

INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)

Written Statement of Ghana

21 MARCH 2024

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I. INTRODUCTION

1. This Written Statement is filed by the Republic of Ghana, in accordance with the Order of the Court dated 20 April 2023 in response to the United Nations General Assembly's Request for an Advisory Opinion on the 'Obligation of States in respect of Climate Change' dated 29 March 2023.
2. This written statement addresses the (I) Terms of the Request and the context in which it was made. (II) it then addresses the jurisdiction of the Court and admissibility (III) climate change and its impact on Ghana and (IV) Conclusions.

II. TERMS OF THE REQUEST

3. The General Assembly, in resolution 77/276 of 29 March 2023, decided, pursuant to Article 96, paragraph 1, of the United Nations Charter and Article 65 of the Statute of the Court, to request the International Court of Justice to render an opinion on the following question:

"Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,

- (a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?
- (b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

- (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?
 - (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?"
4. As the terms of these questions indicate, the "obligations of States under international law" is the "protection of the climate system and other parts of the environment" from emissions, and acts of states that cause significant harm and entail legal consequences.
5. Following these terms, although the questions specified "in particular, small island developing states," that are currently negatively affected by climate **they relate to the entire world**. As put by the General Assembly in the resolution requesting the current opinion, "climate change is an unprecedented challenge of civilizational proportions," and the "future of humankind depends on our immediate and urgent response."
6. The questions formulated by the General Assembly on which the Court is asked to render an Advisory Opinion emerged from "*scientific consensus*" documented by, *inter alia*, resolutions and declarations of the General Assembly, the Security Council, reports of the intergovernmental Panel on Climate Change and NGOs. This evidence is also reflected in existing facts that are affecting communities globally. The existence of "significant harm to the climate system" due to acts and omissions by some states in violation of their legal obligations under international law creates a reality that affects us all.
7. The questions referred to the Court by the General Assembly seek to elucidate the legal obligations such as the "right to a healthy environment", "polluter pays principle" and "intergenerational equity" as well as identifying their consequences - which is vital to understand the responsibility of states caused by its internationally wrongful acts and the "urgency of scaling up action and support... to enhance adaptive capacity and to implement collaborative approaches" in order to "effectively" respond to "the adverse effects of climate change, as well as for averting,

minimizing and addressing loss and damage associated with those effects in developing countries that are particularly vulnerable to these effects...”

8. The scientific facts establish first the human causes of climate change, second the accelerating rate of this change and third the deleterious effects of this change in terms of both increased temperature, increased numbers of adverse weather events, crop failure, rising sea-levels, drought and famine.

9. This is not even to mention the second-order effects of increasing likelihood of war, societal unrest, competition for resources, displacements of peoples and threats to our culture and civilisation that would be the inevitable result unless concerted and sustained action is taken.

10. This written statement on behalf of Ghana is based on its view of the important role that the Court serves in rendering advisory opinions and the importance of strengthening the rule of law at the international level, on the potential to use international law to resolve seemingly intractable problems, as well as clarifying among global actors about the legal consequences arising from States' obligations under international law, reinforcing the awareness of the scientific evidence, and by clarifying the law, creating a greater sense of solidarity among States and cooperation in what is a transnational problem.

11. No individual party to this Court can take the actions necessary to ward off the pressing and creeping dangers that climate change poses. The appeal to the ICJ is a once in a generation opportunity to catalyse a change in attitudes and behaviours to keep climate change within a range where its deleterious effects might be managed and to work together in managing them. The climate change problem by its nature requires joint and shared responsibility.

12. Ghana perceives that this Advisory Opinion will therefore provide guidance to States to carry out and implement their obligations in order to uphold the rule of law and save the planet from further degradation.

III. JURISDICTION OF THE COURT

A. The Court has jurisdiction to render the requested advisory opinion

13. Article 96(1) of the UN Charter states:

“The General Assembly of the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.”¹

14. Article 65 (1) of the ICJ Statute provides:

“The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.”²

15. The above provisions are sufficient to establish that the General Assembly has the competence to request an advisory opinion for the Court and the Court has jurisdiction to render the requested advisory opinion.

16. The General Assembly adopted Resolution 77/276 by consensus in which it requested the current advisory opinion. Therefore, it must be evidence of the legal validity and an expression of the will of the General Assembly for the Court to give its opinion. The consensus here indicates that the questions raised by the General Assembly are in need for further legal clarifications that will assist the requesting body in carrying its responsibility in matters relating to climate change that are incurring damages to the environment and affecting the rights of the current and future generations.

17. Furthermore, the Court has never declined to render an advisory opinion falling within the competence of the requesting body, given that the opinion will assist the requesting body in fulfilling its mandate.

¹ United Nations Charter, Article 96(1).

² United Nations Charter, Article 65(1).

18. In rendering the advisory opinion, it is important to note that the General Assembly has focused on the legal aspects of the responsibility of states under relevant agreements and other rules of international law, which clearly falls within the scope of the Court's jurisdiction. As indicated by this Court, in the *Western Sahara Advisory Opinion*, questions "framed in terms of law and raising problems of international law ... are by their very nature susceptible of a reply based on law" and therefore appear to be questions of a legal character for the purposes of Article 96 of the Charter and Article 65 of the Statute."³

19. As evidenced from the formulation of the question and as stated in the preamble of resolution 77/276, the General Assembly is alarmed of the current status of climate change, hence, it requires the Court's opinion on the legal issues that will assist it in addressing the adverse effects of climate change and achieve sustainable development.

20. Recognizing that the questions put forward before the Court by the General Assembly are focused solely on legal matters, the Court should find itself having jurisdiction to answer them and render its advisory opinion.

B. There are no compelling reasons for the Court to exercise discretion not to render the requested advisory opinion

21. Article 65(1) of the Statute of the ICJ provides that a Court 'may give an advisory opinion', illustrating the fact that the power is discretionary, and the Court has the power to decline to give an advisory opinion. Only "compelling reasons" should lead to the Court declining to exercise jurisdiction.⁴ This discretion whether or not to respond to a request for an advisory opinion is important to protect the integrity of the Court's judicial function and its nature as the principal judicial organ of the United Nations.⁵ An illustration of this would be the use of an advisory opinion to circumvent

³ *Western Sahara, Advisory Opinion*, (1975) *I.C.J. Reports*, p. 18, para. 15.

⁴ *Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Advisory Opinion)* (2010) *I.C.J. Reports* p. 403, para. 30.

⁵ *Status of Eastern Carelia, Advisory Opinion*, 1923, *P.C.I.J. Series B*, No. 5, p. 29; *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion*, *I.C.J. Reports* 1973, p. 175, para. 24; *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion*, (1982) *I.C.J. Reports*, p. 334, para. 22; and *Legal*

the lack of consent from a third state⁶ or a question of a fact which could not be resolved without the participation of a third state.⁷ The Court's Opinion is given not to individual states, but the "organ" of the UN General Assembly. It, therefore, "represents its participation in the activities of the Organization, and, in principle, should not be refused."⁸ In practice, the Court has never refused to answer a question on the basis of discretion.

22. Ghana submits that there are no compelling reasons to exercise discretion not to consider the questions asked. Climate change obligations concern the international community as a whole, **in the nature of *erga omnes***, and the atmosphere forms part of mankind's common heritage. The questions asked were the product of extensive negotiations and adopted by consensus. Climate change poses a major challenge to the international community, and the Court can help clarify the obligations in this area. States have been invited to participate on this basis and the Court has been given extensive information by UN agencies. The court will have been provided with extensive evidence to make a determination on these obligations.⁹ In short, there are no compelling reasons why the Court should decline to exercise its discretion.

23. Further Ghana urges the Court not to depart from its environmental jurisprudence. In its advisory opinion on *The Legality of the Threat or Use of Nuclear Weapons*¹⁰ the ICJ recognised that "the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn." The ICJ also recognised that "the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States

Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, (2004) *I.C.J. Reports*, pp. 156-157, paras. 44-45.

⁶ *Western Sahara (Advisory Opinion)* (1975) *I.C.J. Reports* p.25, para 33.

⁷ *Status of East Carelia, P.C.I.J. Series B, No 5*, 28.

⁸ *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion*, (1950) *I.C.J. Reports*, p. 71.

⁹ *The Wall Case* (2004) *I.C.J. Reports*, p. 136, para. 56.

¹⁰ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, ICJ GL No 95, [1996] ICJ Rep 226, ICGJ 205 (ICJ 1996), 8th July 1996, United Nations [UN]; International Court of Justice [ICJ]

or of areas beyond national control is now part of the corpus of international law relating to the environment.”

24. Furthermore, in the *Gabčíkovo-Nagymaros case*¹¹, the ICJ noted that “mankind has, for economic and other reasons, constantly interfered with nature.” According to the Court, this intervention “was often done without consideration of the effects upon the environment.” Nonetheless, “owing to new scientific insights and to a growing awareness of the risks for mankind – for present and future generations – of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed.” This is certainly the case with climate change for which the Court is called upon to render its advisory opinion.
25. In the *Pulp Mills case*¹² the ICJ considered the principle of prevention and pointed out that, “as a customary rule, it has its origins in the due diligence that is required of a State in its territory.” The ICJ clarified that States must use all the means at their disposal to avoid transboundary harm from activities in their territory or under their jurisdiction. To exercise due diligence, States have to “ascertain whether there is a risk of significant transboundary harm prior to undertaking an activity having the potential adversely to affect the environment of another State. If that is the case, the State concerned must conduct an environmental impact assessment” (EIA). In *Costa Rica v Nicaragua/Nicaragua v Costa Rica cases*¹³, the ICJ reiterated this interpretation.
26. The Court is thus invited to consider its previous holdings in the above cases and explore the applicability of the no-harm principle and the related due diligence obligations in the context of climate change. In so doing, the Republic of Ghana is convinced the most irresistible conclusion is to affirm the obligations of States to ensure that their GHG emissions¹⁴ do not cause significant harm to other states. The Court is

¹¹Gabčíkovo-Nagymaros Project, Hungary v Slovakia, Judgment, Merits, ICJ GL No 92, [1997] ICJ Rep 7, [1997] ICJ Rep 88, (1998) 37 ILM 162, ICGJ 66 (ICJ 1997), 25th September 1997, [ICJ]

¹²Pulp Mills on the River Uruguay, Argentina v Uruguay, Order, Provisional Measures, ICJ GL No 135, [2006] ICJ Rep 113, (2006) 45 ILM 1025, ICGJ 2 (ICJ 2006), 13th July 2006, United Nations [UN]; International Court of Justice [ICJ]

¹³Certain Activities carried out by Nicaragua in the Border Area, Costa Rica v Nicaragua, Compensation owed by Nicaragua to Costa Rica, ICJ GL No 150, [2018] ICJ Rep 15, ICGJ 520 (ICJ 2018), 2nd February 2018, United Nations [UN]; International Court of Justice [ICJ]

¹⁴The current CO₂-equivalent emission rates averaging 6.6 tonnes per person per year, are well over twice the estimated rate 2.3 tons required to stay within the 2030 Paris Agreement increase of 1.5 °C (2.7 °F) over pre-industrial levels. Annual per capita emissions in the industrialized countries are typically as much as ten times the average in developing countries.

similarly being called upon to elaborate on specific criteria of due diligence and identify benchmarks to assess state action and delve into the application of principles and standards relating to climate change in Environmental Impact Assessments.

27. Ghana further submits that in addressing the questions before the Court, the Court may kindly wish to interpret the Paris Agreement, by considering its Preamble, which calls on States to “respect, promote and consider their respective obligations on human rights” when taking action to address climate change. It is Ghana’s view that an analysis of the Preamble of the Paris Agreement could advance the understanding of the relationship between the operative part of the treaty and States’ human rights obligations.

28. Furthermore, Ghana contends that the ICJ’s advisory opinion on the questions before it presents an opportunity to obtain an authoritative statement on “**the long-neglected matter of loss and damage.**” International climate negotiations have seen a **decades-long** conversation on funding for loss and damage. On this point, it may be recalled that at COP27 States Parties decided to establish and operationalise a **loss and damage fund**, particularly for the most vulnerable nations. The success of the fund and its capacity to reach its objectives will depend, to a large extent, on the existence of clear rules of operation and accountability mechanisms that consider the needs of developing countries. In exercising its jurisdiction, this advisory opinion of the Court would provide clear guidelines on this important matter.

C. The formulation of the question is clear and endorsed by consensus by all members of the General Assembly

29. Ghana notes that the Court has an inherent power to interpret the meaning and scope of the questions or modify the way the questions are formulated.¹⁵ Ghana considers that there is no need for the Court to reformulate the questions asked. Although question (a) might be considered to be drafted quite broadly, Ghana is satisfied that it is appropriately formulated and can be broken down into subheadings by the Court. The only observation Ghana wishes to record in relation to the first part of question (b) is that “coastal states” as well as “small island developing States” are particularly vulnerable to the effects of climate change.

¹⁵ *Interpretation of the Greco-Turkish Agreement of 1 December 1926 (Final Protocol, Article IV) Advisory Opinion, 1928 P.C.I.J., Series B, No.16.*

IV. CLIMATE CHANGE AND ITS IMPACT ON GHANA

A. There is a scientific consensus regarding climate change, its causes and impacts

30. The scientific facts are no longer subject to doubt surrounding the human causes of climate change, their causes, and impacts. The IPCC Report concludes that human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming.¹⁶ The best estimate of the degree of human-caused global warming to date is 1°C above pre-industrial levels (2011-2020).¹⁷ According to the IPCC, if global warming continues to increase at its actual rhythm, it could reach 1.5°C between 2030 and 2052.¹⁸ More than 11,200 scientists from 153 countries have declared that humanity is facing a climate emergency.¹⁹

B. The impact of climate change on the situation of Ghana

31. Climate change has had, and continues to have a disruptive effect on Ghana. It currently threatens to erode the development gains Ghana has made in the past and hampers her ability to accomplish the sustainable development aspirations envisaged. Since 1960, the average annual mean temperature has increased by around 1 degree Celsius. The average number of 'hot' days has increased by 13 percent, while the number of hot nights per year increased by 20 percent. Since Ghana has a tropical climate, with an average annual temperature of 28 degrees Celsius, and relative humidity between 77 and 85 percent.²⁰

32. Ghana's economic and human development is vulnerable to climate change and climate-related shocks. The higher temperatures and heat stress affect crop, livestock,

¹⁶ IPCC, *Sixth Assessment Synthesis Report* (2023) p.4

¹⁷ IPCC, *Summary for policy makers in IPCC Special Report on the impacts of Global Warming of 1.5°C above pre-industrial levels* Myles Allen et al. (2018) p.4.

¹⁸ IPCC, *Summary for policy makers in IPCC Special Report on the impacts of Global Warming of 1.5°C above pre-industrial levels* Myles Allen et al. (2018) p.4.

¹⁹ Ripple et al., 'World Scientists' Warning of a Climate Emergency', (2020) 70 *BioScience* pp. 8-12.

²⁰ World Bank, *Country Climate and Development Report: Ghana*, (2022) P.3.

and labour productivity.²¹ Ghana has also seen erratic rainfall patterns which have been predicted to cause damage to infrastructure and buildings, while local air pollution and congestion threaten to hamper human capital and productivity in the densely populated cities like Accra and Kumasi.

33. Sea level rise and changing hydrodynamics along the West Africa coast have led to increased coastal erosion. This phenomenon has resulted in weather and climate extremes which have increased in frequency and magnitude, triggering floods, droughts, and heat waves that cause human losses, damages to public and private assets, and are extremely disruptive of economic activities.²²

34. Ghana's growing population faces high risks from floods and droughts, deforestation and land degradation, poor air and water quality, rising heat stress, and depletion of natural resources.²³ Between 1968 and 2021, 32 major natural disasters were reported, mostly in the past two decades and mostly on account of floods, followed by droughts. On average, flooding affects around 45,000 Ghanaians every year and half of Ghana's 550-kilometre coastline is vulnerable to erosion and flooding as a result of sea-level rise.²⁴

35. Meanwhile, droughts and dry periods have caused significant agricultural losses over the past decade, resulting in food insecurity or famines and lost working days and livelihoods. Under present climate conditions, 13 percent of the population is estimated to be affected by drought, particularly in the Northern belt. Landslide risk is present in about 3.5 percent of Ghana's territory, with the northern part of the Volta Region, the Bono, and the Ashanti regions most affected.²⁵

36. Though less frequent, storm surges, tidal events, and earthquakes have also contributed to disaster tolls. It is predicted that, rising heat, more frequent and extreme natural disasters, and more variable weather patterns will increasingly impact Ghana's economy. This includes both direct impacts such as losses of assets, lives, and livelihoods as a result of weather-related events as well as indirect impacts from higher heat and water scarcity on labour and land productivity. While future precipitation

²¹ Ibid p.4

²² Ibid p.3

²³ ibid

²⁴ibid

²⁵ ibid

patterns are uncertain, pessimistic models predict that total annual rainfall could decline by 12 percent by 2050.²⁶

37. It has been further reported that, extreme precipitation events will become more frequent and of increased magnitude, contributing to increased flood risk. The AAL due to floods is currently estimated at US\$100 million. Under an RCP8.5/SSP 5 scenario, this is expected to double to US\$200 million by 2050 (0.18 percent of expected 2050 GDP), with direct losses expected to fall mostly on infrastructure (34 percent), residential buildings (28 percent), and agriculture (16 percent). The full economic costs of flooding are likely to be much higher, as, for example destroyed bridges cut off access to markets, floods destroy regional health centres, urban flooding compromises sanitation, risk aversion to floods deters productive investments, and the ‘spikiness’ of disaster spending undermines the stability of public finances.²⁷

38. While most floods remain circumscribed, an estimated 4.3 million people, are already at high risk to a 100-year return period event. Flood risks in Ghana are expected to grow due to both hazards (climate change) and exposure (rising asset values, population size, and land use change).²⁸

39. Rising temperatures will reduce yields for most of Ghana’s crops, affecting producer incomes, raising costs of living, and harming cash crop exports. With more pessimistic (RCP8.5)²⁹ temperature increases of 1.12 degrees Celsius by 2050, yields are expected to fall by 1 to 21 percent, with most crops in the 2 to 6 percent range. This is expected to translate to average price increases of around 13 percent, compared to a no climate change scenario. Yields of Ghana’s leading cash crop, cocoa, are expected to fall 5.5 percent by 2050 under RCP8.5 warming, which will impact export revenues. Higher prices for subsistence crops are expected to raise costs of living, potentially with second-order effects for wage competitiveness.

²⁶ *ibid*

²⁷ *ibid*

²⁸ *ibid*

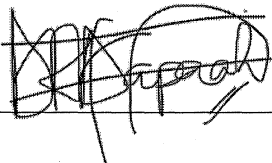
²⁹ RCP8.5 represents a high-emissions scenario in which unabated GHG emissions continue, leading to an average warming of almost 5 degrees Celsius by 2100. While long-term GHG emissions in RCP8.5 are widely considered overly pessimistic, the CMIP5 scenarios with RCP8.5 provide plausible highwarming scenarios, consistent with continued GHG emissions and high climate change sensitivity or a positive feedback from the c

40. The poor in Ghana devote a higher share of their budgets to food purchases, and higher food prices can push more people into poverty and make many households poorer. Among farming households; the increase in food prices implies a boost to nominal incomes, but the limited landholdings of the poor mean higher nominal incomes may not be enough to offset consumption cost increases. Rising temperatures will also depress labour productivity through heat stress, particularly for outdoor workers doing manual labour such as agricultural and construction workers.³⁰

41. Heat stress and heat-related diseases could reduce agricultural labour productivity by 8.5 percent by 2050 under RCP8.5,25 with more moderate impacts for manufacturing (-2.6 percent) and services (-0.3 percent). A 3-degree Celsius warming from 1990 levels could reduce labour capacity by 11 percent for manual laborers.³¹

V. CONCLUSIONS

42. On the basis of the foregoing considerations, the Republic of Ghana respectfully submits that the Court has jurisdiction and competence to consider the important question asked by the General Assembly in its request for an advisory opinion contained in Resolution 77/276. Given the importance of the question asked and the need to engage with the substance of written submissions of other states, Ghana reserves the right to produce a further written submission that engage with the substance of the case commenting on the statements by other States and international organisations before the next time limit of 24 June 2024.



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DEPUTY ATTORNEY GENERAL AND DEPUTY MINISTER FOR JUSTICE

³⁰ World Bank, Country Climate and Development Report: Ghana, (2022) p.

³¹ Ibid