



COMMISSION OF SMALL ISLAND STATES

ON CLIMATE CHANGE AND INTERNATIONAL LAW

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Secretary
Inter-American Court of Human Rights
10th Avenue, between street 45 and street 47
San José
Costa Rica

13 December 2023

Request for an Advisory Opinion Submitted by the Republic of Chile and the Republic of Colombia: Letter of Authorization

Excellency,

Pursuant to Article 3(3) of the Agreement for the Establishment of the Commission of Small Island States on Climate Change and International Law (the “COSIS Agreement”) (see Annex), we have the honor to transmit this letter on behalf of the Commission of Small Island States on Climate Change and International Law (the “Commission”) in the above-referenced proceedings.

The COSIS Agreement established the Commission as an intergovernmental organization on 31 October 2021. On 15 May 2023, the Commission decided to submit a written opinion in response to the request for advisory opinion on the scope of the state obligations for responding to the climate emergency from the Inter-American Court of Human Rights (the “Court”) submitted by the Republic of Chile and the Republic of Colombia, pursuant to Article 73(3) of the Court’s Rules of Procedure. On the same day, the Commission authorized its Committee of Legal Experts to make all necessary arrangements for the Commission’s submissions in the proceedings.

We have the honor to inform you that the Commission has designated Professor Payam Akhavan, Chair of the Committee of Legal Experts, and Ms. Catherine Amirfar, Member of the Committee and Chair of the Subcommittee on Litigation Management, as the Commission’s Representative and Co-Representative, respectively, before the Court. Accordingly, Professor Akhavan and Ms. Amirfar are duly authorized to represent the Commission in all aspects of these proceedings.

Please accept the assurances of our highest consideration.

CO-CHAIRS OF THE COMMISSION OF SMALL ISLAND STATES ON
CLIMATE CHANGE AND INTERNATIONAL LAW

Hon. Gaston Alfonso Browne
Prime Minister of Antigua and Barbuda

Hon. Kausea Natano
Prime Minister of Tuvalu

INTER-AMERICAN COURT OF HUMAN RIGHTS

CLIMATE EMERGENCY AND HUMAN RIGHTS
(REQUEST FOR ADVISORY OPINION SUBMITTED BY THE
REPUBLIC OF CHILE AND THE REPUBLIC OF COLOMBIA)

**WRITTEN OPINION OF THE
COMMISSION OF SMALL ISLAND STATES ON
CLIMATE CHANGE AND INTERNATIONAL LAW**



18 DECEMBER 2023

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I. Introduction

1. The Commission of Small Island States on Climate Change and International Law (*COSIS* or the *Commission*) presents this written opinion as an interested party in response to the Request submitted to the Inter-American Court of Human Rights (the *Court*) by the Republic of Chile and the Republic of Colombia on 9 January 2023 (the *Request*).
2. The Commission's key submissions are set out at [7] below. The Commission's central submission is its request that the Court articulate specific minimum climate-related mitigation and adaptation obligations on States, arising from their duties of prevention and international cooperation under the American Convention, to redress the current and anticipated breaches of the Convention from States' failure to act on climate change (**Section V**). Failure to implement these obligations entails State responsibility under international law (**Section VI**).
3. The Commission was established on 31 October 2021. Its Member States span both the Pacific and the Caribbean, and currently include Antigua and Barbuda, Tuvalu, the Republic of Palau, Niue, the Republic of Vanuatu, Saint Lucia, Saint Vincent and the Grenadines, Saint Christopher (Saint Kitts) and Nevis, and the Commonwealth of the Bahamas.
4. The Commission's mandate stems from the particular vulnerability of small island States to the increasingly devastating impacts of climate change.¹ The Intergovernmental Panel on Climate Change (*IPCC*)—the UN body responsible for assessing the science related to climate change—has confirmed that climate change has already caused widespread adverse impacts and related losses and damages to nature and people, including some irreversible impacts as natural and human systems are pushed beyond their ability to adapt.² Near-term actions that limit warming to close to 1.5°C above pre-industrial levels would substantially reduce projected losses and damages related to climate change in human systems and ecosystems, compared to higher warming levels, but cannot eliminate them all.³
5. Small island States are “disproportionately affected” by the adverse effects of human-caused climate change.⁴ As noted by the IPCC, exceeding the 1.5°C threshold will result in extreme weather events and sea-level rise that threaten the habitability and, in some cases, the very existence, of small island States.⁵ In addition, the IPCC confirmed that “[c]limate-related migration is considered to be a particular issue for small islands because changes in extreme events and slow-onset changes affect increasingly highly exposed and vulnerable low-lying

¹ The Preamble to the United Nations Framework Convention on Climate Change (*UNFCCC*) recognises “low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, droughts and desertification, and developing countries with fragile mountainous ecosystems are particularly vulnerable to the adverse effects of climate change”. *UNFCCC*, entered into force on March 21, 1994, Preamble. To ensure that its written statement is as short as possible, the Commission has not reproduced documents that are readily accessible online.

² *COSIS* relies upon the findings of the IPCC. In particular *COSIS* relies on the following key IPCC reports from its most recent assessment cycle: (i) Synthesis Report (2023)—Summary for Policymakers; (ii) Working Group II report (2022)—Summary for Policymakers, Chapter 3 (Ocean and Coastal Ecosystems and Their Services), and Chapter 15 (Small Islands); (iii) Working Group I report (2021)—Summary for Policymakers, Chapter 5 (Global Carbon and Other Biogeochemical Cycles and Feedbacks), and Chapter 9 (Ocean, Cryosphere, and Sea Level Change); (iv) Special Report on the Ocean and Cryosphere in a Changing Climate (2019); and (v) Special Report on Global Warming of 1.5°C (2018).

³ IPCC, *Synthesis Report* (2023), p. 95.

⁴ IPCC, *Synthesis Report* (2023), p. 42.

⁵ IPCC, *Working Group II Report* (2022), ch 15.

coastal populations, therefore causing a threat to small island habitability”.⁶ The peoples of small island States face a gradual threat of displacement, or may be forced to migrate as a result of extreme weather events, salinization of aquifers or agricultural lands, collapsing local economies, or other conditions that making living on a small island untenable.⁷ As stressed by the IPCC, individuals and households in small islands have reached “*soft limits*” and, despite adaptations measures, losses and damages cannot be prevented.⁸

6. COSIS makes this submission to highlight the severe and existential threat that climate change poses to the human rights of the inhabitants of its Member States and to their environment. COSIS calls on this Court to recognise that, despite having contributed negligible amounts to historical greenhouse gas (GHG) emissions, small island States bear the brunt of climate change impacts, particularly sea level rise, which has caused – and is expected to continue causing – acute and irreparable damage with dire consequences for the enjoyment of fundamental human rights.⁹
7. COSIS respectfully submits that the Court is in a unique position to consider the human rights impact of climate change on small island States. It urges the Court to clarify, through this advisory opinion, the binding obligations of State Parties to the American Convention to urgently protect against the deleterious effects of anthropogenic GHG emissions, for the benefit of all States, but particularly small island States.¹⁰ COSIS urges the Court to uphold the approach it took in its *Advisory Opinion OC-23/17 The Environment and Human Rights*¹¹ (the *2017 Advisory Opinion*) that the duty of prevention in Article 2 of the Convention requires States

⁶ IPCC, *Sixth Assessment Report, Climate Change 2022: Impacts, Adaption and Vulnerability*, ch 15, p 2067. Small Island Developing States are projected to be among the biggest victims of the impacts of climate change in a world of 1.5°C increase. See IPCC, *Special Report, Global Warming of 1.5°C* (2018), p 181.

⁷ The timescale of the different scenarios was recognised recently by the United Nations Human Rights Committee in *Teitiota v New Zealand* CCPR/C/127/D/2728/2016, para 9.11. The evacuation of an entire population of Barbuda during Hurricane Irma is an example of how swift the threat can arrive. See Kate Lyons, *The night Barbuda died: how Hurricane Irma created a Caribbean ghost town* (20 November 2017), <theguardian.com>. Some small island States have already had to take steps to ensure their populations can be relocated in the near future. See, e.g., Republic of Kiribati statement by Honourable Minister Mr. Tiarite George Kwong, *UNFCCC COP 19th Meeting*, (Warsaw, Poland, 2013) (now abandoned) (discussing “migration with dignity”), http://unfccc.int/files/meetings/warsaw_nov_2013/statements/application/pdf/cop19_hls_kiribati.pdf; *NZ considers developing climate change refugee visa*, RADIO NEW ZEALAND (October 2017), <https://www.rnz.co.nz/international/pacific-news/342749/nz-considers-developing-climate-change-refugeevisa#:~:text=%22There%20might%20be%20a%20new,partnership%20with%20the%20Pacific%20Islands.%22>

⁸ IPCC, *Synthesis Report* (2023), p. 61.

⁹ See, e.g., Statement of Antigua and Barbuda at COP27; Statement of Niue at COP27; Statement of Palau at COP27; Statement of Saint Lucia at COP27; Statement of Tonga at COP27; Statement of Tuvalu at COP27; Statement of Vanuatu at COP27.

¹⁰ Resolution 3/2021 adopted by the Inter-American Commission on Human Rights (IACHR) recognises “a human rights-based approach to the implementation of international commitments on environmental law and climate change enhances the effectiveness of national responses to climate change taking into account traditional and local knowledge and knowledge. Similarly, this recognition must be covered by measures to generate and strengthen capacities in education and awareness of climate change of all social actors, especially in island and coastal States.”; *Climate Emergency: Scope of Inter-American Human Rights Obligations* Inter-American Court of Human Rights, Res 3/2021, *Climate Emergency: Scope of Inter-American Human Rights Obligations* (2021), p 9.

¹¹ Inter-American Court of Human Rights, *The Environment and Human Rights, Advisory Opinion OC-23/17 The Environment and Human Rights*, Inter-Am. Ct. H.R. *the Environment and Human Rights* (15 November 2017, Requested by the Republic of Colombia).

Parties to take steps to prevent temperature rise exceeding 1.5°C, so as to avoid serious and massive breaches of human rights, no matter where those that will suffer from climate change are located.

8. This submission focuses on State obligations in relation to small island States in four crucial aspects raised by the Request:
 - 8.1 The scope of the **duties of prevention and international cooperation** recognised by this Court to minimize damage caused by the climate emergency (responding to **Question A.1** of the Request);¹²
 - 8.2 State obligations to protect the **rights of children and future generations** (responding to **Question C** of the Request);¹³
 - 8.3 State obligations and principles to guide individual and coordinated measures to deal with **climate-induced displacement** (responding to **Question F.3** of the Request); and¹⁴
 - 8.4 The **international responsibility of States** arising out of the breach of their duties and obligations with respect to climate change (responding to **Questions D.1 and F.2** of the Request).¹⁵
9. Drawing on the Court's 2017 Advisory Opinion, COSIS urges this Court to recognise:
 - 9.1 That the obligations of *prevention* and *international cooperation* arising under the American Convention require States Parties to act urgently, and do so together, to avoid global temperature rise of more than 1.5°C above pre-industrial levels;
 - 9.2 That the current international GHG emissions trajectory is already undermining the rights of those within small island States, including those displaced by climate change, and particularly children and future generations;
 - 9.3 That individuals from small island States already displaced by, or likely to be displaced by climate change are also experiencing breaches of rights protected under the American Convention, including but not limited to the rights to life; family, home and private life; property; culture; and personal liberty;
 - 9.4 That these effects of climate change implicate obligations under the American Convention, and also international responsibilities towards individuals outside the territory of the States Parties to the American Convention, and as such require specific actions by States Parties, including to mitigate emissions through legislative steps, and to

¹² Question A.1, on page 8 of the Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile (9 January 2023).

¹³ Question C, on page 10 of the Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile (9 January 2023).

¹⁴ Question F.3, on page 13 of the of the Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile (9 January 2023).

¹⁵ Questions D.1 and F.2 on pages 11 and 13 of the of the Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile (9 January 2023).

take steps to adapt to climate change. Specific obligations are identified in **Section V**; and

- 9.5 That the failure to discharge these obligations entails the international responsibility of the States whose acts or omissions are driving climate change-induced human rights violations, and the consequent obligation of said States to make full reparation for the injury caused.

II. Preliminary Observations

A. Constitution, Purpose, and Activities of the Commission

10. This Section sets out the Commission's constitution and composition (Subsection 1), purpose and mandate (Subsection 2), and activities (Subsection 3).

1. Constitution and Composition

11. The Commission was established by Antigua and Barbuda and Tuvalu on 31 October 2021 upon their conclusion in Edinburgh of the Agreement for the Establishment of the Commission of Small Island States on Climate Change and International Law (the *COSIS Agreement*) during the 26th Meeting of the Conference of the Parties of the UNFCCC (*COP26*) in Glasgow.¹⁶ The *COSIS Agreement* entered into force pursuant to its Article 4 upon signature by the Prime Ministers of Antigua and Barbuda and Tuvalu¹⁷ and was duly registered with¹⁸ and published by the UN Secretariat¹⁹ pursuant to Article 102 of the UN Charter.²⁰
12. The *COSIS Agreement* created the Commission as an intergovernmental organization with international legal personality, thus establishing it as an international organization.²¹ Article 3 provides that the Commission is represented by its Co-Chairs, elected every two years. Antigua and Barbuda and Tuvalu were elected as Co-Chairs on 31 October 2021.
13. Pursuant to Article 3(1) of the *COSIS Agreement*, membership in the Commission is open to all members of the Alliance of Small Island States (*AOSIS*). *AOSIS* is an intergovernmental organization comprising 39 Small Island and low-lying coastal developing States, with a mandate to promote the interests of its members in international climate change and sustainable development negotiations and processes.²² Barbados, Dominica, the Dominican Republic,

¹⁶ The *COSIS Agreement* was duly registered with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations. The Secretariat issued Certificate No. 56940 on 3 February 2022. *See also COSIS, 2022 Annual Report* (31 October 2022), p 4.

¹⁷ *COSIS Agreement*, art 4(2).

¹⁸ UN Certificate of Registration: No. 56940 (31 October 2021), <https://treaties.un.org/doc/Treaties/2021/10/20211031%2001-22%20PM/Other%20Documents/COR-Reg-56940-Sr-71092.pdf>

¹⁹ UN Multilateral Agreements: No. 56940 (31 October 2021), <https://treaties.un.org/doc/Publication/UNTS/No%20Volume/56940/Part/I-56940-08000002805c2ace.pdf>.

²⁰ *See* Certificate of Registration No. 71092 of 3 February 2023, <https://treaties.un.org/doc/Treaties/2021/10/20211031%2001-22%20PM/Other%20Documents/COR-Reg-56940-Sr-71092.pdf>; Records of the Agreement for the Establishment of the Commission of Small Island States on Climate Change and International Law, <<https://treaties.un.org/doc/Publication/UNTS/No%20Volume/56940/Part/I-56940-08000002805c2ace.pdf>>.

²¹ *COSIS Agreement*, arts 1(1)–(2); *see* Vienna Convention on the Law of Treaties, Article 2(1)(i).

²² *AOSIS, About Us*, <<https://www.aosis.org/about/chair-of-aosis/>>.

Grenada, Haiti, Jamaica, and Suriname are all AOSIS members as well as States Parties to the Convention.²³

14. Following Antigua and Barbuda and Tuvalu, the Republic of Palau signed an instrument acceding to the COSIS Agreement on 4 November 2021, followed by Niue on 13 September 2022, the Republic of Vanuatu on 2 December 2022, Saint Lucia on 7 December 2022, Saint Vincent and the Grenadines on 9 June 2023, Saint Christopher (Saint Kitts) and Nevis on 13 June 2023, and The Bahamas on 15 June 2023.²⁴

2. Purpose and Mandate

15. The COSIS Agreement expresses the Member States' determination to "*take immediate action to protect and preserve the climate system and marine environment based on equity and the common but differentiated responsibilities of States to combat climate change*".²⁵ Member States also note the injustice of having to "*bear a disproportionate and overwhelming burden of the adverse effects*" of global warming even though they emit negligible GHG emissions.²⁶
16. The impact of climate change on human rights is a central element of the Commission's mandate. The Preamble to the COSIS Agreement notes the:
 - 16.1 "*[C]atastrophic effects of climate change which threaten the survival of Small Island States, and in some cases, their very existence*";
 - 16.2 "*[I]mportance of maritime zones and the significant reliance of Small Island States on marine living resources within such zones, as well as the impacts of climate change on the marine environment including marine living resources*"; and
 - 16.3 "*[O]bligations of States*" under international "*conventions and principles of international law applicable to the protection and preservation of the climate system*".
17. In the conviction that international law has an important role to play in addressing the climate crisis, the Commission was established with a mandate to:

promote and contribute to the definition, implementation, and progressive development of rules and principles of international law concerning climate change, including, but not limited to, the obligations of States relating to the protection and preservation of the marine environment and their responsibility for injuries arising from

²³ AOSIS, *About Us – Member States*, <<https://www.aosis.org/about/member-states/>>; Inter-American Court of Human Rights, *History*, <<https://www.corteidh.or.cr/historia.cfm?lang=en>>.

²⁴ Palau, *Instrument of Accession to the COSIS Agreement* (4 November 2021) (subject to approval under its internal law); Niue, *Instrument of Accession to the COSIS Agreement* (13 September 2022); Vanuatu, *Instrument of Accession to the COSIS Agreement* (2 December 2022); Saint Lucia, *Instrument of Accession to the COSIS Agreement* (7 December 2022); Saint Vincent and the Grenadines, *Instrument of Accession to the COSIS Agreement* (9 June 2023); Saint Christopher (Saint Kitts) and Nevis, *Instrument of Accession to the COSIS Agreement* (13 June 2023); The Bahamas, *Instrument of Accession to the COSIS Agreement* (15 June 2023).

²⁵ COSIS Agreement, Preamble.

²⁶ COSIS Agreement, Preamble.

internationally wrongful acts in respect of the breach of such obligations.²⁷

18. Specifically, the COSIS Agreement provides that the Commission’s activities shall include, *inter alia*:

assisting Small Island States to promote and contribute to the definition, implementation, and progressive development of rules and principles of international law concerning climate change . . . including through the jurisprudence of international courts and tribunals.²⁸

The Commission thus provides a vehicle through which small island States may cooperate on a global basis to contribute to the rules and principles of international law concerning climate change and human rights.

19. The Commission, pursuant to Article 3(4) of the COSIS Agreement, has appointed a diverse and gender-balanced group of 14 international lawyers to its Committee of Legal Experts.²⁹ Through its Subcommittees on the Marine Environment, Loss and Damage, Sea-Level Rise, Human Rights, and Litigation Management, the Committee advises the Commission on a wide range of topics related to its mandate and activities.³⁰
20. Further to the Commission’s mandate and activities—and “[h]aving regard to the . . . adverse effects of climate change on Small Island States”³¹—Article 2(4) of the COSIS Agreement authorizes the Commission to represent the interests of the Parties in international fora, including this Court.

3. Activities and Participation in these Proceedings

21. In the first year and half of its existence, the Commission has been engaged in conducting activities to fulfil its mandate. The Commission’s 2022 annual report describes these activities in greater detail.³²
22. On 12 December 2022, the Commission initiated proceedings before the International Tribunal for the Law of the Sea (ITLOS) with a request for an advisory opinion.³³ ITLOS entered the request in the List of Cases as Case No. 31, *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*.³⁴ The Commission submitted its written statement on 16 June 2023,³⁵ presenting scientific evidence related to the deleterious effects of climate change and addressing the resulting obligations of

²⁷ COSIS Agreement, Art 1(3).

²⁸ COSIS Agreement, Art 2(1).

²⁹ See COSIS 2022 Annual Report, p 8.

³⁰ See COSIS 2022 Annual Report, p 8.

³¹ COSIS Agreement, Art 2(2).

³² COSIS 2022 Annual Report, pp 9–20.

³³ See *Request for Advisory Opinion dated 12 December 2022*, <https://www.itlos.org/fileadmin/itlos/documents/cases/31/Request_for_Advisory_Opinion_COSIS_12.12.22.pdf>.

³⁴ See President of the International Tribunal for the Law of the Sea *Order 2022/4 of 16 December 2022*, <https://www.itlos.org/fileadmin/itlos/documents/cases/31/C31_Order_2022-4_16.12.2022_01.pdf>.

³⁵ COSIS *Written Statement of 16 June 2023*, <https://www.itlos.org/fileadmin/itlos/documents/cases/31/written_statements/2/C31-WS-2-4-COSIS.pdf>.

States Parties under the United Nations Convention on the Law of the Sea (UNCLOS). The Tribunal held oral hearings from 11 to 25 September 2023, in which COSIS participated by presenting oral submissions. In total, over 50 State Parties to UNCLOS and intergovernmental organizations submitted written or oral statements before the Tribunal.³⁶

23. COSIS has also been supporting the initiative in the UN General Assembly that led, in March 2023, to the adoption of Resolution 77/276 seeking an advisory opinion from the International Court of Justice (the ICJ) on the obligations of States in respect of climate change.³⁷ Like those at issue in these and the ITLOS proceedings, the questions submitted to the ICJ refer to obligations of States under international law to protect and preserve the climate system and other parts of the environment for present and future generations, and to the legal consequences of such obligations for States.³⁸ COSIS has also hosted events supporting the initiative in New York and during the 27th Meeting of the Conference of the Parties to the UNFCCC (COP27) in Sharm el-Sheikh, and it has sought to provide legal assistance to small island States that may wish to participate in the proceedings.³⁹ On 15 May 2023, acting under Art 3(5) of the COSIS Agreement, COSIS decided to furnish information to the ICJ on the questions submitted to the court.⁴⁰ On 22 June 2023, pursuant to Article 66(2) of the Statute of the ICJ, the Court authorized COSIS to present a written statement.⁴¹
24. Separately, following Chile and Colombia's present request of 9 January 2023 for an advisory opinion from this Court, the President of the Court invited "*all interested parties to present their written opinion on the issues covered by the request that they consider relevant according to their area of expertise or their field of work or interest.*"⁴² On 15 May 2023, acting under Article 3(5) of the COSIS Agreement, COSIS decided to submit a written opinion in these proceedings pursuant to Article 73(3) of the Court's Rules of Procedure.⁴³

B. Statement of Interest

25. These proceedings present the Commission with the unique opportunity to assist the Court in contributing to the rules and principles of international law concerning climate change in the specific context of the international human rights law regime. In so doing, the Commission seeks to take action to protect the inhabitants of small island States and their environment from the devastating harms and threats that they face from climate change.

³⁶ See, e.g., ITLOS Order of 15 February 2023 (extending written submission deadline and inviting African Union to submit a written statement); ITLOS Press Release 340 of 26 June 2023 (summarizing submissions received by ITLOS); ITLOS Order of 30 June 2023; (inviting the International Seabed Authority and Pacific Community to submit written statements).

³⁷ See COSIS 2022 Annual Report, p 15.

³⁸ UN General Assembly, Resolution 77/276, Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change (29 March 2023).

³⁹ See COSIS 2022 Annual Report, p 20.

⁴⁰ COSIS, Decisions of the Commission of Small Island States on Climate Change and International Law (15 May 2023).

⁴¹ ICJ, Press Release No. 2023/32 (22 June 2023).

⁴² Inter American Court of Human Rights, Extension of deadline to submit observations to the request for an Advisory Opinion submitted by the Republic of Chile and the Republic of Colombia, <https://www.corteidh.or.cr/observaciones_oc_new.cfm?lang=en&lang_oc=en&nId_oc=2634>.

⁴³ COSIS, Decisions of the Commission of Small Island States on Climate Change and International Law (15 May 2023); Inter-American Court of Human Rights, Rules of Procedure of the Inter-American Court of Human Rights, Art 73(3).

26. Despite having contributed only negligible amounts to historical GHG emissions, small island States are suffering and will continue to suffer widespread devastation from climate change. Every small island State is affected, and some face existential threats to their survival or permanent habitability. For example, and as set out in more detail at Section III.A below, small island States face increased risk of water and food insecurity; declines in human health outcomes; reduced habitability and displacement; submergence and destruction of coastal settlements and infrastructure; destruction of livelihoods; disruption and decline of ecosystems and loss of biodiversity due to ocean warmth and acidification; and loss of cultural heritage. These devastating effects have serious and dire implications for human rights around the world, and especially in small island States.
27. Through this written opinion, the Commission therefore aspires to fulfil its mandate to promote and contribute to the definition, implementation, and progressive development of rules and principles of international law concerning climate change, including in particular the human rights and obligations enshrined in the Convention.

C. Applicable Law

28. The law applicable to these proceedings includes the American Convention; other agreements to which American States are Parties and which have implications for human rights, including agreements related to environmental matters and climate change; customary international law; and general principles of law.
29. The Court has held that, in interpreting the American Convention obligations at issue in this request, the Court may employ customary international law rules of treaty interpretation as set out in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (the *VCLT*).⁴⁴ Specifically, pursuant to Article 31(3)(c) of the VCLT, the Court shall take into account “*any relevant rules of international law applicable in the relations between the parties*,” including other relevant treaties to which the American States are parties, customary international law, and general principles of international law.⁴⁵ Indeed, as the Court explained in its advisory opinion on *The Environment and Human Rights*:

[W]hen responding to the present request, the Court . . . proceeds to make a strictly legal analysis of the questions raised, pursuant to international human rights law, taking into account the relevant sources of international law. In this regard, it should be clarified that the corpus juris of international human rights law consists of a series of rules expressly established in international treaties, or to be found in international customary law as evidence of a practice generally accepted as law, as well as of the general principles of law and a series of norms of a general nature or soft law...⁴⁶

⁴⁴ Inter-American Court of Human Rights (n 11), paras 45-46 (noting that the Court will use the methods in Articles 31 and 32 of the Vienna Convention and quoting their text in full).

⁴⁵ United Nations, *Vienna Convention on the Law of Treaties*, (23 May 1969, United Nations, Treaty Series, vol. 1155), Art 31(3)(c).

⁴⁶ Inter-American Court of Human Rights (n 11), para 45; *see also* Inter-American Court of Human Rights, *Advisory Opinion OC-29/22 Differentiates Approach with Respect to Certain Groups of Persons Deprived of Liberty*, (30 May 2022, requested by the Inter-American Commission on Human Rights) para 47.

These sources provide critical guidance on the interpretation of the American Convention obligations, because they “give greater precision to the basic content established” in the Convention.⁴⁷

30. In particular, the Court should interpret the Convention in light of the United Nations Framework Convention on Climate Change (UNFCCC) and Paris Agreement, to which all the State Parties to the American Convention, and COSIS Member States, are Parties.⁴⁸ The Preamble of the Paris Agreement encourages States to consider their human rights obligations when taking action to address climate change, such as exercising the duty of prevention and taking measures to limit global temperature increase to 1.5°C.⁴⁹ Thus, in defining States’ substantive obligations in relation to climate change under the Convention, the Court should take into account the rules and provisions accepted by the American States in relation to the UNFCCC and the Paris Agreement.

D. Extraterritorial Nature of Convention Obligations

31. COSIS respectfully submits that the Court should apply its existing determination that State Parties to the American Convention owe positive obligations to individuals *outside* their territory to prevent and redress breaches of human rights connected with climate change.
32. This Court has previously determined that State Parties can owe positive obligations to individuals outside their territory, including with respect to transboundary harm. In its 2017 Advisory Opinion, this Court recognised that the exercise of jurisdiction by a State, in relation to the protection of human rights under the American Convention, may encompass extraterritorial conduct, including environmental transboundary harm resulting from climate change.⁵⁰ The Court specifically reiterated that the obligation of prevention of breaches of human rights applies to damage that may occur “*within or outside the territory of the State of origin*”.⁵¹
33. The Court identified that the test to establish extraterritorial jurisdiction required a causal link between the act in the territory of the State of origin and the harm, as well as that the State of origin had effective control over the act in question:⁵²

“[W]hen transboundary damage occurs that affects treaty-based rights, it is understood that the persons whose rights have been violated are under the jurisdiction of the State of origin, if there is a causal link between the act that originated in its territory and the infringement of the human rights of persons outside its territory... [T]he exercise of jurisdiction by a State of origin is based on the understanding that it is the State in whose territory or under whose

⁴⁷ Inter-American Court of Human Rights (n 11).

⁴⁸ Paris Agreement to the United Nations Framework Convention on Climate Change, (12 December 2015 U.N. Doc. FCCC/CP/2015/L.9/Rev/1), Status List.

⁴⁹ Paris Agreement to the United Nations Framework Convention on Climate Change (n 48) Preamble para 11.

⁵⁰ Inter-American Court of Human Rights (n 11), paras 78-82 and 102-103. The Court recognised climate change as a form of transboundary harm, stating “the prevention and regulation of transboundary environmental pollution has resulted in much of international environmental law, through bilateral, regional or multilateral agreements that deal with global environmental problems such as ozone depletion and climate change” (para 96).

⁵¹ Inter-American Court of Human Rights (n 11), paras 103 and 133.

⁵² Inter-American Court of Human Rights (n 11), paras 101-102.

jurisdiction the activities were carried out that has the effective control over them and is in a position to prevent them from causing transboundary harm.”

34. This Court further noted that the obligation to prevent transboundary environmental damage or harm is an obligation recognised by international environmental law, under which States may be held responsible for any significant damage caused to persons outside their borders by activities originating in their territory or under their effective control or authority.⁵³
35. Building on the Court’s jurisprudence, the United Nations Committee on the Rights of the Child has since applied the Court’s test to the harmful effects of GHG emissions for the purposes of establishing jurisdiction (*Saachi*).⁵⁴ In the context of GHG emissions arising from State A and causing harm to children in State B, the Committee held that children will be within the jurisdiction of State A if there is a causal link between State A’s acts or omissions and the impact on the rights of children in State B, if State A exercises effective control over the sources of the emissions.⁵⁵ The Committee held that, again for jurisdictional purposes, it was reasonably foreseeable that children’s rights in State B would be detrimentally impacted by State A’s acts or omissions regarding GHG emissions originating within its territory.⁵⁶ This was despite the Committee’s acknowledgement of the “*collective nature of the causation of climate change*”, and was sufficient for the Committee to determine it had jurisdiction.⁵⁷
36. COSIS respectfully submits that this Court may draw on its 2017 Advisory Opinion and the United Nations Convention on the Rights of the Child (the *UNCRC*) decision in *Saachi* in developing its present Advisory Opinion as to State responsibility for climate change to further articulate the obligations on States Parties to the American Convention to take steps to reduce GHG emissions, in the same way that they should act to reduce the risk of transboundary harm. This obligation arises regardless of whether that transboundary harm is ultimately suffered by a Convention Member State or a third party, such as a COSIS Member State.

III. Facts

37. This section sets out the factual background for the Commission’s legal submissions. Specifically, it addresses the scientific consensus on the impacts of climate change on small island States (Section A) and the unique impact of climate change on small island States in two specific respects relevant to the Request—climate-induced displacement and children (Section B). Importantly, the Commission emphasises that small island States are not only vulnerable to the future impacts of climate change, but rather already experience real and present impacts on their lives, infrastructure, community and culture.

A. Scientific Consensus on the Human Impact on Global Warming

38. There is scientific consensus that global warming is “human-caused” by the cumulative emissions of GHG over time. As noted by the IPCC:

Human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface

⁵³ Inter-American Court of Human Rights (n 11), para 103.

⁵⁴ United Nations Committee on the Rights of the Child, *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* (8 October 2021) (*Sacchi*), para 10.7.

⁵⁵ United Nations Committee on the Rights of the Child (n 54), para 10.7.

⁵⁶ United Nations Committee on the Rights of the Child (n 54), para 10.11 and 10.14.

⁵⁷ United Nations Committee on the Rights of the Child (n 54), para 10.11 and 10.14.

temperature reaching 1.1°C above 1850–1900 in 2011–2020. Global greenhouse gas emissions have continued to increase over 2010–2019, with unequal historical and ongoing contributions arising from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production across regions, between and within countries, and between individuals.⁵⁸

39. Accordingly, the contribution to global warming by a particular State may be estimated by reference to its cumulative historical GHG. A recent scientific study, estimated the historical contribution to global warming of the main GHG emitters:⁵⁹

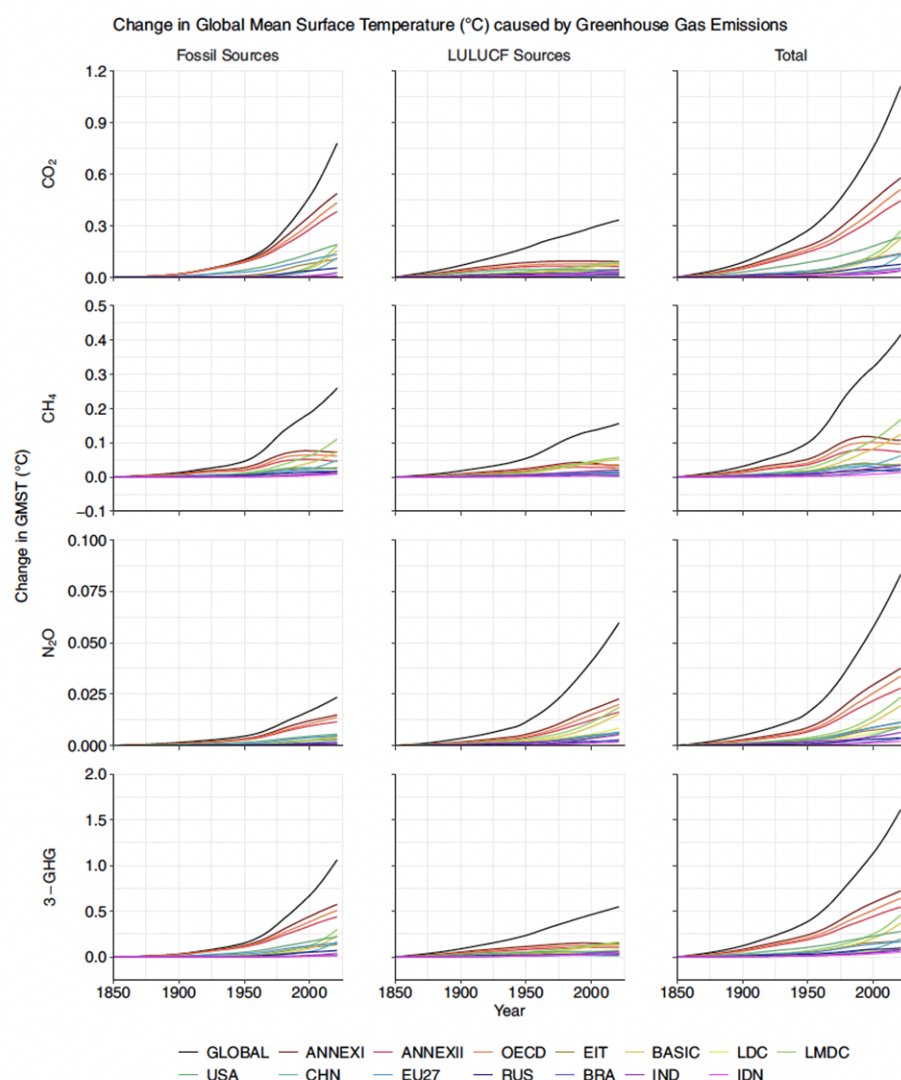


Fig. 5 Response of global mean surface temperature (GMST, °C) to emissions of CO₂, CH₄ and N₂O during 1851–2021, shown globally and for selected regions. The GMST response to historical CH₄ emissions began to fall in some developed regions towards the end of the 20th Century due to a decline in CH₄ emissions versus prior decades (see Fig. 3). The temperature response is calculated by multiplying the transient response to cumulative emissions of CO₂ (TCRE) by the total emissions of CO₂, CH₄ and N₂O expressed in Pg CO₂-e₁₀₀. Emissions of CH₄ and N₂O are converted to units Pg CO₂-e₁₀₀ using the GWP* approach³⁸. The ISO3 codes of countries in the legend are: CHN, China; RUS, Russia; BRA, Brazil; IND, India; IDN, Indonesia. All data shown are provided in the Data Records⁴⁴.

⁵⁸ IPCC, Sixth Assessment Synthesis Report (2023), p 42-43.

⁵⁹ See M. W. Jones et al, ‘National contributions to climate change due to historical emissions of carbon dioxide, methane and nitrous oxide since 1850’, *www.nature.com/scientificdata* (2023) 10:155 | available at: <https://doi.org/10.1038/s41597-023-02041-1>.

40. As demonstrated, the major historical emitters have greatly contributed to global warming and climate change. The impacts of their acts and omissions causing global warming have disproportionately affected small island States.

B. Scientific Consensus on the Impacts of Climate Change on Small Island States

41. The adverse impacts of climate change are not just anticipated future threats. Small island States are already facing real and widespread devastation from climate change, including existential threats to their survival.⁶⁰ The IPCC confirms that:

Small islands are increasingly affected by increases in temperature, the growing impacts of tropical cyclones (TCs), storm surges, droughts, changing precipitation patterns, sea level rise (SLR), coral bleaching and invasive species, all of which are already detectable across both natural and human systems (*very high confidence*).⁶¹

Coastal cities and rural communities on small islands have been already impacted by SLR, heavy precipitation events, tropical cyclones and storm surges. Climate change is also affecting settlements and infrastructure, health and well-being, water and food security, and economies and culture, especially through compound events (*high confidence*).⁶²

42. The IPCC designates atoll islands as some of the most vulnerable to climate change.⁶³ The heightened exposure of small island States to climate hazards due to their topography, and climate, coupled with structural inequality and lack of institutional capacity, make small island States especially vulnerable to the impacts of climate change.
43. Despite having contributed negligible amounts to historical GHG emissions, this vulnerability is causing small island States to bear the brunt of climate change impacts, many of which are already causing them acute, irreparable damage.⁶⁴ Small island States will continue to suffer devastating effects, even if global warming remains under 1.5°C above pre-industrial levels, and any progression to higher levels of warming would be catastrophic or fatal to them and others. The IPCC has concluded with *high confidence* that, for small islands, “*projected climate and ocean-related changes will significantly affect marine and terrestrial ecosystems and ecosystem services, which will in turn have cascading impacts across both natural and human systems.*”⁶⁵
44. This Section summarizes the devastating impacts on small island States, including (1) water and food insecurity, (2) declines in human health outcomes, (3) submergence and destruction of

⁶⁰ IPCC (n 3), pp 2045–2046.

⁶¹ The IPCC uses two types of calibrated language. *First*, it uses “qualitative expressions of confidence”—“very low,” “low,” “medium,” “high,” and “very high”—“based on the robustness of evidence for a finding.” *Second*, where possible, the IPCC “uses quantitative expressions to describe the likelihood of a finding,” which represent the IPCC’s assessment of how likely a given outcome is to occur based on its “evaluation of underlying evidence and agreement.” Its seven quantitative expressions are “virtually certain” (99 to 100 percent), “very likely” (90 to 100 percent), “likely” (66 to 100 percent), “as likely as not” (33 to 66 percent), “unlikely” (0 to 33 percent), “very unlikely” (0 to 10 percent), or “exceptionally unlikely” (0 to 1 percent). IPCC (n 3) *Technical Summary*, pp 40–41.

⁶² IPCC (n 3), p 2045.

⁶³ IPCC (n 3), p 2052.

⁶⁴ *See, e.g.*, (n 9).

⁶⁵ IPCC (n 3), p 2045.

coastal settlements and infrastructure, (4) destruction of livelihoods, (5) disruption and decline of ecosystems and loss of biodiversity, and (6) loss of cultural heritage.

1. Water and Food Insecurity

45. Climate change is already severely impacting food and water security in small island States. The IPCC has documented that on “*small islands, coastal land loss attributable to higher sea level, increased extreme precipitation and wave impacts and increased aridity have contributed to food and water insecurities that are likely to become more acute in many places.*”⁶⁶
46. The combined effects of increasing tropical storm intensity, severe droughts, sea-level rise, and decreased precipitation as a result of climate change are impacting water security across small island States. Drought affects small island States particularly due to their dependence on precipitation for freshwater leading to devastating effects during periods of extended drought.⁶⁷ Sea-level rise and flooding cause salinity intrusion into already scarce freshwater resources pushing many States above their freshwater capacities.⁶⁸ According to the IPCC, for example, an 11%–36% reduction is estimated in the volume of fresh groundwater lens of the small atoll islands (area < 0.6 km²) of the Maldives due to sea-level rise; a Caribbean high-resolution drought atlas spanning 1950–2016 indicates that the region-wide 2013–2016 drought was the most severe event during that period; and in Puerto Rico, the island experienced 80 consecutive weeks of moderate drought, 48 weeks of severe drought and 33 weeks of extreme drought conditions between 2014 and 2016.⁶⁹ Water insecurity and scarcity are thus prevalent across various island States and their lack of capacity to effectively manage water resources and services exacerbates water insecurity in the region.⁷⁰
47. In addition, the projected impacts of climate change on fisheries and agriculture, according to the IPCC, will undermine food production and greatly exacerbate food insecurity challenges for human populations in small island States.⁷¹
48. The fisheries sector is key to providing food security in small island States.⁷² Globally, about 17 percent of humans’ average per capita intake of animal protein in 2017 came from wild and farmed marine and freshwater aquatic animals; for small island States, that number jumps to 50 percent or more.⁷³ For example, in the Pacific, fish protein constitutes 50 to 90 percent of animal protein consumption in rural areas and 40 to 80 percent in urban areas,⁷⁴ with similar values reported for some Indian Ocean and Caribbean islands (e.g., the Maldives, Antigua and Barbuda). Over 70 percent of Niuean households eat fish caught in local waters every day.⁷⁵

⁶⁶ IPCC (n 3), p 2046.

⁶⁷ IPCC (n 3), pp 2045 and 2065.

⁶⁸ IPCC (n 3), pp 2058–2060; See UNGA, *Prime Minister of Tuvalu National Statement*, (77th Assembly, 23 September 2022), p 5.

⁶⁹ IPCC (n 3), p 2045.

⁷⁰ See Adrian Cashman, *Water Security and Services in the Caribbean*, (Centre for Resource Management and Environmental Studies, University of the West Indies, 2014), p 1200.

⁷¹ IPCC (n 3), pp 2066 and 2099.

⁷² IPCC (n 3), pp 2066, 2099; See also Secretariat of the Convention on Biological Diversity, *An Updated Synthesis of the Impacts of Ocean Acidification on Marine Biodiversity*, (CBD Technical Series, no. 75, 2014), p 83.

⁷³ IPCC (n 3), p 456.

⁷⁴ IPCC (n 3), p 2066.

⁷⁵ See Niue, *Second National Communication*, UNFCCC (2014), p 64.

49. As a result of local species extinction and migration, coral bleaching, and tropical storms caused by climate change, however, catch potential has declined. The IPCC has concluded that “[o]cean warming has decreased sustainable yields of some wild fish populations (*high confidence*) by 4.1% between 1930 and 2010,” and that ocean warming and acidification have already affected fish farming.⁷⁶ The continued degradation of marine ecosystems of small islands will also amplify the vulnerability of island peoples to the impacts of climate change.⁷⁷ A unique feature of small island States, for example, is the access to and consumption of reef fish, which are uniquely affected by climate change.⁷⁸ This effect is especially pronounced among Pacific Island States, where the IPCC estimates that a 20 percent decline in fish production from coral reefs by 2050 could threaten food security.⁷⁹
50. Coastal agriculture has also been impacted by sea-level rise, over-wash, and salinization.⁸⁰ For example, according to the IPCC, tropical cyclones caused losses and damages to the agricultural sectors in Vanuatu in 2015 valued at USD 56.5 million (64.1% of gross domestic product (GDP)), in Fiji in 2016 valued at USD 254.7 million, and Dominica in 2017 that amounted to 224% of Dominica’s 2016 GDP.⁸¹ As the world gets progressively warmer, studies estimate an overall reduction in the already scarce area of land suitable for crop cultivation.⁸² Changes to weather patterns may also disrupt food transportation and distribution systems on islands where indigenous communities are often located in remote areas.⁸³ Agricultural losses have even led many small island States to resort to imported foods, which are often high in fat and sugar with less nutritional value, resulting in higher obesity levels and undernourishment.⁸⁴

2. Declines in Human Health Outcomes

51. Climate change-induced extreme weather events, including tropical cyclones, floods, and droughts, have led to declines in human health outcomes in small island States. Small island States face disproportionate health risks associated with extreme weather events, not only through injuries, infectious diseases, and deaths, but also as a result of water and food insecurity, and compromised healthcare facilities.⁸⁵
52. Small island States are facing increasing numbers and intensities of tropical cyclones and other extreme weather events⁸⁶—such as Hurricane Irma on Antigua and Barbuda in 2017 or Severe Tropical Cyclone Ian on Tonga in 2014. These events have serious public health consequences, causing “delayed . . . mortality, physical injury during the clean-up and recovery phase and increased risk of chronic, vector-borne, contaminated water-related diseases as well as of mental sequelae.”⁸⁷ For example, in 2016, tropical cyclone Matthew damaged water and sanitation

⁷⁶ IPCC (n 3), p 48.

⁷⁷ IPCC (n 3), p 2046.

⁷⁸ IPCC (n 3), p 2064.

⁷⁹ IPCC (n 3), p 2065.

⁸⁰ IPCC (n 3), pp 2065–2067.

⁸¹ IPCC (n 3), p 2066.

⁸² IPCC (n 3), p 1211.

⁸³ IPCC (n 3), p 2099.

⁸⁴ Food and Agricultural Organization of the United Nations, *Study on the State of Agriculture in the Caribbean* (2020), pp xiii, 23–24; *see also* IPCC (n 3), p 2066.

⁸⁵ IPCC (n 3), pp 2064 and 2088.

⁸⁶ IPCC (n 3), pp 2045, 2071.

⁸⁷ IPCC (n 3), p 2071.

services in Haiti, causing an infectious cholera outbreak in the nation.⁸⁸ Similarly, during the national state of emergency after Category 5 tropical cyclone Winston hit Fiji in 2016, the World Health Organisation recorded 34,113 cases of illness in a population of about 900,000: 48% of cases were influenza-like illnesses, 30% were acute diarrhoea, and 13% were suspected cases of dengue.⁸⁹ There also were 583 cases of Zika-like illness (1.7% of all cases) and two large outbreaks of viral conjunctivitis (total of 880 cases).⁹⁰ Tropical islands are already at risk of vector-borne diseases, such as malaria, dengue fever, and the Zika virus, but higher average temperatures increase the risks of these diseases.⁹¹

3. Submergence and Destruction of Coastal and Riverine Settlements and Infrastructure

53. Small island States' main settlements are high-density coastal and riverine urban developments that face heightened risks of damage and destruction as a result of climate change.⁹² According to the IPCC, approximately 22 million in the Caribbean live below 6 meters above sea level, and approximately 90% of Pacific Islanders live within 5 kilometres of the coast (excluding Papua New Guinea).⁹³ Tuvalu, in particular, which has an average elevation of 2 meters, is proximately facing submergence.⁹⁴ Key infrastructure is also concentrated in coastal and riverine areas. The IPCC reports that most Pacific islands have more than 50% of their infrastructure within 500 meters of the coast, and in Kiribati, Marshall Islands and Tuvalu more than 95% of the infrastructure is located in coastal areas that are less than 10 meters above sea level. Risks are heightened for informal settlements that tend to have less robust infrastructure to withstand flooding and storm surges.⁹⁵
54. Climate change is placing coastal and riverine settlements at risk of severe beach erosion and loss of key infrastructure. In 2017, Hurricane Maria caused significant destruction of the infrastructure in Dominica, with estimated losses amounting to over 225 percent of the nation's annual GDP.⁹⁶ In addition, the IPCC expects that sea-level rise will cause inundation of almost all port and harbour facilities in the Caribbean, including in Jamaica and Saint Lucia.⁹⁷
55. Moreover, small island States often take years to recover from flooding by extreme weather events due in part to the high cost of debt financing for such projects.⁹⁸ Small island States often lack easy access to infrastructure finance, which prevents them from undertaking necessary adaptation and recovery projects.⁹⁹ Traditional measures for evaluating project financing for

⁸⁸ IPCC (n 3), p 2065.

⁸⁹ IPCC (n 3), p 2064.

⁹⁰ IPCC (n 3), p 2064.

⁹¹ IPCC (n 3), p 2064.

⁹² IPCC (n 3), pp 2063–2064.

⁹³ IPCC (n 3), p 2063.

⁹⁴ See UN General Assembly, Prime Minister of Tuvalu National Statement, 77th Session (23 September 2022), p 4.

⁹⁵ IPCC (n 3), p 2064.

⁹⁶ IPCC (n 3), p 2064.

⁹⁷ IPCC (n 3), p 2064.

⁹⁸ See, e.g., World Health Organisation, *Health & Climate Change: Antigua and Barbuda Country Profile 2020*, (World Health Organisation, Small Island Developing States Initiative, 2020), p 1–2.

⁹⁹ See UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, *Multidimensional Vulnerability Index*; Economic Commission for Latin America (ECLA), *Small Island Developing States Will Not Achieve the 2030 Agenda if they Do Not Obtain Financing and International Support for Effective Adaptation to Climate*

developing States, such as gross national income, fail to capture the immense costs of dealing with climate shocks.¹⁰⁰ Many small island States are among the most indebted in the world, with a total debt deficit of \$52 billion, north of 70% of the region's GDP.¹⁰¹

4. Destruction of Livelihoods

56. Climate change has also contributed to the deterioration of livelihoods associated with the tourism, fishing, and agricultural industries in small island States.¹⁰² Small island States are heavily reliant on tourism, particularly ecotourism. In 2019, eight of the world's 10 most tourism-dependent economies were located in the Caribbean and the Pacific.¹⁰³ Climate change threatens the survival of this core industry due to biodiversity loss, coral bleaching, and beach erosion and destruction from tropical cyclones and storm surges.¹⁰⁴
57. As mentioned above, the agriculture and fisheries sectors in small island States also suffer detrimental climate-induced effects, which are especially consequential given the sectors' contribution to national employment and overall economic development. As a result, associated livelihoods dependent on those sectors are considerably jeopardised and will hinder each State's economic development as the economies of many small island States, particularly in the Caribbean, are heavily dependent on the agricultural and fishing sectors.¹⁰⁵ In Dominica, Grenada, Guyana, and Haiti, agriculture contributes between seven and 17 percent to annual GDP and between 10 and 25 percent to national employment, with Haiti's agricultural sector accounting for about 50 percent.¹⁰⁶

5. Disruption and Decline of Ecosystems, and Loss of Biodiversity

58. The IPCC has identified the loss of marine, coastal, and terrestrial biodiversity as a key risk in small islands.¹⁰⁷ Biodiversity loss from traditional ecosystems has been identified as one of the most serious threats to food and livelihood security in small island States.¹⁰⁸ Several small island States including the Caribbean region and small Pacific atoll nations such as Tuvalu, have experienced unprecedented sargassum blooms, which have significantly damaged coastal habitats and the mortality of seagrass beds and associated corals.¹⁰⁹ Recent evidence has also confirmed that tropical corals are currently at high risk, and if global warming exceeds 1.5°C, known coral reef restoration options may be ineffective.¹¹⁰ Loss of biodiversity in the Caribbean is also driven by poleward migration of marine species: as equatorial waters heat up faster than

Change. (Speech to special session organised by the United Nations Economic and Social Council (ECOSOC), 13 November 2018).

¹⁰⁰ UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, (n 99), p 8.

¹⁰¹ Economic Commission for Latin America (ECLA), (n 99).

¹⁰² IPCC (n 3), pp 2067 and 2096–2097.

¹⁰³ World Travel & Tourism Council, *Travel and Tourism in The Caribbean: Prospects for Growth* (2022), p 4.

¹⁰⁴ IPCC (n 3), p 2067.

¹⁰⁵ Food and Agricultural Organization of the United Nations (n 84), pp xii, 5.

¹⁰⁶ Food and Agricultural Organization of the United Nations (n 84), p 5.

¹⁰⁷ See IPCC (n 3), pp 2074, and 2150–51.

¹⁰⁸ IPCC (n 3), p 2099.

¹⁰⁹ IPCC (n 3), p 2057.

¹¹⁰ IPCC (n 3), p 2048.

other parts of the world, marine species seek cooler conditions and migrate towards the poles.¹¹¹ On land, small islands are home to more than 20% of the world's extant terrestrial species and nearly half of all species considered to be at risk of extinction, especially at higher warming levels; the IPCC has thus concluded with high agreement that further losses to biodiversity on islands "could contribute disproportionately to global biodiversity decline."¹¹²

59. Small island States are uniquely affected by biodiversity loss as they are usually insular biodiversity hotspots for endemic species. New studies highlight large population reduction with an extinction risk of 100 percent for such species in these habitats located within the Caribbean, Pacific and Sundaland regions.¹¹³
60. This biodiversity loss has had flow-on effects for inhabitants of small island States, including on food and water security, health outcomes, economic development culture and migration.¹¹⁴ For example, the Caribbean is one of the world's greatest endemic centers of biodiversity and one of Earth's 35 biodiversity hotspots.¹¹⁵ These ecosystems offer considerable benefits to small island States, including agricultural and fisheries services, coastal protection, filtering of pollutants, and cultural services, among others.¹¹⁶

6. Loss of Cultural Heritage

61. Climate change is also threatening cultural heritage across the globe, including through the destruction of culturally significant sites and cultural losses of involuntary displacement. In small island States, populations are concentrated in coastal areas which means that tangible cultural heritage such as archaeological sites, buildings and historic sites, are vulnerable to the effects of climate change, especially coastal erosion and sea-level rise.¹¹⁷ In the Grenadian island of Carriacou, for example, sea-level rise is threatening culturally and historically significant archaeological sites.¹¹⁸ Other tangible cultural and heritage losses on small islands include buildings and UNESCO World Heritage sites, which may also impact the tourism sectors on these islands and therefore have significant impacts on some small islands with relatively narrow economies.¹¹⁹ Climate change also harms and threatens intangible cultural heritage.
62. The IPCC has noted that climate migration linked to reduced habitability can have severe cultural implications in a small island context in which community solidarity and cohesion linked to place-based identity are important aspects of adaptive capacity.¹²⁰ Customary land tenure and familial inheritance of land which is common across the small island States mean that land is intrinsically linked to identity and the loss of land can create a loss of identity.¹²¹ Such threats are already being realised, for example, damage to ancestral graves from flooding and high tides of the Torres Strait Islander communities was documented in the *Billy* petition to the United

¹¹¹ IPCC (n 3), pp 392 and 2126.

¹¹² IPCC (n 3), p 2150.

¹¹³ IPCC (n 3), p 2046.

¹¹⁴ IPCC (n 3), p 2046.

¹¹⁵ Critical Ecosystem Partnership Fund, *Caribbean Islands Biodiversity Hotspot Ecosystem Profile Summary*, p 1.

¹¹⁶ IPCC (n 3), p 2058.

¹¹⁷ IPCC (n 3), p 2069.

¹¹⁸ IPCC (n 3), p 2069.

¹¹⁹ See IPCC (n 3), p 2069.

¹²⁰ IPCC (n 3), p 2069.

¹²¹ IPCC (n 3), p 2069.

Nations Human Rights Committee.¹²² Additionally, in the Bahamas, for example, the entire population of Ragged Island was displaced from their ancestral homelands after Hurricane Irma in 2017. This prolonged displacement threatened their sense of identity, sense of place, and community cohesion, which were important features of this population's self-initiated rehabilitation efforts and eventual return.¹²³

C. The Unique Impacts for Individuals of Small Island States Displaced by Climate Change and for Children of Small Island States

63. Small island States have suffered significant losses and damages as a result of climate-induced events such as storms, floods, heatwaves, increased water levels and destruction of fauna and flora. More importantly, small island States continue to be at an increasing risk of suffering invaluable losses and damages if urgent measures are not adopted to halt and revert the effects of global warming.
64. The Commission responds in this Submission particularly to the issues raised in the Request in relation to (a) displaced persons, including those likely to be displaced as a result of climate change, and (b) children. We consider the unique impacts of climate change on each of these groups below.

1. Small Island States Are Disproportionately Impacted by Displacement from Climate Change

65. Small island States are already, and will continue to be, disproportionately impacted by displacement of their populations as a result of climate change. The IPCC has recognized that small island States are uniquely vulnerable in this regard.¹²⁴
66. *First*, small islands States' inhabitants are more likely to be forced to relocate to access sufficient food sources given their physical isolation from other States and heavy dependence on climate-vulnerable marine ecosystems and near-coast agriculture for their nutrition.¹²⁵
67. *Second*, small islands States' populations are similarly more likely to be forced to relocate to access sufficient water sources. In 2021, the World Bank reported that water deficits in small island States explain 10 percent of the increase in total migration.¹²⁶ Cross-island migration within the same country, which is increasing due to climate change, is also exacerbating water scarcity through overcrowding.¹²⁷
68. *Third*, climate change has led to disproportionate reductions in habitable land in small island States, driving migration.¹²⁸ For instance, in 2019, tropical storm Dorian caused 465,000 new displacements in seven countries, most significantly in the Bahamas.¹²⁹ Small island States often

¹²² United Nations Human Right Committee, *Daniel Billy et al. v. Australia* (CCPR/C/135/D/3624/2019, September 22, 2022), paras 42(4), 52, 57 and 59.

¹²³ IPCC (n 3), p 2069.

¹²⁴ IPCC (n 3), p 2045.

¹²⁵ IPCC (n 3), pp 2046 and 2068.

¹²⁶ Esha Zaveri, Jason Russ, Amjad Khan, Richard Damania, Edoardo Borgomeo, and Anders Jägerskog, *Ebb and Flow: Water, Migration and Development* (Volume 1, The World Bank, USA), p 17.

¹²⁷ See e.g., AF (Kiribati) [2013] NZIPT 800413, para 16.

¹²⁸ IPCC (n 3), pp 2046 and 2076.

¹²⁹ John Marazita, *Displacement in Paradise: Hurricane Dorian Slams the Bahamas*, (Thematic report, Internal Displacement Monitoring Center, 2020), p.8; see also Graham Watkins & Andrea Garcia Salinas,

take years to recover from flooding by extreme weather events due in part to the high cost of debt financing for such projects, resulting in inevitable migration to seek out habitable land.¹³⁰ The IPCC has noted that “environmental change has been shown to affect land use and land rights, which in turn have become drivers of migration.”¹³¹ A scarcity of liveable land as a result of the impacts of climate change has heightened impacts for inhabitants of small island States due to customary land tenure and overcrowding leading to social tension. For example, in Tuvalu, around 95% of the land is held in customary tenure, an approach which is crucial to the social fabric of small island States. When land held in customary tenure is impacted by climate change, it impacts entire communities at once.¹³² As a result, land-related conflict is not uncommon and inter rural-to-urban migration has exacerbated such conflicts.¹³³

2. Children of Small Island States Disproportionately Impacted by Displacement from Climate Change

(a) Children Are Particularly Vulnerable to Climate Change

69. Of all the victims of climate change, children are perhaps the most affected.¹³⁴ In 2021 nearly 50 percent of the world’s 2 billion children were at an “‘extremely high risk’ of the impacts of the climate crisis,” with their survival under “imminent threat.”¹³⁵ Climate change affects children in significant ways. Children under the age of five carry 90 percent of the global burden of disease associated with climate change despite representing only 8.1 percent of the world population.¹³⁶ In 2016 alone, over 600,000 children died due to air pollution, which is the leading cause of children’s deaths globally and which climate change exacerbates.¹³⁷ Children are also twice as likely as adults to be forced into poverty due to the loss of livelihoods and infrastructure

The Climate Crisis Could Drive Massive Human Displacement in Latin America and the Caribbean, (Inter-American Development Bank, 2020).

¹³⁰ See, e.g., World Health Organization, *Health & Climate Change: Antigua and Barbuda Country Profile 2020*; Third National Communication of Tonga to the UNFCCC (December 2019), pp 4, 179–190.

¹³¹ IPCC, *Working Group II Report* (2014), p 1625.

¹³² For example, “Land is integral to the people of the Pacific, being a traditional source of sustenance, social and political relationships and identity. Traditional access to and use and management of land is closely tied to the social fabric of communities, and customary tenure defines not only the nature and scale of economic development but also social harmony” (see South Pacific Forum Secretariat, *Land Management and Conflict Minimisation Project Guiding Principles and Implementation Framework for Improving Access to Customary Land and Maintaining Social Harmony in the Pacific* (Suva, 2008), pp 20–24).

¹³³ South Pacific Forum Secretariat, *Land Management and Conflict Minimisation Project Guiding Principles and Implementation Framework for Improving Access to Customary Land and Maintaining Social Harmony in the Pacific* (Suva, 2008), pp 22–23. Expert evidence presented on the impacts of climate change in Kiribati (presented to the New Zealand Immigration Tribunal) recognises the violent implications of overcrowding as a result of climate-related impacts on available land, see AF (Kiribati) (n 127), para 15.

¹³⁴ Article 1 of the Convention on the Rights of the Child (1989) defines child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”

¹³⁵ UNICEF, *The climate crisis is a child rights crisis. Introducing the Children’s Climate Risk Index* (August 2021), pp 4 and 6.

¹³⁶ UNICEF, (n 135), pp 20 and 43.

¹³⁷ UNICEF, (n 135), p 48; United States Environmental Protection Agency, *Climate Change Impacts on Air Quality* (last viewed 28 June 2023) (“In many regions of the United States, climate-driven changes in weather conditions, including temperature and precipitation, are expected to increase ground-level ozone and particulate matter (such as windblown dust from droughts or smoke from wildfires). These changes worsen existing air pollution. Exposure to these pollutants can lead to or worsen health problems, such as respiratory and heart diseases.”).

resulting from climate change.¹³⁸ This Court is not oblivious to this reality—it has already held that children are at heightened risk of harm from environmental damage.¹³⁹

70. The disproportionate impact of climate change on children has multiple reasons. *First*, children are “physically more vulnerable” to severe weather and shocks such as floods, storms, droughts and heatwaves. Whereas adults have a measure of control over their exposure to extreme weather events, children are less able to physically protect themselves and procure clean water and food in case of emergency.¹⁴⁰
71. *Second*, children are “physiologically more vulnerable” to water and food scarcity, and air pollutants caused by climate change.¹⁴¹ Because children require more food and water relative to body size than adults, the demands of their metabolism make lack of adequate access to food and clean water a more significant health hazard.¹⁴² Because children breathe twice as fast as adults and require relatively more oxygen to function, they are also particularly vulnerable to air pollution.¹⁴³ Young children, in particular, are at increased risk because of their underdeveloped immune systems and lungs.¹⁴⁴
72. *Third*, children are subject to a higher risk of death from pathogens and water- and vector-borne diseases that are influenced by climate change. Notably, changes in temperature, precipitation patterns and humidity have a direct effect on the transmission rates of diseases that affect children, such as dengue and malaria.¹⁴⁵ The increases in storms and flooding also increase lead and pesticide contamination of food and water sources.¹⁴⁶
73. *Fourth*, climate change has a disproportionately long-term effect on children. Children affected by the consequences of climate change—which by UNICEF’s account is “*almost every child on earth*”¹⁴⁷—may suffer from inadequate nutrition,¹⁴⁸ disruptions to education,¹⁴⁹ alterations to

¹³⁸ UNICEF (n 135), pp 68–69.

¹³⁹ Inter-American Court of Human Rights (n 11), para 67.

¹⁴⁰ UNICEF (n 135), pp 19, 37; *see also* IPCC (n 3), p 1197 (noting “climate change differentially impacts people in vulnerable situations within countries, including . . . children [and] in most vulnerable regions and countries, very limited resources and structures exist to support these groups when droughts, floods, or storms occur.”).

¹⁴¹ UNICEF (n 135), p 11.

¹⁴² UNICEF (n 135), p 19.

¹⁴³ UNICEF (n 135), p 19; IPCC (n 3), p 1221 (noting “[c]hildren under 5 years old and the elderly in rural areas were respectively *11 and 22 times more affected* by the smoke from fire outbreaks and temperature increase in the Amazon”) (emphasis added).

¹⁴⁴ United Nations Human Rights Council, *Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child*, (A/HRC/35/13, 4 May 2017).

¹⁴⁵ Ebi KL, Lewis ND, Corvalan C., *Climate variability and change and their potential health effects in small island states: information for adaptation planning in the health sector*, (Environ Health Perspect, 2006).

¹⁴⁶ UNICEF (n 135), p 52.

¹⁴⁷ UNICEF (n 135), pp 10–11 (noting that almost every child on earth is exposed to at least one of the major climate and environmental hazards, shocks and stresses, which include heatwaves (820 million exposed), cyclones (400 million exposed), riverine flooding (330 million exposed), coastal flooding (240 million exposed), water scarcity (920 million exposed), vector-borne diseases (600 million exposed), air pollution (two billion exposed), and lead pollution (815 million exposed)) (emphasis added).

¹⁴⁸ IPCC (n 3), pp 1218–1219 (noting that in developing nations, the “increasing temperature, droughts and excessive rain lead to successive crop failures and reduced productivity that are affecting children’s growth and health”).

¹⁴⁹ UNICEF (n 135), p 20.

social and physical structures,¹⁵⁰ and early onset of mental health issues, including eco-anxiety.¹⁵¹ All these impacts during development can have long-term effects on their future quality of life and physical and mental health of the affected children.¹⁵² The same is true of the long-term physiological impact: malnutrition in children is linked to “reduced educational achievement and long-term decrements in cognitive function.”¹⁵³ But children will not only suffer from the impact of climate change for *longer* than adults—they will also potentially suffer *harsher* consequences as climate change worsens throughout their lives.¹⁵⁴

74. *Fifth*, children are also relatively powerless to change the state of things. While in recent years there has been an inspiring wave of child-led activism, children often lack political representation at the state or international level, and largely depend on adults to devise, implement, and enforce the agendas that most benefit them.¹⁵⁵ This is particularly true for children of isolated and under-financed States like many small island States.¹⁵⁶
75. Over 1.7 billion children—an alarming 77% of children globally—are currently exposed to at least three of the above-mentioned environmental hazards.¹⁵⁷ Overlapping exposures are particularly dangerous as they exacerbate each other. The most vulnerable children, particularly those in small island States and developing countries, face the devastation of these combined hazards more imminently and severely. As UNICEF aptly summarised it: “climate change will harm the poorest and most vulnerable children first, hardest and longest.”¹⁵⁸ Yet despite bearing the brunt of the effects of climate change, it is precisely children who have done the least to create these conditions.¹⁵⁹ Children have had less time than adults to have an impact on climate change, nor do they engage in activities that impact climate change in the ways and to the extent

¹⁵⁰ United Nations Human Rights Council (n 144), para 4.

¹⁵¹ United Nations Human Rights Council (n 144), para 18; United Nations Committee on the Rights of the Child, *General Comment No. 26* on children’s rights and the environment, with a special focus on climate change (CRC/C/GC/26, 22 August 2023), paras 41–44; *see also* Andrew Gregory, ‘Eco-anxiety’: Fear of Environmental Doom Weighs on Young People, (The Guardian, 6 October 2021) (defining eco-anxiety as “the chronic fear of environmental doom” and noting that it has a “‘disproportionate’ impact on children and young people.”).

¹⁵² United Nations Human Rights Council (n 144), para 18 (noting, for example, that “children affected by El Niño during early childhood posted lower scores in language development, memory and spatial reasoning than other children of a similar age.”); IPCC (n 3), p 1046 (noting that climate change “is expected to have adverse impacts on well-being and to further threaten mental health” with “[c]hildren and adolescents, particularly girls . . . particularly at risk.”).

¹⁵³ IPCC (n 3), p 1079.

¹⁵⁴ Special Rapporteurs on Human Rights and the Environment, *Amici Curiae Brief in the case of Sacchi et al. v. Argentina, Brazil, France, Germany and Turkey*, (United Nations Committee on the Rights of the Child, No.104-108/2019), para 5.

¹⁵⁵ Special Rapporteurs on Human Rights and the Environment (n 154), para 5 (“Despite the requirement in art. 12 of the Convention on the Rights of the Child that children have the right to express their views freely in all matters affecting them, they are typically denied information, excluded from decision-making procedures, and lack access to effective remedies.”).

¹⁵⁶ UNICEF (n 135), p 20.

¹⁵⁷ UNICEF (n 135), p 54.

¹⁵⁸ UNICEF, *Unless we act now: The impact of climate change on children*, (2015), p 8. *See also* IPCC (n 3), p 1053.

¹⁵⁹ UNICEF (n 135), p 20; United Nations General Assembly, *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, 15 July 2019), para 46 (noting that the worst impacts of climate change afflict those who have contributed least to the problem, including women and children in low-income countries, and indigenous peoples).

that adults do. Even more modest contributors to climate change are the children of low-income nations.¹⁶⁰

(b) Children in Small Island States Are Subject to Heightened Risk from Climate Change due to the Compounding of Impacts

76. Children in small island States arguably suffer the greatest impacts of climate change because of (i) their status as children, for the reasons mentioned in Section IIIC above; and (ii) their residence in small island States, making them disproportionately vulnerable to the effects of climate change. This problem is further exacerbated by the fact that small island States have higher proportions of children in their overall population compared to less vulnerable countries.¹⁶¹ Of the 43 million inhabitants of the Caribbean small island States, for example, 12.6 million or 29.3 percent are children.¹⁶²
77. It is difficult to overstate the vulnerability of this population. Climate change is expected to increase the frequency and intensity of natural disasters already afflicting small island States, and many of their populations face heightened risks of complete destruction and submergence.¹⁶³ As the United Nations Human Rights Council noted, children subject to large-scale human movement due to natural disasters and rising sea-levels, particularly those in small island States and low-lying coastal areas, face a plethora of risks, including: separation from cultural heritage; barriers in access to schools; adequate health-care facilities and necessary goods and services; overcrowded shelters with inadequate sanitation and clean water, which can increase the incidence of leading causes of child mortality such as diarrhoea and malnutrition; and inadequate or lack of protection if they are separated from their parents, which exposes them to emotional, physical, and sexual violence.¹⁶⁴ Besides natural disasters, climate change is also poised to intensify the prevalence of deadly diseases and conditions and threaten food and water security.¹⁶⁵
78. Children in small island States cannot escape these threats. The majority of them live relatively close to the coastlines, which are regularly battered by storms and storm surges.¹⁶⁶ Those in rural areas often live in poorly constructed dwellings, while those in cities are concentrated in densely populated neighbourhoods with poor drainage systems that aggravate the effects of floods and encroaching tides.¹⁶⁷
79. The dire situation of children in small island States is compounded by other problems plaguing their countries, in what the UN has called a “catch-22.”¹⁶⁸ Not only do small island States face

¹⁶⁰ For example, the annual carbon footprint measured in metric tons of CO₂ of a person in a low-income country is 1.9% of that of a person in a high-income country. UNICEF (n 135), p 20.

¹⁶¹ United Nations Human Rights Council (n 144), para 5.

¹⁶² UNICEF, *Children uprooted in the Caribbean. How stronger hurricanes linked to a changing climate are driving child displacement* (December 2019), p 1.

¹⁶³ United Nations Human Rights Council (n 144), para 26; Special Rapporteurs on Human Rights and the Environment (n 154), para 3.

¹⁶⁴ United Nations Human Rights Council (n 144), paras 26–27.

¹⁶⁵ See *supra* Section III.B.1 above; see also IPCC (n 3), p 1075.

¹⁶⁶ Global Environmental Outlook 4 (GEO-4), *Coastal population and altered land cover in coastal zones (100 km of coastline)* (2006); UNICEF (n 135), p 39; Creel Liz, *Ripple Effect: Population and Coastal Region* (25 September 2003) pp 1–2.

¹⁶⁷ Ebi KL, Lewis ND, Corvalan C. (n 145).

¹⁶⁸ UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (n 99).

serious challenges in accessing international finance, but their agriculture- and tourism-dependent economies are also being threatened by climate change.¹⁶⁹ The combined effect of these factors further hinders governments' ability to invest in the mitigation and adaptation measures that are essential to both protect children now, and ensure the conditions for the enjoyment of their rights in the future.

80. Thus, for children of small island States, the confluence of two factors that they cannot control—their age and their homeland—places them in a unique risk category. Their experiences on the frontlines of the climate emergency clearly illustrate the effects of this double impact.¹⁷⁰

IV. Convention Rights Affected by Climate Change

81. The devastating effects of climate change are an existential threat for inhabitants of small island States and their enjoyment of a broad range of rights protected under the American Convention. Most notably, States' failure to prevent and protect inhabitants from the climate emergency violates their rights under Articles 4, 11(2), 17(1), 21, 22(8) and 26 concerning the rights to (A) life, (B) a healthy environment, (C) health, (D) take part in cultural life, (E) privacy, family and home, (F) property, (G) personal liberty, and (H) non-refoulement.

A. Climate Change Affects Inhabitants of Small Island States' Right to Life Under Article 4 of the Convention

82. The Convention imposes both a negative obligation prohibiting arbitrary deprivation of life, and a positive obligation requiring States to take "*all appropriate measures to protect and preserve the right to life*,"¹⁷¹ including special obligations owed to more vulnerable groups such as children and populations of small island States.¹⁷²
83. The HRC has observed that climate change constitutes one of the "*most pressing and serious threats to the ability of present and future generations to enjoy the right to life*."¹⁷³ This Court has already acknowledged that coastal and small island communities are especially at risk of

¹⁶⁹ See *supra* Section III.B.4 above; see also IPCC (n 3), pp 2067 and 2073.

¹⁷⁰ UNICEF, *'The night the sea rose': Families from Barbuda and Cuba reflect on surviving Hurricane Irma* (22 September 2017) (reporting that in September 2017 a seven year-old boy was displaced from Barbuda to neighboring Antigua after Hurricane Irma wrecked the island; in his new school in a shelter he drew his house "before" and "after" the hurricane—the latter showing a house in shambles; and that in Cuba, an eleven-year-old boy witnessed as people carried children and possessions while the sea swell caused by Hurricane Irma ravaged the village's houses, including the home he lived in with his mother and his four-year-old brother).

¹⁷¹ Inter-American Court of Human Rights (n 11), para 108 (citing *Villagrán Morales et al. v Guatemala*, para 144; *Case of Ortiz Hernández et al. v Venezuela*, para 100); European Court of Human Rights, *Case of Önerlydiz v Turkey*, Application No. 4839/99 (30 November 2004), paras 89–90.

¹⁷² Inter-American Court of Human Rights (n 11), para 67; United Nations Committee on the Rights of the Child (n 54), para 10.13 ("Due to the particular impact on children, and the recognition by States parties to the Convention that children are entitled to special safeguards, including appropriate legal protection, States have heightened obligations to protect children from foreseeable harm."). See also Joint Statement by the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, *Statement on human rights and climate change*, HRI/2019/1, (14 May 2020), paras 3, 10 (confirming that "climate change poses significant risks to the enjoyment of [] human rights," including the right to life, and that the risk of harm is particularly high for children "owing to the immaturity of their body systems.").

¹⁷³ United Nations Human Rights Committee, *General comment No. 36 on Article 6: Right to Life of the International Covenant on Civil and Political Rights*, (CCPR/C/GC/36 3 September 2019), para 62.

being affected by climate change due to their geographical location.¹⁷⁴ Climate change resulting from States' unchecked GHG emissions has already violated the right to life in small island States, both directly through deadly storms, floods and heatwaves and indirectly, by displacing people from their homes and traditional lands and depriving them of their ability to hunt, fish, gather or undertake subsistence farming and access clean water.¹⁷⁵ Further human rights violations can occur as those affected are forced to cross borders.¹⁷⁶

84. Even more serious and large-scale violations may be expected as temperatures continue to rise, affecting vulnerable or marginalized groups first and hardest. For example, children of small island States are in greater and more immediate danger of experiencing life-threatening circumstances caused by climate change. Studies have estimated that without significant reductions to current carbon emissions, the child mortality rate for children under five years old due to climate change could double by 2049.¹⁷⁷ Younger children are more susceptible to environmental hazards due to their activity, behaviour, and physiology.¹⁷⁸
85. International human rights jurisprudence already recognises that the risk of a breach of the right to life and States' corresponding obligations of prevention will arise in an environmental context. For example:

85.1 This Court recognised in its 2017 Advisory Opinion that States have a range of obligations to respect and ensure the right to life in the face of potential environmental damage.¹⁷⁹ In particular, it confirmed that “*States must act in keeping with the precautionary principle in order to protect the rights to life and to personal integrity in cases where there are plausible indications that an activity could result in severe and irreversible damage to the environment, even in the absence of scientific certainty. Consequently, States must act with due caution to prevent possible damage.*”¹⁸⁰

¹⁷⁴ Inter-American Court of Human Rights (n 11) para 67. In particular, the effects of climate change may result in saltwater flooding, desertification, hurricanes, erosion, and landslides, leading to scarcity of water supplies and affecting food production from agriculture and fishing as well as destroying land and housing. The particular vulnerability of COSIS member states to climate change has been explained at paragraphs [41] – [68] above.

¹⁷⁵ In many small island States, the lack of alternatives to subsistence livelihoods may place individuals at a heightened risk of vulnerability to the adverse effects of climate change. The particular vulnerability of COSIS member states to climate change has been explained at paragraphs [41] – [68] above. There are also adverse consequences for human health, including: direct mortality and injury from extreme weather events, increased incidences of vector-borne diseases, such as malaria and dengue fever, diseases from exposed landfill and burial sites following floods and inundation events, and compromised health from lack of access to freshwater and adequate nutrition. See, e.g., IPCC (n 131), pp 1623–1625; Lachlan McIver, et. al., *Assessment of Health Impacts of Climate Change in Kiribati*, (Int. J. Environ. Res. Public Health 11/5 2014), p 5224. In Tuvalu, for example, declining yields are increasing reliance on imported foods, which has been linked to serious health problems, including diabetes. Shawn Shen and Francois Gemenne, *Contrasted Views on Environmental Change and Migration: The Case of Tuvaluan Migration to New Zealand*, (International Migration 49/S1 2011), pp 224, 226.

¹⁷⁶ See (n 175).

¹⁷⁷ *Climate action ‘could prevent 6,000 child deaths a year’*, NEWSWISE, (22 July 2022), <https://www.newswise.com/articles/climate-action-could-prevent-6-000-child-deaths-a-year>; Chapman, Birch, et. al., *Past and projected climate change impacts on heat-related child mortality in Africa*, (4 July 2022), <https://iopscience.iop.org/article/10.1088/1748-9326/ac7ac5/meta>.

¹⁷⁸ United Nations Committee on the Rights of the Child (n 151), para 25.

¹⁷⁹ Inter-American Court of Human Rights (n 11), paras 116–118.

¹⁸⁰ Inter-American Court of Human Rights (n 11), para 180.

- 85.2 The UN Human Rights Committee, in its General Comment No. 36 on the right to life, established that the right to life includes the right of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their premature death.¹⁸¹
- 85.3 In its decisions in *Teitiota*, *Caceres*, and, most recently *Billy*, the UN Human Rights Committee has recognised that:¹⁸²
- (a) environmental degradation can compromise effective enjoyment of the right to life, and severe environmental degradation can lead to a violation of the right to life;¹⁸³
 - (b) State Parties to the ICCPR may be in breach of the right to life even if reasonably foreseeable threats which include climate change do not result in the loss of life;¹⁸⁴ and
 - (c) the protection of the right to life requires State Parties to adopt positive measures to protect the right to life.¹⁸⁵
- 85.4 Similarly, the European Court of Human Rights (“ECtHR”) has held that governments must effectively deter foreseeable threats to the right to life from dangerous human activities, environmental hazards, and natural disasters.¹⁸⁶
86. In a similar vein, the United Nations Committee on the Right of the Child (“CRC”) has articulated that:¹⁸⁷
- States should take positive measures to ensure that children are protected from foreseeable premature or unnatural death and threats to their lives [through] the adoption and effective implementation of environmental standards, for example, those related to ... greenhouse gas emissions, and all other adequate and necessary environmental measures that are protective of children’s right to life [with additional] [s]pecial measures of protection [] needed to prevent and reduce child mortality from environmental conditions and for groups in vulnerable situations.

¹⁸¹ United Nations Human Rights Committee (n 173), paras 3, 62.

¹⁸² See generally United Nations Human Rights Committee (n 7); United Nations Human Rights Committee, *Portillo Cáceres and Others v Paraguay* CCPR/C/126/D/2751/2016; United Nations Human Rights Committee (n 122).

¹⁸³ United Nations Human Rights Committee (n 7), para 9.4; United Nations Human Rights Committee (n 173), paras 7.3, 7.4; ; United Nations Human Rights Committee (n 122), para 8.3.

¹⁸⁴ United Nations Human Rights Committee (n 7), para 9.4; United Nations Human Rights Committee (n 173), para 7.3; United Nations Human Rights Committee (n 122), para 8.3; United Nations Human Rights Committee, *Toussaint v Canada* CCPR/C/123/D/2348/2014, para 11.3.

¹⁸⁵ See, e.g., United Nations Human Rights Committee (n 7), para 9.4; United Nations Human Rights Committee (n 173), para 7.3; United Nations Human Rights Committee (n 173), para 11.3; United Nations Human Rights Committee (n 122), para 8.3..

¹⁸⁶ European Court of Human Rights, (n 171); European Court of Human Rights, *Case of Budayeva and others v Russia*, Application Nos. 15339/02, 21166/02, 20058/02, 11673/02, and 15343/02 (29 September 2008), para 11.3.

¹⁸⁷ United Nations Committee on the Rights of the Child (n 151), paras 20–21, 63–67.

87. We set out in Section V.B below the State obligations of prevention and international cooperation to avoid the impacts on the right of life set out in this section.

B. Climate Change Affects Inhabitants of Small Island States' Right to a Healthy Environment under Article 26 of the Convention

88. This Court has held that Article 26 of the Convention protects the right to a healthy environment.¹⁸⁸ This right, which according to the Court is “*a universal value that is owed to both present and future generations*,”¹⁸⁹ entails an obligation to “*refrain*” from activities that “*ha[ve] a negative impact on the conditions that permit a decent life*.”¹⁹⁰ In this regard, the Court has held that States’ failure to prevent activities that exacerbate the deterioration of an ecosystem and reduce the availability of food and potable water, thus destroying “*peoples’ means of subsistence*,” violate the right to a healthy environment.¹⁹¹ The CRC similarly expressed that a “*clean, healthy and sustainable environment is both a human right itself and necessary for the full enjoyment of [] rights*.”¹⁹²
89. In small island States, sea-level rise and storms fuelled by climate change already have a severe impact on many of the indicators laid down by the Court to evaluate a healthy environment, notably sources of water, soil quality, and biodiversity.¹⁹³ By denying individuals from small island States the ability to live in a healthy environment, climate change has a devastating impact on individuals’ “*means of subsistence*,”¹⁹⁴ with resulting displacement.
90. For individuals in small island States, the loss of a healthy environment is felt more acutely because of the intrinsic connection to the sea and the land. For indigenous peoples in small island States, the connection between indigenous peoples and a healthy land and sea is integral to their spiritual and cultural identity.¹⁹⁵ This is even more true where the connection between an individual or community and the land and the sea is severed due to climate-induced displacement.

¹⁸⁸ Inter-American Court of Human Rights (n 11), para 57.

¹⁸⁹ Inter-American Court of Human Rights (n 11), para 59. Children too have the right to a healthy environment, which is closely linked to their rights to life, survival and development. *See* United Nations Committee on the Rights of the Child (n), para 37.

¹⁹⁰ Inter-American Court of Human Rights, *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v Argentina* (Judgment on Merits, reparations and costs, 6 February 2020), para 207, n 196 (citation omitted).

¹⁹¹ Inter-American Court of Human Rights (n 190), paras 272–289.

¹⁹² United Nations Committee on the Rights of the Child (n 151), para 8.

¹⁹³ Torres Strait Regional Authority, *Torres Strait Climate Change Strategy 2014-2018: Building Community Adaptive Capacity and Resilience*, (Report prepared by the Land and Sea Management Unit, Torres Strait Regional Authority, July 2014), pp 10–17.

¹⁹⁴ Inter-American Court of Human Rights (n 190), paras 281–282, 285. *See also* Inter-American Commission on Human Rights (n 10), p 6 (“Particularly, climate change poses serious threats to all Caribbean nations, despite the numerous differences between them ... Rainfall patterns in the region have changed, and an increase in the number of consecutive dry days is expected. Additionally, sea levels have risen at a rate of between two and four centimetres per decade over the past 33 years, a pattern that poses serious risks to the region’s valuable freshwater resources and to the coastal population that depends on tourism and agriculture. Even more serious, this would have devastating consequences, especially for millions of people living in poverty, who even in the best of cases, would face food insecurity, forced migration, disease and death.”).

¹⁹⁵ Torres Strait Regional Authority (n 193), p 16; United Nations Human Rights Committee (n 122), para 44(3).

91. For children in small island States, the loss of a healthy environment is also significant. In its recent General Comment No. 26, the CRC articulated that the right to a healthy environment is *implicit* in the UN Convention on the Rights of the Child.¹⁹⁶ The Committee highlighted that the substantive elements of this right are critical for children, noting the importance of safe air quality, safe and sufficient water and sanitation, and sustenance from agriculture and fisheries.¹⁹⁷ The Court has also acknowledged that the effects of environmental degradation “may be felt with greater intensity by certain groups in vulnerable situations,”¹⁹⁸ including children.¹⁹⁹
92. We set out in Section V.B below the State obligations of prevention and international cooperation to avoid the impacts on the right to a healthy environment as set out in this section.

C. Climate Change Affects Inhabitants of Small Island States’ Right to Health under Article 26 of the Convention

93. The right to health, protected by Article 10 of the San Salvador Protocol,²⁰⁰ has also been held by this Court to be one of the rights protected by Article 26 of the American Convention.²⁰¹ In the environmental context, this Court has concluded “*health requires certain essential elements to ensure a healthy life*,” such as access to food, nutrition, housing, clean potable water, adequate sanitation, and a healthy environment.²⁰² Climate change and biodiversity loss are obstacles to the realisation of the right to health.²⁰³
94. In particular, climate change exacerbates health issues that disproportionately affect children. The bulk of the global burden of disease, undernutrition, and the detrimental and often long-

¹⁹⁶ United Nations Committee on the Rights of the Child (n 151), para 63.

¹⁹⁷ United Nations Committee on the Rights of the Child (n 151), paras 63–67.

¹⁹⁸ Inter-American Court of Human Rights (n 190), para 209 (citation omitted).

¹⁹⁹ Inter-American Court of Human Rights (n 190), para 219, n 214.

²⁰⁰ Organization of American States, *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights: “Protocol of San Salvador”*: Signed at San Salvador, El Salvador, on 17 November 1988, at the Eighteenth Regular Session of the General Assembly, Art 10, (“States Parties agree to . . . ensure . . . [s]atisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.”).

²⁰¹ Inter-American Court of Human Rights, *Case of Vera Rojas et al. v Chile* (Judgment on Preliminary Objections, Merits, Reparations, and Costs, 1 October 2021), para 97 (“[T]he Court reaffirms that the right to health is a right protected under Article 26 of the Convention.”). Other human rights bodies have also reached similar conclusions based on closely worded articles. *See e.g.*, United Nations Joint Statement on Human Rights and Climate Change (n 172) paras 3, 10; Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health* (Art. 12), E/C.12/2000/4 (11 August 2000), para 34; African Court on Human and Peoples’ Rights, *African Commission on Human and Peoples’ Rights, Social and Economic Rights Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria*, Judgement 155/96 27 October 2001), paras 51–52.

²⁰² Inter-American Court of Human Rights (n 11), para 110, n 210 (defining health, as related to the right to health, as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity” and further elaborating that it includes “food and nutrition, housing, access to clean potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.”). Other human rights bodies have defined the right to health similarly. For example, the Committee on Economic, Social and Cultural Rights has indicated that the obligation to respect the right to health means that States should “refrain from unlawfully polluting air, water and soil, e.g. through industrial waste from State-owned facilities, from using or testing nuclear, biological or chemical weapons if such testing results in the release of substances harmful to human health.” Committee on Economic, Social and Cultural Rights (n 201), paras 4, 34; *see also* European Committee of Social Rights, *Marangopoulos Foundation for Human Rights (MFHR) v Greece*, (Judgement, Complaint No. 30/2005, 6 December 2006), para 195.

²⁰³ United Nations Committee on the Rights of the Child (n 151), paras 37–44.

lasting health effects associated with climate change, including in relation to physical, physiological, and psychological development is carried by children, especially young children of vulnerable communities such as those in small island States.²⁰⁴ For example, Caribbean States have experienced a decline in human health outcomes due to climate change-related impacts to food and water security, the transmission of diseases, the incidence of injuries and death, as well as the functioning of key healthcare infrastructure.²⁰⁵

95. Climate-induced displacement is also inextricably linked to the right to health. Heatwaves and other extreme weather events force people to migrate to avoid the negative health impacts of such events. Similarly, climate-induced migration creates vulnerability to disease and problems accessing quality health-care.²⁰⁶ Some academics have noted that the health risks posed by climate-induced displacement are likely to become a major source of human suffering and disability.²⁰⁷ Notably, climate induced displacement typically increases negative health outcomes for vulnerable groups such as children (as above), women, and the elderly.²⁰⁸
96. We set out in Section V.B below the State obligations of prevention and international cooperation to avoid the impacts on the right to health set out in this section.

D. Climate Change Affects Inhabitants of Small Island States' Right to Take Part in Cultural Life under Article 26 of the Convention

97. Article 26 of the American Convention also protects the right to take part in cultural life, which this Court has held includes the right to cultural identity.²⁰⁹ The right to cultural identity is “closely related to the right of everyone ‘to take part in cultural life’ and to the right of ‘people belonging to . . . minorities. . . to enjoy their own culture.’”²¹⁰ The Court, in turn, has described “culture” as “the set of distinctive spiritual, material, intellectual and emotional features” of a social group, encompassing lifestyles, ways of living together, value systems, traditions, and beliefs.²¹¹
98. The necessary conditions for the full realisation of this right include, among others: (1) *availability*, which is understood as the “*presence of cultural goods and services*,” including the natural environment—rivers, mountains, and forests—and intangible goods—customs, traditions, and values; and (2) *accessibility*, which is defined as “*effective and concrete*

²⁰⁴ See *supra* [Part III.B.2, Part III.C.2]; United Nations Human Rights Council (n 144), pp 3–8.

²⁰⁵ See *supra* [Part III.B.2].

²⁰⁶ Office of the United Nations High Commissioner for Human Rights, *Response to UNFCCC Secretariat request for submissions on: Nairobi Work Programme on impacts, vulnerability and adaptation to climate change - health impacts, including occupational health, safety and social protection*, (FCCC/SBSTA/2016/2, 29 August 2016), para 15(a)(i) ; United Nations Committee on the Rights of the Child (n 151), paras 42, 50.

²⁰⁷ Mazhin, Sadeh Ahmadi et al., *Migration Health Crisis Associated with Climate Change: A Systematic Review*, J. of Ed. and Health Promotion 9(97) (28 April 2020).

²⁰⁸ United Nations Committee on the Rights of the Child (n 151), paras 37–44; C. McMichael, J. Barnett, A.J. McMichael, *An Ill Wind? Climate change, Migration, and Health*, Environ. Health Perspect., 120, 646–654. (2012).

²⁰⁹ Inter-American Court of Human Rights (n 190), para 231; Inter-American Court of Human Rights, *Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v Guatemala* (Judgment on Merits, Reparations and Costs, 6 October 2021), para 120.

²¹⁰ Inter-American Court of Human Rights (n 190), para 231, n 233.

²¹¹ Inter-American Court of Human Rights (n 190), para 237 (*citing* Preamble to the UNESCO Universal Declaration on Cultural Diversity (2 November 2001)).

*opportunities for individuals and communities to enjoy culture fully.*²¹² In addition, the Court has acknowledged a “*special connection*” between communities, a healthy environment, and their culture.²¹³ For example, it has found that “*the lack of access to the territories and corresponding natural resources may expose the indigenous communities to . . . suffering and prejudicing the preservation of their way of life, customs and language.*”²¹⁴ The Committee on the Rights of the Child also explained that States should pay attention to “*preserving the traditional land of Indigenous children and protecting the quality of the natural environment for the enjoyment of their rights, including their right to an adequate standard of living.*”²¹⁵

99. Climate-exacerbated displacement interferes with the full enjoyment of the right to cultural life for individuals and communities around the world,²¹⁶ but this interference is particularly acute for those in small island States.²¹⁷ Many small island States are populated by indigenous peoples who have been traditional stewards of their biological and cultural diversity, and the various ecosystems found in their lands and waters.²¹⁸ In addition, as discussed in the previous section, climate change threatens the availability of natural resources, including food, which is intimately linked to the preservation of culture.²¹⁹ The close relationship between indigenous peoples and their traditional territories and natural resources is a constitutive element of their culture, understood as a particular way of life. For many small island States, retention of culture depends on the continued existence and habitability of their islands and on the ecological health of the surrounding seas.²²⁰
100. Climate change also affects the right to take part in cultural life of children of small island States under Article 26 of the American Convention. In particular, climate change impacts (1) the availability of “cultural goods and services” and (2) the accessibility of children to opportunities

²¹² Inter-American Court of Human Rights (n 190), para 241 (citation omitted). Other conditions include: *acceptability* to the individuals and communities of the laws and policies adopted by the State to protect cultural rights; *adaptability* or flexibility of strategies; and *appropriateness* or the need to consider specific cultural modalities or contexts. *Id.*

²¹³ Inter-American Court of Human Rights (n 190), para 275, n 288 (citation omitted); *see also* Inter-American Court of Human Rights (n 11), paras 48, 113.

²¹⁴ Inter-American Court of Human Rights (n 190), para 275 (*citing* Inter-American Court of Human Rights, *Case of the Yakye Axa Indigenous Community v Paraguay*, (Judgement on Merits, reparations and costs, 17 June 2005), para 163; Inter-American Court of Human Rights (n 11), para 48.

²¹⁵ United Nations Committee on the Rights of the Child (n 151), para 49.

²¹⁶ Committee on Economic, Social and Cultural Rights, *Climate Change and the International Covenant on Economic, Social and Cultural Rights*: Statement by the Committee on Economic, Social and Cultural Rights, (E/C.12/2018/1*, 31 October 2018), para 4. The impacts of climate change on a range of rights guaranteed under the International Covenant on Economic, Social and Cultural Rights, including the right to culture, have been amply documented. *Id.*

²¹⁷ Small island States represent some of the most culturally diverse areas in the world, exhibiting a great variety of cultures and languages, due to their histories exemplifying the nexus between culture and nature, cultural diversity, and biological diversity. As “diasporic societies” that formed because of many migratory movements, voluntary or not – the cultures of small island States are not only shaped by the interactions between people and their environment but also the cross-influence of relationships to their place of origin and their neighbours, connected by the ocean. UNESCO, *Cutting Edge: Small Island Developing States: Cultural Diversity as a Driver of Resilience and Adaptation*, <https://www.unesco.org/en/articles/cutting-edge-small-island-developing-states-cultural-diversity-driver-resilience-and-adaptation>.

²¹⁸ Indigenous People’ Major Group, *Indigenous Peoples’ Major Group Statement on the Small Island Developing States (SIDS)* (CSD18 Review Session, 10 May 2010).

²¹⁹ Inter-American Court of Human Rights (n 190), para 275, n 288; *see also* Inter-American Court of Human Rights (n 11), paras 48 and 113.

²²⁰ UNESCO (n 217).

to take part in their cultural life.²²¹ The Human Rights Council (“HRC”) acknowledged this phenomenon in *Billy v Australia* when it found that Australia violated the Torres Strait Islanders’ right to enjoy their culture by delaying the construction of sea walls around the islands. In particular, the HRC noted that Australia “fail[ed] to adopt timely adequate adaptation measures to protect [the complainants’] collective ability to maintain their traditional way of life, to transmit to their children and future generations their culture and traditions and use of land and sea resources.”²²² The Committee found Australia responsible for failing to protect the right to culture of the Torres Strait Islands peoples because it had not taken adequate measures to protect them from the adverse impacts of climate change.²²³

101. The Commission submits that this Court should recognise that climate change threatens the right to culture as recognised in Article 26 of the American Convention. We set out in Section V.B below the State obligations of prevention and international cooperation to avoid the impacts on the right to cultural life set out in this section.

E. Climate Change Affects Inhabitants of Small Island States’ Right to Privacy, Family, and Home under Articles 11(2) and 17(1) of the Convention

102. Article 11(2) of the American Convention provides that home and private and family life must be free from arbitrary interference by either the State or third parties.²²⁴ Article 17(1) of the Convention provides that “[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the state.” States’ inaction in the face of climate-change effects that lead to the destruction of homes and family life may therefore violate Article 11(2).²²⁵
103. The right to protection from arbitrary interference is reflected in other international human rights treaties, including Article 8 of the ECtHR and Article 11 of the ICCPR.²²⁶ International and domestic human rights jurisprudence recognises that environmental damage can interfere with the right to protection from arbitrary interference.²²⁷

²²¹ See *supra*, [Part III.B.6]; Inter-American Court of Human Rights (n 190), para 241.

²²² United Nations Human Rights Committee (n 122), para 8.14; United Nations Human Rights Council (n 144), paras 29–30 (noting that the impacts of climate change undermine children’s right to enjoy their culture).

²²³ See generally United Nations Human Rights Committee (n 122).

²²⁴ Inter-American Court of Human Rights, *Case of the Peasant Community of Santa Bárbara v Peru*, (Judgment on Preliminary Objections, Merits, Reparations and Costs, 1 September 2015), para 200.

²²⁵ Inter-American Court of Human Rights (n 224), para 205 (holding that the burning down of homes by the Army constituted abusive and arbitrary interference with private life and home in violation of the American Convention).

²²⁶ Not only does the jurisprudence regarding Article 8 provide relevant examples of the appropriate interpretation and application of Article 11, which has the same wording, but further, “[t]he Court’s advisory jurisdiction... extends to other treaties [beyond the Convention] concerning the protection of human rights in the American States.” Inter-American Court of Human Rights, “Other Treaties” Subject to the Consultative Jurisdiction of the Court, Art. 64 American Convention on Human Rights Advisory Opinion OC-1/82 (24 September 1982), para 14).

²²⁷ The ECtHR has found that environmental pollution, environmental issues, and serious damage to the environment threaten the right to protection from arbitrary interference. Naturally, severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health. See European Court of Human Rights, *López Ostra v Spain* (Judgement on Application No. 16798/90, 9 December 1994), paras 47, 51 and 58; European Court of Human Rights, *Taskin v Turkey* (Judgement on Application No. 46117/99 10 November 2004), para 103, 112.

104. In *Billy v. Australia*, for example, the HRC found that Australia violated the Torres Strait Islanders' right to privacy, family, and home when its delay in constructing sea walls around the islands led to the flooding of their villages and ancestral lands, the destruction of their traditional gardens, and erosion near their homes.²²⁸
105. Climate-induced displacement threatens the right to protection from arbitrary interference for small island States when living conditions are made unbearable leading to displacement, forced relocation, and family separation. These climate-change effects implicate islanders' rights to privacy, family, and home under Articles 11(2) and 17(1) of the American Convention.
106. Importantly, the right to protection from arbitrary interference exists regardless of whether GHG emissions cause imminent climate-change effects. The ECtHR has held that this right can be breached in the context of environmental pollution even when the threat of environmental pollution was not expected to materialise for 20 to 50 years²²⁹ and where there were possibly longer-term health risks from heavy metal emissions.²³⁰
107. In relation to children's rights, the Court, in interpreting Article 17(1), has noted that separation, such as due to expulsion or deportation, "*may have prejudicial effects on the life, well-being and development of the child*" and indicated that, in certain circumstances, the separation of children from their family can constitute a violation of Article 17(1). Climate-change-related phenomena threaten the safety, stability, and existence of the homes of children in small island States.²³¹
108. We set out in Section V.B below the State obligations of prevention and international cooperation to avoid the impacts on the right to privacy, family, and home set out in this section.

F. Climate Change Affects Inhabitants of Small Island States' Right to Property under Article 21 of the Convention

109. Article 21 of the American Convention protects "*the right to the use and enjoyment of ...property*". This Court has already recognised that for indigenous peoples, the Article 21 right to property includes the special meaning of communal property of ancestral lands, including the preservation of cultural identity and transmission to future generations.²³²
110. If indigenous communities are forced to leave their ancestral lands due to migration, they will be unable to continue many of their cultural practices that are tied to the land because as recognised by this Court, "*the culture of the members of the indigenous communities directly relates to a specific way of being, seeing and acting in the world, developed on the basis of their close relationship with their traditional territories.*"²³³

²²⁸ United Nations Human Rights Committee (n 122), para 8.12..

²²⁹ European Court of Human Rights (n 227), paras 107, 111–114.

²³⁰ European Court of Human Rights, *Tătar v Romania*, (Judgement Application No. 67021/01 27 January 2009), paras 89–97.

²³¹ *See supra*, Parts III.A, III.C.2; *see also* United Nations Human Rights Council (n 144), para 26 (noting that in the most extreme scenarios, whole populations of small island States and low-lying coastal areas may need to be relocated due to loss of their land).

²³² Inter-American Court of Human Rights (n 214), paras 124, 131, 140 and 146.

²³³ Inter-American Court of Human Rights (n 214), para 135; Inter-American Court of Human Rights, *Case of the Sawhoyamaya Indigenous Community v. Paraguay*, Series C No. 146 (Judgement on Merits, Reparations and Costs, 29 March 2006), para 118. The IPCC has found that climate-change impact has already disrupted people's "place-based emotional attachments and cultural activities." IPCC (n 3), p 467. Similarly, the United Nations Department of Economic and Social Affairs (UNDESA) observed the effects

111. For indigenous peoples, “*possession of their traditional territory is indelibly recorded in their historical memory, and their relationship with the land is such that severing that tie entails the certain risk of an irreparable ethnic and cultural loss, with the ensuing loss of diversity.*”²³⁴ The loss of cultural identity because of the lack of access to ancestral territory also has a direct impact upon the rights of the children of the dispossessed communities.²³⁵
112. When indigenous communities are forced to move from their ancestral lands due to climate change, this threatens their Article 21 right to property:
- 112.1 This Court has drawn a clear link between an indigenous community’s relationship with its traditional territories and resources on the one hand, and that community’s cultural identity and worldview on the other.²³⁶
- 112.2 Where climate-induced displacement or migration would therefore deprive an indigenous community of its territorial lands and resources, there would be the same threatened impact on the community’s culture and development.
113. States must therefore adopt various mitigation and adaptation measures as outlined in Section V.B below.

G. Climate Change Affects Inhabitants of Small Island States’ Right to Personal Liberty under Article 7 of the Convention

114. Article 7 of the American Convention protects “*the right to personal liberty and security*”. This Court has already recognised that the right to personal liberty (including due process) applies to everyone, irrespective of their migratory status.²³⁷ This Court has established that migration

of climate change on indigenous peoples and stated, “[c]limate change exacerbates the difficulties already faced by indigenous communities [including] political and economic marginalisation, loss of land and resources, human rights violations, discrimination and unemployment.” United Nations Department of Economic and Social Affairs, *Climate Change*, un.org.

²³⁴ Inter-American Court of Human Rights (n 214), para 154. This Court went on to say:

To guarantee the right of indigenous peoples to communal property, it is necessary to take into account that the land is closely linked to their oral expressions and traditions, their customs and languages, their arts and rituals, their knowledge and practices in connection with nature, culinary art, customary law, dress, philosophy, and values.

²³⁵ Inter-American Court of Human Rights (n 224); Inter-American Court of Human Rights, *Case of the Xákmok Kásek Indigenous Community v Paraguay*, Series C No. 214 (Judgement on Merits, Reparations and Costs, 24 August 2010), paras 261–263. This Court stated:

“In this sense, the Court considers that the loss of traditional practices, such as the feminine or masculine initiation rituals and the Community’s languages, and the damages derived from the lack of territory, affect in a particular way the development and cultural identity of the Community’s boys and girls, who will not even be able to develop that special relationship with their traditional territory and that particular form of life that appertains to their culture, if the measures necessary to guarantee the enjoyment of those rights are not implemented.”

²³⁶ Inter-American Court of Human Rights (n 214) para 135 (affirmed by Inter-American Court of Human Rights (n 224), para 118).

²³⁷ Inter-American Court of Human Rights, *Advisory Opinion on the Juridical Condition and Rights of the Undocumented Migrants*, OC-18/03 (17 September 2003, Requested by the United Mexican States), para 121. Due process of law in this context included the right to consular assistance. Inter-American Court of Human Rights, *Advisory Opinion on the Right to Information on Consular Assistance within the Framework of the Guarantees of Due Process of Law*, OC-16/99 (1 October 1999). This is consistent with broader international human rights law. See, e.g., United Nations Human Rights Committee, *General Comment No. 18: Non-discrimination*, (11 October 1989), para 1; United Nations Human Rights Committee *General Comment No. 15: The position of aliens under the Covenant*, paras 1–2; United

policies that have as their central element the mandatory detention of irregular migrants are arbitrary and incompatible with the American Convention.²³⁸ It is respectfully submitted that this right extends to persons affected by climate induced displacement, irrespective of their migratory status.

115. People affected by climate induced displacement face a range of restrictions on their personal liberty due to their irregular migration status. Individuals are at risk of detention when they are forced to flee and seek asylum in another country, particularly in a situation of emergency such as a severe weather event,²³⁹ and if they remain unlawfully in a country or overstay a visa.²⁴⁰
116. States must therefore adopt various mitigation and adaptation measures as outlined in Section V.B below.

H. Climate Change Affects Inhabitants of Small Island States' Right to Non-Refoulement under Article 22(8) of the Convention

117. Article 22(8) of the American Convention protects the right of non-refoulement. This Court has recognised that the right, as provided for in Article 22(8) “*is a broader right in its meaning and*

Nations High Commissioner for Refugees, *Right to Liberty and Security of Persons and detention of refugees, asylum seekers, stateless persons and migrants* (2011), p 17. Equivalent provisions in multilateral agreement, i.e. Article 9 of the ICCPR, have been held to apply to “all deprivations of liberty, including detention for the purposes of immigration control.” See United Nations Human Rights Committee, *General Comment No. 8 on Article 9 (Right to liberty and security of person)*, (HRI/GEN/1/Rev.7, 1982), para 1.

²³⁸ Inter-American Court of Human Rights, *Case of Vélez Loor v Panama*, (Judgement on Preliminary Objections, Merits, Reparations and Costs, 23 November 2010), para 171.

²³⁹ For example, Hurricane Eta displaced millions of people across central America. While it is hard to track the exact numbers that sought asylum overseas directly because of it, there are many reports of people seeking asylum as a result. See International Organisation for Migration, *IOM Responds to Eta's Aftermath in Central America: 2.5 Million People Affected*, (12 November 2020); *The 'Spiralling Crisis' Pushing Hondurans to Flee North*, AL JAZEERA (26 January 2021); Amnesty International, *When it Rains it Pours: The Devastating Impact of Hurricanes Eta and Iota in Honduras* (13 December 2020). The United Nations High Commission for Refugees reports that “the detention of asylum seekers has become commonplace in a number of countries.” UNHCR, *Detention*, <https://www.unhcr.org/detention>. Data on detention of asylum seekers in the Americas is severely lacking. See, e.g., GLOBAL DETENTION PROJECT, *Americas*, <https://www.globaldetentionproject.org/regions-subregions/americas>.

²⁴⁰ Both in instances of sudden and gradual onset climate change, individuals may be able to use existing migratory or visa pathways design for temporary migration to enter a state and subsequently seek to remain on humanitarian grounds or by seeking asylum. However, once individuals overstay their visa, they are in a country unlawfully and face the prospect of detention. For example, Tietiota arrived in New Zealand on a lawful visa and then sought asylum. Teitiotia was detained in Mount Eden prison for the purposes of deportation after he was found to be unlawfully in the country because his claim to refugee status on the basis of the threat climate change posed to his life was not recognised. See *Kiribati climate change refugee told he must leave New Zealand*, THE GUARDIAN (22 September 2015); *Family turn to UN after court rejects refugee bid*, THE NEW ZEALAND HERALD (18 September 2015); *Kiribati man Ioane Teitioa loses bid to stay in New Zealand*, STUFF (22 September 2015); New Zealand Supreme Court, *Ioane Teitiotia v The Chief Executive of the Ministry of Business, Innovation and Employment*, (NZSC 107, 20 July 2015) , para 4.

scope than the one included in international refugee law”²⁴¹ and applies to any “alien”, not just “asylum seekers or refugees”.²⁴²

118. This Court has held that an individual has the right to non-refoulement if their right to life or personal freedom is in danger of being violated because of specific reasons (e.g., race, nationality, religion, social status, or political opinions) or due to generalised violence, foreign aggression, internal conflicts, massive violations of human rights, or other circumstances that have seriously disturbed the public order.²⁴³
119. It is respectfully submitted that the right of non-refoulement under Article 22(8) should extend to those affected by climate-induced displacement. As noted above, the right to life of individuals is in danger of being violated when people are forced to leave their homes due to the massive violations of human rights caused by climate change effects.²⁴⁴ Climate change threatens to displace whole communities and populations, particularly in small island States.²⁴⁵
120. States must therefore adopt various mitigation and adaptation measures as outlined in Section V.B below.

²⁴¹ Inter-American Court of Human Rights, Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, *Advisory Opinion OC-21/14* (19 August 2014, Requested by the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay), para 217 (emphasis added).

²⁴² Inter-American Court of Human Rights (n 241), para 215; Inter-American Court of Human Rights, *Case of the Pacheco Tineo Family v Plurinational State of Bolivia*, (Judgment on Preliminary objections, merits, reparations and costs, 25 November 2013), para 135. The initial proposal to include non-refoulment in the American Convention was made by United Nations High Commissioner for Refugees who proposed the term “refugee” with reference to non-refoulment and it was amended to “alien” demonstrating the “unequivocal” intention of states for the right to non-refoulment to apply to every alien not just refugees. The Inter-American Commission of Human Rights has further recognised this right. In 2022, the Commission issued Resolution No. 3/21, which provides that States, when faced with persons affected by climate induced displacement “*must guarantee due process during the procedure leading to the recognition of their migratory status, and in any case guarantee their human rights, such as the safeguard of non-refoulement while their status is determined.*”

²⁴³ Inter-American Court of Human Rights, *Request for an advisory opinion* Inter-American Court of Human Rights (n 241), paras 76–77 and 213. *See also* Cartagena Convention, Protocol to the 1951 Geneva Convention Relating to the Status of Refugees, 31 January 1967. This definition has been supported by the Organisation of American States since 1985. *See* Cartagena Declaration on Refugees, (adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama: Legal and Humanitarian Problems, 22 November 1984).

²⁴⁴ The Preamble to the Paris Agreement notes that “[a]cknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights ...[and] the rights of ... migrants”. Paris Agreement (n 48), preamble. The Report of the United Nations Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change) recommends that “[r]egional organizations be encouraged to expand their legal arrangements to include the legal protection of persons displaced across international borders due to climate change and, in regions where there are no regional organizations, Governments within those regions should collaborate to explore options for developing such arrangements.” UN Special Rapporteur, *Providing Legal Options to Protect the Human Rights of Persons Displaced Due to Climate Change* (A/HRC/53/34), para 71(e).

²⁴⁵ IPCC (n 3), pp 2067–2068.

V. States' Human Rights Obligations in the Context of Climate Change

121. The Commission respectfully submits that, in light of the above impacts of climate change on American Convention rights, this Court should confirm a set of *minimum obligations* on American Convention States Parties, focused on mitigation and adaptation measures, set out at Sections [V.B.3] and [V.B.4] below. These obligations should be informed by the general principles recognized throughout the Court's jurisprudence (at Section [V.A] below), as well as the obligation to take preventative measures to protect rights (at Section [V.B.1] below).

A. General Principles that Inform the Scope of States' Obligations in the Context of the Climate Emergency

122. This section describes the general principles that should aid the Court in defining the scope of States' obligations, in particular as owed to children and those displaced by climate change, in the context of the climate emergency. These principles include (1) the duty to protect and preserve human rights, (2) the precautionary principle, and (3) principles particularly relevant to children's rights, including the best interests of the child, inter-generational equity, and non-discrimination.

1. States Parties Must Protect and Preserve Human Rights from the Effects of Climate Change

123. Article 1(1) of the Convention requires, in relevant part, that States Parties “*ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.*” The Court has applied this obligation in the face of potential environmental damage to hold that States Parties must act proactively with respect to affected rights. As the Court held in its 2017 advisory opinion, the “*obligation to ensure rights . . . means that States must take all appropriate steps to protect and preserve the rights to life and to integrity.*”²⁴⁶
124. The Court continued that States Parties “*are bound to comply*” with this and other obligations under the Convention with “*due diligence.*”²⁴⁷ The Court has emphasised that “*due diligence*” under the American Convention requires States Parties to ensure free and full exercise of the rights recognised in the Convention to all persons subject to their jurisdiction. Under that principle, 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.*”²⁴⁸
125. The Court has also held that States Parties must exercise due diligence to fulfil economic, social, and cultural rights where they have committed to take “*all appropriate measures to achieve, progressively, the full effectiveness of the corresponding rights.*”²⁴⁹
126. The Court has further noted that States Parties' duty to act with due diligence in fulfilling their obligations under the Convention may reinforce certain obligations under international environmental law. The Court first noted that “[m]ost environmental obligations are based on this duty of due diligence.”²⁵⁰ Turning to the Convention, the Court “*reiterate[d] that an adequate protection of the environment is essential for human well-being, and also for the*

²⁴⁶ Inter-American Court of Human Rights (n 11), para 118.

²⁴⁷ Inter-American Court of Human Rights (n 11), para 123.

²⁴⁸ Inter-American Court of Human Rights (n 11), para 123.

²⁴⁹ Inter-American Court of Human Rights (n 11), para 123 (citations and internal quotation marks omitted).

²⁵⁰ Inter-American Court of Human Rights (n 11), para 124.

*enjoyment of numerous human rights, particularly the rights to life, personal integrity and health, as well as the right to a healthy environment itself.”*²⁵¹ The Court also acknowledged that, under the Convention, these specific obligations “*may also be necessary to ensure other rights in cases of the possible negative impact of environmental harm.*”²⁵²

127. The Court has determined that, in line with international environment law, the assessment of what specific measures States must adopt to fulfil their due diligence obligations with respect to climate change is an objective one that must reflect the best available science.²⁵³ And here the IPCC, the source of the best available science, has made clear that the only way to avoid the worst consequences of climate change on the environment and beyond is to keep average global temperature rise within 1.5°C of pre-industrial levels.²⁵⁴
128. The nature and scope of the due diligence obligation under the Convention is exceedingly rigorous in relation to prevention and protection against the deleterious effects of climate change on the impingement of fundamental rights. As COSIS explained in September of this year at the hearing on its request for an advisory opinion ITLOS, the stringency of due diligence obligations to protect and preserve the marine environment is determined in important part by the degree of risk and the foreseeability and severity of potential harm.²⁵⁵ That obligation is strict in these circumstances in light of the unequivocal scientific conclusions that greenhouse gases create a *high* probability of *disastrous* harm to the marine environment, and in turn to the people who rely on it.²⁵⁶

2. Precautionary Principle

129. The precautionary principle requires States to adopt preventive measures in the face of threats of serious or irreversible environmental damage, even when there is a lack of scientific certainty.²⁵⁷ Human rights jurisprudence also acknowledges the precautionary principle as a critical tool for the protection of human rights. This Court, for example, has held that States “*must act in keeping with the precautionary principle in order to protect the rights to life and to personal integrity in cases where there are plausible indications that an activity could result in severe and irreversible damage to the environment,*” and “[t]herefore, even in the absence of scientific certainty, they must take ‘effective’ measures to prevent [such] damage.”²⁵⁸ The Committee on the Rights of the Child too noted that States “*have a due diligence obligation to take appropriate preventive measures to protect children against reasonably foreseeable*

²⁵¹ Inter-American Court of Human Rights (n 11), para 124.

²⁵² Inter-American Court of Human Rights (n 11), para 125.

²⁵³ Inter-American Court of Human Rights (n 11), para 142 (citing Responsibilities and Obligations of States with Respect to Activities in the Area, Case No. 17, Advisory Opinion, 2011 ITLOS REP. 10 (1 February 2011), para 117).

²⁵⁴ See ITLOS, Case No. 31, Hearing Transcript, 12 September 2023 (morning), p 27.

²⁵⁵ See ITLOS, Case No. 31, Hearing Transcript, 12 September 2023 (morning), p 9 (citing ICJ, *Case concerning the Gabčíkovo-Nagymaros Project (Hungary v Slovakia)*, (Judgment of September 25, 1997), para 140; Responsibilities and Obligations of States with Respect to Activities in the Area, Case No. 17, Advisory Opinion, 2011 ITLOS REP. 10 (1 February 2011), para 117); ITLOS, Case No. 31, Written Statement of COSIS, 16 June 2023, Chapter 6.

²⁵⁶ See *supra* § III.

²⁵⁷ *Rio Declaration on Environment and Development*, (United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992, UN Doc. A/CONF.151/26/, Vol. 1), Principle 15.

²⁵⁸ Inter-American Court of Human Rights (n 11), para 180.

*environmental harm and violations of their rights, paying due regard to the precautionary principle.*²⁵⁹

130. The IPCC’s findings regarding the current and future impacts of climate change, particularly on small island States, far exceed the threshold of certainty requiring States to act to protect Convention rights. Nevertheless, to the extent that any questions remain as to the precise nature of certain climate change impacts, it is respectfully submitted that the precautionary principle must apply in this context:
- 130.1 A precautionary approach has long been recognised in Article 3 of the UNFCCC, which provides that “*Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects.*”²⁶⁰
- 130.2 The United Nations Human Rights Committee (UNHRC) has now expressly recognised that, with respect to environmental threats to the right to life, including climate change, States should “*pay due regard to the precautionary approach.*”²⁶¹
- 130.3 The Colombian Supreme Court applied the precautionary principle in its 2018 decision in *Future Generations v Ministry of the Environment and Others*, ruling that the deforestation of the Colombian Amazon violates the rights to life, health, and environmental rights of future generations and that therefore the State must take corrective and mitigating measures.²⁶²
- 130.4 The Supreme Court of the Netherlands also adopted this position in its 2019 decision in *Urgenda v Netherlands*.²⁶³ The Court upheld the decision of the Hague Court of Appeal finding that the Netherlands had violated the right to life enshrined in Article 2 of the European Convention on Human Rights (ECHR).²⁶⁴ The Court explained that the State was obliged to take “*reasonable and suitable*” preventive measures against the foreseeable risks of climate change, despite the uncertainty that the various risks will materialise.²⁶⁵
131. This Court’s holding that States should adopt the precautionary principle to protect the rights to life and personal integrity should apply broadly to all the rights under the Convention that are affected by climate change.²⁶⁶

²⁵⁹ Committee on the Rights of the Child (n 151) para 69.

²⁶⁰ United Nations Framework Convention on Climate Change (UNFCCC) (adopted by the General Assembly, 20 January 1994, A/RES/48/189), art 3.3.

²⁶¹ United Nations Human Rights Committee (n 173), para 62.

²⁶² Supreme Court of Colombia, *Future Generations*, (Sala Lab. 4 April 2018, STC4360-2018), pp 35–36.

²⁶³ See *Urgenda Foundation (on behalf of 886 individuals) v The State of the Netherlands (Ministry of Infrastructure and the Environment)*, First instance decision, HA ZA 13-1396, C/09/456689, ECLI:NL:RBDHA:2015:7145, ILDC 2456 (NL 2015), 24th June 2015, Netherlands; The Hague; District Court (20 December 2019).

²⁶⁴ See *Urgenda Foundation v The State of the Netherlands* (n 263), para 7.5.1–7.5.3.

²⁶⁵ *Urgenda Foundation v The State of the Netherlands* (n 263), paras 5.3.2-5.3.3, 5.7.1 and 5.9.1.

²⁶⁶ Cf. Inter-American Court of Human Rights (n 11), para 125; see also United Nations Human Rights Council, *Human rights and the environment*, (A/HRC/RES/34/20, 6 April 2017), Preamble (“Recognizing also that, conversely, the impact of climate change . . . may interfere with the enjoyment of a safe, clean, healthy and sustainable environment, and that environmental damage can have negative implications, both direct and indirect, for the effective enjoyment of all human rights”).

132. The precautionary principle is key to protecting the rights of inhabitants of small island States from climate change effects,²⁶⁷ and also for protecting children’s rights, given that children are “*far more likely than adults to suffer serious harm, including irreversible and lifelong consequences and death, from environmental degradation.*”²⁶⁸ For example, States should “*assess[] the environmental impacts of policies and projects [on children], identifying and preventing foreseeable harm, mitigating such harm if it is not preventable and providing for timely and effective remedies to redress both foreseeable and actual harm.*”²⁶⁹ Further, States should adopt environmental standards protective of children’s rights, and empower regulatory agencies to monitor and enforce compliance, including by investigating and initiating remedial action.²⁷⁰
133. Therefore, the Court should take this opportunity to elaborate on its jurisprudence, linking the precautionary principle to climate change, to the need to keep temperature rise below 1.5°C, and specifically to the prevention of the devastating impacts on those in small island States. As expanded upon below, States should do so by evaluating environmental harm, considering more suitable and less risky alternatives, developing policies and standards to protect individual rights, and empowering regulators to monitor compliance.

3. Principles Particularly Relevant to Children’s Rights

(a) Best Interests of the Child

134. Article 3 of the Convention on the Rights of the Child provides that the “*best interests of the child shall be a primary consideration.*”²⁷¹ Interpreting Article 3, the Committee on the Rights of the Child has defined the child’s best interests as a (i) substantive right to have their best interests taken as a primary consideration, (ii) an interpretive legal principle when a legal provision is ambiguous, and (iii) a rule of procedure to include an evaluation of the possible impact of a measure that will affect a child, a group of children, or children in general (a child rights impact assessment).²⁷²
135. This Court has likewise acknowledged the centrality of this principle and declared that the “*best interests of the child . . . entails that children’s development and full enjoyment of their rights must be considered the guiding principles to establish and apply provisions pertaining to all*

²⁶⁷ Cf. Inter-American Court of Human Rights (n 11), para 180.

²⁶⁸ United Nations Committee on the Rights of the Child (n 151), para 73; United Nations Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, (A/HRC/37/58, 24 January 2018), para 58 (“The lack of full scientific certainty should never be used to justify postponing effective and proportionate measures to prevent environmental harm to children, especially when there are threats of serious or irreversible damage. On the contrary, States should take precautionary measures to protect against such harm.”).

²⁶⁹ United Nations Committee on the Rights of the Child (n 151), para 69.

²⁷⁰ United Nations Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, (A/HRC/37/58, 24 January 2018), para 58.

²⁷¹ Convention on the Rights of the Child, art 3. Cf. United Nations Committee on the Rights of the Child, *General comment No. 11 Indigenous children and their rights under the Convention* (CRC/C/GC/11, 12 February 2009), para 30 (discussing the principle in the context of indigenous children).

²⁷² United Nations Committee on the Rights of the Child, *General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration*, (CRC/C/GC/14, 29 May 2013), paras 6, 35.

aspects of children's lives."²⁷³ This involves recognizing that the child is the subject of rights, adopting special measures for children, and accounting for the particular impacts, characteristics and circumstances of children.²⁷⁴

136. As the Committee on the Rights of the Child has recognised, the principle should apply with equal force to children's rights that are affected by the climate emergency.²⁷⁵ According to the Committee, States "*should take into account the possibility that environmental decisions that seem reasonable individually and on a shorter timescale can become unreasonable in aggregate and when considering the full harm that they will cause to children throughout their life courses.*"²⁷⁶
137. Because children are, and will be, the hardest-hit victims of climate change, the Court should articulate how States' obligations under the American Convention require States to give primary consideration to the best interests of the child with regard to climate-related measures. In practice, this could mean evaluating the possible impact on children of measures that affect climate change; showing how children's best interests were taken into account by detailing what factors were considered and how they were weighed; ensuring that children's best interests are clearly laid out in data collection and analysis related to the impacts of climate change; and investigating the full effect of climate change on children's rights.²⁷⁷ States should also include child rights impact assessments to predict the environmental impact of any proposed measure, including their nationally determined contributions (NDCs).²⁷⁸

(b) Principle of Inter-Generational Equity

138. The principle of intergenerational equity, at its core, provides that while the current generation has a right to use the Earth and its resources, it must pass the planet on to future generations "*in a condition no worse than that in which it was received so that future generations may meet their own needs.*"²⁷⁹ In the human rights context, this Court has already stated that the right to a healthy environment "*is owed to both present and future generations.*"²⁸⁰ The CRC has also

²⁷³ Inter-American Court of Human Rights, *Advisory Opinion OC-17/2002 Juridical Condition and Human Rights of the Child*, (28 August 2002, Requested by the Inter-American Commission on Human Rights), para 137(2).

²⁷⁴ Inter-American Court of Human Rights, *Advisory Opinion OC-17/2002 Juridical Condition and Human Rights of the Child*, (28 August 2002, Requested by the Inter-American Commission on Human Rights), paras 60–61.

²⁷⁵ United Nations Committee on the Rights of the Child (n 151), paras 16–19. *See also Agostinho and Others v. Portugal and 32 Others*, ECtHR Application No. 3937120, Amicus Curiae Brief submitted by David R. Boyd, UN Special Rapporteur on human rights and the environment and Marcos A. Orellana, UN Special Rapporteur on toxics and human rights, paras 12–14.

²⁷⁶ United Nations Committee on the Rights of the Child (n 151), para 19.

²⁷⁷ UNICEF, *The Challenges of Climate Change: Children on the front line* (2014), pp 54–55.

²⁷⁸ *See* United Nations Committee on the Rights of the Child (n 151), paras 75–77; Amici Curiae Brief of Special Rapporteurs on Human Rights and the Environment (n 154), paras 49–50.

²⁷⁹ Edith Brown Weiss, *Intergenerational Equity*, Max Planck *Encyclopedias of International Law* (April 2021), para 6 (concluding that this definition represents the core of the principle, based on a review of juridical writings and legal instruments). *See also* Stockholm Declaration (1972), Preamble, Principles 1–2; World Charter for Nature (1982), Preamble; United Nations Framework Convention on Climate Change (1992), Preamble, Article 3.1; United Nations Economic Commission for Europe Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1992), Article 2(5)(c).

²⁸⁰ Inter-American Court of Human Rights (n 11), para 59; *see also* Inter-American Court of Human Rights, *Mayagna (Sumo) Awas Tingi Community v. Nicaragua*, (Ser. C. No. 79, Joint Separate Opinion of JJ. Cançado Trinidad, Pacheco Gómez and Abreu Burelli, 31 August 2001), para 10.

called on States to consider the short-, medium- and long-term effects of actions when implementing their human rights obligations.²⁸¹ Likewise, the Human Rights Council stated that this principle “*places a duty on current generations to act as responsible stewards for the planet and ensure the rights of future generations to meet their developmental and environmental needs.*”²⁸²

139. The Court should elaborate on the intergenerational nature of States’ human rights obligations with respect to children,²⁸³ and climate change. Specifically, States should consider the short-, medium-, and long-term effects of any actions related to climate change that may have an impact on children’s development. This could mean, for example establishing “inter-generational compacts” aimed at taking preventive, corrective, and educational measures to curtail activities the most drastic effects of which will not be felt for generations, such as deforestation or GHG emissions.²⁸⁴ Acknowledging this is key to ensure that States’ obligations will encompass those who stand to lose the most from climate change—children that will live longer than present adults, and future generations. It is even more critical with respect to the children and future generations of small island States, who face life-threatening circumstances, including up to extinction, due to the climate emergency.

(c) Non-Discrimination

140. The principle of non-discrimination, as the Committee on the Rights of the Child has recognised, is a “*principle of fundamental importance*” for the implementation of children’s rights.²⁸⁵ This Court itself has concluded that “*differentiated treatment granted to adults and to minors . . . serves the purpose of allowing full exercise of the children’s recognized rights.*”²⁸⁶
141. For the reasons explained in section III.C.2, children, including those of small island States, are more vulnerable to, and disproportionately affected by, the effects of climate change.²⁸⁷ Thus, to fulfil their human rights obligations, this Court has held that States “*are legally obliged to confront these vulnerabilities based on the principle of equality and non-discrimination.*”²⁸⁸ In addition to this, when devising differentiated measures for children, the non-discrimination principle “*requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures.*”²⁸⁹ The Human

²⁸¹ United Nations Committee on the Rights of the Child (n 151), paras 11 and 76.

²⁸² United Nations Human Rights Council (n 144), para 35.

²⁸³ See ICJ, *Legality of the threat or use of nuclear weapons*, (Advisory Opinion of July 8, 1996), para 29; ICJ, *Case concerning the Gabčíkovo-Nagymaros Project (Hungary v Slovakia)*, (Judgment of September 25, 1997), para 112 (“the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn.”).

²⁸⁴ See Supreme Court of Colombia (n 262), paras 11.2 and 14 (finding a violation of, among others, the intergenerational equity principle, and ordering the creation of an “intergenerational pact for the life of the Colombian Amazon” to take measures to reduce deforestation and GHG emissions to zero).

²⁸⁵ United Nations Committee on the Rights of the Child (n 272), para 23.

²⁸⁶ Inter-American Court of Human Rights, *Advisory Opinion OC-17/2002 Juridical Condition and Human Rights of the Child*, (28 August 2002, Requested by the Inter-American Commission on Human Rights), para 55.

²⁸⁷ See also Inter-American Court of Human Rights (n 11), para 67 (noting that children and the population of small island States are among the groups “especially vulnerable to environmental damage”).

²⁸⁸ See Inter-American Court of Human Rights (n 11), para 67.

²⁸⁹ United Nations Committee on the Rights of the Child (n 271), para 24. One example of such groups, the Committee noted, is indigenous children. A large number of children of small island States are also indigenous: in Pacific small island States except for Fiji, for example, 80% of the population is indigenous.

Rights Council’s framework principles already requires States to take measures to protect those “most vulnerable to, or at particular risk from” environmental harm, including children, and indigenous peoples and traditional communities.²⁹⁰

142. This Court should thus develop how the principle of non-discrimination informs States’ obligations toward children threatened by the climate emergency.²⁹¹ This Court could draw inspiration from the UN CRC and its General Comment No 26, which accepts that, for example, “States have an obligation to effectively prevent, protect against and provide remedies for both direct and indirect environmental discrimination.”²⁹² Further, to fulfil the rights of children, States should collect differentiated data on the impact of climate change on children, and dedicate special attention and resources to devising measures that address the challenges faced by the most marginalized children subject to their jurisdiction.²⁹³

B. Resulting Obligations of State Parties in Order to Respect and Ensure Rights Impacted by Climate Change

143. In each of Sections IV.A – IV.H above, COSIS has identified that States Parties to the American Convention have an obligation of prevention to take action to reduce GHG emissions to avoid the anticipated harm from climate change.
144. COSIS respectfully submits that States Parties owe the following obligations as a result of their duty to protect the rights identified above. To fulfil these obligations States must prevent the impacts of climate change through taking necessary measures to (i) prevent harm, (ii) to cooperate internationally, (iii) to mitigate GHG emissions, and (iv) to facilitate adaptation measures.

1. The Obligation of Prevention: States Have the Obligation to Implement Necessary Measures to Prevent Climate-Change Related Human Rights Violations Within or Outside Their Territory

145. In its 2017 Advisory Opinion, this Court focussed its analysis on the obligation of prevention to respect and ensure the rights to life and personal integrity, which are threatened by transboundary environmental harm.²⁹⁴ This Court described this as a ‘general obligation’, because States “*must comply . . . whatever the activity, geographical area or component of the environment that is affected*”.²⁹⁵

UNESCO, *Cutting Edge: Small Island Developing States: Cultural diversity as a driver of resilience and adaptation* (23 February 2022).

²⁹⁰ United Nations Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, (A/HRC/37/59, 24 January 2018), Annex, Framework principle 14, paras 40–41.

²⁹¹ Another case has called on the European Court of Human Rights to make a similar clarification. See *Agostinho and Others v. Portugal and 32 Others*, ECtHR Application No. 3937120, Amicus Curiae Brief submitted by David R. Boyd, UN Special Rapporteur on human rights and the environment and Marcos A. Orellana, UN Special Rapporteur on toxics and human rights, paras 12-14 (n 275), para 15.

²⁹² United Nations Committee on the Rights of the Child (n 151), para 14.

²⁹³ United Nations Committee on the Rights of the Child (n 151), para 15; Elizabeth D. Gibbons, *Climate Change, Children’s Rights, and the Pursuit of Intergenerational Climate Justice*, (Health and Hum. Rts. J. 16/1, 2014), p 27 (arguing that the non-discrimination principle “compels States to direct attention and resources to those most excluded and marginalized,” specifically children and the poorest among them).

²⁹⁴ Inter-American Court of Human Rights (n 11), para 140.

²⁹⁵ Inter-American Court of Human Rights (n 11), para 126.

146. As outlined above, the obligation of prevention is derived from the obligation assumed by States Parties under the Convention to “ensure” rights, which this Court has held means “*that States must take all appropriate steps to protect and preserve*” the relevant rights.²⁹⁶ The Court has specifically recognised that this obligation extends beyond the relationship between State agents and persons subject to the State’s jurisdiction, and “*encompasses the duty to prevent third parties from violating the protected rights*”.²⁹⁷ A failure to do so may entail the State’s international responsibility.²⁹⁸
147. This Court has recognised therefore that the obligation to *ensure* rights means that States Parties have are required to *prevent* violations of these rights.²⁹⁹ This entails all the measures that “*promote the safeguard of human rights and ensure that eventual violations of these rights are taken into account and may result in sanctions as well as compensation for their negative consequences*.”³⁰⁰
148. In the context of environmental protection, this Court held in its 2017 Advisory Opinion that:
- 148.1 the principle of prevention has meant that “*States have 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*”;³⁰¹
- 148.2 this duty is “*linked to the international obligation to exercise due diligence so as not to cause or permit damage to other States*”;³⁰²
- 148.3 the principle of prevention of environmental damage forms part of customary international law, encompassing the land, water and atmosphere;³⁰³ and
- 148.4 in particular, States are obliged to prevent environmental damage that may involve a violation of the rights to life and to personal integrity.³⁰⁴
149. Given the nature of environmental damage and the impossibility of restoring the situation that existed before environmental damage occurs, this Court stressed that prevention “*should be the main policy as regards environmental protection*”.³⁰⁵ In the words of this Court in the *Case of The Indigenous Communities of The Lhaka Honhat (Our Land) Association v. Argentina*:

[T]he principle of prevention of environmental harm . . . 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

²⁹⁶ Inter-American Court of Human Rights (n 11), para 118.

²⁹⁷ Inter-American Court of Human Rights (n 11), para 118.

²⁹⁸ Inter-American Court of Human Rights (n 11), para 119.

²⁹⁹ Inter-American Court of Human Rights (n 11), para 127.

³⁰⁰ Inter-American Court of Human Rights (n 11), para 127.

³⁰¹ Inter-American Court of Human Rights (n 11), para 128 (internal quotations omitted).

³⁰² Inter-American Court of Human Rights (n 11), para 128.

³⁰³ Inter-American Court of Human Rights (n 11), para 129.

³⁰⁴ Inter-American Court of Human Rights (n 11), para 140.

³⁰⁵ Inter-American Court of Human Rights (n 11), para 130. *See also* Draft Articles on Prevention of Transboundary Harm for Hazardous Activities, General Commentary (2).

*environment.’ 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. 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.*³⁰⁶

150. Again, the specific measures that a State should adopt to comply with the principle of prevention “*may change over time*”, including in light of new scientific or technical knowledge.³⁰⁷ This is also a fundamental principle of international environmental law.³⁰⁸

151. The duty to prevent harm applies to all the rights enshrined in the American Convention.³⁰⁹ For example, with respect to the right to life enshrined in Article 4 of the American Convention, the duty to prevent involves the obligation “*to ensure the creation of the necessary conditions to prevent violations of this right and, in particular, the obligation to prevent its agents from endangering it*”.³¹⁰ As explained by this Court:

*The observance of Article 4, in relation to Article 1(1) of the Convention, not only presumes that no one be deprived of their life arbitrarily (negative obligation), but also requires the States to take all appropriate measures to protect and preserve the right to life (positive obligation), in keeping with the obligation to ensure the full and free exercise, without discrimination, of the rights of all persons . . .*³¹¹

152. In accordance with the principle of prevention, it has been broadly acknowledged under international law that States are obliged to “*use all the means at [their] disposal in order to avoid activities which take place in [their] territory, or in any area under [their] jurisdiction, causing significant damage to the environment of another State*”.³¹² This position reflects that the principle of prevention is a customary rule which “*has its origins in the due diligence that is*

³⁰⁶ Inter-American Court of Human Rights (n 190), para 208 (emphasis added). *See also* Inter-American Court of Human Rights (n 11), paras 145–174.

³⁰⁷ Inter-American Court of Human Rights (n 11), para 142.

³⁰⁸ *See, e.g., ICJ, Case concerning the Gabčíkovo-Nagymaros Project (Hungary v Slovakia)*, (Judgment of September 25, 1997), para 140.

³⁰⁹ Inter-American Court of Human Rights (n 190), para 207.

³¹⁰ Inter-American Court of Human Rights, *Case of the Xákmok Kásek Indigenous Community v Paraguay*, (n 235) para 187.

³¹¹ Inter-American Court of Human Rights, *Case of the Xákmok Kásek Indigenous Community v Paraguay* (n 235), para 187.

³¹² International Court of Justice, *Case concerning Pulp Mills on the River Uruguay (Argentina v Uruguay)*, (20 April 2010), para 101. *See also* International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, (n 283), para 29 (“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”); International Court of Justice, *Construction of a Road in Costa Rica Along the San Juan river (Nicaragua v Costa Rica)*, (Judgment of 16 December 2015), para 168; International Court of Justice, *Construction of a Road in Costa Rica Along the San Juan river (Nicaragua v Costa Rica)*, (Separate Opinion of Judge Donoghue, 16 December 2015), para 1; Permanent Court of Arbitration, *Iron Rhine Railway (Belgium v Netherlands)*, (Award of 24 May 2005), paras 59 and 222; *Trail Smelter Arbitration (United States v Canada)*, (Award of 11 March 1941, Reports of International Arbitral Awards, Volume III), p 1965.

required of a State in its territory".³¹³ In accordance with this principle, States are required "*not to allow knowingly [their] territory to be used for acts contrary to the rights of other States*".³¹⁴ Thus, while States have the right to engage in activities within their own territory, they have a corresponding obligation "*to exercise due diligence in preventing significant transboundary environmental harm*".³¹⁵ In her Separate Opinion in the *San Juan River Case*, Judge Donoghue noted that this is an "*obligation of conduct*", so States may breach the obligation and incur international responsibility "*without any showing of material harm to the territory of the affected State*".³¹⁶

153. In this regard, the precautionary principle, detailed above at Section V.A.2 is particularly relevant. In order to align the jurisprudence in relation to the precautionary principle with this Court's statements in its 2017 Advisory Opinion, COSIS submits that the Court should recognise that:
 - 153.1 the precautionary principle recognises the need for States to act to protect and preserve human rights in the context of climate change, even in specific instances involving some scientific uncertainty;
 - 153.2 the precautionary principle requires States to take actions to reduce GHG emissions to protect and preserve human rights, including in particular the right to life;
 - 153.3 those living in small island States are particularly at risk from implication of their fundamental rights, for example, if they are required to migrate from their homes and/or States to avoid climate change impacts; and so,
 - 153.4 all States Parties to the American Convention must act with due caution in light of the precautionary principle to mitigate GHG emissions and protect and preserve the human rights of individuals negatively impacted.
154. This Court has recognised that there is consensus in international environmental provisions that the obligation of prevention requires that the harm or damage attain a "*certain level*", that level being "*significant harm or damage*".³¹⁷ It is respectfully suggested that, applying the precautionary principle and the clear findings of the IPCC in relation to the catastrophic threat to humans and the environment by failing to keep global temperatures below 1.5°C (as to which, see Section [V.B.3] below), this Court determine that this requisite level of harm is easily met in relation to climate change.³¹⁸ The question for States Parties then becomes *which* activities they need to regulate to prevent the significant harm that will be caused by climate change (detailed in Section [V.B.3] below).

³¹³ International Court of Justice, *Case concerning Pulp Mills on the River Uruguay (Argentina v Uruguay)*, (Judgment of 20 April 2010), para 101.

³¹⁴ International Court of Justice, *Case concerning Pulp Mills on the River Uruguay (Argentina v Uruguay)*, (Judgment of 20 April 2010). *See also* International Court of Justice, *Corfu Channel (United Kingdom v Albania)*, (Judgment of 9 April 1949), p 22.

³¹⁵ International Court of Justice, *Construction of a Road in Costa Rica Along the San Juan river (Nicaragua v Costa Rica)*, (Separate Opinion of Judge Donoghue, 16 December 2015), para 8.

³¹⁶ International Court of Justice, *Construction of a Road in Costa Rica Along the San Juan river (Nicaragua v Costa Rica)*, (Separate Opinion of Judge Donoghue, 16 December 2015), para 9.

³¹⁷ Inter-American Court of Human Rights (n 11), paras 137 and 140.

³¹⁸ *See supra* § III.

2. The Obligation of International Cooperation: Article 26 of the Convention Requires States to Take Measures Through International Cooperation to Achieve Economic, Social and Cultural Rights

155. Article 26 of the Convention requires States to engage in international cooperation to achieve the full realisation of economic, social, and cultural rights, including the rights to a healthy environment, to health, and to take part in cultural life.³¹⁹ In its 2017 Advisory Opinion, the Court confirmed that this obligation applies to cooperation “*in good faith to ensure protection against environmental damage.*”³²⁰ This duty, the Court explained, has both a “*customary nature*” and is enshrined in several international treaties.³²¹ In particular, the text of Article 26 of the Convention mirrors that of Article 2(1) of the International Covenant on Economic, Social, and Cultural Rights.³²² The Committee on Economic, Social and Cultural Rights has explained that the obligation of cooperation is “*essential . . . in facilitating the full realization*” of human rights, and is “*particularly incumbent upon those States which are in a position to assist others in this regard.*”³²³
156. In the context of protection from environmental harm, the Court held that States must cooperate in order to achieve the common goal of “*ensur[ing] the human rights of the persons subject to their jurisdiction,*” including by observing their duties to notify; consult and negotiate with potentially affected States; and share information.³²⁴ This reasoning applies with equal force to, and is “*especially important*” in, the context of the climate emergency.³²⁵ Because no State acting alone can guarantee the rights to a healthy environment, health, and participation in cultural life from the effects of climate change, States must cooperate in the adoption of measures aimed at safeguarding these rights.³²⁶ The Committee on the Rights of the Child has recently elaborated on this position, noting that “[c]limate change, pollution and biodiversity loss clearly represent urgent examples of global threats to children’s rights that require States to work together, calling for the widest possible cooperation by all countries and their participation in an effective and appropriate international response.”³²⁷

³¹⁹ American Convention, art 26.

³²⁰ Inter-American Court of Human Rights (n 11), para 185.

³²¹ Inter-American Court of Human Rights (n 11), paras 183–184; *see also, e.g.*, UNCLOS, art 197.

³²² International Covenant on Economic, Social and Cultural Rights, art 2(1) (“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”).

³²³ ICESCR, General comment No. 3: The nature of States parties’ obligations (Art. 2, Para. 1, of the Covenant), Fifth session (14 December 1990), paras 13–14.

³²⁴ Inter-American Court of Human Rights (n 11), paras 182 and 186.

³²⁵ *Cf.* Inter-American Court of Human Rights (n 11), para 185.

³²⁶ *Cf.* Inter-American Court of Human Rights (n 11), para 185. *See also* United Nations Human Rights Council, Resolution 26/27 Human Rights and climate change, A/HRC/RES/26/27 (15 July 2014), para 5 (“Call[ing] upon all States to continue to enhance international dialogue and cooperation in relation to the adverse impact of climate change on the enjoyment of human rights, including the right to development, particularly in developing countries, especially least developed countries, small island developing States and African countries, including through dialogue and measures, such as the implementation of practical steps to promote and facilitate capacity-building, financial resources and technology transfer.”); United Nations Committee on the Rights of the Child (n 151), paras 91–94 (discussing States’ duty of cooperation in order to respect, protect and fulfil children’s rights).

³²⁷ United Nations Committee on the Rights of the Child (n 151), para 91.

157. Critically, States must cooperate to combat climate change and its effects *while also* working on their own toward the same end. As the International Court of Justice has observed, where action by more than one State is required to prevent a certain outcome, each individual State must “*take all measures . . . which [are] within its power.*”³²⁸
158. According to this Court, one means of “*achieving compliance with the duty of cooperation*” is through the exchange of information, specifically that concerning scientific and technological knowledge.³²⁹ Just as the exchange of information is “*of particular importance*” to fulfil the duty of prevention in the situations of transboundary harm, it is critical to satisfy the duty of prevention applicable to climate change described above.³³⁰

3. The Obligation of Mitigation: States Should Comply Stringently with Their Existing Obligations to Mitigate GHG Emissions

159. Given the severity of the rights impacts identified above, it is respectfully submitted that State Parties have positive obligations under the Convention to take specific steps to reduce the risk of climate-related impacts on human rights by mitigating GHG emissions:
- 159.1 This Court has held that where there is a threat of violating the right to life, States have the “*duty to take positive, concrete measures geared towards fulfilment of the right to a decent life, especially in the case of persons who are vulnerable and at risk.*”³³¹
- 159.2 As above, in its 2017 Advisory Opinion this Court confirmed that “*States have the duty to establish appropriate mechanisms to supervise and monitor certain activities in order to guarantee human rights.*”³³² This Court considered that “*States have an obligation to supervise and monitor activities within their jurisdiction that may cause significant damage to the environment.*”³³³
- 159.3 In *Sawhoyamaya Indigenous Community v Paraguay* this Court emphasised the duty of States to guarantee the creation of conditions that may be necessary in order to prevent violations of the right to life.³³⁴
160. The starting point for States’ GHG emissions mitigation obligations is the IPCC’s findings regarding the dramatic increase in the risk of severe harm if average global temperatures exceed 1.5°C above pre-industrial levels.³³⁵ The international community confirmed the need to hold

³²⁸ Cf. ICJ, *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, (Judgment of 26 February 2007), para 430.

³²⁹ Inter-American Court of Human Rights (n 11), paras 206 and 208.

³³⁰ Cf. Inter-American Court of Human Rights (n 11), para 207.

³³¹ Inter-American Court of Human Rights (n 232), para 162.

³³² Inter-American Court of Human Rights (n 11), para 152.

³³³ Inter-American Court of Human Rights (n 11), para 154.

³³⁴ Inter-American Court of Human Rights (n 224), para 151.

³³⁵ IPCC, *Summary for Policymakers*, SPECIAL REPORT: GLOBAL WARMING OF 1.5°C (2018), p 8.

global warming to that level in Article 2(1)(a) of the Paris Agreement and in subsequent decisions at COP27.³³⁶

161. As described above in Section III.A, the IPCC reports lay out the widespread devastation and existential threats that climate change poses for small island States, including water and food insecurity, declines in human health outcomes, destruction of infrastructure, biodiversity and livelihoods, and loss of cultural heritage.³³⁷ According to the IPCC, “[e]very increment of global warming” beyond the current global average of 1.1 C, “will intensify” these and other “multiple and concurrent hazards.”³³⁸ The IPCC also concluded with “high confidence” that the risks to small islands associated with sea-level rise—including saltwater intrusion, flooding, and damage to infrastructure—“are higher at 2°C compared to 1.5°C.”³³⁹ But even under a global temperature scenario of 1.5°C, the IPCC has projected with high confidence that small island States will face a “significant risk” of reduced habitability due to these threats.³⁴⁰ As explained in Section IV, these hazards impact human rights, thereby triggering States’ mitigation obligations.³⁴¹
162. Expectations of States’ obligations to take steps to fulfil their mitigation obligations continue to increase:
- 162.1 The UN Human Rights Committee has long recognised that States are obliged to “adopt legislative, judicial, administrative, educative and other appropriate measures in order to fulfil their legal obligations.”³⁴² In general, the measures should be “effective . . . to prevent the human rights harms caused by climate change.”³⁴³
- 162.2 In its recent General Comment on Article 6 of the ICCPR which guarantees the right to life, the UN Human Rights Committee confirmed that the “obligations of States parties under international environmental law should thus inform the content of article 6 of the Covenant... States parties should therefore... develop and implement substantive environmental standards...”³⁴⁴
- 162.3 This Court explained in *Lhaka Honhat* that “the principle of prevention of environmental harm . . . 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

³³⁶ COP27, Decision 21/CP.27, Second periodic review of the long-term global goal under the Convention and of overall progress towards achieving it, UN Doc. FCCC/CP/2022/10/Add.2 (2023), para 7; COP27, Decision 2/CP.27, Funding arrangements for responding to loss and damage associated with the adverse effects of climate change, including a focus on addressing loss and damage, UN Doc. FCCC/CP/2022/10/Add.1, (2022), p 1. See also Paris Agreement, Article 2(1)(a).

³³⁷ Section III.A.

³³⁸ IPCC, *Summary for Policymakers*, SIXTH ASSESSMENT SYNTHESIS REPORT (2023), p 12.

³³⁹ IPCC, *Summary for Policymakers*, SPECIAL REPORT: GLOBAL WARMING OF 1.5°C (2018), p 8.

³⁴⁰ IPCC, Working Group II, *Chapter 15: Small Islands*, SIXTH ASSESSMENT REPORT: IMPACTS, ADAPTATION AND VULNERABILITY (2022), p 2046.

³⁴¹ See *supra*, Section IV.

³⁴² United Nations Human Rights Committee, *General comment No. 31 The nature of the general legal obligation imposed on States Parties to the Covenant*, (6 May 2004, CCPR/C/21/Rev.1/Add.13), para 7.

³⁴³ UN Special Rapporteur on human rights and the environment, *Statement on the human rights obligations related to climate change, with a particular focus on the right to life*, (25 October 2018), para 54.

³⁴⁴ United Nations Human Rights Committee (n 173) para 62.

situation.”³⁴⁵ Among the possible measures to satisfy this obligation, the Court noted regulation, supervision and monitoring of activities that cause harm to the environment, which in this context includes GHG emissions.³⁴⁶

- 162.4 The UN Committee on the Rights of the Child in its General Comment No. 26 called for urgent “*collective action by all states to mitigate greenhouse gas emissions, in line with human rights obligations*”, based on the best available science to limit temperature increases to below 1.5°C.³⁴⁷
163. COSIS respectfully submits that, in line with its 2017 Advisory Opinion, this Court should remind State Parties that in order to comply with their American Convention obligations, they must:
- 163.1 First, take steps, through internal and international cooperation (as recognised in Article 26 of the Convention) to reduce emissions to meet the obligation to keep global temperatures under 1.5°C above pre-industrial levels;
- 163.2 Second, implement legislation consistent with the 1.5°C target and that reflects the “*highest possible ambition*” to meet this target.³⁴⁸ This Court has already recognised that Article 2 of the Convention obliges States Parties to adopt domestic laws and regulations to give effect to protected rights.³⁴⁹ As advised by the UNHRC, this Court should require States to “repeal or amend” laws or regulations “*to bring them into accordance with*” the Convention where appropriate.³⁵⁰ This may be appropriate where specific legislation drives an outcome that is not aligned with the 1.5°C target, and could, for example, require new regulation to regulate high-emitting entities within the States’ jurisdiction. This would be similar to the Court’s conclusion in its 2017 Advisory Opinion that States must actively supervise and monitor activities which cause significant environmental damage, in this case, high emitting activities.³⁵¹
- 163.3 Third, consider the rights of the most vulnerable when setting emissions reduction targets to meet 1.5°C. This has been emphasised by the UN Special Rapporteur and in the UN Framework Principles on Human Rights and the Environment as well as specialist bodies like the UN CRC.³⁵²

³⁴⁵ Inter-American Court of Human Rights (n 190) para 208.

³⁴⁶ *Cf. id.* This Court has also already recognised that States must adopt legislative or other measures to reduce the impact of environmental damage. *See* Inter-American Court of Human Rights (n 11), paras 146–147, 149; American Convention on Human Rights, art 2.

³⁴⁷ United Nations Committee on the Rights of the Child (n 151), paras 95–97.

³⁴⁸ Paris Agreement, art 4.3.

³⁴⁹ Inter-American Court of Human Rights (n 11), para 146.

³⁵⁰ United Nations Human Rights Committee, *Guidelines on measures of reparation under the Optional Protocol to the International Covenant on Civil and Political Rights*, CCPR/C/158 (30 November 2016)

³⁵¹ Inter-American Court of Human Rights (n 11), paras 149, 152–155.

³⁵² *See* Inter-American Commission of Human Rights (n 242) paras 16–22; Committee on the Rights of the Child, General Comment No. 26 (n 151), para 98.

163.4 Fourth, at a minimum, comply with their procedural commitments under the Paris Agreement specifically in relation to their NDCs including:³⁵³

- (a) preparing, communicating, maintaining, and implementing successive NDCs.³⁵⁴ (It would be useful for this Court to articulate that this requires State Parties to the Paris Agreement to ensure accurate and accessible measurements of GHG emissions³⁵⁵);
- (b) updating their NDCs as required every five years,³⁵⁶ and
- (c) in setting their NDCs, undertaking a thorough “bottom up” assessment of all possible measures at their disposal to reduce emissions, recognising States’ obligations to use the “maximum available resources” and “all appropriate means”.

163.5 Fifth, not lose sight of the importance of mitigation, when considering adaptation actions. As acknowledged in *Urgenda Foundation*:³⁵⁷

Although it is true that the consequences of climate change can be cushioned by adaptation, it has not been made clear or plausible that the potentially disastrous consequences of excessive global warming can be adequately prevented with adaptation. So, while it is certainly logical for the State also to take adaptation measures, this does not diminish its obligation to reduce CO2 emissions quicker than it has planned.

4. The Obligation of Adaptation: States Should Take Steps to Increase Community Resilience and Support Adaptation Measures to Minimize Climate Induced Displacement

164. COSIS also submits that States Parties have positive obligations to avoid climate induced displacement through adaptation measures, including taking measures to increase the resilience of indigenous peoples. To limit climate-induced displacement, States must plan and prepare for natural disasters, extreme weather events and slow-onset processes. Following the jurisprudence of this Court, States must ensure that individuals and communities can continue to live on traditional lands, and in accordance with traditional ways of living.³⁵⁸

³⁵³ Paris Agreement, Articles 3, 4.2, 4.3, 4.8 and 4.9. Nationally Determined Contributions, or NDCs, are countries’ self-defined national climate pledges under the Paris Agreement, detailing what they will do to help meet the global goal to pursue 1.5°C, adapt to climate impacts and ensure sufficient finance to support these efforts. The obligation to communicate NDCs is contained in article 4 of the Paris Agreement.

³⁵⁴ Paris Agreement, art 4.2.

³⁵⁵ United Nations Human Rights Committee, *Addressing human rights protection gaps in the context of migration and displacement of persons across international borders resulting from the adverse effects of climate change and supporting the adaptation and mitigation plans of developing countries to bridge the protection gaps*, A/HRC/38/21 (23 April 2018), para 55.

³⁵⁶ Paris Agreement, art 4.9.

³⁵⁷ *Urgenda Foundation v The State of the Netherlands* (n 263), para 59.

³⁵⁸ Inter-American Court of Human Rights (n 232), para 155; Inter-American Court of Human Rights, para 286.

165. Specifically, in relation to climate-induced displacement, the UNHRC has recognised that States should employ effective adaptation measures and ensure all persons have the capacity and means to adapt,³⁵⁹ including with respect to disasters, extreme weather events and slow-onset processes.
166. COSIS respectfully submits that, in line with its 2017 Advisory Opinion, this Court should remind State Parties that they must:
- 166.1 *First*, not assume that migration is an appropriate option to mitigate potential human rights impacts. Saint Lucia, a COSIS Member State, for example, has explicitly stated in its national adaptation plan that it does not view migration as an acceptable adaptation strategy and it is not included in its national adaptation plan.³⁶⁰
- 166.2 *Second*, fund appropriate adaptation measures in developing countries in accordance with the UNFCCC and the Paris Agreement. The Paris Agreement considered that “*States that are in a position to do so should contribute to covering the costs of mitigation and adaptation of States prevented from doing so, in accordance with the principle of common but differentiated responsibilities.*”³⁶¹ Vanuatu, a COSIS member, notes in its most recent NDC (2021-2023) that the cost of its adaptation measures are estimated at USD 721,080,000, approximately 62 percent of Vanuatu’s 2023 gross domestic product.³⁶² Support from other States is critical in achieving such measures.
- Such measures could, for example, include contributing towards the development of coastal resilience systems.³⁶³ In *Billy*, the claimants argued that to meet their obligations in regard to climate-induced displacement, human rights and adaptation, the UN Human Rights Committee should recognise that the State concerned was obliged to “*commission a comprehensive and fully-costed study of all coastal defence system*” to prevent forced retreat.³⁶⁴ Coastal defence systems have been touted as appropriate adaptation measures by COSIS member states in domestic policy. For example, the Tuvaluan Climate Change Statement envisages “[c]oastal protections and causeways constructions followed best practices appropriate for Tuvalu’s situation and reduce vulnerability to the impacts of climate change, climate variability and geological hazards.”³⁶⁵
- 166.3 *Third*, ensure mitigation and adaptation measures themselves do not undermine human rights or inadvertently drive displacement.³⁶⁶ The Inter-American Commission has recognised that States should consult and seek the consent of persons whose rights could be violated by projects that involve the risk of environmental damage – such programmes and projects include those aimed at mitigating GHG emissions and adapting to the impacts of climate change.³⁶⁷ Similarly, when discussing adaptation measures in its

³⁵⁹ United Nations Human Rights Committee, *Slow onset effects of climate change and human rights protection for cross-border migrants*, (29 November 2018), paras 19 and 140.

³⁶⁰ Government of Saint Lucia, *Saint Lucia’s National Adaptation Plan (NAP) 2018–2028* (2018), p 133.

³⁶¹ Inter-American Commission of Human Rights (n 242), para 11.

³⁶² Government of Vanuatu, *Vanuatu’s Revised and Enhanced 1st Nationally Determined Contribution 2021–2030*, p 39; INTERNATIONAL MONETARY FUND, IMF Data Mapper October 2023, <https://www.imf.org/external/datamapper/NGDPD@WEO/VUT>.

³⁶³ The UNFCCC contains obligations to “*develop and elaborate appropriate and integrated plans for coastal zone management*”. UNFCCC, art 4(e).

³⁶⁴ Complaint (*Daniel Billy et al. v Australia*) (n 122), para 214.1.

³⁶⁵ Government of Tuvalu, *National Climate Change Policy* (October 2011), p 17.

³⁶⁶ See United Nations Human Rights Committee (n 359), para 9.

³⁶⁷ Inter-American Commission of Human Rights (n 242), para 13.

recent General Comment on Children’s rights and the environment, with a special focus on climate change, the UN CRC has said that “*a sharp and urgent increase in the design and implementation of child-sensitive, gender-responsive and disability-inclusive adaptation measures and associated resources is necessary.*”³⁶⁸ The Inter-American Commission has also recognised that States must ensure climate change policies are constructed, updated, and examined in a transparent and participatory manner, and that they do not adversely affect rights.³⁶⁹

166.4 *Fourth*, prioritise effective participation in the design and adoption of adaptation measures. The need for effective participation of groups that have had their rights harmed was recognised by the Human Rights Committee in *Poma Poma*.³⁷⁰

166.5 *Fifth*, ensure that persons affected by climate induced migration are not returned to the place where their right to life was threatened by climate change effects, by recognizing and giving effect to the right of non-refoulement in Article 22(8) (discussed above at Section [IV.H]). The Court has recognised that the right of non-refoulement applies to any “alien”, including persons affected by climate induced migration.

166.6 *Sixth*, adopt migration policies that do not have as their central element the mandatory detention of migrants, including climate change migrants. States should detain persons affected by climate induced migration only as an exceptional measure, ensuring that each individual case has been assessed and verified as necessary, and detaining the person for the briefest possible time. This Court has recognised that the right to personal liberty (including the due process provided for in Article 7) applies to everyone, irrespective of their migratory status.

VI. The International Responsibility of States Arising out of the Breach of their Obligations with Respect to Climate Change

167. To the extent that major emitting States are considered to have breached their obligations with respect to climate change, including those identified at Section V above, and that such breaches resulted in human rights being violated, the Commission respectfully submits that States should be held internationally responsible.

168. Under public international law, every internationally wrongful act of a State entails the international responsibility of that State.³⁷¹ The international responsibility of a State involves a series of legal consequences, including: (i) the obligation to cease the wrongful conduct, (ii) the obligation to offer appropriate assurances and guarantees on non-repetition, and (iii) the obligation to make full reparation for the injury caused by the internationally wrongful act.³⁷²

³⁶⁸ United Nations Committee on the Rights of the Child (n 151), para 101.

³⁶⁹ Inter-American Commission of Human Rights (n 242), para 3.

³⁷⁰ United Nations Human Rights Committee, *Angela Poma Poma v Peru*, CCPR/C/95/D/1457/2006 (24 April 2009), para 7.6.

³⁷¹ See, e.g., Articles on Responsibility of States for Internationally Wrongful Acts, Article 1; *S.S. “Wimbledon”*, PCIJ, Series A, No. 1, Judgment, 17 August 1923, p. 30; *Phosphates in Morocco*, PCIJ, Series A/B, No. 74, Judgment on Preliminary Objections, 14 June 1938, p. 28; *Gabčíkovo-Nagymaros Project*, ICJ, Judgment, 25 September 1997, para. 47.

³⁷² See Articles on Responsibility of States for Internationally Wrongful Acts, Article 30-31. The legal consequences of an internationally wrongful act do not affect the continued duty of the responsible State to perform the obligation it has breached. See Article 29. If the State incurs international responsibility for human rights violations, the State’s obligations are without prejudice to any right which may accrue

169. Human rights instruments recognize the right of the victims of human rights violations to obtain direct redress.³⁷³ In particular, Article 63 of the American Convention states:

(1) If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

(2) In cases of extreme gravity or urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.³⁷⁴

170. The IACtHR has considered that Article 63(1) of the American Convention “is one of the fundamental principles of contemporary international law regarding the responsibility of States”: that “*when an illegal act is attributable to a State, the latter incurs immediately the international responsibility for violation of an international rule, with the attendant duty to redress and to make the consequences of the violation cease*”.³⁷⁵
171. With respect to the obligation to make full reparation for the injury caused, the IACtHR “*has reiterated, in its case law, that it is a principle of International Law that all violations to an international obligation that have caused harm generate an obligation to adequately redress said harm*”.³⁷⁶ In particular, the IACtHR held that full reparation involves restitutio in integrum and compensation:

directly to any person or entity other than a State, for example, under human rights treaties: *see, e.g.*, Article 33(2) and Article 28, Commentary (3).

³⁷³ *See, e.g., Case of Velásquez-Rodríguez v. Honduras*, Reparations and Costs, IACtHR, Judgment, 21 July 1989, para. 28; United Nations Human Rights Committee, General Comment No. 31, n 347, paras. 16-17.

³⁷⁴ American Convention on Human Rights, Article 63.

³⁷⁵ *Sánchez v. Honduras*, Preliminary Objections, Merits, Reparations and Costs, IACtHR, Judgment, 7 June 2003, Series C, No. 99, para. 148. *See also, e.g., Case of the “Five Pensioners” v. Peru*, Merits, Reparations and Costs, IACtHR, Judgment, 28 February 2003, para. 174; *Case of Kawas-Fernández v. Honduras*, Merits, Reparations and Costs, IACtHR, Judgment, 3 April 2009, para. 156; *Case of the Xákmok Kásek Indigenous Community v. Paraguay* (n 235), para. 276; *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, Merits and Reparations, IACtHR, Judgment, 27 June 2012, para. 279; *Case of Colindres Schonenberg v. El Salvador*, Merits, Reparations and Costs, IACtHR, Judgment, 4 February 2019, para. 120. Notably, the Court has also held that Article 63(1) of the American Convention on Human Rights “*codifies a rule of customary law*”. *See Aloeboetoe et al. v. Suriname*, Reparations and Costs, IACtHR, Judgment, 10 September 1993, Series C no. 15, para. 43; *Case of the Moiwana Community v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, IACtHR, Judgment, 15 June 2005, para. 169; *Case of the Sawhoyamaya Indigenous Community v. Paraguay*, Merits, Reparations and Costs, IACtHR, Judgment, 29 March 2006, para. 196; *Case of the Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations and Costs, IACtHR, Judgment, 17 June 2005, para. 180.

³⁷⁶ *Sánchez v. Honduras* (n 375), para. 147. *See also, e.g., Case of Velásquez-Rodríguez v. Honduras* (n 373), para. 25; *Case of the “Five Pensioners” v. Peru* (n 375), para. 173; *Case of González et al. (“Cotton Field”) v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, IACtHR, Judgment, 16 November 2009 (Series C, No. 205), para. 446; *Case of the “Las Dos Erres” Massacre v. Guatemala*, Preliminary Objection, Merits, Reparations, and Costs, IACtHR, Judgment, 24 November 2009, para. 223; *Case of the Xákmok Kásek Indigenous Community v. Paraguay* (n 235), para. 276; *Case of the Kichwa*

Redress of the harm caused by infringement of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of reestablishing the situation prior to the violation. If this is not possible, [] this international Court must order the adoption of a set of measures that, in addition to ensuring respect for the rights abridged, will provide reparation for the consequences caused by the infractions and payment of a compensation for the harm caused in the pertinent case. The obligation to redress, which is regulated in all its aspects (scope, nature, modes, and determination of beneficiaries) by international law, cannot be modified by the State nor can it avoid compliance with it by invoking domestic legal provisions.³⁷⁷

172. The IACtHR also noted that “*reparations must have a causal connection to the facts of the case, violations declared, proven damages, and to the measures requested for reparation of the corresponding damages*”.³⁷⁸ As such, the “*nature and amount of the reparations ordered depend on the characteristics of the violation and on the pecuniary and non-pecuniary damage caused*”.³⁷⁹
173. Multiple forms of reparation are granted, often in combination, including restitution, compensation, and orders preventing the recurrence of the harm.³⁸⁰

Indigenous People of Sarayaku v. Ecuador (n 375), para. 279; *Case of Colindres Schonenberg v. El Salvador* (n 375), para. 120; *Case of the Yakye Axa Indigenous Community v. Paraguay* (n 375) para. 179.

³⁷⁷ *Sánchez v. Honduras* (n 375), para. 149. See also, e.g., *Case of Velásquez-Rodríguez v. Honduras* (n 375), para. 26; *Case of González et al. v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, IACtHR, Judgment, 16 November 2009 (Series C, No. 205), para. 250; *Case of the Moiwana Community v. Suriname* (n 375), para. 170; *Case of the Yakye Axa Indigenous Community v. Paraguay* (n 375), para. 181; *Case of the Sawhoyamaya Indigenous Community v. Paraguay* (n 375), para. 197; *Aloeboetoe et al. v. Suriname* (n 375), para. 46 (“As regards the future, Article 63(1) provides that the injured party shall be ensured the enjoyment of the right of freedom that was violated. As for the past, the provision in question empowers the Court to impose reparations for the consequences of the violation and a fair compensation”).

³⁷⁸ *Case of the “Las Dos Erres”* (n 376), para. 227; *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador* (n 375), para. 281; *Case of Colindres Schonenberg v. El Salvador* (n 375), para. 120.

³⁷⁹ *Case of González et al. v. Mexico* (n 377), para. 450; *Case of the Moiwana Community v. Suriname* (n 375), para. 171; *Case of the Yakye Axa Indigenous Community v. Paraguay* (n 375), para. 182. See also United Nations Economic and Social Council, Commission on Human Rights, “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”, UN Doc. E/CN.4/2005/L.48, 13 April 2005, paras. 15, 18.

³⁸⁰ When assessing the measures of reparation under the American Convention the Court seeks “to ensure that they: (i) refer directly to the violations declared by the Tribunal; (ii) repair the pecuniary and non-pecuniary damage proportionately; (iii) do not make the beneficiaries richer or poorer; (iv) restore the victims to their situation prior to the violation insofar as possible, to the extent that this does not interfere with the obligation not to discriminate; (v) are designed to identify and eliminate the factors that cause discrimination; (vi) are adopted from a gender perspective, bearing in mind the different impact that violence has on men and on women, and (vii) take into account all the juridical acts and actions in the case file which, according to the State, tend to repair the damage caused”. *Case of González et al. v. Mexico* (n 377) para. 451. See also, e.g., *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador* (n 375), para. 280 (“the Court has considered the need to order diverse measures of reparation in order to redress fully the damage caused and, therefore, in addition to pecuniary compensation, the measures of restitution and satisfaction and guarantees of non-repetition are especially relevant”).

A. Restitution

174. Restitution is aimed at eliminating the effects of the human rights violations and restoring the victim to the original situation before the violations took place.³⁸¹ The appropriate measures to ensure restitution depend on the situation before the violation, as well as on the violation itself. For example, in *Xákmok Kásek v. Paraguay*, where members of the Xákmok Kásek indigenous community had been displaced from their traditional land, the IACtHR considered that “*the return to the members of the Xákmok Kásek Community of their traditional land is the measure of reparation that comes closest to restitutio in integrum*” so it ordered the State to “*take all the necessary legislative, administrative and any other measures to ensure the Community members’ right to ownership of their traditional lands and, consequently, to the use and enjoyment of those lands*”.³⁸² Similarly, in *Sawhoyamaxa Indigenous Community v. Paraguay* the IACtHR considered that “*the restitution of traditional lands to the members of the Sawhoyamaxa Community is the reparation measure that best complies with the restitutio in integrum principle*”.³⁸³ However, if restitution of ancestral lands is not possible “*on objective and sufficient grounds*”, the State may assign alternative lands, selected upon agreement with the community, “*in accordance with the community’s own decision-making and consultation procedures, values and practices and customs*”.³⁸⁴ In either case, “*the extension and quality of the lands must be sufficient to guarantee the preservation and development of the Community’s own way of life*”.³⁸⁵
175. In some cases (e.g., structural discrimination), the IACtHR has held that “*the reparations must be designed to change the situation, so that their effect is not only of restitution, but also of rectification*”.³⁸⁶ If pursuing this course, the Court should be mindful that it has also ordered States to adopt “*any legislative, administrative or other type of measures that may be necessary to implement effectively the right to prior consultation of the indigenous and tribal peoples and communities*”,³⁸⁷ which would be particularly appropriate in the context of remedying harm from climate change.

³⁸¹ See *Sánchez v. Honduras* (n 375), para. 149; *Case of the Sawhoyamaxa Indigenous Community v. Paraguay* (n 375), para. 198. See also, e.g., United Nations Economic and Social Council, Commission on Human Rights “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”, UN Doc. E/CN.4/2005/L.48, 13 April 2005, para. 19.

³⁸² *Case of the Xákmok Kásek Indigenous Community v. Paraguay* (n 235), para. 281. The Court noted, among others, that “[t]he Community’s connection to those lands is indissoluble and fundamental for its cultural subsistence and its food supply, which is why its return is so important”. See para. 282.

³⁸³ *Case of the Sawhoyamaxa Indigenous Community v. Paraguay* (n 375), para. 210.

³⁸⁴ para. 212.

³⁸⁵ para. 212.

³⁸⁶ *Case of González et al. (“Cotton Field”) v. Mexico* (n 376), para. 450.

³⁸⁷ *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, Merits and Reparations, IACtHR, Judgment, 27 June 2012, para. 301.

B. Compensation

176. In cases where restitution is not “possible, sufficient or appropriate”,³⁸⁸ the IACtHR has held that reparation may be performed “by means of fair pecuniary compensation when this is appropriate”.³⁸⁹
177. Compensation may be granted for both pecuniary and non-pecuniary damages and may be claimed by the victims directly, their successors or other persons in certain circumstances:³⁹⁰
- 177.1 Pecuniary damages include “the loss or detriment to the victim’s income, the expenses incurred as a result of the facts, and the consequences of a monetary nature that have a causal connection to the facts of the case”.³⁹¹ In particular, the IACtHR has ordered States to compensate victims for the lost income³⁹² and consequential damages (i.e., extraordinary expenses incurred due to the human rights violation).³⁹³ Pecuniary damages have been granted, for example, in cases involving the forced displacement of indigenous communities from their homes and traditional lands, on the assumption that such a displacement caused material harm.³⁹⁴
- 177.2 Non-pecuniary damages include “both suffering and affliction caused to the direct victims and their relatives, detriment to the persons’ very significant values, and non-pecuniary alterations to the conditions of life of the victim or his family”.³⁹⁵ In assessing the non-pecuniary damages, the IACtHR has assessed the nature and gravity of the human rights violations and the impact on the victims, in light of the specific cultural beliefs and practices of the victims or affected communities. For example, in *Xákmok Kásek v. Paraguay*, the IACtHR held that “any denial of the enjoyment or exercise of property rights harms values that are very significant to the members of those peoples, who run the risk of losing or suffering irreparable harm to their life and identity and to the cultural

³⁸⁸ *Aloeboetoe et al. v. Suriname* (n 375), para. 49. This is the case, for example, where the right to life is concerns, as “it is impossible to reinstate the enjoyment of that right to the victims”. See para. 50.

³⁸⁹ *Sánchez v. Honduras* (n 375), para. 150.

³⁹⁰ See, e.g., *Aloeboetoe et al. v. Suriname* (n 375), paras. 54, 67-77; *Case of Bámaca-Velásquez v. Guatemala*, Reparations and Costs, IACtHR, Judgment, 22 February 2002, Series C no. 91, para. 52. The identities of the beneficiaries, however, need to be communicated to the IACtHR before the judgment on reparations is rendered. See *Case of the Moiwana Community v. Suriname* (n 375), para. 177.

³⁹¹ *Case of Bámaca-Velásquez v. Guatemala*, n 398, para. 43. See also, e.g., *Case of the Xákmok Kásek Indigenous Community v. Paraguay* (n 235), para. 315; *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador* (n 375), para. 309; *Case of the Yakye Axa Indigenous Community v. Paraguay* (n 375), para. 193.

³⁹² See, e.g., *Sánchez v. Honduras* (n 375), para. 164; *Case of González et al. v. Mexico* (n 377), paras. 568-578; *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador* (n 375), para. 318.

³⁹³ See, e.g., *Sánchez v. Honduras* (n 375), para. 166; *Case of González et al. v. Mexico* (n 377), paras. 561-567.

³⁹⁴ See, e.g., *Case of the Moiwana Community v. Suriname* (n 375), paras. 186-187; *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador* (n 375), paras. 313-317; *Case of the Xákmok Kásek Indigenous Community v. Paraguay* (n 235), paras. 315-318.

³⁹⁵ *Sánchez v. Honduras* (n 375), para. 168. See also, e.g., *Case of Bámaca-Velásquez v. Guatemala*, n 398, para. 56; *Case of the “Street Children” v. Guatemala*, Reparations and Costs, IACtHR, Judgment, 26 May 2001, Series C no. 77, para. 84 (noting that non-pecuniary damage “may include both the suffering and distress caused to the direct victims and their next of kin, and the impairment of values that are highly significant to them, as well as other sufferings, of a non-pecuniary nature”); *Case of the Xákmok Kásek Indigenous Community v. Paraguay* (n 235), para. 319; *Case of the Moiwana Community v. Suriname* (n 375), para. 191; *Case of the Sawhoyamaya Indigenous Community v. Paraguay* (n 375), para. 219; *Case of the Yakye Axa Indigenous Community v. Paraguay* (n 375), para. 199.

heritage to be passed on to future generations".³⁹⁶ The Court ordered the State to pay compensation for non-pecuniary damages to the members of the Xákmok Kásek community.

178. Similarly, when assessing the non-pecuniary damages suffered by the People of Sarayaku in connection with oil extraction activities within their ancestral territory, the IACtHR took into account "*the suffering caused to the People and to their cultural identity, the impact on their territory, particularly due to the presence of explosives, as well as the changes caused in their living conditions and way of life*".³⁹⁷
179. The IACtHR has also acknowledged that reparation may be due for damages to the victim's "*life plan*" or "*life project*". The concept is based on "*the options that an individual may have for leading his life and achieving the goal that he sets for himself*".³⁹⁸ As noted by the Court, the elimination or curtailment of these options "*objectively abridges freedom and constitute the loss of a valuable asset, a loss that this Court cannot disregard*".³⁹⁹
180. The IACtHR has considered damages to the "*life project*" to be "*real, significant, autonomous and reparable*".⁴⁰⁰ and has ordered different measures of reparation. For example, in *Furlan v. Argentina* the Court noted that "[c]omprehensive reparation of damage to the '*life project*' generally calls for reparation measures that go beyond mere monetary compensation, and involve measures of rehabilitation, satisfaction and non-repetition".⁴⁰¹

C. Measures preventing the recurrence of the harm

181. The IACtHR has held that, in accordance with Article 1(1) of the Convention, States have the obligation to "*prevent and fight impunity*"⁴⁰² and to "*ensure that these grave violations do not occur again*".⁴⁰³ Accordingly, the Court has ordered diverse measures to ensure that the conduct in violation of human rights is ceased and not reinstated in the future. This aligns with Article 63(1) of the Convention, which permits the Court to order that the consequences of the measure

³⁹⁶ *Case of the Xákmok Kásek Indigenous Community v. Paraguay* (n 235), para. 321. See also, e.g., *Case of the Moiwana Community v. Suriname* (n 375), para. 195; *Case of the Sawhoyamaya Indigenous Community v. Paraguay* (n 375), para. 222; *Case of the Yakye Axa Indigenous Community v. Paraguay* (n 375), para. 203.

³⁹⁷ *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador* (n 375), 27 June 2012, para. 323.

³⁹⁸ *Case of Loayza-Tamayo v. Peru*, Reparations and Costs, IACtHR, Judgment, 27 November 1998, paras. 147-148.

³⁹⁹ *Case of Loayza-Tamayo v. Peru* (n 398) para. 148. Judge A.A. Cançado Trindade has also referred to the "spiritual damage" as an "aggravated form of moral damage, which has a direct bearing on what is most intimate to the human person, namely, her inner self, her beliefs in human destiny, her relations with their dead". In his opinion, spiritual damage "is a serious harm, requiring corresponding reparation, of the (non-pecuniary) kind". See *Case of the Moiwana Community v. Suriname* (n 375), paras. 71-81.

⁴⁰⁰ *Case of Alvarado Espinoza et al v. Mexico*, Merits, Reparations and Costs, IACtHR, Judgment, 28 November 2018, para. 314.

⁴⁰¹ *Case of Furlan and Family v. Argentina*, Preliminary Objections, Merits, Reparations and Costs, IACtHR, Judgment, 31 August 2012, paras. 285-287. See also, e.g., *Case of Cantoral-Benavides v. Peru*, Reparations and Costs, IACtHR, Judgment, 3 December 2001, para. 80; *Case of Tibi v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, IACtHR, Judgment, 7 September 2004, paras. 245-246; *Case of the "Las Dos Erres" Massacre v. Guatemala* (n 376), para. 293.

⁴⁰² *Case of the "Las Dos Erres" Massacre v. Guatemala* (n 376), para. 234.

⁴⁰³ *Case of Bámaca-Velásquez v. Guatemala*, n 398, para. 77. See also, e.g., *Case of Kawas-Fernández v. Honduras* (n 375), para. 190.

or situation that constituted the breach of such right or freedom be remedied: this may require action to prevent breaches recurring in future.

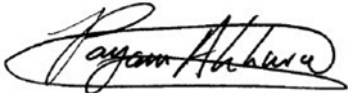
182. For example, in *Sánchez v. Honduras*, the Court noted that where the right to life has been violated, the State must adopt “*positive measures*” to ensure that the injurious acts do not recur.⁴⁰⁴ Significantly, the Court has ordered States to adopt legislative “*and any other measures required*” to adapt the domestic legal system to international human rights norms and humanitarian law. Specifically, “*the State must adopt the national measures to apply international humanitarian law, as well as those for protection of human rights that ensure the free and full exercise of the rights to life, to personal liberty, to humane treatment, to judicial protection and to a fair trial, so as to avoid future injurious acts*”.⁴⁰⁵ This course – for example, requiring legislative measures to require emissions reductions – would be particularly appropriate to prevent further harm from climate change.

VII. Conclusion

183. The Commission respectfully highlights that the Court is in a unique position to clarify the human rights impact of climate change on small island States and to recognise that under the American Convention:
- 183.1 The human rights of those within small island States, particularly including children and future generations, are disproportionately negatively impacted by climate change;
 - 183.2 States Parties’ failure to act urgently, and together, to avoid global temperature rise of more than 1.5°C above pre-industrial levels breaches multiple rights protected by the American Convention;
 - 183.3 States have specific obligations to take steps to adapt to climate change to address existing damage and to prevent future damage; and
 - 183.4 Should they fail to comply with these obligations, States are liable under international law and specifically under the American Convention to make full reparation for the resulting harm.
184. The Commission expresses its appreciation for the opportunity to provide submissions to the Court on these critical issues and remains at the Court’s disposal to assist further.

⁴⁰⁴ *Sánchez v. Honduras* (n 375), para. 150.

⁴⁰⁵ *See, e.g., Bámaca-Velásquez v. Guatemala*, n 398, para. 85.



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