

# CLIMATE LITIGATION AND PUBLIC PARTICIPATION IN SOCIO-ENVIRONMENTAL INTERNATIONAL LAW

## LITIGÂNCIA CLIMÁTICA E PARTICIPAÇÃO CIDADÃ NO DIREITO INTERNACIONAL SOCIOAMBIENTAL

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### Abstract

The XXI century climate crisis has pressured the reconfiguration of international legal systems for environmental protection, favoring models that integrate economic development, sustainability, social well-being, and cross-border and intergenerational responsibility. With climate litigation, a legal space emerges with the challenge of moderating the developments of public participation in environmental governance. In this context, this study investigates whether climate litigation has structured a space for civil society to contribute to the construction of a socio-environmentalist order within regional human rights systems. The research adopts a qualitative and exploratory approach, employing the deductive method and documentary analysis, using the Global Climate Litigation Report 2023 as reference. Findings indicate that the Inter-American Court recognizes states'

### Resumo

*A crise climática do século XXI tem pressionado a reconfiguração dos sistemas jurídicos internacionais na proteção ambiental de maneira a prestigiar modelos que aliem desenvolvimento econômico, sustentabilidade, bem-estar social e responsabilidade transfronteiriça e transgeracional. Por meio da litigância climática, surge um espaço jurídico que tem o desafio de moderar os desdobramentos da participação popular na governança ambiental. À luz disso, este estudo investiga se a litigância climática tem estruturado um espaço para que a sociedade civil contribua para a construção de uma ordem socioambientalista nos sistemas regionais de direitos humanos. A pesquisa adota uma abordagem qualitativa e exploratória, empregando o método dedutivo e análise documental, dispoendo como referência o Global Climate Litigation Report 2023. Os achados indicam que a Corte Interamericana reconhece a responsabilidade transfronteiriça dos Estados, mas mantém barreiras de acesso;*



cross-border responsibility but maintains access barriers; the European Court acknowledges the link between climate and human rights but imposes restrictive procedural requirements; and the African Court lacks significant climate-related litigation. Organized into two sections, the study first examines the evolution of ecological citizenship and then assesses public participation in climate litigation. The conclusion highlights that, despite progress, structural challenges limit the effectiveness of public participation in International Environmental Law.

**Keywords:** climate litigation; Global Climate Litigation Report 2023; International Law; public participation; socio-environmentalism.

*a Corte Europeia reconhece a relação entre clima e direitos humanos, mas impõe exigências processuais restritivas; e a Corte Africana não apresenta litígios climáticos expressivos. Organizado em duas seções, inicialmente o estudo examina a evolução da cidadania ecológica e, seguidamente, avalia a participação popular nos litígios climáticos. Conclui-se que, apesar de avanços, desafios estruturais limitam a efetividade da participação popular no Direito Ambiental Internacional.*

**Palavras-chave:** Direito Internacional; Global Climate Litigation Report 2023; litigância climática; participação popular; socioambientalismo.

## Introduction

The intensification of the 21<sup>st</sup> century climate crisis and its global impacts have led to a reconfiguration of transboundary legal systems in relation to environmental protection. At the international level, climate litigation has emerged as a space capable of moderating and expanding environmental governance via popular participation, by adopting positions that allow individuals or non-state groups to enter international courts with the aim of demanding the implementation of public policies and making polluting agents accountable. In this context of climate emergency, this research starts from the following question: has climate litigation ensured adequate space for popular participation to contribute to the improvement of a socio-environmental order within the scope of international regional courts? This question arises from the need to examine to what extent these courts incorporate the idea of ecological citizenship and enable the expression of civil society in judicial decisions on environmental policies and in the development of a legal paradigm that merges environmental protection with human rights.

Based on this issue, the general objective of this study is to analyze how the Regional Human Rights Courts—the Inter-American Court, the European Court, and the African Court—have structured popular participation in climate litigation, with a view to constructing an International Law based on a socio-environmentalist premise. To this end, this is a qualitative exploratory piece of research based on deductive method, with the analysis of primary and secondary sources and using the 2023 Global Climate Litigation Report as a main reference.

In effect, the work is organized into an introduction, two main sections, and a conclusion. The first section will address the evolution of popular participation in the sense of ecological citizenship and its interaction with climate litigation, by discussing the transition from classical citizenship to a model that recognizes environmental protection as a fundamental right and a shared responsibility. Based on this theoretical framework, the second section will analyze citizen participation in climate litigation based on the cases presented in the 2023 Report, structuring the analysis into three methodological axes related to the decisions of the Inter-American, European, and African courts.

Finally, the research concludes that, despite the tendency to recognize the capacity of climate change to cause violations of human rights and fundamental rights, institutional barriers that hinder full popular participation still exist and, as a consequence, the strengthening of a socio-environmental legal model, especially with regard to the active legitimacy and effectiveness of decisions.

## **1 Popular participation and ecological citizenship in climate justice**

Climate litigation consists of the set of repercussions arising from legal actions brought by individuals, groups, or organizations against entities considered responsible for climate change. It is, therefore, a legal architecture of instruments and standards inserted in domestic or global legal systems designed to monitor, control, and hold States, corporations and private agents accountable for practices or omissions that aggravate the environmental crisis and violate human rights, fundamental rights and commitments assumed under International Law (PNU-MA, 2023). Through this mechanism, the concept of ecological citizenship expands the protection of these rights, by integrating environmental protection as a legal duty shared between individuals, the State, and the productive sector, based on co-responsibility and the need for collective action (Schlosberg, 2007).

In view of this profile, this section aims to develop the concept that the realization of environmental rights, which give a plan of existence to human rights,

depends on the empowerment of the entire society to actively participate in the Law, which materializes climate litigation as a thermometer of this sense of individual, social, and environmental justice. To present this argument, subsection 1.1 will examine the transition from classical citizenship to ecological citizenship mediated by the evolution of Environmental Law. Next, subsection 1.2 will address climate litigation from the perspective of risk society theory (Beck, 1992, 2009). Finally, based on this well-established theoretical framework, subsection 1.3 will establish the methodological parameters for the analysis of popular participation in the International Courts throughout section 2, preceding the conclusion of the study.

In this way, by articulating ecological citizenship, popular participation, and climate litigation, the conceptual and methodological basis is established to analyze how human rights protection systems have dealt with citizen participation in environmental justice and whether this points to the establishment of a socio-environmental legal model.

### 1.1 The evolution of popular participation in environmental rights

The refinement of environmental rights included in human rights is the result of a long process of evolution of citizenship and growing popular participation in environmental protection. If, at the beginning of the 20<sup>th</sup> century, citizenship was conceived essentially in individual, political, and social terms (Marshall, 1967), the intensification of ecological crises and the expansion of scientific knowledge of global environmental impacts demanded new forms of citizen action, incorporating the environment as a good of planetary interest. This transition, which goes from classical citizenship to ecological citizenship, can be seen as the expansion of the active and positive status of individuals in environmental governance, according to the conception of Jellinek (1905), given that the preserved and balanced ecological space gains notoriety as the breath that gives life to human dignity.

That being said, the perception that the environment should be viewed by Law from the perspective of human rights and fundamental rights began to gain strength in the second half of the 20<sup>th</sup> century, driven by social and scientific advances, a fact that resulted in greater concern about the effects of anthropic actions of global environmental movements. In this context, Carson (1962) took the lead in exposing the devastating impacts of the indiscriminate use of pesticides on biodiversity and human health, which would result in a nature without the singing of birds—due to their extinction—hence the title of his book published that year:

“Silent Spring”. For Pompeu and Pompeu (2022), Carson’s work was more than a scientific warning; its publication inaugurated a new form of social mobilization, which gave civil society an unprecedented role in demanding responses from the State and international institutions. According to the authors, this movement paved the way for contemporary ecological citizenship, by demonstrating that environmental degradation was not just a bureaucratic technical problem, but a question of social justice and human rights, whose solution depends on everyone.

As a result, citizenship as a global duty was driven by the creation of normative and political frameworks aimed at environmental protection (Pompeu; Holanda; Pompeu, 2022). In this regard, the authors point out that the catalytic moments of this new environmentalist understanding are the 1968 Tehran Conference, when environmental degradation was recognized as an obstacle to the realization of human rights. This understanding was later established in Principle 1 of the 1972 Stockholm Declaration and expanded by the overwhelming majority of subsequent international instruments. Among them, Agenda 21 stands out, adopted at the 1992 Earth Summit in Rio de Janeiro, which integrated sustainability into public policies and strengthened the participation of the civil society. As a consequence of this normative advancement, the Sustainable Development Goals (SDGs) of the 2030 Agenda established a paradigm in which economic growth is subordinated to environmental preservation as a fundamental principle (Pompeu; Pompeu, 2022).

In the context of the redemocratization of several countries in the second half of the 20<sup>th</sup> century, many constitutions began to incorporate the so-called “opening clauses”, one of the pillars of the constitutionalization of International Law. These provisions, especially present in Latin American constitutions, guarantee the incorporation of international treaties into the domestic legal system at different normative levels—supra-legal, constitutional, and supra-constitutional—each with its own implications. However, this dynamic often triggers a clash between national and international standards, challenging the harmony of the domestic legal system (Lopes; Santos Junior, 2020).

Another point is that, with the advancement of environmental research, the risk associated with the ecological crisis has been recognized as true and become part of the formulation of domestic public policies. To this end, the concept of tipping points (inflection points or points of no return), introduced by Johan Rockström *et al.* (2009), has raised awareness of the global environmental impacts of the Anthropocene by illustrating that changes in ecosystems caused by humanity have the potential to impose continuous and irreversible changes on the Earth’s

climate system. This new guiding axis of global solidarity was theorized by Beck (1992, 2009) under the concept of “risk society”, which highlights how environmental threats transcend national borders and require new forms of social and legal control. In this logic, citizens can no longer be mere spectators, but must take an active role in mitigating the environmental crisis, pressuring environmental aggressors to adopt effective prevention and precautionary measures. This framework of growing social mobilization is directly reflected in the increase in climate litigation in International Law (UNEP, 2023), which has become one of the main stages through which individuals exercise their global ecological citizenship and claim transboundary environmental rights.

The need to integrate social justice and environmental sustainability has also led the debate to formulate new economic models that reevaluate traditional growth paradigms and pave the way for a responsible economy with the sustainability of natural resources, a green or socio-environmental economy. Based on this precept, Raworth (2019) presented the “Donut Economics”, a visual and normative structure that proposes an ideal space for human activities, which is built between two essential limits: the minimum social base, representing the existential minimum for human dignity and the starting point for economic development, and the upper limit that should not be exceeded, such as those established by Rockström *et al.* (2009), which define the boundaries of ecological sustainability that provide stability to the planetary ecosphere. This model is innovative for challenging the traditional logic of economics by technically establishing a limit to the exploitation of natural resources in the name of economic performance, when emphasizing that development must be resilient to the environment, through regenerative practices, and also distributive, with the equitable distribution of natural resources as a corollary of human well-being.

In an ancillary manner, Veiga (2010) understands socio-environmentalism as inserted in legal and political theory, by reflecting that the safeguarding of the environment by law cannot treat the social and economic dimensions in isolation. For the author, ecosystems should not be mere legal assets protected by individual rights, but rather basic axes of human dignity. This principle confers legitimacy to the Rule of Law, human rights, and fundamental rights, to be called upon for protection both at the time of formulating economic, social, cultural, and other public policies, and in the invalidation of institutional arrangements that run counter to this idea and, consequently, are contrary to human dignity. In this sense, socio-environmentalism is not just a theoretical movement, but a normative vector that convinces the legal system to assume concrete commitments in

promoting a sustainable model of development, under penalty of extinguishing life on Earth. Therefore, this model recognizes the biosphere as the basis for prosperity, including the survival of human life and all known life forms.

Thus, the evolution of citizenship to involve environmental protection is more than a political-normative transformation; it is a way in which individual, political, social, and global rights are conceived, enjoyed and, above all, perpetuated through universal solidarity. Following Jellinek (1905), this path emphasizes active status, which reflects the individual's participation in the exercise of political power, and positive status, in which the individual has the right to demand action from the State to ensure their well-being, especially in guaranteeing an intact environment, as occurs in climate litigation. Consequently, if environmental rights previously depended exclusively on State action, in the 21<sup>st</sup> century they are also claimed and established based on popular participation in access to justice. For this reason, this process will be explored in greater depth in the following subsection, with an analysis of climate litigation from the perspective of ecological citizenship within risk society and its role in stimulating institutional responses to the contemporary environmental crisis.

## **1.2 Climate litigation as an expression of ecological citizenship in the risk society**

The contemporary climate crisis requires an urgent adaptation of the legal bases of citizenship, shifting it from a liberal model centered on individual prerogatives to a relational and interdependent paradigm in which environmental justice emerges as a normative imperative. In this regard, Schlosberg (2007) expands the understanding of this form of justice beyond the distributive dimensions—which deal with the equitable allocation of environmental goods and burdens—but incorporates procedural, recognitive, and training fronts into popular participation and access to jurisdictional claims. Based on this, the author explains that the procedural arrangements that characterize this environmental justice refer to the openness to the society's equitable participation in judicial decision-making processes, access to information, state transparency, and inclusion in debates on public policies. Recognitive arrangements, on the other hand, have to do with recognizing and respecting the identities, cultures, and perspectives of the affected groups, especially marginalized communities and traditional peoples that often suffer from environmental impacts. Finally, the training arrangements emphasize that it is necessary to qualify individuals so that

they can claim their environmental rights and influence the social order, providing resources, knowledge, and autonomy for their effective participation. Based on this construct, Schlosberg (2007) argues that the idea of “ecological citizenship” goes beyond the classical conception of rights and duties confined to the state sphere, as it establishes a framework of shared responsibilities between individuals, civil society, the productive sector, and the State.

Thus, citizenship, previously understood only as a legal bond that connects the individual to the State, currently assumes the dimension of an intergenerational commitment, in which the preservation of planetary conditions for future generations emerges as an unavoidable obligation. The judicialization of Climate Law, in turn, has the power to raise the quality of this interrelational and trans-generational dialogue by crossing the paths of affected communities, academic institutions, non-governmental organizations, activists, and also States and state agencies, giving them an active voice in the processes of deliberation on environmental justice. Thus, it mediates and promotes the training of the entire society to act in defense of climate stability and biodiversity conservation (Machado, 2015).

In another implication, if the ecological citizenship of Schlosberg (2007) requalifies democratic participation by attributing it to environmental responsibility, the theory of risk society, formulated by Beck (1992, 2009), offers the necessary structure to understand the reason why this participatory model has become unavoidable in contemporary environmental governance. In this sense, Beck starts from the precept that modernity has intensified ecological degradation and that the environmental risks of the early 21<sup>st</sup> century are transnational, intergenerational dynamics with potentially catastrophic consequences, which the bureaucracy of nation-states, alone, is incapable of controlling. Therefore, unlike previous societies, which, according to Beck, dealt with threats restricted to local territories and contexts, the risk society finds itself faced with an insufficiency of traditional mechanisms of state regulation and representative politics. Thus, the leading role of International Law emerges on the horizon as it has the power to mitigate and contain these systemic risks “that directly affect the quality of human life and can, ultimately, extinguish it, while environmental protection and sustainable development directly relate to the promotion of human dignity”<sup>1</sup> (Portela, 2024, p. 500, free translation).

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1 In the original: “que afetam diretamente a qualidade da vida humana e podem, em última instância, extingui-la, ao passo que a proteção ambiental e o desenvolvimento sustentável têm a ver diretamente com a promoção da dignidade humana”.

Within this reality, the judicialization of climate is a natural consequence of ecological citizenship, insofar as it channels civic engagement to an institutional sphere capable of imposing legal obligations beyond borders and state sovereignty itself (Mazzuoli, 2025). In this reasoning, Peel and Osofsky (2015) echo this when explaining that taking environmental disputes to the Judiciary puts pressure on the actors responsible for the climate crisis and even reconfigures the Law itself. Thus, for the authors, the legal system assumes a structuring responsibility in global environmental governance, becoming a legitimate instrument of resistance against regulatory omission and state negligence.

In view of the above, popular participation in climate litigation provides a fertile field for the notion of environmental justice and becomes a vehicle for ecological citizenship. It is from this premise that it becomes important to investigate how this citizenship is conceived in the environmental justice of the Regional Human Rights Courts. Nonetheless, measuring popular participation requires formulation of a methodological strategy through practical criteria. Thus, the scope of the research is to establish which criteria will be used for evaluating social participation in climate litigation, and then be able to reach conclusions about the effectiveness of this phenomenon in the construction of citizen and sustainable environmental governance at the supranational level, as seen in the socio-environmental matrix.

### 1.3 Measuring popular participation in climate litigation

Measuring popular participation in international climate litigation requires a methodological approach that simultaneously captures the complexity of interactions between civil society and international courts and is in line with the scope of this work. Therefore, a qualitative exploratory approach is adopted, associated with the deductive method and the documentary analysis technique, applied to primary and secondary sources, which is justified by the need to critically interpret the judicialization of climate not only as a normative phenomenon, but as a mechanism for legal, social, and political transformation (Bello; Engelmann, 2015). The research seeks to analyze how climate litigation in regional courts of international justice—the Inter-American Court, the European Court, and the African Court—has deliberated popular participation in the construction of a socio-environmental paradigm.

The choice to exclusively analyze the regional system of human rights protection is justified by its expanded access model, which allows climate litigation by

non-state actors. Unlike the global United Nations system, in which only States have active legitimacy to initiate proceedings before the International Court of Justice (ICJ)—except in some specific situations in relation to UN committees—regional systems provide individuals, communities, non-governmental organizations, and other civil society entities with a broader network of manifestation channels (Piovesan, 2024).

Based on this premise, the research will use international occurrences in regional systems as an empirical reference, as reported in the *Global Climate Litigation Report: 2023 Status Review (GCLR 23)*. This document was selected for representing the most up-to-date global survey on the judicialization of the climate crisis at the time of completion of this work. Produced by the United Nations Environment Programme (UNEP), the report, in addition to organizing the most relevant climate disputes on the international scene, also constitutes a solid basis for offering an insight into how Regional Human Rights Courts have addressed social demands for climate justice (PNUMA, 2023).

It should be noted that there is no intention to quantify popular participation, but to analyze qualitatively its effects on climate disputes in regional systems. In fact, only sentenced cases will be considered to avoid a speculative bias in the research. To this end, three analytical axes were established, drawn from the perception of the theoretical framework and applicable to the analysis of the specific cases reported in the *GCLR 2023* regarding the degrees of: (1) openness to active legitimacy; (2) plurality of the judicial debate, and (3) regulatory and social impact of the decision.

The first axis will analyze the scope of climate litigation by examining the active party of the actions. This examination will reveal not only the actor that brings legal action to the Court, but also the origin of these actions, whether they come from individuals, collectives, non-governmental organizations, or States. The objective is to identify whether there is permeability for the ideal of popular participation in ecological citizenship.

The second axis will evaluate the otherness of the debate, beyond the parties, by analyzing the intervention of third parties from civil society throughout the judicial process. This parameter is based on the concept of inclusive environmental deliberation, according to which the environmental judicial process must operate as an effective channel for collective participation in formulating legal responses for those affected by the environmental crisis (Dinnebier; Morato, 2017).

The third and final axis will address the regulatory and social impact of decisions, by critically considering the concrete effects of these judgments on the

formulation of environmental policies that are in harmony with the principle of socio-environmentalism. In other words, one will analyze whether judicial decisions bring about structural transformations—whether they are aimed at improving or reversing the theoretical paradigm—or whether merely reinforce the regulatory status quo. In this way, this axis will adopt as a principle the understanding that society’s participation in climate litigation acts as an instrument of control in the face of the State’s inertia in relation to environmental public policies, as highlighted by Peel and Osofsky (2015).

Finally, based on the results obtained in the analysis of each of these axes throughout the cases reported in each regional Court, it will be possible to conclude whether the deliberative space of the Regional Human Rights System moves towards environmental protection in a conception of social and economic sustainability, as seen in the socio-environmentalist archetype. With these criteria defined, the investigation now moves on to the analysis of the disputes reported in GCLR 23.

## **2 Popular participation in climate litigation: analysis of regional human rights systems**

This section analyzes how the Regional Human Rights Courts have incorporated popular participation in climate litigation, using the cases reported in GCLR 23 as a reference. The aim is to assess, through popular participation, whether these jurisdictional bodies have been creating a socio-environmental paradigm in their territories.

The preliminary analysis of the report identified 12 cases in the European Court of Human Rights (ECHR), two in the Inter-American Court of Human Rights (I/AC H.R.) and none in the African Court on Human and Peoples’ Rights (AfCHPR)—a situation that will be critically analyzed. Therefore, despite the methodology established in section 1.3, one selected only cases that already have decisions on the merits handed down by the respective regional courts, excluding those still in progress, which will be detailed in the upcoming subsections.

### **2.1 Environmental judicialization in the Inter-American Court**

The I/AC H.R. is part of the Inter-American System for the Protection of Human Rights (IAHRS) and acts as the judicial body responsible for guaranteeing the rights provided for in the 1969 American Convention on Human Rights (Pact

of San José de Costa Rica) and in the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador). The Court exercises dual jurisdiction—advisory and contentious—in order to fulfill its duties (Mazzuoli, 2021; Piovesan, 2024).

In exercising its advisory jurisdiction, the Court is responsible for interpreting the American Convention on Human Rights (ACHR) and the Protocol of San Salvador, issuing opinions that guide the application of these instruments. On the other hand, within the scope of its contentious jurisdiction, the Court judges cases of specific human rights violations, with the possibility of acquitting or holding States liable for any failure to comply with international standards, in a final and unappealable decisions. However, the Court's contentious jurisdiction is not automatically applicable to all States parties to the ACHR. Submission to its contentious jurisdiction requires an explicit declaration of adherence to its Art. 62. In contrast, the consultative jurisdiction has a broad scope, being binding on all member States of the Organization of American States (OAS) that have ratified the ACHR, regardless of their specific adherence to the Court's contentious jurisdiction (Mazzuoli, 2021; Piovesan, 2024).

Unlike the tradition of national courts, individuals, and civil society organizations do not have standing to access the Court's jurisdiction directly. This limitation arises from Art. 61 of the Convention, which exclusively grants the States Parties and the I/AC H.R. the prerogative to submit cases to the Court. The Commission, therefore, operates as a mandatory preliminary instance for the admissibility of complaints. Nevertheless, the I/AC H.R. is not a formal procedural party in disputes, but acts as a procedural substitute, representing, on its own behalf, the victims' interests. In addition, Art. 61 also provides for the possibility of a State Party submitting another State to the jurisdiction of the Court, provided that the defendant State has previously recognized jurisdiction for interstate disputes, and the requirement of reciprocity may or may not be established. Although there is a limitation on direct access by individuals, progress was made in 2000, with the amendment of the I/AC H.R.'s Rules of Procedure, which began to guarantee victims and their representatives the right to demonstrate and present evidence in the proceedings, thus expanding their participation in the search for justice (Mazzuoli, 2021).

Regarding the cases reported in GCLR 23, two actions are evident in the IAHRs. The first is Colombia's request in 2017 for the issuance of Advisory Opinion OC-23/17, in which the Court is urged to interpret Articles 1, 4 and 5 of the ACHR in light of climate change. The second refers to the petition presented to

the I/A C H.R. in 2021 by a group of Haitian children, who reported violations of their rights in Cité Soleil, Haiti, as a result of the environmental and health impacts aggravated by the climate crisis (PNUMA, 2023).

Still regarding the second case, it is an example of how socio-environmental vulnerability, if ignored, can intensify inequalities and severely compromise fundamental rights, especially in communities most exposed to environmental degradation. In the action filed, the petitioners argue that poor waste management in Cité Soleil, aggravated by extreme weather events, results in multiple human rights violations. These factors generate flooding, sanitation problems, and the accumulation of pollutants, which prevent, for example, children from going to places such as their schools. Nevertheless, since the petition has not yet been formally admitted by the I/A C H.R., this study will focus its analysis on Advisory Opinion OC-23/17, whose impact has already been crystallized in the IAHRs (PNUMA, 2023).

### *2.1.1 Examination of popular participation in the Inter-American Court*

The analysis of the first diagnostic axis, which investigates the scope of active legitimacy in the I/A C H.R, points to a structural limitation in access to inter-American jurisdiction in environmental matters. In this regard, Advisory Opinion OC-23/17, formulated exclusively by Colombia, may raise questions about the lack of regional environmental engagement by Caribbean States, in spite of all facing environmental challenges arising from the climate crisis. This scenario indicates that environmental litigation in the IAHRs still depends on the isolated initiative of a few countries, without a coordinated mobilization of the States Parties to build a common environmental governance. The aforementioned situation becomes even more worrying given the lack of possibility of direct petitions being filed by individuals and civil society organizations, delegating to national governments and the Inter-American Commission on Human Rights (IACHR) the power to determine which environmental issues are brought to the Court's attention. It should be noted that the composition of the IACHR occurs through an election held by the General Assembly of the Organization of American States, in which seven members are chosen from a list indicated by the member States' governments (OAS, 1969). This scenario presents the risk of weakening the Court's autonomy due to political interference in the admissibility judgment. Although the reform of the Court's Rules of Procedure, carried out in 2000, guaranteed victims and their representatives the right to express their

views throughout the proceedings, such participation remains restricted, without including the prerogative to directly submit cases to the contentious jurisdiction (Mazzuoli, 2021). By extension, this design of active legitimacy of the IAHRs is capable of containing the development of a socio-environmental model in the region, keeping it subordinate to institutional dynamics that still require greater integration and a more solid collective commitment.

In the second axis, referring to the plurality of the judicial debate, it is noted that, although there is no popular participation in the active pole of the demand, there was extensive intervention by civil society and academia in the discussion phase of consultation. The I/A C H.R. received 52 contributions from third parties, from four member States and two OAS bodies, one international organization, nine non-governmental organizations, 10 universities and academic centers, and 26 independent individuals, such as professors, university students, environmental researchers, and activists. Openness to debate gives the consultation the status of an instrument that promotes a legitimate normative interpretation, resulting from the consensus provided by broad popular participation, being therefore compatible with the democratic nature of litigation and in line with the concept of inclusive environmental deliberation (Dinnebier; Morato, 2017).

The third axis, focused on the regulatory and social impact of the decision, highlights that OC-23/17 represented a paradigmatic advance in the recognition of environmental protection as a human right within the scope of the IAHRs. By interpreting that States can be held liable for transboundary environmental damage whenever there is a failure to prevent and take precautions regarding the activities that cause it—including the emission of pollutants with climate impact—the Court outlined new perspectives for environmental governance in the region. More than assigning responsibility, the opinion gave precision to the scope of state obligations by imposing specific duties, such as regulation, monitoring, and conducting environmental impact studies, in addition to implementing the precautionary principle. Another highlight is that the decision reinforced the importance of international cooperation by emphasizing that States have a duty to negotiate in good faith with potentially affected countries and to act in a coordinated manner in formulating these preventive control measures. Eventually, the Court also understood that the rights of access to information, public participation, and environmental justice cannot be mitigated.

Although non-binding (OEA, 1969), an advisory opinion carries strong political influence, as it is seen as an anticipation of the case law of the I/A C H.R., which in the specific case under analysis has a high chance of being used as an

interpretative reference for climate disputes. Notably, the opinion understands human dignity as an expansive normative basis to overcome the express absence of Environmental Law in the ACHR and the Protocol of San Salvador, which Mazzuoli (2021, p. 925, free translation) called “rebound protection”<sup>2</sup>. Thus, the Court reaffirmed the centrality of the environment in the effectiveness of human rights and provided a strong normative basis for climate protection in the IAHRs, which can be understood as an opinion that, in general terms, is quite convergent with socio-environmentalism.

In view of the above, the analysis of Advisory Opinion OC-23/17 in light of the three methodological axes revealed a framework with socio-environmentalist tendencies based on popular participation in climate litigation in the IAHRs. Although the scope of the litigation is limited, given that the initiative has come exclusively from a State, without direct civil society’s involvement in the active pole of the lawsuit, the plurality of the judicial debate compensated for this limitation with the contribution of several international, institutional, academic, and civil society organizations. Finally, the regulatory and social impact of the decision materialized the interconnection between the environment and human rights, establishing clear lines for state responsibility in the face of climate litigation. Thus, although non-binding, OC-23/17 outlines interpretative parameters that structure the socio-environmental governance model.

## 2.2 Environmental judicialization in the European Court: climate policies and human rights

The European Court of Human Rights (ECtHR) acts as a judicial body of the Council of Europe, and is responsible for the interpretation and application of the European Convention on Human Rights, adopted in 1950 (Conselho da Europa, 2025). Its jurisdiction is strictly contentious, meaning that the Court does not issue advisory opinions on abstract questions of law, except when formally requested by the Committee of Ministers of the Council of Europe to interpret provisions of the Convention, as stipulated in Art. 47 of the ECHR.

As such, the Court’s procedural mechanism has a different structure, especially after the abolition of its Commission, which previously handled the admission of applications. The Court currently admits applications from both individuals and States, provided that the admissibility requirements set out in the Convention are met. In this regard, the main admissibility requirement for individual

<sup>2</sup> In the original: “proteção ricochete”.

applications before the ECHR is the status of direct victim, as set out in Art. 34. This means that, for an individual or entity to have standing to bring an action before the Court, it is essential to demonstrate that they were directly affected by a violation of the provisions of the Convention or its protocols (Mazzuoli, 2021; Piovesan, 2024).

In consultation with GCLR 23, seven of the 12 climate cases analyzed by the ECHR were declared inadmissible. Among these inadmissible cases, the following stand out: *Duarte Agostinho and Others v. Portugal and 32 Other States* (European Court of Human Rights, 2024a), and *Carême v. France* (European Court of Human Rights, 2024b), in which the applicants claimed to have suffered harm due to the defendant States' failure to comply with the 2015 Paris Agreement. In *Humane Being v. United Kingdom* and *Plan B. Earth and Others v. United Kingdom*, the claims focused on the transboundary damage caused by the United Kingdom, including environmental impacts in the Amazon basin (PNUMA, 2023).

In the ongoing case, three additional climate actions that were preliminarily accepted for analysis by the Court remain pending. These include the *De Conto v. Italy and 32 Other States* case and *Soubeste and Others v. Austria and 11 Other States* case, which claim civil compensation for climate damage attributed to the defendant States. Furthermore, in the *Greenpeace Nordic and Others v. Norway* case, it is argued that the Norwegian government, by authorizing new licenses for oil and gas exploitation in the Arctic, would have breached the duty to adopt preventive measures to mitigate the risks arising from the climate crisis (PNUMA, 2023).

With regard to the disputes judged, there are two cases in which the Court has ruled definitively, although only one of them addressed the merits of the climate issue. In the *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* case, elderly women over 70 years of age requested compensation from the ECHR for climate damage allegedly caused by the Swiss State, and in the *Carême v. France* case, the ECHR held that, because the plaintiff had moved from France to Brussels, away from the place where they claimed to have suffered environmental damage, their active legitimacy did not subsist (European Court of Human Rights, 2024b).

Thus, based on the method adopted in this study, the detailed analysis of climate litigation in the European system will focus on the *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* case, given that it is the only precedent in which the European Court substantially addressed the relationship between climate change and human rights. Nevertheless, the other cases will be duly contextualized within the scope of the analysis of popular participation.

### 2.2.1 Examination of popular participation in the Inter-American Court

The first analytical axis assesses the openness to active legitimacy, that is, the diversity of the active pole and its representativeness in environmental protection. In this sense, the European Court adopted a very strict interpretation of the concept of victim; of the 12 climate lawsuits filed, seven were declared inadmissible—which corresponds to 58% of the cases analyzed by the Court. This percentage is mainly due to the strict interpretation of the concept of victim, as provided for in Art. 34 of the ECHR, and the requirement of exhaustion of domestic remedies, under the terms of Art. 35 of the Convention. This procedural barrier puts an end to ecological citizenship (Schlosberg, 2007), as it reduces the interpretation of victim due to climate change to a singularist perspective, without any mention of the systemic impacts of environmental degradation on fundamental rights.

In light of the facts, the application of this formal barrier is very worrying, as observed in the *Carême v. France* case, since the geographic location was the epicenter of the defeat. Similarly, in the *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* case, it was noted that the lawsuit was filed by a Swiss association composed mainly of women over 70. The central argument presented consisted of the claim that the Swiss State's inability to implement effective climate policies compromised its members' health, particularly during episodes of extreme heat waves. As proof of victim status, four elderly women linked to the organization presented medical reports attesting to how their health conditions, which included cardiovascular and respiratory diseases and episodes of exhaustion, were exacerbated by climate change, which caused them to overcome the admissibility judgment. In this context, the Court's stance is excessively restrictive when assessing a climate dispute, which hinders popular participation and contrasts with the idea of a risk society and the preventive function of environmental justice (Beck, 1992, 2009; Veiga, 2010).

Thus, the fundamental guarantee of due process, which for Dinnebieer and Morato (2017) should act as an instrument for the protection of fundamental rights, imposes obstacles on vulnerable groups, such as the elderly, or representatives of civil society in the defense of diffuse and transgenerational interests. This circumstance compromises the development of International Law as an effective mechanism for climate governance in the European context.

The second methodological axis, referring to the plurality of the judicial debate, reveals that, although direct popular participation in the active pole suffers severe restrictions, the discussion phase of the case before the Grand Chamber of

the ECHR received a wide diversity of third parties in the *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* case. In total, 46 other interested parties formally intervened, in addition to the parties, including eight governments (Austria, Ireland, Italy, Latvia, Norway, Portugal, Romania, and Slovakia), four UN bodies (the Office of the High Commissioner for Human Rights, the Special Rapporteurs on human rights and the environment, and the Independent Commissioner on the rights of older persons), as well as 16 civil society organizations, including NGOs, technical associations, and 18 professors and researchers. Although it was found that, in the investigation related to the I/A C H.R., there was a more significant participation of petitioners classified as individuals from civil society, there is no evidence that the European Court restricted the action of these individuals in the case analyzed (European Court of Human Rights, 2024c). From this aspect, it is possible to conceive that the ECHR allows for an inclusive debate, suitable for the construction of a socio-environmental legal order.

The third diagnostic axis examines the regulatory and social impacts of the European Court's decision in the *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* case, by analyzing its influence on environmental governance and the consolidation of climate rights in the European regional system of human rights protection. The decision set a historic precedent by recognizing, for the first time, that Art. 8 of the European Convention—which protects the right to private and family life—encompasses the right to effective protection against the adverse effects of climate change (PNUMA, 2023). In doing so, the Court established that States have a positive duty to adopt regulatory measures to mitigate climate impacts that affect quality of life and human dignity. Although it established relevant guidelines, the Court did not determine specific responsibilities for the State, limiting itself to delegating to the Committee of Ministers of the Council of Europe the task of supervising compliance with the decision (European Court of Human Rights, 2024c). This orientation reinforces the more restrained stance of the European Court in relation to the I/A C H.R., by avoiding direct interventions in the formulation of domestic policies. In any case, the decision is of great relevance to international environmental law, by endorsing that the environment, as in the case of climate, can affect fundamental rights.

Therefore, climate judicialization in the European Court advances in the protection of human rights and the environment, but it faces formal barriers that restrict its scope. On the one hand, the strict interpretation of the concept of victim and the procedural requirements substantially limit the access of vulnerable individuals and groups to European jurisdiction, which limits ecological

citizenship and compromises the construction of an inclusive and preventive environmental law in the socio-environmentalist model. On the other hand, the recognition of the relationship between climate change and fundamental rights in the *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* case has a major impact on regional environmental governance. Thus, although it now carries an important jurisprudential paradigm, popular participation in climate litigation in the European Court still faces structural challenges to adapt to socio-environmentalism, as it oscillates between a robust environmental justice decision and self-restraint that sets institutional limits on its actions and hinders the evolution of citizenship.

### 2.3 Environmental judicialization in the African Court

The African Commission on Human and Peoples' Rights (AfCHPR) is the main protection mechanism in the African Regional Human Rights System, with its contentious and advisory powers established in Art. 45, Paragraph 1 to 4, of the 1986 African Charter on Human and Peoples' Rights (also known as the Banjul Charter). Although the Banjul Charter does not expressly indicate the provision for individual petitions to the Commission, the consolidated practice of the body has been to admit such complaints, pointed out by Piovesan (2024) as the most frequently used channel for the protection of fundamental rights in the region. The late creation of the AfCHPR, established by the 1998 Protocol and implemented only in 2004, reflects a different trajectory from that followed by the inter-American and European systems, whose respective courts were conceived since the founding treaties. This gap has delayed the institutional development of human rights protection on the African continent, compromising its applicability at the international level (Mazzuoli, 2021; Piovesan, 2019, 2024).

This institutional structure, therefore, does not justify the lack of climate litigation in the African Court reported in GCLR 23, but it may reveal deeper challenges. Furthermore, it is unreasonable to propose that such a gap would be sustained by the absence of severe environmental impacts in the region, or by formal obstacles to active legitimacy, as already anticipated. In fact, what is observed under the hypothesis is a scenario of structural obstacles, marked by the political fragmentation of the continent and the socioeconomic diversity of the States that comprise it. Taking this into account, the vulnerability of judicial independence, the scarcity of institutional resources, the insufficiency of adequate protection mechanisms, and the low adherence of the States Parties to the Court's

decisions are obstacles to the advancement of climate litigation at the regional level. Added to this is the preponderance of humanitarian conflicts and socioeconomic disputes of an emergency nature, which often redirect the legal priorities of African countries and hinder the rise of environmental issues in regional litigation (Piovesan, 2019).

Although the African system lacks climate disputes registered in the GCLR 23, it is pertinent to mention the only reported case of judicialization in sub-regional instances, namely: *Center for Food and Adequate Living Rights et al. v. Tanzania and Uganda* (PNUMA, 2023). Considering this point, the grounds for the action may corroborate the hypothesis presented here, given that it is a controversy related to the construction of an oil pipeline between these countries. On the one hand, one alleges that the project contravenes climate commitments and would cause irreversible environmental and social damage. In addition, the action raises concerns about the excessive informality in the approval of the project by the authorities, as highlighted in the aforementioned case. Thus, the absence of environmental litigation within the regional system does not necessarily imply inertia on the part of African civil society in the face of the climate crisis. On the contrary, it may highlight the need to improve the institutional mechanisms that support international environmental governance on the continent.

### Final considerations

This study aimed to investigate how Regional Human Rights Courts structure popular participation in the climate debate and whether their decisions pave the way for a socio-environmentalist paradigm. To this end, the research adopted three analytical axes: openness to active legitimacy, plurality of judicial debate, and regulatory and social impact of decisions, taking the international cases reported in the GCLR 2023 as a reference.

With this in mind, the investigation exposed both regulatory advances in the inter-American and European systems and limitations in the treatment of popular participation in climate litigation by all jurisdictional instances. Within the scope of the IAHRs, through Advisory Opinion no. 23/17, the I/A C H.R. ratified the expansive interpretation of human dignity as a basis for environmental protection and imposed an understanding on the ACHR that confirms the transboundary responsibility of States, which represents notable progress for the efficiency of climate litigation in the international context. Nevertheless, the consolidation of the concept of ecological citizenship faces restrictions related to active legitimacy,

which remains centralized in the IACHR, which limits popular participation and establishes a model of procedural substitution, in which civil society is prevented from directly accessing international jurisdiction. In the European context, although the openness to individual petitions suggests, a priori, a more accessible scenario, the requirement of victim status, provided for in Art. 34 of the ECHR, made most of the climate actions analyzed unfeasible. In practice, this reveals an obstacle to access to environmental justice.

Despite the challenges related to the active legitimacy of the two Courts, one observed, throughout the procedural instructions analyzed, both in the I/A C H.R. and in the ECHR, an environment characterized by dialogue and inclusion through the contribution of interested third parties. This situation had broad participation by States, international public bodies, non-governmental organizations, academia members, activists, civil society entities and even individuals, which indicates a favorable scenario to the consolidation of legitimacy and the effective implementation of decisions by States, essential elements for the construction of a socio-environmentalist paradigm, in accordance with the ideas of Beck (1992, 2009) and Schlosberg (2007).

In the context of regulatory impact, it is worth highlighting the pioneering nature of Advisory Opinion No. 23/17 of the I/A C H.R., which recognizes human dignity as an essential basis for environmental protection. The recognition in question represents a historic milestone for climate litigation in the Inter-American system, by integrating it into the first part of the ACHR, dedicated to civil and political rights, in contrast to the second part, which deals with social rights and, according to Lopes (2024), presents less room for litigation, with the exception of the rights to education and freedom of association, regulated by the Protocol of San Salvador. Moreover, the opinion analyzed incorporated the possibility of cross-border environmental liability of States, an indisputably necessary measure, but capable of generating unpredictable consequences for domestic environmental regulation in the region. In this sense, it is essential to examine the argumentative basis used by the I/A C H.R., which has been the target of criticism associated with alleged judicial activism (Lopes, 2024).

In the European context, the *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* case also represents a regional milestone by establishing that state inaction in the face of climate change may constitute violations of fundamental rights, contributing greatly to the strengthening of a society guided by socio-environmental principles. Furthermore, the binding nature of this decision, in contrast to the merely advisory nature of Advisory Opinion No. 23/17 in the IAHRs,

which is not binding, reinforces its potential solidification as a robust precedent within the jurisdiction of the European Court.

On the other hand, the assessment regarding the African Court proved to be limited due to the lack of empirical data. However, the analysis directed at this scarcity of climate disputes raises a hypothetical problem regarding, to a lesser extent, issues related to procedural barriers and, to a greater extent, challenges of a structural nature of International Law itself, such as the insufficiency of institutional resources, the fragility of enforcement mechanisms and the limited adherence of States parties to decisions issued by the Court. This hypothesis, if confirmed, will expose historical obstacles that restrict the advancement of climate litigation at the African regional level.

In view of this analytical context, it is possible to outline two paths for improving the socio-environmental debate in the Regional Human Rights Courts. The first refers to the critical review of active legitimacy, to ensure greater access to individuals with the status of victims of systemic climate change, through the action of their own procedural representatives, without intermediaries. With this measure, one expects that there will be less political influence in the admissibility judgment and greater openness to popular participation, which will have positive effects on environmental justice. In addition, it is expected that the cause of action and requests will be formulated with greater autonomy of the parties when drawing up the initial petitions.

The second improvement concerns the urgent need for coordination between regional systems in order to establish precedents among courts regarding matters of global concern, such as climate change—which, in essence, is not far off, considering the recognition of environmental protection based on individual rights in the Inter-American and European Courts mentioned above. Given the transnational dimension of certain environmental crises, courts lose effectiveness when adopting fragmented interpretations on such issues, but they should seek alignment in defining minimum standards of environmental protection.

Finally, through these reflections, this study aims to contribute to the improvement of socio-environmental International Law in climate litigation. In this way, the right to a balanced environment can be definitively conceived as an inalienable expression of human dignity, which allows for a Judiciary that is open to ecological citizenship, with independence and commitment to environmental governance, thus ensuring that ecological citizenship transcends the discursive plane and asserts itself as an effective instrument of transformation and environmental justice.

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