

INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)

Written Comments of the Republic of Ghana

15 August 2024

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The Sea Eats the Land at Home
by Kofi Awoonor

At home the sea is in the town,
Running in and out of the cooking places,
Collecting the firewood from the hearths
And sending it back at night;
The sea eats the land at home.

It came one day at the dead of night,
Destroying the cement walls,
And carried away the fowls,
The cooking-pots and the ladles,
The sea eats the land at home;

It is a sad thing to hear the wails,
And the mourning shouts of the women,
Calling on all the gods they worship,
To protect them from the angry sea.

Aku stood outside where her cooking-pot stood,
With her two children shivering from the cold,
Her hands on her breasts,
Weeping mournfully.
Her ancestors have neglected her,
Her gods have deserted her,
It was a cold Sunday morning,
The storm was raging,
Goats and fowls were struggling in the water,
The angry water of the cruel sea;
The lap-lapping of the bark water at the shore,
And above the sobs and the deep and low moans,
Was the eternal hum of the living sea.
It has taken away their belongings
Adena has lost the trinkets which
Were her dowry and her joy,
In the sea that eats the land at home,
Eats the whole land at home.

CHAPTER 1
INTRODUCTION

- 1.1 Ghana submits these Written Comments on the Written Statements filed by other States and international and regional organisations pursuant to the Court’s original Order dated 20 April 2023 and extended by subsequent Orders, the most recent being that of 30 May 2024 pursuant to Article 66(4) of the Statute. Ghana repeats what is set out in its own Written Statement of 21 March 2024. For the avoidance of doubt, it fully adopts and relies upon evidence and arguments in that Statement.
- 1.2 These Written Comments do not purport to address each and every issue raised by the other 91 Written Statements that have been filed in the Registry of the International Court of Justice, which is the highest number of written statements ever to have been filed in the advisory proceedings before the Court. The number of statements alone is a testament to the gravity of the questions posed. No inferences should be drawn by the absence of comment or otherwise on a matter raised in other Written Statements.

- 1.3 The Republic of Ghana, like other African States, affirms that climate change is one of the most serious and pressing issues facing the world today. As rightly explained by the African Union:

“the urgent need to avert catastrophic outcomes finds a periodical reminder in the disasters that are already striking the world, and especially the poorer parts thereof. Floods and storms; fires and droughts – many climate events of the past few decades have been aggravated by the slow build-up of greenhouse gases in the atmosphere, a build-up that remains ongoing, at the risk of decimating humanity”.¹

- 1.4 Ghana is among the African states mentioned in the IPCC, in its most recent assessment report in 2022, that has already experienced widespread impacts from human-induced climate change even though “the contribution of Africa is among the

¹ Written Statement of the African Union (22 March 2024) para. 13.

lowest of historical GHG emissions responsible for human-induced climate change and it has the lowest per capita GHG emissions of all regions currently.”²

- 1.5 As rightly indicated by the African Union, “while the countries members of the Union contributed little, if at all, to the build-up of greenhouse gases, they stand to suffer the most from its dire consequences.” And, as “the IPCC confirmed a year ago already: ‘The pace and scale of what has been done so far, and current plans, are insufficient to tackle climate change’”.³
- 1.6 Ghana as a coastal state, and like Kenya, Egypt and Mauritius, is particularly at risk from climate change. As stated in Egypt’s written statement, “the negative impacts from climate change...are already being experienced across various sectors including coastal zones, water resources, agriculture, and health, in addition to damages related to food security, which leads to economic losses estimated at billions”.⁴
- 1.7 This was confirmed in Kenya’s statement at the Open Debate on Climate and Security in Africa before the UN Security Council when it stated that “for every heatwave in a wealthy city, there are biblical floods elsewhere”. The result has been that the “effects of carbon dioxide and other greenhouse gases are felt most by those who have benefited least from their production”.⁵
- 1.8 As the World Bank indicated in its Country Climate and Development Report on Ghana, “Since 1960, Ghana’s average annual mean temperature has increased by around 1 degree Celsius. Rainfall has also become more erratic. Sea level rise and changing hydrodynamics along the West African coast have resulted in increased coastal erosion. As a result, weather and climate extremes have increased in frequency and magnitude, triggering floods, droughts, and heat waves that, associated with

² Written Statement of the Arab Republic of Egypt (22 March 2024) para. 52, citing IPCC 2022: Africa, p.1294.

³ Written Statement of the African Union (22 March 2024) para. 13.

⁴ Written Statement of the Arab Republic of Egypt, para. 54.

⁵ Written Statement of the Republic of Kenya (22 March 2024) para. 1.3.

increased exposure, cause human losses, damages to public and private assets, and disruption of economic activities.”⁶

- 1.9 The same Report further confirmed that “Without prompt global and local climate actions, higher temperatures and heat stress will affect crop and labor productivity. More erratic rainfall patterns will damage infrastructure and buildings. Local air pollution and congestion will hamper human capital and productivity in cities. Modelling these damages in a macroeconomic framework suggests they could increase poverty rates by at least 1 to 2 percentage points by 2050 (or up to around 1 million people), when compared to a scenario with no climate change. These are conservative estimates, as they do not consider deep uncertainties regarding future climate impacts, risks of catastrophic outcomes due to tipping points, and the costs of biodiversity loss that affect the welfare of individuals.”⁷
- 1.10 Consequently, Ghana, like other developing countries, supports global action to address climate change issues within an all-inclusive approach from a legal standpoint. This Advisory Opinion will shed light on the historic obligations of states under not only climate related agreements but also human rights and reparations for the damages caused by the activities behind the climate crisis.
- 1.11 These Written Comments, therefore, address (2) the Jurisdiction and Competence of the Court; (3) the Legal Obligations on States (‘Question 1’); and (4) Legal Consequences (Question 2) before presenting a (5) Conclusion.

⁶ The World Bank Group, “Ghana- Country Climate and Development Report,” (October 2022) <https://openknowledge.worldbank.org/server/api/core/bitstreams/9c9764c1-076d-5dcc-8339-6e4f0de2b610/content>

⁷ Ibid.

CHAPTER 2

JURISDICTION AND COMPETENCE

I. The Court has jurisdiction

2.1 Like, the majority of other states, Ghana raises no objection to the Court exercising jurisdiction. It is clearly within the competence of the General Assembly to request such an advisory opinion.

II. No compelling reasons for the Court to decline to render the Advisory Opinion

2.2 In its Written Statement, Iran argues that the Court should exercise its discretion and decline to answer the question because, in its view, it is “not precise enough” and invites the Court to enter into *lex ferenda* arguments.⁸

2.3 Ghana believes that the questions asked are clear, even if states may have differing views about their answer. It notes that the General Assembly requesting the opinion was adopted “by consensus”. The fact that these questions might be difficult to answer should not deter the court from answering them.

2.4 In relation to argument that the Court should refrain from entertaining *lex ferenda* arguments, Ghana notes that international law in this area is rapidly evolving, and the Court is well placed to clarify the scope of state obligations. Ghana believes that the role of the Court is not a static one and the Court can play a part in progressing and developing international law to adapt to new circumstances.

III. The Court is fully capable and competent to deal with the factual aspects of the Advisory Opinion

2.5 Ghana perceives that, for the Court to answer the questions before it in these proceedings, it is required to study not only the law but also scientific evidence and information regarding climate change.

2.6 In this regard, Ghana joins the African Union’s view that:

⁸ Written Statement of the Islamic Republic of Iran (22 March 2024)

“[i]n answering these questions, the Court must take into account (A) the whole corpus of international law, which includes the United Nations Framework Convention on Climate Change (“UNFCCC”), Kyoto Protocol and Paris Agreement, principles of general international law, multilateral environmental agreements, human rights treaties, and relevant instruments governing aspects of climate change in the African context”; and (B) the current state of scientific knowledge.”⁹

- 2.7 Scientific evidence is also required to determine those states, including 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.
- 2.8 Ghana agrees with Sierra Leone that “there are no concerns that the Court lacks sufficient information and evidence to enable it to deliver the requested Advisory Opinion. The Court has at its disposal a voluminous dossier with comprehensive documentation available from relevant intergovernmental processes of the United Nations and several reports from, among others, the Intergovernmental Panel on Climate Change (“IPCC”), UN Working Groups related to climate change, and UN Special Rapporteurs with mandates bearing directly on climate change-related matters”.¹⁰
- 2.9 Ghana also supports the submission of Egypt that “the state of global finance landscape should also be perceived as part of the scientific/factual basis which the Court should take into consideration while assessing the various legal obligations imposed on States in relation to the protection of the climate system from climate change and the legal consequences arising therefrom.”¹¹
- 2.10 Having established the relevance of climate science in assessing States’ obligations in relation to climate change, it is also important to highlight the relevance of the

⁹ Written Statement of the African Union (22 March 2024) para., 41.

¹⁰ Written Statement of the Republic of Sierra Leone (15 March 2024) para., 2.8.

¹¹ Written Statement of Egypt, para., 55.

asymmetric responsibilities of developed and developing countries with regard to climate change”.¹²

2.11 In this regard, Ghana would submit to the Court that based on the evidence provided before it, it should also consider financial losses to states suffering from harms caused by climate change and stresses the importance of addressing the obligations of states causing harm and damages based on the rules of state responsibility. Based on IPCC reports, the Court will find evidence for, as Vanuatu put it, “Climate injustice, i.e. the disproportional impacts of climate change on those who have contributed the least, is part of this consensus.”¹³

2.12 In fact, the “Court could answer the question put to it by the UN General Assembly by examining the Relevant Conduct from one or more of the three aforementioned perspectives: in relation to the acts and omissions of (i) a specific State (a large emitter of GHG and, hence, a significant contributor to the problem), (ii) a specific group of States (a group of large emitters of GHG, hence of significant contributors to the problem and, taken together, those having caused climate change) or (iii) as a general conduct, whose conformity with international law is assessed in principle. This is because...there is ample evidence and a scientific consensus on: a) the cause of climate change, namely anthropogenic GHG emissions over time; b) the specific States whose individual GHG emissions have caused significant harm to the climate system and other parts of the environment and, taken together, also catastrophic harm in the form of climate change and its adverse effects; and c) the disproportionate adverse impact of climate change on States whose emissions are insignificant and, yet, are amongst the most directly and severely impacted”.¹⁴

2.13 In conclusion, the Court has a vast body of scientific evidence and knowledge to address the conduct of states and analyze it within the legal obligations incorporated in both hard and soft law dealing with the causes and the consequences of climate change on the livelihood of living beings as well as the statehood of many. Ghana is confident that the Court is fully capable of addressing not only the phenomenon of

¹² Written Statement of the Arab Republic of Egypt, para. 56.

¹³ Written Statement of the Republic of Vanuatu, para. 62.

¹⁴ Ibid 157.

climate change *and* its causes but also the full legal consequences of breaches of those obligations by states therein.

IV. Nothing in the request circumvents the Court from addressing the Obligations of States

- 2.14 Ghana fully supports the submission by the African Union and others that confirmed the competence of the Court to address the obligations of states while taking into consideration that “‘international law’ as a system – which encompasses climate change law, environmental law, human rights law, and the law of the sea – offers a more complete answer to the question of States’ obligations to protect the climate from significant harm for present and future generations, and the consequences of those obligations”.¹⁵
- 2.15 Ghana supports the call by many states that while addressing these obligations, the Court should give particular regard to the list of legal instruments in the chapeau of the request incorporated before the questions stipulated in UNGA resolution 77/276. However, giving ‘particular regard’ should not limit the Court from looking into and considering other legal instruments not listed therein, including but not limited to the rules of customary international law of Transboundary Harm and the rules of state responsibility and reparations for wrongful acts as confirmed by this Court’s vast jurisprudence.
- 2.16 As Micronesia stated:
- “the chapeau does not impose a closed universe of sources of international law from which the Court must draw in issuing its advisory opinion in the present request. The phrase “particular regard” instead indicates that the Court must pay close but not exclusive attention to the sources of international law listed in the chapeau. The UNGA has not asked the Court to ignore other sources of international law not explicitly mentioned in the chapeau. Indeed, the preambular paragraphs of UNGA resolution 77/276 list

¹⁵ Written Statement of the African Union, para 49.

a number of sources of international law not explicitly referenced in the chapeau of the question, including the Convention on the Rights of the Child, the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Convention on Biological Diversity, and the Kyoto Protocol. Additionally, the sources of international law explicitly referenced in the chapeau of the question themselves contain a large number of rules and principles of international law that are not mentioned in the chapeau but which are also relevant for the present request”.¹⁶

- 2.17 In brief, Ghana has full confidence that the Court could and should address the full breadth of States’ legal obligations based on the entire corpus of international law and not limited to the few legal instruments enlisted in the UNGA resolution 77/276 requesting the current advisory opinion.

¹⁶ Written Statement of the Federated States of Micronesia (15 March 2024), para. 42.

CHAPTER 3

WHAT ARE THE LEGAL OBLIGATIONS ON STATES?

3.1 Ghana submits that 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 gas” may broadly speaking be divided into three categories: treaties, customary international law and human rights obligations.

I. Treaties

3.2 The UN Framework Convention on Climate Change (UNFCCC) was the first climate change treaty adopted at Rio in 1992. States have adopted climate change treaties after conference rounds making pledges to cut greenhouse gas emissions, such as the 1997 Kyoto Protocol. The most recent treaty round led to the adoption of the Paris Agreement of 2015.

A. Duty of Due Diligence

3.3 The 2015 Paris Agreement is the most recent agreement to be adopted under the UNFCCC with 195 ratifications. The Paris Agreement contains three goals: mitigation, adaptation and finance. The first of these goals of mitigation amounts to an obligation of due diligence.

3.4 Under the Paris Treaty, many of the obligations to protect the climate system constitute obligations of conduct rather than obligations of result.¹⁷ The key objective of the treaty, as set out in Article 2(1)(a):

Article 2

1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

(a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;

¹⁷ Written statement of the European Union, para. 69.

3.5 States have a procedural obligation which is binding to prepare reports under:

Article 4(2)

Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

3.6 Mitigation-related measures are also contained in Article 5, which contains provisions concerning Greenhouse Gas removals by sinks.

3.7 However, the obligations of due diligence as set out in the Paris Agreement are a partial rather than a full enunciation of due diligence commitments under international law with respect to tackling climate change as we will now go on to address. The precautionary conduct necessitated by anticipated, foreseeable or potentially disastrous results is not limited by the conduct agreed upon in the Paris agreement. Moreover, obligations of conduct are not limited to due diligence, but include obligations of adaptation and finance as a response and succour to damaging results.

B. Common but Differentiated Responsibilities and Respective Capabilities

3.7 A fundamental cornerstone which underlies the treaty regime is that of “Common but differentiated responsibilities and respective capabilities” which departs from the traditional approach of equality between states.

3.8 Whilst all states have a responsibility to contribute to global efforts to combat climate change by reducing GHGs, states are under a duty to allocate the burden of emissions reductions in line with the principle of differentiated responsibilities based on respective capabilities.

3.9 Whilst there is broad agreement as a guiding principle, divergent opinions exist as to the scope of the principle and how it interacts with States’ obligations to protect the

climate system. In its written statement, the EU identifies three aspects of differentiation¹⁸:

- 1) Applicability: exempt from certain provisions or additional obligations e.g. WTO, See also the Kyoto Protocol.
- 2) Differentiation based on circumstances: Art 2(1) ICESCR
- 3) One group of Parties to provide technical and financial assistance to another group of Parties

- 3.10 As developed country Parties are expected to “take the lead” in reducing GHGs¹⁹ Differentiation in favour of developing states remains “the linchpin” of the climate change regime.²⁰ This is justified by the serious harm caused by historic emissions. As acknowledged by the COP, “historical cumulative net carbon dioxide emissions already account for about four-fifths of the total carbon budget for a 50 per cent probability of limiting global warming to 1.5 °C”.²¹ As the African Union points out, Africa contributed very little to these emissions and reducing GHGs today severely limits its ability to industrialise.²² One estimate puts Africa’s current contribution to GHG as accounting for between 2-3% of the world’ carbon dioxide emissions from energy and industrial sources.²³
- 3.11 The second need for differentiation arises from the fact that different countries by virtue of their income, wealth and development, have differing capabilities to mitigate against climate change.
- 3.12 CBDR-RC is referred to in Art 2.2 and 4.3 and preamble of the Paris Agreement and has a normative status as a general principle of law.

C. Loss and Damage

- 3.13 3.13 None of the climate treaties address state responsibility for loss or damage caused by climate change. Although “loss and damage” is mentioned in Article 8 of the Paris Agreement, it is not formulated in terms that accept liability or compensation for the harmful effects of climate change. Ghana therefore submits that the Court’s advisory

¹⁸ Written Statement of the European Union, paras. 203-212.

¹⁹ Written Statement of the Republic of Kenya, para. 3.35.

²⁰ Written Statement of Brazil, para. 12.

²¹ Decision 1/CMA.5 ‘Outcome of the first global stocktake’ (2023), para. 25.

²² Written Statement of the African Union, para 109.

²³ UN Fact Sheet on Climate Change, Africa, UN Climate Conference in Nairobi. https://unfccc.int/files/press/backgrounders/application/pdf/factsheet_africa.pdf (Accessed 14.08.24).

opinion presents an opportunity to obtain an authoritative statement on the long-neglected matter of loss and damage.

- 3.14 In this regard, the success of the Loss and Damage Fund- established at COP 27 and its capacity to reach its objectives will depend largely on the existence of clear rules of operation and accountability mechanisms that consider the needs of developing countries. The Court should therefore provide insights into the substantive content of obligations that are particularly relevant in the context of loss and damage in furtherance of the Transitional Committee’s work on the subject.

D. Financial Provision

- 3.15 Many developed states accept that there is a binding obligation to provide financial resources to assist developing countries.²⁴ The Paris Agreement provides under Article 9(1) Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaption in continuation of their existing obligations under the Convention.

E. Systemic Integration, not *Lex Specialis*

- 3.16 Ghana’s position is that both treaties and customary international law are equal sources of law as established under Article 38(1) of the Statute of the ICJ. It, therefore, rejects the position taken by the USA that “other sources of international law do not establish additional obligations of states in respect of climate change”.²⁵
- 3.17 The position of a number of states, such as Japan, is that treaties on climate change have priority by virtue of the rule of *lex specialis* which governs the relationship between treaties and custom.²⁶ Saudi Arabia in its written statement, states that “[n]o basis exists for imposing legal obligations that go beyond what States have agreed in the UNFCCC, the Kyoto Protocol and the Paris Agreement.”²⁷ Saudi Arabia continues, “[t]he specialized treaty regime on climate change cannot be interpreted based on a different legal regime, such as human rights or environmental law.”²⁸

²⁴ Written Statement of the United Kingdom, para. 158

²⁵ Written Statement of the United States of America (22 March 2024) para. 4.1 – 4.2.

²⁶ Written Statement of Japan (22 March 2024) para. 14.

²⁷ Written Statement of Saudi Arabia, para. 5.4.

²⁸ *Ibid*, para. 5.5

- 3.18 The use of the technique of *lex specialis* to disregard other areas of international law that are also impacted by climate change is flawed. This is because the technique of “*lex specialis derogate legi generali*” is only employed as a technique of interpretation when two norms are in conflict with one another. There is no suggestion that ‘climate change law’, ‘international environmental law’ and ‘human rights’ are in conflict.
- 3.19 This is also similar to the position adopted by the EU, which states that the provisions in Paris, UNFCCC, UNCLOS and human rights treaties facilitate their mutual interpretation: “these instruments apply in parallel and are to be interpreted in a manner ensuring consistency between these instruments.”²⁹
- 3.20 Ghana, therefore, supports interpreting climate change treaties under the principle of systemic integration outlined in Article 31(3)(c) of the Vienna Convention on the Law of Treaties³⁰ with regard to other obligations in international law whether set out by treaty, custom or as a general principle.

II. Customary International Law

- 3.21 Ghana supports the view that the following legal principles have attained status as customary international law: duty of due diligence, no harm principle, duty of cooperation. Ghana supports the precautionary principle and inter-generational equity being established as norms of customary international law.

A. Duty of Diligence not to cause transboundary harm

- 3.22 States are also under a duty of due diligence in customary international “not to allow knowingly its territory to be used for acts contrary to the rights of other States.” This is a long-established principle of customary international law that is widely accepted by states participating in these proceedings.³¹

²⁹ Written Statement of the European Union, para 93.

³⁰ Written Statement of Vanuatu, footnote 335.

³¹ Written Statement of Pakistan para. 30; Written Statement of Sierra Leone, para. 3.10.

- 3.23 As far back as 1872, Great Britain was found in breach of obligations of “due diligence” to maintain neutrality by permitting its territory to be used for the construction and arming of the warships sold to the Confederacy during the American Civil War in the famous *Alabama Claims* arbitration.³² This principle was upheld in the Corfu Channel case (UK v Albania)³³.
- 3.24 It was widely accepted by states that the principle to prevent transboundary harm was articulated in the *Trail Smelter Case* in which the Tribunal stated, “no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein when the case is of serious consequence and the injury is established by clear and convincing evidence.”³⁴ The principle was confirmed as customary international law by this court in the *Pulp Mills* case.³⁵

B. No harm principle

- 3.25 The *Trail Smelter case* also is authority for the ‘no harm principle’ that no state should permit their territory to be used to cause harm to another state. Ghana supports the position taken by Egypt that the ‘no harm principle’ is an obligation owed to a group of States, States that are particularly vulnerable, including Egypt, and also to the international community as a whole.³⁶ Like Egypt, Ghana is both a developing state and a coastal state that is highly vulnerable to climate change.

C. Precautionary Principle

- 3.26 The Precautionary Principle guides decision-making in cases of scientific uncertainty.³⁷ Ghana submits that there the science is sufficiently certain about the harmful effects of climate change. However, to the extent that there remains any scientific uncertainty – including in relation to confidence and probability – the precautionary principle requires States to take action to prevent serious harm to the

³² *Alabama Claims of the United States of America against Great Britain*, Arbitration Award, 14 September 1872 (2011) 29 RIAA 125-34.

³³ Corfu Channel, U.K. v. Albania, Judgment, 1948 I.C.J. 15 (Mar. 25)

³⁴ *Trail Smelter Arbitration*, RIAA, vol III, pp.1905-82, p.1965.

³⁵ *Ibid.*

³⁶ Written Statement of the Arab Republic of Egypt, para. 338.

³⁷ Rio Declaration, Principle 15.

climate system and other parts of the environment.³⁸ A number of states treat the precautionary principle as part of the obligation of due diligence.³⁹ This is especially important given the irreversible nature of the effects of climate change.

D. Inter-generational Equity

- 3.27 Ghana supports the principle of inter-generational equity. Humans exercise trusteeship over the earth's resources for future generations. This principle was mentioned by Judge Weeramantry in his dissenting opinion in the *Nuclear Weapons* case in which he pointed out that support for inter-generational equity could be found in a "multiplicity of traditional legal systems."⁴⁰
- 3.28 It is reflected in the 1972 Stockholm Declaration, which provides that "Man... bears a solemn responsibility to protect and improve the environment for present and future generations."⁴¹ Principle 2 of the Declaration provides that: "The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations."⁴²
- 3.29 Ghana, therefore, is broadly supportive of the EU's position which "invites the Court to find that the principle of equity, as an enforceable legal norm of customary international law, also comprises intergenerational equity."⁴³

E. Duty to Cooperate

- 3.29 The duty to cooperate is a well-established principle of customary international law. This reflects the fact that climate forms part of a "common concern of humankind"

³⁸ Written Statement of the Republic of Mauritius, para.196.

³⁹ Written Statement of the Republic of Mauritius, para. 192; Written Statement of the Arab Republic of Egypt, para. 110.

⁴⁰ *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* Dissenting Opinion of Judge Weeramantry, (1996) ICJ Rep 226, 454.

⁴¹ Declaration on the UN Conference on the Human Environment, 16 June 1972, 11 ILM (1972) 1416, Principle 1.

⁴² *Ibid.*

⁴³ Written Statement of the EU, para. 184.

which transcends territorial borders and requires states to jointly manage the risks posed to the climate system.⁴⁴ It also includes a duty to notify where a neighbouring state is at risk of a transboundary harm and to act in good faith.

- 3.30 Climate change necessitates what Professor Georges Abi-Saab termed a movement away from a law of coexistence to one of cooperation.⁴⁵ The former is premised on independent interests of states and prohibitions to act. The latter, in contrast, divides a common task between states requiring everyone to do their part often under the supervision of an organ that monitors compliance. This is premised on the existence of international community with its own interests and values that align with those of states.

III. Human Rights Obligations

- 3.31 Ghana, like many other states, believes that there is an undeniable connection between climate change and the enjoyment of human rights. This has been recognised by the international community in the passing of General Assembly Resolution 76/300 in (2022) on the Right to a Healthy and Sustainable Environment. The effects of climate change engage all three generations of rights, which are indivisible in nature. State human rights obligations arise by virtue of the obligation to protect the rights of those individuals on a state's territory.
- 3.32 A number of states express scepticism about the validity of linking human rights obligations and climate change. For example, Australia and the UK point out the absence of direct obligations in human rights treaties to “ensure the protection of the *climate system*.”⁴⁶ Russia notes that the logic of “individual vs government” is not applicable in the context of climate change.⁴⁷ Other valid objections included: (i) that human rights obligations are primarily territorial,⁴⁸ and (ii) concern courts going

⁴⁴ Written Statement of the Republic of Kenya (22 March 2024) para. 3.103.

⁴⁵ Georges Abi-Saab, ‘Whither the International Community?’ (1998) 9 EJIL 248, 250.

⁴⁶ Written Statement of Australia, para. 3.58; Written Statement of the UK, para.

⁴⁷ Written Statement of Russian Federation (21 March 2024) p.9.

⁴⁸ Written Statement of China, para. 124

outside of their competence area and straying into policy-making decisions about the allocation of resources.⁴⁹

3.33 In response, Ghana makes the following observations. First, the link between climate change and enjoyment of human rights is undeniable. The request for an advisory opinion has been led by states whose people’s very existence is under threat. Secondly, as point out by Vanuatu and other states, it is widely accepted that the rights set out in the ICCPR/ICESCR and UDHR constitute customary international law.⁵⁰ Thirdly, the interpretation of international human rights treaties is not static but these are “living instruments” whose meaning evolves as society evolves.⁵¹ Fourthly, human rights obligations have an *erga omnes* quality even if their enforcement may be governed by territory. Fifthly, Ghana supports the position by Vanuatu that human rights obligations in the ICCPR/ICESCR can have extraterritorial scope and include the rights of anyone “within the power or effective control of that State Party”, which is to be determined on a case-by-case basis.⁵² The Cook Islands believes that “the incessant release of pervasive and immensely damaging pollution to other States’ territories with profound impacts on those States’ environments and peoples’ constitutes ‘actual or attempted acts of exercising jurisdiction over other States.’”⁵³ Sixthly, whatever the concerns of states about justiciability, it is undeniable that people are increasingly turning to courts to pursue climate justice. Courts clearly believe that they have a role in holding governments accountable.

A. Life, Health, Property, Private and Family Life, Food

3.34 In the ground-breaking case of *SERAC v Nigeria* in 2001, the African Commission found that Nigeria had failed to protect its citizens from oil pollution caused by oil companies in violations of the right to life, property, environment and health. Ghana supports the clarification of human rights obligations to mitigate against human rights violations.⁵⁴

⁴⁹ Written Statement of China, para. 125; Written Statement of the UK, para. 130.

⁵⁰ Written Statement of Vanuatu, para, 341.

⁵¹ *Tyler v UK*, App. No. 5856/72, ECtHR, 24 April 1978, para. 31.

⁵² Written Statement of Vanuatu, para, 335.

⁵³ Written Statement of the Cook Islands, (20 March 2024) para. 191.

⁵⁴ *The Social and Economic Rights Action Centerl, et al v Nigeria*, African Commission on Human and Peoples’ Rights, Ref No. 155/96 (2001).

Life

- 3.35 States have a positive obligation to protect individuals against the violation of the rights under the ICCPR and ensure them to all individuals in their territory and subject to their jurisdiction. This obligation also applies to prevent the taking of life before it has occurred.
- 3.36 As pointed out by Sierra Leone’s written statement, “[a]ccording to the WHO, there will be approximately 250,000 additional deaths per year between 2030 and 2050 due to the effects of climate change.”⁵⁵
- 3.37 Ghana agrees with Egypt’s statement that states must protect life and take positive measures “against foreseeable and preventable loss of life” through mitigation and adaption to climate change.”⁵⁶

Health

- 3.38 The Right to health is enshrined in the UDHR and the Banjul Charter, which provides:

Article 16

- (1) Every individual shall have the right to enjoy the best attainable state of physical and mental health
- (2) State Parties to the present Charter shall take the necessary measures to protect the health of their people...

- 3.39 Ghana agrees with the statement by Sierra Leone that:

“IPCC concludes with “very high confidence” that climate change has adversely affected the physical health of people around the world, whether that be directly through extreme weather events, or indirectly through changes in natural systems resulting in the spread of diseases, resource scarcity, and the displacement of persons.”⁵⁷

⁵⁵ Written Statement of the Republic of Sierra Leone (15 March), para. 3.66.

⁵⁶ Written Statement of the Arab Republic of Egypt, para. 211.

⁵⁷ Written Statement of the Republic of Sierra Leone (15 March), para. 3.75.

Property

- 3.40 Ghana also observes the devastating effects of climate change on land. The right to property under Article 14 of the Banjul Charter includes land rights.⁵⁸
- 3.41 Climate change impacts land use by affecting environmental conditions, particularly in urban areas. The consequences are increasing floods, landslides, droughts, storms, sea level rise, and other natural disasters. These undermine the very foundation of land use and, as a result, property rights⁵⁹.
- 3.42 The relationship between climate change and property rights is substantial. The rapidly changing environmental conditions have a direct or indirect impact on an individual's property and property rights⁶⁰.

Private and Family Life

- 3.43 In the recent case of *Billy v Australia*, the Human Rights Committee found that a failure by the Australian government to take measures to safeguard the Torres Strait Islanders, amounted to arbitrary interference with their private life, family and home.⁶¹ Australia could not explain its delay in erecting seawalls, which resulted in the islanders having to be displaced from their homes.
- 3.44 Similarly, within the context of the European Court of Human Rights, the recent case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* found that Switzerland was in breach of the right to private and family life towards a group of women of seniority. This was due to a failure to implement a regulatory framework to tackle GHG emissions or meet targets.⁶² The court found Switzerland in breach of the position obligations under Article 8 of the ECHR.

⁵⁸ *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, Communication 276/2003.

⁵⁹ *Advances in Chemical Pollution, Environmental Management and Protection*, Vol. 8, issue 1, 2022, pap1

⁶⁰ *ibid*

⁶¹ *Daniel Billy et al. v. Australia*, UN Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019, CCPR/C/135/D/3624/2019, 22 September 2022, para. 8.12.

⁶² *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, App. No. 53600/20, Judgment 9 April 2024.

Food

Article 11(1) of the ICESCR guarantees an “adequate standard of living” including “adequate food”. Ghana, like other West African nations, is also vulnerable to the effects on the agricultural sector due to extreme weather conditions leading to food insecurity.⁶³ Climate change has an effect on the availability of stocks of fish in the ocean. This is due to increased levels of acidification caused by high concentrations of carbon dioxide in the ocean.⁶⁴ **Right to a Healthy Environment**

- 3.45 In Ghana’s view the “right to a healthy environment” is an inalienable right. A collective right that covers the intersecting violations is better suited to address these violations than one rooted solely in individual instances of rights violations.
- 3.46 Several submissions by states fail to consider its status as a “collective right”. Some states have traditionally been fairly reluctant to accept collective rights. No mention is made of this right in the written statements of the UK, Russia or China. The EU, on the other hand, submits that “the human right to a clean and healthy environment is emerging as a matter of customary international law”.⁶⁵
- 3.47 Other states, such as the United States, do not accept that the “right to a healthy environment and sustainable” environment constitutes a binding ‘hard’ obligation preferring to define his concept as a ‘soft’ norm. The US, for example, in its written statement, provides that despite the resolutions that have “recognised” this as a human right, “this purported right remains inchoate and has not attained the status of international law.”⁶⁶
- 3.48 It is argued that the “right to a healthy environment” finds support in African approaches to international law. Article 24 of the Banjul Charter provides that: “All peoples shall have the right to a general satisfactory environment favourable to their development.”

⁶³ Written Statement of the Republic of Sierra Leone, para. 3.87.

⁶⁴ Written Statement of the Cook Islands (20 March 2024), paras. 57-61.

⁶⁵ Written Statement of the EU, para. 258.

⁶⁶ Written Statement of the USA, para 4.54.

- 3.49 The right was established by the ground-breaking case of *SERAC v Nigeria*, in which the African Commission established the concept of a “right to a healthy environment” combining the obligations set out in Article 24 with those set out in Article 12 of the Banjul Charter. As the African Union explains in its statement, the right is a product of other existing rights.⁶⁷
- 3.50 Ghana believes that the “right to a healthy environment” has attained the status of customary international law and/or a general principle of international law. It notes that the “right to a healthy and sustainable environment” was recently recognised by General Assembly Resolution 76/300 in (2022) and can be found in numerous constitutions.⁶⁸
- 3.51 The General Assembly has long been used a vehicle for the creation of new norms that are now widely accepted as international law from the UDHR, crimes against peace, the prohibition of genocide and prohibition of colonialism, to name but a few resolutions that crystallised as binding law.

B. Self-Determination and Means of Subsistence

- 3.52 As pointed out by Nauru and other islands, “[c]limate change threatens the very existence of some small island States.”⁶⁹ The effects of rising sea levels will have devastating consequences for small island states, causing forced re-location. Such rising sea-levels will also have devastating consequences for the existence of communities that live next to the sea. Finally, another effect of climate change pointed out by Pakistan is “desertification” making land unable to support life.⁷⁰
- 3.53 Linked to self-determination is the legal principle of permanent sovereignty over natural resources found in common Article 1 to the ICCPR./ICESCR. Ghana submits

⁶⁷ Written Statement of the African Union, para. 192.

⁶⁸ GA Res. 76/300 ‘The human right to a clean, healthy and sustainable environment’, 28 July 2022 (A/RES/76/300).

⁶⁹ Written Statement of Nauru, para. 24.

⁷⁰ Written Statement of the Islamic Republic of Pakistan (22 March 2024) paras 22-27.

that this includes an obligation ‘not to deprive people of their means of subsistence’. This is especially important in the context of increasing food insecurity caused by climate change.

CHAPTER 4

WHAT ARE THE LEGAL CONSEQUENCES?

I. State Responsibility

4.1 It is a well-established principle of international law that: “Every international wrongful act of a State entails the international responsibility of that State”⁷¹ Certain states, such as Japan, questioned the applicability of the rules on state responsibility as set out in the Articles on the Responsibility for Internationally Wrongful Acts (‘ARISWA’) (2001). Japan argues that responsibility can only be governed by reference to the primary obligations set out in the specified treaty on climate change.⁷²

4.2 These secondary rules are set out in the Articles on State Responsibility. An internationally wrongful act consists of two elements:

- (i) Attribution of conduct to a State
- (ii) Breach of an international obligation

A. Attribution on conduct to a State

4.3 For something to constitute an internationally wrongful act, it must be possible to attribute the actions to a state.

4.4 Certain states believe it is impossible attribute the effects of climate change to individual states. For example, Russia put this as follows:

“climate change is an indirect process. Greenhouse gas emissions do not have a direct negative impact on humans and ecosystems at the location where they are emitted.¹⁴ The effect of emissions is "spread" all over the planet. As a result, certain processes in the atmosphere take place, which in turn lead to negative consequences (droughts, floods, etc.) that affect (a) particular State(s). It is impossible to identify which sources of emissions have ultimately led to which consequences in a particular State.”⁷³

4.5 Others believe that it is possible to attribute the effects of climate to the States that have caused the greatest amount of global warming through the release of GHG. For example, Vanuatu cites the work of Professor Corine Le Quéré in measuring global warming caused by each State as a result of their cumulative GHG emissions as follows:

⁷¹ ARSIWA, Article 1

⁷² Written Statement of the Government of Japan (22 March 2024), para., 27.

⁷³ Written Statement of the Russian Federation, p.17.

“The top 10 contributors to global warming from historical emissions of GHG during 1851-2022 are the USA (responsible for 17.0% of the global warming in 2022 due to their historical GHG emissions; 0.28°C), China (12.5%; 0.21°C), the EU27 (10.3%; 0.17, including Germany 2.9%, France 1.3%, Poland 1.0% and Italy 0.9%), Russia (6.3%; 0.11°C), Brazil (4.9%; 0.081°C), India (4.7%; 0.078°C), Indonesia (3.7%; 0.061°C), the United Kingdom (2.4%; 0.040°C), Canada (2.1%; 0.035°C), and Japan (2.1%; 0.035°C). The GHG emissions from these contributors, together with those from Australia (1.5%; 0.025°C), Mexico (1.4%; 0.023°C), Ukraine (1.4%; 0.022°C), Nigeria (1.2%; 0.019°C), Argentina (1.2%; 0.019°C), and Iran (1.1%; 0.019°C), amount to three quarters of the global warming due to GHG emissions during 1851-2022 [...] The same countries figure among the largest contributors to global warming from emissions of GHG during the shorter 1990-2022, with China the largest contributor in that period”.⁷⁴

- 4.6 The US also believes that states are not responsible for actions carried out by private parties or businesses stating that “purely private conduct is not attributable to a State.”⁷⁵ Ghana submits that whilst this position may be broadly speaking correct, a failure to regulate private conduct, can engage state responsibility as we can see with positive obligations in human rights law. The holdings in the *D. Earnshaw and Others (Great Britain) v. United States (Zafiro case)*⁷⁶ affirms this point of law.
- 4.7 In the above case, the USA was held liable for the looting and destruction of property by the Chinese Crew of the *Zafiro*. It was held that though a merchant ship, the *Zafiro* did not operate as one; it was under control of the US Navy and operated as a supply ship-which made the US fully responsible for the action of the crew in the ship.

B. Breach of an international obligation

⁷⁴ Vanuatu, Exhibit B, Expert Report, paras 25 and 26 cited in the Written Statement submitted on behalf of Vanuatu, para. 152.

⁷⁵ Written Statement of the USA, para. 5.3.

⁷⁶ *Zafiro v. United States*, 506 U.S. 534 (1993).

- 4.8 There is disagreement as to (i) factually speaking when states became aware about the risk posed by climate change; (ii) when customary international law crystallised in this area or to what extent states can be liable for past international wrongful acts.
- 4.9 The written comment by Vanuatu states that “as early as 1832, the renowned British engineer Charles Babbage” became aware that “*combustion of fuel were “constantly increasing the atmosphere by large quantities of carbonic acid [CO₂] and other gases noxious to animal life”* reflecting the early state of scientific knowledge about pollution.⁷⁷ The US takes the position that states first became aware that anthropogenic GHG were a problem in 1980s.⁷⁸ Germany takes the view that a global consensus of the scientific community only emerged in 1990s with the publication of reports by the IPCC.⁷⁹
- 4.10 The position of many of the biggest polluting states is that the customary international law obligation to prevent significant harm to the environment only emerged in the 1990s. For example, Russia argues that “no State may be held responsible for such emissions produced” before the 1990s.⁸⁰ The UK believes that “the relevant obligation under Question A were not in existence over much of the period in which human activities have resulted in GHG emissions.”⁸¹ It considers the inquiry under Question B “would be extremely narrow in scope” because “[i]t would deal with only the most recent GHG emissions and only those in breach of rules of international law binding on the State.”⁸² Given that according to the UK, the “UN climate change regime, developed over the last 30 years”, we can infer that such an obligation would only arise from pollution in the last 30 years and does not account for pollution before this date.
- 4.11 The question is to what extent can states be liable for past international wrongful acts. The US puts forward the valid position that states can’t be responsible ‘retrospectively’ before a primary obligation entered into force.⁸³ Germany highlights

⁷⁷ Written Statement of Vanuatu, para., 247.

⁷⁸ Written Statement of the US, para., 6.2.

⁷⁹ Written Statement of Germany, para. 40.

⁸⁰ Written Statement of Russian Federation, p.16.

⁸¹ Written Statement of the UK, para., 137.4.2.

⁸² Ibid.

⁸³ Written Statement of the USA, para., 5.4.

the intertemporal principle that states must apply the law as was at the time of the past emissions.⁸⁴ States cannot be responsible for past emissions because the law was not in existence at the time when the vast majority of emissions occurred.

- 4.12 Natural law prohibitions of colonialism, slavery or individual criminal responsibility for crimes against humanity or aggression have often sat uneasily with the intertemporal principle and that of non-retroactivity. This is because by stating that something became unlawful at a particular time, it suggests that it was lawful before this. Those states most vulnerable to the effects of climate change do not accept that causing massive environmental air pollution was ever lawful in the first place.
- 4.13 Ghana's position is that duty of diligence was established in customary international law as far back as 1872 with the *Alabama Case*. Therefore, responsibility for past emissions pre-dates the establishment of the climate change system under treaty law from 1992 onwards.

C. Cessation and Non-Repetition

- 4.14 If a State does not act in compliance with its due diligence obligations to protect the atmosphere and prevent significant transboundary harm resulting from GHG, it may be held responsible.
- 4.15 Where state responsibility is engaged by an internationally wrongful act, states are obliged to cease that act and provide assurances of non-repetition.⁸⁵

D. Reparation

- 4.16 The responsible state is also obliged to make full reparation. Such "reparation must as far as possible, wipe out the consequences of an illegal act and re-establish the situation which would, in all probability, have existed if the act had not been committed."⁸⁶ This is set out in Article 31(1) of the ARISWA, which states that: "The responsible State is under an obligation to make full reparation for the injury *caused*

⁸⁴ Written Statement of Germany, para. 37.

⁸⁵ ARISWA, Article 30.

⁸⁶ *Chorzów Factory (Germany v Poland)*, Judgment No 13 (1928) PCIJ Series A No 17.

by the international wrongful act.” Reparations can include restitution, compensation and satisfaction.

- 4.17 Certain states, including historic polluters, have also questioned whether it is possible to prove causation. For example, in the event of a small island becoming submerged underwater, how would you prove that a historic polluter had caused the island to become submerged? Russia articulates this position in its written statement:

“it is important to take account of the difficulties in establishing causality in the context of causing harm to the climate system and other parts of the environment through greenhouse gas emissions. First, virtually all States are now emitters of greenhouse gases, and it is impossible to identify, with any legally meaningful degree of precision, the role of each State in the global climate change process which, besides, is driven not only by anthropogenic but also by natural factors.... in every particular situation of harm caused by climate change it is virtually impossible to identify the responsible State, the exact internationally wrongful act that has led to the negative consequences and sometimes even the injured State.”⁸⁷

- 4.18 Many of the developing countries argue that unlawful GHG emissions entail state responsibility and an obligation to pay compensation for loss and damage caused.⁸⁸ In 1991, Vanuatu proposed negotiating compensation for loss and damage.

II. Obligations to Peoples and Individuals

- 4.19 Ghana supports attempts to define state obligations to “peoples and individuals of present and future generations affected by the adverse effects of climate change.” It notes that by their nature, climate change obligations are *erga omnes* and our climate forms part of the common heritage of humankind. Such community obligations fit uneasily within the traditional paradigm based on the rights and responsibilities of

⁸⁷ Written Statement of the Russian Federation, p.7.

⁸⁸ Written Statement of Mauritius, para. 124.

states. States must provide access to justice to enable victims of climate change to seek a remedy.

4.20 Ghana recalls that the precursor to *jus cogens* obligations in Article 40 was the concept of ‘state crimes’ set out in draft Article 19(2) which stated:

An internationally wrongful act which results from the breach by a State of an international obligation so essential for the protection of fundamental **interests of the international community** that its breach is recognized as a crime by that community as a whole, constitutes an international crime.

Under Article 19(3) ...an international crime may result, *inter alia*, from

(d) a serious breach of an international obligation of essential importance for the safeguarding and preservation of the **human environment**, such as those prohibiting massive pollution of the atmosphere or of the seas.⁸⁹

4.21 Philip Allott criticised the drafting of obligations on state responsibility. By identifying a limited group of international crimes which attract individual liability, he argued that it “excludes from that category other behaviour whose effects may be more serious but which governments do not happen to regard as grossly abnormal or criminal. There might, for example, be an international tort of governmental negligence for bringing about social, economic, moral or physical damage to the peoples of the world in the form of...destruction of the physical environment...”⁹⁰

4.22 Allott described the work of the ILC in the following terms:

“The Commission is a law processor, chopping up the ingredients of law into small pieces and blending them into a bland gruel not likely to upset the most dyspeptic government official. Governments, with their special sensitivity to anything that may affect their power, have generally found the final product

⁸⁹ Report of the International Law Commission on the work of its 28th session 3 May – 23 July 1976 under the auspices of Robert Ago, ILC Yearbook (1976) II, Part 2, 95-96.

⁹⁰ Philip Allott, ‘State Responsibility and the Unmaking of International Law’ (1988) 29 *HILJ* 1, 16.

acceptable and even satisfying. However, the consumers - the peoples of the world - may have been less well served. Instead of limiting the power of governments, the ILC's version of state responsibility establishes the limits of their powers. It affirms rather than constrains power.”⁹¹

Ghana urges the court to foreground the interests of individuals and peoples in its response to the advisory opinion and, where necessary, fill *lacuna* in the law.

⁹¹ Ibid, 2.

CHAPTER 5


CONCLUSION

- 5.1 There is a pressing need for the Court to elucidate the obligations and legal consequences of a catastrophe whose warning signs and effects are already with us.
- 5.2 While the Opinion of the Court is advisory, it has the potential to have far-reaching consequences to save lives and livelihoods of present and future generations.
- 5.3 The international legal system is in the early stages of growing a backbone, which marks a higher stage of its evolution, an evolution which is necessary in order to function as a coherent whole and not be overcome by its own contradictions.
- 5.4 Contrary to the submissions of some states, the questions under review by the Court are not hypothetical questions. In the case of Ghana, the average temperature has risen almost one degree Celsius over the last 30 years, and there are signs of reduced rainfall affecting both agriculture and the production of hydroelectric power, which accounts for about a third of Ghana's electricity generation. The present extensive drought situation in the Northern parts of Ghana imperilling the livelihood of farmers and threatening life and food security are clear demonstrations of the consequences of this catastrophe.
- 5.5 Those who have contributed least to the emission of greenhouse gases are worst affected by its consequences, and within Ghana itself, the effects of increased temperature and decreased rainfall disproportionately affect poorer communities dependent on water for agriculture.
- 5.6 For the reasons set out in its Written Statement of 21 March 2024 and further developed in these Written Comments, Ghana submits as follows:
 - (1) The Court has jurisdiction, and there are no grounds for declining to exercise such jurisdiction.
 - (2) States are under an obligation to exercise due diligence obligation to prevent, reduce and control anthropogenic GHG emissions that cause significant harm

to the climate system and parts of the environment emissions with a view to limiting global warming to 1.5°C above pre-industrial levels.

- (3) Developed states have an obligation to provide funding to address the historic differential responsibilities for causing GHG and in accordance with different financial and technological capabilities in accordance with the principle of common but differentiated responsibility – respective capabilities.
- (4) Climate change is also informed by developed customary international law and general principles on due diligence, no harm principle, the duty of cooperation. It supports the Court declaring inter-generational equity and the precautionary principle as customary international law.
- (5) There is a collective right to a healthy environment which is under threat from the effects of climate change. The right to self-determination may be breached by the effects of climate change. This is in addition to the harmful effects on individual rights to life, health, private and family life, property and food.
- (6) States should provide access to justice and effective remedies to individuals and peoples whose rights have been impacted by climate change.

The Court should not shy away from progressing the development of international law in the service of the law of a community of States. However, where the Court finds lacunae in the current system, for example, in how to quantify responsibilities or reparations, then it should seek scientific counsel and give recommendations indicating to the international community its best approximation of current rules as well as indications of outstanding issues which need to be redressed urgently through negotiation and reform.

A handwritten signature in black ink, appearing to read 'Diana Asonaba Dapaah', with a double underline at the end.

DIANA ASONABA DAPAAH

DEPUTY ATTORNEY GENERAL AND DEPUTY MINISTER FOR JUSTICE

FOR: ATTORNEY GENERAL AND MINISTER FOR JUSTICE