IN THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

REQUEST FOR ADVISORY OPINION NO. 001 OF 2025

AMICUS CURIAE

BY

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

(Made under Article 4 of the Protocol of the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights and Rule 68 of the Rules of the African Court on Human and Peoples' Rights)

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30 March 2026

Table of Contents

STATEMENT OF INTEREST OF THE AMICUS

1. The *amici curiae* are an interdisciplinary consortium of scholars and practitioners who are committed to the impartial promotion and development of international human rights standards related to, in particular, African human rights law, climate justice, environmental governance, constitutional design, Indigenous and gendered vulnerability, intersectionality, state responsibility, and emerging global norms on the right to a healthy environment and healthy climate. As practitioners, researchers, and experts who have decades of experience interpreting and operationalizing the African Charter on Human and Peoples' Rights (the "African Charter"), working directly on climate advisory opinions and landmark climate cases in international fora, pursuing state and corporate accountability for environmental harms, helping to develop regional climate policies, and gathering empirical, field-based insights into Indigenous rights, community resilience, and the ways climate harms interact with structural inequality, this group has specialized expertise in the questions of law before the African Court on Human and Peoples' Rights (the "Court").
2. *Amici* are not parties to the dispute and respectfully submit this brief as legal scholars and practitioners who wish to avail the Court with their expertise and specifically to provide doctrinal depth, regional contextual knowledge, comparative law perspectives, and practice-based insights that may assist the Court in articulating a principled, context-sensitive, and forward-looking approach to human and peoples' rights in response to the urgent risks currently posed by the climate emergency to human rights in Africa.
3. *Amici* submit this brief as individual scholars whose institutional affiliations are provided in the Annex below for their identification purposes. The *amici* are as follows:[*] Dr. Abadir M. Ibrahim; Dr. Angela Hefti; Ms. Salma Waheedi; Dr. Muna B. Ndulo; Mr. Ibrahima Kane; Dr. Girmachew Alemu Aneme; Dr. Jonathan Liljeblad; Dr. Oluwatoyin Adejonwo-Osho; Dr. Oluwabusayo Temitope Wuraola; Dr. Pedi Obani; Dr. Raymond Akongburo Atuguba; and Dr. Yusra Suedi, Dr.

[*] Please see Appendix 1 for additional information about the *amici*.

Angela van der Berg; Dr. Benyam Dawit Mezmur; Tyler R. Giannini; and Dr. Idriss Fofana.[**]

INTRODUCTION

4. *Amici* seek to assist the Court by providing a distinctive legal and multidisciplinary analysis of how the African human rights system can effectively assume normative leadership in the interpretation and application of existing and emerging substantive norms to the climate emergency. The African system already exercises normative leadership in a number of fields, especially in relation to collective rights.[1] *Amici* will demonstrate that the African system's pre-existing strengths on collective rights, and most notably on environmental rights, allow it to take normative leadership in the development of international climate law. international climate law is one of the areas in which the African system can lead based on pre-existing strengths in the regional normative framework.
5. Article 24 of the African Charter's articulation of the right to a satisfactory environment encompasses the right to climate stability, as climate change directly threatens or even extinguishes the possibility of the existence of such a satisfactory environment. Read in conjunction with the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the "Maputo Protocol"), the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the "Kampala Convention"), and widespread African state constitutional recognition of rights to a clean and healthy environment, Article 24 therefore provides a textual basis for the Court to recognize the right to a healthy climate based on the notion of climate change as a specific form of environmental harm. Next, international treaty and customary law expound the content of States' climate obligations, which include positive duties of mitigation, adaptation, and prevention, and these obligations are further

[**] Law student researchers Camille Cummings, Ideal Dowling, Iqra Saleem Khan, and Malika Kounkourou assisted with the drafting of this brief under supervision of Abadir Ibrahim, Angela Hefti, and Salma Waheedi.

[1] Abadir M. Ibrahim & Angela Hefti, *Contributions of the African Human Rights System to International Climate Law*, YALE J. INT'L L. 1, 9-14 (forthcoming 2026) (hereinafter Ibrahim & Hefti, *African Contributions*); Obiora C. Okafor & Godwin E.K. Dzah, *The African Human Rights System as 'Norm Leader': Three Case Studies*, 21 AFR. HUM. RTS. L.J. 669, 690–93 (2021).

specified under the Court's existing four-part environmental duties framework to respect, protect, promote, and fulfill rights.

6. There is a sufficient treaty-basis, bolstered by state practice and the legal pluralist approach common in African governance to reference Indigenous and traditional systems, to recognize nature as a right-holder within the African legal system. At the very least, there is abundant evidence supporting affirmation and further generalization of the African Commission's directive to respect the intrinsic value of sacred natural sites and territories in its Resolution on the Protection of Natural Sites and Territories. Recognition of the inherent, non-anthropocentric value of nature provides essential backgrounding for the Court's declarations on climate change obligations in Indigenous and traditional African values.
7. Climate harms in Africa are shaped by longstanding and interconnected systems of structural oppression and therefore disproportionately impact individuals whose vulnerability arises from intersecting identities related to gender, Indigenous status, race, disability, age, land tenure, and socio-economic marginalization, among other factors. For States to meaningfully comply with obligations related to climate harms and avoid obscuring specific harms faced by at-risk groups in light of these intersectional inequities, there must be participatory processes that reflect community-specific knowledge, break down power dynamics, and overcome barriers to participation and lack of access to justice. The imperative to take an intersectional approach to climate obligations is reflected in the African legal system's treaty framework, emerging protocols, soft-law instruments, and jurisprudence.

ARGUMENT

I. Right to a Healthy Climate

8. *Amici* will show that the right to a healthy climate is inherent in the right to a healthy environment, and does not create a new or free-standing entitlement untethered from the Charter's text. Rather, it clarifies that Article 24 of the African Charter, which already protects the right to a healthy environment, both in its individual and collective iteration, encompasses protection of the atmospheric and climatic systems whose equilibrium is indispensable to a "general satisfactory environment favorable to development."[2] In the contemporary context of escalating greenhouse gas emissions and transboundary atmospheric harm, this clarification is necessary to give full effect to the Charter's guarantees.
9. Recognition of the right to a healthy climate delineates the full scope of States' established obligations under Article 24. It encompasses an obligation to respect by refraining from conduct that contributes to emissions and climate harm; to protect by preventing and regulating harmful activities of public and private actors; to promote and fulfill through mitigation, adaptation, loss and remedies, access to information, and participatory decision-making; and to ensure effective remedies, including for transboundary and foreseeable harms.
10. The right to a healthy environment under Article 24 protects the ecological conditions necessary for the realization of human dignity, development, and the effective enjoyment of all Charter rights. Environmental protection within the African human rights system is therefore not limited to isolated incidents of pollution or resource degradation, but extends to the structural conditions that sustain life and collective well-being.[3]

[2] The African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5, art. 24 (1982) (hereinafter African Charter or Banjul Charter); *see also* note regarding terminology ("healthy" vs. "satisfactory") referencing *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria,* Appl. No. 155/96 *Ogoni*, ¶ 52 (May 27, 2002) (hereinafter *Ogoni*).

[3] *See* African Charter, arts. 20-22, 24; *see also* Lasane Koné, *Climate Change and Human Rights in the Democratic Republic of the Congo: REDD + and the Protection of the Rights of Indigenous Peoples*, *in* CLIMATE CHANGE JUSTICE AND HUMAN RIGHTS: AN AFRICAN PERSPECTIVE, 207, 225 (Ademola Oluborode Jegede & Adejonwo Oluwatoyin eds., 2022).

11. By affirming that the right to a healthy environment encompasses the right to a healthy climate, this Court would delineate with precision the scope of States' obligations *vis-à-vis* widespread climate harm, diffuse emission sources, transboundary effects, and the unequal distribution of climate impacts and resources for adaptation and resilience. Such recognition situates African jurisprudence within the consolidated trajectory of international human rights and climate law while remaining firmly anchored in the Charter's already existing text, structure, and emphasis on collective rights and intergenerational equity.
12. In light of the foregoing, this Court should expressly affirm that the right to a healthy environment guaranteed under Article 24 encompasses a right to a healthy climate. Such recognition would not expand the Charter beyond its text, but would give effect to its object and purpose by clarifying the specific content of States' obligations in the context of contemporary environmental realities and historic climate harms. The climate crisis presents harms that are cumulative, transboundary, and intergenerational in nature. Without explicit recognition of the climatic dimension of Article 24, the scope of States' duties risks remaining under-specified in precisely the domain where clarity is most needed.
13. Among the duties that risk remaining under-specified is the affirmative duty of States to seek reparations for transboundary climate harm, which emerges when reading together the obligation to protect from extraterritorial harm with the recognized right to seek reparation from such harm. Explicit recognition of duties here functions to elucidate that what might have otherwise appeared to be a mere prerogative is in fact a positive obligation on States in fulfilling their duty to provide effective remedies to those under their protection.
14. An authoritative pronouncement from this Court would serve three essential functions. First, it would provide doctrinal coherence by aligning environmental protection under Article 24 with the material conditions necessary for the enjoyment of all Charter rights. Second, it would offer legal certainty to States and litigants by articulating the applicable standards–respect, protect, promote, and fulfill–in relation to greenhouse gas emissions, climate adaptation, mitigation, and climate-related harms. Third, it would reinforce the African human rights

system's longstanding commitment to collective rights, peoples' development, and intergenerational equity, ensuring that present and future generations benefit form effective protection of the climate.

15. By clarifying that the right to a healthy climate is inherent in the Charter's environmental guarantee, this Court would not only respond to the legal questions presented in this proceeding, but would strengthen the capacity of the African human rights system to address one of the most significant threats to the realization of human rights on the continent. Such elucidation would confirm the existing normative status of the right to a healthy climate within the African Charter and allow this Court to refine its doctrinal contours–advancing a distinctly African contribution to the shaping of a more robust and progressive human rights response to the climate crisis.
16. This clarification is supported by the requirement that the Charter be interpreted in light of relevant international law applicable to the protection of the environment. The climate system is regulated through an established body of international legal obligations, including those under the United Nations Framework Convention on Climate Change and the Paris Agreement, which collectively articulate the objective of limiting global temperature increase and preventing dangerous anthropogenic interference with the climate system. These instruments do not operate in isolation but inform the content of States' obligations under Article 24, particularly where environmental harm arises from cumulative and transboundary processes such as climate change.
17. In this respect, the clarification of the climatic dimension of Article 24 does not depend on the creation of new legal standards, but on the application of existing environmental and human rights principles to a category of harm that is global in scale and cumulative in effect. Climate change, as a form of environmental degradation, engages established obligations of prevention, regulation, and due diligence, adapted to its particular characteristics, including its diffuse sources, delayed impacts, and transboundary reach.
18. The Court is therefore not called upon to develop new obligations, but to articulate with greater precision how existing duties under Article 24 operate in

the climate context. This includes clarifying the scope of State conduct required to address harms that are foreseeable, scientifically established, and capable of undermining the ecological conditions upon which the enjoyment of Charter rights depends.

A. The Emergence of the Right to a Healthy Climate in International Law

19. International human rights law has crystallized around the recognition that protection of the global climate system is indispensable to the realization of fundamental rights, thereby affirming the existence of a right to a healthy climate. This consolidation is reflected most clearly in recent advisory jurisprudence, which the African Court may take account as interpretive context when delineating the climatic dimension of Article 24. In July 2025, the Inter-American Court of Human Rights (the "IACtHR") issued a landmark Advisory Opinion OC-32/25 on the "Climate Emergency and Human Rights." This opinion, requested by Chile and Colombia, confirms and clarifies existing climate-related human rights obligations.[4] The IACtHR declared the situation a climate emergency requiring urgent action,[5] and provided an authoritative interpretation of how the American Convention on Human Rights applies to climate change, which presented a first step in the recognition of the right to a healthy climate on the international plane.
20. The IACtHR explicitly recognized a "right to a healthy climate" as part of the right to a healthy environment, and asserted that a safe climate is essential for the enjoyment of life, personal integrity, health, and other fundamental rights.[6] The Court affirmed that the obligation to prevent irreversible environmental harm has attained peremptory norm *(jus cogens)* status of international law.[7] Given the emergency, the IACtHR recognized that the duty to protect the environment and climate is now on par with norms like the prohibition of genocide, torture or

[4] Climate Emergency and Human Rights, Advisory Opinion OC-32/25, Inter-Am. Ct. H.R., (May 29, 2025).
[5] *Id*. ¶ 184.
[6] *Id*. ¶¶ 301–303; ¶¶ 272–274.
[7] *Id*. ¶¶ 287–294.

slavery, in that it is universally binding and non-derogable.[8] This recognition affirms the authority of the international community to condemn and respond to egregious climate harm, even in the absence of specific treaties.[9]

21. At the universal level, the International Court of Justice (the "ICJ"), in its 2025 advisory opinion, affirmed the centrality of climate protection within already-recognized legally binding human rights to life, health, housing, food, and water among others.[10] Many of the principles the Court draws on, such as no harm,[11] due diligence,[12] human rights integration[13] reflect and reinforce obligations States already possess via other instruments. The Court, thus, affirmed that the right to a clean, healthy, and sustainable environment is "a precondition" for the exercise of other human rights, deriving from the inherent link between environmental protection and the realization of human dignity,[14] solidifying the recognition of the right to a healthy climate under international law.

B. Climate Rights in the African System

22. Against this international backdrop, the African human rights system not only forms part of the established legal foundation of the right to a healthy climate, but it also has an unparalleled and distinctive potential to recognize and operationalize that right.[15] The African Charter is the only regional human rights treaty to explicitly guarantee in Article 24 the right of all peoples to "a general satisfactory environment favorable to their development."[16] African institutions have interpreted this Article 24 right to encompass protection of the environment.

23. Within the African Charter itself, the move from the law and practice of protecting the "environment" to the "climate" is straightforward. The climate system is an integral component of the environment; its stability underpins the ecological

[8] *Id*. ¶¶ 289–294.
[9] *Id*. ¶¶ 294–296.
[10] Obligations of States in Respect of Climate Change, Advisory Opinion, 2025 I.C.J. No. 187, ¶¶ 403–404 (July 23) [hereinafter ICJ Climate Advisory Opinion].
[11] *Id*. ¶¶ 275–276.
[12] *Id*. ¶¶ 233–236.
[13] *Id*. ¶¶ 541–547.
[14] *Id.*, ¶ 393.
[15] Ibrahim & Hefti, *African Contributions*.
[16] African Charter, art. 24

conditions upon which development and the enjoyment of Charter rights depend. Protecting a "satisfactory environment" therefore necessarily entails protecting the atmospheric and climatic systems that sustain it.

24. While historically applied to localized environmental harm–including the pollution of watercourses, the destruction of Indigenous peoples' environment, and industrial activities–Article 24 jurisprudence has established principles[17] capable of broader application beyond the confines of localized harms.[18] From this entrenched jurisprudence, the right to a healthy climate follows as a necessary clarification of Article 24's scope. This understanding is consistent with the trajectory of international jurisprudence–both the IACtHR and the ICJ have affirmed that climate protection forms part of, and gives content to, the right to a healthy environment. Recognizing this within the African system therefore aligns the Charter with established legal developments while remaining firmly anchored in its own text and structure.

25. Given the Charter's emphasis on collective rights and peoples' development, Article 24 is particularly well situated to address climate change–an inherently cumulative, transboundary, and intergenerational harm. Recognizing that the right to a healthy environment encompasses a right to a healthy climate thus clarifies, rather than expands, the Charter's and African jurisprudence's existing guarantee. Besides the African Charter's provisions in Articles 60 and 61 which allow the Court to contribute to a process of judicial dialogue, this interpretive move is reinforced by the broader treaty architecture of the African system discussed below.

1. The Multi-Treaty Baseline of the Right to Healthy Environment

26. Beyond Article 24, the African system's multi-treaty protection of environmental rights further supports the recognition of the right to a healthy climate. The Charter's explicit recognition of the right to a healthy environment under Article

[17] Most notably in *Ogoni*, ¶¶ 51–52.

[18] For a recent domestic example recognizing the right to a healthy environment in the climate context see the Montana Supreme Court's decision in *Held v. Montana*, 2024 MT 318, 389 Mont. 456, 512 P.3d 789 (Dec., 2024).

24[19] legally situates environmental protection expressly in a binding human rights treaty, and reinforces this protection across a range of regional and sub-regional treaties. Taken together, this framework permits climate-related claims to be anchored directly on treaty-based environmental rights, without relying on derivative or implied protections such as through the rights to life or health.

27. This integration is further strengthened by specialized treaties protecting the environment. One of the African human rights system's strongest and distinct contributions is its affirmation of environmental rights through specialized treaty regimes, including those addressing the rights of women and children. Notably, the Maputo Protocol is the only regional women's rights treaty to explicitly guarantee the right to a "healthy and sustainable environment" for African women,[20] reflecting a progressive and integrated approach to environmental protection within the African women's rights framework. This express recognition underscores the distinctive and unparalleled breadth of environmental protection within African human rights law.[21] Similarly, the African Charter on the Rights and Welfare of the Child (the "African Children's Charter") also underscores a duty to promote and support both formal and community-based environmental education.[22] The inclusion of environmental guarantees in these specialized treaties strengthens the normative and procedural foundations for climate-related claims before African human rights bodies.

28. This multi-treaty baseline recognition provides an embedded legal basis for recognizing the right to a healthy climate as implied under the right to a healthy environment. Recognizing climate protection as inherent in the right to a healthy

[19] We will use the terms right to a "healthy" instead of a "satisfactory" environment since the latter is more widely used and has gained traction in the African system, which uses both terms. E.g., *Ogoni*, ¶ 52, 199, and *Minority Rights Group International and Environnement Ressources Naturelles et Developpement (on behalf of the Batwa of Kahuzi-Biega National Park, DRC) v. Democratic Republic of Congo*, Comm. No. 588/15, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], ¶¶ 210–211 (2022) [hereinafter *Batwa*] .

[20] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, July 11, 2003, OAU Doc. CAB/LEG/66.6 (2003), art. 18 [hereinafter Maputo Protocol]; *see also id*., arts. 16, 24.

[21] *See e.g.* Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, May 11, 2011, C.E.T.S. No. 210. Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, June 9, 1994, 33 I.L.M. 1534 (1994).

[22] African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990) Arts. 11 (2) (g) and 14 (2) (h) [hereinafter African Children's Charter].

environment correspondingly elucidates African States' obligations in respect of transboundary and global atmospheric harms linked to climate change.

2. Nexus Between the Right to a Healthy Climate and African Charter Rights

29. The doctrinal coherence of the recognition of the right to a healthy climate becomes even clearer when viewed in relation to the Charter as a whole. The right to a healthy climate is grounded both in its inherent nexus to environmental rights as well as in its interdependence with the full range of rights enshrined in the African Charter, many of which are directly threatened by climate change and related harms.
30. This interdependence is evidenced by the material and foreseeable effects of climate change–such as displacement, loss of livelihood, food and water insecurity, and increased exposure to disease and violence–on the enjoyment of enumerated Charter-protected rights.
31. The Kampala Convention gives concrete legal expression to this nexus by expressly addressing environment- and climate-related displacement, and by imposing binding obligations on States both to prevent environmental degradation and–where prevention fails–to protect and assist persons displaced by environmental harm as well as by climate disasters.[23]
32. Recognizing this right also clarifies its normative content. The right to a healthy climate as extrapolated from the right to a healthy environment enables the concrete articulation of its content through the lens of the State obligations they imply.
33. The Commission and the Court have repeatedly clarified that States owe a fourfold duty under the right to a healthy environment: to (1) respect, (2) protect, (3) promote, and (4) fulfill this right."
34. Accordingly, these duties attach to the right to a healthy climate, requiring States to address localized harms, diffuse emissions sources, transboundary effects, and the unequal distribution of climate impacts. These obligations are

[23] African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (entered into force 6 Dec. 2012) Arts. Arts. 5 (4), 9 (2) (j), & 10 (3) [hereinafter Kampala Convention].

operationalized through the well-established typology of State duties under Article 24.

35. *Amici* respectfully urge the Court to seize this opportunity to delineate the State obligations corresponding to the right to a healthy climate under Article 24. Such express clarification would not merely operationalize the right to a healthy climate, but it would crystalize and consolidate its normative content, giving doctrinal precision to what States must respect, protect, promote and fulfill in the context of climate harm.

36. The Court is uniquely positioned to make this contribution to international climate law. The African human rights system's rich and distinctive jurisprudence on peoples' rights, collective entitlements, intergenerational equity, and intersectional treatment of rights furnishes an interpretive foundation that few, if any, international tribunals can match. An authoritative pronouncement from this Court would therefore not only advance the development of regional and global norms at the intersection of human rights, environmental, climate and other branches of international law, but would cement this Court's place as a leading voice in the global development of climate justice.

3. State Obligations Under the Right to a Healthy Climate

a. Duty to Respect

37. The duty to *respect* obliges States to refrain from conduct that directly interferes with the enjoyment of climate-related rights, including a focus on conduct through which the State own actions and/or omissions becomes a source of climate harm.[24] African States therefore bear an obligation to mitigate their own greenhouse gas emissions, notwithstanding their minimal historic contribution to the conditions that gave rise to the climate crisis.[25]

[24] Private violence or such violence that cannot be attributed clearly to a state actor has been left outside the purview of international law until recently. Dorothy Q. Thomas & Michele E. Beasley, *Domestic Violence as a Human Rights Issue*, 58 ALB. L. REV. 1119, 1121 (1995).

[25] *See, e.g.*, in the environmental context, *Ogoni* ¶ 65, 69-70 (State oil and gas company is involved in pollution and the State authorities engage in violence against environmental defenders). The duty to respect refers to "non-interventionist conduct." *Id*., ¶ 52.

38. States may breach this duty by contributing to greenhouse gas emissions, including through *inter alia* State-owned or State-controlled extractive enterprises, State subsidized activities that substantially drive emissions or deforestation, and State failure to monitor, report, and modify its activities to conform with emission standards.
39. The diffuse and cumulative nature of greenhouse gas emissions does not diminish the responsibility of individual States under the duty to respect.[26] Climate harm results from the aggregate effect of emissions over time, and each State's contribution to that harm remains legally relevant as part of a broader causal chain. Accordingly, the fact that a State's individual contribution to global emissions may be comparatively small does not absolve it from the obligation to mitigate emissions within its jurisdiction and control.
40. The duty to respect further serves to prevent States from persecuting climate defenders and destroying homes, livelihoods, or other resources that support climate resilience or sustainable lifestyles.[27] It also requires States not to obstruct independent scientific studies and research on climate impacts in the region.[28]

b. Duty to Protect

Prevention, Mitigation, and Adaptation

41. Beyond non-interference, States bear affirmative obligations to safeguard individuals and peoples from climate-related harm. The duty to *protect* is particularly engaged where climate harm is caused by non-State actors, including private corporations or State actors beyond the respondent State. At its core, this duty obliges States to prevent climate-related harm, to the extent possible.[29] It,

[26] *See* Dutch Supreme Court (Hoge Raad), *Urgenda Foundation v. State of the Netherlands*, Judgment of 20 December 2019, No. 19/00135, ECLI:NL:HR:2019:2006 (holding that a State's limited share of global emissions does not absolve it from responsibility).
[27] *Ogoni*, ¶ 45.
[28] *Ogoni*, ¶ 53.
[29] *Ogoni*, ¶ 52; ECOWAS Court, *SERAP v. Nigeria*, Judgment No. ECW/CCJ/JUD/18/12 (2012), ¶ 112. *Cf*. *Ogoni*, ¶ 61; *Ligue Ivoirienne des droits de l'homme (LIDHO), Mouvement ivoirien des droits humains (MIDH) and Fédération internationale pour les droits humains (FIDH) v. Ivory Coast,* No. 041/2016, African Court on Human and Peoples' Rights [Afr. Ct. H.P.R.], ¶ 183 (Sept. 5, 2023) [hereinafter African Court, *Ligue Ivorienne*].

furthermore, requires States to undertake both mitigation and adaptation measures, and to ensure remedial action is taken where rights are violated.

Protection from Future Climate Risks (Foreseeability)

42. A particularly significant dimension of the duty to protect concerns future cumulative risks. African human rights law distinctively recognizes the duty of States to protect against *foreseeable* future harm, including from future climate risks, and sets out standards of due diligence that are applicable in environmental and climate contexts.
43. Unlike the European system, which is limited by an *imminence* standard in climate-related cases,[30] the African system applies *foreseeability* as the principal standard in other contexts.[31] Consistent with that jurisprudence, the Court is therefore called upon to apply the foreseeability standard to climate-related harms. In doing so, it need not invite indeterminate liability. Rather, it can cabin claims by identifying (1) those individuals or groups who face heightened climate risks, and (2) the specific categories of climate-related disasters that are sufficiently concrete to ground State responsibility.[32]
44. Foreseeability may be established through existing climate impacts, scientific knowledge including attribution science, and States' ratifications of international climate agreements. The Economic Community of West African States ("ECOWAS") Court has already articulated a heightened due diligence standard, requiring States to act with "vigilance and diligence" to prevent foreseeable harm.[33] Such heightened due diligence obligations combined with a foreseeability

[30] *See, e.g.*, Bell-James & Briana Collins, *Human Rights and Climate Change Litigation: Should Temporal Imminence Form Part of Positive Rights Obligations?*, 13 J. Hum. Rts. & Env't 212, 220 (2022). This entails "an element of physical [and temporal] proximity of the threat", *Verein KlimaSeniorinnen v. Switzerland,* App. No. 53600/20, Judgment, Eur. Ct. H.R., ¶ 536 (Apr. 9, 2024) .
[31] *Equality Now and Ethiopian Women Lawyers Association v. Federal Republic of Ethiopia*, African Commission, Communication No. 341/2007, 25 Feb. 2016, ¶ 131.
[32] Angela Hefti, *An Ecofeminist Approach to Climate Risks*, 46 MICH J. INT'L L. 363 (2025).
[33] ECOWAS Court, *Adou Kouma, Village Chief of Similimi et al. v. Ivory Coast*, 30 Nov. 2023, ¶ 226. *See also* Zero Draft in relation to the Study on the Impact of the Climate Change on Human and Peoples' Rights in Africa, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], ¶ 144–91, 164 (May 23, 2023) (showing that the African system adopts the foreseeability or awareness standard); ANGELA HEFTI, CONCEPTUALIZING FEMICIDE AS A HUMAN RIGHTS VIOLATION, STATE RESPONSIBILITY UNDER INTERNATIONAL LAW 234 (2022) (arguing that the African system makes a significant contribution to the prevention of harm in the context of women's rights).

standard is particularly pertinent in the climate litigation context, where claimants must link climate effects and human rights violations.

45. The content of these obligations must be assessed against a standard of reasonableness informed by the magnitude of the risk, the availability of measures to address that risk, and the State's capacity to act. In the climate context, where harm is well-established and increasingly foreseeable, this standard requires States to take timely and effective measures proportionate to the scale of the threat. A failure to act where measures are reasonably available, or an unjustified delay in implementing such measures, may therefore constitute a breach of the duty to protect under Article 24.

Regulatory Action

46. The preventative dimension of protection necessarily includes regulatory action. The duty to protect includes an obligation to enact and enforce climate-related laws.[34] Such regulation must address the diffuse nature of climate harm contributors, encompassing State conduct, private or individual actors, transnational corporate activity in Africa.

47. At a minimum, States should enact legislative frameworks that reflect in line with the latest science, including that reflecting international temperature targets under the Paris Agreement, to which 54 African States have committed.[35]" As the ECOWAS Court aptly emphasized in *SERAP v. Nigeria*, even "advanced" legislation is insufficient if it "remain[s] on paper and [is] not accompanied by additional and concrete measures aimed at preventing the occurrence of damage."[36]

Precautionary Principle and Impact Assessments

48. Preventative protection also requires anticipatory governance. States are obliged, as part of their duty to protect, to conduct, or require, climate impact and

[34] *Ogoni* ¶ 64.
[35] *See* African Development Bank, Africa NDC Hub, https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/africa-ndc-hub.
[36] *SERAP v. Nigeria*, ¶ 105.

risk assessments for private and public projects and investments.[37] Such assessments must take into account global sources of harms, including the activities of transnational corporations producing adverse effects in Africa. They must further reflect the exponential increase in "intensity and frequency" of climate-related risks.[38] This Court has already acknowledged the precautionary principle in *Ligue Ivorienne*.[39]

49. In considering the specific contents of the requirements that climate impact assessments must meet, the Court may take into account contemporary literature critiquing localized, project-level assessment frameworks, as well as recommendations advocating more comprehensive approaches, such as strategic environmental assessment or sustainability impact assessment.[40] Such approaches are particularly relevant where the Court is called upon to consider the scaling and adaptation of existing normative and governance tools from the environmental context to the climate context, where risks are cumulative, transboundary, and long-term.[41]

Provision of Effective Remedies

50. When harm to the rights of individuals and peoples has occurred, States have a duty to provide effective remedies.[42] This Court has affirmed, in *Ligue Ivorienne,* that the State had a duty "to ensure full and effective decontamination once the waste had been dumped."[43]

51. Likewise, regional courts have further clarified that preventative environmental legislation should include "effective reparation of the environmental damage,"[44] and that a failure to "seriously and diligently" hold polluters accountable violates

[37] For environmental impact studies, *see Ogoni*, ¶ 53. *See also* ICJ Climate Advisory Opinion, ¶ 298.
[38] Angela Hefti, *An Ecofeminist Approach to Climate Risks* 46 MICH. J. INT. LAW 363, 395–397 (2025).
[39] African Court, *Ligue Ivorienne*, ¶¶ 35, 181.
[40] *See generally* Nora Götzmann et al. eds., Handbook on Human Rights Impact Assessment: Principles, Methods and Approaches (Edward Elgar Publ'g 2020).
[41] Note, for example, that the UN Special Rapporteur on the right to a clean, healthy and sustainable environment is currently working on recommending a similar move in her planned report to the 81st the United Nations General Assembly.
[42] *See generally* Ademola Oluborode Jegede, *State Duty to 'Protect' Rights and Legal Obstacles to Climate Litigation*, *in* CLIMATE LITIGATION AND JUSTICE IN AFRICA 43, 48–53 (Uzuazo Etemire, Kim Bouwer, Tracy-Lynn Field & Ademola Oluborode Jegede eds., 2024).
[43] African Court, *Ligue Ivorienne*, ¶ 183.
[44] *SERAP v. Nigeria*, ¶ 105.

States' obligations under the right to a healthy environment.[45] For example, the ECOWAS Court in *Adou* recognized impunity for polluters as enabling harmful corporate activities in violation of Article 24 and other rights under the African Charter.[46]

52. Accordingly, the duty of States to provide remedies must include reparations, including the recovery of damages from corporate actors responsible for climate harms. The remedies that States provide must play close attention to groups in more vulnerable situations- such as children and persons with disabilities. For instance, it is important for States to remove procedural barriers that prevent children from challenging decisions by governments and corporations that impact their rights.

c. Duties to Promote and Fulfill

53. Finally, the Charter requires not only restraint and protection, but proactive realization. The duties to *promote* and *fulfill* the right to a healthy climate[47] require States to take positive measures to advance climate protection. These measures include *inter alia* promoting conservation, improving environmental and industrial hygiene, [48] raising awareness about climate change through education and research, and building infrastructures that enhance resilience.[49]
54. Specialized treaties, such as the Maputo Protocol on Women's Rights further require States to promote research, invest in renewable energy, and develop technologies, and simultaneously promote Indigenous knowledge systems supporting a healthy climate.[50]
55. Under the African Children's Charter, States are likewise obliged to promote formal and community-based environmental and climate education.[51] The right to access environmental and climate information entails obligations of proactive

[45] *SERAP v. Nigeria*, ¶ 110; ECOWAS Court, *Adou Kouma, Village Chief of Similimi et al. v. Ivory Coast*, 30 Nov. 2023, ¶ 223.
[46] ECOWAS Court, *Adou Kouma, Village Chief of Similimi et al. v. Ivory Coast*, 30 Nov. 2023, ¶ 225.
[47] *See Ogoni*, ¶ 46.
[48] *Id.*, ¶ 52.
[49] *Id.*, ¶ 47.
[50] Maputo Protocol, art. 18.
[51] African Children's Charter, arts. 11 (2) (g) and 14 (2) (h).

creation, collection, maintenance, and disclosure of relevant information, including by private actors where appropriate.[52]

56. Moreover, Free, Prior, and Informed Consent**,** has been given a treaty basis,[53] and further recognized in *Ogoni* as the State's duty to "provid[e] meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities."[54] The requirement of "consent" by Indigenous communities in decisions affecting them is well ingrained in African human rights jurisprudence.[55]

C. State Obligations for Extraterritorial Harms

57. Given the transboundary nature of climate harm, remedial obligations cannot be territorially confined. Under international human rights law, African States have a duty to protect their populations from harm, including those that are caused by activities taking place outside the territorial jurisdiction of African States.[56] This obligation persists even though the State's capacity to act may be constrained by jurisdictional limits or principles of peace and security. One of the many ways in which international law strikes a balance between the two interests is by imposing obligations, including reparatory obligations, on States that have territorial jurisdiction or exercising effective control over territory from which harm emanates.

58. The ICJ Climate Advisory Opinion confirmed the entitlement of States and victims under international law to seek "full reparation[s]" from States that are responsible for extraterritorial climate harms.[57] The IACtHR, repeating the

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[52] *Ogoni*, ¶ 53; Afr. Comm'n H.P.R., Declaration of Principles on Freedom of Expression and Access to Information in Africa, 65th Ordinary Session (2019), Principles 28–30; Afr. Comm'n H.P.R., Model Law on Access to Information for Africa (2013), arts. 6–7.
[53] African Convention on the Conservation of Nature and Natural Resources (Revised, 2003), art. 22 (2) (f) (hereinafter the "African Conservation Convention (2003)"); EAC Protocol on Environment and Natural Resource Management, arts., 4 (2) (f), 17 (b), and 34.
[54] *Ogoni*, ¶ 53.
[55] For a discussion on the definition of consent, *see infra* Section II.D.
[56] This precept has, for example, been reiterated by the African Commission in the context of the human rights impacts of climate harms and in the context of the right to life. Respectively, *see* African Comm'n on Human & Peoples' Rights, Resolution on the Need for a Study on the Development of a Specific Legal Framework for the Protection of Forcibly Displaced Persons in Africa as a Result of Climate Change, ACHPR Res. 628 (LXXXII) (Mar. 11, 2025); African Comm'n on Human & Peoples' Rights, General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (art. 4) (Nov. 18, 2015).
[57] ICJ Climate Advisory Opinion, ¶¶ 449–54.

operative precept in the Commission's decision in *Congo v. Burundi et al*.,[58] reaffirmed that human rights treaties may operate extraterritorially where a State exercises jurisdiction beyond its borders.[59] The IACtHR stressed that obligations arising under human rights law, climate treaties, and environmental law are mutually reinforcing, and States must interpret and implement each set of commitments in harmony, ensuring that measures taken under one legal regime are consistent with, and informed by, their duties under the others.[60]

59. One of the unique settings in which these precepts are applied in the African context is that most states parties to the African Charter, contributing less than 0.01 percent to cumulative greenhouse gas emissions,[61] would not be able to directly curb the impacts of climate change, even if they were able to stop greenhouse gas emissions from their territories. Whereas the obligations of African states to take measures to reduce their own contributions to climate harms is not disputed, *amici* call upon the Court to make a more direct pronouncement on the more specific obligations of States parties to the Charter to protect individuals and peoples within their jurisdiction from transboundary harm caused by activities taking place in the territory of or under the effective control of states that are not party to the African Charter.

60. *Amici* submit that the existing obligation of States to protect populations from extraterritorially originating harm, read together with States' recognized right as well as duty to seek reparations for such harm, elevates what might otherwise seem as a mere prerogative to seek reparations into a positive obligation. African States are therefore not simply *entitled* to seek reparations for transboundary climate harm from States that disproportionately contribute to greenhouse gas emissions, they are *obligated* to do so as a matter of fulfilling their own duty to provide effective remedies to those within their protection. Given the

[58] The extraterritorial exercise of control over events was, for example, partly addressed in *Dem. Rep. Congo v. Burundi, Rwanda & Uganda*, Commc'n No. 227/99, ¶¶ 79, 91 (Afr. Comm'n on Hum. & Peoples' Rts. May 29, 2003).
[59] *Id.*, ¶¶ 394–397.
[60] *Id.*, ¶ 404.
[61] The combined contribution of the entire African continent is three percent of cumulative greenhouse gas emissions. *See* Hannah Ritchie, "Who has contributed most to global CO2 emissions?" *Our World in Data* (01 Oct. 2019), https://ourworldindata.org/contributed-most-global-co2.

entwinement of the legacies of colonialism, or neo-colonialism, and global climate change,[62] the obligation to seek reparations for climate change should also be seen in light of the Commission's Resolution on the broader reparations agenda of Africa.[63]

61. Finally, the duty to seek just and adequate reparations for harm not only extends to reparations from states from which greenhouse gas emissions emanate, but also from oil producing countries. As noted by the ICJ, attribution for climate harm is not limited to the point of emission of greenhouse gases, and includes the entire chain of "fuel production, fossil fuel consumption, the granting of fossil fuel exploration licenses or the provision of fossil fuel subsidies."[64]

II. Rights of Nature

62. In order to further inform the answers to the questions before the Court, *amici* respectfully submit evidence showing that the Court has sufficient treaty-basis to recognize the rights of nature—the concept that natural entities, and nature as a whole, have legal rights in the African legal system. Specifically, the basis for the recognition of the rights of nature and the centrality of nature's intrinsic value to African Indigenous and traditional systems can inform the Court's conceptualization of a just and equitable transition, offer additional doctrinal basis for holding corporations and extractive industries accountable, assist in determining the obligations of African States toward global emitters, and provide interpretive resources for defining States' "duty of care."

63. Put in the proper context of its legislative history, the ordinary meaning of the African Charter takes on a holistic reading that includes the concept of nature as a right-holder. Numerous other regional and sub-regional treaties likewise embrace and reinforce this holistic concept, leading to the conclusion that the

[62] *See generally* Hans-Otto Pörtner et al. (eds.), (2022) *Climate Change 2022: Impacts, Adaptation and Vulnerability, Intergovernmental Panel on Climate Change*, 594, 659, 1204, 2350–51; Laura Weiss, Marisol Lebrón & Michelle Chase, Eye of the Storm, 50:2 (2018) *NACLA Report on the Americas* 109; Gurminder K. Bhambra and Peter Newel, More than a metaphor: "climate colonialism" in perspective, 20 *Global Social Challenges Journal* 1 (2022).

[63] Resolution on Africa's Reparations Agenda and The Human Rights of Africans in the Diaspora and People of African Descent Worldwide - ACHPR/Res.543 (LXXIII) 2022.

[64] ICJ Climate Advisory Opinion, ¶ Pars. 427.

rights of nature already exist in the African Union legal regime and especially within the African human rights normative framework. Importantly, this conclusion is further reinforced by subsequent State practice and also finds additional support in the legally pluralist tradition of the African human rights system. Based on evidence from regional, sub-regional, national, sub-national, and local normative systems, *amici* submit that there is a Pan-African normative consensus that supports the rights of nature. This not only gives the Court sufficient grounds to expressly recognize the rights of nature as part of the regional legal framework but also allows it to do so by treating this Pan-African normative consensus as a general principle of law under Article 61 of the Charter.

64. Alternatively, the Court should at a minimum consider taking the intermediary measure of recognizing the inherent, non-anthropocentric value of nature. It can do so by reaffirming, or further generalizing and broadening, the African Commission's determination on the intrinsic value of sacred natural sites and territories.

65. Similarly, whether the Court recognizes the rights of nature or instead the intrinsic value of nature, it should still note the fact that African Indigenous and traditional systems, which themselves recognize and protect the rights of nature, are part of the body of law that extends from global to regional, sub-regional, national, sub-national, and local systems relevant to protecting the rights to a healthy environment and healthy climate.

A. The plain meaning and legislative history of the African Charter provide a foundation for the rights of nature.

66. A two-step analysis of the African Charter alongside subsequent regional treaties leads to the rights of nature: first, the ordinary meaning and legislative history of the Charter and other conventions establish duties owed to the environment, and, second, these duties accordingly provide for the derivation of rights held by the environment.

1. Duties Owed to the Environment

67. In his opening address at the 1979 Dakar Conference launching the drafting of the Banjul Charter, President Léopold Senghor entrusted the assembled drafters with the responsibility to ensure that the Charter reflected traditional African values. He articulated a vision of the Charter, declaring:

> "… In Africa, the individual and his rights are wrapped in the protection [of] the family and other communities … [as] Professor Collomb … very rightly observed: 'To live in Africa is to give up being an individual, particular, competitive, selfish, aggressive … man is to live with others, in peace and harmony, with the dead and living, with the natural environment and the spirits inhabiting [it].'"[65]

68. Senghor's speech encapsulates what can be described as ideas of communitarianism and holism. These concepts, which are consistently incorporated into the African Charter and the regional human rights treaties that follow it, are also quite prevalent across Indigenous and traditional African ethical and belief systems.[66] The integration of communitarianism into the African system of human rights ensures that African approaches are fundamentally more community-focused than they are individualistic, especially compared to Western philosophies.[67] Holism extends communitarian principles of kinship, community, and family to include not only present and future generations of humans, but also the dead, the biosphere, ecosystem, and cosmos, thereby emphasizing the interconnectedness of humans with non-human realms.[68]

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[65] Leopold Sedar Senghor, *Address Delivered at the Opening of the Meeting of African Experts Preparing the draft African Charter in Dakar, Senegal, 28 November to 8 December 1979*, *in* HUMAN RIGHTS LAW IN AFRICA 78–80 (Christof Heyns ed., 1999) (hereinafter Senghor, *Address to Drafters*).

[66] *See* Philomena A. Ojomo, *Environmental Ethics: An African Understanding*, 5 AFR. J. ENV'T SCI. & TECH. 572, 574–77 (2011); Kevin Gary Behrens, *An African Relational Environmentalism and Moral Considerability*, 36 ENV'T ETHICS 63, *passim* (2014); Godfrey B. Tangwa, *Bioethics: An African Perspective*, 10 BIOETHICS 183, 186, 192 (1996) (relying on the culture of the Nso' people of Cameroon); Workineh Kelbessa, *The Rehabilitation of Indigenous Environmental Ethics in Africa*, 52 DIOGENES 17, 21–26 (2005) (relying on the East African Oromo culture); Ademola Kazeem Fayemi, *African Environmental Ethics and the Poverty of Eco-Activism in Nigeria: A Hermeneutico-Reconstructionist Appraisal*, 48 MATATU 363, 375–84 (2016).

[67] Makau Wa Mutua, *The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties*, 35 VA J. INT'L L. 339, 346–9 (1995); Josiah A.M. Cobbah, *African Values and the Human Rights Debate: An African Perspective*, 8 HUM. RTS. Q. 309, 314–25 (1987).

[68] *See* A.O. Balcomb, *African Christianity and the Ecological Crisis — Tracing the Contours of a Conundrum*, 118 SCRIPTURA 1, 51–54, 71–75 (2019); Kevin Gary Behrens, *An African Relational Environmentalism and Moral Considerability*, 36 ENV'T ETHICS 63, 65–

69. In his retrospective reflections on the Charter, Honorable Judge Kéba M'Baye, head of the drafting committee and author of the first version of the Charter, similarly to Senghor, emphasized that African traditions prioritize peaceful and harmonious coexistence with society, the spiritual realm, and the natural environment over individualistic tendencies.[69]
70. Senghor urged his listeners, M'Baye and the other drafters, to specifically include "Duties of Individuals" provisions in the Charter to ensure the treaty captured the aforementioned values.[70] The drafters followed Senghor's advice and specified individual and State duties in several provisions. As described below, when considering this proper setting and context of the Charter, the ordinary meaning of provisions outlining individuals' duties to community and society should therefore be understood to encompass duties of care toward nature, since concepts of community and society in African tradition intrinsically include nature. Similarly, the provisions imposing duties on States and individuals to uphold traditional African values should be understood to include the duty to uphold holism, as holism constitutes a traditional African value; accordingly, the principles of holism, including duties to nature, must likewise be respected and enforced.
71. First, Article 27(1) notes that "[e]very individual shall have duties towards his family and society, the State and other legally recognized communities and the international community." When interpreted in light of M'Baye's and the other drafters' intentions, the specific reference to society at large in addition to the family, State, and other communities conveys the holistic understanding in African tradition that individuals' duties extend beyond human members of their community to include past generations and non-human entities, such as nature itself.

66, 125–28 (2014); Sara Berry, *Hegemony on a Shoestring: Indirect Rule and Access to Agricultural Land*, 62 AFR. J. INT'L AFR. INST. 327, 342 (1992).

[69] Keba M'Baye, *Human Rights in Africa*, *in* THE INTERNATIONAL DIMENSIONS OF HUMAN RIGHTS 583, 589 (Karel Vasak ed., 1982) (hereinafter M'Baye, *Human Rights in Africa*).

[70] Senghor, *Address to Drafters* at 78-80.

72. Similarly, Article 29(2) of the Charter lists as one of the individual's duties the obligation "[t]o serve" the "community," thereby establishing an individual responsibility toward all that the community encompasses. From the holistic perspective Senghor and M'Baye offered the drafters, that community would include nature, spirits, the ecosystem, and the cosmos as well as to the other human beings that have membership in the community.
73. The African Children's Charter integrates a similar understanding of a holistic lens into its text as the African Charter when it directs readers to use "African values and traditions" as an interpretive source of inspiration, alongside the Universal Declaration of Human Rights.[71] The presence of this preambular specification to use African traditions, such as holism, exemplifies how the drafting intent to integrate holistic duties into the emerging human rights system—an intent that is illustrated by Senghor's speech and M'Baye's publications noted above—has been realized beyond the Charter and throughout the rest of the legal regime. Thus, there is a thread of holistic influence from the African Charter into later conventions, demonstrating a continued embrace of holistic values, including the conceptualization of society and community as including nature, within the African system.
74. This thread is specifically present in the African Children Charter's provision listing the duties of children, which include the duties "to serve" the "community" and "to contribute to the moral well-being of society."[72] These obligations can reasonably be understood to reflect the idea of holism, and thus the inclusion of nature as one of the entities to which moral and cultural duties are owed. Once again, society is not limited to immediately present human beings but also encompasses non-anthropomorphic beings.
75. As previously mentioned, both the African Charter and African Children's Charter outline duties to uphold traditional African values, which, when interpreted in light of the Charter's holistic principles, encompass duties toward nature. For example, Article 17(3) of the African Charter declares the State's duty to

[71] African Children's Charter, art. 46.
[72] African Children's Charter, arts. 31(b), 31(d).

"promot[e] and protect[] … morals and traditional values recognized by the community." In accordance with the holistic principles of the Charter, these traditional values encompass the African values and norms that embrace the intrinsic value of nature.

76. Next, Article 29(6) compels the individual "[t]o preserve and strengthen positive African cultural values in … relations with other members of the society…" One key component of these values is the holistic Indigenous and traditional norms identified by Senghor and M'Baye, which safeguard individuals, ancestors, the environment, and spiritual entities as coexisting members of a broader community.
77. And, finally, Article 31(d) of the African Children's Charter lists the duty on the child "to preserve and strengthen African cultural values," which encompasses traditional values that include responsibilities toward nature.

2. Rights Derived from Duties Owed to the Environment

78. These duties—namely the duty of preservation and care toward all members of the community and the duty to uphold traditional African value systems that recognize the intrinsic value of nature[73]—can be understood as creating corresponding rights. When applied specifically to the duty of care toward nature, the derivation gives rise of what are often termed "rights of nature." M'Baye, who led the drafting of the Charter, shares this understanding of the relationship between rights and duties, writing, "[i]n traditional Africa, rights are inseparable from the idea of duty."[74] In other words, where a duty exists, a corresponding right follows.
79. As conceived by the positivist legal scholar Wesley Hohfeld, a legal "right" creates, for others, a legally enforceable duty to take an action or refrain from taking an action toward the holder of the right.[75] When a legal duty is established

[73] In other words, that nature is to be respected not for its utilitarian, exploitative, capitalist, or mercantilist value, but for its inherent value and worth.
[74] M'Baye, *Human Rights in Africa* at 589.
[75] *See* Wesley Newcomb Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 YALE L.J. 16 (1913).

to take action (such as protect the environment), the corresponding right—of the environment to be protected—is also established.

80. The creation of rights from duties is a logical corollary of the creation of duties from rights, which is an accepted feature of legal rights. As exemplified in the preceding sections' discussions of State obligations with respect to the right to a healthy environment and climate, the State's duty to respect, protect, promote, and fulfill rights once these rights are established in law constitutes a core element of international and African human rights jurisprudence.

81. The derivation of duties from rights is commonplace especially in human rights law, and the converse—deriving rights from duties—is also evident in many legal systems beyond African Indigenous and traditional legal frameworks. For example, Indian, Bangladeshi, and Pakistani courts have used this reasoning to recognize the rights of watercourses, ecosystems, and nonhuman animals.[76] Islamic law applies similar typologies to extend protections to animals.[77] European and North American animal-law scholars also note that rights of nature, or at least animal rights, are not unfamiliar to western domestic legal systems or EU law, as reflected in the extensive duties of care embedded in animal welfare legislation.[78]

82. Thus, when the African Charter imposes duties upon the State and the individual to protect African traditions and to care for the community and society in Articles 17(3), 27(1), 29(2), and 29(6)—all of which encompass duties toward nature as described above—a corresponding right of nature to be protected is thereby

[76] Mohd Salim v State of Uttarakhand and Others WP (PIL) No 126 of 2014 (High Court of Uttarakhand) 2017 SCC Online Utt 367; Lalit Miglani v State of Uttarakhand and Others 2017 SCC Online Utt 392 (High Court of Uttarakhand).; Craig Kauffman et al., *Bangladesh court case: rights of the Turag River*, ECO JURISPRUDENCE MONITOR, https://ecojurisprudence.org/initiatives/rights-of-rivers-in-bangladesh/ (last visited Mar. 24, 2026); *Islamabad Wildlife Management Board v. Metropolitan Corporation Islamabad*, (2021) PLD Islamabad 6 (W.P. No. 1155/2019); *Ali Imran v. Forest Wildlife and Fishery Department*, PLD Lahore 24 (2020).

[77] Richard C. Foltz, Animals in Islamic Tradition and Muslim Cultures 30–31, 46–60 (2006); Kristen A. Stilt, *Constitutional Innovation and Animal Protection in Egypt*, 43 L. & Soc. Inquiry 1364, 1380–82 (2018). For more on the typology itself, *see* Anver M. Emon, *Natural Law and Natural Rights in Islamic Law*, 20 J.L. & Religion 351, 379–81 (2006).

[78] *See, e.g.*, Steven M. Wise, *The Struggle for the Legal Rights of Nonhuman Animals Begins – the Experience of the Nonhuman Rights Project in New York and Connecticut*, 25 ANIMAL L. 367, 374–78 (2019); Saskia Stucki, *Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights*, 40 OXFORD J. LEGAL STUD. 553, 544–52 (2020); *see also* John Groom, *Legal Animal Rights and Animal Welfare Legislation*, 2 CITY L. REV. 45, 49–52 (2020).

established. The same principle applies to Articles 31(b) and 31(d) of the African Children's Charter.

83. The lack of prior implementation of the African Charter's holistic provisions, and therefore of the corresponding rights they create, does not undermine the presence and significance of these values within the Charter text. While there is extensive literature on the communitarian aspects of the Charter,[79] its holistic dimensions, and therefore the duties in Articles 17(3), 27(1), 29(2) have not yet been fully applied in regional jurisprudence. *Amici* submit that this non-implementation may reflect the prudence of the generation of African human rights actors following Senghor and M'Baye, who may have been concerned that the duties provisions could be misapplied in ways that might undermine human rights during the incipient stages of the regional system.[80] Now that the African human rights system has reached a stable phase of institutional development, the duties provisions of the Charter can be explicitly recognized and implemented as the drafters intended—without opening the door for states to exercise unlimited discretion in restricting individual and group rights.

B. A holistic understanding and the rights of nature are supported by the regional system's dual commitment to African traditions and to international human rights norms.

84. The textual basis for the rights of nature is further evident in the African human rights system's dual commitment to—and dual derivation from—African Indigenous and traditional systems, as well as global conceptions of human rights, as recognized within the Charter itself. The Charter's preamble explicitly notes both "due regard to the Charter of the United Nations and the Universal Declaration of Human Rights" and that "historical tradition" and "values of African civilization" must "inspire and characterize their reflection on the concept of

[79] *See, e.g.*, Makau Wa Mutua, *The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties*, 35 VA J. INT'L L. 339, 346–9 (1995); Josiah A.M. Cobbah, *African Values and the Human Rights Debate: An African Perspective*, 8 HUM. RTS. Q. 309, 314–25 (1987).

[80] *See* H. W. O. Okoth-Ogendo, *Human and Peoples' Rights: What Point Is Africa Trying to Make?*, *in* HUMAN RIGHTS AND GOVERNANCE IN AFRICA 74, 78–79 (Ronald Cohen, Goran Hyden, & Winston Nagan, eds., 1993) (criticizing the language of duties in the Charter based on the danger that States might capitalize on the duty concept to violate fundamental rights by allowing duties to trump individual rights if coming into conflict).

human and peoples' rights."[81] By including this language in its preamble, the Charter signals its intention to integrate regional human rights norms with Indigenous and traditional norms, claiming equal lineage from both Africa's historical traditions and the broader human rights movement.[82] These historical traditions and values include holism, and accordingly, respect for the value of nature and a duty toward nature can be understood as intrinsic components of the Charter.

85. The dual commitment to traditional values and the broader human rights movement is a deeply entrenched feature of the regional system, reiterated in numerous treaties,[83] as is the centrality of individuals' duties toward their families, societies, and communities. Compared to other global[84] and regional treaties, which only make broad statements about duties, African treaties—including the Charter—dedicate both preambular provisions and substantive provisions to emphasize and outline individual and communal duties. As explained above, references to duties in these treaties should be interpreted to include duties to nature, with holistic readings of "society" and "community" encompassing duties owed to nature.[85] Similarly, duties of the individual to "preserve and strengthen" solidarity or "positive African cultural values"[86] include the duty to preserve Indigenous and traditional normative systems that recognize rights of past, present, and future members of society, both human and non-human.

86. Other treaties and soft law documents share similar structures. For example, in assigning duties to the state to respect women's rights to live in a healthy environment, the Maputo Protocol explicitly directs the protection and development of women's Indigenous knowledge systems to support

[81] African Charter, pmbl., ¶¶ 4–5.
[82] Ibrahim & Hefti, *African Contributions* at 25.
[83] *See, e.g.*, African Children's Charter, pmbl. ¶ 6, art. 46; African Convention on the Conservation of Nature & Natural Resources art. 4 (2003); African Youth Charter, pmbl. ¶¶ 4–5, 14, arts. 20, 26 (m) (2009); African Charter on Democracy arts. 27 (9), 35; Kampala Convention, pmbl. ¶ 3 (2012); African Protocol on Rights of Older Persons, pmbl. ¶ 11.
[84] *See* International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171., pmbl., ¶ 6.
[85] *See* African Charter, arts. 27(1), 29(2), & 29(6); African Children's Charter, art. 31.
[86] *See* African Charter, art. 29(6); African Children's Charter, art. 31(c)-(d).

environmental protection[87]—systems that prioritize holism and include duties and obligations toward nature out of respect for its intrinsic value.

87. Likewise, the African Commission's resolution on sacred sites emphasizes the importance of Indigenous custodian communities and their governance systems to "recognize and respect the intrinsic value of sacred natural sites and territories."[88] This reliance on Indigenous custodian communities, which take a holistic view toward the human relationship with nature, implies a willingness to incorporate duties toward nature into the African approach in order to adequately recognize and respect the intrinsic value of natural sites.

C. State practice confirms the holistic approach and provides additional basis for the rights of nature.

88. In addition to the ordinary meanings of the duties provisions, as informed by legislative history and the dual commitment discussed above, the holistic interpretation of the African Charter and other regional treaties is reaffirmed in subsequent state practice. African states have incorporated substantive provisions and principles that confirm the holistic viewpoint in a series of post-Banjul treaties directly or indirectly relating to the environment as well as in their constitutions, thereby illustrating that holism, the duty of care toward the environment, and the rights of nature are standard features of the African regional legal order.

89. The duty to protect the environment is, for example, reiterated in the African Conservation Convention, which recognizes the need to protect "irreplaceable" components of nature and obliges State Parties to adopt necessary measures to conserve soil, water, flora, and fauna.[89] A series of agreements establishing sub-

[87] Maputo Protocol, art. 18 ¶ 2(c).

[88] African Commission Resolution on the Protection of Natural Sites and Territories, ACHPR/Res.372/LX (2017), pmbl. ¶¶ 2, 5, arts. 2-3.

[89] African Convention on the Conservation of Nature and Natural Resources, pmbl. ¶ 5, art. 2. This phrasing has prompted scholars to argue that a combined reading of art. 24 of the Banjul Charter with the Preamble and art. 3 of the 2003 African Conservation Convention imply not just a duty to protect the environment but to do so for its own worth or without considering impact on human beings. *See, e.g.*, Ademola Oluborode Jegede, *Shifting Lens: The Protection of Environment and Human Rights under the African Charter on Human and Peoples' Rights*, 23 S. AFR. J. ENV'T L. & POL'Y 23, 41 (2015). *But see* Bolanle T. Erinosho, *The Revised African Convention on the Conservation of Nature and Natural Resources: Prospects for a Comprehensive Treaty for the Management of Africa's Natural Resources*, 21 AFR. J. INT'L & COMP. L. 378, 384 (2013) (arguing that

regional economic communities, such as the East African Community and the Southern African Development Community, also incorporate duties to protect the environment as priority aims of interstate collaboration.[90]

90. The recognition of the rights of nature is further supported by African Union legal and policy frameworks, which consistently emphasize the integrity of ecosystems as a foundational condition for human well-being and sustainable development. The African Union Climate Change and Resilient Development Strategy 2022-2032 recognizes that climate change threatens not only human systems but also ecosystems, and it highlights that the health of ecosystems and the flourishing of communities and economies are inseparable.[91]

91. These commitments are reinforced by the African Union Biodiversity Strategy and Action Plan 2020-2030, which recognizes that Africa's prosperity is intimately connected to its biodiversity and ecosystems and underscores the central role of Indigenous Peoples and Local Communities in the stewardship of these systems, including through the protection of culturally significant lands, waters, and sacred natural sites.[92] Together, these frameworks reflect a continental approach to environmental governance grounded in ecological integrity, interdependence, and community-based stewardship.

92. In this context, African regional law and policy do not treat nature as an object of regulation or resource exploitation but rather as a system whose integrity must be maintained over time. The recognition of the rights of nature therefore does not constitute a departure from existing legal and normative frameworks, but rather gives juridical expression to principles of ecological integrity, stewardship, and intergenerational responsibility that are already embedded in Africa's climate, biodiversity, and environmental governance regimes.

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the Conservation Convention is anthropocentric and has a utilitarian outlook rather than a protectionist or preservationist one).

[90] *See* Treaty Establishing the EAC, July 7, 1999, 38 I.L.M. 1482 (1999) arts. 109(d), 111–14, 101(2)(f); the ECOWAS Treaty, revised July 19, 1993, 20 I.L.M. 1476 (1993) art. 29; Southern African Development Community Treaty, Aug. 17, 1992, 31 I.L.M. 1437 (1992), art. 5(1)(g) & 21(3)(f); Sonja Kahl, *The Legal Standing in Environmental Litigation before Regional International Courts in Africa and Latin America*, 20 OPOLE STUD. ADMIN. L. 63, 72–74 (2022).

[91] African Union, *African Union Climate Change and Resilient Development Strategy and Action Plan (2022-2032)*, 3, 6-8, https://au.int/sites/default/files/documents/41959-doc-CC_Strategy_and_Action_Plan_2022-2032_08_02_23_Single_Print_Ready.pdf (Jun. 28, 2022).

[92] African Union, *African Union Biodiversity Strategy and Action Plan 2023-2030*, 6-7, https://au.int/sites/default/files/documents/44075-doc-AU_Biodiversity_Strategy_12_08_2024.pdf (Aug. 17, 2024).

93. State practice extends beyond these international African treaties and is further exemplified by the fact that forty-eight out of the fifty-five African Union member states have constitutional provisions imposing a duty of care toward the environment on the State, individual, or both.[93] Nearly all impose the duty on the State, while slightly more than half specify that "every citizen" or "every person" is a bearer of the duty. Generally, the duty is framed as a positive one, requiring affirmative steps to "protect," "preserve," "conserve," "defend," "enhance," or "promote" nature and the environment.[94] As explained in the previous section and the preceding sections, "Nexus Between the Right to a Healthy Climate and African Charter Rights" and "State Obligations Under the Right to a Healthy Climate," deriving State duties from rights is a common feature of human rights law. Accordingly, the duties identified in State constitutions may be understood as juridical expressions of corresponding environmental rights—whether framed as rights of the environment itself or, more broadly, nature.

94. It is important to note that ten of these forty-eight constitutions could potentially be interpreted as identifying human beings—whether individually or collectively—as the primary rights-holders, insofar as they locate the duty of care within their bills of rights and articulate the obligation as one owed to human subjects rather than to nature itself.[95] Such an interpretation, however, does not preclude the possibility that both human beings and the environment may simultaneously be right bearers within the same constitutional framework. In addition, these constitutions—and even the six African constitutions that contain neither an explicit human right to a healthy environment nor an express duty of care toward

[93] Ibrahim & Hefti, *African Contributions* at 33.

[94] *See* Dustūr al-Jumhūrīyah al-Jazā'irīyah [Constitution] Nov. 1, 2020, arts. 20, 67 (Alg.); Constituição da República de Angola [Constitution] Feb. 5, 2010, arts. 21(m), 39, 91(2) (Angl.); Constitution de l'Union des Comores [Constitution] 2018, arts. 8(9), 43 (Comoros); Constitution [of Kenya] Aug. 27, 2010, arts. 42, 69–70 (Kenya); Constitution de la République du Mali [Constitution] 2023, arts. 22, 25, 42 (Mali); Constituição da República de Moçambique [Constitution] Nov. 16, 2004, as amended, arts. 45(f), 90, 117 (Mozam.); Constitution de la République du Niger [Constitution] Nov. 25, 2010, as amended 2017, arts. 35, 37, 149 (Niger); Constitution of the Republic of Rwanda [Constitution] June 4, 2003, as amended 2015, arts. 22, 53 (Rwanda); Constituição da República Democrática de São Tomé e Príncipe [Constitution] Nov. 5, 1975, as amended 2003, arts. 10(d), 49(1), 50(2) (São Tomé & Príncipe); of the Republic of South Africa [Constitution] Dec. 18, 1996, as amended 2012, arts. 24, 152 (S. Afr.); Provisional Constitution of the Federal Republic of Somalia [Constitution] Aug. 1, 2012, as amended, arts. 25, 45 (Somalia); Constitution of the Republic of Uganda [Constitution] Oct. 8, 1995, as amended 2017, arts. XIII, 17(j), 39, 237(2)(b), 245 (Uganda).

[95] Ibrahim & Hefti, *African Contributions* at 36.

the environment—may still be read to support the recognition of the rights of nature on alternative interpretive grounds. After all, most African constitutions recognize the importance of traditional institutions and cultural values that reflect communitarian and holistic worldviews that ground or reinforce recognition of the rights of nature.[96] In fact, a substantial number of African constitutions contain provisions directly related to the protection of culture and tradition, ranging from establishing State duties to protect and promote culture and traditions[97] to enshrining individual rights to cultures and traditions.[98]

95. The inclusion of a duty to nature and the corresponding rights granted to nature is sufficiently widespread throughout African constitutions to indicate the existence of a Pan-African normative consensus on the rights of nature. This provides the Court with an additional option of recognizing the rights of nature as a principle of law pursuant to Article 61 of the African Charter. Article 61 provides the African Court with a number of avenues to integrate the holistic approach into its jurisprudence by requiring that, in determining such principles, it take into account treaties, state practice, the general principles of law recognized by African States, as well as legal doctrine. As seen in the previous sections, all of these can be invoked in support of the rights of nature.

96. Even independently of this constitutional consensus, the aforementioned additional evidence of rights of nature beyond State constitutions in myriad regional, sub-regional, and international agreements on human rights, the environment, and economic cooperation further corroborates the recognition of the rights of nature as a principle of African law. The Pan-African normative consensus argument is further strengthened by the fact that communitarian and holistic approaches cut across temporal boundaries, transcending the pre- and

[96] Katrina Cuskelly. *Customs and Constitutions: State Recognition of Customary Law around the World*, INTERNATIONAL UNION FOR THE CONSERVATION OF NATURE (2011), 6–7, https://perma.cc/VVM5-7HPG.

[97] *See, e.g.*, Constitution of the Republic of Benin 1990 art. 10; Constitution of the Federal Democratic Republic of Ethiopia 1995 art. 91(1); Constitution of Kenya 2010 art. 11; Constitution of Mozambique 1990 art. 115(1); Transitional Federal Charter for the Somali Republic 2004 arts. 1:1(3), 24(6); Constitution of the Republic of Uganda 1995 art. XXIV.

[98] *See, e.g.*, Constitution of the Republic of Benin 1990 art. 10; Constitution of the Central Africa Republic 1995 art. 7; Constitution of Cote d'Ivoire 2000 art. 7; Constitution of the Republic of The Gambia 1997 s. 32; Constitution of the Republic of Ghana 1992 art. 26(1); Constitution of the Republic of Seychelles 1993 art. 39(1); Constitution of the Republic of South Africa 1996 s 31; The Interim National Constitution of the Republic of Sudan 2005 art. 47; Constitution of the Republic of Uganda 1995 art. 37.

post-colonial divide, and pervade the settings in which African constitutions were created and operate, as described further below.

D. African Indigenous and traditional normative systems have important roles in addressing climate change.

97. As previously noted, the Court can recognize the rights of nature under the African Charter and other human rights instruments in at least two ways: first, by adopting a positivist holistic interpretation of duties directly owed to society; and second, by acknowledging obligations to uphold traditional African values, such as holism. This section, while supporting both approaches, also emphasizes the need to recognize that there exists a body of African Indigenous and traditional law that predates colonialism and the post-colonial state, explicitly recognizes the rights of nature, and has historically provided—and continues to provide—protections for the environment and the climate.
98. It is important to make explicit that African Indigenous and traditional systems, which unequivocally recognize and protect the rights of nature, form an integral part of the body of law that extends from global to regional, sub-regional, national, sub-national and local levels, all of which are relevant to safeguarding the rights to a healthy environment and a healthy climate. Recognition of these systems is directly relevant to the protection of ecosystems—an element that must be taken into account in interpreting and applying the rights of nature.
99. A review of the literature on African Indigenous and traditional normative systems reveals that many of these frameworks have long supported environmental protection,[99] likely contributing to decelerating climate change and limiting its impacts. These studies, which either focus on specific Indigenous and traditional normative systems or attempt to derive Africa-wide principles,[100] confirm the communitarian and holistic positions discussed above. This background demonstrates that the Court's current deliberation is not taking place in a

[99] Ibrahim & Hefti, *African Contributions* at 21–22.
[100] *See* Mogobe B. Ramose, *African Philosophy through Ubuntu* 99, 105–10 (2005); Godfrey B. Tangwa, *Bioethics: An African Perspective*, 10 Bioethics 183, 186, 192 (1996) (relying on the culture of the Nso' people of Cameroon).

normative vacuum; there is empirical evidence of pre-existing normative systems that address the same issues and support the rights of nature.

100. The African system of human rights goes beyond the empirical recognition of Indigenous and traditional normative systems and explicitly protects them as part of the right to cultural life[101] and under the right to self-determination.[102] The regional system thus recognizes that Indigenous and traditional communities have legal systems distinct from those of the State. These systems organize economic, political, and governance structures in a manner that does not reduce these living jurisgenerative normative systems to a mere notion of "culture" or to other categories of pre- or non-law.[103] In other words, Indigenous and traditional normative systems, similar to the state-based legal system, are semi-autonomous legal orders that overlap with and at times compete for authority over the regulation of the same social fields.[104] It is the lived reality of most Africans that international, domestic, local, and non-state legal systems coexist to govern overlapping social spaces.[105]

101. It was described earlier that the African human rights normative framework not only recognizes the contributions of the values of African civilizations, of which Indigenous and traditional normative systems are an integral part, but also that

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[101] *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya,* Communication no. 276/2003, African Commission on Human and Peoples' Rights, ¶ 149 (2009) ¶¶ 246–249 (hereinafter *Endorois*); *African Commission on Human and Peoples Rights v. The Republic of Kenya,* No. 006/212, Decision, African Court on Human and Peoples' Rights, ¶¶ 178–179 (May 6, 2017).

[102] While this protection of Indigenous and traditional normative systems under the right to self-determination is already articulated in Article 20(1) of the African Charter and implied in Articles 20-24, it has been re-affirmed in *Katangese Peoples' Cong. v Zaire*, Comm. No. 75/92, ¶ 4; *African Commission on Human and Peoples Rights v. The Republic of Kenya*, ¶ 199 (May 6, 2017); United Nations Declaration on the Rights of Indigenous Peoples, 41st Ordinary Session, Advisory Opinion, African Commission on Human and Peoples' Rights, 14–43 (2007); and Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, 28th Ordinary Session, African Commission on Human and Peoples' Rights, 74–75 (2005).

[103] *See African Commission on Human and Peoples Rights v. The Republic of Kenya,* ¶ 110 (May 6, 2017); Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, 28th Ordinary Session, African Commission on Human and Peoples' Rights (2005) at 21, 25–26, 108; *Endorois,* ¶¶ 241, 250.

[104] Ibrahim & Hefti, *African Contributions* at 24–25, FN 179; These claims typically include what would fall under positive law categories of family law, law of succession and inheritance, land tenure and property law, and can occasionally extend to criminal justice. They can also go as far as claims over the power to levy taxes or even make peace and war. On the latter, *see* Aninka Claassens, *Resurgence of Tribal Levies: Double Taxation for the Rural Poor*, 35 S AFR. CRIME Q. 11, 11–12, 14–16 (2011); Maame A.S. Mensa-Bonsu, *Customary Law and the 1992 Constitution of Ghana: A Comparative Theoretical Study*, 92, 100–04, 160–61, 237 (Ph.D. dissertation, University of Oxford 2021).

[105] Chuma Himonga, *State and Individual Perspectives of a Mixed Legal System in Southern African Contexts with Special Reference to Personal Law*, 25 TUL. EUR. & CIV. L.F. 23, 26–28, 31 (2010); Sally Engle Merry, *New Legal Realism and the Ethnography of Transnational Law*, 31 L. & SOC. INQUIRY 975, 976, 980 (2006).

fundamental African human rights documents are derived from these African values to the same extent as they are from the global human rights principles encapsulated by the UDHR. While this equal influence underscores the importance of Indigenous and traditional normative systems, there is an additional argument that the interpretation of human rights documents, such as the Charter, should reflect the African rights system's anti-colonial orientation.[106]

102. There are several precedents or examples of the application of the pluralist approach that recognize the existence of Indigenous and traditional legal systems alongside state and international law and is therefore able to integrate them into its repertoire of normative tools. The African Commission's and African Union Assembly's transitional justice policy declarations illustrate the pluralist approach in directing the application of Indigenous and traditional mechanisms, sometimes bypassing, or requiring balancing with, conflicting criminal justice standards in African constitutions, domestic law, and international human rights law.[107] In its accompanying document explaining the reasoning behind the policy declaration, the Commission highlights its dual commitment to both international legal systems and Indigenous and traditional systems, and explicitly recognizes that past hesitations to adopt Indigenous norms and procedures can be attributed to a "Eurocentric" view "that portrays all approaches to justice outside the mainstream European legal thought as primitive and lacking in human rights legitimacy."[108] Thus, the Commission advocates challenging this colonial perspective and affording adequate respect to African Indigenous and traditional approaches.

103. In the *Endorois* and *Ogiek* cases, the African Commission and this Court found hybrid norms of collective rights to property and religion for Indigenous groups

[106] Besides the assumption of the lasting impacts of the colonial experience to human rights practices within the system, the African Charter goes as far as implying a duty to assist the liberation struggles of "[c]olonized or oppressed peoples." African Charter, art. 20. S*ee also id.* pmbl. ¶¶ 3, 8; Cultural Charter for Africa, pmbl., arts. 1(d), 2(e), 22(a) (1990); Grand Bay (Mauritius) Declaration and Plan of Action art. 8 (b) (1990); African Committee of Experts on the Rights and Welfare of the Child, General Comment on Article 6, CERWC/GC/02 ¶ 4(2014); African Commission on Human and Peoples' Rights, General Comment No. 4 ¶ 11 (2017).

[107] Ibrahim & Hefti, *African Contributions* at 27.

[108] African Commission on Human and Peoples' Rights, Study on Transitional Justice and Human and Peoples' Rights in Africa ¶ 61 (Adopted Apr. 2019).

that cannot be directly found in either Indigenous legal systems or to international human rights law but can be traced back to both. This indicates the interpretive generation of a separate and new legal norm through the interaction of international and Indigenous legal systems.[109] In *Endorois*, the Commission developed "a much higher threshold" and "more stringent" public interest test for limiting collective property rights than exists for individual property rights by using Indigenous systems to expand state legal conceptions of property.[110] In *Ogiek*, the Court modified the "classical conception" of the right to property to preclude alienation of Ogiek land by blending the Ogiek community's normative system with the U.N. Declaration on the Rights of Indigenous Peoples.[111] The *Ogiek* case affirmed that property, like freedom of religion, has a form of a communally exercised "peoples'" rights that cannot be explained as an individual right.[112]

104. *Endorois* also required that "consent" be defined in accordance with Indigenous norms and procedures.[113] This redefinition of consent, to be understood from an Indigenous perspective, is a partial reversal of the legacy of the Berlin Conference.[114] During colonization, African agency was excluded from legal notions of consent, such that "consent" to be colonized could be attained without the participation or contribution of the nations being colonized.[115] Thus, while the pluralist approach represents an overall reversal of colonialism's (attempted) erasure of non-European normative systems from the "realm of legality",[116] the redefinition of consent in *Endorois* represents a specific example that

[109] Ibrahim & Hefti, *African Contributions* at 26.
[110] *Endorois*, ¶¶172–173, 186–87, 212.
[111] *African Commission on Human and Peoples Rights v. The Republic of Kenya* ¶¶8, 124, 126-28, 140-41.
[112] *Id*.
[113] *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya*, Communication no. 276/2003, African Commission on Human and Peoples' Rights, ¶ 291. Note that this definition takes a qualitatively significant evolutive step in refining *Ogoni*'s broad interpretation of the standard, which articulated consent as "meaningful opportunities for individuals to be heard and to participate." *Ogoni*, ¶ 53.
[114] Martti Koskenniemi, The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960, 137-141 (2009).
[115] S*ee* Antony Anghie, Imperialism, Sovereignty, and the Making of International Law, 13, 16, 240 (2012) (hereinafter Anghie, Making of International Law). *See also* Robert J. Miller and Olivia Stitz, *The International Law of Colonialism in East Africa: Germany, England, and the Doctrine of Discovery*, 32 DUKE J. COMP. & INT'L. L. 1, 16–20, 22–28, 34–39 (2021); James Thuo Gathii, *Geographical Hegelianism in Territorial Disputes Involving Non-European Land Relations: An Analysis of the Case Concerning Kasikili/Sedudu Island (Botswana/Namibia)*, *in* The Third World and International Order: Law, Politics & Globalization 75, 97–99 (Antony Anghie, B. S. Chimni, Karin Mickelson & Obiora Chinedu Okafor eds., 2003).
[116] Anghie, Making of International Law at 65.

discontinues a specific colonial practice, and does so through the application of African indigenous norms.

105. The decisions in *Endorois* and *Ogiek* can be understood under the rubric of what legal anthropologists describe as normative hybridization, or a form of double-vernacularization, combining Indigenous and traditional systems with international law.[117] This deliberate approach to hybridity may be jurisprudentially novel, but the phenomenon of hybridity itself is as old as law,[118] and is something that is anticipated by the Banjul Charter's dual-commitment described above. The direction of the diffusion of norms has been heavily influenced by power-relations, flowing primarily from Western and international sources into the legal systems of (now formerly) colonized nations.[119] However, both the African system of human rights and the United Nations Declaration on the Rights of Indigenous Peoples provide examples in which Indigenous and traditional legal systems have directly influenced the contents of contemporary international law.[120]
106. Given the background of the dual commitment throughout the African legal system, as well as transitional justice policy declarations and judicial decisions supporting the application of Indigenous and traditional mechanisms, jurisprudential hybridity is fully consistent with the African regional human rights framework.[121] In fact, the generative potential of this hybrid and pluralist approach is a "design feature" of the region's normative order, creating substantial space for innovative interpretation.[122]
107. The integration of Indigenous and traditional norms into African legal systems provides a compelling basis for deriving the rights of nature from existing

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[117] Ibrahim & Hefti, *African Contributions* at 26.

[118] For a discussion of the phenomenon of hybridity at the legal system level and at the normative level, *see* Brian Z. Tamanaha, *Understanding Legal Pluralism: Past to Present, Local to Global*, 30 Syd. L. Rev. 375, 386–390, 403–407 (2008); Boaventura de Sousa Santos, *The Heterogenous State and Legal Pluralism in Mozambique*, 40 L. & Soc. Rev. 39, 42–43 (2006); *see also* Vernon Valentine Palmer, "Mixed Legal Systems" in Mauro Bussani & Ugo Mattei eds., The Cambridge Companion to Comparative Law 368, 368–369 (2012).

[119] *See, e.g.*, Xavier Blanc-Jouvan, *The Encounter Between Traditional Law and Modern Law in French-Speaking Africa: A Personal Reflection*, 25 Tul. Eur. & Civ. L.F. 197 (2010).

[120] For a description of the "reverse trajectory" in vernacularization, *see* César Rodríguez-Garavito, *Globalising the Indigenous: The Making of International Human Rights from Below*, *in* The Complexity of Human Rights: From Vernacularization to Quantification, 75, 86, 88–91 (Philip Alston ed., 2024); *see generally* Brian Z. Tamanaha, *Understanding Legal Pluralism: Past to Present, Local to Global*, 30 Syd. L. Rev. 375, 380–81, 403, 409 (2008).

[121] Ibrahim & Hefti, *African Contributions* at 27.

[122] *Id.* at 29.

jurisprudence on the right to a healthy environment and directly from Indigenous and traditional normative systems. Specifically with regards to interpreting the Charter, this integration is particularly significant for addressing climate change. Indigenous and traditional systems have long reflected adaptive, place-based approaches to environmental stewardship, emphasizing resilience, interdependence, and the maintenance of ecological balance.[123] Recognizing the rights of nature within this pluralist framework therefore not only affirms existing legal traditions but also provides an important interpretive lens through which the systemic and long-term nature of climate harm may be understood.

108. The Inter-American Court of Human Rights built up to its recognition of the rights of nature through teleological and evolutive interpretation that relied on Indigenous rights and the right to a healthy environment[124]—both of which have their origins in the regional system's implied rights jurisprudence.[125] The African human rights regime more explicitly recognizes a number of collective rights, including environmental rights and the right of indigenous peoples to self-determination, and elevates the Indigenous rights and norms that underpin the rights of nature (as described above), positioning it even more clearly to affirm these rights.[126] The Court should recognize climate change obligations in a way that is grounded in these Indigenous and traditional norms that protect the rights of nature.

III. Intersectionality and Climate Impacts[127]

109. *Amici* respectfully submit that an intersectional analytical framework enables a more complete and accurate assessment of the differentiated and compounded

[123] Tashi Dorji et al., *Understanding How Indigenous Knowledge Contributes to Climate Change Adaptation and Resilience: A Systematic Literature Review*, 74 ENV. MGMT. 1101 (Aug. 31, 2024).
[124] *See, e.g.*, IACtHR, Advisory Opinion OC-32/25, ¶¶ 314–16; IACtHR, Advisory Opinion OC-23/17: Environment and Human Rights, Ser. A No. 23 (15 Nov. 2017) ¶¶ 43–63. *See also Inhabitants of La Oroya v. Peru*, Preliminary Measures, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 25–26, 118, 122 (Nov. 27, 2023); Climate Emergency and Human Rights, Advisory Opinion OC-32/25, Inter-Am. Ct. H.R. (May 29, 2025), ¶¶ 282.
[125] Note, however, that both rights would receive more direct state recognition after their jurisprudential development respectively in the Protocol of San Salvador (1988), art. 11, and the American Declaration on the Rights of Indigenous Peoples (2016).
[126] Ibrahim & Hefti, *African Contributions* at 30.
[127] This section draws on Angela Hefti and Abadir Ibrahim, *Intersectionality and the African Human Rights System* (on file with the authors).

impacts of climate change, thereby strengthening the Court's response to the questions presented in the request for an Advisory Opinion. The harms of climate change do not arise in a vacuum; rather, the harms are shaped and exacerbated by longstanding and interconnected systems of structural inequality, historical marginalization, and overlapping forms of disadvantage that influence exposure, resilience, and access to justice. These dynamics bear directly on the questions before the Court, particularly those concerning equality, non-discrimination, participation, and collective rights, and require an analytical approach capable of capturing the layered and context-specific nature of climate-related harm.

110. The African human rights system provides a strong foundation for such an approach. Across its treaties, interpretive instruments, and jurisprudence, the system reflects a longstanding recognition that disadvantage in the African context is often layered, contextual, and produced through the interaction of multiple identity-based and structural factors, including gender, age, disability, socioeconomic position, and Indigenous status. While the system has at times relied on the language of vulnerability to describe heightened exposure to harm, *amici* respectfully submit that an intersectional framework offers a more precise and structurally grounded method of analysis. It not only identifies which individuals and communities may be most affected, but it also explains how and why patterns of disadvantage arise.

111. An intersectional approach strengthens the Court's analysis in several respects. It supports a more complete understanding of the collective and structural dimensions of climate-related harm, deepens equality and non-discrimination analysis, enhances access to justice for affected communities, and promotes meaningful participation in climate-related decision-making.[128] It also enables the Court to build upon existing regional jurisprudence and to draw on the African human rights system's established legal framework, including its treaties, protocols, interpretive instruments, and case law, which already reflect attention to overlapping and context-specific forms of disadvantage. As demonstrated

[128] *See* Angela Hefti, *Intersectional Victims as Agents of Change in International Human Rights-Based Climate Litigation*, 13(3) TRANSNAT'L ENV'T L. 610, 630 (2024).

below, these sources provide a concrete doctrinal basis for the application of intersectional reasoning within the African system.

112. For these reasons, *amici* respectfully request that the Court consider and apply an intersectional analytical framework when interpreting climate-related rights under the African Charter. This section first explains the concept of intersectionality and distinguishes it from vulnerability. It then demonstrates that the African human rights system already reflects intersectional reasoning within its legal and institutional framework. Finally, it outlines how such an approach would assist the Court in interpreting and applying rights in the climate context.

113. To better illustrate the concept in the African context, the experiences of African women provide a clear example. Their circumstances are often shaped by overlapping identities, including race, gender, class, age, disability, and sexual orientation.[129] It is also in this light that a former member of the African Committee of Experts on the Rights and Welfare of the Child (the "ACERWC") has noted that climate change impacts African children "more acutely and longer—often for the rest of their lives—especially as adaptation as well as loss and damage measures are very limited."[130] These scenarios demonstrate how climate change amplifies existing structural discrimination and underscores the need for a nuanced, intersectional human rights approach within the African system.

A. Intersectionality and the Interpretation of Climate-Related Rights

114. Climate-related harms reflect interconnected systems of structural inequality, including colonialism, racism, and sexism. These systems generate social inequalities along identity markers such as race, gender, indigeneity, disability, and socioeconomic status, producing overlapping forms of marginalization and compounded exposure to climate-related harms. As a result, climate impacts

[129] Ebenezer Durojaye & Olubayo Oluduro, *The African Commission on Human and Peoples' Rights and the Woman Question*, Feminist Legal Studies (2016); Lea Mwambene & Maudri Wheal, *Realisation or Oversight of a Constitutional Mandate? Corrective Rape of Black African Lesbians in South Africa*, African Human Rights Law Journal (2015).
[130] Harvard L. Sch. Human Rights Program, 40th Anniversary Publication 31 (Feb. 2026).

such as drought, displacement, and food insecurity deepen pre-existing inequalities and affect communities in disparate and mutually reinforcing ways.

115. An intersectional approach can provide the analytical framework for understanding how climate-related harms are distributed across African societies. It examines how multiple, interrelated identity markers interact to produce distinct forms of disadvantage, focusing on the structural systems that shape and reinforce inequality rather than treating identities as separate or additive. The concept has two central components: first, it identifies how overlapping axes or identity create specific and unequal social experiences; second, it seeks to expose and remedy the structural forces that sustain compounded disadvantage.[131] Applied to climate change, intersectionality reveals how environmental harms map onto existing patterns of inequality and intensify systemic marginalization, making it an essential tool for understanding differentiated climate risks across African societies.
116. It is important to distinguish the concept of "intersectionality" from that of "vulnerability"; two terms that are often, and incorrectly, used interchangeably in the human rights and climate change context. "Vulnerability" has traditionally referred to groups perceived as facing a heightened risk without necessarily linking that risk to prohibited grounds of discrimination. However, the language of "vulnerable groups" and the like is increasingly recognized as potentially stigmatizing because it may suggest inherent weakness or helplessness. As a result, international practice has begun shifting toward the more empowering formulation, "people in vulnerable situations," which emphasizes agency and participation in climate decision-making and reflects aa move toward the more structurally grounded analysis offered by intersectionality.
117. Building on this distinction, an intersectional approach provides the analytical framework needed to identify which segments of society are disproportionately affected by climate change because of overlapping and interacting forms of

[131] Angela Hefti, *Intersectional Victims as Agents of Change in International Human Rights-Based Climate Litigation*, 13 TRANSNAT'L ENV'T L. 610, 620-21 (2024). *See also* on intersectionality and climate litigation Angela Hefti, Hannah van Kolfschooten & Aminta Ossom, *A Health-Centric Intersectional Approach to Climate Litigation at the European Court of Human Rights*, HARV. HUM. RTS. J. 351, 376-377 (2024).

disadvantage. Rather than focusing solely on exposure to harm, it clarifies how layered forms of discrimination shape exposure, resilience, and access to remedies. By linking climate harm to structural inequality, intersectional analysis also guides the development of targeted and equitable legal and policy responses.

118. To better illustrate the concept of an “intersectional” approach in the African context, the experiences of African women provide a clear example. Their circumstances are often shaped by overlapping identities, including race, gender, class, age, disability, and sexual orientation. For instance, a lesbian woman residing in an informal settlement in South Africa may face compounded disadvantage, as gender, sexual orientation, and socioeconomic status together heighten exposure to violence and discrimination. The effects of climate change can further intensify these inequalities: during drought, an elderly woman may be required to walk greater distances to obtain water, a task traditionally assigned to women, while confronting age-based stigmatization, such as accusations of witchcraft, that increase her risk of harm. This scenario demonstrates how climate change amplifies existing structural discrimination and underscores the need for a nuanced, intersectional human rights approach within the African system.
119. Taken together, these considerations demonstrate that an intersectional approach provides a more precise framework for understanding and responding to climate-related harms within the African context. It enables a fuller account of how inequality shapes exposure, resilience, and access to remedies, and offers a basis for interpreting climate-related rights in a manner that reflects the structural and differentiated nature of harm. As the following section illustrates, this approach is already reflected within the African human rights system’s legal and institutional framework.

B. Intersectionality in the African Human Rights System: Current Legal and Institutional Frameworks

120. The African human rights system is uniquely positioned to engage in intersectional analysis and already reflects a comparatively advanced approach

to addressing overlapping forms of inequality. This is evident across its specialized treaties, emerging protocols, soft law instruments, and developing jurisprudence. Although the term “intersectionality” is not used consistently, numerous provisions acknowledge the interaction of identity-based disadvantages, especially those related to gender, age, disability, socioeconomic position, and minority or Indigenous status.[132]

1. Specialized Treaties Addressing Intersecting and Compounded Inequalities

121. The Maputo Protocol contains several provisions that address overlapping forms of inequality.[133] These provisions recognize that women’s experiences of discrimination may be shaped by the interaction of gender with other social and identity-based factors.[134]
122. Articles 22 through 24 expressly protect women situated at the intersection of gender and other categories.[135] Article 22 addresses the rights of elderly women and acknowledges the compounded forms of discrimination they may face.[136] Article 23 addresses the rights of women with disabilities.[137] And Article 24 protects “women in distress,” a category encompassing socioeconomic and situational disadvantage.[138] Taken together, these provisions reflect an understanding within the regional framework that gender inequality may intersect with other forms of disadvantage.
123. A similar approach appears in the African Children’s Charter. Articles 21 and 13 recognize that children’s experiences of discrimination may be shaped by the interaction of gender, disability, and social conditions.[139] Article 21 addresses harmful social and cultural practices, including those that disproportionately affect

[132]Ibrahim & Hefti, *African Contributions*; Johanna Bond, *Intersectionality and Human Rights within Regional Human Rights Systems*, in Global Intersectionality and Contemporary Human Rights (2021).
[133] Maputo Protocol, arts. 22–24.
[134] Johanna Bond & L. Amede Obiora, *Intersectionality, Women’s Rights in Africa, and the Maputo Protocol*, in Patriarchy and Gender in Africa (2021).
[135] Maputo Protocol, arts. 22–24.
[136] *Id*., art. 22.
[137] *Id*., art. 23.
[138] *Id*., art. 24.
[139] African Children’s Charter, arts. 21, 13.

girls.[140] Article 13 addresses the rights of children with disabilities, including access to education, care, and participation.[141] These provisions acknowledge that gender, age, disability, and social context may operate together to place certain children at heightened risk in the African setting.[142]

124. More broadly, these provisions illustrate how the African human rights system has long recognized that discrimination in the African context is often layered, contextual, and historically grounded. The Charter's equality provisions, together with the specialized treaties such as the Maputo Protocol and the African Children's Charter, acknowledge that disadvantage may arise from the interaction of gender, age, disability, and socioeconomic position. The African Commission's General Comment No. 2 on Article 14 further reflects an intersectional understanding of gender equality by interpreting the right to health considering the diverse and overlapping circumstances faced by women across the continent.[143]
125. Emerging instruments addressing disability and older persons further reflect this trajectory, reinforcing the recognition that equality and non-discrimination within the African system must account for overlapping and context-specific forms of disadvantage. Specifically, the Protocol on the Rights of Persons with Disabilities in Africa (Disability Protocol) and the Protocol on the Rights of Older Persons in Africa (Older Persons Protocol) demonstrate the African system's evolving engagement with intersecting forms of inequality[144]
126. The Disability Protocol contains provisions that explicitly recognize compound forms of disadvantage. Article 27 addresses the situation of women and girls with disabilities, including elderly women, while Article 28 protects children and youth with disabilities.[145] These provisions build upon the structure of the Maputo

[140] *Id*., art. 21.
[141] *Id*., art. 13.
[142] Johanna Bond, *Intersectionality and Human Rights within Regional Human Rights Systems*, in GLOBAL INTERSECTIONALITY AND CONTEMPORARY HUMAN RIGHTS (2021).
[143] African Commission on Human and Peoples' Rights, *General Comment No. 2 on Article 14 of the Maputo Protocol* (2014).
[144] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, adopted Jan. 29, 2018; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, adopted Jan. 31, 2016.
[145] Disability Protocol, arts. 27–28.

Protocol and acknowledge that disability frequently intersects with gender, age, and socioeconomic status in the African context.[146]

127. The Older Persons Protocol likewise reflects attention to intersecting forms of inequality. It includes protections for older persons with disabilities (Article 13), older persons caring for vulnerable children (Article 12), older persons in conflict and disaster situations (Article 14), and older women facing sexual abuse and land-related violations (Article 9).[147] Article 9 is particularly relevant in the climate context because displacement, land scarcity, and environmental degradation often heighten the risk of gender-based violence and dispossession for older women.[148] More broadly, these provisions address challenges such as displacement, resource constraints, and violence, which often disproportionately affect older persons in overlapping and compounded ways.
128. Together, these instruments expand existing protections by addressing the ways in which disability, age, gender, and social conditions interact in shaping disadvantage and access to rights. Once in force, these protocols will further strengthen the African treaty framework by providing a clearer legal basis for addressing compounded and context-specific harms in areas such as climate change, displacement, and environmental governance.[149]

2. Interpretive and Jurisprudential Developments Addressing Intersecting Inequalities

129. The African human rights system has also developed interpretive and jurisprudential approaches that recognize compounded and intersecting forms of inequality. Through general comments, guidelines, and case law, the African Commission and the African Court have increasingly addressed the ways in which discrimination and marginalization operate across multiple, interacting grounds.[150]

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[146] Abadir M. Ibrahim & Angela Hefti, *Comments on the Draft Study on the Impact of Climate Change on Human and Peoples' Rights in Africa* (2023).
[147] Older Persons Protocol, arts. 9, 12–14.
[148] Shreya Atrey, *The Inequality of Climate Change and the Difference It Makes*, in Feminist Frontiers in Climate Justice (2023).
[149] Ibrahim & Hefti, *African Contributions.*
[150] Frans Viljoen, *International Human Rights Law in Africa* (2d ed. 2012).

130. The African Commission's *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter* (the Guidelines) expressly recognize intersectional discrimination as a distinct form of inequality.[151] The Guidelines define "intersectional or multiple discrimination" as occurring when a person is subjected to discrimination on more than one ground at the same time, and the provision requires States to take steps to address discrimination based on combinations of factors such as sex, gender, race, ethnicity, language, religion, and political or other opinion.[152] This distinction reflects an understanding that disadvantage may arise through the interaction of structural and social conditions rather than through isolated identity categories.
131. The Commission's jurisprudence similarly reflects attention to intersecting forms of inequality. In *Mali v. Human Rights Defense*, the Commission examined discriminatory laws and practices affecting girls' access to education, noting the ways in which gender, religion, and cultural norms shaped exclusion and marginalization.[153] In *Equality Now v. Ethiopia*, a case concerning the abduction of girls in Ethiopia, the Commission observed that the practice disproportionately targeted girls in particular regions, implicitly recognizing the interaction of gender and ethnic or regional discrimination.[154] These decisions illustrate a contextual approach to advancing equality that considers how different forms of discrimination may converge in specific settings.
132. The experiences of Indigenous peoples across Africa further demonstrate how the African system has already approached environmental and human rights harms through a structurally grounded and context-specific lens. Climate-related harms affecting Indigenous communities frequently reflect the interaction of historical dispossession, extractive development models, environmental degradation, and entrenched discrimination. These dynamics are closely linked to land tenure, cultural identity, and collective survival.

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[151] African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter* (2010).
[152] *Id*.
[153] *Association Malienne des Droits de l'Homme v. Mali*, African Commission on Human and Peoples' Rights.
[154] *Equality Now and Ethiopian Women Lawyers Ass'n v. Federal Republic of Ethiopia*, Communication 341/2007, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], ¶ (Feb. 25, 2016).

133. Regional jurisprudence has recognized that environmental and land-related harms cannot be separated from broader patterns of marginalized and historical exclusion. In *Endorois* and *Ogiek*, the regional bodies emphasized that Indigenous identity, culture, and livelihood depend on secure access to land and natural resources, and that state interference with these relationships must be understood considering the communities' history of dispossession. This reflects an interpretive approach that situates environmental harm within broader structural and historical contexts. As illustrated in *Ogoni*, environmental degradation and resource exploitation have long affected communities' ability to exercise their rights under Article 21, as well as related rights to health, property, development, and a satisfactory environment.
134. The African Court has also adopted a structural and process-based understanding of marginalization. As early as 2013, the ACERWC referred to "children who find themselves in a disadvantaged and vulnerable situation." The African Court has likewise treated marginalization as situational rather than intrinsic. In *African Commission on Human and Peoples' Rights v. Kenya (Ogiek)*, the Court described the community's marginalization as the product of sustained state action, including discriminatory laws, policies, dand dispossession, while also recognizing the community's continued resistance and agency.[155] This approach treats vulnerability and marginalization as socially produced conditions rather than inherent characteristics.
135. Taken together, the African system's treaty framework, emerging protocols, soft-law instruments, and jurisprudence reflect sustained attention to intersecting forms of inequality. Although the concept of intersectionality is not always explicitly articulated in these sources, the structure and content of regional protections for women, children, older persons, persons with disabilities, and marginalized communities demonstrate a recognition that disadvantage often arises through the interaction of multiple identity-based and structural factors. This body of law provides an important foundation for further consideration of

[155] *African Commission on Human and Peoples' Rights v. Kenya (Ogiek)*, African Court on Human and Peoples' Rights, Judgment of May 26, 2017.

intersectional approaches in the African human rights response to climate-related harm.[156]

C. Benefits of Intersectional Framework to Interpreting Climate-Related Rights

136. *Amici* respectfully submit that an intersectional framework would assist the Court in interpreting and applying the African Charter in the context of climate change. Climate-related harms do not arise in isolation. Instead, they interact with existing structural inequalities, historical patterns of marginalization, and collective forms of disadvantage. The Charter's recognition of peoples' rights, its equality and non-discrimination guarantees, and the interpretive approaches already reflected in the jurisprudence of the Commission and the Court provide a foundation for addressing these dynamics in a coherent and context-sensitive manner.

1. Intersectionality strengthens the interpretation of collective and structural climate harms.

137. Climate change is a structural and communal phenomenon. Drought, flooding, biodiversity loss, and resource scarcity disproportionately affect communities whose identities and social positions are shaped by multiple and overlapping forms of disadvantage. The African Charter is the only regional human rights instrument that explicitly recognizes the rights of "peoples." This framework allows the African system to conceptualize climate change not merely as an aggregation of individual harms, but as a collective human rights challenge affecting communities, cultures, and ways of life.

138. The jurisprudence of the Commission and the Court reflect this orientation. In *Endorois*, the Commission recognizes that land, culture, religion, and identity are inseparable, and that violations affecting those elements reverberate across the collective life of a people. In *Ogoni*, the Commission grounded the protection of natural resources under Article 21 in historical patterns of exploitation and environmental degradation, acknowledging that environmental harm is

[156] Ibrahim & Hefti, *African Contributions.*

intertwined with structural inequality. Similarly, in *Ogiek*, the Court characterized vulnerability and marginalization as products of discriminatory laws, policies, and forced evictions, rather than inherent attributes of affected communities.

139. These approaches align closely with an intersectional analysis, which examines how structural forces shape exposure to harm and constrain resilience. Applying such a framework in the climate context would enable the Court to more fully capture the collective and systemic dimensions of climate-related rights violations.

2. Intersectionality enhances access to climate-related justice.

140. The procedural features of the African system further support the relevance of an intersectional approach. The Commission's accessible standing rules and openness to public interest litigation allow representatives to bring claims on behalf of affected communities. This structure is especially significant where climate-related harms are collective, diffuse, and shaped by multiple and overlapping forms of disadvantage, including those experienced by women, Indigenous peoples, persons with disabilities, and older persons.

141. The inclusivity of the procedural features is particularly important in the climate context because climate-related harms often affect entire communities and may manifest through complex patterns of structural inequality rather than through individualized injury. Strict standing requirements can therefore prevent those most affected---especially marginalized groups experiencing intersecting forms of disadvantage---from accessing judicial remedies and justice. By contrast, the African system's broader approach to standing enables representatives and civil society organizations to bring claims that reflect the collective and intersectional nature of climate-related harm.[157] As a result, the procedural framework of the African system creates greater opportunities for injured parties to be heard, which may be further expanded through the application of an intersectional approach. In short, an intersectional analysis expands the pool of potential

[157] Yusra Suedi & Marie Fall, *Climate Change Litigation Before the African Human Rights System: Prospects & Pitfalls*, 16 J. HUM. RTS. PRAC. 146, 150–151 (2024).

claimants by tracing overlapping inequalities to the root at which they intersect, thereby helping identify those most affected by climate-related harm, and increasing access to climate-related justice.

142. An intersectional framework may also support more meaningful participation in climate-related decision-making. Rather than characterizing affected populations solely in terms of vulnerability, it emphasizes lived experience, agency, and the role of communities in shaping legal and policy responses. This perspective aligns with evolving international practice, which increasingly recognizes the importance of participation, inclusion, and access to justice as central components of effective environmental governance. It may also assist in ensuring that processes such as environmental impact assessments, adaptation planning, and climate mitigation incorporate the perspectives of those most directly affected. Such an intersectional understanding of participation is consistent with the African human rights system's recognition, including under the African Children's Charter, that affected individuals, specifically children in vulnerable situations, must be able to participate in decisions impacting their rights and well-being.
143. Scholarly work, including that of Jegede, has documented how Indigenous communities have often been situated at the center of large-scale agricultural, mining, logging, gas, and conservation initiatives pursued in the name of economic growth or environmental protection. These dynamics also shape access to justice. Communities affected by such projects are frequently excluded from decision-making processes, lack meaningful consultation, and face structural barriers in challenging state or corporate conduct that affect their lands and resources. In this way, climate-related harms are closely linked not only to historical and contemporary patterns of resource extraction and land pressure, but also to procedural inequalities that limit access to remedies. An intersectional framework assists in identifying these barriers by connecting overlapping forms of disadvantage to both the experience of harm and the ability to seek redress.
144. Taken together, these considerations suggest that an intersectional analytical framework may assist the Court in identifying affected groups, assessing

differentiated impacts, and evaluating whether state responses adequately address the layered and context-specific nature of climate-related harms. It may also support approaches that promote participation, agency, and access to justice for communities whose experiences are shaped by overlapping forms of disadvantage.

3. An intersectional Approach empowers participation, strengthens agency, and promotes inclusive climate governance.

145. An intersectional approach also supports meaningful participation and agency in climate governance, moving beyond access to legal forums toward the active inclusion of affected parties in shaping climate responses. Climate change policies, whether related to mitigation, adaptation, conservation, or energy transition, often affect communities collectively and disproportionately. An intersectional framework assists in identifying which groups are most affected *and* how structural inequalities influence their ability to participate in decision-making processes.
146. This perspective aligns with the African Charter's commitment to equality and non-discrimination (Articles 2 and 3), dignity (Article 5), and the rights of peoples to freely dispose of their natural resources and to development (Articles 21 and 22). These provisions reflect an understanding that participation is central to the realization of substantive rights, particularly where environmental and climate-related decisions affect land, livelihoods, culture, and survival. By clarifying how climate harms interact with identity, social position, and historical marginalization, intersectional analysis may assist the Court in articulating participation as a core component of state obligations under the Charter.
147. Intersectionality further emphasizes that affected individuals and communities are not passive recipients of protection but active agents in climate governance. This is particularly relevant for Indigenous peoples, rural women, persons with disabilities, older persons, and youth, whose knowledge systems and lived experiences often shape locally effective climate adaptation and resilience

strategies. Recognizing these groups as rights-holders and participants may contribute to more context-sensitive and sustainable climate responses.

148. This approach also has implications for the protection of environmental human rights defenders. Individuals and communities advocating for environmental protection and climate justice frequently face threats, reprisals, and exclusion from decision-making processes. An intersectional framework may assist in identifying how such risks are heightened where defenders belong to historically marginalized or disadvantaged groups. It may also guide states in adopting protective measures consistent with their duties to respect, protect, and fulfill rights under the Charter.
149. In practice, intersectionality may strengthen obligations relating to consultation, access to information, environmental impact assessments, and free, prior, and informed consent. It may also support equitable participation in adaptation planning, climate finance governance, and just transition processes. In this way, intersectional analysis may contribute to ensuring that climate measures do not reproduce or deepen existing inequalities, but instead promote inclusive, transparent, and accountable governance across the continent.
150. Taken together, these considerations suggest that an intersectional analytical framework may assist the Court in interpreting climate-related rights under the African Charter in a manner that reflects the structural, collective, and context-specific nature of climate harms across the continent. By clarifying how environmental degradation interacts with historical marginalization, social inequality, and collective identity, such a framework may support more precise assessments of equality, non-discrimination, and state obligations. It may also enhance the identification of affected groups, the evaluation of differentiated impacts, and the development of remedies that address both individual and communal dimensions of harm. In this way, intersectionality offers a coherent interpretive approach that aligns with the Charter’s existing jurisprudence and contributes to more inclusive, participatory, and effective responses to climate change.

D. Request that the Court Consider an Intersectional Analytical Framework in Interpreting Climate-Related Rights under the African Charter

151. Having outlined the structural and doctrinal foundations for intersectional reasoning within the African human rights system, *amici* respectfully request that the Court consider how intersectionality may inform the interpretation of Charter rights in the climate context. The present Request raises broad questions concerning state obligations, equality, participation, and climate-related harms. Attention to intersecting forms of disadvantage would assist the Court in clarifying the scope and application of existing Charter guarantees in a manner consistent with the continent's social, historical, and environmental realities. This request does not seek to expand the scope of the Advisory Opinion or to introduce new rights. Rather, it invites the Court to consider how the Charter's existing protections may be interpreted in light of the layered and context-specific nature of climate-related harm.
152. First, the Court may wish to clarify that climate-related violations often arise through the interaction of structural and identity-based factors. The Charter's provisions on equality and non-discrimination, dignity, collective rights, and environmental protection already reflect sensitivity to historical marginalization and group-based disadvantage. An explicit acknowledgment that climate harms frequently affect individuals and communities through overlapping forms of inequality would provide doctrinal clarity and assist states and regional bodies in implementing their obligations in a coherent and context-sensitive manner.
153. Second, the Advisory Opinion presents an opportunity to distinguish intersectional analysis from the concept of multiple discrimination. While both involve more than one ground of disadvantage, intersectionality focuses on how structural and historical forces shape the interaction of identity markers and produce distinct forms of harm. Clarifying this distinction would support consistent equality analysis across regional and domestic fora and reduce the risk that intersectionality is treated as a mere enumeration of identity categories rather than as a structural method of analysis.

154. Third, the Court may consider offering guidance on terminology used to describe affected populations. International human rights practice increasingly emphasizes situation-based and agency-sensitive language, such as “people in vulnerable situations,” rather than essentialized characterizations of “vulnerable groups.”[158] Such an approach aligns with the jurisprudence of the African Commission and Court, which have treated vulnerability and marginalization as processes produced by structural and historical conditions. Clarifying this point could support more precise and empowering language in climate governance and strengthen participation and inclusion.
155. Fourth, an intersectional framework may assist the Court in developing a consistent approach to victim-status and equality analysis in climate-related cases. Climate change frequently intensifies existing inequalities linked to gender, age, disability, socioeconomic position, minority or Indigenous status, and historical exclusion. Recognizing these interactions would support a more accurate assessment of differentiated impacts and the adequacy of state responses under the Charter’s equality and non-discrimination provisions.
156. Fifth, attention to intersectionality may reinforce participation, consultation, and procedural fairness in climate decision-making. The Court has repeatedly emphasized the importance of consultation and access to justice in environmental and land-related cases. An intersectional perspective would assist in identifying which communities are excluded from decision-making and whose knowledge is overlooked, thereby supporting more inclusive processes related to environmental impact assessments, adaptation planning, mitigation measures, and just transition policies. This approach may also strengthen the protection of environmental human rights defenders and align with evolving international standards on participation and climate governance.
157. The experiences of Indigenous peoples across Africa provide a particularly salient illustration of participation and access to justice concerns. Climate-related harms affecting Indigenous communities frequently reflect the interaction of

[158] *See also* Pedi Obani, *Climate Litigation in South Africa and Nigeria: Legal Opportunities and Gender Perspectives*, *in* CLIMATE LITIGATION AND JUSTICE IN AFRICA 219, 298 (Uzuazo Etemire, Kim Bouwer, Tracy-Lynn Field & Ademola Oluborode Jegede eds., 2024).

historical dispossession, extractive development models, environmental degradation, and entrenched discrimination. These dynamics are closely linked to land tenure, cultural identity, and collective survival. Regional jurisprudence has already recognized that environmental and land-related harms cannot be separated from broader patterns of marginalization. An intersectional analytical framework would allow the Court to articulate the compounded nature of these harms, recognize the agency and knowledge systems of Indigenous communities in climate governance, and ensure that Charter obligations are interpreted in a manner responsive to their lived realities.

158. Finally, consideration of intersectionality may contribute to the development of international human rights law on climate change. Regional and global bodies are increasingly engaging with questions of structural inequality and differentiated vulnerability in climate jurisprudence. Guidance from the African Court would offer a context-specific and globally relevant framework grounded in the experiences of the Global South and the Charter's distinctive recognition of collective rights. Such an approach may support coherence across human rights systems and contribute to the evolution of equitable and inclusive climate governance. For these reasons, *amici* respectfully invite the Court to consider the relevance of intersectionality as an interpretive framework in its Advisory Opinion.

CONCLUSION

159. For the aforementioned reasons, *amici* respectfully request the Court expressly affirm the right to a healthy environment guaranteed in Article 24 of the African Charter encompasses the right to a healthy climate and accordingly delineate the scope of States' obligations to respond to widespread climate harm as involving duties to respect, protect, promote, and fulfill the right to a healthy climate.
160. Furthermore, the Court should employ the holistic lens suggested by legislative history to ascertain from the ordinary meaning of the African Charter, as well as several other regional and sub-regional treaties in the African system, that nature is a right-holder—a position further affirmed by state practice and constitutions. If

the Court is not prepared to make this finding, it should consider the intermediary measure of recognizing the intrinsic value of nature in the African legal system, which has already had an initial formulation in the African Commission's determination on the intrinsic value of sacred natural sites and territories. Additionally, regardless of the Court's choice on this matter, *amici* submit it is essential to note that African Indigenous and traditional systems (which recognize and protect the rights of nature) are part of the body of law relevant to the Advisory Opinion's findings on the rights to a healthy environment and healthy climate.

161. Finally, throughout its Opinion, the Court should consider how intersectionality influences proper interpretation of the right to healthy climate and other implicated rights under the African Charter.

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Appendix I: Signatory List and Biographies

1. **Dr. Abadir M. Ibrahim** is the Associate Director of the Human Rights Program at Harvard Law School and a leading expert on the African human rights system, collective rights, and decolonial approaches to human rights. Dr. Ibrahim is an Ethiopian jurist whose research focuses on African approaches to human rights law, decolonial legal theory, and post-colonial constitutional development. He has litigated or served as *amici* in several African constitutional court (and equivalent) jurisdictions as well as the African Commission on Human and Peoples Rights. Additionally, he previously served as Head of the Secretariat for Ethiopia's Legal and Justice Affairs Advisory Council, where he led major pro-democracy and human rights law reforms, including reforms on civil society, anti-terrorism, transitional justice, and NHRIs. His current work focuses on how the African Charter, and its institutions, can shape international climate law.
2. **Dr. Angela Hefti** is an Assistant Professor of Law at Florida International University College of Law whose scholarship on intersectional and ecofeminist climate litigation explores how international human rights law can respond to emerging legal challenges posed by climate change. Before joining FIU, she was a Visiting Fellow with Harvard Law School's Human Rights Program, the Human Rights Entrepreneurs Clinic, and the Graduate Program, where she advised multiple climate-related projects and examined how international human rights frameworks can respond to climate harms. Previously, she served as a research fellow at Yale Law School's Orville Schell Center for Human Rights and then as a Yale Robina Fellow at the European Court of Human Rights, clerking for Judge Helen Keller. She later clerked in the Asylum Division of the Swiss Federal Administrative Court and held positions at the Inter-American Court of Human Rights, the Appeals Chamber of the International Criminal Tribunal for Rwanda, and the Spanish Refugee Commission.
3. **Ms. Salma Waheedi** is the Executive Director of the Program on Law and Society in the Muslim World and Lecturer on Law at Harvard Law School. She is a public interest lawyer and international law expert, with extensive experience in

litigation and advocacy before international courts, including the International Criminal Court and the International Court of Justice, and United Nations Human rights mechanisms and treaty bodies. Additionally, she serves as Legal Advisor on the Middle East and North Africa at the University Network for Human Rights, a Guardrail Advisor to De│Center, and an affiliated faculty member of the Middle East Initiative at the Harvard Kennedy School. Ms. Waheedi has previously held positions at the United African Organization in Chicago, Better World Foundation in Cairo, Egypt, the Carnegie Endowment for International Peace, and the Economic Development Board in Bahrain. As a litigator, she specialized in corporate responsibility for environmental and climate harms, covering the United States, West Africa, and the Middle East and North Africa. Her areas of legal practice span climate justice, human rights and the environment, corporate accountability litigation, anticorruption and trade compliance, gender justice, and asylum and refugee law.

4. **Dr. Muna B. Ndulo** is the Director of the Berger International Legal Studies Program and the William Nelson Cromwell Professor of International and Comparative Law at Cornell Law School. Trained at the University of Zambia, Harvard and Oxford, he served as Professor of Law and Dean of the School of Law, University of Zambia, and Director of the Law Practice Institute under the Council of Legal Education in Zambia. He is also an Extraordinary Professor of Law at the University of Cape Town, Free State University, and West Cape University. Ndulo is the founder of the Southern African Institute for Public Policy and Research and a member of the boards of the African Association of International Law and the Advisory Committee of Human Rights Watch Africa. He has authored more than thirty-five chapters and over one hundred articles on African constitutionalism, democracy, peace and security, and development. He has served as an arbitrator under the auspices of the ICC and ICSID, Legal Officer in the UNCITRAL, Chief Political and Legal Adviser with the UNOMSA, to the Special Representative of the UN Secretary-General to South Africa, and Legal Advisor to the UNAMET, Legal Expert to the UNAMIK, and UNAMA. He has advised the African Development Bank, World Bank, Economic Commission

for Africa, United Nations Development Program, National Democratic Institute, United Nations Institute for Peace, and International Development Law Organization. Additionally, he was a consultant to the constitution-making processes in Kenya, Somalia, and Zimbabwe.

5. **Mr. Ibrahima Kane** is a lawyer and Special Adviser to the Executive Director of Open Society Foundations---Africa, on African Union advocacy. As former Senior Legal Officer in charge of the Africa Program at INTERIGHTS, and as a founding member of RADDHO, a Senegalese human rights organization, Mr. Kane has litigated and advocated before the African Commission on Human and People's Rights, the African Union Commission, the African Committee of Experts on the Rights and Welfare of the Child, the ECOWAS Court of Justice, and the East African Court of Justice. His work has focused on economic, social, and cultural rights; women's rights; migrants' and refugees' rights; nationality; and access to regional remedies, often in collaboration with civil society across West and East Africa. Mr. Kane's experience offers a practice-based understanding of grounding climate-related matters in the lived realities of African institutions and communities.
6. **Dr. Girmachew Alemu Aneme** is an Associate Professor at the College of Law and Governance Studies of the University of Addis Ababa, where he previously served as Associate Dean. He also formerly acted as the Head of the Center for Human Rights, Editor-in-Chief of the *Journal of Ethiopian Law*, and Head of the Research and Publications Unit. His research focuses on African regional organizations, African constitutional law, and human rights. He earned his degrees from Addis Adaba University, Harvard University, and the University of Oslo. Dr. Alemu Aneme provides a comparative and interdisciplinary approach to the way climate-related human rights obligations may be integrated into regional and national legal frameworks.
7. **Dr. Jonathan Liljeblad** is an Associate Professor at the Australian National University College of Law and a 2025 Visiting Fellow at the Human Rights Program at Harvard Law School. He has worked with international organizations including the Asian Development Bank, Konrad Adenauer Stiftung, where he

researched and helped develop its rule-of-law programs in Bhutan, the International Commission of Jurists, the International Work Group for Indigenous Affairs, and the Danish Institute for Human Rights. His publications on environmental law, Indigenous rights to environment, transitional justice and nature, and integrating the Anthropocene into legal education, explore how international environmental and human rights norms can be localized through plural legal systems.

8. **Dr. Oluwatoyin Adejonwo-Osho** is the founding Director and Chief Executive Officer of the Center for Climate Change and Sustainable Development (3CSD), a Senior Lecturer in Public Law at the University of Lagos, and a Solicitor and Advocate of the Supreme Court of Nigeria. She is a leading African scholar of international environmental law and climate justice and co-authored Climate Change Justice and Human Rights: An African Perspective. Her research and policy work includes preparing and presenting a Policy Brief to the Nigerian National Assembly on the need for an improved Environmental Impact Assessment Legislation in Nigeria. Additionally, she has advised entities including the Heinrich Boll Foundation and the Department of Climate Change of the Federal Ministry of Environment on matters related to climate legislation, environmental impact assessment reform, and gendered climate impacts.
9. **Dr. Oluwabusayo Temitope Wuraola** is a Lecturer in Law at Anglia Ruskin University, Chelmsford, and a knowledge expert member of the UN Harmony with Nature Network, where she specializes in international environmental law, rights of nature, and earth jurisprudence. Her doctoral research at the University of Leicester examined legal personhood for ecosystems, and her scholarship explores African approaches to nature's rights and the interaction between common law, statute, and customary law. In 2012, she became a Barrister and Solicitor of the Federal Republic of Nigeria and represented the Minister of the Federal Capital Territory, Abuja, Nigeria, as a State Counsel on land matters at the Legal Services Secretariat, Federal Capital Development Authority, Abuja, Nigeria.

10. **Dr. Pedi Obani** is an Associate Professor of Law at the University of Bradford, and a Barrister and Solicitor of the Supreme Court of Nigeria. Her work focuses on the human rights to water and sanitation, gender-inclusive climate change governance, and the legal and governance frameworks that mediate access to essential environmental services in African contexts. She has contributed to flagship international reports and advised institutions including UNU-INRA, Lagos State Water Regulatory Commission, the University of Leeds GCRF Water Security Hub, the World Bank, and NEPAD Western African Network of Water Centres of Excellence, with a particular emphasis on streamlining human rights standards into water, sanitation, and climate-related policymaking.
11. **Dr. Raymond Akongburo Atuguba** is a Professor of Law and former Dean of the School of Law at the University of Ghana. He has experience in the public, private, and non-profit sectors, including serving as Executive Secretary to the President of Ghana, Team Leader of Law and Development, co-founding Legal Resources Centre, where he also previously served as Executive Director and Board Chair, and advising numerous African governments and international organizations on constitutional reform, governance, natural resource management, and social justice (organizations include the UN, World Bank, AU, ECOWAS, to name a few). Additionally, he has consulted for many African governments (The Gambia, Ghana, Guinea Bissau, Lesotho, Liberia, Sierra Leone, Uganda, Zimbabwe, etc.). His scholarly work addresses legal pluralism, environmental and climate law, socio-economic rights, and democratic development.
12. **Dr. Yusra Suedi** is Director of the LLM programmes in International Law and Assistant Professor of International Law at the University of Manchester, and a Visiting Professor at the Geneva Graduate Institute. She is the author of The Individual in the Law and Practice of the International Court of Justice (CUP, 2025), and editor of Public Interest Litigation in International Law, Routledge. Dr. Suedi has worked at the UN Office in Geneva, the International Law Commission, the ILOAT, and the International Court of Justice. She has

advocated in cases on Palestine and climate change before the ICJ, as well as matters before the African Court and the ICC.

13. **Dr. Angela van der Berg** is Director of the Global Environmental Law Centre (GELC) and an Associate Professor in the Department of Public Law and Jurisprudence, Faculty of Law, University of the Western Cape. She has published on urban climate governance, transformative constitutionalism, and the intersection between human rights and environmental protection, with a particular emphasis on the Global South. She has also contributed to international climate law and policy processes, including serving as a National Rapporteur for the Sabin Center for Climate Change Law, and has advised governments and international organizations on climate governance and legal reform. Her work engages both doctrinal and practice-based approaches to climate law, with a focus on strengthening the capacity of legal systems to respond to the climate crisis, particularly in the African context.
14. **Dr. Benyam Dawit Mezmur** is a Professor of Law and Deputy Dean for Research and Post-Graduate Studies at the Law Faculty at the University of the Western Cape (UWC) with decades of experience contributing to the development of international legal protections for children. He is Coordinator of the Children's Rights Project at the Dullah Omar Institute for Constitutional Law, Governance, and Human Rights at UWC, and he has served on the United Nations Committee on the Rights of the Child since 2012 and was its Chairperson from 2015 to 2017. At the regional level, he served on the African Committee of Experts on the Rights and Welfare of the Child from 2010 to 2021, serving as Chairperson twice. In 2018, he was appointed by Pope Francis to the Pontifical Commission on the Protection of Minors.
15. **Tyler R. Giannini** is a Clinical Professor of Law at Harvard Law School and the founding director of its Human Rights Entrepreneurs Clinic, which was launched in 2023. Previously, Giannini was co-director of both the Human Rights Program and the International Human Rights Clinic at Harvard Law School, where he has been since 2004. His teaching, scholarship, and practice areas focus on climate change and human rights, business and human rights, accountability litigation as

well as community-centric approaches to human rights. Before coming to Harvard, Giannini spent a decade in Thailand as a co-founder and co-director of EarthRights International, an organization at the forefront of efforts to link human rights and environmental protection. At EarthRights, he was one of the architects of the landmark *Doe v. Unocal* case, a precedent-setting corporate accountability suit brought in U.S. court about human rights abuses surrounding the Yadana gas pipeline in Myanmar. Giannini has been involved in other seminal human rights litigation, including *Mamani, et al. v. Sánchez de Lozada* and the *In re South African Apartheid Litigation*. Giannini has authored numerous *amicus curiae* briefs, including to the U.S. Supreme Court in *Kiobel v. Royal Dutch Petroleum Co.*, *Jesner v. Arab Bank, Nestlé USA v. Doe*, *Cisco v. Doe, Samantar v. Yousuf*, and *Presbyterian Church of Sudan v. Talisman*.

16. **Dr. Idriss Fofana** is Assistant Professor of Law and Affiliate Assistant Professor of History at Harvard University. His scholarship on law and colonialism, intertemporal law, territorial disputes and the law of decolonization focuses on African and Asian perspectives on international law and its history. He is the co-editor of *International Legal Histories of Precolonial Africa* (OUP, forthcoming 2026). Dr. Fofana has previously participated in advocacy and litigation before the International Court of Justice, where he has also previously worked.