

INTERNATIONAL COURT OF JUSTICE

**OBLIGATIONS OF STATES  
IN RESPECT OF CLIMATE CHANGE**

**AMICUS CURIAE BRIEF**

PRESENTED BY

**GREEN RIGHTS COALITION**

*ON BEHALF OF THE WORLD'S YOUTH*

*Relating to the United Nations General Assembly's request for an  
advisory opinion from the Court (Resolution 77/276 of 29 March  
2023)*

**PARIS, 1<sup>st</sup> AUGUST 2024**

*This document is a translation from the French original version of this Amicus curiae brief. In the case of any consistency between the French and English versions, the Green Rights Coalition relies on the original French version.*

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## SUMMARY

In response to the request for an advisory opinion from the United Nations General Assembly (UNGA) on States' climate obligations, pursuant to resolution 77/276 of 29 March 2023, the Green Rights Coalition submits to the International Court of Justice an *amicus curiae* brief. This brief, supported and co-signed by around a hundred young volunteers and ambassadors of the Green Rights Coalition, is presented on behalf of the world's youth.

The purpose of this brief is to invite the Court to recognise the existence and value in customary international law of human rights in environmental matters and to emphasise their crucial role in defining the climate-related obligations of States and those States' responsibility in the event of a breach of those obligations.

To put it another way, the identification of the climate obligations incumbent on States stems in particular from the recognition of the environmental rights of individuals and groups. This link between rights and duties is well illustrated by the European Court of Human Rights' judgment of 9 April 2024<sup>1</sup>, in which the Court enshrines a right to effective protection of citizens by States against the adverse effects of climate change – a perfect illustration of a right of individuals that forms the basis of States' climate obligations.

### **I. The progressive recognition of the value of environmental human rights in international law**

#### **A. Essential rights: rights of future generations and the right to a healthy environment**

##### **1. Rights of future generations and the principle of intergenerational equity**

- The principle of intergenerational equity, which implies the obligation to respect the rights of future generations, has a well-established value under treaty law. It is mentioned in the preamble to several international treaties, such as the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement.
- Although its customary value has yet to be established, several major international declaratory instruments, as well as regional and national texts, recognise the importance of protecting future generations. At the regional level, the Inter-American Court of Human Rights, in the recent decision *La Oroya v. Peru*<sup>2</sup>, for example, applied the principle of intergenerational equity, stating that States must fulfil their obligations to protect the environment by taking into account the effects of environmental damage on present and future generations. Some judges of the International Court of Justice have also issued opinions in favour of this recognition, thus reinforcing the customary value of the right of future generations and the principle of intergenerational equity.

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<sup>1</sup> ECHR, *Verein Klimaseniorinnen Schweiz v. Switzerland*, no. 53600/20, 9 April 2024.

<sup>2</sup> IACHR, 27 November 2023, *Habitantes de la Oroya v. Peru*, Merits, Reparations and Costs, Series C, no. 511, § 243.

## 2. The right to a healthy environment

- The right to a healthy environment, which has developed gradually since the 1970s, is now recognised in several international, sector-specific and regional conventions. Regional and international case law, in particular that of the African, Inter-American and European Courts of Human Rights, has made a major contribution to the affirmation of this right, interpreting it as an integral part of the rights to private and family life and to well-being. For example, since the *Lopez Ostra v. Spain* case of 9 December 1994, the European Court of Human Rights has held that<sup>3</sup> that the right to private and family life protected by Article 8 of the Convention includes a right to be protected against serious harm to the environment because such harm may "affect an individual's well-being and prevent them from enjoying their homes in such a way as to affect their private and family life".
- The value under customary law of the right to a healthy environment must be recognised. It is accepted as general practice and binding in the vast majority of States. It is recognised in the legal systems of 155 States, including more than 100 States at constitutional level. The 1972 Stockholm Declaration, the Rio Declaration and the Johannesburg Declaration all mention it. Finally, the United Nations General Assembly resolution of 22 July 2022 has formalised this recognition, considering this right to be an integral part of human rights.
- The right to a healthy environment must naturally be applied to the field of climate-related matters. The result is a right to a stable climate and to effective protection against the adverse effects of climate change.

## B. Other environmental rights

### 1. Substantive rights

- The right to clean air, recognised at the national level in many countries and at the regional level in some regions, is linked to air quality, which can be degraded by pollutants such as greenhouse gases.
- The right to drinking water is recognised internationally by the United Nations General Assembly and the United Nations Committee on Economic, Social and Cultural Rights, and regionally by several courts. It is linked to climate change, which is exacerbating problems of access to drinking water, particularly as a result of the retreat of glaciers, reduction in snow cover and extreme weather conditions.
- Finally, the right to healthy food, recognised internationally and regionally, is linked to climate change through its threat to agri-food systems.

### 2. Procedural rights

- Three procedural rights are essential in environmental matters: the right of access to environmental information, the right to participate in the environmental decision-making process and the right of access to justice in environmental matters.
- These rights are enshrined in numerous international instruments, such as the Aarhus Convention in Europe and the Escazú Agreement in Latin America and the Caribbean. Access to climate information is also mentioned in the United Nations Framework Convention on Climate Change and the Paris Agreement.

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<sup>3</sup> ECHR, 9 December 1994, *López Ostra v. Spain*, no. 16798/90.

- These rights ensure that citizens can access information, participate in decisions affecting the environment, and seek legal redress to protect their environmental rights in the face of climate change.

## **II. The consequences of the recognition of environmental human rights for the climate obligations and responsibilities of States**

### **A. The effects of environmental rights in identifying the climate obligations of States**

- Although environmental treaty law constitutes a major body of law for climate-related advances, it is nevertheless insufficient in terms of identifying the climate-related obligations of States.
- This brief invites the Court to turn to a complementary basis: environmental rights.

#### **1. Environmental rights as the basis for a broader interpretation of traditional customary law principles**

- Environmental rights serve as a tool for interpreting customary law principles in international law.
- They make it possible to specify the substantive obligations of States resulting from the principle of prevention. For example, the right of future generations and the principle of intergenerational equity require States to prevent significant damage that activities would cause not only to present generations but also to future generations.
- Similarly, the procedural obligations of States must be interpreted in light of environmental rights. For example, under the principles of cooperation and prevention, States are obligated to carry out an environmental assessment when a project is likely to have transboundary impacts. However, taking into account the environmental rights of individuals under a State's jurisdiction should lead to this obligation being extended to all projects, including with respect to any internal impacts from those projects.

#### **2. Environmental rights as a source of obligations for States**

- Environmental rights also give rise to obligations on the part of States. For example, the United Nations General Assembly resolution on the right to a healthy environment, after recognising this right, commits States to "*fulfil their human rights obligations and commitments [...], on the implementation of the right to a clean, healthy and sustainable environment*"<sup>4</sup>.
- In his 2019 report A/74/161, the Special Rapporteur on human rights and the environment lists a series of obligations that States are required to respect on the basis of the 2018 Framework Principles on Human Rights and the Environment.
- These obligations include procedural obligations, such as the obligation to ensure the procedural rights of citizens and the obligation to carry out, or have carried out, an environmental assessment prior to any policy or project relating to climate change.

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<sup>4</sup> ICJ, *Certain Activities of Nicaragua in the Border Region (Costa Rica v. Nicaragua)*, 2 February 2018, 2018 I.C.J., Reports 15.

- International human rights law also imposes substantive obligations on States, such as the duty to adopt national measures against climate change, the obligation to ensure equity and non-discrimination in the conduct of climate-related policies and the obligation to regulate and control the behaviour of third parties.

## **B. The effects of environmental rights in determining the responsibilities of States in climate-related matters**

### **1. State responsibility at the international level**

- State liability for climate damage results from the application of the usual principles of international law. Implementation of this responsibility is therefore the responsibility of the States that have suffered the damage. In particular, the Court recognised the reparable nature of ecological damage in the case *Certain Activities Carried Out by Nicaragua in the Border Region (Costa Rica v. Nicaragua)*<sup>5</sup>, with general international law permitting reparations for environmental damage caused by unlawful acts, in addition to economic harm.
- In this respect, a distinction is made between "injured States", which suffer direct damage, and "interested States", which act to protect a collective interest. However, emission reduction obligations are *erga omnes* obligations, in the sense that they are not considered to be owed individually to a particular State.

### **2. State responsibility before domestic courts**

- Individuals must have a means of recourse to assert their environmental human rights and, consequently, to ensure that governments comply with their resulting obligations. This is the logical outcome of recognising these rights as one of the foundations of governments' duty to act on climate change.
- Since individuals cannot normally bring cases directly before international courts, it is logical to ensure that they have the possibility of holding States responsible before domestic courts.
- Such a statement is in line with practice relating to international human rights standards: after affirming rights in favour of individuals, they frequently establish the principle of individuals' right of recourse under domestic law to protect those rights.
- Each national court must therefore be the guarantor of States' compliance with their international obligations towards individuals. With this in mind, in its *Klimaseniorinnen* judgment, the European Court of Human Rights "*considers it essential to emphasise the key role which domestic courts have played and will play in climate-change litigation*"<sup>6</sup>.
- As a result, the Court could establish that individuals, including representatives of future generations, have the right to challenge States' failure to meet their climate obligations before national courts, with a view to guaranteeing the effectiveness of these rights.

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<sup>5</sup> ICJ, *Certain Activities of Nicaragua in the Border Region (Costa Rica v. Nicaragua)*, 2 February 2018, 2018 I.C.J. Reports 15.

<sup>6</sup> ECHR, *Verein Klimaseniorinnen Schweiz v. Switzerland*, no. 53600/20, 9 April 2024 at [639].

## INTRODUCTION

1. As was emphasised by Vanuatu, "*the UN's International Court of Justice is the only principal organ of the UN system that has not yet been given an opportunity to help address the climate crisis*"<sup>7</sup>. However, on 29 March 2023, the United Nations General Assembly adopted a resolution referring two questions relating to States' climate obligations to the Court. This initiative offers the Court a historic opportunity to provide clear legal guidance to States and civil society, and thus to play a crucial role in responding to this global crisis.
2. The Green Rights Coalition is a non-governmental organization accredited to the United Nations Environment Program. Formerly known as the Global Pact Coalition, its initial mission was to support the proposed Global Pact for the Environment<sup>8</sup>. Its broader objective is now the promotion of human rights relating to the environment<sup>9</sup>.
3. In this *amicus curiae* brief, the Green Rights Coalition respectfully invites the International Court of Justice to recognise the customary status of human rights relating to the protection of the climate. This would enable, on the one hand, a **major foundation for the climate obligations** incumbent on States and, on the other hand, the possibility for the beneficiaries of those rights, when they are victims of breaches of these obligations, to engage **State responsibility**, not only in certain international jurisdictions<sup>10</sup>, but also in domestic jurisdictions.
4. This brief is presented **on behalf of the world's youth** in two respects: first, in terms of substance, it is predominantly based on the recognition of the principle of intergenerational equity; secondly, in terms of formalities, it is endorsed by many young ambassadors of the Green Rights Coalition, an initial list of whom can be found in **Appendix I**. It was drafted by an editorial committee of the Green Rights Coalition, whose members are listed in **Appendix II**.
5. As a preliminary point, the Green Rights Coalition emphasizes:
  - first, the link between the climate crisis and human rights;
  - second, the link between human rights and governments' climate obligations.
6. **First and foremost**, the link **between the climate crisis and human rights** is now self-evident. To that effect, the documentary bundle attached to the request for an advisory opinion on States' climate obligations includes an entire section devoted

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<sup>7</sup>Vanuatu, "Publishing an Advisory Opinion on Climate Change from the International Court of Justice", [vanuatuicj.com](https://vanuatuicj.com)

<sup>8</sup> On the draft Global Pact for the Environment, see UNGA, Resolution 72/277, Towards a Global Pact for the Environment, May 10, 2018. See also the Pact website: <https://globalpactenvironment.org>.

<sup>9</sup> For more information, see the Green Rights Coalition website: <https://www.greenrightscoalition.org>.

<sup>10</sup> This is the case in certain regional human rights jurisdictions offering individual rights of appeal.



exclusively to the theme of "**human rights and climate change**", including many sources<sup>11</sup>. Similarly, in 2018 Special Rapporteur John H. Knox published a report on "**Framework Principles on Human Rights and the Environment**"<sup>12</sup>. As the United Nations High Commissioner for Human Rights noted in 2021 at the 48<sup>th</sup> session of the Human Rights Council: "[t]he interlinked crises of pollution, climate change and biodiversity... will constitute the single greatest challenge to human rights in our era".<sup>13</sup> Once again this year, droughts have followed floods, and extreme climatic events have become recurrent. According to the United Nations, the earth's temperature is set to rise by 2.5°C by 2100, and beyond an increase of 1.5°C, the risks of natural disasters, fires, mass migrations and conflicts will increase significantly. In a joint statement, numerous committees of international human rights instruments note "*with great concern that States' current commitments under the Paris Agreement are insufficient to limit global warming to 1.5°C above pre-industrial levels, and that many States are not on track to meet their commitments. Consequently, States are exposing their populations and future generations to the significant threats to human rights associated with higher temperatures increases*"<sup>14</sup>. The triple global crisis has become a reality, affecting first and foremost the rights of the most vulnerable, and in particular the rights of young people.

7. **Secondly**, the link between human rights and the climate obligations of States is at the heart of this *amicus curiae* brief. Indeed, most environmental rights have a specific characteristic: their realization requires positive intervention by the State. They fall into the legal category of "claim-rights", in the sense that they imply a **duty of action on the** part of the public authority to realize them. Like all claims, they concern two people: on the one hand, **the creditor**, the beneficiary of the right, and on the other, **the debtor** of the obligation, in particular the State, on whom the duty to act rests. To put it another way, recognizing the environmental rights of individuals or groups also means recognizing the obligations of States to protect these environmental rights. This **link between the rights of individuals and the duties of States**<sup>15</sup> is illustrated by the ruling of the European Court of Human Rights (ECHR)

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<sup>11</sup> Documents attached pursuant to Article 65 of the Statute of the International Court of Justice, Part VIII, documents no. 257 to 339.

<sup>12</sup> These framework principles on human rights and the environment are annexed to the report A/HRC/37/59 by the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

<sup>13</sup> Statement by Michelle Bachelet, United Nations High Commissioner for Human Rights, "Environmental crisis: High Commissioner calls for leadership by Human Rights Council member States", September 13, 2021 (48th session of the Human Rights Council).

<sup>14</sup> Joint statement by the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, HRI/2019/1 (footnotes omitted).

<sup>15</sup> On this link between the rights of individuals and the duties of States, see the report by the Club des juristes, a French think tank, "Reinforcer l'efficacité du droit international de l'environnement : devoirs des États, droit des individus", 2015 (<https://think-tank.leclubdesjuristes.com/rapport-renforcer-lefficacite-du-droit-international-de-l'environnement-devoirs-des-etats-droits-des-individus/>).

of April 9, 2024, which enshrines a **right to effective protection** of people by States against the adverse effects of climate change<sup>16</sup> - a perfect illustration of a **right that forms the basis of States' climate obligations**.

8. In this brief, the Green Rights Coalition calls on the International Court of Justice to recognize that **States' climate obligations are based in part in the duty to respect environmental human rights**.
9. First, the brief addresses the progressively increasing international recognition of **environmental human rights (I)**. Second, it examines the consequences of this increasing recognition for States' **obligations and responsibilities** in climate matters **(II)**.

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<sup>16</sup> ECHR, *Verein Klimaseniorinnen Schweiz v. Switzerland*, no. 53600/20, April 9, 2024.

## **I. The progressive recognition of the value of environmental human rights in international law**

10. It is true that international recognition of environmental human rights is in progress and still underway. To date, there is still no international convention bringing together each of these fundamental rights in a single text, which would be to environmental rights what the two International Covenants of 1966 are to civil and political rights and economic, social and cultural rights, respectively. Indeed, such was the purpose of the proposed **Global Pact for the Environment**, negotiations on which were opened by a resolution of the United Nations General Assembly on 10 May 2018<sup>17</sup>. However, environmental rights are inherent to certain human rights that have already been enshrined. Some examples include, in the case of the *International Covenant on Economic, Social and Cultural Rights*, Article 11 on the right to an adequate standard of living and Article 12 on the right to the enjoyment of the highest attainable standard of physical and mental health<sup>18</sup> or, in the case of the *International Covenant on Civil and Political Rights*, Article 6 on the right to life and Article 27 on the right of minorities. Moreover, environmental rights have been progressively and strongly recognized, notably by regional or sector-specific conventions<sup>19</sup>, so that their value is now well established in international law. Thus, the right to a healthy environment, as recognized by the United Nations General Assembly and the Human Rights Council<sup>20</sup>, is clearly a human right.
11. Among environmental human rights, particular attention will first be paid to two fundamental rights that can be described as "*essential rights*": the right of future generations and the right to a healthy environment **(A)**. We will then mention a number of other environmental rights derived from them **(B)**.

### **A. Essential rights: rights of future generations and the right to a healthy environment**

12. These essential rights are, on the one hand, the right of future generations and the principle of intergenerational equity **(1)**, anchored in several jurisprudential precedents, and on the other hand, the right to a healthy environment **(2)**, whose

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<sup>17</sup> UNGA, Resolution 72/277, Towards a Global Pact for the Environment, May 10, 2018.

<sup>18</sup> Corresponding respectively to articles 3 and 25 of the Universal Declaration of Human Rights of December 10, 1948.

<sup>19</sup> Among these conventions, which will be examined below, we might mention the following texts: European Convention on Human Rights, Articles 2 and 8; American Convention on Human Rights, Article 26; African Charter on Human and Peoples' Rights, Articles 16 and 24; Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters; Escazú Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean.

<sup>20</sup> UNGA, resolution 76/300 of July 28, 2022; Human Rights Council, resolution 48/13 of October 8, 2021.

recognition at the international level has significantly been affirmed by resolutions of the Human Rights Council and the General Assembly of the United Nations.

## 1. The rights of future generations and the principle of intergenerational equity

13. The principle of intergenerational equity, which implies the obligation to respect the right of future generations, has a well-established value under international treaty law (a) and a value under customary law that must be recognized (b).

### *a) A well-established value under treaty law*

14. Numerous conventions mention future generations **in their preamble**, in order to enshrine the action of States under the relevant convention, and with the aim of preserving the environment for the benefit of future generations<sup>21</sup>. This is particularly true of **the United Nations Framework Convention on Climate Change**<sup>22</sup> and **the Paris Agreement**<sup>23</sup>. While it is well established in international law that the preambles to conventions do not in themselves have normative scope, they do have interpretative significance<sup>24</sup>.
15. **The provisions of** international environmental protection conventions do not lack reference to future generations. This is the case of UNESCO's World Heritage Convention, which makes the obligations it imposes on States a duty to future generations<sup>25</sup>. The same applies to the Convention on Biological Diversity in its definition of "*sustainable use*", which is "*the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations*"<sup>26</sup>. Last but not least, Article 3 of the United Nations Framework Convention on Climate Change states that "*[t]he Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof*".

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<sup>21</sup> 1946 Convention for the Regulation of Whaling, 1979 Convention on the Conservation of Migratory Species of Wild Animals (CMS), 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the 1994 United Nations Convention to Combat Desertification (UNCCD).

<sup>22</sup> UNFCCC, preamble, paragraph 24, "*determined to preserve the climate system for present and future generations*".

<sup>23</sup> Paris Agreement, preamble, paragraph 12, "*mindful that climate change is a matter of concern to all humankind and that, in addressing climate change, the Parties should respect, promote and take into account their respective obligations regarding (...) intergenerational equity*".

<sup>24</sup> Vienna Convention on the Law of Treaties 1969, article 31 §2.

<sup>25</sup> UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage 1972, article 4.

<sup>26</sup> 1992 Convention on Biological Diversity, article 2.

*b) A value to be recognized under customary law*

16. The existence of a customary norm must be demonstrated by a general practice (material element) accepted as law (psychological element). Proof of each of these two elements is demonstrated, for the principle of intergenerational equity, by acts adopted by the States under international and domestic law, which should lead the Court to recognize it as having customary value, a view expressed by several judges within your jurisdiction.
17. **International instruments.** The major declaratory texts adopted in international environmental law refer to the interests of future generations or to the intergenerational principle<sup>27</sup>, generally anchoring those concepts in the principle of sustainable development, according to which the needs of present generations must be met without compromising those of future generations<sup>28</sup>. Several texts affirm more explicitly the responsibility of present generations to preserve the environment for the needs of future generations<sup>29</sup>. These interests and responsibilities are also mentioned in the Millennium Development Goals and their successor Sustainable Development Goals<sup>30</sup>. In the more specific field of combating climate change, various resolutions adopted by the United Nations General Assembly since 1988 focus on "**protection of global climate for present and future generations of mankind**"<sup>31</sup>, revealing the intrinsic link between preserving the climate system and intergenerational equity. In 2021, in its resolution on "Policies and programmes involving youth", the United Nations General Assembly paid particular attention to **the role of young people in climate action**, recognising the importance of "*foster[ing] intergenerational equity*"<sup>32</sup>. Among texts adopted in recent years, the Assembly has described climate change as one of the "*most pressing and serious threats to the ability of present and future generations to effectively enjoy all human rights*"<sup>33</sup>. What's more, it has included the activity of "*promoting the protection of the global climate for the well-being of present and future generations of humankind*"<sup>34</sup> among the activities to be

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<sup>27</sup> Stockholm Declaration, 1972, preamble, principles 1 and 2.

<sup>28</sup> Rio Declaration on Environment and Development, 1992, principle 3; Rio Forest Principles, 1992, principle 2 (b); Johannesburg Declaration on Sustainable Development, 2002, §37; Rio +20 Declaration: The Future We Want, 2012, §86.

<sup>29</sup> UNGA, Resolution 35/8 on the historical responsibility of States for the preservation of nature for present and future generations, adopted on October 30, 1980, §1; UNESCO, Declaration on the Responsibilities of the Present Generations Towards Future Generations, 1997; art. 1, UNGA, Resolution 76/300 of July 28, 2022 on the right to a clean, healthy and sustainable environment.

<sup>30</sup> UNGA, Resolution 55/2 on the Millennium Declaration, §2 and 6; UNGA, Resolution 70/1 on the 2030 Agenda for Sustainable Development, September 25, 2015, preamble and §18.

<sup>31</sup> UNGA, Resolution 43/53 of December 6, 1988 on the protection of global climate for present and future generations, 26 July 2022.

<sup>32</sup> UNGA, Resolution 76/137 on policies and programs involving youth, December 16, 2021.

<sup>33</sup> UNGA, Resolution A/76/L.75 on The human right to a clean, healthy and sustainable environment.

<sup>34</sup> UNGA, Resolution A/72/219 on Protection of global climate for present and future generations of humankind.

carried out under the Charter of the United Nations. Finally, there is a growing body of case law on intergenerational equity and justice<sup>35</sup>.

18. **Regional and national legislation.** Since 1990, intergenerational equity and the needs of future generations have been explicitly taken into account in various legislative and executive acts throughout the world<sup>36</sup>. Moreover, intergenerational equity is now enshrined at the **highest level of the hierarchy of standards**. At the regional level, the Inter-American Court of Human Rights (IACHR), in the recent decision *La Oroya v. Peru*, applied the principle of intergenerational equity, stating that States must fulfill their obligations to protect the environment by taking into consideration the effects that environmental damage has on present and future generations. The Court considers this obligation to be of particular importance in relation to children, as it is they who may be most affected by the present and future consequences of environmental damage<sup>37</sup>. Some constitutions simply state that choices made to satisfy present needs must not compromise those of future generations<sup>38</sup>, or the government's duty to preserve the environment for present and future generations<sup>39</sup>. But several constitutions go further, recognizing the right of present and future generations to a healthy environment<sup>40</sup>. National courts have deduced specific obligations from the principle of intergenerational equity, such as the government's responsibility to guarantee access to clean water by building a sewage system<sup>41</sup>, the right to a healthy ecology<sup>42</sup>, certain environmental impact assessment requirements<sup>43</sup> or an annual mining excavation limit<sup>44</sup>.
19. **Voices in favor of recognition within the Court.** As long ago as 1996, in its opinion on the legality of the use of nuclear weapons, the International Court of Justice affirmed that "*the environment is not an abstractio, but represents the living space, the quality of life and the very health of human beings, including generations unborn*"<sup>45</sup> and that in assessing the applicable law it was essential to account for the capacity of those weapons to cause damage to future generations. In the *Gabcikovo-Nagymaros* case, the Court noted that new norms and standards had been developed

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<sup>35</sup> Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, July 28, 2023, A/78/255.

<sup>36</sup> Brazilian laws n°12.305; n°9.985/2000; n°12.187; and sometimes directly linked to the purpose of these acts (New Zealand Resource Management Act 1991 s.5; Australian Environment Protection and Biodiversity Conservation Act s. 3A; French Code de l'environnement, art. L.110-1 II, Canadian National Marine Conservation Areas Act, art. 4§3).

<sup>37</sup> IACHR, November 27, 2023, *Habitantes de la Oroya v. Peru*, Merits, Reparations and Costs, Series C, no. 511, § 243.

<sup>38</sup> Charter of the Environment, part of the French Constitution.

<sup>39</sup> Brazilian Constitution, art. 225.

<sup>40</sup> Bolivian Constitution, art. 7; Norwegian Constitution, art. 110 b); Japanese Constitution, arts. 11 and 97; South African Constitution, art. 24.

<sup>41</sup> High Court of Kenya, *Mr Peter Waweru v. Republic of Kenya*, 2006, §48.

<sup>42</sup> Supreme Court of the Philippines, July 30 1993, *Minors Oposa*.

<sup>43</sup> Land and Environment Court of New South Wales, *Gray v. The Minister of Planning and Others*, 2006, §126.

<sup>44</sup> Supreme Court of India, *Goa Foundation v. Union of India & Others*, 2013, §71.

<sup>45</sup> ICJ, July 8, 1996, *Legality of the Threat or Use of Nuclear Weapons*, §29.

in international environmental law as a result of a growing awareness of risks for present and future generations. On all these occasions, however, the Court has refrained from recognizing the principle of intergenerational equity as having customary value, although it has not ruled it out. On numerous occasions, certain judges have expressed their opposition on this point. First, Judge Weeramantry, who in 1993, in his dissenting opinion in the case concerning the legality of the threat or use of nuclear weapons, stated that **the rights of future generations** "*have woven themselves into international law through major treaties, through juristic opinion and through general principles of law recognized by civilized nations*"<sup>46</sup>. What's more, Judge Cançado Trindade paid particular attention to the principle of intergenerational equity in his dissenting opinions, regarding it as a **general principle of international environmental law**<sup>47</sup> and asserting that the Court should have used it for interpretation<sup>48</sup> and to define ongoing monitoring and control obligations<sup>49</sup>.

## 2. The right to a healthy environment

20. The right to a healthy environment, like the principle of intergenerational equity, has a widely-established value under treaty law **(a)** and a value under customary law yet to be affirmed **(b)**. Given its broad scope, the right naturally applies to climate-related matters, through the right to a liveable climate **(c)**.

### *a) A widely-established value under treaty law*

21. The right to a healthy environment has been developing progressively since the 1970s, in national and international texts. Since then, this right has been increasingly recognized in regional treaties and in the case law of regional and international courts.
22. **The right is enshrined in numerous regional and sector-specific treaties.** As early as 1981, article 24 of the African Charter on Human and Peoples' Rights enshrined the right of peoples to "*a general satisfactory environment favorable to their development*". Article 38 of the Arab Charter of Human Rights protects every person's right "*to a healthy environment*". Within the inter-American system, it is Article 11 of the Protocol of San Salvador, on the back of the American Convention on Human Rights, that provides for the "*right to live in a healthy environment*". Finally, although the right to a healthy environment is absent from the text of the European Convention on Human Rights as adopted in 1950, the Strasbourg Court has since endeavoured to protect it indirectly by reference to other guaranteed rights, by way of a dynamic interpretation of the Convention. Several sector-specific treaties also enshrine this

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<sup>46</sup> ICJ Advisory Opinion on the Legality of the Use of Nuclear Weapons, dissenting opinion by Mr Weeramantry, p.233.

<sup>47</sup> ICJ, Pulp Mills on the River Uruguay Case (Argentina v. Uruguay), op. sep., §220.

<sup>48</sup> ICJ, Antarctic Whaling Case (Australia v. Japan; New Zealand (intervener)), op. cit. Japan; New Zealand (intervener), op. sep. at §43.

<sup>49</sup> ICJ, Pulp Mills on the River Uruguay Case (Argentina v. Uruguay), sep. op., §124.

right. The first article of the Aarhus Convention proclaims "*the right of every person of present and future generations to live in an environment adequate to his or her health and well-being*". Article 4 of the Escazú Agreement states that "*each Party shall guarantee the right of every person to live in a healthy environment*".

23. **The wealth of international case law on the right to a healthy environment.** The international jurisprudence is already extensive. This is particularly true of regional human rights courts, which have widely interpreted the stipulations of human rights conventions as protecting the right to a healthy environment. For example, since the *Lopez Ostra v. Spain* case of 9 December 1994, the European Court of Human Rights has considered that the right to private and family life protected by Article 8 of the Convention includes a right to be protected against serious harm to the environment, since such harm may "*affect an individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life*"<sup>50</sup>. Similarly, the Inter-American Court of Human Rights<sup>51</sup> and the African Court of Human and Peoples' Rights<sup>52</sup> have issued decisions finding a violation of the human rights guaranteed in their respective treaties due to a failure to respect the right to live in a healthy environment.

*b) A value to be recognized under customary law*

24. There are sound reasons for asserting the customary value of the right to a healthy environment.
25. **A right corresponding to a general practice accepted as binding in a large majority of States.** According to a survey carried out by David R. Boyd, former United Nations Special Rapporteur on Human Rights and the Environment, the right to a healthy environment "*is included in regional human rights treaties and environmental treaties binding more than 120 States*"<sup>53</sup>. In all, 155 States have established legal recognition of the right to a healthy environment, either through international law or in their domestic law, including more than 100 States at constitutional level.

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<sup>50</sup> ECHR, December 9, 1994, *López Ostra v. Spain*, no. 16798/90 at [51]: in this case, the applicant complained of the authorities' passivity in the face of the nuisances generated by a sewage treatment plant near her home. In other cases, the Court has held that the right to life enshrined in Article 2 of the Convention includes the right to be protected against the risks arising from hazardous industrial activities: see ECHR (Grand Chamber), November 30, 2004, *Öneryıldız v. Turkey*, no. 48939/99.

<sup>51</sup> IACHR, November 15, 2017, Advisory Opinion on Environment and Human Rights, 23/17; IACHR, May 30, 2018, *La institución del asilo y su reconocimiento como derecho humano en el sistema interamericano de protección*, Advisory Opinion OC-25/18; IACHR, February 6, 2020, *Lhaka Honhat v. Argentina*.

<sup>52</sup> African Court on Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v. Republic of Kenya*, May 26, 2017, no. 006/2012; *Ligue ivoirienne des droits de l'homme (LIDHO) et autres v. Republic of Côte d'Ivoire*, September 5, 2023, no. 041/2016; *Peuple Ogoni v. Nigeria*.

<sup>53</sup> Boyd, D., Chapter 2: The Right to a Healthy and Sustainable Environment in Aguila, Y. and Viñuales, J.E., 2019. A Global Pact for the Environment - Legal Foundations. University of Cambridge, p. 36.



26. **International instruments.** The major declaratory texts adopted in international environmental law refer to the right to a healthy environment. The 1972 Stockholm Declaration alluded to it for the first time, stating in its first principle that: "*Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being*"<sup>54</sup>. More modestly, the Rio Declaration mentions this in its first principle, which states that "*[h]uman beings are at the center of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature*". Finally, the Johannesburg Declaration on Sustainable Development also refers to the right indirectly, notably in principle 18, which aims to "*speedily increase access to such basic requirements as clean water, sanitation, adequate shelter, energy, health care, food security and the protection of biodiversity*". Finally, recent resolutions have paved the way for recognition of the customary value of the right to a healthy environment. Thus, **the General Assembly resolution of 22 July 2022**, adopted following a Human Rights Council resolution of 8 October 2021<sup>55</sup>, formalized the recognition of the right to a clean, healthy and sustainable environment, considering "*that the right to a clean, healthy and sustainable environment is a human right*" and that it "*is related to other rights and existing international law*"<sup>56</sup>. The General Assembly resolution received near-unanimous support from States: of the 169 member countries present, 161 voted in favor, only 8 abstained, and no State voted against<sup>57</sup>. The General Assembly also affirmed, in a resolution of 15 December 2022, that "*a democratic and equitable international order requires, inter alia, the realization of the following:... (l) The right of every person and all peoples to a healthy environment and to enhanced international cooperation (...) to adapt to climate change, particularly in developing countries, and that promotes the fulfilment of international agreements in the field of climate change mitigation*"<sup>58</sup>.

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<sup>54</sup> Declaration of the United Nations Conference on the Human Environment, June 5-16, 1972, A/CONF.48/14/Rev.1.

<sup>55</sup> Human Rights Council, The human right to a clean, healthy and sustainable environment, HRC/RES/48/13.

<sup>56</sup> UNGA, Resolution 76/300 on the right to a clean, healthy and sustainable environment, July 28, 2022, §1 and §2.

<sup>57</sup> UNGA, Seventy-sixth session, A/76/PV.97, p.11. The summary record of the plenary meeting indicates that, following the adoption of the resolution, three delegations (Kyrgyzstan, Saint Kitts and Nevis and Seychelles) advised the Secretariat that they had intended to vote in favor, bringing the total number of votes in favor to 164, with only 7 abstentions.

<sup>58</sup> UNGA, Resolution 77/215 on the promotion of a democratic and equitable international order, December 15, 2022, §6(1).

*c) The right to a liveable climate, a climate-related application of the right to a healthy environment*

27. **The fundamental nature of the right to a healthy environment.** The right to a healthy environment<sup>59</sup> is a fundamental right. Not only is it the basis of many other environmental rights, which flow from it, but it is also one of the **conditions for the enjoyment of** all other human rights. David R. Boyd has observed that "*as human beings, we are all dependent on the environment in which we live. A safe, clean, healthy and sustainable environment is essential for the full enjoyment of a wide range of human rights, including the rights to life, access to health, food, water and sanitation. Without a healthy environment, we are unable to realize these aspirations. We cannot even aspire to the essential criteria of human dignity*"<sup>60</sup>.
28. **The right to a liveable climate and to effective protection against the adverse effects of climate.** The right to a healthy "*environment*" touches upon the various components of the "environment" as it relates to human beings: it concerns not only biodiversity, but also climate. As far as biodiversity is concerned, biodiversity's importance for human rights is obvious. As the Convention on Biological Diversity notes in its preamble, "*conservation and sustainable use of biological diversity is of critical importance for meeting the food, health and other needs of the growing world population*"<sup>61</sup>. The same is true for the climate. The 1992 United Nations Framework Convention on Climate Change underlines the importance of climate for human health and well-being, defining "*adverse effects of climate change*" as "*changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or **on human health and welfare***"<sup>62</sup>. Thus, the right to a healthy environment is gradually giving way to a veritable **right to a liveable climate**. The "right to a liveable climate" is mentioned by Special Rapporteur David R. Boyd in his 2019 report as one of the rights that States are obligated to respect<sup>63</sup>. The European Court of Human Rights, applying the right to a healthy environment to the field of climate, has deduced **the right to effective protection against the serious adverse effects of climate change on life, health, well-being and quality of life**<sup>64</sup>.

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<sup>59</sup> For simplicity's sake, we'll use the term "*right to a healthy environment*" here, even if the exact designation of this right may vary from one text or era to another.

<sup>60</sup> Human Rights and the Environment, Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd.

<sup>61</sup> 1992 Convention on Biological Diversity, Preamble.

<sup>62</sup> UNFCCC, article 1<sup>er</sup>, point 1 (emphasis added).

<sup>63</sup> Report A/74/161 of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

<sup>64</sup> ECHR, April 9, 2024, *Verein Klimaseniorinnen Schweiz v. Switzerland*, no. 53600/20 at [544].

## B. Other environmental rights

29. These fundamental rights give rise to numerous other environmental rights. The United Nations General Assembly recognized this in its resolution 76/300 of 28 July 2022: after noting, in point 1, that "*the right to a clean, healthy and sustainable environment is a human right*", it added, in point 2, that this right "*is related to **other rights and existing international law***".
30. Environmental rights are usually divided into two categories: **substantive rights (1)** and **procedural rights (2)**.

### 1. Substantive rights

31. In order to guarantee the right to a healthy environment, it is up to States to ensure respect for a certain number of rights, such as the aforementioned right to a liveable climate. Other rights include, but are not limited to, the right to clean air **(a)**, drinking water **(b)** and healthy food **(c)**.

#### *a) The right to clean air*

32. Air quality is degraded by ambient and indoor air pollution. Among the pollutants that have a negative impact on air quality are greenhouse gases<sup>65</sup>. Air pollution causes various health problems, including respiratory illnesses and infections and heart disease.
33. At the national level, the Dominican Republic<sup>66</sup>, France<sup>67</sup> and the Philippines<sup>68</sup> have explicitly recognized the right to clean air in their legislation. In addition, the Supreme Court of South Africa<sup>69</sup> has also recognized the right to clean air as a fundamental right.
34. At the regional level, the African Court of Human and Peoples' Rights has ruled that the dumping of toxic waste violates the right to health<sup>70</sup>.

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<sup>65</sup> More generally, this pollution results from the presence of other elements in the air, such as suspended particles, carbon monoxide, ozone, nitrogen dioxide, sulfur dioxide, etc.

<sup>66</sup> Congreso Nacional de la República Dominicana, Ley No.64-00 General de Medio Ambiente, 2000.

<sup>67</sup> Charter of the Environment, 2004, article 1.

<sup>68</sup> Philippine Clean Air Act, 1999, Section 5, article 11.

<sup>69</sup> High Court of South Africa, *Vukani Environmental Justice Alliance Movement in Action vs Ministry of Environmental Affairs*, 18 March 2022, 39724/2019, §76.

<sup>70</sup> African Court of Human and Peoples' Rights, September 5, 2023, *Ligue ivoirienne des droits de l'homme (LIDHO) et autres c. République de Côte d'Ivoire*, no. 041/2016, §174; IACHR, November 27, 2023, *Habitantes de la Oroya v. Peru*, §127.

35. At the international level, the World Health Organization has established air quality guidelines<sup>71</sup>, setting acceptable levels of air pollutants for the protection of human health.

***b) The right to drinking water***

36. Lack of access to safe drinking water and basic sanitation is responsible for the deaths of millions of children every year from water-borne and infectious diseases. According to the annual report of the United Nations High Commissioner for Human Rights on the links between climate change and human rights, glacier retreat and the reduction of snow cover are set to accelerate, with **negative consequences for more than one-sixth of the world's population**, who are supplied with meltwater from mountain ranges. Extreme weather events, such as droughts and floods, will also have an impact on water supplies. Climate change will therefore amplify existing constraints on water resources and exacerbate the problem of access to drinking water, which currently deprives some 1.1 billion people worldwide and is a major cause of morbidity and disease<sup>72</sup>.
37. In its resolution of 28 July 2010<sup>73</sup>, the United Nations General Assembly recognized the importance of equitable access to safe drinking water and sanitation as "*essential for the full enjoyment of life and all human rights*", and enshrined the right to safe, clean drinking water and sanitation as "*essential for the full enjoyment of the right to life and all human rights*".
38. In its 1995 General Comment No. 6<sup>74</sup>, **the United Nations Committee on Economic, Social and Cultural Rights recognized the right to water as a fundamental right**, establishing its intrinsic link with the right to health (Article 12§1 of the International Covenant on Economic, Social and Cultural Rights) and the right to adequate food and housing (Article 11§1 of the International Covenant on Economic, Social and Cultural Rights). Furthermore, in its General Comment No. 15<sup>75</sup>, the same Committee defines the right to water as consisting of "*an acceptable, physically accessible and affordable water for personal and domestic uses*".
39. At the regional level, the European Court of Human Rights has also found that water pollution can violate several human rights, including the right "*to enjoy a healthy and protected environment*"<sup>76</sup>. The Inter-American Court of Human Rights also

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<sup>71</sup> Air Quality, Energy and Health (AQE), September 22, 2021, "WHO global air quality guidelines: particulate matter (PM2.5 and PM10), ozone, nitrogen dioxide, sulfur dioxide and carbon monoxide".

<sup>72</sup> Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the links between climate change and human rights, A/HRC/10/61, §29.

<sup>73</sup> UNGA, The human right to safe drinking water and sanitation, A/RES/64/292, §1, July 28, 2010.

<sup>74</sup> UNCESC, General Comment n°6 on the economic, social and cultural rights of the elderly, §5/32, 1995.

<sup>75</sup> UNCESC, General Comment n°15 on the right to water, §2, 2005.

<sup>76</sup> ECHR, January 27, 2009, *Tatar v. Romania*, 67021/01, §112.

recognized the right to water in its decision *Comunidades Indígenas Miembros de la Asociación Lhaka Honhat*<sup>77</sup>.

40. What's more, wealthy States must contribute more, on the basis of the principle of common but differentiated responsibilities, to the costs of ensuring safe and sufficient water and healthy aquatic ecosystems in low-income countries<sup>78</sup>.

**c) *The right to healthy, sustainably produced food***

41. As early as 1996, the International Covenant on Economic, Social and Cultural Rights recognized the right of everyone to be free from hunger as a fundamental right<sup>79</sup>. In 2013, in its resolution on the right to food<sup>80</sup>, the UN General Assembly reaffirmed "*the right of everyone to have access to safe, sufficient and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger*". The UN Human Rights Council observed that the adverse impact of climate change "*threatens global food security and nutrition and puts at risk the agrifood systems*"<sup>81</sup>. It noted that the adverse effects of climate change have "*serious consequences on the full realization of the right to food for all people, especially with respect to the production, distribution, availability, accessibility, adequacy and sustainability of food*". The United Nations General Assembly has also recognized these effects, "*recogniz[ing] the importance of giving due consideration to the adverse impacts of climate change and the full realization of the right to food*"<sup>82</sup>.
42. The UN Human Rights Committee (CCPR) has also considered that serious degradation of the environment, in particular of the agri-food systems that constitute a community's livelihood, constitutes a serious violation of the right to life<sup>83</sup>.
43. At the regional level, the Inter-American Court of Human Rights has ruled<sup>84</sup> that the right to health is "*directly related to access to food*", and that pollution limits access to food of sufficient quality and quantity. What's more, the Inter-American Court has recognized the right to adequate food<sup>85</sup>.

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<sup>77</sup> IACtHR, February 6, 2020, *Comunidades Indígenas Miembros de la Asociación Lhaka Honhat (Nuestra Tierra) v. Argentina*, Merits, Reparations and Costs, Series C, no. 400, § 222-230.

<sup>78</sup> Special Rapporteur on human rights and the environment, David R. Boyd, The global water crisis and human rights A/HRC/46/28 - Executive summary.

<sup>79</sup> International Covenant on Economic, Social and Cultural Rights, article 11§2, December 16, 1966.

<sup>80</sup> UNGA, The Right to Food, December 18, 2013, A/RES/68/177.

<sup>81</sup> Human Rights Council, A/HRC/RES/50/9, Human rights and climate change, §16.

<sup>82</sup> UNGA, Resolution 77/217 on the right to food, December 15, 2022, §43.

<sup>83</sup> UN Human Rights Committee, July 21, 2019, *Portillo Cáceres v. Paraguay*, CCPR/C/126/D/2751/2016, §7.1.

<sup>84</sup> Inter-American Court of Human Rights, November 15, 2017, Advisory Opinion No. 17, OC-23/17 at [110].

<sup>85</sup> IACtHR, February 6, 2020, *Comunidades Indígenas Miembros de la Asociación Lhaka Honhat (Nuestra Tierra) v. Argentina*, Series C, no. 400, §210-221.

## 2. Procedural rights

44. Three essential procedural rights in environmental matters are enshrined in several international instruments: the right of access to environmental information **(a)**, the right to participate in environmental decision-making **(b)** and the right of access to justice in environmental matters **(c)**.

### *a) Right of access to environmental information*

45. Principle 10 of the Rio Declaration formalizes this requirement in a non-binding manner. At a more general level, the United Nations General Assembly noted the importance of the international flow of information in its 2022 resolution on the promotion of a democratic and equitable order<sup>86</sup>.
46. With regard to climate change, both the 1992 United Nations Framework Convention on Climate Change<sup>87</sup> and the 2015 Paris Agreement stipulate that Parties must improve public access to information on climate change<sup>88</sup>. In this way, public information is an integral part of the principles for strengthening the action of States in the fight against climate change.
47. At the regional level, two main binding instruments make access to environmental information a condition for the realization and effectiveness of the right to live in a healthy environment: the Aarhus Convention<sup>89</sup>, mainly applicable in Europe, and the Escazú Agreement<sup>90</sup>, applicable in Latin America and the Caribbean. Other instruments, again regional, provide for this type of guarantee, such as the African Convention on the Conservation of Nature and Natural Resources of Maputo<sup>91</sup>.
48. Finally, this principle has appeared in case law on a number of occasions. For example, the European Court of Human Rights has already recognized a right to receive information on environmentally hazardous activities<sup>92</sup>.

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<sup>86</sup> UNGA, Resolution 77/215 on the promotion of a democratic and equitable order, December 15, 2022, §6. This observes "*that a democratic and equitable international order requires, inter alia, the realization of the following elements: (...) j) the promotion of a free, just, effective and balanced international information and communications order, based on international cooperation aimed at achieving a new balance and greater reciprocity in the international flow of information, including by redressing inequalities in the flow of information to and from developing countries*".

<sup>87</sup> Article 6.

<sup>88</sup> Article 12.

<sup>89</sup> Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, signed on June 25, 1998 by thirty-nine States.

<sup>90</sup> Regional Agreement on Access to Information, Public Participation and Environmental Justice in Latin America and the Caribbean, signed by 24 Latin American and Caribbean countries in 2018.

<sup>91</sup> African Convention on the Conservation of Nature and Natural Resources, Maputo, article 16.

<sup>92</sup> For example: ECHR, *Guerra et al. v. Italy*, A4967/89, February 1998.

**b) *The right to participate in environmental decision-making***

49. In accordance with the principle of public participation, interested parties have the right to express an opinion when an administrative decision or normative act likely to have an impact on the environment is to be taken.
50. Principle 10 of the Rio Declaration encourages public participation in environmental matters. The World Charter for Nature, adopted in 1982 by the United Nations General Assembly in the form of resolution<sup>93</sup>, states that all persons have the right to "*participate ... in the formulation of decisions of direct concern to their environment*". More generally, in its resolution on the promotion of a democratic and equitable order, the General Assembly affirms that a democratic and equitable international order requires "*(h) [t]he right to equitable participation of all, without any discrimination, in domestic and global decision-making*"<sup>94</sup>.
51. On the specific issue of climate, the United Nations Framework Convention on Climate Change and the Paris Agreement encourage Parties to cooperate to improve and encourage public participation in the field of climate change<sup>95</sup>.
52. With regard to regional or sector-specific texts, the Aarhus Convention, the Escazú Agreement and the Maputo Convention establish more detailed regimes for implementing public participation.

**c) *The right of access to justice in environmental matters***

53. The right of access to environmental justice is central: it conditions the effectiveness of adopted standards. This right has been enshrined in international law. Principle 10 of the Rio Declaration embraces this requirement, stating that "*[e]ffective access to judicial and administrative proceedings, including redress and remedy, shall be provided*". UNESCO's Declaration of Ethical Principles in relation to Climate Change adopts a similar approach.
54. In terms of legally binding texts, the Aarhus Convention and the Escazú Agreement contain detailed provisions on how Parties are to implement this guarantee. The European Court of Human Rights has also reiterated the importance of access to justice under Article 6(1) of the European Convention on Human Rights in climate-related matters<sup>96</sup>.

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<sup>93</sup> UNGA, Resolution 37/7 on the World Charter for Nature, October 28, 1982.

<sup>94</sup> UNGA, Resolution 77/215 on the promotion of a democratic and equitable international order, December 15, 2022, §6(h).

<sup>95</sup> UNFCCC, Article 6; Paris Agreement, Article 12.

<sup>96</sup> ECHR, *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, April 9, 2024.

## II. The consequences of recognizing environmental human rights for States' climate-related obligations and responsibilities

55. The Green Rights Coalition wishes to invite the Court to draw the consequences of the affirmation of environmental human rights with regard to the two questions posed by the request for an advisory opinion:

- "*What are the obligations of States under international law to protect the climate system and other components of the environment (...)?*" (A) ;
- "*What are the legal consequences, in the light of these obligations, for States which, through their actions or omissions, have caused significant damage to the climate system and other components of the environment (...)?*" (B).

### A. The effects of environmental rights in identifying the climate obligations of States

56. As a preliminary point, it should be noted that, in order to identify the climate obligations of States, the Court could base itself in particular on **treaty law**.

57. On the one hand, it will be able to mobilize **conventional climate law**. The **United Nations Framework Convention on Climate Change** and the **Paris Agreement** are the main components of this body of law. These texts set targets for the reduction of greenhouse gas emissions<sup>97</sup> as well as certain commitments, such as the adoption of national policies to mitigate the effects of climate change<sup>98</sup>. The obligations contained in the Paris Agreement<sup>99</sup> are also important. Some of the principles and concepts mobilized will be central to the definition of State obligations (equity, common but differentiated responsibilities, preservation of the climate system in the interests of present and future generations, adoption of precautionary measures)<sup>100</sup>.

58. On the other hand, the Court can also rely on **environmental treaty law**. We might mention the obligation to protect fauna, flora, ecosystems and biodiversity, contained in Article 3 of the **Convention on Biological Diversity**. The same is true of the general obligation to "*protect and preserve the marine environment*" and to take all necessary measures to prevent, reduce and control pollution of the marine

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<sup>97</sup> Article 2 of the 1992 UNFCCC sets the objective of stabilizing greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference, and Article 2(1) of the Paris Agreement sets the objective of keeping the rise in temperature well below 2°C.

<sup>98</sup> Article 2 of the 1992 UNFCCC.

<sup>99</sup> These include the obligation to draw up and submit "Nationally Determined Contributions" (NDCs), which are intended to explain the measures taken to limit greenhouse gas emissions. They must represent the highest possible level of ambition, and be more ambitious than previous ones.

<sup>100</sup> Respectively: Article 4(4) Paris Agreement, Article 3(1) UNFCCC, and Article 3(3) UNFCCC.



environment, set out in the **United Nations Convention on the Law of the Sea**<sup>101</sup> (all the more so since the International Tribunal for the Law of the Sea, seized of a request for an advisory opinion in a similar context, confirmed that climate change constitutes "marine pollution" within the meaning of the convention<sup>102</sup> ). The **Vienna Framework Convention for the Protection of the Ozone Layer** and the **Montreal Protocol** may also help to clarify State obligations with regard to ozone-depleting greenhouse gases, and in particular the obligation to take all appropriate measures against adverse effects resulting or likely to result from human activities that modify or are likely to modify the ozone layer<sup>103</sup>.

59. However, the texts of this body of conventional law **are still inadequate** for determining the obligations of States. In particular, in the current state of conventional climate law, the definition of the content of State commitments is largely left to the discretion of each State, within the framework of "*voluntary*" contributions, in accordance with a "*bottom-up*" approach. Sanctions for failure to meet these obligations are imprecise and limited in scope. The Court will therefore need to arm itself with international tools that go beyond the framework of conventional environmental law, in order to lay the foundations for solid climate obligations.
60. It is therefore natural that the Court should turn to other sources of law. In this respect, the Green Rights Coalition intends to invite the Court to use a complementary and alternative basis for States' climate obligations: environmental rights. Environmental rights, on the one hand, form the basis for a broader reading of traditional customary principles **(1)**, and on the other, are sources of obligations for States **(2)**.

### **1. Environmental rights as the basis for a broader interpretation of traditional customary principles**

61. Environmental rights have an **interpretative function** in relation to customary principles, whether they concern the substantive obligations **(a)** or the procedural obligations **(b)** of States.

#### ***a) Substantial obligations***

62. The **principle of prevention of** environmental damage has a customary value in international law, as clearly affirmed by the Court in the Pulp Mills on the River Uruguay case. It entails a substantial obligation for States "*to use all means at [their] disposal to prevent activities taking place on [their] territory, or in any area under*

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<sup>101</sup> Articles 192 and 194 of this convention. The Court can also mobilize the obligation to protect and preserve rare or delicate ecosystems and the habitat of species and other marine organisms that are declining, threatened or endangered (Article 194 of UNCLOS).

<sup>102</sup> ITLOS, Advisory Opinion on Climate Change and International Law, May 21, 2024.

<sup>103</sup> Article 2(1) of the Vienna Convention.

*[their] jurisdiction, from causing significant damage to the environment of another State"*<sup>104</sup>. As climate change is a particular form of environmental damage, the Court should logically affirm in the requested opinion that States are obliged, in particular, to take all appropriate means to prevent activities subject to their jurisdiction from causing significant damage to the climate system.<sup>105</sup>

63. The right of future generations and the principle of intergenerational equity could provide a **complementary foundation to the principle of prevention** in identifying the obligation of States to preserve the climate system. Above all, it makes it possible to clarify this obligation. As noted by Judge Cañado Trindade in his separate opinion attached to the judgment in the *Usines de pâte à papier* case, the notion of intergenerational equity introduces a long-term temporal dimension into the field of environmental protection, making it possible to circumscribe the rights of present generations in relation to those recognized for future generations. It leads us to consider that the substantial obligation of prevention requires States to prevent significant damage to present and future generations caused by their activities. In this field, the objective of stabilizing the increase in global temperature at a maximum of 1.5° represents a scientific-political consensus, formalized in article 2 of the Paris Agreement and reiterated in the Glasgow Pact. Consequently, when the Court seeks to identify the substantive obligations of States, **it cannot reduce them to the implementation of nationally determined contributions (NDCs)**, the aggregate of which is insufficient to achieve the 1.5° objective. The principle of common but differentiated responsibilities, well established in international climate law, must also serve as a guide in the individualization of the substantial collective obligation. The three principles (prevention, intergenerational equity and common but differentiated responsibilities) therefore make it possible to specify the obligation incumbent on each State: to take the appropriate means, according to their national situations and capacities, by regulating the activities under their jurisdiction in order to keep the rise in global temperature to 1.5°.

#### ***b) Procedural obligations***

64. The customary value of the **duty to cooperate is unquestionable when it** comes to transboundary damage. It encompasses a continuous obligation to exchange information (before and during the implementation of an activity that may cause transboundary damage), as well as an obligation to cooperate in good faith. Combined

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<sup>104</sup> This customary recognition was formalized in the Advisory Opinion of the International Court of Justice on the *Legality of the Threat or Use of Nuclear Weapons, as well as in the Usines de Pâte à Papier case on the Uruguay River (Argentina v. Uruguay)*, where prevention was formulated as a positive obligation.

<sup>105</sup> This duty of prevention also acquired binding force when it was incorporated into certain environmental treaties. For example, Article 3 of the Convention on Biological Diversity contains an obligation to "ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction".

with the **principle of prevention**, this results in a general obligation to carry out an **environmental impact assessment** when a planned activity is likely to have a significant detrimental impact on the environment<sup>106</sup>. For the International Tribunal for the Law of the Sea, the obligation to carry out environmental impact assessments is an essential aspect of a comprehensive environmental management system<sup>107</sup>.

65. This traditional customary principle must be read in the **light of environmental human rights**. Thus, the obligation to carry out an impact assessment concerns only transboundary impacts. However, in the context of climate change, and taking into account the individual beneficiaries of environmental rights, the Court could also recognize that this obligation applies to internal impacts. Similarly, the obligations of States arising from these duties of cooperation and prevention in climate matters must be defined **in an intergenerational perspective**. Consequently, they are obliged to inform the international community of activities carried out under their jurisdiction and associated emissions, to inform other States prior to the authorization of activities having a substantial impact on the climate of future generations, and to consult them in good faith. The climate regime partially meets these obligations through the **transparency framework** (notification of biennial reports and inventories) and the discussions held as part of the global review. However, the procedures instituted are designed to guarantee the credibility of the information disseminated, but the exchanges must not concern the political choices made. Additional consultation channels must therefore be mobilized on an *ad hoc basis* or instituted on a permanent basis (within the climate regime) in order to satisfy the **duty to consult** in good faith and prevent significant damage to the climate system for future generations.

## 2. Environmental rights as a source of obligations for States

66. In addition to this interpretative function, environmental rights themselves generate obligations for States. For several decades now, various international institutions have been drawing conclusions from the existence of human rights to derive obligations, particularly in the context of climate change.
67. United Nations General Assembly resolution 76/300 of July 28, 2022 illustrates this reasoning in two stages: first, the affirmation of a right, then the recognition of the obligation of States to protect this right. Thus, after strongly affirming the right to a healthy environment, it "*urges States (...) to adopt policies and improve international cooperation (...) in order to intensify efforts to ensure a clean, healthy and sustainable*

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<sup>106</sup> Enshrined in the 1991 Espoo Convention, the obligation was recognized in the *Usines de Pâte à Papier* case for industrial activities, and was extended to all activities likely to have an environmental impact in *Certain activities carried out by Nicaragua in the border region (Costa Rica v. Nicaragua)* and clarified in the Advisory Opinion of the International Tribunal for the Law of the Sea in response to the request submitted by the Small Island States Commission on Climate Change and International Law.

<sup>107</sup> International Tribunal for the Law of the Sea, Advisory Opinion on Climate Change and International Law, May 21, 2024, §354.

*environment for all". Similarly, Human Rights Council resolution 48/13 of October 8, 2021, on the right to a healthy environment, not only recognizes this right, but also "calls upon States (...) (a) To strengthen their capacity for environmental protection in order to comply with their **human rights obligations and commitments (...), with a view to realizing the right to a clean, healthy and sustainable environment, within their respective mandates (...)" (bold added).***

68. The International Court of Justice could follow the same path as this UN General Assembly resolution, by affirming that **international human rights law constitutes one of the foundations of States' obligations in climate matters.**
69. In his 2019 report, the Special Rapporteur lists a series of obligations that States are required to respect on the basis of the **2018 Framework Principles on Human Rights and the Environment**<sup>108</sup>. Taking up his analysis, we can distinguish between procedural obligations **(a)** and three major substantive obligations: the obligation to protect environmental rights by adopting national measures against climate change **(b)**, the obligation to ensure equity and non-discrimination in the conduct of climate policies **(c)** and the obligation to regulate and control the behavior of third parties **(d)**.

*a) Procedural obligations*

70. The Court is called upon to recognize, on the one hand, the **obligation to respect the three procedural rights of individuals already mentioned, namely the rights to information, participation and access to justice, and on the other hand, the obligation to carry out or have carried out an environmental assessment** prior to any policy or project.
71. In this regard, we refer to the aforementioned 2019 report of the Special Rapporteur on Human Rights and the Environment, which is very clear on the content of these obligations:

*"In accordance with international human rights law, States have the following procedural obligations:*

*a) **Provide people with easily accessible, affordable and understandable information on the causes and consequences of the global climate crisis (in particular by integrating the subject of climate change into school curricula at all levels);***

*b) **Ensure that everyone is able to participate in climate action in an equitable manner, taking into account gender disparities, with a particular focus on***

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<sup>108</sup> Report A/74/161 of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

*empowering the most affected populations, namely women, children, youth, indigenous and local peoples, people living in poverty, people with disabilities, the elderly, migrants, displaced persons and other potentially vulnerable populations;*

*c) **Ensure that everyone has affordable and timely access to justice and effective remedies, so that States and companies can be held to their climate change obligations;***

*d) **Assess the potential effects of any plan, policy or proposal on climate change and human rights, including upstream and downstream effects (i.e. emissions from production and consumption); (...)***" (bold added)<sup>109</sup>.

72. In the same spirit, the European Court of Human Rights has recognized since 1998 that "where a government engages in dangerous activities [...] likely to have hidden adverse consequences for the health of the persons taking part in them, respect for private and family life guaranteed by Article 8 requires the establishment of an effective and accessible procedure enabling such persons to request the communication of all relevant and appropriate information"<sup>110</sup>.

*b) **States' obligation to protect environmental rights by adopting national measures against climate change***

73. Unquestionably, there is *at the very least* a **negative obligation on States not to violate human rights**<sup>111</sup>. As stated in the aforementioned 2019 report of the Special Rapporteur on human rights and the environment "with regard to substantive obligations, States must ensure that their actions do **not violate the right to a liveable climate**"<sup>112</sup>.

74. States also have a **positive obligation to promote and guarantee respect for human rights**<sup>113</sup>. Indeed, as emphasized by the European Court of Human Rights in its decision of April 9, 2024, States have **an obligation to guarantee effective protection for their citizens** against the serious adverse effects of climate change on life, health, well-being and quality of life<sup>114</sup>.

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<sup>109</sup> Report A/74/161 of the Special Rapporteur on the issue of human rights obligations relating to the means of enjoying a safe, clean, healthy and sustainable environment, §64.

<sup>110</sup> ECHR, *McGinley and Egan v. United Kingdom*, June 9, 1998, 10/1997/794/995-996, §101.

<sup>111</sup> For example, as emphasized by the Human Rights Committee in its General Comment No. 36 on the right to life, States "have an obligation to refrain from any conduct that would result in arbitrary deprivation of life".

<sup>112</sup> Report A/74/161 of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

<sup>113</sup> The case law of the ECHR clearly affirms this (e.g. *Öneryildiz v. Turkey*, 48939/99, November 30, 2004).

<sup>114</sup> ECHR, *Verein Klimasenioren Schweiz v. Switzerland*, no. 53600/20, April 9, 2024.

75. This positive obligation translates into an **obligation to adopt national measures to combat climate change**. In the case of *Daniel Billy and others v. Australia*, the Human Rights Committee noted that the positive preventive obligations incumbent on States to protect the right to private and family life entail the adoption of more ambitious strategies to combat climate change<sup>115</sup>.
76. On the one hand, this implies an **obligation to adopt preventive measures**, in particular to prevent pollution and limit harmful emissions. For example, the United Nations Committee on Economic, Social and Cultural Rights has noted that the obligation to guarantee the right to a healthy environment implies the adoption of "*measures aimed at preventing and reducing the exposure of the population to certain dangers such as radiation or toxic chemicals and other harmful environmental factors having a direct impact on the health of individuals*"<sup>116</sup>. As early as 2001, the African Commission on Human and Peoples' Rights considered that "*the right to enjoy a satisfactory environment (...) imposes clear obligations on every Government*", requiring the State "*to take reasonable measures (...) to prevent pollution and environmental degradation, promote conservation and ensure ecologically sustainable development and use of natural resources*"<sup>117</sup>. In the *Daniel Billy* case<sup>118</sup>, the Human Rights Committee noted that Australia had "*not worked effectively to combat climate change*"<sup>119</sup>, in particular in that it had not stopped promoting the extraction and use of fossil fuels.
77. On the other hand, it implies an **obligation to adopt effective adaptation measures**. In the same *Daniel Billy* case, the Human Rights Committee found that Australia had failed to "*implement an adaptation plan to ensure the long-term habitability of the islands*"<sup>120</sup>.

*c) The obligation of States to ensure equity and non-discrimination in the conduct of climate policies*

78. The Court should pay particular attention to the recognition of an **obligation to ensure the fairness of climate action, to guarantee equality and non-discrimination, in the interests of future generations**. Indeed, the rights of **indigenous peoples, children, the elderly, minorities, climate migrants, future generations** and other

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<sup>115</sup> Camilla Perruso, "Insufficient climate action at the root of human rights violations. Notes on the Torrès case before the United Nations Human Rights Committee", *Revue juridique de l'Environnement*, 2023.

<sup>116</sup> Committee on Economic, Social and Cultural Rights, General Comment No.14: The right to the highest attainable standard of health (Article 12), 2000.

<sup>117</sup> African Commission on Human and Peoples' Rights, *Social and Economic Rights Action Centre (SERAC) and others v. Nigeria*, 155/96, October 17, 2001.

<sup>118</sup> Human Rights Committee, *Daniel Billy et al. v. Australia*, July 21, 2022, communication no. 3624/2019.

<sup>119</sup> Camilla Perruso, "Insufficient climate action at the root of human rights violations. Notes on the Torrès case before the United Nations Human Rights Committee", *Revue juridique de l'Environnement*, 2023.

<sup>120</sup> Human Rights Committee, *Daniel Billy et al. v. Australia*, 21 July 2022, communication no. 3624/2019, §2.7

groups in vulnerable situations must be the subject of special measures to guarantee enhanced protection. In the aforementioned *Daniel Billy* case, the Human Rights Committee paid particular attention to the traditional lifestyles of indigenous peoples and how these are threatened by climate change. In concrete terms, as noted by the Office of the United Nations High Commissioner for Human Rights, "*climate change adaptation and mitigation activities should benefit [first and foremost] populations in developing countries, indigenous peoples, people in vulnerable situations and future generations*"<sup>121</sup>. According to the then Independent Expert on Human Rights and International Solidarity, Prof. Obiora C. Okafor, in his 2009 report on international solidarity and climate change, climate change exacerbates social vulnerabilities linked to gender, disability, poverty, age, place of birth and indigenous status. In his view, it is therefore essential to build international solidarity based on human rights, to ensure that losses and damage caused by climate change are systematically compensated<sup>122</sup>.

79. The Court should also pay particular attention to the fact that climate change is not **gender-neutral**. Women are particularly exposed to the risks associated with climate change, due to discrimination against them, their unequal status and the inhibiting roles assigned to them. They are also at greater risk during all phases of natural disasters: preparedness, hazard warning and response, economic and social consequences, recovery and reconstruction<sup>123</sup>. Women and girls, particularly in rural areas and developing countries, suffer disproportionately from the effects of climate change and other consequences of the environmental crisis, such as the contamination of freshwater resources. In its resolution on improving the lot of women and girls in rural areas, the United Nations General Assembly noted "*with grave concern that (...) rural women and girls, particularly in developing countries, are disproportionately affected by the impacts of desertification, deforestation, sand and dust storms, natural disasters, persistent drought, extreme weather events, sea-level rise, coastal erosion and ocean acidification, and are often unable to adapt to climate change*"<sup>124</sup>. Women are more likely to live in poverty, have limited access to resources and be excluded from decision-making processes, despite their crucial role as leaders in advocacy, adaptation and resilience strategies.
80. Finally, the Court should also note that climate change is not **age-neutral** either. On the one hand, the elderly, as emphasized when the case of the "*Swiss Elders*" was referred to the European Court of Human Rights, are particularly vulnerable<sup>125</sup>. On the other hand, young people and, more broadly, future generations, are exposed to

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<sup>121</sup> Office of the United Nations High Commissioner for Human Rights, Human rights and climate change: frequently asked questions.

<sup>122</sup> Human Rights Council, Report on international solidarity and climate change, A/HRC/44/44.

<sup>123</sup> Human Rights Council, 2009 Report of the Office of the United Nations High Commissioner for Human Rights on the links between climate change and human rights, A/HRC/10/61, §29.

<sup>124</sup> UNGA, Resolution 76/140 on the promotion of a democratic and equitable order, December 16, 2021, paragraph 17.

<sup>125</sup> ECHR, *Verein Klimaseniorinnen Schweiz and others v. Switzerland*, April 9, 2024.

climatic consequences that are worsening day by day. According to the Committee on the Rights of the Child, "*over and above their immediate obligations under the Convention [on the Rights of the Child] in the area of the environment, States bear responsibility for foreseeable threats to the environment resulting from their current acts or omissions, the consequences of which may not become apparent for years or even decades*"<sup>126</sup>.

***d) States' obligation to regulate and control the behavior of third parties***

81. Furthermore, the Court is called upon to recognize **the obligation of States to regulate risky third-party behavior, and to protect human rights abuses that may be committed by corporations**. In a 2017 advisory opinion<sup>127</sup>, the Inter-American Court of Human Rights considered that, by virtue of their duty to guarantee human rights, States are "*obliged to regulate, monitor and control the conduct of third parties whose activities may cause damage to the environment*"<sup>128</sup>. Similarly, on 5 September 2023, the African Court of Human and Peoples' Rights emphasized that "*the failure of companies to which the dumping and treatment of waste have been delegated cannot exonerate the defendant State from its responsibility to guarantee the protection of the environment*"<sup>129</sup>.
82. Thus, recourse to the corpus of human rights should enable the Court to consolidate, concretize and clarify the obligations of States with regard to climate change, and to adopt a more ambitious reading of them.

**B. The effects of environmental rights in identifying the responsibilities of States in climate matters**

83. Having identified the climate obligations of States, it will be up to the Court to specify the legal consequences that should be deduced from them when the latter, through their actions or omissions, have caused significant damage to the climate system and other components of the environment. Indeed, to be effective, the recognition of obligations must be accompanied by the definition of sanctions in the event of failure to meet those obligations.

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<sup>126</sup> Committee on the Rights of the Child, CRC/C/GC/26, General Comment No. 26 (2023) on children's rights and the environment, with particular emphasis on climate change.

<sup>127</sup> Inter-American Court of Human Rights, Advisory Opinion No. 17, OC-23/17, November 15, 2017.

<sup>128</sup> Natalia Castro Nino, Camilla Perruso, "Urgence et changements climatiques: enjeux et potentialités autour de la demande d'avis consultatif devant la Cour interaméricaine des droits de l'homme", in C. Cournil (ed.), *Expertise et argumentaires juridiques. Contribution à l'étude des procès climatiques*, Aix-Marseille

<sup>129</sup> Cour africaine des droits de l'homme et des peuples, *Ligue ivoirienne des droits de l'homme (LIDHO) et autres c. République de Côte d'Ivoire*, 5 septembre 2023, n° 041/2016, §184.



84. Given that these climate-related obligations result in particular from environmental rights, a State's failure to comply must logically entail legal consequences not only at international level **(1)**, **but** also at domestic level **(2)**.

### **1. State responsibility at international level**

85. There can be no doubt about the very principle of State liability for damage to the environment, and in particular to the climate system. The Court recognized the reparable nature of ecological damage in the case *Certain Activities of Nicaragua in the Border Region (Costa Rica v. Nicaragua)*<sup>130</sup>. The Court affirmed that general international law allows for the reparation of environmental damage caused by unlawful acts, over and above mere economic damage.
86. **With regard to the ways in which** this responsibility is implemented, a distinction must be made between the situation of "**injured States**", victims of direct damage, and that of "**interested States**", acting to protect a collective interest.
87. Indeed, in climate matters, emission reduction obligations cannot be considered as being owed individually to a State. Consequently, only those States particularly affected by the breach, such as island countries, or States for which the performance of the obligation is radically altered by the internationally wrongful act, can be qualified as "injured States".
88. However, the **principle of intergenerational equity should lead the Court to broaden the scope of States liable to take action**. Indeed, this principle requires that the substantial obligations of States (in terms of emissions reduction) be qualified as *erga omnes* obligations, since failure by one State to meet its obligations is likely to have **repercussions on the other States**.
89. Consequently, when a State's failure to fulfil a substantial obligation is significant, **each State can be qualified as an injured State**. In such cases, and by application of the customary rules of the law of responsibility, codified in article 30 of the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts, that State may demand cessation of the internationally wrongful act, assurances and guarantees of non-repetition, and performance of the obligation of reparation in its favour.
90. Where breaches of substantive obligation are less significant, or where a procedural obligation is violated, **each State** should be able to invoke the responsibility of the violating State, **as an "interested State"** acting to protect a collective interest. Indeed, the principle of intergenerational equity and the relevant treaty provisions require that

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<sup>130</sup> ICJ, *Certain activities carried out by Nicaragua in the border region (Costa Rica v. Nicaragua)*, February 2, 2018, 2018 I.C.J. Reports 15.

the obligations of States in climate matters be interpreted as obligations that go beyond the sphere of bilateral relations and are directed towards the preservation of a collective interest. As such, they must be qualified as *erga omnes* obligations. International liability law provides that in the event of a breach of this type of obligation, responsibility can be invoked by any State, which can demand the cessation of the internationally wrongful act and assurances and guarantees of non-repetition, as well as the fulfilment of the obligation of reparation on behalf of the injured State.

## 2. State responsibility before domestic courts

91. This last part of the Green Rights Coalition's observations echoes the fundamental question posed by René Cassin, former President of the European Court of Human Rights: "*How can the individual, a subject of law, obtain effective and universal respect for the prerogatives to which he is entitled? Will he be in a position to invoke, where appropriate, preventive guarantees or sanctions, in the event of violation of his fundamental rights or freedoms?*"<sup>131</sup>.
92. If individuals are holders of environmental human rights, then they must have a means of redress to assert their rights, and hence the resulting obligations of States. This is **the logical outcome of recognizing environmental rights as one of the foundations of States' duty to act on climate change**.
93. Admittedly, international law is not traditionally concerned with the domestic effect of its norms within a national legal system and before the domestic courts of a State<sup>132</sup>. The question of the effect of international norms in domestic law is closely linked to the legal system of each State. There is no single, universal answer applicable to all States.
94. However, **international human rights standards** are an exception to this rule: having asserted rights for the benefit of individuals, it is natural that these international texts should concern themselves with **the remedies available to individuals under domestic law** to protect their rights<sup>133</sup>. For example, Article 13 of the European Convention on Human Rights establishes the principle of the right to an effective remedy: "*Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority (...)*". Similarly, under Article 9 of the above-mentioned Aarhus Convention, persons whose rights to

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<sup>131</sup> René Cassin, "L'homme sujet de droit international et la protection des droits de l'homme dans la société universelle", Mélanges Georges Scelle, pp. 67-91.

<sup>132</sup> ICJ, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion of June 21, 1971, 1971 I.C.J. Reports 16.

<sup>133</sup> Antonio Cassese, *International Law*, Oxford University Press, 2005; Malcolm N. Shaw, *International Law*, Cambridge University Press, 2008; Alain Pellet and others, *Droit international public*, LGDJ, 2022.

information or participation have been infringed must have "*the possibility of a remedy before a court of law or an independent and impartial body established by law*". Similarly, in matters of human rights, the Court has always worked to enable individuals, as subjects of national and international law, to avail themselves of the human rights protected and guaranteed by the Court<sup>134</sup>.

95. In the same spirit, after setting out the rights of individuals and the resulting climate obligations of States, **the Court should establish a general principle** whereby, in the event of an infringement of environmental rights, any person concerned has the **right to an effective remedy** before a national authority.
96. Since individuals cannot normally take their case directly to the international courts<sup>135</sup>, it is logical to assert their right to recourse to domestic courts to sanction States' failure to meet their international obligations to ensure respect for their environmental rights. The opposite solution would leave these rights without jurisdictional sanction - which would be tantamount to depriving them of effectiveness or creating a denial of justice. **Each national court must therefore be the guarantor of States' compliance with their international obligations towards individuals.** With this in mind, in its *Klimaseniorinnen* judgment, the European Court of Human Rights "*considers it essential to emphasize **the key role that national courts** have played and will play in disputes relating to climate change*" (emphasis added)<sup>136</sup>.
97. In the present case, the recognition of States' obligations to protect the climate system is linked to human rights. This circumstance should prompt the Court to issue an opinion expressly ruling on the possibility for individuals, and more broadly for representatives of their rights, including the rights of future generations, to rely on these obligations before the ordinary law jurisdiction to which they have access, namely the national court.

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<sup>134</sup> ICJ, *Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory*, Advisory Opinion of July 9, 2004, I.C.J. Reports 136.

<sup>135</sup> With the exception of certain regional human rights courts that accept individual appeals.

<sup>136</sup> ECHR, *Verein Klimaseniorinnen Schweiz v. Switzerland*, no. 53600/20, April 9, 2024, point 639.

## CONCLUSION :

For all these reasons, the Green Rights Coalition invites the International Court of Justice to :

- Affirm **the existence of human rights in relation to climate protection, and** in particular the rights of future generations deriving from the principle of intergenerational equity, as well as the right to a healthy environment;
- Use these rights as a basis for **interpreting traditional customary principles in the** light of environmental human rights, and for **deducing the existence of State obligations to** protect the climate system, such as :
  - **the procedural obligations** to provide people with information about the global climate crisis, to ensure that everyone can participate in climate action, to guarantee everyone affordable and timely access to justice and effective remedies, and to assess the potential effects of any plan, policy or proposal on climate change;
  - **the substantive obligations** to protect environmental rights by adopting national measures against climate change, to ensure equity and non-discrimination in the conduct of climate policies, and to regulate and control the behavior of third parties;
- Enshrine the possibility of engaging the **responsibility of States** not only at international level but also, for individuals, before national jurisdictions, by affirming the existence of a **right to individual recourse** in the event of actions or omissions having caused significant damage to the climate system and other components of the environment.

**Yann AGUILA**  
*Chairman of the  
Green Rights Coalition*

**Victoria LICHET**  
*Executive Director, Green  
Rights Coalition*

## APPENDIX I

### LIST OF YOUNG PEOPLE CO-SIGNING THE *AMICUS CURIAE* BRIEF, GREEN RIGHTS COALITION VOLUNTEERS AND AMBASSADORS

*(current as of 1<sup>st</sup> August 2024,  
date of filing of the memorandum with the registry of the International Court of Justice)*

1. Alice Adami, Switzerland
2. Youssifou Aguorigoh, Togo
3. Ibrahima Alhousseyni, Senegal
4. Juan Pablo Amaya Amaris, Colombia
5. Shonola Anointed, Nigeria
6. François Antonini, France
7. Joshua Antonioli, Italy
8. Valéria Emília de Aquino, Brazil
9. Adel Asrawi Elias, Mexico
10. Eve Aubisse, France
11. Héloïse Aubret, France
12. Marie-Cécile de Bellis, France
13. Domitille Bordeaux, France
14. Pierre Brunstein-Compard, France
15. Tu Doan-Quynh Bui, France
16. Samuela Burzio, Italy
17. Flavia Cabaço, Portugal and Switzerland
18. Lionel Youssef Chami, Belgium and Lebanon
19. Pierre Chapsal, France
20. Yamikani Chikho, Malawi
21. Francisco Cordeiro de Araújo, Portugal
22. Diego Crespi, Mexico
23. Sebaka Derrick, Uganda
24. Juliette Dessagne, France
25. Vicente Felipe Díaz Galleguillos, Chile
26. Océane Dureysseix, France

27. Vincenzo Elia, Italy
28. Georgia Eriksen, United Kingdom and France
29. Pedro Ezquer, Spain
30. Francesco De Facci, Italy
31. Sueley Firmino Cavalcante, Brazil
32. Emma Garnier-Carrel, France
33. Sebastián Garrido, Chile
34. Victoria Gohin, France
35. Jordan Gonzalez, United States and Mexico
36. Mauricio Gonzalez, Colombia
37. Laura Goudrias, France
38. Esther Hervella, Spain
39. Melkide Hossou, France
40. Gabriel Marcel Ikopi Moleko, Democratic Republic of Congo
41. Abiba Issa Moussa, Niger
42. Laure Joly, France
43. Anyanwu Joseph, Nigeria
44. Ashna Lamba, India
45. David Larbre, France
46. Marin Lardeau, France
47. Jeanne Lazennec, France
48. Parker Lee, United States
49. Johanna Leplanois, France
50. Valentine Lestringuez, France
51. Zoe Lujic, Serbia and United Kingdom
52. Sylvan Lutz, Canada and United Kingdom
53. Alexandra Masek, France
54. Michael McArdle, Australia
55. Helena Megrelis, France
56. Lauren Megrelis, United States
57. Roland Melaine Toé, Canada
58. Alice Messin-Roizard, France
59. Pierre Minoves, France

60. Joaquín Eduardo Miranda González, Mexico
61. Anaëlle Monnier, France
62. Olivier Mufungizi, Democratic Republic of Congo
63. Gemma Naveja Romero, Mexico
64. Ombeline Ogier, France
65. Vincent Ontita, Kenya
66. Elisabetta Orsoni, Italy
67. Stéphanie Papazoglou, Greece
68. Theodora De Pasquale, Italy and France
69. Antoine Portanguen, France
70. Sérgio Pedro, Portugal
71. Julia-Marie Penner, France
72. Francesse Philippe, France
73. Juan Diego Quirós Delgado, Costa Rica
74. Étienne Rabotin, France
75. Nicola Ragazzi, Italy
76. Pauline Rاپilly Ferniot, France
77. Michael Reis, United States
78. Alice Rodde, France
79. Lucie Rollini, Belgium
80. Chloé Le Rouvreur, France
81. Lisa Ruston, France
82. Thomas Sainte Thérèse, France
83. Matias Schroh, Argentina
84. Brice Séverin Pongui, Republic of Congo
85. Matilda Sodiya, United Kingdom
86. Chisomo Somanje, Malawi
87. Yuan Sun, China
88. Kiersten Swaak, United States
89. Isabelle Tattevin, France
90. Mizan Teklay, Ethiopia
91. Carla Suarez Torres, Bolivia and the United Republic of Uruguay
92. Henri Totin Jevev, Bénin

93. Natalia Urzola, Colombie
94. Brenda Valtierra de la Rosa, Mexique
95. Pedro José Villa López, Colombie
96. Louise Vittori, France
97. Abdoul Wahab Magawata, Niger
98. Mengge Wang, China
99. Alexandra Wenzel, Canada
100. Flora Witkowski, Belgique
101. Jairo Zapata Cortázar, Colombia
102. Ambre Zwetyenga, France



## **APPENDIX II**

### **EDITORIAL COMMITTEE**

This brief was written by a Green Rights Coalition working group composed as follows:

- Yann Aguila
- Domitille Bordeaux
- Pierre Brunstein-Compard
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