12 June 2026

Submission to the African Commission on Human and Peoples' Rights

Inputs on the Draft General Comments on Article 24 of the African Charter on Human and Peoples' Rights: Right to a Healthy Climate

Submitted by:

Salma Waheedi,[*] Angela Hefti,[**] and Abadir Ibrahim[***]

I. INTRODUCTION

1. This submission is respectfully provided in response to the African Commission on Human and Peoples' Rights' call for submissions on the draft General Comment on Article 24 of the African Charter on Human and Peoples' Rights. In line with the Commission's mandate under Article 45(1)(b) of the African Charter to formulate and elaborate principles and rules guiding the interpretation of human rights standards, this submission offers inputs for consideration in the General Comment on the protection and promotion of the right to a satisfactory environment in Africa, with particular focus on the relevance of climate stability to the scope and content of Article 24. It situates climate change as a key dimension of contemporary environmental harm bearing on the Commission's elaboration of the right to a satisfactory, clean, healthy, and sustainable environment, and advances analysis of climate stability as an essential component of the right protected under Article 24, including States' duties of mitigation, adaptation, prevention, and ensuring accountability for harms that undermine the conditions necessary for a healthy climate.

[*] Executive Director of the Program on Law and Society in the Muslim World and Lecturer on Law at Harvard Law School.

[**] Assistant Professor of Law at Florida International University College of Law.

[***] Associate Director of the Human Rights Program at Harvard Law School.

II. THE RIGHT TO A HEALTHY CLIMATE

2. 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 the conditions necessary to sustain such an environment.[1] 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 constitutional recognition across Africa of rights to a clean and healthy environment, Article 24 provides a textual basis for recognizing a right to a healthy climate on the basis that climate change constitutes a specific form of environmental harm.[2] International treaty and customary law further elaborate States' climate obligations, including positive duties of mitigation, adaptation, and prevention, which are reflected in the African human rights system's framework of duties to respect, protect, promote, and fulfill rights.
3. This submission recommends that the General Comment recognize that the right to a general satisfactory environment favorable to development encompasses the atmospheric and climatic systems whose stability is a precondition for the enjoyment of that right. This interpretation would give effect to Article 24's object and purpose in light of contemporary environmental conditions and relevant international law.
4. 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]

---

[1] Abadir M. Ibrahim & Angela Hefti, *Contributions of the African Human Rights System to International Climate Law*, 51 YALE J. INT'L L. 96, 110 (2026) [hereinafter Ibrahim & Hefti, Contributions of the African System].
[2] *Id.*, at 109-110.
[3] *See* 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], 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).

5. The climate crisis presents harms that are cumulative, transboundary, and intergenerational in nature. Recognition of the climatic dimension of Article 24 would enable the Commission to provide guidance on States' obligations regarding climate harm, diffuse emission sources, transboundary effects, and the unequal distribution of climate impacts and adaptive capacity. It would also strengthen the African human rights system's capacity to address one of the most significant threats to the realization of human rights on the continent. Such recognition would anchor African human rights law's engagement with climate change firmly within the Charter's existing text and structure, and its established emphasis on collective rights and intergenerational equity.
6. Among the duties requiring clarification is the affirmative duty of States to seek reparations for transboundary climate harm, which arises from combined reading of the obligation to protect against extraterritorial harm and the right to seek reparation for such harm. Recognizing this duty explicitly would clarify that it constitutes a positive obligation on States—not a mere discretionary prerogative—in fulfilling their responsibility to provide effective remedies to those under their protection.

A. International Legal Developments Supporting the Recognition of the Right to a Healthy Climate

7. 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.
8. 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.
9. 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. 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]

10. 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.[7] Many of the principles the Court draws on, such as no harm,[8] due diligence,[9] human rights integration[10] 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,[11] solidifying the recognition of the right to a healthy climate under international law.

B. Climate Rights in the African System

11. 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.[12] The African Charter is the only regional human rights treaty to explicitly guarantee the right of all peoples to "a general satisfactory environment favorable to their development"[13] under Article 24, which African institutions have interpreted to encompass protection of

[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] 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].
[8] *Id*. ¶¶ 275–276.
[9] *Id*. ¶¶ 233–236.
[10] *Id*. ¶¶ 541–547.
[11] *Id.*, ¶ 393.
[12] Ibrahim & Hefti, Contributions of the African System, at 109-116.
[13] African Charter, art. 24

the environment. Within this framework, extending protection from the environment to the climate is a straightforward interpretive step: the climate system is an integral component of the environment, and its stability underpins the ecological conditions necessary for the development and the enjoyment of Charter rights. Protecting a "satisfactory environment" therefore necessarily entails protecting the atmospheric and climatic systems that sustain it.

12. 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[14] capable of broader application.[15] The recognition of a right to a healthy climate follows as a clarification of Article 24's scope, particularly given the Charter's emphasis on collective rights and people's development and the inherently cumulative, transboundary, and intergenerational nature of climate harm. This interpretation is consistent with developments in international law, including recognition by international and regional bodies that climate protection forms part of, and gives content to, the right to a healthy climate. Recognizing this within the African system aligns the Charter with established legal developments, while remaining firmly anchored in its own text and structure.

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

13. 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 24[16] legally situates environmental protection expressly in a binding human rights treaty, and reinforces this protection across a range of regional and sub-regional treaties.[17] Taken together, this framework permits climate-related claims to be anchored directly on treaty-based

---

[14] Most notably in *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria,* Appl. No. 155/96 *Ogoni*, ¶ 51-52 (May 27, 2002) [hereinafter *Ogoni*].
[15] 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).
[16] 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*].
[17] Ibrahim & Hefti, Contributions of the African System, at 110.

environmental rights, without relying on derivative or implied protections such as through the rights to life or health.

14. 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,[18] 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.[19] 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.[20] The inclusion of environmental guarantees in these specialized treaties strengthens the normative and procedural foundations for climate-related claims before African human rights bodies.

15. 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.[21] Recognizing climate protection as inherent in the right to a healthy 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

16. 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

---

[18] 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.

[19] *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).

[20] 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].

[21] Ibrahim & Hefti, Contributions of the African System, at 110.

interdependence with the full range of rights enshrined in the African Charter, many of which are directly threatened by climate change and related harms.

17. 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 Charter-protected rights.
18. 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 and climate disasters.[22]
19. 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.
20. The Commission has 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.[23]
21. 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 operationalized through the well-established typology of State duties under Article 24.
22. We urge the Commission to use this General Comment 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 would crystallize and consolidate its normative content, giving doctrinal precision to what States must respect, protect, promote, and fulfill in the context of climate harm. 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 international bodies can match, positioning this General

[22] 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].
[23] *Soc. & Econ. Rights Action Ctr. v. Nigeria*, Communication No. 155/96, African Commission on Human and Peoples' Rights, ¶ 44 (Oct. 27, 2001).

Comment to make an authoritative contribution to the development of regional and global norms at the intersection of human rights, environmental, and climate law.

3. State Obligations Under the Right to a Healthy Climate

a. Duty to Respect

23. The duty to *respect* obliges States to refrain from conduct that directly interferes with the enjoyment of climate-related rights, including conduct through which a State's own actions and/or omissions become 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. 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.

25. 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.

26. 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]

---

[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] Ibrahim & Hefti, Contributions of the African System, at 112. *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.

[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] Ibrahim & Hefti, Contributions of the African System, at 112. *Ogoni*, ¶ 45.

[28] *Ogoni*, ¶ 53.

b. Duty to Protect

i. Prevention, Mitigation, and Adaptation

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

ii. Protection from Future Climate Risks (Foreseeability)

28. 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.[30]
29. Unlike the European system, which is limited by an *imminence* standard in climate-related cases,[31] the African system applies *foreseeability* as the principal standard in other contexts.[32] 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.[33]
30. Foreseeability may be established through existing climate impacts, scientific knowledge including attribution science, and States' ratifications of international climate agreements.

[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*].
[30] Ibrahim & Hefti, Contributions of the African System, at 113.
[31] *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) .
[32] *Equality Now and Ethiopian Women Lawyers Association v. Federal Republic of Ethiopia*, African Commission, Communication No. 341/2007, 25 Feb. 2016, ¶ 131.
[33] Angela Hefti, *An Ecofeminist Approach to Climate Risks*, 46 MICH J. INT'L L. 363 (2025).

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.[34] Such heightened due diligence obligations combined with a foreseeability standard is particularly pertinent in the climate litigation context, where claimants must link climate effects and human rights violations.

31. 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.

iii. Regulatory Action

32. The preventative dimension of protection necessarily includes regulatory action. The duty to protect includes an obligation to enact and enforce climate-related laws.[35] Such regulation must address the diffuse nature of climate harm contributors, encompassing State conduct, private or individual actors, transnational corporate activity in Africa.

33. 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.[36]" 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."[37]

---

[34] Ibrahim & Hefti, Contributions of the African System, at 113, referring to the 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).

[35] *Ogoni* ¶ 64.

[36] *See* African Development Bank, Africa NDC Hub, https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/africa-ndc-hub.

[37] *SERAP v. Nigeria*, ¶ 105.

iv. Precautionary Principle and Impact Assessments

34. Preventative protection also requires anticipatory governance. States are obliged, as part of their duty to protect, to conduct, or require, climate impact and risk assessments for private and public projects and investments.[38] 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.[39] Th African Court has acknowledged the precautionary principle in *Ligue Ivorienne*.[40]

35. In considering the specific contents of the requirements that climate impact assessments must meet, the Commission 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.[41] Such approaches are particularly relevant where the Commission 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.[42]

v. Provision of Effective Remedies

36. When harm to individuals' and peoples' rights has occurred, States have a duty to provide effective remedies.[43] The African Court has affirmed, in *Ligue Ivorienne,* that State had a duty "to ensure full and effective decontamination once the waste had been dumped."[44]

---

[38] Ibrahim & Hefti, Contributions of the African System, at 113-114. For environmental impact studies, *see Ogoni*, ¶ 53. *See also* ICJ Climate Advisory Opinion, ¶ 298.
[39] Angela Hefti, *An Ecofeminist Approach to Climate Risks* 46 MICH. J. INT. LAW 363, 395–397 (2025).
[40] African Court, *Ligue Ivorienne*, ¶¶ 35, 181.
[41] *See generally* Nora Götzmann et al. eds., Handbook on Human Rights Impact Assessment: Principles, Methods and Approaches (Edward Elgar Publ'g 2020).
[42] The UN Special Rapporteur on the human right to a clean, healthy and sustainable environment has similarly called for existing impact assessment frameworks to evolve beyond project-level approaches to comprehensively evaluate cumulative environmental, climate, biodiversity, and human rights impacts. *See* Special Rapporteur on the Human Right to a Clean, Healthy and Sustainable Environment, *Framework for Environmental, Social and Human Rights Impact Assessments and the Right to a Clean, Healthy and Sustainable Environment*, U.N. Doc. A/80/187 (2025).
[43] *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).
[44] African Court, *Ligue Ivorienne*, ¶ 183.

37. Likewise, regional courts have further clarified that preventative environmental legislation should include "effective reparation of the environmental damage,"[45] and that a failure to "seriously and diligently" hold polluters accountable violates States' obligations under the right to a healthy environment.[46] 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.[47]
38. Accordingly, the duty of States to provide remedies must include reparations, such as the recovery of damages from corporate actors responsible for climate harms. The remedies that States provide must pay 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

39. Finally, the Charter requires not only restraint and protection, but proactive realization. The duties to *promote* and *fulfill* the right to a healthy climate[48] require States to take positive measures to advance climate protection. These measures include *inter alia* promoting conservation, improving environmental and industrial hygiene,[49] raising awareness about climate change through education and research, and building infrastructures that enhance resilience.[50]
40. 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.[51]
41. Under the African Children's Charter, States are likewise obliged to promote formal and community-based environmental and climate education.[52] The right to access environmental and climate information entails obligations of proactive creation,

---

[45] *SERAP v. Nigeria*, ¶ 105.
[46] *SERAP v. Nigeria*, ¶ 110; ECOWAS Court, *Adou Kouma, Village Chief of Similimi et al. v. Ivory Coast*, 30 Nov. 2023, ¶ 223.
[47] ECOWAS Court, *Adou Kouma, Village Chief of Similimi et al. v. Ivory Coast*, 30 Nov. 2023, ¶ 225.
[48] *See Ogoni*, ¶ 46.
[49] *Id.*, ¶ 52.
[50] *Id.*, ¶ 47.
[51] Ibrahim & Hefti, Contributions of the African System, at 115. Maputo Protocol, art. 18.
[52] African Children's Charter, arts. 11 (2) (g) and 14 (2) (h).

collection, maintenance, and disclosure of relevant information, including by private actors where appropriate.[53]

42. Moreover, Free, Prior, and Informed Consent**,** has been given a treaty basis,[54] 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."[55] The requirement of "consent" by Indigenous communities in decisions affecting them is well ingrained in African human rights jurisprudence.[56]

C. State Obligations for Extraterritorial Harms

43. 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 harm arising from activities outside their territorial jurisdiction.[57] This obligation persists even where a 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 exercise effective control over territory from which harm emanates.
44. 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.[58] The IACtHR, repeating the operative precept in the Commission's decision in *Congo v. Burundi et al*.,[59] reaffirmed that human rights treaties

[53] *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.
[54] 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.
[55] *Ogoni*, ¶ 53.
[56] For a discussion on the definition of consent, *see infra* Section II.D.
[57] 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).
[58] ICJ Climate Advisory Opinion, ¶¶ 449–54.
[59] 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).

may operate extraterritorially where a State exercises jurisdiction beyond its borders.[60] 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.[61]

45. 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,[62] 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 well established, the General Comment presents an opportunity for the Commission to make an authoritative pronouncement on specific obligations of States parties to the Charter to protect individuals and peoples within their jurisdiction from transboundary climate harm caused by activities taking place in the territory of or under the effective control of States not party to the African Charter.

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

[60] *Id.*, ¶¶ 394–397.
[61] *Id.*, ¶ 404.
[62] 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.
[63] *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).

47. Finally, the duty to seek just and adequate reparations extends not only to reparations from emission-producing States, but also to fossil-fuel producing States and those that subsidize or license fossil fuel extraction. As the ICJ has recognized, attribution for climate harm is not limited to the point of emission of greenhouse gases, and encompasses the entire chain of "fuel production, fossil fuel consumption, the granting of fossil fuel exploration licenses and the provision of fossil fuel subsidies."[64]

III. CONCLUSION

48. For the aforementioned reasons, we respectfully ask the Commission to expressly affirm that the right to a healthy environment guaranteed in Article 24 of the African Charter encompasses the right to a healthy climate, and to accordingly delineate the scope of States' obligations to respond to transboundary and widespread climate harm as involving duties to respect, protect, promote, and fulfill the right to a healthy climate — including obligations to protect those within their jurisdiction from extraterritorially originating harm, to seek just and adequate reparations from disproportionate emitters and fossil fuel-producing States, and to ensure that impact assessment frameworks are adequate to the cumulative, transboundary, and long-term nature of climate risk. Such a General Comment would make a distinctive and authoritative contribution to the development of regional and global norms at the intersection of human rights and climate law, and would reaffirm the African human rights system's foundational commitment to the rights of peoples, intergenerational equity, and climate justice.

[64] ICJ Climate Advisory Opinion, ¶ 427.

Appendix I: Authors' Biographies

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 and United Nations human rights mechanisms and treaty bodies. She also 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 of the Middle East Initiative at the Harvard Kennedy School. She previously held positions at the United African Organization in Chicago, Better World Foundation in Cairo, Egypt, Harvard Law School's International Human Rights Clinic, Yale Law School's Transnational Development Clinic, and the Economic Development Board in Bahrain. At Harvard, she leads research and advocacy projects on human rights and state responsibility, constitutional design, climate justice, prisoners' rights, labor rights, and gender justice.

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.

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.