Anticipating a Climate Moment in Arusha

State Obligations in the African Court's Forthcoming Advisory Opinion

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Since becoming operational in 2006, the African Court on Human and Peoples' Rights (AfCHPR), based in Arusha, Tanzania, has never issued an advisory opinion as highly anticipated as the forthcoming advisory opinion on climate change. The opinion responds to the request submitted by Pan African Lawyers Union (PALU) under article 4 (1) of the Court's Protocol. Noting the adverse impacts of the climate crisis on the African continent and on the enjoyment of numerous human and peoples' rights, PALU requested the AfCHPR to clarify African States' human rights obligations in the context of the climate crisis. Indeed, there is a growing recognition that human rights obligations must shape States' responses to climate change. This contribution, which forms part of the symposium on Inter-Judicial Dialogue on Climate Change and Human Rights, explores how the Arusha Court could articulate a coherent African rights-based vision of climate action. To this end, this post explores how the AfCHPR could develop a regionally grounded understanding of States' substantive, procedural, and intersectional climate obligations.

Substantive Obligations

Arguably, the African Charter on Human and Peoples' Rights provides the AfCHPR with a strong legal basis to define States' duties to respect, protect, and fulfil human rights in relation to the climate crisis. The request invites the Court to consider States' climate-related obligations under various Charter provisions, notably Articles 2, 3, 4, 5, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20, 21, 22, 23, and 24. Article 24, which guarantees a right to a satisfactory environment, could provide the foundation for a right to climate protection. This provision recognises the interdependence between environmental protection and human well-being, viewing a healthy environment as a precondition for the enjoyment of other Charter rights , including the right to life, the right to health, and the right to development. The African Commission has already linked Articles 22 and 24 in its resolution on climate change, suggesting that these rights should be interpreted in a mutually reinforcing manner. The AfCHPR could build on this approach by clarifying how States can pursue development priorities while meeting their climate obligations.

Moreover, in its first contentious environmental case, echoing the jurisprudence of the African Commission on Human and Peoples' Rights, the AfCHPR stated that the right to a general satisfactory environment obliges States to take reasonable and appropriate measures to prevent pollution and ecological degradation, promote conservation, and secure ecologically sustainable development and the sustainable use of natural resources. Article 24 implies a duty to protect the environment from activities that may harm it, including those contributing to climate change. Following an evolutive interpretation of Article 24, the AfCHPR could conclude that the right to a satisfactory environment encompasses a right to climate protection with both individual and collective dimensions. Such a conclusion would enable the Court to clarify States' obligations in responding to the climate crisis.

In assessing climate duties arising from such a right to climate protection, the Arusha judges could engage substantively with the particular exposure of the African continent to climate risks. To this end, they should rely on the best available climate science, including reports of the Intergovernmental Panel on Climate Change and the World Meteorological Organization. Given the severity of climate impacts and the

urgency of climate action, it is crucial that the AfCHPR requires States to act with heightened due diligence to prevent climate-related harms and protect the rights enshrined in the African Charter. In this respect, the jurisprudential developments of the Inter-American Court may provide useful interpretive guidance while leaving room for the African Court to articulate a distinctly African approach to climate obligations.

Mitigation must constitute one of the essential pillars of the right to a healthy climate. Accordingly, the AfCHPR should require States to adopt adequate regulatory frameworks, exercise effective supervision and oversight, and mandate climate impact assessments for activities that may generate significant greenhouse gas (GHG) emissions. The AfCHPR has the authority to articulate ambitious and coherent obligations relating to emissions reductions and long-term carbon neutrality, much as the European Court of Human Rights did in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*.

Furthermore, an African-centred approach to climate obligations should be rooted in African environmental philosophies that conceive human beings as an integral part of nature rather than as superior to it. A distinctly African approach could also draw on the Charter's recognition of collective rights, solidarity, and the interconnectedness of human well-being and environmental protection. Such an approach may support the recognition that the right to a safe climate entails duties to protect the integrity of nature and its various components.

Because climate change is global in nature, States have a duty to cooperate. While such duties are already reflected in international instruments such as the Paris Agreement, the Arusha Court should lend them regional legal weight within the African human rights system. To this end, the AfCHPR should expressly link the duty to cooperate with the principle of common but differentiated responsibilities and respective capabilities. Such an approach would acknowledge the disproportionate burden borne by African States, despite their minimal historical contribution to climate change and comparatively limited resources to address the crisis.

Procedural Obligations

Procedural rights are indispensable to the effective protection of substantive climate rights. A comprehensive articulation of procedural obligations in the climate context would require the AfCHPR to address States' duties relating to access to information, public participation and access to justice. These obligations are foundational to transparent and equitable climate governance.

The right to information should be read as entailing a positive obligation on States to establish clear legal and institutional frameworks guaranteeing access to climate information. This should include ensuring access to the best available scientific knowledge as well as to traditional and indigenous knowledge systems, thereby enabling affected communities to understand and contest climate-related decisions that affect them.

Equally important is a clear articulation of States' duties to ensure meaningful participation in climate decision-making. In particular, States should guarantee the effective involvement of individuals and communities in decision-making and policy formulation concerning climate change. States should also ensure prior consultation with indigenous peoples and tribal communities where climate measures may affect their traditional livelihoods.

Concerning access to justice, States should be required to ensure that individuals and communities affected by climate harms have access to effective remedies before competent national institutions and courts. This necessarily includes removing procedural barriers that often prevent individuals, communities and NGOs from bringing climate-related claims before domestic jurisdictions. Following the jurisprudential developments of both the European and Inter-American Courts, the AfCHPR may also take the opportunity to clarify standing requirements in climate litigation. Given the transboundary nature of climate harm, the AfCHPR could expand locus standi to address transboundary climate impacts. Such an approach, already endorsed by the San José judges in AO-32/25, would represent a significant normative development within

the African human rights system and contribute to the evolution of transnational climate accountability. The Arusha judges should further clarify States' obligations regarding reparations in the context of climate change. Reparations must be comprehensive, effective, and tailored to the specific nature of climate-related harm and the needs of vulnerable communities.

Intersectional Obligations

The Arusha judges should dedicate particular attention to climate-related vulnerabilities. Africa is among the regions most affected by climate change, and within the continent some populations bear a disproportionate share of its impacts. These include, most notably, poor and marginalised groups such as Indigenous peoples whose livelihoods depend on land, rainfall, and pasture, including farming and pastoralist communities. Climate change also disproportionately affects socially vulnerable groups such as women, children, older persons, persons with disabilities, as well as refugees and displaced persons. For these groups, climate change exacerbates pre-existing vulnerabilities. The AfCHPR should therefore require States to adopt an intersectional approach to climate change, one that accounts for how multiple and overlapping axes of marginalisation shape individuals' and communities' exposure to climate-related harm.

A recent UNICEF report reveals that children in 48 out of 49 assessed African countries are at "high" or "extremely high" risk from the impacts of climate change. Each vulnerable group warrants heightened protection. At the same time, the AfCHPR should recognise that these vulnerable groups are not homogeneous. States should therefore design climate measures that reflect the specific lived experiences, risks, and adaptive capacities of each group. Beyond mere recognition, the Arusha judges should articulate differentiated obligations requiring States to prioritise resources and protective measures for groups facing heightened climate risks, ensure culturally appropriate adaptation and health interventions, and facilitate meaningful participation in climate-related decision-making processes.

Conclusion

The forthcoming climate advisory opinion presents a historic opportunity for the AfCHPR to articulate a coherent and comprehensive African rights-based framework for climate governance. Given Africa's particular vulnerability to climate change, the need for such guidance is especially pressing. By clarifying States' obligations under the African Charter, the Arusha judges can strengthen climate accountability across the region and provide guidance to policymakers and domestic courts.

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