

Shaping the Future of the Right to a Healthy Environment: An Analysis of the Participation of Non-state Actors in the International Courts' Advisory Proceedings on Climate Change

1) The Right to a Healthy Environment, Non-state Actors and International Courts

Climate change has already caused loss of life and threatens fundamental human rights. Meanwhile, there is a growing recognition of the right to a clean, healthy, and sustainable environment (RtHE), which has been increasingly supported by civil society and formally recognised by both the UN Human Rights Council (HRC) in 2021 and UN General Assembly in 2022¹. Multiple international courts, including the International Court of Justice (ICJ), Inter-American Court of Human Rights (IACtHR), International Tribunal for the Law of the Sea (ITLOS), and most recently the African Court of Human and Peoples' Rights (AfCHPR) in 2025², have been asked to clarify States' obligations regarding climate change and, to some extent, the RtHE as well. Clarifying states' climate obligations inherently involves addressing the RtHE, as this process includes identifying the specific actions needed to reduce environmental harm and protect all people's right to a healthy environment from the adverse effects of climate change³.

Non-state actors (NSAs), especially civil society organisations (CSOs), have been central to advancing the right to a healthy environment, including by playing a crucial role in its recognition by the UN⁴. NSA participation has also been key to initiate some of the current requests for advisory opinions⁵ on the issue of climate change before international courts, including the ICJ's advisory proceedings⁶ and the request for an advisory opinion before the AfCHPR⁷. NSAs' engagement through *amicus curiae* briefs in such proceedings has offered expert insights and advocated for evolutive interpretations of international law⁸, potentially helping courts clarify State obligations and ensuring that environmental and human rights decisions reflect diverse, informed, and inclusive perspectives⁹. While the courts may dismiss

¹ United Nations Human Rights Council. (8 October 2021). *Resolution on the right to a clean, healthy, and sustainable environment*. <https://undocs.org/A/HRC/RES/48/13>; United Nations General Assembly. (28 July 2022). *Resolution on the right to a clean, healthy, and sustainable environment*. <https://undocs.org/en/A/RES/76/300>

² The petition to the AfCHPR was submitted on 2 May 2025 by African civil society organisations. However, the African Court has not yet (25 June 2025) formally accepted the request for an advisory opinion.

³ United Nations Development Programme, United Nations Environment Programme, & Office of the High Commissioner for Human Rights. (2024). What is the right to a healthy environment? (Information Note). <https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf>

⁴ Ibid.

⁵ Center for International Environmental Law (2 December 2024). Press Room, Historic Climate Justice Hearings Begins at the World's Highest Court. Accessed 27 May 2025. <https://www.ciel.org/news/historic-climate-justice-hearings/>

⁶ Pacific Islands Students Fighting Climate Change. (2025). Our journey. Retrieved June 6, 2025, from <https://www.pisfcc.org/ourjourney>

⁷ Human Rights Watch. (5 May 2025). Top African rights court to consider states' climate obligations: Advisory opinion could further cement rights in climate action. <https://www.hrw.org/news/2025/05/05/top-african-rights-court-consider-states-climate-obligations>

⁸ Tignino, M., & Prado, R. (6 March 2024). The role of *amicus curiae* in the ITLOS advisory opinion on climate change and international law (Vol. 13, Issue 4). ESIL Reflections. <https://esil-sedi.eu/esil-reflection-the-role-of-amicus-curiae-in-the-itlos-advisory-opinion-on-climate-change-and-international-law/>

⁹ Farber, S. (2019). The *amicus curiae* phenomenon theory, causes and meanings. *Transnational Law and Contemporary Problems*, 29(1), 1–61. The Academic Center for Law and Science. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3341963

arguments or conclusions given by the *amicus curiae* brief of any actor, they may also use them as basis to support their own position¹⁰.

In this context, this blog post aims to address the role that NSA participation via *amicus curiae* may play in shaping the international courts' advisory opinions on climate change and, specifically, in respect of the right to a healthy environment. By examining recent and ongoing proceedings, this post explores how inclusive courts are for NSA participation and draws conclusions on whether this has the potential to influence the interpretation and evolution of the RtHE under international law. Given the prominent role that NSAs, especially CSOs, have played in advocating for the recognition of the RtHE at the international level,¹¹ an analysis of whether their participation in those proceedings may influence the advisory opinions' outcome when it comes to the RtHE becomes particularly relevant. In this sense, the post argues that the recognition and advancement of the RtHE through advisory proceedings before international courts could be shaped by procedural openness, particularly the increased participation of NSAs through *amicus curiae* briefs. The issue of inclusivity of NSA participation will be analysed by looking into how each court allows for such participation in its respective rules of procedure. Moreover, this post will highlight how specific NSAs have addressed questions that were posed to each court in relation to the RtHE. In all, this post seeks to shed light on the democratisation of a traditionally inter-State judicial processes at a time when international courts are addressing issues that affect all of humanity, such as climate change.

2) Analysis of International Courts' Procedural Openness

2.1) IACtHR

By December 2023, the IACtHR had received 263 *amicus curiae* briefs – of which 76 were submitted by NGOs (written submissions) – on Colombia and Chile's request for an advisory opinion on State obligations in the context of the climate emergency¹². The IACtHR foresees the submission of *amicus curiae* briefs in its legal proceedings, including advisory opinions, in Art. 44 of its Rules of Procedure¹³. With this permission, the Court allows for broad participation of stakeholders before the IACtHR, which reflects the Inter-American human rights system's general aim to promote dialogue and the active participation of civil society in the proceedings before both the Inter-American Court and the Commission¹⁴. Several CSOs addressed the right to a healthy environment in their submissions. For example, Earthjustice mentioned the RtHE in the context of environmental impact assessments¹⁵. Moreover, World's Youth for Climate Justice addressed, among other issues, the right to a healthy environment in relation to duties of States to respect and protect human rights from climate change impacts

¹⁰ Supra note 9.

¹¹ Supra notes 5, 6 and 7; see e.g. the following initiative by civil society organizations: Global Network for Human Rights and the Environment. (n.d.). *The right to a healthy environment: Global portal*. <https://healthyenvironmentisaright.org/>.

¹² Republic of Colombia and the Republic of Chile (9 January 2023) Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf

¹³ Inter-American Court of Human Rights (IACtHR) (Accessed 27 May 2025). Rules of Procedure of the Inter-American Court of Human Rights. <https://www.corteidh.or.cr/reglamento.cfm?lang=en>

¹⁴ Novak, F. (2020). *Amicus Curiae: Inter-American Court of Human Rights (IACtHR)*. Max Planck Encyclopedias of International Law. <https://opil.ouplaw.com/display/10.1093/law-mpeipro/e3647.013.3647/law-mpeipro-e3647>

¹⁵ (See page 25 of the submission by Earthjustice) Earthjustice. (18 December 2023). Observations on the request for an advisory opinion on climate emergency and human rights (OC-32) [Amicus curiae brief]. IACtHR. https://corteidh.or.cr/sitios/observaciones/OC-32/14_earthjustice.pdf.

on both present and future generations¹⁶. The submission of the Stichting Greenpeace Council¹⁷ highlighted that the court's final opinion "could provide foundational guidance on what is required to ensure the right to a clean, healthy and sustainable environment (...)", implying that the decision could build on previous decisions of the Court¹⁸ on the issue of climate change¹⁹. While the IACtHR had already recognised the RtHE in its 2017 advisory opinion, in *La Oroya v. Peru* (2023), it went further to establish groundbreaking standards by recognizing environmental degradation of air, water, and soil as a human rights violation, and by referring to the obligation to protect the environment as a *jus cogens* norm under international law²⁰. It has been argued that this interpretation encompasses the right to a healthy environment²¹.

On 3 July 2025, the IACtHR released its long-awaited advisory opinion on climate change where it clarified that international human rights law creates binding obligations to prevent, reduce and remedy the harms of the climate crisis²². The Court not only built on its previous findings to reaffirm the right to a healthy environment as protected under the American Convention on Human Rights, but also included a whole dedicated section in which the Court deepened the substantive content of the RtHE by recognizing the right to a healthy climate as a key step contextualizing the right's protection in the climate emergency²³. This showcases the progressive approach adopted by the IACtHR in the interpretation and development of the RtHE, which is aligned with the Court's unique feature as a forum open to submissions from both States and NSAs.

2.2) ICJ

In the context of its ongoing advisory proceedings on climate change, the ICJ received 62 written submissions — with one notable submission from a "hybrid" international organisation. The International Union for Conservation of Nature (IUCN) was permitted to submit an *amicus* brief due to its hybrid nature as an international organisation comprising both state and non-

¹⁶ (See page 19-20 of the submission by World's Youth for Climate Justice) World's Youth for Climate Justice (2023) Request for an Advisory Opinion instituted by the Republic of Chile and the Republic of Colombia concerning the "Climate Emergency and Human Rights". https://corteidh.or.cr/sitios/observaciones/OC-32/13_WYCYJ.pdf

¹⁷ Stichting Greenpeace Council includes Greenpeace International, the Center for International Environmental Law (CIEL), the NYU Climate Law Accelerator (CLX), the Union of Concerned Scientists (UCS), and the Open Society Justice Initiative (OSJI).

¹⁸ IACtHR. (15 November 2017). Advisory Opinion OC-23/17: The environment and human rights. Requested by the Republic of Colombia. https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf; IACtHR. (27 November 2023). *Caso Habitantes de La Oroya vs. Perú: Sentencia (Excepciones preliminares, fondo, reparaciones y costas)*, Serie C No. 511. https://www.corteidh.or.cr/docs/casos/articulos/seriec_511_esp.pdf

¹⁹ (See paragraph 188 of the submission by Stichting Greenpeace Council) Stichting Greenpeace Council (2023) Written Observations on the request for an advisory opinion on the climate change emergency and human rights as requested by the states of Colombia and Chile. https://corteidh.or.cr/sitios/observaciones/OC-32/4_CIEL_CLX_otros.pdf

²⁰ (See paragraphs 71-98 of the decision) *Caso Habitantes de La Oroya vs. Perú*.

²¹ Viveros-Uehara, T. (2024, May 16). *La Oroya and Inter-American innovations on the right to a healthy environment*. Verfassungsblog. <https://verfassungsblog.de/la-oroya-and-inter-american-innovations-on-the-right-to-a-healthy-environment/>

²² IACtHR. (29 May 2025). *Opinión Consultiva OC-32/23. La emergencia climática y los derechos humanos* (Serie A No. 32). https://www.corteidh.or.cr/docs/opiniones/seriea_32_esp.pdf

²³ (See paragraphs 269-376 and 298-316 of the advisory opinion) *Ibid*.

state members²⁴. Therefore, while the ICJ has usually remained quite restrictive, it is “the first time that an organisation such as the IUCN was considered under Art. 66 ICJ Statute and authorized to participate in advisory proceedings”²⁵. The IUCN addressed the RtHE in several parts of its submission. Most notably, the *amicus curiae* brief states that, while some States may point to the non-binding nature of this right, it has been argued that the high density of recognition and codification of the RtHE under international law is creating an emerging norm of customary international law²⁶.

While the ICJ Statute and Rules do not explicitly provide for *amicus curiae* participation in advisory opinions, Art. 66(2) of the ICJ Statute allows the Court to invite States or international organisations deemed likely to furnish relevant information to submit written or oral statements²⁷. Importantly, Art. 66(2) does not explicitly restrict the type of organisations that may submit information. Despite this, the ICJ has rarely accepted submissions from NGOs. In 2004, the ICJ issued Practice Direction XII, clarifying that submissions by international NGOs will not be part of the official case file but may be referenced by States or intergovernmental organisations in their statements²⁸. This development highlights the hesitant acknowledgment of the growing importance of the work of NGOs in the international sphere. Thus, while NGO submissions are not formally admitted, IUCN being the exception, they may still play an indirect role in influencing the advisory proceedings’ outcome. In this context, it is argued that NGOs should have greater access to the ICJ, specifically to submit amicus briefs that will be considered by the Court²⁹. According to Rizwanul Islam and Sayere Nazabi Sayem’s article “IUCN’s *amicus curiae* submission in the climate change advisory opinion: Wind of changing practice at the ICJ” from 2025, published in *The International Lawyer*, there are “compelling reasons for NGOs to be able to submit *amici* briefs before the ICJ as (...) advisory opinions affect not only the rights and obligations of states parties to the dispute, but also increasingly the rights and obligations of individuals as states are not always the defenders of the public interest”³⁰.

2.3) ITLOS

In the context of the ITLOS, Art. 138(3) of the Rules of the Tribunal specifies the conditions under which a request for an advisory opinion may be submitted to the Tribunal³¹. It also

²⁴ Islam, M. R., & Sayem, S. N. (2025). IUCN’s amicus curiae submission in the climate change advisory opinion: Wind of changing practice at the ICJ. *The International Lawyer*, 58(1), 1–46. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5207285

²⁵ Garrido Alves, D. (2023, July 27). *The concept of international organization in the practice of the International Court of Justice*. EJIL:Talk! <https://www.ejiltalk.org/the-concept-of-international-organization-in-the-practice-of-the-international-court-of-justice/>

²⁶ International Union for Conservation of Nature (IUCN). (19 March 2024). Obligations of states in respect of climate change (Request for advisory opinion): Written statement of the International Union for Conservation of Nature (IUCN), prepared by the IUCN World Commission on Environmental Law (WCEL). <https://www.icj-cij.org/sites/default/files/case-related/187/187-20240319-wri-02-00-en.pdf>

²⁷ International Court of Justice (ICJ). (1945). Statute of the International Court of Justice. <https://www.icj-cij.org/statute>.

²⁸ Williams, S., Woolaver, H., & Palmer, E. (2020). The Amicus Curiae in International Criminal Justice. <https://ebin.pub/the-amicus-curiae-in-international-criminal-justice-9781509913329-9781509913350-9781509913343.html>. A compilation of NGOs’ submission is available at <https://climatecasechart.com/non-us-case/request-for-an-advisory-opinion-on-the-obligations-of-states-with-respect-to-climate-change/>

²⁹ Supra note 24.

³⁰ Ibid.

³¹ Jus Mundi (2025). Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law; ITLOS Case No. 31. <https://jusmundi.com/en/document/opinion/en->

clarifies that the Tribunal can invite entities to provide written statements. By June 2023, 31 States and 8 intergovernmental organisations had submitted written statements to the ITLOS in the context of its most recent advisory proceedings on climate change³². Ten additional non-state groups, including CSOs, submitted written statements not pursuant to the above-mentioned provisions³³. While these non-state *amici* briefs are available on the ITLOS' website, they are considered as "not part of the case file"³⁴. *Amici* briefs were submitted, for example, by the Center of International Environmental Law (CIEL), Greenpeace, the World Wide Fund for Nature, Oxfam International, as well as a joint submission by UN Special Rapporteurs from the HRC special procedures³⁵. The latter submission elaborated on States' obligations that derive from the RtHE and on the pollution of the marine environment through greenhouse gas emissions³⁶. Nevertheless, the Tribunal's decision of 21 May 2024 failed to recognize (or at least address) the right to a healthy environment in the context of States' climate obligations under the UNCLOS, although the Tribunal did note that climate change poses an existential threat and raises human rights concerns³⁷.

Even though the ITLOS is not a human rights court per se, human rights considerations can be derived from selected provisions under the UNCLOS, including the obligation to ensure effective protection of human life with respect to the activities in the Area (Article 146) and the definition of "pollution of the marine environment" (Article 1(4)) which explicitly encompasses the element of "human health".³⁸ Considering the growing human rights impacts associated with the degradation of the ocean environment, and the potential of recognizing the RtHE as a way to advance ocean governance,³⁹ the Tribunal could have expanded on whether/how the RtHE should be taken into consideration (or at least addressed the importance of upholding this right) by States when fulfilling their obligations under the UNCLOS on the protection of the marine environment from pollution caused by climate change. Additionally, the arguments put forward in favor of the RtHE as an emerging norm of customary international law,⁴⁰ and the references to this right made by some non-state actors in their

[request-for-an-advisory-opinion-submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law-declaration-of-judge-kittichaisaree-tuesday-21st-may-2024](#)

³² Climate Change Litigation Database (2025) on the ITLOS advisory opinion, Case No. 31/2022. Accessed on 27 March 2025. <https://climatecasechart.com/non-us-case/18416/>

³³ Ibid.

³⁴ International Tribunal for the Law of the Sea (ITLOS). (Accessed on 27 March 2025). Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law.

<https://www.itlos.org/en/main/cases/list-of-cases/request-for-an-advisory-opinion-submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law-request-for-advisory-opinion-submitted-to-the-tribunal/>.

³⁵ Ibid.

³⁶ (See paragraph 49.-52. of the submission by UN Special Rapporteurs) UN Special Rapporteurs on Human Rights and Climate Change (Ian Fry; Marcos Orellana; David Boyd). (30 May 2023). Amicus brief submitted to the International Tribunal for the Law of the Sea by the UN Special Rapporteurs on Human Rights & Climate Change, Toxics & Human Rights), and Human Rights & the Environment (30 May 2023).

https://www.itlos.org/fileadmin/itlos/documents/cases/31/written_statements/4/C31-WS-4-1_Amicus_Brief_UN_Special_Rapporteurs.pdf

³⁷ ITLOS. (21 May 2024). Request for an advisory opinion submitted by the Commission of Small Island States on climate change and international law (Advisory Opinion No. 31).

https://itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf.

³⁸ United Nations. (1982). *United Nations Convention on the Law of the Sea*. Articles 1 (4) and 146. https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

³⁹ Bennett, N. J., Morgera, E., & Boyd, D. (2024). The human right to a clean, healthy and sustainable ocean. *npj Ocean Sustainability*, 3(1), 19. <https://doi.org/10.1038/s44183-024-00057-7>.

⁴⁰ Supra note 22; Tigre, M. A. (July 2023). *International recognition of the right to a healthy environment: What is the added value for Latin America and the Caribbean?* Sabin Center for Climate Change Law. *AJIL Unbound*, 117, 184. <https://doi.org/10.1017/aju.2023.28>.

submission to the ITLOS,⁴¹ also support the view that the Tribunal could have at least addressed the importance of the RtHE in the context of the advisory opinion's request.

2.4) AfCHPR

The AfCHPR allows *amicus curiae* participation in advisory proceedings according to Articles 69 and 70 of its Rules of the Court, which also permit submissions from “any other interested entity”⁴². Once admitted, the Court sets a time limit for written submissions⁴³. While the AfCHPR allows this form of participation and has never prevented any NGO fulfilling relevant requirements to intervene, the rate of *amici* interventions by NGOs is sparse⁴⁴. Still, should the Court accept the request and declare it admissible, NGO participation as *amicus curiae* will arguably be extensive, especially considering the high rate of NGO participation observed in the current advisory proceedings before the IACtHR, for instance.

Even though the current advisory opinion request before the AfCHPR mentions the RtHE, it remains to be seen how the Court might address this right in the context of States' obligations in relation to greenhouse gas emissions under Art. 24 of the African Charter on Human and People's Rights⁴⁵, and how non-state participation will inform the decision should the request be declared admissible⁴⁶.

2.5) Potential limitations on NSA participation before international courts

Several authors discussed the potential positive role that NSA participation via *amici curiae* in international courts could play in advisory proceedings⁴⁷. However, there are critical voices highlighting that, while the inclusion of *amicus curiae* briefs by NSAs could enhance the plurality of perspectives before international courts, this also raises significant concerns about procedural efficiency⁴⁸. As international courts gain prominence in addressing broad global challenges such as climate change, the volume of interest from civil society, academia, and other stakeholders is rapidly increasing, which might risk overwhelming courts with submissions that may not be directly relevant to the legal questions posed⁴⁹. A flood of *amicus* briefs could hinder the efficiency of legal proceedings and strain the limited resources of the

⁴¹ Supra note 35.

⁴² D'Amour, B. (2022). Missed Opportunities: Participation of NGOs in Advisory Proceedings of the African Court on Human and Peoples' Rights. *Human Rights Law Review*, Volume 22, Issue 2. <https://academic.oup.com/hrlr/article-abstract/22/2/ngac012/6585400>

⁴³ African Union (Accessed 27 May 2025). Rules of the Court, African Court of Human Rights. <https://www.african-court.org/wpafc/wp-content/uploads/2021/04/Rules-Final-Revised-adopted-Rules-eng-April-2021.pdf>

⁴⁴ Supra note 42.

⁴⁵ Organization of African Unity. (1981). African Charter on Human and Peoples' Rights (Banjul Charter). OAU Doc. CAB/LEG/67/3 rev. 5; 21 I.L.M. 58 (1982). Retrieved from https://www.oas.org/en/sla/dil/docs/African_Charter_Human_Peoples_Rights.pdf

⁴⁶ Tigre, M., & Samuel, S. (2025). Africa's Advisory Opinion Request: Taking Climate Justice to the continent's Highest Court. *Climate Law*, A Sabin Center blog. <https://blogs.law.columbia.edu/climatechange/2025/05/07/africas-advisory-opinion-request-taking-climate-justice-to-the-continents-highest-court/>

⁴⁷ Supra notes 14, 24 and 42.

⁴⁸ Tignino, M., & Prado, R. (6 March 2024). The role of *amicus curiae* in the ITLOS advisory opinion on climate change and international law (Vol. 13, Issue 4). *ESIL Reflections*. <https://esil-sedi.eu/esil-reflection-the-role-of-amicus-curiae-in-the-itlos-advisory-opinion-on-climate-change-and-international-law/>

⁴⁹ Ibid.

courts. Therefore, while procedural openness is essential for democratic legitimacy, it must be balanced with safeguards to ensure that the advisory process remains efficient⁵⁰.

3) The role of non-state actors in shaping the future of the RtHE

The participation of NSAs in international judicial processes, particularly through *amicus curiae* briefs, in the context of the advisory proceedings on climate change, can be an avenue for shaping the interpretation and development of the RtHE by international courts and, thus, contribute to the recognition and advancement of the RtHE under international law. As international courts are increasingly requested to address challenges such as climate change, their openness to diverse sources of expertise could be critical to allow for different perspectives in their final advisory opinion.

The scope of procedural inclusivity varies among international courts, ranging from the relatively open framework of the IACtHR to the more restrictive practice of the ICJ. This blog post has argued that NSAs have contributed not only to the formal recognition of the RtHE at the international level, but also to the ongoing interpretative process, in the framework of the advisory opinions, through their submissions. International courts could benefit from this plurality of perspectives, especially when dealing with rights that are evolving and intrinsically linked to scientific, societal, and environmental considerations. Therefore, international courts could benefit from continuing to cautiously evolve toward greater inclusivity in their procedural *amicus curiae* frameworks.

The advisory proceedings at the IACtHR, ICJ, ITLOS and possibly the AfCHPR are pivotal in shaping the international legal response to climate change. While non-binding, these opinions clarify State obligations and human rights duties such as the RtHE⁵¹. Therefore, the future development of this right has the potential to be shaped not only by how international courts engage with States, but also with the voices of civil society, academia, affected communities and especially the youth as they will bear the future consequences of current decisions related to climate change.

⁵⁰ Ibid.

⁵¹ Gehring, M., and Cordonier Segger, M.-C. (2025). *Climate Justice through International Courts and Tribunals: Advisory Opinions in the International Tribunal on the Law of the Sea (ITLOS), the Inter-American Court of Human Rights (IACtHR) and the International Court of Justice (ICJ)* (University of Cambridge Faculty of Law Research Paper No. 4/2025). SSRN. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5137762