SPECIAL PROCEDURES
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HUMAN RIGHTS COUNCIL

Submission by Special Rapporteur on the promotion and protection of human rights in the context of climate change, Prof. Elisa Morgera

Call for Submissions for developing the content of the Draft Outline of the General Comment on the Right to Environment of the African Commission of Human and Peoples' Rights

This submission aims to support the African Commission in developing the content of the Draft Outline of the General Comment on the Human Right to a Healthy Environment and in particular, its consideration of: 1) State substantive obligations relating to environmental protection, climate change, biodiversity, toxic pollution and sustainable development; and 2) procedural obligations, with a focus on access to information. The submission builds on the Special Rapporteur's work on: defossilization (A/HRC/59/42; A/HRC/62/44), energy transition (A/80/188), food systems (A/HRC/62/44) and access to information (A/79/176). The submission is also informed by the Special Rapporteur's scene-setting report focusing on intersectionality in the protection of human rights in the context of climate change (A/HRC/56/46).

I. Scope, nature and content of the human right to a healthy environment and the protection it guarantees in the specific context of climate change

The African Charter is the first regional human rights treaty to include the human right to a satisfactory environment (Article 24). As per the African Charter, the right is collective in nature, constituting another unique feature of the instrument. 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.[i]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 vulnerability, and requires coordinated action across communities, nations, and generations.

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. 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. This framing has profound implications for climate change, which represents the ultimate collective environmental challenge. On this reading, Article 24 imposes both substantive obligations — positive and negative — and procedural rights and guarantees — access to information, public participation and access to justice and effective remedies.

The advisory opinions of the International Court of Justice, International Tribunal of the Law of the Sea and the Inter-American Court of Human Rights[ii] shall guide the African Commission in the interpretation and application of State obligations concerning climate change under Article 24, including with respect to the protection of vulnerable populations, including Indigenous Peoples, peasants, women, and children. The African Commission shall, in particular, consider the following legal clarifications that are common to all Advisory Opinions and particularly relevant to Article 24 : a stringent due diligence standard for regulating activities and businesses that are responsible for greenhouse gas emissions and degradation of carbon sinks (forests, soils,

the ocean) in line with best available science, precaution and the highest possible ambition of each State; recognition that the obligation to prevent significant climate and environmental harm is customary, and that the prevention of irreversible environmental harm is peremptory (*ius cogens*) according to the Inter-American Court; a binding duty to cooperate internationally, that should be responsive to developing countries' highest possible ambition, in consideration of their common but differentiated responsibilities and respective capabilities (CBDR-RC); and an obligation to protect and restore ecosystems as integral to both mitigation and adaptation.

This anchors in the African Commission's existing jurisprudence on Article 24, particularly under *SERAC v. Nigeria*, addressing prevention of pollution, environmental monitoring, impact assessment, access to information, justice and effective remedies, and *Endorois v. Kenya*, concerning heightened duties where environmental burdens fall on already-marginalized groups. 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. [iii]

The distinctly African approach to Article 24 should emphasize several key elements: the collective and intergenerational dimensions of the human right to a healthy environment (with a focus on children's and future generations' human rights (ICJ AO, para. 155-157; CRC/C/GC/26)., 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 the co-development of 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 locally grounded ways.

II. State obligations relating to environmental protection, climate change, biodiversity, conservation and sustainable development

a. Defossilization in the energy sector and food systems (terrestrial and aquatic)

Fossil fuels are a major driver of all planetary crises – climate change, biodiversity loss, toxic pollution and social inequality, which — taken together — undermine States' entire ability to meet their human rights obligations. This is a central concern because the entire fossil fuel life cycle – exploration, extraction, transport, refining, combustion and waste management – causes cumulative, intergenerational harm to human rights, nature and to health, on top of the human rights harm of climate change itself. The "carbon tunnel vision" in climate action — a narrow focus on carbon dioxide emissions to the exclusion of the broader toxic, ecological, and economic harms — must be avoided. 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 premature deaths annually, and disproportionately affects children, pregnant women, Indigenous Peoples, and marginalized groups.[iv] Severe harm in African fossil fuel-rich regions — oil operations and pollution in Niger Delta, South African coal mining fields, Mozambique gas extractions, and "sacrifice zones" of compounding poverty and weak governance — is well documented.[v] But crucially, human rights harms from fossil fuels are not confined to local environments: 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.

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 on defossilization clarified that all States have international human rights obligations to phase out fossil fuels and related subsidies to prevent foreseeable human rights harm. 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. 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”. In addition, fossil fuel industries, including State-owned entities, have generated immense profits while benefiting from substantial public subsidies and employing tax avoidance structures. Fossil fuel subsidies and industry tax avoidance divert "maximum available resources" away from health and education, harming the right to development, particularly for countries still striving toward structural transformation, while African fossil-exporting economies remain exposed to stranded-asset and revenue-volatility risk, deepening fiscal constraints and hindering investment in renewable energy. The phase out of fossil fuels is a precondition for the right to development, including non-discrimination and protection of children’s right to development. 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.

Against this background, 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
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.

The Special Rapporteur’s report on transforming food systems for a safe climate and health for all clarified that all States have international human rights obligations to defossilize not only their energy sectors, but also their terrestrial and aquatic food systems, particularly large-scale agriculture, livestock, fisheries and aquaculture, in order to effectively mitigate and adapt to climate change and respond to loss and damage. There is growing reliance on fossil fuels and petrochemicals, such as fertilizers, pesticides and plastics, in food systems, which locks entire economies beyond the energy sector —including African economies—into long-term fossil fuel dependence and long-term human rights harm. Petrochemicals contribute to soil degradation, water pollution and potent GHG emissions, threatening the rights to food, health and a healthy environment—including for future generations — and exacerbating climate impacts where adaptive capacity is already limited. States should thus combine decarbonization, defossilization

and detoxification of food systems to prevent localized human right harms. On the other hand, States should prioritize legal protection and financial support for small-scale food systems, particularly led by Indigenous Peoples and peasants, small-scale fishers and pastoralists, which provides greater guarantees of environmental sustainability, contributions to climate mitigation and adaptation, protection of health, and the security and resilience of food systems locally and for entire nations.

i) **International cooperation**

The African Commission should highlight human rights obligations for African States to secure necessary financial and technological cooperation and effective remedies through collective action. For instance, African States should continue to demand increased international cooperation on taxation,[vi] on corporate accountability[vii] and demand a significant reform of international investment law. Under bilateral investment agreements, contracts, and investor-State dispute settlement, multinational fossil fuel companies 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). States and taxpayers thus pay fossil fuel companies compensation for attempting to advance the transition, diverting public funding from investments in renewables, adaptation and workers' social protection.

b. Energy transition

Reliance on renewable energy – notably, energy and wind –provides one of the most effective and environmental sustainable climate change mitigation actions and therefore helps prevent further widespread and severe impacts on human rights of climate change and of the fossil fuel life cycle. Transitioning towards renewables-based economies can also prevent toxic pollution, protect biodiversity and make significant contributions to protect human rights, notably the right to health.

Transition towards renewables-based economy, however, should not be unchecked. Widespread human rights violations are currently being documented across all regions in relation to renewables development and energy transition minerals, due to environmental deregulation and the lack of coherence between energy, climate, biodiversity, land and ocean laws. Scientific evidence, including Indigenous science and local knowledge, is available to ensure that renewables are developed while avoiding or minimizing any negative environmental and human rights impacts, and preventing the repeating of historical and colonial patterns of exclusion and exploitation. In the context of worsening climate change, 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 fully aligning human rights obligations into policy, law, planning and monitoring of renewables development, 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. African States should therefore: undertake full-life cycle assessment of renewables and energy transition minerals at the nexus of climate, nature, food, water and health; re-assess priorities for energy use to ensure protection of those in vulnerable situation and de-prioritization of the energy needs of those driving over-production, over-consumption and economic inequality; and prevent the expansion of creation of new sacrifice zones linked to renewables and energy transition minerals, particularly when they are combined with continued reliance on fossil fuels (for instance, coal-fired plants for processing or recycling minerals). To that end, States should ensure clear and effective legislative guarantees and administrative practices on Indigenous Peoples' access to information, Free Prior Informed Consent, and fair and equitable benefit-sharing; and relevant guarantees for peasants, small-scale fishers, pastoralists, other rural communities, with full consideration for intersectional impacts on rural women and other community members.[viii]

i) International cooperation

African States have human rights obligations to request from historically high-emitting countries to provide grant-based finance, debt relief and cooperation, as well as technology co-development. Africa possesses more than 60 per cent of the planet's solar energy potential, but receives only 2 per cent of worldwide renewables funding.[ix] Neocolonial patterns in renewable energy development and related mining lock regional and national economies— particularly in Africa—into development and technology dependencies characterized by primary extraction, land expropriation, elite capture, and unsafe disposal of toxic waste. For example, 90 per cent of patents for renewable technologies are held by companies based in wealthy nations. The human right to science (which was emphasized by the Inter-American Court in its AO), instead, supports a shift from transfers of technology to 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.[x] 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.

III. Procedural obligations, with a focus on access to information

Access to information, enshrined in Article 9 of the African Charter, constitutes a precondition for protecting and exercising all other human rights in the context of the climate crisis. The Inter-American Court confirmed this in its advisory opinion, linking access to information to the rights to life, health, a healthy environment, personal integrity, public participation and the right to education. The African Commission's Special Rapporteur on Freedom of Expression and Access to Information has, in a joint resolution with UN and regional experts, issued similar findings.[xi]

In her 2024 report on access to information,[xii] the Special Rapporteur on Climate Change and Human Rights concluded that timely access to high-quality, trustworthy, 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.

States shall imperatively identify and respond, at all governance levels, to gaps in knowledge production and information-sharing that protect the human rights of those in vulnerable and marginalized situations. States should regularly and proactively collect and share information on the causes, extent and effects of climate change (considering the nexus with nature, toxic pollution, the ocean and human health), with an emphasis on fossil fuels; on potential and actual negative impacts of climate change on human rights; on proposed and ongoing climate response measures and their impact on human rights; intersectionality; climate technology; on climate finance and technology; on carbon markets. To fill data gaps, States should support, including financially, knowledge co-development with human rights holders in vulnerable situations. Carbon markets pose particular risks to the rights to a healthy environment and development, given growing questioning of their mitigation effectiveness, capacity to elicit additional finance for climate action, and documented negative human rights impacts on affected communities. The Special Rapporteur is preparing a thematic report on this topic that will be released in September 2026.

Given the over six decades of evolving strategies of climate disinformation and obstruction by the fossil fuel industries, the Special Rapporteur submits that the African Commission 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.

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[i] D Lupin Townsend, Human Dignity and the Adjudication of Environmental Rights (Edward Elgar Publishing 2020).

[ii] *Obligations of States in Respect of Climate Change*, Advisory Opinion, 23 July 2025, International Court of Justice, Case No. 187; *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion, 21 May 2024, ITLOS Case No. 31; *Climate Emergency and Human Rights*, Advisory Opinion OC-32/25, 29 May 2025 (notified 3 July 2025), requested by the Republic of Chile and the Republic of Colombia. See also: UN experts welcome recognition from International Court of Justice that all States must protect the climate system | OHCHR, Law of the sea tribunal's judgment on marine environment and climate change underscores obligations, say UN experts | OHCHR, UN experts hail landmark Inter-American Court opinion on States' extensive duties to protect the climate | OHCHR.

[iii] See A/HRC/49/53 : "sacrifice zone can be understood to be a place where residents suffer devastating physical and mental health consequences and human rights violations as a result of living in pollution hotspots and heavily contaminated areas."

[iv] https://climateandhealthalliance.org/cradle-to-grave-the-health-toll-of-fossil-fuels-and-the-imperative-for-a-just- transition-2nd-edition/.

[v] A/HRC/49/53 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.

[vi] https://financing.desa.un.org/unfcitc

[vii] https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc

[viii] 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

[ix]Submission by the Migration Youth and Children Platform.

[x] 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&.

[xi] 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).