INTER-AMERICAN COURT OF HUMAN RIGHTS

Advisory Opinion on Climate Emergency and Human Rights

Amicus brief submitted by the UN Special Rapporteurs on Toxics and Human Rights (Marcos Orellana), Human Rights and the Environment (David Boyd), and the Right to Development (Surya Deva)

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I. EXECUTIVE SUMMARY

1. The UN Special Rapporteurs on Toxics and Human Rights (Marcos Orellana), Human Rights and the Environment (David Boyd), and the Right to Development (Surya Deva) (together, the "**UN Rapporteurs**") submit this *amicus* brief to the Inter-American Court of Human Rights (the "**Court**") in the proceedings concerning the Advisory Opinion Request made by Chile and Colombia regarding obligations of States under the American Convention on Human Rights and international law in the face of the climate emergency (the "**Advisory Opinion Request**").

2. As set out in Section II, the UN Rapporteurs are uniquely qualified to advise the Court on the issues raised in the Advisory Opinion Request. The UN Rapporteurs have written extensively about the climate emergency and other environmental challenges, emphasizing their connection with human rights.[1] The UN Rapporteurs respectfully request that the Court accept this *amicus* submission into the case record.

3. The Intergovernmental Panel on Climate Change (the "**IPCC**") has been unequivocal that the climate emergency threatens all regions of the world. As discussed in Section III, the climate emergency impacts the Americas and the Caribbean in critical ways. The best available scientific evidence indicates that the existential threat posed to humankind by the climate emergency will only increase and worsen unless urgent, ambitious, and effective interventions are made by governments all over the world that cooperate and coordinate their efforts together.

4. The American Convention on Human Rights (the "**Convention**"), and international human rights law more generally, requires States to respect, protect, and fulfill the human rights of potentially affected individuals and communities as they prevent, mitigate, adapt to, and remedy the effects of the climate emergency. As discussed in Section IV, major organs of the Inter-American human rights system have already found that the climate emergency threatens and imperils Convention rights. Additionally, United Nations human rights bodies such as the Human Rights Council, the Committee on Economic, Social and Cultural Rights, the Human

[1] *See, e.g.*, Marcos Orellana (Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes), *The toxic impacts of some proposed climate change solutions*, U.N. Doc. A/HRC/54/25 (July 13, 2023); David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment) and Marcos Orellana (Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes), *The right to a clean, healthy and sustainable environment: non-toxic environment*, U.N. Doc. A/HRC/49/53 (Jan. 12, 2022); David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), *Human rights and the global water crisis; water pollution, water scarcity and water-related disasters*, U.N. Doc. A/HRC/46/28 (Jan. 19, 2021); David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: A Safe Climate*, U.N. Doc. A/74/161 (July 15, 2019); Surya Deva (Special Rapporteur on the right to development), *Reinvigorating the right to development: A vision for the future*, U.N. Doc. A/HRC/54/27 (Aug. 4, 2023,) and *Role of business in realizing the right to development*, U.N. Doc. A/78/160 (July 12, 2023).

Rights Committee, and the Committee on the Rights of the Child have recognized the adverse impact of the climate emergency on human rights.

5. As discussed in Section IV.e, the climate emergency is already preventing the full enjoyment of a range of human rights for certain individuals, communities, and populations, including, *inter alia*, the rights to: life; health, food, and water sanitation; a clean, healthy, and sustainable environment; self-determination of vulnerable populations, in particular Small Island Developing States; home, privacy, and family life; and development. Additionally, the best available science makes clear that certain populations and/or States will disproportionately experience the adverse impacts of the climate emergency on the enjoyment of human rights and that these adverse impacts will only worsen over time.

6. Fundamentally, States should respond to such harms, regardless of the magnitude of their contributions to the climate emergency. States should reduce ongoing greenhouse gas emissions. Additionally, some States may be responsible for loss and damage caused by historic and ongoing emissions.

7. Certain governing principles apply to identify the scope of States' obligations and the manner in which States should fulfill those obligations. Section V.a discusses these applicable governing principles, such as:

   (i) international cooperation among States, which includes notification, consultation, and exchange of information regarding foreseeable risk of serious harm to human rights resulting from greenhouse gas emissions;

   (ii) prevention of harm and, relatedly, application of the precautionary principle to activities that may result in greenhouse gas emissions;

   (iii) the polluter pays principle, whereby the party responsible for the harm should bear the cost of addressing the harm caused;

   (iv) application of non-regression, which prohibits States from allowing or pursuing actions that roll back climate actions or have the net effect of diminishing the legal protection of the environment;

   (v) equality and non-discrimination in the respect, protection, and fulfillment of human rights; and

   (vi) use of the best available scientific knowledge in the application of State action.

8. The scope of certain State obligations will be informed by each State's available resources and historic and ongoing contributions to the climate emergency. Applicable principles regarding these differentiated responsibilities of States include: common but differentiated responsibilities and respective capabilities; highest possible ambition; maximum available resources; and progressive realization of climate action goals.

9. The rights discussed in Section IV and the principles governing State obligations regarding the foreseeable risk of serious harm to those rights discussed in Section V answer the questions raised in the Advisory Opinion Request. Section V.b provides supplementary responses to some of the specific questions raised in Parts IV.A through IV.F of the Advisory Opinion Request. Specifically, States should:

(i) ensure that all laws, policies, and actions are consistent with Convention rights and the duty to prevent harm. Such duties extend beyond notification and include comprehensive duties of implementation and enforcement.

(ii) act consistently with their obligations concerning the right to life, including the duty to protect, respect and fulfill the right and its necessary conditions where there is a foreseeable risk that the right may be threatened. Such actions should be consistent with the best available science concerning the climate emergency, including its causes and impacts.

(iii) act consistently with the principles of intergenerational equity and differentiated obligations owed toward children and young people.

(iv) respect, protect, and fulfill procedural rights concerning access to information; participation in environmental decision-making; and access to justice and redress.

(v) respect, protect, and fulfill the rights of territorial, environmental, and climate defenders, adopting an intersectional approach which recognizes the particular vulnerabilities of children, women, Indigenous Peoples, rural populations, and Afro-descendent communities.

(vi) pursue international and regional cooperation and assistance, consistent with the principle of common but differentiated responsibilities and respective capabilities.

10. Section VI identifies the specific measures that States should consider implementing to fulfill their human rights obligations in the context of the climate emergency. Specifically, States should:

(i) phase out the burning of fossil fuels in line with the just transition principle;

(ii) increase renewable energy production in a responsible manner;

(iii) secure the supply of minerals critical to the energy transition in a manner that protects and respects human rights of potentially affected communities;

(iv) avoid over-reliance on carbon removal technologies, and ensure that human rights of potentially affected communities are respected in the application of such technologies;

(v) ensure the protection of human rights in any implementation of carbon markets programs and forestry credits;

(vi) preserve their natural carbon mitigation systems;

(vii) reduce and end deforestation;

(viii) increase their levels of climate financing, including climate adaptation financing, and sharing of green technologies; and

(ix) promote awareness and education about the climate emergency.

11. Finally, States should address both economic and non-economic harms arising from or relating to the climate emergency, including harms to the human rights of affected individuals and communities. Section VII addresses the obligations of States under international law to remedy such harms.

12. The UN Rapporteurs have focused this submission primarily on the State obligations owed by State parties to the Convention. However, this Court has provided comprehensive opinions on critical issues that impair human rights, including *Advisory Opinion OC-23/17*, which recognized the connection between the climate emergency and the right to a healthy environment. Indeed, in *Advisory Opinion OC-23/17*, this Court observed that in considering the scope of Article 1(1) of the Convention when responding to a request for an advisory opinion, the Court should not limit its response to specific countries; rather, environmental obligations may be "important for all the States of the planet."[2]

13. The Advisory Opinion Request raises important questions about the role of Convention rights in informing the obligations of States to fight the existential threat to humankind posed by the climate emergency. The UN Rapporteurs respectfully make this submission with the objective of assisting the Court as it discharges the monumental task that lies before it. The UN Rapporteurs have directed their analysis to the obligations of State parties to the Convention where appropriate, while also addressing the obligations of OAS Member States in responding to the climate emergency.

II. EXPERIENCE AND QUALIFICATIONS OF THE UN RAPPORTEURS

14. UN Special Rapporteurs are part of the special procedures system of the UN Human Rights Council. They are independent experts from across the world appointed by the UN Human Rights Council to contribute to the promotion and realization of human rights in areas related to their professional expertise. UN Special Rapporteurs undertake country visits, act on cases of reported violations and

[2] *Advisory Opinion OC-23/17*, para. 35 :"This Court has indicated that, owing to the general interest of its advisory opinions, their scope should not be restricted to specific States. The questions raised in the request go beyond the interests of the States parties to the Cartagena Convention and are important for all the States of the planet. Therefore, the Court considers that it should not limit is [sic] response to the scope of application of the Cartagena Convention."

infringements through communications with implicated States and businesses, and contribute to the development of international human rights standards. They work closely with the Office of the High Commissioner for Human Rights and report annually to both the UN Human Rights Council and the UN General Assembly.

a. Admissibility of the submission of the UN Rapporteurs

15. The UN Rapporteurs qualify as *amici* to make this submission under the Court's Rules of Procedures. Article 2(3) of the Court's Rules of Procedures, as amended in 2009, defines *amicus curiae* as:

> the person or institution who is unrelated to the case and to the proceeding and submits to the Court reasoned arguments on the facts contained in the presentation of the case or legal considerations on the subject-matter of the proceeding by means of a document or an argument presented at a hearing [. . .].[3]

16. The UN Rapporteurs satisfy these requirements to qualify as *amici*. They are independent of the parties who made the Advisory Opinion Request. UN Rapporteurs are qualified and independent experts. Additionally, as discussed immediately below in Section II.b, they are experts on human rights issues, including the relationship between the climate emergency and human rights.

b. The UN Rapporteurs are independent experts on the connections between the climate emergency and human rights

1. Dr. Marcos Orellana: UN Special Rapporteur on Toxics & Human Rights

17. The UN Human Rights Commission established a mandate to examine the human rights implications of exposure to hazardous substances and toxic wastes in 1995. The UN Human Rights Council expanded the mandate in 2011 to include the whole life cycle of hazardous products from manufacturing to final disposal, establishing a Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes ("**Special Rapporteur on Toxics & Human Rights**"). The mandate includes examining emissions of hazardous substances from all sources; reporting on the adverse consequences of unlawful management and disposal of hazardous wastes and substances; and studying the connections of science and policy as regards the risks to human rights posed by the lifecycle of hazardous substances and wastes.

18. Dr. Marcos Orellana has worked as a legal advisor to various UN agencies, governments, and non-governmental organizations, including to the Presidency of the 25th Conference of the Parties of the United Nations Framework Convention on Climate Change ("**UNFCCC**"), and as climate negotiator representing the eight-

[3] Article 2(3) of the Rules of Procedure of the Inter-American Court of Human Rights.

nation Independent Association of Latin America and the Caribbean in the negotiations of the Paris Agreement. Dr. Orellana began his term as the Special Rapporteur on Toxics & Human Rights in August 2020 and was reappointed in 2023 for a second three-year term.

2. Dr. David Boyd: UN Special Rapporteur on Human Rights & the Environment

19. The UN Human Rights Council created the mandate on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment in 2011. The mandate was formalized as a Special Rapporteur in 2015 ("**Special Rapporteur on the Environment**"). The mandate includes studying the human rights obligations related to the enjoyment of a safe, clean, healthy, and sustainable environment; promoting good practices in rights-based approaches to environmental policymaking; and advancing the recognition and implementation of the right to a clean, healthy, and sustainable environment.

20. Dr. David Boyd is a professor at the University of British Columbia in Canada, jointly appointed in the Institute for Resources, Environment and Sustainability and the School of Public Policy and Global Affairs. Dr. Boyd has submitted amicus briefs to more than a dozen national, regional, and international courts and tribunals, including the Supreme Courts of Brazil and Norway, the Constitutional Court of Ecuador, the European Court of Human Rights, the Inter-American Court of Human Rights, and the UN Human Rights Committee. Dr. Boyd began his term as the Special Rapporteur on the Environment in August 2018 and was reappointed in 2021 for a second three-year term.

3. Mr. Surya Deva: UN Special Rapporteur on the Right to Development

21. The UN General Assembly proclaimed the right to development in 1986. To advance the promotion and fulfillment of the right, the Human Rights Council created the mandate of the Special Rapporteur on the right to development in 2016 ("**Special Rapporteur on the Right to Development**"). The Special Rapporteur on the Right to Development is charged with promoting peoples' right to participate in, contribute to, and enjoy economic, social, cultural, and political development. The Special Rapporteur engages with UN Member States and pertinent stakeholders and reports to the UN Human Rights Council and the UN General Assembly. The Rapporteur also assists in bringing awareness to and implementing the right to development in the work of UN bodies, financial institutions, and international development projects.

22. Mr. Surya Deva is a Professor at the Macquarie Law School and Director of the Centre for Environmental Law at Macquarie University, Australia. He has published extensively in the field of business and human rights and sustainable development. Mr. Deva has advised UN agencies, governments, national human rights institutions, multinational corporations, trade unions, and civil society organizations on issues related to his expertise. He served as a member of the UN

Working Group on Business and Human Rights between May 1, 2016 and April 30, 2022. Mr. Deva took up the role of the UN Special Rapporteur on the Right to Development on May 1, 2023.

III. THE ANTHROPOGENIC RELEASE OF GREENHOUSE GASES HAS CREATED A CLIMATE EMERGENCY WHICH THREATENS PROTECTED RIGHTS

23. The existing impacts of the climate emergency demonstrate that global surface temperature being at 1.2°C higher on average than pre-industrial levels already is having a major adverse impact on certain populations and preventing vulnerable communities from enjoying the full range of their human rights. The UN Rapporteurs are of the view that the commitments in the Paris Agreement to hold the increase in the global average temperature "to well below 2°C and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels" are not safe and sufficient. Rather, humanity should aim to bring the increase in the global average temperature down to 1.0°C, as this was the outer boundary of the stable range experienced by humanity during the Holocene.[4]

a. The climate emergency is a global phenomenon that poses an existential threat to humankind

24. The climate emergency threatens all regions of the world. Global surface temperature was on average 1.59°C higher over land and 0.88°C higher over the ocean during the period between 2011 and 2020 than between 1850 and 1900.[5] Human-caused climate change is already affecting weather patterns and creating climate extremes across the globe.[6] Changes in the atmosphere, ocean, cryosphere, and biosphere are widespread and accelerating. Observed changes in climate extremes, particularly heatwaves, heavy precipitation, wildfires, droughts, and cyclones, have increased in frequency since the IPCC AR5, which was finalized in 2014.[7]

25. The climate emergency affects many aspects of human wellbeing. Approximately 3.3 to 3.6 billion people live in environments that are highly vulnerable to climate change.[8] Climate change has caused substantial damage to, and increasingly irreversible losses in, terrestrial, freshwater, cryosphere, and marine ecosystems.[9]

[4] *See* Darrell Kaufman et al., *Holocene global mean surface temperature, a multi-method reconstruction approach*, Sci. Data 7, 201 (2020), https://www.nature.com/articles/s41597-020-0530-7.

[5] IPCC, *AR6 Synthesis Report: Climate Change 2023,* para. A.1.1.

[6] *Id.* at para. A.2.

[7] *Id.* at para. A.2.1.

[8] *Id* at para. A.2.2.

[9] *Id.* at para. A.2.3.

26. The climate emergency has slowed gains from agricultural productivity over the past 50 years and reversed progress in reducing malnutrition.[10] Roughly half of the world's population now experiences severe water scarcity for at least part of the year due to climatic and non-climatic drivers.[11] Globally, increases in extreme heat have led to human mortality and morbidity.[12] In urban areas, climate change has caused adverse impacts on health, livelihoods, and infrastructure.[13]

27. The climate emergency has resulted in the world's oceans absorbing more than 90% of the additional energy trapped by the greenhouse effect and an estimated 30% of the anthropogenic carbon dioxide from the atmosphere.[14] This absorption has heated, deoxygenated, and acidified the world's oceans.[15] Rising sea levels endanger coastal communities with floods, salinization, storm surges, and erosion.[16] Sea-level rise threatens the very existence of many communities, particularly in low-lying and Small Island Developing States.[17]

28. Scientists are increasingly concerned about tipping points in the Earth's climate system, which, if crossed, could cause catastrophic disruption to ecosystems, economies, and societies.[18] There is a risk that even if anthropogenic greenhouse gas emissions are reduced in the future, the long-term effects of past and existing emissions will continue to cause harm in the future. For example, scientists have warned that deforestation is pushing the Amazon towards potentially irreversible change from forest to savannah.[19]

29. The uncertainties and dangers associated with tipping points highlight the importance of the precautionary principle and the urgency of immediate steps to decarbonize the global economy, stop deforestation, and transform agriculture.

[10] *Id* at para. A.2.5.

[11] *Id.* at para. A.2.4.

[12] *Id.* at para. A.2.5.

[13] *Id.* at para. A.2.6.

[14] Ian Fry, Marcos Orellana & David Boyd, *Amicus brief submitted to the International Tribunal for the Law of the Sea by the UN Special Rapporteurs*, May 30, 2023, [ITLOS brief], page 8; IPCC, *Report of Working Group I (Physical Science basis), AR6: Summary for Policymakers*, para. A.4.2; IPCC Working Group II, *AR5: Climate Change 2014 Impacts, Adaptation, and Vulnerability*, page 1658.

[15] ITLOS brief, page 8.

[16] ITLOS brief, pages 8-9; IPCC, *AR6 Synthesis Report: Climate Change 2023, Summary for Policymakers*, page 5, paras. B.3.1, B.7.2.

[17] Special Rapporteur Dr. Boyd has observed first-hand such relocations caused by climate change, such as in Fiji, during a mission in 2018. A/HRC/43/53/Add.1.

[18] Will Steffen et al., *Trajectories of the Earth System in the Anthropocene* (Aug. 2018).

[19] T.E. Lovejoy & C. Nobre, Amazon Tipping Point: Last Chance for Action, Science Advances, Vol. 5, no. 12, eaba2949.

b. The climate emergency adversely impacts the Americas and the Caribbean

30. The climate emergency adversely impacts the Americas and the Caribbean in many ways. The increased frequency of climate-extreme events has acutely affected communities in Central and South America, as well as the Caribbean islands, and has especially affected Indigenous Peoples, small-scale food producers, and low-income households.[20] Central American States consistently are ranked among those most at risk of being impacted by extreme climate events—particularly those States situated in the "Dry Corridor," a tropical dry forest region in the Pacific Coast.[21] Small-island states in the Caribbean are also disproportionately affected.[22] Large-scale, climate-driven changes in the Amazon rainforest affect Brazil, Colombia, Ecuador, and Peru. Chile is suffering from a megadrought that has made water scarcity a national crisis.[23]

31. The climate emergency impacts agricultural production, food security, and water security in the Americas and the Caribbean. Climate change results in more frequent and/or longer droughts and decreases in rainfall, resulting in reduced yields for key crops.[24] Coupled with a high population growth rate, the reduction of agricultural productivity exposes more people to food insecurity and malnutrition.[25] The changes and general decline in seasonal water availability result in greater water insecurity.[26]

32. The Americas are increasingly threatened by climate-induced disasters, including floods, landslides, epidemics, and the resultant strain on public service systems. Climate change brings more frequent and severe storms, heavy precipitation events, and the thawing of permafrost and glaciers.[27] More people, especially low-income and marginalized populations, are threatened by the increase in floods and landslides and their disruption of critical infrastructure and service systems.[28] Higher temperatures enlarge the geographic range of disease-carrying vectors.[29] With poor sanitation conditions in many parts of the Americas, the incidence of

[20] IPCC, *AR6 Synthesis Report: Climate Change 2023,* para. A.2.

[21] IPCC Working Group II, *AR6: Climate Change 2022 Impacts, Adaptation, and Vulnerability*, page 1699.

[22] IPCC, *AR6 Synthesis Report: Climate Change 2023,* para. A.2.5.

[23] John Bartlett, 'Consequences will be dire': Chile's water crisis is reaching breaking point, Guardian (June 1, 2022), https://www.theguardian.com/world/2022/jun/01/chiles-water-crisis-megadrought-reaching-breaking-point.

[24] IPCC Working Group II, *AR6: Climate Change 2022 Impacts, Adaptation, and Vulnerability*, page 1722.

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

vector-borne diseases, such as malaria, dengue, Zika, and leishmaniasis will rise, further burdening the economic and healthcare sectors.[30]

33. The climate emergency also endangers the region's critical ecological systems. More frequent and persistent droughts, combined with anthropogenic forest degradation and deforestation are reducing the Amazon's capacity to absorb and sequester carbon as well as decreasing the myriad forest products and ecosystem services upon which Indigenous Peoples and local communities depend.[31] The increase in the regional seawater CO_2 levels leads to ocean acidification and coral bleaching, degrading and possibly killing the Mesoamerican coral reef, which is the second largest reef in the world and a vital habitat and food source for many marine species.[32] The rising sea levels cause coastal flooding and erosion, harming coastal populations and damaging infrastructure.[33]

c. The climate emergency will worsen

34. The climate emergency will intensify with further increases in global temperature. According to the IPCC, global heating will worsen because of increased cumulative CO_2 emissions "in nearly all considered scenarios and modelled pathways."[34] Even under the IPCC's very low greenhouse gas emission scenario, global warming is "more likely than not" to reach 1.5°C before 2040.[35] Indeed, some sources suggest that the 1.5°C threshold may be surpassed well before 2040.[36] The upward trend of global warming is expected to further intensify the global water cycle, resulting in very wet and very dry weather and other extreme events, such as wildfires.[37] Further warming could subject every region to more frequent heatwaves and droughts.[38] The oceans are heating up at an even faster pace.[39] Past emissions have committed the global ocean to future heating at a level of two to eight times what has been experienced over the last 50 years.[40]

[30] *Id.* at 1723.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] IPCC, *AR6 Synthesis Report: Climate Change 2023,* para. B.1.

[35] *Id.* at para. B.1.

[36] *As 1.5 Degrees Looms, Scientists See Growing Risk of Runaway Warming, Urgent Need to Slash Emissions*, Yale Env't 360 (Mar. 15, 2023), https://e360.yale.edu/digest/1.5-degrees-climate-change-tipping-points-2030.

[37] *Id.* at para. B.1.3.

[38] *Id.* at para. B.1.4.

[39] Cheng, L.J. et al., 2023: Another year of record heat for the oceans, Adv. Atmos. Sci., 40(6), 963-9974.

[40] IPCC Working Group I, *AR5: Climate Change 2014 Impacts, Adaptation, and Vulnerability,* para. B.5.1.

35. Near-term actions limiting global warming to around 1.5°C by 2040, combined with major investments in adaptation, could substantially reduce the loss and damage caused by the climate emergency.[41] However, substantial loss and damage has already occurred and will inevitably continue in the near term.[42] The level of risk to the climate, ecosystem, and human life that global warming of 1.5°C poses will partially depend on concurrent near-term trends in the level of climate adaptation.[43]

36. Despite escalating climate risks and the pressing need to adapt, the current state of climate mitigation and adaptation actions is grossly insufficient. There have been some meaningful actions: laws and policies on mitigation and adaptation have progressed,[44] and the growth rate of greenhouse gas emissions over the past decade has slowed compared to the previous decade.[45] Most State parties to the Paris Agreement have submitted new or updated nationally determined contributions with more ambitious emission reduction goals.[46] Full implementation of all-new or unconditional, nationally determined contributions could lead to a modest reduction in annual CO_2 emissions by 2030.[47] Given the track record of most States since 1992, however, full implementation of commitments is highly unlikely. Additionally, the mitigation and adaptation efforts of Central and South American States are hampered by many obstacles, including institutional instability, weak governance structures, inadequate access to climate finance and green technologies, inequality, and poverty.[48]

37. The human rights of individuals and communities are impaired as they suffer through droughts (especially in the Amazon, Andes, and Dry Corridor regions);[49] loss of wetlands;[50] glacial retreat (resulting in soil erosion and loss of access to

[41] IPCC Working Group II, *AR6: Climate Change 2022 Impacts, Adaptation, and Vulnerability*, para. B.3.

[42] *Id.* at para. B.3.

[43] *Id.* at para. B.3.

[44] IPCC, *AR6 Synthesis Report: Climate Change 2023,* paras. A.3, A.4.

[45] *Emissions Gap Report 2022,* UNEP (Oct. 27, 2022), page 5.

[46] *Id.* at page 12.

[47] *Id.* at page 13.

[48] *Id.* at page 1963.

[49] IPCC Working Group II, *AR6: Climate Change 2022 Impacts, Adaptation, and Vulnerability*, at 12.3-12.4.

[50] *Id.* at 12.3, 12.5.2.

water);[51] wildfires;[52] and transmission of vector-borne diseases.[53] The IPCC has observed that the climate emergency will "convert existing risks in the region into severe key risks," including food insecurity; floods and landslides; water insecurity; vector-borne disease epidemics; changes to the Amazon and coral reef ecosystems; and risks to coastal communities.[54]

38. Reining in the climate emergency requires States to implement further ambitious measures and policies to curb anthropogenic climate change, reduce total greenhouse gas emissions and enhance carbon sinks. As discussed in Section VI, the path forward requires systemic changes, including reforming existing energy infrastructure in favor of green and renewable energies, initiating and scaling up zero-carbon technological advances, supporting zero-carbon industrial processes, and planning infrastructure to reduce travel demand.[55] State action is crucial to implementing such changes and States must require businesses to decarbonize their operations as a matter of urgency.

IV. THE CLIMATE EMERGENCY IMPAIRS HUMAN RIGHTS

39. As discussed in Section III, the climate emergency impairs the full range of human rights. States should proactively respect, protect, and fulfill human rights in the context of the climate emergency. These obligations are owed to individuals and communities within the jurisdiction of a specific State. They are also owed to individuals and communities outside the State where (1) there is a causal link between the acts or omissions of the State in question and the negative impact on those individuals and communities outside that State's territory; and (2) the State of origin exercises effective control over the sources of the emissions in question.[56] Where States fail to safeguard rights of individuals and communities both inside and outside their territories against foreseeable climate-related threats of serious harm, they should provide an appropriate remedy.[57]

[51] *Id.* at 12.3.2, 12.3.7.

[52] *Id.* at 12.2, 12.3 (noting, at 1691, that "[o]n average, people in the [Central and South America] region were more exposed to high fire danger between 1 and 26 additional days depending on the sub-region for the years 2017-2020 compared to 2001-2004").

[53] *Id.* at 12.3 (noting, at 1691, that "[t]he reproduction potential for the transmission of dengue increased between 17% and 80% for the period 1950-1954 to 2016-2021, depending on the sub-region, as a result of changes in temperature and precipitation").

[54] *Id*. at page 1692.

[55] *Id.* page 16; UNEP, *Emissions Gap Report 2022* (Oct. 27, 2022), pages 39, 45, 48.

[56] On the extraterritorial obligations of State parties to the Convention, *see* The Environment and Human Rights, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (Nov. 15, 2017), at 32-44. [*Advisory Opinion OC-23/17*]

[57] *Billy v. Australia, (2019) CCPR/C/135/D/3624/2019,* Views adopted by the Committee under article 5(4) of the Optional Protocol concerning communication No. 3624/2019 (Sept. 22, 2022), para. 8.9. [*Billy v. Australia*]

40. These obligations arise independently of whether a State has significantly contributed to the climate emergency through its greenhouse gas emissions.[58] As part of their human rights obligations, States should reduce their greenhouse gas emissions, although the degree of urgency with which they should act depends in part on their historical emissions and status as low-income or developing States, pursuant to the principle of common but differentiated responsibilities and respective capabilities.[59] States that are current or historical large emitters owe additional obligations, including larger and faster reductions in greenhouse gas emissions, substantial contributions to climate finance to assist climate vulnerable States with mitigation and adaptation, guarantees of non-repetition, and compensation for loss and damage, because their actions have disproportionately contributed to harm suffered as a result of the climate emergency.

a. The major organs of the Inter-American human rights system have recognized that the climate emergency imperils Convention rights

41. In 2008, the Organization of American States first recognized that the adverse effects of climate change negatively impact the enjoyment of human rights.[60] The Secretariat of the Organization of American States subsequently catalogued the threats posed by the climate emergency to the rights to life, liberty, and economic rights.[61] The Secretariat identified threats to the rights of persons in Caribbean Small Island Developing States, as well as particular threats posed to the rights of displaced persons in the Caribbean and Central America.[62] The Secretariat emphasized that all State responses to the climate emergency should be guided by human rights obligations.[63]

42. In 2021, the Inter-American Commission on Human Rights, together with the Commission's Special Rapporteur for Economic, Social, Cultural and Environmental Rights, adopted the resolution *Climate Emergency: Scope of Inter-American Human Rights Obligations*.[64] In this resolution, the Inter-American Commission recognized that "[t]he nexus between climate change and human

[58] Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment,* U.N. Doc. A/HRC/31/52 (Feb. 1, 2016), para. 37 [*Special Rapporteur on the Environment Climate Report No. 1*], citing *Budayeva v. Russia*, (2008) App. No. 15339/02, para. 138.

[59] *See* Section V.b.6, below discussing the principle of common but differentiated responsibilities and respective capabilities of States.

[60] Resolution on Human Rights and Climate Change in the Americas adopted at the fourth plenary session held on June 3, 2008, AG/RES. 2429 (XXXVIIIO/08).

[61] OAS General Secretariat, *Climate Change: Life Democracy Freedom Justice Equality* (2022), at 8.

[62] *Id.* at 26-27, 29-30.

[63] *Id*. at 7-8.

[64] *Climate Emergency: Scope of Inter-American Human Rights Obligations*, Inter-American Commission Resolution No. 3/2021, adopted Dec. 31, 2021. [Inter-American Commission Resolution No. 3/2021].

rights is increasingly evident."[65] It further noted "the existence of a directly proportional relationship between the increase in greenhouse gas emissions . . . and the frequency and intensity of meteorological changes, which implies the amplification of risks to societies, people and natural systems."[66] The resolution likewise emphasized that "climate change is one of the greatest threats to the full enjoyment and exercise of the human rights of present and future generations, to the health of ecosystems, and all species that inhabit the planet."[67]

b. UN human rights bodies have recognized that the climate emergency impairs human rights

43. Since 2008, the UN Human Rights Council has adopted several resolutions recognizing that the climate emergency threatens the enjoyment of human rights, particularly for the world's most vulnerable populations. Together with other UN Special Rapporteurs, the Special Rapporteur on the Environment and the Special Rapporteur on Climate Change have detailed the specific impacts of the climate emergency on a range of protected rights.[68]

44. Human rights treaty bodies consistently have affirmed that States owe obligations to prevent and remedy foreseeable threats of serious harm resulting from the

[65] *Id.* at 4.

[66] *Id.* at 4.

[67] *Id.* at 8.

[68] *See, e.g., Special Rapporteur on the Environment, Climate Report No. 1*; David Boyd, Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: A safe climate, U.N. Doc. A/74/161 (July 15, 2019) [*Special Rapporteur on the Environment, Climate Report No. 2*]; Ian Fry, Promotion and protection of human rights in the context of climate change, U.N. Doc. A/77/226 (July 26, 2022) [*July 2022 Report of the Special Rapporteur on Climate Change*]; *see also* Pedro Arrojo Agudo (Special Rapporteur on the human right to safe drinking water and sanitation), *Special thematic report on climate change and the human rights to water and sanitation* (Jan. and Mar. 2022); Clement Nyaletsossi Voule (Special Rapporteur on the right to freedom of peaceful assembly and association), *Exercise of the rights to freedom of peaceful assembly and of association as an essential to advancing climate justice*, U.N. Doc. A/76/222 (July 23, 2021), at para. 90(g); Saad Alfarargi (Special Rapporteur on the right to development), *Climate action at the national level*, U.N. Doc. A/HRC/48/56 (July 2, 2021); Philip Alston (Special Rapporteur on extreme poverty and human rights), *Climate change and poverty*, U.N. Doc. A/HRC/41/39 (July 17, 2019); Balakrishnan Rajagopal (Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context), *Towards a just transformation: climate crisis and the right to housing*, U.N. Doc. A/HRC/52/28 (Dec. 23, 2022); Raquel Rolnik (Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context), *The right to adequate housing*, U.N. Doc. A/65/255 (Aug. 6, 2009); Hilal Ever (Special Rapporteur on the right to food), *Right to food*, U.N. Doc. A/70/287 (Aug. 5, 2015); Cecilia Jimenez-Damary (Special Rapporteur on the human rights of internally displaced persons), *Protection of and assistance to internally displaced persons*, U.N. Doc. A/66/285 (Aug. 9, 2011); Ian Fry, *Providing legal options to protect the human rights of persons displaced across international borders due to climate change*, U.N. Doc. A/HRC/53/34 (Apr. 18, 2023); Karima Bennoune (Special Rapporteur on the field of cultural rights), *Field of cultural rights*, U.N. Doc. A/75/298 (Aug. 10, 2020); Reem Alsalem (Special Rapporteur on violence against women and girls, its causes and consequences), *Violence against women and girls in the context of the climate crisis, including environmental degradation and disaster risk management and response*, U.N. Doc. A/77/135 (July 11, 2022); Siobhan Mullally (Special Rapporteur on trafficking in persons, especially women and children), *Addressing the gender dimensions of trafficking in persons in the context of climate change, displacement and disaster risk reduction*, U.N. Doc. A/77/170 (July 15, 2022); François Crépeau (Special Rapporteur on the human rights of migrants), *Human rights of migrants*, A/67/299 (Aug. 13, 2022); Victoria Tauli-Corpuz, Special Rapporteur on the rights of indigenous peoples), *Report of the Special Rapporteur on the rights of indigenous peoples*, U.N. Doc. A/HRC/36/46 (Nov. 1, 2017); Victoria Tauli-Corpuz, *Regional consultation on the rights of indigenous peoples in Asia*, U.N. Doc. A/HRC/45/34/Add.3 (Sept. 4, 2020).

climate emergency.[69] State responses should address both the failure to take measures to prevent foreseeable harm as well as the failure to regulate ongoing activities contributing to such harm.[70] The UN Committee on the Rights of the Child identified obligations related to mitigation, adaptation, loss and damage, business and climate change, and climate finance.[71] The UN Committee on Economic, Social and Cultural Rights warned States that they should mobilize maximum available resources to prevent foreseeable human rights violations resulting from the climate emergency.[72] Failure to do so amounts to a violation of States' obligations to respect, protect, and fulfill human rights.[73]

45. The UN Human Rights Committee identified the climate emergency as "among the most pressing and serious threats to the ability of present and future generations to enjoy the right to life."[74] In *Billy v. Australia*, the Committee considered a communication brought by Indigenous residents of Australia's Torres Strait Islands, alleging that Australia had violated the complainants' rights by failing to protect them adequately from the worst effects of the climate emergency.[75] The Committee found that Australia had breached its obligations to protect the complainants against foreseeable risks of serious harm, amounting to violations of their rights to private and family life and culture. In *Sacchi v. Argentina*, the UN Committee on the Rights of the Child observed that States may owe obligations under the UN Convention on the Rights of the Child where they fail to protect children's rights from threats that are both serious and foreseeable.[76]

[69] *See* UN Human Rights Committee, General Comment No. 36 (right to life), U.N. Doc. CCPR/C/GC/36 (Sept. 3, 2019), para. 62 [*Human Rights Committee General Comment 36*]; *Billy v. Australia*, para. 8.12 (observing that Australia's failure to implement adaptation measures adequate to counter rising sea levels amounted to a failure to protect against "foreseeable and serious violations of private and family life and the home"); para. 8.14 (finding that complainants' right to culture was violated where impacts "could have reasonably been foreseen by the State party"); *Sacchi v. Argentina*, CRC/C/88/D/104/2019 (2022) [*Sacchi v. Argentina*], para. 10.6 ("[f]ailure to take measures to prevent foreseeable human rights harm caused by climate change or to regulate activities contributing to such harms could constitute a violation of the States' human rights obligations").

[70] *See Sacchi v. Argentina*, at para. 10.6; The Committee on the Elimination of all Forms of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, the Committee on the Rights of the Child, and the Committee on the Rights of Persons with Disabilities, *Joint Statement on Human Rights and Climate Change*, U.N. Doc. HR1/2019/1 (May 14, 2020), para. 1.

[71] General comment No. 26 (2023) on children's rights and the environment with a special focus on climate change, U.N. Doc. CRC/C/GC/26, [*CRC Committee General Comment 26*] paras. 95-115.

[72] Committee on Economic, Social and Cultural Rights, *Climate change and the International Covenant on Economics, Social and Cultural Rights*, U.N. Doc. E/C/12/2018/1* (Oct. 8, 2018).

[73] *Id*.

[74] *General Comment No. 36*, para. 62.

[75] *Billy v. Australia*.

[76] *Sacchi v. Argentina*.

c. International environmental laws recognize that the climate emergency impairs human rights

46. The extensive human rights impacts of environmental degradation have been recognized since the Stockholm Declaration of 1972, which is one of the founding documents of international environmental law.[77] The relation between human rights, the environment, and development is further elaborated in the 1992 Rio Declaration on Environment and Development and the 1993 Vienna Declaration and Programme of Action. The Rio Declaration on Environment and Development reaffirmed that human beings "are entitled to a healthy and productive life in harmony with nature" and that "environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it."[78] Both the Rio Declaration on Environment and Development and the Vienna Declaration and Programme of Action make clear that the "right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations."[79]

47. The Preamble of the Paris Agreement provides that State parties:

> should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, persons with disabilities, and people in vulnerable situations.[80]

48. This provision has two dimensions. First, States should consider human rights as a reason to act (on mitigation, adaptation, and loss and damage) in response to the climate emergency. Second, States should ensure that all actions are consistent with their human rights obligations, especially in relation to populations put in situations of vulnerability or marginalization.

49. Apex courts in several State parties to the Convention have recognized that failure to take effective measures in response to the climate emergency may violate domestic human rights obligations.[81] There is a close link between international human rights obligations, international climate obligations, and domestic and regional rights guarantees. The Supreme Federal Court of Brazil, for example,

[77] Stockholm Declaration, U.N. Doc. A/CONF.48/14/Rev.1, June 16, 1972; UNGA Res. 2994/XXVII, 2995/XXVII and 2996 XXII (Dec. 15 1972) [*Stockholm Declaration*], Principle 1: "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."

[78] Report of the United Nations Conference on Environment and Development 1992, Principles 1 and 4.

[79] Rio Declaration, Principle 3.

[80] Paris Agreement, Preamble.

[81] *See, e.g.,* Supreme Court of Brazil, *Partido Socialista Brasieiro (PSB) et al. v. Brasil*, ADPF 708, (July 1, 2022); *Generaciones Futuras v. Ministerios de Ambiente y Desarrollo Sostenible*, República de Colombia Corte Supreme de Justicia STC4360-2018 (Apr. 5, 2018).

recently confirmed that the Paris Agreement is a human rights treaty with supreme status in domestic law.[82]

50. This Court extensively discussed the interrelationship between human rights and the environment in its *Advisory Opinion OC-23/17*, opining that "the adverse effects of climate change affect the real enjoyment of human rights."[83]

d. Interpretation of the Convention should be guided by the principle of systemic integration

51. In its *Advisory Opinion OC-23/17*, this Court affirmed an approach of "systemic integration" and "harmonious interpretation" between different bodies of relevant law.[84] In adopting this approach, this Court confirmed that it "must take international law on environmental protection into consideration when defining the meaning and scope of the obligations assumed by States under the American Convention, in particular, when specifying measures States must take."[85] This includes binding international treaties, non-binding instruments, and relevant jurisprudence.[86]

52. Article 29 of the Convention sets forth that the Convention shall not be interpreted as "[r]estricting the enjoyment or exercise of any right or freedom recognized by . . . the laws of any State Party or by another convention to which one of the said states is a party," as "precluding other rights or guarantees that are inherent in the human personality," nor as "[e]xcluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have. . ."[87] Reference to international environmental and human rights instruments is thus relevant and, indeed, necessary to properly interpreting and applying the Convention's text.

53. When harmonizing and integrating these regimes, this Court is guided by the *pro persona* principle, which favors the interpretation that offers more protection to the individual.[88] In *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, this Court recognized the *pro persona* principle to forbid external restriction on rights found in the American Convention of Human

[82] Supreme Court of Brazil, *Partido Socialista Brasieiro (PSB) et al. v. Brasil*, ADPF 708, (July 1, 2022).

[83] *Advisory Opinion OC-23/17*, para. 47; *see also* discussion of the climate emergency at paras. 54, 96.

[84] *Advisory Opinion OC-23/17*, at para. 44.

[85] *Id*. at para. 44.

[86] *Id*. at para. 44.

[87] American Convention on Human Rights, Art. 29(b)-(d).

[88] *Advisory Opinion OC-23/17*, para. 42.

Rights.[89] We owe much of our understanding of this principle to the late Judge Antônio Cançado Trindade, who elaborated on it in his tenure on the judicial bench of both this Court and the International Court of Justice.[90]

54. The approach of systemic integration is consistent with Article 31(3)(c) of the Vienna Convention on the Law of Treaties (VCLT). Article 31(3)(c) requires that courts and tribunals, when interpreting international treaties, consider "any relevant rules of international law applicable in the relations between the parties." The corpus of relevant rules includes not only treaties, but also general principles and rules of customary international law,[91] such as harm prevention, precaution, non-regression, and the application of best available science.

e. Protected rights impaired by the climate emergency

55. The climate emergency impacts the full spectrum of rights. As the Special Rapporteur on Human Rights and Climate Change has observed:[92]

> Throughout the world, the rights of people are being denied as a consequence of climate change. This includes a denial of the rights to, inter alia, life, health, food, development, self-determination, water and sanitation, work, adequate housing and freedom from violence, sexual exploitation, trafficking and slavery.

56. Many UN Special Rapporteurs have documented how the climate emergency violates and further threatens this full range of human rights.[93] For the sake of brevity, we focus on the set of rights most relevant to the Court in answering the Advisory Opinion Request. This set includes rights protected by the American Convention, as well as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (which have been ratified by all Convention parties). Our approach should not be interpreted to

[89] IACtHR, "Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)", Advisory Opinion (Nov. 13, 1985) at para. 52.

[90] *See Application of the ICSFT and CERD (Ukraine v. Russian Federation)*, Sep. Op. Cançado Trindade (Nov. 8, 2019), at para. 70 ("Human rights conventions… go beyond the outdated inter-State outlook, ascribing a central position to the individual victims, rather than to their States.").

[91] For examples of international courts and tribunals drawing on general principles and customary international law, *see* Oil Platforms (Iran v. U.S.), Preliminary Objections, 1996 I.C.J. 803 (Dec. 12), ¶ 41; Prosecutor v. Anto Furundžija, Case No IT-95-17/1-A, Judgment (Declaration of Judge Patrick Robinson), ¶ 283 (Int'l Crim. Trib. fFFor Former Yugoslavia July 21, 2000); Pope & Talbot Inc v. Government of Canada, Award in Respect of Damages by Arbitral Tribunal, 2002 Arbitrator Tribunal, at 4, ¶ 8 (May 31); United States – Import prohibition of Certain Shrimp and Shrimp Products (Shrimp-Turtle Case), AB-1998-4, Report of the Appellate Body (12 Oct. 1998), ¶ 158; *Al-Adsani v. United Kingdom*, 34 Eur. Ct. H.R. 11 (2002).

[92] *See* Ian Fry (Special Rapporteur on the promotion and protection of human rights in the context of climate change), *Promotion and protection of human rights in the context of climate change*, U.N. Doc. A/77/226 (July 26, 2022), at para. 88.

[93] *See generally* the reports identified at note 68 *supra*.

mean that these are the only, or most important, rights affected by the climate emergency. Human rights are indivisible, interdependent, and interrelated.

1. The climate emergency impairs the right to life, including its necessary conditions

57. Article 4(1) of the Convention provides that "[e]very person has the right to have his or her life respected." In its *Advisory Opinion OC-23/17*, this Court identified the right to life as "particularly vulnerable to environmental impact."[94]

58. The right to life occupies a central place in this Court's jurisprudence. This Court has recognized that "the realization of other rights depends on its protection,"[95] and that "[a]ccordingly, States are obliged to ensure the creation of the necessary conditions for the full enjoyment and exercise of this right."[96] This includes both negative obligations (to refrain from depriving individuals of the right to life), as well as positive obligations to regulate and protect its citizens against the acts of third parties, including businesses.[97] States should "regulate, supervise or monitor" third parties and private actors.[98] States breach this duty where they know (or should know) of a real and imminent danger to the life of specific individuals or groups; where they fail to take necessary measures to prevent or avoid that danger; and where there is a causal link between environmental degradation and the impact on the right to life.[99]

59. The UN Special Rapporteur on the Environment reported to the UN Human Rights Council that:[100]

> Climate change has many direct and indirect effects on the full enjoyment of the right to life. Climate-related deaths are caused by extreme weather events, heat waves, floods, droughts, wildfires, water-borne and vector-borne diseases, malnutrition and air pollution. Globally, at least 150,000 premature deaths annually have been linked to climate change. … The World Health Organization (WHO) estimates that by 2030 some 250,000 climate-related deaths each year will be caused by heat stress, malaria, diarrhea and

[94] *Advisory Opinion OC-23/17*, above note 56, para. 65.

[95] *Id*. at para. 108; *see also Case of the "Street Children" (Villagrán Moreals et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, para. 144; *Ortiz Hernández et al. v. Venezuela. Merits, reparations and costs.* Judgment of August 22, 2017. Series C No. 338, para. 100.

[96] *Id.* at para. 109.

[97] *Id.* at paras. 118-19.

[98] *Id.* at paras. 118.19.

[99] *Id.* at para. 120.

[100] *Special Rapporteur on the Environment, Climate Report No. 2*, at para. 29. [footnotes omitted].

> malnutrition alone. The Office of the United Nations High Commissioner for Human Rights concluded that, "at its most extreme, climate change kills."

60. This Court has identified several conditions necessary to the exercise of the right to life. These conditions include access to (and quality of) water, food, health, and an adequate standard of environmental protection.[101] These necessary conditions are themselves protected rights. As discussed below, all these conditions are threatened by the climate emergency. This Court has found that States must "refrain from practices or activities which deny or restrict access, in equal conditions, to the requisites of a dignified life"; and must not "unlawfully pollute the environment in a way that has a negative impact on the conditions that permit a dignified life."[102]

61. Article 4 of the Convention corresponds to Article 6 of the International Covenant on Civil and Political Rights. The UN Human Rights Committee has reached many of the same conclusions on the content of the right to life as those reached by this Court in *Advisory Opinion OC-23/17*. It held that this right "concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity."[103] The Committee continued, "The obligation of States to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 even if such threats and situations do not result in loss of life."[104] States therefore have a "duty to take positive measures," including obligations of due diligence before the right is threatened.[105] Similar conclusions have been reached by the UN Committee on the Rights of the Child.[106]

62. In *Billy v. Australia*, the UN Human Rights Committee applied these principles in the context of the climate emergency. Specifically, the Committee considered whether Australia's failure to protect complainants from rising sea levels amounted to a violation of Australia's Article 6 obligations. The Committee concluded that on the facts of the case, Australia had not violated the complainants' right to life. This was because the devastating impact of rising sea levels had not *yet* exposed the complainants "to a situation of physical endangerment or extreme precarity that

[101] *Id.* at paras. 109-11; *see also Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of June 17, 2005. Series C No. 125, paras. 163-67; *Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of March 29, 2006. Series C No. 146, paras. 156-78.

[102] *Special Rapporteur on the Environment, Climate Report No. 2* at para. 117.

[103] *General Comment 36*, at para. 2.

[104] *General Comment 36*, at para. 7.

[105] *General Comment 36*, at para. 21.

[106] *CRC Committee General Comment 26*, at paras. 20-25.

could threaten their right to life, including their right to live in dignity."[107] Nevertheless, the Committee observed that over the next 10 to 15 years, if States do not take active mitigation and adaptation measures, "the effects of climate change may expose individuals to a violation of their rights under article 6."[108] Such a violation is particularly likely where an entire country, such as a Small Island Developing State, is at risk of being submerged.[109] Although the Human Rights Committee in *Billy v. Australia* did not find a violation of the right to life, the Committee's reasoning clearly indicated that the climate emergency could violate the right to life.

2. The climate emergency impairs the rights to health, food, water, and sanitation

63. This Court has found that the rights to health, food, water, and sanitation are all "conditions required for a decent life," and are thus protected under Article 4 of the Convention.[110] Furthermore, under Article 26 of the Convention, States have an obligation to pursue the goals of the Charter of the Organization of American States, including food and nutrition, through progressive realization.[111] Rights to food and health are also protected under the San Salvador Protocol, ratified by 16 State parties to the Convention.[112] These rights, in turn, depend on the maintenance of a clean, healthy and sustainable environment.[113] While these rights may be realized progressively, they also contain a minimum core of immediate obligations.[114] This includes obligations of equality and non-discrimination.

64. The climate emergency implicates all four rights.

65. First, realization of the right to health depends on an enabling natural environment, including a safe climate system.[115] This relationship is reflected in the International Covenant on Economic, Social and Cultural Rights, which requires States, as part

[107] *Billy v. Australia*, at para. 8.6. *But see Billy v. Australia*, Annex III (Arif Bulkan, Marcia V. J. Kran and Vasilka Sancin (partially dissenting)) ("Despite multiple requests and knowledge of the ongoing impacts on the lives of the authors, the State party did not undertake adaptation measures in a timely manner. Consequently, we would find that the State party violated the authors' right to life under article 6 of the Covenant in addition to the violations found by the majority.")

[108] *Id.* at para. 8.7.

[109] *Id.* at para. 8.7.

[110] *Advisory Opinion OC-23/17*, at para. 109; *see also Yakye Axa*, at para. 167; *Sawhoyamaxa*, at paras. 156-78.

[111] Charter of the Organization of American States (Feb. 27, 1967), Art. 34(j).

[112] Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights: Protocol of San Salvador [*San Salvador Protocol*], Arts. 10 and 12.

[113] *Advisory Opinion OC-23/17*, paras. 66, 110-11; *see also CESCR General Comment 12*, paras. 7-8; CESCR, General Comment No. 15 (the right to water), U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003) [*CESCR General Comment 15*], paras. 10-12.

[114] *Advisory Opinion OC-23/17*, para. 111.

[115] *Id*. at para. 66.

of their obligation to protect the right to health, to take measures for "the improvement of all aspects of environmental and industrial hygiene."[116]

66. As the Special Rapporteur on the Environment has reported to the UN Human Rights Council, the climate emergency threatens the right to health in many ways:[117]

> The adverse health impacts of climate change include not only premature deaths but also increased incidences of respiratory disease, cardiovascular disease, malnutrition, stunting, wasting, allergies, heat stroke, injuries, water-borne and vector-borne diseases and mental illness. Dengue fever is the most rapidly spreading vector-borne disease, with a thirtyfold increase in global incidence that is largely attributable to climate change. Hundreds of millions of people are exposed to extreme weather events annually, resulting in injuries, illnesses and mental health impacts. Climate change also erodes many of the key social and environmental determinants of health, including access to adequate food and water, clean air, culture and livelihoods. Health is also affected by climate-related displacement, migration and reduced access to health-care services.

67. Second, the right to food is protected by Article 11 of the International Covenant on Economic, Social and Cultural Rights. Under that Covenant, States should take positive measures to safeguard individuals' access to food and nutrition.[118] Various UN treaty bodies have recognized the environmental dimension of the right to food since at least 1997.[119] More recently, the Human Rights Council recognized that the climate emergency threatens the right to food.[120]

68. The UN Special Rapporteur on the Environment has summarized the impact of the climate emergency on the right to food in the following terms:[121]

> Food production, food security and the right to food are affected by shifting precipitation patterns, higher temperatures, extreme weather events, changing sea ice conditions, droughts, floods, algal blooms and salinization. Changes in climate are already undermining the production of major crops, such as wheat, rice and maize. Without adaptation, or where adaptations fall short, this is

[116] ICESCR, Art. 12(2)(b).

[117] *Special Rapporteur on the Environment, Climate Report No. 2*, paras. 31-32 [footnotes omitted].

[118] *CESCR General Comment 12*, at para. 6.

[119] CESCR, *Concluding Observations on the Russian Federation*, U.N. Doc. E/C.12/Add.13 (May 20, 1997), paras. 24, 38.

[120] Human Rights Council, *Resolution adopted by the Human Rights Council on 21 March 2019*, U.N. Doc. A/HRC/RES/40/7 (Mar. 21, 2019).

[121] *Special Rapporteur on the Environment, Climate Report No. 2*, paras. 33-36.

> expected to worsen as temperatures increase and become more extreme. In the oceans, temperature changes, bleaching of coral reefs and ocean acidification are affecting fisheries. Climate change also exacerbates drivers of food insecurity and malnutrition, such as conflict and poverty.

69. Third, this Court has recognized the rights to water and sanitation as being "particularly vulnerable to environmental impact."[122] This includes threats arising from changing patterns of precipitation, droughts, floods, deglaciation, temperature rise, sea-level rise, as well as threats to groundwater aquifers, wetlands, and riparian ecosystems.[123] Referring specifically to South and Central America, the United Nations Independent Expert on safe drinking water and sanitation has observed "the vulnerability of a high proportion of the population in a general context of increasing of rivers and aquifers, deforestation and growing risks of droughts and floods."[124] The UN Special Rapporteur on the Environment has observed:[125]

> Climate change is affecting precipitation patterns across the world, with some dry areas receiving less precipitation and wet areas receiving more frequent and intense precipitation. The four key elements of the right to water and sanitation are threatened: availability, accessibility, acceptability and quality. The Intergovernmental Panel on Climate Change warned of particularly high vulnerability to water stress in small island developing States and parts of Africa, Asia and Latin America. Climate Change has already contributed to a water crisis in the Plurinational State of Bolivia, where glaciers are receding and water rationing has been required in major cities. … The right to sanitation may be threatened when water is increasingly scarce, and when floods, intense precipitation or other extreme weather events damage infrastructure or impair access. The rise in extreme weather events owing to climate change increases the risk of water-borne diseases, including typhoid fever and cholera.

3. The climate emergency impairs the right to a healthy environment

70. This Court has recognized an autonomous right to a healthy environment. The right is expressly recognized in Article 11 of the San Salvador Protocol, and Article 26 of the Convention has served as conduit for the Court's enforcement of this right under the system of individual petitions to the Court. The Court's approach to

[122] *Advisory Opinion OC-23/17*, para. 66; *see also CESCR General Comment 15*, paras. 10-12.

[123] Pedro Arrojo Agudo, *Special thematic report on climate change and the human rights to water and sanitation by the Special Rapporteur on the human rights to safe drinking water and sanitation* (January 2022).

[124] *Id.* at para. 57.

[125] *Special Rapporteur on the Environment, Climate Report No. 2*, paras. 38-39.

developing this right is consistent with the approach to systemic integration as well as the recognition of the indivisibility and interdependence of all human rights.[126]

71. At the international level, the right to a clean, healthy, and sustainable environment ("**right to a healthy environment**") has been recognized by resolutions of both the Human Rights Council and General Assembly.[127] No State voted against either resolution.

72. The right to a healthy environment is widely recognized across many domestic and international legal orders. Article 24 of the African Charter on Human and Peoples' Rights recognizes the right of all peoples to a "general satisfactory environment favourable to their development."[128] The right is also recognized in the American Declaration on the Rights of Indigenous Peoples,[129] the ASEAN Human Rights Declaration,[130] and the Arab Charter on Human Rights.[131] The right is recognized in the constitutions, legislation, judicial decisions, or treaty obligations of at least 161 UN Member States.[132]

73. As this Court has recognized, the right has "both individual and also collective connotations."[133] Moreover, the right benefits not only humans, but also components of the natural environment "as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals."[134]

74. As discussed in Section V.b.4 below, the right also encompasses three procedural elements in the environmental context: (a) the right to information; (b) the right to participate in decision-making; and (c) access to justice and effective remedies.

75. The substantive elements of the right to a healthy environment include a safe climate, clean air, safe and sufficient water, adequate sanitation, healthy and

[126] *Id.* at para. 57.

[127] Human Rights Council, "The human right to a clean, healthy and sustainable environment", U.N. Doc. A/HRC/RES/48/13 (Oct. 18, 2021); General Assembly, "The human right to a clean, healthy and sustainable environment", U.N. Doc. A/76/300 (July 28, 2022).

[128] African Charter on Human and Peoples' Rights, Art. 24.

[129] American Declaration on the Rights of Indigenous Peoples, Art. 19.

[130] ASEAN Human Rights Declaration, Art. 28(f).

[131] Arab Charter on Human Rights, Art. 38.

[132] David Boyd, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, U.N. Doc. A/HRC/43/53 (Jan. 8, 2019). Nations recognizing the right in law since 2020 include Antigua and Barbuda, Belize, Canada, Grenada, and Saint Lucia. *See also* the recent recognition by the CRC Committee General Comment 26.

[133] *Advisory Opinion OC-23/17*, at para. 59.

[134] *Id.* at para. 62.

sustainably produced food, non-toxic environments, in which to live, work, study, and play, and healthy biodiversity and ecosystems.[135]

76. All of these elements rely on a stable climate system. Failure to take adequate mitigation and adaptation measures may constitute a violation of the right to a healthy environment.[136] This conclusion is supported by case law from domestic courts and the Commission on Human Rights of the Philippines.[137]

4. The climate emergency impairs the rights of Indigenous Peoples, including their right to property

77. As discussed extensively in Section III above, the climate emergency threatens all regions of the world, but disproportionately impacts certain communities and populations who live in areas that are more susceptible to the impacts of climate change. The Advisory Opinion Request expressly requests the Court to articulate the obligations of States towards communities and populations that are especially vulnerable to the impacts of climate change, such as children (Section IV.C) and Indigenous Peoples (Section IV.E). Much of this Court's jurisprudence on the rights of Indigenous Peoples and other populations derives from the right to Indigenous and tribal property. This Section lays out the relevant jurisprudence of the Court. Section V below discusses the specific obligations owed by States to populations and communities rendered vulnerable in the face of the climate emergency.

78. This Court has long recognized that the human rights of Indigenous Peoples are particularly vulnerable to environmental degradation. These threats give rise to heightened obligations, including "positive measures to ensure that members of these peoples have access to a dignified life – which includes the protection of their close relationship with the land – and to their life project, in both its individual and collective dimension."[138] As this Court has explained, the vulnerability of Indigenous communities derives not only from the "special spiritual and cultural relationship with their ancestral territories, but also due to their economic

[135] David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: A Safe Climate*, U.N. Doc. A/74/161 (July 15, 2019); *see also Advisory Opinion OC-23/17*, at para. 60.

[136] *Id*. at para. 44.

[137] *See e.g.* Supreme Court of Colombia, *Demanda Generaciones Futuras v. Minambiente*, Decision of Apr. 5, 2018; High Court at Lahore, *Leghari v. Federation of Pakistan*, W.P. No. 25501/201, Decision of Apr. 4, 2015; Supreme Court of Brazil, *PSB et al. v. Brazil*, Decision of July 1, 2022; Commission on Human Rights of the Philippines, *National Inquiry on Climate Change Report*, Case No. CHR-NI-2016-0001 (May 2022); *Held v Montana*, No. CV 22-137, 2023 WL 1997864 (D. Mont. Aug. 14, 2023); Supreme Court of the State of Hawai'i, *In the matter of Hawai'i Electric Light Company*, SCOT—22—0000418, Decision of 13 Mar. 2023.

[138] *Advisory Opinion OC-23/17*, para. 48, citing *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of June 17, 2005. Series C No. 125, para. 163; *Case of the Kaliña and Lokono Peoples v. Suriname. Merits, reparations and costs.* Judgment of November 25, 2015. Series C No. 309, para 181.

dependence on environmental resources."[139] Additionally, in 2020, this Court ruled that Indigenous Peoples' right to a healthy environment had been violated by the unregulated activities of settlers (who were raising cattle and installing fencing) that "had an impact on the traditional ways of obtaining food of the Indigenous communities." The Court ordered Argentina, which knew about these activities, to formalize the titles of the Indigenous Peoples to their land promptly; to remove the livestock and fences; and facilitate access of the Indigenous Peoples to nutritious and culturally acceptable food.[140]

79. Indigenous Peoples are entitled to the respect, protection, and fulfillment of the full range of their Convention rights. This collective or communal dimension of Convention rights of Indigenous Peoples was recognized by this Court in *Awas Tingni v. Nicaragua*, where the Court found that the right to property protects the ancestral lands of Indigenous Peoples.[141] This Court in *Saramaka* and other cases has further elaborated on the property rights of Indigenous and Tribal Peoples over their lands, territories and natural resources, including safeguards to ensure their survival, such as the right to free and prior informed consent.[142]

80. This Court repeatedly has emphasized that potentially affected Indigenous groups must be consulted in good faith. In *Saramaka*, the Court held that States must act to assure and protect the rights of Indigenous and Tribal peoples to participate effectively in consultation processes. Effective participation requires States to ensure that affected peoples "are [made] aware of possible risks, including environmental and health risks, in order that the proposed [activity] is accepted knowingly and voluntarily."[143] States must also "actively consult with the community according to their customs and traditions,"[144] and, in doing so, "take account of the people's traditional methods of decision-making."[145]

81. Similarly, *Kaliña and Lokono Peoples v. Suriname* concerned the efforts of the Kaliña and Lokono Peoples to obtain information from the local governments that could have supported their claims that their property rights to their lands were being impacted by proposed measures. This Court held that "the failure to hand over information in Suriname's public records, and the failure to justify the refusal to

[139] *Advisory Opinion OC-23/17*, n. 121.

[140] *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Judgment of February 6, 2020 (Merits, reparations and costs), Inter-Am. Ct. H.R. Series C No. 400, para. 248.

[141] *Case of the Mayagna (Sumon) Awas Tingni Community v. Nicaragua, Merits, reparations and costs*, IACHR Series C No 79, [2001] IACHR 9, IHRL 1462 (IACHR 2001), (Aug. 31 2001).

[142] *Saramaka People v. Suriname, Preliminary Objections,* Merits, Reparations, and Costs. Judgment of Nov. 28, 2007. Inter-Am. Ct. H.R. Series C No. 172, para. 92.

[143] *Id.*

[144] *Id*.

[145] *Id*.

provide it" constituted a violation of both the right to information under Article 13 of the American Convention, as well as the right to judicial protection under Article 25.[146]

82. Additionally, this Court has found States liable for violating the property rights of Indigenous peoples through improper exploitation of natural resources in their territories. For example, in *Yakye Axa Indigenous Community v. Paraguay*,[147] this Court held that Paraguay had not safeguarded the ancestral property rights of the Yakye Axa Indigenous Community, and that Paraguay should take positive measures to protect the natural resources of the community's recognized territory.

5. The climate emergency impairs the right to self-determination

83. Threats to human rights can be intensified because of geographic location. Certain regions of the Americas and the Caribbean are, and will be, exposed to heightened effects of the climate emergency. Individuals who are members of vulnerable groups *and* reside in these regions experience, and will continue to experience, intensified and intersecting forms of vulnerability.

84. In particular, the climate emergency poses an existential threat to the rights of those living in Small Island Developing States, including those in the Caribbean region. This Court has acknowledged that "coastal and small island communities … run a special risk" of having their rights threatened through environmental degradation.[148]

85. As the Inter-American Commission has noted, rising sea levels and changes in rainfall patterns threaten residents of these States with "food insecurity, forced migration, disease and death."[149] The Commission has also noted particular risks to those living in Central America, where the climate emergency is likely to intensify risks arising from tropical storms and hurricanes, as well as droughts in the Dry Corridor region.[150]

86. Rising sea levels create novel concerns about these States' right to self-determination, particularly low-lying and Small Island Developing States, to whom sea-level rise poses an existential threat.[151] Sea-level rise and the inundation of coastal areas and islands will have consequences to those States' sovereignty and

[146] *Case of the Kaliña and Lokono Peoples v. Suriname*. *Merits, reparations and costs.* Judgment of November 25, 2015. Series C No. 309, paras. 213-226.

[147] *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of Feb. 6, 2006. Series C No. 125.

[148] *Id.* at para. 67.

[149] *Inter-American Commission Resolution 3/2021*, at page 6.

[150] *Id.* at page 7.

[151] *Report of the Study Group on sea-level rise in relation to international law*, U.N. Doc. A/CN.4/L.972 (July 15, 2022), para. 10.

statehood, the law of the sea based on maritime zones extending from their territories, and the protection of persons affected by sea-level rise.[152]

87. Self-determination is a fundamental right. It is recognized in Article 1 of the United Nations Charter, as well as Article 1 of the International Covenant on Civil and Political Rights, Article 1 of the International Covenant on Economic, Social and Cultural Rights, and Article 5 of the Declaration on the Right to Development. It includes the right of a people not to be deprived of its own means of self-subsistence.[153]

88. This right is threatened by the climate emergency. As the Office of the High Commissioner for Human Rights has observed:

> While the right to self-determination is a collective right held by peoples rather than individuals, its realization is an essential condition for the enjoyment of individual human rights. Climate change not only poses a threat to the lives of individuals but also to their ways of life and livelihoods, and to the survival of entire peoples.[154]

89. The right requires States to promote the realization of self-determination, including for groups and States within their own territories.[155] As this Court has recognized, the right to self-determination especially implicates the rights of Indigenous Peoples.[156]

90. The international community recognizes that there is a strong presumption of the persistence of States. The conclusion that catastrophic sea-level rise could lead to the extinction of any State, rather than these States' persistence where possible, should be disfavored.[157]

91. It is essential to preserve the right to self-determination of those populations whose States become completely submerged by the sea or otherwise uninhabitable due to

[152] *Report of the International Law Commission: Seventieth Session*, U.N. Doc. A/73/10 (Apr. 30 – June 1 & July 2 – Aug. 10, 2018), para. 12.

[153] Human Rights Committee, General Comment No. 12, Art. 1 (Right to Self-determination), The Right to Self-Determination of Peoples (Mar. 13, 1984), para. 6.

[154] Office of the High Commissioner for Human Rights, *Frequently Asked Questions on Human Rights and Climate Change*, Fact Sheet 38 (2021) at 5, https://www.ohchr.org/sites/default/files/Documents/Publications/FSheet38_FAQ_HR_CC_EN.pdf; *see also* Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009), paras. 39-41.

[155] *Id*.

[156] *Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations and costs.* Judgment of November 28, 2007. Series C No. 172, para. 93.

[157] *See, e.g.,* Patrícia Galvão Teles & Juan José Ruda Santolaria, *Sea-level rise in relation to international law: Second Issues Paper*, U. N. Doc. A/CN.4/752, para. 30.

sea-level rise. Maintaining statehood and implementing additional processes to enable displaced and affected populations to express their will and their identities will be key to supporting these populations' right to self-determination. [158]

92. The right to self-determination is essential for the effective enjoyment of other human rights. As displaced communities are unlikely to be able to relocate entirely together with the same functioning institutions, host States should take special care to ensure that these communities' rights are respected. [159]

93. Additionally, the right to self-determination of Small Island Developing States should be respected by all States. States should avoid actions that will foreseeably cause serious infringements of this right. The Office of the High Commissioner for Human Rights therefore concluded that "States have a duty to take action, individually and jointly, to address and avert threats to the right to self-determination by mitigating climate change."[160]

94. Finally, the climate emergency causes the displacement of people within and between countries. This Court has recognized that the right to not be forcibly displaced is "particularly vulnerable to environmental impact."[161] The displacement effects of the climate emergency have been recognized by the UNFCCC Conference of Parties.[162] In 2015, the Conference of Parties appointed a Task Force on Displacement.[163]

95. States should respect the rights both of internally displaced persons, as well as those forced to migrate across State boundaries. States should guarantee that individuals forced to migrate can enjoy their fundamental human rights throughout their journey and upon arrival in host countries.[164] These rights include "the provision of

[158] *Id.* at para. 226.

[159] *Id.* at para. 252.

[160] *Frequently Asked Questions on Human Rights and Climate Change*, at page 6.

[161] *Advisory Opinion OC-23/17*, para 66; *see also San Salvador Protocol*, Preamble; *Advisory Opinion OC-23/17*, paras. 47-55; *Rio Declaration*, Principle 1.

[162] *See, e.g.*, UNFCCC, Third rolling plan of action of the task force on displacement for 2022-2024.

[163] *Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015*, U.N. Doc. FCCC/CP/2015/10/Add.1, Decision 1/CP.21 (Adoption of the Paris Agreement), para 49: "Also requests the Executive Committee of the Warsaw International Mechanism to establish, according to its procedures and mandate, a task force to complement, draw upon the work of and involve, as appropriate, existing bodies and expert groups under the Convention including the Adaptation Committee and the Least Developed Countries Expert Group, as well as relevant organizations and expert bodies outside the Convention, to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change;"

[164] International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights; *see also* OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf; OHCHR, *OHCHR's Key Messages on Human Rights, Climate Change and Migration*, para 1: "States have affirmative

food and clean water; access to adequate housing, health care and social security, education, and decent work opportunities; and safeguarding the principles of non-refoulement and the prohibition of collective expulsion, as well as the rights to liberty, personal integrity and family unity."[165]

6. The climate emergency impairs the right to home, privacy, and family life

96. Article 11 of the Convention protects the right to private life. This Court has recognized the right to private life as one which is "particularly vulnerable to environmental impact."[166]

97. Article 11 of the Convention is based on Article 17 of the International Covenant on Civil and Political Rights. The UN Human Rights Committee has found that the right in Article 17 of the International Covenant on Civil and Political Rights gives rise to State obligations in the context of the climate emergency, particularly when violations of the right are foreseeable and serious. In *Billy v. Australia*, the Committee found that extensive seawall construction by Australia was insufficient to discharge these obligations. The seawalls at issue would not prevent a range of violations of the right to private life, including reduced access to food; inundation of villages and burial sites; salinization of traditional gardens; decline of nutritionally and culturally important species; coral bleaching; and ocean acidification.[167] Such impacts were both foreseeable and serious, in light of "their intensity or duration and the physical or mental health harm they can cause."[168]

98. Article 11 corresponds closely to Article 8 of the European Convention on Human Rights.[169] The European Court of Human Rights has long recognized that Article 8 is engaged where a person is directly and seriously affected by unsafe or disruptive environmental conditions (such as air or water pollution).[170] States have a responsibility for damage caused directly by the State, or by private entities that the State has failed to regulate.

obligations to take preventative and remedial actions to uphold the rights of migrants and address violations and abuse at all stages of migration."
https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/Key_Messages_HR_CC_Migration.pdf [OHCHR's Key Messages on Human Rights].

[165] OHCHR's Key Messages on Human Rights, para 1.

[166] *Advisory Opinion OC-23/17*, at para. 66.

[167] *Billy v. Australia*, at para. 8.12.

[168] *Id*. at para. 8.12.

[169] "Everyone has the right to respect for his private and family life, his home and his correspondence."

[170] *See, e.g., Cordella v. Italy*, ECtHR App Nos. 54414/13 and 54264/15 (Jan. 24, 2019); *Çiçek v. Turkey*, ECtHR App No. 44837/07 (Sept. 14, 2007); *Fadeyeva v. Russia*, ECtHR App. No. 55723/00 (June 9, 2005).

99. Apex courts in Member States of the European Union have also held that State measures regarding the climate emergency might violate Article 8 of the European Convention on Human Rights. For example, in *State of the Netherlands v. Urgenda Foundation*, the Supreme Court of the Netherlands affirmed that Article 8 of the European Convention on Human Rights requires wealthy States to reduce their carbon emissions rapidly to prevent violations of the right to private and family life and the home caused by the climate emergency.[171]

100. In sum, Article 11 requires States to protect individuals who are within their jurisdiction, or under their control, from serious and foreseeable interferences with their private lives. It is undoubtedly engaged in the climate emergency.

V. STATE OBLIGATIONS IN THE CONTEXT OF THE CLIMATE EMERGENCY

101. Our analysis of State obligations focuses primarily on those owed by State parties to the Convention. Nevertheless, this Court has previously recognized its advisory function "encompasses not only the State Parties to the American Convention," but that an advisory opinion "also has legal relevance for all OAS Member States, as well as for the OAS organs whose sphere of competence relates to the matter that is the subject of the request."[172] Furthermore, in *Advisory Opinion OC-23/17*, when assessing the scope of Article 1(1) of the Convention in response to a request for an advisory opinion, this Court determined that it should not limit its response to specific countries on the basis that environmental obligations may be "important for all the States of the planet."[173] Accordingly, while we direct our analysis to Convention State parties, we respectfully submit that this analysis is also relevant to the obligations of OAS Member States in regard to the climate emergency.

a. Governing principles

102. Before reviewing the human rights obligations owed by States in the context of the climate emergency, we first discuss the principles that are relevant to assessing the scope and content of those obligations. These principles are cross-cutting and inform the obligations established in the Convention. In setting out these principles, we draw on the Convention's text, this Court's jurisprudence, international human rights law, international environmental law, and climate treaties. Such an interpretive approach is justified by the principle of systemic integration, set out in Section IV.d above.

[171] *Urgenda Foundation v. State of the Netherlands*, ECLI:NL:HR:2019:2007, Judgment, Supreme Court of the Netherlands (Dec. 20, 2019) at 5.6.2, 5.8.

[172] *Advisory Opinion OC-23/17*, para. 30, citing *Advisory Opinion OC-18/03*, para. 60; *Advisory Opinion OC-22/16*, para. 25.

[173] *Advisory Opinion OC-23/17*, para. 35: "This Court has indicated that, owing to the general interest of its advisory opinions, their scope should not be restricted to specific States. The questions raised in the request go beyond the interests of the States parties to the Cartagena Convention and are important for all the States of the planet. Therefore, the Court considers that it should not limit is [sic] response to the scope of application of the Cartagena Convention."

1. International cooperation

103. Global environmental challenges such as the climate emergency can only be addressed effectively through cooperation between States at the bilateral, regional and global levels. The UNFCCC notes that "the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate response."[174]

104. The duty of cooperation incorporates three interrelated obligations. First, States should notify potentially affected States of any significant environmental damage that might result from activity within a State's jurisdiction.[175]

105. Second, States owe a duty to consult and negotiate with potentially affected States. Such consultation and negotiation activities should be performed in good faith. This Court has observed that consultation "involves the mutual willingness of the States concerned to enter into a genuine discussion of actual and potential environmental risks."[176] States should refrain from carrying out any proposed environmentally-harmful activities until consultation and negotiation have concluded.[177] In the context of greenhouse gas emissions, the duty of cooperation requires ongoing multilateral negotiations and agreements to reduce greenhouse gas emissions and to strengthen technical, scientific, financial and adaptive capacities. Such cooperation might require joint development of mitigation and adaptation initiatives.

106. Third, States owe one another a duty to exchange information concerning risks of transboundary harm.[178] In the context of the climate emergency, this includes a duty to share best available science and technology to assist other countries in developing and implementing their mitigation and adaptation policy responses.

107. Ultimately, international cooperation is central to climate mitigation and adaptation. The Draft International Covenant on the Right to Development recognizes the central role that cooperation among States should play to ensure the "full, equal and meaningful enjoyment of the right to development by every individual and all peoples everywhere."[179] Draft article 13, titled, "Duty to cooperate," provides that:

[174] UNFCCC, Preamble.

[175] *Advisory Opinion OC-23/17*, para. 187.

[176] *Id*. at para. 205.

[177] *Id*. at para. 205.

[178] *Id*. at paras. 206-208.

[179] Report by the Chair-Rapporteur of the Working Group on the Right to Development, Zamir Akram, *Draft international covenant on the right to development*, U.N. Doc. A/HRC/54/50 (July 18, 2023), Art. 1.

> 4. State Parties recognize their duty to cooperate to create a social and international order conducive to the realization of the right to development by, inter alia:
>
> [. . .]
>
> (h) Enhancing mitigation actions and adaptive capacity, strengthening resilience and response and reducing vulnerability to climate change and extreme weather events, addressing the economic, social and environmental impacts of climate change, taking into account the imperatives of a just transition, equity and the principles of common but differentiated responsibilities and respective capabilities in the light of national circumstances, and enhancing access to international climate finance, technology transfer and capacity-building to support mitigation and adaptation efforts in developing and least developed countries, especially those that are particularly vulnerable to the adverse effects of climate change.[180]

108. The UN Special Rapporteur on the Right to Development also emphasized in a report to the UN General Assembly the central importance of States' duty to cooperate to realize the right to development, especially when addressing the many challenges facing humanity, including climate change.[181] He observed that "[s]trengthening the duty to cooperate and international solidarity will be necessary to mobilize and make available necessary resources to developing countries and in turn realize fully the right to development in all world regions."[182]

2. Prevention of environmental harm

109. The principle of prevention of transboundary environmental harm forms part of customary international law.[183] The principle requires each State to "use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State."[184] It requires States not only to implement "appropriate rules and

[180] *Id.*

[181] Surya Deva (Special Rapporteur on the right to development), *Reinvigorating the right to development: A vision for the future*, U.N. Doc. A/HRC/54/27 (Aug. 4, 2023), para. 21.

[182] *Id*. at para. 58; *see also* para. 81 ("States, especially in the global South, face significant capacity deficits – some of which are linked to past colonization and the continuing neocolonial order – in realizing the right to development. While some of these deficits relate to access to finance and technologies, others relate to good governance issues such as transparency, corruption, the rule of law, judicial independence, free media and accountability. International cooperation and solidarity will be critical to fill these capacity gaps.").

[183] See *Pulp Mills on the River Uruguay (Argentina v. Uruguay*) Judgment, 2010 ICJ (Apr. 20, 2010), para. 101; *Corfu Channel (United Kingdom v. Albania)*, Judgment, 1948 ICJ (Mar. 25, 1948).

[184] *Pulp Mills*, at para. 101.

measures" to prevent significant transboundary harm, but also to ensure "vigilance in the enforcement" of those measures,[185] such as by monitoring activities likely to cause harm.[186]

110. At the core of the principle is the obligation of due diligence. States should perform an environmental impact assessment wherever "there is a risk that the proposed … activity may have significant adverse impact on the environment in a transboundary context."[187] This reflects a broader aim that States should, wherever possible, proactively prevent harm from occurring, rather than retrospectively addressing harm after it has taken place.

111. The duty of due diligence incorporates both procedural and substantive elements. It is an obligation of conduct which demands a high level of care. Not only should States make good faith efforts to identify environmental harm and adopt rules and measures, but States should also incorporate a high degree of "vigilance in their enforcement and the exercise of administrate control applicable to public and private operators, such as the monitoring of activities undertaken by such operators."[188] As the International Law Commission has observed, States should not only formulate policies to avoid environmental harm, but also implement and enforce those policies.[189]

112. Harm prevention obligations are triggered wherever there is a "risk of causing significant transboundary harm."[190] As already noted, under developing human rights jurisprudence, States' human rights obligations are engaged where serious harm is foreseeable.[191] This standard of "serious harm" is met wherever environmental degradation threatens the right to life.[192] Read harmoniously, the two regimes require that in the context of environmental harm, States take action to respect and ensure human rights when violations of such rights are foreseeable *and* where there is a *risk* of significant harm.

[185] *Id*.

[186] *Id.* A recent example of States monitoring activities likely to cause harm is the European Parliament's adoption of the Corporate Sustainability Due Diligence Directive, which focuses on mandatory human rights and environmental due diligence for certain companies. *See* European Parliament, *Corporate Sustainability Due Diligence* (adopted on June 1, 2023).

[187] *Id*. at 55-56; *see also Advisory Opinion OC-23/17*, at paras. 124-25.

[188] *Pulp Mills* at para. 197.

[189] Prevention of Transboundary Harm from Hazardous Activities (2001) Art. 3.

[190] *Id*. at Art. 1.

[191] *See, e.g., Billy v. Australia*.

[192] *Advisory Opinion OC-23/17*, at para. 140.

113. This Court has found that the harm prevention principle applies to purely domestic environmental harm.[193] This is because "the obligations that it imposes are similar to the general duty to prevent human rights violations."[194] In Advisory Opinion OC-23/17, this Court set out a range of domestic obligations flowing from the harm prevention principle, including duties of due diligence,[195] regulation,[196] supervision and monitoring (including particular duties owed to Indigenous Peoples),[197] carrying out environmental impact assessments,[198] preparing contingency plans,[199] and mitigating environmental damage.[200] The UN Human Rights Committee reached a similar conclusion.[201]

114. Interpreted harmoniously, the Convention right to life,[202] the harm prevention principle, and this Court's Article 1(1) jurisprudence generate extraterritorial environmental obligations on States. This Court has found that "the State obligation to respect and to ensure human rights applies to every person who is within the State's territory *or* who is in any way subject to its authority, responsibility or control."[203] A State "is exercising authority over that person when that person is under its effective control, either within or outside its territory."[204] Therefore, a person's rights are violated "if there is a causal link between the act that originated in its territory and the infringement of the human right outside its territory."[205] This conclusion has been affirmed by a resolution of the Inter-American Commission, and was embraced by the UN Committee on the Rights of the Child.[206]

[193] *Id*. at para. 140.

[194] *Id*. at para. 133.

[195] *Id*. at para. 142.

[196] *Id*. at para. 146.

[197] *Id*. at paras. 152-54.

[198] *Id*. at paras. 162-69.

[199] *Id*. at para. 171.

[200] *Id*. at para. 172.

[201] *See Portillo Cáceres and Others v. Paraguay*, CCPR/C/126/D/2751/2016, Communication 2751/2016.

[202] *Id*. at para. 63.

[203] *Id*. at para. 73 [emphasis added]; *see also Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, Advisory Opinion OC-21/14 Inter-Am. Ct. H. R. (Aug. 19, 2014), para. 61.

[204] *Id*. at para. 81.

[205] *Id*. at para. 101.

[206] *Inter-American Commission Resolution 3/2021*, at pages 5-6. *Sacchi v. Argentina*, paras. 9.7-9.12.

3. Precaution

115. "Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."[207] This formulation, contained in the Rio Declaration, is the core of the precautionary principle. The precautionary principle has been recognized by this Court.[208] It is also found in many international environmental instruments,[209] including the UNFCCC, which provides that:[210]

> The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all sectors. Efforts to address climate change may be carried out cooperatively by interested parties.

116. Like the harm prevention principle, the precautionary principle requires States to act before environmental harm occurs. States should make good faith efforts to anticipate future environmental risks (including those derived from greenhouse gas emissions) and address such risks even in the face of uncertainty.

4. Polluter pays principle

117. Duties of harm prevention, cooperation and precaution all emphasize that environmental harms (including transboundary harms) should be addressed before they occur. Where such harms do occur, the polluter pays principle requires that the cost of addressing such harms should be borne by the polluter.

118. The polluter pays principle has been recognized in international jurisprudence since 1941.[211] It is reflected in Principle 16 of the Rio Declaration on Environment and

[207] *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26 (Vol. I) (Aug. 12, 1992), [*Rio Declaration*] at Principle 15.

[208] *Advisory Opinion OC-23/17*, para. 180.

[209] *See, e.g., Rio Declaration*, at Principle 15; *Stockholm Declaration*.

[210] UNFCCC, Art. 3.3.

[211] Arbitral Trib., *Trail Smelter Arbitration (U.S. v. Can.)*, 3 U.N. Rep. Int'l Arb. Awards 1905, 1965-66; 1974-78 (1941).

Development, which provides that "the polluter should, in principle, bear the cost of pollution."[212]

119. In the context of the climate emergency, the polluter pays principle applies to mitigation, the financing of climate adaptation measures, and obligations related to loss and damage. While the polluter pays principle applies to all States in the context of the climate emergency, it may also give rise to differentiated obligations. Specifically, its application requires major historic and current emitters of greenhouse gases to provide greater financial contributions to ongoing mitigation, adaptation and loss and damage obligations. The polluter pays principle thus reinforces the principles of differentiated obligations discussed above.

5. Best available scientific knowledge

120. State responses to the climate emergency should be informed by the best available science. The right to science requires that States adopt mitigation and adaptation measures on the basis of the best available scientific evidence.[213]

121. Science provides the international community with knowledge about the risks and harms posed to human health and the environment by climate change, enabling the development of evidence-based policies to prevent and address those harms.[214] Connecting the regulatory, policy-making, and scientific communities is indispensable to advancing environmental and human rights goals.[215]

122. The Paris Agreement recognizes that the global response to the climate emergency should be undertaken on the basis of "the best available scientific knowledge."[216] This in turn depends on States fulfilling their obligations of cooperation, ensuring the sharing of scientific knowledge and technical capacity.[217] The obligation to utilize best available science and align the regulatory response with such best available science also derives from human rights law. The human right to enjoy the benefits of scientific progress is protected by Article 15 of the International Covenant on Economic, Social and Cultural Rights. This right includes, among

[212] *Rio Declaration*, at Principle 14.

[213] Marcos Orellana (Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes), *Right to science in the context of toxic substances*, U.N. Doc. A/HRC/48/61 (July 26, 2021), para. 10.

[214] *See id.* at para. 1.

[215] *Id.* at para. 2.

[216] Paris Agreement, Preamble. The UNFCCC and Paris Agreement both require States to utilize best available science in their calculation of emissions (UNFCCC art 4(2)(a)); assessing climate policies (UNFCCC, Art. 4(2)(d)); developing strategies to reduce greenhouse gas emissions (Paris Agreement, Art. 4(1)); developing strategies to reduce greenhouse gas emissions (Paris Agreement, Art. 4(1)); and developing adaptation plans (Paris Agreement, Art. 7(5)).

[217] See *Stockholm Declaration*, Principle 20; *Rio Declaration,* Principle 9; Paris Agreement, Art. 10; UNFCCC, Art. 4.

other things, the right to "share in scientific advancement and its benefits"[218] and to "enjoy the benefits of scientific progress and its applications."[219] Importantly, this right requires States to "respect the freedom indispensable for scientific research and creative activity."[220]

123. The Inter-American system "provides the most robust and comprehensive protection of the right to science among the regional human rights systems,"[221] recognizing the right to science in the American Declaration of the Rights and Duties of Man,[222] the Charter of the Organization of American States,[223] and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.[224]

6. Non-regression

124. The principle of non-regression is the counterpart of progressive realization (discussed below).[225] States should not allow or pursue actions that have the effect of diminishing the legal protection of the environment or of access to environmental justice.[226] Once a State has enacted or accepted a measure of environmental protection, it should not weaken that measure. The non-regression principle ensures that States work toward stronger standards on global environmental challenges (including the climate emergency). It avoids a "race to the bottom" that may occur where countries compete to attract foreign investment by weakening domestic environmental protection laws.

125. The principle of non-regression is widespread in international treaties and investment agreements, with over 150 States now subscribing to a non-regression clause in at least one agreement.[227] Together with progressive realization, non-regression is one of the guiding principles of the Escazú Agreement.[228] It is also

[218] UDHR, Art. 27.

[219] ICESCR, Art. 15; *see also CESCR General Comment 25*.

[220] ICESCR, Art. 15(3).

[221] A/HRC/48/61 at para. 32.

[222] ADHR, Art. XIII.

[223] OAS Charter, Art. 38.

[224] San Salvador Protocol, Art. 14.

[225] *CESCR General Comment 15,* para. 32.

[226] IUCN World Declaration, Principle 12.

[227] Andrew D. Mitchel & James Munro, *An International Law Principle of Non-Regression from Environmental Protections*, 72 ICLQ 35 (2023).

[228] Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) [Escazú Agreement], Art. 3(c).

reflected in Article 4.3 of the Paris Agreement and has been applied in environmental cases by courts in the Americas.[229] A Brazilian court recently applied this principle to overturn a decision of the federal government to allow sugarcane plantations in the Amazon, contrary to a rule enacted in 2009.[230] The non-regression principle is clearly articulated in Article 11(8) of the Constitution of Ecuador, which provides, "[a]ny deed or omission of a regressive nature that diminishes, undermines or annuls without justification the exercise of rights shall be deemed unconstitutional."[231]

126. Regressive measures are permissible only where the State has considered all available alternatives, and where the measures are "duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party's maximum available resources."[232]

7. Equality and non-discrimination

127. All States, when acting to respect, protect, and fulfill human rights, should act consistently with obligations of equality and non-discrimination. This obligation follows from both the International Covenant on Civil and Political Rights (Article 2), and the International Covenant on Economic, Social and Cultural Rights (Article 2(2)). As with the principle of non-regression, States should comply with this obligation regardless of their available resources. The list of prohibited grounds of discrimination in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights is non-exhaustive[233] and extends to a wide range of characteristics.[234]

128. States should avoid both direct and indirect discrimination.[235] States' climate policies should proactively reduce historical or systemic discrimination, for example by closing coal-fired power plants located in vulnerable and/or marginalized communities. When fulfilling procedural obligations, States should remove barriers that individuals, groups, and communities might face in receiving information, participating in decision-making, or seeking remedies. States should also ensure that the burdens of mitigation or adaptation activities do not fall unduly

[229] Supreme Court of Brazil, *PSB et al. v. Brazil*, Decision of July 1, 2022

[230] Seventh Federal Court, Amazonas, suspending the effects of Decree 10.084/2019, Case No. 1016202-09.2019.4.01.3200.

[231] Constitution of Ecuador (2001, rev. 2021).

[232] *CESCR General Comment 15,* para. 19 (applying the principle in the context of the right to health).

[233] These instruments specify race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

[234] Committee on Economic, Social and Cultural Rights, General Comment 20, Non-discrimination in economic, social and cultural rights, U.N. Doc. E/C.12/GC/20 (July 2, 2009) [*CESCR General Comment 20*] discussing grounds of disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, and economic and social situation.

[235] John Knox, *Framework Principles on Human Rights and the Environment*, U.N. Doc. A/HRC/37/59, Jan. 24, 2018 [*Framework Principles on Human Rights and Climate Change*], paras. 8-9 (Principle 3); *CRC Committee General Comment 26*, para. 16.

on persons or communities in vulnerable situations. This requires that States proactively consider whether activities might result from, or contribute to, existing patterns of discrimination, taking into account the heightened barriers to justice that such groups experience.[236] States should avoid indirect differential treatment, unless such treatment meets strict requirements of legitimacy, necessity, and proportionality.[237]

129. These obligations apply to all State actions that are intended to mitigate or adapt to the climate emergency.[238]

8. Intergenerational equity

130. The principle of intergenerational equity is recognized in many international instruments[239] and is reflected in international law jurisprudence.[240] Intergenerational equity requires States to act as responsible stewards of the planet, protect the interests of future generations, and ensure that they will be able to meet their development and environmental needs.[241]

131. Future generations include living children and those constantly arriving, both of whom are entitled to the realization of their human rights.[242] While children's rights are a well-established area of international human rights law, there is as yet no specific definition of "future generations." The principle of intergenerational equity is clearly applicable, however, when considering the human rights obligations that States owe toward existing children, in relation to both present *and* future harms.[243]

132. Intergenerational equity draws attention to the fair distribution of environmental goods and services. The Earth's material productivity and ecosystem services are

[236] *Framework Principles on Human Rights and Climate Change,* at para. 9 (Principle 3*); CRC Committee General Comment 26,* para. 14.

[237] *Framework Principles on Human Rights and Climate Change,* at para. 9 (Principle 3).

[238] *Advisory Opinion OC-23/17*, at para. 67, citing Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights,* U.N. Doc. A/HRC/10/61 (Jan. 15, 2009), at para. 42, and *UN Special Rapporteur on the Environment, Climate Report No. 1*, at para. 81.

[239] *See, e.g., Stockholm Declaration*, Principles 1 and 2; *Rio Declaration*, Principle 3; UNFCCC, Art. 3, Principle 1; UNESCO Declaration on the Responsibilities of the Present Declaration on the Responsibilities of the Present Generation towards future Generations (Nov. 12, 1997); Paris Agreement, Preamble (2015).

[240] *Pulp Mills*, Sep. Op. Judge Cançado Trindade, para. 122; *Case concerning the Gabčikovo-Nagymaros Project (Hung. v. Slovk.)*. (Sept. 25, 1997), Sep. Op. Judge Weeramantry, ICJ Rep 7, ICJ Rep 88 at 106-108; CESCR General Comment 15, para. 28.

[241] Office of the United Nations High Commissioner for Human Rights, *Analytical Study on the Relationship Between Climate Change and the Full and Effective Enjoyment of the Rights of the Child*, U.N. Doc. A/HRC/35/13 (May 4, 2017), para. 35, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/110/91/PDF/G1711091.pdf?OpenElement.

[242] *CRC Committee General Comment 26*, para. 11.

[243] *Sacchi v. Argentina,* at 10.13.

finite. Excessive consumption or pollution by one generation may amount to a violation of intergenerational equity and of the rights of children and future generations, as illustrated by *Oposa v. Factoran*, the pioneering case on this principle.[244]

133. The principle of intergenerational equity also calls attention to the collective rights that future generations may hold.[245] The Maastricht Principles on the Human Rights of Future Generations, adopted on February 3, 2023, lists the obligations of States to respect, protect, and fulfil the human rights of future generations, and the need for accountability and the provision of full and effective reparations where States have breached these obligations.[246]

134. States should recognize that future generations not yet alive will one day be the holders of rights under the Convention, and that the acts or omissions of today, including a failure to protect the environment, may diminish the ability of those future rights-holders to enjoy their rights.

9. Differentiated obligations

135. Some principles—such as prevention and precaution— should be immediately realized equally by all States. Other principles are differentiated, which means they give rise to different obligations owed by different States, depending on their available resources and historic and ongoing contributions to the climate emergency. Differentiated obligations arise from several principles in the UNFCCC and Paris Agreement.[247] These principles are discussed below.

(a) Common but differentiated responsibilities and respective capabilities

136. As noted in the UNFCCC, "change in the Earth's climate and its adverse effects are a common concern of humankind."[248] The responsibility for addressing the climate emergency is shared by all States. Nevertheless, States are differently situated in both their *responsibility* for producing the climate emergency, as well as their *capability* to address it. Thus, the UNFCCC balances the "common concern" baseline with a call for States' obligations to be "in accordance with common but

[244] Supreme Court of the Philippines, *Oposa v Factoran*, G.R. No. 101083 (July 30, 1993).

[245] *See, e.g., Advisory Opinion OC-23/17,* para. 59: "In its collective dimension, the right to a healthy environment constitutes a universal value that is owed to both present and future generations."

[246] *See Maastricht Principles on the Human Rights of Future Generations* (adopted on Feb. 3, 2023).

[247] UNFCCC, Arts. 3.1, 3.2; Paris Agreement, Art. 2(2).

[248] UNFCCC, Preamble.

differentiated responsibilities and respective capabilities and their social and economic conditions."[249]

137. This principle of common but differentiated responsibilities and respective capabilities takes into account the deep inequalities that exist between developed and developing States. Wealthy States have vastly contributed to the volume of global greenhouse gas emissions responsible for the climate emergency, while benefitting from associated economic development. Put bluntly, "[t]he main contributors to the problem have reaped immense economic benefits and thus have the greatest responsibility to solve the problem."[250] Mitigation burdens, as well as the resourcing and financing of climate mitigation, adaptation and loss and damages, must, should reflect these historic and ongoing responsibilities and capabilities.

138. The principle of common but differentiated responsibilities and respective capabilities is reflected in the operational provisions of the UNFCCC and Paris Agreement. The UNFCCC differentiates between developed (Annex I) and developing (Annex II) countries, which have different obligations concerning their greenhouse gas emissions,[251] and regarding the provision of finance and technology to other countries.[252] The Paris Agreement takes a more dynamic approach.[253] Rather than referencing the bifurcated UNFCCC Annexes, the differentiated obligations of States can be adjusted over time, reflecting contemporary conditions within and among States. The Agreement requires that developed States "tak[e] the lead by undertaking economy-wide absolute emission reduction targets," while developing countries should "continue enhancing their mitigation efforts," and "move over time towards economy-wide emission reduction or limitation targets."[254] This reflects both the principle of common but differentiated responsibilities and respective capabilities and the principle of progressive realization.[255] The Paris Agreement likewise maintains that developed States should "take the lead in mobilizing climate finance."[256]

[249] *See also Rio Declaration*, at Principle 7 ("In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.").

[250] *Special Rapporteur on the Environment, Climate Report No. 2*, at para. 26.

[251] UNFCCC, Arts. 4.1-4.2.

[252] UNFCCC, Arts. 4.3, 4.7.

[253] *See* Christina Voigt & Felipe Ferreira, *'Dynamic Differentiation': The Principles of CBDR-RC, Progression and Highest Possible Ambition in the Paris Agreement*, 5 Transnat'l Env. L. 285 (2016).

[254] Paris Agreement, Art. 4(4).

[255] These principles are discussed below in Section V.b.6.

[256] Paris Agreement, Art. 9(3).

139. The principle is relevant not just globally, but to State parties to the Convention. Different State parties have different levels of responsibility (owing to historic and ongoing emissions), as well as different ongoing capacities to reduce greenhouse gas emissions or adapt to the impacts of the climate emergency.

(b) Highest possible ambition and maximum available resources

140. The principle of highest possible ambition requires that *all* parties enact ambitious climate policies. It is a cornerstone of the Paris Agreement, which applies the principle to preparing nationally determined contributions and taking measures to achieve them.[257] Such nationally determined contributions should reflect the commitments of the Paris Agreement to keep the increase in global temperature to *well below* 2°C, and to pursue efforts to limit the temperature increase to 1.5°C. Nevertheless, the principle acknowledges that the highest possible ambition will vary between States: what is possible in one State may be different from that in other States. Accordingly, this principle is closely related to other principles of differentiation, such as the principle of common but differentiated responsibilities and respective capabilities.

141. The principle of maximum available resources derives from Article 2(1) of the International Covenant on Economic, Social and Cultural Rights.[258] It is also incorporated in the San Salvador Protocol.[259] The realization of human rights, including those related to environmental protection, often requires expenditure of State resources. The level of available resources varies dramatically between States. However, States which lack resources to realize certain rights should still use the maximum of resources *available* to them, and work towards the *progressive* realization of those rights. Importantly, "maximum available resources" includes "both the resources existing within a state as well as those available from the international community through international cooperation and assistance."[260] The concept is thus closely related to the obligation of cooperation set out above.

b. State obligations with regard to specific issues raised in the Advisory Opinion Request

142. Several of the obligations discussed in Sections V.a and V.b above apply to specific issues raised in the Request for Advisory Opinion. For the sake of brevity, the UN Rapporteurs do not repeat each applicable obligation in the sub-sections below. Instead, the UN Rapporteurs provide more detail or context as applicable in each

[257] Paris Agreement, Art. 4(3).

[258] Each State must take actions "to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all available means."

[259] *San Salvador Protocol*, Art. 1.

[260] UN Economic and Social Council, *An Evaluation of The Obligation to Take Steps to the "Maximum of Available Resources" Under an Optional Protocol to the Covenant*, U.N. Doc. E/C.12/2007/1 (Sept. 21, 2007), para. 5; *see also San Salvador Protocol,* Art. 1, which requires States to adopt measures "both domestically and through cooperation among states."

of the following sub-sections that address specific parts of the Advisory Opinion Request.

1. State obligations are derived from the duties of prevention and the guarantee of human rights, including the right to a healthy environment, in relation to the climate emergency (Part IV.A of the Advisory Opinion Request)

143. As discussed in Sections IV.e.3 and V.a.2 above, the climate emergency impairs the right to a healthy environment, triggering the obligations of States to apply the prevention principle. Specifically, State duties are engaged where there exists a foreseeable risk of serious environmental harm that adversely affects the effective enjoyment of human rights, including the right to a healthy environment. Such risks are pervasive in the climate emergency. Such risks therefore give rise to obligations of prevention, mitigation, adaptation, cooperation, and loss and damage, among others. The fulfillment of these obligations should be informed by several of the principles discussed above, including the application of the best available knowledge, prevention, and the precautionary principle.

144. The fundamental obligation of States to address current risks is to reduce greenhouse gas emissions urgently and deeply, in line with the best available science. This is reflected in Article 2 of the UNFCCC, which provides that its "ultimate objective" is to "achieve … stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system." Burning fossil fuels and biomass (73.2 percent) and agriculture and deforestation (18.4 percent) account for 91.6 percent of global emissions.[261] Accordingly, States, especially historic and current high emitters, should phase out fossil fuels, end deforestation and transform industrial agriculture in order to fulfill their obligations.

145. Additionally, State policies to protect Convention rights in the context of the climate emergency should be *comprehensive*. They should address all economic sectors and forms of greenhouse gas pollution. When formulating policies, States should incorporate all necessary measures to meet their Convention obligations to respect, protect, and fulfill human rights. States should be guided by the obligation to protect against foreseeable threats of serious harm. At minimum, States should align their policies and measures with the best available science, as well as obligations under international environmental law – including those found in the UNFCCC and Paris Agreement. The obligation to prevent harm applies both to government activities, as well as the activities of non-State actors.[262] For example, States should require business to conduct climate change due diligence; disclose

[261] *See* Hannah Ritchie and Max Roser, "Emissions by sector," Our World in Data, https://ourworldindata.org/emissions-by-sector.

[262] *Pulp Mills,* at para. 197.

their emissions; limit their emissions through regulation; install non-emitting technologies; and prohibit lobbying against phasing out of fossil fuels.

146. Finally, rules should be binding and enforceable. States' obligations under the duty of prevention extend beyond procedural obligations. States should not only *formulate policies* aimed at reducing transboundary and domestic harm, but also *implement, monitor,* and effectively *enforce* those policies.[263]

147. Ways in which States may execute and fulfill their obligations are discussed in Section VI below. It should be noted that the differentiated obligations of States – including the principle of common but differentiated responsibility and respective capabilities – means that the responsibility for fulfilling obligations should be most urgently met by industrialized States.

2. State obligations to preserve the right to life and survival in relation to the climate emergency in light of science and human rights (Part IV.B of the Advisory Opinion Request)

148. Threats to the right to life are, by definition, "serious." Accordingly, States owe obligations to respect and ensure human rights wherever threats to the right to life are foreseeable.[264]

149. As discussed above in Sections IV.e.1-3 above, the climate emergency threatens the right to life. This includes threats to its necessary conditions, such as the rights to health, food, water, and sanitation, and to a clean, healthy, and sustainable environment.

150. States should address threats to such rights. In line with the policies set out in Part VI below, States should reduce their greenhouse gas emissions, including by urgently phasing out the use of fossil fuels, and should preserve and restore carbon sinks to the greatest extent possible. States should also ensure that individuals and communities have adequate information and financial and technical resources to respond to threats to human rights. This obligation is subject to the principle of common but differentiated responsibilities and respective capabilities, as well as other differentiated obligations. Nevertheless, some obligations – including the obligation of equality and non-discrimination – should be immediately realized by all States.[265]

151. Consistent with the right of access to justice, States should ensure that domestic and international forums are available to hold States and businesses responsible where they fail to meet their obligations and responsibilities. State policies and actions should align with the best available science, including information provided

[263] Prevention of Transboundary Harm from Hazardous Activities (2001) Art. 3.

[264] *Billy v. Australia.*

[265] *See* Section V.a.7 above.

by the IPCC. As part of their duties of cooperation and prevention of transboundary harm, States should share and disclose accurate and accessible information about the climate emergency – its causes, impacts, and State contributions – with one another and the public.

3. The obligations of States in relation to the rights of children and future generations in light of the climate emergency (Part IV.C of the Advisory Opinion Request)

152. Children are particularly vulnerable to health problems exacerbated by climate change, including vector-borne diseases, malnutrition, acute respiratory infections, diarrhea, and other water-borne illnesses.[266] It has been estimated that 88% of the global disease burden associated with climate change is borne by children under the age of five.[267] Extreme weather events pose unique threats to the health and well-being of young bodies and minds. Globally, over 500 million children live in extremely high-risk flood zones; 160 million live in high or extremely high drought severity zones; and 115 million are at high risk from tropical cyclones. By 2040, almost 600 million children will live in regions with extremely limited water resources. The United Nations Children's Fund warns that "climate change will harm the poorest and most vulnerable children first, hardest and longest."[268]

153. The climate emergency poses particular challenges to children's right to health, protected under the International Covenant on Economic, Social and Cultural Rights and by Article 24 of the UN Convention on the Rights of the Child. The impact of the climate emergency on children and youth is particularly stark.[269] It is also twofold: as the UN Committee on the Rights of the Child has observed, children are "particularly impacted by the effects of climate change, both in terms of the manner in which they experience such effects as well as the potential of climate change to affect them throughout their lifetime."[270] In other words, not only will children and young people bear the brunt of the climate emergency by living in a hotter and less stable future, but they are also more vulnerable to both physical and mental health impacts in the present.[271]

154. The UN Committee on the Rights of the Child additionally observed that "the effects of climate change, including water scarcity, food insecurity, vector-borne

[266] Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights, Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child,* U.N. Doc. A/HRC/35/13 (June 6-23, 2017).

[267] Ying Zhang, et al., *Climate change and disability-adjusted life years*. J Environ Health. (Oct. 2007); 70(3):32-6.

[268] UNICEF, *Unless we act now: The impact of climate change on children* (2015).

[269] *Inter-American Commission Resolution 3/2021*, at III.21; *CRC Committee General Comment 26*, para. 96.

[270] *Sacchi v. Argentina*, at 12. [emphasis added]

[271] IPCC Working Group II, *AR6: Climate Change 2022 Impacts, Adaptation, and Vulnerability: Summary for Policymakers,* B.4.4, page 15.

and waterborne diseases, the intensification of air pollution and physical trauma linked to both sudden- and slow-onset events, are disproportionately borne by children."[272] There is also a "clear emerging link between environmental harm and children's mental health, such as depression and eco-anxiety."[273]

155. As discussed in Section V.a.8 above, which addresses the principle of intergenerational equity, States' obligations to respect, protect, and fulfill children's rights should be a top priority, requiring States to take urgent, just, effective, and positive measures.[274] States owe a "heightened duty of care" toward children, who "are far more likely than adults to suffer serious harm."[275] States should take the best interests of children into account as a primary consideration in all policies.[276] While States "retain discretion in arriving at a reasonable balance between determining the appropriate levels of environmental protection and achieving other social goals," States should nevertheless acknowledge the serious harms that the climate emergency produces for children, "and therefore set and enforce environmental standards that protect children from such disproportionate and long-term effects."[277]

156. Under international human rights law, all children have the right to be heard.[278] The realization of this right improves environmental decision-making.[279] Children should be involved in States' decision-making concerning the need for policy responses to the climate emergency, as well as the design and implementation of such policies. States should identify decisions and policies with particular impacts on children and conduct a more detailed procedure (a child rights impact assessment) to determine children's best interests.[280]

157. Children's views should be proactively sought, with additional support given to children with disabilities, children belonging to minority groups, and children living in vulnerable areas.[281] Children should be provided with age-appropriate, safe and accessible mechanisms to make their voices heard, and should be provided with

[272] *CRC Committee General Comment 26*, para. 40, citing IPCC, *AR6 Synthesis Report: Climate Change 2023, Summary for Policymakers*, figure SPM.1, The data show the disproportionate, cumulative and long-term effects of climate change on people born in 2020.

[273] *CRC Committee General Comment 26*, para. 41.

[274] *Billy v. Australia*; *Sacchi v. Argentina*.

[275] *CRC Committee General Comment 26*, para. 73.

[276] UNCRC, Art. 3.

[277] *CRC Committee General Comment 26,* para. 73.

[278] UNCRC, Art. 12.

[279] *CRC Committee General Comment 26*, para 26.

[280] *Id*.

[281] *Id*. at para. 26.

meaningful and effective education concerning the climate emergency and human rights.[282] Children have the right to access accurate and reliable information concerning the causes, effects, and actual and potential sources of climate harm, as well as State responses.[283] Dissemination of information should be appropriate to children's age and capacities.[284] In line with the principle of cooperation, States parties to the Convention should facilitate regional and international mechanisms for child and youth participation in decision-making.[285] Children and youth should be included in national delegations at climate negotiations and other international climate events.

158. All State policies and actions concerning the climate emergency should comply with the UN Convention on the Rights of the Child, which has been ratified by all State parties to the Convention.[286]

159. The UN Rapporteurs endorse the position of the UN Committee on the Rights of the Child, which has found that a child-rights consistent mitigation policy should:

- specify how national policies—including nationally determined contributions—respect, protect and fulfill children's rights;
- meet the principles of highest possible ambition and common but differentiated responsibilities, while protecting children's rights to the maximum possible extent;
- progressively increase the ambition of mitigation action over time, keeping in mind that the time frame for preventing catastrophic climate change and harm to children's rights is short and requires urgent action;
- avoid delaying a rapid phase out of fossil fuels, which would result in higher cumulative emissions and thereby greater foreseeable harm to children's rights; and
- avoid reliance on unproven technologies, and instead prioritize rapid and effective emissions reductions now in order to support children's full enjoyment of their rights in the shortest possible period of time and to avoid irreversible damage to nature.[287]

[282] *Id*. at para. 27.

[283] *Id*. at para. 33.

[284] *Id*. at para. 34.

[285] *Id*. at para. 28.

[286] *CRC Committee General Comment 26*, paras. 20, 98.

[287] *CRC Committee General Comment 26.*

160. State adaptation policies also should be consistent with children's rights. Due weight should be given to the views of children in planning adaptation decisions.[288] Adaptation measures should consider both imminent and long-term threats to the rights of children.[289] States should also consider their obligations to children when compensating for loss and damage.[290]

161. Additionally, the human rights of future generations are implicated and threatened by the climate emergency. As reflected in the Paris Agreement, global heating of more than 2°C will drastically interfere with the rights of future generations, global heating of 1.5°C will also lead to substantial impairment, and current heating of 1.2°C is already causing significant harm. Furthermore, the deferral of action on climate change to a future date depletes the "budget" of carbon emissions, thus imposing an unfair burden on, and impairing the rights of, future generations.[291]

162. No human rights instrument contains forward-looking temporal limitations on human rights. As recognized in the 2023 Maastricht Principles on the Human Rights of Future Generations, where States fail in their obligations to protect and sustain natural resources and cultural heritage, both imperiled by climate change, they create human rights concerns for present and future generations.[292]

163. Finally, the principle of international cooperation is particularly relevant to the rights of children. Article 4 of the UN Convention on the Rights of the Child requires a "framework of international co-operation" in the realization of children's rights. Where cooperation leads to the transfer of climate finance and technology, such programs should be rights-based, and States should allocate a portion of finance and assistance to child-focused programs.[293] States should ensure that any climate finance mechanisms uphold and do not violate children's rights, increase policy coherence between children's rights obligations and other objectives (such as economic development), and strengthen the demarcation of roles of various stakeholders in climate finance, such as Governments, financial institutions (including banks), businesses, and affected communities – especially children.[294]

[288] *Id.* para. 102.

[289] *Id.* para. 103.

[290] *Id.* paras. 104-106.

[291] See, e.g., *Neubauer v. Germany* (2020), Decision of March 24, 2021.

[292] *See Maastricht Principles on the Human Rights of Future Generations* (adopted on Feb. 3, 2023) at § 8(b).

[293] UNCRC, para. 92.

[294] *Id*. para. 111.

4. State obligations arising from consultation procedures and judicial proceedings owing to the climate emergency (Part IV.D of the Advisory Opinion Request)

164. This Court ruled in *Advisory Opinion OC-23/17* that the right to a healthy environment includes procedural rights such as (a) access to information; (b) the right to participate in decision-making; (c) access to justice; and (d) the right to an effective remedy.[295] The rights to information, participation and remedies are expressed in the Rio Declaration.[296] These rights are further elaborated in the Escazú Agreement, a regional treaty with 24 signatories and 15 State parties across Latin America and the Caribbean.[297] State parties' ratification and implementation of the Escazú Agreement strongly contribute to the realization of their Convention obligations.

(a) Access to information

165. The right of access to information is protected by the Convention, which encompasses a right to "seek, receive, and impart information."[298] The obligation is proactive. States should ensure the accessibility of environmental information; refuse or make conditional access to such information only on narrow, rational, and prescribed grounds; and establish independent oversight mechanisms.[299] This includes an obligation on States—recognized in multilateral climate treaties—to proactively promote and facilitate awareness and education on the climate emergency and its impacts.[300]

166. This Court has been unequivocal that States have an obligation under the Convention to provide information of public interest that it holds. In *Claude-Reyes v. Chile*, the Court held that Article 13(1) of the Convention:

> protects the right of the individual to receive such information and the positive obligation of the State to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason permitted by the

[295] *Advisory Opinion OC-23/17*.

[296] *Rio Declaration,* Principle 10.

[297] State parties include Antigua and Barbuda, Argentina, Belize, Bolivia, Chile, Ecuador, Grenada, Guyana, Mexico, Nicaragua, Panama, Saint Vincent and the Grenadines, Saint Kitts & Nevis, Saint Lucia, and Uruguay. Signatories include the 15 State parties as well as Brazil, Colombia, Costa Rica, Dominica, Dominican Republic, Guatemala, Haiti, Jamaica, Paraguay, and Peru.

[298] American Convention on Human Rights, Art. 13(1) [emphasis added].

[299] Escazú Agreement, Art. 5.

[300] UNFCCC, Art. 6(a); Paris Agreement, Art. 12; *Framework Principles on Human Rights and Climate Change*, paras. 15-19 (Principle 6).

Convention, the State is allowed to restrict access to the information in a specific case.[301]

167. The "obligation of active transparency"[302] requires States "to provide accurate, updated, understandable information in a timely and proactive manner,"[303] which should be "relevant and necessary information on the environment . . . includ[ing] information on environmental quality, environmental impact on health and the factors that influence this, and also information on legislation and policies, as well as assistance on how to obtain such information."[304] This obligation is applicable especially in cases of environmental emergency.[305]

(b) Participation in environmental decision-making

168. The right of public participation in governmental decision-making is protected by Article 23 of the Convention. Specific obligations concerning public participation in environmental decision-making can be found in the UNFCCC[306] and the Escazú Agreement.[307] Public participation is crucial in producing climate policies that draw on a wide knowledge base; identify and protect threatened rights; and are sustainable and robust.[308] Public participation should include *all* affected and interested individuals, including those who are most vulnerable. Effective public participation depends on the protection and fulfillment of rights to expression, association, and assembly.

169. The Special Rapporteur on Human Rights and Climate Change has observed that States frequently fall short of their obligations concerning public participation.[309] He has also observed that there is a "disconnect between those who are most vulnerable to climate change impacts and those who actually participate and are represented in political and decision-making processes"—including children,

[301] *Case of Claude Reyes v. Chile,* Merits, Reparations, and Costs. Judgment of Sept. 19, 2006. Inter-Am. Ct. H.R. Series C No. 151, paras. 76-81.

[302] *Advisory Opinion OC-23/17*.

[303] *Id*.

[304] *Id*.

[305] In the case of *La Oroya*, Peru violated the La Oroya community's right to information about the environmental and health impacts of the metallurgical complex. As such violation will be addressed by the Court's judgement, climate change advocates have speculated and assume that such resolution could also potentially define the States' obligation of active transparency to include stronger and more specific requirements to produce, organize, update, and disseminate environmental information.

[306] UNFCCC, Art. 6(6).

[307] Escazú Agreement, Art. 7.

[308] *Special Rapporteur on Human Rights and the Environment, Climate Report No. 1*, at para. 58; *Framework Principles on Human Rights and Climate Change,* paras. 23-26 (Principle 9).

[309] *July 2022 Report of the Special Rapporteur on Human Rights and Climate Change*, at para. 73.

young people, Afro-descendants, and Indigenous Peoples.[310] The Special Rapporteur has accordingly recommended that States expand rights of standing in domestic courts and include youth representatives in national parliaments.[311]

170. The obligation of public participation is a proactive one. Governments should take positive steps to involve citizens in decision-making, including decisions related to the climate emergency, such as State mitigation and adaptation policies. This includes (but is not limited to) an obligation to consult widely.

171. Furthermore, the Court has also recognized that States have an additional obligation to ensure that vulnerable groups are consulted. The Court held in *Ximenes Lopes* that States should provide "special protection" to "any person who is in a vulnerable condition."[312]

172. In subsequent jurisprudence, the Court has repeatedly emphasized *Saramaka*'s requirement that States should consult with affected peoples early in the process of development in order for Indigenous Peoples and Tribal communities to engage in internal dialogue and effectively participate in decision-making *before* the State approves or carries out activities potentially affecting them.[313] Moreover, in *Sarayaku*, the Court also required that States undertake consultations in a manner that can be understood by the affected vulnerable groups, including in the language spoken by the majority of community residents.[314]

173. Environmental and social impact assessments constitute one mechanism through which groups and individuals can participate in climate-related decision-making, including decisions related to States' mitigation and adaptation policies. This Court has issued detailed guidelines for how environmental and social impact assessments should be performed, noting that such guidelines should apply broadly[315] "when there is a risk of significant environmental harm, regardless of whether the activity or project will be carried out by a State or by private persons."[316] In *Advisory Opinion OC-23/17*, this Court included the "[d]uty to require and approve environmental impact assessments"[317] among the actions that States must take to

[310] *Id*. at para. 75.

[311] *Id*. at para. 97.

[312] *Ximenes Lopes v. Brazil*, Merits, Reparations and Costs, Judgment of July 4, 2006. Inter-Am. Ct. H.R. Series C No. 149, para. 103.

[313] *Garífuna Punta Piedra Community v. Honduras*, Preliminary Objections, Merits, Reparations and Costs, Judgment of Oct.5, 2015. Inter-Am. Ct. H.R. Series C No. 304, paras. 217, 223.

[314] *Kichwa Indigenous People of Sarayaku v. Ecuador*, Merits and Reparations. Judgment of June 27, 2012. Inter-Am. Ct. H.R. Series C No. 245, para 161.

[315] *Id.* at paras. 156, 161.

[316] *Id*. at para. 174; *see also id*., at para. 160.

[317] *Advisory Opinion OC-23/17.*

"regulate activities that could cause significant environmental damage in a way that reduces any threat to the rights to life and to personal integrity."[318] The Court held that States must enact domestic laws or regulations regarding how environmental impact assessments should be performed, including the specific steps that must be taken to ensure that the assessment is procedurally fair. [319]

174. States should allow for consideration of foreseeable risks of serious harm to the rights of potentially affected communities as part of the environmental impact assessment for projects that contribute to the emission of greenhouse gases or the degradation of natural carbon sinks. In 2020, the Supreme Court of Mexico addressed this point, finding that a regulatory proposal must undergo scientific assessment and public participation when it would result in higher greenhouse gas emissions.[320]

(c) Access to justice

175. Article 25(1) of the Convention guarantees the right to access to justice. This Court has held that this provision obligates States to "ensure a simple, prompt and effective judicial remedy before a competent judge or court"[321] and that "this remedy must be adequate and effective."[322] The right protects against "the arbitrary exercise of public authority"[323] and the recognition that "[t]he inexistence of effective domestic recourses places the individual in a state of defenselessness."[324] The right of access to justice with effective remedies is also protected under Article 2(3) of the International Covenant on Civil and Political Rights and by the Escazú Agreement. States should ensure that restrictive standing rules do not prevent individuals, communities or civil society organizations from bringing rights-based climate lawsuits.

(d) Right to redress and effective remedy

[318] *Id.* at para. 149.

[319] *Id*. at paras. 149-150.

[320] See Second Chamber of the Supreme Court of Mexico, Amparo 610/2019, 15 Jan. 2020; *see also* Mexico First Circuit Collegiate Tribunal, *Greenpeace Mexico v. Ministry of Energy and Others (on the National Electric System Policies)*, Amparo No. 104/2020, (Nov. 17, 2020) ("finding that regressive policies discriminating against renewable energy violated the right to a healthy environment and failed to engage public participation").

[321] See *Case of López Lone et al. v. Honduras*, Preliminary Objection, Merits, Reparations and Costs, Judgment of Oct. 5, 2015, Inter-Am. Ct. H.R. Series C. No. 302, para 245.

[322] *Id*.

[323] *Case of Claude Reyes v. Chile,* Merits, Reparations, and Costs. Judgment of Sept. 19, 2006. Inter-Am. Ct. H.R. Series C No. 151, paras. 76-81.

[324] *Id*.

176. The core of the right of access to justice is the provision of effective remedies for violations of human rights, including those related to the climate emergency.[325] Affected individuals should have access to remedies against government authorities and private entities.[326] To meet this obligation, States should ensure access to procedures and institutions that: (a) are impartial, independent, affordable, transparent and fair; (b) review claims in a timely manner; (c) have necessary expertise and resources; (d) incorporate a right of appeal; and (e) issue binding decisions.[327] State obligations associated with the right of access to justice include providing legal aid and support to affected individuals or communities, particularly those who may face barriers to accessing justice, such as children, youth, women, Indigenous Peoples, the elderly, displaced persons, Afro-descendants, and those in conditions of poverty.

177. This Court has found that the right to an effective remedy applies not only where States violate substantive obligations, but also procedural ones, such as access to information or the right to participate in environmental decision-making. In *Claude-Reyes*, this Court found that Chile owed complainants a remedy for failing to disclose all relevant information concerning a logging project in Patagonia.[328] The Court held that when a State refuses or withholds access to State-held information, it must ensure the availability of "a simple, prompt and effective recourse that permits determining whether there has been a violation of the right of the person requesting information and, if applicable, that the corresponding body is ordered to disclose that information."[329]

178. Examples of effective redress mechanisms can be found in the domestic legal orders of States parties to the Convention. For example, in *Future Generations v. Ministry of the Environment and Others*, the Supreme Court of Colombia sided with 25 youth plaintiffs between the ages of 7 and 26 years who had sued several corporations and public bodies within the Colombian government to enforce their rights to a healthy environment, life, health, food, and water. The plaintiffs argued that climate change, along with the government's failure to reduce deforestation and ensure compliance with a target for zero-net deforestation in the Colombian Amazon by the year 2020,[330] threatened plaintiffs' fundamental rights. The Court notably ordered the Colombian government to establish, with the active participation of the plaintiffs, affected communities, scientific environmental research groups, and interested populations, the "Intergenerational Pact for the Life

[325] *Framework Principles on Human Rights and Climate Change,* Principle 10.

[326] *July 2022 Report of the Special Rapporteur on Human Rights and Climate Change*, at para. 97.

[327] *Framework Principles on Human Rights and Climate Change*, para. 29 (Principle 10).

[328] *Case of Claude Reyes v. Chile,* Merits, Reparations, and Costs. Judgment of Sept. 19, 2006. Inter-Am. Ct. H.R. Series C No. 151.

[329] *Id*.

[330] As agreed under the Paris Agreement and the National Development Plan 2014-2018.

of the Colombian Amazon," which would include preventative, mandatory, corrective, and pedagogical strategies for the implementation of climate change adaptation measures.[331]

179. The obligation to provide redress applies both within and across States. States' duties arising from the right of access to justice should be read together with States' duty of cooperation. States should support international legal frameworks that address climate-related damage and the right to redress.[332] Examples of redress frameworks produced through international cooperation include facilitation of instruments such as climate change funds or insurance mechanisms, and providing financial resources for redress to affected countries, particularly those with limited capacities to seek redress independently. There have been recent calls for the creation of a global mechanism to raise reconstruction grants for any country imperiled by a climate disaster and a multilateral lending agency to accelerate private investment in the low carbon transition.[333]

180. State redress obligations include those related to loss and damage. States should cooperate to ensure that the recently agreed-upon global Loss and Damage Fund is swiftly operationalized and funded from a wide range of sources, primarily wealthy and historically high emitting States. To safeguard the right to redress, the Fund should be independent, capitalized, supported by a coordination mechanism, and capable of distributing funds directly to climate-affected communities.

5. State obligations related to the protection of territorial and environmental defenders, as well as women, Indigenous Peoples, and Afro-descendant communities in the context of the climate emergency (Part IV.E of the Advisory Opinion Request)

181. While the climate emergency impairs the rights of all people globally, it disproportionately threatens the rights of individuals and communities in vulnerable situations.[334] This Court has found that in the context of the climate

[331] *Generaciones Futuras v. Ministerios de Ambiente y Desarrollo Sostenible*, República de Colombia Corte Suprema de Justicia STC4360-2018 (Apr. 5, 2018).

[332] *See* Charter of the United Nations, Arts. 55–56; ICESCR, Art. 2 (1).

[333] *The 2022 Bridgetown Initiative* (Sept. 23, 2022), https://www.foreign.gov.bb/the-2022-barbados-agenda/.

[334] Inter-American Commission Resolution No. 3/2021, at III.16 ("Climate change affects all people, but it generates differentiated impacts with respect to the effective enjoyment of their rights. States have a reinforced obligation to guarantee and protect the rights of individuals or groups who are in situations of vulnerability or who are particularly vulnerable to the damage and adverse impacts of climate change because they have historically and systematically borne the greatest burden of structural inequality."); *see also* IPCC Working Group II, *AR6: Climate Change 2022 Impacts, Adaptation, and Vulnerability,* Chapter 12, page 1691, noting that the Latin American & Caribbean region is "highly exposed, vulnerable and strongly impacted by climate change," and that existing "[p]rofound economic, ethnic and social inequalities are exacerbated by climate change."

emergency, "States are legally obliged to confront these vulnerabilities based on the principle of equality and non-discrimination."[335]

182. Marginalized persons and communities in vulnerable situations include children and youth, women,[336] Indigenous Peoples, racial and ethnic minorities (including Afro-descendent communities), migrants, refugees, internally displaced persons, informal settlers, persons in detention, persons in situations of homelessness, peasants, fisherfolk, persons with disabilities, and older persons.[337]

183. Effective recognition of vulnerable and marginalized groups is an obligation that applies equally to both industrialized and developing States.[338] As discussed in Section V.a.7 above, this "equality of treatment" is necessary to ensure the uniform application of the highest standards of consideration of those that are "particularly vulnerable to the adverse effects of climate change."[339]

184. In recognizing the needs of people in vulnerable situations, States, international organizations, and businesses should incorporate principles of inclusion, meaningful participation, and intersectionality into climate action.[340] Climate change exacerbates existing inequalities and discrimination, impacting individuals and communities differently based on their environmental, geographical, and

[335] *Advisory Opinion OC-23/17*, para. 67, citing Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights,* U.N. Doc. A/HRC/10/61 (Jan. 15, 2009), para. 42, and *UN Special Rapporteur on the Environment, Climate Report No. 1*, para. 81.

[336] The IPCC has observed that in the Latin America and Caribbean region, "[w]omen, particularly the poorest, are post vulnerable and are impacted in greater proportion. Often they have less capacity to adapt, further widening structural gender gaps." See IPCC Working Group II, *AR6: Climate Change 2022 Impacts, Adaptation, and Vulnerability*, page 1692; *see also Inter-American Commission Resolution 3/2021,* at III.19, observing that "[w]omen and girls face greater risks … due to the adverse effects of climate change that increase all existing gender inequalities." See further Committee on Discrimination Against Women, General Recommendation No. 37 on gender related dimensions of disaster risk reduction in the context of Climate Change.

[337] *See* Ian Fry (Special Rapporteur on the promotion and protection of human rights in the context of climate change), *Providing legal options to protect the human rights of persons displaced across international borders due to climate change*, U.N. Doc. A/HRC/53/54 (Apr. 18, 2023); Balakrishnan Rajagopal (Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context), *Towards and just transformation: climate crisis and the right to housing*, U.N. Doc. A/HRC/52/27 (Dec. 23, 2022); Saad Alfarargi (Special Rapporteur on the right to development), *Climate action at the national level*, U.N. Doc. A/HRC/48/56 (July 2, 2021); and Lancet, 2022, 400: 1619-54, *The 2022 report of the Lancet on heath and climate change: health at the mercy of fossil fuels*, noting that "annual heat-related deaths in people older than 65 years [have increased] by 68% from 2000-04 to 2017-21."; *see also* A/67/299, A/75/208, A/66/285, A/HRC/49/61, and A/HRC/44/30; *see also* David Boyd & Marcos Orellana, *The right to a clean, healthy and sustainable environment: non-toxic environment*, U.N. Doc. A/HRC/49/53 (Jan. 12, 2022).

[338] Paris Agreement, Preamble.

[339] Paris Agreement, Arts. 7.5 and 7.9.

[340] The Enhanced Lima Work Programme on Gender and its gender action plan, Decision 3/CP.25 (Dec. 12, 2019), Preamble [Enhanced Lima work program].

economic conditions, as well as their gender, race, socio-economic status, age, and other identities.[341]

185. The principle of intersectionality requires that States be cognizant of the fact that individuals may simultaneously possess several different statuses and identities. These overlapping identities may compound a particular individual's vulnerability.[342]

186. At the domestic level, this standard should guide States' actions when formulating policies to address the urgent threat of climate change. For example, when implementing climate actions, Honduras has committed to culturally sensitive, participatory, and inclusive consultation of affected communities, marginalized groups, and civil society organizations,[343] allowing for the integration of diverse perspectives and knowledge systems in decision making.[344] States such as Jamaica, Costa Rica, and Bolivia have designed climate policies and measures to protect and promote human rights.[345] This approach involves prioritizing the needs and vulnerabilities of marginalized and disadvantaged groups, including Indigenous Peoples, Afro-descendent communities, women, children, older persons, persons with disabilities, and refugees, among others.[346]

(a) Climate defenders

187. Environmental, climate, and human rights defenders are protected by a range of human rights yet are routinely subjected to threats, harassment, intimidation,

[341] *Advisory Opinion OC-23/17*, para. 67; UNFCCC, Art. 4.8; Human Rights Council, Resolution 16/11, April 12, 2011, A/HRC/RES/16/11, preamble; Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment,* February 1, 2016, A/HRC/31/52, para. 81; Human Rights Council, *Mapping report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment,* John H. Knox, of December 30, 2013, A/HRC/25/53, paras. 69-78, 81; Enhanced Lima work program, Preamble.

[342] *See* Report of the Special Rapporteur on the right to development, *Reinvigorating the right to development: a vision for the future*, A/HRC/54/27, 4 August 2023, para. 12.

[343] *See* Government of the Republic of Honduras, *National Determined Contribution of Honduras*, page 26: "Honduras reaffirms the commitment of its government to respect, promote and take into consideration their respective obligations with respect to human rights, gender equality and intergenerational equity, committing to ensure a transversal perspective and guarantee that women, youth, indigenous peoples and Afro-Honduran people have full and effective participation in decision-making when implementing climate actions, given the great importance of these different groups of people in the national context as they are highly vulnerable to the impacts of climate change."

[344] *Rio Declaration*, Principle 10; *Kichwa Indigenous People of Sarayaku v. Ecuador*, Merits and Reparations. Judgment of June 27, 2012. Inter-Am. Ct. H.R. Series C No. 245, paras. 217 and 222. The Court stated that "States have an obligation to ensure that indigenous peoples are properly consulted on matters that affect or could affect their cultural and social life […]."

[345] Government of Jamaica, Climate Change Policy Framework for Jamaica (July 2021), pages 44-45; *See* Plurinational State of Bolivia, *National Determined Contribution (NDC) of the Plurinational State of Bolivia*, page 4, https://unfccc.int/sites/default/files/NDC/2022-06/NDC_Bolivia-2021-2030_UNFCCC_en.pdf; Dirección General de Política Exterior Ministerio de Relaciones Exteriores y Culto, *Cuestionario en relación con la resolución del consejo de derechos humanos A/HRC/RES/44/7 sobre derechos humanos y cambio climático,* page 3-4, https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/RightsOlderPersons/costa-rica-submission.pdf.

[346] Paris Agreement, Preamble; Advisory Opinion OC-23/17, para. 67.

violence and criminalization. Their rights to freedom of expression, assembly, association, and participation are protected by the Convention and must be protected by States.[347] These rights may be restricted only in narrow circumstances and with compelling justification.[348]

188. In particular, States should protect the rights of environmental, land and climate defenders belonging to vulnerable groups. This includes women, girls, Indigenous Peoples, and Afro-descendant communities. Indigenous Peoples are disproportionately targeted for their actions, as are environmental and land defenders. In 2021, over 40% of all fatal attacks against environmental and land defenders targeted Indigenous Peoples.[349]

189. State parties that have ratified the Escazú Agreement should proactively and positively "guarantee a safe and enabling environment … so that they are able to act free from threat, restriction and insecurity."[350] The Agreement requires that States take "effective measures to recognize, protect and promote *all* the rights of human rights defenders in environmental matters,"[351] and "take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidation that human rights defenders in environmental matters may suffer."[352] States should protect individual environmental and land defenders and prosecute and punish their antagonists.

190. States should also refrain from criminalizing climate activists, which may have a chilling effect not only on their freedoms of assembly, association, and expression—all rights protected under the Convention—but also on civic space and democratic discourse for the broader public.

191. States should adopt and implement laws consistent with international human rights standards; publicly recognize the contributions of environmental, land and climate defenders to society; ensure their work is not criminalized or stigmatized; work with defenders to develop effective programs for protection and early warning; provide appropriate training for law enforcement officials; ensure the prompt and

[347] *See* Articles 13, 15, 16 and 23 of the Convention.

[348] Where provided by law, and where necessary in a democratic society to protect the rights of others, or to protect national security, public order, or public health or morals; and such restrictions must be narrowly tailored and proportionate. See *Framework Principles on Human Rights and Climate Change*, para. 13 (Principle 5).

[349] Ali Hines, *Decade of defiance: Ten years of reporting land and environmental activism worldwide,* Global Witness (Sept. 29, 2022), at 11, https://www.globalwitness.org/en/campaigns/environmental-activists/land-and-environmental-defenders-annual-report-archive/.

[350] Escazú Agreement, Art. 9(1).

[351] *Id*. at Art. 9(2).

[352] *Id*. at Art. 9(3).

impartial investigation of threats and violations and the prosecution of alleged perpetrators; and provide for effective compensation.[353]

(b) Women, girls, and gender-diverse persons

192. The burdens arising from the climate emergency are not distributed evenly. Women, faced with unequal social structures and responsibilities, generally have fewer available resources than men. Differences in ownership of household assets, greater familial responsibilities, unstable food, water and fuel access, and heightened disaster exposure can "undermine women's ability to achieve economic independence, enhance human capital, and maintain physical and mental health and well-being."[354]

193. This burden is heavier for women in less-developed States and those who are vulnerable across intersectional identities.[355] Lack of comprehensive gender-responsive disaster planning has led to the creation of facilities and early warning mechanisms that ignore the needs of diverse groups of women, such as Indigenous women, women with disabilities, elders and girls, as well as gender-diverse persons.[356]

194. Furthermore, women, girls, and gender-diverse persons face a higher risk of gender-based violence during and following disasters.[357] For example, temporary camps that lack physical security and safe infrastructure can lead to increased levels of violence against women and girls.[358] As the UN Special Rapporteur on Violence Against Women and Girls has observed, women and girls are at a heightened risk of violence (including domestic and intimate partner violence) following natural disasters,[359] food shortages,[360] breakdown in law and order,[361] and loss of livelihood or land use.[362] All these situations are at a heightened risk of realization as a result of the climate emergency.

[353] *Id.* at para. 11 (Principle 4).

[354] IPCC, *Climate Change 2022: Mitigation of Climate Change* (2022), page 525.

[355] *Id.* at page 526.

[356] *Id.*

[357] *Id.* at para. 5.

[358] *Id.*

[359] *Id.* at para. 24.

[360] *Id.* at para. 28.

[361] *Id.* at para. 30.

[362] *Id.* at para. 39.

195. The UN Committee on the Elimination of Discrimination against Women has observed that women are "particularly affected by environmental disasters, serious and infectious diseases and various forms of violence against women."[363] Several UN treaty bodies, including the Committee on the Elimination of Discrimination against Women, have observed that the climate emergency exacerbates discrimination and pre-existing inequalities, including those experienced by women and girls.[364] In recognizing the right to a clean, healthy and sustainable environment, the UN Human Rights Council called on States to adopt policies addressing gender equality.[365] Likewise, the Paris Agreement preamble calls on State parties to specifically consider gender equality and women's empowerment.

196. In light of these vulnerabilities, States have particular obligations to protect, respect and fulfil the rights of women, girls and gender-diverse persons in the context of the climate emergency. In line with the principle of equality and non-discrimination, States should proactively ensure that women, girls and gender-diverse persons are active participants in environmental decision-making.[366] In planning for climate change disaster prevention and action, care should be taken not to categorize women passively into "vulnerable groups,"[367] but to enhance their full and effective participation in disaster prevention. When women have democratic and economic equity, their votes have tended to support sustainable environmental goals and less high-emission policies.[368] Climate policies, therefore, are strengthened by the inclusion of women.[369]

197. States should identify the particular climate vulnerabilities of women, girls and gender-diverse persons within their jurisdictions, applying an intersectional lens to identify compounding vulnerabilities (such as those of Indigenous women, older women, and women with disabilities). For example, where women and girls are primarily responsible for the provision of household or communal water, States should ensure that women are active participants in decisions concerning water adaptation; that State assistance and policies take these responsibilities of women and girls into account; and consider the possibility that the climate emergency may exacerbate gendered divisions of labor.[370] States should likewise consider how the

[363] Committee on the Elimination of Discrimination against Women, General Recommendation No. 37 (2018).

[364] Committee on the Elimination of Discrimination against Women and others, *Joint Statement on Human Rights and Climate Change* (Sept. 16, 2019).

[365] UN Human Rights Council Res. 48/13, U.N. Doc. A/HRC/RES/48/13 (Oct. 18, 2021).

[366] *Id. at* para. 26 (Principle 9).

[367] Committee on the Elimination of Discrimination against Women, General Recommendation No. 37 (2018), at para. 7.

[368] IPCC, *Climate Change 2022*, page 527.

[369] *Id.*

[370] *Id.* at para. 41(a) (Principle 14); Reem Alsalem, Special Rapporteur on violence against women and girls, its causes and consequences, U.N. Doc. A/77/136, (July 11, 2022), para. 35.

safety of women and girls may be affected by pressures resulting from the climate emergency, including water scarcity.[371]

198. As part of their duties of cooperation, States should work together to ensure that climate financing reflects gender-responsive budgeting, that women-led projects are adequately financed, and that women's rights and livelihoods are taken into account when selecting projects for funding.[372] State mitigation and adaptation policies should be monitored and evaluated through a gender-based lens and incorporate gender risk analysis.[373]

(c) Indigenous Peoples

199. As discussed in Section IV.e.4 above, this Court also has long recognized that the human rights of Indigenous Peoples are particularly vulnerable to environmental degradation. Furthermore, as noted in Section IV.e.5 above, Indigenous Peoples possess the right to self-determination.[374] This includes the right to free, prior and informed consent.[375] These protected property and self-determination rights should be protected in the context of the climate emergency.

200. A healthy and stable climate system is necessary for the protection of Indigenous rights. In *Advisory Opinion OC-23/17*, this Court found that Indigenous "peoples' right to collective ownership is linked to the protection of, and access to, the resources to be found in their territories, because those natural resources are necessary to the very survival, development and continuity of their way of life."[376] Indigenous Peoples are particularly vulnerable where processes of colonization have deprived them of ownership of their traditional territories, targeted these lands for extractive industries, and failed to provide adequate investment in adaptation. This Court has ordered States, such as Argentina, to take affirmative steps to protect the rights of Indigenous Peoples to their lands, such as ensuring they have title to their lands and removing intrusions to their lands.[377]

201. This Court repeatedly has emphasized that potentially affected Indigenous groups must be consulted in good faith. Such consultation must take place "at the early stages of a development or investment plan, not only when the need arises to obtain

[371] *Id.* at paras. 26-27.

[372] *Id.* at paras. 71-72.

[373] *Id.* at para. 80.

[374] *Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations and costs.* Judgment of November 28, 2007. Series C No. 172, para. 93; United Nations Declaration on the Rights of Indigenous Peoples, Art. 3.

[375] United Nations Declaration on the Rights of Indigenous Peoples, Arts. 10, 11, 19, 28, 29; ILO Convention 169, Art. 16.

[376] *Advisory Opinion OC-23/17*, citing *Yakye Axa*, para. 137; *Sawhoyamaxa*, paras. 121-22; *Kaliña and Lokono Peoples v. Suriname*. Merits and Reparations. Judgment of Nov. 25, 2015. Series C No. 209, para. 173.

[377] *See, e.g.*, *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Judgment of February 6, 2020 (Merits, reparations and costs), Inter-Am. Ct. H.R. Series C No. 400.

approval from the community, if such is the case."[378] Examples include large-scale renewable energy projects[379] and carbon credit or carbon offset projects that may involve potential restrictions on traditional Indigenous activities in protected forests. Furthermore, many State parties to the Convention owe obligations concerning free, prior, and informed consent which derive from the right of self-determination enshrined in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the UN Declaration on the Rights of Indigenous Peoples, among other human rights instruments.

(d) Afro-descendant peoples

202. The Inter-American Commission on Human Rights has recognized that Afro-Descendant peoples are among the most vulnerable to the effects of the climate emergency.[380] This vulnerability arises from existing socioeconomic inequality, structural racism, and exposure to violence.[381] Afro-Descendent groups in rural, riparian and island settings are at particular risk, particular when they rely on their lands for subsistence.[382] All these factors are likely to be exacerbated by the climate emergency.

203. Afro-Descendant Peoples have long faced disproportionate exposure to severe natural disasters, including environmental pollution linked to toxic chemicals and wastes. This exposure can amount to environmental racism - increases the exposure of Afro-descendant individuals and result in health emergencies, humanitarian crises, and forced displacement.[383] Meanwhile, structural racism locks Afro-Descendant persons out of decision-making institutions and processes, meaning they are often excluded from the design and implementation of climate and environmental policies.

204. This discrimination can be exacerbated in cases of intersecting vulnerabilities (such as Afro-Descendant women and girls). As the Inter-American Commission has

[378] *Id*.

[379] *Statnett SF v. Fosen Vind DA et al.*, Judgment of the Supreme Court of Norway, HR-2021-1975-S (Case Nos. 20-143891SIV-HRET; 20-143892SIV-HRET; 20-143893SIV-HRET), (Oct. 11, 2021).

[380] *See, e.g.,* Inter-American Commission on Human Rights, *The Situation of People of African Descent in the Americas*, OEA/Ser.L/V/II. Doc 62 (Dec. 5, 2011).

[381] Organization of American States, *States Must Step Up Their Efforts to Eradicate Historical Patterns of Environmental Racism*, (Mar. 21, 2022), https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2022/055.asp.

[382] Inter-American Commission on Human Rights and REDESCA, *Economic, Social and Environmental Rights of Persons of African Descent*, OEA/Ser.L/V/II. Doc. 109 (Mar. 16, 2021), para. 193.

[383] Organization of American States, *States Must Step Up Their Efforts to Eradicate Historical Patterns of Environmental Racism,* (Mar. 21, 2022).

recognized, this discrimination violates Convention guarantees of equality and non-discrimination,[384] as well as rights to self-determination.

205. As part of their obligations of equality and non-discrimination, States should consider the vulnerable position of Afro-Descendant individuals and communities in the context of the climate emergency. States should proactively ensure that procedural guarantees of access to information, public participation, and access to justice are available to Afro-Descendant communities. Afro-Descendant individuals and communities should be involved at all levels of decision-making concerning climate mitigation and adaptation. In particular, States should consider how the climate emergency might exacerbate existing forms of discrimination, including barriers to government services. States should also regulate business activities so as to fulfill guarantees of equality and non-discrimination.[385]

206. As part of their prevention and due diligence obligations, States should identify particular risks posed to such communities, and work alongside communities to develop appropriate adaptation measures. Similarly, States should ensure that proposed mitigation projects do not undermine the rights of Afro-Descendant communities,[386] and must ensure that rights to free, prior and informed consultation and consent are fulfilled.[387]

6. The common but differentiated human rights obligations and responsibilities of States in the context of the climate emergency (Part IV.F of the Advisory Opinion Request)

207. As discussed in Section V.b.9(a) above, the principle of common but differentiated responsibilities and respective capabilities, which is enshrined in the UNFCCC and the Paris Agreement, recognizes that all States share a responsibility to address climate change, but the extent of their duties may vary based on factors such as wealth, historical emissions, economic capacity, scientific knowledge, technical capability, and development needs.

208. The duty of cooperation also requires that States provide scientific, technical, and financial assistance to developing States to help address the fundamental inequity

[384] *Id.* at para. 12.

[385] Inter-American Commission on Human Rights and REDESCA, *Economic, Social and Environmental Rights of Persons of African Descent*, OEA/Ser.lL/V/II, Doc. 109 (Mar. 16, 2021), para. 238.

[386] *Id.* at para. 217.

[387] *Id.* at para. 217.

that prevents the most affected States from responding effectively to climate change threats[388] and from achieving sustainable development goals.[389]

209. Inter-State cooperation entails sharing information, best practices, and lessons learned, as well as providing technical and financial assistance to enhance the capacity of vulnerable countries and communities to address climate-related challenges. Developed countries have a responsibility to provide financial resources[390] and technology transfer to support the mitigation and adaptation efforts of developing countries in the region.[391]

210. Most State parties to the Convention are developing countries.[392] It is therefore vital that industrialized OAS Member States recognize obligations of cooperation owed toward developing OAS Members.

211. Furthermore, Articles 4.8 and 4.9 of the UNFCCC emphasize that specific duties of cooperation are owed to Small Island Developing States, as well as Least Developed Countries.[393] In particular, "Parties shall take full account of the specific needs and special situations of the least developed countries in their action with regard to funding and transfer of technology." A tangible example is that many Least Developed Countries have outstanding renewable energy resources but have been unable to develop these resources because of a lack of financial, regulatory and technical resources. Wealthy, historically high-emitting States should do more to assist Least Developed Countries to overcome these barriers.

212. Inter-state cooperation should also prioritize adaptation and resilience-building measures. Given the vulnerability of coastal areas and islands, States should collaborate to develop and implement strategies to protect infrastructure, ecosystems, and livelihoods from the impacts of climate change in these disproportionately affected areas. This may involve joint research and sharing expertise on coastal zone management, climate-resilient agriculture, disaster risk

[388] Written Statement of the Commission of Small Island States on Climate Change and International Law, ITLOS Case No. 31 (June 16, 2023), page 95.

[389] UNFCCC, Art. 3.4; Paris Agreement, Arts. 6, 7.7; Kyoto Protocol, Articles 6 and 12; *see also* Written Statement of the Federative Republic of Brazil, ITLOS Case No. 31 (Jun. 16, 2023), page 17.

[390] The allocation of climate loans and other non-grant instruments to Least Developed Countries (LDC) and Small Island Developing States (SIDS) creates serious unsustainable debt burden risks. States should consider that most climate-vulnerable countries do not have the fiscal space to adopt new debt (*see* Barbados statement "Most climate-vulnerable countries do not have the fiscal space to adopt new debt." *The 2022 Bridgetown Initiative* (Sept. 23, 2002); *see also* UN Task Force on Financing for Development, *Financing for Sustainable Development Report 2022*, page xiii, fsdr_2022.pdf (un.org)). Given that climate financing has a direct influence over adaptation measures taken by States in need of financial support (*see* Argentina statements regarding adaptation actions, unfccc.int/resource/docs/natc/argnc3s.pdf), climate finance providers should consider delivering all adaptation finance as grants, particularly for LDCs and SIDS.

[391] Paris Agreement, Arts. 9 and 10; *Rio Declaration*, Principle 9; *Stockholm Declaration*, Principle 20.

[392] For example, no Convention State parties were listed in Annex B of the Kyoto Protocol, which maintained a strict distinction between the obligations of "developed" and "developing" countries.

[393] Among Convention State parties, this includes Haiti.

reduction, and early warning systems. This will also require the transfer of financial and technological resources.[394]

213. In line with the polluter pays principle, States should ensure that domestic and regional mechanisms are available for individuals and communities to seek redress against State governments – as well as private actors – for damage caused by their acts and omissions in relation to the climate emergency. Mechanisms should offer an opportunity for victims of climate-related harm to establish a causal link between the acts and omissions of States and private actors, and harms experienced by individuals and communities. Such mechanisms should be based on the principles of best available science, access to justice. and the right to an effective remedy. Mechanisms should also take into account the principle of common but differentiated responsibilities and respective capabilities.

VI. STATES SHOULD CONSIDER IMPLEMENTING THE FOLLOWING MEASURES TO SATISFY THEIR HUMAN RIGHTS OBLIGATIONS REGARDING THE CLIMATE EMERGENCY

214. According to the 2022 Emissions Gap Report published by the United Nations Environment Programme, current public policies put the world on track for a temperature increase of 2.8°C by the end of this century.[395] To meet their obligations to protect human rights in the face of the clear and grave challenges posed by the climate emergency, States should implement more ambitious policies to combat current, and prevent future, climate change and to mitigate its deleterious effects. To that end, States should consider implementing the measures set forth in this Section VI. The specific actions that individual States ultimately adopt, and the manner in which they implement those actions, will depend on their unique circumstances, building on the general principles discussed in Section V above, including the differentiated obligations set forth in Section V.a.9.

a. States should phase out the burning of fossil fuels (coal, oil, and natural gas)

215. To limit global warming to 1.5°C, States should rapidly phase out the burning of fossil fuels, which includes coal, oil, and natural gas, and should replace them with renewable forms of energy. UN Secretary General Antonio Guterres has urged States "to leave oil, coal and gas in the ground where they belong" and to funnel investments towards renewables.[396] The energy sector is the source of around three-

[394] UNFCCC, Art. 4.1(e)

[395] *Emissions Gap Report 2022: The Closing Window – Climate Criss Calls for Rapid Transformation of Societies*, United Nations Environment Programme, page 35, https://www.unep.org/resources/emissions-gap-report-2022.

[396] Guterres Calls For Phasing Out Fossil Fuels to Avoid Climate 'Catastrophe', UN News (June 15, 2023), https://news.un.org/en/story/2023/06/1137747.

quarters of greenhouse gas emissions today, while fossil fuels make up almost four-fifths of our total energy supply.[397]

216. Successful energy transition policies require commitment to and respect of States' human rights obligations. States should consider the proposal of the UN Special Rapporteur on Extreme Poverty and Human Rights, Olivier De Schutter, that just energy transition processes should capture the "triple dividend" of (a) cleaner environments; (b) decent jobs; and (c) improved access to affordable goods and services.[398] Labor and trade union rights should also be considered when designing and implementing energy transition policies, among other factors.[399]

217. The International Energy Agency estimates that transitioning to global economy that produces net-zero greenhouse gas emissions will result in tremendous new employment opportunities, including 14 million new jobs by 2030 in the clean energy sector, with a loss of only 5 million jobs in the fossil fuel sector.[400] Nevertheless, the loss of fossil fuel sector jobs will require measures to mitigate associated hardships, including worker retraining, locating new renewable energy jobs in locations where fossil fuel jobs are lost and potentially providing direct aid to the most affected regions.

218. When implementing measures to phase out the burning of fossil fuels and undergo the energy transition, States also should be cognizant of obligations they may owe under bilateral or multilateral investment treaties regarding investments made by foreign investors in these sectors. The measures should be implemented in a manner consistent with the requirements of these treaties to avoid States facing investor-state claims brought under these investment treaties that could halt or thwart progress by those States in their energy transition. The Special Rapporteur on the Environment has identified specific actions State could take to avoid future claims under the investor-State dispute settlement process and fulfill their human rights obligations.[401] Similarly, the Special Rapporteur on the Right to Development has identified ways in which States may reform existing investment treaties or promulgate new investment treaties that support sustainable development. Such reforms could include limiting the scope of jurisdiction of an arbitral tribunal

[397] *Net Zero by 2050: A Roadmap for the Global Energy Sector*, International Energy Agency, ["*Net Zero by 2050*"], page 13.

[398] Olivier De Schutter, Special rapporteur on extreme poverty and human rights, *Extreme poverty and human rights*, U.N. Doc. A/75/181/Rev.1 (Oct. 7, 2020).

[399] Maria Antonia Tigre, et al., *Just Transition Litigation in Latin America: An Initial Categorization of Climate Litigation Cases Amid the Energy Transition*, Columbia Law School Sabin Center for Climate Change Law (Jan. 2023), citing Inter-American Commission of Human Rights, Resolution 3/2021 Climate Emergency: Scope of Inter-American Human Rights Obligations (Dec. 31, 2021), para. 48.

[400] *Net Zero by 2050: A Roadmap for the Global Energy Sector*, page 17.

[401] David Boyd, Special Rapporteur on human rights and the environment, *Paying polluters: the catastrophic consequences of investor-State dispute settlement for climate and environment action and human rights*, A/76/168 (July 13, 2023).

constituted under applicable investment treaties to decide disputes concerning human rights and the environment.[402]

1. States should avoid new investments in fossil fuels

219. As long ago as 2012, the International Energy Agency estimated that two-thirds of proven fossil fuel reserves (oil, gas and coal) should not be burned if we are to limit warming to 2°C.[403] A similar study published in 2015 concluded that 82 per cent of known coal reserves, 49 per cent of gas reserves and 33 per cent of oil reserves cannot be burned if we are to avoid dangerous climate change of more than 2°C.[404] In 2016, the International Energy Agency observed that "[t]he unavoidable conclusion is that there is an urgent need for immediate radical reductions in energy sector CO2 emissions if there is to be any chance of achieving the 1.5°C goal."[405]

220. These admonitions notwithstanding, the International Energy Agency estimates that global investment in new fossil fuel supply is expected to rise by more than six percent in 2023, reaching US$950 billion.[406] More than half of that total – US$500 billion – is attributable to the extraction of oil and gas.[407]

221. States should avoid new investments in fossil fuels if they are to decrease the portion of total energy supply derived from fossil fuels. The scope of such a policy could include avoiding exploration and exploitation of new fossil fuel or natural gas projects; choosing not to build new fossil fuel infrastructure, such as new pipelines; and not supporting new fossil fuel export projects.[408] Building new fossil fuel infrastructure commits States to fossil fuel dependency and greenhouse gas emissions for decades to come.[409] Investments in new fossil fuel activities exacerbate the global climate emergency and should be avoided by States to the fullest extent possible.

[402] *See* Surya Deva, Special Rapporteur on the right to development*, Role of business in realizing the right to developmen*t, U.N. Doc. A/78/160, (July 12, 2023), paras. 83-85.

[403] International Energy Agency, *World Energy Outlook 2012*.

[404] Christophe McGlade and Paul Ekins, "The geographical distribution of fossil fuels unused when limiting global warming to 2°C", *Nature*, Vol. 517 (January 2015).

[405] International Energy Agency, *World Energy Outlook 2016*, page 76.

[406] International Energy Agency, *World Energy Investment 2023*, page 13.

[407] *Id.*

[408] Cleo Verkuijl, et. al, *Aligning fossil fuel production with the Paris Agreement: Insights for the UNFCCC Talanoa Dialogue*, Stockholm Environmental Institute (March 2018), page 2; Frank McDonald*, Two-thirds of energy sector will have to be left undeveloped, Bonn conference told*, The Irish Times (June 12, 2013), http://www.irishtimes.com/news/world/ europe/two-thirds-of-energy-sector-will-have-to-be-left-undeveloped-bonn-conference-told-1.1425009.

[409] UNEP, *Emissions Gap Report 2022* (Oct. 27, 2022), page 41.

2. States should avoid new fossil fuel subsidies and phase out existing fossil fuel subsidies

222. States should avoid new fossil fuel subsidies. They should also phase out existing subsidies, taking into consideration specific actions to mitigate the potentially adverse effects on low-income households.

223. According to the International Monetary Fund, fossil fuel subsidies "have sizable fiscal consequences (leading to higher taxes/borrowing or lower spending), promote inefficient allocation of an economy's resources (hindering growth), encourage pollution (contributing to climate change and premature deaths from local air pollution), and are not well targeted at the poor (mostly benefiting higher income households)."[410] Globally, fossil fuel subsidies totaled approximately US$7 trillion in 2022, composed of $1.3 trillion in explicit subsidies and $5.7 trillion in indirect subsidies (i.e. health and environmental externalities caused by the combustion of fossil fuels).[411]

224. All G20 members have pledged to remove fossil fuel subsidies, but clearly many have not fulfilled this commitment.[412] The International Institute for Sustainable Development identified at least 53 governmental reforms of subsidy policies implemented between 2015 and 2020, but many subsidies remain in place.[413] Subsidy and tax reforms may prove particularly beneficial if added tax revenues are reinvested toward meeting states' climate commitments.[414] Rights-based subsidy reform will ensure that the rights of people in situations of vulnerability and marginalization are taken into consideration and protected.

3. States should phase out coal extraction and use

225. States should phase out their extraction and use of coal as quickly as possible.[415] Coal-fired electricity is the largest source of global greenhouse gas emissions, a

[410] *See* International Monetary Fund*, Fossil Fuel Subsidies,* https://www.imf.org/en/Topics/climate-change/energy-subsidies.

[411] *Id.*

[412] *Id*. at page 42 (citing Falk, Gaffney et al. 2020; CAT 2022b; Clarke et al. 2022).

[413] Lourdes Sanchez, Peter Wooders, and Ronja Bechauf, *53 ways to reform fossil fuel consumer subsidies and pricing*. Global Subsidies Initiative, International Institute for Sustainable Development (Aug. 19, 2020), https://www.iisd.org/articles/deep-dive/53-ways-reform-fossil-fuel-consumer-subsidies-and-pricing.

[414] Philipp M. Richter, Roman Mendelevitch, and Frank Jotzo, *Coal taxes as supply-side climate policy: a rationale for major exporters?* Climatic Change (2018); Laura Merrill, *Financing the Sustainable Development Goals through Fossil Fuel Subsidy Reform: Opportunities in Southeast Asia, India and China*. International Institute for Sustainable Development (2014).

[415] "Joint Statement by UN human rights experts – Accelerate the end of the coal era to protect human rights," (Oct. 29, 2021), available at https://www.ohchr.org/en/statements/2021/11/joint-statement-un-human-rights-experts-accelerate-end-coal-era-protect-human?LangID=E&NewsID=27740#_edn1 [Joint Statement], citing *Implications of the Paris Agreement for Coal Use in the Power Sector*, Climate Analytics (Nov. 2016); Dan Welsby, James Price, Steve Pye, and Paul Ekins, *Unextractable fossil fuels in a 1.5 °C world*. Nature 597, 230–234 (Sept. 8, 2021), https://doi.org/10.1038/s41586-021-03821-8.

significant contributor of mercury emissions to the atmosphere,[416] and a major source of toxic ash.[417]

226. Several UN human rights experts recommended in a joint statement that States should (a) immediately stop building new coal-fired power plants; (b) require existing coal-fired power plants to be shut down as soon as possible, and no later than 2030 in high-income nations, 2040 in upper middle-income nations, and 2050 everywhere else; (c) immediately terminate all subsidies for all actions related to coal-fired power plants and mining of thermal coal; and (d) immediately terminate all export financing for all actions related to coal-fired power plants and mining of thermal coal, with the sole exception of pollution abatement technologies that do not prolong the life of a power plant.[418]

227. Most States recognize the urgent need to terminate coal dependency, including South American States. At COP26, Ecuador and Chile, along with over 40 other States, signed on to the "Global Coal to Clean Power Transition Statement," pledging to avoid new investment in coal and to transition away from coal power generation as soon as possible.[419] Chile, Costa Rica, El Salvador, Mexico, Peru, and Uruguay are among the many States who are signatories to the Powering Past Coal Alliance (PPCA), which is committed to avoiding new investment in coal and transitioning away from coal power generation.[420]

228. Chile exemplifies the possibility of rapidly phasing out coal-fired electricity. Five years ago, 28 coal-fired power plants were in operation in Chile. By mid-2023, 8 had already been shut down. Chile plans to cease operations of all remaining coal-fired power plants by 2040,[421] and is working on a roadmap to do so by 2030.[422]

229. Strategies for phasing out coal must give due consideration to human rights. States must allow for those employees and workers affected by just transition policies to participate in the phase-out process. In certain cases, communities may call for a

[416] Joint Statement, citing *2018 Global Mercury Assessment*, UNEP (Mar. 4, 2018).

[417] Joint Statement.

[418] Joint Statement.

[419] "Global Coal to Clean Power Transition Statement," UN Climate Change Conference UK 2021, (Nov. 4, 2021), available at https://webarchive.nationalarchives.gov.uk/ukgwa/20230313120149/https://ukcop26.org/global-coal-to-clean-power-transition-statement/.

[420] "PPCA Declaration," Powering Past Coal Alliance, https://poweringpastcoal.org/wp-content/uploads/PPCA-Declaration_Text-1.pdf.

[421] *See Prohíbe la instalación y funcionamiento de centrales termoeléctricas a carbón en todo el país, a contar de la fecha que indica*, Boletín 13196-12, Leg. 367 (Jan. 9, 2020); *see also* Energy Partnership Chile-Alemania, *Coal Phase-out in Chile*.

[422] *See Prohíbe la instalación y funcionamiento de centrales termoeléctricas a carbón en todo el país, a contar de la fecha que indica*, Boletín 13196-12, Leg. 367 (Jan. 9, 2020); *see also* Energy Partnership Chile-Alemania, *Coal Phase-out in Chile*. See *Chile prepares roadmap to ditching coal by 2030*, Renewables Now, https://renewablesnow.com/news/chile-prepares-roadmap-to-ditching-coal-by-2030-830363/

faster transition. In Colombia, for example, the Wayuu Indigenous communities sought to speed up the phase-out of coal by initiating a lawsuit to annul an environmental permit granted to expand a coal mine.[423]

4. States should reduce and phase out existing oil and gas production

230. To meet the goal of reducing global warming to 1.5C, States should also reduce current oil and gas production, which accounts for approximately 15 percent of energy-related emissions globally, totaling 5.1 billion tons of greenhouse gas emissions.[424] To meet that goal, the richest countries must take the lead in phasing out oil and gas production.[425] This reflects the principle of common but differentiated responsibilities and respective capabilities. The International Energy Agency estimates that an upfront investment of US$600 billion would be required to halve the emissions intensity of oil and gas operations globally by 2030, which is less than two-thirds the amount that will be spent on new oil and gas development in 2023 alone.[426]

5. States should reduce emissions from methane and other short-lived climate pollutants

231. States should reduce emissions from methane, black carbon and other short-lived climate pollutants resulting from the extraction, transportation and burning of fossil fuels, including through adopting cost-effective abatement technologies, and addressing emissions from agriculture, the oil and gas industry, transportation, and cooking and heating.

232. Rapid reduction in emission of short-lived climate pollutants is critical to the global effort against climate change.[427] Research estimates that methane has a global

[423] Colombia Council of State Administrative Tribunals, *Wayúu Indigenous communities and others vs. Ministry of Environment and others for environmental permit for the Cerrejón Mine*, 11001-0324-000-2019-00107-00, filed in 2019.

[424] *Emissions from Oil and Gas Operations in Net Zero Transitions: A World Energy Outlook Special Report on the Oil and Gas Industry and COP 28*, International Energy Agency (June 2023), https://www.iea.org/reports/emissions-from-oil-and-gas-operations-in-net-zero-transitions.

[425] Greg Muttitt, *Countries Must Phase Out Oil and Gas Production – and Quickly: But How Fast is Fast Enough?*, International Institute of Sustainable Development (Mar. 23, 2022), https://www.iisd.org/articles/analysis/phase-out-oil-gas-production.

[426] *Emissions from Oil and Gas Operations in Net Zero Transitions: A World Energy Outlook Special Report on the Oil and Gas Industry and COP 28*, International Energy Agency (June 2023)..

[427] *Emissions Gap Report 2022,* UNEP (Oct. 27, 2022), citing IPCC 2021 and IPCC 2022; *see also* Xiaopu Sun, et al., *Fast action on short-lived climate pollutants and nature-based solutions to help countries meet carbon neutrality goals*, Advances in Climate Change Research, Volume 13, Issue 4, August 2022, pages 564-577, https://doi.org/10.1016/j.accre.2022.06.003.

warming potential around 30 times that of CO_2.[428] In addition, black carbon has a global warming impact up to 1,500 times stronger than CO_2 per unit of mass.[429]

233. States in the Americas should update their nationally determined contributions to include reduction of emissions of methane, black carbon and other short-lived climate pollutants. For example, Mexico and Costa Rica have integrated short-lived climate pollutants into their nationally determined contributions, with the former aiming to reduce black carbon emissions by at least 51% by 2030,[430] and the latter aiming to do so by 20% by 2030.[431]

234. States have demonstrated their willingness to cooperate internationally to reduce short-lived climate pollutant emissions by entering into international agreements and commitments such as the Kigali Amendment to the Montreal Protocol,[432] which addresses hydrofluorocarbon phasedowns, and the Global Methane Pledge, which was signed by over 100 countries, including Argentina, Barbados, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Honduras, Jamaica, Mexico, Panama, Peru, Suriname, Trinidad and Tobago, and Uruguay.[433] The participants joining the Global Methane Pledge agreed to take voluntary actions to contribute to a collective effort to reduce global methane emissions at least 30% from 2020 levels by 2030, which could eliminate over 0.2˚C warming by 2050.[434]

235. The International Energy Agency proposed that cost-effective abatement technologies could be adopted to reduce methane emissions, such as replacement of existing devices, installation of new devices, and leak detection and repair to address venting and flaring from oil and gas production facilities.[435] Eliminating routine flaring and capturing and utilizing associated gas would significantly reduce

[428] "The Gas Industry in Latin America and the Caribbean," Project on Organization, Development, Education and Research, (Dec. 2022), https://poderlatam.org/wp-content/uploads/2022/12/Informe-Gas-2022_EN.pdf. [PODER].

[429] "Black Carbon," Climate & Clean Air Coalition, https://www.ccacoalition.org/short-lived-climate-pollutants/black-carbon.

[430] See *Progress on Climate Action in Latin America: Nationally Determined Contributions as of 2019*, Euroclima+ Thematic Studies Series 13, https://www.euroclima.org/images/Destacados/2020/Estudio-Avances-INGLES-20-5-2020.pdf.

[431] See CCAC secretariat, "Sustainability leader Costa Rica Makes Short-Lived Climate Pollutants Key to Decarbonization" (Nov. 4, 2021), https://www.ccacoalition.org/news/sustainability-leader-costa-rica-makes-short-lived-climate-pollutants-key-decarbonization.

[432] *See* Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer (Oct. 15, 2016), https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-2-f&chapter=27&clang=_en. [Kigali Amendment]. Argentina, Barbados, Bolivia, Chile, Colombia, Costa Rica, Ecuador, Grenada, Honduras, Nicaragua, Panama, Peru, Trinidad & Tobago, Uruguay, and Venezuela have ratified the Kigali Amendment, while Dominican Republic, El Salvador, Mexico, and Paraguay have accepted the Kigali Amendment.

[433] Global Methane Pledge, https://www.globalmethanepledge.org/.

[434] *Id.*

[435] *Methane Tracker*, International Energy Agency, https://www.iea.org/data-and-statistics/data-tools/methane-tracker#iea-total-sources.

black carbon emissions.[436] Colombia introduced an action plan to reduce methane through its National Strategy for Mitigation of Short-Lived Climate Pollutants. Moreover, Ecuador and Peru have committed to zero routine flaring by 2030.[437] In 2021, the Provincial Court of Justice of Sucumbíos held that Ecuador violated the right to a healthy environment by allowing gas flaring, also violating Ecuador's international commitments.[438] The Court ordered Ecuador to proceed with progressive elimination of all gas flares by the deadline of December 2030.[439]

236. One of the most effective ways to address black carbon emissions in the transportation sector is to regulate diesel emissions from on-road and off-road vehicles. Effective regulations could require mandating particulate filters and adopting soot-free technologies, such as electric and Euro VI vehicles.[440] For example, to partially address emissions from the transportation sector, Argentina announced its Electromobility Law in 2022 which bans sales of internal combustion engine vehicles from 2041 onwards and creates a support scheme for electromobility.[441]

237. To address residential burning of solid fuels for cooking and heating, which is the second most significant sector for black carbon emissions in South America,[442] States are encouraged to establish national or regional programs to transition homes to cleaner cooking and heating methods, prioritizing subsidies for low-income households.[443]

b. States should increase renewable energy production

238. According to the UN Office of the High Commissioner for Human Rights, energy production and use account for two-thirds of the world's greenhouse gas emissions

[436] Sun, Xiaopu Sun, et al., *Fast action on short-lived climate pollutants and nature-based solutions to help countries meet carbon neutrality goals*, Advances in Climate Change Research, Volume 13, Issue 4, August 2022, pages 564-577, https://doi.org/10.1016/j.accre.2022.06.

[437] *Methane Tracker*, International Energy Agency, https://www.iea.org/data-and-statistics/data-tools/methane-tracker#iea-total-sources.

[438] Ecuador Provincial Court of Justice of Sucumbíos, *Herrera Carrion et al. v. Ministry of the Environment et al. (Caso Mecheros)* (2020).

[439] *Id.*

[440] Xiaopu Sun, et al., *Fast action on short-lived climate pollutants and nature-based solutions to help countries meet carbon neutrality goals*, Advances in Climate Change Research, Volume 13, Issue 4, August 2022, pages 564-577, https://doi.org/10.1016/j.accre.2022.06.003

[441] "Law project for the Promotion of Sustainable Mobility," International Energy Agency (updated Mar. 10, 2022).

[442] See *Integrated Assessment of Short-lived Climate Pollutants in Latin America and the Caribbean*, Climate & Clean Air Coalition (2018), https://www.ccacoalition.org/resources/integrated-assessment-short-lived-climate-pollutants-latin-america-and-caribbean.

[443] Xiaopu Sun, et al., *Fast action on short-lived climate pollutants and nature-based solutions to help countries meet carbon neutrality goals*, Advances in Climate Change Research, Volume 13, Issue 4, August 2022, pages 564-577, https://doi.org/10.1016/j.accre.2022.06.003; *see also* "Black Carbon," Climate & Clean Air Coalition, https://www.ccacoalition.org/short-lived-climate-pollutants/black-carbon.

and therefore transformation of the energy sector into one based on renewable energy should be at the heart of efforts to address climate change.[444] The Office of the High Commissioner for Human Rights found that increasing investment in, and equitable access to, renewable energy supports State efforts to meet their human rights obligations to prevent and mitigate the adverse impacts of climate change.[445] This is done by developing fostering economic growth, contributing to livelihoods and decent work opportunities, improving human health and welfare, and advancing standards of living for people living in poverty through increased access and affordability of renewable energy sources.[446]

239. It is estimated that, by 2050, electricity will account for almost 50% of total energy consumption and almost 90% of such electricity generation is expected to come from renewable sources, with wind and solar together contributing nearly 70% of electricity generation.[447] South America generated 63% of its electricity from clean sources in 2022, which is higher than the global average of 39%. Uruguay and Chile have the highest shares of wind- and solar-powered energy.[448] The share of electricity production from clean energy in 2021/2022 of several parties to the Convention, including Bolivia, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Panama, Paraguay, Peru, Uruguay, and Venezuela was above the global average.[449] South America is also "unique in being the only region over the last seven years that increased clean power fast enough to meet rising electricity demand and to reduce fossil generation."[450]

240. However, more must be done. To meet renewable energy production targets, States should continue to remove barriers to the expansion of renewables in a manner that allows all members of society to participate and benefit inclusively. The UN Secretary-General outlined three critical actions to transform energy systems and speed up the shift to renewable energy: (a) government policies should shift subsidies away from fossil fuels and towards renewable energy; (b) private and public investments in renewable energy should triple to at least US$4 trillion dollars a year; and (c) States should secure, scale up and diversify the supply of critical components and raw materials for renewable energy technologies. Of note, the cost

[444] *Renewable Energy and the Right to Development: Realizing Human Rights for Sustainable Development*, United Nations Human Rights Office of the High Commissioner, https://www.ohchr.org/sites/default/files/2022-05/KMEnergy-EN.pdf.

[445] *Id.*

[446] *Id.*

[447] International Energy Agency, *Net Zero by 2050* (May 2021), at pages 18-19.

[448] "Latin America and Caribbean: Clean power replacing emissions-intensive fossil fuels," Ember (updated May 2023), https://ember-climate.org/countries-and-regions/regions/latin-america-and-caribbean/; *see also* "Wind and solar overtake coal in Chile," Ember (Oct. 25, 2022), https://ember-climate.org/insights/research/wind-and-solar-overtake-coal-in-chile/.

[449] *Id.*

[450] Malgorzata Wiatros-Motyka, "Global Electricity Review 2023," Ember (Apr. 12, 2023), https://ember-climate.org/insights/research/global-electricity-review-2023/#chapter-3-the-big-picture-close-to-a-tipping-point-where-clean-sources-meet-all-demand-growth.

of renewable projects is no longer a significant economic barrier, since technologies such as wind and solar are, in most cases, cheaper than coal and other fossil fuels.[451]

241. Renewable energy technologies should also be treated as essential and freely available global public goods. In connection with the right to science, States should work to remove obstacles to knowledge sharing and technological transfer, including intellectual property constraints.[452] Among such technology transfers, knowledge surrounding battery storage methods is of increased importance. In 2022, the United Nations called on States to create a global coalition on battery storage to fast-track innovation and deployment.[453]

242. States should build frameworks and reform bureaucracies to level the playing field for renewables. Doing so will help ensure that renewable projects are not held up by red tape, permits and difficulties accessing grid connections. For example, rapid transformation of power systems requires that governments set new market rules for grid access, connection, and dispatch.[454] Such regulations should, among other things, promote the dispatchment of a higher share of renewables, as compared to fossil fuels.[455]

c. States should manage the energy transition responsibly, accounting for human rights in the exploitation of minerals critical to the energy transition

243. Certain minerals, which have been termed "critical minerals," will be essential to the energy transition.[456] States should secure, scale-up, and diversify the supply of critical components and raw materials for renewable energy technologies. Compared to fossil fuel-based energy systems, clean energy technologies—including wind turbines, electricity networks, and electric vehicles—require more metals like lithium, molybdenum, cobalt, copper, nickel, manganese, and zinc.[457]

[451] UN Secretary-General's video message on the launch of the World Meteorological Organization's State of the Global Climate 2021 Report (May 18, 2022).

[452] UN Secretary-General's video message on the launch of the World Meteorological Organization's State of the Global Climate 2021 Report (May 18, 2022).

[453] *Id*.

[454] UNEP, *Emissions Gap Report 2022* (Oct. 27, 2022), page 40 (citing Falk, Gaffney et al. 2022).

[455] See *id.*; *see also* "Power system digitalisation is crucial for clean energy transitions and security in developing markets, but investment is lagging," International Energy Agency, (June 6, 2023), https://www.iea.org/news/power-system-digitalisation-is-crucial-for-clean-energy-transitions-and-security-in-developing-markets-but-investment-is-lagging.

[456] *See* Marcos Orellana (Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes), *The toxic impacts of some proposed climate change solutions*, U.N. Doc. A/HRC/54/25 (July 13, 2023).

[457] "The Role of Critical Minerals in Clean Energy Transitions," International Energy Agency (Mar. 2022), https://iea.blob.core.windows.net/assets/ffd2a83b-8c30-4e9d-980a-52b6d9a86fdc/TheRoleofCriticalMineralsinCleanEnergyTransitions.pdf. [IEA: Role of Critical Minerals].

However, States should ensure that the exploitation and production of these critical minerals protects and respects human rights of affected communities.

244. South America accounts for 40% of global production of copper, led by Chile (27%), Peru (10%), and Mexico (3%).[458] The region also supplies 35% of the world's lithium, led by Chile (26%) and Argentina (6%). Bolivia and Mexico also have substantial lithium resources.[459] In addition, South America also has significant potential in graphite, nickel, manganese, and rare earth elements.[460]

245. The Americas are, and will continue to be, an important region in the extraction and processing of critical minerals for the clean energy transition. However, States should legislate and enforce high environmental, social and governance standards, maximize public returns, and ensure tangible benefits for local communities.[461] If poorly managed, mineral development could lead to negative consequences, including (a) significant GHG emissions from mining and processing activities; (b) negative environmental impacts such as biodiversity loss, water depletion and pollution, waste-related contamination and air pollution; (c) massive disasters such as recent tailings dam collapses in Brazil; and (d) social impact from corruption and misuse of government resources, fatalities and injuries to workers and members of the public; and (e) human rights abuses, including child labor, unequal impact on women and girls, and devastating impacts on the right to a clean, healthy and sustainable environment.[462]

246. Additionally, clean energy should be used in sustainable mineral development. Fuel switching, low-carbon electricity and investment in energy efficiency can significantly reduce the emissions footprint of mineral production in the near term.[463] According to the International Energy Agency, emissions from minerals development do not negate the climate advantages of clean energy;[464] however, electricity mix and the pace of future decarbonization will have a significant impact on the emissions profile of mineral production.[465]

[458] "Latin America's opportunity in critical minerals for the clean energy transition", International Energy Agency (Apr. 7, 2023), https://www.iea.org/commentaries/latin-america-s-opportunity-in-critical-minerals-for-the-clean-energy-transition.

[459] *Id. See* "Top ten biggest lithium mines in the world," Mining Technology (Aug. 30, 2019), https://www.mining-technology.com/features/top-ten-biggest-lithium-mines/.

[460] "Latin America's opportunity in critical minerals for the clean energy transition", International Energy Agency (Apr. 7, 2023), https://www.iea.org/commentaries/latin-america-s-opportunity-in-critical-minerals-for-the-clean-energy-transition

[461] *Id.*

[462] IEA: Role of Critical Minerals.

[463] *Id.* at pages 201-207.

[464] *Id.* at page 194.

[465] *Id.* at page 200.

247. States focusing on the development of critical minerals should ensure that the human rights of affected populations are respected and protected. Indigenous Peoples are among the most affected by extractive activities, including in South America. According to the United Nations:

> It is estimated that over 50 per cent of the world's remaining mineral resources targeted by mining companies are in customary lands claimed by indigenous peoples. For copper and uranium resources these estimates increase to 70 per cent. The demand for lithium, the new "white gold", is expected to increase tenfold in the next decade, and this surge in demand is triggering a new wave of extractive industry encroachment into indigenous territories in Chile, the Plurinational State of Bolivia and Argentina, where 60 per cent of the world's lithium resources are located. Among those affected by lithium mining are the Pai-Ote community of the Colla people in the Cordillera sector of the Atacama Region in northern Chile, who have mobilized to protest against the profound impact of such mining on their water supplies and livelihoods, and whose representatives have been criminalized and threatened for voicing their opposition.[466]

248. States should ensure that the mining of critical minerals does not impact the rights of Indigenous Peoples, including free, prior, and informed consent, with regard to the exploitation of critical minerals within their territories.

d. States should avoid overreliance on carbon removal technologies, and ensure that human rights are respected in the application of such technologies

1. Bioenergy, Carbon Capture and Storage and Direct Air Capture technologies raise human rights concerns

249. Carbon removal methods include both natural processes (such as afforestation and agricultural soil management), man-made methods (such as direct air capture), and hybrid options (such as bioenergy combined with carbon capture and storage and ocean-based carbon removal).[467] Carbon removal may play a significant role in global decarbonization efforts by reducing emissions in industries that are particularly difficult to decarbonize[468] (such as the steel, cement, and chemical

[466] United Nations Department of Economic and Social Affairs, *State of the World's Indigenous Peoples*, 5th Volume (2021), https://social.desa.un.org/sites/default/files/publications/2023-03/State-of-Worlds-Indigenous-Peoples-Vol-V-Final%20%282%29.pdf..

[467] World Resources Institute, *Carbon Removal.*

[468] Esin Serin, *What is carbon capture, usage and storage (CCUS) and what role can it play in tackling climate change?*, London School of Economics and Political Science Grantham Research Institute on Climate Change and the Environment (Mar. 13, 2023).

industries),[469] producing low-carbon electricity and hydrogen, and removing existing carbon dioxide from the atmosphere.[470]

250. Two of the most prominent carbon removal technologies are Bioenergy with Carbon Capture and Storage and Direct Air Capture. Bioenergy with Carbon Capture and Storage involves the capture and permanent storage of carbon dioxide from processes that generate biomass energy.[471] Direct Air Capture involves the direct extraction of carbon dioxide from the air, in contrast with carbon capture, which captures carbon dioxide at the point of emissions.[472] This technology extracts carbon dioxide from the air by creating chemical reactions that selectively react with and trap carbon dioxide, while allowing other air particles to pass.[473] The captured carbon dioxide is then stored underground or used in products.[474]

251. The UN Human Rights Council and the Intergovernmental Panel on Climate Change have identified several ways that these technologies constrain sustainable development and pose dangers to human life and the environment.[475] Carbon removal technologies pose significant health risks in the capture and transport processes.[476] Carbon dioxide removal technologies require heavy reliance on water and energy consumption, and leave waste, pollution, and chemical footprints.[477] Local communities—including Indigenous Peoples, fisherfolk, and other peoples in rural areas – face the most serious risks of exposure to these technologies' negative externalities.[478]

252. Bioenergy with Carbon Capture and Storage could impact the right to food. To operate at scale, this approach would require large swaths of land and volumes of water to be diverted from food production to growing biomass.[479] It relies on

[469] Samantha Gross, *The challenge of decarbonizing heavy industry*, Brookings (June 2021), https://www.brookings.edu/articles/the-challenge-of-decarbonizing-heavy-industry/.

[470] Esin Serin, *What is carbon capture, usage and storage (CCUS) and what role can it play in tackling climate change?*, London School of Economics and Political Science Grantham Research Institute on Climate Change and the Environment (Mar. 13, 2023).

[471] U.N. Framework Convention on Climate Change, Removal Activities under the Article 6.4 mechanism, page 61, section 7.7.

[472] International Energy Agency, *Direct Air Capture: A key technology for net zero*, April 2022, page 3.

[473] *Id.*

[474] *Id.* at page 46.

[475] Human Rights Council Advisory Committee, *Impact of New Technologies Intended for Climate Protection on the Enjoyment of Human Rights*, U.N. Doc. A/HRC/54/47 (Aug. 10, 2023). at para. 19.

[476] *Id.*

[477] Human Rights Council Advisory Committee, *Impact of New Technologies Intended for Climate Protection on the Enjoyment of Human Rights*, U.N. Doc. A/HRC/54/47 (Aug. 10, 2023) at para. 16.

[478] *Id.* at para. 18.

[479] Philipp Günther and Felix Ekardt, *Human Rights and Large-Scale Carbon Dioxide Removal: Potential Limits to BECCS and DACCS Deployment*, Land (2022), https://doi.org/10.3390/land11122153, page 3.

growing primary or secondary biomass to generate fuel.[480] Primary biomass includes maize, wheat, soy, switchgrass and willow, while secondary biomass includes non-food biomass.[481]

253. Assuming that primary biomass continues to be the source of biofuels, the widespread application of this technology likely would affect the food supply and infringe upon the right to food for certain communities.[482] Studies project that to limit global warming to 1.5°C, an estimated 380 to 700 million hectares of land area would need to be devoted to biofuel crops, which translates into the conversion of 7% to 25% of the world's agricultural land and 25% to 46% of arable and permanent cropland by 2100.[483] Such conversions of land use would create greater food insecurity and would cause food prices to increase.[484]

254. Direct Air Capture technology could impact the right to water. Direct Air Capture systems have varying degrees of water requirements. Solvent Direct Air Capture systems require 1 to 7 tons of water to capture a ton of carbon dioxide, while certain sorbent systems require 1.6 tons of water per ton of carbon dioxide captured.[485] Widespread use of these technologies would likely result in increased demand and competition for freshwater supply and rising water prices.[486] The price of water is already expected to increase by 20-30% by 2050, and rising water prices will disproportionately affect vulnerable populations in the Global South.[487] Bioenergy and carbon capture and storage technology would also require large amounts of fertilizer, which would also likely worsen water pollution and thus impact the availability of clean water.[488]

255. Large-scale use of these technologies may also infringe the right to a healthy environment. Biomass production can also lead to deforestation, discussed in more detail in Section VI.e, Biomass production can also lead to significant greenhouse gas emissions and air pollution, which impact efforts to create a healthier environment. The Supreme Court of Hawaii recently concluded that granting a permit to a proposed biomass power plant would violate the right to a clean and

[480] *Id.*

[481] *Id.*

[482] *Id*. at page 4.

[483] *Id*. at page 9.

[484] *Id.*

[485] Katie Lebling, Haley Leslie-Bole, Zach Byrum, and Liz Bridgwater, *6 Things to Know About Direct Air Capture*, World Resources Institute (May 2, 2022), https://www.wri.org/insights/direct-air-capture-resource-considerations-and-costs-carbon-removal.

[486] *Id.* at page 10.

[487] *Id.*

[488] *Id.*

healthy environment (protected by the state constitution) because of the volume of greenhouse gas emissions produced. The applicant's promises to offset these emissions were dismissed as speculative and inadequate.[489]

256. The large area of land that biomass production requires will also exacerbate biodiversity loss.[490] The capture of carbon dioxide, its transportation through pipelines and its storage for unspecified periods of time raises the risks of leakage, which would have detrimental impacts on the climate crisis, ecosystems, and biodiversity.[491]

257. Finally, the largest market for captured carbon dioxide is enhanced oil recovery, which uses captured carbon dioxide to produce more oil from depleted wells, thereby producing more greenhouse gas emissions.[492] States should address the connection between Direct Air Capture and fossil fuel production in order to prevent increased emissions and a slower energy transition.[493] Otherwise, there is a serious risk that more carbon dioxide emissions would be produced than would be captured.[494] States should also refrain from subsidizing enhanced oil recovery.

2. States should preserve and restore natural carbon mitigation ecosystems

258. States should preserve and restore their natural carbon mitigation ecosystems, which absorb carbon dioxide from the atmosphere. Courts have enforced state obligations to preserve such resources. A court in Colombia, for example, ruled against the Colombian Government in a case where the government was not preserving *páramos* or natural carbon sinks. Colombia's Constitutional Court found that the government's measures that permitted mining activity in *los páramos* violated the right to a healthy environment for both present and future generations.[495] The Supreme Court of Mexico similarly ruled that the State must protect mangrove ecosystems, another natural carbon sink, in order to fulfill the right to a healthy environment.[496]

[489] Supreme Court of the State of Hawai'i, *In the matter of Hawai'i Electric Light Company*, SCOT—22—0000418, Decision of 13 Mar. 2023.

[490] *Id.* at page 11.

[491] *Id.*

[492] *Id.*

[493] *Id.*

[494] *Id.*

[495] Decision C-298/16 of June 8, 2016, Colombia Constitutional Court, http://climatecasechart.com/non-us-case/decision-c-298-16-of-june-8-2016/.

[496] First Chamber of the Supreme Court of Mexico, Amparo 307/2016, (Nov. 14, 2018).

3. States should ensure the protection of human rights in any implementation of carbon markets program, including forestry credits

259. Carbon markets are intended to facilitate mandatory or voluntary compliance with carbon emission reduction regimes. These regimes allow for the buying and selling of environmental credits that are intended to represent a reduction, avoidance, storage, or capture of greenhouse gas emissions, which may be used to offset emissions in another location.[497] States should ensure that potential emissions reductions through carbon markets do not come at the expense of human rights. Previous offsetting projects under the Clean Development Mechanism of the Kyoto Protocol[498] have been linked to human rights abuses, including forced relocations and killing of environmental activists.[499] Some carbon offsetting projects violated the rights of Indigenous Peoples by forcibly displacing them from their land.[500]

260. In addition to human rights abuses, recent scientific studies have revealed grave problems regarding the legitimacy of certain carbon credits.[501] Reports indicate that the carbon credit industry is marked by exaggerated claims, weak oversight, inaccurate reporting, and widespread over-crediting.[502] Research has shown that decision-makers utilizing carbon credits benefit financially from over-crediting.[503] In addition, vulnerable communities are often left out of critical consultations and efforts to inform affected peoples are half-hearted, resulting in extensive human rights violations.[504]

[497] Megan Stubbs, Katie Hoover, and Jonathan L. Ramsuer, *Agriculture and Forestry Offsets in Carbon Markets: Background and Selected Issues*, Congressional Research Service, Doc. No. R46956, (Nov. 3, 2021), Background and Selected Issues, page 2.

[498] As set forth in Article 12 of the Kyoto Protocol, the Clean Development Mechanism allows a State with a commitment to a certain emissions reduction or limitation target to implement an emissions reduction project in developing countries, which can earn a saleable emission reduction credit, equal to one tonne of carbon dioxide. This credit can then be applied toward meeting that country's commitment under the Kyoto Protocol. *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, Art. 12.; *The Clean Development Mechanism,* United Nations Climate Change, https://unfccc.int/process-and-meetings/the-kyoto-protocol/mechanisms-under-the-kyoto-protocol/the-clean-development-mechanism#:~:text=The%20Clean%20Development%20Mechanism%20(CDM,reduction%20project%20in%20developing%20countries.

[499] Human Rights Watch, *COP28: Carbon Market Rules Should Protect Rights* (Mar. 7, 2023), https://www.hrw.org/news/2023/03/07/cop28-carbon-market-rules-should-protect-rights#:~:text=Some%20were%20also%20linked%20to,to%20be%20fraudulent%20and%20exploitative.

[500] Human Rights Watch, *COP27: Governments Should Reject Weak Carbon Market Rules* (Nov. 14, 2022), https://www.hrw.org/news/2022/11/14/cop27-governments-should-reject-weak-carbon-market-rules.

[501] Thales A. P. West, et al., *Action needed to make carbon offsets from forest conservation work for climate change mitigation*, Science (Aug. 25, 2023), doi: 10.1126/science.ade3535.

[502] Nina Lakhani, *Revealed: Top Carbon Offset Projects May Not Cut Planet-Heating Emissions*, The Guardian (Sept. 19, 2023), https://www.theguardian.com/environment/2023/sep/19/do-carbon-credit-reduce-emissions-greenhouse-gases;

[503] Barbara Haya et. al, *Quality Assessment of REDD+ Carbon Credit Projects, Executive Summary*, Goldman School of Public Policy (Sept. 15, 2023) at page 2, https://gspp.berkeley.edu/research-and-impact/centers/cepp/projects/berkeley-carbon-trading-project/redd#media-coverage.

[504] *Id.* at page 6.

261. States have an obligation to take reasonable measures to prevent such foreseeable harms, whether committed by private or public actors.[505] In furtherance of their duty to prevent foreseeable harms, States have an obligation to assess the risks and impacts of carbon markets.[506] Given previous human rights abuses related to carbon offsetting projects, States can reasonably foresee that potential harm may occur in future offsetting projects, and they have an obligation to assess whether such adverse impacts may occur and take steps to prevent them.

e. States should reduce and end deforestation

262. Deforestation, which is the conversion of previously forested land into another permanent use, is one of the human activities with the largest adverse impacts on the Earth's climate.[507] Deforestation, along with agriculture and changes in land use, constitutes 24% of global greenhouse gas emissions.[508] Deforestation also contributes to loss of biodiversity, economic losses, human health issues, and detrimental environmental impacts. [509]

263. Agriculture accounts for almost 88.1% of the world's deforestation, while urban and infrastructure development accounts for about 6.1% and the remaining 5.8% is attributed to other causes.[510] Livestock grazing is the main driver of deforestation in the Americas, causing almost three quarters of deforestation in South America and about half of deforestation in North and Central America.[511]

264. In *Future Generations v. Ministry of the Environment and Other*, the Supreme Court of Colombia found that deforestation of the Colombian portion of the Amazon rainforest was a violation of the right to a healthy environment and other human rights. The Court stated that deforestation in the Amazon poses an "imminent and serious" threat to present and future generations due to its impact on climate change.[512]

[505] Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change, *Understanding Human Rights and Climate Change*.

[506] Center for Int'l Env't Law, *Rights, Carbon, Caution: Upholding Human Rights under Article 6 of the Paris Agreement* (2021), https://www.ciel.org/wp-content/uploads/2021/02/Rights-Carbon-Caution.pdf, page 10.

[507] David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, U.N. Doc. A/74/161 (July 15, 2019).

[508] *Id.*

[509] Clare Balboni, Aaron Berman, Robin Burgess, Benjamin A. Olken, *The Economics of Tropical Deforestation* (Sept. 1, 2022).

[510] FRA 2020 Remote Sensing Survey, FAO Forestry Paper 186, FAO (2022)

[511] *Id.*

[512] Supreme Court of Colombia, *Demanda Generaciones Futuras v. Minambiente*, Decision of Apr. 5, 2018.

265. While ending deforestation is the best way to stop this form of greenhouse gas emissions, States should also consider implementing measures aimed at restoring already degraded land, converting such lands into secondary forests. [513]

266. The recommendation that States should move reduce and ultimately end deforestation focuses on a planet-centered model of development, rather than the current system in which nature and the environment are ignored. The Special Rapporteur on the Right to Development has proposed that States should move towards a model of planet-centered, participatory development that does not focus only on humans, but nature, the environment, and all species:

> The goal of leaving no one behind should include not merely people but also plants and animals because, without these organisms, people cannot survive. As the right to development is not a license to destroy the planet or undermine the ability of future generations to realize their economic development aspirations, brakes should be applied to the idea of infinite economic growth and more focus should be placed on ensuring the fair and equitable distribution of existing resources by respecting the planetary boundaries.[514]

f. States should increase their levels of climate financing

267. As discussed in Section III, the current level of climate financing is insufficient to prevent, curb or respond to the global consequences of the climate emergency.[515] According to the International Monetary Fund, US$5 trillion in annual investments are needed globally by 2030 to meet greenhouse gas emission reduction goals, with US$ 2 trillion of that needed to be spent in emerging markets and developing economies.[516] As it is elsewhere, climate financing remains insufficient throughout the Americas. In North America, annual climate financing accounts for a sixth to a third of the amount needed.[517] The situation is graver in South America and the Caribbean, where the amount of climate financing is much lower, accounting for only an eighth to a quarter of the financing needed.[518] Industrialized members of the OAS should enhance their financial support for the climate actions of developing

[513] Tik Root, "Tropical forests can recover from deforestation very fast, new study finds," The Washington Post (Dec. 9, 2021).

[514] *See* Surya Deva (Special Rapporteur on the right to development), *Reinvigorating the right to development: A vision for the future*, U.N. Doc. A/HRC/54/27 (Aug. 4, 2023), Section V.F.

[515] IPCC Working Group II, *AR6: Climate Change 2022 Impacts, Adaptation, and Vulnerability*, page 1963.

[516] "IMF says private sector needs to shoulder most of climate investment burden." Reuters (October 2, 2023), https://www.reuters.com/sustainability/sustainable-finance-reporting/imf-says-private-sector-needs-shoulder-most-climate-investment-burden-2023-10-02/#:~:text=Of%20the%20%245%20trillion%20in,about%2080%25%20of%20these%20investments.

[517] *Emissions Gap Report 2022,* UNEP (Oct. 27, 2022), page xxvii.

[518] *Id.* at page xxvii.

members of the OAS, particularly the least developed States and the Small Island Developing States.

268. Pursuant to international human rights law, States should dedicate the maximum available resources to fulfilling their human rights obligations. In the context of the climate emergency, this means allocating the maximum available financial, material, and human resources to shift to renewable energy, clean transport and agroecological farming; halting and reversing deforestation and soil deterioration; and increasing adaptive capacity, especially in vulnerable and marginalized communities.

269. Financing for mitigation and adaptation strategies and initiatives has grown globally but still falls short of current global needs. As an example, financing flowing from industrialized to developing countries has never met the commitment of US$100 billion per year originally made at UNFCCC COP15 in Copenhagen in 2009 and reiterated in the Paris Agreement.[519] The United Nations Adaptation Gap Report 2022 found that, in 2020, industrialized countries only pledged a combined mitigation and adaptation finance of US$83.3 billion.[520] To limit warming to 1.5°C or 2°C, the average annual investment required for the period from 2020 to 2030 is approximately three to six times greater than current levels.[521] The United Nations estimates that the annual need for adaptation finance for developing countries alone could be between US$215 to US$387 billion.[522] These statistics reveal the disparity between current levels of climate finance and what is needed for countries to mitigate and adapt to climate change related challenges.

270. States recognized the need for transformative climate financing in Section 1(c) of Article 2 of the Paris Agreement. This provision aims to strengthen the global response to the threat of climate change in the context of sustainable development and efforts to eradicate poverty, including by: "making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development."[523]

271. In accordance with Article 2 of the Paris Agreement and their human rights obligations, States are under a duty to refrain from directing finance flows toward any policy or action that is inconsistent with a low emissions pathway and/or climate-resilient development.[524] Therefore, States should adopt policies and

[519] IPCC, *AR6 Synthesis Report: Climate Change 2023*, pages 28-29.

[520] Paul Watkiss, Georgia Savvidou, Pieter Pauw, and Dipesh Chapagain, "Chapter 3: Global progress on adaptation financing in developing countries," in *Adaptation Gap Report 2022*, UNEP, page 18.

[521] IPCC, *AR6 Synthesis Report: Climate Change 2023*, page 29.

[522] *Adaptation Gap Report 2023,* UNEP (Nov. 2, 2023), https://www.unep.org/resources/adaptation-gap-report-2023.

[523] Paris Agreement, Art. 2.

[524] *Id.*

budgeting in accordance with the obligation to adequately allocate their national budgets to mitigate and reduce greenhouse emissions, restore natural carbon sinks and undertake adequate adaptation actions to protect vulnerable communities.

272. Section 2 of Article 2 of the Paris Agreement also provides for implementation that reflects "equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances."[525] States therefore should frame their obligations based on national circumstances and budgetary needs, and allocate public financing in their budgets where private financing is not available. In *PSB et al. v. Brazil (on Climate Fund)*, the Supreme Court of Brazil ruled that the executive branch has a constitutional duty to execute and allocate funds to mitigate climate change, based on, among other things, the constitutional right to a healthy environment and Brazil's commitments under the Paris Agreement.[526]

1. States should be proactive in overcoming the barriers to adequate financing

273. The climate finance gap is mainly the result of four factors: (a) the failure to implement the polluter pays principle; (b) the failure to mobilize maximum available resources; (c) unsustainable debt burdens for many low-income States small island developing states and other climate vulnerable States; and (d) lack of access to capital at affordable rates for mitigation and adaptation projects. To overcome these challenges, States should be more proactive in overcoming the systemic barriers in the current international financial system. The UN Secretary General has requested that States rethink climate financing by demanding more decisive and direct actions.[527] This call-to-action has been materialized in multiple international initiatives, such as the "Bridgetown Initiative 2.0," which aims to reform the international financial system.[528]

274. The Bridgetown Initiative 2.0 highlights six key action areas to take concrete steps to support all developing States, including to: (a) provide liquidity support of at least US$100 billion of unused special drawing rights through the IMF and multilateral development banks; (b) restore debt sustainability by restructuring sovereign debt with long-term low interest rates; (c) increase official sector development lending to reach US$500 billion annual stimulus for investment in sustainable development swaps (discussed below); (d) mobilize more than US$1.5 trillion per year of private sector investment in the green transformation; (e) modify

[525] *Id.*

[526] Supreme Court of Brazil, *Partido Socialista Brasieiro (PSB) et al. v. Brasil*, ADPF 708, (July 1, 2022)

[527] Masayoshi Suga, *With clock ticking for the SDGs, UN Chief and Barbados Prime Minister call for urgent action to transform broken global financial system*, UN (Apr. 26, 2023), https://www.un.org/sustainabledevelopment/blog/2023/04/press-release-with-clock-ticking-for-the-sdgs-un-chief-and-barbados-prime-minister-call-for-urgent-action-to-transform-broken-global-financial-system/.

[528] *Id.*

the governance and management of international financial institutions to have more equitable and inclusive management and supervision; and (f) create an international trade system that supports green energy and the required transformations.[529]

2. States should consider putting a price on greenhouse gas emissions

275. Carbon pricing is a mechanism by which the external costs of greenhouse gas emissions (e.g. crop damage, health care costs from droughts and heat waves, and property loss from sea level rise and flooding) are connected to the source.[530] The source then pays per unit of climate pollution emitted.[531] Carbon pricing shifts the burden of paying for greenhouse gas pollution from the public to polluters, forcing the latter to decide to alter their activities or continue emitting and paying the price. Carbon pricing has been formulated in different ways, but to be most effective, it should be implemented in a manner that predictably increases over time to change emitter behavior. Funds generated from carbon pricing could then be used to close the gap in carbon financing discussed above.

276. At present, only one-quarter of global carbon emissions are priced. The International Monetary Fund has proposed to expand this coverage by implementing an international carbon price floor agreement, which would have States pay a floor price of $25-$75 per ton of carbon depending on the States' level of economic development.[532] An international carbon price floor would help accelerate decarbonization.

277. The commercial aviation and international shipping industries are major contributors to greenhouse gas emissions. Together, these industries release billions of tons of CO_2 a year.[533] Emissions from these industries are projected to continue to rise in the decades ahead.[534] Furthermore, the industries' CO_2 emissions are mainly unregulated and not addressed by carbon pricing mechanisms.[535]

[529] Public Relations, *Bridgetown Initiative 2.0 Highlights Six Key Action Areas*, Barbados Government Information Service, https://gisbarbados.gov.bb/blog/bridgetown-initiative-2-0-highlights-six-key-action-areas/.

[530] "What is Carbon Pricing?, Carbon Pricing Dashboard," The World Bank, https://carbonpricingdashboard.worldbank.org/what-carbon-pricing.

[531] *Id.*

[532] Jean Chateau, Florence Jaumotte, & Gregor Schwerhoff, "Why Countries Must Cooperate on Carbon Prices," International Monetary Fund (May 19, 2022), https://www.imf.org/en/Blogs/Articles/2022/05/19/blog-why-countries-must-cooperate-on-carbon-prices.

[533] *See Maritime Shipping*, The International Council on Clean Transportation, https://theicct.org/sector/maritime-shipping/; *see also Tracking Aviation*, International Energy Agency, https://www.iea.org/energy-system/transport/aviation.

[534] David R. Boyd and Stephanie Keene, *Air Travel and Maritime Shipping Levies: Making Polluters Pay for Climate Loss, Damages and Adaptation*, UN Special Rapporteur Policy Brief #2 (2021), page 5.

[535] *Id.*

278. To address these industries' greenhouse gas emissions, States should apply the polluter pays principle and impose carbon pollution levies that could be redistributed to low-income States, Small Island Developing States, and other climate-vulnerable States.[536] Multiple models for a levy have been proposed, such as a levy of $100 per ton of CO_2 emitted by shipping and $25 per passenger for air travel.[537]

3. States should consider participating in collaborative schemes, including debt-for-climate swaps

279. States should collaborate internationally to explore bilateral and multilateral investment and capital structures that are beneficial for the environment, human rights and all participating parties. Many of the least developed States have been unable to adequately invest in recovery, climate action, and sustainable development due to capital constraints and unsustainable debt burdens. Some have to borrow from international capital markets at much higher interest rates than industrialized States.[538]

280. However, certain investment structures may assist States in obtaining climate-related financing. An example is the sustainable development swap, which could redirect debt service payments toward investments in sustainable development and climate action. Debt-for-climate swaps could be structured to allow creditor countries to apply the value of the debt relief towards their climate commitments.[539] For example, Bolivia and Conservation International signed the first debt-for-nature agreement in 1987, pursuant to which Conservation International purchased US$650,000 of Bolivia's foreign debt in the secondary market at a discount in exchange for the Bolivia's commitment to set aside 3.7 million acres in three conservation areas as buffer zones.[540] However, States should always ensure that debt-for-climate and debt-for-nature swaps include human rights safeguards, are developed in consultation with potentially affected communities, respect the right to free, prior and informed consent of Indigenous Peoples, and that persons whose rights are allegedly affected have access to justice with effective remedies.

g. States should implement oversight and education programs to promote awareness of the climate emergency

281. To further promote climate literacy and thereby promote community participation and political engagement, States should that education systems include science-based climate-change curriculum, employ trained educators, and address the

[536] *Id.* at page 4.

[537] *Id.* at para. 50.

[538] *United Nations Secretary-General's SDG Stimulus to Deliver Agenda 2030*, UN (Feb. 2023).

[539] *Id.*

[540] J. P. Resor, *Debt-for-nature swaps: a decade of experience and new directions for the future*, FAO.

ethical, political, cultural and economic aspects of climate change.[541] For example, the Dominican Republic enacted the Environmental Education and Communication Law, which aims to incorporate climate education into all levels of the country's academic system.[542] The country's stated goal is to train 200 teachers in climate education by 2024 and to integrate climate education fully into teacher training institutions by 2030.[543]

282. Similarly, Colombia adopted the National Climate Change Policy in 2017, which outlines ways to address information dissemination on education, training and public awareness, science and technology and climate change management planning and financing.[544] The policy's stated goal is to increase climate literacy in the country's education system.[545] Colombia has also created the Interinstitutional Technical Committees of Environmental Education, which implement national environmental policies and climate education according to each region's local guidelines.[546]

VII. LOSS AND DAMAGE

283. "Loss and damage," the third critical pillar of climate action, refers to both economic and non-economic harms arising from the climate emergency. Economic harms include measurable impacts, such as infrastructure damage, costs of rebuilding, increased health care expenditures, and agricultural losses. Non-economic harms refer to the negative impacts of the climate emergency that are difficult but not impossible to place a dollar value on, such as trauma from experiencing catastrophic weather events, loss of traditions and community, impacts on cultural rights, and displacement.

284. Loss and damage include the sudden effects of extreme weather events including hurricanes, typhoons, heat waves and wildfires, but also slow-onset events such as sea-level rise, rising global temperatures, ocean acidification, loss of biodiversity, drought, and desertification.

285. The IPCC has recognized that the likelihood of exceeding adaptation limits increases as the magnitude and pace of climate change increases. When prevention,

[541] *Climate Literacy is the Key to Reversing Climate Change*, Earth Day (Apr. 19, 2023), https://www.earthday.org/climate-literacy-is-the-key-to-reversing-climate-change/#:~:text=The%20Education%20International%20Manifesto%20on,science%2C%20(3)%20addressing%20the.

[542] Climate Change Laws of the World, Dominican Republic, Grantham Research Institute on Climate Change and the Environment, https://climate-laws.org/geographies/dominican-republic.

[543] Christina Kwuak, *The Climate Change Education Ambition Report Card*, Education International Research (Sept. 28, 2021), https://www.ei-ie.org/en/item/25344:the-climate-change-education-ambition-report-card, page 45.

[544] *Getting every school climate-ready: How countries are integrating climate change issues in education*, UNESCO (2021), unesdoc.unesco.org/ark:/48223/pf0000379591/PDF/379591eng.pdf.multi.

[545] *Id.*

[546] *Id.*

mitigation and adaption efforts are unsuccessful or impossible to implement, addressing loss and damage post facto becomes necessary.

286. Signatories to the Paris Agreement acknowledged "the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change."[547] The agreements of COP27 further recognized the importance of addressing climate-related loss and damage, with States agreeing to establish a loss and damage fund for vulnerable communities impacted by climate change.

287. In addition to fulfilling their obligations to address loss and damage pursuant to international environmental and climate agreements, States should adhere to international human rights law in addressing climate-related losses and damages. The loss and damage experienced due to climate change fundamentally impacts the rights recognized in international human rights law – including, inter alia, the rights to life, food, water, health, livelihood, culture, and a clean, healthy, and sustainable environment.

288. Communities and individuals most in need of international human rights protections also tend to be the most vulnerable to the losses and damages inflicted by climate change. Effectively addressing loss and damage arising from or related to the climate emergency requires a human rights-based approach.

289. States should move forward with urgency to operationalize the Loss and Damage Fund (agreed to at COP27) and provide the required magnitude of financing, which is estimated at $290 billion to $580 billion annually.[548] The bulk of funding should come from current and historically high emitting States, based on the polluter pays principle.

290. In designing and operationalizing the Fund, to ensure that loss and damage remedies are just and effective, States should proactively incorporate human rights principles into their efforts. State efforts to provide redress and remedy for loss and damage should incorporate and at all times respect core human rights principles, including non-discrimination and effective access to remedy.

291. The Fund should not only be aimed in remedying past injustices suffered by vulnerable States and peoples, but also adopt a forward-facing outlook that seeks to strengthen local communities from inevitable environmental damage while preventing repetition of harm. As outlined in the 2023 Maastricht Principles, States should establish national and international programs for reparation of the human rights of future generations that include the principles of restitution, compensation,

[547] Paris Agreement, Art. 8.

[548] Anil Markandya & Mikel González-Eguino (2018): *Integrated Assessment for Identifying Climate Finance Needs for Loss and Damage: A Critical Review*. In: Mechler R., Bouwer, L., Schinko, T., Surminski, S. Linnerooth-Bayer, J. (eds): *Loss and damage from climate change. Concepts, methods and policy options.* Springer, pages 343-362.

and satisfaction.[549] When restitution is not possible, victims should receive compensation, either monetarily or in kind. Finally, the satisfaction of reparations for future generations includes full public disclosure of causes and conditions leading to violations, mechanisms to provide victims with the truthful account and details of violations, and administrative or judicial sanctions to those responsible for violations.

292. Funds and obligations of loss and damage are primarily concerned with creating a prospective framework for addressing present and future harms caused by the climate emergency. The existence of such a framework should not be used as a basis for excluding the right to redress for damage caused by States' past acts and omissions. The right of access to justice, including rights to redress and remedy, are a core component of the right to a healthy environment.

VIII. CONCLUSION

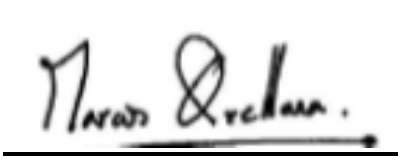
293. Respecting, protecting and fulfilling human rights, including the right to a clean, healthy, and sustainable environment (which includes, inter alia, the right to a safe climate, healthy ecosystems and biodiversity, and a non-toxic environment), could be a critical catalyst in spurring the urgent, systemic and transformative changes required to achieve a sustainable future. Human rights empower the public and promote accountability by imposing enforceable obligations on governments to implement effective and equitable actions to address the planetary crises.

294. In light of the climate emergency that humanity is facing, every molecule of greenhouse gas counts. There are no marginal or insignificant emissions. There is no time to lose. As the IPCC has stated, "Every bit of warming matters, every year matters, every choice matters."[550]

[549] *See Maastricht Principles on the Human Rights of Future Generations* (adopted on Feb. 3, 2023).

[550] IPCC, *Global Warming of 1.5°C*, Foreword at (vi).

Respectfully submitted:







Marcos Orellana	David Boyd	Surya Deva
Special Rapporteur on Toxics & Human Rights	Special Rapporteur on Human Rights & the Environment	Special Rapporteur on the Right to Development

LEGAL REPRESENTATIVES FOR SUBMITTING PARTIES

SUSAN KATH
SAMUEL BOOKMAN
VANCE CENTER FOR INTERNATIONAL JUSTICE
42 W. 44th Street
New York, NY 10036
skath@nycbar.org
sbookman@nycbar.org

VIREN MASCARENHAS
ELISABETH BRENNEN
DIANA FELIPE
THOMAS GOSLIN
NICOLE HADDAD
CAIO JUNQUEIRA DE BRITO
MARIELLA MONTPLAISIR BAZAN
ARI SINGZON
ELIZABETH SIMPER
PIERRE-PHILIPPE TURNBULL
MARIA VELASCO

MILBANK LLP
55 Hudson Yards
New York, NY 10001
vmascarenhas@milbank.com
+1 (212) 530-5502

100 Liverpool Street
London, UK EC2M 2AT

Av. Brigadeiro Faria Lima, 4100
5th Floor
04538-132, São Paulo, SP, BR

12 Marina Boulevard
Marina Bay Financial Centre #36-03 Tower 3
Singapore, SG 018982