Defining Climate Justice in the African Human Rights System

On the Climate Advisory Opinion Request to the African Court on Human and Peoples' Rights

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On 2 May 2025, the Pan African Lawyers Union (PALU) – in collaboration with the African Climate Platform, the Environmental Lawyers Collective for Africa, Natural Justice, and resilient40 – submitted a request to the African Court on Human and Peoples' Rights for an advisory opinion on States' obligations in relation to climate change (see here).

This request builds upon a growing transnational trend of climate-related advisory proceedings, following the recent requests to the International Court of Justice (ICJ), the Inter-American Court of Human Rights (IACtHR), and the International Tribunal for the Law of the Sea (ITLOS) (see here and here). Taken together, these initiatives signal an emerging effort to turn to international courts to clarify the legal responsibilities of States in addressing the human and environmental consequences of climate change. The request represents a pivotal moment for African jurisprudence: it not only asks the Court to articulate State duties under a uniquely expansive human rights charter but also to set the tone for how climate change is addressed within a regional legal architecture that centers on collective rights and intergenerational justice.

The request for the Advisory Opinion before the African Court within the ecosystem of current international case law on climate justice

The African Court's jurisdiction to issue such opinions is established under Article 4(1) of the Protocol to the African Charter on Human and Peoples' Rights and Article 82 of the Court's Rules of Procedure. The questions presented are of a legal nature, and the PALU is a recognized entity entitled to seek an advisory opinion, having done so previously (para. 97).

This request fits within a growing jurisprudence under international law, which includes pronouncements from the Human Rights Committee (*Ioane Teitiota v. New Zealand* and *Daniel Billy and others v. Australia*, respectively, in 2019 and 2022), the Committee on the Rights of the Child (*Sacchi, et al. v. Argentina, et al.*, in 2021), the ECtHR (*Carême v. France*, *Duarte Agostinho and Others v. Portugal and 32 Others*, and *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, in 2024 (see here)), and ITLOS (*COSIS Opinion*). Moreover, an advisory opinion from the IACtHR was requested by Colombia and Chile (which is expected to be rendered on July 3, 2025), whilst the ICJ is deliberating on an advisory opinion request on the obligations of states concerning climate change.

In fact, there is a growing recognition that climate change and human rights are inextricably linked. It is on this assumption that the request before the African Court identified the right to a satisfactory environment enshrined in Article 24 of the African Charter as "the preeminent provision upon which the Court should anchor obligations of States about addressing the impact of climate change" (para. 101). The legal parameters of the right to a satisfactory environment and the extent to which it contributes to the realization of other rights were explored by the African Court in *LIDHO and others v. Republic of Coˆte d'Ivoire*, but such clarifications were also provided by the African Commission in *SERAC and CESR v. Nigeria*, and by the ECOWAS Court of Justice in *SERAP v. Nigeria* and *Adou Kouame and others v. Cote d'Ivoire*. Moreover, the

African Court is expected to mobilize other provisions of the African Charter, including the right to life, the right to health, the right to information, the right to property, or the right to non-discrimination. The request further touches on both primary and secondary international obligations, extending, notably, to the question of reparations, as well as the accountability of corporations for GHG emissions.

Apart from the African Charter, the request also asks the Court to consider relevant and applicable principles derived from the United Nations system and other African human rights and peoples' rights instruments, which seemingly includes the UN Framework Convention on Climate Change, the Kyoto Protocol, the Paris Agreement, the UN Convention on Combatting Desertification, the United Nations Convention on Biological Diversity, and Any other Relevant Instrument (para. 90), on the one hand, and the Constitutive Act of the African Union, the Kampala Convention for the Protection and Assistance of Internally Displaced Persons (which refers to climate change specifically in Article V, para. 4), the Maputo Protocol on the Rights of Women in Africa, the African Charter on the Rights and Welfare of the Child, and the Revised African Convention on Conservation of Nature (para. 89), on the other hand.

What to expect from the African Court's advisory opinion?

A request for an advisory opinion from the African Court has been long anticipated – not only because Africa is the most vulnerable continent in relation to the adverse effects of climate change, but also because the African Charter stands out as a leading human rights instrument that enshrines a standalone right to a healthy environment (Article 24). Although Article 24 of the African Charter does not specifically mention GHG emissions or climate change as forms of pollution or environmental harm, the African Court is likely to reach this conclusion, as both ITLOS and the ECtHR have recently done, and as the African Commission did in 2014. The Charter's distinctive framing, treating environmental rights as both collective and developmental, provides a compelling foundation for interpreting States' duties in relation to climate change. While the Court's response remains to be seen, several issues stand out as likely focal points.

First, Article 24 of the African Charter refers to the rights of "peoples", instead of "individuals". This terminology reflects a normative orientation within parts of African legal and philosophical thought that emphasizes communal relations and interconnectedness with nature. It will be interesting to see whether this collective, regionally grounded lens has any impact on the interpretation of the right to a satisfactory environment in relation to climate change. The right to a general satisfactory environment is interpreted as holding an inter-temporal lens under the African Charter, which protects the rights of current *and future* generations alike. Although the rights of future generations and children's rights are not synonymous, it does not seem to be a coincidence that the requesting entity invoked the African Charter on the Rights and Welfare of the Child. Unsurprisingly, the request asks the African Court about States' obligations to "protect and safeguard the rights of individuals and peoples of the past (ancestral rights), present and future generations" (para. 93(a)), but also about States' "positive obligations to protect vulnerable populations including environmental human rights defenders, indigenous communities, women, children, youth, future generations, the current generation, past generations, the elderly and people with disabilities from the impact of climate change" (para. 93(b)). Therefore, the Court's interpretation of Article 24 will need to reconcile collective rights ("peoples") with enforceable State obligations.

Second, Article 24 ACHPR conditions the right to a general satisfactory environment on the development of a people, and the request expressly mentions Article 22 (on the right to development). This can be a problematic point for the African Court, as an absolute prevalence of the right to development (as implied by Article 24 of the African Charter but rejected by the practice of African institutions) would imply an excessively wide margin of appreciation for States. More than balancing both variables, the African Court will have to provide guidance to States on how to balance

their country's development priorities with the need to protect a healthy atmosphere and adapt to a changing climate system.

Third, the request also invokes mainstream human rights, since a stable climate is a necessary condition for the effective enjoyment of all human rights. On the one hand, deriving environmental obligations from other rights reflects the interpretative approach of human rights bodies, which often favor mainstream provisions over standalone environmental rights. On the other hand, it also results from the fact that human rights are mutually reinforcing and concurrently applicable to the same facts. In the African system, more specifically, human rights are not to be read in clinical isolation from each other, and States' obligations are a synthesis of all potentially relevant human rights provisions. As such, the Court will need to grapple with this dichotomy, which is at the core of several rights-based climate cases.

Fourth, and perhaps most critically, the African Court is expected to specify what the concrete States' obligations are under the African Charter in relation to climate change. In *SERAC and CESR) v. Nigeria*, the African Commission referred that Article 24 "imposes clear obligations … It requires the State to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources," (para. 52) thus, implying a stringent due diligence obligation, similar to ITLOS' guidance in the climate change advisory opinion. In turn, the ECOWAS Court of Justice referred in *SERAP v. Federal Republic of Nigeria* that States also bear an obligation to effectively implement laws, including through the mobilization of proper financial resources (para. 105). However, both human rights bodies failed to specify the minimum threshold of pollution that triggers Article 24 ACHPR, or to elaborate in more detail on the obligations of States (except for identifying procedural obligations and a very general obligation to prevent environmental harm). In climate change litigation, however, significant changes in State conduct are only expected if courts can detail the content of States' obligations to mitigate, adapt, or build resilience (para. 93(d)). More importantly, the request asks about States Parties' responsibilities (e.g., to monitor and control) with regard to non-State parties and multinational corporations (para. 93(f)). The Court has an opportunity to innovate in this area, especially with growing litigation against multinationals in African jurisdictions, and transnational cases brought in the Global North based on multinationals' actions in Africa.

To that end, there are some regional efforts that can assist the African Court, including the 2009 Decision on the African Common Position on Climate Change, the African Union Nairobi Declaration on the African Process for Combating Climate Change, the 2014 African Union Draft Continental Strategy on Climate Change, the 2015 African Adaptation Initiative, or the African Union Climate Change and Resilient Development Strategy and Action Plan (2022-2032), as well as the African Commission's resolutions adopted in 2009, 2014, and 2016. In this context, a study group constituted by the African Commission also produced the Zero Draft Report (Study on the Impact of Climate Change on Human and Peoples' Rights in Africa), which has not been adopted formally yet, but still identifies the key issues and gaps in the protection of human rights in face of climate change.

Fifth and finally, the request for an advisory opinion also places a strong emphasis on issues of just transition (para. 93 (c)), loss and damage, and reparations (para. 93 (d)). It is difficult to predict what the African Court will decide in this regard, but it appears that the purpose of PALU was to bring these topics to the forefront of diplomatic negotiations, scholarly production, and litigation before other international, regional, or domestic courts. These topics, which can be controversial, were also included in the request to the IACtHR, which can similarly help provide inspiration through a dialogue between regional courts.

The link between the questions and a brief insight into the Court's options for responding to them

Another distinctive feature of the African Charter that may distinguish the reasoning of the African Court is

that the Charter does not expressly contain a derogation clause from the rights it enshrines, unlike other international human rights instruments (see Brenda K. Kombo). The question of derogation from human rights obligations, that is, whether and how a state may lawfully suspend certain rights during times of emergency, may be crucial for climate action in Africa. This raises the question: can climate emergencies justify limitations on rights without formal suspension? The African Commission has generally interpreted the absence of a clause as a prohibition on derogation; however, its own jurisprudence blurs the line between derogation and limitations, creating uncertainty about how states can navigate crises while upholding human rights.

This legal ambiguity was brought to the fore in the case of *APDF and IHRDA v Mali*, where the African Court was asked to consider Mali's invocation of *force majeure* to justify its failure to implement a more rights-protective family code. Mali cited mass protests by Islamic groups as an overwhelming public emergency that prevented compliance with its obligations under instruments like the African Women's Protocol and the African Children's Charter. While the Court ultimately ruled against Mali, it failed to elaborate on the *force majeure* defense or clarify whether derogation from human rights norms is permissible under the Charter.

This silence has particular implications as it intersects with the climate emergency. As African states face increasing pressure from the escalating impacts of climate change – extreme weather, resource scarcity, displacement, and conflict – States may invoke emergency powers or sidestep rights obligations to delay compliance with international commitments and national laws. Without clear guidance on whether and how human rights obligations can be adjusted during such emergencies, states may either act unlawfully or fail to respond adequately to crises. Worse, governments may exploit the ambiguity to suppress dissent or roll back environmental protections under the guise of emergency response.

A more robust jurisprudence – either affirming the absolute nature of Charter rights or articulating criteria for lawful derogation – could help ensure that climate emergency measures remain accountable, proportionate, and aligned with human dignity. In time, future decisions may fill this critical gap, equipping States with principled tools to navigate the climate crisis while upholding core human rights.

Conclusion

The African Court's forthcoming advisory opinion represents both a legal and moral inflection point for the region. It offers an opportunity to clarify the obligations of States under a uniquely expansive Charter that fuses individual and collective rights. As the climate crisis intensifies across the continent, exacerbating inequality, displacing communities, and threatening ecological systems, the need for principled, coherent, and rights-based legal guidance has never been greater. In addressing this request, the Court has the chance not only to align with emerging global jurisprudence, but to contribute a distinctly African vision of climate justice – one rooted in solidarity, sustainability, and human dignity. Whether through affirming the indivisibility of rights, clarifying obligations in emergencies, or confronting the role of corporate actors, the Court's opinion could shape the contours of climate accountability across the region and beyond.

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