

Organisation of African,  
Caribbean and Pacific States  
(OACPS)



Organisation des États  
d'Afrique, des Caraïbes et  
du Pacifique (OEACP)

**International Court of Justice**

***Obligations of States in Respect of Climate Change (Request for Advisory Opinion)***

**Organisation of African, Caribbean and Pacific States (OACPS)**

***Responses to the questions put by Judges Cleveland, Tladi, Aurescu and Charlesworth***

**20 December 2024**

## Question posed by Judge Cleveland

*“During these proceedings, participants have referred to the production of fossil fuels in the context of climate change, including with respect to subsidies. In your view, what are the specific obligations under international law of States within whose jurisdiction fossil fuels are produced to ensure protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases, if any?”*

### The OACPS submits the following in response to this question:

1. The OACPS draws the Court's attention to the overwhelming body of evidence indicating that certain States, for decades, have produced, licensed, and subsidised fossil fuels knowing full well that the resulting massive greenhouse gas emissions would dangerously interfere with the climate system.<sup>1</sup> This conduct—understood as a composite act spanning many years<sup>2</sup>—has already inflicted serious harm, threatening the survival of entire peoples who contributed little or nothing to the crisis.
2. Under general international law—including the duty of due diligence and the prevention principle—States must not conduct or allow activities under their jurisdiction or control that cause significant transboundary harm, including to areas beyond national jurisdiction.<sup>3</sup> This obligation has long been established in international law and has been reaffirmed in multiple international instruments and judicial decisions.<sup>4</sup> In the climate context, given the catastrophic consequences of continued fossil fuel usage, due diligence requires prompt, deep, and sustained emissions reductions—and this is impossible to achieve without phasing out fossil fuel production and related subsidies.<sup>5</sup>

---

<sup>1</sup> See United Nations Environment Programme, *Emissions Gap Report 2023: Broken Record. Temperatures reach new highs, yet world fails to cut emissions (again)* (November 2023), p. 30; United Nations Environment Programme, *Emissions Gap Report 2024: No more hot air, please! With a massive gap between rhetoric and reality, countries draft new climate commitments* (2024), pp. 4-5; United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), pp. 4-5; see also, Vanuatu Written Statement, paras. 162-170, 247-248, 267-278, 285-287, 510, 512, 513; Expert Report of Professor Corinne Le Quéré on Attribution of global warming by country (dated 8 December 2023) (Written Statement Vanuatu, Exhibit B); Written Comment Vanuatu, paras. 52-75, 110 and table 1, 165-168 and table 2.

<sup>2</sup> See Written Comment OACPS, paras. 85-98.

<sup>3</sup> Rio Declaration on Environment and Development, 13 June 1992, UN Doc A/CONF.151/26, principle 2; see Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972, A/CONF.48/14/Rev.1, principle 21.

<sup>4</sup> See, e.g., Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, London, 29 December 1972, 1046 U.N.T.S. 120, in force 30 August 1975, preamble; Convention for the Protection of the Ozone Layer, Vienna, 22 March 1985, in force 22 September 1988, 26 ILM 1529, preamble, art 1(2); Convention on the Regulation of Antarctic Mineral Resource Activities, Wellington, 2 June 1988, not in force 27 ILM 868, art 4(2); United Nations Framework Convention on Climate Change, 9 May 1992, 1771 U.N.T.S. 107, art. 1(1) [hereinafter UNFCCC]; Convention on Biological Diversity, Rio de Janeiro, 5 June 1992, in force 29 December 1993, 1760 UNTS 69, preamble, arts. 7(c), 8(l), 14(1), 16(1); Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Helsinki, 17 March 1992, in force 6 October 1996, 31 ILM 1312, art 1(2); Convention on the Law of the Non-navigational Uses of International Watercourses, New York, 21 May 1997, in force 17 August 2014, 2999 UNTS 77, art 7; see also *Alabama Claims of the United States of America against Great Britain*, Award rendered on 14 September 1872 by the tribunal of arbitration established by Article I of the Treaty of Washington of 8 May 1871, XXIX Reports of International Arbitral Awards, p. 125, at pp. 129-130; *Trail Smelter Arbitration*, III Reports of International Arbitral Awards, p. 1905, at p. 1965; *Corfu Channel (United Kingdom v. Albania)*, Merits, Judgment, 1949 I.C.J. Reports, p. 4, at p. 22; *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. Reports, p. 242, para. 29; *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)*, Judgment, 2022 I.C.J. Reports, p. 614, para. 99; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, 2010 I.C.J. Reports, p. 14, para. 101.

<sup>5</sup> See International Energy Agency, *Net Zero by 2050. A Roadmap for the Global Energy Sector*, Summary for Policymakers (May 2021), p. 10 (“Beyond projects already committed as of 2021, there are no new oil and gas fields approved for development in our pathway, and no new coal mines or mine extensions are required.”); Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (March 2023), statement B.5 (“Projected CO2 emissions from existing fossil fuel infrastructure without additional abatement would exceed the remaining carbon budget for 1.5°C (50%).”); United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (November

3. The obligation to phase out fossil fuel production and related subsidies also arises under human rights law (as elucidated in the work of UN treaty bodies,<sup>6</sup> UN Special Procedures,<sup>7</sup> and the Office of the UN High Commissioner for Human Rights<sup>8</sup>) as well as marine environmental protection commitments and other sources of international law,<sup>9</sup> including the right to self-determination, recognised as a peremptory norm.<sup>10</sup> Collectively, these obligations require that fossil-fuel-producing States avoid further expansion of fossil fuel infrastructure and urgently halt and reverse their fossil-fuel-centred policies. They must also reorient financial flows, including by eliminating subsidies that incentivise further harm and providing finance and technology to facilitate a just transition to clean energy globally.

---

2023), pp. 4-5 (“[T]he increases estimated under the government plans and projections pathways would lead to global production levels in 2030 that are 460%, 29%, and 82% higher for coal, oil, and gas, respectively, than the median 1.5C-consistent pathways ... The disconnect between governments’ fossil fuel production plans and their climate pledges is also apparent across all three fuels.”)

- <sup>6</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, *Statement on Human Rights and Climate Change*, 14 May 2020, HRI/2019/1, para. 12 (“In their efforts to reduce emissions, States parties should contribute effectively to phasing out fossil fuels, promoting renewable energy and addressing emissions from the land sector, including by combating deforestation. In addition, States must regulate private actors, including by holding them accountable for harm they generate both domestically and extraterritorially. States should also discontinue financial incentives or investments in activities and infrastructure that are not consistent with low greenhouse gas emissions pathways, whether undertaken by public or private actors, as a mitigation measure to prevent further damage and risk.”); see also, Committee on Elimination of Discrimination Against Women, *Concluding observations on the eighth periodic report of Australia*, 25 July 2018, CEDAW/C/AUS/CO/8, para. 30(c); Committee on Elimination of Discrimination Against Women, *Concluding observations on the tenth periodic report of Norway*, 2 March 2023, CEDAW/C/NOR/CO/10, paras. 48(b)-(c), 49(a)-(b); Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Azerbaijan*, 22 February 2023, CRC/C/AZE/CO/5-6, para. 14(c).
- <sup>7</sup> Mr. David Boyd, Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Mr. Pedro Arrojo Agudo, Special Rapporteur on the human rights to safe drinking water and sanitation, Mr. Marcos A. Orellana, Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Mr. Livingstone Sewanyana, Independent Expert on the promotion of a democratic and equitable international order, Mr. Surya Deva, Special Rapporteur on the right to development, and Mr. Olivier De Schutter, Special Rapporteur on extreme poverty and human rights, *Fossil fuels at the heart of the planetary environmental crisis*, 30 November 2023; David R. Boyd (Special Rapporteur on the human right to a clean, healthy and sustainable environment), *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc. A/74/161 (15 July 2019), paras. 77-78.
- <sup>8</sup> Office of the High Commissioner for Human Rights, *Human Rights, Climate Change and Business: Key Messages*, Key Message 7, p. 9 (“In order for States to comply with their human rights obligations and climate commitments, they must discontinue financial incentives for fossil fuels, including subsidies and other forms of public finance, through effective policies designed to avoid negative impacts on the poor and marginalized”); *Impact of new technologies intended for climate protection on the enjoyment of human rights*, Report of the Human Rights Council Advisory Committee, 10 August 2023, A/HRC/54/47, para. 71 (“The main way for States to be human rights compliant is to rapidly phase out fossil fuels”).
- <sup>9</sup> See, e.g., Kyoto Protocol, 11 December 1997, 2302 U.N.T.S. 148, art 2(1)(a)(v) (requiring each Party in Annex I to phase out “subsidies in all greenhouse gas emitting sectors that run counter to the objective of the Convention”); Paris Agreement to the United Nations Framework Convention on Climate Change, 12 December 2015, 3156 U.N.T.S., entered into force 4 November 2016, art 2(1)(c) (whereby the phrase “[m]aking finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development” can be understood as requiring not only that financial resources be directed towards clean energy but also that fossil fuel subsidies be phased out).
- <sup>10</sup> CR 2024/53, p. 51, para. 7 (OACPS); *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, 19 July 2024, para. 233; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Separate Opinion of Vice-President Sebutinde, 2019 I.C.J. Reports, paras. 25-45; *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Separate Opinion of Judge Gomez Robledo, paras. 18-22; *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Declaration of Judge Tladi, paras. 14-16; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Separate Opinion of Judge Robinson, 2019 I.C.J. Reports, p. 317, para. 71(a); Dire Tladi, Fourth Report of the Special Rapporteur on Peremptory Norms of General International Law (Jus Cogens), 31 January 2019, UN Doc A/CN.4/727, p. 48-52, paras. 108-115; Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), with commentaries, Yearbook of the International Law Commission, 2022, vol. II, Part Two, conclusion 23 and Annex, letter (h).

4. States' failure to comply with these obligations constitutes an internationally wrongful act, triggering legal consequences under the general law of State responsibility.<sup>11</sup> As above, this wrongful conduct, extending over decades, must be viewed as a composite act, the cumulative effect of which has gravely undermined the climate system and disproportionately harmed States in Africa, the Caribbean, and the Pacific—regions long subjected to colonial exploitation and now at the frontline of the climate crisis.<sup>12</sup>
5. As a matter of cessation, States must immediately halt ongoing wrongful conduct—i.e., end further fossil fuel expansion and harmful subsidies—and take all necessary measures to prevent continued dangerous emissions.<sup>13</sup> They must also dismantle systems enabling large-scale fossil fuel production and redirect financial flows toward clean energy and adaptation for affected States.<sup>14</sup> Crucially, they must guarantee non-repetition,<sup>15</sup> ensuring that fossil fuel production does not continue to destabilise the climate system and undermine the rights of present and future generations.
6. The Court is specifically urged to clarify that guarantees of non-repetition require legal safeguards against the development and use of geoengineering technologies. Heavily promoted by the fossil fuel industry, the “promise” of these technologies is being used by large producers to justify the continued production of fossil fuels for decades to come. Yet these technological fixes are unproven, with some—such as solar geoengineering—inviting a new form of dangerous interference with the climate system that could throw off nature's equilibrium forever. The unimaginable risks to human and peoples' rights posed by such technologies underscore the pressing need for legal measures to protect against repeated and aggravated breaches.<sup>16</sup>
7. In addition to cessation and guarantees of non-repetition, responsible States must provide full reparation for the harm caused, including restitution where possible, compensation for damage suffered, and measures of satisfaction.<sup>17</sup> Failure to fulfil this obligation violates the most foundational principles of international law and perpetuates injustices visited upon those least responsible and most vulnerable to climate change.

---

<sup>11</sup> Written Statement OACPS, paras. 143-157; Written Comment OACPS, paras. 71-84.

<sup>12</sup> Written Comment OACPS, paras. 85-98, 104.

<sup>13</sup> Written Comment OACPS, paras. 111.

<sup>14</sup> See Written Comment Vanuatu, paras. 177-178, 181-182.

<sup>15</sup> Written Comment OACPS, paras. 99, 112.

<sup>16</sup> Written Comment OACPS, paras. 110-111.

<sup>17</sup> Written Comment OACPS, paras. 99, 113-115.

## Question posed by Judge Tladi

*“In their submissions, participants have often considered the interpretation of Article 4 of the Paris Agreement as imposing primarily procedural obligations in respect of NDCs. They have relied mainly on textual interpretation, context, and elements in Article 31(3) of the VCLT. Does the “object and purpose” of the Paris Agreement and the climate treaty framework affect this interpretation?”*

### The OACPS submits the following in response to this question:

1. The OACPS recalls the United Framework Convention on Climate Change (UNFCCC)’s ultimate objective of “[stabilising] greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system,” to be achieved “within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.”<sup>18</sup>
2. Regrettably, this objective has not been met. For decades, States have disregarded scientific warnings.<sup>19</sup> Escalating emissions have now led to a level of interference with the climate system that is no longer dangerous, but already deadly. Limits to natural adaptation have been crossed, leading to “substantial damages, and increasingly irreversible losses, in terrestrial, freshwater and coastal and open ocean marine ecosystems.”<sup>20</sup> These losses and damages, which extend to food sources, increasingly render injured States—including those of the OACPS—unable to realise sustainable economic development.
3. The Paris Agreement’s reference to “enhancing the implementation” of the UNFCCC<sup>21</sup> acknowledges that certain States have failed to meet their substantive obligations under the Convention. Under the UNFCCC, States are required, *inter alia*, to “take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects.”<sup>22</sup> To this end, developed States are obliged to provide finance, technology transfer and capacity building to developing States.<sup>23</sup> The preamble of both the UNFCCC and the Paris Agreement underscore that the UNFCCC’s ultimate objective was not to be achieved in a vacuum, but rather in a manner that is informed by best available science, the urgency of climate change, differentiated levels of obligations, and an appreciation of the wider corpus of international law, including human rights and the general law of State responsibility.<sup>24</sup>

---

<sup>18</sup> UNFCCC, art 2.

<sup>19</sup> Knowledge and awareness of climate risks have been known since at least the 1960s: CR 2024/53, pp. 53-54, para. 5 (Organization of African, Caribbean and Pacific States); Written Statement OACPS, paras. 22, 148; see also, Written Statement Vanuatu, paras. 177-192; Expert Report of Naomi Oreskes on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change (dated 29 January 2024) (Exhibit D to Written Statement Vanuatu); Written Statement MSG, para. 46; CR 2024/35 p. 97 (Vanuatu and MSG); Written Comment Barbados, para. 14; Written Statement Barbados, paras. 38-82; CR 2024/36, pp. 88-89, paras. 12-13 (Barbados).

<sup>20</sup> Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.1.2 (“high confidence”).

<sup>21</sup> Paris Agreement, art 2.

<sup>22</sup> United Nations Framework Convention on Climate Change, 9 May 1992, 1771 U.N.T.S. 107, art. 3(3) [hereinafter UNFCCC].

<sup>23</sup> UNFCCC art 4(1), see art 2.

<sup>24</sup> UNFCCC, preamble; Paris Agreement, preamble. As to the relevance of the preamble to determining “object and purpose”, see *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, 1986 I.C.J. Reports, p. 14, para. 275; *Case concerning Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, 1996 I.C.J. Reports, p. 803, para. 27; *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, Judgment, 2014 I.C.J. Reports, p. 226, para. 56.

4. In the OACPS' submission, these matters guide the proper interpretation of Article 4 of the Paris Agreement. In particular, the construction of Article 4 cannot disregard the ongoing breaches of obligations that jeopardise the integrity of the climate treaty framework if left without legal consequence.<sup>25</sup>
5. Thus, while Article 4 of the Paris Agreement sets forth procedural duties (e.g., preparing and communicating Nationally Determined Contributions (NDCs)), these obligations are not self-contained. Interpreted in light of the climate treaty framework's object and purpose, such procedural obligations serve as vehicles for restoring compliance with breached substantive norms. It follows that Article 4 obliges responsible States to adopt NDCs that not only reflect their "highest possible ambition" but also rectify ongoing violations, including through international cooperation. NDCs of responsible States must thus provide detailed blueprints for a just transition globally, with clear commitments for the phasing out of fossil fuels, transferring green technologies, and providing climate finance and capacity building at scale.
6. The OACPS stresses that NDCs are not mere formalities. They are tools to ensure cessation of wrongful conduct, reparation for harm done, and prevention of further harm. Interpreted in light of the climate treaty framework's object and purpose, Article 4 of the Paris Agreement demands that procedural steps translate into substantive, science-aligned mitigation and adaptation efforts, as well as financial, technological, and capacity-building support to developing States to implement their climate actions effectively.
7. In short, the object and purpose of the UNFCCC and the Paris Agreement transform what might appear as purely procedural obligations into instruments to correct ongoing breaches and ensure that those States responsible for excessive emissions meet their remedial duties without delay.

---

<sup>25</sup> Written Comment OACPS, para. 86; Written Statement OACPS, paras. 147-157.

## Question posed by Judge Aurescu

“Some participants have argued that there exists a right to a clean, healthy, and sustainable environment in international law. Could you please develop what is, in your view, the legal content of this right and its relation to the other human rights which you consider relevant for this advisory opinion?”

### The OACPS submits the following in response to this question:

1. The OACPS affirms that the right to a clean, healthy, and sustainable environment (right to a healthy environment) is firmly established as a human right, indispensable for the enjoyment of the rights to life, health, food, water, housing, culture, and self-determination, among others. This right, affirmed by UN General Assembly Resolution 76/300<sup>26</sup> and Human Rights Council Resolution 48/13,<sup>27</sup> has deep roots,<sup>28</sup> including in regional treaties and instruments<sup>29</sup> and national constitutions<sup>30</sup> across the globe. As many participants have submitted, the right has now crystallised into a norm of customary international law.<sup>31</sup> It also exists as a general principle of law recognised by the community of nations.

---

<sup>26</sup> *The human right to a clean, healthy and sustainable environment*, UN General Assembly Resolution 76/300, adopted 28 July 2022, A/RES/76/300, para. 1.

<sup>27</sup> *The human right to a clean, healthy and sustainable environment*, Human Rights Council Resolution 48/13, adopted 8 October 2021, A/HRC/RES/48/13, para. 1.

<sup>28</sup> The right was first recognised in the 1972 Stockholm Declaration. See *Report of the United Nations Conference on the Human Environment*, Stockholm, 5 - 16 June 1972, A/CONF.48/14/Rev.1, principle 1. Over the intervening five decades, the right has achieved broad recognition by the international community, individual States, international and regional bodies, and tribunals. See, e.g., *Report of the United Nations Conference on Environment and Development*, Rio de Janeiro, 3 - 14 June 1992, vol. I, Resolutions Adopted by the Conference (United Nations publication, Sales No. E.93.I.8 and corrigendum) (Rio Declaration), principle 1; *Report of the World Summit on Sustainable Development*, Johannesburg, 26 August - 4 September 2002, A/CONF.199/20, para. 169; *Human Rights and the Environment*, Human Rights Council Resolution 16/11, adopted 12 April 2011, A/HRC/Res/16/11; *Human Rights and Climate Change*, Human Rights Council Resolution 41/21, adopted 23 July 2019, A/HCR/Res/41/21; *Human Rights and Climate Change*, Human Rights Council Resolution 50/9, adopted 7 July 2022, A/HCR/Res/50/9; Committee on the Elimination of Discrimination against Women, *General Recommendation No. 39 on the rights of indigenous women and girls*, CEDAW/C/GC/39, 26 October 2022, para. 60; Committee on the Rights of the Child, *General Comment No. 26 on children's rights and the environment, with a special focus on climate change*, CRC/C/GC/26, 22 August 2023, para. 8.

<sup>29</sup> See, e.g., African Charter on Human and Peoples' Rights, adopted 27 June 1981, into force 21 October 1986, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58, art. 24; Arab Charter on Human Rights (2024), art. 38; The Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters, 25 June 1998, in force 30 October 2001, 2161 U.N.T.S. 447, art. 1; Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, 4 March 2018, in force 22 April 2021, 3388 U.N.T.S., art. 1; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 16 November 2022, A-52, art. 11(1); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 11 July 2003, entered into force 25 November 2005, art. 18.

<sup>30</sup> David Boyd, Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, *Right to a healthy environment: good practices*, U.N. Doc A/HRC/43/53 (30 Dec. 2019), para 10 (“There are 110 States where this right enjoys constitutional protection.”), para. 13 (“In total, more than 80 per cent of States Members of the United Nations (156 out of 193) legally recognize the right to a safe, clean, healthy and sustainable environment.”). Subsequent developments in Antigua and Barbuda, Belize, Canada, Dominica, the Federated States of Micronesia, Grenada, Oman and Saint Lucia increased the total to 164 UN Member States that recognize the right to a healthy environment in law.

<sup>31</sup> See, e.g., CR 2024/39, p. 67, para. 7 (El Salvador); CR 2024/41, p. 36, para. 21 (Ghana); CR 2024/50, pp. 23-25, paras. 4-8 (Slovenia); CR 2024/37, p. 57, para. 25 (Cameroon); CR 2024/37, p. 65, para. 12 (Philippines); CR 2024/39, p. 67, para. 7 (El Salvador); CR 2024/50, p. 39, para. 10 (Sri Lanka); Written Comment Uruguay, paras. 108-115; Written Statement Solomon Islands, paras. 174-176; Written Statement Seychelles, para. 144; Written Statement Kenya, para. 5.73; Written Statement Albania, para. 96(c); Written Statement Micronesia, para. 79; Written Statement Liechtenstein, para. 45; Written Statement Mexico, para. 87; Written Statement Ecuador, para. 3.103-3.107; Written Statement Madagascar, para. 62; Written Statement Namibia, paras. 121-123; Written Statement Bangladesh, para. 110; Written Statement Argentina, para. 184; Written Statement Costa Rica, paras. 80-83; Written Statement El Salvador, para. 42; Written Statement Bolivia, paras. 17-21; Written Comment Kiribati, para. 42; Written Comment Tuvalu, para. 20; Written Comment Albania, paras. 35-36; Written Comment Samoa, para. 131.

2. Substantively, the right to a healthy environment guarantees access to clean air, safe and sufficient water, a safe climate, healthy food, thriving ecosystems and biodiversity, and non-toxic environments.<sup>32</sup> Procedurally, it requires access to environmental information, public participation in environmental decision-making, and effective remedies for harm.<sup>33</sup> It applies to present and future generations<sup>34</sup> and extends extraterritorially, given the transboundary character of climate harm.<sup>35</sup>
3. For OACPS members—which include many former colonies and small island developing States—the right to a healthy environment is of particular importance as a prerequisite for the exercise of the right to self-determination. Climate change, caused by historical and ongoing excessive emissions, jeopardises cultural survival, territorial integrity, and the very existence of peoples.<sup>36</sup> Entire ecosystems are collapsing, freshwater sources are contaminated by saltwater intrusion, and agricultural lands are diminishing, impairing the fundamental rights of peoples and individuals who contributed minimally to the problem.<sup>37</sup>
4. These impairments must be recognised as **violations** of the relevant rights: they emanate from internationally wrongful conduct, attributable to specific States. Indeed, by destroying the conditions necessary for the fulfilment of fundamental rights and self-determination, in full knowledge of the risks, States that have caused significant harm to the climate system and other parts of the environment have violated multiple human rights obligations, including those arising from the right to a healthy environment.<sup>38</sup>

<sup>32</sup> See Astrid Puentes Riaño (Special Rapporteur on the human right to a clean, healthy and sustainable environment), *Overview of the implementation of the human right to a clean, healthy and sustainable environment*, U.N. Doc. A/79/270 (2 Aug. 2024), paras. 50-70; see also David Boyd, Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, *Right to a healthy environment: good practices*, U.N. Doc A/HRC/43/53 (30 Dec. 2019), paras. 38-112.

<sup>33</sup> Astrid Puentes Riaño (Special Rapporteur on the human right to a clean, healthy and sustainable environment), *Overview of the implementation of the human right to a clean, healthy and sustainable environment*, U.N. Doc. A/79/270 (2 Aug. 2024), paras. 40-49; see also David Boyd, Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, *Right to a healthy environment: good practices*, U.N. Doc A/HRC/43/53 (30 Dec. 2019), paras. 14-37.

<sup>34</sup> *Advisory Opinion OC-23/17* ('The Environment and Human Rights'), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 59 ("The human right to a healthy environment has been understood as a right that has both individual and also collective connotations. In its collective dimension, **the right to a healthy environment constitutes a universal value that is owed to both present and future generations.**" (emphasis added)). This is also consistent with the Court's jurisprudence. See, e.g., *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. Reports, p. 226, paras. 35-36 (discussing the serious threat to future generations posed by the use nuclear weapons, including because of the environmental devastation such use would entail).

<sup>35</sup> Written Statement OACPS, paras. 118-119; Written Comment OACPS, paras. 44-50; Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child, concerning Communication Nos. 104-107/2019: Chiara Sacchi et al. v. Argentina, Brazil, France, and Germany* (CRC/C/88/D/104/2019, CRC/C/88/D/105/2019, CRC/C/88/D/106/2019, CRC/C/88/D/107/2019), 11 November 2021, para. 10.7; *Advisory Opinion OC-23/17* ('The Environment and Human Rights'), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, paras. 102-103.

<sup>36</sup> CR 2024/35, pp. 103-104, paras. 3-4 (Vanuatu and MSG).

<sup>37</sup> See, e.g., CR 2024/49, p. 22, para. 11 (Samoa); CR 2024/41, p. 37, para. 27 (Ghana); CR 2024/51, pp. 54-55, para. 12 (Tuvalu); CR 2024/40, p. 71, paras. 18-19 (Fiji); CR 2024/41, p. 19, para. 11 (Sierra Leone); CR 2024/42, p. 29, para. 8 (Marshall Islands); CR 2024/44, p. 25, para. 9 (Liechtenstein); CR 2024/45, pp. 24-25, paras. 21-22 (Micronesia); Written Statement Sierra Leone, para. 3.92; Written Statement Antigua and Barbuda, para. 195; Written Statement COSIS, paras. 74-78; Written Comment MSG, paras. 59-136; see also Ian Fry, *Promotion and protection of human rights in the context of climate change*, "Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change", 26 July 2022, U.N. Doc A/77/226, para. 88 ("Throughout the world, the rights of people are being denied as a consequence of climate change. This includes a denial of the rights to, inter alia, life, health, food development, self-determination, water and sanitation, work, adequate housing and freedom from violence, sexual exploitation, trafficking and slavery."); *Statement on Human Rights and Climate Change*, 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, 14 May 2020, HRI/2019/1, paras. 3, 5.

<sup>38</sup> See Written Statement OACPS, paras. 128, 150, 152-155.



5. The right's violation mandates not only an end to ongoing harmful conduct but also guarantees of non-repetition and full reparation for the injury caused. Responsible States must also provide reparations to victims, including by restoring damaged ecosystems, supporting affected communities, and ensuring that individuals and peoples—especially in vulnerable States such as those of the OACPS—can once again enjoy their environment as a source of life, culture, and well-being.<sup>39</sup>
6. Correlative violations of the right to self-determination emanating from States' conduct that has caused climate change trigger additional legal consequences for all States and international organisations.<sup>40</sup> The OACPS respectfully asks the Court to elaborate on the meaning of these obligation—i.e., the obligation to cooperate to bring the breach to an end, and to refrain from recognising as lawful the situation stemming from the breach—with particular regard for affected peoples' right to restore the health of their environment in self-determined ways.
7. In sum, the right to a healthy environment clarifies that climate obligations are not satisfied by partial or prospective steps alone. Past and ongoing violations of this right, emanating from certain States' contributions to climate change, must be remedied, ensuring that those who have suffered already are made whole. This right provides a powerful normative anchor tying the urgent need for cessation and reparation to the fundamental principle of human dignity.

---

<sup>39</sup> See, e.g., Written Statement OACPS, para. 176; Written Comment OACPS, para. 113; CR 2024/35, p. 113, para. 11 (Vanuatu and MSG); CR 2024/38, p. 49, para. 36 (Colombia); CR 2024/45, p. 28, para. 39 (Micronesia); CR 2024/42, p. 20, para. 13 (Cook Islands); Written Statement Solomon Islands, para. 239; Written Statement Kenya, paras. 6.93-6.94; Written Statement Madagascar, paras. 84-85; Written Statement Tuvalu, paras. 136-140; Written Statement Bangladesh, para. 147; Written Statement COSIS, para. 182; Written Statement MSG, para. 206; Written Comment Vanuatu, para. 202; Written Comment Sierra Leone, para. 4.18; Written Comment MSG, paras. 206-218.

<sup>40</sup> See Written Statement OACPS, paras. 190-194.

## Question posed by Judge Charlesworth

*“What is the significance of the declarations made by some States on becoming parties to the UNFCCC and the Paris Agreement to the effect that no provision in these agreements may be interpreted as derogating from principles of general international law or any claims or rights concerning compensation or liability due to the adverse effects of climate change?”*

### The OACPS submits the following in response to this question:

1. The OACPS notes that several States, including OACPS member States, made declarations upon signing or ratifying the UNFCCC,<sup>41</sup> the Kyoto Protocol<sup>42</sup> and the Paris Agreement<sup>43</sup> affirming that these instruments do not displace or limit the general law of State responsibility or otherwise impair remedial rights of States, peoples and individuals. These declarations underscore the importance of existing entitlements to remedies under international law for the harm caused by decades of wrongful conduct. The absence of objections to these declarations reinforces their significance and supports their interpretative value.<sup>44</sup>
2. The significance of these declarations lies in the shared understanding that the climate treaties, while providing a crucial platform for international cooperation, do **not** constitute a self-contained regime exempt from the broader corpus of international law. Likewise, the declarations make it plain that loss and damage arrangements under the Paris Agreement operate in conjunction with, not as substitutes for, the general law of State responsibility and other existing frameworks for liability and redress.<sup>45</sup>
3. Instead, these instruments are part of a broader tapestry of international obligations arising under both treaty and customary international law, including: the obligation to prevent transboundary harm; due diligence requirements; obligations arising from human and peoples’ rights, including the right to self-determination; and distinct obligations arising from internationally wrongful acts. The applicability of a broad range of obligations to the conduct that has caused significant harm to the climate system

---

<sup>41</sup> Declarations made by Fiji, Kiribati, Nauru and Papua New Guinea. See ‘Status of Ratification of the United Nations Framework Convention on Climate Change’, United Nations Treaty Collection, available at [https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsq\\_no=XXVII-7&chapter=27&Temp=mtdsq3&clang=en](https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsq_no=XXVII-7&chapter=27&Temp=mtdsq3&clang=en).

These States made declarations to the effect that the Convention “shall in no way constitute a renunciation of any rights under international law concerning State responsibility for the adverse effects of climate change, and that no provisions in the Convention can be interpreted as derogating from the principles of general international law.”

<sup>42</sup> Declarations made by Cook Islands, Kiribati, Nauru and Niue. See ‘Status of Ratification of the UNFCCC and the Kyoto Protocol’, United Nations Treaty Collection, available at [https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsq\\_no=xxvii-7-a&chapter=27&clang=en](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsq_no=xxvii-7-a&chapter=27&clang=en). These States made declarations to the effect that the Kyoto Protocol “shall in no way constitute a renunciation of any rights under international law concerning State responsibility for the adverse effects of climate change and that no provision in the Protocol can be interpreted as derogating from principles of general international law.”

<sup>43</sup> Declarations made by Cook Islands, Marshall Islands, Federated States of Micronesia, Nauru, Niue, Philippines, Solomon Islands, Tuvalu and Vanuatu. See ‘Status of Ratification of the Paris Agreement’, United Nations Treaty Collection, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq\\_no=XXVII-7-d&chapter=27&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq_no=XXVII-7-d&chapter=27&clang=en). These States made declarations to the effect that “the Paris Agreement and its application shall in no way constitute a renunciation of any rights under international law concerning State responsibility for the adverse effects of climate change and that no provision in the Paris Agreement can be interpreted as derogating from principles of general international law or any claims or rights concerning compensation due to the impacts of climate change.”

<sup>44</sup> See *The Temple of Preah Vihear (Cambodia v. Thailand)*, 1962 ICJ Reports p. 6, at p. 23; *Fisheries Case (United Kingdom v. Norway)*, 1951 ICJ Reports, p. 116, at p. 138; *Legal Status of Eastern Greenland (Denmark v. Norway)*, PCIJ Series A/B No. 53, para. 25.

<sup>45</sup> This is further confirmed by the COP decision accompanying the Paris Agreement, which provides that the loss and damage mechanism articulated in Article 8 of the Agreement “does not involve or provide a basis for any liability or compensation”. See Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, para. 51.

and other parts of the environment is confirmed in most submissions to the Court in the present proceedings.<sup>46</sup>

4. In the context of the escalating climate crisis, the legal situation captured by the declarations is simple: the climate change treaties in no way shield responsible States from accountability or remedial obligations. They must confront the legal consequences of their unlawful conduct, including their obligation to restore climate stability, provide legal safeguards against further harm, and ensure that those whose rights have been violated receive the reparations to which they are entitled.<sup>47</sup>
5. The OACPS respectfully urges the Court to affirm this legal situation in the clearest, most articulate terms in its advisory opinion. Specifically, the Court is asked to confirm the unlawfulness of the relevant conduct and the corresponding legal consequences—ensuring that no State escapes accountability and that adequate and effective remedies are provided to those who have suffered, and continue to suffer, the dire consequences of climate change.
6. Confirmation of these legal truths will not only safeguard the rights of climate-vulnerable States and present and future generations but also protect coherence and consistency in the international legal order. Such clarification from the Court would greatly assist all States and international organisations in their collective efforts to ensure that the climate crisis is addressed through the established legal frameworks, leaving no victims in a legal vacuum.

Respectfully submitted on behalf of the Organisation of African, Caribbean and Pacific States,

*Cristelle Pratt*

PP  
**Georges Rebelo Pinto CHIKOTI**  
**Secretary-General**

<sup>46</sup> See e.g., CR 2024/35, p. 98, para. 5 (Vanuatu and MSG); CR 2024/35, p. 132, paras. 20-23; p. 134, para. 2 (Albania); CR 2024/36, p. 17-18, paras. 7, 10-11 (Antigua and Barbuda); CR 2024/36, p. 60, para. 11, pp. 63-64, para. 27-29 (Bahamas); CR 2024/36, p. 67, paras. 3-4, p. 70, para. 13 (Bangladesh); CR 2024/35, p. 82, para. 4 (Barbados); CR 2024/37, p. 9-12, paras. 18 (Belize); CR 2024/37, p. 21-22, paras. 12-14 (Bolivia); CR 2024/37, pp. 43-44, paras. 2-4 (Burkina Faso); CR 2024/37 p. 53-54, para. 5 (Cameroon); CR 2024/37, pp. 65-66, paras. 9-17 (Philippines); CR 2024/38, pp. 22-23, paras. 15-19 (Chile); CR 2024/38, p. 42, para. 5 (Columbia); CR 2024/38, p. 55, paras. 11-12 (Dominica); CR 2024/39, p. 12, paras. 5-8 (Costa Rica); CR 2024/39, p. 58, para. 9 (Egypt); CR 2024/39, p. 66, para. 3 (El Salvador); CR 2024/40, p. 18, para. 8 (Ecuador); CR 2024/40, p. 32, para. 7 (Spain); CR 2024/40, pp. 68-69, paras. 7-11 (Fiji); CR 2024/41, pp. 20-21, paras. 5-7 (Sierra Leone); CR 2024/41, p. 33, para. 3 (Ghana); CR 2024/41, p. 51, para. 9 (Grenada); CR 2024/41, p. 58, paras. 23-24 (Guatemala); CR 2024/42, p. 14-15, para. 19 (Cook Islands); CR 2024/42, p. 28, para. 4 (Marshall Islands); CR 2024/42, p. 38, para. 6 (Solomon Islands); CR 2024/43, p. 14, para. 11 (Jamaica); CR 2024/43, p. 23, para. 2 (Papua New Guinea); CR 2024/43, p. 31, para. 2 (Kenya); CR 2024/43, p. 44, para. 4 (Kiribati); CR 2024/44, p. 9, para. 8, p. 14, para. 11, p. 16, para. 18 (Latvia); CR 2024/44, pp. 24-25, para. 7, p. 27, para. 17 (Liechtenstein); CR 2024/44, p. 37, para. 21 (Malawi); CR 2024/44, p. 47, para. 3 (Maldives); CR 2024/44, p. 67, para. 17 (African Union); CR 2024/45, p. 10, para. 6 (Mexico); CR 2024/45, p. 20, para. 8 (Federated States of Micronesia); CR 2024/45, p. 39, paras. 8-9; CR 2024/46, p. 8, para. 2 (Nauru); CR 2024/46, p. 24, para. 2 (Nepal); CR 2024/46, pp. 41-42, paras. 2-4 (Palestine); CR 2024/46, pp. 59-60, para. 17 (Pakistan); CR 2024/47, p. 14, para. 3 (Palau); CR 2024/47, p. 20, para. 9 (Panama); CR 2024/47, pp. 31-32, paras. 19-21 (Netherlands); CR 2024/47, p. 40, paras. 13-15, p. 42, paras. 26-27 (Peru); CR 2024/47, pp. 46-47, paras. 2-4 (Democratic Republic of the Congo); CR 2024/48, p. 11, para. 24, p. 15, para. 45 (Portugal); CR 2024/48, p. 24, para. 13 (Dominican Republic); CR 2024/48, p. 35, para. 41 (Romania); CR 2024/48, pp. 61-62, paras. 2-7 (Saint Lucia); CR 2024/49, p. 12, paras. 5-6 (Saint Vincent and the Grenadines); CR 2024/49, p. 25, para. 9 (Samoa); CR 2024/49, pp. 60-61, paras. 7-9 (Gambia); CR 2024/49, p. 32, paras. 5-6; CR 2024/49, p. 46, paras. 5-7 (Senegal); CR 2024/50, p. 10, para. 10 (Singapore); CR 2024/50, pp. 19-20, para. 3, p. 25, para. 10 (Slovenia); CR 2024/50, pp. 32-33, paras. 3-4 (Sudan); CR 2024/50, p. 37, para. 4, p. 38, para. 8 (Sri Lanka); CR 2024/50, p. 63, paras. 16-18 (Serbia); CR 2024/50, p. 55, paras. 28-29 (Switzerland); CR 2024/51, pp. 14-15, paras. 14-15, para. 17 (Thailand); CR 2024/51, p. 41, para. 4 (Tonga); CR 2024/51, p. 64, para. 2 (Comoros); CR 2024/52, p. 12, para. 2 (Uruguay); CR 2024/52, pp. 18-19, para. 7 (Viet Nam); CR 2024/52, p. 30, para. 14 (Zambia); CR 2024/53, p. 24, para. 16 (COSIS); CR 2024/53, p. 35, para. 5 (SPC).

<sup>47</sup> See Written Statement OACPS, paras. 158-194; Written Comment OACPS, para. 99 (documenting that most participants in these proceedings have confirmed in their written submissions that the relevant conduct is unlawful under international law and entails legal consequences under the general law of State responsibility); CR 2024/53, p. 49, para. 5 (documenting that most participants in their oral statements have submitted the same).