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WORLD COMMISSION ON ENVIRONMENTAL LAW
COMMISSION MONDIALE DE DROIT DE L'ENVIRONNEMENT
COMISION MUNDIAL DE DERECHO AMBIENTAL

Tel: +41 229 990 0000 Fax: +41 22 9990002

E-mail: director.general@iucn.org and wcel@iucn.org

Website: <https://www.iucn.org/our-union/commissions/world-commission-environmental-law>

Address: IUCN Headquarters, Rue Mauverney 28, 1196 Gland, Switzerland

**Written Opinion by International Union for the Conservation of
Nature (IUCN)**

**Prepared by the IUCN World Commission on Environmental Law
(WCEL)**

**Request by the Republic of Colombia and the Republic of Chile for
an Advisory Opinion
from
the Inter-American Court on Human Rights
concerning the Climate Emergency and Human Rights**

December 18, 2023



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List of Acronyms

ACHR	American Convention on Human Rights
AG/RES	General Assembly / Resolution (acronym in Spanish)
BBNJ	Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
CARICOM	Caribbean Community
CBD	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMA	Conference of the Parties serving as the meeting of the Parties to the Paris Agreement.
CMS	Convention on the Conservation of Migratory Species of Wild Animals
ECtHR	European Court of Human Rights
ESCR	Economic, Social and Cultural Rights
ESCER	Economic, Social, Cultural and Environmental Rights
EIA	Environmental Impact Assessment
GHG	Greenhouse gases
GST	Global Stocktake. Process established under Art. 14 of the Paris Agreement to collectively take stock of the implementation of the Agreement and of progress in achieving the purpose of the Paris Agreement and its long-term goals.
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IPBES	Intergovernmental Panel on Biodiversity and Ecosystem Services



IPCC	Intergovernmental Panel on Climate Change
ISP	Inter-American Strategy for the Promotion of Public Participation in Sustainable Development Decision Making
ITLOS	International Tribunal for the Law of the Sea
IUCN	International Union for Conservation of Nature
IUCN-WCEL	International Union for the Conservation of Nature-World Commission on Environmental Law
MEA	Multilateral Environmental Agreement
NbS	Nature-based Solutions
OAS	Organization of American States
SIDS	Small Island Developing States
TEIA	Transboundary Environmental Impact Assessment
TWAP	Transboundary Water Assessment Project
UNCED	United Nations Conference on Environment and Development
UNCLOS	United Nations Convention on the Law of the Sea
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	General Assembly of the United Nations
UNHRC	United Nations Human Rights Council
VCLT	Vienna Convention on the Law of Treaties
WCR	The Wider Caribbean Region

I. Introduction

The long-standing cooperative relations of the International Union for the Conservation of Nature (“IUCN”) with the Inter-American System date back to 1968 (OEA/ Ser.D/v.21/70). In January 19, 2017, the IUCN jointly with the General Secretariat of the Organization of American States (OAS), provided an expert written opinion to the Inter-American Court of Human Rights (hereafter “IACtHR” or “the Court”) on the request by the Republic of Colombia for an advisory opinion from the Court concerning the interpretation of Article 1(1), 4(1) and 5(1) of the American Convention on Human Rights, and delivered oral arguments (57th EO period of Sessions, November 2017) (OC23/2017).

The Presidency of the IACtHR, acting pursuant to Article 73, paragraph 3 of the Court’s Rules of Procedure, invited all interested parties to submit a written opinion in the current Advisory proceedings commenced by the Republic of Chile and the Republic of Colombia on January 9, 2023, pursuant to Article 64, paragraph 1 of the American Convention on Human Rights (hereafter “the Convention”) or the Pact of San José (hereafter “the Pact of San José”). On March 22, 2023, the Secretary of the Court upon instruction of its President extended an invitation (REF: CDH-OC-1-2023/255) to IUCN to submit its written opinion on the relevant issues according to its area of expertise, field of work or interest. On July 2023, IUCN communicated to the Court that it would be submitting a written opinion and satisfied the requirements established in Article 73(3) of the Rules of Procedure the IACtHR. Together with its acknowledgement, the Court (REF.: CDH-SOC-1-2023/751) informed IUCN of the President’s decision to extend the deadline for submission of the written opinion, in accordance with Article 73(2) of the aforementioned Rules of Procedure, until October 18, 2023. Further, the President, after consulting the Plenary of the Court, decided to extend until December 18, 2023, the deadline established for the submission of written observations regarding the request.¹

IUCN respectfully submits the following written opinion, as an international organization with widely recognized independent expertise, in order to assist the Court in its deliberations and further clarify the scope of human rights affected by the climate emergency, the State obligations to address it, taking into account considerations of equity, justice and sustainability. The statement was prepared by the IUCN World Commission on Environmental Law (“IUCN WCEL”) in furtherance of its objective and mandate. Additionally, the submission seeks to assist the Court in the identification of Inter-American standards, in the American Convention and other Inter-American treaties, to accelerate the response to the climate emergency.

The observations contained in this written opinion have been organized into three sections:

Section I provides a brief introduction to the request for the Advisory Opinion, the themes and questions presented for the Court’s consideration. This section also identifies relevant sources of International Environmental Law that should be taken into account when interpreting the American Convention on Human Rights.

Section II contextualizes the questions on which the Court is requested to opine. It examines the relevance of science on the climate emergency for human rights and contextualizes the questions

¹ https://www.corteidh.or.cr/observaciones_oc_new.cfm?lang=en&lang_oc=en&nId_oc=2634.



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on which the Court is requested to opine. It examines the relevance of the climate emergency science for human rights and the need for response.

Section III provides a comprehensive analysis of the inter-American human rights system in the context of the climate emergency, with a particular emphasis on the corresponding obligations of states. This section furnishes the court with a detailed structured analysis that departs from the order of questions in which the Republic of Chile and the Republic of Colombia have sought an opinion from the Court. In turn, IUCN WCEL addresses and provides guidance on the majority of substantive and procedural specific issues contained in the various questions.

A. IUCN and WCEL

IUCN is an international organization of governmental and non-governmental members. It was established in 1948 and it currently counting over 1,400 member organizations from over 170 states. These include States and government agencies at the national and subnational levels, Non-Governmental Organizations (NGOs), indigenous peoples' organizations, scientific and academic institutions and business associations. In the Americas region ("the region"), six (6) of the IUCN Member States are part of the InterAmerican System and seven (7) of the Member Government Agencies belong to States that are part of the InterAmerican System.²

Moreover, fifteen (15) of the international and national non-governmental members that are part of the Union are located in State parties to the American Convention on Human Rights, as well as twelve (12) of the indigenous peoples organizations that are members of the Union.

IUCN assists states and provides public, private, and non-governmental organizations throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable. It carries out its work, inter alia, through seven specialized Commissions. IUCN Commissions are broad and active networks of scientists and experts providing IUCN and its Members with sound science and policy advice to drive conservation and sustainable development. The WCEL is one such Commission. WCEL works to enhance the development and strengthen the implementation of environmental law and policy, including through best practices and inter-sectoral strategies for effective compliance and enforcement. WCEL promotes the environmental rule of law globally, particularly in countries that seek to improve their law and governance systems.

WCEL aims to strengthen the capacity of governments, the judiciary, prosecutors, law schools and other stakeholders as they develop and implement environmental law. WCEL works through its global network of over 1200 experts, eight (8) specialist groups and four (4) task forces. WCEL works closely with the IUCN Secretariat, IUCN's Regional Offices, other IUCN Commissions and IUCN members and in partnership with relevant international entities to realize the Union's One Programme Charter and pursues its Mandate 2021-2025³ in concert with the integrated programme of activities adopted by the World Conservation Congress in the IUCN Programme 2021-2025 and the WCEL mandate adopted at the 2021 World Conservation Congress.

² IUCN(2023). Members Directory, <https://www.iucn.org/our-union/members/members-directory> [Accessed: 06 October 2023].

³ IUCN(2021) *Nature 2030. One Nature, One Future*, <https://portals.iucn.org/library/sites/library/files/documents/WCC-7th-001-En.pdf> [Accessed 02 November 2023].



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WCEL is led by a Chair elected every four years by the IUCN Members Assembly during the World Conservation Congress and a Deputy Chair appointed by the IUCN Council on the recommendation of the Chair. A small WCEL Steering Committee³ is also appointed by the IUCN Council on the recommendation of the Chair in accordance with the IUCN Statutes and Regulations. The Steering Committee assists the Chair and Deputy Chair in setting the strategic direction and providing oversight of the activities of the Commission. Membership of WCEL is a fundamental part of its organization. Many WCEL members from throughout the world have contributed to this written opinion.

IUCN WCEL Steering Committee:

Prof. Dr. Christina Voigt, University of Oslo, Norway, Co-Chair Paris Agreement Implementation and Compliance Committee (PAICC), IUCN Counselor.
(IUCN WCEL Chair)

Mr. Ayman Cherkaoui, Coordinator for the Mohammed VI Prize for the Climate and Sustainable Development, Strategic Development Officer at the Mohammed VI Foundation for Environmental Protection.
(IUCN WCEL Deputy Chair)

Prof. Denise Antolini, William S. Richardson School of Law, University of Hawai‘i at Mānoa.
(Steering Committee Member)

Prof. Dr. Nilufer Oral, Member and Co-Chair of the UN International Law Commission, Co-Chair of the Study Group on Sea-level rise in relation to international law, Professor of Law and Senior Fellow at the National University of Singapore.
(Steering Committee Member)

Ms. Elizabeth Maruma Mrema, Deputy Executive Director of the United Nations Environment Programme (UNEP).
(Steering Committee Member)

Dr. Claudia S. de Windt, Chief Executive Officer, Inter-American Institute on Justice and Sustainability (IIJS), Adjunct Associate Professor of Human Rights and Environment, American University, Washington College of Law.
(Steering Committee Member)

Ms. Maria-Goreti Muavesi, Member of FELA, Member of the National Environmental Law of Australia and JICA Alumni Association of Fiji. Deputy Director of the IUCN Oceania Regional Office.
(Steering Committee Member)

Mr. James Cameron, Barrister.
(Steering Committee Member)



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Prof. Lavanya Rajamani, Professor of International Environmental Law, Faculty of Law, University of Oxford, Yamani Fellow in Public International Law at St Peter's College, Oxford.
(Steering Committee Member)

Prof. Agnès Michelot, Senior Lecturer in Public Law, Faculty of Law, Political Sciences and Management of the La Rochelle University (France), Vice President and Honorary President of the French Society for Environmental Law.
(Steering Committee Member)

Ms. Christina Pak, Principal Counsel of the Asian Development Bank (ADB), Office of General Counsel's Law and Policy Reform Program across the Asia and the Pacific region.
(Steering Committee Member)

Prof. Patricia Kameri-Mbote, Director of UNEP Law Division, Member of the Governing Board of the Council on Environmental Law (ICEL).
(Steering Committee Member)

Dr. Alejandro Omar IZA, Head of IUCN Environmental Law Programme.
(Ex Officio Steering Committee Member)

Ms. Marina Venancio, Chair of the WCEL Early Career Specialist Group, Programme Officer at the United Nations Environment Programme World Conservation Monitoring Centre, member of the YPARD Steering Committee.
(Steering Committee Member)

Ms. Rose-Liza Eisma-Osorio, Lecturer at the University of Cebu, Philippines.
(Ex Officio Steering Committee Member)

Ms. Sandrine Friedli Cela, IUCN Legal Adviser.
(Ex Officio Steering Committee Member)

Ms. Sheila Abed, Paraguayan lawyer, Former Counselor of the Yacyreta Binational Hydropower Dam, Former Minister of Justice and Labor of the Republic of Paraguay.
(Chair Emeritus)

Dr. Parvez Hassan, Senior Advocate of the Supreme Court of Pakistan
(Chair Emeritus)

Justice Antonio Benjamin, Justice of the National High Court of Brazil (STJ), President Global Judicial Institute on the Environment, Member of the Governing Board of the Council on Environmental Law (ICEL).
(Chair Emeritus)

Prof. Nicholas Robinson, Former Legal Advisor of IUCN negotiated IUCN's Observer Status in the UN General Assembly, Founder of IUCN Academy of Environmental Law,



Professor of Environmental Law at Elisabeth Haub School of Law, Pace University,
Founder of Center for Environmental Legal Studies at Elisabeth Haub School of Law,
Member of the Governing Board of the Council on Environmental Law (ICEL).
(Chair Emeritus)

LEGAL COUNSELS FOR THE INTERNATIONAL UNION OF THE CONSERVATION OF
NATURE-WORLD COMMISSION ON ENVIRONMENTAL LAW AND CONTRIBUTING
AUTHORS OF THIS WRITTEN OPINION:

Dr. Claudia S. de Windt, Chief Executive Officer, Inter-American Institute on Justice and Sustainability (IIJS), Adjunct Associate Professor of Human Rights and Environment, American University, Washington College of Law, member of the Bar of the Dominican Republic (Steering Committee Member)

Prof. Dr. Christina Voigt, Professor at the University of Oslo, Co-Chair Paris Agreement Implementation and Compliance Committee (PAICC). (IUCN WCEL Chair)

The IUCN WCEL 2020-2025 Steering Committee would like to acknowledge and is grateful to the following WCEL members and experts, listed in alphabetical order, who served as contributing authors of this written opinion:

1-Jorge Aranda Ortega

Researcher, Center for Environmental Law, School of Law, University of Chile
Chile

2-Nicholas Stevens Bryner

Associate Professor of Law, Louisiana State University
Legal Advisory Group, Louisiana Climate Initiatives Task Force
Chair, IUCN WCEL Task Force on the Global Judicial Institute on the Environment
Louisiana, U.S.

3-Prof. Jorge Mariano Guillermo Castro Sánchez-Moreno

Dean, Law School, Universidad Científica del Sur.
Professor, Pontificia Universidad Católica del Perú
Former Vice-Minister of Environmental Management of the Peruvian Ministry of Environment Member, Consultative Commission, Presidency of the Supreme Court
Member, Steering Committee, UN-Environment Program for the Development of Environmental Law
Peru

4-Marcelo J. Cousillas

Director of the Legal Advisory Department of Ministry of Environment of Uruguay
Chair of the Presiding Officers of the Escazú Agreement.
Co-Chair of the Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme V, United Nations Environment Programme)
Climate Change Specialist Group Representative



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Uruguay

5-Luis Fernando Macias Gomez

Partner, Philippi Prieto Carrizosa Ferrero DU & Uria (PPU).
Founding partner, Macías Gómez & Asociados
Consultant for the World Bank, UNDP
Colombia.

6-Mario Peña Chacón

Professor, Coordinator of the Master's Degree in Environmental Law at the University of Costa Rica; practitioner, independent consultant in Environmental Law researcher and university professor, Member of the Costa Rican Association of Environmental Law. External Advisor to IUCN Costa Rica
National Correspondent of *Centré International de Droit Comparative de l'Environnement (CIDCE)*
Costa Rica

8-Francesco Sindico

Founder, Strathclyde Centre for Environmental Law and Governance (SCELG), UK
Founder and Co-Director of the Climate Change Litigation Initiative (C2LI)
Chair, IUCN-WCEL Climate Change Specialist Group
Italy

The IUCN WCEL Steering Committee is grateful to Ana Di Pangraccio, Deputy Director of Fundación Ambiente y Recursos Naturales (FARN) and IUCN Counselor, Professor Tahseen Jaffry, Director of the Mary Robinson Centre for Climate Justice at the Glasgow Caledonia University, Professor Cymie Paine, Chair of the IUCN WCEL Oceans Specialist Group, Julio Guity-Guevara, member of the Change Coordinating Committee of the Afro Inter-American Forum on Climate (AIFCC) and Managing Director at SUDECC, Maria Antonia Tigre, Global Climate Litigation Fellow, Sabin Center and Deputy Director of the Global Network for Human Rights and the Environment (GNHRE), Cristian Fernández, Legal Coordinator of Fundación Ambiente y Recursos Naturales (FARN), Martina Carbonaro, Ariana Lippi, Ms. Karen Dayana Mosquera and Ms. Cyreka Jacobs, Research fellows at the Inter-American Institute on Justice and Sustainability (IIJS) for their input and support to this submission as well as to Danilo Garrido, Abbe Brown, Gerd Winter, Erick Pajares, Mariana Nogales Paez and Marina Dutra Trindade of the IUCN-WCEL Climate Change Specialist Group for their learned advice and support.

**B. The questions posed to the Court and the approach taken by IUCN
WCEL**

As stated, on January 9, 2023, the Republic of Chile and the Republic of Colombia (hereinafter “Chile and Colombia” or “the Agents”), referring to Article 64(1) of the American Convention on Human Rights (“American Convention” also referred to as “The Pact of San José”), and pursuant to Article 2(2) of the Court’s Statute, requested the Court to provide an Advisory Opinion “to clarify the scope of State obligations, in their individual and collective dimension, in order to respond to the climate emergency within the framework of international human rights



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law, paying special attention to the differentiated impacts of this emergency on individuals from diverse regions and population groups, as well as on nature and on human survival on our planet” (hereinafter “Request for Advisory Opinion”).

In accordance with the provisions of paragraphs 1 and 2 of Article 70 of the Court’s Rules of Procedure, Colombia and Chile requested the Court to provide Inter-American standards to accelerate the response to the climate emergency and to provide a guide for the development of policies and programs at the local, national and international levels in accordance with the commitments acquired under the American Convention and other human rights and environmental treaties for an adequate response to the climate crisis, taking into account the obligations of prevention, guarantee and protection of human rights. More specifically, the Agents requested the Court to clarify the scope of State human rights obligations on six (6) selected topics concerning the climate emergency, from which twenty (20) specific questions are derived, as follows:

- 1) States’ obligations derived from duties of prevention and guarantee in human rights related to the climate emergency.

1.1) What is the scope of the duty of States to prevent climate phenomena generated by global warming, including extreme events and slow onset events, in accordance with inter-American treaty obligations in light of the Paris Agreement and the scientific consensus that encourages not increasing the global temperature beyond 1.5°C?

1.2) In particular, what measures should States take to minimize the impact of damages deriving from the climate emergency, in light of the obligations established in the American Convention? In this regard, what differentiated measures should be taken with respect to populations in situations of vulnerability or intersectional considerations?

1.3) What considerations should a State take to implement its obligation to (i) regulate; (ii) monitor and oversee; (iii) require and approve social and environmental impact studies; (iv) establish a contingency plan; and (v) mitigate activities within its jurisdiction that aggravate or may aggravate the climate emergency?

1.4) What principles should inspire mitigation, adaptation and response actions to losses and damages generated by the climate emergency in the affected communities?

- 2) State obligations to preserve the right to life and survival in the face of the climate emergency in light of what has been established by science and human rights;

2.1) What is the scope that States should give to their conventional obligations in the face of the climate emergency, in terms of:

(i) environmental information for all people and communities, including that related to the climate emergency



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(ii) the climate mitigation and adaptation measures to be adopted to address the climate emergency and the impacts of such measures, including specific just transition policies for groups and persons particularly vulnerable to global warming

(iii) responses to prevent, minimize and address economic and non-economic losses and damages associated with the adverse effects of climate change;

(iv) the production of information and access to information on greenhouse gas emission levels, air pollution, deforestation and short-lived climate forcers, analysis of sectors or activities contributing to emissions, or other; and

(v) the determination of impacts on people, such as human mobility migration or forced displacement - health, and life impacts, non-economic losses, etc.?

2.2) To what extent does access to environmental information constitute a right whose protection is necessary to guarantee the rights to life, property, health, participation and access to justice, among other rights negatively affected by climate change, in accordance with the State's obligations under the American Convention?

3) State differential obligations with respect to the rights of children and the new generations in the face of the climate emergency;

3.1) What is the nature and scope of a State Party's obligation to adopt timely and effective measures in the face of a climate emergency to ensure the protection of children's rights derived from its obligations under Articles 1, 4, 5, 11 and 19 of the American Convention?

3.2) What is the nature and extent of a State Party's obligation to provide children with meaningful and effective means to freely and fully express their views, including the opportunity to initiate, or otherwise participate in, any judicial or administrative proceedings concerning the prevention of climate change that constitutes a threat to their lives?

4) State obligations arising from consultation and judicial procedures in the face of a climate emergency.

4.1) What is the nature and scope of a State Party's obligation to provide effective judicial remedies to provide adequate and timely protection and redress for the impairment of their rights due to the climate emergency? /

4.2) To what extent should the consultation obligation take into account the consequences of an activity on the climate emergency or the emergency projections?

5) The Conventional obligations of protection and prevention for environmental and territorial defenders, as well as women, indigenous peoples and Afro-descendant communities in the context of the climate emergency;



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- 5.1) *What measures and policies should States adopt in order to facilitate the work of environmental defenders?*
- 5.2) *What specific considerations should be taken into account to guarantee the right to defend the healthy environment and territory of women human rights defenders in the context of the climate emergency?*
- 5.3) *What specific considerations should be taken into account to guarantee the right to defend the healthy environment and territory in light of intersectional factors and differentiated impacts, among others, on indigenous peoples, peasant communities and Afro-descendants in the context of the climate emergency?*
- 5.4) *In the face of the climate emergency, what information should the State produce and publish in order to determine the capacity to investigate various crimes committed against defenders, including reports of threats, kidnappings, homicides, forced displacement, gender-based violence, discrimination, etc.?*
- 5.5) *What due diligence measures should States take into account to ensure that attacks and threats against environmental defenders in the context of the climate emergency do not go unpunished?*
- 6) Shared and differentiated obligations and responsibilities of States in the face of the climate emergency.
- 6.1) *What considerations and principles should States and international organizations take into account, collectively and regionally, to analyze shared but differentiated responsibilities in the face of climate change from a human rights and intersectionality perspective?*
- 6.2) *How should States act both individually and collectively to guarantee the right to **reparation** for damages generated by their actions or omissions in the face of the climate emergency, taking into account considerations of equity, justice and sustainability?*
- 6.3) *Taking into account that the climate crisis is having a greater impact on some regions and populations, including the Caribbean, island and coastal countries and territories of our region and their inhabitants:*
- 1- *How should the obligations of cooperation between States be interpreted?*
- 2- *What obligations and principles should guide the actions of States in order to ensure the right to life and survival of the most affected regions and populations in the various countries and in the region?*
- 6.4) *What obligations and principles should guide State actions to ensure that the right to life and survival for the regions and populations most affected in the diverse countries and the region?*



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6.5) Considering that one of the impacts of the climate emergency is to aggravate the factors that lead to human mobility - migration and forced displacement of people: What obligations and principles should guide the individual and coordinated actions to be taken by States in the region to address non-voluntary human mobility exacerbated by the climate emergency

IUCN submits to the Court in this written opinion a comprehensive analysis of the obligations of States, in their individual and collective dimension, in order to respond to the climate emergency within the framework of the Inter-American Human Rights system, paying special attention to the differentiated impacts of this emergency on individuals from diverse regions and population groups, as well as on nature and on human survival on our planet. IUCN does not attempt to separately answer each of the questions put before the Court. Instead, we purport in our submission a comprehensive legal analysis of the above-mentioned state obligations, based on diligent legal methodology and supported by sound science. This analysis departs therefore from the order in which the Agents formulated the questions. However, we submit to the court that our analysis addresses most of the key issues contained in the questions in due course.

Two priorities of the IUCN Nature 2023 Programme are paramount to this submission and to address the request before the Court: people and climate. Nature's contributions to people should be equitably shared globally and over time, and all of humanity should be enabled to take informed, just and sustainable decisions. Monitoring the impacts of climate change and guiding the conservation and restoration of ecosystems to help mitigate it is essential due to the harm that climate change is causing to societies and the natural world and the services that healthy nature provides. In order to holding temperature increase to 1.5°C above pre-industrial levels and to avoid an overshooting scenario, legal responses should enhance the use of Nature-based Solutions (NbS) to scale up effective adaptation to the impacts of climate change, scale up climate mitigation and be informed by scientific assessment and knowledge to avoid adverse outcomes for nature and people.⁴ IUCN-WCEL is widely recognized for its independent expertise in developing and strengthening the environmental rule of law. IUCN WCEL, therefore, aims to assist the Court in its deliberations and further clarify the scope of human rights affected by the climate emergency, the State obligations to address it, taking into account the existing sources of international law and considerations of equity, justice and sustainability.

C. Sources of Law

An array of sources of International Environmental and Human Rights Law are relevant to the provisions and interpretation of the American Convention on Human Rights to respond to the climate emergency. The Inter-American Court of Human Rights is an autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights. In the exercise of its functions, the concept of control of conventionality emerges as an enabling tool for State compliance with human rights obligations verifying coherence of the constitutional national legal framework of states with the American Convention and the

⁴ UNEP/EA.5/Res.5 Resolution adopted by the United Nations Environment Assembly on 2 March 2022 5/5. Nature-based solutions for supporting sustainable development. <https://wedocs.unep.org/bitstream/handle/20.500.11822/39864/NATURE-BASED%20SOLUTIONS%20FOR%20SUPPORTING%20SUSTAINABLE%20DEVELOPMENT.%20English.pdf?sequence=1&isAllowed=y>. [Accessed 10 October 2023].



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Courts Jurisprudence.⁵ International law as a source of constitutional law, has contributed to the evolution of normative and constitutional precepts that today confirm the existence of a right to a clean and healthy environment at the national,⁶ hemispheric⁷ and global level.⁸ In this context, sources of international law are of unique relevance in reference to human rights, environment, and the climate emergency. The conventionality control theory developed by the IACtHR demands that domestic judges, with jurisdiction and competence in the Inter-American System, examine the compatibility of national rules and practice with the American Convention on Human Rights, as interpreted by the IACtHR.⁹ Since the Court started to use the concept of conventionality control, it has made use of teleological interpretation of the Vienna Convention on the Law of Treaties (VCLT) (Art. 31(1) and (2))¹⁰ and has taken into account relevant rules of international law applicable in the relations between the parties (Art. 31.3.c). For domestic judges, this duty comes in addition to the traditional constitutionality control or judicial review within their respective States.

The formal sources of international law are those that are recognized as of legal and binding content. According to Statute of the International Court of Justice (ICJ), whose Rules of Procedure were adopted by the IACtHR¹¹ they are listed in Art. 38 and are those that the Court must apply when deciding in accordance with international law the disputes assigned to it by the parties¹² or when rendering advisory opinions. Since the establishment in the Charter of the OAS¹³ of the faithful fulfillment of obligations derived from treaties and sources of international

⁵ Asociación Nacional de Magistrados de Circuito y Jueces de Distrito del Poder Judicial de la Federación, A.C. (JUFED). Memoria Congreso Internacional “Derechos-Democracia-Justicia” MESA DE TRABAJO: DERECHOS HUMANOS Y CONVENCIONALIDAD. MEDIO AMBIENTE. 19-21 de octubre de 2022.

⁶ Constitutionally established in 24 States of the Americas: Constitution of the Argentine Republic, article 41; Constitution of the Plurinational State of Bolivia, article 33; Constitution of Belize, preamble e) paragraph; Constitution of the Federative Republic of Brazil, 1988, article 225; Political Constitution of the Republic of Chile, article 19; Political Constitution of Colombia, article 79; Constitution of Costa Rica, article 50; Constitution of the Republic of Cuba, article 27; Constitution of the Republic of El Salvador, article 117; The Constitution of the Co-Operative Republic of Guyana, article 36; Political Constitution of the Mexican United States, article 4; Political Constitution of the Republic of Panamá, article 114; Constitution of the Dominican Republic, articles 66 and 67; Political Constitution of Ecuador, article 23; Political Constitution of the Republic of Guatemala, article 64; The Constitution of Guyana, article 36; Constitution of Haiti, article 253; Constitution of Honduras, article 172; Constitution of Nicaragua, article 60; Constitution of the Republic of Paraguay, article 7; Political Constitution of Peru, article 66; Constitution of Suriname, article 6; Constitution of the Oriental Republic of Uruguay, article 47; Constitution of the Bolivarian Republic of Venezuela, article 127.

⁷ *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador"* (1988) Adopted in San Salvador on 17 November 1988.

⁸ United Nations, General Assembly (2022). *The human right to a clean, healthy and sustainable environment*. 26 July. A/76/L.75.

⁹ Dulitzky, A. (2015). An Inter-American Constitutional Court? The Invention of the Conventionality Control by the Inter-American Court of Human Rights, *Texas International Law Journal* 50(1), 46-91. <https://www.corteidh.or.cr/tablas/r33557.pdf>.

¹⁰ https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf *Vienna Convention on the Law of Treaties* (1969), Adopted in Vienna on 23 May 1969 entered into force on 27 January 1980.

¹¹ OAS: IACHR *Basic documents Introduction*.

https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/basics/intro.asp#_ftn16

¹² *Statute Of The International Court of Justice* (1945) Chapter II: Competence of The Court (Article 38).

https://www.icj-cij.org/statute#CHAPTER_II

¹³ Charter of the Organization of American States. https://www.oas.org/en/sla/dil/docs/inter_american_treaties_A-41_charter_OAS.pdf



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law as essential elements of the international order, these sources are widely recognized in the Interamerican System.¹⁴ They are:

1. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
2. international custom, as evidence of a general practice accepted as law;
3. the general principles of law recognized by civilized nations;
4. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

When interpreting the American Convention on Human Rights the Court should seek to establish coherence with the rules and sources of international law and in particular the system of Multilateral Environmental Agreements (MEAs). In the context of this advisory opinion, this is especially relevant with respect to MEAs that have a direct relation to the climate emergency, in particular the United Nations Framework Convention on Climate Change (UNFCCC)¹⁵ and the Paris Agreement.

The following sources are identified for the court's consideration in the advisory opinion in question as well as in any subsequent contentious proceedings that may arise in the context of the climate emergency.

1. International Conventions and Treaties

i) The American Convention on Human Rights¹⁶

Colombia and Chile's request for an Advisory Opinion implicates the following provisions of the American Convention on Human Rights:

¹⁴ AG/RES. 2959 (L-O/20) International Law http://www.oas.org/en/sla/dil/docs/AG-RES_2959_L-O-20.pdf
AG/DEC. 12 (XXVI-O/96) Declaration of Panamá on the Inter-American Contribution to the Development and Codification of International Law (Adopted at the sixth plenary session, held on June 5, 1996)
https://www.oas.org/en/sla/dil/docs/AG-RES_12_XXVI-0-96_eng_declaration_of_panama.pdf
AG/RES. 2660 (XLI-O/11) INTER-AMERICAN PROGRAM FOR THE DEVELOPMENT OF INTERNATIONAL LAW https://www.oas.org/en/sla/dil/docs/AG-RES_2660_XLI-O-11_eng.pdf
2020. OAS. *Inter-American Juridical Committee. Guidelines of the Inter-American Juridical Committee for binding and non-binding agreements* / [Prepared by the Department of International Law of the Secretariat for Legal Affairs of the Organization of American States]
https://www.oas.org/en/sla/iajc/docs/Guidelines_on_Binding_and_Non-Binding_Agreements_publication.pdf

¹⁵ United Nations Framework Convention on Climate Change, Mar. 21, 1994, U.N. DOC. S. TREATY DOC. NO. 102-38, 1771 U.N.T.S. 107.

¹⁶ *American Convention On Human Rights "Pact of San Jose, Costa Rica" (1969), Adopted at San Jose Costa Rica on 22 November 1969 entered into force 18 July, 1978.*



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- Article 1(1) (Obligation to Respect Rights)
- Article 2 (Domestic Legal Effect)
- Article 4 (1) (Right to life)
- Article 5 (1) (Right to Personal Integrity)
- Article 8 (Right to a Fair Trial) (1-5)
- Article 11 (Right to Privacy) (1-3)
- Article 13 (Freedom of Thought and Expression) (1-5)
- Article 19 (Rights of the Child)
- Article 25 (Right to Judicial Protection) (1-2)

ii) Additional Protocol to the American Convention on Human Rights¹⁷

Several provisions of the Additional Protocol to the American Convention on Human Rights¹⁸ in the area of economic, social and cultural rights (Protocol of San Salvador) are relevant for the purpose of this written opinion:

- Article 6 (Right to work) (1-2)
- Article 10 (Right to Health) (1-2)
- Article 11 (1-2) (Right to a healthy environment)
- Article 12 (Right to food) (1-2)
- Article 16 (Rights of children)

iii) Universal Declaration on Human Rights

The Universal Declaration of Human Rights guarantees that all human beings are entitled to a social and international order in which their rights and freedoms can be fully realized. Climate change threatens this order and the rights and freedoms of all people.¹⁹ The Universal Declaration on Human Rights as the cornerstone of the Bill of rights, provides an important foundation to approach climate action from a human rights perspective.

iv) The International Covenant on Civil and Political Rights (ICCPR)²⁰

Adopted by UN resolution 2200A (XXI) on 16 December 1966 and entered into force on 23 March 1976, this multilateral treaty that commits nations to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. General Comment 31²¹ on

¹⁷ *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" (1988) Adopted in San Salvador on 17 November 1988.*

¹⁸ *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" (1988) Adopted in San Salvador on 17 November 1988.*

¹⁹ 2021 United Nations. Fact Sheet 38. Frequently Asked Questions on Human Rights and Climate Change. Issued by the Office of the United Nations High Commissioner for Human Rights. (OHCHR).https://www.ohchr.org/sites/default/files/2021-09/FSheet38_FAQ_HR_CC_EN_0.pdf. [Accessed 1 September 2023].

²⁰ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> [Accessed 5 November 2023].

²¹ General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant Adopted on 29 March 2004 CCPR/C/21/Rev.1/Add. 13 Available at:



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the Nature of the General Legal Obligation Imposed on States Parties to the Covenant is relevant to State duties in the context of the climate emergency.

v) *International Covenant on Economic, Social and Cultural Rights (ICESCR)*²²

This multilateral treaty commits parties to work toward the granting of economic, social, and cultural rights (ESCR) to all individuals including those living in Non-Self-Governing and Trust Territories. While in comparison to the Inter-American System, ESCCR does not include the right to a healthy environment, provisions on the right to self-determination and the progressive realization of human rights, including those in Part 3 of the covenant, have been interpreted to guarantee environmental rights.

vi) *United Nations Framework Convention on Climate Change (UNFCCC)*²³

The United Nations Framework Convention on Climate Change (UNFCCC) is an international treaty, adopted in 1992 as a framework for international cooperation to achieve the “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner” (Ultimate Objective, (Art. 2). The main provisions to take into consideration are the following:

- **Article 2 (Objective)**
- **Article 3 (Principles)**
- **Article 4 (Commitments)**
- **Article 6 (Education, Training and Public Awareness)**

vii) *The Paris Agreement*

The Paris Agreement is a landmark in the multilateral climate change process, adopted by 196 Parties to the UNFCCC at the UN Conference of the Parties to the UNFCCC (COP21) in Paris, France, on 12 December 2015. It entered into force on 4 November 2016. The Paris Agreement was adopted under the UNFCCC with the aim of strengthening the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty purpose. The implementation of the Agreement shall reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances (Art. 2 (1) and (2)).

tinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F21%2FRev.1%2FAdd.13&Lang=en [Accessed 5 November 2023].

²² UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: [Ch_IV_03.pdf \(un.org\)](#) [Accessed 5 November 2023].

²³ United Nations Framework Convention on Climate Change, Mar. 21, 1994, U.N. DOC. S. TREATY DOC. NO. 102-38, 1771 U.N.T.S. 107 [Accessed 8 October 2023].



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Its overarching goals are to (i) hold the increase in the global average temperature to well below 2°C above pre-industrial levels and pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels, (b) increase the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and (c) to make finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development (Art. 2.1 Paris Agreement).

To meet the long-term temperature goals, each Party shall prepare, communicate every five years and maintain successive nationally determined contributions (NDC) (Art. 4.2 and 4.9). Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions. (Art. 4.2). Each Party's successive NDC will represent a progression beyond the Party's then current NDC and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances. (Art. 4.3).

Moreover, successive NDCs shall be informed by the outcome of the Global Stocktake. The Global Stocktake (GST) took place for the first time in 2023 and every five years thereafter. The outcome of the GST shall inform the next round of NDCs which are due in 2025 and every 5 years thereafter. Linking with the requirements of progression and highest possible ambition in Article 4.3, the GST outcome is an important normative element to be considered by Parties when preparing their successive NDC. Article 14 (3) states that “3. The outcome of the global stocktake shall inform Parties in updating and enhancing, in a nationally determined manner, their actions and support in accordance with the relevant provisions of this Agreement, as well as in enhancing international cooperation for climate action”, while Article 4(9) states “9. Each Party *shall* communicate a nationally determined contribution every five years in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement *and be informed by the outcomes of the global stocktake referred to in Article 14.*” (emphasis added).

The Preamble of the Paris Agreement significantly calls on States to “*respect, promote and consider their respective obligations on human rights*” when taking action to address climate change.”

The Katowice climate package²⁴ (also known as the “Paris Rulebook”) was agreed at CMA1, in 2018²⁵, and provides the guidelines that are needed for the effective implementation of the Paris Agreement. The Rulebook clarifies the procedures for Parties when preparing and communicating the NDCs – what information must be included –, how to report on their climate actions in a transparent way, and review, individually and collectively, their efforts to reduce greenhouse gas emissions, take adaptation measures and provide means of implementation. In their Biennial Transparency Reports (Art. 13), Parties must report, *inter alia*, on their individual

²⁴ UN Framework Convention on Climate Change (2023). The Katowice climate package: Making The Paris Agreement Work For All. <https://unfccc.int/process-and-meetings/the-paris-agreement/katowice-climate-package> [Accessed 8 October 2023].

²⁵ Rep. of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on the third part of its first session, held in Katowice from 2 to 15 December 2018, at 3-4, U.N. DOC. FCCC/PA/CMA/2018/3/Add.1 (2019).



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progress in implementing and achieving their NDCs, while the global stock take (Art. 14) assesses collective progress toward the Agreement's goals and informs the next round of NDCs.

For the purpose of these observations, the following provisions of the Paris Agreement are relevant:

- **Article 2 (all)**
- **Article 3 (all)**
- **Article 4 (all)**
- **Article 5(all)**
- **Article 6 (1), (2)**
- **Article 7 (1-6)**
- **Article 8 (1), (4)**
- **Article 9 (all)**
- **Article 11 (all)**
- **Article 12 (all)**
- **Article 13 (all)**
- **Article 14 (all)**
- **Article 15 (all)**

viii) The Convention on Biological Diversity²⁶

The Convention on Biological Diversity, adopted in 1992, has currently 196 parties, has the triple objective of conserving biological diversity, sustainably using its components and the fair and equitable access to genetic resources.

ix) The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families²⁷

The Convention outlines protections for migrant workers and their families in light of the migration process. It notes the need to provide international protection for all migrant workers and their families to ensure the protection of their fundamental human rights.

x) Convention on the Rights of the Child²⁸

This human rights treaty of a universal nature extends particular care to the protection of rights of the child. General comment Nr. 26²⁹ issued by the Committee on the Rights of the Child provide general guidance on how the rights of the child are affected by environmental degradation and climate change. It provides guidance on state obligations to ensure the right to a healthy environment for children.

²⁶ United Nations Environment Programme. (1992). Convention on Biological Diversity, 1760 U.N.T.S. 79. Available at: <https://wedocs.unep.org/20.500.11822/8340> [Accessed 5 November 2023].

²⁷ United Nations, General Assembly (1990) *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, Res 45/158 [Accessed 10 August 2023].

²⁸ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html> [accessed 16 December 2023]

²⁹ CRC/C/GC/26: General comment No. 26 (2023) on children's rights and the environment with a special focus on climate change. <https://www.ohchr.org/en/documents/general-comments-and-recommendations/crccgc26-general-comment-no-26-2023-childrens-rights> [Accessed 26 August 2023].



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xi) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)³⁰

The Convention was adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979 and entered into force on 3 September 1981, in accordance with article 27(1), CEDAW is an international legal instrument that requires countries to eliminate discrimination against women and girls in all areas and promotes women's and girls' equal rights. CEDAW is often described as the international bill of rights for women.

xii) The Vienna Convention on the Law of Treaties (VCLT)³¹

The VCLT addresses treaties among States. It provides significant guidance for their interpretation. A significant part of the international law focus on the climate context involves the negotiation of binding treaties, starting with the UNFCCC, which established an institutional framework for addressing climate change. The VCLT is particularly relevant to the control of conventionality theory developed by the IACtHR as it would stipulates how treaties are to be interpreted in regard to the climate emergency.

xiii) Statute of The International Court of Justice, Article 38³²

Article 38 of the Statute of the International Court of Justice elaborates on the Competency of the ICJ but it is recognized as a definitive statement of the sources of international law. This article in the Statute of ICJ has traditionally guided international tribunals in their decision-making process.

“Article 38. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. international custom, as evidence of a general practice accepted as law;
- c. the general principles of law recognized by civilized nations;
- d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.”

³⁰ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <https://www.refworld.org/docid/3ae6b3970.html> [Accessed 16 December 2023]

³¹ https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf *Vienna Convention on the Law of Treaties* (1969), Adopted in Vienna on 23 May 1969 entered into force on 27 January 1980.

³² Statute of The International Court of Justice (1945), <https://www.icj-cij.org/statute>.



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xiv) Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement)³³

Colombia and Chile's request for an Advisory Opinion refers also to the provisions of the Escazú Agreement, 2018, whose main objective is to guarantee the right of all people in the region to have adequate access to information, to participate meaningfully in decisions that affect them, and to access justice in environmental matters when their rights are violated. This Agreement entered into force on April 22, 2021, and has 24 signatures and 15 State parties, hence it is not legally binding in all countries under the jurisdiction of the IACtHR. Considering the nexus between the protection of human rights and the protection of the environment, the following additional sources of International Environmental Law, related to the Climate Emergency, are taken into consideration in this opinion.

2. International customary law and relevant resolutions

i) Relevant Resolutions and Declarations of the United Nations, the Organization of American States General Assembly and organs of the United Nations and Inter-American System

United Nations General Assembly and Human Rights Council Resolutions and Declarations

- A/76/L.75. The human right to a clean, healthy and sustainable environment adopted by the Seventy-sixth session of the UN General Assembly on July 1, 2022.³⁴
- A/RES/64/292. The Human Right to Water and Sanitation. United Nations General Assembly, July 2010. UN General Assembly. (2010). The Human Right to Water and Sanitation.³⁵
- A/RES/61/295. United Nations Declaration on the Rights of Indigenous Peoples, 13 September 2007.³⁶

³³ U.N. Econ. Comm'n. for Lat. Am. and the Caribbean, Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, U.N. Doc LC/PUB.2018/8/Rev.1 (2023).

https://repositorio.cepal.org/bitstream/handle/11362/43583/4/S2300531_en.pdf.

³⁴ United Nations, General Assembly (2022). *The human right to a clean, healthy and sustainable environment*. 26 July. A/76/L.75.

³⁵ UN General Assembly. (2010). The Human Right to Water and Sanitation. AG/Res. 64/292 (41 Abstentions). Available at: <https://daccess-ods.un.org/access.nsf/GetOpenAgent&DS=A/RES/64/292&Lang=E>.

³⁶ UN General Assembly. (2007). United Nations Declaration On The Rights Of Indigenous Peoples. Available: https://digitallibrary.un.org/record/606782/files/A_RES_61_295-EN.pdf.



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- A/RES/53/144. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Art 6, Art 8, art. 9) 37 8 March 1999
- A/RES/41/128UN General Assembly, Declaration on the Right to Development, 4 December 1986.³⁸
- A/HRC/RES/52/14 Promotion and protection of human rights and the implementation of the 2030 Agenda for Sustainable Development. Resolution adopted by the Human Rights Council on 3 April 2023.
- A/HRC/RES/48/13. The human right to a clean, healthy and sustainable environment adopted by the Human Rights Council on 8 October 2021.³⁹
- A/HRC/RES/35/20. Human rights and climate change Resolution adopted by the Human Rights Council on 22 June 2017.⁴⁰
- A/RES/70/1⁴¹. UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015.
- A/HRC/RES/26/27. Human rights and climate change. Resolution adopted by the Human Rights Council on July 15, 2014.⁴²
- A/HRC Res. 18/11. The Human Right to Safe Drinking Water and Sanitation.⁴³ Resolution adopted by the Human Rights Council. 12 October 2011.

Other UN System Bodies Decisions and document

- UNEP/EA.5/Res.5. Nature-based solutions for supporting sustainable development⁴⁴

³⁷ United Nations General Assembly (1998) Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. A/RES/53/144.

³⁸ Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-rightdevelopment>.

³⁹ United Nations, General Assembly, Human Rights Council (2021). The human right to a clean, healthy and sustainable environment. A/HRC/RES/48/13 [Accessed 26 August 2023].

⁴⁰ United Nations General Assembly (2017) *Resolución aprobada por el Consejo de Derechos Humanos*, A/HRC/RES/35/20. [Accessed 26 August 2023].

⁴¹ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015. [Accessed 26 August 2023].

⁴² United Nations, General Assembly, Human Rights Council (2014). *26/27 Human rights and climate change*. A/HRC/RES/26/27 [Accessed 26 August 2023].

⁴³ Available at: https://digitallibrary.un.org/record/848893/files/A_HRC_RES_18_1-EN.pdf?ln=en.

⁴⁴ UNEP/EA.5/Res.5 Resolution adopted by the United Nations Environment Assembly on 2 March 2022 5/5. Nature-based solutions for supporting sustainable development

<https://wedocs.unep.org/bitstream/handle/20.500.11822/39864/NATURE-BASED%20SOLUTIONS%20FOR%20SUPPORTING%20SUSTAINABLE%20DEVELOPMENT.%20English.pdf?sequence=1&isAllowed=y> [Accessed 10 October 2023].



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- Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its third session, held in Glasgow from 31 October to 13 November 2021.⁴⁵
- Decision 1/CP.27 and Decision 1/CMA.4 “Sharm el-Sheikh Implementation Plan”.⁴⁶
- Decision 1/CP.26 and decision 1/CMA.3 “Glasgow Climate Pact”.⁴⁷
- Decision 3/CP.25 and Decision 24/CP.27.⁴⁸
- Decision –/CMA.5 Outcome of the First Global Stocktake (“UAE Consensus”)⁴⁹
- Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 105/2019: CRC/C/88/D/105/2019.⁵⁰
- ILC Draft Guidelines on the Protection of the Atmosphere, 2021.
- UN Environment Programme (UNEP), Promoting Greater Protection for Environmental Defenders Policy.⁵¹
- OHCHR Guidelines on Human rights in transit and at international borders.⁵²
- General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant Adopted on 29 March 2004 CCPR/C/21/Rev.1/Add.13.
- UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 January 2003, E/C.12/2002/11.

⁴⁵ United Nations, Conference of the Parties (2021) *Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its third session*, FCCC/PA/CMA/2021/10/Add.1.

⁴⁶ United Nations, The Conference of the Parties, *Sharm el-Sheikh Implementation Plan*, https://unfccc.int/sites/default/files/resource/cop27_auv_2_cover%20decision.pdf.

⁴⁷ UNFCCC (2021). Decision 1/CP.26 Glasgow Climate Pact. Available at: <https://unfccc.int/documents/310475> [Accessed November 24, 2023].

⁴⁸ United Nations Framework Convention on Climate Change (2023) *Gender Action Plan*, Decision 3/CP.25 and amendments agreed in Decision 24/CP.27, <https://unfccc.int/documents/627886>. [Accessed 0 October, 2023].

⁴⁹ UNFCCC (2023), Decision –/CMA.5 (https://unfccc.int/sites/default/files/resource/cma5_auv_4_gst.pdf [Accessed 16 December 2023]

⁵⁰ CRC/C/88/D/105/2019. (n.d.). Retrieved July 7, 2023, from <https://undocs.org/Home/Mobile?FinalSymbol=CRC%2FC%2F88%2FD%2F105%2F2019&Language=E&DeviceType=Desktop&LangRequested=False> [Accessed 08 October 2023].

⁵¹ United Nations Environment, *Promoting Greater Protection for Environmental Defenders*, https://wedocs.unep.org/bitstream/handle/20.500.11822/22769/UN%20Environment%20Policy%20on%20Environmental%20Defenders_08.02.18Clean.pdf?sequence=1&isAllowed=y, [Accessed: 08 October 2023].

⁵² Office of the High Commissioner, Human rights in transit and at international borders, <https://www.ohchr.org/en/migration/human-rights-transit-and-international-borders> [Accessed: 08 October 2023].



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OAS General Assembly Resolutions and Declarations

- AG/RES. 2882 (XLVI-O/16) Inter-American program for Sustainable Development.
- AG/RES. 2888 (XLVI-O/16) American Declaration on the Rights of Indigenous Peoples.⁵³
- AG/RES. 2891 (XLVI-O/16) Plan of Action for the Decade for People for People of African Descent in the Americas (2016–2025).
- AG/RES. 2823 (XLIV-O/14) Adoption of the Follow-up Mechanism for Implementation of the Protocol of San Salvador.
- AG/RES. 2760 (XLII-O/12). The Human Right to Safe Drinking Water and Sanitation.
- AG/RES. 2644 (XLI-O/11) Declaration of Santo Domingo for the Sustainable Development of the Americas. “Report of the Second Inter-American Meeting of Ministers and High-Level Authorities on Sustainable Development within the Framework of CIDI.”
- AG/RES. 2288 (XXXVII-O/07) Access to Public Information and Strengthening Democracy.⁵⁴
- AG/RES. XXXVII-O/07 Declaration of Santa Cruz +10.
- AG/RES. 2349 (XXXVII-O/07). Water, Health and Human Rights.
- AG/RES. 2067 (XXXV-O/05), Human Rights Defenders: Support for the individuals, groups, and organizations of civil society working to promote and protect human rights in the Americas⁵⁵
 - operative paragraph 2
 - operative paragraph 5.
- AG/RES. 2429 (XXXVIII-O/08) Human Rights and Climate Change in the Americas.
- AG/RES. 2485 (XXXIX-O/09), AG/RES. 2397 (XXXVIII-O/08), AG/RES. 1886 (XXXII-O/02), AG/RES. 1970 (XXXIII-O/03), AG/RES. 1802 (XXXI-O/01), “Special Security Concerns of Small Island States of the Caribbean.
- AG/RES. 2006 (XXXIV-O/04).
- AG/RES. 2112 (XXXV-O/05).
- AG/RES. 2187 (XXXVI-O/06).
- AG/RES. 2325 (XXXVII-O/07).
- AG/RES. 1819 (XXXI-O/01), AG/RES. 1896 (XXXII-O/02), AG/RES. 1926 (XXXIII-O/03) Human Rights and Environment in the Americas.
- AG/RES. 1 (XXVIII-E/01). Inter-American Democratic Charter. Adopted by the General Assembly at its special session held in Lima, Peru, on September 11, 2001.⁵⁶

⁵³ Organization of American States. (2016). American Declaration on the Rights of Indigenous Peoples. AG/RES. 2888 (XLVI-O/16). Available From: <https://www.oas.org/en/sare/documents/DecAmIND.pdf> [Accessed 10 October 2023].

⁵⁴ OAS General Assembly (2007) *Access to Public Information and Strengthening Democracy*: https://www.oas.org/DIL/AG-RES_2288_XXXVII-O-07_eng.pdf. [Accessed 10 October 2023].

⁵⁵ OAS General Assembly (2005) *Human Rights Defenders: Support For The Individuals, Groups, And Organizations Of Civil Society Working To Promote And Protect Human Rights in The Americas*, AG/RES. 2067 (XXXV-O/05) <http://archived2021.ishr.ch/sites/default/files/article/files/2005.pdf>. [Accessed 10 October 2023].

⁵⁶ OAS General Assembly (2001) AG/RES. 1 (XXVIII-E/01). Inter-American Democratic Charter. Adopted by the General Assembly at its special session held in Lima, Peru, on September 11, 2001 Available at: [https://www.summit-americas.org/Quebec_Summit/Quebec-DemocraticCharter/Charter-AG.RES.%201%20\(XXVIII-E.01\)e.doc](https://www.summit-americas.org/Quebec_Summit/Quebec-DemocraticCharter/Charter-AG.RES.%201%20(XXVIII-E.01)e.doc). [Accessed 15 November 2023].



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- AG/RES. 1497 (XXVII-O/97).
- AG/RES. 1567 (XXVIII-O/98).
- AG/RES. 1640 (XXIX-O/99), and
- AG/RES. 1410 (XXVI-O/96) “Promotion of Security in the Small Island States”.
- AG/RES. 2691 (XLI-O/11) “Support for the work of the Caribbean Sea Commission”.

Other Inter-American System Bodies Decisions and Documents

- CIDI/RIMDS-IV/DEC.1/2. Fourth Inter-American Meeting of Ministers and High Level Authorities on Sustainable Development Declaration of Nassau for the Sustainable Development of the Americas.
- CIDI/RIMDS-IV/doc. 7/23 rev. 2 Inter-American Climate Change Action Plan 2023-2030.
- IACHR Resolution 3/2021: Climate Emergency and Human Rights in the Americas. OEA/Ser.K/XXIXIACHR.⁵⁷
- AG/DEC. 81 (XLVI-O/16) Declaration of Santo Domingo on Institutional Strengthening for the Sustainable Development of the Americas.
- AG/DEC. 88 (XLVI-O/16) Declaration on Climate change, Food Security and Migration in the Americas.
- AG/DEC. 85 (XLVI-O/16) Declaration on Promotion and Strengthening of the Social Charter of the Americas.
- Progress Indicators for Measuring Rights under the Protocol of San Salvador: Second Group of Rights (OEA/Ser.L/XXV.2.1 GT/PSS/doc.9/13).⁵⁸
- AG/dec. 69 (XLII-O/12). Declaration of Cochabamba on Food Security with Food Sovereignty in the Americas.
- Social Charter of the Americas AG/doc. 5242/12 rev. 2.
- Declaration of Bridgetown, Barbados, AG/DEC. 27 (XXXII-O/02).
- Declaration on Security in the Americas 2003, OEA/Ser.K/XXXVIII.
- Declaration of Kingstown on the Security of Small Island States, SEPEIN-II/doc.8/02 rev. 2 corr. 1.
- CJI/RES. 259 (XCVII-O/20): Inter-American Juridical Committee. Guidelines of the Inter-American Juridical Committee for binding and non-binding agreements.⁵⁹
Development of international law in regard to climate change has continued from implementation of other sources of law. These approved guidelines⁶⁰ by the Inter-

⁵⁷ InterAmerican Commission on Human Rights (2021) *Climate Emergency Scope of Inter-American Human Rights Obligations*, Resolution 3/2021. [Accessed 05 April 2023].

⁵⁸ Progress indicators for measuring rights contemplated in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, “Protocol of San Salvador” / [Prepared by the Working Group to examine the periodic reports of the States Parties to the Protocol of San Salvador]. Available at: https://www.oas.org/en/sedi/pub/progress_indicators.pdf.

⁵⁹ 2020. OAS. *Inter-American Juridical Committee. Guidelines of the Inter-American Juridical Committee for binding and non-binding agreements* / [Prepared by the Department of International Law of the Secretariat for Legal Affairs of the Organization of American States]

https://www.oas.org/en/sla/iajc/docs/Guidelines_on_Binding_and_Non-Binding_Agreements_publication.pdf. [Accessed 10 October 2023].

⁶⁰ OEA/Ser.Q/CJI/doc.614/20 Rev.1 Corr.1. [Accessed 10 October 2023].

American Juridical Committee provide insight into the legal effect of non-treaty sources with their scope.⁶¹

- CJI/RES. 147 (LXXIII-O/08): Principles on the right of access to information.⁶²
- Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development. Principles (p. 5-6); 1) Information and communication (p. 18-20); 2) Processes and institutional structures (p. 30-32); 4) education and training (p. 35-37); opportunities and mechanisms for public participation (p. 46-48).⁶³

ii) Relevant IUCN Resolutions, Motions and Documents

- IUCN (2021) *Nature 2030. One Nature, One Future*.⁶⁴
The IUCN Programme, adopted by democratic vote at the IUCN World Conservation Congress in Marseille. The Nature 2030 IUCN Programme, for the first time, sets its ambition over ten years. This longer-term outlook aligns with the United Nations 2030 Agenda for Sustainable Development and the post-2020 global biodiversity framework.
- IUCN WCC-2020-Res-115-EN Protecting environmental human and peoples' rights defenders and whistleblowers.⁶⁵
- IUCN (2020). Global Standard for Nature-based Solutions. A user-friendly framework for the verification, design and scaling up of NbS.⁶⁶ The Standard consists of 8 Criteria and 28 Indicators.
- IUCN (2016) WCC- 2016-RES-079-ENG Request for an Advisory Opinion of the International Court of Justice on the principle of sustainable development in view of the needs of future generations.⁶⁷
- IUCN (2021) *The Natural Resource Governance Framework – Improving governance for equitable and effective conservation*. The framework is created for the purpose of providing a robust, inclusive, and credible approach to assessing and strengthening natural resource governance, at multiple levels and in diverse contexts.⁶⁸

⁶¹ Resolution CJI/RES. 259 (XCVII-O/20).

⁶² The Inter-American Juridical Committee (2008) *Principles on The Right of Access to Information*, CJI/RES. 147 (LXXIII-O/08). [Accessed 05 April, 2023].

⁶³ OAS Inter-American Council for Integral Development (2001) CIDI/RES. 98 (V-O/00). Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development. Available at: https://www.oas.org/dsd/PDF_files/ispenglish.pdf. [Accessed 05 April, 2023].

⁶⁴ IUCN(2021) *Nature 2030. One Nature, One Future*.

<https://portals.iucn.org/library/sites/library/files/documents/WCC-7th-001-En.pdf> [Accessed 02 November 2023].

⁶⁵ IUCN Congress (2020) *Protecting environmental human and peoples' rights defenders and whistleblowers*, <https://iucncongress2020.org/motion/039>. [Accessed 1 August 2023].

⁶⁶ IUCN. (2020). Global Standard for Nature-based Solutions. A user-friendly framework for the verification, design and scaling up of NbS. First Edition. Available from:

<https://portals.iucn.org/library/sites/library/files/documents/2020-020-En.pdf>. [Accessed 10 October 2023].

⁶⁷ IUCN (2016) available at:

https://portals.iucn.org/library/sites/library/files/resrecfiles/WCC_2016_RES_079_EN.pdf [Accessed 16 december 2023]

⁶⁸ IUCN (2021) available at: <https://www.iucn.org/resources/publication/natural-resource-governance-framework> [Accessed 16 december 2023]



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iii) International Commission of Jurists

- Brasilia Regulations Regarding access to justice for vulnerable people.⁶⁹

3. Recognized principles of law

i) Stockholm Declaration

The Stockholm Declaration was adopted, together with the Action Plan for the Human Environment, during the 1972 United Nations Conference on the Human Environment in Stockholm⁷⁰. The UN Conference was the first world conference to make the environment a major issue. The Stockholm Declaration, containing 26 principles, placed environmental issues at the forefront of international concerns and marked the start of a dialogue between industrialized and developing countries on the link between economic growth, the pollution of the air, water, and oceans and the well-being of people around the world.

Among the relevant principles are:

PRINCIPLE 21. States have the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

PRINCIPLE 22. States shall cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.

ii) Rio Declaration on Environment and Development

The Rio Declaration was adopted at the U.N. Conference on Environment and Development in 1992 (UNCED). The principles of the Declaration have strengthened the international environmental law regime by adopting Agenda 21⁷¹ (which has served as blueprint for sustainable development),⁷² and are enshrined in, for example, the UN

⁶⁹ Ibero-American Judicial Summit (2002) *Brasilia Regulations Regarding Access to Justice for Vulnerable People*, <https://www.icj.org/wp-content/uploads/2018/11/Brasilia-rules-vulnerable-groups.pdf>. [Accessed 10 October 2023].

⁷⁰ Declaration on the Human Environment (Adopted by the United Nations Conference on the Human Environment, Stockholm, 16 June 1972; see U.N. General Assembly Resolutions 2994/XXVII, 2995/UVII and 2996/XXII of 15 December 1972). <https://wedocs.unep.org/bitstream/handle/20.500.11822/29567/ELGP1StockD.pdf>.

⁷¹ U.N. Dept. of Pub. Info., Agenda 21: Programme of action for sustainable development, Rio Declaration on Environment and Development, statement of forest principles: the final text of agreements negotiated by Governments at the United Nations Conference on Environment and Development (UNCED), 3-14 June 1992, Rio de Janeiro, Brazil, U.N. DOC ST/DP/1344 (1993). [Accessed 05 April 2023].

⁷² *Agenda 21*, U.N. SUSTAINABLE DEV., <https://sustainabledevelopment.un.org/outcomedocuments/agenda21> (last visited July 28, 2023). [Accessed 05 April 2023].



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Framework Convention on Climate Change (UNFCCC)⁷³, the Convention on Biological Diversity,⁷⁴ and the UNCED Forest Principles.⁷⁵ It has also informed environmental law in statutory sense as some countries such as Bolivia and Ecuador have enshrined domestic legal rights which directly apply principles (primarily Principle 1) of the Declaration.⁷⁶ Furthermore, some principles of the Rio Declaration are generally recognized as being part of customary international law and consistent with *opinion juris* such as principle 2 (State sovereignty and natural resources), 15 (precautionary approach), 12 (prevention of transboundary harm, 5 (duty to cooperate), 18 (duty to notify).⁷⁷ It is therefore a critical component of international environmental law to consider within the context of the climate emergency and human rights.

Among the relevant principles are:

Principle 7

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. 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.

Principle 10

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy that shall be provided.

Principle 11

States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and

⁷³ United Nations Framework Convention on Climate Change, Mar. 21, 1994, U.N. DOC. S. TREATY DOC. NO. 102-38, 1771 U.N.T.S. 107.

https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf. [Accessed 10 October 2023].

⁷⁴ The Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79. [Accessed 5 November 2023].

⁷⁵ Alexander Puhmann, *From Declaration to Implementation? – Rio + 13: An Evaluation of its Legal Significance in International Environmental Law*, 3 NZPGLeJ 1, 4; U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. DOC. A/CONF.151/6/Rev.1, 13/6/1992.

⁷⁶ Stakeholder Forum for a Sustainable Future (2011). Review of Implementation of the Rio Principles, December 2011, <https://sustainabledevelopment.un.org/content/documents/1127rioprinciples.pdf>, [Accessed, 8, October 2023].

⁷⁷ Boon, Foo Kim. "The Rio Declaration and its influence on international environmental law." *Singapore Journal of Legal Studies*, 1992, 347–64. <http://www.jstor.org/stable/24866183>.



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developmental context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.

Principle 12

States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided.

Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.

Principle 17

Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

Principle 18

States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted.

Principle 19

States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.

Principle 20

Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.

Principle 21

The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all.

Principle 22

Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.



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iii) Framework principles on human rights and the Environment (A/HRC/37/59)⁷⁸

While not exhaustive, the framework principles on human rights and the environment summarize the main human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment. They provide integrated and detailed guidance for practical implementation of these obligations, and a basis for their further development as our understanding of the relationship between human rights and the environment continues to evolve.

iv) Environmental Legal Principles for Ecologically Sustainable Development⁷⁹

Systematization of the principles and guidelines contained in the most relevant international conventions and declarations currently in force in environmental matters, with the incorporation of some jurisprudential criteria of national and international courts on the subject matter. Adopted by the Chief Justices of Ibero-America with the purpose of their dissemination, knowledge and application by those who impart justice and by all operators that are related to Environmental Law in the cases before them.

- **Principle 13)** Dissemination, information and participation in the media of collaborative conflict resolution.
- **Principle 15)** Access to Public Information
- **Principle 16)** Participation in environmental matters
- **Principle 17)** Access to Justice
- **Principle 28)** Dynamic Interpretation
- **Principle 53)** Preventive Actions
- **Principle 54)** Efficiency
- **Principle 64)** Direct application, non-regression and jurisprudential complementation
- **Principle (65)** Progression
- **Principle (66)** Environmental Justice
- **Principle 69)** The Full Recognition of Vulnerable Groups in Environmental Matters
- **Principle 70)** Gender equality
- **Principle (88)** Common but differentiated responsibilities.
- **Principle (93)** Corporate Social Responsibility must be considered in the perspective of environmental law
 - **Environmental Impact Assessment (III)**
 - **Emergency Plans (IV)**
 - **Duty to repair Damages (V)**

⁷⁸ Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (2018). <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/017/42/PDF/G1801742.pdf?OpenElement>, [Accessed: November 13, 2023].

⁷⁹ 2018. Judiciary of Chile, Organization of American States and Ibero-American Judicial Summit (Cumbre Judicial Iberoamericana). Environmental Juridical Principles for Ecological Sustainable Development. Available online at (Spanish only): <https://servicios.pjud.cl/ManosLibro/files/assets/basic-html/page-1.html>.

v) *UN Guiding Principles on Business and Human Rights*⁸⁰

Although the UN Guiding Principles on Business and Human Rights (Guiding Principles) do not explicitly mention climate change, the main human rights instruments that are referenced by the UNGPs, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, have been interpreted since 2011 in a manner consistent with international environmental and climate law.⁸¹ The Working Group on the issue of human rights and transnational corporations and other business enterprises has issued guidance for business enterprises in light of the climate emergency.

The Guiding Principles on Business and Human Rights are the global standard for preventing and addressing the risk of adverse impacts on human rights involving business activity, and they provide the internationally accepted framework for enhancing standards and practices with regard to business and human rights. They were developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises.

- Principle 1: States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.
- Principle 8: States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.
- Principle 11: Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
- Principle 13: The responsibility to respect human rights requires that business enterprises:
 - (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
 - (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.
- Principle 14: The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.

⁸⁰ *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (2011). https://www.ohchr.org/sites/default/files/Documents/Issues/Business/A-HRC-17-31_AEV.pdf, [Accessed: November 13, 2023].

⁸¹ *Information Note on Climate Change and the Guiding Principles on Business and Human Rights* (2023). <https://www.ohchr.org/sites/default/files/documents/issues/business/workinggroupbusiness/Information-Note-Climate-Change-and-UNGPs.pdf>, [Accessed: November 24, 2023].



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- Principle 17: In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.
- Principle 18: In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:
 - (a) Draw on internal and/or independent external human rights expertise;
 - (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.
- Principle 19: In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes and take appropriate action.
- Principle 23: In all contexts, business enterprises should:
 - (a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;
 - (b) Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements;
 - (c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

vi) IUCN World Declaration on the Environmental Rule of Law⁸²

The IUCN World Congress on Environmental Law, having met in Rio de Janeiro (Brazil) from 26 to 29 April 2016, with the goal of building the environmental rule of law as the legal foundation for environmental justice, declared a set of principles having established that the environmental rule of law should thus serve as the legal foundation for promoting environmental ethics and achieving environmental justice, global ecological integrity, and a sustainable future for all, including for future generations, at local, national, sub-national, regional, and international levels.

- Principle 7 Intragenerational Equity
- Principle 8 Intergenerational Equity
- Principle 9 Gender Equality
- Principle 10 Participation of Minority and Vulnerable Groups
- Principle 13 Progression:
 - III.a - Monitoring and reporting systems that enable accurate assessments of the state of the environment and the pressures on it,
 - III.d - Environmental assessment, incorporating multidimensional, polycentric perspectives and the complexity of social-ecological relationships,
 - III.d - Environmental assessment, incorporating multidimensional, polycentric perspectives and the complexity of social-ecological relationships,

⁸² *The IUCN World Congress on Environmental Law*, Rio de Janeiro (Brazil) from 26 to 29 April 2016, <http://www2.ecolex.org/server2neu.php/libcat/docs/LI/MON-091064.pdf>. [Accessed 8 October 2023].



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- III.f - Collaborative and adaptive management and governance that involves stakeholders from a range of socio-economic and cultural backgrounds, including local communities, indigenous peoples, women, the poor, and other traditionally marginalized and vulnerable groups,
- III.l - Coordination mechanisms such as regional enforcement networks, intelligence sharing, and judicial cooperation,
- III.n - Strengthening the independence and capacity of courts in the effective application and interpretation of environmental law, and in acting as guarantors of the environmental rule of law.

vii) Brasilia Declaration of Judges on Water Justice (10 Principle Declaration)⁸³

Judges gathered at the Conference of Judges and Prosecutors on Water Justice at the 8th World Water Forum, Brasília, Brazil (2018) agreed to be guided by ten fundamental principles in promoting water justice through application of water law and the environmental rule of law.

4. Jurisprudence

To December 2022, 2,180 climate-related cases had been filed in 65 jurisdictions, including international and regional courts, tribunals, quasi-judicial bodies, or other adjudicatory bodies, such as Special Procedures at the United Nations and arbitration tribunals⁸⁴. The following jurisprudence while illustrative it is not exhaustive:

- Advisory Opinion OC-23/17 Of November 15, 2017, Requested by The Republic of Colombia⁸⁵.
- Advisory Opinion 23/17: The Environment and Human Rights (State Obligations in Relation to The Environment in The Context of The Protection and Guarantee of The Rights to Life and to Personal Integrity: Interpretation and Scope of Articles 4(1) And 5(1) In Relation to Articles 1(1) And 2 Of The American Convention on Human Rights)⁸⁶.
- Advisory Opinion OC-24/17 of November 24, 2017, Requested by The Republic of Costa Rica⁸⁷.
- *Kawas Fernández Vs. Honduras*⁸⁸ (par. 148).
- *Fabrica de Fogos*⁸⁹.

⁸³ 8th World Water Forum Brasília, (Brazil) 21 March 2018, https://www.iucn.org/sites/default/files/2022-10/brasilia_declaration_of_judges_on_water_justice_21_march_2018_final_as_approved.pdf. [Accessed 08 October 2023].

⁸⁴ 2023 United Nations Environment Programme Global Climate Litigation Report: 2023 Status Review

⁸⁵ Inter-American Court of Human Rights. (2017). *Advisory Opinion OC-23/17 of November 15, 2017, Requested by The Republic of Colombia*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf, [Accessed 09 October 2023].

⁸⁶ Inter American Court of Human Rights *Advisory Opinion OC-23/17 (2017) Inter American Court of Human Rights*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf, [Accessed: 09 October 2023].

⁸⁷ Inter American Court of Human Rights *Advisory Opinion OC-24/1 (2017) Inter-American Court of Human Rights*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf, [Accessed: 09 October 2023].

⁸⁸ *Case of Kawas-Fernández v. Honduras* (2009).

⁸⁹ *Caso Empleados da Fábrica De Fogos de Santo Antônio de Jesus e Seus Familiares Vs. Brasil* (2020) Available at: https://www.corteidh.or.cr/docs/casos/articulos/resumen_407_por.pdf.

- *Lemoth Morris et al. v. Honduras (Buzos Miskitos Case)*⁹⁰.
- *Case of the Yakye Axa Indigenous Community v. Paraguay*, para. 167,
- *Case of the Sawhoyamaya Indigenous Community v. Paraguay*, paras. 156 to 178, and
- *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment August 24, 2010. Series C No. 214, paras. 195 to 213.
- *Case of the Saramaka People v. Suriname*.
- *Villagrán Morales and Others v Guatemala* (1999). Also known as Street Children case⁹¹.
- *Barahona Bray v. Chile*⁹².
- *Lhaka Honhat vs Argentina*, (para 202 y 203)⁹³.
- *Claude-Reyes et al. v. Chile*.
- *Vera Rojas v. Chile*⁹⁴.
- *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*⁹⁵
- *Future Generations v. Ministry of the Environment and Others* (Colombia)⁹⁶
- *Minors Oposa v. Secretary of the Department of Environmental and Natural Resources* (Phillipines)⁹⁷
- *Gbemre v. Shell Petroleum Nigeria Limited and Others* (Nigeria) 98
- *Juliana v. the United States of America* (USA)⁹⁹
- *Colombia Supreme Court of Justice Protective Action Decision (STC. 4360-2018, also known as Rights of the Amazon Climate Case)*¹⁰⁰
- *Navahine F. v. Hawai'i Department of Transportation* (USA)¹⁰¹
- *Held v. State of Montana* (USA)¹⁰²

⁹⁰ *Caso De Los Buzos Miskitos (Lemoth Morris Y Otros) Vs. Honduras* (2021). Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_432_esp.pdf.

⁹¹ Cancado Trindade, A.A. (2023) 'The Developing Case Law of the Inter-American Court of Human Rights', <https://www.corteidh.or.cr/tablas/R112617.pdf> [Accessed 09 October].

⁹² *Caso Baraona Bray vs. Chile* (2022). Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_481_esp.pdf.

⁹³ *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina* (2020). Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_400_ing.pdf.

⁹⁴ *Case of Vera Rojas et Al. v. Chile* (2021). Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_439_ing.pdf, [Accessed 09 October 2023].

⁹⁵ *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (2001). Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf, [Accessed: 09 October 2023].

⁹⁶ *Future Generations v. Ministry of the Environment and Others* (2018) *Climatecasechart*. Available at: <https://climatecasechart.com/non-us-case/future-generation-v-ministry-environment-others/#:~:text=On%20April%205%2C%202018%2C%20the,Amazon%20as%20a%20E2%80%9Csubject%20of,> [Accessed 12 November 2023].

⁹⁷ *Minors Oposa v. Secretary of the Department of Environment and Natural Resources* (1993). Available at: <https://www.acrisl.org/casenotes/m21l8m8skjplk8-83mk2#:~:text=This%20case%20declared%20that%20the,rights%20through%20the%20present%20generation>

⁹⁸ *Gbemre v. Shell Petroleum Development Company of Nigeria Ltd. and Others* (no date). Available at: <https://climatecasechart.com/non-us-case/gbemre-v-shell-petroleum-development-company-of-nigeria-ltd-et-al/>.

⁹⁹ *Juliana v. United States* (2015). Available at: <https://climatecasechart.com/case/juliana-v-united-states/>.

¹⁰⁰ *Corte Suprema de Justicia. Sentencia STC. 4360-2018. M.P. Luis Armado Tolosa Villabona. Bogotá, D.C., cinco (5) de abril de dos mil dieciocho* (2018).

¹⁰¹ *Navahine F. v. Hawai'i Department of Transportation* (no date) Available at: <https://climatecasechart.com/case/navahine-f-v-hawaii-department-of-transportation/> [Accessed 9 Oct. 2023].

¹⁰² *Held v. State* Available at: <https://climatecasechart.com/case/11091/> [Accessed 9 Oct. 2023].



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- *Sacchi, et al. v. Argentina, et al.*: No. 104/2019-Argentina¹⁰³
- *Almonacid-Arellano et al v. Chile*¹⁰⁴
- *Caso Velásquez Rodríguez Vs. Honduras*¹⁰⁵
- *Juan Humberto Sánchez Vs. Honduras* (para. 184)

D. Summation

The International Union for the Conservation of Nature (“IUCN”) through the World Commission on Environmental Law (“IUCN WCEL”) submits to the Court in this written opinion a comprehensive analysis of the obligations of States, in their individual and collective dimension, to respond to the climate emergency. The opinion is supported by sound science and based on diligent legal methodology within the framework of the Inter-American Human Rights system. It pays special attention to the differentiated impacts of this emergency on individuals from diverse regions and on population groups, as well as on nature and on human survival on our planet. This analysis departs from the order in which the Agents formulated the questions. However, we submit to the court that our analysis addresses most of the key issues contained in the questions in due course as follows: Section I provides a brief introduction to the request for the Advisory Opinion, the themes and questions presented for the Court’s consideration along with the relevant sources of International Environmental Law. Section II, contextualizes the questions on which the Court is requested to opine. It examines the relevance of science on the climate emergency for human rights and provides the climate science. Finally, Section III provides a comprehensive analysis of the inter-American human rights system in the context of the climate emergency, with a particular emphasis on the corresponding obligations of states.

Climate change poses a significant threat to the human rights of people everywhere, including those in Latin America and the Caribbean. The United Nations Human Rights Council in its Resolution 26/27, has emphasized that “climate change is an urgent global problem requiring a global solution.” Evidence of observed adverse impacts and related losses and damages, projected risks, levels and trends in vulnerability and adaptation limits, demonstrate the urgency of addressing climate change to protect rights of individuals and communities in Latin American and the Caribbean.

In its recent reports, the IPCC has recognized that in addition to adversely affecting food and water insecurity, climate change negatively impacts human security on a broad scale (3.1.2) and is one of the main challenges for world peace and stability. Many small island and low-lying coastal developing states face a grave threat to their survival and viability from climate change and sea-level rise. The concept of multi-dimensional security adopted by OAS Member States includes environmental degradation and the impacts of climate change. As assessed by the IPCC, the rise of the global temperature has already caused profound alterations to both human and natural systems, including an increase of extreme weather events, droughts, and floods as well

¹⁰³ *Sacchi, et al. v. Argentina, et al.* Available at: <https://climatecasechart.com/non-us-case/sacchi-et-al-v-argentina-et-al/>, [Accessed 9 Oct. 2023].

¹⁰⁴ https://www.corteidh.or.cr/docs/casos/articulos/seriec_154_ing.pdf *Case of Almonacid-Arellano et al v. Chile* [2006] (Inter-American Court of Human Rights).

¹⁰⁵ *Case of Velásquez-Rodríguez v. Honduras* [1988] Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf, [Accessed 9 Oct. 2023].



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as biodiversity loss. The Americas region is especially vulnerable to climate change and extreme weather events, whose impacts are exacerbated by the high rate of social inequality and poverty. The adverse impacts of climate change are indeed exacerbated by inequality, poverty, population growth and high population density, land use change “particularly deforestation with the consequent biodiversity loss, soil degradation, and high dependence of national and local economies on natural resources for the production of commodities”.

Global temperature rise will put the rights protected by the American Convention, both substantive and procedural, under threat. Interpreting and understanding the right to life in conjunction to the right to personal integrity, the protection, guarantee and respect of all rights affected by the climate emergency with implications on the condition necessary for a decent life as identified must be ensured by the IACtHR under the American Convention and identified sources of law.

The right to water, food (Article 12 of the PSS), health (Article 10 of the PSS) a healthy environment (Article 11 of the PSS), security (Article 7 of the ACHR) participation in cultural life (Article 14 of the PSS), property (Article 21 of the ACHR) should be interpreted with regards to prevention, precaution, mitigation of damages and cooperation among States that are affected by threats to their populations resulting of environmental degradation and Climate Change.

Compliance actions, which may be positive or negative and should be determined by each right and as applicable taking into consideration as measures and criteria identified under the Progress indicators for measuring rights contemplated in the Protocol of San Salvador together with case law of the IACtHR. In the case of "Everyone's right to have sufficient, safe, acceptable, physically accessible and affordable water for their personal and domestic use" the parameters on General Comment 15 should be understood in conjunction to the standards in case law of the IACtHR. The impacts of climate change in the region can hinder development outcomes and the realization of the right to development. Similarly, climate goals can impact the basic objectives of integral development as established in the OAS Charter. It is therefore imperative of States to take urgent and measured efforts to reduce emissions in order to limit temperature increase to no more than 1.5°C. To this end, the scope of State's duties and their legal obligations are outlined by the Paris Agreement which is supported and reinforced by other agreements within the international environmental and human rights regime.

State obligations under the American convention are centered on the protection, respect and guarantee of human rights. In the context of the identified corpus juris and sources of international law applicable to the climate emergency, these are obligations of conduct and results.

Human rights obligations exist within a system of environmental conventionality or the extensive *corpus iuris* in existence for environmental protection. It is evident that the principles, rights, and obligations contained therein make a decisive contribution to establishing the scope of the American Convention. Considering these findings, the development of the theory of control of conventionality by the IACtHR, the provisions in the VCLT, and guidance provided by the Human Rights Committee, IUCN-WCEL submits that the Pact of San Jose must be interpreted in the context of existing environmental obligations in MEAs, most notably the Paris Agreement,



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and the principles of international environmental law. Relevant sources of Law are provided for the Courts consideration and review.

In the Paris Agreement, states, including all states in the region, committed to the objective of “holding global average temperature rise well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels” to reduce the impacts of climate change and avoid the most devastating impacts.

Moreover, acting with due diligence includes: the duty to regulate, duty to supervise and monitor, create contingency plans, require and approve environmental impact assessments, duty to prepare a contingency plan, duty to mitigate if environmental measures occur.

In order to prevent human rights from being violated in the context of the climate emergency, the Court establishes in paragraph 111 of the AO 23/17 States have immediate obligations to respond to these rights being violated. This requires parties to take all necessary measures aligned with the collective pathway to rapidly, deeply, and immediately reduce GHG emissions by 45% in 2030 with a view to achieving global net-zero CO₂ emissions by 2050 and net-negative emissions thereafter. "States are obliged to use all means at their disposal in order to prevent activities carried out under their jurisdiction from causing significant damage to the [...] environment". This obligation must be met under a standard of due diligence, which must be appropriate and proportionate to the degree of risk of environmental damage. The obligation to prevent "is one of means or conduct and its non-compliance is not demonstrated by the mere fact that a right has been violated."

We submit to the Court that Article 4(3) of the Paris Agreement should be also understood as a due diligence standard. It contains the substantive expectation of each party to take climate action in its NDC at the level of its highest possible ambition and to progress regularly. This means to deploy its “best efforts”, or simply do the best it can in each successive NDC. The operative word “will” was deliberately chosen by consensus of all parties, because it carries stronger legal weight than “should”, although it does not amount to a strict legal obligation of “shall”. Rather, it can be seen as a standard of conduct that each party will take all appropriate measures at its disposal.

In fact, the Human Rights Committee has indicated regarding the nature of the general legal obligation imposed on States Parties to the ICCPR that “There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”¹⁰⁶

In light of the significant risk that climate change poses to human rights, we submit to the Court that “highest possible ambition” be understood in a way that each Party exerts its best efforts and uses all the means at its disposal to reduce – over time – all GHG emissions from activities which take place in its territory, or are under its jurisdiction or control, aligned with the 1.5°C threshold.

¹⁰⁶ HUMAN RIGHTS COMMITTEE, General Comment No. 31 [80], *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add. 1326 May 2004, adopted on 29 March 2004 (2187th meeting).



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With an understanding of the urgent need for the above actions and considering the strong scientific consensus linking climate change to human rights, the obligations of States should be guided by the principles of non-regression, progression and prevention. Meaning that States, sub-national entities, and regional integration organizations shall not allow or pursue actions that have the net effect of diminishing the legal protection of the climate system or access to justice in its regards. Further, State duties shall include encompass regularly revising and enhancing laws and policies in order to protect, conserve, restore, and ameliorate the environment, based on the most recent scientific knowledge and policy developments to prevent further harm.

Therefore, a prevention duty already lies in the obligation to adopt all positive feasible measures and is supported by article 2 obligations in the ICCPR. Positive features that a State may pursue are identified in Article 10(1) and (2) of the Protocol and protect the basic rights to health and education.

The State's duty to take positive measures is accentuated precisely in connection with protection of the lives of vulnerable and defenseless persons, who are at risk. To identify said measures, it is necessary to resort to Article 10(2) of the San Salvador Protocol, as a provision that sheds light on interpretation of the positive measures that the State was under the obligation to take to ensure. This is consistent with the duties established in Article 26 of the ACHR for the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the OAS Charter.

In light of the legal standards of result and of conduct contained in Paris Agreement, states have to reduce their emissions at a level aligned with the 1.5°C threshold in a way that reflects each party's highest possible ambition, and to adopt effective national measures to this end.

The pathways and approaches identified in the “Outcome of the First Global Stocktake” are crucial for holding temperature increases to 1.5oC as a guardrail against the climate change impacts on human rights. Increasing ability to adapt to the adverse effects of climate change and foster climate resilient and low greenhouse gas emissions development is also critical. The obligations of Parties in this context are detailed in Article 7 of the Paris Agreement and in the Decision adopted at CMA 5 in Dubai, December 2023.

Which, in acting with due diligence entails prevention of transboundary environmental harm and human rights violations as the standard of care and compliance with substantive and procedural obligations. The submission identifies the duty to create national and international conditions favorable to the realization of the right to development, as well as the commitment of States to cooperate with one another to achieve this goal. It outlines the scope of the due diligence obligations including the duty to regulate, duty to supervise and monitor the conduct of private actors, create contingency plans, require and approve environmental impact assessments, duty to prepare a contingency plan, duty to mitigate if environmental measures occur and ensuring procedural and access rights: information, participation and justice. IUCN Submits that the Court must uphold States' obligations to provide access to justice for all, and to create mechanisms that will allow for adequate redress of injustice. Differentiation in State obligations and enhanced pro-active measures are identified for people and groups in positions of vulnerability.



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In order to protect, respect and guarantee human rights, States should ensure a safe, healthy and sustainable environment. On the basis of the universal, indivisible, interdependent and interrelated nature of all human rights and the contribution of the autonomous right to a healthy environment to the guarantee and full enjoyment of human rights. Advisory Opinion 23/2017 serves as a defining road map of substantive and procedural rights and obligations in the Convention and how they should be interpreted with regards to state duties of prevention, precaution, and mitigation of damages towards individuals and communities that are affected by environmental degradation and the impacts of climate change. Art. 1(1) obliges States “to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms,” without discrimination. Art. 1(1) places no express territorial limitation on the duty to “respect” rights.

To prevent, minimize and address economic and non-economic loss and damage associated with the adverse effects of climate change State Parties should be reminded that they have an obligation to protect their people from the adverse impacts of climate change, especially vulnerable communities such as indigenous communities whose livelihoods are strongly dependent on the land and the surrounding ecosystems. When they fail to do so, they should be deemed responsible. Adaptation measures must be timely and adequate to aver the risk of significant environmental degradation that can compromise the effective enjoyment of the rights to life and personal integrity. When private sector actions create environmental damage, pursuant to the Paris Agreement, States have a responsibility to mitigate environmental harm. This includes the duty of the State to provide appropriate compensation to victims of human rights abuses and due diligence measures to ensure that violations do not go unpunished.

States must collaborate collectively in addressing the challenges posed by climate change to guarantee the right to reparation for damages generated by State actions or omissions in the face of the climate emergency, taking into account considerations of equity, justice and sustainability. An integral part of this response involves addressing and rectifying losses and damages incurred through cooperation (Article 26 of the American Convention, several articles of the Protocol of San Salvador Article 6 of the Paris Agreement) and reparations. In investigating avenues for reparations linked to the right of access to justice in environmental matters, the Court should consider that Compensation is a financial remedy that is required to address damage that is not made good by restitution. International law has now accepted various methods of valuing the environment as such, with a priority set on maintaining and restoring ecological functions.

IUCN Nature 2030 Programme’s two priorities included in this submission and to address the request before the Court has been presented: people and climate. Nature’s contributions to people should be equitably shared, and all of humanity should be enabled to take informed, just and sustainable decisions. Monitoring the impacts of climate change and guiding the conservation and restoration of ecosystems to help mitigate it is essential due to the harm that climate change is causing to societies and the natural world and the services that healthy nature provides. To avoid an overshooting scenario and keeping the limits of temperature rise to 1.5°C, legal response should enhance the use of Nature-based Solutions (NbS) including IUCN’s standard to scale up effective adaptation to the impacts of climate change, scale up NbS to reach climate mitigation targets and be informed by scientific assessment and knowledge to avoid adverse outcomes for nature and people.

II. Contextual framework: The science of climate change, the climate emergency and international legal frameworks

A. The Climate Emergency

The world is in a state of climate emergency. Climate change poses a significant threat to the human rights of people everywhere, including those in Latin America and the Caribbean. The United Nations Human Rights Council in its Resolution 26/27 has emphasized that “climate change is an urgent global problem requiring a global solution.”¹⁰⁷ Evidence of observed adverse impacts and related losses and damages, projected risks, levels and trends in vulnerability and adaptation limits, demonstrate the urgency of addressing climate change to protect rights of individuals and communities in Latin American and the Caribbean.

The Intergovernmental Panel on Climate Change (IPCC) confirms that human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming. Building on the 6th Assessment Report (AR6) by the IPCC, a recent study¹⁰⁸ reports that overall, global warming will increase the frequency of unprecedented extreme events, raise the probability of compound events and ultimately could combine to make multiple system failures more likely. Furthermore, there is a risk that many tipping points can be triggered already by 1.5 to 2°C warming and therefore sooner than previously thought, including collapse of the Greenland and West Antarctic ice sheets, die-off of low-latitude coral reefs and widespread abrupt permafrost thaw.

Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred. Human-caused climate change is already affecting many weather and climate extremes in every region across the globe. This has led to widespread adverse impacts and related losses and damages to nature and people.¹⁰⁹ Continued greenhouse gas emissions will lead to increasing global warming. Every increment of global warming will intensify multiple and concurrent hazards.¹¹⁰ This constitutes a state of emergency for the planet and all those who inhabit it, as well as for future generations.

Flooding, extreme weather events such as hurricanes and cyclones, landslides, extreme heat and cold have all undoubtedly increased in frequency around the world within the past several years concurrently as global temperatures rise. This level of warming is unprecedented throughout the span of human existence on Earth. Excessive levels of fossil fuel use and natural resource exploitation that occur from activities such as deforestation are progressively increasing global

¹⁰⁷ United Nations, General Assembly, Human Rights Council (2014). *26/27 Human rights and climate change*. A/HRC/RES/26/27, <https://undocs.org/Home/Mobile?FinalSymbol=A/HRC/RES/26/27&Language=E&DeviceType=Desktop&LangRequested=False>. [Accessed 05 April 2023].

¹⁰⁸ Willcock, S., Cooper, G., Addy, J. and Dearing, J.A. (2023). Earlier collapse of Anthropocene ecosystems driven by multiple faster and noisier drivers. *Nature Sustainability*. doi:<https://doi.org/10.1038/s41893-023-01157-x>. [Accessed 05 November 2023].

¹⁰⁹ Ibid A.2.

¹¹⁰ IPCC, Synthesis Report (SYR) of the Sixth Assessment Report (AR6), Ibid B.2.

temperatures and pushing Earth System boundaries to their limit.¹¹¹ This is driving disastrous and deleterious effects and will continue to worsen in the near and distant future if left unmitigated.

The climate emergency is causing widespread and devastating impacts globally and pose an existential threat to human rights everywhere. Through Advisory Opinion 23/17, The Inter-American Court has established that climate change directly affects the right to a healthy environment, which has been recognized as an autonomous and justiciable human right by the jurisprudence of the organs of the InterAmerican Human Rights System.

As of June 2023, six (6) countries in Latin America and the Caribbean have declared a climate emergency at the national and municipal level including: Argentina, Brazil, Chile, Colombia, Mexico, and Peru - which are part of the constituency of the Court (Climate Emergency Declaration)(CEDEMIA).¹¹² And according to the 2021 UNDP survey on Climate change (the largest public survey of its kind), the majority of the global population considered that climate change was an emergency and supported stronger climate policy to respond to this emergency (UNDP)¹¹³.

The climate emergency and the severity of its impacts are recognized at the regional level by Summits of the Americas process, multiple resolutions of the OAS General Assembly and Resolution 3/2021 of the Inter-American Commission on Human Rights which affirms that climate change directly affects the right to a healthy environment, which has been recognized as an autonomous and justiciable human right in the Inter-American System pursuant to Advisory Opinion 23/17. Resolution 3/21¹¹⁴ further acknowledged the region of Latin America and the Caribbean as being in a position of increased vulnerability to climate change but particularly States in the Caribbean which experience serious threats and devastating consequences. Heads of State and Government of the Americas gathered in the IX Summit of the Americas agreed to cooperate to strengthen regional cooperation in support of the Inter-American Democratic Charter, including through measures that encourage increased attention with respect to ‘members of groups that have been historically marginalized, discriminated against, and/or in vulnerable situations, as well as all women and girls, taking into account their diverse conditions and situations, in a manner consistent with national legislation and international law.’¹¹⁵

Individuals and communities on the frontlines of climate change face the greatest risk. This risk is amplified and compounded by factors of income inequality and poverty, institutional bias based on religion, ethnicity and race, inequity based on sex, gender expression and sexual

¹¹¹ Richardson, K., Steffen, W., Lucht, W., Bendtsen, J., Cornell, S.E., Donges, J.F., Drüke, M., Fetzer, I., Bala, G., von Bloh, W., Feulner, G., Fiedler, S., Gerten, D., Gleeson, T., Hofmann, M., Huiskamp, W., Kummu, M., Mohan, C., Nogués-Bravo, D., Petri, S., Porkka, M., Rahmstorf, S., Schaphoff, S., Thonicke, K., Tobian, A., Virkki, V., Weber, L. & Rockström, J. 2023. Earth beyond six of nine planetary boundaries. *Science Advances* 9, 37. Available at: <https://www.science.org/doi/10.1126/sciadv.adh2458>.

¹¹² Climate Emergency Declaration Mobilization and Action. See dataset at: <https://www.cedamia.org/>.

¹¹³ UNDP and University of Oxford. 2021 Peoples Climate Vote Results. Available at: <https://www.undp.org/publications/peoples-climate-vote>.

¹¹⁴ InterAmerican Commission on Human Rights (2021) Climate Emergency Scope of Inter-American Human Rights Obligations, Resolution 3/2021.

¹¹⁵ Inter-American Action Plan on Democratic Governance (Adopted by the Heads of State and Government on June 9, 2022). OEA/Ser.E CA-IX/doc.5/22 http://summit-americas.org/documentos_oficiales_ixsummit/CMBRS02295e02.pdf. [Accessed 05 April 2023].



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orientation, citizenship and/or migration status, etc. Also recognizing that those in the greatest positions of vulnerability face the greatest amount of poor infrastructure and lack of access to housing, health care, clean water, etc. are often closest in proximity to environmental stressors or sources of pollution thereby intensify and deepen existing factors of vulnerability.

As established expressly in Article 11 of the Protocol of San Salvador¹¹⁶: i) Everyone shall have the right to live in a healthy environment and to have access to basic public services; and ii) The States Parties shall promote the protection, preservation, and improvement of the environment. The IACtHR has recognized the existence of an undeniable relationship between the protection of the environment and the realization of other human rights, in that environmental degradation and the adverse effects of climate change affect the real enjoyment of human rights. It further recognizes that environmental degradation (which encompasses climate change) “may be felt with greater intensity by certain groups in vulnerable situations”.¹¹⁷ Such groups include women, children, indigenous peoples, persons with disability, and persons living in extreme poverty, *inter alia*.¹¹⁸ Here, the concept of intersectionality is also relevant, as it acknowledges that individuals that belong to more than one vulnerable group (e.g., an impoverished indigenous girl living with a disability) may have their human rights harmed by climate change in more severe and particular ways than others.¹¹⁹ In order to achieve an adequate, equitable, just, and progressive realization of the rights recognized in the Inter-American System, the Court must take intersectionality into account. While still incipient in the jurisprudence of the IACtHR, the concept has already appeared in the work of other courts, including the European Court of Human Rights.¹²⁰

Without urgent, effective, and equitable mitigation and adaptation actions, climate change increasingly threatens ecosystems, biodiversity, and the livelihoods, health and wellbeing of current and future generations.¹²¹

B. Scientific Consensus on Climate Change

In the Request for an Advisory Opinion on Climate Emergency and Human Rights, the Republics of Chile and Colombia have resorted to the scientific consensus as assessed in the reports of the Intergovernmental Panel on Climate Change (hereinafter: IPCC) to highlight the threat that global warming constitutes to human survival and human rights. The warming of the global

¹¹⁶ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" (1988) Adopted in San Salvador on 17 November 1988.

¹¹⁷ Inter American Court of Human Rights Advisory Opinion OC-23/17 of ... (2017) Inter - American Court of Human Rights. Available at: https://www.corteidh.or.cr/docs/opinion/es/seriea_23_ing.pdf, [Accessed: 12 November 2023].

¹¹⁸ *Climate Emergency: Scope of Inter-American Human Rights Obligations. Resolution No. 3/2021* (2021). https://www.oas.org/en/iachr/decisions/pdf/2021/resolucion_3-21_ENG.pdf, [Accessed: November 12, 2023].

¹¹⁹ 2022. *United Nations Network on Racial Discrimination and Protection of Minorities. Guidance Note on Intersectionality, Racial Discrimination & Protection of Minorities*. Available at: <https://www.ohchr.org/sites/default/files/documents/issues/minorities/30th-anniversary/2022-09-22/GuidanceNoteonIntersectionality.pdf>

¹²⁰ *Legal Standards related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application* (no date). <https://www.oas.org/en/iachr/reports/pdfs/legalstandards.pdf>, [Accessed: November 12, 2023].

¹²¹ IPCC (no date) *AR6 Synthesis Report (SYR)*. <https://www.ipcc.ch/report/sixth-assessment-report-cycle/>, [Accessed: November 12, 2023].



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climate that is affecting the planet is mainly due to increased cumulative CO₂ emissions from human activities (the so-called “anthropogenic emissions”), as they have caused approximately a warming of 1.0°C–2.0°C, with likely range of increase of 0.8°C to 1.3°C from 1850–1900 to 2010–2019.¹²² In this section we are going to highlight the main observations and projections concerning the climate emergency in light of the best available science contained in the IPCC’s 6th Assessment Report.

1. Greenhouse gas emissions as main climate drivers

Greenhouse gas (hereinafter GHG) emissions, natural and anthropogenic, cause heat to be trapped in the atmosphere rather than released to space. Consequently, the reflectivity of the Earth’s surface changes, absorbing rather than radiating heat to space. When incoming solar radiation is greater than the outgoing energy, the Earth warms. Many of the major GHG stay in the atmosphere over a long period of time after being released, accumulate over time and increase the GHG concentration in the atmosphere. Therefore, their warming effects on climate persist for such long period of time, thus affecting present and future generations. Indeed, warmer temperatures change weather patterns and disrupt the usual balance of nature.

Anthropogenic emissions, that is GHG arising from human activities, have been recognized as the main drivers of climate change. Since 1990, the levels of emissions have significantly increased, thus steadily de-stabilizing the planet’s climate: net emissions of GHG from human activities increased by 43 percent from 1990 to 2015, and emissions of carbon dioxide increased by 51%. The IPCC’s Sixth Assessment Report (AR6) shows that emissions of greenhouse gases from human activities are responsible for approximately 1.1°C of warming since 1850-1900, and finds that averaged over the next 20 years, global temperature is expected to reach or exceed 1.5°C of warming.¹²³

GHG have been regulated by the international community under the UN Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol (KP), the Paris Agreement (PA) and the Montreal Protocol. Under the UNFCCC, States are under the obligation to report the following GHGs: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF₆) and nitrogen trifluoride (NF₃). CO₂ emissions constitute a large part of anthropogenic emissions, and cause both warming and ocean acidification.

2. Increase of GHG emissions over time and impacts of climate change

As mentioned before, the IPCC observed that anthropogenic emissions caused global surface temperature to reach 1.1°C above 1850-1900 in 2011-2020. Global GHG emissions have continued to increase over 2010-2019, with unequal historical and ongoing contributions among states, and arising from unsustainable energy use, land use and land-use change.¹²⁴ The emissions

¹²² IPCC (2023) *AR6 Synthesis Report (SYR)*. <https://www.ipcc.ch/report/sixth-assessment-report-cycle/>, [Accessed: November 12, 2023]

¹²³ United Nations Environment Programme (2023). *Emissions Gap Report 2023: Broken Record – Temperatures hit new highs, yet world fails to cut emissions (again)*. Nairobi. <https://doi.org/10.59117/20.500.11822/43922>.

¹²⁴ IPCC (2023) *AR6 Synthesis Report (SYR)*. <https://www.ipcc.ch/report/sixth-assessment-report-cycle/>, [Accessed: November 12, 2023].



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reductions from fossil fuels and industrial processes have been outweighed by the emissions increases from rising global activity levels in industry, energy supply, transport, agriculture, and buildings.¹²⁵

Global warming is defined by the Intergovernmental Panel on Climate Change (IPCC)¹²⁶ as “an increase in combined surface air and sea surface temperatures averaged over the globe” mainly caused by the impact of human activities on the climate since the mid-20th century. As assessed by the IPCC, the rise of the global temperature has already caused profound alterations to both human and natural systems, including an increase of extreme weather events, droughts, and floods as well as biodiversity loss.¹²⁷ With the Paris Agreement, States globally committed to the objective of “holding global average temperature rise well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels” to reduce the impacts of climate change and avoid the most devastating impacts.

The IPCC Sixth Report¹²⁸ has stated that “Human influence has likely increased the chance of compounded extreme events since the 1950s, including increases in the frequency of concurrent heatwaves and droughts (...) Urban infrastructure, including transportation, water, sanitation, and energy systems have been compromised by extreme and slow onset events, with resulting economic losses, disruptions of services and negative impacts to well-being” (A.3.5).¹²⁹ As mentioned in the Request and confirmed by the IPCC, global temperature is likely to increase by 1.5°C between 2030 and 2052 if emissions continue to increase at the current rate. However, according to the IPCC, this is already a reality as certain regions have already experienced warming of more than 1.5°C between 2006-2015 including areas within Latin America and the Caribbean.¹³⁰ The vulnerability to climate change of these regions and populations living therein is often amplified by significant poverty and severe social inequality.

¹²⁵ IPCC (2023) *AR6 Synthesis Report (SYR)*. <https://www.ipcc.ch/report/sixth-assessment-report-cycle/>, [Accessed: November 12, 2023].

¹²⁶ IPCC (2018) *Special Report; Global Warming of 1.5°C*. <https://www.ipcc.ch/sr15/>, [Accessed: November 12, 2023].

¹²⁷ IPCC (2018) *Special Report; Global Warming of 1.5°C*. <https://www.ipcc.ch/sr15/>, [Accessed: November 12, 2023].

¹²⁸ IPCC (2023) *AR6 Synthesis Report (SYR)*. <https://www.ipcc.ch/report/sixth-assessment-report-cycle/>, [Accessed: November 12, 2023].

¹²⁹ IPCC (2021): Summary for Policymakers. In: *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, pp. 3–32, doi:10.1017/9781009157896.001.

¹³⁰ Allen, M.R., O.P. Dube, W. Solecki, F. Aragón-Durand, W. Cramer, S. Humphreys, M. Kainuma, J. Kala, N. Mahowald, Y. Mulugetta, R. Perez, M. Wairiu, and K. Zickfeld, 2018: Framing and Context. In: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 49-92. <https://doi.org/10.1017/9781009157940.003>.

Human-caused climate change is already affecting many weather and climate extremes in every region across the globe, as the IPCC observed evidence of changes in extremes such as heatwaves, heavy precipitation, droughts, and tropical cyclones.¹³¹ However, regional contributions to global GHG emissions continue to differ widely: Least Developed Countries (LDCs) and Small Island Developing States (SIDS) have much lower per capita emissions (1.7 tCO₂-eq and 4.6 tCO₂-eq, respectively) than the global average (6.9 tCO₂-eq).¹³² These countries are disproportionately impacted by the adverse effects of climate change on food and water security, human health and on economies and society and related losses and damages. Their vulnerability is exacerbated by inequity and marginalization.¹³³

Climate change has impacted human and natural systems across the world with those who have generally least contributed to climate change being most vulnerable

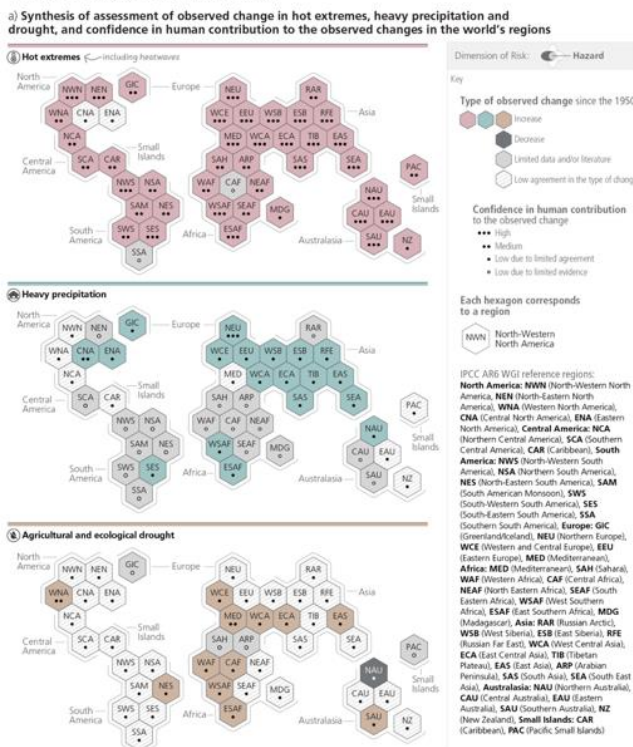


Image 1: IPCC 2023. Current Status and Trends. Synthesis of assessment of observed change in hot extremes, heavy precipitation and drought, and confidence in human contribution to the observed changes in the world's regions.¹³⁴

¹³¹ IPCC, 2023: Sections. In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 35-115, doi: 10.59327/IPCC/AR6-9789291691647.

¹³² IPCC, 2023: Sections. In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 35-115, doi: 10.59327/IPCC/AR6-9789291691647.

¹³³ IPCC, 2023: Sections. In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 35-115, doi: 10.59327/IPCC/AR6-9789291691647 at 12-14.

¹³⁴ IPCC, 2023: Sections. In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H.

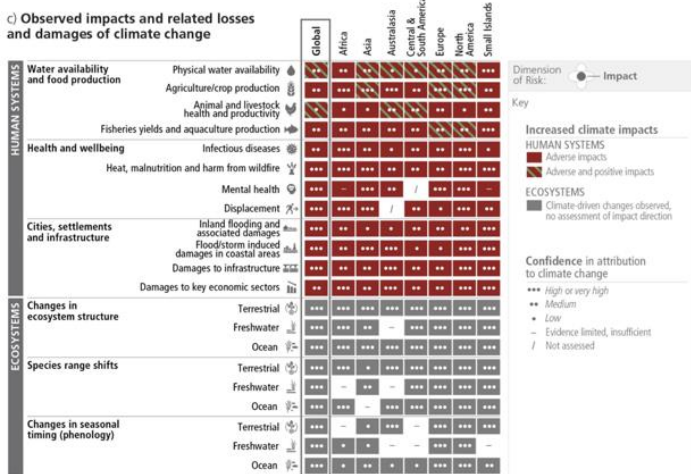
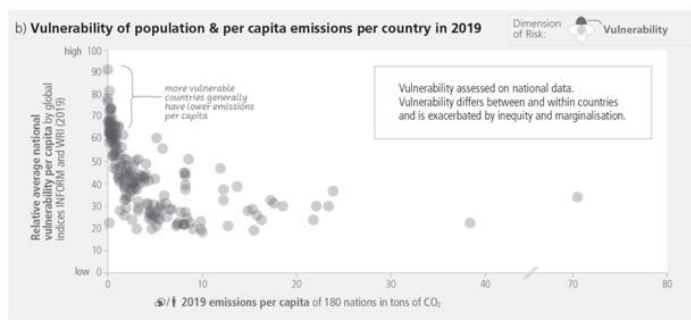


Image 1 (part 2): IPCC 2023. Current Status and Trends. Synthesis of assessment of observed change in hot extremes, heavy precipitation and drought, and confidence in human contribution to the observed changes in the world's regions.¹³⁵

Considering the available science, the IPCC noted the presence of important gaps between global ambitions and the sum of declared national ambitions. Global GHG emissions in 2030 associated with the implementation of Nationally Determined Contributions (NDCs) announced by Parties to the Paris Agreement prior to COP26 would make it likely that warming will exceed 1.5°C and it would make it harder to limit warming below 2°C. These are further compounded by the “implementation gap” between declared national ambitions and current implementation for all aspects of climate action.

Current global temperature increase has already had devastating impacts on the region, as illustrated in the Sixth Assessment Report of the IPCC.¹³⁶ Human and economic losses, changing

Lee and J. Romero (eds.). IPCC, Geneva, Switzerland, pp. 35-115, doi: 10.59327/IPCC/AR6-9789291691647. pp.48.

¹³⁵ IPCC, 2023: Sections. In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 35-115, doi: 10.59327/IPCC/AR6-9789291691647. pp.48.

¹³⁶ Castellanos, E., M.F. Lemos, L. Astigarraga, N. Chacón, N. Cuvi, C. Huggel, L. Miranda, M. Moncassim Vale, J.P. Ometto, P.L. Peri, J.C. Postigo, L. Ramajo, L. Roco, and M. Rusticucci, 2022: Central and South America. In: *Climate Change 2022: Impacts, Adaptation and Vulnerability*. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner, D.C. Roberts, M. Tignor,



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water availability and increasing food insecurity are among the most frequent impacts of climate change in the region of Central America, where significant increases in the intensity and frequency of hot extremes have been observed.¹³⁷ Moreover, in the Andean region, an increase in the frequency of climate-related disasters has been registered together with thermal anomalies.¹³⁸ High temperatures combined with heavy precipitations and floods expose the population to a greater risk of breakout of epidemics.

Furthermore, the Sixth Assessment Report of the IPCC has also confirmed that accelerated warming is increasingly reducing tropical glaciers. Indeed, the Andean region has lost about 30% of its glaciers since the 1980s.¹³⁹ In the Brazilian Amazon, the outbreak of infectious diseases is closely related to the unprecedented extreme events of floods and droughts.¹⁴⁰ The IPCC predicts extreme maximum temperature in the region by the end of the century. These impacts are expected to get worse as the global temperature rises to 1.5°C above pre-industrial levels which is predicted to be likely. The conditions of climate change outlined by the IPCC such as glacier retreat, temperature increase, and unpredictable precipitation, significantly affect surface water and groundwater resources, agricultural production and catalyze the transmission of climate-sensitive infectious diseases in the region,¹⁴¹ thus exacerbating food and water insecurity, and human health risks. In the Americas since the 1960s, renewable fresh water available per person has decreased by 50 per cent.¹⁴² The water security challenges for over half the population of the Americas arise from unevenly distributed supply and access and decreasing water quality.¹⁴³

E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 1689–1816, doi:10.1017/9781009325844.014.

¹³⁷ *Climate Change 2022: Impacts, Adaptation and Vulnerability*. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change par. 12.3.1.4.

¹³⁸ *Climate Change 2022: Impacts, Adaptation and Vulnerability*. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change par. 12.3.2.4.

¹³⁹ *Climate Change 2022: Impacts, Adaptation and Vulnerability*. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change par. 12.3.2.4.

¹⁴⁰ *Climate Change 2022: Impacts, Adaptation and Vulnerability*. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change par. 12.3.3.2.

¹⁴¹ IPCC, 2022: Summary for Policymakers [H.-O. Pörtner, D.C. Roberts, E.S. Poloczanska, K. Mintenbeck, M. Tignor, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem (eds.]. In: *Climate Change 2022: Impacts, Adaptation, and Vulnerability*. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 3–33, doi:10.1017/9781009325844.001.

¹⁴² <https://www.ipbes.net/news/Media-Release-Global-Assessment> *The IPBES Global Assessment Report on Biodiversity and Ecosystem Services* (2019). <https://www.ipbes.net/news/Media-Release-Global-Assessment>, [Accessed: November 12, 2023].

¹⁴³ IPBES (2018): The IPBES regional assessment report on biodiversity and ecosystem services for the Americas. Rice, J., Seixas, C. S., Zaccagnini, M. E., Bedoya-Gaitán, M., and Valderrama N. (eds.). Secretariat of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, Bonn, Germany. 656 pages. https://ipbes.net/sites/default/files/2018_americas_full_report_book_v5_pages_0.pdf.



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In order to limit human-caused global warming it would be necessary to limit cumulative CO₂ emissions, reaching global net zero CO₂ emissions by 2050.^{144, 145} In this sense, the IPCC assessed the climate response to five illustrative scenarios based on Shared Socio-economic Pathways (“SSP5”) that explore future emissions, climate change, related impacts and risks, and possible mitigation and adaptation strategies and are based on a range of assumptions, including socio-economic variables and mitigation options. These range from high and very high GHG emission scenarios to low and very low GHG emission scenarios. The modelled pathways that could limit warming to 1.5°C would therefore require global emissions of CO₂ to reach net zero in the early 2050s and emissions would have to remain net-negative thereafter. Global pathways that limit warming to 1.5°C with no or limited overshoot involve rapid, deep and, in most cases, immediate greenhouse gas emission reductions in all sectors (such as land-use, forestry and energy supply) this decade.

From an adaptation point of view, the IPCC has observed adaptation gaps between current levels of adaptation and levels needed to respond to the climate emergency and this adaptation gap is expected to grow.¹⁴⁶ Most observed adaptation is fragmented, small in scale, incremental, sector-specific, and focused more on planning rather than implementation. Furthermore, adaptation is unequally distributed across regions and the largest adaptation gaps exist among lower population income groups: inequity and poverty also constrain adaptation, resulting in disproportionate exposure and impacts for most vulnerable groups.¹⁴⁷

In conclusion, the closing chapter of the IPCC Sixth Assessment Report “*underscores the urgency of taking more ambitious action and shows that, if we act now, we can still secure a livable sustainable future for all.*”¹⁴⁸ The report focuses on loss and damages experienced as a consequence of climate change. Human-caused climate change has led to many weather and climate extreme events, causing substantial damages, and increasingly irreversible losses, especially affecting the most vulnerable people and ecosystems.¹⁴⁹ Every increment of global warming, as predicted, will increase related risks and adverse impacts, as well as loss and damage from climate change, and, with further warming, climate change risks will become extremely

¹⁴⁴ IPCC, 2023: Sections. In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 35-115, doi: 10.59327/IPCC/AR6-9789291691647.

¹⁴⁵ United Nations’ High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities (no date) *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions*. https://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf, [Accessed: November 12, 2023]

¹⁴⁶ IPCC, 2023: Sections. In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 35-115, doi: 10.59327/IPCC/AR6-9789291691647.

¹⁴⁷ IPCC, 2023: Sections. In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 35-115, doi: 10.59327/IPCC/AR6-9789291691647.

¹⁴⁸ Lee, H. (2023) 'Urgent climate action can secure a liveable future for all: Press Release,' *IPCC*, 20 March. <https://www.ipcc.ch/2023/03/20/press-release-ar6-synthesis-report/>, [Accessed: November 12, 2023].

¹⁴⁹ IPCC, 2022: Summary for Policymakers [H.-O. Pörtner, D.C. Roberts, E.S. Poloczanska, K. Mintenbeck, M. Tignor, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem (eds.)]. In: *Climate Change 2022: Impacts, Adaptation, and Vulnerability*. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 3-33, doi:10.1017/9781009325844.001. At 5.



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complex to manage.¹⁵⁰ Especially, human vulnerability will be exacerbated globally due to socio-economic trends such as migration, growing inequality and urbanization. Vulnerability will be higher in rural areas where there is a high reliance on climate-sensitive livelihoods.¹⁵¹ Furthermore, the likelihood of irreversible changes increase with higher global warming levels, but can be limited by deep, rapid and sustained reduction of GHG - e.g. the increase of warming levels inevitably leads to irreversible loss of biodiversity in ecosystems including forests, coral reefs and in Arctic regions.¹⁵² Therefore, it is crucial to accelerate adaptation, closing the gap between existing adaptation and what is needed, as well as to reduce in a timely and sustained manner the GHG emissions in all sectors. The report identifies climate resilient development as the solution, as it integrates adaptation and GHG to advance sustainable development for all.¹⁵³ Climate resilient development is enabled when both governments and private actors prioritize risk reduction, equity and justice.¹⁵⁴

3. Vulnerabilities and impacts on the region

The Sixth Assessment Report provides a more detailed regional assessment of climate change. *It confirms findings of the AR5 of the attributable impacts to climate change in the Americas mostly in ecosystems, water and food security and extreme events.* As referred to in the Request by Chile and Colombia, the regions of Central and South America are highly exposed, vulnerable, and strongly impacted by climate change. The Americas region is especially vulnerable to climate change and extreme weather events, whose impacts are exacerbated by the high rate of social inequality and poverty. The adverse impacts of climate change are indeed exacerbated by inequality, poverty, population growth and high population density, land use change “particularly deforestation with the consequent biodiversity loss, soil degradation, and high dependence of national and local economies on natural resources for the production of commodities”.¹⁵⁵ Climate change is exacerbating widespread poverty, weak water governance,

¹⁵⁰ IPCC, 2022: Summary for Policymakers [H.-O. Pörtner, D.C. Roberts, E.S. Poloczanska, K. Mintenbeck, M. Tignor, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem (eds.)]. In: *Climate Change 2022: Impacts, Adaptation, and Vulnerability*. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 3-33, doi:10.1017/9781009325844.001. At 15.

¹⁵¹ IPCC, 2022: Summary for Policymakers [H.-O. Pörtner, D.C. Roberts, E.S. Poloczanska, K. Mintenbeck, M. Tignor, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem (eds.)]. In: *Climate Change 2022: Impacts, Adaptation, and Vulnerability*. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 3-33, doi:10.1017/9781009325844.001. At 15.

¹⁵² IPCC, 2022: Summary for Policymakers [H.-O. Pörtner, D.C. Roberts, E.S. Poloczanska, K. Mintenbeck, M. Tignor, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem (eds.)]. In: *Climate Change 2022: Impacts, Adaptation, and Vulnerability*. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 3-33, doi:10.1017/9781009325844.001. At 20.

¹⁵³ IPCC, Sixth Assessment Report (AR6), Climate Change 2023: Synthesis Report, Summary for Policymakers, 2023, p. 25.

¹⁵⁴ IPCC, Sixth Assessment Report (AR6), Climate Change 2023: Synthesis Report, Summary for Policymakers, 2023, p. 25.

¹⁵⁵ IPCC, Climate Change 2022: Impacts, Adaptation and Vulnerability, Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change p.1691.

unequal access to safe water and sanitation services and lack of infrastructure in the region, leading to increasing and creating new vulnerabilities for the population.

The States of Chile and Colombia point out at the Amazon Forest as one of the world's largest biodiversity and carbon repositories is highly vulnerable to climate change impacts. This is confirmed in the IPCC report. The Amazon region, which is home to 40% of the remaining tropical forests in the world and 25% of terrestrial biodiversity, was highly impacted by the unprecedented droughts and higher temperatures observed in 1998, 2005, 2010 and 2015/2016, mostly attributed to climate change. This resulted in high tree mortality rates and basin-wide reductions in forest productivity. Furthermore, as the deforestation of the Amazon Forest continues and exceeds the tipping point permitted by the deforestation of the biome, it is expected to have devastating impacts on rainfall regulation. It should be highlighted that this would have devastating effects not only for the region but also globally. Moreover, drought and extreme weather events have impacted other terrestrial ecosystems in Central and South America. As already shown in the Fifth Assessment Report, the IPCC confirmed in its latest report that the increases in temperature, aridity and drought have led to increase the frequency and intensity of fire. On average, people in the 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.

The climate emergency has also impacted the ocean and coastal ecosystems in the region, such as coral reefs, estuaries, salt marshes, mangroves and sandy beaches. Among the impacts observed by the IPCC, there is coral reduction in abundance, density and cover in Central America and the northern part of South America. In addition, in the same regions an increasing number of coral bleaching events have been registered. Other significant changes in ocean ecosystems are the changes in the plankton community and in ocean and coastal food web structures, loss of vegetated wetlands.¹⁵⁶ Sea levels in the Caribbean rose at a rate of 3.6mm per year between 1993 and 2020, which was slightly higher than the global average of 3.3 mm per year, and the surface temperature of the Caribbean Sea reached a record high in 2020, exceeding the previous highest anomaly value of +0.78°C in 2010 and registering 0.87°C above the 1981–2010 average (WMO, 2022).¹⁵⁷

The Andean region has been indicated by the two Requesting States as one of the most sensitive regions to climate change. Global warming has caused glacier loss in the Andes from 30% to more than 50% of their area since the 1980s. The glacier retreat and temperature increase have affected ecosystems, water resources and livelihoods through landslides and flood disasters. In the tropical Andes reduced precipitation and altered rainfall at the start and end of the rainy season has compromised rainfed subsistence farming, therefore increasing food security. For example, the duration of the maize's crop growth was reduced by at least 5% between 1981–2010 and 2015–2019.

Climate change is also impacting on the population's health as it increases the epidemiology of climate-sensitive infectious diseases in the region. Warming temperatures increase the suitability

¹⁵⁶ IPCC, Climate Change 2022: Impacts, Adaptation and Vulnerability, Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change p.1691.

¹⁵⁷ WMO (World Meteorological Organization) (2022), State of the Climate in Latin America and the Caribbean 2021, Geneva [online] <https://public.wmo.int/en/our-mandate/climate/wmo-statement-state-of-global-climate/LAC>.



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of transmission of vector-borne diseases, including endemic and emerging arboviral diseases such as dengue fever. As a result of changes in temperature and weather events, the potential for transmission of dengue increased between 17% and 80% for the period 1950–1954 to 2016–2021. Climate change has also exacerbated climate-related migration and displacement, especially in the Andes, northeastern Brazil and the northern countries of Central America. The most common climatic drivers have been identified in droughts, tropical storms and hurricanes, heavy rains, and floods.¹⁵⁸

As highlighted in the Request, also the IPCC observed that the impacts of climate change are not equal. Vastly unequal socioeconomic conditions leave a large proportion of the population vulnerable to climate change. Women are more vulnerable than men and are impacted in greater proportion, especially if they live in poor conditions. Often, they experience more significant risks and challenges and have less capacity to adapt, further widening structural gender gaps. As the majority of the world's poor are women, this exacerbates the inequalities they face. Additionally, women's unequal participation in decision-making processes and labour markets further limits their ability to contribute to climate-related planning, policymaking and implementation (UNFCCC, 2022).¹⁵⁹

4. Projections of the impacts on the region

The IPCC AR6 report shows that existing risks may convert into more severe key risks, among others food insecurity due to droughts, water insecurity due to declining snow cover, shrinking glaciers and rainfall variability, increasing epidemics, particularly of vector-borne diseases. In particular, food insecurity will likely impact rural livelihoods of small and medium-sized farmers and Indigenous peoples in the mountains, and water scarcity and disruption in water flows will significantly affect farming communities, as well as public health and energy production.

In addition, extreme precipitation events, which result in floods, landslides and droughts, are projected to intensify in magnitude and frequency due to climate change, thus posing a risk to human life and infrastructures. The IPCC predicts that a 1.5°C increase in temperature would result in an increase of 100–200% in the population affected by floods in Colombia, Brazil and Argentina, 300% in Ecuador and 400% in Peru.

The Amazon Forest is expected to be threatened by the increase of fire occurrence and forest degradation, leading ultimately to a long-term decrease in carbon stocks in forest biomass, compromising Amazonia's role as a carbon sink. In addition, up to 85% of natural systems (plant and animal species, habitats and communities) in the region are projected to be negatively impacted by climate change, especially vertebrates and plants of the Atlantic Forest and Cerrado in Brazil and in Central America.

¹⁵⁸ IPCC, Climate Change 2022: Impacts, Adaptation and Vulnerability, Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change p.1691.

¹⁵⁹ UNFCCC (United Nations Framework Convention on Climate Change) (2022), Dimensions and examples of the gender-differentiated impacts of climate change, the role of women as agents of change and opportunities for women. Synthesis report by the secretariat (FCCC/SBI/2022/7) [online] <https://unfccc.int/documents/494455>. United Nations (2022), World Population Prospects 2022, New York.

With regards to ocean and coastal ecosystems in the region, coral reefs are projected to lose their habitat, change their distribution range and suffer more bleaching events driven by ocean warming. There will likely be changes in the geographical distribution of marine species and ocean and coastal ecosystems such as mangroves, estuaries and rocky shores, as well as those species held in fisheries.

As climate conditions are deteriorating, countries in the region are highly exposed. In addition to the physical evidence of climate change, economic projections indicate that due to the intensification of climate shocks, by 2050, the gross domestic product (GDP) of six highly exposed countries (Barbados, the Dominican Republic, El Salvador, Guatemala, Honduras and Saint Lucia) to climate risks in the region could be between 9% and 12% lower than under a business-as-usual growth scenario.¹⁶⁰

Small island developing States (SIDS) in the Caribbean and countries in Central America are structurally vulnerable to the impacts of climate change. Geographically, the countries of the group are located in areas that are exceptionally susceptible to changes in climatic conditions. Rising temperatures and changes in hydrometeorological conditions, with a higher incidence of droughts and heatwaves and greater variability in precipitation levels and patterns, because of their geography, their high dependence on economic activities that will be heavily impacted by climate change, such as agriculture and tourism, and their levels of poverty and inequality there is a threat to determinants of economic growth, reducing labour productivity, disrupting agricultural production and contributing to a rapid depreciation of the capital stock. At the same time, the increasing frequency and severity of extreme climatic events such as hurricanes and floods are exacting a growing toll on the region.

5. Adaptation responses undertaken in the region according to the IPCC

The IPCC observed ecosystem-based adaptation is the most common adaptation strategy for terrestrial and freshwater ecosystems. There is a focus on the protection of native terrestrial vegetation through the implementation of protected areas and payment for ecosystem services, especially those related to water provision. However, the adaptation measures in place are regarded as insufficient to protect both the terrestrial and freshwater ecosystems in the region from the negative impacts of climate change. With regards to ocean and coastal ecosystems, the adaptation measures¹⁶¹ mainly consist in conservation, protection and restoration of the ecosystems. With regards to water management, adaptive measures have focused on enhancing the quantity and quality of water supply, but the IPCC registered that this resulted in an increase in water-related conflicts. To overcome social inequalities, approaches including nature-based

¹⁶⁰ The Economic Survey of Latin America and the Caribbean is issued annually by the Economic Development Division of the Economic Commission for Latin America and the Caribbean (ECLAC). The 2023 edition was prepared under the leadership of Daniel Titelman, Chief of the Division, and coordinated by Daniel Titelman and Ramón Pineda Salazar.

¹⁶¹ The main adaptation measures are ocean zoning, the prohibition of productive activities (e.g., fisheries, aquaculture, mining and tourism) on marine ecosystems, the improvement of research and education programmes and the creation of specific national policies (high confidence). IPCC, Climate Change 2022: Impacts, Adaptation and Vulnerability, Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change p.1692.



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solutions, such as wetland restoration and water storage and infiltration infrastructure, have been found to be more successful for adaptation and sustainable development.¹⁶²

With regards to rural areas and the agricultural activities, the region has adopted strategies such as soil and water management conservation, crop diversification, climate-smart agriculture, early-warning systems. However, the adaptive capacity in rural areas is seriously challenged by the lack of educational programmes for farmers, adequate knowledge of site-specific adaptation and institutional and financial constraints. On the other hand, the IPCC observed that the adoption of nature-based solutions and hybrid infrastructures in urban adaptation is still in early stages, with weak inequality reduction strategies.¹⁶³

Finally, adaptive responses in the health sector consist in climate services largely focused on epidemic forecast tools and monitoring systems for vector-borne diseases.¹⁶⁴

6. Scientific consensus on and pathways for holding global temperature increase to 1.5°C

The Americas is especially vulnerable to climate change and extreme weather events, whose impacts are exacerbated by the high rate of social inequality and poverty.

A key finding of the 2023 technical dialogue under the Global Stocktake¹⁶⁵ under the Paris Agreement is that global emissions are not in line with modelled global mitigation pathways consistent with the temperature goal of the Paris Agreement, and there is a rapidly narrowing window to raise ambition and implement existing commitments in order to limit warming to 1.5 °C above pre-industrial levels.

In fact, in the decision on the outcome of the first Global Stocktake under the Paris Agreement, Parties “noted with significant concern that, despite progress, global greenhouse gas emissions trajectories are not yet in line with the temperature goal of the Paris Agreement, and that there is

¹⁶² IPCC, 2022: Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press. Cambridge University Press, Cambridge, UK and New York, NY, USA, 3056 pp., doi:10.1017/9781009325844.

¹⁶³ IPCC, 2022: Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press. Cambridge University Press, Cambridge, UK and New York, NY, USA, 3056 pp., doi:10.1017/9781009325844.

¹⁶⁴ IPCC, 2022: Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press. Cambridge University Press, Cambridge, UK and New York, NY, USA, 3056 pp., doi:10.1017/9781009325844.

¹⁶⁵ Decision 19/CMA.



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a rapidly narrowing window for raising ambition and implementing existing commitments in order to achieve it”.¹⁶⁶

The recognition of climate change as a threat to human rights is a cross cutting consideration.¹⁶⁷

Current global temperature increase has already had devastating impacts on Latin America and the Caribbean, as illustrated in the Sixth Assessment Report of the IPCC.¹⁶⁸ Human and economic losses, changing water availability and increasing food insecurity are among the most frequent impacts of climate change in the region of Central America, where significant increases in the intensity and frequency of hot extremes have been observed.¹⁶⁹ Moreover, in the Andean region, an increase in the frequency of climate-related disasters has been registered together with thermal anomalies.¹⁷⁰ High temperatures combined with heavy precipitations and floods expose the population to a greater risk of breakout of epidemics.

Furthermore, the Sixth Assessment Report of the IPCC has also confirmed that accelerated warming is increasingly reducing tropical glaciers. Indeed, the Andean region has lost about 30% of its glaciers since the 1980s.¹⁷¹ In the Brazilian Amazon, the outbreak of infectious diseases is closely related to the unprecedented extreme events of floods and droughts.¹⁷² The IPCC predicts extreme maximum temperature in the region by the end of the century. These impacts are expected to get worse as the global temperature rises to 1.5°C above pre-industrial levels which is predicted to be likely. The conditions of climate change outlined by the IPCC such as glacier retreat, temperature increase, and unpredictable precipitation, significantly affect surface water and groundwater resources, agricultural production and catalyze the transmission of climate-sensitive infectious diseases in the region,¹⁷³ thus exacerbating food and water insecurity, and human health risks.

¹⁶⁶ UNFCCC (2023), decision -/CMA.5, https://unfccc.int/sites/default/files/resource/cma5_auv_4_gst.pdf, para 24.

¹⁶⁷ 2023 Synthesis report on GST elements. Views on the elements for the consideration of outputs component of the first global stocktake Synthesis report by the secretariat.

https://unfccc.int/sites/default/files/resource/SYR_Views%20on%20%20Elements%20for%20CoO.pdf.

¹⁶⁸ Castellanos, E., M.F. Lemos, L. Astigarraga, N. Chacón, N. Cuví, C. Huggel, L. Miranda, M. Moncassim Vale, J.P. Ometto, P.L. Peri, J.C. Postigo, L. Ramajo, L. Roco, and M. Rusticucci, 2022: Central and South America. In: *Climate Change 2022: Impacts, Adaptation and Vulnerability*. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 1689–1816, doi:10.1017/9781009325844.014.

¹⁶⁹ *Climate Change 2022: Impacts, Adaptation and Vulnerability*. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change par. 12.3.1.4.

¹⁷⁰ *Climate Change 2022: Impacts, Adaptation and Vulnerability*. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change par. 12.3.2.4.

¹⁷¹ *Climate Change 2022: Impacts, Adaptation and Vulnerability*. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change par. 12.3.2.4.

¹⁷² *Climate Change 2022: Impacts, Adaptation and Vulnerability*. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change par. 12.3.3.2.

¹⁷³ *Climate Change 2022: Impacts, Adaptation and Vulnerability*. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Executive Summary, p. 1691.



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7. Science basis for an international law response

Climate Change will and is already amplifying existing risks shown.¹⁷⁴ Many countries of the Americas are already most vulnerable to the adverse effects of climate change, particularly Small Island Developing States in the Caribbean.¹⁷⁵ Many small island and low-lying coastal developing states face a grave threat to their survival and viability from climate change and sea-level rise.¹⁷⁶ There are disproportionately high risks to livelihoods and health from climate change,¹⁷⁷ as well as associated risks from threatened biodiversity and scarcity driven conflicts. Climate change “will have devastating consequences for people in poverty. Even under the best-case scenario, hundreds of millions will face food insecurity, forced migration, disease, and death. Climate change threatens the future of human rights and risks undoing the last fifty years of progress in development, global health, and poverty reduction.”¹⁷⁸

In his special report to the UN General Assembly the Special Rapporteur on poverty and human rights warned that the unequal distribution of climate change across the developing and developed regions puts the world at risk of “climate apartheid”.¹⁷⁹ The report also emphasizes that climate change is making it harder for countries to reduce poverty and countries will struggle to expand public services such as health and keep up with the people that need them. Taking a close look at some of the most relevant global commitments that have been agreed upon globally and regionally, facts show that the response has been and continues to be insufficient¹⁸⁰. Climate change exists above underlying vulnerabilities. The physical, social, economic, and

¹⁷⁴ <https://www.ipbes.net/news/Media-Release-Global-Assessment> *The IPBES Global Assessment Report on Biodiversity and Ecosystem Services* (2019). <https://www.ipbes.net/news/Media-Release-Global-Assessment>, [Accessed: 15 November 2023].

¹⁷⁵ The Notre Dame Global Adaptation Initiative Country Index. Summarizes a country's vulnerability to climate change and other global challenges in combination with its readiness to improve resilience. Available online at: <https://gain.nd.edu/our-work/country-index/>.

¹⁷⁶ (AG/RES. 2907 (XLVII-0/17), “Advancing Hemispheric Security: A Multidimensional Approach” AG/RES. 2921 (XLVIII-O/18) Incorporating Multidimensional Criteria in Measuring Poverty and Development).

¹⁷⁷ https://www.ipcc.ch/site/assets/uploads/2018/02/ar5_wgII_spm_en.pdf IPCC, 2022: Summary for Policymakers [H.-O. Pörtner, D.C. Roberts, E.S. Poloczanska, K. Mintenbeck, M. Tignor, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem (eds.)]. In: *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 3–33, doi:10.1017/9781009325844.001.

¹⁷⁸ United Nations (2019). Report of the Special Rapporteur on extreme poverty and human rights (Climate change, extreme poverty and human rights: Report (2019). A/HRC/41/39. Available at <https://www.ohchr.org/en/documents/thematic-reports/ahrc4139-climate-change-extreme-poverty-and-human-rights-report>, [Accessed: 13 November 2023]).

¹⁷⁹ United Nations (2019). Report of the Special Rapporteur on extreme poverty and human rights (Climate change, extreme poverty and human rights: Report (2019). A/HRC/41/39. Available at <https://www.ohchr.org/en/documents/thematic-reports/ahrc4139-climate-change-extreme-poverty-and-human-rights-report>, Accessed: November 13, 2023].

¹⁸⁰ 2015. Millennium Development Goals Report. Available online at: https://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20%28July%201%29.pdf; Gaps in International Environmental Law and Environment-Related Instruments: Towards a Global Pact for the Environment’ (A/73/419). Available online at: <https://globalpact.informea.org/sites/default/files/documents/Gap-Report-Final.pdf>

The Sustainable Development Goals Report 2023 .Available at: https://sdgs.un.org/sites/default/files/2023-07/The-Sustainable-Development-Goals-Report-2023_0.pdf.



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environmental factors and processes increase susceptibility of communities in the region to be impacted. The vulnerability must exist before a crisis can emerge. Climate change is not the culprit. Human well-being has been sacrificed as a result of poor governance, lax enforcement and insufficient implementation of the Environmental rule of law.¹⁸¹

The IPCC's report explains that places with "poverty, governance challenges and limited access to basic services and resources, violent conflict and high levels of climate-sensitive livelihoods" are more vulnerable to climate change impacts.¹⁸²

This is even more relevant for Latin America, which remains the region with most inequality in the planet.¹⁸³ The IPCC's report states, with high confidence, that "climate change is contributing to humanitarian crises where climate hazards interact with high vulnerability".

The climate crisis adds pressure to the underlying existing vulnerabilities and threats to our economic, social and environmental well-being. The above-described challenges place the region, right at the intersection of environmental change and security. Making the security and environmental change nexus more relevant than ever in facing from a multidimensional perspective, what countries of the Americas have denominated as non-traditional threats to their security.¹⁸⁴

In this sense we are truly facing a disaster. A "serious disruption of the functioning of a community or a society involving widespread human, material, economic or environmental losses and impacts"¹⁸⁵ which exceeds the ability of the affected community or society to cope using its own resources.¹⁸⁶

Adapting to climate change is only part of the solution. Scientific analyses note how development, rather than climate change adaptation only, is the most effective. Fully offsetting these economic losses would require an exceptionally large additional investment effort, of between 5.3% of GDP and 10.9% of GDP per year to make economies resilient and drive dynamic, sustained, and sustainable growth.¹⁸⁷

¹⁸¹ *The rule of law and transitional justice in conflict and post-conflict societies* (2004).

<https://www.unhcr.org/us/media/rule-law-and-transitional-justice-conflict-and-post-conflict-societies-report-secretary>, [Accessed 15 November 2023]. https://www.un.org/en/ga/search/view_doc.asp?symbol=S/2004/616.

¹⁸² Gasparini, L., and Cruces, G. (2021). *The Changing Picture of Inequality in Latin America: Evidence for Three Decades*. UNDP LAC Working Paper No. 01. Background Paper for the UNDP LAC Regional Human Development Report 2021. Available: <https://www.undp.org/latin-america/publications/changing-picture-inequality-latin-america>.

¹⁸³ Gasparini, L., and Cruces, G. (2021). *The Changing Picture of Inequality in Latin America: Evidence for Three Decades*. UNDP LAC Working Paper No. 01. Background Paper for the UNDP LAC Regional Human Development Report 2021.

¹⁸⁴ 2003. Declaration on Security in the Americas. OEA/Ser.K/XXXVIII. CES/DEC.1/03 rev. 1 Available online at: http://www.oas.org/juridico/english/decl_security_en.pdf.

¹⁸⁵ Sendai Framework Terminology on Disaster Risk Reduction <https://www.undrr.org/terminology/disaster#:~:text=A%20serious%20disruption%20of%20the,and%20environmental%20losses%20and%20impacts>, [Accessed: November 22, 2023].

¹⁸⁶ 2009 United Nations International Strategy on Disaster Risk Reduction (UNISDR). Terminology on Disaster Risk Reduction. Available online at: <http://www.drdo.gov.sc/wp-content/uploads/2017/05/UNISDR-terminology-2009-eng.pdf>

¹⁸⁷ Economic Commission for Latin America and the Caribbean (ECLAC), *Economic Survey of Latin America and the Caribbean, 2023* (LC/PUB.2023/11-P), Santiago, 2023.

Disaster risk and impacts can be reduced according to the IPCC report, by tackling fundamental issues which cause vulnerability. It places high confidence in risk management, risk sharing, and warning strategies as key tasks for adapting to climate change.

The IPCC report authors identify, with high confidence, actions to reduce the underlying vulnerabilities. These can be based on research and might include redistributing wealth and resources to make societies more equal and equitable, while providing diverse livelihoods.

Future capacity to address the causality has been seriously diminished, including but not limited to by the additional pressure to governance that disaster response generates¹⁸⁸ The study of environmental law in principle is the study of society at risk of science's overwhelming facts and understanding of the limits and current environmental problems. Given these compelling facts or circumstances, the law reacts and generates new solutions to new and urgent social demands, making imperative a multidisciplinary approach. These are signals, that this is not a time for deregulation or to relax enforcement. This is a time to understand and address causality and the multiple and broad scope of attributions that are required. In a time to act and respond to an emergency while implementing prevention that considers development and future human wellbeing. It is time for holistic approaches and solidarity.

Globally and regionally the past decade has been characterized not only by liquid modernity,¹⁸⁹ but by increased conflict and judicialization of social-environmental issues. In this context, the judiciaries have been the first line of defense and last bastion increasingly basing decisions on science to address environmental destruction. Hence their role in governance and implementing the rule of law should be considered as theme 4 of the request under consideration by the Court highlights.

The application of modern environmental law has been shaped by international sources of law and principles, a fundamental element of strong environmental laws. These include environmental law principles but also principles drawn from other disciplines such as International law and Human Rights among other. They are an essential aspect of the rule of law. Numerous general principles are either implicitly or explicitly included in the right to a healthy environment. Other specific principles have been agreed upon by Judges of the highest courts of the Americas as sources of law and the key principles for environmental sustainability for adjudication.¹⁹⁰ These agreed upon principles respond to the need for a common value set that supports that interpretation of statutory rules in a way that maximizes the effectiveness of environmental protection in the context of climate change.

¹⁸⁸ 2007. International Strategy for Disaster Risk Reduction (ISDR) Informs. Issue 14. 2007. Disaster Response in the Americas. de Windt, Claudia. Disaster Legislation: Toward a legal framework in the Americas.

¹⁸⁸ 2020. World Bank Press Release. April 12, 2020. Washington, DC. Coherent Policy Response Needed to Overcome Coronavirus Crisis in Latin America and the Caribbean. Available online at: <https://www.worldbank.org/en/news/press-release/2020/04/12/coronavirus-crisis-latin-america-and-the-caribbean>

¹⁸⁹ 2000. Zygmunt Bauman. Liquid Modernity. *Globalization: The Human Consequence*

¹⁹⁰ 2018. Judiciary of Chile, Organization of American States and Ibero-American Judicial Summit. Environmental Juridical Principles for Ecological Sustainable Development. Available online at (Spanish only): <https://servicios.pjud.cl/ManosLibro/files/assets/basic-html/page-1.html>.



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Strengthening International environmental law and its effective implementation both at the national and international levels in this new era is really a matter of environmental security. Climate change continues to be both a dominant context for environmental rule of law efforts and a driver of actions to advance it.¹⁹¹ It should support risk reduction, management, resilience. Resilience at all levels calls for reducing underlying risk factors such as those addressed above and deliberately considering them through the appropriate frameworks and obligations prioritizing climate justice based on the rule of law. The global Environmental Rule of Law Report has made a call to standardize and track environmental rule of law indicators; develop guidance on environmental rule of law in emergencies and disasters-including the climate emergency-; integrate social justice in environmental institutions; and establish a technology-policy interface.¹⁹²

Basing policy changes in the environmental rule of law is essential as it is an enabler in ensuring just and sustainable development outcomes and in guaranteeing fundamental rights to a healthy environment.

¹⁹¹ United Nations Environment Programme (2023). Environmental Rule of Law: Tracking Progress and Charting Future Directions. Nairobi. <https://doi.org/10.59117/20.500.11822/43943>.

¹⁹² United Nations Environment Programme (2023). Environmental Rule of Law: Tracking Progress and Charting Future Directions. Nairobi. <https://doi.org/10.59117/20.500.11822/43943>.



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III. Observations and analysis of the issues covered by the request: The role of the Inter-American Human Rights System and State obligations in the context of the Climate Emergency

Scientific consensus as assessed by the IPCC confirms that at the current and expected rate of global temperature increase, Latin America and the Caribbean is affected and will be heavily affected by the climate emergency. Therefore, it is critical to understand the relationship between human rights and climate change in the context of climate emergency and how human rights can best be guaranteed under the existing legal framework.

A. Affected Rights under the American Convention in the Climate Emergency

1. Right to Healthy Environment: Substantive and Procedural Rights

The right to a healthy environment is generally understood to include substantive and procedural elements, which provide the means for the guarantee of environmental rights. These categories of rights combined in environmental rights, recognize the inextricable nature of both the protection of, and harm to, human beings, communities, and the planet. The connection between environmental quality and the enjoyment of rights was first recognized in Principle 1 of the Stockholm Declaration, which established that “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being”.¹⁹³ While the right to a healthy environment as a human right has been recently universally recognized,¹⁹⁴ it has longstanding recognition in the Inter-American System as a matter of national law with constitutional standing and in human rights instruments¹⁹⁵ such as the Protocol of San Salvador to the American Convention.

Article 11 of the Protocol of San Salvador establishes that: “1. *Everyone shall have the right to live in a healthy environment and to have access to basic public services.* 2. *The States Parties shall promote the protection, preservation, and improvement of the environment.*”

In the Inter-American system, the right to a healthy environment has been interpreted to include meeting of certain conditions governed by the criteria of availability, accessibility, sustainability,

¹⁹³ Declaration on the Human Environment (Adopted by the United Nations Conference on the Human Environment, Stockholm, 16 June 1972; see U.N. General Assembly Resolutions 2994/XXVII, 2995/UVII and 2996/XXII of 15 December 1972).

¹⁹⁴ United Nations, General Assembly (2022). The human right to a clean, healthy and sustainable environment. 26 July. A/76/L.75.

¹⁹⁵ Progress indicators for measuring rights contemplated in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, “Protocol of San Salvador” / [Prepared by the Working Group to examine the periodic reports of the States Parties to the Protocol of San Salvador]. Available online at: https://www.oas.org/en/sedi/pub/progress_indicators.pdf.



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acceptability, and adaptability with regards to environmental components.¹⁹⁶ These components are mainly the following: a) atmospheric conditions, b) quality and sufficiency of water sources, c) air quality, d) soil quality, e) biodiversity, f) production of pollutant waste and their management, g) energy resources, and h) status of forest resources.¹⁹⁷ Therefore, access to safe water and adequate sanitation, clean air, a safe and stable climate along with healthy and sustainably produced food can be considered among the substantive elements of the right to a healthy environment.¹⁹⁸

In this sense, actions aimed at halting the effects of climate change are also aimed at protecting other human rights (see following table)¹⁹⁹ and the guarantee of the right to a healthy environment is dependent on the fulfillment of the ultimate objective of the UNFCCC²⁰⁰ in sufficient time ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.

Pursuant to the Court's Advisory Opinion 23/2017, human rights, including the right to a healthy environment, are affected by environmental degradation regardless of whether it is caused private or public conduct.²⁰¹ The Court established that the right to a healthy environment is further protected by Article 26 of the American Convention,²⁰² given the obligation of the State to ensure "integral development for their peoples," as revealed by Articles 30, 31, 33 and 34 of the OAS Charter.²⁰³

The Inter-American Commission and the IACtHR have both found that "environmental impacts can constitute severe harm to other rights coming under the justice system administered by the Inter-American System, such as the right to life. Because of this, requiring States to guarantee environmental protection has become a suitable way to guarantee other human rights".²⁰⁴

¹⁹⁶ Healthy environments for healthier populations: Why do they matter, and what can we do? Geneva: World Health Organization; 2019 (WHO/CED/PHE/DO/19.01). Licence: CC BYNC-SA 3.0 IGO.

¹⁹⁷ Progress indicators for measuring rights contemplated in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, "Protocol of San Salvador" / [Prepared by the Working Group to examine the periodic reports of the States Parties to the Protocol of San Salvador]. Available online at: https://www.oas.org/en/sedi/pub/progress_indicators.pdf.

¹⁹⁸ Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina (2020). Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_400_ing.pdf.

¹⁹⁹ Organization of American States, Department of Sustainable Development (2017). Climate change: A comparative overview of the rights based approach in the Americas / [Published by the Department of Sustainable Development of the General Secretariat of the Organization of American States]. Available online at: https://www.oas.org/en/sedi/dsd/docs/climate_change.pdf. [Accessed 09 October 2023].

²⁰⁰ United Nations Framework Convention on Climate Change, Mar. 21, 1994, U.N. DOC. S. TREATY DOC. NO. 102-38, 1771 U.N.T.S. 107.

²⁰¹ *Ximenes Lopes Vs. Brasil. Fondo, Reparaciones y Costas. Sentencia de 4 de julio de 2006. Serie C No. 149, párrs. 86, 89 y 99* *Caso I.V. Vs. Bolivia, párrs. 154 y 208.*

Caso Ramírez Escobar y otros Vs. Guatemala, párr. 355.

²⁰² Inter American Court of Human Rights Advisory Opinion OC-23/17 of ... (2017) Inter American Court of Human Rights. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf, [Accessed 09 October 2023].

²⁰³ Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina (2020). Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_400_ing.pdf, [Accessed 24 November 2023].

²⁰⁴ Progress indicators for measuring rights contemplated in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, "Protocol of San Salvador" / [Prepared by the Working Group to examine the periodic reports of the States Parties to the Protocol of San Salvador]. Available online at: https://www.oas.org/en/sedi/pub/progress_indicators.pdf.



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State Parties to the American Convention on Human Rights have an obligation to respect the rights and freedoms of all persons subject to their jurisdiction (Article 1.1). Given the scientific data and predictions of the IPCC in its Sixth Assessment Report, the increase in global warming critically threatens the lives and well-being of individuals across the region and, puts the right to life and integrity (protected by Article 4.1 and 5.1 of the Convention) directly under threat. However, these are not the only rights affected.

Within paragraph 66 of Advisory Opinion 23/2017,²⁰⁵ the Court highlights how multiple other rights could be affected by non-compliance with environmental obligations, including economic, social, cultural and environmental rights protected by the Protocol of San Salvador, the American Convention and other treaties and instruments, specifically, the right to a healthy environment. The rights that are particularly vulnerable to environmental impact include: the rights to life, personal integrity, private life, health, water, food, housing, participation in cultural life, property, and the right to not be forcibly displaced. Under the American Convention these rights are protected under Article 4.1 (right to life), 5.1 (right to integrity), 11.2 (right to a private life), Article 12 (freedom of expression), Article 16.1 (freedom of association), Article 21 (right to property), and Article 22.1 and 22.5 (right to freedom of movement). Item 67 of Advisory Opinion 23/2017 further emphasizes that those in vulnerable positions are at greater risk of having these rights threatened at a compounded rate with a cascading effect.²⁰⁶

²⁰⁵ *Inter-American Court of Human Rights. (2017). Advisory Opinion OC-23/17 of November 15, 2017, Requested by The Republic of Colombia. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf, [Accessed 09 October 2023].*

²⁰⁶ *Inter-American Court of Human Rights. (2017). Advisory Opinion OC-23/17 of November 15, 2017, Requested by The Republic of Colombia. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf, [Accessed 09 October 2023].*

Table 2. Links between Climate Change Impacts and Human Rights

Human Rights, established in the following instruments: American Declaration of the Rights and Duties of Man (AD) American Convention on Human Rights "Pact of San Jose, Costa Rica" – (AC) Additional Protocol on ECOSOC (Protocol of San Salvador) to the American Convention on Human Rights – (PS)	Climate Change Impacts ²¹		
	Ecosystems	Water Security	Extreme Events
Right to life AD: Article 1 AC: Article 4	Aquatic and terrestrial ecosystems affected (irreversibly). Changes in living stock and quality of resources.	Reduced surface water, groundwater and snowpack, less water quality. Saltwater inundation of freshwater resources.	Deaths and outbreaks of diseases. Risk human mortality as a result of an increased drying and high temperature trends in North America (high confidence)
Right to a healthy environment PS: Article 11, 1. & 2.	Degradation/reduction of ecosystems and species (irreversibly). Wildfire induce loss of ecosystems integrity in North America (high confidence).	Clean/quality water availability diminished.	Clean/quality water availability diminished due to Hazardous environments. (e.g. Tornados and Cyclones)

Image 2: Link between Climate Change Impacts and Human Rights. Organization of American States, Department of Sustainable Development (2017)²⁰⁷

²⁰⁷ Organization of American States, Department of Sustainable Development (2017). Climate change: A comparative overview of the rights based approach in the Americas / [Published by the Department of Sustainable Development of the General Secretariat of the Organization of American States]. Available online at: https://www.oas.org/en/sedi/dsd/docs/climate_change.pdf. [Accessed 09 October 2023].

<p>Right to inviolability of the home AD: Article X</p>	<p>claiming beach homes and homes in close proximity to flood plains, changes in living stock and quality of resources. Forced displacement.</p>	<p>water availability diminished causing forced displacement.</p>	<p>cyclones and landslides causing forced displacement. Risk of urban floods in riverine and coastal areas, inducing property and infrastructure damage in North America (high confidence).</p>
<p>Right to Food (food security) PS: Article 12</p>	<p>Changes in weather patterns: longer rain/dry seasons, longer/shorter winters producing irreversible changes in crops and quality of resources.</p>	<p>Food production diminished. Environmental changes (land infertility caused by excessive drought). Water availability risk in semi-arid and glacier-melt-dependent regions and Central America (high confidence).</p>	<p>Food production diminished by floods and droughts. Death of livestock, changes in agriculture.</p>
<p>Right to benefits of culture AD: Article XIII PS: Article 14, 1. a.</p>	<p>Economic losses. Changes in animals dependency (e.g. cattle farming). Changes in communities. Ancestral ecosystems services stock affected (i.e. traditional medicine and nursing products in indigenous communities).</p>	<p>Season changes affecting fishing & hunting patterns (e.g. indigenous people in the Arctic)</p>	<p>Extreme events affect activities of cultural life and activities of a community. Infrastructure losses (e.g. damage at cultural heritage).</p>
<p>Right to Self Determination²² and to Progressive Development AC: Article 26</p>	<p>Ecosystem changes may hinder freedom to pursue self-development. Un-sustainable development.</p>	<p>Water changes may hinder freedom to pursue self-development. Un-sustainable development e.g. loss of hydroelectric power.</p>	<p>Extreme event changes may hinder freedom to pursue self-development.</p>
<p>Right to Residence and Movement AD: Article VIII AC: Article 22</p>	<p>Blockage of passages due to floods, slides, etc. Changes in landscapes. Mobility risks/vulnerability increased. Migration of species.</p>	<p>Mobility risks/vulnerability increased (e.g. melting of ice in the poles).</p>	<p>Increased frequency and intensity of natural disasters. Mobility risks/vulnerability increased (excess of warmth and cold). Risk of flooding and landslides in urban and rural areas due to extreme precipitation in Central and South America (high confidence).</p>

Image 2: Link between Climate Change Impacts and Human Rights. Organization of American States, Department of Sustainable Development (2017)²⁰⁸

²⁰⁸ Organization of American States, Department of Sustainable Development (2017). Climate change: A comparative overview of the rights based approach in the Americas / [Published by the Department of Sustainable Development of the General Secretariat of the Organization of American States]. Available online at: https://www.oas.org/en/sedi/dsd/docs/climate_change.pdf. [Accessed 09 October 2023].

<p>Right to health and well being AD: Article XI PS: Article 10, 1. & 2.</p>	<p>Disease outbreaks. Air pollution leading to respiratory diseases. Human livelihoods affected. Risk of spread of vector-borne diseases in altitude and latitude in Central and South America (high confidence).</p>	<p>Flood water settlement may lead to unhealthy environments and increased vulnerability.</p>	<p>More heat related diseases and colds. Impact on quality of drinking water and freshwater resources.</p>
<p>Right to clean water and Basic Sanitation²¹</p>	<p>Losses in forests and flora affects clean water availability (e.g. The Amazon)</p>	<p>Reduced surface water, groundwater and snowpack, saltwater inundation of freshwater resources affect clean water availability. Risk of water quality impairment in North America (high confidence).</p>	<p>Extreme events like hurricanes can jeopardize the supply of drinking water. (e.g. Damaged pipelines)</p>
<p>Right to Property (including ancestral) AD: Article XXIII AC: Article 21</p>	<p>Forced displacement due to changes in ecosystems. Sea level rise claiming beach homes and homes in close proximity to flood plains. Forced displacement.</p>	<p>Clean/quality water availability diminished affecting housing. Forced displacement due to diminished water availability.</p>	<p>Floods, hurricanes, cyclones and landslides affecting housing. Changes in landscapes due to extreme events. Risk of property loss as a result of increased drying and temperature trend in North America (high confidence).</p>

Source: GSOAS with IPCC Data

Image 2: Link between Climate Change Impacts and Human Rights. Organization of American States, Department of Sustainable Development (2017).²⁰⁹

The following considerations with regards to the right to life and personal integrity are pertinent regarding rights that are particularly vulnerable to environmental impact and the climate emergency.

2. The right to life (ACHR Article 4)²¹⁰

The IPCC has recognized that human rights to life, health, shelter, and food are fundamentally impacted by climate change.²¹¹ Article 4 of the Convention guarantees the right to life without discrimination (Article 1) for all individuals and communities under the jurisdiction of the State. The Court has affirmed repeatedly in AO 23/17 that the right to life in the American Convention is essential because the realization of the other rights depends on its protection.²¹²

²⁰⁹ Organization of American States, Department of Sustainable Development (2017). Climate change: A comparative overview of the rights based approach in the Americas / [Published by the Department of Sustainable Development of the General Secretariat of the Organization of American States]. Available online at: https://www.oas.org/en/sedi/dsd/docs/climate_change.pdf. [Accessed 09 October 2023].

²¹⁰ InterAmerican Commission on Human Rights (2021) *Climate Emergency Scope of Inter-American Human Rights Obligations*, Resolution 3/2021. https://www.oas.org/en/iachr/decisions/pdf/2021/resolucion_3-21_ENG.pdf.

²¹¹ *Human Security — IPCC (2014)*. <https://www.ipcc.ch/report/ar5/wg2/human-security/>

²¹² *Inter American Court of Human Rights Advisory Opinion OC-23/17 (2017)*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf, [Accessed 09 October 2023].



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The climate emergency poses an existential threat to the lives of individuals and communities, especially those who are in positions of vulnerability and undermines this fundamental right. This risk has been assessed by the latest science provided by IPCC, which expressly draws the connection between the adverse impacts of climate change (such as those related food insecurity, extreme weather events, etc.) and the high risk of human mortality. Article 4.1 of the Convention assures that every person has the right to have their life respected. In the *Street Children* case (para 2)²¹³ the Court has interpreted the right to life under Article 4.1 as both a negative obligation not to deprive anyone of life arbitrarily, and a positive obligation to take all necessary measures to secure that that basic right is not violated. In interpreting Art. 4 of the Convention, other relevant international law needs to be considered. This applies to legal sources that specifically address states' obligations on climate change, such as the UNFCCC and the Paris Agreement. In the context of climate emergency, the positive measures of States must be applied through the lens of the prevention principle and the obligation to prevent and mitigate climate impacts as outlined by the Paris Agreement. Additionally, the Court asserted in the *Street Children* case that there is no doubt that the fundamental right to life belongs to the domain of *jus cogens*.²¹⁴

The right to life is further recognized as being in jeopardy in the context of the climate emergency by the Inter-American Commission on Human Rights Resolution 3/21²¹⁵. In this resolution, the Commission recognizes that the right to life is under threat for all persons in the region, however with special consideration for those in greater positions of vulnerability such as women and girls (III.19), children and youth (III.21), and indigenous peoples, Afro-descendant, tribal or peasant communities (IV.23). It is emphasized by the Court that States must take immediate actions to prevent the right to life from being violated in the climate emergency (V.27).²¹⁶

Furthermore, Advisory Opinion no. 23/2017, the IACtHR and the Human Rights Committee²¹⁷ determined that the right to life pursuant to Article 4(1) of the Convention, entitles individuals to enjoy a life with dignity. In its case law,²¹⁸ the IACtHR has identified the conditions necessary for a decent life, which include access to and quality of water, food, health and environmental protection, further emphasizing the connection between human rights and climate change.²¹⁹

3. Personal Integrity (ACHR Article 5)

The right to life must be understood in conjunction with the right to personal integrity, which is protected under Article 5.1 and 5.2 of the Convention - once again this right must be upheld without discrimination, pursuant to Article 1. As guaranteed under Article 5.1, the right to personal integrity must involve the physical, mental and moral integrity of an individual.

²¹³ *Inter American Court of Human Rights, Case of the "Street Children" (Villagran-Morales et al.) v. Guatemala*. Judgment of November 19, 1999. https://www.corteidh.or.cr/docs/casos/articulos/seriec_63_ing.pdf.

²¹⁴ Antônio Augusto Cançado Trindade, THE DEVELOPING CASE LAW OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS, *Human Rights Law Review*, Volume 3, Issue 1, Spring 2003, Pages 1–25, <https://doi.org/10.1093/hrlr/3.1.1> <https://www.corteidh.or.cr/tablas/R112617.pdf>.

²¹⁵ InterAmerican Commission on Human Rights (2021) *Climate Emergency Scope of Inter-American Human Rights Obligations*, Resolution 3/2021.

²¹⁶ InterAmerican Commission on Human Rights (2021) *Climate Emergency Scope of Inter-American Human Rights Obligations*, Resolution 3/2021 https://www.oas.org/en/iachr/decisions/pdf/2021/resolucion_3-21_ENG.pdf.



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The climate emergency not only threatens life itself, factors of Article 5.2 come under threat by the nature of the climate emergency. The impacts of climate change have a multitude of adverse effects that make quotidian life difficult for individuals, especially those facing situations of vulnerability. Moreover, growing evidence has demonstrated that the climate crisis has adverse mental health and psychosocial outcomes, directly affecting the right to mental wellbeing protected by Article 5 of the Convention. And it has been acknowledged by the World Health Organization that mental health is negatively affected by climate change and can lead to cascading economic and social detriments, especially for people in positions of vulnerability. The climate crisis will enhance food and housing insecurity, reduce access to water, and inhibit people's ability to earn an income. All of which are factors that contribute to personal integrity and a dignified life and are amplified for people in positions of vulnerability.

In AO 23/17, The Court indicated that changes to the environment vis a vis the climate emergency, affects the physical, mental and social wellbeing of a person (Para 110).²²⁰ The State has the obligation to protect this right and also take measures to prevent violation of these rights from taking place.

4. Rights to life, to personal integrity and particularly affected rights by the climate emergency

In recent reports, the IPCC has recognized that in addition to adversely affecting food and water insecurity, climate change negatively impacts human security on a broad scale (3.1.2)²²¹ and is one of the main challenges for world peace and stability. Many small island and low-lying coastal developing states face a grave threat to their survival and viability from climate change and sea-level rise²²². The concept of multi-dimensional security adopted by OAS Member States includes environmental degradation and the impacts of climate change.²²³

The link between climate change and security is multi-dimensional and it is of serious concern, because climate change acts as an amplifier of security risks on both an individual or national level.²²⁴ Security threats to one's person has a direct and negative impact on their personal liberty, both of which are protected by Article 7.1 of the Convention.

²²⁰ Inter-American Court of Human Rights (2017) *Advisory Opinion OC-23/17-*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf, [Accessed 09 October 2023].

²²¹ IPCC (2023) *Climate Change 2023: Synthesis Report of the Sixth Assessment Report (AR6) longer report*. Available at: https://report.ipcc.ch/ar6syrr/pdf/IPCC_AR6_SYR_LongerReport.pdf

Inter-American Court of Human Rights (2017) *Advisory Opinion OC-23/17-*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf, [Accessed 09 October 2023].

²²² (AG/RES. 2907 (XLVII-0/17), "Advancing Hemispheric Security: A Multidimensional Approach" AG/RES. 2921 (XLVIII-O/18) *Incorporating Multidimensional Criteria in Measuring Poverty and Development*)

²²³ General Secretariat of the Organization of American States (2016) *Climate change: A comparative overview of the rights-based approach in the Americas*. Available at: https://www.oas.org/en/sedi/dsd/docs/climate_change.pdf

https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf, [Accessed 19 October 2023].

²²⁴ *Climate change recognized as 'threat multiplier', UN Security Council debates its impact on peace* (2019).

<https://www.un.org/peacebuilding/fr/news/climate-change-recognized-'threat-multiplier'-un-security-council-debates-its-impact-peace>

<https://news.un.org/en/story/2019/01/1031322>.



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Interpreting and understanding the right to life in conjunction to the right to personal integrity, the protection, guarantee and respect of all rights affected by the climate emergency with implications on the condition necessary for a decent life as identified must be ensured by the IACtHR under the American Convention and identified sources of law.

The right to water,²²⁵ food (Article 12 of the PSS), health (Article 10 of the PSS) a healthy environment (Article 11 of the PSS), security (Article 7 of the ACHR) participation in cultural life (Article 14 of the PSS), property (Article 21 of the ACHR) should be interpreted with regards to prevention, precaution, mitigation of damages and cooperation among States that are affected by threats to their populations resulting of environmental degradation and Climate Change. Compliance actions, which may be positive or negative and should be determined by each right²²⁶ and as applicable taking into consideration as measures and criteria identified under the Progress indicators for measuring rights contemplated in the Protocol of San Salvador²²⁷ together with case law of the IACtHR²²⁸. In the case of *"Everyone's right to have sufficient, safe, acceptable, physically accessible and affordable water for their personal and domestic use"*²²⁹ the parameters on General Comment 15²³⁰ should be understood in conjunction to the standards in case law of the IACtHR.²³¹

5. The Right to Development

United Nation General Assembly Resolution 77/212²³² outlines commitments for States under the United Nations Charter in light of the Sustainable Development Goals to operationalization of the right to development as a priority. The right to development²³³ is an inalienable human right and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations, and that the individual is the central subject and beneficiary of

²²⁵ AG/RES. 2760 (XLII-O/12). The Human Right to Safe Drinking Water and Sanitation. A/RES/64/292. The Human Right to Water and Sanitation. United Nations General Assembly, July 2010.

²²⁶ I/A Court H.R., Case of Velásquez Rodríguez v. Honduras (Merits), Judgment of July 29, 1988, Series C, No. 4The general obligations of the American Convention on Human Rights (Duty of respect, guarantee and adequacy of domestic law). DR, 2017. Universidad Nacional Autónoma de México INSTITUTO DE INVESTIGACIONES JURÍDICAS. <https://www.cndh.org.mx/sites/default/files/documentos/2019-05/CESIDH-Obligaciones-Convencion-Americana.pdf>.

²²⁷ Progress indicators for measuring rights contemplated in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, "Protocol of San Salvador" / [Prepared by the Working Group to examine the periodic reports of the States Parties to the Protocol of San Salvador]. Available online at: https://www.oas.org/en/sedi/pub/progress_indicators.pdf.

²²⁸ Yakye Axa Indigenous Community v. Paraguay, Case of the Saramaka People v. Suriname.

²²⁹ AG/RES. 2760 (XLII-O/12). The Human Right to Safe Drinking Water and Sanitation. A/RES/64/292. The Human Right to Water and Sanitation. United Nations General Assembly, July 2010.

²³⁰ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 January 2003, E/C.12/2002/11.

²³¹ Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina (2020). Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_400_ing.pdf.

²³² A/RES/77/212 The right to development. Resolution adopted by the General Assembly on 15 December 2022. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/762/20/PDF/N2276220.pdf>.

²³³ A/RES/41/128UN General Assembly, Declaration on the Right to Development, 4 December 1986. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-rightdevelopment>.



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development. Development facilitates the enjoyment of all human rights.²³⁴ States have a duty to create national and international conditions favorable to the realization of the right to development, as well as their commitment to cooperate with one another to achieve this goal. Member States in Article 30 of the Charter of the OAS pledge themselves to a united effort to ensure international social justice in their relations and integral development for their peoples, as conditions essential to peace and security. The charter includes fields through which the goals that each country sets for accomplishing it should be achieved. The impacts of climate change in the region can hinder development outcomes and the realization of the right to development. Similarly, climate goals can impact the basic objectives of integral development as established in the Charter.

6. Access Rights

The procedural elements of the right to a healthy environment include access rights. In those cases where environmental impacts have played an important role, both the Inter-American Commission and the IACtHR emphasized the importance of procedural rights to access to information, to public participation in decision-making processes and to access to justice.²³⁵ Access rights are key for the effectiveness of climate justice and climate-resilient development. These rights have been acknowledged in the Inter-American System as functional to the protection of human rights.

The inter-American Democratic Charter establishes that:

“Article 7 (Democracy and Human Rights) Democracy is indispensable for the effective exercise of fundamental freedoms and human rights in their universality, indivisibility and interdependence, embodied in the respective constitutions of states and in inter-American and international human rights instrument.”²³⁶

The relevance of the rights to information, participation and justice in environmental issues was first acknowledged in the Declaration of Principles adopted at the 1992 United Nations Conference on Environment and Development (Rio Summit). Principle 10 states:

“Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available.”

²³⁴ United Nations, General Assembly (2022). *Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms*. A/RES/77/212.

²³⁵ Progress indicators for measuring rights contemplated in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, “Protocol of San Salvador” / [Prepared by the Working Group to examine the periodic reports of the States Parties to the Protocol of San Salvador]. Available online at: https://www.oas.org/en/sedi/pub/progress_indicators.pdf.

²³⁶ OAS General Assembly (2001) AG/RES. 1 (XXVIII-E/01). Inter-American Democratic Charter. Adopted by the General Assembly at its special session held in Lima, Peru, on September 11, 2001 Available at: [https://www.summit-americas.org/Quebec_Summit/Quebec-DemocraticCharter/Charter-AG.RES.%201%20\(XXVIII-E.01\)e.doc](https://www.summit-americas.org/Quebec_Summit/Quebec-DemocraticCharter/Charter-AG.RES.%201%20(XXVIII-E.01)e.doc).



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*Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.*²³⁷

Following the adoption of the Rio Declaration, Principle 10, the Summit Conference on Sustainable Development held in Santa Cruz de la Sierra in 1996 represented another key milestone. The Santa Cruz Summit Declaration established that OAS Member States, will support and encourage, as a basic requisite for sustainable development, broad participation by civil society in the decision-making process, and promote increased opportunities for the expression of ideas and the exchange of information and traditional knowledge on sustainable development between groups, organizations, businesses and individuals, including indigenous people, as well as for their effective participation in the formulation, adoption and execution of decisions that affect their lives. To implement the mentioned initiatives, among others in the Summit Plan of Action, the Heads of State entrusted the OAS with the formulation of an InterAmerican strategy for the promotion of public participation in decision making for sustainable development. Countries of the Americas have slowly come to the understanding that access rights are fundamental for the achievement of sustainable development.²³⁸

By strengthening public participation in decisions and policies on environment and natural resources management, governments and civil society can contribute to sustainability. At the regional level in 2000 the Inter-American Council for Integral Development of the OAS approved the Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development (ISP).²³⁹ The core of the Strategy is the Policy Framework which contains seven principles and a number of policy recommendations aimed at achieving greater involvement of all sectors of society in the decision-making process on sustainable development and environmental issues. Two of the seven ISP principles that have utmost relevance in the context of access rights are the principle of access and the principle of transparency. The principle of access recognizes that in order to participate effectively, citizens should have timely access to the different levels of government, to information, to the political process and to the judicial system. As for the principle of transparency, in order for alliances between civil society and the government to be effective, trust and transparency are required, since the transparency of all parties involved in a decision-making process facilitates more meaningful participation by ensuring that the motivations and objectives are explicit, and the reliability and availability of information is timely.

The Paris Agreement also recognized the crucial role of public awareness and access rights.²⁴⁰ As far as access rights to are concerned, the Agreement embraced what has been declared in

²³⁷ United Nations General Assembly (1992) Report of the United Nations Conference on Environment and Development. 3-14, June. A/CONF.151/26 (Vol. I). Available at: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf.

²³⁸ Scholtz, W. and Verschuuren, J. (2015). Regional Environmental Law. Chapter 6: Introduction to Environmental Law in the Americas (De Windt and Orellana). Edward Elgar Publishing.

²³⁹ OAS Inter-American Council for Integral Development (2001) CIDI/RES. 98 (V-O/00). Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development. Available at: https://www.oas.org/dsd/PDF_files/ispenglish.pdf.

²⁴⁰ Paris Agreement, Article 12: "Parties shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information, recognizing the importance of these steps with respect to enhancing actions under this Agreement".



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Principle 10 of the Rio Declaration: “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes (in States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.” In international environmental law, access rights are pivotal for “strengthening democracy, sustainable development, and human rights.”²⁴¹ However, the sole acknowledgement of environmental rights without proper further implementation and enforcement mechanisms at the national level has not been sufficient to transform realities on the ground. Therefore, appropriate environmental and climate change protection depends on adequate mechanisms to guarantee the right to a healthy environment and the right to water and sanitation. Adequate implementation of environmental rights also requires that environmental considerations be effectively integrated into economic development processes²⁴². The available mechanisms for integration for the most part rely on procedural rights, such as access to information, access to process and access to justice. These procedural rights enable the implementation of substantive rights. However, the implementation of procedural rights faces many obstacles in order to secure a legislative and judicial system capable of providing effective redress at the national levels of December 2022, 2,180 climate-related cases had been filed in 65 jurisdictions, including international and regional courts, tribunals, quasi-judicial bodies, or other adjudicatory bodies, such as Special Procedures at the United Nations and arbitration tribunals. Representing a steady increase from 884 cases in 2017 and 1,550 cases in 2020.²⁴³

The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazu agreement)²⁴⁴ adopted following developments in the Inter-American System²⁴⁵ acknowledged that access rights contribute to the protection of the right of every person of present and future generations to live in a healthy environment and to sustainable development²⁴⁶ and establishes legally binding obligations for state parties on Access rights.

²⁴¹ Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement). 2018. Preamble.

²⁴² Scholtz, W. and Verschuuren, J. (2015). Regional Environmental Law. Chapter 6: Introduction to Environmental Law in the Americas (De Windt and Orellana). Edward Elgar Publishing.

²⁴³ 2023 United Nations Environment Programme Global Climate Litigation Report: 2023 Status Review. Available online at:

https://wedocs.unep.org/bitstream/handle/20.500.11822/43008/global_climate_litigation_report_2023.pdf?sequence=3.

²⁴⁴ U.N. Econ. Comm'n. for Lat. Am. and the Caribbean, Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, U.N. Doc LC/PUB.2018/8/Rev.1 (2023).

²⁴⁵ United Nations (2013). Access to information, participation and justice in environmental matters in Latin America and the Caribbean Situation, outlook and examples of good practice. Environment and Development Series 151. Available at: <https://repositorio.cepal.org/server/api/core/bitstreams/8aa86534-ad26-4b03-bed7-39d7e3a58a8b/content>.

²⁴⁶ Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement). 2018. Article 1.



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B. Protect, Respect and Guarantee of Human Rights in the Climate Emergency

Among the measures that the State must adopt to respect the normative mandate regarding the right to a healthy environment are compliance actions, which may be positive or negative and will be determined by each right.²⁴⁷ Therefore, knowing that multiple rights will come under threat, especially for communities and/or individuals in positions of vulnerability, or intersectional vulnerability (see Section A on The Climate Emergency), States have a responsibility to protect, respect and guarantee these rights under Article 1 of the American Convention.

In order to protect, respect and guarantee human rights, States should ensure a safe, healthy and sustainable environment.²⁴⁸ On the basis of the universal, indivisible, interdependent and interrelated nature of all human rights²⁴⁹ and the contribution of the autonomous right to a healthy environment to the guarantee and full enjoyment of human rights. Advisory Opinion 23/2017 serves as a defining road map of substantive and procedural rights and obligations in the Convention and how they should be interpreted with regards to state duties of prevention, precaution, and mitigation of damages towards individuals and communities that are affected by environmental degradation and the impacts of climate change. Art. 1(1) obliges States “to *respect* the rights and freedoms recognized herein *and to ensure* to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms,” without discrimination. Art. 1(1) places *no express territorial limitation* on the duty to “respect” rights. The IACtHR has established that State responsibility regarding environmental harm, per the Trail Smelter case²⁵⁰ does not end at boundaries established by borders furthering the objectives of the Convention as “the protection of the human rights of all individual human beings within the Americas, irrespective of their nationality.”²⁵¹

On the basis of the two statements in Article 11 of the Protocol of San Salvador and considering the general obligation of States to take measures to guarantee the rights enshrined in the PSS without incurring any discrimination, States have at least the following obligations with respect to the right to a healthy environment: a) guaranteeing everyone, without any discrimination, a healthy environment in which to live; b) guaranteeing everyone, without any discrimination,

²⁴⁷ I/A Court H.R., Case of Velásquez Rodríguez v. Honduras (Merits), Judgment of July 29, 1988, Series C, No. 4The general obligations of the American Convention on Human Rights (Duty of respect, guarantee and adequacy of domestic law). DR, 2017. Universidad Nacional Autónoma de México INSTITUTO DE INVESTIGACIONES JURÍDICAS. <https://www.cndh.org.mx/sites/default/files/documentos/2019-05/CESIDH-Obligaciones-Convencion-Americana.pdf>.

²⁴⁸ Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (2018). <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/017/42/PDF/G1801742.pdf>, [Accessed: 13 November 2023].

²⁴⁹ A/CONF.157/24 (Part I), chap. III.

World Conference on Human Rights. Report of the Secretary General. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G93/853/46/PDF/G9385346.pdf>.

²⁵⁰ Trail Smelter Case (U.S. v. Can.), III U.N. RIAA 1905, 1938-1966 (award of 11 March 1941); Ann. Digest (1938-40) no. 104.

²⁵¹ IACtHR, Adv. Op. OC-2/82, Effect of reservations on the entering into effect of the American Convention on Human Rights, 27; 29: “Their object and purpose is the protection of the basic rights of individual human beings irrespective of their nationality, both against the State of their nationality and all other contracting States.” Cf. ICJ, Wall Adv Op, 109.]



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basic public services; c) promoting environmental protection; d) promoting environmental conservation; and e) promoting improvement of the environment.²⁵²

Direct obligations, both substantive and procedural, were identified by the IACtHR in paragraph 111 of the AO 23/17. The substantive obligations include: the duty to regulate, duty to supervise and monitor, create contingency plans, require and approve environmental impact assessments, duty to prepare a contingency plan, duty to mitigate if environmental measures occur.²⁵³ The Court furthered the scope of State duties regarding the right to a healthy environment in the case of *The Indigenous Communities of The Lhaka Honhat (Our Land) Association V. Argentina*.²⁵⁴ For the first time, protection under article 26 of the Convention for progressive implementation was afforded.

It is noted that the right to a healthy environment applies not only to the obligation to respect, but also to the obligation to guarantee human rights provided for in Article 1(1) of the Convention, one of the ways in which it is to be observed is to prevent violations. For example, States "must refrain" from, inter alia, "unlawfully polluting the environment in a way that affects the conditions that allow people to live a dignified life, for example, by depositing waste from state-owned enterprises in ways that affect the quality of or access to drinking water and/or food sources."²⁵⁵ This duty extends to the "private sphere", in order to prevent "third parties from violating the protected legal rights", and "covers all those measures of a legal, political, administrative and cultural nature that promote the safeguarding of human rights and ensure that any violations of these rights are effectively considered and treated as an unlawful act."²⁵⁶

The IACtHR has also noted that multiple human rights protection systems recognize the right to a healthy environment as a right in itself, while as discussed there is no doubt that many other human rights are impacted by environmental degradation, all of which entail a series of corresponding environmental duties and responsibilities of States in order to protect, respect and guarantee human rights. In other words, human rights obligations exist within a system of environmental conventionality or the extensive *corpus iuris* in existence for environmental protection. It is evident that the principles, rights, and obligations contained therein make a decisive contribution to establishing the scope of the American Convention.²⁵⁷ Considering these findings, the development of the theory of control of conventionality by the IACtHR, the provisions in the VCLT, and guidance provided by the Human Rights Committee, the Pact of

²⁵² Progress indicators for measuring rights contemplated in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, "Protocol of San Salvador" / [Prepared by the Working Group to examine the periodic reports of the States Parties to the Protocol of San Salvador]. Available online at: https://www.oas.org/en/sedi/pub/progress_indicators.pdf.

²⁵³ Inter-American Court of Human Rights (2017) *Advisory Opinion OC-23/17 paras 146-173*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf [Accessed 09 October 2023].

²⁵⁴ Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina (2020). Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_400_ing.pdf.

²⁵⁵ Inter-American Court of Human Rights (2017) *Advisory Opinion OC-23/17 paras 146-173*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf, [Accessed 09 October 2023].

²⁵⁶ Inter-American Court of Human Rights (2017) *Advisory Opinion OC-23/17 paras 146-173*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf, [Accessed 09 October 2023].

²⁵⁷ *Inter American Court of Human Rights Advisory Opinion OC-23/17 of ... (2017) Inter American Court of Human Rights*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf, [Accessed 09 October 2023] pp. 44 and 45.



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San Jose must be interpreted in the context of existing environmental obligations in MEAs, most notably the Paris Agreement,²⁵⁸ and the principles of international environmental law.²⁵⁹

Considering the fundamental human rights protected by the Convention and the elaboration of human rights and the environment by Advisory opinion 23.2017, the Paris Agreement further supports those rights at the international level. The Paris Agreement recognizes that “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, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.”²⁶⁰ CMA4 added “the right to a clean, healthy and sustainable environment” to this list.²⁶¹ The outcome of the first Global Stocktake under the Paris Agreement acknowledged:

*“that climate change is a common concern of humankind and that Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to a clean, healthy and sustainable environment, the right to health, the rights of Indigenous Peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity”.*²⁶²

This is reinforced by Paragraph 67 of AO 23/17, which includes a list (*numerus apertus*) of persons and groups especially vulnerable to environmental harm including indigenous peoples, children, persons in extreme poverty, minorities, persons with disabilities, women, populations that depend economically or for survival on natural resources such as coastal and small island communities.

Global temperature rise will put the rights protected by the American Convention under threat. It is therefore imperative of States to take urgent and measured efforts to reduce emissions in order to limit temperature increase to no more than 1.5°C. To this end, the scope of State’s duties and their legal obligations are outlined by the Paris Agreement which is supported and reinforced by other agreements within the international environmental and human rights regime.

Given that the Sixth IPCC Assessment report (AR6) reflects scientific consensus of great certainty about climate change and its negative impacts on human rights, it should be the priority of States to limit global temperature increase to 1.5°C. The Paris Agreement is the most recent

258 Paris Agreement, Preamble, https://unfccc.int/sites/default/files/english_paris_agreement.pdf

259 Cf. “Other Treaties” Subject to the Advisory Function of the Court (Art. 64 American Convention on Human Rights). Advisory Opinion OC-1/82 of September 24, 1982. Series A No. 1, first operative paragraph; Advisory Opinion OC-22/16, supra, para. 17.

260 Paris Agreement, Preamble, https://unfccc.int/sites/default/files/english_paris_agreement.pdf

261 UNFCCC (2022). Decision 1/CMA.4. See Decision -/CP.27 Sharm el-Sheikh Implementation Plan. Available at:

https://unfccc.int/sites/default/files/resource/cop27_auv_2_cover%20decision.pdf, [Accessed 24 November 2023].

262 UNFCCC (2023) Decision-/CMA.5, preamble.



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and most comprehensive international treaty that outlines the duty and obligations of States to achieve this common goal.

The American Convention is to be interpreted in the context of international treaties, such as the Paris Agreement. Pursuant to the Vienna Convention on the Law of Treaties, Article 31.1 and 31.3(c) “a treaty shall be interpreted in good faith...” by “any relevant rules of international law applicable in the relations between the parties.”²⁶³ This is further confirmed by the Court’s Advisory Opinion 23/17 in paragraph 90 which states that “the American Convention must be interpreted in keeping with other principles of international law.”²⁶⁴ “The provisions must be interpreted as part of a whole, the significance and scope of which must be established based on the legal system to which it belongs.”²⁶⁵ In the context of the climate emergency, it is therefore submitted to the Court to interpret the American Convention and the human rights contained therein in light of the Paris Agreement, supported and reinforced by other agreements within the international environmental and human rights regime.

The Paris Agreement sets the overall threshold to limit temperature increase to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change (Article 2.1 (a)).²⁶⁶ Decisions 1/CP.26²⁶⁷ and 1/CP.27²⁶⁸ allow the conclusion that parties have put a priority on the 1.5°C target, supported by the scientific consensus as assessed in the sixth report of the IPCC. In these decisions, all Parties by consensus “resolved to pursue efforts to limit the temperature increase to 1.5°C”.²⁶⁹ This is *because* they recognize “that the impacts of climate change will be much lower at the temperature increase of 1.5°C compared with 2°C.”²⁷⁰ This is reinforced by Article 4.1 of the Paris Agreement which emphasizes the need to meet the goal of limiting temperature increase to 1.5°C as soon as possible. Article 4.1 also recognizes that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the

²⁶³ United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, available at: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf
<https://www.refworld.org/docid/3ae6b3a10.html>, [Accessed 25 November 2023].

²⁶⁴ *Inter American Court of Human Rights Advisory Opinion OC-23/17 of...* (2017) *Inter American Court of Human Rights*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf, [Accessed 09 October 2023].

²⁶⁵ *Inter American Court of Human Rights Advisory Opinion OC-23/17 of...* (2017) *Inter American Court of Human Rights*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf, [Accessed 09 October 2023].

²⁶⁶ *Paris Agreement Article 4(2)* (2015), entered into force 4 November 2016. Available at: https://unfccc.int/sites/default/files/english_paris_agreement.pdf

²⁶⁷ UNFCCC (2021). Decision -/CP.26 Glasgow Climate Pact. Available at: https://unfccc.int/sites/default/files/resource/Overarching_decision_1-CP-26_0.pdf, [Accessed: 24 November 2023].

²⁶⁸ Decisions 1/CP.27 and 1/CMA.4. https://unfccc.int/sites/default/files/resource/Decisions_1CMA4_1COP27.pdf, [Accessed: November 24, 2023].

²⁶⁹ Decision 1/CMA.3 Glasgow Climate Pact, para 21, and Decision 1/CMA.4, Sharm el-Sheikh Implementation Plan, para 8.

²⁷⁰ Decision 1/CMA.3 Glasgow Climate Pact, para 21.



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second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty²⁷¹.

The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA), reaffirmed their commitments to these goals through Decision 4/CMA.1,²⁷² 1/CMA.3²⁷³ and 1/CMA.4. States must take action to mitigate and adapt to climate change to limit the impacts on human rights, and it is incumbent on States to follow the collective timelines and emission pathways set out in Article 4(1) of the Agreement.²⁷⁴ States must act with urgent and appropriate measures. The IPCC²⁷⁵ urges States to take rapid, deep and immediate emission reductions of about 50% globally by 2030 and reaching global net-zero CO₂ emissions by 2050, with varying degrees of global net-negative emissions thereafter.²⁷⁶

More specifically, in the Decision on the “Outcome of the First Global Stocktake” under the Paris Agreement Parties, by consensus, recognized “that limiting global warming to 1.5 °C with no or limited overshoot. requires deep, rapid and sustained reductions in global greenhouse gas emissions of 43 per cent by 2030 and 60 per cent by 2035 relative to the 2019 level and reaching net zero carbon dioxide emissions by 2050”.²⁷⁷

Importantly, the decision calls upon parties to consider the efforts:

“(a) Tripling renewable energy capacity globally and doubling the global average annual rate of energy efficiency improvements by 2030;

(b) Accelerating efforts towards the phase-down of unabated coal power;

(c) Accelerating efforts globally towards net zero emission energy systems, utilizing zero- and low-carbon fuels well before or by around mid-century;

(d) Transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner, accelerating action in this critical decade, so as to achieve net zero by 2050 in keeping with the science;

(e) Accelerating zero- and low-emission technologies, including, inter alia, renewables, nuclear, abatement and removal technologies such as carbon capture and utilization and storage, particularly in hard-to-abate sectors, and low-carbon hydrogen production;

²⁷¹ *Paris Agreement Article 4(2)* (2015), entered into force 4 November 2016.

https://unfccc.int/sites/default/files/english_paris_agreement.pdf

²⁷² *Decision 4/CMA.1* (2018). https://unfccc.int/sites/default/files/resource/4-CMA.1_English.pdf, [Accessed 24 November 2023].

²⁷³ UNFCCC (2021). *Decision -/CP.26 Glasgow Climate Pact*. Available at: https://unfccc.int/sites/default/files/resource/Overarching_decision_1-CP-26_0.pdf, [Accessed 24 November 2023].

²⁷⁴ *Paris Agreement Article 4(1)* (2015), entered into force 4 November.

2016. https://unfccc.int/sites/default/files/english_paris_agreement.pdf https://unfccc.int/sites/default/files/english_paris_agreement.pdf

²⁷⁵ IPCC, 2023: Sections. In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 35-115, doi: 10.59327/IPCC/AR6-9789291691647

²⁷⁶ IPCC, 2023: Sections. In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 35-115, doi: 10.59327/IPCC/AR6-9789291691647 https://report.ipcc.ch/ar6syr/pdf/IPCC_AR6_SYR_LongerReport.pdf.

²⁷⁷ *Ibid*, para 27.



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(f) Accelerating and substantially reducing non-carbon-dioxide emissions globally, including in particular methane emissions by 2030;
(g) Accelerating the reduction of emissions from road transport on a range of pathways, including through development of infrastructure and rapid deployment of zero- and low-emission vehicles;
(h) Phasing out inefficient fossil fuel subsidies that do not address energy poverty or just transition.”²⁷⁸

In addition, Parties emphasized the importance of conserving, protecting and restoring nature and ecosystems, including through enhanced efforts towards halting and reversing deforestation and forest degradation by 2030, and other terrestrial and marine ecosystems acting as sinks and reservoirs of greenhouse gases and by conserving biodiversity, while ensuring social and environmental safeguards, in line with the Kunming-Montreal Global Biodiversity Framework; as well as to preserve and restore oceans and coastal ecosystems.²⁷⁹

These efforts are crucial for holding temperature increases to 1.5°C as a guardrail against the climate change impacts on human rights.

In the context of adaptation, the Paris Agreement also establishes a global goal of “increasing the ability to adapt to the adverse effects of climate change and foster climate resilient and low greenhouse gas emissions development, in a manner that does not threaten food production” (Art. 2.1(b)). The obligations of Parties in this context are detailed in Article 7 of the Paris Agreement and in the Decision adopted at CMA 5 in Dubai, December 2023, on the “Global Goal on Adaptation”.²⁸⁰

1. Nature of State obligations under the American Convention

State obligations under the American convention are centered on the protection, respect and guarantee of human rights. In the context of the identified corpus juris and sources of international law applicable to the climate emergency, these are obligations of conduct and results.

In order to prevent human rights from being violated in the context of the climate emergency, the Court establishes in paragraph 111 of the AO 23/17 States have immediate obligations to respond to these rights being violated. In the Paris Agreement, 195 states, including all states in the region, committed to the objective of “holding global average temperature rise well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels” to reduce the impacts of climate change and avoid the most devastating impacts.

In light of the legal standards of result and of conduct contained in Paris Agreement, states have to reduce their emissions at a level aligned with the 1.5°C threshold in a way that reflects each party's highest possible ambition, and to adopt effective national measures to this end.

²⁷⁸ Ibid, para 28.

²⁷⁹ Ibid, paras 33 and 35.

²⁸⁰ UNFCCC (2023) Decision -/CMA.5, Glasgow- Sharm El Sheikh Work program on the Global Goal on Adaptation.



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This requires parties to take all necessary measures aligned with the collective pathway to rapidly, deeply, and immediately reduce GHG emissions by 45% in 2030 with a view to achieving global net-zero CO₂ emissions by 2050 and net-negative emissions thereafter.

Which, in acting with due diligence entails prevention of transboundary environmental harm and human rights violations in the standard of care and compliance with substantive and procedural obligations including: the duty to regulate, duty to supervise and monitor, create contingency plans, require and approve environmental impact assessments, duty to prepare a contingency plan, duty to mitigate if environmental measures occur and ensuring access rights.

2. Standard of care in the climate emergency, Due Diligence and Prevention of transboundary environmental and human rights harm

The duty to prevent environmental harm is firmly entrenched in customary international law.²⁸¹ Beyond custom, this duty has been codified in a number of global treaties. For example, under the United Nations Convention on the Law of the Sea (UNCLOS), this duty is codified in positive language so that states “have the obligation to protect and preserve the marine environment.”²⁸² It is also embedded in Article 3 of the Convention on Biological Diversity, the ratification of which has a universality approaching that of both the Charter of the United Nations and of the OAS.²⁸³

“Article 3. Principle. States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”

²⁸¹ *Legality of the Threat of Use of Nuclear Weapons*, [1996(I)] I.C.J. Reports 226, 241-42 (“The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.”); *Case Concerning the Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)* [1997] I.C.J. Reports 7, 67, 77-78. See also Principle 21, Stockholm Declaration on the Human Environment, Report of the United Nations Conference on the Human Environment, U.N. Doc. A/CONF.48/14/Rev.1, reprinted in 11 I.L.M. 1416 (1972); Principle 2, The Rio Declaration on Environment and Development, Report of the United Nations Conference on Environment and Development, U.N. Doc., A/CONF.151/26/Rev.1 (Vol. 1)(3-14 June 1992), Annex I, pp. 3-8, reprinted in 31 I.L.M. 874 (1992). See further International Law Commission, Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with Commentaries, [2001] YEARBOOK OF THE INTERNATIONAL LAW COMMISSION, VOL. II (Part Two), at 148 (para. 3).

²⁸² Art. 192, United Nations Convention on the Law of the Sea (UNCLOS), United Nations, *The Law of the Sea: Official Text of the United Nations Convention on the Law of the Sea with Annexes and Index, Final Act of the Third United Nations Conference on the Law of the Sea, Introductory Material on the Convention and Conference*, U.N. Pub. Sales No. E.83.V.5 (1983). Under Article 194 and Section 5 of Part XII of UNCLOS, specific obligations to prevent pollution are imposed on states. In those areas that are beyond the limits of national jurisdiction, such as the high seas, the applicable concept is not related to sovereignty, but to common heritage and states are obliged cooperate in the conservation and share the economic benefits of such areas. UNCLOS, Part XI.

²⁸³ Art. 3, Convention on Biological Diversity, 1769 U.N.T.S. 79. The Biodiversity Convention has 196 parties as of January 18, 2017. The United States (which has signed) and the Holy See - and perhaps Palestine - are the only States that have yet to ratify the Convention. These States are, of course, bound by the mirror Article 3 obligation reflected in customary international law, as discussed above.



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Among other, the objectives of the Convention on Biological Diversity are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of benefits arising from the use of genetic resources. Biodiversity plays a key role in building resilience to the unavoidable impacts of climate change, including with NbS protection of coastal communities from storms, flooding and erosion. Implementation of GHG mitigation targets is very much dependent on biodiversity, considered an environmental component in interpretation of the right to a healthy environment.²⁸⁴

In *Pulp Mills*, a dispute involving Argentina and Uruguay, the ICJ further explained that

“[T]he principle of prevention, as a customary rule, has its origins in the due diligence that is required of a State in its territory. It is ‘every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States.’ A State is thus obliged 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.”²⁸⁵

The ICJ reaffirmed these principles in a dispute between Costa Rica and Nicaragua.²⁸⁶ It has long been clear that a State’s responsibilities do not end at its border. International law does not permit States to conduct or allow activities within their territory, or in common spaces, without regard for the rights of other States or for the protection of the general environment.²⁸⁷ In particular, international law imposes two related duties on States: (a) a duty to prevent significant transboundary environmental harm and harm to areas beyond national jurisdiction, and (b) a duty to cooperate in mitigating risks of transboundary environmental harm.

In RES 3/21 the Inter-American Commission on Human Rights²⁸⁸ establishes that “In the context of the climate crisis, the obligation to prevent transboundary environmental harm is manifested in the development and implementation of GHG mitigation targets that reflect a level of ambition consistent with the obligations of the Paris Agreement and other applicable instruments” (p. 20 par 4).

"States are obliged to use all means at their disposal in order to prevent activities carried out under their jurisdiction from causing significant damage to the [...] environment". This obligation must be met under a standard of due diligence, which must be appropriate and proportionate to

²⁸⁴ Progress indicators for measuring rights contemplated in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, “Protocol of San Salvador” / [Prepared by the Working Group to examine the periodic reports of the States Parties to the Protocol of San Salvador]. Available online at: https://www.oas.org/en/sedi/pub/progress_indicators.pdf.

²⁸⁵ ICJ, *Pulp Mills on the River Uruguay (Arg. v. Uru.)*, Judgment, 20 Apr. 2010, I.C.J. Reports 2010 (I), pp. 55-56, p. 101 (quoting *Corfu Channel (United Kingdom v. Albania)*, Merits, Judgment, I.C.J. Reports 1949, p. 22).

²⁸⁶ *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica/Nicaragua)*; *Construction of a Road in Costa Rica along the San Juan River (Nicaragua/ Costa Rica)*, Judgment, 16 Dec, 2017, I.C.J. Reports 2015 (I), p. 45, p. 104.

²⁸⁷ Patricia Bernie et al. *International Law and the Environment* (3rd ed., 2009), at p. 137

²⁸⁸ InterAmerican Commission on Human Rights (2021) *Climate Emergency Scope of Inter-American Human Rights Obligations*, Resolution 3/2021.



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the degree of risk of environmental damage.²⁸⁹ The obligation to prevent "is one of means or conduct and its non-compliance is not demonstrated by the mere fact that a right has been violated."²⁹⁰

Since the foregoing is applicable to all the rights enshrined in the American Convention, it is useful to state that it also refers to the rights to adequate food, water, and participation in cultural life.

With an understanding of the urgent need for the above actions and considering the strong scientific consensus linking climate change to human rights, the obligations of States should be guided by the principles of non-regression, progression²⁹¹ and prevention. Meaning that States, sub-national entities, and regional integration organizations shall not allow or pursue actions that have the net effect of diminishing the legal protection of the climate system or access to justice in its regards. Further, State duties shall include encompass regularly revising and enhancing laws and policies in order to protect, conserve, restore, and ameliorate the environment, based on the most recent scientific knowledge and policy developments to prevent further harm.²⁹²

This is consistent with the duties established in Article 26 of the ACHR for the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the OAS Charter. As stated in the 2016 WCEL Declaration on the Environmental Rule of Law, States must act in alignment with the progressive development of international environmental legal and policy regimes for the conservation and sustainable use of nature at all governance levels, based on respect for human rights and fundamental freedoms for current and future generations (Preamble).²⁹³ In the context of the climate crisis, these principles must guide State's primary duty to prevent human rights from being violated.

Furthermore, it is the State's duty to prevent rather than remedy violations of human rights in the context of the climate emergency. This has been reiterated by the Court in Section B.1 of the AO 23/2017. To this end, the Court has decided that States the duty to adopt all feasible "positive measures" (Para 109 and 121 od AO 23/17²⁹⁴) to prevent human rights violations in the context of climate change. The obligation of positive measures was established by paradigmatic case of *Villagrán Morales and Others v Guatemala* (1999) (the so-called Street Children case),²⁹⁵ where the Court also ruled that failure to provide positive measures is a violation of Article 4 of the American Convention, and established that "the fundamental right to life includes not only the right of every human being not to be deprived of his [her or their] life arbitrarily, but also the

²⁸⁹ Inter American Court of Human Rights Advisory Opinion OC-23/17 of ... (2017) Inter American Court of Human Rights. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf, [Accessed 09 October 2023].

²⁹⁰ 290 *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala Judgment Reparations and Costs* (2021) Inter-American Court of Human Rights. Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_77_ing.pdf, [Accessed: October 9, 2023].

²⁹¹ IUCN *World Declaration on the Environmental Rule of Law* (2016). <http://www2.ecolex.org/server2neu.php/libcat/docs/LI/MON-091064.pdf>, [Accessed: November 24, 2023].

²⁹² Principles 12 and 13 WCEL Declaration on the Environmental Rule of Law. General Comment 31

²⁹³ IUNC (2016). *IUCN World Declaration on the Environmental Rule of Law*

²⁹⁴ Inter-American Court of Human Rights (2017) *Advisory Opinion OC-23/17*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf, [Accessed 09 October 2023].

²⁹⁵ Trindade, A.A.C. (2003) 'THE DEVELOPING CASE LAW OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,' *Human Rights Law Review*, 3(1), pp. 1–25. <https://www.corteidh.or.cr/tablas/R112617.pdf>



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right that he [she, or they] will not be prevented from having access to the conditions that guarantee a dignified existence”.²⁹⁶ By adopting the principle of prevention to safeguard human rights in the face of the climate emergency, States must prevent temperature increases above 1.5°C as the consequences (acute extreme weather events and slow-onset disasters) will negatively impact the rights to life and to personal integrity.

The Court has decided through its *jurisprudence constante* (e.g., “Street Children” (Villagrán Morales et al.), 1999; Bulacio case, 2003; Myrna Mack Chang case, 2003; case of the “Juvenile Reeducation Institute”, 2004; Huilca Tecse case, 2005), that the right to life, whose full enjoyment is a prerequisite for enjoyment of all the other rights, is basic in its nature, and it requires that the States take positive steps to ensure conditions for a decent life.”²⁹⁷ In the case of the Court reported that failure to adopt all positive feasible measures is a violation of Article 4 of the American Convention, and of the San Salvador Protocol, especially regarding peoples and populations in positions of differentiated vulnerability. Therefore, a prevention duty already lies in the obligation to adopt all positive feasible measures and is supported by article 2 obligations in the ICCPR.²⁹⁸ Positive features that a State may pursue are identified in Article 10(1)(2) of the Protocol and protect the basic rights to health and education.

The State’s duty to take positive measures is accentuated precisely in connection with protection of the lives of vulnerable and defenseless persons, who are at risk. To identify said measures, it is necessary to resort to Article 10(2) of the San Salvador Protocol, as a provision that sheds light on interpretation of the positive measures that the State was under the obligation to take to ensure.

States have a cooperation duty to establish, maintain and enforce effective legal frameworks in order to prevent, reduce and remedy transboundary and global environmental harm that interferes with the full enjoyment of human rights.²⁹⁹ This duty is emphasized in previously mentioned *Pulp Mills case*:

“[t]he Parties have a legal obligation . . . to continue their co-operation through CARU and to enable it to devise the necessary means to promote the equitable utilization of the river, while protecting its environment”.³⁰⁰

In the context of the climate emergency, the obligation to adopt positive measures to prevent the violation of human rights under the American Convention requires of states to put conditions in place that reduce GHG emissions at the level of highest possible ambition, aligned with the global, collective goal of limiting temperature increase to 1.5°C above pre-industrial levels and

²⁹⁶ *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala Judgment Reparations and Costs* (2021) Inter-American Court of Human Rights. Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_77_ing.pdf, [Accessed: October 9, 2023].

²⁹⁷ *Case of the Indigenous Community Yakye Axa v. Paraguay Interpretation of the Judgment of Merits, Reparations and Costs* (2006) Inter-American Court of Human Rights. Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_142_ing.pdf, [Accessed: October 9, 2023].

²⁹⁸ United Nations High Commissioner on Human Rights (2004). *General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*. <https://digitallibrary.un.org/record/533996>.

²⁹⁹ Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (2018). <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/017/42/PDF/G1801742.pdf>, [Accessed: November 13, 2023].

³⁰⁰ ICJ, *Pulp Mills on the River Uruguay (Arg. v. Uru.)*, Judgment, 20 Apr. 2010, I.C.J. Reports 2010 (I).



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to adapting to climate-related impacts that violate human rights in order to preserve the right to life and to integrity. More specifically, limiting global warming to 1.5°C requires rapid, deep and sustained reductions in global greenhouse gas emissions, including reducing global carbon dioxide emissions by 45 per cent by 2030 relative to the 2010 level and to net zero around mid-century, as well as deep reductions in other greenhouse gases.³⁰¹ (see also question 1.2 in the request for advisory opinion)

In order to reach the 1.5°C temperature threshold set in the Paris Agreement, each Party has a number of legal obligations. Most of these are obligations of result, but they are procedural in nature and require parties to submit specific information at certain points in time in regular intervals and to report or account in accordance with agreed rules. The core legal obligation of all Parties is to prepare, communicate and maintain successive nationally determined contributions (or NDCs).³⁰²

This does not mean that the level of ambition included in NDCs is entirely left to parties' own discretion.

The Paris Agreement incorporates several normative parameters to progressively scale up mitigation ambition in light of the temperature goal. These include that each Party's successive NDC "will represent a progression beyond the Party's then current NDC and reflect its highest possible ambition, reflecting common but differentiated responsibilities and respective capabilities, in the light of different national circumstances", as stated in Article 4(3). Moreover, Parties' NDCs must be informed by the outcome of the Global Stocktake³⁰³ – which took place in 2023 for the first time.³⁰⁴ These elements are embedded within the multilaterally agreed, iterative 5-year processes under the Paris Agreement, which are purpose-built to increase climate action over time, and many of which are only about to start.

These normative parameters circumscribe the conduct expected of parties when carrying out their legal obligation to prepare and communicate their respective NDCs. They are the "ambition drivers" of Parties' NDCs.

³⁰¹ *Decision 1/CMA.3 parr 22* (2021). UN Climate Change Conference.

https://unfccc.int/sites/default/files/resource/Overarching_decision_1-CMA-3_1.pdf, [Accessed October 9 2023].

³⁰² *Paris Agreement Article 4(2)* (2015), entered into force 4 November 2016.

³⁰³ UNFCCC (2023) Outcome of the First Global Stocktake, Decision -/CMA.5, available at: https://unfccc.int/sites/default/files/resource/cma5_auv_4_gst.pdf [Accessed 16 December 2023].

³⁰⁴ Paris Agreement, Article 14 and Article 4(9). The Global Stocktake (GST) takes place for the first time in 2023 and every five years thereafter. The outcome of the GST shall inform the next round of NDCs which are due in 2025 and every 5 years thereafter. Linking with the requirements of progression and highest possible ambition in Article 4.3, the GST outcome is an important normative element to be considered by Parties when preparing their successive NDC. Article 14 (3) states that "3. The outcome of the global stocktake shall inform Parties in updating and enhancing, in a nationally determined manner, their actions and support in accordance with the relevant provisions of this Agreement, as well as in enhancing international cooperation for climate action", while Article 4(9) states "9. Each Party shall communicate a nationally determined contribution every five years in accordance with decision 1/CP21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement and be informed by the outcomes of the global stocktake referred to in Article 14." (emphasis added) The synthesis of the first Global Stocktake was released on 8 September 2023 and can be accessed here: <https://unfccc.int/documents/631600>.



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We submit to the Court that Article 4(3) should be also understood as a due diligence standard.³⁰⁵ It contains the substantive expectation of each party to deploy its “best efforts”, or simply do the best it can in each successive NDC.³⁰⁶ The operative word “will” was deliberately chosen by consensus of all parties, because it carries stronger legal weight than “should”, although it does not amount to a strict legal obligation of “shall”. Rather, it can be seen as a standard of conduct³⁰⁷ that each party will take all appropriate measures at its disposal.³⁰⁸ This was recognized in the IPCC Working Group III chapter on international cooperation, which observed that “[w]hile what represents a Party’s highest possible ambition and progression is not prescribed by the Agreement or elaborated in the Paris Rulebook ... these obligations *could be read to imply a due diligence standard*”.³⁰⁹

In fact, the Human Rights Committee has indicated regarding the nature of the general legal obligation imposed on States Parties to the ICCPR that “There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”³¹⁰

In light of the significant risk that climate change poses to human rights, we submit to this Court that “highest possible ambition” be understood in a way that each Party exerts its best efforts and uses all the means at its disposal to reduce – over time – all GHG emissions from activities which take place in its territory, or are under its jurisdiction or control, aligned with the 1.5 °C threshold.

As the Seabed Disputes Chamber of ITLOS confirmed, in order to act with due diligence, a party must deploy adequate means, exercise best possible efforts, and do the utmost.³¹¹ Accordingly, parties need to exercise best efforts in their climate action, including in their NDC. The NDC

³⁰⁵ L Rajamani, “Due Diligence in International Climate Law” in H Krieger et al (eds), *Due Diligence in the International Legal Order* (Oxford University Press 2020) 169; C Voigt and F Ferreira “Dynamic Differentiation”: The Principles of CBDR-RC, Progression and Highest Possible Ambition in the Paris Agreement” (2016) 5 *Transnational Environmental Law* 2, 285-303.

³⁰⁶ B Mayer “International Law Obligations Arising in relation to Nationally Determined Contributions» (2018) *Transnational Environmental Law* 7(2), 251-275; C Voigt “The Power of the Paris Agreement in International Climate Litigation” (2023) 32 *Review of European, Comparative and International Environmental Law* 2, 237-249 (open access).

³⁰⁷ Rajamani considers the concept ‘a regime-specific marker of due diligence’; see L Rajamani “Due Diligence in International Climate Law” in H Krieger et al (eds) *Due Diligence in the International Legal Order* (Oxford University Press 2020) 169.

³⁰⁸ See, e.g., the first report of the International Law Association (ILA) Study Group on Due Diligence in International Law, ‘First Report (7 March 2014) <https://www.ila-hq.org/en_GB/documents/first-report-washington-dc-2014>.

³⁰⁹ A Patt et al, “International Cooperation” in PR Shukla et al (eds), *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2022) 1451, 1466.

³¹⁰ United Nations High Commissioner for Refugees (2004) *General comment no. 31 [80] Article 8, The nature of the general legal obligation imposed on States Parties to the Covenant*.

³¹¹ International Tribunal for the Law of the Sea (2011) *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area (Request for Advisory Opinion submitted to the Seabed Disputes Chamber)* para. 110. Available at: https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_17/17_adv_op_010211_en.pdf, [Accessed 09 October 2023].



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would need to be based on a comprehensive assessment of all mitigation options in all relevant economic sectors. “Highest possible ambition” means “doing the utmost”. It also implies that the extraterritorial consequences, including on the marine environment, of actions need to be taken into account.³¹² This includes all anthropogenic emissions. It would, for example, hardly be justifiable for a State with significant fossil fuel production and/or exports, to claim “highest possible ambition” in its climate policy and to have acted with due diligence, if emissions caused by these productions and their exports remain entirely unaddressed.

Acting with due diligence requires Parties as a whole to deploy all adequate political, regulatory, legal, socio-economic, financial, and institutional capacities in defining their NDC objectives. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local - are in a position to engage the responsibility of the State Party.³¹³ Moreover, parties are expected to align their level of ambition with their respective responsibilities and capabilities, in light of national circumstances. This means that countries with higher responsibility and/or more capacity must go further and faster in their NDC objectives consistent with the emission pathways necessary to stay at maximum 1.5°C. Countries with less capacity may need more time and technical assistance in order to implement policies, plans and laws that reduce GHG emissions to these levels.

While it is clear that parties have the obligation to prepare, communicate and maintain an NDC, they arguably do not have an obligation of result under the Paris Agreement to achieve the objectives of their NDCs.³¹⁴ The second sentence of Article 4(2) provides that “Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such NDCs”.³¹⁵ This has been interpreted as not establishing an obligation of result on each party to implement or achieve its NDC, but to act with the intention to do so.³¹⁶

This does not mean, however, that the implementation and achievement of NDCs fall entirely outside the legal scope of the Agreement. It is submitted that the second sentence of Article 4(2) contains a legal obligation of result to pursue domestic mitigation measures. If a Party takes no measure, this would be a violation of that provision, but this obligation is coupled with a due diligence standard to achieve the NDC.³¹⁷ The achievement of the NDC itself does not become legally binding, but the measures adopted must be necessary, meaningful, timely and, indeed, effective to function as a means to this end.

The simple truth is that human rights cannot be effectively protected and preserved without addressing climate change and its adverse effects. Therefore, the American Convention needs to

³¹² This issue is relevant in several climate cases pending before the ECtHR, most directly in *Duarte Agostinho and others v Portugal and 32 Other States* App No 39371/20 (ECtHR, communicated 13 November 2020, Hearing held on 27 September 2023).

³¹³ *International Covenant on Civil and Political Rights* Article 2 (1966), entered into force 23 March 1976.

³¹⁴ *Paris Agreement Article 4(2)* (2015), entered into force 4 November 2016.

³¹⁵ *Ibid.*

³¹⁶ L Rajamani “The 2015 Paris Agreement: Interplay Between Hard, Soft and Non-Obligation” (2016) 28 *Journal of Environmental Law* 337; D Bodansky “The Legal Character of the Paris Agreement” (2016) 25 *Review of European, Comparative and International Environmental Law* 2.

³¹⁷ B Mayer “Obligations of Conduct in the International Law on Climate Change: A Defense” (2018) 27 *Review of European, Comparative and International Environmental Law* 130, 135.



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be read in light of the legal standards of result and of conduct contained in Paris Agreement, which implies that states have to reduce their emissions at a level aligned with the 1.5°C threshold in a way that reflects each party's highest possible ambition, and to adopt effective national measures to this end.

As mentioned above, this requires parties to take all necessary measures aligned with the collective pathway to rapidly, deeply, and immediately reduce GHG emissions by 45% in 2030 with a view to achieving global net-zero CO₂ emissions by 2050 and net-negative emissions thereafter. Reducing CO₂ emissions at this level also addresses the challenge of ocean acidification.

As stated, there is significant consensus from the scientific community that supports the need for duty of prevention with regards to furtherance of the impacts of the climate emergency. While the science is clear, climate change simultaneously ushers in an era where rapid change will happen on a large scale and may produce unpredicted consequences. Therefore, prevention must also be supported by principles of precaution.

To protect the climate system for the benefit of present and future generations of humankind, State parties to the UNFCCC have agreed to take precautionary measures to anticipate and prevent harm to the climate system. With the expectation that not all future events are predictable in totality, especially in highly variable situations caused by climate change, States must adopt a precautionary approach, which is dictated in furtherance of article 3(3) of the UNFCCC: “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”, which also informs the Paris Agreement.

Heads of State and Government gathered at the IX Summit of the Americas recognized that limiting the temperature increase to 1.5°C above pre-industrial levels, would significantly reduce the risks and impacts of climate change.³¹⁸ In sum, states, when adopting laws and regulations to prevent violations of human rights by the impacts of the climate emergency, must – at a minimum – align their measures with the 1.5°C temperature target and its respective emission pathway and timeline, including through the process of setting nationally determined contributions at the level of their highest possible ambition (in accordance with Article 2 and 4(3) of the Paris Agreement) and of achieving them.

Against this background and in the context of the specific rights contained in the American Convention, States have the following substantive and procedural obligations.

3. Substantive and Procedural State obligations to protect human rights in the climate emergency

AO-23/17³¹⁹ confirms that the right to life and personal integrity is under greatest threat for those in positions of greater vulnerability in the climate emergency (see III, A.2 above). And the Court

³¹⁸ OEA/Ser.E CA-IX/doc.4/22 Our Sustainable Green Future (Adopted by the Heads of State and Government on June 9, 2022)

³¹⁹ Inter American Court of Human Rights (2017). *Advisory Opinion OC-23/17*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf, [Accessed 09 October 2023].



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has confirmed that with respect to this right, States must take immediate actions to protect them from being violated under the American Convention without prejudice to the actions with regards to other rights affected by climate change such as those that have been outlined.

Those actions must be guided by:

- the obligation of prevention;
- the precautionary principle;
- the obligation of cooperation, and
- the procedural obligations relating to environmental protection in order to establish and determine the State obligations derived from the systematic interpretation of these provisions together with the obligations to respect and to ensure the rights to life and personal integrity established in the American Convention.³²⁰

To this end, States shall adopt all necessary measures to mitigate and adapt to the climate crisis. This requires states to adopt domestic laws to reduce GHG emissions to the highest extent possible and to protect those rights that come under threat by the climate emergency, as well as eliminate any provision that results in a violation of the guarantees established in the Convention (Art. 2 ACHR).

In order to prevent human rights from being violated and respond in the context of the climate emergency, the immediate obligations both substantive and procedural identified by the IACtHR in paragraph 111 of the AO 23/17 are of relevance and should be considered a baseline. The substantive obligations include: the duty to regulate, duty to supervise and monitor, create contingency plans, require and approve environmental impact assessments, duty to prepare a contingency plan, duty to mitigate if environmental measures occur.³²¹ These duties are consistent with adaptation and mitigation goals of the Paris Agreement (Arts. 2, 4 and 7). They are further detailed and emphasized by the 2016³²² WCEL Declaration on the Environmental Rule of Law purports that States must be required to establish monitoring and reporting systems that enable accurate assessments of the state of the environment and the pressures on it (III,a), and environmental assessment (III.d)³²³

As noted above, States have obligations to adopt measures that further mitigation goals in light of the climate crisis. States also have a duty to create national and international conditions favorable to the realization of the right to development, as well as their commitment to cooperate with one another to achieve this goal. These are ongoing obligations that seek to monitor and address, any potential impacts of climate change. These duties provide tools which combined with other State commitments are important for the realization of both substantive and procedural rights.

3.1. Regulate, Supervise and Monitor (Conduct of private actors)

³²⁰ Ibid.

³²¹ Inter-American Court of Human Rights (2017) *Advisory Opinion OC-23/17 paras 146-173*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf, [Accessed 09 October 2023].

³²² IUNC (2016). *IUCN World Declaration on the Environmental Rule of Law*.

³²³ Ibid.



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In the Court's Advisory Opinion 23/17 on State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity, the Court outlines positive measures that States must undertake within this context. Importantly, this Advisory Opinion stated that the right to a healthy environment "must be considered one of the rights [...] protected by Article 26 of the American Convention,"³²⁴ and therefore with the goal of progressive development, States must take positive measures to prevent the violation of this right. In Section B.1 of the AO 23/2017 the Court has reinforced States' duty to adopt all feasible "positive measures" (Para 109 and 121)³²⁵ to prevent human rights violations in the context of climate change which include the responsibilities to:

- (i) regulate;
- (ii) supervise and monitor;
- (iii) require and approve environmental impact assessments;
- (iv) establish contingency plans, and
- (v) mitigate, when environmental damage has occurred.³²⁶

In accordance with these responsibilities, States have the following duties:

(i) Duty to regulate

Pursuant to the OAS Principles on Environmental Law for Ecologically Sustainable Development (93),³²⁷ the duty to regulate extends to activities which are not carried out by the State. The scientific consensus by the IPCC confirms that carbon dioxide emissions are the main drivers of climate change. The current rate of climate change has elevated to the status of a climate emergency, and the largest share of carbon dioxide emissions since the beginning of industrialization comes from private enterprises.³²⁸ Therefore, States must regulate the activities of the private sector--that cause or can exacerbate the effects of the climate emergency and impair the enjoyment of human rights such as the right to life (art. 4) and the right to personal integrity (art. 5), such as fossil fuel extraction and combustion, waste incineration, deforestation, transport etc.

States' duty to regulate the activity of private actors with regard to environmental activities was established by the Court in the case of *Vera Rojas Et Al. v. Chile* in which the Court ruled that within the scope of a State's duty to regulate activities of the private sector, "States must adopt legislative and other measures to prevent...violations and to investigate, punish, and remedy...violations when they occur. States thus have a duty to make [legislation to] regulate companies so that their actions respect the human rights recognized in the different instruments of the inter-American system of human rights protection...companies must ensure that their

³²⁴ Inter-American Court of Human Rights (2017). *Advisory Opinion OC-23/17-*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf, [Accessed 09 October 2023]. Inter American Court of Human Rights, *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*. Judgment (Merits, Reparations and Costs) of February 6, 2020.

³²⁵ Inter-American Court of Human Rights (2017). *Advisory Opinion OC-23/17-*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdfhttps://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf, [Accessed 09 October 2023].

³²⁶ *Ibid.*, para 145.

³²⁷ 2018. Judiciary of Chile, Organization of American States and Ibero-American Judicial Summit (Cumbre Judicial Iberoamericana). Environmental Juridical Principles for Ecological Sustainable Development. Available online at (Spanish only): <https://servicios.pjud.cl/ManosLibro/files/assets/basic-html/page-1.html>.

³²⁸ Climate Accountability Institute. "*Carbon Majors*." <https://climateaccountability.org/carbon-majors/>.



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activities do not cause or contribute to human rights violations, and [States] must take steps to remedy said violations” (para. 85).³²⁹

Established case law from this Court also confirms that States have a duty to prevent human rights violations by private companies, and therefore must adopt legislative and other measures to prevent such violations, and to investigate, punish and provide reparation when they occur.³³⁰ State duties to regulate activities of the private sector are critically important toward the protection of human rights in the context of climate emergency. In the case of Indigenous Communities of the *Lhaka Honhat (Our Land) Association v. Argentina* the Court linked violation of the right to life and a healthy environment to activities of the private sector and determined that States’ duty to prevent this “encompasses all those legal, political, administrative and cultural measures that promote the safeguard of human rights and that ensure that eventual violations of those rights are examined and dealt with as wrongful acts.” (Para 207).³³¹

This is supported by the case of *Los Buzos Miskitos (Lemoth Morris y otros) Vs. Honduras*³³² in which the Court determined that it is the State’s duty to regulate, supervise and oversee the practice of dangerous activities by private companies that involve significant risks to the life and integrity of persons under their jurisdiction...States Parties must effectively prevent any impairment of the economic, social and cultural rights in the context of business activities, and must therefore adopt legislative, administrative and educational measures to ensure their effective protection (Para 46). To this end, the Court also emphasized that the Council has adopted the “*Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework.*”³³³ The interconnections among business, human rights, and climate change were recently highlighted in the UN Information Note on Climate Change and the Guiding Principles on Business and Human Rights. The Guiding Principles, established in 2011, do not explicitly address climate change. However, the UN Information Note emphasizes that Guiding Principle 12 explicitly references two key international human rights instruments: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. Since 2011, these instruments have been interpreted in a manner consistent with international environmental and climate law.³³⁴

In order to regulate private actor activities that would adversely impact the environment and human rights, the Court has detailed in the Miskitos case that States should adopt the following measures:

³²⁹ Inter American Court of Human Rights, *Case of Vera Rojas and Others vs. Chile*. Judgment (Preliminary Objections, Merits, Reparations and Costs) of October, 2021.

³³⁰ Inter American Court of Human Rights, *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*. Judgment (Merits, Reparations and Costs) of February 6, 2020.

³³¹ *Ibid.*, para 207.

³³² Inter American Court of Human Rights, *Case Buzos Miskitos (Lemoth Morris y otros) Vs. Honduras*. Judgment of August 31, 2021.

³³³ *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (2011). https://www.ohchr.org/sites/default/files/Documents/Issues/Business/A-HRC-17-31_AEV.pdf, [Accessed: 13 November, 2023].

³³⁴ Information Note on Climate Change and the Guiding Principles on Business and Human Rights (2023). <https://www.ohchr.org/sites/default/files/documents/issues/business/workinggroupbusiness/Information-Note-Climate-Change-and-UNGPs.pdf>, [Accessed: 13 November 2023].



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- a) appropriate policies for the protection of human rights;
- b) due diligence processes for the identification, prevention and correction of human rights violations, as well as to ensure decent and dignified work; and
- c) processes that allow businesses to remedy human rights violations that result from their activities, especially when these affect people living in poverty or belonging to vulnerable groups. The Court considers that, in this context, States should actively encourage businesses to adopt good corporate governance practices that focus on stakeholders and actions aimed at orienting business activity towards compliance with human rights and standards, including and promoting the participation and commitment of all the stakeholders involved, and the redress of affected persons. (para 49)

We further submit to the court to take into consideration that the need to implement the UN Guiding Principles into regulation activities has been cited in other cases, including the in the judgment in the case *Milieudefensie et al. v. Royal Dutch Shell Kingdom* of the Hague District Court in the Netherlands (para 2.5.22).³³⁵ In this case, the UN Guiding Principles on Business and Human Rights were used as an interpretative element to give content to an unwritten duty of care (“proper social conduct”), contained in Dutch tort law.³³⁶

(ii) Duty to supervise and monitor

The Court has expressly stated that it is the obligation of a State to supervise and monitor activities that could cause significant harm to the environment and that this entails the duty to develop and implement adequate independent monitoring and accountability mechanisms.³³⁷ As has been established, this is especially important in order to guarantee human rights, and to protect nature reserve areas and the territories of indigenous communities and other populations in positions of vulnerability.³³⁸

The duty to monitor and supervise complements the duty to regulate and is especially applicable to private sector activities. States must use monitoring and supervision in two ways: (1) they must monitor and supervise the activities of the private sector in order to inform the type of regulation that is needed and adjust regulation appropriately. Pursuant to the principle of prevention States should employ measures of monitoring and supervision of business activities in order to gauge how human rights are being upheld by the sector implement policies that prevent further violations from occurring; and (2) States must use mechanisms of supervision and monitoring of activities to ensure that regulation measures are being observed by the private sector. When they are not, States have an obligation to hold companies accountable for the violation of human rights. Mechanisms of monitoring and accountability must not only include

³³⁵ *Milieudefensie et al. v. Royal Dutch Shell plc. - Climate Change Litigation* (2019).

<http://climatecasechart.com/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/>.

³³⁶ Under the Dutch Civil Code Article 6:162 a ‘tortious act’ is defined as: “a violation of someone else’s right (entitlement) and an act or omission in violation of a duty imposed by law or of what according to unwritten law has to be regarded as proper social conduct, always as far as there was no justification for this behaviour.”

³³⁷ Inter-American Court of Human Rights (2017). *Advisory Opinion OC-23/17- para. 152*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf, [Accessed 09 October 2023].

³³⁸ Inter American Court of Human Rights, *Case of of the Kaliña and Lokono Peoples v. Suriname*. Judgment of November 25, 2015. https://www.corteidh.or.cr/docs/casos/articulos/seriec_432_ing.pdf.



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preventive measures, but also appropriate measures to investigate, punish and redress possible abuse through effective policies, regulations and adjudication (para 154).³³⁹

Similar to the duty to regulate, the Court has taken note that the UN Guiding Principles on Business and Human Rights should be observed by business enterprises to respect and protect human rights, and prevent, mitigate and assume responsibility for the adverse human rights impacts of their activities.³⁴⁰ Therefore, business entities have a duty to respect human rights and to guarantee access to remedy in case of violations and States have an obligation to set boundaries through regulation and follow through with monitoring and supervision to ensure that regulations are being adequately complied with. When the State fails to act with due diligence on regulation, supervision and monitoring, it may be found liable, such as in the case of *Empregados Da Fábrica De Fogos De Santo Antônio De Jesus Vs. Brazil*.³⁴¹ In this case, the State was found to be liable for the violation of human rights by failure of its duty to implement regulation measures on business activities. The Court ordered that the State provides a report on the implementation of the UN principles especially with regard to protecting the rights of people in positions of vulnerability and demonstrating that there had been alignment of business standards with regard to the actions of individuals and the risks to human rights. (para 291).³⁴²

Related to human rights and the environment, activities of the private sector that States must monitor and supervise include activities which contribute to GHG emissions, extraction activities that cause environmental degradation, and pollution linked to private operations. All of which can negatively impact several rights protected by the Convention, but especially the right to a healthy environment which was established by AO 23/17. In the case of *Indigenous Communities of The Lhaka Honhat (Our Land) Association V. Argentina*, the Court established that, regarding the right to a healthy environment the obligation to prevent is an obligation “of means or conduct and non-compliance is not proved by the mere fact that a right has been violated.” Since the foregoing is applicable to all the rights included in the American Convention, it is useful to establish that it also refers to the rights to adequate food, to water and to take part in cultural life.” (para 207).³⁴³ Furthermore, the Court indicated that regarding land rights, States have the obligation to establish adequate mechanisms to monitor and supervise certain activities in order to ensure human rights, protecting them from actions of public entities and also private individuals.³⁴⁴

In conclusion, it is important to recognize that, even though States have the primary responsibility to protect, promote, secure the fulfilment of, respect, ensure respect of and protect human rights, non-state actors such as transnational corporations and other business enterprises, as organs of society, are also responsible for promoting and securing the human rights set forth

³³⁹ Inter-American Court of Human Rights (2017). *Advisory Opinion OC-23/17- para. 152*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf [Accessed 09 October 2023].

³⁴⁰ *Ibid.*, para 155.

Inter American Court of Human Rights, *Case of the workers of the fireworks factory in santo antônio de jesus dnd their families V. Brazil*. Judgment (Preliminary objections, Merits, Reparations and Costs) of July 15, 2020.

³⁴¹ Inter American Court of Human Rights, *Case of the workers of the fireworks factory in santo antônio de jesus dnd their families V. Brazil*. Judgment (Preliminary objections, Merits, Reparations and Costs) of July 15, 2020.

³⁴² *Ibid.*

³⁴³ Inter American Court of Human Rights, *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*. Judgment (Merits, Reparations and Costs) of February 6, 2020.

³⁴⁴ *Ibid.*



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in the Universal Declaration of Human Rights.³⁴⁵ While businesses may generate positive roles within the economy and society by bolstering job creation and economic growth, they may simultaneously produce adverse effects in terms of environmental health and pollution by driving large amounts GHG emissions, and violations of human rights. Some of the largest companies are overall responsible for at least 71% of global emissions.³⁴⁶ The Court should therefore provide greater guidance on obligations for States and actions to be taken by companies operating in Latin America, with regards to their duty to respect human rights.

(iii) Duty to require and approve environmental impact assessments (EIA)

The Inter-American human rights institutions have emphasized that “a minimal environmental quality” is a “precondition” for the proper exercise of fundamental rights³⁴⁷ including the right to a healthy environment. In considering and applying external sources, the decisive factor is to “give effect to the normative standard which best safeguards the rights of the individual.” In this case, taking into account well-established international environmental law principles, such as the precautionary principle, “best safeguards” the rights of the potentially affected individuals by placing the onus on the State(s) to take certain positive measures ex ante to identify risks—and to prevent—any potentially adverse environmental impacts that might have harmful human rights consequences. The obligation to respect and ensure rights under the American Convention entails a concomitant duty to prevent any environmental harm that could significantly affect or restrict the effective enjoyment of human rights, and to take affirmative steps to fulfill this obligation. The kinds of affirmative steps that a State can take to discharge its international

³⁴⁵ Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Right. United Nations Digital Library. <https://digitallibrary.un.org/record/501576>.

³⁴⁶ "Carbon Majors Report 2017." CDP (Carbon Disclosure Project), <https://cdn.cdp.net/cdp-production/cms/reports/documents/000/002/327/original/Carbon-Majors-Report-2017.pdf?1501833772>.

³⁴⁷ See IACHR, *Kuna of Madungandí and Emberá of Bayano Indigenous Peoples and Their Members v. Panama*, 30 Nov. 2012, Report No. 125/12 (Merits), Case 12.354, ¶ 233 (internal citations omitted) (holding that “it is clear that several fundamental rights enshrined [in the Convention] require, as a precondition for their proper exercise, a minimal environmental quality, and suffer a profound detrimental impact from the degradation of the natural resource base. The [Commission] has emphasized in this regard that there is a direct relationship between the physical environment in which persons live and the rights to life, security, and physical integrity. These rights are directly affected when there are episodes or situations of deforestation, contamination of the water, pollution, or other types of environmental harm on their ancestral territories.”). Cf. IACHR, *Indigenous and Tribal Peoples’ Rights over Their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*, OEA/Ser.L/V/II. Doc. 56/09, 30 Dec. 2009, 190-191. See also IACHR, *Report on the Situation of Human Rights in Ecuador*, OEA/Ser.L/V/II.96, Doc. 10 rev. 1, 24 Apr. 1997, Chap. VIII (“The realization of the right to life, and to physical security and integrity is necessarily related to and in some ways dependent upon one’s physical environment. Accordingly, where environmental contamination and degradation pose a persistent threat to human life and health, the foregoing rights are implicated.”); IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, OEA/Ser.L/V/II, 28 June 2007, 250-253 (expressing concern at “severe environmental pollution” caused by certain development projects and “the harmful effects they have had on the continuity of basic subsistence activities,” such as fishing, and on the health of indigenous and peasant communities); IACHR, *Follow-up Report—Access to Justice and Social Inclusion: the Road Towards Strengthening Democracy in Bolivia*, OEA/Ser.L/V/II.135, Doc. 40, 7 Aug. 2009, 158 (finding violations of human rights stemming from the exploitation of natural resources, such as “adverse effects on health and production systems; changes in domestic migration patterns; a decline in the quantity and quality of water sources; impoverishment of soils for farming; a reduction in fishing, animal life, plant life, and biodiversity in general, and disruption of the balance that forms the basis of ethnic and cultural reproduction”).



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obligations in this regard. Requiring and approving environmental impact assessments is part of those steps.

An environmental impact assessment (“EIA”) has been defined as a “national procedure for evaluating the likely impact of a proposed activity on the environment”.³⁴⁸ As for the duty to require – through regulation – and approve social and environmental impact studies, the Court has recognized this duty as part of the obligation of prevention of environmental damage that affects human rights. In the context of the climate emergency, this obligation implies: (1) ensuring the integration of the climate change impacts into the environmental impact assessment processes of projects (Environmental Impact Assessment – EIA) and policies (Strategic Environmental Assessment – SEA); and (2) giving due consideration to the results of such climate impact assessments when making the final decision.³⁴⁹

As defined by the Court in AO 23/17, this regulation must be clear with regard to:

- (i) the proposed activities and the impact that must be assessed (areas and aspects to be covered);
- (ii) the process for carrying out an environmental impact assessment (requirements and procedures);
- (iii) the responsibilities and duties of project proponents, competent authorities and decision-making bodies (responsibilities and duties);

³⁴⁸ 1991 Convention on Environmental Impact Assessment in a Transboundary Context, 1989 U.N.T.S. 309 (entered into force on 10 Sept. 1997) (hereinafter the “Espoo Convention”), art. 1(vi).

³⁴⁹ There is a wide range of sources on which to base this obligation, see UNFCCC, art. 4; IACHR, Resolution 3/2021, para. 10; A/74/161 (2019), par. 64; International Law Association, Declaration of Legal Principles Relating to Climate Change, Resolution 2/2014; International Law Commission, Protection of the atmosphere: Text and title of the draft guidelines by the Drafting Committee on second reading, 15 May 2021, A/CN.4/L.951, guideline 4, <https://legal.un.org/ilc/reports/2018/spanish/chp6.pdf>; Group of Experts on Global Climate Obligations, Oslo Principles on Global Obligations to Climate Change, available at: https://globaljustice.yale.edu/sites/default/files/files/Principios_de_Oslo.pdf; some national and regional regulations can also be highlighted, for example, Law No. 12,187 of Brazil (Article 6) and Directive 2014/52/EU; a review of the international situation of the inclusion of climate change in environmental assessment processes through regulations and guides can be found in Enríquez de Salamanca Sánchez-Cámara, A., Consideration of climate change in the environmental impact assessment of linear transport infrastructures, National University of Distance Education, Doctoral thesis, 2017; a list of implementation guides can be found in Sabin center for climate change law, EIA Guidelines for Assessing the Impact of a Project on Climate Change <https://climate.law.columbia.edu/content/eia-guidelines-assessing-impact-project-climate-change>; Likewise, jurisprudence within and outside the region has been recognizing this duty, whether or not there is an express reference to climate change in the regulations on EIA, for example, the Supreme Court of Justice of Chile can be highlighted: Galindo Gacitúa, Saba Ester et al. v. Environmental Assessment Service of the Region of Antofagasta (judgment of April 19, 2022), Supreme Court of Justice of Mexico: Amparo in revision 610/2019 (judgment of January 15, 2020), 9th Federal Court of Rio Grande do Sul: Instituto Preserve et al. v. Copelmi and IBAMA (decision of 31 August 2021); outside the region, this has been recognized by courts in the United States, Australia, France, South Africa, Kenya and India, among others; generally speaking, courts have accepted that there is a sufficient causal link between the release of GHG emissions (or other climate impacts) by projects, the warming of the climate system and its resulting impacts; This link is not broken by the fact that there are a variety of causes acting cumulatively; on this question see Medici-Colombo, G., “You cannot be serious! Climate crisis, authorization of carbon-intensive projects and their judicial control”, PhD thesis, Universitat Rovira i Virgili, 2021; Mayer, B., “Climate assessment as an emerging obligation under customary international law”, *International & Comparative Law Quarterly*, 2019.



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- (iv) how the environmental impact assessment process will be used in approval of the proposed actions (relationship to decision-making), and
- (v) the steps and measures that are to be taken in the event that due procedure is not followed in carrying out the environmental impact assessment or implementing the terms and conditions of approval (compliance and implementation).³⁵⁰

EIAs are important tools that provide objective measurement of the possible impact on the land and people to inform policy and regulation. It is also an important tool in assessing any impact that might affect the territory of another State or in common spaces to prevent transboundary environmental harm. Transboundary Environmental Impact Assessments (TEIAs) allow authorities “to give explicit consideration to environmental factors at an early stage in the decision-making process,” serve as “a necessary tool to improve the quality of information presented to decision makers,” and help ensure that “environmentally sound decisions can be made paying careful attention to minimizing significant adverse impact, particularly in a transboundary context.” AO 23/17 (para 156) — emphasized that for the protection of the right to information, EIA’s are —especially pertinent to upholding the rights to the traditional lands of indigenous people. In the case of *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*³⁵¹ this Court reaffirmed the principle that indigenous peoples have rights to their traditionally used and occupied territory, and that these rights arise autonomously under international law.³⁵² Simultaneously, the Court has found that EIAs are critical to ensure that the members of indigenous communities are aware of the possible risks, including the environmental and health risks, so that they can evaluate, in full knowledge and voluntarily, whether or not to accept the proposed development or investment plan.³⁵³

It is crucial to note as well that EIA is complemented and strengthened by conducting Strategic Environmental Assessments (SEA). An EIA is carried out to evaluate the impact an existing project has on the environment. This is a critical tool for cultivating an understanding about best practices and causal relations between projects and their impact. However, an SEA is conducted to determine the future impact that a project may have and is carried out at the planning stage in order to make decisions about what might need to be altered in order to take positive and preventative measures.³⁵⁴ Both are important to upholding indigenous rights, but it is also crucial to principles of access to information (Article 13 of Convention), and access to environmental information. Both EIA and SEA must include a comprehensive evaluation of social impacts as well. Social and environmental impact studies are developed prior to the approval of projects

³⁵⁰ Inter American Court of Human Rights (2017). *Advisory Opinion OC-23/17 para 150*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf, [Accessed 09 October 2023].

³⁵¹ Inter American Court of Human Rights, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Judgment (Merits, Reparations and Costs) of August 31, 2001 https://www.corteidh.or.cr/docs/casos/articulos/seriec_63_ing.pdf

³⁵² Page, Alex. "Indigenous Peoples' Free Prior and Informed Consent in the Inter-American Human Rights System." *Sustainable Development Law and Policy*, Summer 2004, 16-20.

³⁵³ Inter American Court of Human Rights (2017). *Advisory Opinion OC-23/17*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf, [Accessed 09 October 2023].

³⁵⁴ UNEP (2004) *Environmental impact assessment and strategic environmental assessment: towards an integrated approach*. Available at https://wedocs.unep.org/bitstream/handle/20.500.11822/8753/Environmental_impact_assessment.pdf?sequence=3&isAllowed=1, [Accessed: 19 October 2023].



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(public and private) and policies (programs and plans) that may have significant effects on the environment and interfere with the full enjoyment of human rights.³⁵⁵

In particular, the integration of the climate change impacts and risks implies the consideration and assessment of greenhouse gas emissions, directly or indirectly, as a result of decision-making. This task should include both upstream and downstream impacts of the supply chain into which the assessed activity is integrated.³⁵⁶

The assessment of these impacts must be carried out in a reasoned and reasonable manner, considering their incremental and cumulative nature and avoiding underestimating their relevance (significance) through their mere comparison with total emissions at national or global level.³⁵⁷ In their assessment, authorities must consider, among other things, the fit of the projects or policies and their impacts on the short-, medium- and long-term climate planning assumed in response to commitments at the national and international levels,³⁵⁸ including net-zero emissions or carbon neutrality targets or national carbon budgets, if any. Likewise, promoters should be required to explain the correspondence of the proposed activity with their emission reduction plans.³⁵⁹

On the other hand, in the context of the climate emergency, this obligation requires ensuring, in the impact assessment processes, the inclusion and assessment of the impacts of climate change on projects, plans, policies or programs, as well as on the resources that the projects affect (e.g.,

³⁵⁵ United Nations (2018). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment A/HRC/37/59, Framework principle 8.* Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/017/42/PDF/G1801742.pdf>, (Accessed: 13 November 2023).

³⁵⁶ A/74/161 (2019), paragraph 64; this concerns *downstream* and *upstream* emissions. For instance, several courts have recognized the need to consider such 'indirect' emissions, even when they occur outside the jurisdiction where the project is being evaluated. For example, the New South Wales Land and Environment Court in the case "*Gray v. The Minister of Planning and Ors*" [2006] NSWLEC 720 (judgment of November 27, 2006); Land and Environment Court of New South Wales in the case "*Gloucester Resources Limited v. Minister of Planning*" [2019] NSWLEC 7 (judgment of February 8, 2019) (regarding 'scope 3 emissions' from a coal mine); Administrative Tribunal of Marseille in the case "*Association Les Amis de la Terre France et al. v. Le Préfet des Bouches-du-Rhône et al, N° 1805238*" (judgment of April 1, 2021) (regarding extraterritorial upstream impacts of a bio-refinery project).

³⁵⁷ Inter-American Court of Human Rights, Advisory Opinion OC 23/17, paragraph 165; Inter-American Commission on Human Rights, Resolution 3/2021, paragraph 10; courts from various jurisdictions have rejected the so-called 'drop in the ocean' argument, which seeks to dismiss the relevance of any individual contribution to climate change. For example, the United States Court of Appeals for the Ninth Circuit in the case "*Center for Biological Diversity v. National Highway Traffic Safety Administration*" (judgment of August 18, 2008); Land Court of Queensland in the case "*Adani Mining Pty Ltd v. Land Services of Coast and Country et al.*" [2015] QLC 48 (judgment of December 15, 2015); Land and Environment Court of New South Wales in the case "*Gloucester Resources Limited v. Minister of Planning*" [2019] NSWLEC 7 (judgment of February 8, 2019); District Court of The Hague in the case "*Urgenda Foundation v. The Netherlands*," ECLI:NL:RBDHA:2015:7196 (judgment of June 24, 2015).

³⁵⁸ It should be noted that there is an obligation on the part of states to set emission reduction targets ambitiously and in accordance with the principle of common but differentiated responsibilities and respective capacities and national circumstances. This obligation arises from the international legal framework on climate change but also from human rights law, within the context of the prevention obligation. Inter-American Commission on Human Rights, Resolution 3/2021, paragraph 41; 9th Federal Court of Rio Grande do Sul: "*Instituto Preservar et al. v. Copelmi and IBAMA*" (decision of August 31, 2021).

³⁵⁹ InterAmerican Commission on Human Rights (2021) *Climate Emergency Scope of Inter-American Human Rights Obligations*, Resolution 3/2021 par. 44.



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availability of fresh water), for the purposes of adaptation and risk reduction considerations ('reverse EIA').³⁶⁰ Finally, it should be remembered that there is a duty to assess the human rights' impacts of actions in response to climate change, whether mitigation or adaptation measures, including the development of renewable energies.³⁶¹

(iv) Duty to establish contingency plans

The Court has deliberated that States should have a contingency plan to respond to environmental emergencies or disasters.³⁶² Within the context of the climate emergency, States' safety measures and procedure to minimize the consequences of climate disasters should take into consideration the vulnerable communities that are greater impacted by climate change impacts (low-onset impacts or disasters).

The State obligation to regulate, supervise, monitor, and conduct EIA is further complemented by the duty to establish contingency plans. When environmental damages occur which violate human rights, States must be able to address the damages with appropriate measures. This is specifically relevant to transboundary harm. Within Resolution 3/21,³⁶³ the Inter-American Commission on Human Rights emphasized states' extraterritorial obligations in environmental and climate matters. It stated that a State is responsible not only for actions and omissions in its territory, but also for those within its territory that could have effects on the territory or inhabitants of another State. Accordingly, States have the obligation, within their jurisdiction, to regulate, supervise and supervise activities that may significantly affect the environment inside or outside their territory. In addition, it is necessary to establish a contingency plan, in order to have safety measures and procedures to minimize the impacts of large environmental accidents, and mitigate the significant environmental damage that could be generated (Para 4038).³⁶⁴

³⁶⁰ See, for example, the Supreme Court of Chile, *Jara Alarcón, Luis against the Environmental Evaluation Service*, Case No. 8573-2019, (judgment of January 13, 2021); in this regard, reference can be made to Agrawala, S., et al, "Incorporating climate change impacts and adaptation in Environmental Impact Assessments: Opportunities and Challenges," OECD Environmental Working Paper No. 240, OECD Publishing, 2010; Wentz, J., "Considering the Effects of Climate Change on Natural Resources in Environmental Review and Planning Documents: Guidance for Agencies and Practitioners," *Sabin Center for Climate Change Law, Columbia Law School*, 2016.

³⁶¹ OHCHR (2013). *Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, Focus report on human rights and climate change A/HRC/25/53*.

³⁶² Inter American Court of Human Rights (2017). *Advisory Opinion OC-23/17 Par. 171*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf, [Accessed 09 October 2023].

³⁶³ InterAmerican Commission on Human Rights (2021) *Climate Emergency Scope of Inter-American Human Rights Obligations*, Resolution 3/2021.

³⁶⁴ *InterAmerican Commission on Human Rights (2021) Climate Emergency Scope of Inter-American Human Rights Obligations*, Resolution 3/2021 par. 38.



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3.2 Loss and Damages: Preventing, minimizing and addressing economic and non-economic consequences of climate change

Loss and damages related to the climate emergency are the consequences of climate change that surpass what states and people can adapt to.³⁶⁵ These consequences can be devastating for communities, especially those who are particularly vulnerable. Loss and damages can be environmental, socio-economic, or cultural in nature. The Paris Agreement recognizes the importance of averting, minimizing, and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events (Art. 8). At COP27 in Sharm-el Sheikh in Egypt in 2022, Parties to the UNFCCC and the Paris Agreement addressed financial arrangements for loss and damage, including through the establishment of a Response Fund for Loss and Damage.³⁶⁶ At COP28 in Dubai, in December 2023, Parties adopted the operational guidelines for that Fund.

The IPCC Sixth Assessment Report noted with great concern the growing gravity, scope, and frequency in all regions of loss and damage associated with the adverse effects of climate change, resulting in devastating economic and non-economic losses, including forced displacement and impacts on cultural heritage, human mobility and the lives and livelihoods of local communities, and underlines the importance of an adequate and effective response to loss and damage.

Climate change affects several human rights, including the right to a healthy environment. In its advisory opinion 23/2017, the Court stated that the protection of this right is not only intended to protect people's interest in ecosystems, but also aims at the protection of nature and all its components for their intrinsic value.³⁶⁷ Therefore, States must also adopt measures to protect ecosystems and endangered species, and they should adopt a human rights approach in doing so.

To prevent, minimize and address economic and non-economic loss and damage associated with the adverse effects of climate change State Parties should be reminded that they have an obligation to protect their people from the adverse impacts of climate change, especially vulnerable communities such as indigenous communities whose livelihoods are strongly dependent on the land and the surrounding ecosystems.³⁶⁸ When they fail to do so, they should be deemed responsible. Adaptation measures must be timely and adequate to aver the risk of significant environmental degradation that can compromise the effective enjoyment of the rights to life and personal integrity.

When environmental degradation – due to climate change – and its impacts on individual rights are foreseeable by the States, based on scientific information available to them, States have a duty to take adaptive measures to prevent, or at least minimize, both economic and non-economic

³⁶⁵ Adelle Thomas. "Loss and damage: A moral imperative to act." <https://www.un.org/en/climatechange/adelle-thomas-loss-and-damage>
<https://www.un.org/en/climatechange/adelle-thomas-loss-and-damage>

³⁶⁶ United Nations, The Conference of the Parties, *Decision -/CP.27 Sharm el-Sheikh Implementation Plan*, https://unfccc.int/sites/default/files/resource/cop27_auv_2_cover%20decision.pdf
https://unfccc.int/sites/default/files/resource/cop27_auv_2_cover%20decision.pdf

³⁶⁷ InterAmerican Commission on Human Rights (2021) *Climate Emergency Scope of Inter-American Human Rights Obligations*, Resolution 3/2021 p. 5.

³⁶⁸ See *Torres Strait v. AUS*, Human Rights Committee.



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losses. In particular, when foreseeable climate change impacts have direct, serious repercussions on the right to life and survival, because of their intensity or duration, or the physical or mental harm that they cause, then State's failure to adequately act constitutes a violation of those rights.³⁶⁹ When the impacts of climate change seriously damage people's rights and livelihoods, States have the duty to provide adequate compensation for the harm suffered, to engage in consultations with the affected people in order to conduct needs assessments and continue the implementation of measures to guarantee a safe existence of the communities involved, reviewing their effectiveness.³⁷⁰

States should always, to the best of their ability, prevent environmental damage from occurring. However, in the case of unforeseen circumstances, due to the variable nature of climate change, it may be difficult to predict with absolute certainty how climate events will manifest. This is particularly relevant to extreme weather events, to certain measures that States must take in the event of an urgent and emergency situation, where lives are at stake. However, failure to adequately plan and prevent is also possible, and in cases where there is adequate planning, monitoring and supervision have not taken place and environmental damages have occurred, States have a duty to mitigate the impacts in order to protect human rights from being violated.

The Court established that when environmental damage occurs, the State has a duty to mitigate it.³⁷¹ The obligation to mitigate the damages must be fulfilled by using best available science and technology.³⁷² Some mitigation measures indicated by the Court are: "clean-up and restoration within the jurisdiction of the State of origin; containment of the geographical range of the damage to prevent it from affecting other States; collection of all necessary information about the incident and the existing risk of damage; in cases of emergency in relation to an activity that could produce significant damage to the environment of another State, the State of origin should, immediately and as rapidly as possible, notify the States that are likely to be affected by the damage; once notified, the affected or potentially affected States should take all possible steps to mitigate and, if possible, eliminate the consequences of the damage, and in case of emergency, any persons who could be affected should also be informed".³⁷³

Furthering the point on due diligence obligations of states to regulate non-state actors such as businesses, it is imperative of the States to take the preventative measures mentioned in this section (regulation, monitoring and supervision, carry out EIAs and establish contingency plans). When private sector actions create environmental damage, pursuant to the Paris Agreement, States have a responsibility to mitigate environmental harm. This includes the duty of the State to provide appropriate compensation to victims of human rights abuses and due diligence measures to ensure that violations do not go unpunished.

The actions of mitigation, adaptation and response to losses and damages generated by the climate emergency should be governed by several principles of international environmental law and human rights law. In international environmental law, differentiation (or differential

³⁶⁹ Torres Strait v. AUS par. 8.12.

³⁷⁰ Torres Strait v. AUS, par. 11.

³⁷¹ Inter-American Court of Human Rights (2017). *Advisory Opinion OC-23/17- para. 172*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf
https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf, [Accessed 09 October 2023].

³⁷² Ibid.

³⁷³ Ibid., para 172.



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treatment) has become a defining characteristic, placing a major burden on those countries that contribute more to the rising of the climate emergency or have a greater capacity to address the emergency, in order to reach a de facto equality between unequal states.³⁷⁴ This is reflected in the principle “common but differentiated responsibilities and respective capabilities” (Art. 3 UNFCCC). While recognizing that climate change is a common concern of humankind, the UNFCCC recognized different contributions to the emergency and different capability to adopt address climate change through mitigation, adaptation and finance.

The Paris Agreement embraces the principles of equity and common but differentiated responsibilities, but it departs from the binary differentiation-approach between developed and developing countries adopted in the UNFCCC, being evident in the fact that it has no Annexes. The Paris Agreement establishes that “This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.”(Art. 2.2).³⁷⁵ The Paris Agreement therefore does not draw a net line between developed and developing countries, acknowledging that the principle of common but differentiated responsibilities and respective capabilities is responsive to the different national circumstances. Moreover, the Agreement introduces the principles of “highest possible ambition” and “progression”. “Highest possible ambition” reflects the standard of care to be adopted by States in climate affairs, as they shall strive for their highest possible ambition in a way that their efforts reflect their common responsibilities, respective capabilities and national circumstances.³⁷⁶ The principle of progression establishes that the efforts of the State parties towards the temperature target will be progressive over time, i.e. States’ efforts cannot diminish in quantity and quality. Both progression and ambition are responsive to the parties’ national responsibilities and capabilities, allowing for greater differentiation.

The aforementioned principles should be adapted to the recommendations that the Court will provide regarding human rights and the climate emergency. States should be encouraged to achieve the highest possible ambition at the national level further to the best available science when developing and implementing policies designed to protect human rights regarding environmental matters. Furthermore, in the spirit of cooperation enshrined by the Convention and Principle 12 of the Rio Declaration and based on the principle of progression (65)³⁷⁷ States should be able to provide feedback on policies as well as the status of implementation on policies in a mutual setting in order to stimulate more and more ambitious human rights protections over time.

The enhanced transparency framework between State Parties established in the Paris Agreement should be effectively implemented.³⁷⁸ Through the Enhanced Transparency Framework, each

³⁷⁴ Christina Voigt and Felipe Ferreira, ‘Dynamic Differentiation’: The Principles of CBDR-RC, Progression and Highest Possible Ambition in the Paris Agreement, *Transnational Environmental Law*, 5:2 (2016), pp. 285–303, 2016 Cambridge University Press, doi:10.1017/S2047102516000212.

³⁷⁵ *Paris Agreement Article 2.2* (2015), entered into force 4 November 2016.

³⁷⁶ Christina Voigt and Felipe Ferreira, ‘Dynamic Differentiation’: The Principles of CBDR-RC, Progression and Highest Possible Ambition in the Paris Agreement, *Transnational Environmental Law*, 5:2 (2016), pp. 285–303, 2016 Cambridge University Press, doi:10.1017/S2047102516000212.

³⁷⁷ 2018. Judiciary of Chile, Organization of American States and Ibero-American Judicial Summit (Cumbre Judicial Iberoamericana). Environmental Juridical Principles for Ecological Sustainable Development. Available online at (Spanish only): <https://servicios.pjud.cl/ManosLibro/files/assets/basic-html/page-1.html>

³⁷⁸ *Paris Agreement Article 13* (2015), entered into force 4 November 2016.

party has the obligation to provide on a biannual basis mandatory information on, inter alia, the progress in implementation and achievement of its NDC (Art. 13.7 PA).

Based on the framework and access rights obligations outlined in section 3.5, the Court should recommend States to guarantee full access to information and to judicial proceedings in relation to their mitigation, adaptation and response to loss and damages actions – consequent to the impacts of the climate emergency – in order to ensure the protection of human rights adversely affected by the climate crisis.

It is widely acknowledged, and it has also been assessed by the IPCC that the climate crisis has differentiated impacts on certain geographic regions and communities, rendering them extremely vulnerable to extreme events and slow onsets. It is crucial that States take into account these vulnerabilities when adopting mitigation, adaptation and loss and damages measures. States should address vulnerabilities with fairness. In order to do so, the Court should encourage the establishment of national or transnational accountability mechanisms.

Obligations of transparency and accountability mechanisms are also outlined in para 223 of the AO 23/17, Article 5 of the UN Convention Against Corruption,³⁷⁹ as well as paragraphs 10 and 75 of the Rio+20 outcome document “The Future We Want.” These objectives are further supported by UN Sustainable Development Goal 16 which aims to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.³⁸⁰

(i) Individual and collective action

States must collaborate collectively in addressing the challenges posed by climate change to guarantee the right to reparation for damages generated by State actions or omissions in the face of the climate emergency, taking into account considerations of equity, justice and sustainability. An integral part of this response involves addressing and rectifying losses and damages incurred through cooperation and reparations.

(ii) Cooperation

Globally, there are various precedents and frameworks that guide the obligations on reparations created by the United Nations Commission on Human Rights (UNCHR) including the UN Basic Principles and the Guidelines on the Right to Reparation for Victims of Violations of Human Rights and International Humanitarian Law (1993)³⁸¹ and the Question of the impunity of perpetrators of human rights.³⁸² However, understanding that the impacts of climate change are far-reaching and may appear in many forms, guidelines on reparations must be matched by both

³⁷⁹ *The United Nations Convention against Corruption* (2004), entered into force 14 December 2005 Available at: https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

³⁸⁰ *Goal 16. Department of Economic and Social Affairs.* <https://sdgs.un.org/goals/goal16>.

³⁸¹ United Nations High Commissioner for Human Rights (2005). *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.* Resolution 60/147.

³⁸² UN Commission on Human Rights (1997). *Question of the impunity of perpetrators of human rights violations (civil and political): revised final report / prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119,* available at: <https://digitallibrary.un.org/record/240943?ln=en>, [Accessed 23 November 2023].

international and regional cooperation and agreement for the wronged party(ies) and victim(s) to be compensated.

States must respond collectively to the climate crisis. But collective action must go beyond curbing emissions and must extend to repairing losses and damages that have taken place as a result of their action, or lack thereof. Inter-State cooperation obligations should be interpreted widely and with regard to other relevant international and regional obligations. Regionally, Article 26 of the American Convention (and several articles of the Protocol of San Salvador) establishes the obligation of international cooperation with a view to the development and protection of economic, social and cultural rights – all of which are under threat in the context of the climate crisis. The obligation of cooperation at the international level is upheld by Article 6 of the Paris Agreement, which recognizes that Parties choose to pursue voluntary cooperative approaches to allow for higher ambition in their mitigation and adaptation and mitigation.

Furthermore, the impacts of the climate emergency are not confined by borders and impacts of climate change may be felt by communities in positions of vulnerability transnationally. The Court may therefore find itself in a position to be deciding on cases where reparations are appropriate in which a population has received damage or harm transnationally from another State that has obstructed their rights or prevented their home State from being able to properly respond. The Convention also recognizes the obligations of States to uphold their own human rights but also to abstain from impeding or obstructing other States from complying with the obligations derived from the Convention. To the extent that climate change negatively impacts rights in the American Convention on Human Rights (i.e. right to life under Article 4.1), in relevant Protocols of the Inter-American System (i.e. San Salvador Protocol, whose Article 11 recognizes the right to a healthy environment), all States have the duty to take appropriate measures to prevent breaches to the extent of their respective capabilities.

(iii) Reparations

The IACtHR is a powerful platform to issue measures of reparations and the Court indeed has a strong reputation for ordering rulings that include reparation and compensation measures in their rulings that are monetary and non-monetary in nature, such as monetary compensation, restitution, cessation, medical and psychological rehabilitation, apologies, memorials, legislative reform, and training programs for state officials, among others.³⁸³ In investigating avenues for reparations linked to the right of access to justice in environmental matters, the Court should consider the following aspects of the international and regional frameworks for human rights and the environment:

- Planning based on best-available science and environmental ethics, enabling strategies and options that remain robust under multiple plausible futures.³⁸⁴

³⁸³ Antkowiak, Thomas M. "A dark side of virtue: the Inter-American Court and reparations for indigenous peoples." *Duke Journal of Comparative & International Law*, vol. 25, no. 1, fall 2014, pp. 1+. *Gale In Context: Environmental Studies*, link.gale.com/apps/doc/A413787681/GRNR?u=wash11212&sid=bookmark-GRNR&xid=ab21e2b2, [Accessed 4 June 2023].

³⁸⁴ The IUCN World Congress on Environmental Law, Rio de Janeiro (Brazil) from 26 to 29 April 2016, <http://www2.ecolex.org/server2neu.php/libcat/docs/LI/MON-091064.pdf>.



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- Rio Declaration, Principle 13. States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.
- Article 8 of the Paris Agreement which recalls the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts and outlines ways to support communities that experience adverse effects of climate change. Areas of cooperation and facilitation of support outlined in the Article include non-monetary losses and responses which can and should be utilized at the State level in addressing losses from communities in positions of vulnerability and especially communities that have intersectional vulnerabilities.
- Article XIII of the American Declaration on the Human rights of Indigenous Peoples which states: “States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious, and spiritual property taken without their free, prior, and informed consent or in violation of their laws, traditions, and customs.”
- Article 16 of the ILO 169 Indigenous and Tribal people Convention which states: “Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist ... When such return is not possible ... these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development.” If communities prefer "compensation in money or in kind," they may exercise that option. The Article concludes by emphasizing, "[p]ersons thus relocated shall be fully compensated for any resulting loss or injury."
- The Rome Statute of the International Criminal Court requires the establishment of "principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation," directs the States Parties to establish a trust fund for victims, and orders the Court "to protect the safety, physical and psychological well-being, dignity and privacy of victims." Subsequently, the U.N.-backed Extraordinary Chambers in the Courts of Cambodia was granted the competence to order "collective and moral reparations" to civil parties before it.
- The Santiago Network for loss and damages was created under the UNFCCC with the objective of “catalysing technical assistance of relevant organisations, bodies, networks and experts, for the implementation of relevant approaches for averting, minimise and addressing loss and damage at the local, national and regional level, in developing countries that are particularly vulnerable to the adverse effects of climate

2018. Judiciary of Chile, Organization of American States and Ibero-American Judicial Summit (Cumbre Judicial Iberoamericana). Environmental Juridical Principles for Ecological Sustainable Development. P.73 Available online at (Spanish only): <https://servicios.pjud.cl/ManosLibro/files/assets/basic-html/page-1.html>.

change.”³⁸⁵ Once active this will allow States who have experienced or expect to experience damages due to the climate emergency which could receive compensation.

- NbS definition and criteria established by the UN Environment Assembly and the IUCN Global Standard for NbS.³⁸⁶

Actions perpetrated by the State or perpetrated by a third party but backed by the State which cause undo harm to people within the State should be given the opportunity to seek redress at the national and international level. Similarly, inaction to prevent or yield an activity that causes undo harm toward people within the States jurisdiction should also provide the basis for a reparations case at the IACtHR level. Mechanisms already in place within the IACtHR should be activated in these cases with a focus on equity, justice and sustainability.

Pursuant to Article 8 of the Paris Agreement which is devoted to loss and damage, the inclusion of Loss and Damages included in the Transparency Framework and the Global Stocktake at the international level will enable countries to officially report on the impacts they have suffered in the past and expect to happen in the future, the current and planned activities to avert, minimize and address loss and damage, and the institutional arrangements to implement these activities.

An important mechanism for potential victims to bring relevant information forward can be found in the Paris Rulebook regarding the Enhanced Transparency Framework.³⁸⁷ Most vulnerable countries can report their climate-related loss damage in their biennial transparency reports in the section on impacts and adaptation. Developing countries can submit their technology transfer, capacity building and financial support needed and received under Articles 9, 10 and 11 of the Paris Agreement.³⁸⁸

Another essential aspect for damage repair is the impact of the climate crisis on non-human species and the possibility of safeguarding them through the recognition of "rights of nature" and "interspecies justice". This is a central theme, considering that climate change could extinguish 40% of existing species (IPCC, 2007).

In recent years there have been important developments in both legal systems and jurisprudence to extend reparations to breaches of environmental obligations.³⁸⁹ Recognition of the importance of ecological function has led to including both restoration of the damaged environment and, where the recovery of the damaged site will be long or permanently delayed, compensatory restoration “not of the same but of similar level of resources and/or

³⁸⁵ United Nations Framework Convention on Climate Change (2019). Decision 2/CMA.2 Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts and its 2019 review. <https://unfccc.int/documents/209506>.

³⁸⁶ IUCN. (2020). Global Standard for Nature-based Solutions. A user-friendly framework for the verification, design and scaling up of NbS. First Edition. Available from: <https://portals.iucn.org/library/sites/library/files/documents/2020-020-En.pdf>.

³⁸⁷ Decision 18/CMA.1 Modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement. Available online at: https://unfccc.int/sites/default/files/resource/cma2018_3_add2_new_advance.pdf.

³⁸⁸ Decision 18/CMA.1 Modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement (E. Reporting Framework). Available online at: https://unfccc.int/sites/default/files/resource/cma2018_3_add2_new_advance.pdf.

³⁸⁹ Payne, Judicial Development, pp. 459-460; see Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica/Nicaragua) (Judgment of 2 February 2018 on Compensation owed by Nicaragua to Costa Rica) ICJ, paras 4 1-42 (full reparation can require compensation for “damage caused to the environment, in and of itself”).



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services, including, as appropriate, at another site”.³⁹⁰

Compensation is a financial remedy that is required to address damage that is not made good by restitution. International law has now accepted various methods of valuing the environment as such, with a priority set on maintaining and restoring ecological functions.³⁹¹ Ecosystem approaches, the definition and attributes established by the UN Environment Assembly for NbS are of relevance in restoring ecological functions:

“Nature-based solutions are actions to protect, conserve, restore, sustainably use and manage natural or modified terrestrial, freshwater, coastal and marine ecosystems which address social, economic and environmental challenges effectively and adaptively, while simultaneously providing human well-being, ecosystem services, resilience and biodiversity benefits.”³⁹²

These functions that have been deemed as essential in the guarantee of human rights in accepted principles³⁹³ and regional jurisprudence.³⁹⁴

The American Declaration on the Rights of Indigenous People (art. 14) and UNDRIP (Art.11)³⁹⁵ establish that “*States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.*”

³⁹⁰ E. Brans, “Estimating Damages under the 2004 EC Directive on Environmental Liability”, in F. Maes (ed), *Marine Resource Damage Assessment, Liability and Compensation for Environmental Damage* (1st ed.) (Kluwer Academic Pub, 2005), pp. 3, 23.

³⁹¹ M.T. Huguenin et al., “Assessment and Valuation of Damage to the Environment”, in C. Payne and P. Sand (eds), *Gulf War Reparations and the UN Compensation Commission: Environmental Liability* (Oxford University Press, 2015), PP. 67-94.

³⁹² UNEP/EA.5/Res.5 Resolution adopted by the United Nations Environment Assembly on 2 March 2022 5/5. Nature-based solutions for supporting sustainable development <https://wedocs.unep.org/bitstream/handle/20.500.11822/39864/NATURE-BASED%20SOLUTIONS%20FOR%20SUPPORTING%20SUSTAINABLE%20DEVELOPMENT.%20English.pdf?sequence=1&isAllowed=y>.

³⁹³ 2018. Judiciary of Chile, Organization of American States and Ibero-American Judicial Summit (Cumbre Judicial Iberoamericana). *Environmental Juridical Principles for Ecological Sustainable Development*. Available online at (Spanish only): <https://servicios.pjud.cl/ManosLibro/files/assets/basic-html/page-1.html> *8th World Water Forum Brasilia*, (Brazil) 21 March 2018, https://www.iucn.org/sites/default/files/2022-10/brasilia_declaration_of_judges_on_water_justice_21_march_2018_final_as_approved.pdf.

³⁹⁴ Supreme Court of Justice of Mexico. (2022). *Human Right to a Healthy Environment, Modalities to Private Property. Principle of Intergenerational Justice and Protection of Wetlands And Mangroves (Restrictions On Property for the Conservation of Natural Resources)*. Available from: https://www.sitios.scjn.gob.mx/cec/sites/default/files/publication/documents/2023-03/CONSTITUCIONAL%20PRECEDENT_DIGITAL.pdf

Argentine Nation Supreme Court. (2019). *Majul, Julio Jesús c/Municipalidad de Pueblo General Belgrano y otros*. Available from: <https://defensoria.org.ar/normativas-cdh/majul-julio-jesus-c-municipalidad-de-pueblo-general-belgrano-y-otros-s-accion-de-amparo-ambiental-humedales/>.

³⁹⁵ UN General Assembly. (2007). *United Nations Declaration On The Rights Of Indigenous Peoples*. Available: https://digitallibrary.un.org/record/606782/files/A_RES_61_295-EN.pdf

Organization of American States. (2016). *American Declaration on the Rights of Indigenous Peoples*. AG/RES. 2888 (XLVI-O/16). Available From: <https://www.oas.org/en/sare/documents/DecAmIND.pdf>.



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Furthermore, how can we assess the same effect or damage when it occurs to different groups of people? Does the fact that it is the same effect mean that its implications are the same? Distributive justice, which operationalizes climate justice, brings us closer to answers to construct such assessments based on two orthogonal dimensions: the intergenerational and the intergenerational. In both intergenerational and intergenerational dimensions, the traditional approach to damage repair focuses on income level as a primary economic condition. However, from an intersectional climate policy and climate justice perspective, other conditions such as gender and capabilities are equally relevant. We must emphasize that with the concept of sustainable development, two fundamental issues arise for the implementation of policies for planetary integrity: 1. The inexorable cause-and-effect relationship between the decisions made by present generations concerning the Earth and their implications for future generations, considering the accumulated impacts over time, 2. The limits that nature imposes on the economy: on a finite planet, lifestyles based on the paradigm of infinite material well-being cannot be sustained—we must redefine sustainability.

From these premises, the need arises to formulate intergenerational equity policies that cut across multilateral environmental and climate agreements. Likewise, we consider it fundamental for the Inter-American Court of Human Rights to contribute a reflection on the implications of the effective recognition of the rights of future generations in the context of the climate emergency.

3.3 Procedural Obligations and Access Rights in the Inter-American System

The inter-American Democratic Charter clearly establishes that “The exercise of democracy promotes the preservation and good stewardship of the environment. It is essential that the states of the Hemisphere implement policies and strategies to protect the environment, including application of various treaties and conventions, to achieve sustainable development for the benefit of future generations.”³⁹⁶

National jurisprudence in the region resorting to the outlined Inter-American Standards and Principles has affirmed the procedural obligations the affirmed IACtHR ³⁹⁷ that should be deemed a baseline in terms of progression are as follows:

- a. Ensure full respect for the right to access to information through adopting appropriate legislation and putting in place the necessary implementation measures.
- b. Ensure access to participation in decision-making, and
- c. Ensure access to effective remedy.

Specifically, the questions presented by Colombia and Chile relate to the following provisions in the Escazú Agreement:

- Article 5 (Access to environmental information)
- Article 6 (Generation and dissemination of environmental information)

³⁹⁶ OAS General Assembly (2001) AG/RES. 1 (XXVIII-E/01). Inter-American Democratic Charter. Adopted by the General Assembly at its special session held in Lima, Peru, on September 11, 2001 Available at: [https://www.summit-americas.org/Quebec_Summit/Quebec-DemocraticCharter/Charter-AG.RES.%201%20\(XXVIII-E.01\)e.doc](https://www.summit-americas.org/Quebec_Summit/Quebec-DemocraticCharter/Charter-AG.RES.%201%20(XXVIII-E.01)e.doc).

³⁹⁷ Inter-American Court of Human Rights, Advisory Opinion OC 23/17, paragraph 165; Inter-American Commission on Human Rights.



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- Article 9 (Human rights defenders in environmental matters)

However, this Agreement has 24 signatures and 15 State parties. Therefore, it is suggested that in future, contentious cases, the IACtHR considers the provisions in the Escazu agreement as the legally binding standard for those parties that have ratified it or acceded to it. The agreement builds on widely recognized principles and standards of the inter-American System. However, this agreement mirrors recognized principles and standards in the Inter-American System, hence IUCN submits that those principles and standards should be treated as relevant for the purposes of the advisory opinion in question. The previously outlined principles and standards on access to information, participation and access to justice of the Inter-American System are the norm for all member States in this regard.

(i) Access to information

The policy recommendations of the ISP in the areas of information, communication and legal frameworks reaffirm that sustainable development requires the active participation of an informed civil society, and for this reason the States must have: i. Clear and accessible mechanisms that allow the government and civil society to provide and obtain information pertaining to policies, projects and programs in a timely manner; and ii. Laws and regulations that ensure the public timely access to data and documents among other relevant information or related to the formulation and implementation of policies, including the state of the environment, environmental performance of the regulated communities and the development of proposals or budget projects.³⁹⁸

“Only through access to information under the control of the State is it possible that citizens can know *if public functions are adequately being fulfilled.*” (*Inter-American Court of Human Rights, case Claude Reyes et al. v Chile, judgment of 19 September 2006. Series C No. 151*)

The 10 principles issued by the Inter-American Juridical Committee on Access to information, adopted by the OAS General Assembly,³⁹⁹ should be considered when interpreting obligations regarding access to information:

“1. In principle, all information is accessible. Access to information is a fundamental human right, which establishes that everyone can access information from public bodies, subject only to a limited regime of exceptions in keeping with a democratic society and proportionate to the interest that justifies them. States should ensure full respect for the right to access to information through adopting appropriate legislation and putting in place the necessary implementation measures. 2. The right of access to information applies to all public bodies, including the executive, legislative and judicial branches at all levels of government, constitutional and statutory bodies, bodies which are owned or controlled by government, and organizations which operate with public funds or which perform public functions. 3. The right to access to information applies to all significant information, defined broadly to include everything which is held or

³⁹⁸ OAS Inter-American Council for Integral Development (2001) CIDI/RES. 98 (V-O/00). Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development. Available at: https://www.oas.org/dsd/PDF_files/ispenglish.pdf.

³⁹⁹ The Inter-American Juridical Committee (2008) *Principles on The Right of Access to Information*, CJI/RES. 147 (LXXIII-O/08).



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recorded in any format or medium. 4. Public bodies should disseminate information about their functions and activities – including, but not limited to, their policies, opportunities for consultation, activities which affect members of the public, their budget, and subsidies, benefits and contracts – on a routine and proactive basis, even in the absence of a specific request, and in a manner which ensures that the information is accessible and understandable. 5. Clear, fair, non-discriminatory and simple rules should be put in place regarding the processing of requests for information. These should include clear and reasonable timelines, provision for assistance to be given to those requesting information, free or low-cost access, and does not exceed the cost of copying and sending the information, and a requirement that where access is refused reasons, including specific grounds for the refusal, be provided in a timely fashion. 6. Exceptions to the right to access should be established by law, be clear and narrow. 7. The burden of proof in justifying any denial of access to information lies with the body from which the information was requested. 8. Individuals should have the right to appeal against any refusal or obstruction to provide access to information to an administrative jurisdiction. There should also be a right to bring an appeal to the courts against the decisions of this administrative body. 9. Anyone who willfully denies or obstructs access to information in breach of the rules should be subject to sanction. 10. Measures should be taken to promote, to implement and to enforce the right to access to information, including creating and maintaining public archives in a serious and professional manner, training public officials, implementing public awareness-raising programmes, improving systems of information management, and reporting by public bodies on the measures they have taken to implement the right of access, including in relation to their processing of requests for information.”

(ii) Participation

Principle 10 of the Rio Declaration established that “Environmental issues are best handled with participation of all concerned citizens, at the relevant level... *At the national level, each individual shall have the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available* States shall facilitate and encourage public awareness and participation by making information widely available”. Two of the seven Inter-American Strategy principles⁴⁰⁰ that have utmost relevance in the context of access rights and for State obligations regarding participation are the principle of access and the principle of transparency. The principle of access recognizes that in order to participate effectively, citizens should have timely access to the different levels of government, to information, to the political process and to the judicial system. As for the principle of transparency, in order for alliances between civil society and the government to be effective, trust and transparency are required, since the transparency of all parties involved in a decision-making process facilitates more meaningful participation by ensuring that the motivations and objectives are explicit and the reliability and availability of information is timely.

(iii) Judicial Proceedings and Remedies

Principle 10 of the Rio Declaration established “Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided” Access to justice refers to the exercise of citizens’ rights: Before Courts of Justice Before Administrative Bodies In the

⁴⁰⁰ Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development. Principles (p. 5-6).



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Legislative Proposals In the Effective Compensation of Damages. In the context of the climate emergency, a State Party’s obligations to provide effective judicial remedies to provide adequate and timely protection and redress for the impairment of rights is guided by Articles 8, and 25 of the American Convention, which are further emphasized by the Brasilia Rules Regarding Access to Justice for Vulnerable People, Articles 1 and 8 of the Escazu Agreement. And Principle 10 of the Rio Declaration (which corresponds to the Principle on Access to Justice (17)).

Pursuant to Articles 8 (Right to Fair Trial) and Article 25 (Right to Judicial Protection) of the American Convention on Human Rights, everyone has the right to effective access to justice for the vindication of legal and constitutional rights, as well as the rights recognized by the Convention. In elaboration of the rights established by Articles 8, and 25, the Brasilia Regulations Regarding Access to Justice for Vulnerable People, stipulates that States have an obligation to design, implement, and assesses public policy within the judicial system in order to protect the right to access to justice, which is recognized as a fundamental right by the Court. The meaning of access to justice also extends to restoring the exercise of rights that have been denied or violated. Underscoring that access to justice is not limited to ensuring admission to a court but applies to the entire process, which must be conducted in keeping with the principles of the rule of law (AG/RES. 2801 (XLIII-O/13)).

Finally, in the case of *Almonacid-Arellano et al v. Chile* pursuant to item d) Enforcement of Decree Law No. 2.191, this Court found that domestic judges and courts are bound to respect international law set forth by treaties and agreements and must review domestic laws to ensure that they conform with them. This was reinforced by the Court’s Advisory Opinion OC-24/17158 which emphasized that domestic Judiciaries and Legislature must respect international conventions under the Inter-American human rights system. This also corresponds to Principle 28 identified by the Legal Environmental Principles for a Sustainable Ecological Development which states that All rights, whether civil and political, or economic, social and cultural, have been declared to be effective, which is why judges must apply them directly, accompanying society in its evolution.

<p>Right to Petition, to Judicial Protection and to a Fair Trial AD: Articles XXIV, XVIII, XVII, XXVI AC: Articles 3, 8 and 25.</p>	<p>Accuracy and reliability of environmental information may affect due process as well as access to process and justice. Changes in ecosystems may hinder access to petition mechanisms and judicial proceedings.</p>	<p>Changes and effects regarding access to water and in water availability may hinder access to petition mechanisms and judicial proceedings. Accuracy and reliability of information water quality may affect due process.</p>	<p>Extreme events related changes may hinder freedom to attend court and availability of judicial services.</p>
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Image 3: Links between Climate Change Impacts (Ecosystems, Water Security and Extreme Events and Human Rights in instruments of the Inter-American System)
 Source: GS OAS with IPCC data.⁴⁰¹

⁴⁰¹ General Secretariat of the Organization of American States (2017) *Climate change: A comparative overview of the rights-based approach in the Americas*. Available at: https://www.oas.org/en/sedi/dsd/docs/climate_change.pdf https://www.oas.org/en/sedi/dsd/docs/climate_change.pdf; https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf, [Accessed 19 October 2023].

In other words, the Court must uphold States’ obligations to provide access to justice for all, and to create mechanisms that will allow for adequate redress of injustice. These rights must be observed and further interpreted within the context of the climate emergency. These rights are further underscored by Principle 10 of the Rio Declaration which recognizes the right to provision of effective access to judicial and administrative proceedings, including redress and remedy. This right is further emphasized and was used as basis for the formation of Principle 66 on Environmental Justice of the Environmental Legal Principles for Ecologically Sustainable Development adopted by all Chief Justices in the Ibero-American Judicial Summit and drafted with contributions of the General Secretariat of the OAS.

The climate emergency directly implicates various distinct human rights—including rights recognized in the American Convention, in the Protocol of San Salvador, and from other sources—and acts as a “threat multiplier” to exacerbate additional threats to human rights. Therefore, State Parties have an obligation to tailor available judicial processes and remedies to account for the particularized challenges of addressing the climate emergency.

This obligation includes, but is not limited to:

- Due consideration and upholding access rights, the right to access to environmental information, right to participate in decision-making processes, and the right to access to justice (in accordance with the Principle on Dissemination of Information and Collaborative Participation in Conflict Resolution Matters (13), Principle of Access to Public Information (15), and Principle of Public Participation (16), Principle of Access to Justice (17), and Principle of Environmental Justice (66), pursuant to the Legal Principles for an Ecologically Sustainable Development.⁴⁰²
- Due consideration of the climate emergency in determinations about standing (*locus standi* or *legitimacion activa*) to bring legal actions.
- Due consideration of the climate emergency in evaluating the admissibility of scientific evidence, particularly with regard to the risk of uncertainty in modeling the likely causes and impacts of climate change. The nature of the climate emergency, given the scope and uncertainty involved in understanding the potential range and impacts of the problem—requires courts to alter their typical process for considering and evaluating scientific evidence. Given the complexity and uncertainty associated with the risk of climate-related harms, the provision of adequate and timely protection and redress for the human rights impacts of the climate emergency requires a deliberate response and appropriate remedial measures within judiciaries.
- Due consideration of the climate emergency in applying the burden of proof with regard to causation, in terms of the causal link between greenhouse gas emitting activities and damage or harm suffered due to the impacts of climate change.
- Due consideration of the climate emergency in developing and implementing judicial remedies for the infringement of rights caused by the climate emergency.

⁴⁰² 2018. *Judiciary of Chile, Organization of American States and Ibero-American Judicial Summit (Cumbre Judicial Iberoamericana). Environmental Juridical Principles for Ecological Sustainable Development. Available online at (Spanish only): <https://servicios.pjud.cl/ManosLibro/files/assets/basic-html/page-1.html>*



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Lastly, the extent of the threat to human life, health, and wellbeing, and to the enjoyment of the right to a healthy environment, obligates the Court to strike a different balance in considering the equities in different court procedures than may otherwise be the case. In accordance with common law and jurisprudence in several State Parties, this includes relaxing or adjusting the principles of standing and other principles for determining whether a particular dispute is justiciable. The climate emergency makes certain questions more urgent and demands a more direct response from courts when other departments or branches of government have failed to adequately address issues that threaten the enjoyment of human rights. This is particularly applicable in the protection and adequate judicial process for environmental defenders, where the judiciary plays a critical role in ensuring due process when rights are violated and eliminating impunity for perpetrators. These rights are further bolstered by the Brasilia Rules.⁴⁰³

C. Differentiated Obligations

1. Overview

The climate emergency has devastating effects on the region of Latin America and the Caribbean, as both abrupt and slow-onset climate impacts have led to alterations in the natural cycles of ecosystems, droughts, floods and heat waves. People living in poor conditions, as well as individuals and groups who experience institutional inequalities (such as women, ethnic or indigenous communities, Afro-descendent people, people with disabilities, etc.) are the most vulnerable as they are the most exposed to greater occurrences of food and water insecurity, displacement and forced migration, diseases and death.

With consideration for those in greater positions of vulnerability, it is important to note that climate change has disproportionate gendered impacts on women and girls and members that threaten their personal security. It is relevant to establish existing differentiation in obligations under the American Convention to prevent human rights violations in the context of the climate emergency. International bodies such as UN Women,⁴⁰⁴ the IPCC,⁴⁰⁵ the UNFCCC,⁴⁰⁶ (among others) have recognized the disproportionate gendered impacts of the climate emergency--one of which is the causal relationship between climate change and gender-based violence, which certainly affects the personal security, bodily autonomy, and personal liberty of an individual.⁴⁰⁷ In regard to Article 7 of the Convention, The Inter-American Commission on Human Rights has recognized that gender-based violence is of particular concern regarding the right to personal

⁴⁰³ Ibero-American Judicial Summit (2002) *Brasilia Regulations Regarding Access to Justice for Vulnerable People*, <https://www.icj.org/wp-content/uploads/2018/11/Brasilia-rules-vulnerable-groups.pdf>.

⁴⁰⁴ UN Women (2023). *Why climate change matters for women*. Available at <https://asiapacific.unwomen.org/en/stories/feature-story/2023/04/why-climate-change-matters-for-women>, [Accessed 25 October 2023].

⁴⁰⁵ Intergovernmental Panel on Climate Change. *About Gender*. Available at: <https://www.ipcc.ch/about/gender/>

⁴⁰⁶ United Nations Framework Convention on Climate Change (2022). *Dimensions and examples of the gender-differentiated impacts of climate change, the role of women as agents of change and opportunities for women. Synthesis report by the secretariat*. Available at: <https://unfccc.int/documents/494455>.

⁴⁰⁷ Desai, B.H. and Mandal, M. (2021). "Role of Climate Change in Exacerbating Sexual and Gender-Based Violence against Women: A New Challenge for International Law" in *Environmental Policy and Law*, vol. 51, no. 3, pp. 137-157. Available at: <https://doi.org/10.3233/EPL-210055>.



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security.⁴⁰⁸ International consensus around this issue is reflected in the Gender Action Plan - Decision 3/CP.25 and amendments agreed in Decision 24/CP.27.⁴⁰⁹ This action plan was adopted at COP25 (Decision 3/CP.25) with the additions agreed during the intermediate review of the implementation of the gender action plan at COP 27 (Decision 24/CP.27).⁴¹⁰ Positive measures that States can take should be aligned with the Gender Action Plan in order to mitigate the adverse effects of climate change and increase gender-based violence in the context of climate change.

Additionally, impacts of the climate emergency can overburden state capacity and make already vulnerable communities more susceptible to greater and more intense threats.⁴¹¹ For example, in conflict-affected States the climate emergency can create negative loops that further endanger national security. The climate emergency leads also to non-conflict types of insecurity, such as gender-based violence and discrimination. Moreover, within the context of the climate emergency the obligations identified by the Court are functional to the right to personal liberty (Art. 7) as climate change can affect personal security.

In the context of states, the UNFCCC recognizes that vulnerability differs in relation to the climate crisis. Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties - including those in Latin America and the Caribbean - will bear a disproportionate or abnormal burden (Preamble, Articles 3.2 and 4.4).⁴¹² The differing vulnerability and exposure of vulnerable groups, communities and ecosystems to climate hazards are further recognized under the Convention (e.g. through the different decisions of the Conference of the Parties such as decisions 1/CP.16, paragraph 12; 6/CP.16, paragraph 2c; and 5/CP.17, paragraph 3) and the Paris Agreement (e.g. the preamble and Article 7, paragraphs 5 and 9c). Consequently, guidance on adaptation action requires special consideration of such vulnerable groups, communities and ecosystems.⁴¹³

In Advisory Opinion 23/17, the IACtHR, states that communities which are especially vulnerable are those who depend economically or for their survival on environmental resources from the marine environment, forested areas and river basins, or run a special risk of being affected owing to their geographical location, such as coastal and small island communities.⁴¹⁴ These factors are amplified for those who are in situations of marginalization or vulnerability or that, due to discrimination and pre-existing inequalities, have limited access to decision-making or resources.⁴¹⁵ These groups include, among others, women and girls, indigenous people, children and adolescents, peasant communities, people with disabilities, etc. Risk is further amplified

⁴⁰⁸ Inter-American Commission on Human Rights(2009). Report Citizen Security and Human Rights. OEA/Ser.L/V/II. Doc. 57<http://www.cidh.org/countryrep/seguridad.eng/CitizenSecurity.V.htm>

⁴⁰⁹United Nations Framework Convention on Climate Change (2023) *Gender Action Plan*, Decision 3/CP.25 and amendments agreed in Decision 24/CP.27, <https://unfccc.int/documents/627886>.

⁴¹⁰ Ibid.

⁴¹¹ United Nations (2022). *Climate Security Mechanism Briefing Note*. Available at https://dppa.un.org/sites/default/files/csm_toolbox-1-briefing_note.pdf, [Accessed 21 October 2023].

⁴¹² *United Nations Framework Convention on Climate Change* (1992), entered into force 21 March 1994.

⁴¹³ United Nations, The Conference of the Parties (2018). *Considerations regarding vulnerable groups, communities and ecosystems in the context of the national adaptation plans*.

⁴¹⁴ *Inter American Court of Human Rights Advisory Opinion OC-23/17 (2017)*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf, [Accessed 09 October 2023].

⁴¹⁵ *InterAmerican Commission on Human Rights (2021) Climate Emergency Scope of Inter-American Human Rights Obligations*, Resolution 3/2021



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when people belong to more than one of these categories and have intersectional identities. In cases concerning the territorial rights of indigenous and tribal peoples, the Court has referred to the relationship between a healthy environment and the protection of human rights, considering that these 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 for the very survival, development and continuity of their way of life. This emphasizes the notion of vulnerability and need for differentiated measures due to their connection to the land. The Court has also recognized the close links that exist between the right to a dignified life and the protection of ancestral territory and natural resources. In this regard, the Court has determined that, because indigenous and tribal peoples are in a situation of special vulnerability, States must take positive measures to ensure that the 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. The Court has also emphasized that the lack of access to the corresponding territories and natural resources may expose indigenous communities to precarious and subhuman living conditions and increased vulnerability to disease and epidemics, and subject them to situations of extreme neglect that may result in various violations of their human rights in addition to causing them suffering and undermining the preservation of life, customs and language.

Establishing that those in positions of vulnerability will bear a disproportionate burden of the climate emergency, pro-active measures must be undertaken by States. Socio-economic vulnerability for individuals and populations is predicated on historical institutional and social disparity and discrimination. It should therefore be one of the priorities of States to implement policy writ large that prevents discrimination protected explicitly by Article 1.1 of the Convention. Pursuant to Article 26 of the American Convention, and Article 3 of the San Salvador Convention, States must pursue progressive advancement of human rights protection, and therefore must refer to inter-American agreements regarding the protection of vulnerable populations. These agreements include but are not limited to:⁴¹⁶ the Convention on the Prevention, Punishment and Eradication of Violence against Women (the Convention of Belém do Pará);⁴¹⁷ the Convention against Racism, Racial Discrimination and Related Forms of Intolerance;⁴¹⁸ the Declaration on the Rights of Indigenous Peoples;⁴¹⁹ the Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities;⁴²⁰ the Convention on Protecting the Human Rights of Older Persons;⁴²¹ and the Convention against All Forms of Discrimination and Intolerance,⁴²² the Inter-American Commission's Principles and Best

⁴¹⁶ Inter-American Commission on Human Rights (2019). *Compendium on equality and non-discrimination. Inter-American standards*. OEA/Ser.L/V/II.171.

⁴¹⁷ *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belem do Para")* (1994), entered into force 5 March 1995.

⁴¹⁸ *Inter-American Convention against Racism and All Forms of Discrimination and Intolerance* (2013), entered into force 11 November 2017.

⁴¹⁹ Organization of American States, General Assembly (2016) *The American Declaration on the Rights of Indigenous Peoples*, AG/RES. 2888 (XLVI-O/16).

⁴²⁰ *Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities*(1999), entered into force 14 September 2001.

⁴²¹ *Inter-American Convention on the Rights of Older Persons* (2015), enter into force 11 January 2017.

⁴²² *Inter-American Convention Against All Forms Of Discrimination And Intolerance* (2013), entered into force 20 February 2020.



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Practices on the Protection of Persons Deprived of Liberty in the Americas,⁴²³ as well as the approaches described by the Court in the advisory opinion on “Differentiated Approaches to Persons Deprived of Liberty”.⁴²⁴

Referring to State’s obligations on mitigation and adaptation laid out by the Paris Agreement, and taking into consideration their obligation under various precedents to pursue positive measures to prevent the violation of human rights, it is necessary for States to pursue not only policies of non-discrimination (Article 24 of the Convention) in response to the climate emergency, but also take targeted positive measures to directly assist individuals and communities in positions of particular vulnerability. In other words, States must be committed to implement policies without discrimination as is their duty, but also create policy that would provide additional assistance for people in positions of vulnerability that would address current impacts of the climate emergency as well as future ones.

For example, within the context of the climate emergency discrimination against those in positions of vulnerability could manifest in State responses to the aftermath of extreme weather events or severe weather. There is a margin for discrimination within the implementation of response measures including but not limited to disparate aid and resources allocated to communities by the State or local agencies. These asymmetrical responses may increase a vulnerable community's risk of access to vital resources such as food, water, and housing which, in turn, affects their fundamental rights under the Convention as previously detailed. States must therefore provide equally allocated resources in these cases. However, in many cases equal allocation may still not be sufficient for protecting vulnerable communities.

States must also, using the best available science, take steps to identify areas where vulnerable communities are most at risk of climate shocks and develop appropriate infrastructure that will prevent communities from amplifying their vulnerabilities. This could include advanced treatment to sea walls, flood defenses, irrigation systems, sanitation systems, etc.⁴²⁵

States’ duty to comply with the obligation of prevention and to take on positive measures to prevent the violation of human rights have been well established. In the context of the environmental degradation that occurs in the process of climate change, human rights are at high risk of being violated. As such, there is a need to protect the environment under the American Convention and other agreements as a positive measure to protect human rights.

2. Pro-active Measures for people and groups in positions of vulnerability

2.1 Protection of children's rights

⁴²³ Inter-American Commission on Human Rights (2008), *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas Resolution 1/08*.

⁴²⁴ Inter American Court of Human Rights, *Advisory Opinion OC-29/22 30 May (2022)*, Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdfseriea_29_eng.pdf (corteidh.or.cr), [Accessed 09 October 2023]. https://www.corteidh.or.cr/docs/opiniones/seriea_29_eng.pdf.

⁴²⁵ The Organization for Economic Co-operation and Development (OECD) (2018). *Climate-resilient infrastructure, policy perspectives paper NO. 14*.



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The protection of children's rights derives from obligations under articles 1, 4, 5, 11 and 19 of the American Convention. Children are one of the most vulnerable populations in regard to the climate emergency. On average, compared to people born in 1960, children born in 2020 are expected to face a two to seven-fold increase in extreme climate events such as heat waves, wildfires, crop failures, droughts, and floods.⁴²⁶ Each State has an obligation to uphold the rights of and protect all children within its jurisdiction and at the regional level (Article 1 & 19). These rights should be universally coordinated among States and upheld to the highest capacity of the State. Furthermore, these rights should be inalienable, unqualified, and accessed without discrimination, regardless of race, ethnicity, class, disability status, citizenship status, age, sex, sexual orientation, and gender identity, among others.

Pursuant to Principle 2 of the Stockholm Declaration, "the natural resources of the earth must be safeguarded for the benefit of present and future generations." This principle is further established by the Inter-American Democratic Charter which mandates that "the States of the hemisphere implement policies and strategies to protect the environment, including application of various treaties and conventions, to achieve sustainable development for the benefit of future generations." This right is further defined and emphasized by the IACHR's advisory opinion 23 from 2017 which outlines State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity.

State obligations must extend the consideration of future generations in environmental matters as outlined by the Maastricht Principles on Future Generations which seeks to "both consolidate and provide a progressive interpretation of international law as a foundation for recognizing the human rights of future generations." With an understanding of the Progressive Principle that States may incur additional obligations as human rights law in this sphere continues to evolve. Additionally, the principle of non-regression in this matter must be understood and applied concurrently to not lower the quality of life for future generations and assure that actions taken in the present do not cause undue harm to or inhibit the rights of future generations. The Maastricht Principles also suggest abiding by case law and previous cases/laws regarding these issues. Therefore, the Court should encourage States to refer to and model existing legislation such as Article 33 of the Constitution of the Plurinational State of Bolivia, which recognizes "the right to a healthy, protected and balanced environment to enable the development of individuals and collectives of present and future generations." The Court should also make explicit reference to relevant case law from other States and regions at the regarding the right to life (Article 4) and intergenerational climate justice including:

- *Future Generations v. Ministry of the Environment and Others* (Colombia)
- *Minors Oposa v. Secretary of the Department of Environmental and Natural Resources* (Phillipines)
- *Gbemre v. Shell Petroleum Nigeria Limited and Others* (Nigeria)
- *Juliana v. the United States of America* (USA)
- *Colombia Supreme Court of Justice Protective Action Decision (STC. 4360-2018, also known as Rights of the Amazon Climate Case)*
- *Navahine F. v. Hawai'i Department of Transportation* (USA)
- *Held v. State of Montana* (USA).

⁴²⁶ EARTHJUSTICE (2022). *Navahine v. Hawaii Department of Transportation*, 1 June. <https://earthjustice.org/case/navahine-v-hawaii-department-of-transportation>, [Accessed: 10 October 2023].



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The rights of children should be respected regardless of country of origin or country of occupancy. The climate crisis will invariably cause greater migration and involuntary displacement – this includes minors and may also include to a large degree unaccompanied minors—and creates an added condition of vulnerability for this population. The Court should emphasize Article 11 on Privacy and Article 5 on the Right to Humane Treatment to ensure that the rights of children and minors are protected under these circumstances. To this end, the Court should also recall the landmark decision of The UN Child Rights Committee ruling on countries extra-territorial and cross-border responsibility for harmful impact of climate change which found that a State party can be held responsible for the negative impact of its carbon emissions on the rights of children both within and outside its territory. Therefore, States have a responsibility to protect not only the children and minors in their territory but other children who may enter their jurisdiction due to the shared responsibility established by the Committee.

The Decision was adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child under a communications procedure by No. CRC/C/88/D/104/2019- (*Sacchi et al. v. Argentina*) and further emphasized by CRC/C/88/D/105/2019 (*Sacchi et al. v. Brazil*) which declared the climate crisis as a children’s rights crisis and as such The States parties to the Convention are obliged to respect, protect and fulfill children’s inalienable right to life by mitigating climate change and by not doing so “the State party has failed to uphold its obligations under the Convention to (i) prevent foreseeable domestic and extraterritorial human rights violations resulting from climate change; (ii) cooperate internationally in the face of the global climate emergency; (iii) apply the precautionary principle to protect life in the face of uncertainty; and (iv) ensure intergenerational justice for children and posterity.” And by not upholding a State’s responsibility to effectively respond to climate change thereby perpetuating the climate crisis, the State party has failed to take necessary preventive and precautionary measures to respect, protect, and fulfil youth’s rights to life, health, and culture.”

Additionally, inherently tied to the rights of children are the rights of women and other caretakers who will be accompanying or taking care of children in several capacities. The Court should take extra care to develop recommendations that bolster women’s rights in unison with the rights of children in the context of climate emergency.

General Comment 26 on children’s rights and the environment focuses specifically on climate change. It notes “children are entitled to protection from infringements of their rights stemming from environmental harm and to be recognized and fully respected as environmental actors.” Given the significance of this consideration, it is important for the Court to consider the following key elements outlined in General Comment 26:

“A clean, healthy, and sustainable environment is not only a human right but is necessary for the full enjoyment of a broad range of children’s rights and is the basis for the enjoyment of the rights derived from articles 1, 4, 5, 11, and 19 of the American Convention”. (CRC/C/GC/26 para 8)

The principle of intergenerational equity accounts for the interests of future generations as well as the children currently impacted by environment-related threats. States' obligations under the Convention also extend to future generations and bear the responsibility for foreseeable environment-related threats arising as a result of their acts or omissions now. (CRC/C/GC/26 para 11)



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“Children’s rights, like all human rights, are indivisible, interdependent and interrelated. Some rights are particularly threatened by environmental degradation. Other rights play an instrumental role in safeguarding children’s rights in relation to the environment.” (CRC/C/GC/26 para 13)

States are required to take proactive measures that prevent children from foreseeable premature or unnatural death and threats to their lives that may be caused by acts and omissions, as well as the activities of business actors, and enjoy their right to life with dignity. Acts consistent with protecting a child’s right to life include the adoption and effective implementation of environmental standards, programs related to food, air, and water quality, and other necessary protective measures. (CRC/C/GC/26 para 20)

Pursuant to Article 6 of the Convention, States have an obligation to protect children from the long-term challenges and effects of climate change, that may infringe on their right to life and require taking appropriate measures to address those conditions, such as sustainability measures. “Special measures of protection are needed to prevent and reduce child mortality from environmental conditions and for groups in vulnerable situations.” (CRC/C/GC/26 para 21)

Environmental degradation causes increased risks to children’s right to life. In armed conflict, States should take special precautions to mitigate the effects stemming from conflict, such as displacement, famine, and increased violence. Environmental degradation also impacts children’s right to life and jeopardizes their ability to achieve full development. It also results in numerous rights under the Convention being impacted along with children’s enjoyment of a clean, healthy environment. (CRC/C/GC/26 para 22 and 23)

Due to their behaviors, physiology, and distinct patterns, younger children are particularly vulnerable to environmental hazards. States should mitigate these risks by preventing children’s exposure to toxic pollutants which can impact the growth, development, and maturational processes of their bodily organs. (CRC/C/GC/26 para 24) States should take note of the requirements for healthy growth and development for children at the various stages of maturation and take the necessary precautions to avoid any potential environmental determinants during the life course. (CRC/C/GC/26 para 25)

In essence, the rights of children in the context of the climate emergency demand a comprehensive and proactive response from States, involving the integration of legal frameworks, adherence to international principles, and a dedicated commitment to intergenerational equity. The Court’s role is pivotal in guiding States toward effective measures that respect, protect, and fulfill the inalienable rights of children, ensuring a sustainable and just future for generations to come.

The protection of children’s rights also entails a State Party obligation to provide children with meaningful and effective means to freely and fully express their views, including the opportunity to initiate, or otherwise participate in, any judicial or administrative proceedings concerning the prevention of climate change that constitutes a threat to their lives.

To provide children, adolescents and youth the ability to freely, fully, and meaningfully express themselves and participate in democratic processes, States should take into account the precautionary principle, the principle of non-regression, and the precedents set by UN Child Rights Committee as well as subsequent decisions such as the Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a



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communications procedure, concerning communication, (No. 104/2019-Argentina and CRC/C/88/D/105/2019 Brazil).

States must also provide accessible mechanisms for participation with special consideration for the questions and concerns posed by General comment No. 26 on children's rights and the environment with a special focus on climate change.

The Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 104/2019- (Sachi et al v. Argentina mentioned above) outlined the necessity to cooperate internationally in the face of the global climate emergency; apply the precautionary principle to protect life in the face of uncertainty; and ensure intergenerational justice for children and posterity. The precautionary principle should also be applied to ensure equity and justice across generations, including future generations, but there is also a necessity to protect the present generation of children and minors who are already experiencing the impacts of the climate emergency at an accelerated rate through *intragenerational* justice.

The precautionary principle is also applicable in this regard because courts and legal practitioners should be encouraged to bring forth and decide on matters affecting current youth regardless of uncertainty. The climate emergency will certainly bring about changes to the natural environment and structure of society at large. It is therefore also necessary for the Court to adapt in step. The Court should therefore engage in a greater amount of flexibility on what is admissible for evidence by plaintiffs and grounds for a decision by the Court and should not deny petitions based on uncertainties related to environmental harm (see Petition to The Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States). Furthermore, greater avenues for addressing injustice are needed as well: This includes inclusion of traditional or community-based justice methods to be incorporated into formal procedures at the Court level. But it is also necessary for children and youth to be able to seek redress for justice in ways that may be untraditional or unfamiliar to the Court. The Court must therefore remain flexible and open to weaving new mechanisms for justice that may be generated or explored by youth or co-created with youth. The Court should also encourage States to follow suit within its recommendations and guidelines.

This leads to the critical need of the Court to uphold the right of freedom of expression among youth in relation to climate emergency. Youth's rights to freedom of expression should not be inhibited at any level, including the right to peaceful assembly, and communication by any method. These rights are similarly upheld by No. 104/2019-Argentina and CRC/C/88/D/105/2019, and further reflected by General comment No. 26 on children's rights and the environment with a special focus on climate change which affirms the importance of procedural elements including access to information, participation in decision-making and access to justice with effective remedies, empowering children, including through education, to become agents of their own destiny, actively shaping their future rather than passively inheriting a clean, healthy and sustainable environment.

Freedom of expression is also important for youth participation because it allows them to engage in public demonstrations, engage with civil society, and participate in democratic processes

which they may be otherwise restricted from (such as voting due to age limitations). As stated by CRC/C/88/D/105/2019, “States should foster, recognize and support the positive contribution of children towards environmental sustainability and climate justice as an important means of civil and political engagement through which children can negotiate and advocate for the realization of their rights related to the environment, and hold States accountable.”

Lastly, the right to access to justice should be available to redress violations of their human rights and inequities that exist or may arise. Legal support should be provided at no cost to minors and performed in way that is accessible to the child. According to the decision CRC/C/88/D/105/2019, States have an additional obligation to provide mechanisms for youth to be able to pursue complaints pursuant to the Optional Protocol to the Convention on the Rights of the Child. information about which should be made widely known to children, parents, caregivers and professionals working with and for children.

With the proliferation of climate litigation led by young people representing future generations, barriers to access to justice regarding standing have become apparent in some jurisdictions in the region (e.g., Chile and Mexico).⁴²⁷ Primarily, these barriers demonstrate direct harm or sufficient connection (e.g., by residing in the 'adjacent environment' or imminent harm or risk of direct or imminent harm). The global nature and repercussion of the impacts of climate change across time emphasize these barriers. Plaintiffs are prevented from accessing justice directly and in protection of their own rights affected by the climate emergency. In this sense, limitations on standing affect due process by removing the climate from the center of judicial controversies through the use of arguments related to local air pollution to counter evidence of climate impacts or removing direct access of youth to legal action by requiring intermediaries such as legally constituted NGOs to represent them in litigation. As a consequence, on the one hand, a restriction of the possibilities of judicially discussing the causes and impacts of climate change and its impact on the rights of future generations and, on the other, a dis-empowerment of young people who lose the direction of actions that seek to judicially protect their own rights.⁴²⁸

According to General Comment 26, which focuses on specific rights under the Convention as they relate to the environment, Article 12 of the Convention provides the right for children to be heard:

Children, having articulated the impact that environmental concerns have on their lives and future, are integral to the judicial process and or administrative proceedings. Children should be consulted to provide input on effective remedies to address the significant and long-term environmental challenges that affect their future. Creative approaches such as music and art, may be utilized to allow children to express their views. (CRC/C/GC/26 para 26)

⁴²⁷ See Juzgado Decimotercero de Distrito en Materia Administrativa en la Ciudad de México: Juicio de amparo 1854/2019, re *Jóvenes v. Gobierno de México* (sentencia del 19 de mayo de 2022) y Corte Suprema de México: Recurso de queja 11/2022, re *Julia Habana Cervantes Magaloni y otros* (sentencia del 7 de diciembre de 2022); Medici-Colombo, G. y Ricarte, T., *The Escazú Agreement contribution to environmental justice in Latin America: An exploratory empirical inquiry through the lens of climate change litigation*, *Journal of Human Rights Practice*, 2023 (in print).

⁴²⁸ This, in turn, has negative consequences for access to justice for those who live far from the capitals where the authorized NGOs are located and willing to pursue this type of litigation.



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States should also employ age-appropriate, safe and accessible tools that allow children's views to be heard at all stages of the environmental decision-making process, including legislation, policy, regulations, projects and any aspect that may impact them. Children should also be provided with environmental human rights education and should receive information about the outcomes of environment-related consultations and feedback on how their views were taken into account. Age-appropriate grievance mechanisms should also be provided when their right to be heard has been violated. (CRC/C/GC/26 para 27)

Recognizing the vital role of children, adolescents, and youth in addressing the climate emergency, State Parties must fulfill their obligation to facilitate their meaningful and comprehensive participation. Drawing guidance from international principles such as the precautionary principle and non-regression, as well as decisions adopted by the Committee on the Rights of the Child, States should ensure accessible mechanisms for participation. Vital to this effort is the incorporation of flexibility in evidentiary considerations and the establishment of innovative justice mechanisms. Upholding freedom of expression and ensuring access to justice for youth are also crucial components. The Court should actively encourage States to follow suit, emphasizing the integral role of children in environmental decision-making and fostering a future where their rights are actively protected.

2.2 Migrants and people affected by forced displacement

States have differentiated obligations regarding determining and addressing effects on health, life and non-economic loss of people from climate impacts of human mobility, migration and forced displacement. It is now evident that climate change inevitably impacts different aspects of human life and safety, posing enormous threats to the lives and well-being of individuals and communities across the world. Droughts, ecosystem degradation, sea level rise, and water and food insecurity are already negatively impacting several communities.

One of the most widespread impacts of extreme weather changes and their implications is migration and internal displacement. However, displacement of local people can occur also as a result of the adoption of mitigation measures (such as hydroelectric and biofuels policies and projects).⁴²⁹ Displacement and internal/external migration significantly increase the risk of human rights violations (i.e. right to life, right to personal integrity, right to property, right to mobility etc.), therefore it is crucial that States adopt guarantees to safeguard human rights. In particular, States should:

“(1) Conducting risk assessments, providing public participation risk assessments, providing public participation opportunities, and ensuring that there are human rights safeguards for all programs to manage migration and displacement. (2) Ensuring adequate resettlement opportunities for those who are temporarily displaced by climate change-related disasters, and ensuring that “temporary relocation must last only as long as absolutely necessary and all displaced persons should have the right to return to their homes without discrimination.” (3) Ensuring that the UNFCCC and related climate change frameworks address “the nexus between the effects of climate change and displacement” and that the least developed countries are provided with technical assistance, financial resources and/or other enhancements to domestic capacity to cope with climate-related displacement. (4) Adhering to the Guiding Principles on

⁴²⁹ United Nations Environment Programme (2015). *Climate Change and Human Rights*, p. 8.



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Internal Displacement, which describe how human rights considerations should be incorporated into government actions to prevent and manage internal displacement.”⁴³⁰

Here again access to information and public participation in decisions concerning the displacement or resettlement groups is crucial. OHCHR emphasizes that “adequate and meaningful consultation with affected persons should precede decisions to relocate people away from hazardous zones.”⁴³¹ In addition, it has been emphasized the need to address climate-induced temporary displacement and permanent migration, both within and across domestic borders, through the creation of international mechanisms. A first attempt was the proposal for the creation of “Climate change displacement coordination facility” within the UNFCCC that “(i) provides support for emergency relief, (ii) assists in providing organized migration and planned relocation, and (iii) undertakes compensation measures”⁴³² for persons displaced by climate change. It also included other options that did not include any mention of this facility, or even of loss and damage. Considering that the phenomenon of internal climate migration is widespread in Latin America and climate migrants are expected to add up to a high of 17.1 million by 2050 (2.6% of the region’s total population)⁴³³, the Court could recommend States’ cooperation aimed at the creation and implementation of a regional mechanism to address internal migration and displacement originating from the adverse effects of climate change.

When extreme weather events or slow onsets affect water supply, food security and agricultural incomes, human health can be adversely affected. Major health impact include:

- (i) greater risk of injury, disease, and death due to more intense heat waves and fires;
- (ii) increased risk of under-nutrition resulting from diminished food production in poor regions;
- (iii) health consequences stemming from lost work capacity and reduced labor productivity in vulnerable populations; and (iv) increased risk of food-, water- and vector-borne diseases.”⁴³⁴ In some regions, significant health risks will be caused by the combined effects of higher average temperatures and higher humidity when those regions already exceed the international standard for safe work activity during the hottest months.⁴³⁵ According to the World Health Organization (WHO), climate change also impacts on the social factors that contribute to good health, i.e. livelihoods, equality and access to health care and social support structures. These climate-related health risks are disproportionately felt by the most vulnerable communities and groups, such as women, children, indigenous communities, poor

⁴³⁰ United Nations Environment Programme (2015). *Climate Change and Human Rights*, p. 22.

⁴³¹ OHCHR (2009). *Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights*, A/HRC/10/61 (2009), p. 79, Report (2009), supra note 71, at p. 74.

⁴³² Negotiating Text, Ad Hoc Working Group on the Durban Platform for Enhanced Action, Option 1, ¶ 70.3(a), UN Doc. FCCC/ADP/2015/1, at 32 (Feb. 25, 2015), available at <http://unfccc.int/resource/docs/2015/adp2/eng/01.pdf>. See also id., Option III, ¶¶ 75-76, at 33.

⁴³³ Rigaud, Kanta Kumari; de Sherbinin, Alex; Jones, Bryan; Bergmann, Jonas; Clement, Viviane; Ober, Kayly; Schewe, Jacob; Adamo, Susana; McCusker, Brent; Heuser, Silke; Midgley, Amelia. 2018. Groundswell: Preparing for Internal Climate Migration. © World Bank, Washington, DC. <http://hdl.handle.net/10986/29461> License: CC BY 3.0 IGO.

⁴³⁴ United Nations Environment Programme (2015). *Climate Change and Human Rights*, p. 8.

⁴³⁵ Ibid.



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communities, older population etc.⁴³⁶ The Court should recommend States to adopt and implement mechanisms that minimize foreseeable health risks, generated by the climate emergency, and guarantee that health care and support structures are able to reach the most affected communities, that are also the marginalized and poorest communities. In addition, access rights (access to environmental information and public participation in decision-making processes) play a crucial role also with regards to human health safeguards.

In sum, the climate emergency generates and will generate environmental damage and effects at all levels: social, breaking ties between groups and families, derived from the displacement generated by climate change. The impact on agriculture and food security will not only generate modifications in the agricultural sectors but will also have a serious economic impact on large sectors of the population, who will see their sources of livelihood lost.

In this context, States must inform responsibly and, above all, with pedagogy to avoid destabilization and jeopardizing democracy and peaceful coexistence. In other words, the task of the State must be aimed at maintaining its capacity to react and act in the face of unforeseen events, but above all to maintain its legitimacy, the defense of its institutions and democracy.

2.3 Environmental Defenders

a. Measures and policies to facilitate the work of environmental defenders

Following the Inter-American Democratic Charter recognition of the role of democracy in good stewardship of the environment,⁴³⁷ OAS member States have recognized the valuable contribution of human rights defenders to the promotion, observance, and protection of human rights and fundamental freedoms in the Hemisphere.⁴³⁸ Similarly, within the United Nations system, the Human Rights Council⁴³⁹ has recognized that human rights defenders make a positive, important and legitimate contribution to the promotion and protection of human rights relating to the enjoyment of a safe, clean, healthy and sustainable environment, and that these defenders who deal with environmental issues, also referred to as environmental human rights defenders, are among those most exposed and most at risk.

There is consensus on the need of stepping up State efforts to adopt the necessary measures to safeguard the lives, freedom, and personal safety of human rights defenders and to conduct

⁴³⁶ World Health Organization (2023). *Climate change*, 12 October. <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>.

⁴³⁷ OAS General Assembly (2001) AG/RES. 1 (XXVIII-E/01). Inter-American Democratic Charter (Art.15). Adopted by the General Assembly at its special session held in Lima, Peru, on September 11, 2001 Available at: [https://www.summit-americas.org/Quebec_Summit/Quebec-DemocraticCharter/Charter-AG.RES.%201%20\(XXVIII-E.01\)e.doc](https://www.summit-americas.org/Quebec_Summit/Quebec-DemocraticCharter/Charter-AG.RES.%201%20(XXVIII-E.01)e.doc).

⁴³⁸ General Assembly (2005) *Human Rights Defenders: Support For The Individuals, Groups, And Organizations Of Civil Society Working To Promote And Protect Human Rights In The Americas*, AG/RES. 2067 (XXXV-O/05).

⁴³⁹ Human Rights Council (2019). *Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development*, A/HRC/RES/40/11.



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thorough and impartial investigations in all cases of violations against human rights defenders, ensuring that the findings thereof are transparent and publicized.⁴⁴⁰

To facilitate the work of environmental defenders, States should adopt measures to protect respect and guarantee environmental rights of human rights environmental defenders, particularly access rights. Additionally States must ensure a safe enabling environment for environmental defenders to engage in their work and also provide an effective remedy in the event of violations, including the effective right to obtain reparation and benefit from judicial protection in the event their rights are affected. These duties stem from various sources of law in the Inter-American System such as the principles on Access to information and on Access to Justice adopted by the Inter-American Juridical Committee and the Inter-American Strategy on Public Participation for Sustainable Development Decision Making and from the commitments in UNFCCC and the Paris Agreement. States that are parties to the Escazu Agreement have treaty obligations in this respect under articles 7 and 9.

States should also interpret international human rights and guidelines on the protection of human rights, in tandem with the commitments under the UNFCCC and the Paris Agreement.

Environmental defenders are human rights defenders and therefore must have the same guarantees, rights and protections that human rights defenders enjoy. This is derived from environmental rights, resulting from the substantive right to a healthy environment and procedural rights, which provide the means for their guarantee. Further it stems from recognition by the IACtHR in several cases of the inextricable nature of both the protection of, and harm to, human beings, communities, and the planet.

Not only does environmental damage raise issues of human rights but failure to protect human rights can prevent progress in environmental protection. Environmental rights can be seen as an extension of basic human rights.

Environmental rights defenders carry out a vast range of activities related to land and environmental rights, including those working on issues related to extractive industries, and construction and development projects and are characterized as such by their actions to protect environmental and land rights. Even if they are journalists, activists or lawyers who denounce and oppose environmental destruction or land grabbing, they are often ordinary people living in remote villages, forests or mountains, who may not even be aware that they are acting as environmental human rights defenders.⁴⁴¹ In many instances, they are women, Afro-descendants, and indigenous leaders or community members defending their traditional lands against the damage caused by large-scale projects, such as mining and dam construction.⁴⁴² In fact, collaborative and adaptive management and governance that involves stakeholders from a range of socio-economic and cultural backgrounds, including local communities, indigenous peoples, women, the poor, and other traditionally marginalized and vulnerable groups, has been identified

⁴⁴⁰ General Assembly (2005). *Human Rights Defenders: Support For The Individuals, Groups, And Organizations Of Civil Society Working To Promote And Protect Human Rights In The Americas*, AG/RES. 2067 (XXXV-O/05).

⁴⁴¹ UN Environment. *Policy on Promoting Greater Protection for Environmental Defenders Policy*. Available at https://wedocs.unep.org/bitstream/handle/20.500.11822/22769/UN%20Environment%20Policy%20on%20Environmental%20Defenders_08.02.18Clean.pdf?sequence=1&isAllowed=y.

⁴⁴² *United Nations General Assembly (2016). Report of the Special Rapporteur on the situation of human rights defenders .A/71/281.*



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as means of Implementation that add procedural strength and help build the procedural and substantive components to of the Environmental Rule of Law as defined by the 2016 WCEL Declaration on the Environmental Rule of Law.⁴⁴³

It can therefore be said that, in the first place, States must respect, protect and guarantee the human rights of environmental defenders, including those fundamental rights relating to the protection and preservation of life, freedoms of opinion, expression, peaceful assembly, association, participation in the management of public affairs and decision making. These rights are all cornerstones of environmental rights.

States must foremost ensure a safe and enabling environment that allows them to carry out their work without hindrance or insecurity, in recognition of their important assistance to States in fulfilling their climate related obligations under the UNFCCC, and the Paris Agreement encouraging the widest participation.

States must also provide an effective remedy in the event of violations of the rights of defenders, as well as the effective right to obtain reparation and to be protected in the event of violations of those rights. Prompt and impartial investigation of alleged violations, prosecution of perpetrators regardless of their situation, provision of reparation, including adequate compensation for victims, as well as enforcement of decisions or sentences, are fundamental steps that must be taken to ensure the right to an effective remedy. This obligation can be fulfilled through effective access to justice. Regarding climate impacts and water, these responsibilities are enhanced in the Procedural Water Justice Principle (Principle 10) of the Brasilia Declaration on Water Justice.⁴⁴⁴

To the extent feasible States shall take climate change considerations into account with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change. In carrying out commitments under Article 6, of the UNFCCC Parties shall promote and facilitate at the national and as appropriate, subregional and regional levels, and in accordance with national laws and regulations, and within their respective capacities public participation in addressing climate change and its effects and developing adequate responses.⁴⁴⁵ The Paris Agreement establishes an obligation for Parties to cooperate in taking measures to enhance public awareness, public participation and public access to information, recognizing their importance to enhancing actions under the Agreement.⁴⁴⁶ These obligations are consistent with delivering on the promise of implementing the 2030 Agenda for Sustainable Development of no one left behind and reaching first to those furthest behind.⁴⁴⁷

The right and responsibility of participation has been recognized in the context of access rights within the Inter-American System, as essential for democratic societies as previously addressed. These rights are recognized in commitments of all states that are part of the Inter-American Human Rights System in UNFCCC and the Paris Agreement. Further, those States that are

⁴⁴³ IUNC (2016). *IUCN World Declaration on the Environmental Rule of Law*.

⁴⁴⁴ *Brasilia Declaration of Judges on Water Justice*, entered into force March 21, 2018.

⁴⁴⁵ *The United Nations Framework Convention on Climate Change articles Article 4, paragraph 1 (i) and Article 6 (a) (iii) (1992)*, entered into force 21 March 1994.

⁴⁴⁶ *Paris Agreement to the United Nations Framework Convention on Climate Change article 12 (2015)*,

⁴⁴⁷ United Nations General Assembly (2015). *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1.



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Parties to the Escazu Agreement have adopted complementary obligations into the work of the context of protecting and promoting all the rights of human rights defenders in environmental matters. Participation is essential to their work because much of their work takes place in the space of advocacy and participation. Every State has the duty to ensure the right to public participation and, to this end, is committed to the principles of openness and inclusiveness in environmental decision-making processes⁴⁴⁸ having established adequate mechanisms for participation based on domestic and international normative frameworks.⁴⁴⁹

Ensuring a safe and enabling environment is of paramount importance for implementation of the Paris Agreement. It implies, inter alia, the adoption of an appropriate legal and institutional framework,⁴⁵⁰ fighting impunity and enabling access to justice; the creation of a strong national human rights institution; effective protection policies and mechanisms; respect for and support by non-State actors for the work of human rights defenders,⁴⁵¹ and a strong community of advocates.

These main rights and responsibilities were recognized by the IACtHR in the case of *Baraona Bray v. Chile*, finding that the State of Chile was internationally responsible for violations of the rights to freedom of thought and expression, the principle of legality and judicial protection, to the detriment of Carlos Baraona Bray. It is critical for States to implement public policy and adopt all measures in support of access rights such as participation and freedom of expression, given they are critical foundations of the work of environmental and human rights defenders.

States must therefore provide strong protection for environmental and human rights defenders whose work focuses on any climate-related issue, from land use to fossil fuels. States must zealously protect defenders from harassment, intimidation, and violence.⁴⁵² It is of particular importance for individuals and communities in vulnerable positions such as women, indigenous peoples, Afro-descendant communities, and rural/peasant communities. International legal frameworks must focus on the rights of these communities and people in vulnerable positions to ensure the rights of all.

b. Women human rights defenders

Women environmental defenders are especially vulnerable. In fact, all forms of discrimination can lead to the targeting or vulnerability to violence of women human rights defenders, who are prone to multiple, aggravated or intersecting forms of discrimination. To recognize that, in view

⁴⁴⁸ Inter American Court of Human Rights, *Case of Baraona Bray v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2022. Series C No. 481.

⁴⁴⁹ OAS (2001). *Inter-American Strategy on Public Participation in Sustainable Development Decision Making*. Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement). 2018. Article 7.1, 7.2 and 7.3

⁴⁵⁰ *The United Nations Framework Convention on Climate Change* (1992), entered into force 21 March 1994; UN Human Rights Committee (2004), *General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*, article 4; *Paris Agreement to the United Nations Framework Convention on Climate Change* (2015).

⁴⁵¹ Inter American Court of Human Rights, *Case of Baraona Bray v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2022. Series C No. 481.

⁴⁵² United Nations, General Assembly (2019). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*. A/74/161.



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of their specific role and needs, women human rights defenders should be accorded special attention to ensure that they are fully protected and effective in carrying out their important activities.⁴⁵³

To ensure the right to defend a healthy environment and the territory for women human rights and environmental defenders in the context of the climate emergency, States must consider information on gender vulnerability verified by the IPCC and similar reports, as well as relevant international declarations emphasizing gender disparity in the climate emergency. This should take into account key elements of the Rio Declaration and the Escazu Agreement, which recognize protective rights for environmental human rights defenders.

Since 2014, the IPCC has noted that individuals marginalized socially, economically, culturally, politically, institutionally, or otherwise are particularly vulnerable to climate change. This includes individuals or communities whose vulnerabilities are caused by poverty, gender, age, disability, geography, and cultural or ethnic origin.⁴⁵⁴ Additionally, the effects of climate change and environmental degradation have exacerbated existing inequalities, creating new vulnerabilities.⁴⁵⁵

This situation has not changed, and to this day, women continue to be considered one of the groups particularly vulnerable to the negative impacts of climate change. Some studies reflect that women are 14 times more likely to die in a climate disaster than men, and 80% of those displaced by the climate emergency are women and girls. The combined effects of natural disasters, both sudden and slow-evolving, environmental degradation, and forced displacement severely affect women's and girls' rights to life, access to food and nutrition, clean water and sanitation, education and training, adequate housing, land, decent work, and labor protection.⁴⁵⁶

Principle 20 of the Rio Declaration recognizes that women play a fundamental role in environmental management and development. Therefore, their full participation is essential for achieving sustainable development. Furthermore, their involvement necessarily extends to the political sector and decision-making sphere. However, there are specific barriers to the participation and contribution of women. Chief among them is violence against women and gender-based violence, which is further heightened for women defenders who are part of other communities in vulnerable positions (indigenous, Afro-descendant, LGBTQ+, rural and peasant populations, etc.).

Moreover, in its Sixth Assessment Report, the IPCC acknowledged that indigenous women, elderly women, and women belonging to minority groups are the most vulnerable to climate change. This vulnerability increases further when it comes to women human rights defenders.

⁴⁵³ General Assembly (2005) *Human Rights Defenders: Support For The Individuals, Groups, And Organizations Of Civil Society Working To Promote And Protect Human Rights in The Americas*, AG/RES. 2067 (XXXV-O/05), <http://archived2021.ishr.ch/sites/default/files/article/files/2005.pdf>.

⁴⁵⁴ IPCC, 2014: *Cambio climático 2014: Impactos, adaptación y vulnerabilidad – Resumen para responsables de políticas*.

⁴⁵⁵ United Nations, General Assembly (2022). *Report of the Special Rapporteur on violence against women and girls in the context of the climate crisis, including environmental degradation and related disaster risk mitigation and response*. A/77/136.

⁴⁵⁶ *Ibidem*.

Hence, there is a need to emphasize the intersectionality of identities among environmental and human rights defenders.

According to the 2022 Report of the Special Rapporteur on violence against women and girls, serious violence is perpetrated against women defending their communities, livelihoods, or scarce environmental resources. To address these disadvantages, it is crucial to refer to Article 1 of the Inter-American Convention, which asserts the need to eliminate discrimination based on race, color, sex, language, religion, political opinions, or any other kind, national or social origin, economic status, birth, or any other social condition. It is also important to draw attention to the Preamble of the Paris Agreement, recognizing the need to empower women by addressing and eliminating obstacles to their participation. On the other hand, states must also integrate aspects of The Inter-American Convention on the Prevention of Punishment and Eradication of Violence Against Women.

In this regard, the Inter-American Court has established that States have the obligation to adopt all reasonable and necessary measures to guarantee the right to life and personal integrity of individuals in a situation of special vulnerability, particularly as a consequence of their work, as long as the State has or should have knowledge of the real and immediate risk. In the face of such a risk, the State must take measures that are reasonably expected to prevent the materialization of such a risk. This obligation is further emphasized by the Principle on The Full Recognition of Vulnerable Groups in Environmental Matters (70) and the Principle on Gender Equality (71).⁴⁵⁷ To inform climate action responsive to specific needs of women and women environmental defenders, access to data is key. Climate policy and action cannot address the critical needs of women and girls without a full understanding of the links between gender and the environment, and this cannot happen without ensuring that gender and environment data and statistics are abundant, readily available, and incorporated into global climate negotiations. For this end, States should promote and prioritize the production of data on gender and environment, in an ethical and transparent way. This need was specifically addressed at Global Gender and Environment Data Conference in the margins of COP28.⁴⁵⁸

c. Indigenous peoples, peasant communities, afro descendants, intersectionality

Specific considerations should be afforded with regards to the right to defend a healthy environment and the territory by among others, indigenous peoples, peasant communities and Afro descendants, based on intersectional factors and differentiated impacts of the climate emergency.

Women, indigenous peoples, peasant communities, and Afro-descendant individuals are also vulnerable groups to the impacts of climate change. Not only have these groups experienced the impacts of climate change with corresponding consequences on the enjoyment of their human rights, but their territorial rights have also been violated in the implementation of climate change mitigation and adaptation measures. As a result, indigenous peoples, peasant communities, and Afro-descendant individuals are disproportionately exposed to attacks due to their struggle to

⁴⁵⁷ 2018. Judiciary of Chile, Organization of American States and Ibero-American Judicial Summit (Cumbre Judicial Iberoamericana). Environmental Juridical Principles for Ecological Sustainable Development. Available online at (Spanish only): <https://servicios.pjud.cl/ManosLibro/files/assets/basic-html/page-1.html>.

⁴⁵⁸ For more information: <https://www.cop28.com/en/finance-events/global-conference-gender>



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protect their ancestral lands from extractive industries. In 2021, 1/5 of attacked defenders were indigenous leaders or members, and 1/4 of the attacks on defenders were related to their opposition to mining activities.⁴⁵⁹

In connection with the climate emergency, it is important to note that, on the one hand, the declared commitments to mitigate and respond to climate change are being ignored, as major polluting countries continue to carry out irresponsible extractive projects and invest in fossil fuels throughout the region. On the other hand, in the context of the growing demand for renewable energy resources, extractive projects related to sustainable energy transition have also been linked to human rights violations.⁴⁶⁰

In this context, the effective fulfillment of the right to free, prior, informed, and culturally adequate consultation becomes a crucial tool to prevent future human rights violations. Furthermore, the right to free, prior, and informed consent established by the Convention on Indigenous and Tribal Peoples (ILO Convention No. 169), adopted by the International Labour Organization in 1989, plays a significant role. In the context of the right to development, and any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water, or other resources this right is reaffirmed and supported by Article 29 of the American Declaration on the Rights of Indigenous Peoples and article 32 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) empowering them to "maintain and determine their own priorities with respect to their political, economic, social, and cultural development in accordance with their own worldviews" and "to be guaranteed the enjoyment of their own means of subsistence and development, and to freely exercise all their economic activities."

Moreover, these rights are closely tied to and directly impact the political participation and decision-making processes for indigenous peoples. Therefore, Article 7.15 of the Escazu Agreement, which addresses public participation in environmental decision-making processes, asserts that in the implementation of this Agreement, each Party will ensure respect for its national legislation and international obligations regarding the rights of indigenous peoples and local communities.

Free, prior, and informed consent is a crucial right for indigenous and Afro-descendant defenders and must be a priority for Party States to protect their rights. To safeguard the rights and work of environmental human rights defenders, especially the work of women and Afro-descendant defenders, the Court should consider its previous decision in conjunction with the *Saramaka v. Surinam* case. This case represents the first internationally binding decision recognizing the rights of Indigenous Peoples to natural resources located in their lands. The ruling stated that whenever large-scale development has a significant impact within indigenous territory, the state has the obligation to obtain free, prior, and informed consent with respect to their culture and traditions. This is consistent with the referred UNDRIP and American Declaration on the Rights of Indigenous Peoples provisions.

⁴⁵⁹ Business and Human Rights Centre, "*International Women's Day 2022: recognizing the role of women in advancing human rights and defending the planet*", 28 de febrero de 2022.

⁴⁶⁰ Front Line Defenders (2022). *Global Analysis 2022*. <https://www.frontlinedefenders.org/en/resource-publication/global-analysis-2022>.

State duties in this regards should be centered on the provisions of article 29 of the American Declaration on which mirror the provisions of UNDRIP as follows: “*States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water, or other resources*”.

Furthermore, “No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return” in accordance to UNDRIP. Judicial precedent in the region has ratified this right.⁴⁶¹

However, indigenous peoples are not the only ones who experience excess vulnerability and an aggravating risk of vulnerability. Afro-descendant communities and peasant communities also face significant barriers that are exacerbated in the context of the climate emergency. In specific situations, institutionalized racism and stigmatization fuel the oppression against Afro-descendant community members, denying them their rights. Therefore, it is necessary to consider laws and principles against discrimination, such as Articles 1, 24, and 27 of the Inter-American Convention. Also, the Advisory Opinion OC-29/22 of the IACHR on human rights and differentiated approaches regarding certain groups of persons deprived of liberty.⁴⁶² In situations where international standards have recognized this, as seen in A/71/281, Report of the Special Rapporteur on the situation of human rights defenders, 2016.⁴⁶³

In conclusion, to guarantee the right to defend a healthy environment and territory specifically for indigenous people and Afro-descendent communities, it is critical for States to enforce guidelines on free, prior and informed consent as defined by the Court and international conventions in order for defenders to be given adequate opportunity to participate in public processes. It is also important for these communities to do so without discrimination, and it is therefore necessary for the Court to provide states with strong guidelines that enforce existing anti-discrimination laws within a national context and an international one.

d. Environmental defenders with heightened risk

The Escazú Agreement stands out as the first international treaty to explicitly provide protection measures for environmental defenders, emphasizing the prevention, investigation, and reprimand of attacks against those safeguarding environmental rights. It seeks to ensure the full and

⁴⁶¹ 24 de Noviembre 2023. SALA MULTICOMPETENTE DE LA CORTE PROVINCIAL DE JUSTICIA DE SUCUMBÍOS En el Juicio Especial No. 21332202200699. (Caso de la Nación siekopai contra del Ministerio del Ambiente, Agua y Transición Ecológica y Procuraduría General del Estado).

⁴⁶² Inter American Court of Human Rights (2022), *Advisory Opinion OC-29/22*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_29_esp.pdf, [Accessed 09 October 2023].

⁴⁶³ Global Witness, *Una década de resistencia, Diez años informando sobre el activismo por la tierra y el medio ambiente alrededor del mundo*, 2022. United Nations, General Assembly (2016). *Report of the Special Rapporteur on the situation of human rights defenders A/71/281*.

effective implementation of access to environmental information, public participation in the environmental decision-making process, and access to justice in environmental matters.⁴⁶⁴

While investigation is the responsibility of the State, it is also the State's obligation to ensure that the investigation is meaningful. Therefore, the investigation process must also allow victim(s) or those closest to the victim(s) access to justice and must be restorative in nature. In the *Velásquez Rodríguez Vs. Honduras* case (para 166) the Court found that that in fulfilling their obligation to investigate, "the States must...attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation."

In the case of *Barahona Bray v. Chile*, this Court explicitly states that States must practice due diligence when protecting environmental defenders, and should take special care in the protection of their rights to access to information, freedom of expression, peaceful assembly and association, guarantees of non-discrimination and participation in decision-making, which are protected by the American Convention (Articles 1(1), 13) and the Escazu Agreement (Articles 5 – 9).

Determined that States must "remain vigilant and protect defenders from intimidation, criminalization and violence, investigate, prosecute and punish diligently the perpetrators of such crimes...and 'establish a safe and enabling environment for defenders to operate free from threats, harassment, intimidation and violence'".

The above, with the understanding that defenders cannot properly defend rights related to the environment if they cannot exercise their own rights, as defined in the scope of State responsibilities to "stay vigilant and protect defenders against intimidation, criminalization, and violence, diligently investigate, prosecute, and punish the authors of these crimes [...] and establish a safe and conducive environment for defenders to act without threats, harassment, intimidation, or violence."⁴⁶⁵ This is based on the understanding that defenders cannot adequately defend environmental rights if they are unable to exercise their own rights, including access to information, freedom of expression, peaceful assembly, non-discrimination guarantees, and participation in decision-making.

Specific measures should be taken when a state knows or should have known of a particular risk of harm to an identifiable person or group. In this case, States have specific due diligence obligations in relation to defenders, or groups of defenders who experience heightened risk of violation of human rights or lethal measures⁴⁶⁶, especially groups that experience high risk due to factors of identity, gender, race, status, or their role in society. In the case of environmental defenders, this translates into specific measures for the protection of indigenous peoples, peasant communities, and Afro-descendants in whose territories oil and gas extractive activities are carried out.

⁴⁶⁴IUCN (2020). *Protecting environmental defenders in Latin America: the Escazú Agreement*. Available at: <https://www.iucn.org/news/world-commission-environmental-law/202010/protecting-environmental-defenders-latin-america-escazu-agreement>, [Accessed 19 October 2023].

⁴⁶⁵ OHCHR (2018). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment* (2018). Framework Principles on Human Rights and the Environment. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/017/42/PDF/G1801742.pdf>, [Accessed November 13 2023].

⁴⁶⁶ Ibid.



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Enhanced due diligence measures exist in relation to groups that are often subject to particular risks based on their identity, situation, or role in society. These obligations entail deploying “best efforts”, all adequate political, regulatory, legal, socio-economic, financial, and institutional capacities with regards to anticipating and addressing heightened risk to environmental defenders and guarantee the right to effective access justice if the risk materialize.⁴⁶⁷ All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local - are in a position to engage the responsibility of the State Party. This can be established through an international instrument, as is the case with treaties that determine specific obligations to protect women from gender-based violence or ensure the best interests of children, or through the state's awareness of a higher risk for a specific group.⁴⁶⁸

In the context of a climate emergency, one can consider the case of enhanced due diligence measures for the protection of women who have been victims of forced displacement, internally or across borders, due to climate-related causes, and who claim their right to dignified relocation and compensation for losses and damages caused by the impacts of climate change. It is worth mentioning that the most effective way to combat attacks and threats against defenders is to investigate and sanction those responsible for these crimes. The failure to investigate and penalize those responsible for assaults on human rights defenders and journalists sends a signal to the aggressor that committing such offenses carries no consequences, creating an environment that fosters recurrence.⁴⁶⁹ Additionally, existing laws protecting defenders must be enforced. Where such laws are absent, new regulatory frameworks should be established, ensuring a preventive approach to the safety of environmental human rights defenders, with a focus on their significant participation in decision-making and the development of laws, policies, contracts, and assessments by both states and companies.

States should guarantee the right to access justice, placing particular emphasis on the protection of environmental defenders. The right to access justice is explicitly acknowledged in Article 8 of the Escazu Agreement. Furthermore, States should also refer to Articles 8 and 25 of the American Convention on Human Rights, along with a careful examination of the standards established by the Inter-American Human Rights System concerning due process in judicial proceedings related to social rights.⁴⁷⁰

⁴⁶⁷ United Nations High Commissioner on Human Rights (2004). General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant. <https://digitallibrary.un.org/record/533996>. *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment* (2018). <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/017/42/PDF/G1801742.pdf> (Accessed November 13 2023).

⁴⁶⁸ Ibid.

⁴⁶⁹ PBI (2016). *El mecanismo de protección para personas defensoras de derechos humanos y periodistas en México, los avances y continuos desafíos*.

⁴⁷⁰ OAS. *Inter-American Commission on Human Rights*. <https://www.oas.org/en/iachr/>.



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This duty of due diligence requires States to employ the principle of preventative action⁴⁷¹ and proactively investigate potential or ongoing human rights violations, and take affirmative steps to mitigate any harm or risks of human rights violations.⁴⁷²

States should produce and publish information in order to define the capacity to investigate various crimes committed against defenders, including reports of threats, kidnappings, homicides, forced displacement, gender-based violence, discrimination.

To protect access to justice for defenders and investigate various crimes against environmental human rights defenders, it is important to define the threats against them and interpret them with a diverse and intersectional perspective. In this regard, it is critical for the Court to fulfill its responsibility in enhancing the public policy of State parties. First, it is important to recall the guidelines outlined by the Inter-American Commission on Human Rights regarding Public Policy with a Human Rights Approach.⁴⁷³ The promotion and protection of human rights in the Americas is enforced by the Court. The recommendations and mandates by the Court therefore must promote measures that strengthen a framework to implement public policy with a human rights approach at the national level of the member States. As such the Court must also remember its responsibility to provide effective judicial remedies to human rights violations as recognized by Article 25 of the Convention.

Due to the high rate of assassinations of environmental defenders, it is therefore important to maintain due diligence related to evidence, especially forensic evidence, this includes maintaining a clear and transparent chain of custody related to the evidence of the case. The Court has affirmed this importance in the case of *González y otras ("Campo Algodonero") Vs. México*, (para. 305).⁴⁷⁴ A crucial aspect in determining the ability to investigate various crimes committed against defenders is the production of information related to a context analysis that includes the risks associated with the work of defenders. This should consider the characteristics of the areas where they operate, the type of projects, and the actors promoting them. An intersectional approach is essential to identify particularities of defenders that put their work at greater risk. In addition, civil society organizations have suggested the implementation of a special program within prosecutorial offices to investigate attacks against defenders.⁴⁷⁵ Furthermore, defenders face a high risk in the Latin American region. Half of all environmental defender assassinations worldwide occur in Latin America.⁴⁷⁶ This violence is even more pronounced in Latin American countries where extractive industries have a larger presence.

⁴⁷¹ 2018. Judiciary of Chile, Organization of American States and Ibero-American Judicial Summit (Cumbre Judicial Iberoamericana). Environmental Juridical Principles for Ecological Sustainable Development. Available online at (Spanish only): <https://servicios.pjud.cl/ManosLibro/files/assets/basic-html/page-1.html>.

⁴⁷² Sarah Dávila A., *The Escazú Agreement: The Last Piece of the Tripartite Normative Framework in the Right to a Healthy Environment*, 42 Stan. Env'tl. L. J. 63 (2023).

⁴⁷³ Inter-American Commission on Human Rights (2018). *Public policy with a human rights approach*. Available at: <https://www.oas.org/en/iachr/reports/pdfs/PublicPolicyHR.pdf>, (Accessed 20 October 2023).

⁴⁷⁴ Inter American Court of Human Rights, *Case of González y otras ("Campo Algodonero") Vs. México*. Judgment (Preliminary Objections, Merits, Reparations and Costs) of November 16, 2009. https://www.corteidh.or.cr/cf/Jurisprudencia2/ficha_tecnica.cfm?nId_Ficha=347&lang.

⁴⁷⁵ PBI (2016). *El mecanismo de protección para personas defensoras de derechos humanos y periodistas en México, los avances y continuos desafíos*.

⁴⁷⁶ Front Line Defenders (2022). *Global Analysis 2022*.



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- The main risks for defenders include:⁴⁷⁷ Arrest and detention, as well as unwarranted questioning by authorities
- Raids and searches
- Legal actions against defender(s)
- Physical attacks
- Intimidation and death threats online or in person
- Surveillance
- Sexual harassment or assault
- Murder

Many of these risks are compounded for defenders with intersectional identities. For example, women face a high risk of gender-based violence (such as assault, harassment, or rape). Similarly, individuals from indigenous and Afro-descendant communities are at a high risk of physical violence.⁴⁷⁸

On its part, the Expert Rapporteur on the situation of human rights defenders has recommended that the international community thoroughly examine and publicly condemn violations of the rights of environmental human rights defenders and increase the visibility of their legitimate role in defending environmental and land rights.⁴⁷⁹ In this regard, IUCN during the World Conservation Congress in Marseille 2021 adopted a resolution urging the Director General of IUCN to work with state and non-state Members, including indigenous peoples' organizations and national NGOs, Commissions, Regional Offices, National Committees, the Secretariat, and international organizations, such as international financial institutions, to develop an IUCN policy and action plan on whistleblowers and defenders of human rights and peoples in relation to the environment, in collaboration with the whistleblowers and defenders themselves and their organizations.⁴⁸⁰

In the same resolution, the international community agreed that knowledge, disaggregated data collection, and awareness of whistleblowers and defenders of environmental issues and protection mechanisms linked to other current efforts, such as civil society organizations and networks, implementation of the UN environment policy to promote greater protection of environmental defenders, s, should be increased by national governments.

Another fundamental aspect to consider is how states can establish mechanisms that facilitate analysis of crimes committed against defenders to determine the source of violence and ensure that they do not go unpunished. Therefore, transparency and access to information are critical. To achieve these objectives, states can first recognize the guarantee of access to information and the right to access justice for environmental defenders established in the Escazu Agreement. Furthermore, they should conduct regular consultations with communities in high-risk areas to gather relevant information and provide opportunities to submit information about crimes against defenders. Additionally, they should publish available information on the registry of crimes

⁴⁷⁷ Front Line Defenders (2022). *Global Analysis 2022*.

⁴⁷⁸ Ibid.

⁴⁷⁹ United Nations General Assembly (2016). *Report of the Special Rapporteur on the situation of human rights defenders*. A/71/281.

⁴⁸⁰ WCC-2020-Res-115-ES Protección de los denunciantes y defensores de los derechos humanos y de los pueblos en relación con el medio ambiente, Marsella 2021.



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against defenders and their investigation at the national and international levels. Mechanisms should be implemented for local participation at the international level to avoid retaliation from the state or authorities.

Regarding information on patterns of threats and violence against environmental defenders, which is also a key resource for developing responses, including investigations. According to recommendations from civil society organizations,⁴⁸¹ to ensure justice and accountability, justice operators must have access to cross referenced information that allows for criminal analysis of threats, as well as the identification of common criminal patterns. This information should include: the modalities of threats; their geographical incidence; relevant information about the victim to better understand who is the target of threats, including membership in an organization or movement, affiliation, and interests affected by their work; possible perpetrators, evidence of the presence or participation of state actors, armed groups, organized criminal groups, companies, and economic interests (including the names of individual companies, whenever possible); associated crimes suffered by defenders, their families, associations, organizations, or social movements; and the state's response, including the implementation of protective measures, progress in criminal investigations, the number of people brought to trial, and the number of convictions.

To collect this data, it is important that defenders are promptly informed about the data that will be collected and for what purposes, so that they give their informed consent in this regard. The data must be accurate and kept up-to-date; it should be subject to specific standards regarding the duration and location of storage, and defenders should have the right to access their own information, as well as to challenge or request removal or rectification at any time.

No data revealing personal information about a human rights defender or sensitive information about their work should be published or shared with individuals or organizations, including state agents, who do not have a legitimate interest in such information; the exchange of information should also be subject to a test of necessity and proportionality. Thus, certain information should not be made public if it could pose a greater risk to the defender, such as their name and other personal details, as well as information that may constitute a violation of privacy or stigmatization.

States should take enhanced due diligence measures to ensure that attacks and threats against environmental defenders in the context of the climate emergency do not go unpunished.

States are bound to comply with their obligations under the American Convention with due diligence (AO 23/17 para 123).⁴⁸² Human right defenders experience a disproportionate rate of violence and intimidation. However, those cases are often not investigated, or are inadequately brought to justice.⁴⁸³ The due diligence measures to be taken by States in the context of the climate emergency are to uphold their obligation of investigation, and to reinforce and expand

⁴⁸¹ Centro por la Justicia y el Derecho Internacional (CEJIL), Protocolo de la Esperanza, Una respuesta eficaz a las amenazas contra las personas defensoras de los derechos humanos, 2021.

⁴⁸² Inter-American Court of Human Rights (2017). *Advisory Opinion OC-23/17*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf (Accessed 09 October 2023).

⁴⁸³ IUCN (2020). *Protecting environmental defenders in Latin America: the Escazú Agreement*. Available at: <https://www.iucn.org/news/world-commission-environmental-law/202010/protecting-environmental-defenders-latin-america-escazu-agreement> (Accessed 19 October 2023).



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mechanisms that ensure access to justice for all with a particular focus on vulnerable communities and environmental defenders.

In the case of the Indigenous Communities of the *Lhaka Honhat (Our Land) Association v. Argentina*, the Inter-American Court of Human Rights underscores the critical importance of the due diligence and investigation obligations of states in environmental matters:

208. Nevertheless, specifically with regard to the environment, it should be stressed that the principle of prevention of environmental harm forms part of customary international law and entails the State obligation to implement the necessary measures ex ante damage is caused to the environment, taking into account that, owing to its particularities, after the damage has occurred, it will frequently not be possible to restore the previous situation. Based on the duty of prevention, the Court has pointed out that “States are bound to use all the means at their disposal to avoid activities under its jurisdiction causing significant harm to the environment.”²⁰⁰ This obligation must be fulfilled in keeping with the standard of due diligence, which must be appropriate and proportionate to the level of risk of environmental harm.²⁰¹ Even though it is not possible to include a detailed list of all the measures that States could take to comply with this obligation, the following are some measures that must be taken in relation to activities that could potentially cause harm: (i) regulate; (ii) supervise and monitor; (iii) require and approve environmental impact assessments; (iv) establish contingency plans, and (v) mitigate, when environmental damage has occurred.⁴⁸⁴

The duty of a State to act with due diligence is a concept whose meaning has been determined by international law...the duty to act with due diligence has been examined in relation to economic, social and cultural rights, regarding which States commit to take “all appropriate measures” to achieve, progressively, the full effectiveness of the corresponding rights. This Court has emphasized, the duty to act with due diligence also corresponds, in general, to the State obligation to ensure the free and full exercise of the rights recognized in the American Convention to all persons subject to their jurisdiction, according to which States must take all appropriate measures to protect and preserve the rights recognized in the Convention, and to organize all the structures through which public authority is exercised so that they are able to ensure, legally, the free and full exercise of human rights”.

Considering the high risk of violence and intimidation faced by environmental defenders, the right to life and personal integrity of environmental defenders is particularly relevant.

International human rights law requires States to adopt general, specific and enhanced due diligence measures to respond to threats against human rights defenders,⁴⁸⁵ including environmental defenders. For States to practice due diligence, they must first undertake appropriate measures of investigation into crimes against environmental defenders. The IACtHR has established that based on the obligation to guarantee the rights and freedoms recognized by Article 1(1) of the American Convention, “States must prevent, investigate and punish any

⁴⁸⁴ Inter American Court of Human Rights, *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*. Judgment (Merits, Reparations and Costs) of February 6, 2020.

https://www.corteidh.or.cr/cf/Jurisprudencia2/ficha_tecnica.cfm?nId_Ficha=347&lang

⁴⁸⁵ CEJIL (2010). *Debida Diligencia en la Investigación de Graves Violaciones a Derechos Humanos*. Available at: <https://www.corteidh.or.cr/tablas/r25129.pdf> [Accessed 17 October 2023].



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violation of the rights committed by a public or private person or group”⁴⁸⁶ recognized by the Convention” for all people under a State’s jurisdiction.⁴⁸⁷

In so doing, however, the State also has the duty to provide measures that prevent impunity. This Court has defined impunity as a lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention.⁴⁸⁸ In the case of *Juan Humberto Sánchez Vs. Honduras* (para. 184) the Court ruled that “States Party to the American Convention have the duty to investigate human rights violations and to punish their perpetrators and those who cover up said violations.”⁴⁸⁹ The Court has also found, in the case of *González y otras (“Campo Algodonero”) Vs. México*, (para. 305) that by failing to comply with its duty to investigate, “a State has failed to uphold the rights enshrined in Articles 4.1, 5.1, 5.2 and 7.1 of the American Convention...For the same reasons, the State violated the rights of access to justice and judicial protection, enshrined in Articles 8.1 and 25.1 of the American Convention...”(para. 389)⁴⁹⁰

Thus, the Inter-American Court would not have to justify the violation of rights expressly enshrined in the American Convention on Human Rights (ACHR), such as property, life or personal integrity, but it would suffice to demonstrate the violation of the right to enjoy a healthy environment, based on Article 26 of the ACHR.

Regarding the proof of the causal link, the *Lhaka Honhat* judgment seems to reduce the level of requirement set in OC-23/17, which states that the obligation of prevention that is part of the duty to guarantee rights (art. 1.1 of the ACHR) applies to “significant” environmental damage, i.e., those that can affect the life or integrity of persons. The *Lhaka Honhat* judgment, on the other hand, suggests that this obligation implies adopting effective measures to avoid environmental degradation that could harm other rights, such as the ESCR provided for in article 26 of the ACHR (right to a healthy environment, right to water, right to adequate food and right to participate in cultural life). Therefore, following the line developed in the *Lhaka Honhat v. Argentina* judgment, it would be sufficient to demonstrate that the State's behavior did not meet the standard of due diligence with respect to the prevention of an “environmental threat” and that this generated a degradation of the components of the environment which, in turn, had an impact on the way of life of a community.

⁴⁸⁶ Moser, Patricia Tarre. “Duty to Ensure Human Rights and its Evolution in the Inter-American System: Comparing *Maria de Pengha v. Brazil* with *Jessica Lenagan (Gonzales) v. United States*.” *American University Journal of Gender Social Policy and Law* 21, no. 2 (2012): 437-453.

⁴⁸⁷ CEJIL (2010). *Debida Diligencia en la Investigación de Graves Violaciones a Derechos Humanos*. Available at: <https://www.corteidh.or.cr/tablas/r25129.pdf><https://www.corteidh.or.cr/tablas/r25129.pdf> [Accessed 17 October 2023].

⁴⁸⁸ Basch, Fernando Felipe. “The Doctrine of the Inter-American Court of Human Rights Regarding States’ Duty to Punish Human Rights Violations and Its Dangers.” *American University International Law Review* 23, no.1 (2013): 195-229.

Inter American Court of Human Rights, *Case of the “White Van” (Paniagua-Morales et al.) v. Guatemala*. Preliminary objections of January 25, 1996.https://www.corteidh.or.cr/docs/casos/articulos/seriec_23_ing.pdf.


⁴⁸⁹ Inter American Court of Human Rights, *Case of Juan Humberto Sánchez v. Honduras*. Judgment (Preliminary Objections Merits, Reparations and Costs) of June 7, 2003.https://www.corteidh.or.cr/docs/casos/articulos/seriec_400_ing.pdf.

⁴⁹⁰ Inter American Court of Human Rights, *Case of González y otras (“Campo Algodonero”) Vs. México*. Judgment (Preliminary Objections, Merits, Reparations and Costs) of November 16, 2009.



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Dr. Grethel Aguilar

Director General, IUCN

Switzerland, 18-12-2023

Place, date