

To cite: M Addaney 'Climate change adaptation through the human rights-based approach: Reflections on the African human rights system' (2026) 26
African Human Rights Law Journal 157-180
<http://dx.doi.org/10.29053/1996-2096/2026/v26n1a6>

Climate change adaptation through the human rights-based approach: Reflections on the African human rights system

*Michael Addaney**

Senior Lecturer, Department of Land Management, University of Energy and Natural Resources, Sunyani, Ghana
<https://orcid.org/0000-0003-4351-1241>

Summary: *The African continent remains one of the regions most vulnerable to the adverse effects of climate change, due to its unique geography, low levels of economic development, high levels of poverty, colonial legacies, weak governance systems and social inequalities. The impacts of climate change are already being felt across the continent, and their intensity and frequency are projected to increase. The African Union and its institutions, including human rights bodies, must play a leading role in ensuring that member states adopt appropriate regional and national climate change legislation to guide climate action. Using a doctrinal legal method, this article examines the potential content of a human rights-based approach to climate change adaptation in Africa. It advances an original, structured normative framework, grounded in the African Charter on Human and Peoples' Rights, that identifies specific rights holders, duty bearers, and corresponding state obligations. While arguing for the immediate application of a human rights-based approach, the article calls on the AU to develop a climate-specific protocol anchored in human rights standards, given the novelty of the climate crisis and the legal innovations required to address adaptation and resilience effectively on the continent.*

* BSc (Kwame Nkrumah) MSc (University for Development Studies) MPhil (Pretoria) PhD (Wuhan University); appl.adm@gmail.com/michael.addaney@uenr.edu.gh

Key words: *African Union; climate change; climate change adaptation; human rights law; human rights-based approach; international climate change law*

1 Introduction

The 2015 Paris Agreement, adopted during the 21st Conference of the Parties to the UN Framework Convention on Climate Change (UNFCCC), sets a target to limit global warming to 1.5°C.¹ The Intergovernmental Panel on Climate Change (IPCC) notes that meeting this goal will necessitate significant transformation across systems and sectors, including legal systems.² International law has been identified as an important tool for driving the global transformation needed to address climate change.³ Article 2(1) of the Paris Agreement focuses on both climate mitigation, actions to cut greenhouse gas emissions and climate adaptation, actions to prepare for and address climate impacts.⁴ The African Union (AU), as a regional bloc, prioritises adaptation over mitigation due to the continent's geographical vulnerability, level of development and collective greenhouse gas (GHG) emissions.⁵ The concept of 'adaptation' refers to reactive adjustments that occur in response to changing conditions.⁶ Accordingly, adaptation describes 'dynamics of change which, at least to some extent, seek to retain functional or structural features of the phenomenon that undergoes change'.⁷

- 1 R Kinley 'Climate change after Paris: From turning point to transformation' (2016) 17 *Climate Policy* 9; L Rajamani *Innovation and experimentation in the international climate change regime* (2020) 23, 26; NS Ghaleigh 'Article 2: Aims, objectives and principles' in GV Calster & L Reins (eds) *The Paris Agreement on Climate Change: A commentary* (2021) 73, 87.
- 2 Intergovernmental Panel on Climate Change 'Global warming of 1.5°C: An IPCC special report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty' (2018) 392.
- 3 C Voigt 'ANZSIL Conference Keynote 2019: Climate change, the critical decade and the rule of law' (2019) 37 *Australian Year Book of International Law* 50.
- 4 The Paris Agreement recognises several vulnerable groups in the preambular paragraph on human rights, namely, indigenous peoples, migrants, children, persons with disabilities, people in vulnerable situations and women: Paris Agreement, 12 December 2015, in the annex of Decision 1/CP.21, preambular recital 11.
- 5 The overall objective of the African Union Climate Change and Resilient Development Strategy and Action Plan (2022-2032) is 'Building the resilience of African communities, ecosystems and economies, and supporting regional adaptation': AU 'Climate change and resilient development strategy and action plan (2022-2032)' adopted 8 February 2023. The collective emissions of all 55 African countries remain at 3.7% of total global emissions, underscoring the region's decision to focus largely on adaptation.
- 6 *Oxford English Dictionary Online*, 'adaptation, n', www.oed.com/view/Entry/2115?redirectedFrom=adaptation#eid (accessed 31 March 2026).
- 7 L Mai 'Navigating transformations: Climate change and international law' (2024) 37 *Leiden Journal of International Law* 535, 539.

While mitigation is largely top-down, adaptation is hyper-local, as climate change impacts vary significantly across countries and regions.⁸ These disparities are a major concern for many countries facing the disproportionate impacts of climate change. The most vulnerable and least resilient countries have limited capacity to adapt to the adverse impacts of climate change. Given the already colossal accumulation of GHGs in the atmosphere, the impacts of climate change are inevitable regardless of the success of global efforts to curb emissions.⁹ Taking autonomous action on adaptation is practical, efficient and necessary. Given the varied impacts of climate change; it is particularly crucial at the national and local levels for addressing the specific requirements of affected communities, areas and ecosystems.¹⁰

The African continent remains one of the regions most vulnerable to the adverse effects of climate change due to its unique geography, underdevelopment, high levels of poverty, colonial legacies, weak governance systems and social inequalities.¹¹ The AU is lagging behind the European Union (EU) and the Organisation of American States (OAS), through its Inter-American human rights mechanisms, in adopting multilateral regional agreements to address climate change.¹² Only 9 out of 55 African countries have adopted national legislation to address climate change within their jurisdictions.¹³ The impacts of climate change are already being felt across the continent, and their intensity and frequency are projected to increase.¹⁴ The

8 B Mayer 'Climate change adaptation law: Is there such a thing?' in B Mayer & A Zahar (eds) *Debating climate law* (2021) 310.

9 H-O Pörtner and others 'Summary for policymakers' in H-O Pörtner and others (eds) *Climate change 2022: Impacts, adaptation, and vulnerability – Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2022) 3-33; A Lesnikowski and others 'What does the Paris Agreement mean for adaptation?' (2017) 17 *Climate Policy* 825.

10 TC Tiam Fook 'Transformational processes for community-focused adaptation and social change: A synthesis' (2017) 9 *Climate and Development* 5.

11 V Masson-Delmotte and others 'Summary for policymakers' in V Masson-Delmotte and others (eds) *Climate change: The physical science basis – Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2021) 3.

12 The EU adopted Regulation (EU) 2021/1119 establishing the framework for achieving climate neutrality (European Climate Law) in 2021, committing to GHG emissions reduction by 2030 (art 4) and climate neutrality by 2050 (art 2). The Organisation of American States has addressed climate obligations through human rights mechanisms, including the Inter-American Court of Human Rights Advisory Opinion OC-23/17 of 15 November 2017 on the environment and human rights, and OAS General Assembly Resolution AG/RES 2429 (XXXVIII-O/08) on human rights and climate change in the Americas.

13 These are Benin, Gabon, Ghana, Kenya, Mauritius, Nigeria, South Africa and Uganda. The Climate Change Laws of the World (CCLW) database lists and classifies more than 2 860 climate-related laws and policies in force worldwide: <https://climate-laws.org/framework-laws?c=Legislation> (accessed 31 March 2026).

14 Pörtner and others (n 9).

AU, as a supranational institution, and its organs, such as the African Ministerial Conference on the Environment (AMCEN), must play a pioneering role in ensuring that member states adopt appropriate regional and national climate change legislation to guide climate action.¹⁵

According to the 2022 State of the Climate in Africa report by the World Meteorological Organisation (WMO), significant flooding occurred across the Sahel during the monsoon season, including in Nigeria, Niger, Chad and South Sudan.¹⁶ The Horn of Africa, specifically Ethiopia, Kenya and Somalia, experienced the worst drought in four decades. The South Indian Ocean experienced a prolonged tropical cyclone season. At the beginning of 2022, a series of tropical cyclones and storms struck Southern Africa, causing floods and displacement.¹⁷ Many parts of East Africa experienced severe climate-related harm due to five consecutive failed rainy seasons, leading to higher food prices, food insecurity and reduced agricultural production.¹⁸ Excessive rainfall in West and Southern Africa destroyed farmland, compounding food insecurity in those regions.¹⁹ Sea levels along Africa's coast are rising at a rate consistent with the global average of 3,4 millimetres per year.²⁰ On this premise, and given the local and context-specific nature of climate change adaptation, a priority for the African continent and AU member states, there is a compelling basis for developing effective adaptation measures.

The relationship between climate change and human rights has been extensively debated.²¹ The link between the impacts of

15 Notable AU institutions and programmes include the African Ministerial Conference on the Environment (AMCEN), established in December 1985 with the mandate to provide advocacy for environmental protection in Africa and ensure basic human needs are met sustainably; the Pan-African Parliament (PAP); the Africa Adaptation Acceleration Program (AAAP); the Climate for Development in Africa (ClimDev-Africa) Programme; and the African Union Development Agency (AUDA-NEPAD).

16 World Meteorological Organisation 'State of the climate in Africa 2022' WMO-No 1330 (2022).

17 As above.

18 As above.

19 As above.

20 As above.

21 D Bodansky 'Climate change and human rights: Unpacking the issues' (2010) 38 *Georgia Journal of International and Comparative Law* 511; PJ Stephens 'Applying human rights norms to climate change: The elusive remedy' (2010) 21 *Colorado Journal of International Environmental Law and Policy* 49; ZL Stillings 'Human rights and the new reality of climate change: Adaptation's limitation in achieving climate justice' (2014) 35 *Michigan Journal of International Law* 637; S Atapattu *Human rights approaches to climate change: Challenges and opportunities* (2016) 1, 125; B Mayer 'Human rights in the Paris Agreement' (2016) 6 *Climate Law* 109, 112; S Adelman 'Human rights in the Paris Agreement: Too little, too late?' (2018) 7 *Transnational Environmental Law* 17; M Mayrhofer 'Framing UN human rights discourses on climate change: The concept of vulnerability and its relation

climate change and states' responses to it is well established in the literature.²² In the United Nations (UN) system, this relationship has been formally recognised by the UN Human Rights Council (HRC), which adopted Resolution 10/4 on human rights and climate change on 25 March 2009.²³ In the AU, and on the African continent more broadly, both supranational institutions, including the working groups of AU organs, and scholars have recognised the conceptual and legal links between climate change impacts and the enjoyment of human and peoples' rights, as well as how states' responses to climate change, without adequate safeguards, can potentially violate recognised rights.²⁴ HRC Resolution 10/4 asserts that human rights commitments can enhance and guide global and national climate policy.²⁵

Similarly, HRC Resolution 32/34 affirms that human rights obligations, norms and principles can enhance and guide regional climate change policy making.²⁶ In 2016, the African Commission on Human and Peoples' Rights (African Commission) adopted Resolution 342, encouraging AU member states to strengthen regional cooperation on climate change consistent with their human rights obligations, and mandating its Working Group on Economic, Social and Cultural Rights and its Working Group on Extractive Industries, Environment and Human Rights Violations to conduct a 'study on the impact of climate change on human rights in Africa'.²⁷ Although the AU has yet to adopt climate-specific treaties at the regional level, human rights-based approaches, by applying human

to the concepts of inequality and discrimination' (2024) 37 *International Journal for the Semiotics of Law* 91.

- 22 UN Human Rights Council (HRC) Res 29/15 'Human rights and climate change' (30 June 2015) UN Doc A/HRC/29/L.21 para 1; L Rajamani 'Integrating human rights in the Paris climate architecture: Contest, context, and consequence' (2019) 9 *Climate Law* 180; M Burger & J Wentz 'Climate change and human rights' in JR May & E Daly (eds) *Human rights and the environment: Legality, indivisibility, dignity and geography* (2019) 198; UNEP 'Climate change and human rights' (December 2015); OHCHR 'Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights' (A/HRC/T0/61) (15 January 2009).
- 23 UN Human Rights Council Res 10/4 'Human rights and climate change' (25 March 2009).
- 24 M Addaney, E Boshoff & B Olutola 'The climate change and human rights nexus in Africa' (2017) 9 *Amsterdam Law Forum* 5; AO Jegede 'Climate change in the work of the African Commission on Human and Peoples' Rights' (2017) 31 *Speculum Juris* 135, 136; AO Jegede 'Should a human right to a safe climate be recognised under the AU human rights system?' in M Addaney & AO Jegede (eds) *Human rights and the environment under African Union law* (2020) 55.
- 25 UN Human Rights Council Res 10/4 (n 23); UN Human Rights Council 'Human rights and climate change' A/HRC/RES/18/22 (2011).
- 26 UN Human Rights Council Res 32/34 'Human rights and climate change', Preamble.
- 27 African Commission on Human and Peoples' Rights Resolution 342 'Climate change and human rights in Africa' ACHPR/Res 342(LVIII) (2016).

rights principles and standards, can operate in harmony with existing policies and initiatives on climate change adaptation in Africa.²⁸

However, the application of a human rights-based approach to climate change adaptation in Africa remains novel.²⁹ Jegede observed that while the African Court on Human and Peoples' Rights (African Court), the African Commission and the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) have the potential to link climate change and human rights, this connection has not been adequately pursued in climate interventions on the continent.³⁰

The present article advances a distinct contribution; it proposes an original, structured normative framework for a human rights-based approach to climate change adaptation in Africa (set out in Table 1), integrates analysis of the UNFCCC architecture with African human rights law in a unified doctrinal synthesis, and argues prescriptively for the development of a climate-specific AU protocol grounded in identified gaps within the African Charter on Human and Peoples' Rights (African Charter). Through a comprehensive analysis of the relevant human rights instruments under the African human rights system, the article explores the potential content of a human rights-based approach to climate change adaptation in Africa. Using doctrinal legal methods, it reviews ongoing debates on climate change adaptation and human rights law, bringing together

28 This article does not join the scholarly debate on whether human rights law, and not international climate change law, is the most suitable conceptual foundation for adaptation action. The position advanced here is that human rights norms and mechanisms can enhance climate change adaptation at the national and regional levels.

29 The African Commission has adopted Resolutions 153 (2009), 271 (2014), 342 (2016) and 417 (2019), each emphasising the importance of examining how climate change affects human rights in Africa. In 2023, the Commission invited comments on the 'Study on the impact of climate change on human and peoples' rights in Africa': ACHPR Resolution 153 'Climate change and human rights and the need to study its impact in Africa', adopted at the 46th ordinary session, Banjul, 11-25 November 2009; ACHPR Resolution 271 'Climate change in Africa', adopted at the 55th ordinary session, Luanda, 28 April-12 May 2014; ACHPR Resolution 342 (n 27); ACHPR Resolution 417 'The human rights impacts of extreme weather in Eastern and Southern Africa due to climate change', adopted at the 64th ordinary session, Sharm el Sheikh, 24 April-14 May 2019.

30 AO Jegede 'Framing climate litigation in individual communications of the African human rights system: Claw-backs and substantive divergences' (2024) 16 *Journal of Human Rights Practice* 107; Jegede (n 24) 136. While Jegede's analyses identify the African human rights system's existing limitations and doctrinal obstacles in framing climate claims, the present article advances a distinct contribution: It proposes an original, structured normative framework (Table 1) for a human rights-based approach to climate adaptation, integrates analysis of the UNFCCC architecture with African human rights law in a unified doctrinal synthesis, and argues prescriptively for the development of a climate-specific AU protocol grounded in identified gaps within the African Charter. These dimensions are not developed in either Jegede's or the present author's earlier work.

strands of literature from diverse fields. It begins by discussing the interconnections between climate change adaptation and human rights, drawing on scientific understandings of adaptation and the philosophical foundations of human rights (part 2). It then assesses states' obligations under international climate change adaptation law from a human rights perspective (part 3). Part 4 explores the utility of human rights principles and norms in the context of climate change adaptation in Africa, laying out the case for a human rights-based approach to climate change adaptation law and policy. Part 5 offers concluding reflections on what climate change adaptation might mean for the field of human rights law in Africa.

2 Climate change adaptation and human rights: An overview

Despite ongoing efforts to reduce GHG emissions and enhance carbon sinks and reservoirs, climate change is already occurring, with the global average temperature estimated to have risen to 1,1° Celsius above pre-industrial levels.³¹ The current concentration of GHGs in the atmosphere will cause further warming, with temperature rises projected to exceed 2° Celsius above pre-industrial levels during the twenty-first century.³² These changes will alter the earth system in multiple ways as high temperatures affect the hydrological cycle, including drought and rainfall patterns; they drive sea-level rise, ocean acidification, and an increasing intensity and frequency of extreme weather events such as cyclones, storms, floods and wildfires.³³ These physical impacts will have wide-ranging effects on human societies and socio-ecological systems, influencing agriculture and food production, water resources, public health, human security and human mobility.³⁴ Conceptualised by the IPCC as the process of adjusting to ongoing and projected impacts of climate change,³⁵ adaptation measures are increasingly urgent in developing countries and highly vulnerable regions as mitigation efforts remain inadequate. Although the UNFCCC was originally focused predominantly on mitigation, adaptation has been given equal priority since the adoption of the Bali Action Plan in 2007 and the Cancun Adaptation Framework in 2010. Adaptation measures at

31 World Meteorological Organisation 'State of the global climate 2023' (2024) 2.

32 Pörtner and others (n 9).

33 L Schipper 'Conceptual history of adaptation in the UNFCCC process' (2006) 15 *Review of European, Comparative and International Environmental Law* 82, 84.

34 B Mayer *The international law on climate change* (2018) 1, 162.

35 RK Pachauri and others 'Climate change 2014: Synthesis report – Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change' (2015) 1, 118.

the national level entail a variety of strategies, including enhancing food and water security, public health interventions, and the protection of biodiversity and cultural heritage through infrastructure development, land-use planning and construction laws and social protection interventions.³⁶

Two key scientific approaches to adaptation are widely canvassed: the community-based approach to adaptation (CBA) and the ecosystem-based approach to adaptation (EbA). The CBA focuses on empowering local communities to take ownership of adaptation efforts, building on their knowledge, skills and experiences.³⁷ CBA prioritises community-led initiatives, social cohesion and inclusive decision making.³⁸ The EbA focuses on maintaining and restoring ecosystem services to enhance adaptive capacity and resilience.³⁹ EbA prioritises the conservation, restoration and sustainable management of natural resources, recognising their role in regulating the climate, providing ecosystem services and supporting human well-being.⁴⁰ Despite their complementarity, the two approaches differ in their primary focus, methods and outcomes; community-based approaches focus predominantly on social and cultural dimensions.⁴¹ In contrast, ecosystem-based approaches focus principally on ecological and environmental aspects.⁴²

Given the social dimensions of climate change and the adverse consequences for the enjoyment of human rights, a third approach, which is the human rights-based approach (HRBA), is being strongly advocated by human rights scholars, practitioners and activists.⁴³ The HRBA to climate change is distinct from both CBA and EbA,

36 Specific adaptation measures are beyond the scope of this article. See, eg, J Verschuuren (ed) *Research handbook on climate change adaptation law* (2013); DA Farber 'The challenge of climate change adaptation: Learning from national planning efforts in Britain, China and the USA' (2011) 23 *Journal of Environmental Law* 359.

37 H Patnaik 'Gender and participation in community-based adaptation: Evidence from the decentralised climate funds project in Senegal' (2021) 142 *World Development* 105448; T Forsyth 'Community-based adaptation: A review of past and future challenges' (2013) *WIREs Climate Change* 439; T Magee *A field guide to community based adaptation* (2013).

38 H Reid and others 'Community-based adaptation to climate change: An overview' (2009) 60 *Participatory Learning and Action: Community-Based Adaptation to Climate Change* 11, 13.

39 J Chong 'Ecosystem-based approaches to climate change adaptation: Progress and challenges' (2014) 14 *International Environmental Agreements* 391.

40 As above.

41 T Forsyth 'How is community-based adaptation "scaled up" in environmental risk assessment? Lessons from ecosystem-based adaptation' in J Ayers and others (eds) *Community-based adaptation to climate change: Scaling it up* (2013) 88.

42 As above.

43 Addaney and others (n 24); S Duyck and others 'Human rights and the Paris Agreement's implementation guidelines: Opportunities to develop a rights-based approach' (2018) 12 *Carbon and Climate Law Review* 191; M Addaney 'Climate change and the realisation of human rights in Africa' in A Onuora-

as it prioritises the protection and promotion of human rights, particularly those of vulnerable populations.⁴⁴ The HRBA emphasises the obligations of states and other duty bearers to respect, protect and fulfil human rights, including the rights to life, health, water, food and an adequate standard of living, as well as substantive and procedural environmental rights such as the rights to a clean, healthy and sustainable environment; participation in environmental decision making; access to environmental information; and access to remedy in environmental matters.⁴⁵ Environmental human rights are increasingly recognised in international and national human rights law, whereas environmental rights, until recently, were recognised primarily in environmental laws and policies.⁴⁶ At its core, the HRBA underscores that human rights principles and standards should guide climate policies and actions, recognising the significant impacts of climate change on human rights.

The HRBA was jointly conceptualised by various UN bodies in 2003 to rationalise engagement with human rights across UN agencies in international development.⁴⁷ These bodies delineated six guiding principles: (1) universality and inalienability; (2) indivisibility; (3) inter-dependence and inter-relatedness of human rights; (4) equality and non-discrimination; (5) participation and inclusion; and (6) accountability and the rule of law.⁴⁸ The Office of the United Nations High Commissioner for Human Rights (OHCHR) clarified that the HRBA provides ‘a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights’.⁴⁹ Broberg and Sano further explained that the HRBA produces ‘a methodological framework for the realisation of human rights’ through ‘linking the normative basis to its concrete implementation’, while acknowledging that its application may differ

Oguno (ed) *Promoting efficiency in jurisprudence and constitutional development in Africa* (2023) 207.

44 P Toussaint & A Martínez Blanco ‘A human rights-based approach to loss and damage under the climate change regime’ (2020) 20 *Climate Policy* 743.

45 OHCHR ‘Frequently asked questions on a human rights-based approach to development cooperation’ (2006), <http://www.ohchr.org/Documents/Publications/FAQen.pdf> (accessed 31 March 2026).

46 Art 24 of the African Charter on Human and Peoples’ Rights was the first international human rights instrument to recognise the ‘right to a general satisfactory environment favourable to their development’. The UN Human Rights Council recognised the right to a clean, healthy and sustainable environment through Res 48/13 (2021). The UN General Assembly affirmed the same right through Res A/76/L.75 (2022), noting its relation ‘to other rights and existing international law’.

47 OHCHR (n 45) 15.

48 As above.

49 As above.

significantly in practice depending on contextual factors.⁵⁰ The HRBA has been strongly advocated for climate action to 'ensure that laws, policies, programmes, and projects adopted to mitigate or adapt to climate change respect, protect, and fulfil human rights'.⁵¹ Rajamani characterises the HRBA as a strategic approach that reframes the climate crisis to provide countries with 'a compass for policy orientation' and to promote more robust climate action. The HRBA goes beyond mainstreaming human rights into climate policy; its particular value in the adaptation context lies in sustaining attention to the human rights impacts of climate change.⁵² More broadly, the HRBA rests on the value of systemic integration in international law, which provides an important framework for interpreting the human rights-related provisions of the UNFCCC and the Paris Agreement within the wider context of human rights law.

Human rights and climate change frameworks have traditionally faced challenges in evolving together, due to differing perspectives on responsibilities and obligations; merging the two frameworks is unlikely to resolve these tensions entirely.⁵³ Despite these obstacles, human rights-based approaches to climate change remain valuable. The primary premise of human rights approaches to climate change is that human rights law can provide a pathway to determine who is responsible and liable for the climate crisis and who will be most affected by it.⁵⁴ Accordingly, various UN bodies, international tribunals,⁵⁵ scholars and non-governmental organisations (NGOs)⁵⁶ endorse a human rights-centric approach to addressing climate change. They argue that states are required, in good faith, to respect, protect and uphold internationally recognised rights under international human rights law.⁵⁷ Human rights derive their strength in part from being grounded in widely accepted norms of natural

50 M Broberg & H-O Sano 'Strengths and weaknesses in a human rights-based approach to international development: An analysis of a rights-based approach to development assistance based on practical experiences' (2018) 22 *International Journal of Human Rights* 664, 667.

51 Duyck and others (n 43) 191, 197.

52 F Knur 'The United Nations human rights-based approach to climate change – Introducing a human dimension to international climate law' in S von Schorlemer & S Maus (eds) *Climate change as a threat to peace* (2014) 37.

53 As above.

54 D Hunter 'Human rights implications for climate change negotiations' (2009) 11 *Oregon Review of International Law* 331, 340.

55 'Petition to the Inter-American Commission on Human Rights seeking relief from violations resulting from global warming caused by acts and omissions of the United States' (7 December 2005), http://earthjustice.org/sites/default/files/library/legal_docs/petition-to-the-inter-american-commission-on-human-rights-on-behalf-of-the-inuit-circumpolar-conference.pdf (accessed 31 March 2026).

56 See, eg, the Mary Robinson Foundation – 'Climate justice', <https://www.mrfcj.org/about/mission-and-vision> (accessed 31 March 2026).

57 Rajamani (n 22) 195.

law, thereby enhancing their political and normative influence.⁵⁸ The HRBA, therefore, draws on concepts of fairness and the protection of minority and vulnerable populations, extending beyond the literal scope of current legal instruments.⁵⁹ While the use of human rights language does not guarantee the establishment of formal legal regulations, it raises awareness of the struggles of marginalised groups who bear the least responsibility for climate change, and thereby strengthens the case for prioritising climate change within the broader international environmental agenda.⁶⁰

Linking human rights and climate change adaptation theoretically offers an opportunity for marginalised actors to participate in climate change discussions. As Limon argues, the focus on the challenges facing small island states and other at-risk populations in IPCC Assessment Reports, UN declarations and resolutions illustrates this dynamic.⁶¹ Including the perspectives of previously marginalised communities in climate change discussions promotes greater global collaboration and deepens understanding of the issue.⁶² Applying human rights perspectives to climate change adaptation can also contribute to the development of a consistent legal framework that protects human rights.⁶³ Affected communities retain the option to pursue accountability claims domestically for human rights violations related to climate change, using the human rights framework to demand that states fulfil their obligations in the face of adverse climate consequences.⁶⁴

The human rights-based approach to climate change adaptation constitutes a valuable complement to the existing framework of climate laws. Presenting climate change from a humanistic perspective, rather than a purely scientific one, could help generate the public and political support needed for an equitable response to the crisis.⁶⁵ Unlike common obligations in international climate law, human rights obligations are independent and do not depend on other countries' compliance. While international climate law

58 As above.

59 As above.

60 Hunter (n 54) 344.

61 M Limon 'Human rights and climate change: Constructing a case for political action' (2009) 33 *Harvard Environmental Law Review* 439, 451.

62 Hunter (n 54) 362.

63 OHCHR 'Applying a human rights-based approach to climate change negotiations, policies and measures', <https://www.ohchr.org/documents/issues/climatechange/infonotehrba.pdf> (accessed 31 March 2026).

64 UNFCCC Decision 1/CP.16 'The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention' FCCC/CP/2010/7/Add.1 (15 March 2011) para 8. The Paris Agreement Preamble further provides that states should respect, promote and consider human rights 'when taking action' to address climate change.

65 Bodansky (n 21) 517.

faces well-documented enforcement and compliance challenges, numerous human rights courts, tribunals, treaty-monitoring bodies, and special procedure mechanisms can effectively address climate change-related human rights claims.⁶⁶ Adopting an HRBA for climate change adaptation could therefore enhance and accelerate the development of a robust adaptation framework while ensuring that states' responses align with their human rights obligations.

3 Climate change adaptation and states' obligations: A human rights-based assessment

States have particular duties under international law that apply to adapting to climate change within their territories. In a broader sense, states are expected to establish favourable conditions for human development,⁶⁷ effectively prevent and manage natural disasters⁶⁸ and promote environmental sustainability.⁶⁹ Ongoing and projected climate change impacts make it increasingly difficult for states to perform these essential functions.⁷⁰ Adaptation to climate change requires attention to three interrelated components: vulnerability, exposure and hazard. Exposure indicates the existence of human populations and assets in areas where climate events may occur. Hazard represents the probability that a physical event will occur at a given location.⁷¹ Vulnerability is the likelihood that an event will cause significant harm to exposed populations and properties.⁷² Addressing exposure and vulnerability to climatic hazards to prevent or minimise harm is the ultimate objective of climate change adaptation.⁷³ Reducing exposure may involve infrastructure development, land use planning, physical development controls preventing construction in high-risk areas and planned relocation. Reducing vulnerability requires context-specific strategies such as constructing levees to protect against flooding and sea level rise,

66 S Kravchenko 'Right to carbon or right to life' (2008) 9 *Vermont Journal of Environmental Law* 513, 525.

67 See UNGA Res 41/128 'Declaration on the right to development' (4 December 1986); UNGA Res 70/1 'Transforming our world: The 2030 Agenda for Sustainable Development' (25 September 2015).

68 UNGA Res 69/283 'Sendai Framework for Disaster Risk Reduction 2015–2030' (3 June 2015) Annex II.

69 UN Conference on Environment and Development 'Rio Declaration on Environment and Development' (1992) 31 ILM 874.

70 CB Field and others 'Summary for policymakers' in CB Field and others (eds) *Climate change 2014: Impacts, adaptation and vulnerability – Part A: Global and sectoral aspects – Working Group II Contribution to the Fifth Assessment Report of the IPCC* (2014) 1, 6.

71 Mayer (n 34) 164.

72 As above.

73 Field and others (n 70) 28.

harvesting and storing water, and developing irrigation facilities to address drought and water scarcity.

The UNFCCC, the Paris Agreement and multiple Conference of the Parties (COP) decisions contain substantive obligations related to climate change adaptation. Under article 4(1)(b) of the UNFCCC, all state parties are required, irrespective of their level of development, to formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to facilitate adequate adaptation to climate change.⁷⁴ All parties must further 'cooperate in preparing for adaptation to the impacts of climate change' and develop appropriate integrated plans for coastal zone management, water resources and agriculture, including for areas affected by drought, desertification and flooding.⁷⁵ All parties are also required, to the extent feasible, to take climate change considerations into account in their relevant social, economic and environmental policies and actions.⁷⁶ To support developing and least developed countries, parties must give full consideration to funding, insurance and technology transfer needs arising from the adverse effects of climate change,⁷⁷ and take full account of the specific needs and special situations of the least developed countries.⁷⁸

Building upon the Bali Action Plan's call for 'enhanced action on adaptation', the Cancún Agreements affirmed that adaptation action should follow a country-driven, gender-sensitive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional and indigenous knowledge, with a view to integrating adaptation into relevant social, economic and environmental policies and actions.⁷⁹

The Paris Agreement built on these foundations by dedicating article 7 to climate change adaptation, establishing the global goal of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change.⁸⁰ State parties are committed, as a matter of principle, to acknowledging that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups,

74 United Nations Framework Convention on Climate Change (UNFCCC) 1992 art 4(1)(b).

75 Art 4(1)(e) UNFCCC (n 74).

76 Art 4(1)(f) UNFCCC (n 74).

77 Art 4(8) UNFCCC (n 74).

78 Art 4(9) UNFCCC (n 74).

79 UNFCCC Decision 1/CP.16 (n 64) para 22.

80 Art 7(2) Paris Agreement 2015.

communities and ecosystems.⁸¹ It should be noted, however, that the adaptation provisions in the Paris Agreement are largely recommendations or aspirational commitments rather than hard legal obligations.⁸² More broadly, states' obligations to promote and protect the rights and welfare of the people within their territories, including in the context of climate change, are widely recognised in international human rights law.

The UN Charter sets out human rights standards covering civil, political, economic, social and cultural rights.⁸³ Human rights principles established in the Universal Declaration of Human Rights (Universal Declaration) and reinforced in the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and various international law treaties are recognised as customary norms applicable across areas of international law.⁸⁴ Understanding how international human rights treaties can be interpreted to address climate change-related claims, therefore, is crucial, as these instruments do not directly address climate change and substantial interpretation is required.⁸⁵ Human rights bodies, including courts, tribunals and treaty-monitoring mechanisms, have demonstrated the relevance of these general rules in the human rights context.⁸⁶ The Inter-American Court of Human Rights articulated the adaptive interpretive approach in one of its advisory opinions:⁸⁷

Modern human rights treaties, in general, are not multilateral treaties of the traditional type concluded to effect the reciprocal exchange of rights for the mutual benefit of the contracting states. Their object and purpose are the protection of basic rights of individual human beings, irrespective of their nationality, both against the state of their nationality and all other contracting states. In concluding these human rights treaties, the states can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations.

81 Art 7(5) Paris Agreement 2015.

82 D Bodansky 'The legal character of the Paris Agreement' (2016) 25 *Review of European, Comparative and International Environmental Law* 142, 146.

83 M Wewerinke-Singh *State responsibility, climate change and human rights under international law* (2019) 1, 22.

84 BM Meier & AM Fox 'Development as health: Employing the collective right to development to achieve the goals of the individual right to health' (2008) 30 *Human Rights Quarterly* 259.

85 Wewerinke-Singh (n 83) 28.

86 See C Chinkin, MA Freeman & B Rudolf (eds) *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A commentary* (2012) 1, 13.

87 *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights* (Advisory Opinion) OC-2/82 (24 September 1982) IACtHR (Ser A) No 2.

This interpretive approach allows human rights provisions to remain adaptable to changing international circumstances, ensuring the continued relevance of human rights law.⁸⁸

The UNFCCC, its associated agreements, and COP decisions set out specific obligations that states must meet regarding adaptation, information sharing, education, finance and technology transfer,⁸⁹ as well as overarching principles to guide climate adaptation action.⁹⁰ The UNFCCC's objective in article 2 is to achieve stabilisation of GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system, within a timeframe sufficient to allow ecosystems to adapt naturally and economic development to proceed sustainably.⁹¹

Comparisons between international human rights law and climate adaptation action are increasingly common in international discussions. The UNFCCC's acknowledgment of the link between climate change and human rights is evidenced by COP decisions affirming that states must uphold human rights in all climate change actions.⁹² The Preamble to the Paris Agreement expressly recognises that state parties should, when taking action to address climate change,

respect, promote, and consider their respective obligations on human rights, the right to health, the right of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development.⁹³

For the first time in a multilateral climate agreement, the Paris Agreement thus explicitly recognises states' responsibilities towards human rights. The effectiveness of international human rights law in enhancing climate change adaptation can accordingly be strengthened by considering states' compliance with human rights obligations when assessing their obligations under the UNFCCC architecture.

At COP 24 in December 2018, the Paris Rulebook was adopted through a series of decisions on the operationalisation of the Paris Agreement.⁹⁴ Efforts to incorporate human rights language into the

88 DL Shelton 'An introduction to the history of international human rights law' (GWU Legal Studies Research Paper 346, 2007) 24.

89 UNFCCC Decision 1/CP.16 (n 64) para 8.

90 Paris Agreement 2015, Preamble, para 11.

91 Art 2 UNFCCC 1992.

92 Art 4 UNFCCC 1992.

93 Paris Agreement 2015, Preamble, para 11.

94 UNFCCC 'Katowice climate package', <https://unfccc.int/process-and-meetings/the-paris-agreement/paris-agreement-work-programme/katowice-climate-package> (accessed 31 March 2026).

Rulebook, including in guidelines on adaptation and mitigation, the transparency framework and the global stocktake, did not succeed.⁹⁵ Human rights bodies and mandate holders of the HRC Special Procedures called on parties to incorporate human rights into the Rulebook.⁹⁶ While these demands went unmet in the Rulebook, the guidelines for preparing Nationally Determined Contributions (NDCs) and adaptation communications do include indirect references to human rights.⁹⁷ Civil society and human rights activists expressed significant frustration at these limited and cautious references.⁹⁸ COP decisions, however, have referred to human rights in other contexts, including those relating to the Local Communities and Indigenous Peoples Platform.⁹⁹ Some parties have also endorsed the UNFCCC Secretariat's creation of a human rights focal point.¹⁰⁰

A watershed development in the international legal architecture on climate change came on 23 July 2025, when the International Court of Justice (ICJ) delivered its Advisory Opinion on the Obligations of States in Respect of Climate Change, requested by the UN General Assembly pursuant to Resolution 77/276. The ICJ confirmed, with considerable analytical force, that states bear legally binding obligations under customary international law and applicable treaty law to take effective measures to prevent, reduce and address the harmful effects of climate change, including obligations drawn from international human rights law.¹⁰¹ The Court affirmed that the right

95 Duyck and others (n 43).

96 UN High Commissioner for Human Rights 'Open letter on integrating human rights in climate action' (21 November 2018), www.ohchr.org/Documents/Issues/ClimateChange/OpenLetterHC21Nov2018.pdf; 'Joint statement of the United Nations Special Procedures Mandate Holders on the occasion of the 24th Conference of the Parties to the UNFCCC' (6 December 2018), www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23982&LangID=E (accessed 31 March 2026).

97 UNFCCC Decision 9/CMA.1 'Further guidance in relation to the adaptation communication, including, inter alia, as a component of nationally determined contributions, referred to in article 7, paragraphs 10 and 11' (2018).

98 See Centre for International Environmental Law 'Katowice COP24 outcome incompatible with Paris Agreement' (15 December 2018), www.ciel.org/news/katowice-cop24-outcome-incompatible-with-paris-agreement/ (accessed 31 March 2026); Global Forest Coalition 'Implications of Katowice: Where human rights were ignored while big business captured the negotiations' (29 January 2019), <https://globalforestcoalition.org/implications-of-katowice-where-human-rights-were-ignored-while-big-business-captured-the-negotiations/> (accessed 31 March 2026).

99 UNFCCC Decision 2/CP.24 'Local Communities and Indigenous Peoples Platform' FCCC/CP/2018/10/Add.1 (2018).

100 Centre for International Environmental Law 'Report from the Katowice Climate Conference: Promoting human rights in climate action at COP-24' (December 2018), www.ciel.org/reports/public-briefing-notes-to-enhance-human-rights-at-the-katowice-climate-conference-cop24/ (accessed 31 March 2026).

101 *Advisory Opinion on the Obligations of States in Respect of Climate Change* ICJ (23 July 2025) General List 187 (requested pursuant to UNGA Res 77/276 of 29 March 2023). For the interpretive significance of the principle of systemic integration in the climate-human rights context, see C McLachlan 'The principle

to life, the right to health and the right to a healthy environment impose substantive duties on states to adopt meaningful adaptation measures proportionate to foreseeable climate harms within their territories and, under certain conditions of effective control, beyond.¹⁰² For African states, the significance of this Opinion is pronounced; the ICJ's affirmation that human rights obligations operate in systemic integration with the UNFCCC architecture, rather than in subordination to it, lends direct authoritative support to the argument advanced in this article that a human rights-based approach to climate change adaptation is not merely persuasive or aspirational, but grounded in binding international law. The Court's reasoning drew on the principle of systemic integration under article 31(3)(c) of the Vienna Convention on the Law of Treaties (VCLT), validating the interpretive approach taken by human rights scholars and bodies who have sought to read the UNFCCC and the Paris Agreement in light of extant human rights obligations. African Commission Resolutions 153, 271, 342 and 417, read against the backdrop of the ICJ Opinion, now carry enhanced normative force as operational expressions of obligations that the Court has confirmed are legally cognisable at the global level.

4 Climate change and human rights under the African human rights system: Towards a human rights-compliant adaptation framework

The threshold for a safer climate has already been exceeded, such that mitigation efforts alone cannot adequately address the problems caused by climate change.¹⁰³ It is therefore necessary to implement measures to safeguard populations, cultures, economic activities, infrastructure and ecosystems against the adverse impacts of climate change. State parties to the UNFCCC and the Paris Agreement are mandated by article 4(1)(b) of the UNFCCC to develop and implement regional plans for addressing climate change through mitigation and adaptation measures.¹⁰⁴ Article 11(4) of the Paris Agreement reinforces this obligation by emphasising the effectiveness of regional measures in supporting developing countries to implement the agreement.¹⁰⁵ Given that climate change is regarded as the

of systemic integration and article 31(3)(c) of the Vienna Convention' (2005) 54 *International and Comparative Law Quarterly* 279.

102 *Obligations of States in Respect of Climate Change* (n 101).

103 Mayer (n 34) 163; A Fischlin 'Background and role of science' in D Klein and others (eds) *The Paris Agreement on Climate Change: Analysis and commentary* (2017) 3.

104 Art 4(1)(b) UNFCCC 1992.

105 Art 11(4) Paris Agreement 2015.

most significant challenge to sustainable development in Africa, the AU is actively seeking sustainable, continent-wide solutions to its adverse impacts.¹⁰⁶ Although the AU has yet to adopt specific climate change laws to complement the UNFCCC and the Paris Agreement, regional human rights law can serve as a practical tool to inform and complement the emerging regional framework on climate change adaptation, thereby improving its effectiveness. This is founded on the recognition of pertinent human rights standards in the African Charter; the rights to a general satisfactory environment favourable to development, health, life, an adequate standard of living, culture and asylum, as well as the right not to be arbitrarily displaced.¹⁰⁷ The rights to life, adequate housing, food, and the highest attainable standard of health are all threatened by climate change.¹⁰⁸ States' responses to the adverse effects of climate change can also potentially violate human rights,¹⁰⁹ particularly where adaptation measures affect access to and use of natural resources such as land, water and forests, thereby implicating rights to culture, property, health, life, clean water and sanitation, and indigenous peoples' self-determination.¹¹⁰

Climate change adaptation through a human rights-based approach is essential to addressing discriminatory practices and power imbalances that undermine the effectiveness of adaptation measures and violate human rights.¹¹¹ It is therefore necessary to identify key human rights standards and the corresponding obligations of states in the adaptation context, and to propose ways to empower individuals to hold duty bearers to account. When affected communities, groups and individuals impacted by climate change or by adaptation responses are included in decision making without bias, adaptation outcomes improve.¹¹² Poorly designed or executed adaptation strategies can infringe upon or weaken human rights, particularly where local communities are not adequately involved or where proper procedures and legal access are not maintained in the event of required relocation.¹¹³ Scholars typically identify two methods by which human rights law can meet the

106 DM Pallangyo & W Scholtz 'Africa and climate change: Legal perspectives from the AU' in W Scholtz & J Verschuuren (eds) *Regional environmental law: Transregional comparative lessons in pursuit of sustainable development* (2015) 51.

107 Addaney (n 43) 207.

108 OHCHR (n 45).

109 As above.

110 Burger & Wentz (n 22) 198.

111 As above.

112 M Addaney 'Climate change and human rights in Africa: A new factor in African Union policymaking?' in ME Addadzi-Koom, M Addaney & LA Nkansah (eds) *Democratic governance, law, and development in Africa* (2022) 237.

113 As above.

adaptation needs of vulnerable populations in developing states. One is by utilising procedural rights, such as the right to receive climate information, including early warnings; the right to participate in adaptation decision making; and the right of access to remedies for climate adaptation-related harms.¹¹⁴ The second involves applying existing substantive human rights norms to achieve effective climate adaptation outcomes.¹¹⁵ As discussed above, climate change adversely affects rights to life, health, food, water, sanitation, an adequate standard of living and culture.¹¹⁶

The content of a human rights-based approach to climate change adaptation requires identifying rights holders and duty bearers. The international legal framework on climate change adaptation has conventionally been confined to a few specialised areas of international law, but these traditional boundaries are increasingly challenged as legal fields touching on agriculture and food production, water and energy, infrastructure and cultural heritage intersect. A human rights-based approach to climate change adaptation plays an important role in ensuring effective, fairer and more inclusive adaptation action by bringing these fields together. Even negatively framed human rights create responsibilities to take actions that are intentional, specific, and aimed directly at fulfilling human rights obligations.¹¹⁷ The African human rights framework includes a relevant reference to climate change adaptation by guaranteeing that all individuals have the right to a general satisfactory environment conducive to their development.¹¹⁸ This right underscores the interconnectedness between environmental protection, climate change adaptation and sustainable development.¹¹⁹ The right to a general satisfactory environment is a key dimension of human rights law's relevance

114 M von Normann 'Does a human rights-based approach to climate change lead to ecological justice?' Paper delivered at the Lund Conference on Earth System Governance, 'Towards a just and legitimate earth system governance: Addressing inequalities', 18-20 April 2012; S Kravchenko 'Procedural rights as a crucial tool to combat climate change' (2010) 38 *Georgia Journal of International and Comparative Law* 613.

115 As above.

116 UN Human Rights Council Res 47/24 (2021) affirms the adverse impacts of climate change on the effective enjoyment of human rights, including the right to life, adequate food, health, adequate housing, self-determination, safe drinking water and sanitation, work and development. This is subsequently confirmed in UNGA Res A/76/L.75 (2022) on the human right to a clean, healthy and sustainable environment.

117 Committee on Economic, Social and Cultural Rights General Comment 24 on state obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, UN Doc E/C.12/GC/24, para 8.

118 Art 24 African Charter on Human and Peoples' Rights.

119 M Addaney, E Boshoff & MG Nyarko 'Protection of environmental assets in urban Africa: Regional and sub-regional human rights and practical environmental protection mechanisms' (2018) 24 *Australian Journal of Human Rights* 182.

to climate change adaptation, even though it is not consistently operationalised in practice.¹²⁰

There is a strong legal foundation for a human rights-based approach to climate change adaptation by AU member states. The catalogue of relevant rights includes both civil and political rights, such as the right to life and self-determination, and economic, social and cultural rights, such as the right to an adequate standard of living and the right to health. This breadth underscores the inherent interdependence and indivisibility of human rights. Based on the analysis above, this article proposes the following structured framework for the content of a human rights-based approach to climate change adaptation in Africa.

Table 1: Propositions for a human rights-based approach to climate change adaptation

1.	Overarching human rights principles
	• Accountability
	• Equality and non-discrimination
	• Inclusion and participation
	• Indivisibility
	• Interdependence and inter-relatedness
	• Universality and inalienability
2.	Fundamental rights
	i. Right to an adequate standard of living
	Right to food
	Right to water
	Right to housing
	ii. Right to self-determination
	iii. Right to life
	iv. Right to health
	v. Right to a generally satisfactory environment
	Right to public participation and consultation in environmental matters

¹²⁰ As above.

	<i>Right of access to environmental and climate-related information</i>
	<i>Right of access to remedy in environmental and climate-related matters</i>
vi.	<i>Right to seek and to enjoy asylum and protection against arbitrary displacement</i>

As Table 1 demonstrates, AU human rights law provides a foundation for addressing climate change adaptation by complementing international climate change law while informing the further development of climate-specific instruments to guide adaptation action in Africa. A human rights-based approach to climate change adaptation must recognise the core human rights principles of accountability, equality and non-discrimination, inclusion and participation, indivisibility, interdependence and inter-relatedness, and universality and inalienability. The rights of certain groups in vulnerable situations may be affected more severely by climate change, and states have enhanced obligations under the principles of equality and non-discrimination. These groups include indigenous peoples, children, people living in extreme poverty, minority groups, persons with disabilities, and forest-ocean-dependent communities who rely on marine environments, forested areas and river basins.¹²¹ The framework must further recognise and mainstream substantive human rights norms in the African Charter and related instruments. Regional human rights laws alone, however, are insufficient to govern climate change adaptation effectively.¹²² The African Charter does not explicitly address climate change, but does recognise rights directly relevant to adaptation, including the right to life (article 4), the right to health (article 16), the right to a general satisfactory

121 Committee on the Rights of the Child, Decision in Communication 104/2019 *Chiara Sacchi & Others v Argentina*, CRC/C/88/D/104/2019 (8 October 2021); Human Rights Committee, Views in Communication 3624/2019 *Daniel Billy & Others v Australia*, CCPR/C/135/D/3624/2019 (22 September 2022); Committee on Economic, Social and Cultural Rights, General Comment 26 (2022) on land and economic, social and cultural rights, E/C.12/GC/26 (24 January 2023).

122 See X Dai 'The "compliance gap" and the efficacy of international human rights institutions' in T Risse, SC Ropp & K Sikkink (eds) *The persistent power of human rights: From commitment to compliance* (2013) 85; C Hillebrecht *Domestic politics and international human rights tribunals: The problem of compliance* (2014). For the African Commission specifically, see LW Kembabazi 'The role of the African Commission in enhancing compliance with its decisions on communications' (2024) 24 *African Human Rights Law Journal* 781; T Mbanje & C Okoloise 'A contextual approach to strengthening state capacity to implement the decisions of the African Commission on Human and Peoples' Rights' (2024) 24 *African Human Rights Law Journal* 911; C Okoloise 'Systematising monitoring: The case for a special mechanism for following up on the implementation of decisions by the African Commission on Human and Peoples' Rights' (2024) 24 *African Human Rights Law Journal* 985.

environment (article 24), and the right to development (article 22). These rights provide a basis for holding governments accountable for their human rights responsibilities in the adaptation context, particularly regarding displacement and mobility, health effects and livelihood disruption.¹²³

There are, however, limitations to relying solely on the AU's human rights laws to address climate change. The African Charter does not provide specific norms on climate change adaptation, making it difficult for governments, policy makers and practitioners to apply the law to complex climate emergencies.¹²⁴ The African Charter and related instruments primarily focus on human rights and may not adequately address the technical dimensions of climate change adaptation.¹²⁵ A major challenge remains enforcement, as the African human rights system struggles to ensure compliance with its decisions, limiting the effectiveness of adjudicating climate change adaptation cases.¹²⁶ Addressing these limitations requires developing additional laws, policies and guidelines specifically addressing climate change adaptation in Africa – including climate-specific instruments at the continental and national levels covering adaptation, resilience and loss and damage. These interventions should be complemented by strengthening the capacity of African courts and human rights bodies to adjudicate climate change cases, through training and resources for judges, lawyers and other stakeholders.

A significant institutional development substantiates the prescriptive arguments advanced in this part. On 2 May 2025, the Pan-African Lawyers Union (PALU) submitted a formal request to the African Court on Human and Peoples' Rights (African Court) for an Advisory Opinion on the human rights obligations of African states in the context of the climate crisis.¹²⁷ This request, submitted pursuant to article 4 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol), invites the Court to

123 M Burger & JA Wentz 'Climate change and human rights' (Sabin Centre for Climate Change Law, Columbia Law School and UNEP, December 2015), https://scholarship.law.columbia.edu/sabin_climate_change/119 (accessed 31 March 2026).

124 Addaney and others (n 24).

125 Addaney (n 112).

126 Kembabazi (n 122); Mbanje & Okoloise (n 122); Okoloise (n 122).

127 PALU Request for Advisory Opinion on the Human Rights Obligations of African States in the Context of the Climate Crisis, submitted to the African Court on Human and Peoples' Rights, 2 May 2025 (on file with author). For the scope of the African Court's advisory jurisdiction, see Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, adopted 9 June 1998, entered into force 25 January 2004 art 4; R Murray & D Long *The implementation of the findings of the African Commission on Human and Peoples' Rights* (2015).

clarify the substantive content of African states' duty to prevent climate harms, the procedural obligations attached to climate-related decision making, and the remedial implications of climate inaction under the African Charter. Should the African Court deliver an advisory opinion, it would constitute the first authoritative regional pronouncement on climate obligations under the African Charter, filling the normative gap that currently constrains the effectiveness of the African human rights system in climate governance. The PALU request explicitly invokes the rights to life, health, food, water and a satisfactory environment under articles 4, 16, 22, and 24 of the African Charter – the same rights identified in Table 1 as constitutive of a human rights-based approach to climate change adaptation in Africa. The convergence between the scholarly framework proposed in this article and the juridical strategy pursued through the PALU request demonstrates both the practical urgency and the legal coherence of integrating human rights norms into Africa's emerging climate adaptation framework.

5 Conclusion

This article has examined the importance of adopting a human rights-based approach when addressing climate change adaptation in Africa, focusing on both the opportunities and the obstacles involved. Climate change constitutes a global crisis distinct from routine public emergencies. It reveals the limitations of existing international law and highlights the importance of examining how human rights norms can be deployed to promote effective adaptation. The foregoing analysis has shown that while climate change adaptation is gaining greater attention, the development of climate law in Africa remains at an early stage. Current regional laws must be assessed to determine whether they can support adaptation efforts, a task that spans almost every sector of society and governance.

These prescriptive arguments are substantially reinforced by two landmark legal developments in 2025. First, the ICJ's Advisory Opinion of 23 July 2025 on the Obligations of States in Respect of Climate Change conclusively establishes, as a matter of general international law, that states bear human rights-based obligations to adapt to climate change, lending binding authoritative weight to the interpretive arguments advanced throughout this article. Second, the request submitted by PALU on 2 May 2025 for an Advisory Opinion from the African Court on the climate obligations of African states creates a direct institutional pathway for the human rights-compliant adaptation framework proposed in this article to acquire regional legal authority. Together, these developments

signal a maturation of the legal field, demonstrating that the relationship between human rights and climate adaptation no longer is merely a scholarly aspiration, but a live question before the highest judicial bodies in international and regional law. For African states, the practical implication is that the window for voluntary, aspirational engagement with human rights-based adaptation is narrowing. As advisory opinions and judicial decisions progressively crystallise binding obligations, African states face increasing legal accountability for the adequacy of their adaptation responses. The contribution of this article lies precisely in anticipating this trajectory and providing, through the framework in Table 1 and the analysis of the African Charter's substantive provisions, a normatively coherent and institutionally workable blueprint for compliance.

The AU must therefore progressively revise its current treaties, resolutions and declarations, while developing new instruments that align with human rights and address the unique challenges of climate change adaptation in Africa. Concretely, this requires the development of a Draft AU Protocol to the African Charter on Climate Change (Mitigation, Adaptation, and Loss and Damage), using the normative framework in Table 1 as its substantive basis; the establishment of an African Commission Special Rapporteur on Climate Change and Human Rights, building on Resolutions 153, 271, 342 and 417; and the integration of the human rights-based framework in Table 1 into the Nationally Determined Contributions and National Adaptation Plans of AU member states as a compliance benchmark. Regional institutions will need to lead the coordination of adaptation efforts relating to transboundary river basins, coastal areas and international migration. At all levels, these interventions must align with human rights norms and principles under international and African human rights law, and human rights principles and norms must be fully integrated into the law-making process.