

INTERNATIONAL COURT OF JUSTICE

**REQUEST FOR AN ADVISORY OPINION FROM
THE GENERAL ASSEMBLY OF THE UNITED NATIONS**

STATE OBLIGATIONS WITH REGARD TO CLIMATE CHANGE

WRITTEN STATEMENT BY THE REPUBLIC OF CAMEROON

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1. The Republic of Cameroon hereby submits its second written statement in the context of the Request by the United Nations General Assembly for an Advisory Opinion on the obligations of States in respect of climate change.
2. This written statement addresses a number of issues in response to submissions made to the Court in March 2024. These issues are: **(I)** the determination of the applicable law; **(II)** the taking into account of the opinion of 21 May 2024 of the International Tribunal for the Law of the Sea; **(III)** the treaty-based obligations of States with regard to the principle of common but differentiated responsibility and respective capabilities; **(IV)** the principle of due diligence ; **(V)** the interaction between foreign investment and climate change; **(VI)** human rights and the protection of the climate system; **(VII)** state responsibility; **(VIII)** ecocide; and **(IX)** the link between the proper management of resources and the rights of peoples and future generations.

I. DETERMINING THE APPLICABLE LAW

3. The question of the law applicable to the advisory opinion was raised in the various March 2024 submissions.
4. For Cameroon, the Court must take into account all relevant applicable rules of international law. Applicable law includes treaties specific to climate change (the UNFCCC, the Kyoto Protocol and the Paris Agreement) as well as multilateral environmental agreements, customary international law and general principles of international law. To answer the question fully, the Court must also consider other branches of international law, other than international environmental law, such as international human rights law and the law of the sea.
5. Cameroon also shares the African Union's position that:¹



¹ Written observations African Union, p.26, para. 66; See more generally, pp. 18-21, paras. 42-49 and pp. 26-32, paras. 66-80.

the Court should also have particular regard to African regional instruments, which form part of the corpus of international law, and which are relevant to the interpretation and clarification of States' specific obligations. These include: (i) human rights instruments and decisions of the relevant human rights treaty bodies; (ii) regional conventions; and (iii) declarations, decisions and other instruments which form part of the practice of the African region and shed light on the impacts, vulnerabilities, priorities and values of the African continent related to climate change.

II. THE COURT SHOULD TAKE INTO ACCOUNT THE ADVISORY OPINION OF THE INTERNATIONAL TRIBUNAL ON THE LAW OF THE SEA

6. On 21 May 2024, the International Tribunal for the Law of Sea (ITLOS) delivered its advisory opinion on questions submitted by the Commission of Small Island States on climate change and international law. The Commission submitted the following request to the Tribunal:

What are the specific obligations of State Parties to the United Nations Convention on the Law of the Sea ('UNCLOS'), including under Part XII: (a) to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas emissions into the atmosphere?

(b) to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification?

7. Cameroon asks the Court to pay particular attention to ITLOS' opinion. On the one hand, because of the common subject matter, the Court, which has a broader mandate, must also address issues relating to the law of the sea. Secondly, the two opinions requested from the ICJ and ITLOS concern international obligations



in relation to the effects of climate change. Given the unprecedented nature of the requests submitted, the Court should pay particular attention to ITLOS' opinion.

8. Moreover, the ICJ in its previous practice has already taken into account ITLOS rulings, for example in *Territorial and Maritime Dispute (Nicaragua v. Colombia)*² and *Diallo (Republic of Guinea v. Democratic Republic of Congo)*,³ both in 2012. In any event, the importance of coordinated action by States in this area requires the development of consistent international caselaw.
9. Cameroon wishes to draw the Court's attention to specific points in the ITLOS Opinion concerning the obligations identified in Article 194(1) of UNCLOS:
 - The measures to be taken to combat marine pollution must be determined objectively on the basis of science, international standards on climate change and the means and capacities available to the State.⁴
 - *"The reference to "the best practicable means at their disposal" and "in accordance with their capabilities" injects a certain degree of flexibility in implementing the obligation under article 194, paragraph 1, of the Convention. In particular, it seeks to accommodate the needs and interests of States with limited means and capabilities, and to lessen the excessive burden that the implementation of this obligation may entail for those States. However, the reference to available means and capabilities should not be used as an excuse to unduly postpone, or even be exempt from, the implementation of the obligation to take all necessary measures under article 194, paragraph 1."*⁵
 - The level of due diligence in relation to marine pollution resulting from GHGs must be high: *"In light of such information, the Tribunal considers that the standard of due diligence States must exercise in relation to marine pollution from anthropogenic GHG emissions needs to be stringent. However, its implementation may vary according to States' capabilities and available resources. Such implementation requires a State with greater capabilities and*

² *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, p. 624.

³ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo)*, Compensation, Judgment, I.C.J. Reports 2012, p. 324.

⁴ ITLOS, Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, 21 May 2024, Rec. 2024, **Exhibit 16**, pp. 80-81, paras. 206-207.

⁵ *Ibid.*, p.88, para. 226 [emphasis added].



sufficient resources to do more than a State not so well placed. Nonetheless, implementing the obligation of due diligence requires even the latter State to do whatever it can in accordance with its capabilities and available resources to prevent, reduce and control marine pollution from anthropogenic GHG emissions.”⁶

- The precautionary approach is an integral part of the due diligence obligation: *“Accordingly, States must apply the precautionary approach in their exercise of due diligence to prevent, reduce and control marine pollution from anthropogenic GHG emissions.”⁷*

III. TREATY-BASED OBLIGATIONS OF STATES WITH REGARD TO THE PRINCIPLE OF COMMON BUT DIFFERENTIATED RESPONSIBILITIES AND RESPECTIVE CAPABILITIES

10. Submissions to the Court have raised the issue of States' obligations under climate change treaties.
11. States' climate change obligations derive mainly from treaties, and in particular the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement. The provisions of the Paris Agreement reinforce the provisions of the UNFCCC. States must also apply the principles of international environmental law enshrined in these treaties.⁸
12. The Paris Agreement sets the objective of limiting the rise in temperature to 1.5°C above pre-industrial levels.⁹ As a result, the treaties include specific obligations to achieve this common objective.¹⁰

⁶ *Idem*, pp. 93-94, para.241.

⁷ *Idem*, p.94, para.242.

⁸ Written observations of the African Union, p.22, paras.51-52.

⁹ Paris Agreement, Article 2 (a).

¹⁰ Paris Agreement, Article 3 and Article 13; Written observations of the Republic of Kenya of 22 March 2024, pp. 54-55, para. 5.37.

13. Cameroon would like to respond in respect of the main obligations of States applicable to climate change, which are the obligations of mitigation (A), adaptation (B) and the obligations of financial support, technology transfer and capacity building (C). These obligations must be applied in the light of the principle of common but differentiated responsibility and respective capacities (D).

A. MITIGATION OBLIGATIONS

14. According to the Paris Agreement: “[p]arties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.”¹¹ Mitigation measures must make it possible to control the increase in global temperature in order to achieve the objective of the Paris Agreement. With regard to this objective, States are obliged to implement nationally determined contributions: “[e]ach Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve.”¹²
15. In any case, Article 4(3) of the Paris Agreement requires that the contribution determined at national level:¹³

will represent a progression beyond the Party’s then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

Despite the margin of appreciation of States in the adoption of their nationally determined contributions, the adoption of too low a nationally determined contribution may constitute a violation of international law, as has been considered in relation to certain national rights.¹⁴

¹¹ Paris Agreement, Article 4(2).

¹² Paris Agreement, Article 4(2).

¹³ Paris Agreement, Article 4(3).

¹⁴ Case Urgenda, Hoge Raad, n°19/00135, C/09/456689 HA ZA 19/00135, 20 December 2019, **Exhibit 13**.

As the text of Article 4(3) of the Paris Agreement indicates, these mitigation obligations are common but differentiated. Moreover, this differentiation is also reflected in the obligation of developed countries to show “leadership”: “[d]eveloped country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets.”¹⁵

16. However, the Court must take into consideration the limited mitigation capacities of the States that are most vulnerable to climate change. Cameroon refers to the explanations of the African Union in its written observations.¹⁶ In any event, although all States share a common responsibility to mitigate global temperature, the leadership of developed States remains essential to effectively reduce GHGs. Developed States bear greater obligations and responsibility because of their capacity and historical contribution to climate change.¹⁷

B. OBLIGATIONS TO ADAPT

17. Article 7 of the Paris Agreement states that:¹⁸

Parties hereby establish the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response in the context of the temperature goal referred to in Article 2

18. To this end, the States Parties must undertake:¹⁹

as appropriate, engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions.

¹⁵ Article 4(4) Paris Agreement; Article 3(1) of the UNFCCC.

¹⁶ Written observations of the African Union, pp. 52-53, para.134.

¹⁷ Written observations of the Government of the Republic of South Africa, p.22, para.78.

¹⁸ Paris Agreement, Article 7(1), and Article 7(9); UNFCCC, Article 4(1)(b).

¹⁹ Paris Agreement, Article 7(9).



19. Adaptation measures enable countries to combat the current and future effects of global warming. These measures are vitally important for the countries most vulnerable to the effects of climate change. Treaties therefore provide for an obligation of international assistance:²⁰

Parties recognize the importance of support for and international cooperation on adaptation efforts and the importance of taking into account the needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change.

In addition, “*enhanced international support shall be provided to developing country Parties*” for the implementation of adaptation measures.²¹

20. Cameroon therefore wishes to bring to the Court’s attention the imperative obligation of developed States to support developing countries’ adaptation to climate change. This assistance is crucial for these States so that they can implement their adaptation measures more effectively.²²

C. THE OBLIGATION TO PROVIDE FINANCIAL SUPPORT, TECHNOLOGY TRANSFER AND CAPACITY BUILDING

21. The relevant treaties include obligations for financial support,²³ technology transfer²⁴ and capacity building.²⁵ The effective implementation of mitigation and adaptation measures by developing countries is intrinsically linked to compliance by developed States with their support obligations.

²⁰ Paris Agreement, Article 7(6).

²¹ Paris Agreement, Article 7(13).

²² Written observations of the People’s Republic of China of 22 March 2024, pp. 30-31, para.71; Written observations of the African Union of 22 March 2024, pp.54-55, paras.139-140; Written observations of the Government of the Republic of South Africa, pp. 28-29, para.104.

²³ UNFCCC, Article 4(4) and Article 4(3); Paris Agreement, Article 9(1).

²⁴ UNFCCC, Article 4(5) and Article 10(6); Paris Agreement, Article 13(9).

²⁵ Paris Agreement, Article 11 (3).

22. Cameroon and many developing countries have limited means to effectively implement their treaty obligations. Failure by developed countries to meet their financial commitments to support developing countries could jeopardise global efforts to achieve the targets set by the Parties to the Paris Agreement.

23. This direct link between the support obligations of developed States and the proper implementation of treaty obligations by developing States is recognised by the UNFCCC:²⁶

[T]he extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.

24. The Paris Agreement reaffirms this vision:²⁷

[T]he efforts of all Parties will represent a progression over time, while recognizing the need to support developing country Parties for the effective implementation of this Agreement.

25. However, current financial support falls short of the real needs of developing countries.²⁸ It cannot be argued that developed countries are meeting their support obligations when this support falls far short of the needs of countries vulnerable to the effects of climate change.

D. THE PRINCIPLE OF COMMON BUT DIFFERENTIATED RESPONSIBILITIES AND RESPECTIVE CAPACITIES

²⁶ UNFCCC, Article 4(7).

²⁷ Paris Agreement, Article 3 and Article 4(5).

²⁸ Written observations of the African Union, p.58, para.147.



26. The “principle of common but differentiated responsibilities and respective capabilities” (**PRCD-CR**) is a principle recognised in the UNFCCC treaties and the Paris Agreement:

*Noting that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs.*²⁹

*All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances [...].*³⁰

*This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.*³¹

*Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.*³²

27. The PRCD-CR implies that all States must combat global warming.³³ However, because of their historical contribution to climate change and the economic growth from which they have benefited, developed countries have differentiated obligations, namely a greater responsibility to reduce greenhouse gases and obligations to assist developing countries.

²⁹ UNFCCC, preamble.

³⁰ UNFCCC, Article 4.

³¹ Paris Agreement, Article 2(2).

³² Paris Agreement, Article 4(3).

³³ Paris Agreement, Article 2.



28. This principle also implies that developed countries must show leadership: *“Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets”*.³⁴
29. Cameroon supports a position similar to that of many States regarding the definition and scope of the PRCD-CR.³⁵ This principle should not be restricted in view of its importance as a principle of international environmental law.

IV. THE PRINCIPLE OF DUE DILIGENCE

30. Many submissions to the Court refer to the duty of due diligence as it relates to States' obligations in relation to climate change. The Court can refer to the written observations of the African Union, which summarise the obligation as:³⁶

The duty of due diligence requires States to exercise to avoid causing significant environmental harm or risk thereof in another state or in areas beyond their national jurisdictions. Obligations of conduct and ‘due diligence’ are closely linked, in that due diligence is ‘an obligation to deploy adequate means, to exercise best possible efforts, to do the utmost, to obtain this result.’ When complementing treaty obligations, such as those found in the UNFCCC and the Paris Agreement, the duty of due diligence emphasises the level of diligence required under the treaty obligation, and sets a rigorous, continuous, and evolving standard for assessing compliance or breach with the obligation. The duty of due diligence is thus applicable and forms part of the corpus of international law under which the Court is requested to answer the questions.

31. The Paris Agreement generally provides for obligations of conduct and therefore of due diligence, as opposed to obligations of result. States must take domestic measures, but the achievement or non-achievement of a specific target cannot

³⁴ Paris Agreement, Article 4 (4).

³⁵ Written observations of the Republic of Kenya, p.55, para. 5.38; Written observations of the Government of the Republic of South Africa, p.17, para. 59; Written observations of the Democratic Republic of Congo, pp. 96-98, paras.191-195.

³⁶ Written observations of the African Union of 22 March 2024, para. 55, p.23; Written observations of the Democratic Republic of Congo of 4 March 2024, p.69, para. 136.

give rise to legal consequences, in and of itself. However, States remain obliged to do their best to achieve that objective.³⁷ In fact, Article 4(2) of the Paris Agreement³⁸ concerning the implementation of nationally determined contributions and Article 4(3) of the Paris Agreement³⁹ are due diligence obligations.

32. Even if the due diligence obligation leaves a certain margin of appreciation, this obligation must not be a means for States to circumvent their common responsibility in the global effort against global warming. Cameroon shares the position of the Democratic Republic of Congo in this respect:⁴⁰

[t]he fact that, a priori, we are faced with obligations of means does not mean that these obligations are merely a matter for the margin of appreciation of States, which could hide behind a general presumption of compliance with international law to exonerate themselves from any responsibility.

33. Cameroon wishes to highlight certain key aspects of the due diligence obligation: the due diligence obligation must be determined objectively (**A**); the precautionary approach derives from the due diligence obligation (**B**); and States must take future generations into consideration when implementing their due diligence obligations (**C**).

A. OBJECTIVE DETERMINATION OF DUE DILIGENCE OBLIGATIONS

34. The scope of due diligence obligations has long been difficult to define because of its variable nature.⁴¹ Nevertheless, Cameroon refers to the vision of the African Union, which shows that the due diligence obligation corresponds to specific obligations.⁴²

³⁷ Paris Agreement, Article 4(2).

³⁸ Written observations of the African Union of 22 March 2024, p.52, paras. 132-133.

³⁹ Written observations of the European Union, p.38, para. 147.

⁴⁰ Written observations of the Democratic Republic of Congo, p.88, para. 168.

⁴¹ ITLOS, Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area (Request for Advisory Opinion submitted to the Seabed Disputes Chamber), 1 February 2011, Rec. 2011, **Exhibit 17**, p.43, para.117.

⁴² Written observations of the African Union of 22 March 2024, pp.37-39, para. 96.

35. The content of the duty of due diligence was set out by the Court in *Pulp Mills on the River Uruguay*:⁴³

It is an obligation which entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators, to safeguard the rights of the other party.

36. This approach was confirmed by ITLOS:⁴⁴

The obligation of due diligence requires a State to put in place a national system, including legislation, administrative procedures and an enforcement mechanism necessary to regulate the activities in question, and to exercise adequate vigilance to make such a system function efficiently, with a view to achieving the intended objective.

37. In any event, compliance with the due diligence obligation depends on the implementation of an effective internal control mechanism⁴⁵ which is becoming clearer and whose structure is not so far removed from an obligation to achieve results. Cameroon shares the following view:⁴⁶

Given these circumstances, it is rather up to each State to demonstrate that it has taken the appropriate measures and, if necessary, to show that certain recommended measures were “impossible” to adopt, and remain so today. For several years now, action has become imperative, not just to prevent, but also and above all to put an end to breaches of the duty of care. From a general

⁴³ ICJ, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment of 20 April 2010, Rec. 2010, p.79, para.197.

⁴⁴ ITLOS, Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, **Exhibit 16**, p.91, para.235.

⁴⁵ Written observations of the Arab Republic of Egypt of 22 March 2024, para. 115-116, p. 30; Written observations of the European Union, p. 25, para. 86.

⁴⁶ Written observations of the Democratic Republic of Congo, p.90, para. 173.

obligation to use one's best endeavours, it is increasingly taking on the form of a specific obligation, or even an obligation of result.

38. Cameroon wishes to draw the Court's attention to the development of the due diligence obligation, as noted by ITLOS in its recent advisory opinion. ITLOS ruled that measures to combat marine pollution, which are due diligence obligations, must be the subject of an objective determination.⁴⁷ This objective determination must take into account science, international rules and standards on climate change (particularly the UNFCCC and the Paris Agreement) and the means and capacities available to the State.⁴⁸

39. Consideration of this last factor requires the due diligence principle to be read in conjunction with the PRCD-CR. Comments to this effect have already been made.⁴⁹ For many States, compliance with the due diligence obligation deriving from treaties must necessarily be assessed on the basis of respective capacities, and developed States have a higher standard of diligence.⁵⁰

B. THE PRECAUTIONARY APPROACH IS A DERIVATIVE OF THE DUE DILIGENCE OBLIGATION

40. The precautionary approach implies that:⁵¹

Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

This precautionary approach is also enshrined in the UNFCCC, which states: "*The Parties should take precautionary measures to anticipate, prevent or minimize the*

⁴⁷ ITLOS, Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, **Exhibit 16**, p.80, para.206.

⁴⁸ *Ibid.*, para.207.

⁴⁹ Written observations of the Government of the Republic of South Africa, p. 2, para. 77.

⁵⁰ Written observations of the Arab Republic of Egypt, p. 35, para. 149; Written observations of the Democratic Republic of Congo, p. 97, para. 192.

⁵¹ Rio Declaration, 1992, Principle 15.



causes of climate change and mitigate its adverse effects.”⁵² The precautionary approach is essential to the climate change regime in that it allows action to be taken before any damage to the environment occurs.

41. In two advisory opinions, ITLOS considers that the precautionary approach is an integral part of the duty of due diligence:

- *“precautionary approach in respect of activities in the Area, it is appropriate to point out that the precautionary approach is also an integral part of the general obligation of due diligence of sponsoring States”*⁵³
- *“Accordingly, States must apply the precautionary approach in their exercise of due diligence to prevent, reduce and control marine pollution from anthropogenic GHG emissions”*⁵⁴.

42. Cameroon shares ITLOS' view, in agreement with other States, that the precautionary approach is an integral part of the due diligence obligation.

C. DUE DILIGENCE AND FUTURE GENERATIONS

43. In its initial comments, Cameroon reiterated the importance of taking into account the rights of future generations.⁵⁵ Cameroon, like other States, considers that the principle of due diligence must take future generations into account.⁵⁶

⁵² UNFCCC, Article 3§3.

⁵³ ITLOS, Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area (Request for Advisory Opinion submitted to the Seabed Disputes Chamber), **Exhibit 17**, p. 46, para.131.

⁵⁴ ITLOS, Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, **Exhibit 17**, p.94, para. 242.

⁵⁵ Written observations of the Republic of Cameroon, pp. 7-10, paras. 18-28.

⁵⁶ Written observations of the Democratic Republic of Congo, p. 74, para. 145.

44. Indeed, when States take mitigation measures through their nationally determined contributions, which are due diligence obligations, they are obliged to take future generations into account in their measures.⁵⁷

45. Cameroon shares the following vision:⁵⁸

States must therefore act in accordance with the principles of prevention and precaution, preventing any activity, whether State or non-State, when they have reasonable grounds for believing that it may lead to a violation of the rights of future generations.

V. THE INTERACTION BETWEEN FOREIGN INVESTMENT AND THE PROTECTION OF THE CLIMATE SYSTEM

46. Cameroon wishes to address the issue of the interaction between investment law and environmental protection, highlighting the challenges posed by the concomitant existence of these two areas. This interaction highlights the tensions that arise between environmental policies, particularly the energy transition, but also the differentiated obligations of developing countries in the extractive sector, the interests of investors, and the general need for capital contributions, including foreign capital, both for the energy transition and for future operations, particularly in the extractive sector.

47. The risk of excessive compensation for harm alleged by foreign investors, in certain contexts, could have a negative influence on the environmental policies of States, adopted with the aim of honouring their international obligations in relation to climate change.⁵⁹ In addition, the compensation sought is not always appropriate, since investors may themselves have contributed to climate change⁶⁰ or may be well aware that the global policies of at least the last decade must have modified

⁵⁷ African Union written observations of 22 March 2024, para. 21, p.48; European Union written observations p.48, paras. 179-180.

⁵⁸ Written observations of the Democratic Republic of Congo, pp. 84-86, para. 162.

⁵⁹ Written observations of the Democratic Republic of Congo, p. 128, paras. 244-245.

⁶⁰ *Ibid.*, p. 128, para. 246.

the legitimate expectations, both general and specific, of investors, who are therefore also subject to regulations aligned with States' international obligations in relation to climate change.

48. As mentioned, investors should generally not receive compensation for measures taken in good faith (and therefore without discrimination) by States, in the name of the public interest, to protect the environment and limit the effects of climate change.⁶¹ It is in this context that Cameroon is also bringing to the Court's attention the Continental African Free Trade Area (CAFTA) Investment Protocol,⁶² adopted by the 54 African countries in October 2022, where all African States have adopted such a position.

49. The text of Article 24 (Right to Regulate) of the CAFTA Investment Protocol provides:⁶³

In accordance with customary international law and other general principles of international law, each State Party has the right to regulate, including taking measures to ensure that investments in its territory are consistent with the objectives and principles of sustainable development, as well as with other legitimate environmental, health, climate, social and economic policy objectives and essential security interests.

For greater certainty measures taken by a State Party to comply with its international obligations under other relevant treaties do not constitute a violation of this Protocol.

For avoidance of doubt, the exercise of the right to regulate under paragraphs 1 and 2 shall not give rise to any claim by investor for compensation.

[Underlined]

50. Thus, measures adopted to ensure the compatibility of investments with "*the objectives and principles of sustainable development*" and "*other legitimate environmental policy objectives*", which necessarily include international

⁶¹ *Ibid.*, p. 129, paras. 247-249.

⁶² FTAA Investment Protocol, **Exhibit 12**, Article 24.

⁶³ *Ibid.*



obligations in relation to climate change, do not violate the investment protection obligations of the FTAA Investment Protocol and cannot give rise to compensation.

51. Article 24 uses the words “*Il est entendu*” in French and “*For greater certainty*” in English, which tracks Cameroonian treaty law practice,⁶⁴ meaning that the parties to the treaty consider that the obligation or principle applies even absent a treaty obligation.
52. The relevant provisions of the CAFTA thus demonstrate the continent-wide view that these rules, which are designed to ensure that environmental obligations are applied in good faith take precedence over an investor's right to compensation, apply even in the absence of treaty standards.
53. Cameroon therefore considers that the norms reflected in Article 24 (Right to Regulate) of the CAFTA Investment Protocol are generally applicable as custom. The Court may also, or in any event, recognise at least a regional custom applicable to the entire African continent, which may be invoked in any investment dispute on the African continent, whether or not the CAFTA is directly applicable.
54. Cameroon also considers that States have an obligation to promote ecological development consistent with the growth of industrialisation in developing countries. Continued growth in industrialisation is necessary for developing countries, particularly in view of their differentiated obligations applicable to climate change, while at the same time otherwise respecting international climate change obligations.
55. Cameroon would also like to inform the Court that it is actively working to restore natural resource exploitation sites. In particular, through its new mining code, it has set up a fund for the restoration, rehabilitation and closure of mining and quarrying sites.⁶⁵ This fund is financed by a range of parafiscal revenues, such as a mining

⁶⁴ See, eg Agreement Between Canada and the Republic of Cameroon for the Promotion and Protection of Investments, made in Toronto, 3 March 2014, **Exhibit 2**, Article 1 (“investor of a party”), Article 5(3), Article 10(1), Article 11(3), 17(8), para. 3 of Annex III.

⁶⁵ Law No. 2023/014 of 19 December 2023, *Portant Code Minier*, **Exhibit 14**, Article 25(5), 32(5), 40(4), 133(2) and in particular 190-193. In the same vein, see also more generally the following legislative framework of Cameroon with respect to various obligations linked to the environment: Law N°89/27 of 29 December 1989 on dangerous and toxic waste, **Exhibit 24** ; Law N° 96/12 of 5 August 1996 relating to

tax and an extraction tax. The Court would point out that failure by investors to comply with these obligations can, and should, have a negative effect on the exercise of rights, not only at the national level, but also at the international level, for example in the context of arbitrations under investment promotion and protection treaties, such as the FTAA Investment Protocol.

VI. HUMAN RIGHTS AND THE PROTECTION OF THE CLIMATE SYSTEM

56. Cameroon will focus on demonstrating the relationship between climate change and human rights. Cameroon's analysis will be divided into four sections.

57. First, it will be shown that there are links between climate change and human rights, which have a direct and indirect effect on the rights of individuals **(A)**. Cameroon will then identify the human rights specifically impacted by climate change **(B)**.

58. This will be followed by a discussion of access to justice for victims seeking redress for the consequences of climate change **(C)**.

59. Finally, the responsibility of States in the context of climate change will be examined **(D)**.

A. THE EXISTENCE OF LINKS BETWEEN CLIMATE CHANGE AND HUMAN RIGHTS

60. Many States and international organisations⁶⁶ have recognised the existence of links between climate change and human rights. Cameroon supports this position.

environmental management, **Exhibit 25** ; Law N°94/01 of 20 January 1994 to lay down forestry, wildlife and fisheries regulations, **Exhibit 26** ; Law n°98/015 of 14 July 1998 relating to establishments classified as dangerous, unhealthy or obnoxious, **Exhibit 27** ; Law N°2019/008 of 25 April 2019 to institute the petroleum code, **Exhibit 28** ; 1996 Constitution of Cameroon, **Exhibit 29**, Preamble ("every person shall have a right to a healthy environment. The protection of the environment shall be the duty of every citizen. The State shall ensure the protection and improvement of the environment;").

⁶⁶ See, for example, the written observations of the Republic of Kenya (p. 62, para. 5.51), the Democratic Republic of the Congo (p. 74, para. 145), the Republic of Namibia (p. 37, para. 78), the African Union (p. 72, para. 188), the Republic of Seychelles (p. 44, para. 134), the Republic of Madagascar (p. 17, para. 58), the Republic of Vanuatu (p. 160, para. 342), the Republic of Mauritius (p. 79, para. 155), the Republic of Colombia (p. 59, para. 3.66), the Republic of Peru (p. 16, para. 88), the European Union (p. 27, para. 94), the French Republic (p. 40, para. 120) and the Kingdom of Spain (p. 13, para. 14). This demonstrates a certain consensus on the issue.

61. Paragraph 11 of the preamble to the Paris Agreement states that :

Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights

62. Consequently, there can obviously be no conflict between the international treaty regime relating to climate change and customary international law relating to human rights, since the relationship is one of both interpretation and integration.⁶⁷

63. The Inter-American Court of Human Rights (IACHR) has also recognised that:⁶⁸

the existence of an undeniable relationship between the protection of the environment and the realization of other human rights, in that environmental degradation and the adverse effects of climate change affect the real enjoyment of human rights

64. In the same vein, the United Nations Human Rights Council has highlighted that:⁶⁹

the adverse effects of climate change have a range of implications, which can increase with greater global warming, both direct and indirect, for the effective enjoyment of human rights, including, inter alia, [...] the right to development, and recalling that in no case may a people be deprived of its own means of subsistence.

65. Cameroon wishes to reiterate its support for States and organisations that adopt this position. The Court must recognise the impact of climate change on human rights, in particular the right to self-determination (1), to life (2), to access to water

⁶⁷ Written observations of the European Union, p. 59, para. 227.

⁶⁸ Inter-American Court of Human Rights, Advisory Opinion OC-23/17, 15 November 2017, **Exhibit 10**, para. 47. It also considers that "particularly vulnerable to environmental impacts include the rights to life, personal integrity, privacy, health, water, food, housing, participation in cultural life, property and the right not to be forcibly displaced", *Ibid*, para 66.

⁶⁹ Written observations of the Democratic Republic of Congo, p. 77, para. 151; citing the resolution adopted by the Human Rights Council, "Human rights and climate change", UN Doc. A/HRC/RES/44/7 (2020), p. 3, para. 1.

(3), to food (4), to health (5), to private and family life (6) and to development (7). These repercussions are all the more significant for vulnerable persons (8).

B. HUMAN RIGHTS IMPACTED BY CLIMATE CHANGE

1. The right to self-determination

66. The right to self-determination is recognised in Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as in Article 21 of the African Charter on Human and Peoples' Rights (ACHPR). The right to self-determination is an obligation *erga omnes*.⁷⁰

67. The Office of the United Nations High Commissioner for Human Rights has recognised that “[c]limate change not only poses a threat to the lives of individuals but also to their ways of life and livelihoods, and to the survival of entire peoples.”⁷¹

68. The Office of the United Nations High Commissioner for Human Rights concludes that all States should refrain from actions that would lead to serious violations, as they have “a duty to take action, [...] to address and avert threats to the right to selfdetermination, by mitigating climate change.”⁷²

2. The right to life

69. The right to life is recognised in Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6 of the ICCPR. With regard to the latter article, the United Nations Human Rights Committee has indicated that:⁷³

⁷⁰ Written observations of the Republic of Kenya, p. 69, § 5.66; citing ICJ, *Legal Effects of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, Reports 2019, p. 139, para. 180 and ICJ, *East Timor (Portugal v. Australia)*, Judgment of 30 June 1995, Reports 1995, p. 102, para. 29.

⁷¹ Office of the United Nations High Commissioner for Human Rights, Human Rights and Climate Change: Frequently Asked Questions, Fact Sheet No. 38, 2021, **Exhibit 15**, p. 6.

⁷² *Ibid*, p. 7.

⁷³ Written observations of the Republic of Kenya, p. 63, para. 5.54; citing Human Rights Committee (HRC), General Comment No. 36, Right to life (Article 6), CCPR/C/GC/36, 3 September 2019, para. 62.

Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.

70. The United Nations Human Rights Committee considers that:⁷⁴

Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.

71. In addition, the IACHR has affirmed that States have an obligation to “take all appropriate steps to protect and preserve the rights to life and to integrity.”⁷⁵

72. Finally, a case on this issue is currently before the European Court of Human Rights (ECHR).⁷⁶

3. Access to water

73. The Committee on Economic, Social and Cultural Rights (CESCR) has recognised that Articles 11 and 12 of the ICESCR protect access to water and that:⁷⁷

States parties should adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations [...] assessing the impacts of actions that may impinge upon

⁷⁴ Written observations of the Republic of Kenya, p. 63, para. 5.54; citing HRC, General Comment No. 36, *op. cit.*, para. 62.

⁷⁵ IACHR, Advisory Opinion OC-23/17, **Exhibit 10**, para. 118.

⁷⁶ The applicants in *Carême v. France* allege that the State has been condemned for its failure to take action on climate change affecting the right to life: Written observations of the European Union, p. 65, para. 251; citing ECHR, *Carême v. France*, no. 7189/21, application lodged on 28 January 2021.

⁷⁷ Committee on Economic, Social and Cultural Rights (ESCR Committee), General Comment No. 15, The right to water (articles 11 and 12), E/C.12/2002/11, 20 January 2003, **Exhibit 18**, para. 28 and see the written observations of the Republic of Kenya, p. 64, para. 5.58.

water availability and natural-ecosystems watersheds, such as climate changes.

4. The right to food

74. The right to food is recognised in Article 25 of the UDHR and Article 11 of the ICESCR. The African Commission on Human and Peoples' Rights has recalled that States:⁷⁸

should not destroy or contaminate food sources. It should not allow private parties to destroy or contaminate food sources, and prevent peoples' efforts to feed themselves.

5. The right to health

75. Article 16 of the ACHPR recognises the right to enjoy a better state of health, which is also recognised in Article 12 of the ICESCR. This right is threatened by climate change. As the World Health Organisation has stated:⁷⁹

Climate change is expected to widen existing health inequalities, both between and within populations, with its overall health effects likely to be overwhelmingly negative.

76. Several cases before the ECHR refer to the impact of climate change on health, particularly with regard to the inaction of States.⁸⁰

6. The right to private and family life

⁷⁸ Written observations of the Republic of Kenya, p. 67, para. 5.63, citing the African Commission on Human and Peoples' Rights, *The Action Centre for Social and Economic Rights and the Centre for Economic and Social Rights v. Nigeria*, decision, 27 October 2001, **Exhibit 11**, para. 65.

⁷⁹ Written observations of the World Health Organization, p. 3, para. 8, citing : Office of the United Nations High Commissioner for Human Rights, Human Rights and Climate Change: Frequently Asked Questions, **Exhibit 15**, p. 10.

⁸⁰ In the current case, *Duarte Agostinho and others v. Portugal and 32 others*, the applicants allege that climate change is affecting their living conditions and health and want the States to be condemned for failing to fulfil their obligations. See written observations of the European Union, p. 65, para. 251; citing ECHR, *Duarte Agostinho and others v. Portugal and 32 others*, no. 39371/20, application lodged on 7 September 2020.

77. The right to private and family life is recognised in Article 17 of the ICCPR. In this context, the ECHR has on numerous occasions held that environmental protection makes it possible to guarantee other rights such as the right to life, and more specifically the right to private and family life.

78. The absence of a fair balance between economic interests and human rights⁸¹ or between the community's interest in having a waste treatment plant and respect for human rights has been criticised by the ECHR.⁸² Finally, the ECHR has sanctioned the failure of the State to protect citizens against the risks of pollution.⁸³ More recently, on 9 April 2024, the ECHR ruled that the State's inaction in combating climate change could lead to a violation of the right to private and family life.⁸⁴ The ECHR ruled that:⁸⁵

the State's primary duty is to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change. This obligation flows from the causal relationship between climate change and the enjoyment of Convention rights [...] effective respect for the rights [...] requires that each Contracting State undertake measures for the substantial and progressive reduction of their respective GHG emission levels with a view to reaching net neutrality within.

79. To support these examples, the Dutch Supreme Court has also ruled that States must rapidly reduce their carbon emissions to prevent violations of this right and further recognised that this obligation must be respected by all developed countries.⁸⁶

7. The right to development

⁸¹ ECHR, *Lopez Ostra v. Spain*, no. 16798/90, 9 December 1994, **Exhibit 20**, paras. 51 and 58.

⁸² ECHR, *Giacomelli v. Italy*, no. 59909/00, 2 November 2006, **Exhibit 21**, para. 97.

⁸³ ECHR, *Tătar v. Romania*, no. 67021/01, 27 January 2009, **Exhibit 22**, para. 107.

⁸⁴ Written observations of the European Union, p 65, para. 251; citing ECHR *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, no. 53600/20, 9 April 2024, **Exhibit 23**.

⁸⁵ ECHR *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, no. 53600/20, 9 April 2024, **Exhibit 23**, pp. 230 et 231, paras. 545 et 548.

⁸⁶ Supreme Court of the Netherlands, judgment, 20 December 2019, ECLI:NL:HR:2019:2007, **Exhibit 13**, paras. 3.4 and 5.6.2.



80. Article 22 of the ACHPR enshrines the right to economic, social and cultural development of all peoples. The right to development must be interpreted in the light of sustainable development.⁸⁷ However, the achievement of the 2030 Agenda for Sustainable Development is at risk, which has an impact on the right to development.⁸⁸

81. In addition, the African Union has stressed that the right to development must be interpreted in the light of the objective of eradicating poverty, which is essential for sustainable development.⁸⁹

82. Cameroon supports the position of the African Union on this point and therefore calls for cooperation between States in establishing fairer world trade.⁹⁰

83. Article 24 of the ACHPR enshrines the right of all peoples to a “*general satisfactory environment favourable to their development*”. The African Commission on Human and Peoples’ Rights recently recognised the importance of a “*clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual.*”⁹¹

84. According to the African Commission on Human and Peoples’ Rights, the right to a healthy environment requires States to take:⁹²

reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources.

⁸⁷ Written observations of the African Union, p. 78, para. 201; citing ICJ, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, para. 140.

⁸⁸ *Ibid*, citing United Nations General Assembly, Political Declaration of the High-Level Political Forum on Sustainable Development convened under the auspices of the General Assembly in September 2023, 15 September 2023, UN Doc. A/HLPF/2023/L.1, para. 8.

⁸⁹ Written observations of the African Union, p. 78, para. 202.

⁹⁰ *Ibid*, citing principle 5 of the Rio Declaration: “*All States and all peoples should cooperate in the essential task of eradicating poverty as a vital requirement for sustainable development, in order to reduce differences in living standards and better meet the needs of the majority of the world’s people*”.

⁹¹ African Commission on Human and Peoples’ Rights, *Action Centre for Social and Economic Rights and Centre for Economic and Social Rights v. Nigeria*, 27 October 2001, **Exhibit 11**, para. 51.

⁹² African Commission on Human and Peoples’ Rights, *Action Centre for Social and Economic Rights and Centre for Economic and Social Rights v. Nigeria*, **Exhibit 11**, para. 52.

85. The African Commission concludes that respect for this right requires the State to do:⁹³

scientific monitoring [...] publicising environmental and social impact studies prior to any major industrial development, undertaking appropriate monitoring and providing information to those communities exposed.

86. Cameroon also supports the European Union's request to the Court to confirm the emergence of the right to a healthy environment as a customary international norm⁹⁴ in the light of practice at national and regional level and before the United Nations General Assembly, and the acceptance of this practice as a right.⁹⁵

8. The impact on vulnerable people

87. The IACHR recalled that:⁹⁶

the effects on these rights may be felt with greater intensity by certain groups in vulnerable situations [...] States are legally obliged to confront these vulnerabilities based on the principle of equality and non-discrimination.

88. Indeed, indigenous peoples are disproportionately affected by the effects of climate change.⁹⁷

the displacement of indigenous peoples and the potential loss of their traditional lands, territories and resources threaten their cultural survival, traditional livelihoods and right to self-determination.

⁹³ *Ibid*, para. 53 [our translation].

⁹⁴ Written observations of the European Union, p. 68, para. 263.

⁹⁵ *Ibid*, para. 261.

⁹⁶ IACHR, Advisory Opinion OC-23/17, **Exhibit 10**, para. 67.

⁹⁷ Office of the United Nations High Commissioner for Human Rights, Human Rights and Climate Change: Frequently Asked Questions, **Exhibit 15**, pp. 23-24.



89. Cameroon is supporting the introduction of awareness-raising campaigns, particularly for indigenous peoples, on the impact of the various projects in order to meet development objectives, climate change obligations and the protection of human rights.

90. In addition, in the case of *African Commission on Human and Peoples' Rights v. Republic of Kenya*, the African Court on Human and Peoples' Rights ruled on the implementation of a development project that contravened obligations to protect human rights and the environment.

91. The indigenous Ogiek people depended on the forest for their cultural, economic and spiritual survival and therefore had a vested and acquired interest in preserving their environment.⁹⁸ They faced numerous evictions to satisfy government policy and development projects, without prior consultation or compensation.⁹⁹

92. The African Court held that the State had not provided any evidence alleging that the presence of the Ogiek had caused the impoverishment of the natural environment of the region.¹⁰⁰ It was held that the State should have demonstrated that its interference was motivated by the necessity of the common interest and that any interference with rights must be necessary and proportionate to the interest pursued.¹⁰¹

C. ACCESS TO JUSTICE

93. When a violation of the rights mentioned above is committed under international environmental and human rights law, States must guarantee effective remedies and adequate reparation.¹⁰² This is recognised by Article 2 paragraph 3 of the ICCPR.

⁹⁸ African Court on Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v. Republic of Kenya*, Application No. 006/2012, 26 May 2017, **Exhibit 4**, pp. 31-32, paras. 109-110.

⁹⁹ *Ibid*, p. 33, para. 114 and p. 38, para. 131.

¹⁰⁰ *Ibid*, p. 37, para. 130.

¹⁰¹ *Ibid*, pp. 56-57, para. 188.

¹⁰² Written observations of the Democratic Republic of Congo, p. 151, para. 322; citing principle 10 of the Rio Declaration and article 2 para. 3 of the ICCPR.



94. Principle 10 of the Rio Declaration states that:¹⁰³

Environmental issues are best handled with the participation of all concerned citizens [...] have appropriate access to information concerning the environment that is held by public authorities [...] the opportunity to participate in decision-making processes. [...] Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

95. Cameroon supports this position. The Committee on ESC rights also recognised that States parties should:¹⁰⁴

take the steps necessary to prevent human rights violations abroad by corporations domiciled in their territory and/or jurisdiction.

96. As a result, governments, particularly industrialised governments, have an obligation to provide effective remedies to hold companies and non-state actors under their jurisdiction or control for accountability to human rights abuses.¹⁰⁵

VII. STATE RESPONSIBILITY

97. Cameroon supports the position of certain States and international organisations and invites the Court to examine the legal consequences arising from the violation of States' obligations to protect the environment, with reference to the articles on the responsibility of States for internationally wrongful acts.¹⁰⁶

98. Articles 1 and 2 of the International Law Commission (ILC) Articles on Responsibility of States for Internationally Wrongful Acts establish the principle that

¹⁰³ Principle 10 of the 1992 Rio Declaration.

¹⁰⁴ Written observations of the Democratic Republic of Congo, p. 153, para. 324; citing ESCR Committee, General Comment No. 24 (2017) on States' obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, E/C.12/GC/24, 10 August 2017, para. 26.

¹⁰⁵ Written observations of the Democratic Republic of Congo, p. 153, para. 324.

¹⁰⁶ See written observations of the Democratic Republic of Congo (p. 140, para. 278), the Republic of Colombia (p. 64, para. 4.4), the Republic of Palau (p. 14, para. 19), the Republic of Peru (p. 17, para. 92), the Republic of Seychelles (p. 49, para. 149), the Republic of Kenya (p. 77, para. 6.87), the Republic of Vanuatu (p. 235, paras. 486-487), Saint Lucia (p. 43, para. 86), the Republic of Mauritius (p. 101, para. 210), the Republic of Madagascar (p. 21, paras. 73-74), the Republic of Namibia (p. 56, para. 130), as well as the African Union (p. 88, para. 230).

States incur international responsibility when the conduct is attributable to them and there is a breach of an international obligation.¹⁰⁷

99. Whatever the nature of the obligation, as soon as a State has committed an internationally wrongful act, its responsibility will be engaged, and the same applies to behaviour towards the environment.¹⁰⁸

100. The legal consequences of breaches of international climate change obligations are governed by the rules on the responsibility of States for internationally wrongful acts, in particular article 30 (cessation and non-repetition), article 31 (reparation), article 34 (forms of reparation), article 35 (restitution), article 36 (compensation), article 37 (satisfaction) and article 41 (special consequences of a breach of an obligation).¹⁰⁹

101. In addition, certain obligations to protect the environment, which the Court will be responsible for determining, are *erga omnes* in nature.¹¹⁰ Violations of obligations related to the environment often follow a series of actions and omissions that constitute a serious breach of obligations *erga omnes*, such as ecocide or human rights violations.¹¹¹

102. The responsibility of each State is individual, and is not diminished by the collective nature of breaches of environmental obligations.¹¹² Moreover, in determining reparation, it is necessary to take into account the State's contribution

¹⁰⁷ Written observations of the Republic of Seychelles, p. 50, para. 152; citing Yearbook of the International Law Commission, Report of the Commission to the General Assembly on the work of its fifty-third session, "Draft articles on responsibility of States for internationally wrongful acts", *Ann. ILC*, 2001, vol. II(2), A/CN.4/SER.A/2001/Add.1, p. 388, articles 1 and 2.

¹⁰⁸ Written observations of the Republic of Seychelles, p. 51, para. 155; citing ICJ, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, *op. cit.* p. 38, para. 47.

¹⁰⁹ Written observations of the Republic of Vanuatu, p. 235, para. 487.

¹¹⁰ *Ibid.*, p. 235, para. 486.

¹¹¹ *Idem*, citing Yearbook of the International Law Commission, Report of the Commission to the General Assembly on the work of its fifty-third session, "Draft articles on responsibility of States for internationally wrongful acts", *op. cit.*, article 15, p. 391.

¹¹² Written observations of the Democratic Republic of Congo, p. 145, para. 301; citing Yearbook of the International Law Commission, Report of the Commission to the General Assembly on the work of its fifty-third session, "Draft articles on responsibility of States for internationally wrongful acts", *op. cit.* article 47, p. 400.



to the damage.¹¹³ Thus, the compensation of debts must apply, because a developed State cannot claim compensation for an injury suffered as if it had not contributed to that same injury, at a level comparable to that of a State that contributed in a lesser way.¹¹⁴

103. In the same vein, Cameroon considers that there is a differentiation between developed and developing countries, which are more vulnerable to the consequences of climate change and have made a marginal contribution to GHG emissions.¹¹⁵ Thus, in view of the historical contribution of developed countries, developing countries, the primary victims of climate change, should receive compensation for the damage suffered.¹¹⁶ Compensation as a form of reparation is important to help developing countries act as well, and as Namibia has suggested, this can be done through funds¹¹⁷ or otherwise.¹¹⁸

104. Finally, governments must compensate for the loss and damage caused to the environment, but climate change also causes non-economic damage that must be taken into account.¹¹⁹

VIII. THE QUESTION OF ECOCIDE

105. Cameroon considers that certain acts which, due to their seriousness, cause irreversible damage to the environment and the planet, could be qualified as ecocide and considered as international crimes.

¹¹³ Written observations of the Democratic Republic of Congo, p. 148, para. 311, citing Yearbook of the International Law Commission, Report of the Commission to the General Assembly on the work of its fifty-third session, "Draft articles on responsibility of States for internationally wrongful acts", *op. cit.* article 39, p. 398.

¹¹⁴ Written observations of the Democratic Republic of Congo, p. 148, para. 312.

¹¹⁵ *Ibid*, p. 146, para. 305.

¹¹⁶ Written observations of the African Union, p. 90, para. 232 and p. 110, para. 290.

¹¹⁷ Written observations of the Republic of Namibia, p. 60, para. 140 and p. 61, para. 143.

¹¹⁸ Press Release, World Bank, "New Partnership Aims to Connect 300 Million to Electricity by 2030", 17 April 2024, **Exhibit 36**.

¹¹⁹ Written observations of the Republic of Kenya, p. 83, para. 6.101.

106. It could also be considered that there is a peremptory norm of international law to the effect that no person or state may commit, or allow to be committed, acts of such gravity that could be considered to lead to the destruction of the environment or the planet. The level of seriousness required to constitute "ecocide" will have to be judged on a case-by-case basis, and may evolve over time, but such a level must necessarily exist, and such actions that could, in themselves, lead to the destruction of the planet, are necessarily prohibited. Serious acts of this nature would obviously trigger the regime of article 41 of the Articles on State Responsibility, requiring in particular the cooperation of all States to put an end to such a violation. As in the case of genocide, States have an obligation to cooperate to put an end to any ecocide.
107. States also have a clear obligation to repress such acts by adopting criminal measures against non-State actors under their jurisdiction.¹²⁰ The most serious forms of environmental damage must be prosecuted, both at national level and through international cooperation, with the establishment of an international crime.¹²¹
108. Cameroon believes that the Court can recognise the concept of ecocide at this stage, rather than simply considering it to be an element still within the progressive development of international law.
109. For example, the link between environmental damage and criminal law has already been highlighted by a resolution of the United Nations Economic and Social Council.¹²²
110. In addition, the idea of creating an international criminal court specialising in environmental protection was put forward by Costa Rica to the Commission on Crime Prevention and Criminal Justice.¹²³

¹²⁰ Written observations of the Republic of Vanuatu, pp. 287-288, para. 577.

¹²¹ *Ibid.*

¹²² Resolution adopted by the Economic and Social Council of the United Nations, "Implementation of General Assembly resolution 46/152 concerning operational activities and coordination in the field of crime prevention and criminal justice", 1992/22, 30 July 1992, VI Priorities, **Exhibit 5**, para. 1a).

¹²³ United Nations press release, "The establishment of an international court of justice on the environment requested from the Commission on Crime Prevention and Criminal Justice" SOC/STU/77, 22 May 1996, online <<https://press.un.org/fr/1996/19960522.socstu77.html>>, **Exhibit 19**

111. Although no provision has yet been created for international criminal liability for serious environmental damage, and no specialised chamber has been set up within the International Criminal Court (ICC), the Office of the Prosecutor has nevertheless adopted the following position:¹²⁴

[t]he impact of the crimes [could] be assessed in light of, inter alia, the increased vulnerability of the victims, the terror subsequently instilled, or the social, economic and environmental damage inflicted on the affected communities. In this context, the Office will give particular consideration to prosecuting Rome Statute crimes that are committed by means of, or that result in, inter alia, the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land.

112. The African Union has also worked in this direction, with the African Court of Justice and Human Rights, which has an international criminal section. The African Court has the power to hand down rulings for serious damage to the environment.

113. At the regional and national level, numerous jurisdictional organs have recognized the link between human rights and the right to environment, and that domestic, regional and international norms must be established to imperatively prevent the destruction of the environment.¹²⁵

114. The fundamental question is therefore to determine not only whether the damage reaches the level required to engage international and/or criminal

¹²⁴ ICC, Office of the Prosecutor, "Policy Paper on Case Selection and Prioritisation", The Hague, 15 September 2016, **Exhibit 3**, p. 15, para. 41, [emphasis added].

¹²⁵ See : 276 / 2003 – Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya, African Commission of Human and Peoples' Rights, 4 February 2010, **Exhibit 30** ; Centre pour les droits de l'homme (Université de Pretoria) et la rencontre africaine pour la défense des Droits de l'Homme v/ Senegal. Decision 3/Com/001/2012 on complaint of 27 July 2012, with decision at the 7-16 April 2014 session, transmitted 26 May 2015, **Exhibit 31** ; Case ECW/CCJ/APP/10/10, Judgment ECW/CCJ/JUD/16/14 : The administrators for the socio-economic rights & transparency project (SERAP) & 10 Others v/ The Federal Republic of Nigeria & 4 Others, Judgment of 10 June 2014, **Exhibit 32**, pp. 263-290 ; Mr. Jonah GBEMRE, AND Shell Petroleum Development Company Nigeria LTD (Defendant), Nigerian National Petroleum Corporation (Defendant), Attorney General of the Federation LTD and other n°FHC/B/CS/53/05 (judgement of 14 November 2005), Federal High Court of Nigeria (Benin Judicial Division), **Exhibit 33** ; High Court of South Africa, Earthlife Africa Johannesburg v/ Minister of Environmental Affairs and others, n°65662/16 (judgement of 8 March 2017) (Thabametsi), **Exhibit 34** ; Save LAMU and others v/ National Environmental Authority and Other, N°NET 196 de 2016, National Environmental Tribunal, Republic of Kenya (judgment 26 June 2019), **Exhibit 35**.



responsibility, but also whether there is a sufficient level of seriousness to breach a peremptory norm relating to the protection of the planet in the context of climate change. In this sense, Cameroon considers that the issue and existence of the crime of ecocide should be submitted to the Court for a ruling on its normative value and its recognition.

IX. THE RIGHTS OF PEOPLES AND FUTURE GENERATIONS AND THE GOOD MANAGEMENT OF RESOURCES

115. In its initial observations, Cameroon reiterated the importance of taking into account the right of future generations, while recalling the necessary link between this right and the right of peoples, including the right to self-determination.¹²⁶ The right of peoples, and therefore of future generations, is particularly important in the African tradition of international law.

116. The present submission also highlights certain financial aspects of international obligations relating to climate change. These include obligations that should lead to a substantial transfer of financial resources to developing countries. There is a necessary link between these obligations and the rights of peoples and future generations. These transfers of financial resources should therefore be made with these rights in mind. Another aspect linked to good governance and the good management necessary for these transfers in the interests of peoples and future generations is the link with international obligations to combat corruption, both at the African and global level.¹²⁷ It may thus be appropriate for the Court to emphasise this link, in the interests of peoples and future generations.

Done at Yaoundé, Cameroon, this 7th day of August 2024.

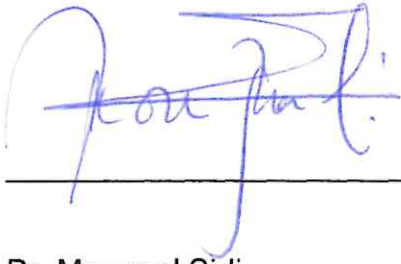


MOUGNAL SIDI
Ministre Plénipotentiaire

¹²⁶ Written observations of the Republic of Cameroon, pp. 7-10, paras. 18-28.

¹²⁷ See, for example, the African Union Convention on Preventing and Combating Corruption, signed in Maputo on 11 July 2003, **Exhibit 6**; List of signatures, ratifications and accessions to the African Union Convention on Preventing and Combating Corruption, signed in Maputo on 11 July 2003, **Exhibit 7**; United Nations Convention against Corruption, General Assembly Resolution 58/4, signed in New York on 31 October 2003, **Exhibit 8**; List of signatures, ratifications and accessions to the United Nations Convention against Corruption, General Assembly Resolution 58/4, signed in New York on 31 October 2003, **Exhibit 9**.





Dr. Mougna Sidi

Minister Plenipotentiary

Director of Legal Affairs and the State's International Commitments

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