Journal of Human Rights Practice, 2023, **XX**, 1–14
https://doi.org/10.1093/jhuman/huad024
Advance access publication 12 July 2023
Article

Climate Change Litigation before the African Human Rights System: Prospects and Pitfalls

Practice Note: GNHRE Climate Litigation in Global South Project

Yusra Suedi*, Marie Fall**

Abstract

Africa is a promising regional venue for climate change-related complaints—not least because it is distinctively vulnerable to climate harms. Yet, neither the African Commission on Human and Peoples' Rights nor the African Court of Human and Peoples' Rights have been theatres to such disputes at the time of writing. In anticipation that climate litigation will emerge before the African human rights system, this practice note provides information to the non-State actors and their lawyers on the procedural challenges that may arise, demonstrating how such challenges may be circumventable in the African context.

Keywords: climate change; Litigation; African court on human and peoples' rights; African Commission on Human and Peoples' Rights; Africa

1. Introduction

The phenomenon of litigating for climate change has been burgeoning in domestic courts across the globe—most cases argued as human rights violations (Setzer and Higham 2021: 6; Fraser and Henderson 2022). A newer trend has recently developed to pursue such litigation on the international stage. In September 2022, the UN Human Rights Committee found that Australia's failure to sufficiently protect Torres Strait Islanders from the unfavourable impact of climate change was a breach of the International Covenant on Civil and Political Rights (*Daniel Billy and Others v. Australia* 2022 (*'Torres Strait Islanders Petition'*)). As such litigation has recently arisen before regional human rights judicial bodies such as the European Court of Human Rights, this practice note focuses on the potential of such litigation before the African human rights system. For reflections on claw-back clauses and the significance of the Paris Agreement for climate litigation in the African human rights system, see Jegede (2023, in this collection).

For the purposes of this practice note, the scope of the African human rights system is limited to the African Commission on Human and Peoples' Rights (ACmHPR) and the African Court of Human and Peoples' Rights (ACtHPR). The ACmHPR receives communications concerning

* Fellow in Law, London School of Economics and Political Science, London, United Kingdom.
** PhD Candidate, University of Geneva, Geneva, Switzerland.

alleged violations of the African Charter on Human and Peoples' Rights, while the ACtHPR settles disputes and provides advisory opinions on the African Charter's interpretation and application and any relevant human rights instrument ratified by States parties.

Africa is a promising regional venue for climate change-related complaints—not least because it is distinctively vulnerable to climate harms (Addaney, Boshoff, and Olutola 2017; Bouwer 2022; Kotze and Du Plessis 2020). Domestic avenues have been explored across the continent (Erinosho 2020: 51–55; Ashukem 2013: 35–43; Etemire 2021; Humby 2018: 145–55; Field 2021; Wangui, Zengerling, and Fuo 2022; Rumble and Gilder 2021). The *Gbemre* and *Mbabazi* cases in Nigeria and Uganda respectively are testament to this (*Gbemre v. Shell Petroleum Development Company of Nigeria Ltd and Others* 2005; *Mbabazi and Others v. The Attorney General and National Environmental Management Authority* 2012), most likely due to civil society's growing awareness of the adverse impact of climate change on human rights and emerging domestic laws and policies on climate change mitigation (for example, South Africa Carbon Tax Act (Act No. 15/2019); Nigeria Climate Change Act 2021; Kenya Climate Change Act (Act No. 11/2016); Uganda National Climate Change Act 2021).

On the regional level, Article 24 of the African Charter on Human and Peoples' Rights (African Charter) uniquely provides that '[a]ll peoples shall have the right to a general satisfactory environment favourable to their development' (African Charter, OAU 1981). Therefore, contrary to other regional human rights courts, the African Court may be requested to directly review a State's compliance with its obligations to respect and protect the human right to a healthy environment, which can encompass climate change issues (Buys and Lewis 2022: 969). In the *Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights (CESR) v. Nigeria* case 2002 ('*SERAC v. Nigeria*'), for example, the Ogoni claimed that the Nigerian government had violated Article 24 in failing to prevent pollution and facilitating operations of oil corporations in Ogoniland. While no reference to the climate was made in the parties' pleadings or the Court's judgment, there is a connection to climate change insofar as oil companies contribute to greenhouse gas emissions (Ako 2014).

The lack of climate cases to date may be attributable to obstacles on the domestic level such as weak legislative frameworks, slow judicial processes or limited financial resources. Such circumstances would typically impede prospective litigants from exhausting domestic remedies to then seize the African human rights system. Further, climate change in the African context has most probably been a secondary consideration compared to broader and more commonplace environmental disputes placing more emphasis on land, property rights or natural resources—a recent example being the *Ogiek* case before the African Court (*African Commission on Human and Peoples' Rights v. Republic of Kenya* 2017 ('*Ogiek*')). See also: *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya* 2009 ('*Endorois*'). However, the global climate litigation movement before regional and international courts and tribunals is likely to arrive on Africa's doorstep in the near future. In anticipation of more direct instances of climate change litigation before the African system of human rights, this practice note provides information to the non-State actor parties in proceedings and their lawyers on certain procedural challenges that may arise when litigating for the climate before the African human rights system. It first examines selected admissibility challenges in contentious proceedings (in section 2), before examining the potential for an advisory opinion to be requested (in section 3).

2. Admissibility challenges in contentious proceedings

Before discussing specific admissibility criteria, it is important to note that prospective litigants having identified a government that they are eligible to sue should be aware that it is

possible to attribute specific climate impacts to individual States (Intergovernmental Panel on Climate Change (IPCC) 2021). Indeed, while the Paris Agreement recalls the principle of common but differentiated responsibilities, both *Urgenda* and *Sacchi* have established that States each carry individual responsibility for their own acts or omissions in relation to climate change and their contribution to it despite its global collective nature (*Chiara Sacchi et al. v. Argentina et al.* 2021 ('*Sacchi*'); *The State of the Netherlands v. Stichting Urgenda* 2019 ('*Urgenda*'); see also *Torres Strait Islanders Petition*: para 7.8). This finding is likely to be replicated by other judicial bodies. Further, while alleged violations should have occurred after the date of entry into force of the African Charter for the State being sued, violations having occurred before this date but with ongoing effects (known as 'continuous violations')—which is likely to be the case in a climate context—are admissible in contentious proceedings (ACmHPR, 2020).

Turning to admissibility criteria, some are not particularly controversial in the climate context. For instance, the names of 'authors' (that is applicants) must be indicated (Article 56(1) African Charter), communications should not be written in disparaging or insulting language (Article 56(3)), evidence other than simply news reports should be presented (Article 56(4)), and the case must not have already been settled elsewhere (Article 56(7)). However, two admissibility requirements that have developed through recent practice in international law and of particular controversy in the climate context, are the requirements of exhaustion of domestic remedies (discussed at 2.1 below) and victimhood (discussed at 2.2 below). This section of our note demonstrates how such admissibility challenges may be circumventable in the African context.

2.1 Exhaustion of domestic remedies

Pursuant to Article 56(5) of the African Charter and Article 6(2) of Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (Ouagadougou Protocol), both the African Commission and Court can only deal with the complaints presented to them if domestic remedies have been exhausted. The rationale of the exhaustion of domestic remedies rule in the African Charter is to ensure that before proceedings are brought before an international body, the State concerned must have had the opportunity to remedy the matter through its own local system.

Applicants may have higher chances of success in the admissibility phase if they make a sincere attempt to exhaust domestic remedies before seizing either the African Commission or Court. In *Sacchi*, Greta Thunberg and fifteen other children had made no attempt to exhaust domestic remedies, arguing that filing separate domestic lawsuits would be 'futile', 'unlikely to secure any effective relief' and 'unduly burdensome'—particularly in the context of a climate emergency (*Sacchi*; Petitioners' Reply; Chiara Sacchi et al. v. Argentina et al. 2021). However, the failure to exhaust domestic remedies was the precise reason why the UNCRC dismissed the petition (CRC Decision 2020, *Sacchi*, para. 10.21). While Aoife Nolan argued that this decision 'reflect[ed] a strong grasp of principle, procedure and pragmatism' (Nolan 2021), it was also criticized as a strategy to 'fend off backlash from states' (Çali 2021) and for its lack of realism. As Wewerinke-Singh commented:

Expecting these children to experiment with largely untested, highly complex and expensive transnational litigation strategies in order to satisfy the exhaustion of domestic remedies requirement suggests that the Committee will only hear complaints when it is too late to prevent the most serious violations of their rights (Wewerinke-Singh 2021).

Applicants in the pending *Duarte Agostinho* before the ECtHR have similarly argued that 'it would not be feasible to pursue domestic proceedings against each of the states, considering the urgency of climate change' (*Duarte Agostinho and Others v. Portugal and Others* 2020 ('*Duarte Agostinho*'); Stanculescu 2021).

It is unlikely that the African Commission and Court would uphold the argument advanced by the claimants in *Sacchi* and *Duarte Agostinho*. This is because the exhaustion

of domestic remedies is the 'first requirement considered' (*Law Offices of Ghazi Suleiman v. Sudan* 2003), examined *proprio motu* by both bodies even in the absence of any objection thereto (*Urban Mkandawire v. Republic of Malawi* 2012), and described by the Court as 'not a matter of choice' but rather 'a legal requirement in international law' (*Peter Joseph Chacha v. The United Republic of Tanzania* 2014).

However, concerns about the length of time it might take for cases to be decided are valid in relation to the climate crisis. Therefore, while the *Sacchi* and *Duarte Agostinho* arguments may not be upheld, applicants may justify that they are exempt from exhausting domestic remedies for other reasons developed in the Commission's and Court's jurisprudence. Indeed, it is established that for domestic remedies under Article 56(5) of the Charter to be exhausted, they must be available (the petitioner can pursue it without impediment), effective (offering a prospect of success) and sufficient (capable of redressing the complaint) (*Sir Dawda K. Jawara v. Gambia* 2000; *Ghaby Kodeih and Nabih Kodeih v. Republic of Benin* 2022). If domestic remedies do not meet these criteria, a victim may not have to exhaust them before complaining to an international body. It is critical to note that merely casting aspersions is insufficient; applicants must provide concrete evidence and sufficiently demonstrate that their apprehensions are well founded (*David Mendes (represented by the Centre for Human Rights, University of Pretoria) v. Angola* 2013; *Mamadou Diakité and Another v. Republic of Mali* 2017 ('*Diakité*'). This also reflects the position taken by the UNCRC in *Sacchi*, where it stated that 'mere doubts or assumptions about the success or effectiveness of remedies [did] not absolve the authors from exhausting them' (CRC Decision 2020, *Sacchi*, para. 10.17).

Another source of justification is found in Article 56(5) itself, according to which complaints are admissible if they '[a]re sent after exhausting domestic remedies, if any, *unless it is obvious that this procedure is unduly prolonged*'. The African Commission and Court do not determine this by reference to a precise maximum limit but rather adopt an *in concreto* approach. They hold that to determine whether or not a process is reasonable, it must take into account the circumstances of the case and the procedure (*The Beneficiaries of the Late Norbert—Zongo Abdoulaye Nikiema alias Ablasse, Ernest Zongo and Blaise IIboudo and The Burkinabe Movement on Human and Peoples' Rights v. Republic of Burkina Faso* 2014 ('*Norbert Zongo*'; *Mariam Kouma and Another v. Republic of Mali* 2018 ('*Kouma*')). They can be also guided by the common law doctrine of a 'reasonable man's test' (*Zimbabwe Lawyers for Human Rights and the Institute for Human Rights and Development in Africa v. Zimbabwe* 2008; *Wilfred Onyango and Others v. United Republic of Tanzania* 2016). Beyond this, and in contrast to the African Commission, the African Court may examine the behaviour of the parties and domestic judicial authorities themselves to determine if they 'ha[ve] been passive or clearly negligent' (*Kouma*). Conversely, applicants' allegations that the proceedings were unduly prolonged cannot succeed before the Court if they contributed to delaying the proceedings by their conduct (*Kouma*).

Applicants have the burden of proof to present evidence of their exhaustion of domestic remedies. In our view, the threshold of evidence to present is fairly high. They are expected to indicate the domestic courts where they sought remedies and attach all relevant evidence, such as copies of court judgments or writs of *habeas corpus* (ACtHPR 2020; *Diakité*). Sometimes, the African Commission and Court, *proprio motu*, ask the applicant for additional information relating to exhaustion of domestic remedies (ACtHPR 2020; ACmHPR 2020). Failing to supply the necessary evidence leads to the conclusion that domestic remedies have not been sufficiently exhausted as, if they had been, the complainant would have made it known (*Egyptian Organization for Human Rights v. Egypt* 2000; *Frank David Omary and Others v. United Republic of Tanzania* 2014). This high threshold aligns with the UNCRC who recently claimed that presenting 'a few general precedents' would be insufficient (D.C. v. Germany 2020).

Should the applicants not be exempt from exhausting domestic remedies, a final matter is the acceptable time frame between the exhaustion of domestic remedies and the seizing of the Commission or Court. In accordance with Article 56(6) of the African Charter, applications shall be considered if they are submitted within a reasonable period from the time domestic remedies are exhausted or from the date the Commission or Court is seized of the matter. This requirement remains abstract insofar as the African Charter does not specify the time frame, unlike other regional human rights systems in which a time limit of six months is set. However, *Michael Majuru v. Zimbabwe* indicates that the African Commission has adopted the six-month period rule from other regional human rights systems (OAS 1969; European Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe 1950; *Michael Majuru v. Zimbabwe* 2008). The African Court, on the other hand, determines the time period 'on a case by case basis' (*Nobert Zongo*). While the African Court is flexible in assessing this criterion (*Alex Thomas v. United Republic of Tanzania* 2015), the lack of predictability, clarity and precision may negatively affect the legal security of applicants before the Court. It is therefore advised to file a case as soon as domestic remedies have been exhausted.

In sum, applicants may have higher chances of success in the admissibility phase if they make a sincere attempt to exhaust domestic remedies. However, in light of the climate emergency, they may request exemption. While arguments related to the climate emergency in *Sacchi* and *Duarte Agostinho* are unlikely to be upheld by the Commission or Court to exempt applicants, they may still justify—with the necessary evidence—that domestic remedies are not available, effective or sufficient, or that proceedings are unduly prolonged. This admissibility requirement is therefore circumventable in the African context.

2.2 Victimhood

Another admissibility challenge in climate litigation in the African human rights system is the establishment of victimhood. Victims can be defined as 'persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law' (UN General Assembly 2006: 5). In the climate change context, UN treaty bodies have explained that victims must be 'actually affected' if a State has already violated their right by action or omission, or their risk of being affected must be 'more than a theoretical possibility' (*Ioane Teitiota v. New Zealand* 2020: para 8.4). In *Torres Strait Islanders Petition*, the Human Rights Committee considered that the authors were 'highly exposed to adverse climate change impacts' as they 'indicat[ed] the existence of real predicaments that they have personally and actually experienced owing to disruptive climate events and slow-onset processes', which have 'compromised their ability to maintain their livelihoods, subsistence and culture' (*Torres Strait Islanders Petition*: para. 7.10). These are some examples of how victimhood relates to harm suffered as a result of climate change.

Before the African Court and Commission, communications may be submitted on behalf of the victim by the latter's family members (ACmHPR 2017, General Comment No. 4). Legal persons may also act on behalf of victims, however the African Commission—unlike the African Court—requires sufficient evidence of the victim's consent (ACmHPR 2020). Before the African Court, only NGOs with observer status before the African Commission can act on behalf of victims (Ouagadougou Protocol, OAU 1998).

Climate litigation before the African Commission and Court is potentially facilitated in relation to the victimhood criterion in two respects. First, it is well established in African Commission's and Court's law that some harms may be collective—not simply individual. They have found entire communities or groups to be collective victims, including communities identified by ethnicity, religion or geographic region (*Endorois*; *The Nubian Community in Kenya v. Kenya* 2015; '*Ogiek*').

Second, and contrary to other international and regional human rights judicial bodies (Hampson, Martin, and Viljoen 2018: 180–82), a communication may also be submitted by a person or group that is not itself the victim of the violation, but is acting in the public interest (*Spilg and Mack and Ditshwanelo v. Botswana* 2013; *Tanganyika Law Society, the Legal and Human Rights Centre et Reverend Christopher R. Mtikila v. Tanzania* 2013). Article 5(3) of the Ouagadougou Protocol, which provides that NGOs may bring cases before the Court, does not make it conditional on victim status, indicating that they may litigate in the public interest as well. Case examples of this practice include *Open Society Justice Initiative v. Côte d'Ivoire* 2015; *Actions pour la protection des droits de l'homme v. Côte d'Ivoire* 2016 and *Association pour le Progrès et la Défense des Droits des Femmes Maliennes et Institute for Human Rights and Developement in Africa v. Mali* 2016. The key example in the environmental realm is the *SERAC v. Nigeria* mentioned above. This practice is particularly valuable in the climate context, as climate change is considered to be a global issue concerning everyone indiscriminately. This rule allows more people to sue governments without necessarily having to prove that they are victims in this legal sense. Both of these procedural prerogatives significantly facilitate the ability for climate litigation on the African regional level.

Despite these facilitative features in establishing victimhood, the causal link must be proven between the applicant's harm and the State's climate action or inaction. This could be rendered particularly difficult due to climate uncertainty and has, before other judicial bodies, required engagement with complex scientific evidence and climate science (Fermeglia 2020; Stuart-Smith, Otto, Saad et al. 2021; Pfrommer, Goeschl, Proelss et al. 2019). It has been a significant obstacle that climate litigants have failed to overcome in certain domestic jurisdictions (for example *Smith v. Attorney-General* 2022: para 183; *Plan B Earth and Others v. Prime Minister* 2021: para. 77). In certain instances, however, courts have been able to overcome this challenge and reach conclusions on causality to establish victimhood through relying on scientific expert reports from the Intergovernmental Panel on Climate Change (IPCC)—for instance, in *Sacchi* and *Urgenda*. Applicants are advised to provide such climate science to the Commission or Court in their pleadings. Further, at the 27th United Nations Climate Change conference (COP27) in November 2022, the African Commission tasked its commissioners to undertake a study on the nexus between climate and human rights and how to limit and address the adverse impacts of climate on the rights and freedoms of individuals, communities and societies (Dersso and Mwandenga 2022). Such a study will foster greater understanding on the causal link between the applicant's harm and the State's climate action or inaction, and therefore facilitate future climate litigation on the continent.

In brief, climate litigation is facilitated by the admissibility of public interest litigation and collective victimhood, subject to the strong scientific evidence establishing the causal link between the applicant's harm and the State's climate action or inaction. The requirement of victimhood is therefore a circumventable challenge in the African context.

2.3 Court or Commission?

Having observed similar admissibility practices in contentious cases before both the Commission and Court, an appropriate question at this stage may be which body should be seized: the Commission or the Court? Seizing the Commission is more accessible, while direct access of individuals to the Court is limited to NGOs with observer status before the Commission and to individuals suing States who have consented to this through a declaration (Articles 5(3) and 34(6) Ouagadougou Protocol). Between 2019 and 2020, a series of States (Tanzania, Benin and Côte d'Ivoire) withdrew their Article 34(6) declarations to the protocol allowing individuals to file cases before it, leaving only eight out of 30 States parties who have consented (Burkina Faso, Malawi, Mali, Ghana, Tunisia, Gambia, Niger, Guinea Bissau). Despite this, individuals or NGOs who *do* have access to the Court may

consider seizing it as, contrary to the Commission's recommendations, it makes binding decisions. The procedures in place to guarantee the implementation of its decisions are also more sophisticated than for the Commission (Ouagadougou Protocol, OAU 1998; ACtHPR 2020, Article 125).

3. An advisory opinion on climate change?

Advisory opinions have been avenues to request courts for opinions on States' environmental obligations. For example, the Inter-American Court of Human Rights (IACtHR) rendered an advisory opinion in 2017 on States' extraterritorial obligations to refrain from committing environmental harm (Advisory Opinion OC-23/17 Requested by the Republic of Colombia 2017 ('Advisory Opinion OC-23/17')). The IACtHR has since received a similar request in early 2023 for an advisory opinion on the scope of the State obligations for responding to the climate emergency under the framework of international human rights law (Minister of Foreign Affairs of Chile and Minister of Foreign Affairs of Colombia 2023). Elsewhere, the International Court of Justice has been requested by the UN General Assembly to render an advisory opinion clarifying the climate obligations of States and legal consequences for climate harm, particularly to small island developing States, peoples and individuals of the present and future generations (UN General Assembly 2023). A similar request has been made to the International Tribunal for the Law of the Sea (Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal) 2022). An initiative is currently being spearheaded by African civil society organizations to request an advisory opinion from the African Court of Human Rights on African States' human rights obligations with respect to climate change (Ncube 2023).

To date, the African Court has received 15 advisory opinion requests, but has rendered only four opinions in which it responded to the legal questions raised (Advisory Opinion 002/2013 Requested by the African Committee of Experts on the Rights and Welfare of the Child 2014; Advisory Opinion 001/2021 Requested by The Bureau of the Pan African Parliament 2021 ('Advisory Opinion 001/2021'); Advisory Opinion 001/2020 Requested by the Pan African Lawyers Union 2021; Advisory Opinion 001/2018 Requested by the Pan African Lawyers Union 2020). While no advisory proceedings with respect to climate change have been requested to date, one of these answered requests concerned the protection of fundamental environment-related rights affected by mining activities (Advisory Opinion 002/2016 Requested by L'Association Africaine de Défense des Droits de l'Homme 2017 ('Advisory Opinion 002/2016')). The paucity of advisory opinions, including in the climate realm, is possibly due to the arguably restrictive procedural conditions for NGOs—explained below—the length of proceedings (for instance Advisory Opinion 001/2013 Requested by the Socio-Economic Rights and Accountability Project (SERAP) 2017 ('Advisory Opinion 001/2013')) or the non-binding nature of opinions, which may have discouraged applicants. However, the growing trend of advisory opinions on climate change before international courts and tribunals invites reflection on this practice in the African context.

Contrary to advisory requests to the ICJ which may involve hostile political lobbying in the UN General Assembly (explaining Palau's failed attempt in 2011—Beck and Burleson 2014), the African human rights system offers relatively easier avenues to make such a request. Article 4(1) of the Ouagadougou Protocol provides that:

At the request of the Member State of OAU, the OAU, any of its organs, or any African organisation recognized by the OAU, the Court may provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the Commission.

It is therefore open to requests from a variety of actors.

However, NGOs are subject to specific requirements. In the *Socio-Economic Rights and Accountability Project* advisory opinion, the Court stated that only NGOs with observer status with the African Union, or that have signed a Memorandum of Understanding with the African Union, are entitled to bring a request for advisory opinion before this Court (Advisory Opinion 001/2013: para 64). It is insufficient to have observer status with an African Union organ, such as the African Commission—one must be recognized by the African Union itself (Advisory Opinion 001/2013: paras 59–63). On the basis of this principle, the Court rejected four advisory applications from NGOs in 2017 because their observer status before the African Commission did not constitute recognition by the African Union under Article 4 of the Ouagadougou Protocol (Advisory Opinion 002/2016; Advisory Opinion Request 001/2016 by The Centre for Human Rights, Federation of Women Lawyers Kenya, Women's Legal Centre, Women Advocates Research and Documentation Centre, Zimbabwe Women Lawyers Association 2017 0; Advisory Opinion 002/2015 by the Centre for Human Rights, University of Pretoria (CHR) and The Coalition of African Lesbians (CAL) 2017 ; and Advisory Opinion 002/2014 by Rencontre Africain pour la Défense des Droits de l'Homme 2017).

The strict requirement of 'any African organisation *recognised by the OAU*' may exclude several environmental non-governmental organizations (NGOs) registered in an African country that could be instrumental in requesting an advisory opinion on climate change with respect to the African continent. However, there is insight on how to acquire this status. By its decision, EX.CL/Dec.230 (VII) (African Union Executive Council 2005), the Executive Council of the African Union adopted the Criteria for Granting African Union Observer Status to Non-governmental organizations (NGOs) (African Union Executive Council 2005: 112. See also Advisory Opinion 001/2013: para 60). The NGO must fulfil certain criteria, including being of recognized standing within the particular field of its competence, having purposes and principles aligned with those of the African Union and be registered for at least three years in an AU Member State. There are criteria on its structure and financial resources, as well as information on how to apply and what to include in the application (African Union Executive Council 2005). To our knowledge, no official list of NGOs with such recognition is publicly available. Such a status is more difficult to obtain than observer status with the African Commission (Judge Ben Achour 2017), and the requirements signal the Court's reticence towards responding to concerns of civil society (Jones 2017).

Still, an advisory opinion brought by a recognized NGO with observer status would be desirable insofar as the material scope of the Court's advisory jurisdiction extends both to the African Charter itself and to 'any other relevant human rights instrument'. Such an opinion would give the Court the opportunity to build on jurisprudence recently established by UN treaty bodies with respect to the International Covenant on Civil and Political Rights (*Torres Strait Islanders Petition*) in matters of climate change or the above mentioned IACtHR 2017 advisory opinion on States' extraterritorial obligations to refrain from committing environmental harm (Advisory Opinion OC-23/17). It could even comment on the recent Human Rights Council (UN Human Rights Council 2021) and General Assembly (UN General Assembly 2022) resolutions affirming the human right to a clean, healthy and sustainable environment in light of climate change. Such resolutions reinforce Article 24 of the African Charter and may therefore enhance the prospects of successful climate litigation on the continent. Otherwise, the only limitations to the Court's jurisdiction in this area are two: the opinion requested may only concern a 'legal question' and its subject matter must not relate to 'a matter pending before the [African] Commission' (Ouagadougou Protocol, OAU 1998: Article 4(1)). Therefore, a potential requester must be mindful to carefully craft a question that raises legal problems and is 'by [its] very nature susceptible of a reply based on law' (Western Sahara 1975: 18, para 15). Finally, in light of the climate emergency, requesters may ask for expedited consideration of the request, which was granted by the

Court in the 2021 Pan African Parliament Advisory Opinion (Advisory Opinion 001/2021: para 13–20).

The African Commission itself may also render advisory opinions: Article 45(3) of the African Charter authorizes it to interpret any provision of the Charter 'at the request of a State Party, an institution of the [African Union] or an African Organisation recognised by the [African Union]'. The Commission has only rendered one advisory opinion to date (Advisory Opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous People 2007). The possibility for such requests to be made by NGOs—despite them having to be recognized by the African Union—reflects greater openness compared to the Inter-American Commission solely authorizing Member States of the Organization of American States to do so (Ouguergouz 1993: para 81). NGOs need only have an observer status with the African Commission to seize it for a matter, while they must be recognized by the African Union to seek the Court's advisory opinion—a more difficult task as discussed above (Judge Ben Achour 2017). One avenue available to NGOs that wish to obtain a human rights interpretation on climate change matters before either the African Court or Commission is to lobby or approach States sympathetic to the climate crisis and its human rights repercussions in Africa (such as The Gambia, who is one of the best performing countries in relation to climate commitments: The Gambia, Climate Change Action Tracker 2023), to submit a request for an advisory opinion.

4. Conclusion

This practice note has explored possible climate litigation avenues in the African human rights system, identifying their challenges and prospects in both contentious and advisory proceedings. Climate litigation, although burgeoning at a rapid pace, can be conjectural and fraught with procedural difficulties. However, we have demonstrated ways to circumvent such challenges: certain evidenced justifications may possibly exempt applicants from the exhaustion of domestic remedies, scientific evidence can prove one or multiple applicants' victimhood and civil society organizations may apply for African Union Observer Status to request an advisory opinion, or approach sympathetic States to do so on their behalf.

Some judicial avenues proposed in this practice note will not result in binding decisions, but rather, in advisory opinions or recommendations by the Commission. It may be argued that the absence of a binding decision renders climate litigation, with the goal of changing the behaviour of States and corporations, meaningless. However, success with respect to this practice ought not to be narrowed down to a binding decision. States comply with international decisions for reasons beyond the binding nature of the decision—the authority of judicial institutions stems from, *inter alia*, their superior knowledge and reputation (Zarbiyev 2008: 293). Even the high moral authority of an advisory opinion should not be discredited. By way of illustration, the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (2019) advisory opinion has led to the UK agreeing to open negotiations with Mauritius over the Chagos Islands (Wintour 2022), among other outcomes. Further, the compounded effect of multiple decisions and opinions from a panoply of international judicial institutions may pressure States to change their behaviour. Whether decisions are binding or not, compliance is still a possibility.

Despite the challenges involved, and the paucity of practice in the African system, we argue that all avenues explored in this practice note are worth pursuing as a form of public interest litigation. Public interest litigation, by definition, is 'not necessarily about winning the case' but can often entail a 'success without victory' (Jeßberger and Steinl 2022: 385; Chamberlain and Fourie 2023, in this special collection). Courts are often used as a forum

of protest with the broader objective of 'promot[ing] structural change' (Ramsden and Gledhill 2019: 411). In this sense, the immediate outcome of the case or process does not outweigh achieving the objectives behind the specific case.

There is scientific evidence to the effect that Africa will disproportionately carry the impact of climate change in the coming years (Intergovernmental Panel on Climate Change 2023), which is likely to give rise to further climate-related disputes. For instance, several coastal cities in East and West Africa, as well as along the Nile Delta, could be increasingly vulnerable to sea-level rise, or even flooding and drought. Increased loss of agriculture could lead to famine or migration (Food and Agriculture Organization of the United Nations 2017). Considering an increased understanding of climate change impact on health, livelihoods and other fundamental rights, rights-based litigation is likely to rise. For this reason alone, climate litigation on the African continent is an important area for further analysis and discussion. This practice note has contributed to the discussion by reflecting on the procedural requirements of the duty to exhaust domestic remedies and victimhood in order to invoke the African human rights system, as well as potential challenges associated with obtaining an advisory opinion on climate change.

Acknowledgements

Thanks to Anna Kokla; Margaretha Wewerinke-Singh; Melanie Murcott and Maria Antonia Tigre; the anonymous *Journal of Human Right Practice* reviewers; and the Global Network of Human Rights and the Environment (GNHRE) reviewers in the Climate Litigation in the Global South Project. This paper was also presented at the 11th Annual Conference of the African Society for International Law (28–29 October 2022, Cairo); thanks to the participants for their feedback.

References

Addaney, M., E. Boshoff, and B. Olutola. 2017. The Climate Change and Human Rights Nexus in Africa. *Amsterdam Law Forum* 9(3): 5–28.

African Commission on Human and Peoples' Rights (ACmHRP). 2017. General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5).

African Commission on Human and Peoples' Rights (ACmHRP). 2020. Rules of Procedure.

African Court on Human and Peoples' Rights (ACtHPR). 2020. Rules of Court.

African Union Executive Council. 2005. Decision on the Criteria for Granting Observer Status and a System of Accreditation within the AU. Doc. EX.CL/195 (VII). EX.CL/Dec.230 (VII). https://archives.au.int/bitstream/handle/123456789/4602/EX%20CL%20Dec%20230%20(VII)%20_E.PDF?sequence=1 (referenced 9 November 2022).

African Union Executive Council. 2005. Draft Criteria for Granting Observer Status and for a System of Accreditation within the AU. 1–2 July 2005. EX.CL/195 (VII) Rev.1, Annex IV. http://www.peaceau.org/uploads/ex-cl-195-vii-e.pdf (referenced 9 November 2022).

Ako, R. 2014. Environmental Justice in Nigeria's Oil Industry: Recognizing and Embracing Contemporary Legal Developments. In R. V. Percival *et al.* (eds), *Global Environmental Law at a Crossroads*, 160–176. Cheltenham: Edward Elgar.

Ashukem, J. C. N. 2013. Setting the Scene for Climate Change Litigation in South Africa: *Earthlife Africa Johannesburg v. Minister of Environmental Affairs and Others*. *Law, Environment and Development Journal* 13(1): 35–43.

Beck, S., and E. Burleson. 2014. Inside the System, Outside the Box: Palau's Pursuit of Climate Justice and Security at the United Nations. *Transnational Environmental Law* 3(1): 17–29.

Bouwer, K. 2022. The Influence of Human Rights on Climate Litigation in Africa. *Journal of Human Rights and the Environment* 13(1): 157–77.

Buys, E., and B. Lewis. 2022. Environmental Protection through European and African Human Rights Frameworks. *International Journal of Human Rights* 26(6): 949–77.

Çali, B. 2021. A Handy Illusion? Interpretation of the 'Unlikely to Bring Effective Relief' Limb of Article 7(e) OPIC by the CRC in Saachi et. al. *Blog of the European Journal of International Law*. https://www.ejiltalk.org/a-handy-illusion-interpretation-of-the-unlikely-to-bring-effective-relief-limb-of-article-7e-opic-by-the-crc-in-saachi-et-al/ (referenced 1 November 2022).

Climate Action Tracker. 2023. The Gambia. https://climateactiontracker.org/countries/gambia/ (referenced 6 June 2023).

Council of Europe. 1950. European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14. 4 November 1950.

Dersso, S. and Mwandenga, M. 2022. African Commission Calls for Human Rights Based Policy Measures towards Climate Change at COP27. https://achpr.au.int/en/news/press-releases/2022-11-06/african-commission-human-rights-policy-measures-towards-climate (referenced 7 November 2022).

Etemire, U. 2021. Climate Litigation in Nigeria: Challenges and Opportunities. In F. Sindico, and M. M. Mbengue (eds), *Comparative Climate Change Litigation: Beyond the Usual Suspects*, 409–426. Cham: Springer Nature.

Erinosho, B. 2020. Climate Change Litigation in Ghana: An Analysis of the Role of Courts in Enforcing Climate Change Law. *AJIL Unbound* 114: 51–5.

Fermeglia, M. 2020. Climate Science Before the Courts: Turning the Tide in Climate Change Litigation. In L. Westra, K. Bosselmann, M. Fermeglia (eds), *Ecological Integrity in Science and Law*, 23–36. Cham: Springer.

Field, T. L. 2021. Climate Change Litigation in South Africa: Firmly out of the Starting Blocks. In I. Alogna, C. Bakker and J. P. Gauci (eds), *Climate Change Litigation: Global Perspectives*, 173–98. Leiden: Brill.

Food and Agriculture Organization of the United Nations. 2017. Migration, Agriculture and Climate Change: Reducing vulnerabilities and enhancing resilience. I8297EN/1/12.17. https://knowledge.unccd.int/sites/default/files/inline-files/i8297en.pdf (referenced 6 June 2023).

Fraser, J., and L. Henderson. 2022. The Human Rights Turn in Climate Change Litigation and Responsibilities of Legal Professionals. *Netherlands Quarterly of Human Rights* 40(1): 3–11.

Hampson, F., C. Martin, and F. Viljoen. 2018. Inaccessible Apexes: Comparing Access to Regional Human Rights Courts and Commissions in Europe, the Americas, and Africa. *International Journal of Constitutional Law* 16(1): 161–86.

Humby, T. 2018. The Thabametsi Case: Case No 65662/16 *Earthlife Africa Johannesburg v. Minister of Environmental Affairs*. *Journal of Environmental Law* 30(1): 145–55.

Intergovernmental Panel on Climate Change. 2021. Summary for Policymakers. In V. Masson-Delmotte, P. Zhai, A. Pirani, S. L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M. I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J. B. R. Matthews, T. K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds), *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, 3–32. Cambridge University Press.

Intergovernmental Panel on Climate Change. 2023. *AR6 Synthesis Report: Climate Change 2023*. March 2023. https://www.ipcc.ch/report/sixth-assessment-report-cycle/ (referenced 6 June 2023).

Jegede, A. 2023. Framing Climate Litigation in Individual Communications of the African Human Rights System: Claw-Backs and Substantive Divergences. *Journal of Human Rights Practice* (forthcoming).

Jeßberger, F., and L. Steinl. 2022. Strategic Litigation in International Criminal Justice: Facilitating a View from Within. *Journal of International Criminal Justice* 20(2): 379–401.

Jones, A. 2017. Form over Substance: The African Court's Restrictive Approach to NGO Standing in the SERAP Advisory Opinion. *African Human Rights Law Journal* 17: 320–8. http://www.scielo.org.za/pdf/ahrlj/v17n1/15.pdf (referenced 9 November 2022).

Judge Ben Achour. 2017. Individual opinion of Judge Rafâa Ben Achour attached to the Advisory Opinion requested by Association Africain pour la Défense des Droits de l'Homme.

Kotze, L., and A. Du Plessis. 2020. Putting Africa on the Stand: A Bird's Eye View of Climate Change Litigation on the Continent. *Environmental Law* 50(3): 615–63.

Minister of Foreign Affairs of Chile and Minister of Foreign Affairs of Colombia. 2023. Request for an Advisory Opinion on Climate Emergency and Human Rights to the Inter-American Court of Human Rights of the Republic of Colombia and the Republic of Chile. 9 January 2023. (translated) http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2023/20230109_18528_petition.pdf (referenced 13 February 2023).

Ncube, R (Institute for Human Rights and Development in Africa). 2023. Panel 1: How Did We Get Here? A Conversation with the Campaigners and Government Representatives. In the online event: *Advisory Opinions on Climate Change: An Overview of a Quartet of Simultaneous Requests*. 27 April 2023. Available at https://climate.law.columbia.edu/events/advisory-opinions-climate-change-overview and https://youtu.be/Fza7UAPsXLI, at 54:30 (referenced 6 June 2023).
Nigeria. 2021. Climate Change Act. NGA-2021-L-112597. 18 November 2021.
Nolan, A. 2021. Children's Rights and Climate Change at the UN Committee on the Rights of the Child: Pragmatism and Principle in *Sacchi v. Argentina*. *Blog of the European Journal of International Law*. https://www.ejiltalk.org/childrens-rights-and-climate-change-at-the-un-committee-on-the-rights-of-the-child-pragmatism-and-principle-in-sacchi-v-argentina/ (referenced 1 November 2022).
Organisation of African Unity (OAU). 1981. African Charter on Human and Peoples' Rights ('Banjul Charter'). CAB/LEG/67/3 rev. 5, 21 I.L.M. 58. 27 June 1981.
Organisation of African Unity (OAU). 1998. Protocol to the African Charter on Human And Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (Ouagadougou Protocol). 10 June 1998.
Organization of American States (OAS). 1969. American Convention on Human Rights, 'Pact of San Jose'. 22 November 1969.
Ouguergouz, F. 1993. *La Charte Africaine des Droits de l'Homme et des Peuples*. Geneva: Graduate Institute Publications.
Pfrommer, T., T. Goeschl, A. Proelss *et al*. 2019. Establishing Causation in Climate Litigation: Admissibility and Reliability. *Climatic Change* 152(1): 67–84.
Ramsden, M., and K. Gledhill. 2019. Defining Strategic Litigation. *Civil Justice Quarterly* 4: 407–38.
Republic of Kenya. 2016. Climate Change Act. Act No. 11/2016.
Republic of Uganda. 2021. National Climate Change Act. UGA-2021-L-114005. 14 August 2021.
Rumble, O., and A. Gilder. 2021. Climate Change Litigation on the African Continent. *Konrad-Adenauer-Stiftung e. V*, 1–8. https://www.kas.de/documents/282730/0/Climate_Litigation_Africa.pdf/1450e939-d100-a70e-8a9d-315161f96024 (referenced 2 November 2022).
Setzer, J., and C. Higham, 2021. Global Trends in Climate Change Litigation: 2021 Snapshot. Policy Report. https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2021/07/Global-trends-in-climate-change-litigation_2021-snapshot.pdf (referenced 10 June 2022).
South Africa. 2019. Carbon Tax Act. Act No. 15/2019. June 2019.
Stanculescu, D. 2021. The Requirement to Exhaust Domestic Remedies and the Future of Climate Change Litigation before the ECtHR, *Public International Law Policy Group*. https://www.publicinternationallawandpolicygroup.org/lawyering-justice-blog/2021/4/26/the-requirement-to-exhaust-domestic-remedies-and-the-future-of-climate-change-litigation-before-the-ecthr (referenced 15 June 2022).
Stuart-Smith, R. F., F. E. L. Otto, A. I. Saad *et al*. 2021. Filling the Evidentiary Gap in Climate Litigation. *Nature Climate Change* 11(August 2021): 651–55.
UN General Assembly. 2006. Resolution 60/147. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Adopted 21 March. A/RES/60/147.
UN General Assembly. 2022. Resolution 76/300. The Human Right to a Clean, Healthy and Sustainable Environment. Adopted 26 July. A/RES/76/300.
UN General Assembly. 2023. Resolution 77/276. Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change. Adopted 29 March. A/RES/77/276.
UN Human Rights Council. 2021. Resolution 48/13. The Human Right to a Clean, Healthy and Sustainable Environment. Adopted 8 October. A/HRC/RES/48/13.
Wangui, T. L., C. Zengerling, and O. Fuo. 2022. Tracing the Trend: Emerging Climate Litigation in Kenya and South Africa. *Völkerrechtsblog*. https://voelkerrechtsblog.org/tracing-the-trend/ (referenced 3 November 2022).
Wewerinke-Singh, M. 2021. Communication 104/2019 *Chiara Sacchi et al. v. Argentina et al.* Case Note 2021/10. *Leiden Children's Rights Observatory*. https://www.childrensrightsobservatory.nl/casenotes/casenote2021-10 (referenced 14 February 2023).
Wintour, P. 2022. UK Agrees to Negotiate with Mauritius over Handover of Chagos Islands. *The Guardian*. https://www.theguardian.com/world/2022/nov/03/uk-agrees-to-negotiate-with-mauritius-over-handover-of-chagos-islands?CMP=share_btn_tw (referenced 7 November 2022).

Zarbiyev, F. 2018. Saying Credibly What the Law Is: On Marks of Authority in International Law. *Journal of International Dispute Settlement* 9(2): 291–314.

Case Law

Actions pour la protection des droits de l'homme v. Côte d'Ivoire (18 November 2016) 001/2014, African Court on Human and Peoples' Rights.

Advisory Opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous People (May 2007) African Commission on Human and Peoples Rights.

Advisory Opinion 001/2013 Requested by the Socio-Economic Rights and Accountability Project (SERAP) (26 May 2017) 001/2013, African Court on Human and Peoples' Rights.

Advisory Opinion 002/2014 by Rencontre Africain pour la Défense des Droits de l'Homme (28 September 2017) 002/2014, African Court on Human and Peoples' Rights.

Advisory Opinion 002/2016 Requested by L' Association Africaine de Défense des Droits de l'Homme (28 September 2017) 002/2016, African Court on Human and Peoples' Rights.

Advisory Opinion OC-23/17 Requested by the Republic of Colombia (15 November 2017) 23/17, Inter-American Court of Human Rights.

Advisory Opinion 001/2018 Requested by the Pan African Lawyers Union (4 December 2020) 001/2018, African Court on Human and Peoples' Rights.

Advisory Opinion 001/2020 Requested by the Pan African Lawyers Union (16 July 2021) 001/2020, African Court on Human and Peoples' Rights.

Advisory Opinion 001/2021 Requested by The Bureau of the Pan African Parliament (16 July 2021) 001/2021, African Court on Human and Peoples' Rights.

Advisory Opinion 001/2016 Requested by The Centre for Human Rights, Federation of Women Lawyers Kenya, Women's Legal Centre, Women Advocates Research and Documentation Centre, *Zimbabwe Women Lawyers Association (28 September 2017) 001/2016, African Court on Human and Peoples' Rights*.

African Commission on Human and Peoples' Rights v. Republic of Kenya (26 May 2017) 006/2012, African Court on Human and Peoples' Rights.

Alex Thomas v. United Republic of Tanzania (20 November 2015) 005/2013, African Court on Human and Peoples' Rights.

Association pour le Progrès et la Défense des Droits des Femmes Maliennes et Institute for Human Rights and Developement in Africa v. Mali (11 May 2018) 046/2016, African Court on Human and Peoples' Rights.

Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya (25 November 2009) 276/2003, African Commission on Human and Peoples' Rights.

Chiara Sacchi et al. v. Argentina et al. (8 October 2021) UN Committee on the Rights of the Child, CRC/C/88/D/104/2019.

CRC, Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, *concerning communication* (10 March 2020) 60/2018, CRC/C/83/D/60/2018 .

Daniel Billy and Others v. Australia (23 September 2022) CCPR/C/135/D/3624/2019, United Nations Human Rights Committee.

David Mendes (represented by the Centre for Human Rights, University of Pretoria) v. Angola (25 February 2013) 413/12, African Commission on Human and Peoples' Rights.

D.C. v. Germany (10 March 2020) UN Committee on the Rights of the Child, CRC/C/83/D/60/2018.

Duarte Agostinho and Others v. Portugal and Others, (2020) 39371/20, European Court of Human Rights.

Egyptian Organization for Human Rights v. Egypt (11 May 2000) 201/97, African Commission on Human and Peoples' Rights.

Frank David Omary and Others v. United Republic of Tanzania (28 March 2014) 001/2012, African Court on Human and Peoples' Rights.

Gbemre v. Shell Petroleum Development Company of Nigeria Ltd and Others (14 November 2005) FHC/B/CS/53/05, Federal High Court of Nigeria (Nigeria).

Ghaby Kodeih and Nabih Kodeih v. Republic of Benin (23 June 2022) 008/2020, African Court on Human and Peoples' Rights.
Ioane Teitiota v. New Zealand (7 January 2020) CCPR/C/127/D/2728/2016, UN Human Rights Committee.
Law Offices of Ghazi Suleiman v. Sudan (29 May 2003) 228/99, African Commission on Human and Peoples' Rights.
Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (25 February 2019) 2019/2, International Court of Justice.
Mamadou Diakité and Another v. Republic of Mali (28 September 2017) 009/2016, African Court on Human and Peoples' Rights.
Mariam Kouma and Another v. Republic of Mali (21 March 2018), 040/2016, African Court on Human and Peoples' Rights.
Mbabazi and Others v. The Attorney General and National Environmental Management Authority (2012) Civil Suit No. 283 of 2012, High Court at Kampala (Uganda).
Michael Majuru v. Zimbabwe (24 November 2008) 308/2005, African Commission on Human and Peoples' Rights.
Open Society Justice Initiative v. Côte d'Ivoire (28 February 2015) 318/2006, African Commission on Human and Peoples' Rights.
Peter Joseph Chacha v. The United Republic of Tanzania (29 March 2014) 003/2012, African Commission on Human and Peoples' Rights.
Petitioners' Reply to the Admissibility Objections of Brazil, France, and Germany. 4 May 2020.
Plan B Earth and Others v. Prime Minister (21 December 2021) CO/1587/2021, High Court of Justice (England and Wales, United Kingdom).
Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal) (12 December 2022) 31/2022, International Tribunal for the Law of the Sea.
Sir Dawda K. Jawara v. Gambia (11 May 2000) 149/96, African Commission on Human and Peoples' Rights.
Smith v. Attorney-General (15 July 2022) NZHC 1693, High Court of New Zealand (New Zealand).
Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria (27 May 2002) 155/96, African Commission on Human and Peoples' Rights.
Spilg and Mack and Ditshwanelo v. Botswana (12 October 2013) 277/2003, African Commission on Human and Peoples' Rights.
Tanganyika Law Society, the Legal and Human Rights Centre et Reverend Christopher R. Mtikila v. Tanzania (14 June 2013) 009/2011 and 011/2011, African Court on Human and Peoples' Rights.
The Beneficiaries of the Late Norbert–Zongo Abdoulaye Nikiema alias Ablasse, Ernest Zongo and Blaise Ilboudo and The Burkinabe Movement on Human and Peoples' Rights v. Republic of Burkina Faso (28 March 2014) 013/2011, African Court on Human and Peoples' Rights.
The Nubian Community in Kenya v. Kenya (28 February 2015) 317/2006, African Commission on Human and Peoples' Rights.
The State of the Netherlands v. Stichting Urgenda (20 December 2019) No. 19/00135, Supreme Court of the Netherlands (Netherlands).
Urban Mkandawire v. Republic of Malawi (30 March 2012) 003/2011, African Commission on Human and Peoples' Rights.
Western Sahara (16 October 1975) 1975/61, International Court of Justice.
Wilfred Onyango and Others v. United Republic of Tanzania (18 March 2016) 006/2013, African Court on Human and Peoples' Rights.
Zimbabwe Lawyers for Human Rights and the Institute for Human Rights and Development in Africa v. Zimbabwe (22 May 2008) 293/04, African Commission on Human and Peoples' Rights.