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Mandate of the Special Rapporteur on the promotion and protection of human rights in the context of climate change

IN THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

ARUSHA, UNITED REPUBLIC OF TANZANIA

APPLICATION No. 001/2025

IN THE MATTER OF A REQUEST BY THE PAN AFRICAN LAWYERS UNION FOR AN ADVISORY OPINION ON THE OF STATES WITH RESPECT TO THE CLIMATE CRISIS

AMICUS CURIAE

Made under Rule 84(2) of the Rules of the African Court on Human and Peoples' Rights

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Filed by Professor Elisa Morgera,

United Nations Special Rapporteur on the promotion and protection of human rights in the context of climate change

30 April 2026

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PARTICULARS OF AUTHOR

This *amicus curiae* brief is respectfully submitted by Professor Elisa Morgera, United Nations Special Rapporteur on the promotion and protection of human rights in the context of climate change

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1. This amicus brief is submitted in accordance with Rule 84(2) of the Rules of Court and the notice Ref. AFCHPR/ADV/OP/001/2025/003 admitting the UN Special Rapporteur, Professor Elisa Morgera, as a friend of the court.
2. The United Nations Special Rapporteur on the promotion and protection of human rights in the context of climate change, established pursuant to resolution 48/14 of the Human Rights Council, is part of "[t]he system of Special Procedures" that "is a central element of the United Nations human rights machinery and covers all human rights: civil, cultural, economic, political, and social."[1] They serve as an independent human rights expert selected for their "(a) expertise; (b) experience in the field of the mandate; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity." They "undertake to uphold independence, efficiency, competence and integrity through probity, impartiality, honesty and good faith" and "not receive financial remuneration."[2]
3. Prof. Elisa Morgera was appointed by the Human Rights Council as the United Nations Special Rapporteur on the promotion and protection of human rights in the context of climate change, pursuant to HRC resolution 57/34 in 2024 and is expected to serve until 2030.
4. In the performance of her mandate, the Special Rapporteur has the legal status of an expert on mission for the United Nations, within the meaning of Articles VI and VII of the Convention on the Privileges and Immunities of the United Nations, adopted by the United Nations General Assembly on 13 February 1946. In accordance with Article VI, Section 22 of the Convention, as an expert on mission for the United

[1] Office of the High Commissioner for Human Rights ("OHCHR"), *Special Procedures of the Human Rights Council*, https://www.ohchr.org/en/hrbodies/sp/pages/introduction.aspx
[2] OHCHR, *Special Procedures of the Human Rights Council*.

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Nations, the Special Rapporteur enjoys such privileges and immunities as are necessary for the independent exercise of her functions, including immunity from legal process of every kind in respect of words spoken or written and acts done by her in the course of the performance of her mission.

5. This application is submitted voluntarily without prejudice to, and should not be considered as a waiver, express or implied, of the privileges and immunities of the United Nations, its officials and experts on mission, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations.
6. The Special Rapporteur further clarifies that authorisation for the position and views expressed herein, in full accordance with the independence afforded to her mandate, was neither sought nor given by the United Nations, the United Nations Human Rights Council, the Office of the United Nations High Commissioner for Human Rights, or any of the officials associated with those bodies.
7. The Rapporteur refers to the Notice on the Request for Leave to Act as Amici Curiae dated 28 November 2025 in this matter,1 in which the Court notified the listed entities that it had granted the request to file an amicus to 30 March 2026. She also refers to the Special Rapporteur's request for extension of time dated 23 March 2026, pursuant to Rule 84(1) of the Rules of Court, read together with Rule 90 and 45, applied mutatis mutandis by Rule 87.
8. The delay in filing the brief amicus curiae is due to the drafting the Special Rapporteur's thematic report to the Human Rights Council 62nd session, which took more time than initially anticipated and an invitation she received to participate in the First Conference on Transitioning Away from Fossil Fuels, in Santa Marta, Colombia.
9. The additional time allowed the Rapporteur to ensure the submission is as comprehensive, well-researched, and ultimately useful to the Court as possible.
10. The Rapporteur respectfully requests the Court to consider this amicus curiae brief as duly filed, despite the delayed submission.

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A. INTRODUCTION

1. The Application before this honorable Court raises critical human rights questions relating to the obligations of African States in the context of climate change, many of which have been investigated by the UN Special Rapporteur on the promotion and protection of human rights in the context of climate change. Her work seeks to clarify the international human rights obligations of States and responsibilities of businesses, at all levels, to address the adverse impact of climate change on the enjoyment of human rights, in the light of scientific evidence and lived experiences, with a view to advancing progress in the implementation of the Sustainable Development Goals, the Paris Agreement and the United Nations Framework Convention on Climate Change, and the broader body of international environmental law, in order to contribute to the promotion, protection, realization and full enjoyment of human rights by everyone everywhere.
2. In fulfilling this role, the Special Rapporteur has presented four thematic reports to the Human Rights Council and the UN General Assembly: A/HRC/56/46, a scene-setting report focusing on intersectionality in the protection of human rights in the context of climate change; A/79/176 on access to information on climate change and human rights; A/HRC/59/42 on the imperative of defossilizing our economies and A/80/188, a human rights based approach to the energy transition, with a focus on renewables and energy transition minerals. The submissions made in this brief draw extensively on these four reports.
3. The methodological approach to the generation of these reports is rigorous, evidence-based and inclusive. They draw on extensive research across natural and social sciences, evidence gathering through country visits and consultations with human rights holders, and submissions from States, regional and domestic mechanisms, UN agencies, and national human rights institutions (NHRIs), civil society organisations, academic institutions, scholars and individuals. In addition, the UN Special Rapporteur undertakes extensive consultations with Indigenous Peoples, peasants, small-scale fishers, pastoralists, and environmental human rights defenders from different regions, as well as children and young people. She also brings together academics and civil society from different perspectives into virtual knowledge co-production workshops.
4. While the UN Special Rapporteur's role and mandate mean she considers matters relating to human rights and climate change at a global, regional, trans-national and national level, each of the thematic reports includes findings of particular relevance to the African continent.

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5. This brief aims to support the African Court in its consideration of the **following legal questions** on the human rights obligations of African States with respect to the climate crisis, which are under consideration by the Court:
    a. The interpretation and application of custom and treaty law concerning State obligations on climate change;
    b. Positive obligations of States to protect vulnerable populations, with a specific focus on Indigenous Peoples, peasants, women, and children;
    c. Applicable obligations concerning a just, transparent, equitable, and accountable transition, including with regard to energy transition minerals;
    d. Applicable obligations in implementing mitigation measures, with a particular focus on fossil fuels and renewables;
    e. Applicable obligations concerning compensation for loss, damage and reparations;
    f. Obligations of African States concerning traditional emitters (historically high-emitting countries), with a specific focus on demanding climate finance, seeking compensation for loss and damage, and promoting equitable burden-sharing.

B. THE RIGHTS TO A HEALTHY ENVIRONMENT AND TO DEVELOPMENT: LOCATING CLIMATE CHANGE OBLIGATIONS IN THE UNIQUE FRAMEWORK OF THE AFRICAN CHARTER

6. In this Amicus Brief, the UN Special Rapporteur reflects in particular on the centrality of the rights to development (Article 22) and a satisfactory environment (Article 24) in the context of the African Charter and African States' international human rights obligations in the context of climate change, as clarified by the Advisory Opinions of the International Tribunal for the Law of the Sea (ITLOS), the Inter-American Court of Human Rights, and the International Court of Justice (ICJ).
7. The African Charter is the first regional human rights treaty to include the human right to a satisfactory environment in article 24 and to explicitly link it to article 22 in relation to environmental conditions for the right to development. Article 22, in turn, explicitly secures the right of all peoples to "the equal enjoyment of the **common heritage of [hu]mankind**". Common heritage of humankind is an international law principle that specifically refers to areas beyond national jurisdiction (the deep-seabed and outer space), where natural resources that cannot be appropriated to the exclusive sovereignty of a State but are rather subject to an international managing and regulating institution with a view to sharing fairly and equitably benefits arising

from the utilization of such resources to all States, even if they are unable to participate in the actual process of extraction:[3] The notion of common heritage of humankind, however, can also be applied in more general terms to shared environmental resources (including air, water, migratory species),[4] pointing to a shared concern and responsibility in the sustainable management of resources and the objective of fairly and equitably sharing the benefits of such management.

8. Both rights to development and a satisfactory environment are **collective in nature**, belonging to all peoples (another unique feature of the African Charter) and, as article 22 makes clear, encompass multiple dimensions of collective personhood. It is the right of peoples, in their freedom, identity and equal enjoyment of humanity's common heritage, to develop as peoples, culturally, socially and economically and in a favourable environment. [5] This collective dimension reflects distinctly African conceptions of rights that emphasize communal well-being, intergenerational continuity, and the relationship between human communities and the natural world.[6] Unlike Western liberal traditions that prioritize individual autonomy, African legal and philosophical traditions recognize that environmental stewardship is fundamentally a collective responsibility with benefits and burdens shared across communities and generations. The right to a satisfactory environment thus encompasses not merely individual claims to environmental quality but collective entitlements of peoples to maintain, protect, and benefit from their natural heritage.
9. This visionary inclusion established Africa as a pioneer in recognizing the inextricable link between environmental protection and human dignity in individual, collective and inter-generational dimensions.[7] The Charter's framers, drawing upon African experiences of colonial resource exploitation and environmental degradation, understood that meaningful self-determination and development required the protection of a healthy environment capable of sustaining present and future generations. This framing has profound implications for climate change, which represents the ultimate collective environmental challenge, while causing distinctively unequal impacts on the human rights of those in various situations of

[3] E Morgera, *Fair and equitable benefit-sharing in international law* (OUP, 2024), open access at https://global.oup.com/academic/product/fair-and-equitable-benefit-sharing-in-international-law-9780198862130?cc=gb&lang=en&.
[4] JE Noyes, 'The Common Heritage of Mankind: Past, Present, and Future' (2011) 40 Denver Journal of International Law and Policy 447.
[5] *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya 276/2003* (African Commission of Human and Peoples' Rights).
[6] E Etieyibo, 'Ubuntu and the Environment' in Adeshina Afolayan and Toyin Falola (eds), *The Palgrave Handbook of African Philosophy* (Palgrave Macmillan 2017); Danford T Chibvongodze, 'Ubuntu Is Not Only about the Human! An Analysis of the Role of African Philosophy and Ethics in Environment Management' (2016) 53 Journal of Human Ecology 157.
[7] D Lupin Townsend, *Human Dignity and the Adjudication of Environmental Rights* (Edward Elgar Publishing 2020).

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vulnerability, and requires coordinated action across communities, nations, and generations.

10. The International Court of Justice's recent advisory opinion on climate change provides authoritative guidance on the **central role of the human right to a healthy environment in the context of all applicable law in relation to climate change** - customary and treaty obligations of all States to protect the climate system, which includes the protection of biodiversity, the ocean and soils that regulate the climate, and the protection of human rights. In doing so, the ICJ clarified that environmental obligations are not subordinate to economic development priorities but rather constitute fundamental prerequisites for sustainable development. For its part, the Inter-American Court, in its advisory opinion, clarified that the obligation to prevent irreversible harm to the climate system and the environment, is imperative and allows no derogation. The Inter-American Court further underscored that the protection of the climate as part of inter-connected life-supporting systems requires transition towards sustainable development models that continuously enhance human wellbeing, protecting human rights and the environment. These interpretations resonate deeply with the emphasis in Article 24 of the African Charter on an environment "favorable to development," pointing to the obligation to **develop development pathways that avoid harming the climate system under Article 22, so that the right to development is exercised in harmony with environmental protection rather than at its expense**.
11. The African Commission on Human and Peoples' Rights has already recognized, in landmark cases such as in the matter of Social and Economic Rights Action Center v Nigeria (SERAC), that environmental degradation can constitute violations of Article 24 and related Charter provisions. The Commission has established that States have obligations to prevent environmental harm through appropriate regulation, to monitor environmental quality, to require environmental impact assessments for major projects, and to ensure that affected communities have access to information and remedies. These principles, developed in the context of oil pollution and toxic waste, apply with even greater force to climate change, which represents the most severe environmental threat facing Africa.
12. The convergence between the African Charter's pioneering environmental rights provisions and the ICJ's recent clarification of climate obligations creates a robust framework for holding African States accountable for climate inaction or inadequate responses, but also to ensure that international cooperation with African States respects the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC), and is guided by human rights priorities determined in Africa in accordance with international and regional norms. Article 24 imposes both

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negative obligations – to refrain from actions that degrade the environment and compromise climate stability – and positive obligations – to take affirmative measures to protect environmental quality and address climate threats. In light of the ICJ advisory opinion, these obligations include duties to effectively regulate and control activities that emit greenhouse gas emissions consistent with the best available science and highest level of ambition as a matter of stringent due diligence, to implement adaptation measures that protect vulnerable individuals communities, to conduct environmental impact assessments that consider climate and human rights harm, and to ensure public participation in climate policy development and decision-making.

13. As this Court develops jurisprudence interpreting Article 24 in the climate context, it has the opportunity to articulate a **distinctly African approach to human rights-based climate action and climate cooperation** that draws upon the continent's philosophical traditions, experiences, and priorities. Such an approach would recognize that environmental rights in the African context cannot be divorced from historical experiences of colonialism and resource exploitation, from ongoing struggles for self-determination and equitable development, or from the profound injustice of a continent that contributed minimally to causing climate change yet suffers disproportionately from its impacts. An African climate jurisprudence must therefore integrate principles of climate justice, historical responsibility, and differentiated obligations while grounding these concepts in the Charter's text and in African values in the context of international human rights law. In this connection, it bears underscoring how the Inter-American Court of Human Rights has contextualized in its advisory opinion a wealth of legal interpretations arising from the UN human rights processes, including over 20 UN Special Procedures,[8] in its long-standing and distinct jurisprudence on human rights and the environment, and the protection of Indigenous Peoples' and Afro-descendants' human rights, and the human rights of communities whose ways of life are intertwined with nature.
14. This distinctly African approach should emphasize several key elements: the collective and intergenerational dimensions of environmental rights rooted in Ubuntu and similar philosophies; the cultural and spiritual dimensions of environmental harm that extend beyond economic losses; the importance of community-based knowledge and participation in climate responses; and the obligation of wealthier nations to provide finance, technology, and capacity support to enable African States to fulfill their environmental and human rights obligations. In particular, Ubuntu

[8] https://www.ohchr.org/en/press-releases/2025/07/un-experts-hail-landmark-inter-american-court-opinion-states-extensive.

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philosophy, prevalent in Southern Africa, emphasizes the **interconnectedness of human beings with each other and with the natural world**, captured in the Nguni expression "umuntu ngumuntu ngabantu" – a person is a person through other persons, which extends to the relationship between humans and nature. Similar concepts exist across the continent, including Ukama in Zimbabwe, Ujamaa in East Africa, and various West African philosophical traditions that emphasize communal stewardship and reciprocal obligations between humans and the environment. These elements have also been explored from the distinctive perspective of Latin-American philosophical traditions and Indigenous Peoples' science and local knowledge by the Inter-American Court of Human Rights. The Inter-American Court placed a critical emphasis on the protection of the climate as part of inter-connected life-supporting systems who are inextricably connected to all dimensions of human well-being protected as human rights. Distinctively the Inter-American Court provided clarifications on the individual and collective dimensions of the human right to a healthy environment, bringing greater recognition both to the human right to a healthy climate and to nature as a rights-holding entity.

15. In turn, the African Court has an opportunity to develop the interpretation of Article 24 in a way that is informed by **African values and conceptions of land** that differ fundamentally from the commodified, instrumentalist approaches prevalent in much Western environmental law. Across African societies, land and the natural environment are understood not merely as property or economic resources but as sacred trusts, sources of cultural identity, and connections to ancestral heritage. These African worldviews recognize land as *home*, not as inert matter to be exploited but as a *living entity* with which communities maintain relationships of mutual obligation and respect. Traditional African land tenure systems typically vest ownership not in individuals but in communities or lineages, with current generations serving as stewards responsible for maintaining the land's productivity for future generations. Elders in many African societies are tasked with ensuring that resource use decisions reflect long-term sustainability rather than short-term gain, embodying principles of intergenerational equity that predate their articulation in international environmental law by centuries. The sacred groves, communal forests, and traditional conservation practices found throughout Africa testify to sophisticated environmental management systems grounded in spiritual, cultural, and practical understandings of ecological interdependence.
16. The peoples' rights framework of Article 24 also supports **community-based approaches** to climate change mitigation, adaptation and resilience, recognizing that African communities possess distinctive knowledge and practices essential for environmental management. Indigenous Peoples and local communities across

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Africa have developed sophisticated climate adaptation strategies over centuries, including crop diversification, water harvesting techniques, mobility patterns, and social support systems that buffer climate variability. In addition, their production systems are more aligned with the necessities of climate change mitigation, including ecosystem protection and restoration – which has been recognized by all three preceding advisory opinions as an international obligation that supports both climate change adaptation and mitigation. In fact, the ICJ also indicated that ecosystem restoration can be a secondary obligation arising from State responsibility arising from violations of international obligations to protect the climate system and human rights. The ICJ's emphasis on States' customary and treaty obligations to protect the environment and the climate system can be interpreted, in the African context, as including duties to prioritize, support and empower community-based environmental stewardship rather than imposing top-down solutions that ignore local knowledge and practices. This in turn would help further clarify State obligations to protect the human rights of Indigenous Peoples and peasants as part of climate action, which was the approach taken by the Inter-American Court in its advisory opinion. This is also aligned with the repeated recommendation from a number of UN Special Procedures on Human Rights and the Office of the High Commissioner for Human Rights, on which the Inter-American Court extensively relied upon. Under Article 24 of the African Charter, therefore, understood through the lens of African values, States should recognize Indigenous Peoples and peasants as human rights-holders who are leaders and partners in climate action, rather than passive beneficiaries of government programs. This is also aligned with best available science on the transformative change needed to address the triple planetary crisis, which recognizes that Indigenous science and peasants' knowledge are more advanced knowledge systems to protect the inter-connected life-supporting systems on our planet.[9]

17. On the other hand, climate change impacts do not affect individuals in isolation but rather devastate entire communities, disrupting social structures, economic systems, and cultural practices that depend on stable environmental conditions. For pastoralist communities across the Sahel and Horn of Africa, climate-induced droughts threaten not merely individual livelihoods but entire ways of life, social organizations, and cultural identities built around livestock herding. For small-scale fishing communities along Africa's coasts, warming and acidifying oceans undermine communal economies and social structures organized around maritime activities. An individualist conception of environmental rights would fail to capture these collective

[9] *Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services* (IPBES), Global Assessment on Transformative Change (2024): https://www.ipbes.net/transformative-change-assessment.

dimensions of climate harm. Crucially, it would also prevent States from learning essential lessons and insights from these communities on how to take effective climate action that can support the protection of everyone's human rights to a healthy environment and to development.

18. The implications of these African values for interpreting Article 24 in the climate context are profound. Climate change fundamentally disrupts the relationship between African communities and their land, rendering traditional agricultural practices ineffective, displacing communities from ancestral territories, and severing the cultural and spiritual connections that sustain African identities. When the Sahel expands southward, when Lake Chad shrinks to a fraction of its historical extent, when the snows of Kilimanjaro disappear, the losses are not merely economic, but also cultural and spiritual ones. An interpretation of Article 24 that emphasizes African values must therefore recognize that climate change constitutes not only a threat to physical survival, but also an assault on African ways of life, cultural heritage, identity, and the integrity of relationships between communities and their environments that have been maintained for generations.

B.1 The Rights to a Healthy Environment and to Development in the context of Climate Change, with a Specific Focus on Children's Human Rights

19. Intergenerational equity underpins the concept of common heritage of humankind[10] that is part of the right to development (Article 22), thereby being open to an interpretation that is aligned with the internationally protected human rights of children[11] and future generations, including the obligation to ensure that burdens of mitigating and remedying climate change are not shifted to future generations. [12] Similarly, intergenerational equity underpins the right to a favourable environment: the African Commission in its State Reporting Guidelines and Principles on Articles 21 and 24, found that the Article 24 protects an environmental favourable to peoples' development, which "entails that the environment should be used in a sustainable

[10] R Das, 'Compensation as Equity in Context of Common Heritage of Mankind: A Key to Sustainability and Inter-generational & Inter-regional Equity' (2009) 2 NUJS Law Review 267.
[11] E Morgera and H Lily, 'Public Participation at the International Seabed Authority: An International Human Rights Law Analysis' (2022) 31 RECIEL 374-388, https://onlinelibrary.wiley.com/doi/epdf/10.1111/reel.12472.
[12] The Maastricht Principles on the Human Rights of Future Generations, supported by the UN Special Rapporteur on Climate Change and Human Rights in UN Doc A/78/255; Gideon Basson et al., Commentary to the Maastricht Principles on the Human Rights of Future Generations (2025): https://muse.jhu.edu/pub/1/article/972482#bio_bio07.

manner, fulfilling the needs of the present generation, without compromising the ability of future generations to meet their needs."[13]

20. The ICJ underscored all States' obligations to prevent disproportionate human rights impacts of climate change on individuals in vulnerable situations, such as children, and to pay due regard to the interests of future generations and the long-term implications of climate action. The Inter-American Court also emphasized that delays in States' action on mitigation and adaptation pass on an extraordinary responsibility to future generations, while increasing the risk of suffering for the most vulnerable. The Inter-American Court also shed light on the links between the collective dimension of the human right to a healthy environment, and its universal value that is owed to both present and future generations, to ensure the survival of present and future generations on a habitable planet. This understanding was part of the reasoning underpinning the conclusion that the prevention of irreversible harm to the climate system and the environment is *ius cogens* on the basis of the general principle of international law of effectiveness. Similar reasoning is reflected in the recent General Comment No 27 (2025) of the UN Committee on Economic, Social and Cultural Rights on Environmental dimension of sustainable development,[14] which was presented in a press release aptly titled 'Development cannot be achieved on a dying planet.'[15]
21. Both the Inter-American Court and the UN Committee on Economic, Social and Cultural Rights pointed to the links between the protection of the human rights of future generations and of children. Similarly, the Committee on the Rights of the Child (CRC) General Comment No. 26 on children's rights and the environment with a special focus on climate change, (2023) emphasizes that States' obligations extend to protecting the rights of future generations of children, not merely those currently alive. This principle resonates powerfully with African values and traditions that emphasize intergenerational continuity and the responsibility of current generations to preserve resources and opportunities for those to come. The concept that children inherit both the benefits and burdens of their ancestors' actions is deeply embedded in African social structures, land tenure systems, and governance traditions. Effectively, protecting children's human rights in the context of the climate crisis, given their unique vulnerability to climate harm, would be a guarantee of enhanced

[13] African Commission on Human and Peoples' Rights (ACHPR), 'State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter related to Extractive Industries, Environment and Human Rights' (2019) 28.
[14] https://www.ohchr.org/en/documents/general-comments-and-recommendations/ec12gc27-general-comment-no-27-2025-economic-social.
[15] https://www.ohchr.org/en/press-releases/2025/09/development-cannot-be-achieved-dying-planet-un-committee-issues-new-guidance.

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protection of everyone's human rights in the context of the climate crisis, including future generations.

22. In Africa, where approximately 40 percent of the population is under the age of 15, climate change threatens to reverse decades of progress in child survival, nutrition, education, and well-being. Children represent the population group most vulnerable to the impacts of climate change, facing both immediate threats to their survival and development and the prospect of living their entire lives in a progressively destabilized climate system. The CRC General Comment No. 26 recognized that children face unique and severe harms from environmental degradation and climate change due to their physiological vulnerability, developmental needs, and the reality that they will bear the consequences of today's emissions throughout their lifetimes. For African children, these vulnerabilities are compounded by existing challenges including poverty, malnutrition, inadequate healthcare infrastructure, and limited access to education, creating cascading risks that climate change exacerbates exponentially.
23. While the African Charter on Human and Peoples' Rights does not contain specific provisions dedicated to children's rights, it must be read in conjunction with the African Charter on the Rights and Welfare of the Child (ACRWC), which entered into force in 1999 and represents the continent's primary instrument for protecting children's rights. The ACRWC explicitly recognizes children's right to health under Article 14, including "the provision of adequate nutrition and safe drinking water," both of which are directly threatened by climate change. Article 5 guarantees children's right to survival and development, requiring States to "ensure, to the maximum extent possible, the survival, protection and development of the child." This provision imposes obligations on African States to **protect children from foreseeable threats to their survival and development**, and in the contemporary context, climate change represents the most significant and foreseeable such threat.
24. The ACRWC also enshrines the principle of the best interests of the child in Article 4, requiring that "in all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration." This principle – which also underpins the UN Convention on the Rights of the Child – has profound implications for climate policy, requiring African States to **prioritize children's wellbeing** in decisions about mitigation, adaptation, resource allocation, and development pathways. CRC General Comment No. 26 emphasizes that the best interests principle requires States to give substantial weight to the impacts of environmental and climate policies on children, both present and future, and to ensure that **children's voices are heard** in environmental decision-making, so that children articulate for themselves their best interests. For African States, this means that climate policies cannot be developed solely based on adult perspectives or

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short-term economic considerations, but rather must reflect genuine consideration of how policy choices will affect children's lives, opportunities, and futures, in accordance with children's rights to be heard and participate in decision-making at all levels.[16]

25. Article 7 of the ACRWC guarantees children's right to freedom of expression, including the right to "seek, receive and impart information and ideas of all kinds." CRC General Comment No. 26 clarifies that children have the right to participate meaningfully in environmental and climate decision-making, to access information about climate risks and government responses, and to organize and advocate for climate action without facing retaliation or harassment. The UN Committee recognized that children and young people have been at the forefront of climate activism globally, demanding that adults and governments take seriously the threats to their futures. This activism has been particularly visible in Africa, where young people have mobilized around climate justice, demanding that African governments adopt more ambitious climate policies and that wealthy nations fulfill their obligations to provide climate finance and support.

26. African States thus have obligations under both the ACRWC and General Comment No. 26 to create **meaningful opportunities for children's participation in climate governance to help clarify the inter-dependence of the right to a healthy environment and the right to development**. This includes ensuring that children can express their views in climate policy development processes, that children's perspectives are given due weight according to their age and maturity, that children have access to child-friendly information about climate change and its impacts, and that children can organize and advocate for climate action without facing restrictions or reprisals. For African States, this means going beyond tokenistic inclusion of youth representatives in international climate negotiations to genuine engagement with children and young people at national and local levels, and in all the spaces where climate policies are designed and implemented, mandated in domestic legislation. It also means that **international climate cooperation should support African States in ensuring the genuine inclusion of children in climate decision-making**, in light of the overwhelming evidence which shows that many early-years children can already make sense of their health and well-being, human rights, and their environment.[17]

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[16] Shields et al, 'Children's Human Right to be Heard at the Ocean-Climate Nexus' (2023) 38(3) *The International Journal of Marine and Coastal Law* 545-580.

[17] L Madden and J Liang, "Young children's ideas about environment: perspectives from three early childhood educational settings", 2017 (23(8)) *Environmental Education Research* 1055-1071. https://doi.org/10.1080/13504622.2016.1236185; M Strand, S Shields, E Morgera et al, 'Protecting Children's Rights

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27. In addition, the relationship between everyone's rights to a healthy environment and to development with **the distinctive right of children to development** should be clarified in the context of climate change. According to the CRC General Comment No. 26, States must ensure that climate policies prioritize the protection of children's rights to life, survival, and development, meaning that economic development strategies cannot legitimately compromise children's developmental process in the **present, as well as immediate and more distant future** – including by preventing harm *in utero*, congenital anomalies, or brain development during vulnerable stages of development. In other words, the child's present and future are recognized, intertwined and equally important.[18] According to CRC General Comment No. 5 (2005), a child's right to development is a 'holistic concept, embracing the child's physical, mental, spiritual, moral, psychological and social development'. In addition, the implementation of the right to development should aspire to achieve 'the optimal development of all children'. This is essential to understand children's right to development not merely as 'caring for the child's future while paying lip service to her life in the present' - a child's right to become an adult – but rather in its inter-dependence with children's human right to a healthy environment as the precondition for children's psychological, spiritual, mental, moral and social development. In other words, children's development is understood as a process that facilitates children's ability to shape their lives in a way which affirms their agency - expanding their capability, increasing their real opportunities, and asserting that children should not be bound by choices made by others.[19]
28. Threats of serious or irreversible climate harm should thus be considered in relation to 'short-, medium- and long-term effects" on children's right to a healthy environment as a precondition for their development over time. This entails recognizing 'each period of childhood, its unfolding importance for subsequent stages and children's varying needs at different stages of their maturation and development' and the 'wide range of determinants' for children of different ages to develop to the fullest potential as part of this 'life-course perspective' (CRC General Comment no 26).
29. In addition, careful consideration should be given to children's right to development and to a healthy environment in their intrinsic connections to **cultural rights**: the UNCRC preamble recognizes the importance of 'taking due account of the

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to Development and Culture by Re-imagining "Ocean Literacies"' (2023) 31 *The International Journal of Children's Rights* 941-975.

[18] N Peleg, The Child's Right to Development (Cambridge: Cambridge University Press, 2019); N Peleg, "Reconceptualising the Child's Right to Development: Children and the Capability Approach" 2013 (21) The International Journal of Children's Rights, 523-542.

[19] Peleg (n 18); A/HRC/59/42.

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importance of the traditions and cultural values of each people for the protection and harmonious development of the child'. The role of cultural rights and the right to benefit from science have been recognized as critical in States' obligations on climate change in the Inter-American Court's advisory opinion, and there is scope to further explore the interpretation of cultural rights with specific regard to children's human rights in the context of climate change, with a view to also better protecting children's rights to education, information, participation in decision-making, as well as access to justice and effective remedies.

30. These interpretations have then a bearing on another general obligation of States in relation to climate change. The application of **precaution** in decisions on the environment and the climate – the centrality of which has been underscored in all advisory opinions – should take into account the 'possibility that **environmental actions that seem reasonable on a shorter scale can become unreasonable when considering the full harm they will cause to children throughout their childhoods and their lives'**. This in turn connects with the clarification in General Comment No. 26 on States' obligations to regulate business enterprises to prevent harm to children's right to a heathy environment, recognizing that corporate activities, particularly in extractive industries and agriculture, significantly contribute to climate change and environmental degradation. For African States, where multinational corporations operate mines, fossil fuel facilities, industrial agriculture, and other climate-harming and health-harming enterprises, this obligation is particularly salient. States must ensure that companies operating within their jurisdiction or under their control conduct environmental and human rights impact assessments that specifically consider effects on the climate system and on children rights in the short, medium and long term. States must ensure that any licensing of business activities (or withdrawal of licenses, where necessary) is compatible with children's rights to a healthy environment and development, and hold business accountable when their activities harm children's rights.
31. The UN Committee further emphasized that States cannot delegate their human rights obligations to private actors and must maintain effective regulatory frameworks, monitoring systems, and enforcement mechanisms to protect children from corporate harms. This interpretation should be understood in the light of the converging findings of all three preceding advisory opinions on the stringent due diligence nature of State obligations to regulate, monitor and enforce legislation to protect the climate system and prevent business from harming children in the present and/or compromising children's futures. It also means that when corporate activities cause environmental harm affecting children, effective remedies including compensation and rehabilitation must be available.

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32. Across these obligations, States must pay particular attention to children in vulnerable situations, including those living in poverty, children with disabilities, refugee and displaced children, Indigenous children and children in peasants, small-scale fishing and pastoralists communities, and children in climate-vulnerable regions such as arid and semi-arid lands, coastal areas, and small island states. Given that millions of African children fall into these categories, this obligation requires targeted policies and resource allocation to protect the most vulnerable. Third, African States must ensure that climate mitigation, adaptation, and loss and damage measures specifically address children's needs.
33. The convergence of the ACRWC's protective framework and General Comment No. 26's authoritative guidance serves to clarify comprehensive obligations for African States to place children's rights at the center of climate policy and action. This requires a fundamental reorientation of how climate decisions are made, moving away from approaches that treat children as passive recipients of adult decisions toward recognition of **children as rights-holders with agency, perspectives, and entitlements that must shape climate action in line with the individual, collective and inter-generational dimensions of the rights to a healthy environment and the right to development.** For Africa, where children constitute the majority of the population and where climate impacts threaten to devastate an entire generation's prospects, child-centered climate policy is merely a human rights imperative, as well as a practical necessity for the continent's future. It is also a guarantee of efficient climate action and sustainable development that will enhance the protection of everyone’s human rights.
34. These obligations also entail **directing climate finance and prioritizing technological development and capacity building toward interventions that specifically protect children in the short, medium and long term**. African States have the obligation and the opportunity to rely on developed States’ legally binding obligations to provide international financial, technical and capacity to support ambitious, child-centered climate action grounded in the legal frameworks of the ACRWC and informed by the authoritative guidance of CRC General Comment No. 26.

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35. Against the background of this overarching understanding of the distinctive opportunities of the African Court’s Advisory Opinion, this brief discusses these two co-constitutive and interdependent rights to a healthy environment and to development, in their individual, collective and inter-generational dimensions, as

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forming the basis of African States' obligations, domestically and in the context of international cooperation, with a particular focus on:

a. The human rights imperative of defossilization;
b. A human rights-based approach to the development of a renewables-based economy, including in relation to energy transition minerals;
c. Access to information and vulnerabilities;
d. Access to effective remedies.

C. DEFOSSILIZATION OF ECONOMIES ALIGNED WITH THE RIGHT TO DEVELOPMENT AND THE RIGHT TO A SATISFACTORY ENVIRONMENT

36. As climate science, but also planetary health science, have clarified beyond doubt, fossil fuels are the main cause of climate change. The Special Rapporteur's report to the Human Rights Council of 2024[20] clarified that all States have international human rights obligations to phase out fossil fuels and related subsidies to prevent further climate, environmental and human rights harm, particularly for children. The ICJ indicated that expansion, production, consumption and subsidies related to fossil fuels may be internationally wrongful acts attributable to the State, and lack of stringent due diligence in this connection is a violation of customary and treaty-based international law across environmental, ocean and human rights.
37. The Special Rapporteur's report also emphasized that the **interlinked, intergenerational, severe and widespread human rights impacts of the fossil fuel life cycle cannot prevented only through decarbonization**. They entail human rights harm arising from biodiversity loss, toxic pollution and economic inequality along the entire life cycle of fossil fuels, affecting the human rights to life, health and a dignified standard of living locally and in transboundary contexts. In addition, fossil fuel companies have for over six decades caused disinformation and climate obstruction, affecting the human rights to information, science, education and public participation in decision-making, to the point of undermining our democracies. All these findings of compounding human rights harm from fossil fuels constitute multiple layers of climate harm (in addition to greenhouse gas emissions, also destruction of carbon sinks), that undermine the capacity of nature to regulate the climate and human capacity of resilience in the context of the climate crisis. These findings are crucial for many African States who are already experiencing prolonged

20 Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change: The imperative of defossilizing our economies, UN Doc A/HRC/59/42 (2024); all underlying references can be found in the report itself and its Additional Materials II: https://www.ohchr.org/en/documents/thematic-reports/ahrc5942-imperative-defossilizing-our-economies-report-special.

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droughts in the Horn of Africa, cyclones in Southern Africa, and severe flooding in West and Central Africa.

38. This section contextualizes the ICJ and the Special Rapporteur's findings in relation to the specific position of African States who have been historically least responsible for climate change, and should benefit from the application of the principles of equity and common but differentiated responsibilities and respective capabilities, while upholding their human rights obligations in the context of climate change, including in the context of a just transition away from fossil fuels.

C.1 Understanding fossil fuels as a human rights issue

39. Fossil fuels—coal, oil and gas—are the primary cause of climate change and a major driver of other planetary crises, including biodiversity loss, toxic pollution and social inequality. Despite scientific consensus and progress in the development of renewable energy, global fossil fuel production continues to increase.

40. Meanwhile, the scientific evidence from a human health and planetary health perspective has highlighted not only the greenhouse gas emissions from fossil fuels, but also a much **wider range of intergenerational human rights impacts** associated with the entire fossil fuel life cycle. Fossil fuel exploration, extraction, transportation, refining, combustion and waste produce cumulative harms to nature and to economic, social and cultural rights that persist across generations. African communities located near oil installations in the Niger Delta, coal fields in South Africa, and gas fields in Mozambique, for example, have long reported severe pollution, health burdens, environmental degradation and displacement. Human rights harms from fossil fuels are not confined to local environments, however: transboundary air pollution, as well as soil, freshwater and ocean contamination, have impacts on human rights nationally, regionally and globally, harming most severely and for the longest time children. Taken together, the negative impacts of the entire fossil fuel life cycle **undermine States' entire ability to meet their human rights obligations.**

41. This is why it is important to attend to the **dangers of "carbon tunnel vision"**—the narrow focus on carbon dioxide emissions to the exclusion of the broader toxic and other ecological harms, as well as the economic inequality, inherent in the fossil fuel-based economy. The harm to human health, alone, has motivated all sectors of the medical community to advocate for phasing out fossil fuels: they see the phase-out as the one most impactful health intervention of our times. Health evidence from all branches of medicine indicates that the full life cycle of fossil-fuels negatively affects every organ of the human body, across our life course, contributing to millions of

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premature deaths annually, and disproportionately affects children, pregnant women, Indigenous Peoples, and other marginalized groups.[21]

42. Even harsher and lasting physical and mental health tolls and human rights violations are suffered by communities in "**sacrifice zones**," where multiple fossil fuel operations are clustered in areas already characterized by poverty, limited public services and inadequate environmental governance. Such sacrifice zones are well-documented in African contexts where fossil fuel extraction occurs, and were specifically discussed in a thematic report of the former UN Special Rapporteur on Human Rights and the Environment in 2022:[22] "often created through the collusion of governments and businesses, sacrifice zones are the diametric opposite of sustainable development, harming the interests of present and future generations," representing forms of **discrimination, violating both the obligation of using the maximum available resources and of prioritizing those most in need**. These patterns of severe human rights violations raise serious concerns under the principles of equality and non-discrimination, in addition to the protection of human rights to life and health. Article 16 of the African Charter obliges States to ensure the highest attainable state of physical and mental health, including by preventing exposure to pollution and hazardous substances; and under Articles 2 and 3 of the African Charter, States must prevent discriminatory environmental harm.
43. In addition, the expansion of **petrochemicals, such as fertilizers, pesticides and plastics** locks entire economies **beyond the energy sector** —including African economies—into long-term fossil fuel dependence and long-term human rights harm. Petrochemicals used in agriculture contribute to soil degradation and water pollution while emitting highly potent greenhouse gases, and harming healthy food systems, food sovereignty and resilience. Plastics and petrochemical expansion threaten the **rights to food, health and a healthy environment**, including for future generations, and exacerbate already severe climate impacts in regions whose adaptive capacity is limited.
44. Fossil fuel industries, including State-owned entities, have generated immense profits while benefiting from substantial public subsidies and employing tax avoidance structures. These practices —which are incompatible with States' obligations to allocate **maximum available resources** toward the realization of human rights— redirect public funds away from essential services such as health and

[21] https://climateandhealthalliance.org/cradle-to-grave-the-health-toll-of-fossil-fuels-and-the-imperative-for-a-just-transition-2nd-edition/.
[22] Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: The right to a clean, healthy and sustainable environment: non-toxic environment A/HRC/49/53 (2022); and Annex I "Additional sacrifice zones", paras 5-6 and11 on African fossil fuel-related sacrifice zones: https://www.ohchr.org/sites/default/files/2022-03/Annex1_to_A_HRC_49_53.pdf.

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education – which are severely undermined by climate change impacts, particularly for children and in Africa – and, paradoxically, also from climate adaptation. This has significant adverse effects on lower-income States, many of which are in Africa, where fossil fuel subsidies often disproportionately benefit wealthier households while deepening fiscal constraints and hindering investment in renewable energy.

45. Fossil fuels also harm directly the right to development—particularly for countries still striving to achieve structural transformation. Fossil-fuel dependent economic models expose States to volatile markets, stranded assets and deepening economic inequality. African economies that rely heavily on fossil fuel exports face particular risks of revenue instability. On the other hand, the evidence has never been clearer that renewable energy has become the cheapest power option in most parts of the world. Renewables can contribute to energy security, dignified and gender-balanced work, healthier and more inclusive economies, as well as improved access to energy in rural areas while better responding to low-income households' needs. Renewables are essential to reduce poverty, and in some settings, health savings are equal to climate mitigation costs. In addition, the foreseeable harm from fossil fuels across their life cycle and sectors (including plastics and petro-chemicals) to the human right to health within one State's own territory should be fully assessed against dwindling national health budgets in the face of the worsening climate and debt crises and climate harm to health care structures themselves. In other words, as underscored by the UN Special Rapporteur in the Defossilization report, **the phase out of fossil fuels is a precondition for the right to development, including in terms of non-discrimination and protection of children's right to development**: a shift toward sustainable economic models that prioritize human and planetary health, diversify sources of income, and ensure intra- and inter-generational equity is a shift away from fossil fuels.

C.2 Human rights obligations applicable to fossil fuels domestically

46. While some States have initiated phaseout measures, a decisive and coordinated shift away from fossil fuel dependence is required urgently to prevent irreversible harm, particularly to vulnerable populations, including many in Africa whose emissions have historically been negligible. This is because all countries must protect human rights, including the right to development, from the multiple harms of fossil fuels, and ensure that priorities are set accordingly as part of international cooperation in accordance with the CBDR-RC principle to support developing countries to **leapfrog** into renewables-based economies.

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47. The phase out of fossil fuels is thus indispensable to prevent further climate change—including extreme heat, drought, floods, disease spread and food insecurity— and its impacts on fossil fuels. While the responsibility to prevent climate change is subject to the CBDR-RC principle, the obligations to protect all the human rights from all the foreseeable negative human rights impacts of fossil fuels rests with all States, as fossil fuels constitute a direct and foreseeable threat to life, health, water, food, self-determination, equality, a clean and healthy environment, the right to development and the rights of the child, including children's rights to development. States thus bear a duty to prevent activities, including fossil fuel expansion, that exacerbate such compounded human rights impacts.
48. African States have a number of human rights obligations in relation to preventing human rights harm from fossil fuels. **Under Articles 4, 16 and 24, States must prevent such foreseeable harm**, not merely react to it. This encompasses prohibiting new fossil fuel exploration, drilling and coal development, revoking existing licences where operations cause or risk serious rights violations, and regulating methane emissions, gas flaring, offshore exploration and exploitation, and petrochemical expansion. States must legislate to prevent further expansion of fossil fuels and manage the phase out of existing operations, conduct monitoring, and provide remedies for past and current harm. This includes ensuring full environmental, social and human rights impact assessments including scope-3 emissions,[23] imposing strict liability for pollution, leaks, spills and toxic exposure, and preventing intimidation or reprisals against environmental human rights defenders.
49. The African Commission has interpreted **Article 4** of the African Charter, in particular, to require States to take positive steps to protect individuals from **foreseeable threats to life, including environmental degradation** (SERAC v. Nigeria, Comm. No. 155/96). Under international human rights law, States' duty to respect, protect and fulfil the right to life, entails an obligation to take appropriate measures to address "the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity", which include "degradation of the environment", and to protect against public and private actors that cause climate change. The increasing intensity of climate events exacerbating human physical and mental suffering in circumstances of tremendous environmental hardship can be characterized as inhuman and degrading treatment, due to the compounding violations of the human rights to health, food, water and sanitation, housing and education, and of cultural rights.

23 Report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment, Framework for environmental, social and human rights impact assessments and the right to a clean, healthy and sustainable environment, UN Doc. A/80/187 (2025).

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50. **Article 24** on the right to "a general satisfactory environment favourable to development" has already been interpreted, in SERAC, by the African Commission to imply that States must prevent pollution, secure ecologically sustainable development, and provide adequate environmental monitoring. The Charter imposes heightened duties where the environmental burden falls on groups already subject to marginalization, as confirmed by the African Commission in *Endorois v. Kenya*. These interpretations are particularly important to prevent and remedy to **discrimination** inherent in the distribution of fossil fuel harms, particularly where Indigenous Peoples, peasants, marginalized communities, women and children have been disproportionately affected, including in the context of sacrifice zones. Within the UN human rights processes, the phaseout of fossil fuels has already been recognized as part of States' obligation to prevent discrimination against children and against women in the context of climate change.[24]
51. Furthermore, the lack of action, or inadequate action, on phasing out fossil fuel subsidies represents a violation of the obligation under the International Covenant on Economic, Social and Cultural Rights to ensure "**maximum available resources**", when States:
    a. Provide public finance to fossil fuel industries, thereby diverting the maximum available public finance from combating climate change;
    b. Are not tackling tax evasion and financial secrecy, and are thereby decreasing public budgets for the full realization of the Covenant rights (e.g. health services and education) that are severely impacted by climate change; and/or
    c. Provide other support for fossil fuels, thereby undermining the remaining global carbon budget and ecosystem services that are negatively impacted by climate change, which diminishes the maximum available natural resources that are essential for full realization of the Covenant rights.
52. The phaseout should thus be understood as an essential precondition for the right to self-determination of States and Peoples, and the inter-dependence of the human rights to development and a healthy environment. As the UN Special Rapporteur on Extreme Poverty has underscored, it entails an obligation to develop economic models that provide goods and services that enhance human and planetary well-being, reducing the production of unnecessary and toxic products, and deprioritizing the demands of the richest groups of society who worsen social exclusion and extreme poverty.[25] In other words, the phaseout should be understood as a precondition for the emergence of a healthier economic model at the nexus of

[24] Committee on the Rights of the Child, general comment No. 26 (2023); Committee on the Elimination of Discrimination against Women, general recommendation No. 37 (2018) and general recommendation No. 39 (2022)
[25] A/HRC/56/61.

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biodiversity, water and food,[26] health and climate change,[27] that fully aligns the right to development with all substantive elements of the right to a healthy environment. Such economic models should be centred on intergenerational equity, without shifting the burden of mitigating and remedying climate change to future generations, and be in the best interests of the child in accordance with children's right to development, respecting children's agency not to be bound by choices made by others about their present and future[28] to the severe detriment of their rights.

53. Against this background, the UN Special Rapporteur submits that the African Court has an opportunity to clarify that to contribute to the protection of human rights in Africa, **African States have human rights obligations to**:
    a. Develop, through a participatory process including workers, affected communities, women and children, a plan for the immediate cessation of fossil fuel exploration and expansion;
    b. Refrain from issuing new exploration or exploitation licences;
    c. Prohibit fracking, gas flaring and offshore drilling, as well as exploration or exploitation in protected and highly biodiverse, including the sea;
    d. Regulate the import and export of fossil fuels;
    e. Develop a participatory plan for the careful phaseout of subsidies;
    f. Jointly assess and prevent the negative impacts of phasing out fossil fuels on workers through: a job guarantee scheme should be in place to provide undersupplied services and poverty reduction to workers' communities and support household income, which is a major determinant of health;
    g. Prohibit the abandonment of fossil fuel infrastructure without remediation, requiring financial guarantees to cover costs for the environmental management of facility closure and subsequent phases, including regarding extraterritorial impacts;
    h. Develop rigorous, human-rights based regulatory frameworks for decommissioning the infrastructure associated with fossil fuels, in consultation with affected communities and workers
    i. Maintain energy services, prioritizing the energy needs of rights holders in vulnerable situations domestically and abroad; and

[26] See also A/HRC/54/32 and A/79/190.
[27] *Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*, Thematic assessment report on the interlinkages among biodiversity, water, food and health (nexus assessment) (2024): https://www.ipbes.net/nexus-assessment.
[28] Peleg (n 18).

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j. Ensure effective remedies by: setting and enforcing strict financial penalties for human rights abuses by fossil fuel companies; requiring fossil fuel companies to finance climate adaptation, mitigation and loss and damage, for instance through climate superfunds, ensuring that they are directly accessible by affected communities; and
k. Ensure restitution of territories to Indigenous Peoples, and peasants in areas previously allocated to fossil fuel operations, as long as the return is desired and is made possible through the dismantling of fossil fuel infrastructure, and ecosystem restoration and full remediation of toxic contamination. Otherwise, compensation should be provided.

54. Given the over six decades of evolving strategies of climate disinformation and obstruction by the fossil fuel industry to avoid responsibility for climate and human rights harm, the UN Special Rapporteur submits that the African Court has an opportunity to clarify that **African States have human rights obligations to**:
    a. Ensure access to comprehensive education on the human rights risks of fossil fuels, and on the benefits of fossil fuel-free production, consumption and lifestyles;
    b. Prevent conflict of interest in any public discussion and decision-making space on fossil fuel phase-out;
    c. Ban fossil fuel advertisements, promotion and sponsorship, including cross-border advertising;
    d. Require private financial institutions and universities to disclose publicly, including on social media, funding amounts, durations and any conditions from the fossil fuel industry.

C.3 International cooperation

55. For African States heavily impacted by climate harm—many of which contribute minimally to global emissions—the continued expansion of fossil fuel activities elsewhere constitutes foreseeable transboundary harm, triggering **extraterritorial obligations** under international law. As the Special Rapporteur clarified, fossil fuel phase-out is part of the stringent due diligence obligation to protect the right to self-determination, which is a peremptory norm of international law, from fossil fuel-induced climate harm to States that contributed minimally to climate change is impaired by loss of territory to sea-level rise and/or protracted unsafe climatic conditions. The continued expansion of fossil fuels outside of Africa also harms the right to self-determination of African peoples who are substantially deprived of their

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means of subsistence or risk their cultural survival because of the severe deterioration of entire ecosystems due to climate change, loss of territories, and/or protracted unsafe climatic conditions. In countries where extreme climate events have already been experienced for at least a decade,[29] the compounded human rights impacts on children – among others – go well beyond the threshold of "significant" harm necessary to trigger extraterritorial obligations, and amount rather to "serious and substantial" harm[30] that further undermines the rights to self-determination and non-discrimination of entire States and cultures.

56. In addition, the duty of international cooperation is essential for the effective protection of human rights in the context of climate change. As the ICJ underscored in its advisory opinion, States have a duty to co-operate through sustained and continuous, appropriate measures to address the adverse effects of climate change, in good faith efforts to arrive at appropriate forms of collective action. Such cooperation needs to be founded on the recognition of the interdependence of States and the ensuing need for solidarity among peoples, taking account of the situation of other States in accordance with common but differentiated responsibility and capabilities, in accordance with national circumstances. The ICJ recognized that the duty to co-operate leaves States some discretion, but is subject to stringent due diligence and the highest level of ambition as a matter of binding international law. Thus, this discretion cannot serve as an excuse for States to refrain from co-operating with the required level of due diligence or to present these efforts as an entirely voluntary contribution which cannot be subjected to scrutiny. Developed States should therefore comply with their duty to cooperate in accordance with the best science clearly pointing to the need to prioritize the phase out of fossil fuels for effective climate mitigation and the protection of human rights.

57. The African Court has thus an opportunity to clarify that to contribute to the protection of human rights in Africa, **African States have human rights obligations to request from historically high-emitting countries to:**

a. Prioritize international grant-based finance, capacity-building and technological cooperation to African countries to phase out fossil fuels and leapfrog into a renewables-based economy;
b. Refrain from "fossil fuel dumping", such as using public finance to secure export markets for technologies or processes relying on coal-fired power;

[29] See A/HRC/59/42/Add.1.

[30] A Skleton, "Child rights jurisprudence without borders: developments in extraterritorial jurisdiction", *De Jure Law Journal* (2023), pp. 606–624.

c. Avoid debt-related or technological forms of fossil fuel lock-in, such as unproven technological solutions that are inadequate for ensuring stringent due diligence (which the Inter-American Court in its advisory opinion on the climate emergency cautioned against);
d. Avoid any transactional or limited approaches to defossilization in energy transition partnerships, instead supporting African countries' self-determination and intergenerational equity;
e. Prevent tax evasion and avoidance by fossil fuel companies, including by adopting human rights due diligence mechanisms for banks, professional service providers and other financial institutions; and redirecting fiscal revenue towards climate finance to developing countries;
f. Introduce wealth taxes and windfall taxes for fossil fuel companies, without undermining the capacity of other countries to raise public revenues.

D. A HUMAN RIGHTS-BASED APPROACH TO THE ENERGY TRANSITION

58. As discussed in the Special Rapporteur's report to the UN General Assembly on the human rights-based approach to the energy transition,[31] reliance on renewable energy provides one of the most effective climate change mitigation action and therefore helps prevent further widespread and severe impacts on human rights of climate change. Transitioning towards renewables-based economies can also prevent toxic pollution, protect biodiversity and make significant contributions to protect human health everywhere.
59. The Rapporteur also found that although a rapid transition towards renewables-based economy is needed, such a transition should not be unchecked. Widespread human rights violations are currently being documented across all regions in relation to renewables development, due to environmental deregulation and/or the lack of coherence between energy, climate, biodiversity, land and ocean laws. But scientific evidence, including Indigenous science and local knowledge, is available to ensure that renewables are developed while avoiding or minimizing any negative impacts on nature, water, food, and health and effectively protecting human rights. As three international tribunals underscored in their advisory opinions on climate change, any climate action should ensure the conservation and restoration of nature, including of

[31] Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change: The Human Rights Approach to the Energy Transition, UN Doc A/80/188 (2024); all underlying references can be found in the report itself and its Additional Materials II: https://www.ohchr.org/en/documents/thematic-reports/a80188-human-rights-based-approach-energy-transition.

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the ocean, which often contribute to both mitigation and adaptation to climate change, and the protection of human rights.

D.1 Applying the human rights-based approach to the energy transition in the African context

60. The energy transition in Africa has increasingly become a focal point of regional instruments and frameworks, reflecting the continent's unique position and the need to expand energy access while addressing climate change. The African Union's Agenda 2063 calls for “harnessing all African energy resources to ensure modern, efficient, reliable, cost-effective, renewable and environmentally friendly energy to all African households, businesses, industries and institutions”. Agenda 2063 incorporates energy security and sustainable development as core aspirations, while specific frameworks like the Programme for Infrastructure Development in Africa prioritize renewable energy projects across the continent.

61. Regional economic communities such as the Economic Community of West African States (ECOWAS) have adopted the ECOWAS Renewable Energy Policy, which sets ambitious targets for renewable energy penetration in the regional energy mix. Similarly, the East African Community has developed frameworks promoting cross-border renewable energy projects, particularly in geothermal and hydropower, recognizing that regional cooperation can unlock economies of scale and facilitate the transition away from fossil fuels.

62. Recent regional instruments have sought to balance Africa's development imperatives with climate commitments, acknowledging the continent's minimal historical contribution to global emissions while emphasizing its vulnerability to climate impacts. The African Continental Free Trade Area includes provisions that could facilitate trade in renewable energy technologies and green products across borders, potentially accelerating the energy transition. The Africa Climate Change Strategy and related frameworks emphasize a "just transition" approach that prioritizes job creation in renewable energy sectors, while ensuring energy access for the approximately 600 million Africans still without electricity. These instruments increasingly recognize that Africa's energy transition must be **self-determined, adequately financed** through climate finance mechanisms, and tailored to the continent's specific circumstances—including the potential role of natural gas as a transition fuel and the imperative to industrialize while decarbonizing. The challenge here is understanding **whether all the options considered are equally capable of protecting the human right to a healthy environment and the right to**

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development, on the basis of the best available science and States' stringent due diligence obligations to protect the environment.

63. In particular, it is essential to understand if the options that are supported by international cooperation and international finance are in the best interests of African children and communities, and any other human rights holders who are most affected by climate change, energy poverty, as well as economic and health inequalities. African states receive private and public funding to prioritize fossil fuel extraction and exports, often through agreements with international corporations that lock countries into decades of carbon-intensive and locally harmful development, while the promised climate finance from developed nations has not materialized at the scale required while high-emitting countries benefit from private and public funding going into solar and wind power. Africa possesses more than 60 per cent of the planet's solar energy potential, but receives only 2 per cent of worldwide renewables funding.[32] Renewable energy is expected to lead to $269 billion in health cost savings from reduced air pollution, while dramatically reducing the cost of energy access.[33]
64. Current regional instruments rarely incorporate explicit reference to human rights. The human rights-based approach, however, can help assess whether the options for energy transitions are going to effectively support sustainable and equitable development, in addition to supporting participatory and accountable processes for children and affected communities. Human rights help anticipate and prevent the energy transitions risks of displacing Indigenous Peoples and rural communities, or negatively impacts on food and water, with knock-on effects on broader society's rights to water, food and health and disproportionate impacts on women and children.[34] **It is exactly because of the absence of human rights in energy transition frameworks that historical and colonial patterns of exclusion and exploitation repeat themselves in the energy transition, worsening the human rights impacts of climate change in the countries who are least responsible for it and most affected by it**.
65. On the other hand, the integration of human rights in energy policies, laws and decisions on licensing help reveal and address deep **structural issues** that risk making the transition ineffective for the climate and the economy, in addition to being unjust. In line with collective dimensions of the human rights to a healthy

[32] https://www.uneca.org/stories/africa-leads-in-energy-potential-but-trails-in-investment.

[33]

[34] N Götzmann and M Dicalou, Towards a Feminist Energy Justice Framework: Women's Participation in the Energy Transition in Sub-Saharan Africa (Copenhagen, Danish Institute for Human Rights, 2023); and G Cortés Valderrama, Transiciones Justas, Feministas y Soberanas: Repensando el Financiamiento Climático en el Sur Global (Lima, Latindadd, 2025).

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environment and development and African values and conceptions of land and communitarianism, thought transitions intersect with land rights, food security, water access, and the rights of women, youth, Indigenous Peoples, peasants, including small-scale fishers and pastoralists. In the context of worsening climate changes, any significant negative impacts on the environment, water and food, including caused by the energy transition, will make the protection of human rights even more difficult and expensive in Africa. Without integrating human rights obligations into energy law—including the rights to information, participation, remedy, and non-discrimination—the energy transition risks becoming another top-down development paradigm that serves external interests rather than advancing the dignity, agency, and wellbeing of African peoples themselves.

66. If African States comply with their stringent due diligence obligations, relying on best available science that supports **full-life cycle assessment of renewables at the nexus of climate, nature, food, water and health,** they will avoid escalating resource competition and ecological degradation, which will further harm human rights in the context of worsening climate crisis. On that basis, African States should set **priorities through a human rights-based and ecosystem-based approach, both for national action and for international cooperation**. A human rights-based approach provides the evidence, norms and participatory process necessary to support meaningful social dialogue to identify which renewable energy sources, as well as which scale and siting of renewables developments, have the highest scientifically-based potential for supporting life-supporting systems for communities, societies and humankind.
67. In that context, it is important to understand the role of human rights protection in national and regional instruments on the energy transition to move away from a purely a technocratic approach to energy planning that ignores power dynamics and the voices of those most affected, thereby missing crucial opportunities to enhance human wellbeing and sustainable development opportunities in accordance with the inter-dependence of the right to development and the right to a healthy environment, in their individual, collective and inter-generational dimensions. This will ultimately lead to more sustainable, effective and equitable decision on the energy transition, which can contribute to the more effective protection of human rights and the realization of multiple public policy objectives across sectors.

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D.2 Human rights obligations applicable to renewables domestically

68. In this section, the UN Special Rapporteur outlines how the protection of the right to development and the right to a satisfactory environment, in the context of the energy transition, imply obligations for African States to:
    a. prioritize a shift in their energy sectors towards reliance in particular on wind and solar energy (and geothermal energy, where available), on the basis of best available science on limiting negative impacts of the energy transition on the environment and human rights;
    b. plan and approve renewable energy developments at the nexus of climate, nature, water, food and health, giving priority to projects that allow for multiple and equitable uses of land and other natural resources;
    c. support decentralized renewables production, particularly when Indigenous-led, community-led, and women-led;
    d. establish no-go zones in ecologically sensitive areas; and
    e. ensure participatory monitoring throughout project life-cycles.

69. Not all sources of renewable energy have the same potential to mitigate climate change and be compatible with the protection of biodiversity and the marine environment, prevention of land degradation, and sustainable management of water resources. States should rely on best available science, which points to **wind and energy, under appropriate conditions, can be the sources of renewable energy that can best ensure the protection of both the right to a healthy environment and the right to development**. That said, precaution should be applied to offshore wind and solar energy development, to take into account heightened risks of environmental and human rights harm in the ocean.[35] A precautionary approach should also be applied to the consideration of geothermal and marine renewables, which can be most effective when planned for longevity and not narrowly focused on carbon sequestration.
70. On the other hand, African States should take in account the track record of severe biodiversity harm and human rights violations of hydro-power. In addition, best available science has put in question the economic and financial viability, efficiency and carbon-reducing potential of hydropower, particularly when placed in areas that are vulnerable to climate change. Such placement causes unpredictable water flows and greater siltation that threaten the structural integrity and productivity of dam

35 Report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment, Astrid Puentes Riaño: Priority actions towards breathing clean air, protecting public health and ensuring a healthy environment, UN Doc A/HRC/61/47 (2026).

structures. There is growing evidence of the failure to properly assess and mitigate human and environmental impacts and of the frequent overestimation of actual power output levels, of operational hydropower projects. Thus **new (particularly large-scale) hydropower developments should be avoided**, in particular on transboundary rivers due to the risks of increased inter-State conflicts.[36] This recommendation is particularly relevant for Africa, where hydropower is expected to provide more than half of the electricity generation by 2030, according to the International Energy Agency Renewables 2024 report.

71. Similarly, States should carefully consider the track record of human rights violations and environmental harm of bioenergy, particularly in the context of food systems that are increasingly negatively impacted by climate change. Thus, bioenergy development should be considered with the highest level of precaution and extensive consideration of alternatives, in the context of a human rights-based and ecosystem approach. There are also connected risks of increasing or creating dependency from fossil fuels, which would undermine progress in implementing the obligations outlined in paras 53-54 and 57 above.
72. In terms of the planning of renewables development, including their siting and choice of scale, States should include in their assessments **pre-existing patterns of social and economic exclusion,** combined with **meaningfully inclusion** of communities in planning the energy transition, to prevent foreseeable human rights and environmental harm and to ensure a fair and equitable sharing of benefits from the opportunities, technologies, and financing associated with renewable energy ventures, including in relation to their own land and resources. The former UN Special Rapporteur on the Human Right to a Healthy Environment, for instance, found that in Botswana, for example, a large solar power project left 30 percent of rural households without electricity access despite their proximity to power lines. These patterns replicate historical injustices from the extractive sector, with marginalized communities bearing disproportionate environmental and social burdens while being excluded from economic benefits.
73. Considering the track record of severe human rights violations and displacement among renewables megaprojects[37] and the need for strict due diligence to prevent transboundary environmental impacts and conflicts, in line with States should **support decentralized renewable energy production, including as a form of climate change resilience**. Extreme climate events can cripple large-scale energy infrastructure, whereas a more flexible nodal energy grid can respond faster to

[36] See also A/HRC/54/32/Add.1, A/HRC/55/43/Add.2 and A/HRC/60/30.
[37] See also A/74/197.

outages and repairs. In addition, off-grid, distributed or mini-grid solar panels improve energy access, especially in remote areas where large-scale on-grid energy production is not cost-effective, protecting the rights to education, health and livelihoods. There are, however, a variety of reasons – technical limitations, internal company policies and a lack of public incentives – that undermine the mini-grid sector. These limitations include a lack of support for hybrid partnership models recognizing the role of communities as active participants in site selection, with the aim of enhancing community livelihoods while optimizing mini-grid capacity and environmental stewardship.[38] African States should thus prioritize support for local ownership and skills, including through the removal of import tariffs and indirect taxes on components for renewables technologies for domestic or community-level use, and target financial and technological resources for low-income households,[39] communities and women. In addition, States should support the integration of decentralized renewables into the grid under equitable economic conditions.

74. Women and children face heightened risks and disproportionate impacts from unsustainable renewable energy projects, including gender-based violence. Women, as primary caregivers, are often more dependent on land for household needs and livelihoods, experience increased burdens when water sources are depleted, lands are expropriated, or communities are forcibly evicted for renewable energy projects. Children are particularly vulnerable to negative impacts of renewables developments on aquatic ecosystems, agriculture, and fisheries, resulting in waterborne diseases and malnutrition. Both groups are frequently excluded from consultation processes due to patriarchal traditions, missing opportunities to integrate their distinctive understanding of enhanced energy access as essential for care work, poverty reduction, education, and social justice. A participatory approach to the planning and implementation of renewables should include women and children, and lead to **outcomes that are aligned with children's best interests and the right to care, with particular attention to the impacts on physical and mental health of those providing and needing care**, as clarified by the Inter-American Court of Human Rights in its 2025 advisory opinion on the right to care.[40]
75. In addition, States musth consider the track record of recurrent violations of Indigenous Peoples' rights in renewables development, often due to lack of access to

[38] See https://africaminigrids.org/libraries/harvesting-sunshine-how-productive-uses-of-minigrid-electricity-make-farmers-richer-and-energy-cheaper/.
[39] See also A/75/181/Rev.1.
[40] Inter-American Court of Human Rights, The Content and Scope of the Right to Care and its Interrelationship with Other Rights, Advisory Opinion AO-31/25 of 12 June 2025: https://jurisprudencia.corteidh.or.cr/en/vid/1088056961.

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information, absence of free, prior and informed consent processes that allow them to determine activities on their own land, and inequitable benefit-sharing arrangements. There is a wealth of evidence that developers, with the backing of States, frequently bypass customary decision-making processes, threaten Indigenous Peoples' representatives who question irregularities, and conduct benefit-sharing negotiations in bad faith to divide communities.[41] When benefits do materialize, they are typically minimal, such as scarce or low-level employment opportunities, with no room for Indigenous worldviews to shape or refuse projects. **States should put in place norms and practices to ensure that free prior informed consent (FPIC) and fair and equitable benefit-sharing support Indigenous Peoples' agency, thereby realizing their choice and capabilities,**[42] as underscored by the African Commission in *Endorois v. Kenya*. States should give consideration of alternatives and of the justification for the final outcome that go beyond a pre-set array of development options and fully considers the root causes of historical and systemic injustices faced by Indigenous Peoples.

a. Extensive evidence also reveals severe human rights violations affecting **peasants, pastoralists and small-scale fishers**, including land grabs, displacement, and the destruction of biodiversity, and cultural subsidence practices. Forced evictions and displacement constitute gross violations of human rights. Even when negotiations occur prior to resettlement, communities experience inadequate compensation, substandard relocation housing, corruption in distribution of funds, and exacerbation of precarious migration patterns, undermining their climate resilience. Considering the track record of severe human rights violations and displacement among renewables megaprojects[43] and the need for strict due diligence to prevent severe environmental impacts, in accordance with all advisory opinions, **States should support decentralized energy production, including as a form of climate change resilience, through participatory approaches that integrate the distinctive knowledge systems of Indigenous Peoples, peasants and small-scale fishers**, while guaranteeing equitable access to energy as fundamental to dignity, consideration of children's best interests and women's disproportionate energy poverty.

76. The violations of Indigenous Peoples' and peasants' rights in the context of renewables are also the result of the disregard for – or lack of genuine engagement

[41] Morgera (n 3), Ch 3.

[42] African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, communication No. 276/2003, Judgment, 4 February 2010.

[43] See A/74/197.

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with – Indigenous science and peasants' local knowledge in developing climate solutions that are aligned with planetary health and all the interlinked substantive dimensions of the human right to a healthy environment. Paradoxically, violations of Indigenous Peoples' and peasants' rights erode the material and immaterial conditions for Indigenous science and peasants' local knowledge to evolve, by preventing them from being practiced in the territories and transmitted to future generations. As underscored by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services,[44] when shared with humanity, Indigenous science and peasants' knowledge can inform just transition planning, thus supporting transformative change to the benefit of everyone's human rights to a healthy environment and development in their individual, collective and inter-generational dimensions. Indigenous science and peasants' knowledge can support States in ensuring biodiversity protection and restoration as part of their stringent due diligence obligations related to climate change, as clarified by the International Tribunal for the Law of the Sea and the Inter-American Court of Human Rights in their respective advisory opinions. The respect of the human rights of Indigenous Peoples and peasants is thus also a guarantee for everyone's human right to science, which was recognized a central place among the human rights to be protected in the context of the climate emergency by the Inter-American Court of Human Rights.

77. Accordingly, the UN Special Rapporteur submits that the African Court has an opportunity to clarify that **African States have human rights obligations as part of the human rights-based approach to the energy transition**, to:
    a. Rely on best available science on the full life-cycle of renewable energy, to develop policies and plans on the just transition in accordance with stringent due diligence obligations to protect the climate, the environment and human rights;
    b. Develop regulatory and planning framework for a human rights-based energy transition, in consultation with affected communities and workers, ensuring alignment across domestic legal frameworks on climate change, energy, nature, water, mining, and human rights;
    c. Prioritize wind and solar energy, with heightened levels of precaution for offshore wind and solar energy, other marine renewable energy and geothermal energy;
    d. Refrain from approving new (particularly large-scale) hydropower developments should be avoided, in particular on transboundary rivers, and bio-energy;
    e. Ensure that biodiversity protection and restoration are integrated into strategic and project-level assessment, planning and development stages, including in site

[44] IPBES (n 9).

selection, project design and operational and monitoring practices, for renewables;

f. Effectively regulate, monitor and enforce free, prior, and informed consent for Indigenous Peoples and comparable standards for communities affected by energy projects;
g. Create enabling policies, laws and financial support for decentralized renewables, particularly Indigenous-led, community-led and women-led projects;
h. Support the integration of decentralized renewables into the grid under equitable economic conditions;
i. Ensure access to justice and effective remedies for those harmed by energy transition policies, law and projects.

78. In addition, the Rapporteur wishes to draw the attention of the African Court to the fact that growing energy demand is in part due to "sluggish progress" in recent years in global energy efficiency,[45] as well as lack of or insufficient control and regulation of over-production and over-consumption – all of which contribute, in their own right, to climate change, biodiversity loss, toxic pollution and economic inequality. These areas need to be examined from a human rights perspective at the strategic level by each State, to ensure stringent due diligence in complying with the obligations to prevent harm to the climate system, the environment and human rights, including from an inter-generational perspective. States should, first and foremost, **assess energy needs in the light of the rights to a healthy environment and to development, and prioritize the energy needs of the most vulnerable to prevent discrimination in energy access**.[46] Accordingly, the UN Special Rapporteur submits that the African Court has an opportunity to clarify that **African States have human rights obligations** to:
    a. Conduct strategic environmental and human rights assessments of energy needs and prioritize the energy needs that are aligned with the inter-dependence of the human right to a healthy environment and to development, with specific attention to the needs of the most vulnerable and the best interests of the child;
    b. Reduce energy overproduction and overconsumption;
    c. Support progress in energy efficiency;
    d. Prioritize opportunities to make energy-efficient solutions more affordable to low-income households; and

[45] International Energy Agency and others, *Tracking SDG 7: The Energy Progress Report 2025* (Washington D.C., World Bank, 2025).
[46] See A/HRC/59/42.

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e. Identify system-wide shifts towards more long-term, efficient and health-supporting energy use reduction, such as accessible electrified public transport, shared mobility systems and the integration of nature into cities to cool them, as well as applying "essential use" and circular economy approaches.

D.3. Human rights obligations applicable to energy transition minerals domestically

79. Solar photovoltaic systems, wind turbines, electrolysers, batteries, fuel cells and residential heat pumps all rely on energy transition minerals: lithium, cobalt, nickel, graphite, manganese, copper, zinc, aluminum and rare earth elements are used for electric vehicles and battery storage; silicon, cadmium, tellurium and selenium help in building solar panels; copper is required for wind power. These minerals have considerable economic importance for consumer countries; and they entail a high supply risk, as their unique properties mean that viable substitutes are lacking.
80. For African States, there are two key human rights challenges: first, ensuring that the exploitation of energy transition minerals in their territory leads to sustainable development, in accordance with the human rights to development and a healthy environment to the benefit of their entire populations, including future generations; and second, prevent foreseeable human rights violations of fenceline communities, including Indigenous Peoples, peasants, women and children. In this connection, it should be underlined that sacrifice zones often also include mining, processing or recycling of energy transition minerals.[47]
81. Given international interest and pressure to obtain access to energy transition minerals, in its 2024 report, the United Nations Secretary-General's Panel on Critical Energy Transition Minerals included as the first principle that human rights must be at the core of all mineral value chains. The Special Rapporteur's 2025 report on the human rights approach to the energy transition advanced understanding of the specific human rights obligations applicable to energy transition minerals, with regard to the two challenges discussed above.
82. With regard to **human rights harm to fenceline communities**, the Special Rapporteur's report underscored global trends related to the extraction and processing of energy transition minerals causing significant environmental harm and human rights violations: water depletion, toxic pollution, land degradation, deforestation, and long-term health hazards for affected communities, with

[47] See Annex I "Additional sacrifice zones", paras 7, 10 and 12 on African energy transition related-related sacrifice zones as part of A/HRC/49/53 (2022): https://www.ohchr.org/sites/default/files/2022-03/Annex1_to_A_HRC_49_53.pdf

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abandoned extraction sites creating ongoing environmental and health risks. Even at the decommissioning stage, failures to adequately rehabilitate a project site and properly restore tenure rights to local communities can result in several adverse impacts on human rights. Abandoned extraction sites and ongoing toxic discharges from mining operations create long-term environmental and health hazards, including soil contamination, groundwater pollution and ecosystem degradation. In addition, considering the full life cycle of energy transition mining, States should consider that extraction, processing and recycling of minerals produce a significant proportion of greenhouse gas emissions, while relying specifically on fossil fuel combustion.

83. The customary and treaty obligations of all States to prevent further climate harm and environmental harm, in accordance with stringent due diligence, as clarified by the ICJ advisory opinion, apply also to energy transition minerals. So does the Inter-American Court's clarification that State obligations to avoid discriminatory climate measures, including in the context of energy transition minerals, and that the obligation to prevent irreversible and massive harm to the climate system and the environment is imperative and allows no derogation. Accordingly, African States should undertake, in the first instance, **a prior strategic, comprehensive and independent assessment,** based on the best available science, of the need for minerals and of alternatives to extraction.[48] These assessments should give full consideration to the interdependent nature of human rights, including the relationships between Indigenous Peoples' and peasants' human rights, and their contributions to environmental stewardship and everyone's human rights to a healthy environment and to development in their individual, collective and inter-generational dimensions. Once again, these assessments should be centered on the nexus between climate, nature, water, health, food and health,[49] and licensing should be based on best available science to prevent foreseeable environmental and human rights harm accordingly.
84. Indigenous Peoples' rights are particularly affected by a lack of access to information, free, prior and informed consent processes, and fair and equitable benefit-sharing in energy transition mining. This is especially worrying, as the International Renewable Energy Agency has estimated that more than 50 per cent of energy transition minerals are found in Indigenous territories.[50] Even when consultations occur, developers

[48] See www.ohchr.org/en/statements/2024/09/all-action-critical-energy-transition-minerals-must-respect-human-rights-un.
[49] IPBES (n 29).
[50] See www.irena.org/Digital-Report/Geopolitics-of-the-Energy-Transition-Critical-Materials. See also A/78/155.

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bypass customary decision-making processes or threaten or attack Indigenous Peoples' representatives who question irregularities in permission processes.[51] In addition, benefit-sharing negotiations are held in bad faith, with a view to dividing communities; and agreed benefits do not materialize or, when they do, they are minimal. Violations are more frequent when domestic legal frameworks are not aligned with international law on Indigenous Peoples' human rights. In many countries, Indigenous Peoples themselves are not recognized, their territories are not demarcated or Indigenous communities (notably, pastoralist or nomadic) are absent from public registries and land-use planning maps. There are often contradictions across domestic legal systems that undermine the protection of their rights. Inadequate protection is guaranteed for Indigenous Peoples in voluntary isolation.

85. It is imperative to understand the violations of Indigenous Peoples' human rights as the latest in a series of extractive activities, conservation initiatives and climate actions that have violated their rights over generations, in cumulative ways,[52] further degrading ecosystems vital to their survival, cultural identity and livelihoods. This is also a "double burden" placed on Indigenous Peoples, as they are not only among those most affected by climate change, but also expected to bear the negative impacts of mitigation efforts.

86. Essentially, African States should require companies to move away from common business practices interpreting benefit-sharing as a charitable award or as a favour granted to secure social support for a project are not in line with international human rights standards.[53] Equally, legislative requirements of fair and equitable benefit-sharing should prevent companies from imposing certain views of development upon Indigenous Peoples that could endanger their cultural or physical survival. Instead, if Indigenous Peoples themselves do not wish to initiate the projects themselves, companies should consider environmental impact assessments, free, prior and informed consent, and fair and equitable benefit-sharing as one process for co-creating genuinely equal partnerships, whereby Indigenous Peoples both participate in project decision-making and share in their profits and other benefits.[54] It is thus necessary to collaboratively identify fair and equitable benefit-sharing opportunities according to Indigenous Peoples' world views in the early stages of planning.[55] It is then also necessary to incorporate agreed terms in contracts with reference to relevant international human rights standards and Indigenous Peoples' customary

[51] See A/HRC/39/17/Add.2.
[52] See A/70/301, A/HRC/24/41, A/HRC/36/46 and A/HRC/54/31.
[53] See A/HRC/15/37.
[54] See A/HRC/66/288, A/HRC/21/47 and A/HRC/24/41.
[55] See A/HRC/21/47.

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rules as principles of the interpretation of fairness and equity in benefit-sharing. **African States should therefore require companies to:**

a. consider the history of territories and a comprehensive contextual assessment of needs and potential impacts, as part of their human rights due diligence processes, before engaging with Indigenous Peoples in meaningful dialogue
b. engage in understanding Indigenous Peoples' culture to prioritize early and continuous communication with local fishers on construction, operation and standardized safety practices;
c. recruit Indigenous Peoples for highly qualified jobs and supported them in obtaining professional certifications for their environmental sustainability contributions;
d. create a fund to share profits for community livelihoods and ecosystem restoration; and
e. share relevant data (see section E below) with local research partners, to support local climate mitigation and adaptation efforts.

87. With regard to the protection of **the human rights to development and a healthy environment to the benefit of their entire populations**, a key challenge has been the speed and large amounts of minerals that are being pursued in Africa, in the context of highly influential international projections of expected mineral demand growth. For instance, the potential for global growth in demand for those minerals is estimated to rise to six times the current levels by 2040, according to the 2021 special report of the International Energy Agency's World Energy Outlook. These projections are currently driving infrastructure planning, mining licensing, trade and investment policies, both nationally and internationally. There are, however, three issues with these projections that have significant human rights implications:
    a. The demand for minerals is not only motivated by the energy transition, but also for the production of electronics, robotics, communication technologies, defence and aerospace.[56] So there are underlying concerns about sustaining production and consumption that are unrelated to climate mitigation or may even run counter to climate mitigation purposes. Notably, these projections often include other sectors that contribute significantly to climate change (such as militarization and unchecked expansion of data centres;[57]

[56] See https://desapublications.un.org/sites/default/files/publications/2025-01/WESP%202025_Harnessing%20the%20Potential%20of%20Critical%20Minerals%20for%20Sustainable%20Development_WEB.pdf.

57 Note that the UN Special Rapporteur on the Right to Water has called for a moratorium on data centres in Report of the Special Rapporteur on the human rights to safe drinking water and sanitation, Pedro Arrojo Agudo: Water and energy nexus, UN Doc A/HRC/60/30 (2025).

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b. Projections can vary significantly depending on expectations about recycling, substitution and technological development: almost all studies disagree on the scale, timeline and rate of demand increase, as well as on which technologies will supply energy needs.[58] For instance, wind turbines might require between 1 and 10 tons of copper, depending on the study;
c. Projections do not take into account progress in energy efficiency, as well as the need to reduce energy demand that is driven by over-production and over-consumption (**see para 78 above**)

88. African States should therefore examine critically the mineral demand projections that are currently driving policymaking, planning and international partnerships. In this connection, an overarching duty for States is to **limit mining to what is essential for the energy transition, without responding to mineral demands for sectors that harm the climate**. Otherwise, despite the intention of contributing to climate mitigation, mining would lead to a violation of the stringent due diligence obligation to prevent significant harm to the environment and the climate system, clarified by the ICJ in its advisory opinion as an obligation based in international customary law and multiple treaties, of an *erga omnes* character.
89. In addition, African States should not rely on mineral demand growth projections for policymaking and planning purposes, if those projections do not factor in recycling, reuse and technological developments and if they do not distinguish mineral dependence of sectors other than energy transition, particularly for those sectors that contribute significantly to climate change. Mining should be limited to what is essential for the energy transition, as a form of protection of human rights in the context of climate change, taking into account local, inter-State and global environmental impacts according to an ecosystem and human rights-based approach.
90. Third, African States must ensure that the **benefits of such mining are shared fairly and equitably domestically** through collaborative identification and understanding opportunities for positive impacts, both locally and globally, according to Indigenous Peoples', communities' and women's worldviews. Compliance with this human rights obligations requires creating the conditions for co-developing socio-economic models, and moving away from practices that provide a pre-set array of development options to communities. To that end, States should prioritize research and research funding, especially for global North-South fair research partnerships and Indigenous-

[58] JL Calderon and others, "Critical mineral demand estimates for low-carbon technologies: what do they tell us and how can they evolve?" (2024) 189 *Renewable and Sustainable Energy Reviews*.

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led, community-led and women-led research on renewables products and technologies that require fewer minerals and less energy.

91. The African Court has thus an opportunity to clarify that to contribute to the protection of human rights in Africa, **African States have human rights obligations to**:
    a. conduct a prior strategic, comprehensive and independent assessment, based on the best available science, of the need for minerals and of alternatives to extraction;
    b. develop legislation and licensing processes that serve to prevent severe harm to the climate system and biodiversity, toxic pollution and foreseeable human rights harm at all levels on energy transition minerals, in consultation with potentially affected communities, including women and children;
    c. develop policies and legislation on decent employment in the context of transition minerals, as well as social protection, compensation and/or relocation for those negatively affected by mining;
    d. create a regulatory environment for safely recovering minerals from end-of-life products, while preventing or addressing any reliance on fossil fuels in that connection;
    e. control the extraction and unsustainable consumption of minerals by introducing requirements and incentives for designing products for increased performance, longer lifespans and improved energy and resource efficiency and repairability;
    f. develop and enforce strict standards for recycling, repurposing and responsibly disposing of renewable energy equipment and infrastructure;
    g. require companies, prior to commencing construction, to develop and make public fully costed waste management, remediation and decommissioning plans, coupled with independently verifiable financial assurances.

D.4 International Cooperation

92. Regarding international cooperation, troubling neocolonial patterns in renewable energy development and related mining lock regional and national economies—particularly in Africa—into development dependencies characterized by primary extraction, land expropriation, elite capture, and unsafe disposal of toxic waste, while disproportionate benefits accrue to other nations. Enhanced international cooperation is needed to prevent these extractive models that benefit only wealthier countries, ensuring fair and equitable benefit-sharing that targets the over 500 million people lacking electricity access in sub-Saharan Africa. All States, including African States, bear international obligations to ensure a just energy transition based on equitable distribution of economic and environmental burdens.

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93. In addition, 90 per cent of patents for renewable technologies are held by companies based in wealthy nations, resulting in high costs for companies located in developing countries. To address this, the human right to science supports a shift from unidirectional transfers of technology towards a model based on **the co-development of technologies**, with a view to better responding to local needs, priorities and contexts, notably the needs of the vulnerable, and avoiding negative environmental and human rights impacts.[59] This could result in shared ownership of intellectual property and collaborative initiatives that support mutual learning, skills-sharing, local innovation and culturally relevant solutions, while preventing lock-in and dependency.

94. The African Court has thus an opportunity to clarify that **African States have human rights obligations to request from historically high-emitting countries to provide grant-based finance, as well as debt relief and cooperation, as well as technology co-development,** to support African countries in the:

a. Development of renewables, notably through in wind and solar power at the nexus of climate, nature, water, food and health, particularly when they are Indigenous-led, community-led and women-led;
b. Support the development/enhancement of legislation, as well as regulatory and institutional capacity to carry out participatory full-life cycle assessments, inclusive planning and monitoring of renewables and transition minerals in accordance with a human rights-based and ecosystem-based approach;
c. Support the development/enhancement of legislation, as well as regulatory and institutional capacity to apply the precautionary approach with heightened to offshore wind and solar energy development, as well as geothermal and other marine renewables;
d. advance sustainable and non-toxic circular economy solutions that reduce new and current extraction, support reuse and challenge unsustainable energy demand;
e. Contribute to global transparency and traceability of transition minerals, as well as monitoring of human rights abuses across global value chains;
f. Create bilateral or multilateral platforms for dialogue to share best practices and lessons learned, carry out joint assessments of just energy transition partnerships and other cooperation programmes and identify emerging and missed opportunities for transformative approaches at the nexus.

[59] Elisa Morgera, *Fair and equitable benefit-sharing in international law* (OUP, 2024), open access at https://global.oup.com/academic/product/fair-and-equitable-benefit-sharing-in-international-law-9780198862130?cc=gb&lang=en&.

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95. Given the multiple threats to ocean health and their implications for the climate system, combined with other planetary crises, African States should support **a moratorium on deep-sea mining** under the aegis of the International Seabed Authority, which is considered a human rights obligation by the Special Rapporteurs on the Human Right to a Healthy Environment and on Climate Change and Human Rights.[60] Should States members of the International Seabed Authority decide to prioritize the completion of the regulations on deep seabed mining, African Stats should demand a precautionary and participatory strategic assessment of potential risks for the environment, including the climate system, and for human rights, that is fully aligned with Advisory Opinion on climate change of the International Tribunal for the Law of the Sea.[61] While the deep-seabed may appear far from African States' territories and maritime zones under their jurisdiction, ecological connectivity between marine areas beyond national jurisdiction and coastal waters, due to circulation and migratory species, means that African States will face significant threats due to ecological harm caused by deep-seabed mining: within the Indian Ocean, Tanzania has the strongest connectivity to areas beyond national jurisdiction, closely followed by other East African states, including Somalia; and in the Atlantic Ocean, Liberia showed the strongest connectivity. On the other hand, alternative proposals for the **International Seabed Authority to focus on advancing science on the deep-seabed and the fair and equitable sharing of benefits** from it, including participation in research and technology development,[62] could provide significant benefits to African countries for their climate-ocean action according to the inter-dependence of the human rights to a healthy environment and development in their individual, collective and inter-generational dimensions.

E. ACCESS TO INFORMATION ON CLIMATE CHANGE AND HUMAN RIGHTS

96. Access to information, enshrined in Article 9 of the African Charter, constitutes a precondition for protecting and exercising other human rights in the context of the climate crisis. As the Inter-American Court found in its advisory opinion, access to information is an essential condition for the protection of the rights to life, health, a healthy environment, personal integrity, public participation and the right to education among others. The African Commission's Special Rapporteur on Freedom

[60] See www.ohchr.org/en/documents/policy-briefs/precautionary-principle-and-deep-seabed-mining-state-obligation-under.
[61] See A/HRC/56/46
[62] See https://deep-sea-conservation.org/wp-content/uploads/2025/04/Opportunities-for-the-ISA-under-a-Deep-Sea-Mining-Moratorium.pdf.

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of Expression and Access to Information has, in a joint resolution with UN and regional experts, recognized that climate information is essential for communities to understand environmental harm and exercise their rights to participation and remedy.[63]

97. In its advisory opinion, the Inter-American Court provided detailed guidance on procedural due diligence requirements including environmental impact assessments, public participation in climate decision-making, access to information about climate risks and government responses (drawing on the 2024 report of the Special Rapporteur on Climate Change and Human Rights on access to information: A/79/176), and access to justice for those affected by climate change or climate policies. The Inter-American Court thus clarified the obligation to avoid regressive actions that delay or obstruct effective climate action, such as climate disinformation and attacks against environmental human rights defenders. For African civil society organizations and affected communities, these procedural rights provide essential tools for holding their governments accountable and for ensuring that climate policies reflect the needs and priorities of vulnerable populations rather than elite interests.
98. Without adequate access to information on States' plans to prevent human rights impacts of climate change, there can be no meaningful public participation to ensure respectful integration of Indigenous and local knowledge into assessment and planning processes. Lack of or inadequate information has led to casualties and long-lasting negative impacts on human lives and health, with gaps in meteorological data contributing to devastating effects of climate shocks. Inadequate access to information in planned relocation processes has led to unrealistic expectations and inability to provide culturally appropriate rehousing, may increase risks of human trafficking of women and girls, environmentally detrimental practices, and increased reliance on child labour. These consequences directly implicate the protective obligations under Articles 4, 5, 16, 18, and 22 of the African Charter.
99. In her 2024 report on access to information,[64] the Special Rapporteur on Climate Change and Human Rights concluded that timely access to high-quality, trustworthy,

[63] Joint Declaration on the Climate Crisis and Freedom of Expression by the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information in Africa (2024).
[64] Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change: access to information on climate change and human rights, UN Doc A/79/176 (2024); all underlying references can be found in the report itself.

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evidenced-based and accessible information on climate change and human rights is essential to ensure that:

a. **public authorities** understand the foreseeability and preventability of negative human rights impacts of climate change and response measures, so as to make holistic, effective and inclusive decisions to mitigate and adapt to climate change;
b. **the public** is informed about the magnitude of actual and potential negative human rights risks and impacts of climate change and response measures, so as to be able to assess the adequacy of States' and businesses' responses to effectively protect and respect human rights in the context of climate change;
c. **people in vulnerable situations** are better prepared and equipped to respond to the adverse impacts of climate change with their resilience and adaptive capacities.

100. In her report to the Human Rights Council of 2024 on the human rights imperative of defossilizing our economies, the Special Rapporteur on Climate Change and Human Rights further underscored the **need to take proactive measures to address over six decades of climate disinformation by fossil fuel companies**. The Rapporteur relied on an extensive body of academic independent research[65] indicating that fossil fuels have employed a "playbook of climate obstruction". Similar to that used by tobacco companies, the playbook encompasses: omissions to to act on scientific information, dissemination of disinformation and misinformation, suppression of independent scientific research, influence over public policy, attacks against environmental human rights defenders, and lobbying against regulatory reforms. African environmental human rights defenders working on oil pollution, gas projects and mining impacts have faced reprisals, legal harassment and violence. These practices undermine core civil and political rights, including the rights to information, participation and access to justice.

101. It is imperative to identify and respond – locally, nationally, regionally and internationally – to the greatest need for progress in knowledge production and information sharing, in order to protect the human rights of those in vulnerable and marginalized situations in the context of climate change. Due to the need to plan renewables developments and other climate measures at the nexus of climate, nature, water, food and health, information is needed on climate change sources and

[65] Roberts et al. (eds.), *Global Assessment of Climate Obstruction* (Cambridge University Press, 2025); Benjamin Franta (2018), "Early oil industry knowledge of CO2 and global warming", Nature Climate Change. Naomi Oreskes and Erik Conway, Merchants of Doubt (Bloomsbury Press, 2011); Union of Concerned Scientists, The Climate Deception Dossiers (June 2015); and United States of America Senate committees' joint staff report: Denial, disinformation and doublespeak (April 2024).

effects, including on biodiversity and ecosystem services, weather and natural disaster patterns, as well as on impacts on human health, mobility, labour, social, economic and cultural rights, and the right to a clean, healthy and sustainable environment, in terrestrial, freshwater and marine contexts.

102. States should regularly and proactively collect and share the following types of information:

a. **on the causes, extent and effects of climate change, with an emphasis on fossil fuels**: This should include information on greenhouse gas emission levels from both State and non-State actors, including emissions from methane and other short-lived climate pollutants, demand for continued or new fossil fuel production, climate change projections based on different emission trajectories, and weather, climate and natural disaster patterns including temperature changes, precipitation patterns, sea level rise, and the frequency and intensity of extreme weather events.

b. **potential and actual negative impacts of climate change on human rights**: This implies an obligation to conduct climate vulnerability assessments, which should consider climate hazards, species sensitivity and the socioeconomic vulnerability of sectors and regions, including displacement and migration patterns, and human health impacts. They also consider ecosystems, livelihood assets and productive infrastructure, plant and animal health, effects on agriculture, fisheries and other climate-sensitive industries, including changes in productivity and income levels, and landscape degradation, in order to identify the most suitable adaptation actions for different regions and sectors. For African States, where agriculture employs approximately 60% of the workforce and climate vulnerability is acute, this information is particularly vital for protecting livelihoods and food security under Articles 4 (life and integrity), 15 (work), and 16 (health) of the African Charter.

c. **proposed and ongoing climate response measures and their impact on human rights:** States should share their plans to implement climate change and development policies, explaining how they are consistent with the best available science and international human rights obligations, with an assessment of risks to human rights associated with proposed climate change responses, and loss and damage. This should include information about mitigation targets, due also to the global stocktaking process for nationally determined contributions, including information on economic modelling associated with them (see A/78/255), as well as information on how to seek protection and take risk reduction actions (see A/64/255).

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d. **Climate finance:** Access to information on climate finance is essential. States should gather and share information on the quantity and priorities of climate finance projects. More generally, States should gather and disclose information on public budgets allocated to the fight against climate change, as well as subsidies to fossil fuels and other high-emitting activities.
e. **Carbon markets:** The Special Rapporteur notes significant risks for the human rights to a health environment and development, due to concerns about the effective contributions to mitigation and climate finance of carbon markets, in addition to increasing documentation of negative human rights impacts on affected communities. She is preparing a thematic report on this topic that will be released in September 2026. She has already recommended that access to information is essential with regard to:
    i. calculations of carbon capture;
    ii. expected local impacts on land and waters, tenure rights and other human rights; confirmation of consent of all affected communities, including free, prior and informed consent of Indigenous Peoples;
    iii. revenue throughout the project life cycle, including the sale price of carbon credits;
    iv. distribution of revenue and other benefits to the project developer, national and local governments and affected communities;
    v. the identity and purpose of those buying credits associated with the project, including whether credits are being used to offset preventable emissions. States should collect and share this information systematically to allow credit buyers to easily understand the potential risks of the credit they are purchasing;
    vi. the use of technologies (remote sensing, artificial intelligence and digital platforms) to measure carbon storage, and to issue and trade carbon credits, because they collect and use data from communities beyond their control.
f. **Climate technology:** Access to information is also acutely needed about the experimenting, testing and deployment of climate mitigation technologies, notably geo-engineering, and about the early identification of potential risks to human life or health, serious and effectively irreversible impacts on the environment, and inequitable impacts on present or future generations. Risk assessments should account for the limited existing research on the social and cultural impacts of carbon capture, storage or removal technologies, with marine carbon dioxide removal lagging behind in particular, and for the dependence of cost-benefit analysis on access to expensive global climate change monitoring

and modelling. The Special Rapporteur is preparing a thematic report on this topic that will be released in May 2027.

103. **Intersectionality**: States must take enhanced measures to ensure access to information for those most affected by climate change, particularly children, Indigenous Peoples with regard to their free, prior and informed consent, peasants and local knowledge holders to ensure recognition of their knowledge systems and territorial connections, and those facing intersectional discrimination,[66] including in the context of displacement and planned relocations.[67] States must improve assessment and data collection on gender-related dimensions of climate impacts, including gender-based violence, and ensure women, girls and gender-diverse persons have equal access to information and education on climate change. States should also gather disaggregated data on persons with disabilities,[68] older persons, and persons with albinism in climate contexts. These obligations align with the African Charter's non-discrimination provisions (Articles 2, 3, and 18) and the Protocol to the African Charter on the Rights of Women in Africa.

104. Crucially, States should fund and support participatory research and information-gathering practices, particularly when community-led, women-led or co-developed with children or local grass-roots organizations, and when they ensure consideration of intersectionality. The precondition for the effectiveness of all climate action, is for States to recognize – on the same level as technical expertise – and to respectfully and genuinely engage with the lived experiences and distinctive knowledge of the human rights holders in situations of vulnerability as agents of change.[69]

105. In addition, public authorities should support and collaborate in gathering and sharing climate information, with national human rights institutions. In Kenya, national human rights institutions documented patterns of human rights violations resulting from deforestation in various sectors, including energy. Partnership with non-State actors, including community-based initiatives to gather culturally appropriate and locally meaningful information on climate risks and impacts, can facilitate the development of early warning systems in local languages through accessible sources and platforms. Participatory research methodologies should be supported by providing training and capacity-building to community members and recognizing the value of Indigenous and local knowledge. Such approaches honour the African Charter's recognition of collective (Peoples') rights and specifically the right to cultural development.

[66] See A/HRC/37/59, annex, principle 15, and A/HRC/56/46.
[67] See A/HRC/56/47.
[68] See A/HRC/31/30.
[69] See A/HRC/56/46.

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106. States should identify and fill gaps in historical climate and meteorological data, provide accessible and timely information to any person upon request, take enhanced measures for those most affected including Indigenous Peoples and those facing intersectional discrimination, and enact clear procedures for processing information requests. The African Commission on Human and Peoples' Rights and this Court should emphasize these obligations in interpreting Articles 9, 16, 22, and 24 of the African Charter, recognizing that access to climate information is indispensable for protecting the full spectrum of human rights guaranteed under African regional human rights law.

107. Based on this evidence, the UN Special Rapporteur submits that the African Court has thus an opportunity to clarify that to contribute to the protection of human rights in Africa, **African States have human rights obligations to**:

a) ensure that public authorities have timely access to high-quality, trustworthy, evidenced-based and information on climate change and human rights to understand the foreseeability and preventability of negative human rights impacts of climate change and response measures;
b) inform the public about the magnitude of actual and potential negative human rights risks and impacts of climate change and response measures, and about the adequacy of States' and businesses' responses to effectively protect and respect human rights in the context of climate change;
c) incorporate quality, trustworthy, accessible and evidence-based information on climate change and human rights into the educational curricula at all levels, including on the human rights risks of fossil fuels, and on the benefits of fossil fuel-free production, consumption and lifestyles;
d) fill gaps and connect sources of information across different sectors and levels of government, on climate change sources and effects, including on biodiversity and ecosystem services, weather and natural disaster patterns, as well as on impacts on human health, mobility, labour, social, economic and cultural rights, and the right to a clean, healthy and sustainable environment, in terrestrial, freshwater and marine contexts;
e) identify and respond – locally, nationally, regionally and internationally – to the greatest need for progress in knowledge production and information- and data-sharing, in order to protect the human rights of those in vulnerable and marginalized situations in the context of climate change.

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E.1 International cooperation

108. International cooperation should be leveraged to secure and promote access to information on climate change and human rights, enhance protection for affected communities, and hold States and businesses accountable. States must cooperate to promote studies, undertake scientific research, and encourage exchange of information and data on climate impacts, according to the advisory opinion of the International Tribunal on the Law of the Sea, with a view to supporting more equitable and effective cooperation in the formulation and elaboration of rules and standards in all relevant international forums. African States should ensure that these obligations are upheld in the context of relevant international organizations, particularly those for which concerns have raised about limited access to information on decision-making and the underlying evidence base, such as the International Seabed Authority, the International Maritime Organization and the International Civil Aviation Organization.

109. Such international collaboration should extend to information on critical biodiversity and ecosystem services contributing to mitigation and adaptation, and to health, food and other basic needs related to economic, social and cultural rights. This is essential to support the protection of the rights to a healthy environment and development, in their collective and inter-generational dimensions in Africa, where climate literacy is low.[70] International cooperation is also needed to share information for migrant workers between countries of origin and receiving countries, including as part of pre-departure training in migration agreements.

110. International cooperation should also focus specifically on sharing accurate, reliable and age-appropriate information and education that is accessible to **children in Africa** according to the different stages of children's development on: the causes of climate harm and its effects; adaptive responses; relevant legislation, policies and plans; findings from impact assessments; sustainable lifestyle choices; and the consideration of children's views in the outcomes of climate-related consultations and complaint procedures (CRC General Comment No. 26). There is limited education on climate change for primary school-age children. A lack of social workers further exacerbates information challenges and limits the documentation of children's needs in the context of climate change.

111. Furthermore, international cooperation should provide specific information to climate-related **internally displaced persons** on: the conditions in the place of origin and reasons and procedures for the displacement; possible risks and imminent

70 N P Simpson and others, "Climate change literacy in Africa" (2021) 11 *Nature Climate Change*.

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threats; the place of relocation, including local integration and compensation; opportunities for participation in the decision and planning of the relocation, access to remedy,[71] and the available support and mental health care.[72]

112. The African Court has thus an opportunity to clarify that to contribute to the protection of human rights in Africa, **African States have human rights obligations to request from developed countries, particularly historically high-emitting countries** to support African countries in:

a. Undertaking scientific research and exchange of information and data on climate change, climate change measures and their impacts on human rights, and on critical biodiversity and ecosystem services that contribute to mitigation and adaptation;

b. Filling of critical information gaps for the protection of human rights of those in vulnerable and marginalized situations;

c. Ensuring accessibility, integration and interoperability of international sources of information on climate change and human rights, including for children, migrant workers and internally displaced persons;

d. Utilizing such information as a basis for the development of international rules and standards in relevant international organizations;

e. Ensuring public access to information on decisions and the underlying evidence base in the context of international organizations whose mandate affects climate change and/or contributes to protecting human rights in the context of climate change.

F. EFFECTIVE REMEDIES

113. Recognising the impact of climate change on the human rights of Africans, and the limited contribution of African States to global emissions, raise specific questions about the human right to effective remedies. As the African Commission stated in Zimbabwe Human Rights NGO Forum v Zimbabwe, “To fulfil the rights means that any person whose rights are violated would have an effective remedy as rights without remedies have little value.” Article 1 of the African Charter requires States to ensure

[71] See A/66/285 and A/75/207.
[72] See A/78/245; and UN Special Rapporteur on Climate Change and Human Rights, Policy Brief - Climate Change, Mental Health and Human Rights (2024), https://www.ohchr.org/en/documents/policy-briefs/policy-brief-climate-change-mental-health-and-human-rights.

that effective and enforceable remedies are available to individuals in case of discrimination.[73]

114. Procedural rights to remedy must be substantively meaningful, accessible, and capable of delivering outcomes that actually protect rights rather than simply acknowledging their violation. This includes access to courts (at the domestic and regional level) that are independent and empowered to require legal compliance by States. The Inter-American Court in its advisory opinion clarified State obligations to ensure access to justice and effective remedies for differentiated climate harm.

115. Ensuring the right to effective remedies in relation to climate change also necessitates substantive repair, restitution, remediation and compensation, in addition to immediate cessation of harm-causing activities. This is aligned with the ICJ advisory opinion indicating that in inter-State relations, violations of customary and treaty obligations to prevent significant environmental and climate harm give rise to State responsibility to provide all remedies available under international law: satisfaction, cessation, guarantees of non-repetition, restitution and compensation.

116. As Articles 22 and 24 of the African Charter articulate collective and intergenerational rights rooted in African legal and philosophical traditions, approaches to remedies which address only individual rights or present-generations would be insufficient under the African Charter rights system. The African Commission established in SERAC v. Nigeria that Article 24 creates both negative and positive obligations for African States.[74] States must refrain from environmental destruction and must take reasonable measures to prevent, monitor, and remediate environmental harm. Where climate harms engage collective and intergenerational rights, the standard of effectiveness for remedies is elevated. A remedy is effective under Articles 22 and 24 only if it addresses conduct — principally continued fossil fuel production, consumption and subsidies — that perpetuates and compounds harm across generations.

117. In the Special Rapporteur's report on defossilization, she underscored that effective remedies should support transformative change by reclaiming spaces for self-determination and restoring human connections with nature, thus facilitating individual and community healing and intergenerational alliances.[75]

118. State obligations related to effective remedies play out across three dimensions, namely: duties of States to their own peoples; obligations between African States;

[73] Paragraph 171.
[74] *Social and Economic Rights Action Center v Nigeria* [2001] 155/96 (African Commission of Human and Peoples' Rights) [44].
[75] See A/HRC/44/48 and A/HRC/56/46.

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and obligations of cooperation in relation to duties owed by non-African States. Each of these is discussed in turn below.

F.1 Duties of African States to Their Own Peoples

119. All human rights remedies are necessary in order to address the human rights impacts of climate change: the phase out of fossil fuels can serve as cessation and guarantees of non-repetition, and the recommendations on education and information, including on the fossil fuels' playbook of climate obstruction, can serve as a form of satisfaction. Rehabilitation can be provided through sociocultural and ecological restoration at the climate-biodiversity-water-food-health nexus, in self-determined ways that support the protection and realization of human rights, combined with functional, medical (including mental health[76]), social, legal and vocational services.

120. States should also adopt appropriate legal measures to prevent climate harms by corporations and investors that are operating and/or domiciled in their jurisdiction. The African Commission's SERAC v Nigeria decision established that states incur Article 24 violations when they fail to monitor and regulate private actors whose operations destroy the environmental conditions on which peoples' rights depend.77 In addition, the Guiding Principles on Business and Human Rights provide that businesses have human rights due diligence obligations (principle 17) and that individuals and communities should have access to appropriate and effective remedies (principle 25). A guarantee of non-repetition could also be provided by States amending bilateral investment treaties and contracts that currently undermine the protection of multinational fossil fuel companies from phase-out measures through investor-State dispute settlement.

121. Crucially, any remedy should be co-developed with affected human rights holders, in accordance with their assessments of impacts and holistic valuation of loss and damage experienced, taking into account intersectionality and historical and structural discrimination, with guarantees of access to justice and effective remedy. Such processes can also help in the co-development of economic models that can support mitigation, adaptation, and the prevention of, and responses to, loss and damage, while ensuring the maximum available resources to tackle the planetary crises.

122. In terms of compensation, given the widespread, substantial and protracted human rights impacts of fossil fuels and the exorbitant profits of fossil fuel companies

[76] Elisa Morgera, "Climate change, mental health and human rights", policy brief, 16 December 2024.
[77] *Social and Economic Rights Action Center v Nigeria* (n 61).

over extended periods while climate harm has accrued intergenerationally, remedies should reflect the temporal extent of that harm and should not be limited to prospective regulatory compliance. Fossil fuel-producing States, according to their historical responsibility, current contributions and respective capabilities – which the ICJ indicated that are evolving, should **require fossil fuel companies to**:

a. provide financial compensation for damage caused, through the effective and meaningful participation of victims in defining remedies based on self-identified needs and priorities, as well as in implementing and monitoring remediation measures;
b. maintain adequate financial provision for the remediation of climate-related harm attributable to their operations;
c. allocate financial contributions to public prorgammes on climate adaptation, mitigation and loss and damage, for instance through climate superfunds, ensuring that they are directly accessible by affected communities;
d. ensure restitution of territories to Indigenous Peoples and peasants in areas previously allocated to fossil fuel operations, as long as the return is desired and is made possible through the dismantling of fossil fuel infrastructure, and ecosystem restoration and full remediation of toxic contamination. Otherwise, compensation should be provided.
e. develop plans to close down existing operations, in consultation with the public and their workers, based on participatory assessments of human rights impacts across the value chain, and pay for independent experts who support consultations and joint assessments with workers and the public;
f. pay for the retraining and reskilling of workers through self-determined programmes;
g. cover the full cost of the closure and clean-up of industrial complexes to avoid toxic legacies in terrestrial, freshwater and marine ecosystems;
h. Abstain from offloading closure liabilities by way of divestment.

123. In addition, the Court should affirm the power of domestic courts, the Commission, and the Court itself to order structural and forward-looking relief, including the cessation of conduct that will produce future violations, requirements to develop and implement credible fossil fuel phase-out plans, and the establishment of trust or compensation mechanisms capable of delivering remedy to communities not yet born. In this the Court may draw on the emerging jurisprudence of other regional systems — including the Inter-American Court's Advisory Opinion OC-23/17 on the environment and human rights — while recognizing that the African

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Charter's explicit peoples'-rights framework provides the basis for collective and intergenerational remedial obligations.

F.2 Obligations Between African States

124. Article 22(2) of the African Charter expressly places the duty to ensure the right to development on States individually and collectively. This formulation means the right operates horizontally between State Parties, not only vertically between States and their own populations. Each state party to the Charter is therefore under an obligation not to conduct itself in ways that materially undermine another State Party's capacity to fulfil the rights guaranteed under Articles 22 and 24 to its own peoples.

125. A State that continues or expands fossil fuel production at a scale that undermines other African States' efforts to discharge their own Charter obligations, cannot treat these decisions merely as a matter of domestic policy, insulated from its Charter obligations to fellow State Parties.

126. This inter-State obligation has a structural dimension that goes beyond individual acts of extraction. States that maintain regulatory, fiscal, or financial architectures that incentivise fossil fuel production perpetuate conditions that compromise the ability of climate-vulnerable African states to secure Articles 22 and 24, among others. As a result, the obligation to phase out fossil fuels is not limited to cessation of extraction activity but extends to the dismantling of the economic and regulatory frameworks that lock African development trajectories into continued fossil fuel dependency.

127. A significant number of corporations domiciled or registered in African countries operate across the continent. The obligation of African States to one another extends to the duty on States to take appropriate legal measures to hold corporations operating transnationally accountable for activities within and beyond national borders that jeopardize the ability of any African State to secure their populations Charter rights. Cooperation among African States is thus necessary also to ensure the protection of the right to effective remedies in this context.

F.3 International cooperation

128. The African Court has an historical opportunity to focus on remediation demands and collective action by African States in relation to climate change as a colonial legacy by historically high-emitters emitters. African states' obligations under the Charter to promote the inter-dependent rights to a healthy environment and to development, in their inter-generational dimensions, align with demands for loss and

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damage financing and genuine reparative climate justice, particularly where the harm suffered is traceable to the unjust enrichment of former colonial powers.

129. Remediation demands by African States to historically high-emitting States and currently high-emitting States in accordance with their evolving responsibilities and respective capabilities, should also focus on the dismantling of the economic, technological and regulatory frameworks that are locking or could lock African development trajectories into continued fossil fuel dependency, as well as legal cooperation to hold transnational corporations accountable for activities that jeopardize the ability of any African State to secure their populations Charter rights in the context of climate change. Once again, these remedies should be co-developed with, rather than unilaterally offered to, the countries most affected by climate change, in accordance with their self-determined priorities to ensuring the protection of Charter rights.

130. High-emitting States should prevent locking other States into fossil fuel dependency, including through debt or technology, which would obstruct their ability to pursue an energy transition. This is particularly the case for States that are highly indebted and less able to adapt and respond to loss and damage, and which would be burdened by costly new investments, much lower than expected revenues and significant liabilities caused by fossil fuels and petrochemicals

131. In addition, the African Court has an opportunity to focus on existing opportunities in international cooperation to provide effective remedies through collective action by African States. For instance, African States, to ensure protection of human rights in the context of climate change, should demands a significant reform of **international investment law**. Multinational fossil fuel companies benefit from undue protection against climate action under bilateral investment agreements, contracts, and investor-State dispute settlement. They are awarded compensation for climate measures that threaten their expected profits, including in circumstances where damages would not be available under national law, and in amounts that historically have been "roughly equivalent to the gross domestic product of 45 of the world's poorest or smallest countries put together" ($82.8 billion).[78] This means that States and taxpayers are paying fossil fuel companies compensation for attempting to advance the transition, diverting public funding from investments in renewables, adaptation and workers' social protection.[79] Since 60.4 per cent of potential fossil fuel-related investor-State dispute settlement claims could occur in middle- and low-

[78] Lee Di Salvatore et al., "Investor–State dispute settlements: a hidden handbrake on climate action".

[79] Lorenzo Cotula, "International investment law and climate change: reframing the ISDS reform agenda", *Journal of World Investment and Trade*, vol. 24 (2023); and submission by the South Centre.

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income countries, the costs of climate action are made higher in the countries that are least responsible for climate change and most affected by it.[80]

132. African States should also request forms of effective remedies in various international negotiations that are relevant for climate change, notably to:

a. reform and meaningfully replenish the **Loss and Damage Fund** under the Paris Agreement in accordance with human rights standards and best available science;
b. prevent and combat illicit financial flows, corruption, money-laundering, tax evasion and tax avoidance that benefit fossil fuel companies, in the negotiations of the **UN framework convention on international tax cooperation**, as well as ensure redistribution of tax revenue towards climate finance and remedies for loss and damage;
c. to restrict primary production of plastics and exports of plastic waste, as a form of cessation and guarantee of non-repetition; and require financial compensation for affected communities, plastic industry workers and informal waste workers, in the ongoing negotiations of a **UN plastics treaty**;
d. clarify the international human rights responsibility of fossil fuel companies to support the phase out as a form of cessation and guarantee of non-repetition; and require financial compensation for climate and human rights harm in the negotiations of the **UN internationally legally binding instrument on business and human rights.**

133. Finally, the Court should clarify African States' human rights obligations to ensure that the consequences of the breach of the *erga omnes* obligations to prevent significant harm to the environment and climate change, as clarified by the ICJ, include: the duty to not recognize as lawful situations created by the breach, the duty of non-assistance in the maintenance of such situations; and the duty to co-operate to bring to an end the breach.[81]

Signed and dated at **Santa Marta**, Colombia, this **30th April 2026**

Professor Elisa Morgera, United Nations Special Rapporteur on the promotion and protection of human rights in the context of climate change

[80] E3G, "Investment treaties are undermining the global energy transition" (July 2024).
[81] Declaration of Judge Tladi to the ICJ Advisory Opinion on State Obligations on Climate Change, para 35-36: https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-12-enc.pdf.

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