Peoples Across Time

Future Generations and the African Climate Advisory Opinion

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In 2025, climate litigation witnessed significant developments at both regional and international levels. The Inter-American Court of Human Rights (IACtHR) rendered an advisory opinion affirming States' obligations to protect human rights against climate harm under the American Convention on Human Rights. This was subsequently followed by the International Court of Justice (ICJ), whose advisory opinion clarified the scope and sources of States' legal obligations to address climate change and outlined the potential consequences under international law when those obligations are breached.

Less attention, however, has been paid to a parallel development. In the same year, a request was submitted to the African Court on Human and Peoples' Rights (ACtHPR) by a group of African civil society organisations for an advisory opinion on African States' obligations in respect of the climate crisis.

The petition explicitly asks the ACtHPR to clarify what specific obligations States bear to protect "the rights of individuals and peoples of the past (ancestral rights), present and future generations" against climate change (request, para 94(a)). This invitation to address rights spanning past, present, and future generations is both original and ambitious. It offers the Court an opportunity to go further than previous regional and international courts dealing with similar questions.

This post argues that the open-ended notion of "peoples" in the African Charter on Human and Peoples' Rights (ACHPR) provides a doctrinal basis for recognising the interests of future generations within African human rights law. Interpreted in light of the Charter's collective architecture and the right to a general satisfactory environment under Article 24, the concept of "peoples" can function as a bridge across time, embedding intergenerational justice within the African human rights framework.

What is at stake?

To make sense of this question, it is useful to rewind to the 1972 Stockholm Conference on the Human Environment. During the deliberations, it was observed that:

> *"Developing countries could ill-afford to put uncertain future needs ahead of their immediate needs for food, shelter, work, education and health care. The problem was how to reconcile those legitimate immediate requirements with the interests of generations yet unborn[...]" (1972 Stockholm Conference Report, p. 45).*

This reflection aptly captures the grim reality in which the ACtHPR finds itself as it embarks on the momentous task of deciding the questions pending before it. With Africa hosting 60 per cent of the world's extremely poor, the tension between pressing developmental needs and the imperative to protect future generations from climate harm renders the Court's task both exacting and urgent. The African continent holds 8% and 12% of the world's natural gas and oil reserves, respectively, and the countries where these resources are situated continue to assert their sovereign right to extract and develop them. Yet fossil fuel combustion is a leading source of greenhouse gas emissions, driving climate change, whose adverse effects are already devastating lives across the continent.

All this comes against the backdrop of the fact that African States have historically been among the lowest contributors to global emissions, yet they are experiencing some of the most severe climate change

impacts: extreme water scarcity, prolonged droughts, heat waves, floods, and declining crop yields. The request details these harms and argues that they contravene the rights protected under the African Charter on Human and Peoples' Rights (ACHPR) (paras 7- 60). Relatedly, the IPCC projects that these effects will get more severe in the future for the African continent. One might therefore ask: can Africa still drill? This is a well-founded question in light of the ICJ advisory opinion declaring continued fossil fuel production, consumption, licensing, and subsidization as potentially unlawful under international law and confirming that States are obliged to respect the interests of future generations in their decision-making (ICJ advisory opinion, paras 427, 157, respectively). The ACtHPR will have to engage with these pronouncements by the ICJ if it is to answer the foregoing question. This inquiry ultimately ties back to an equally fundamental issue: whether future generations enjoy protection under the ACHPR against climate change.

Future generations under the ACHPR: Can the ACtHPR go further than the ICJ?

International environmental law recognises the principle of intergenerational equity, famously articulated by Edith B. Weiss. The principle requires that the present generation should not leave the planet in a worse condition for future generations than they received it.

Under the Climate Change Framework Convention (UNFCCC), this principle is referred to as one of the guiding principles for construing States' obligations under the convention (Article 3(1)). In its advisory opinion, the ICJ noted that the principle of intergenerational equity does not give rise to separate State obligations in respect of climate change. Instead, it serves as a tool for interpreting the obligations already imposed on States to combat climate change under the relevant sources of international law (para 157). It follows, therefore, that a State cannot be said to be in compliance with its obligations to combat climate change if its policies do not pay "[d]ue regard to the interests of future generations" (para 157).

This leaves open an important space. If intergenerational equity is merely interpretive at the global level, could it become more concrete within a regional human rights framework? Notably, the ACtHPR has previously drawn on ICJ advisory opinions. But it is not confined to them.

"Peoples" as a Bridge Across Time

The ACHPR is the primary instrument within the African Union's human rights legal framework. While it makes no explicit reference to future generations, other instruments like the African Convention on Nature Conservation (Article 4) do, and these could serve as a building block. Importantly, the ACHPR provides for both individual and peoples' rights. It, however, does not define the term "peoples".

The idea of "peoples" denotes the African conception of the individual as being far from having an isolated existence but rather "as an integral member of a group animated by a spirit of solidarity". This seems to have been the general context within which the deliberations on the draft ACHPR took place. It has been suggested that the concept of "peoples" in the ACHPR is capable of a very expansive interpretation. It can be a tool for "empower[ing] the people to do something about their future; to take charge of their destiny and control their affairs". This understanding bears similarity to the African philosophy of *Ubuntu* – "I am because we are" – which exists continent-wide. It captures a relational understanding of personhood that transcends atomistic individualism. If individuals are embedded within communities animated by solidarity, that solidarity need not be confined to the living. It can extend temporally. Therefore, the notion of "peoples" is arguably consistent with the perception that the well-being of present and future generations is intertwined.

Insights from previous ACtHPR jurisprudence

The ACtHPR has noted that the term "peoples" was left undefined by the drafters of the ACHPR so as to allow flexibility in future interpretation of the Charter (Ogiek case, para 196). In the *Ogiek* case, the Court affirmed that "the notion 'people'

used by the Charter covers not only the population as the constituent elements of the State, but also the ethnic groups or communities identified as forming part of the said population within a constituted State" (para 198).

This interpretative openness is not merely semantic; it has concrete normative implications. If "peoples" is capable of encompassing distinct communities within the State, it is equally capable of accommodating a temporal dimension that is, extending beyond those presently living to those who will constitute the polity in the future.

The ACHPR makes provision for peoples' rights in several articles. Article 24, for example, provides that: "All peoples shall have the right to a general satisfactory environment favorable to their development". The African Commission on Human and Peoples' Rights (the Commission) has interpreted Article 24 as, inter alia, obliging States "to secure an ecologically sustainable development and use of natural resources" (Ogoni case, paras 52-53). This decision of the Commission was referred to with approval by the ACtHPR in its LIDHO judgment (para 179). Given the intertemporal nature of sustainable development, it is deducible that the protections guaranteed by peoples' right to a general satisfactory environment extend to future generations.

In this connection, the IACtHR has recognised that the right to a healthy environment has a collective dimension, characterizing it as a "universal value that is owed to both present and future generations" (IACtHR Advisory Opinion, para 272). This interpretation is particularly relevant given that the ACtHPR has previously drawn inspiration from the jurisprudence of the IACtHR (the Ogiek case, para 186, note 56). The Inter-American approach, therefore, offers persuasive authority for foregrounding the intergenerational dimension within African human rights law.

The right to a general satisfactory environment under Article 24 of the ACHPR could serve as a doctrinal linchpin for such an interpretation by the ACtHPR. Read in light of the ACHPR's collective architecture and the open-ended notion of "peoples," the provision is capable of encompassing future generations as part of the continuing community whose interests must be safeguarded.

Accordingly, the reference to peoples' rights in the ACHPR lends itself to an expansive interpretation, one that ensures that its protections are not confined to those presently living but extend to the interests of future generations. Such an interpretation is especially warranted in the context of climate change, whose most severe consequences unfold over time. In the pending advisory proceedings, the ACtHPR thus has an opportunity not merely to follow the reasoning of the ICJ and the IACtHR, but to advance regional climate jurisprudence by giving concrete expression to intergenerational justice.

Conclusion

The forthcoming advisory opinion represents a watershed moment. Although advisory opinions are formally non-binding, they can have far-reaching consequences for policy as well as politics in Member States, particularly when it comes to climate change.

The ACtHPR has previously addressed environmental degradation. Now it faces the systemic, long-term challenge of climate change—a crisis that transcends borders and generations, and one to which African States have contributed the least.

By interpreting "peoples" in Article 24 of the ACHPR as encompassing future generations, the Court could embed intergenerational justice within African human rights law. In doing so, it would not merely follow in the footsteps of the ICJ, the IACtHR, and the ECtHR—it would advance its jurisprudence further. This would ensure that African human rights law can chart a path toward development that does not mortgage the continent's future.

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