

SUMMARY OF THE *AMICUS CURIAE* BRIEF

The Green Rights Coalition has submitted an *amicus curiae* brief to the International Court of Justice in the framework of the United Nations General Assembly's request for an advisory opinion on obligations of states in respect of climate change (resolution 77/276 of 29 March 2023). The purpose of this document is to summarise the arguments developed in the brief.

SUMMARY

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

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

To put it another way, the identification of the climate obligations incumbent on States stems in particular from the recognition of the environmental rights of individuals and groups. This link between rights and duties is well illustrated by the European Court of Human Rights' judgment of 9 April 2024¹, in which the Court enshrines a right to effective protection of citizens by States against the adverse effects of climate change – a perfect illustration of a right of individuals that forms the basis of States' climate obligations.

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

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

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

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

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

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

2. The right to a healthy environment

- The right to a healthy environment, which has developed gradually since the 1970s, is now recognised in several international, sector-specific and regional conventions. Regional and international case law, in particular that of the African, Inter-American and European Courts of Human Rights, has made a major contribution to the affirmation of this right, interpreting it as an integral part of the rights to private and family life and to well-being. For example, since the *Lopez Ostra v. Spain* case of 9 December 1994³, the European Court of Human Rights has held that the right to private and family life protected by Article 8 of the Convention includes a right to be protected against serious harm to the environment because such harm may "affect an individual's well-being and prevent them from enjoying their homes in such a way as to affect their private and family life".
- The value under customary law of the right to a healthy environment must be recognised. It is accepted as general practice and binding in the vast majority of States. It is recognised in the legal systems of 155 States, including more than 100 States at constitutional level. The 1972 Stockholm Declaration, the Rio Declaration and the Johannesburg Declaration all mention it. Finally, the United Nations General Assembly resolution of 22 July 2022 has formalised this recognition, considering this right to be an integral part of human rights.
- The right to a healthy environment must naturally be applied to the field of climate-related matters. The result is a right to a stable climate and to effective protection against the adverse effects of climate change.

B. Other environmental rights

1. Substantive rights

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

2. Procedural rights

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

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

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

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

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

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

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

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

2. Environmental rights as a source of obligations for States

- Environmental rights also give rise to obligations on the part of States. For example, the United Nations General Assembly resolution on the right to a healthy environment⁴, after recognising this right, commits States to "*fulfil their human rights obligations and commitments [...], on the implementation of the right to a clean, healthy and sustainable environment*".
- In his 2019 report A/74/161, the Special Rapporteur on human rights and the environment lists a series of obligations that States are required to respect on the basis of the 2018 Framework Principles on Human Rights and the Environment.
- These obligations include procedural obligations, such as the obligation to ensure the procedural rights of citizens and the obligation to carry out, or have carried out, an environmental assessment prior to any policy or project relating to climate change.

⁴ UNGA, Resolution 76/300 of 28 July 2022 on the right to a clean, healthy and sustainable environment.

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

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

1. State responsibility at the international level

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

2. State responsibility before domestic courts

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

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

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

EDITORIAL COMMITTEE

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