UNIVERSITY OF AMSTERDAM

UvA-DARE (Digital Academic Repository)

North–South Divergence on the Right to a Healthy Environment and State responsibility for climate change

A Critical Analysis of State Written Statements to the ICJ on Climate Obligations

Waswa, S.

DOI
10.5281/zenodo.20411056

Publication date
2026

Document Version
Final published version

Published in
The Environmental Rights Review

License
CC BY

Link to publication

Citation for published version (APA):
Waswa, S. (2026). North–South Divergence on the Right to a Healthy Environment and State responsibility for climate change: A Critical Analysis of State Written Statements to the ICJ on Climate Obligations. *The Environmental Rights Review*, *3*. https://doi.org/10.5281/zenodo.20411056

General rights
It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations
If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: https://uba.uva.nl/en/contact, or a letter to: Library of the University of Amsterdam, Secretariat, P.O. Box 19185, 1000 GD Amsterdam, The Netherlands. You will be contacted as soon as possible.

UvA-DARE is a service provided by the library of the University of Amsterdam (https://dare.uva.nl)

Download date:10 Oct 2026

North–South Divergence on the Right to a Healthy Environment and State responsibility for climate change: A Critical Analysis of State Written Statements to the ICJ on Climate Obligations

Simon Waswa[1]

Abstract: The North–South divide has been a persistent feature of international law since the era of decolonization, but it permeated international environmental law beginning with the 1972 Stockholm Conference on the Human Environment. This landmark event highlighted ideological tensions between the Global North and South regarding the relationship between environmental protection and economic development. The resulting Stockholm Declaration offered the first articulation of the right to a healthy environment. The divide resurfaced at the 1992 Rio Conference, where an apparent compromise sought to reconcile developmental priorities with environmental concerns. That conference contributed significantly to the procedural framing of the right to a healthy environment and led to the adoption of the United Nations Framework Convention on Climate Change (UNFCCC), followed by the Kyoto Protocol and the Paris Agreement. The paper argues that the provisions of the three climate change treaties are illustrative of the North-South divide. It maintains that while the nexus between human rights (including the right to a healthy environment) and climate change has been acknowledged in various international legal instruments, States's views are divided on the status of the right to a healthy environment in international law. It explores how states perceive the intersection of this right and climate obligations, with attention to whether these views diverge along North–South lines. Considering specifically the written statements of Vanuatu, India and the African Union on one hand and those of the European Union, the United Kingdom and the United States on the other, the paper concludes that it seems difficult to adopt a 'one size-fits all' approach.

I. Introduction

The North-South divide (the divide) has its roots in colonialism.[2] It denotes a binary contrast between two worlds differentiated not just geographically. It includes their levels of socio-economic development as well as those considered the victims and/or benefactors of capitalism.[3] The global South (the South) has been understood to refer broadly to the 'regions

[1] PhD researcher under the ERC–funded project LitDem (Grant Agreement No. 101125511), Amsterdam Centre for European Law and Governance, University of Amsterdam.

[2] Carmen Gonzalez, 'Bridging the North-South Divide: International Environmental Law in the Anthropocene' (2015) 32 Pace Environmental Law Review 407, 411. See also Sumudu Atapattu and Carmen G Gonzalez, 'The North–South Divide in International Environmental Law: Framing the Issues' in Carmen G Gonzalez and others (eds), *International Environmental Law and the Global South* (Cambridge University Press 2015) <https://www.cambridge.org/core/books/international-environmental-law-and-the-global-south/northsouth-divide-in-international-environmental-law-framing-the-issues/63B93BD7388E5413B7888F56A5F64909> accessed 25 March 2025.

[3] IPBES Secretariat, 'Global North - Global South' https://www.ipbes.net/glossary-tag/global-north-global-south accessed 2 April 2025.

of Latin America, Asia, Africa and Oceania.'[4] In other words the South cohort includes the so-called 'developing, least developed, and technologically impoverished states.'[5] The global North (the North) essentially encapsulates those countries with 'developed economies'.[6] These include, Western Europe and some countries in Eastern Europe, North America, Australia, New Zealand and parts of Asia.[7] The divide is understood to transcend economic underdevelopment to reflect the historical injustices of colonialism, neo-imperialism and the global socio-economic structures through which inequalities are perpetuated.[8]

This divide first percolated into the field of international environmental law in the period leading up to, during, and at the 1972 UN Conference on Human Environment at Stockholm.[9] In the build-up to the Conference, countries from the South, with Brazil and India at the forefront, raised concerns about the potentiality of the conference subordinating their development needs to the (North's) crusade for environmental protection and were even threatening a boycott.[10] However, even after agreeing to attend the Conference, differences remained manifest at the Conference.[11] Two decades later, at the 1992 Rio Conference, the friction between the two axes remained discernible from the text of the Rio Declaration[12] as well as the UNFCCC[13], one of the three international environmental agreements adopted at the Conference. Presently, this divide continues to be evinced by not only international legal instruments on combatting climate change but also international climate change negotiations.

---

[4] Nour Dados and Raewyn Connell, 'The Global South' (2012) 11 Contexts 12.

[5] M Rafiqul Islam, 'History of the North–South Divide in International Law: Colonial Discourses, Sovereignty, and Self-Determination' in Shawkat Alam and others (eds), *International Environmental Law and the Global South* (1st edn, Cambridge University Press 2015) 23 <https://www.cambridge.org/core/product/identifier/9781107295414%23CT-bp-2/type/book_part> accessed 3 July 2025.

[6] Lemuel Ekedegwa Odeh, 'A Comparative Analysis of Global North and Global South Economies' (2010) 12 Journal of Sustainable Development in Africa 338.

[7] Md Kamal Uddin, 'Climate Change and Global Environmental Politics: North-South Divide' (2017) 47 Environmental Policy and Law 106.

[8] Dados and Connell (n 3).

[9] John Ntambirweki, 'The Developing Countries in the Evolution of an International Environmental Law' (1991) 14 UC Law SF International Law Review 905.

[10] Pamela Chasek, 'Stockholm and the Birth of Environmental Diplomacy' (Still Only One Earth: Lessons from 50 Years of UN Sustainable Development Policy Brief No 1, International Institute for Sustainable Development, September 2020), https://www.iisd.org/system/files/2020-09/still-one-earth-stockholm-diplomacy_0.pdf accessed 2 April 2025.

[11] See the speech of Indira Gandhi (the then Prime Minister of India) UN Environment Programme, '1972 UN Conference on the Human Environment' (18 October 2021) https://www.youtube.com/watch?v=jKaYPk5YnsU accessed 2 April 2025

[12] Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, vol. I, Resolutions Adopted by the Conference (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex I.

[13] United Nations Framework Convention on Climate Change, (adopted 9 May 1992, entered into force on 21 March 1994) 1771 U.N.T.S. 107 (UNFCCC). The UNFCCC puts developed countries into Annexes I and II while leaving developing countries unannexed. It then imposes specific obligations on the developed country Parties while leaving the obligations for developing countries more general and sometimes contingent on receiving the relevant assistance from their developed counterparts. See Article 4(1), (2) and (7).

Most recently, the International Court of Justice (ICJ) became a site of this divide. On 29 March 2023, the UN General Assembly (UNGA) adopted a resolution by which it sought the ICJ's advisory opinion on two questions concerning; (1) the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic greenhouse gas (GHG) emissions for States and for present and future generations and; (2) the legal consequences of breaching those obligations.[14] The process preceding the submission to the ICJ of the request for its opinion seems to have been relatively less divisive.[15] However, a closer analysis of the written statements of States discloses a rather mixed story, especially regarding what the States from the North and South perceive the role of the right to a healthy environment to be in the interpretation of State obligations to combat climate change.[16] Focusing on the European Union (EU), the United Kingdom (UK) and the United States of America (US) as representing the North and the African Union (AU), Vanuatu and India as representing the South, this paper interrogates *whether there are distinct North-South perceptions of the relevance of the right to a healthy environment for the establishment of State obligations under the international climate legal regime.*

The Paper has four parts, after the introduction, *2* zooms in on the North-South divide and its manifestation in the climate change legal regime. Part *3* delves into the right to a healthy environment and its nexus to climate change and particularly the obligations of States to combat climate change. Under this part, the paper critically analyzes the selected written statements to trace whether or not their respective approaches disclose a uniform trajectory, unique to either side of the divide. Part *4* offers some concluding reflections.

II. The North-South Divide: manifestation in the International Climate Change Legal Regime

[14] UNGA 'Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change' (29 March 2023) UN Doc (A/RES/77/276).

[15] United Nations, 'General Assembly Adopts Resolution Requesting International Court of Justice Provide Advisory Opinion on States' Obligations Concerning Climate Change' (29 March 2023) <https://press.un.org/en/2023/ga12497.doc.htm>. This resolution was adopted by over 100 states. Preceded by Vanuatu's mobilisation efforts, the UN General Assembly adopted resolution A/RES/77/276 to submit a request to the ICJ for an advisory opinion on obligations of States in relation to climate change. Pursuant to this submission, the ICJ held oral proceedings from 2-13 December 2024. In addition, 91 written statements were received from States and international organizations. An advisory opinion is expected before the end of 2025. For more details see 'ICJ Prepares to Hear Oral Arguments in Climate Advisory Proceedings' (*SDG Knowledge Hub*) <https://sdg.iisd.org/news/icj-prepares-to-hear-oral-arguments-in-climate-advisory-proceedings/> accessed 10 April 2025.

[16] UNGA 'Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change' (29 March 2023) UN Doc (A/RES/77/276). The Resolution does not expressly mention the right to a healthy environment amongst the international law sources listed in the chapeau. However, this paper holds that reference to major international human rights instruments and to this right in the preamble speaks to the UNGA's contemplation of it as a relevant legal source for the determination of the questions raised in the Resolution.

The past 50 or so years have been pointed to as the period for the most severe degradation of the global ecosystems.[17] However, 'environmental degradation does not arise in a vacuum.'[18] There are those who benefit most and others who bear the brunt.[19] Particularly, while the climate crisis is presently experienced everywhere, it is more or less a 'grievous ecological impact of westernisation and empire'.[20] Owing to the capitalistic development model set in place by the North, the planet is now in an epoch famously christened by geologists as the Anthropocene.[21] Southern scholars like Chakrabarty have highlighted the irony of climate change, noting that while the global climate crisis is largely linked to the capitalist model of development of the North, its impacts affect the whole of humankind.[22] Suffice to note, it is particularly those countries and communities in the South which contributed the least to the crisis that are affected the most.[23]

It has been scientifically established that between 1800 and 1990 the North accounted for over 84 per cent of global carbon emissions.[24] Therefore, owing to its extensive industrialization and imperialistic tendencies, the North has reaped the most from the degradation of the global environment, while countries in the South bear a disproportionate brunt of the adverse impacts of climate change.[25] The latter's vulnerability is exacerbated by the high levels of poverty and other endemic developmental challenges perpetuated by the global economic system.[26] This has led some to suggest that the North owes the South an ecological debt.[27]

---

[17] 'Millennium Ecosystem Assessment, 2005. Ecosystems and Human Well-Being: Synthesis. Island Press, Washington, DC.' (Island Press 2005).

[18] Karin Mickelson, 'South, North, International Environmental Law, and International Environmental Lawyers' (2000) 11 Yearbook of International Environmental Law 52, 59.

[19] ibid.

[20] Richard H. Grove, Ecology, Climate and Empire: Colonialism and Global Environmental History, 1400-1940, (White Horse Press, Cambridge, UK 1997)

[21] Dipesh Chakrabarty, 'Postcolonial Studies and the Challenge of Climate Change' (2012) 43 New Literary History 1. The Anthropocene marks a geological era where humans are the main force of planetary change. Chakrabarty muses that in this geological epoch humans have taken the place of causing such change in the planetary systems previously only a 'privilege reserved for...very large scale geophysical forces'

[22] ibid.

[23] UNDP, 'Climate Change Is a Matter of Justice – Here's Why | UNDP Climate Promise' (26 June 2023) <https://climatepromise.undp.org/news-and-stories/climate-change-matter-justice-heres-why> accessed 7 July 2025.

[24] Mickelson (n 16) 75. As of 2015, the Global North was found to have been responsible for 92% of global carbon emissions. See, Jason Hickel, 'Quantifying National Responsibility for Climate Breakdown: An Equality-Based Attribution Approach for Carbon Dioxide Emissions in Excess of the Planetary Boundary' (2020) 4 The Lancet Planetary Health e399.

[25] Amrita Jaiswal, 'Global Environmental Politics and the North-South Divide' (2015) 76 The Indian Journal of Political Science 816, 817.

[26] Jonas Ebbesson and Ellen Hey, 'Introduction: The Sustainable Development Goals, Agenda 2030, and International Law' in Ellen Hey and Jonas Ebbesson (eds), *The Cambridge Handbook of the Sustainable Development Goals and International Law* (Cambridge University Press 2022).

[27] Rikard Warlenius, Gregory Pierce and Vasna Ramasar, 'Reversing the Arrow of Arrears: The Concept of "Ecological Debt" and Its Value for Environmental Justice' (2015) 30 Global Environmental Change 21.

The foregoing differences in responsibility for the climate crisis are a prominent feature in the climate legal regime.[28] Efforts to combat climate change at the international stage, starting with the adoption of the foundational UNFCCC, and subsequently, the Kyoto Protocol and the Paris Agreement, have been characterized by North-South sentiments.[29] The Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC) principle, a common theme in all three treaties, is a particularly striking illustration of the divide.[30] Equity is said to be at the core of this CBDR principle.[31] While the CBDR principle exemplifies the divide, it has also been interpreted as a mechanism for bridging the very disparity it reflects.[32] The UNFCCC requires the implementation of its objective to be in line with the Parties' CBDR-RC.[33] However, this principle is susceptible to different interpretations that hinge on the divide. It has been suggested that it could potentially point to *the acceptance of the existence of different levels of capacity to combat environmental challenges* or *'the acknowledgment of the historic, moral and legal responsibility of the North to shoulder the burdens of environmental protection.'*[34] The former is seemingly preferable for the North, while the South insists on the latter understanding. In fact, the US interpreted Principle 7 of the Rio Declaration as indicating that developed countries would lead global environmental efforts not out of obligation, but due to their greater economic and technical capacity.[35]

The UNFCCC imposes general obligations on all Parties but ascribes specific obligations on developed country Parties.[36] It also particularly divides the developed country parties into Annexes I and II while leaving out the developing country Parties. The Convention specifically imposes obligations on developed Country Parties to extend financial and technological assistance to their developing counterparts and makes the obligations of the latter contingent on the former meeting theirs.[37]

---

[28] United Nations Framework Convention on Climate Change, (adopted 9 May 1992, entered into force on 21 March 1994) 1771 UNTS 107 (UNFCCC) Preamble, para 3. The precept of common but differentiated responsibilities as already recognised in Principle 7 of the Rio Declaration.

[29] Sumudu Atapattu, 'Climate Change, International Environmental Law Principles, and the North-South Divide' (2017) 26 Transnat'l L & Contemp Probs 247. Atapattu cautions that climate change has merely 'given rise to divisions and negotiating blocs along issues, *in addition to the broad North-South divide.' (emphasis added)* Hence, we ought not to lose sight of how entrenched the divide is.

[30] ibid.

[31] Sumudu Atapattu, 'The Significance of International Environmental Law Principles in Reinforcing or Dismantling the North–South Divide' in Shawkat Alam and others (eds), *International Environmental Law and the Global South* (1st edn, Cambridge University Press 2015) 91 <https://www.cambridge.org/core/product/identifier/9781107295414%23CT-bp-4/type/book_part> accessed 3 July 2025. Given the enormous historical responsibility of the North for the climate crisis, disagreements on compensation for loss and damage caused by climate change in the South have been the other thorny front of the divide. See Maria Antonia Tigre and Margaretha Wewerinke-Singh, 'Beyond the North–South Divide: Litigation's Role in Resolving Climate Change Loss and Damage Claims' (2023) 32 Review of European, Comparative & International Environmental Law 439.

[32] Ulrich Beyerlin, 'Bridging the North-South Divide in International Environmental Law' (2006) 66 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 259, 277.

[33] UNFCCC, article 3(1).

[34] Mickelson (n 17) 70.

[35] Atapattu (n 31) 96.

[36] UNFCCC, article 4(1) and (2).'

[37] Ibid article 4(7).

The Kyoto Protocol goes further; it prescribes specific emission reduction targets for developed countries while sparing the developing countries from any such reduction obligations.[38] Maintaining the Annex system originated by the UNFCCC, under the Kyoto Protocol, Annex 1 countries were specifically required to reduce their greenhouse gas emissions by 'at least 5 per cent below 1990 levels in the commitment period 2008 to 2012.'[39] No equivalent specific emission reduction obligations were imposed on the developing (South) countries. However, the annex system under the UNFCCC and the Kyoto Protocol has become increasingly controversial, particularly as greenhouse gas (GHG) emissions from major Southern countries like China, India, and Brazil continue to rise rapidly.[40] The complete exemption of obligations for developing countries has in fact, been pointed to as one of the causes of the failure of the Kyoto Protocol to live up to its objective and its eventual collapse.[41]

Fortunately, states were able to adopt the Paris Agreement in 2015.[42] It sets the gold standard towards which global and domestic climate mitigation and adaptation efforts ought to aspire, the Long-Term Temperature Goal.[43] It also introduced a new approach to international climate governance, the bottom-up approach. [44] Unlike in the Kyoto Protocol, where Parties had to meet emission reduction targets set beforehand under the Protocol, the Paris Agreement leaves it to the States to set their own 'Nationally Determined Contributions' (NDCs).[45]

This obligation to prepare and communicate their NDCs is 'subject only to regular updates (at least every five years) and a requirement of progression (or increasing ambition)'. This applies to all States irrespective of whether they are 'developed' or 'developing'. Nonetheless, developed country Parties are expected to 'take the lead'.[46] Relatedly, the Paris Agreement retains references to the CBDR-RC principle, albeit with some refinement.[47] The Agreement

[38] Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 April 1997, entered into force 16 February 2005) 2303 UNTS 162 (Kyoto Protocol).
[39] ibid article 3(1). Annex B of the Kyoto Protocol sets out the specific emission reduction targets for developed countries and countries whose economies were in transition (at the time).
[40] Beyerlin (n 32) 279. China and India are now among the top five global emitters of greenhouse gases. See Eleni Koilakou, Emmanouil Hatzigeorgiou and Kostas Bithas, 'Social and Economic Driving Forces of Recent CO2 Emissions in Three Major BRICS Economies' (2024) 14 Scientific Reports 8047.
[41] See Christopher Napoli, 'Understanding Kyoto's Failure' (2012) 32 SAIS Review of International Affairs 183; Amanda M Rosen, 'The Wrong Solution at the Right Time: The Failure of the Kyoto Protocol on Climate Change' (2015) 43 Politics & Policy 30. The Kyoto Protocol ran for two commitment periods i.e. 2005 to 2012 (the first commitment period) and 2012 to 2020 (the second commitment period) but failed to garner enough support for a third commitment period and went into abeyance since then.
[42] The Paris Agreement (Adopted 12 December 2015, entered into force 4 November 2016) 3156 UNTS 79. The adoption of this Agreement was preceded by painstaking negotiations and compromises but ultimately brought 'optimism about the future' of climate change governance. See Christiana Figueres and Tom Rivett-Carnac, *The Future We Choose: The Stubborn Optimist's Guide to the Climate Crisis* (Manilla Press 2021).
[43] The Paris Agreement, article 2. It provides for the aim of the Paris Agreement as entailing strengthening global response to climate change by limiting global temperature increase to well below 2 degrees Celsius, while pursuing efforts to limit the increase to 1.5 degrees Celsius.
[44] Pierre-Marie Dupuy and Jorge E Viñuales, *International Environmental Law* (2nd edn, Cambridge University Press 2018) 85.
[45] The Paris Agreement, article 3.
[46] ibid article 4(5).
[47] ibid. Article 2(2) provides that, 'This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of

obliges developed country Parties to provide financial and technological assistance to developing countries to enable the latter to meet their obligations.[48] Varied interpretations of 'differentiated responsibilities' and 'respective capabilities' are making the divide ever wider. The problem is demonstrated by the incessant disagreements on financial assistance and who has to contribute what in international climate negotiations and governance.[49]

III. The Right to a Healthy Environment and climate change: The divide before the ICJ

a. Historical context

Substantively, the 1972 Stockholm Conference was where the right to a healthy environment 'first received its formal enunciation'.[50] Subsequently, at the 1992 Rio Conference the procedural elements of the right i.e., access to environmental information, public participation and access to justice in environmental matters, were fleshed out.[51] Substantially, the components of the right to a healthy environment include clean air, a safe and stable climate, access to safe water and adequate sanitation, healthy and sustainably produced food.[52]

---

different national circumstances.' (emphasis mine) This indicates that all States are expected to take appropriate climate action not only on the premise of their contribution to climate change but also on the basis of their relative capabilities, taking into account the peculiar national circumstances. This is exemplified by the fact that preparing and communicating NDCs is an obligation imposed on all States Parties. See further, Advisory Opinion of 23 July 2025 on the obligations of States in respect of climate change (International Court of Justice (ICJ)), para 226.

[48] The Paris Agreement, article 4(5).

[49] Nicholas R. Micinski, 'Why the "Finance COP" in Baku Missed the Mark' <https://carnegieendowment.org/posts/2025/01/cop29-climate-finance-scale-logistics?lang=en> accessed 5 April 2025; Danni Taaffe, 'Betrayal in Baku: Developed Countries Fail People and Planet' (*Climate Action Network*, 23 November 2024) <https://climatenetwork.org/2024/11/23/cop29_betrayal_in_baku/> accessed 5 April 2025.

[50] Report of the United Nations Conference on the Human Environment, Stockholm, 5 –16 June 1972 (A/CONF.48/14/Rev.1), Part One, Chap. I (Stockholm Declaration). <https://documents.un.org/doc/undoc/gen/nl7/300/05/pdf/nl730005.pdf> accessed 26 March 2025. Principle 1 states that, '*Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being….*' See also Simon Waswa, 'Hazardous Waste and the Right to a Healthy Environment: Reflections on the LIDHO Decision of the African Court on Human and Peoples' Rights' (2024) 8 African Human Rights Yearbook 554.

[51] Rio Declaration (n 10), Principle 10. (UN, 1993) <https://digitallibrary.un.org/record/168679> accessed 26 March 2025. It spurred regional legal developments on the procedural aspects of the right to a healthy environment for example the Aarhus Convention in respect of Europe and the Caucasus, the Maputo Convention and the Escazú Agreement for Africa and Latin America and the Caribbean, respectively.

[52] Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Environment Programme (UNEP), and the United Nations Development Programme (UNDP), 'What Is the Right to a Healthy Environment?' <https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf> accessed 25 March 2025.

Unlike in Europe, in Africa and Latin America, the right to a healthy environment is encapsulated in the regional human rights treaties.[53] Internationally, the right to a healthy environment remains primarily captured in soft-legal instruments.[54] However, the encapsulation of the right in soft-law instruments does not diminish the relevance and cogency of those instruments and the right itself.[55] This holds more true in light of the fact that already approximately 155 countries recognize the right to a healthy environment in their national constitutions and other legal frameworks.[56] Important to note, however, particularly in relation to the global South, the configuration of the right to a healthy environment cannot be divorced from the 'poor socioeconomic conditions' prevailing there.[57]

b. Climate Crisis and the Right to a Healthy Environment

The Paris Agreement and other international legal instruments recognize the nexus between climate change and human rights.[58] The impact of climate change on the right to a healthy environment has also been specifically recognized at the international level.[59] Therefore, one might prima facie surmise that there is international consensus on the nexus between climate change and the right to a healthy environment. In comparison to the North, it has been argued that countries in the South have been more 'active in incorporating environmental rights into

[53] African (Banjul) Charter on Human and Peoples' Rights(Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 Rev. 5, 21 I.L.M. 58 (1982), Entered into Force 21 October 1986) Art 24;Escazú Agreement (n 4) Art 4(1) and others.

[54] Stockholm Declaration (n 42); Rio Declaration (n 10). Most recently, the right has been recognized by the United Nations General Assembly and the United Nations Human Rights Council. See Resolution Adopted by the Human Rights Council on the Human Right to a Clean, Healthy and Sustainable Environment, A/ HRC/RES/48/13 (18 October 2021).; UNGA, The Human Right to a Clean, Healthy and Sustainable Environment, A/ RES/76/300 (28 July 2022).

[55] Jonas Ebbesson, 'International Participatory Rights and Environment Protection in Africa – Powerful Tools or "Sleeping Rights"? In J-CN Ashukem & SM Sama (Eds)', *Human Rights and the Environment in Africa* (Routledge 2023). Even the ICJ has already pointed out that soft law documents, particularly UNGA resolutions although not binding, they have normative value. See *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion) (1996) ICJ Reports* 226, 254.

[56] David Boyd, 'The Right to a Healthy and Sustainable Environment' in Aguila, Y. and Viñuales, J.E. (Eds), *A Global Pact for the Environment-Legal Foundations* (University of Cambridge 2019), 33. In the EU, it is estimated that already 19 member states have enshrined the right to a healthy environment in their national constitutions or laws. See 'A Universal Right to a Healthy Environment' (*European Parliamentary Research Service*) <https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698846/EPRS_ATA(2021)698846_EN.pdf>.

[57] Louis J Kotzé, 'Human Rights, the Environment, and the GlobalSouth' in Shawkat Alam and others (eds), *International Environmental Law and the Global South* (1st edn, Cambridge University Press 2015) 179 <https://www.cambridge.org/core/product/identifier/9781107295414%23CT-bp-8/type/book_part> accessed 3 July 2025.

[58] The Paris Agreement , para. 11 of the Preamble. Climate change has already been recognized as one of the 'most pressing and serious threats to the ability of present and future generations to enjoy the right to life'. See UN Human Rights Committee (124th sess : 2018 : Geneva), 'General Comment No. 36 : Article 6, Right to Life : Human Rights Committee' <https://digitallibrary.un.org/record/3884724> accessed 23 March 2025.

[59] Human Rights Council, A/ HRC/RES/48/13 (18 October 2021). (n 46). See also UNGA, A/ RES/76/300 (28 July 2022) (n 46).

their constitutions and their courts have been very active in enforcing environmental obligations even where no legal instrument provides for explicit environmental rights, such as India.'[60]

However, this paper seeks to make a deeper enquiry. The following exploratory task proceeds by a critical study of the written statements of a selection of States in the proceedings on the Obligations of States in respect of climate change before the ICJ. The discussion will be dichotomous, i.e., the North focusing on the EU, the UK, and the US, and the South focusing on the AU, Vanuatu, and India. For the North, the EU was selected for being a top GHG emitter and owing to its reputed leading role in international climate governance.[61] The UK was selected because it is among the top GHG emitters, and for its trailblazing domestic climate change legal regime and membership to the European Convention on Human Rights.[62] The US was chosen given its status as the top emitter of GHG emissions and its intermittently 'fickle' leadership role in climate governance.[63] On the other hand, the AU's representative nature of African States, Vanuatu's crucial role in the process of triggering the ICJ proceedings and being one of the climate change frontline states, India's traditional leadership role in the South and growth into one of the biggest global carbon emitters constitute the central bases for those selection choices.

i. The North

The EU, the UK, and the US, as is discernible from the written statements of many other States across the aisle, agree to climate change being a common concern of humankind and to its anthropogenic nature.[64] However, as relates to what legal sources the ICJ ought to rely on in determining the obligations of States, the trio seems unaligned. The EU proposed that 'international treaties, customary international law and general principles of law' (including international human rights law) ought to inform the Court's analysis without restricting itself

[60] Kotzé (n 57) 189.

[61] Sebastian Oberthür and Claire Dupont, 'The European Union's International Climate Leadership: Towards a Grand Climate Strategy?' (2021) 28 Journal of European Public Policy 1095.

[62] The relevance of the European Convention on Human Rights, 1950 (ECHR) is brought into focus by the ECtHR's recent decisions as the first international/regional human rights court to rule on the nexus between human rights and climate change with a positive outcome for the Applicants. See *Case of Verein KlimaSeniorinnen Schweiz and Others V Switzerland (Application No 53600/20)*. The link with the UK's membership is crucial because not long before the Klimaseniorinnen decision, the UK High Court and later the Court of appeal had dismissed the tenability of drawing a nexus between human rights under the ECHR and the Paris Agreement (climate change). See *Plan B and Others v Prime Minister and Others[2022] ca- 2021- 003448 (Court of Appeal)*.

[63] Charles F Parker and Christer Karlsson, 'The UN Climate Change Negotiations and the Role of the United States: Assessing American Leadership from Copenhagen to Paris' (2018) 27 Environmental Politics 519. See also Written Statement of the United States of America para 1.11.

[64] Written Statement of the European Union, Request for Advisory Opinion on Obligations of States in respect of Climate Change, International Court of Justice, paras 48-49; Written Statement of the United Kingdom of Great Britain and Northern Ireland, Request for Advisory Opinion on Obligations of States in respect of Climate Change, International Court of Justice, paras 13.1-13.2. See also Written Statement of the United States of America, Request for Advisory Opinion on Obligations of States in respect of Climate Change, International Court of Justice, para 2.1.

to the climate change treaties.[65] The UK proposed a more restrictive approach for the Court, having to look no further than the climate change treaties.[66] For it, international human rights law has no role in the determination of obligations for States in the context of climate change.[67] The US, just like the UK, understands that 'An examination of States' obligations in respect of climate change under the UN climate change regime therefore is properly focused primarily on an analysis of the Paris Agreement's provisions.'[68]

The EU

Although originally conceived as an economic integration organization, overtime the EU has continually embraced environmental protection and human rights as central tenets of its constitutional set-up.[69] In the EU's founding treaties, environmental protection is a core element of EU policy which has to be integrated into all EU policy areas.[70] The TFEU actually empowers the EU to promote international climate policy and governance in furtherance of the EU's own environmental policy.[71] Overall, the EU's environmental policy aims for 'a high level of protection'.[72] However, the EU has no right to environmental protection in its aquis.[73] Indeed, in practice, when it has come to direct (climate) legal actions instituted against EU institutions, the Court of Justice of the European Union (CJEU), which is the judicial arm of the EU, has not demonstrated readiness to uphold the 'high level of environmental protection' objective.[74] To determine whether the foregoing state of affairs has a bearing on the EU's

[65] Written Statement of the European Union, (n 53). para 51. See also paras 94, 258 . Other countries like Australia agree that international human rights law has a role to play (albeit a limited one) in determining state obligations along the climate change treaties. See Written Statement of the Australia. Para 3.64

[66] Written Statement of the United Kingdom of Great Britain and Northern Ireland (n 53). Para 29-30

[67] ibid. Para 33.

[68] Written Statement of the United States of America para 3.3.

[69] Steve Peers and Catherine Barnard, 'European Union Law', *European Union Law* (Oxford University Press) 2. Peers and Barnard state that, 'In the early days, the EU focused upon economic integration: the free movement of goods, persons, capital and services…'

[70] Treaty on the Functioning of the European Union of 13 December 2007 — consolidated version (OJ C 202, 7.6.2016, pp. 47-360), article 11 .

[71] ibid article 191(1).

[72] ibid article 191(2). It provides, 'Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.'

[73] Charter of Fundamental Rights of the European Union (OJ C 202, 7.6.2016, pp. 389–405) art 37. Art. 37 only sets out environmental protection as a principle rather than a right. See, *Order of the General Court (First Chamber) of 28 September 2016 Pesticide Action Network Europe (PAN Europe) and Others v European Commission Actions for annulment — Plant-protection products — Active substance sulfoxaflor — Inclusion in the Annex to Implementing Regulation (EU) No 540/2011 — Lack of direct concern — Inadmissibility Case T-600/15* (GC) [47].

[74] See *Armando Carvalho and Others v European Parliament and Council of the European Union* [2021] CJEU Case C-565/19 P. Court found that not even the right to judicial protection under Article 47 of the Charter clothed the claimants with 'unconditional' locus to institute a climate legal action without meeting the cumbersome 'individual and direct concern' threshold established by the Plaumann decision. However, The EU Parliament considers that the right to a healthy environment should be recognised in the EU Charter and that the EU should take the lead on the international recognition of such a right. See European Parliament resolution of 9 June 2021 on the EU Biodiversity Strategy for 2030: Bringing nature back into our lives (2020/2273(INI)).

overall perception of the right to a healthy environment in the context of climate change at the international plane, the EU's written statement is scrutinized.

In the ICJ proceedings, while the EU acknowledged the anthropogenic nature of climate change, it insisted that climate should be understood as a ' global common good' in respect of which all states have 'collective obligations and responsibilities' to protect it.[75] It submitted that the Paris Agreement constituted the 'more recent expression of the Parties' understanding of their respective obligations relating to climate change' and that the Court should attach 'weight to the manner in which the legal obligations have evolved.'[76] This seems to aim at whittling down the broader differentiated obligations under the UNFCCC and the Kyoto Protocol. This line of argumentation chimes with what other Northern states like the US had to say on the same issue.[77] The US, as if to downplay the high historical emissions of the Northern countries, including itself, particularly employed what has been referred to as a 'drop in the ocean argument'.[78] It stated that 'An individual State alone cannot prevent climate change even if it were to reach net-zero GHG emissions tomorrow because the global average temperature will continue to rise if other States continue to emit.'[79]

In relation to state obligations, the EU recognised the necessity of the systemic integration principle in interpreting and applying the Paris Agreement to ensure consistency with other international legal regimes, including international human rights instruments.[80] It viewed no conflict between the treaty norms and Customary International Law relating to human rights but rather, *one norm ought to assist in interpretation of the other.*[81] However, this argument starkly contrasts with the assertions of other (North) states.[82]

The EU went on to acknowledge that the list of human rights which are liable to be affected by climate change is inexhaustible. Thus, while it did not list the right to a healthy environment, it can be safely understood to agree that this right is among those which are negatively impacted by climate change and hence ought to be central to determining state obligations relating to climate change.[83]

---

[75] Written Statement of the European Union, para 15. When compared with the submissions of Brazil and India, this view demonstrates a different way of interpreting the Common But Differentiated Responsibilities principle.

[76] ibid para 59. It however, did acknowledged the relevance of other international treaties, customary international law and general principles of law and especially as were set out under the UNGA's resolution. See para 51 and 54.

[77] Written Statement of the United States of America para 2.2.

[78] Catherine Higham, Joana Setzer and Emily Bradeen, 'Challenging Government Responses to Climate Change through Framework Litigation' 12.

[79] Written Statement of the United States of America para 2.28.

[80] ibid para 94.

[81] ibid para 227.

[82] Written Statement of the United States of America. The US while acknowledging that there is a nexus between human rights and environmental protection, it contrarily denies that this implies an international human rights obligations to 'mitigate anthropogenic GHG emissions'. See para 4.38-4.39. However, this should not be so shocking because as it has been noted that on issues like climate change, the EU is usually unaligned with other Northern powers like the US. See David M Malone and Lotta Hagman, 'The North-South Divide at the United Nations: Fading at Last?' (2002) 33 Security Dialogue 399.

[83] Written Statement of the European Union, paras 231, 242-243.

The EU noted that the right to a healthy environment is 'emerging as a matter of customary international law' requiring states to take 'appropriate measures to protect and fulfil human rights vis-à-vis the deleterious effects of climate change'.[84] This line of argument (prima facie) concurs with the views of Southern States like Vanuatu and others. However, upon closer scrutiny, the EU's position seems to substantially align with other Northern States, like the US, which hold that the right to a healthy environment does not exist as such in international law, yet.[85] But rather remains a matter of *lex feranda* rather than *lex lata.*[86]

The UK

The UK is heralded as the first country to enact domestic 'framework' legislation on climate change.[87] Relatedly, as a party to the European Convention on Human Rights(ECHR), the UK transposed its provisions via the 1998 Human Rights Act.[88] However, it ought to be pointed out that the ECHR does not provide for a right to a healthy environment.[89] As a result, environmental protection is typically pursued in court by claimants through the invocation of explicitly recognized rights, such as the right to life and the right to private and family life, among others.[90] Despite having robust climate change and human rights legal frameworks, the UK courts have, especially before the ECtHR's KlimaSeniorinnen judgment, seemed more skeptical about the nexus between climate change and human rights.[91] This skepticism also reared its head in the UK's written statement before the ICJ.

The UK emphasized 'the primary role of the specialized treaties within the UN climate change regime' as the source of state obligations for combatting climate change.[92] The UK associated itself with the submission of the EU that central importance should be placed on the climate change treaties as a primary source of obligation, with the ultimate objective being to

[84] ibid para 258.

[85] Written Statement of the United States of America, paras 4.54-4.55. A similar view is shared by Germany. See Written statement of the Federal Republic of Germany, para 105. See also Written Statement of the EU, para 262. The EU for its part concluded that because the right to a healthy environment was not encapsulated in a global treaty, it could not be said that sufficient opinion juris had been shored up for it to be understood as norm of customary international law. Written Statement of the European Union para 262.

[86] Written Statement of the United States of America. The EU similarly holds that the 'lack of codification' of the right to a healthy environment makes it impossible to conclude whether it has attained 'sufficient opinion juris' as to its existence as a customary human rights norm. See Written Statement of the European Union, para 262.

[87] Climate Change Committee, 'CCC Insights Briefing 1 The UK Climate Change Act' (2020).

[88] Equality and Human Rights Commission, 'The Human Rights Act' (15 November 2018) <https://www.equalityhumanrights.com/human-rights/human-rights-act> accessed 5 April 2025.

[89] *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* [2024] ECtHR Application no. 53600/20 [445].

[90] See *Plan B and Others v Prime Minister and Others[2022] ca- 2021- 003448 (Court of Appeal)* (n 61).

[91] ibid. The Court of Appeal flippantly dismissed the applicability of the Paris Agreement in the context of a human rights complaint. It held that, 'The fundamental difficulty which the Claimants face is that there is no authority from the European Court of Human Rights on which they can rely, citing the Paris Agreement as being relevant to the interpretation of the ECHR, Articles 2 and 8....'

[92] Written Statement of the United Kingdom of Great Britain and Northern Ireland, Request for Advisory Opinion on Obligations of States in respect of Climate Change, International Court of Justice, para 4.3. It maintains that the Climate Change Treaties contain the principal obligations of States under international law to protect the climate system. See para 30.3.

promote and not undermine international cooperation.[93] By implication, therefore, the UK seemed to suggest that the other sources of international law, including human rights law, are but peripheral resources for the court's determination of state obligations in the context of climate change. This understanding arguably conflicts with the international legal principle of systemic integration, which, instead of an insular interpretation, advocates for interpreting treaties in the context of other relevant rules and principles of international law.[94]

On the question of the relevance of human rights in construing state obligations concerning climate change, it dismissively argued that 'human rights treaties are not directly responsive to, and do not provide an answer to, the question posed by the General Assembly in Question A (on legal obligations).'[95] The UK urged against the possibility of any State obligations emanating from human rights law in respect of climate change. It concluded that 'International human rights treaties do not contain obligations concerning anthropogenic emissions of GHGs. The obligations under international law to protect the climate system from anthropogenic GHG emissions are found in the Climate Change Treaties and the Complementary Treaties…'[96] However, this argument is untenable, as it runs counter not only to the predominant positions advanced by states from the Global South but also to the considered judgments of various domestic European courts and the European Court of Human Rights (ECtHR), to whose jurisdiction the UK is subject.[97]

The United States

The United States has historically been regarded as a global leader in international environmental and climate governance, a characterization it affirms in its written statement.[98] However, its record reveals frequent vacillation between leadership and obstruction. The US's obstructive tendencies have been seen to flow from its opposition to 'extreme differential treatment of states'.[99] Consequently, its claim to leadership has been met with skepticism by several scholars.[100] As relates to the right to a healthy environment, the US already opposed its recognition by the Human Rights Council in 2021. Hence, given its 'long-standing resistance

[93] ibid para 24.3.
[94] Vienna Convention on the Law of Treaties (adopted on 23 May 1969, entered into force on 27 January 1980) UNTS, vol. 1155, p. 331 art 31(3)(c).
[95] ibid para 33.
[96] ibid para 122.
[97] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (n 88). There the ECtHR read the ECHR in an 'evolutive manner' so as to ensure that the human rights protected thereunder and as threatened by climate change were not rendered illusory. It went on to find Switzerland's inadequate climate change mitigation measures as amounting to a contravention of its obligations under the Convention. Similar human rights reading of state obligations vis-à-vis climate change can be found in domestic decisions such as, *Supreme Court, State of the Netherlands v Stichting Urgenda [2019] ECLI-NL-HR-2019-2007 - official English translation] (Urgenda v NL, 2019)*; *Neubauer and Others v Germany, Decision of the Federal Constitutional Court of the Federal Republic of Germany of 23 March 2021, BVerfG, 1 BvR 2656/18, 1 BvR 96/20, 1 BvR 78/20, 1 BvR 288/20*.
[98] Written Statement of the United States of America para 1.11.
[99] Lavanya Rajamani, 'The Changing Fortunes of Differential Treatment in the Evolution of International Environmental Law' (2012) 88 International Affairs 605, 615–616.
[100] Parker and Karlsson (n 62); Rajamani (n 98). Parallels can be drawn here between the US's pivotal role in the adoption and implementation of the Montreal Protocol on Substances that Deplete the Ozone Layer (1987) and its refusal to ratify the Kyoto Protocol.

to the recognition of "new" human rights', it came as a surprise when the US voted in favour of the UNGA's resolution recognizing the same right in 2022.[101]

In its written statement, the US noted that State obligations to combat climate change are primarily found in the international climate change treaties, more particularly, the Paris Agreement.[102] And no additional obligations can be derived from additional sources of international law, but at best, any such obligations would be of a general nature.[103] It characterized climate change as 'one of the most complex and difficult problems the international community has ever faced.'[104] As such, no single state can prevent climate change even if it were to reach net-zero GHG emissions tomorrow because other states will continue to emit. However, this argument has the undesirable effect of eclipsing the widely accepted norm that every state has to do its 'fair share' to combat climate change.[105]

The US argued against the construction of the CBDR advocated by Southern states like Vanuatu, Brazil, and India, which focused on the historical responsibility of the North for the climate crisis. It submitted that 'The UNFCCC formulation of CBDR differs from that in Rio Principle 7 by including the phrase "and respective capabilities" (referred to, in shorthand, as CBDR/RC). This additional reference to "respective capabilities" makes clear that the concept as stated in the UNFCCC is not just about relative responsibilities but also, importantly, about the capabilities of different States, indicating a spectrum of effort among States.'[106] This underscores the evident North–South divergence in the interpretation of the CBDR principle, particularly concerning the delineation of state responsibilities in the context of climate change.

As relates to the nexus between climate change and the right to a healthy environment, the US acknowledged that states ought to observe their international human rights obligations while adopting measures to combat climate change.[107] It nonetheless insisted that 'A recognition that anthropogenic climate change can adversely affect the enjoyment of human rights, however, does not mean that States have international human rights obligations to mitigate anthropogenic GHG emissions.'[108] It opined that no international human rights instrument creates legal obligations requiring states to protect the climate system against GHG emissions. However, the US's portrayal of human rights law as having no bearing on states' obligations to combat climate change is hard to maintain, especially given the recognition of climate change by international human rights bodies and courts as one of the most pressing threats to the enjoyment of human rights, particularly the right to life.[109] The US's position

[101] 'The United States Recognizes the Human Right to a Clean, Healthy, and Sustainable Environment' (2023) 117 American Journal of International Law 128.
[102] Written Statement of the United States of America para 3.1, 3.3.
[103] ibid 4.1.
[104] ibid 2.27.
[105] Lavanya Rajamani and others, 'National "Fair Shares" in Reducing Greenhouse Gas Emissions within the Principled Framework of International Environmental Law' (2021) 21 Climate Policy 983.
[106] Written Statement of the United States of America para 3.25.
[107] ibid 4.38.
[108] ibid 4.39.
[109] *Daniel Billy & Ors v Australia, CCPR/C/135/D/3624/2019 (Sept 22, 2022) UN Human Rights Committee* [8.3]. See also *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (n 89) para 436. Where climate change was found by the ECtHR to be a threat for rights under the ECHR.

here not only goes against the position of Southern states like Vanuatu and the AU but also sharply contrasts with that of other Northern states such as Portugal and the EU.[110]

Ultimately, it was the US's position that although the UN General Assembly and the Human Rights Council had recognized a right to a clean, healthy and sustainable environment, this did not vest the right with the status of international law and hence imposed no international legal obligations on States.[111] It asserted that 'Such a right is not included in a treaty of global application, nor is it supported by the extensive and virtually uniform State practice and opinio juris necessary for the creation of a rule of customary international law.'[112] While the US's line of argumentation here seems to be aligned with that of other countries like the UK and even the EU (at least in substance), it is sharply opposed to the stance of the AU, Vanuatu and others.

ii. The South

Vanuatu

The right to a healthy environment is not currently enshrined in Vanuatu's constitution.[113] However, its written statement offers the most comprehensive articulation of the relevance of this right in informing state obligations related to climate change. It perceived the right to a healthy environment as giving rise to separate obligations for States to combat climate change. It viewed the right to a clean environment as already crystallising in customary international law.[114] This argument roundly countered the views of the EU, US, UK and Germany that there's not sufficient opinio juris to warrant the characterization of the right to a healthy environment as an existing norm under customary international law.[115]

Vanuatu further highlighted the pertinence of the right to a healthy environment, arguing that it has 'a distinct source in other existing human rights, as a necessary derivation from those rights.'[116] In other words, violation of the right to a healthy environment has a cascading effect on the enjoyment of other rights and vice versa.[117] This argument serves as a rebuttal to the contention by Northern states like the US and Germany, which purported to dismiss the

[110] See Written Statement of the Portuguese Republic para 73. For the EU refer to the discussion on the EU. For the AU and Vanuatu see the following discussion.
[111] Written Statement of the United States of America para 4.39.
[112] ibid.
[113] Len Garae, 'Recommendation to Include Right Healthy Environment in Constitution' (*Vanuatu Daily Post*, 29 May 2025) <https://www.dailypost.vu/news/recommendation-to-include-right-healthy-environment-in-constitution/article_532f237c-82c2-5797-aff0-5e60a28751ad.html> accessed 8 July 2025.
[114] Written Statement of the Republic of Vanuatu, Request for Advisory Opinion on Obligations of States in respect of Climate Change, International Court of Justice, para 379. In support, it alluded to inter alia recognition of the right by the UN General Assembly and UN Human Rights Council, encapsulation the right in major (regional) human rights treaties and recognition of the right in over 110 national constitutions. See para 380.
[115] See Written Statement of Germany para 104. For the EU, UK and the US refer to the discussion on their respective written statements.
[116] Written Statement of the Republic of Vanuatu para 381.
[117] ibid para 381.

relevance of the right to a healthy environment simply because it finds no expression in the existing international human rights treaties.

Vanuatu's stance here does, however, strike a chord with what has come to be known as 'greening of human rights' under the ECHR system, where the Court has on several occasions read the right to a healthy environment into the existing rights.[118] This is noteworthy because States in the North, including the UK and all member states of the EU, are subject to the jurisdiction of ECtHR. One might therefore expect these states to grant greater weight to the right to a healthy environment, even if it has no explicit provision in major international human rights treaties.

In what seemed to be a convergence of opinion with the EU, Vanuatu argued that the UNFCCC and the Paris Agreement do not operate in isolation but rather 'together with the other rules and instruments' constitute an 'important corpus of international law' aimed at addressing the climate crisis.[119] However, Vanuatu went further, and in alignment with the position taken by the AU, it argued for the interrelatedness between human rights obligations and state obligations to combat climate change.[120] Because the UNFCCC and the Paris Agreement do not cover the 'many aspects' of the climate change problem,[121] Vanuatu called upon the Court to adopt the systemic integration rule of interpretation of state obligations under the climate change legal regime vis-à-vis human rights obligations.[122] It concluded that failure by states to mitigate their GHG emissions amounted to a violation of the right to a healthy environment.[123]

In line with the CDBR-RC principle denoting their respectivecapabilities, development needs and contributions to cumulative GHG emissions, Vanuatu emphasized that 'States have differing responsibilities to address and avert climate change.'[124] This view contrasts, for instance, with the US's take, which essentially overlooked the question of individual responsibilities for especially major GHG emitters and framed climate change as no more than a problem requiring collective action. Vanuatu's emphasis is in consonance with the positions taken by states like Brazil, India and the AU.[125]

The AU

Africa has one of the three regional human rights treaties which encapsulate the right to a healthy environment.[126] The AU explicated this point in its written statement noting that, 'Article 24 of the African Charter specifically stipulates that all peoples have the right to a

[118] See *KlimaSeniorinnen Schweiz and Others V. Switzerland (Application No. 53600/20)* para 538.
[119] ibid para 398.
[120] ibid 225, 226.
[121] ibid 399.
[122] ibid 225, 226.
[123] ibid 386.
[124] ibid 440.
[125] See Written Statement of the Federal Republic of Brazil para 4,6, and 8; Written Statement of the Republic of India para 25; Written Statement of the African Union paras 47, 50.
[126] See Article 38 of the Arab Charter of Human Rights, and Article 11 of the Additional Protocol to the American Convention on Human Rights (in the Area of Economic, Social, and Cultural Rights

satisfactory and comprehensive environment.'[127] This right has been enforced by the African Commission on Human and Peoples' Rights (AComHPR) as well as the African Court on Human and Peoples' Rights (ACtHPR) against states on several occasions.[128] Notably, a request for an advisory opinion on the obligations of states with respect to the climate change crisis is now pending before the ACtHPR, and the right to a healthy environment is one of the legal premises of the claims.[129]

In its written statement, the AU posited that the right to a healthy environment provides protection for not only the present generations but also future generations.[130] This argument is in sync with Vanuatu's emphasis on the right to a healthy environment as a value owed to future generations.[131] It could further be viewed as reinforcing Vanuatu's assertion about the 'obligations on States to respect and ensure the rights of future generations' as being intertwined with the obligation to protect the climate system from significant harm.[132]

The AU, in further concurrence with Vanuatu and the EU on the relevance of human rights, argued that '…when identifying the obligations of States to ensure the protection of the climate system and other parts of the environment, the Court must have regard inter alia to human rights treaties…'[133] According to the AU, the determination of the questions by the court should take into account all areas of international law, including those on human rights and the protection of the wider environment.[134] Therefore, obligations emanating from the Paris Agreement ought to be construed harmoniously with those arising from human rights norms.[135] This indicates that the AU perceives human rights obligations as being centrally relevant for the determination of state obligations under the international climate legal regime. However, as already shown above, this is a position to which both the US and UK, among other countries, are opposed.

India

As most other (Southern) countries, such as Brazil, Vanuatu, and the AU, India was predominantly preoccupied with the principle of common but differentiated responsibilities, the historical emissions, and what this meant for the obligations of developed and developing countries.[136] It argued that 'Developing countries, which are not historically responsible for climate change, have to cope with multiple development deficits while the drastic reduction in

[127] Written Statement of the African Union, Request for Advisory Opinion on Obligations of States in respect of Climate Change, International Court of Justice, para 125.
[128] See respectively, *Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria (Communication 155 of 1996) [2001] ACHPR 34 (27 October 2001); LIDHO and Others v Republic of Cote d'Ivoire (Application 041/2016) [2023] AfCHPR 21 (5 September 2023).*
[129] See 'Request for an Advisory Opinion on the Human Rights Obligations of African States in Addressing the Climate Crisis - Climate Change Litigation' <https://climatecasechart.com/non-us-case/request-for-an-advisory-opinion-on-the-human-rights-obligations-of-african-states-in-addressing-the-climate-crisis/> accessed 10 July 2025.
[130] Ibid.
[131] Written Statement of the Republic of Vanuatu para 383.
[132] ibid 256.
[133] Ibid, para 14.
[134] ibid para 22.
[135] Ibid, paras 29-30.
[136] See Written Statement of the Federal Republic of Brazil.

the remaining carbon budget constrains their development.'[137] Just like Brazil, India submitted that a proper understanding of the CBDR principle had to take into account historical emissions for purposes of ensuring that each country has an equitable share of the total carbon budget.[138] This clearly went in opposition to the argumentation by Northern states like the US, UK, and even the EU, which perceive the responsibility to combat the climate crisis as a collective one.

In relation to the right to a healthy environment, India itself does not expressly provide for the right in its constitution. However, the Indian Supreme Court has read this right into the rights to life and liberty. In the *M K Ranjitsinh* case, the Supreme Court held that 'Article 21 recognises the right to life and personal liberty while Article 14 indicates that all persons shall have equality before law and the equal protection of laws. These articles are important sources of the right to a clean environment and the right against the adverse effects of climate change.'[139] This understanding is broadly reflected in India's written statement.

In its written statement, India pointed out that the right to a healthy environment has been recognized by the UN General Assembly.[140] It also referred to the preambular reference to human rights obligations in the Paris Agreement as demonstrative of the link between climate change and human rights.[141] It posited that the right to a healthy environment is a crucial component of the right to life, which is encapsulated in the Indian Constitution.[142] In this sense, it shares the same understanding as, for instance, Vanuatu on the connection between the right to a healthy environment and other human rights. However, when compared to Vanuatu, India's engagement with the right to a healthy environment is more superficial.

Strikingly, according to India, the obligations of States ought to be restricted to those agreed under the existing climate change regime.[143] This sharply contrasted with the broad view proposed by Vanuatu, which went as far as proposing that obligations from other normative values like the right to a healthy environment ought to be read into the obligations under the climate change legal regime.[144]

India further iterated the 'right to development' argument, which has been the South's central position for a long time in international environmental and climate negotiations. It argued that 'the overriding priorities for the developing countries recognized under the UNFCCC and the Paris Agreement are, and continue to remain, poverty eradication, and sustainable development. All climate actions, in some fundamental respects, are complementary to these overriding priorities.'[145] This submission emphasizes that although climate change is a pressing global environmental challenge, for the Global South it should not overshadow the imperative of eradicating poverty. This resonates with position of other

[137] ibid para 68.
[138] ibid para 76.
[139] *M K Ranjitsinh & Ors Versus Union of India & Ors* Supreme Court of India Writ Petition (Civil) No. 838 of 2019 [20].
[140] ibid para 78.
[141] ibid para 77.
[142] ibid para 103.
[143] ibid para 106.
[144] This in a sense illustrates that even amongst themselves countries from the South are not completely agree on how state obligations to combat climate change ought to be circumscribed. It raises the question of a potential South-South divide.
[145] Written Statement of the Republic of India para 80.

Southern states like Brazil, Kenya and the AU but contrasts with the written statements of the EU, the US, which make no meaningful attempt to engage with the issue of poverty and how it relates to state obligations to combat climate change.

IV. Conclusion

Climate change undermines the enjoyment of fundamental human rights—including the right to a healthy environment—a reality affirmed by the UNGA, UN bodies, and regional human rights courts, and most recently by the ICJ. Despite its indispensability for the enjoyment of all other rights, the right to a healthy environment currently exists only in international soft law. This paper has examined how states interpret that right within their obligations to protect the climate system, assessing whether a North-South divide shapes their positions.

From a critical analysis of the written statements of selected states, if anything is discernible, it is the lack of consensus among states on the status of the right to a healthy environment in international law. On the one hand, all the considered states agreed on the existence of the right. On the other hand, they disagreed as to its status as part of customary international law. This is one area where the North-South divide was starkest. However, even among the selected Southern states, only Vanuatu was explicit about the status of this right under international law. The others did not seem to satisfactorily engage on this issue.

As to the relevance of the right to a healthy environment in determining state obligations to combat climate change, this paper has demonstrated that views seem to be mixed, making it hard to have a clear North-South dichotomy. For instance, while the views of Northern states like Portugal and the EU seem to (a degree) agree with Vanuatu's and the AU on the relevance of human rights in determining State obligations vis-à-vis climate change, the UK and the US dismiss this line of argumentation.

On the whole, the disagreement on the status of the right to a healthy environment and hence, its relevance in the climate change proceedings was compounded by the fact that it is not encapsulated in a treaty. This is, in fact, a fear which had been foretold long before.[146] While the ICJ Advisory Opinion confirmed the relevance of the right to a healthy environment in determining states' climate obligations, it will require a concerted global effort by states to bridge the North-South divide on this issue.

[146] A Boyle, 'Human Rights and the Environment: Where Next?' (2012) 23 European Journal of International Law 613. He noted that without being encapsulated in the main international human rights instruments, the right to a healthy environment was susceptible to being trumped by other values like 'economic development and natural resource exploitation'.