

Inter-American Court of Human Rights

On the Matter of

Observations to 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

**Brief Of
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Contents

Interest in the Advisory Opinion.....	5
A. Regarding State obligations derived from the duties of prevention and the guarantee of human rights in relation to the climate emergency	6
A.1. What is the scope of the State’s duty of prevention with regard to climate events caused by global warming, including extreme events and slow onset events, based on the obligations under the American Convention, in light of the Paris Agreement and the scientific consensus which recommend that global temperatures should not increase beyond 1.5°C?.....	6
A.1.1. Pursuant to the American Convention on Human Rights, State Parties must take all necessary measures to guarantee the rights recognized therein by limiting the rise of global temperatures to 1.5°C.....	6
A.1.2 Pursuant to the Principle of Prevention and the No-Harm Principle, State Parties should take all necessary measures to limit the rise of global temperatures to 1.5°C	7
A.1.3. All necessary measures include, among others, the adoption of legislative, administrative, and regulatory measures, including oversight and monitoring duties.....	8
A.2. In particular, what measures should States take to minimize the impact of the damage due to the climate emergency in light of the obligations established in the American Convention? In this regard, what differentiated measures should be taken in relation to vulnerable populations or based on intersectional considerations?	8
A.2.1. Mitigation Strategies	9
A.2.2. Adaptation Strategies	9
A.2.A. What should a State take into consideration when implementing its obligations: (i) to regulate; (ii) to monitor and oversee; (iii) to request and to adopt social and environmental impact assessments; (iv) to establish a contingency plan, and (v) to mitigate any activities under its jurisdiction that exacerbate or could exacerbate the climate emergency?	10
A.2.A.1. The Level of Climate Emergency Risk	10
A.3.A.2. The Efficacy of the States’ Measures.....	10
A.2.A.2. Vulnerable Communities.....	11
A.2.B. What principles should inspire the actions of mitigation, adaptation and response to the losses and damage resulting from the climate emergency in the affected communities?	11
A.2.B.1. All Actions Should be Inspired by Recognition of Human Rights and the Principle of Sustainable Development and Intergenerational Equity.	11
A.2.B.2. Other Principles include: 1) the Principles of Equity and Common but Differentiated Responsibilities, 2) the Polluter Pays Principle, 3) the Principle of Cooperation, and 4) the Principle of Intersectionality.	12
B. Regarding State obligations to preserve the right to life and survival in relation to the climate emergency in light of science and human rights.....	13
B.1. What is the scope that States should give to their obligations under the Convention vis-à-vis the climate emergency in relation to:	13
B.1.i) Environmental information for every individual and community, including such information related to the climate emergency.....	13

B.1.ii) The climate adaptation and mitigation measures to be adopted to respond to the climate emergency and the impacts of such measures, including specific “just transition” policies for groups and individuals who are particularly vulnerable to the effects of global warming	15
B.1.iii) Responses to prevent, minimize, and address economic and non-economic damage and losses associated with the adverse effects of climate change.....	15
B.1.iv) Production of information and access to information on greenhouse gas emissions, air pollution, deforestation, and short-lived climate forcers; analysis of activities and sectors that contribute to emissions or other factors	17
B.1.v) Determination of human impacts, such as human mobility – migration and forced displacement – effects on health and on life, non-economic losses, etc.	18
B.2. Pursuant to State obligations under the American Convention, to what extent does access to environmental information constitute a right the protection of which is necessary to guarantee the rights to life, property, health, participation, and access to justice, among other rights that are negatively affected by climate change?	18
C. Regarding the differentiated obligations of States in relation to the rights of children and the new generations in light of the climate emergency	20
C.1. What is the nature and scope of the obligation of a State Party to adopt timely and effective measures with regard to the climate emergency in order to ensure the protection of the rights of children derived from its obligations under Articles 1, 4, 5, 11 and 19 of the American Convention?	20
C.2. What is the nature and scope of a State Party’s obligation to provide children with significant and effective means to express their opinions freely and fully, including the opportunity to initiate or, in any other way, to participate in any administrative or judicial proceedings concerning prevention of the climate change that represents a threat to their lives?.....	22
D. Regarding State obligations arising from consultation procedures and judicial proceedings owing to the climate emergency	25
D.1. What is the nature and scope of a State Party’s obligation in relation to the establishment of effective judicial remedies to provide adequate and timely protection and redress for the impact on human rights of the climate emergency?	25
D.2. To what extent should the consultation obligation take into account the consequences of an activity on the climate emergency or the emergency projections?	27
E. Regarding the Convention-based obligations of prevention and the protection of territorial and environmental defenders, as well as women, indigenous peoples, and Afro-descendant communities in the context of the climate emergency	29
E.1. What measures and policies should States adopt to facilitate the work of environmental human rights defenders?	29
E.2. What specific considerations should be taken into account to guarantee the right of women human rights defenders to defend a healthy environment and the territory in the context of the climate emergency?.....	31
E.3. What specific considerations should be taken into account to guarantee the right to defend a healthy environment and the territory based on intersectional factors and differentiated impacts, <i>inter alia</i> , of indigenous peoples, peasant farmer communities, and Afro-descendant persons in the context of the climate emergency?.....	34

E.4. With regard to the climate emergency, what type of information should the State produce and publish in order to establish the capability to investigate different offenses committed against defenders, including, reports of threats, kidnappings, murders, forced displacements, gender-based violence, and discrimination?	36
E.5. What are the measures of due diligence that the States should take into account to ensure that attacks and threats against environmental defenders in the context of the climate emergency do not go unpunished?	38
F. Regarding the shared and differentiated human rights obligations and responsibilities of States in the context of the climate emergency	41
F.1. What considerations and principles should States, and international organizations take into account, collectively and regionally, when analyzing shared but differentiated responsibilities in the context of climate change, from the perspective of human rights and intersectionality?	41
F.2. How should States act, both individually and collectively, to guarantee the right to redress for the damage caused by their acts and omissions in relation to the climate emergency, taking into account considerations of equity, justice and sustainability?.....	43
F.1.bis. How should inter-State cooperation obligations be interpreted?	47
F.2.bis. What obligations and principles should guide State actions in order to ensure the right to life and survival of the most affected regions and populations in the different countries and in the region?	49
F.3. What obligations and principles should guide the individual and coordinated measures that the States of the region should adopt to deal with involuntary human mobility, exacerbated by the climate emergency?	52

Interest in the Advisory Opinion

Professors, doctoral candidates, and law students at Cornell Law School, who are committed to protecting the environment and preventing climate change, have a significant interest in this advisory opinion of the Inter-American Court of Human Rights. The interpretation of the Court will be an essential step to ensure the obligation of States during the climate change emergency and protect the human rights of their population, mainly focusing on vulnerable populations in developing countries most affected by climate change, such as children, women, indigenous people, Caribbean populations, people of African Descendant, among others.

The authors are a team of scholars of Cornell Law School with different legal and international backgrounds who met to contribute to the legal discussion and support the Inter-American Court of Human Rights in interpreting environmental law and human rights. This intends to contribute to the new and groundbreaking context of the climate change emergency. As scholars, we are convinced of the need to address collectively these issues and brainstorm together to understand how to interpret and consequently protect the human right to a healthy environment, taking into account the different needs and risks to which the population in the American continent is exposed, if not worldwide. Here is our humble but mindful contribution.

A. Regarding State obligations derived from the duties of prevention and the guarantee of human rights in relation to the climate emergency

A.1. What is the scope of the State's duty of prevention with regard to climate events caused by global warming, including extreme events and slow onset events, based on the obligations under the American Convention, in light of the Paris Agreement and the scientific consensus which recommend that global temperatures should not increase beyond 1.5°C?

A.1.1. Pursuant to the American Convention on Human Rights, State Parties must take all necessary measures to guarantee the rights recognized therein by limiting the rise of global temperatures to 1.5°C.

Climate science is unquestionable. If global temperatures should increase beyond 1.5°C, it would “trigger a cascade of tipping points, which would irreversibly alter the global climate system and further exacerbate warming.”¹ Surpassing 1.5°C would alter ocean currents, cause mass die-offs in the Amazon, and cause extreme flooding, drought, wildfires, and food shortages across the globe.² The effects of climate change are irreversible.³ They are global. In recognition of such dire consequences, the Paris Agreement, a legally binding treaty on climate change under the United Nations Framework Convention on Climate Change (UNFCCC), states that parties will “pursu[e] efforts to limit the temperature increase to 1.5°C above pre-industrial levels.”⁴

The American Convention on Human Rights (“the Convention”) states that “State Parties (...) undertake to respect the rights and freedoms recognized herein and to ensure to all persons (...) the free and full exercise of those rights and freedoms.”⁵ More specifically, it emphasizes that State Parties undertake to take “legislative or other measures as may be necessary to give effect to those rights or freedoms.”⁶ The plain reading of the Convention requires States to take all necessary measures, whether legislative or otherwise, to guarantee the rights recognized within the Convention.

The consequences of a global temperature rise beyond 1.5°C would inevitably infringe on many rights that this Court has long recognized as being fundamental to human lives: the right to life (Article 4), the right to compensation (Article 10), the right to property (Article 21), the

¹ Yale School of the Environment, “As 1.5 Degrees Looms, Scientists See Growing Risk of Runaway Warming, Urgent Need to Slash Emissions,” Yale Environment E360 Digest, accessed December 16, 2023, <https://e360.yale.edu/digest/1.5-degrees-climate-change-tipping-points-2030>.

² Laura Paddison and Jessie Gretener, “‘Sounding the Alarm’: World on Track to Breach a Critical Warming Threshold in the next Five Years,” May 17, 2023, CNN edition, <https://edition.cnn.com/2023/05/17/world/global-warming-breach-wmo-climate-intl/index.html>.

³ Yale School of the Environment, “As 1.5 Degrees Looms, Scientists See Growing Risk of Runaway Warming, Urgent Need to Slash Emissions,” Yale Environment E360 Digest, March 15, 2023, <https://e360.yale.edu/digest/1.5-degrees-climate-change-tipping-points-2030>.

⁴ UN General Assembly, “Paris Agreement to the United Nations Framework Convention on Climate Change,” T.I.A.S. No. 16-1104 § (2015), art. 2.

⁵ Organization of American States (OAS), “American Convention on Human Rights, ‘Pact of San Jose’” (1969), art. 1.

⁶ Organization of American States (OAS), “American Convention on Human Rights, ‘Pact of San Jose’” (1969), art. 2.

right of movement and residence (Article 22) of the American Convention on Human Rights,⁷ as well as the right to health (Article 10), the right to a healthy environment (Article 11), and the right to food (Article 12) of the Protocol of San Salvador⁸. Among these rights, the right to a healthy environment is increasingly being recognized. The United Nations, in the Resolutions from the Human Rights Council in 2021, recognized that the right to a “clean, healthy, and sustainable environment” is a human right and reaffirmed that States have obligations to “respect, protect and promote human rights, including in all actions to address environmental challenges.”⁹ Because climate change constitutes “some of the most pressing and serious threats . . . to enjoy human rights,”¹⁰ States have the obligation to take all necessary measures to prevent environmental damage and climate-related human rights violations. The Inter-American Court of Human rights has repeatedly held that the right to life is an essential human right, whose enjoyment is a prerequisite for exercising all other human rights. Due to the essential nature of the right to life, no restrictive approaches thereto are to be admitted.

Throughout the brief, we refer to several international treaties not part of the Inter-American system. Nevertheless, they should be considered sources of interpretation to determine the duties of the State and obligations imposed by the Inter-American Convention on States.

A.1.2 Pursuant to the Principle of Prevention and the No-Harm Principle, State Parties should take all necessary measures to limit the rise of global temperatures to 1.5°C

It is well established that Sovereigns have the right to exploit their resources but may not cause harm to other States or areas outside their jurisdiction.¹¹ Such principle of prevention is not only enshrined in soft law instruments but is also a “cornerstone of international environmental law” binding through its status as a customary international law (CIL).¹² The International Court of Justice (ICJ) has often reaffirmed the binding nature of CIL.¹³

In transboundary scenarios, the no-harm principle is equivalent to the principle of prevention. The no-harm principle is also binding through its customary international law (CIL) status. As mentioned above, the rise of global temperatures beyond 1.5°C would “irreversibly alter the global climate system.”¹⁴ The loss of sea ice, melting glaciers and ice sheets, rising sea levels,

⁷ Organization of American States (OAS), “American Convention on Human Rights, ‘Pact of San Jose’” (1969).

⁸ Organization of American States (OAS), “Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social And Cultural Rights ‘Protocol of San Salvador.’” A-52 § (1999).

⁹ UN Human Rights Council, “Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development,” A/HRC/RES/48/13 § (2021), p. 2.

¹⁰ *Id.*

¹¹ UN General Assembly, “United Nations Conference on the Human Environment, Stockholm Declaration,” A/RES/2994 § (1972); UN General Assembly, “United Nations Conference on Environment and Development, Rio Declaration on Environment and Development,” A/CONF.151/26 (Vol. I) § (1992).

¹² Pierre-Marie Dupuy and Jorge E. Viñuales, *International Environmental Law* (Cambridge University Press, 2018).

¹³ International Court of Justice, *Gabčíkovo-Nagymaros Project, Hungary v Slovakia*, Judgment, Merits, No. ICJ GL No 92, [1997] ICJ Rep 7, [1997] ICJ Rep 88, (1998) 37 ILM 162, ICGJ 66 (ICJ 1997) (International Court of Justice September 25, 1997), p. 7; International Court of Justice, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Provisional Measures (International Court of Justice July 13, 2006), para 72; International Court of Justice, *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Judgement (n.d.), para. 104.

¹⁴ Yale School of the Environment, “As 1.5 Degrees Looms, Scientists See Growing Risk of Runaway Warming, Urgent Need to Slash Emissions,” Yale Environment E360 Digest, March 15, 2023, <https://e360.yale.edu/digest/1.5-degrees-climate-change-tipping-points-2030>.

and more intense heat waves resulting from each state's exploitation of their resources would invariably cause harm beyond their jurisdictions.

Due to the binding nature of the principle of prevention, States must take all necessary measures to limit the rise of global temperatures to 1.5°C, thereby preventing harm outside their national jurisdictions.

A.1.3. All necessary measures include, among others, the adoption of legislative, administrative, and regulatory measures, including oversight and monitoring duties.

While not exhaustive, the preventive measures that States must adopt would include the adoption of legislative, administrative, and regulatory measures, including oversight and monitoring duties. They would include climate mitigation strategies and adaptation strategies, which are also discussed below in the answer to question 2 of this section.

States should reduce greenhouse gas (GHG) emissions to avoid climate-related human rights infringement and irreversible damage to the global environment (climate mitigation). These mitigation strategies should be set in accordance with countries' nationally determined contributions (NDC)¹⁵ but ambitious enough to meet the Paris Agreement's goal of "holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels."¹⁶

States should also adopt climate adaptation strategies to help vulnerable communities cope with the impacts of climate change. Such strategies would include, among others, investing in infrastructure or establishing early warning systems for climate disasters. The adaptation strategies are always context-specific, and States should tailor their response to the specific challenges they face.

In the face of any scientific uncertainty, States should adopt precautionary measures to "anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects."¹⁷ A lack of total scientific certainty is no excuse for postponing or failing to implement such preventive measures.

A.2. In particular, what measures should States take to minimize the impact of the damage due to the climate emergency in light of the obligations established in the American Convention? In this regard, what differentiated measures should be taken in relation to vulnerable populations or based on intersectional considerations?

The United Nations Framework Convention on Climate Change (UNFCCC) guides the State's obligation to minimize the impact of damage due to climate emergency. States must: 1) mitigate climate change by addressing anthropogenic GHG emissions and 2) prepare for

¹⁵ UN General Assembly, "Paris Agreement to the United Nations Framework Convention on Climate Change," T.J.A.S. No. 16-1104 § (2015), art. 3.

¹⁶ UN General Assembly, "Paris Agreement to the United Nations Framework Convention on Climate Change," T.J.A.S. No. 16-1104 § (2015), art. 2(1)(a).

¹⁷ UN General Assembly, "United Nations Framework Convention on Climate Change (UNFCCC)" (n.d.), art. 3(3); Pierre-Marie Dupuy and Jorge E. Viñuales, *International Environmental Law* (Cambridge University Press, 2018), 70–73; Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights (Inter-American Court of Human Rights November 17, 2017), para. 69.

adaptation to the impacts of climate change. In doing so, developed countries must assist developing countries particularly vulnerable to the damages caused by climate change.¹⁸

A.2.1. Mitigation Strategies

The Paris Agreement states unequivocally the mitigation goals for state parties: to “[h]old the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels”.¹⁹ To do so, each country has to establish a nationally determined contribution (NDC), including such efforts, which are set to be progressive and updated every five years. We can then say that they are part of a legal framework designed to protect the environment.

While the “common but differentiated responsibilities” (CBDR) principle²⁰ allows each country to determine its emission reduction target, it does not constitute a license for State parties to be as lax as they wish. The Paris Agreement²¹ includes the global stocktake (article 14), a review mechanism that assesses countries' progress in achieving the goals of the Paris Agreement. This mechanism is designed to enhance or strengthen efforts to combat climate change—in terms of mitigation, adaptation, and loss and damage purposes—and meet the overall goals of the Paris Agreement. Even if no fixed reduction targets are imposed on state parties, their nationally determined contributions (NDC) shall be ambitious enough to meet the Paris Agreement's objectives, considering their capabilities and responsibilities.

A.2.2. Adaptation Strategies

Adaptation strategies involve the implementation of coping strategies for climate change impacts. Adaptation strategies should be context-specific: no ‘all-size-fits-all’ solution exists. Article 7(f) of the Paris Agreement states that “adaptation action should [...] tak[e] into consideration vulnerable groups, communities, and ecosystems [...] with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate.”

For example, coastal communities exposed to sea-level rise, flooding, and tsunamis may benefit from early warning systems and community resilience to ensure that the residents enjoy their human rights, especially the right to life and health. For farmers in the Andean region who may face droughts caused by *el niño*, the adaptation strategy may involve promoting cultivating drought-resistant crop varieties or investing in efficient irrigation techniques. Such a need for a differentiated adaptation approach is the most pronounced for vulnerable groups, including women, children, farmers, persons with disabilities, and indigenous people.²²

¹⁸ UN General Assembly, “United Nations Framework Convention on Climate Change (UNFCCC)” (n.d.), art. 4(1)(b), 4(1)(c) and 4(4).

¹⁹ UN General Assembly, “Paris Agreement to the United Nations Framework Convention on Climate Change,” T.I.A.S. No. 16-1104 § (2015), art. 2(1)(a).

²⁰ UN General Assembly, “United Nations Framework Convention on Climate Change (UNFCCC)” (n.d.), art. 3(1).

²¹ UN General Assembly, “Paris Agreement to the United Nations Framework Convention on Climate Change,” T.I.A.S. No. 16-1104 § (2015).

²² “‘Intolerable Tide’ of People Displaced by Climate Change: UN Expert,” OHCHR, accessed December 17, 2023, <https://www.ohchr.org/en/press-releases/2022/06/intolerable-tide-people-displaced-climate-change-un-expert>.

A.2.A. What should a State take into consideration when implementing its obligations: (i) to regulate; (ii) to monitor and oversee; (iii) to request and to adopt social and environmental impact assessments; (iv) to establish a contingency plan, and (v) to mitigate any activities under its jurisdiction that exacerbate or could exacerbate the climate emergency?

In 2017, this Court issued an advisory opinion on the issue of human rights and the environment, holding that States have the obligations to (i) regulate, (ii) supervise and monitor, (iii) require and approve environmental impact assessments, (iv) establish contingency plans, and (v) mitigate, when environmental damage has occurred. In laying down the obligations and explaining its holding, the Court repeatedly focused on policies that States should consider. These policies have equivalents in the more specific context of climate emergency. States must consider: 1) the level of climate emergency risk, 2) the efficacy of States' measures, and 3) vulnerable communities.

A.2.A.1. The Level of Climate Emergency Risk

This Court has held that “States must regulate dangerous activities taking into account ‘the level of the potential risk to human lives.’”²³ The Court also held that States must supervise, monitor, and make impact assessments of activities that may cause significant damage to the environment.²⁴

The nature of climate emergency is that all activities have impacts that are far-reaching, irreversible, and detrimental to human rights. (See section 1.A [above](#)) Accordingly, States should give due weight to the high level of risk that these activities carry. States should address these activities through regulation and monitoring with full force in consideration of the detrimental nature of the consequences. This aligns with the argument (See section 1.C [above](#)) that any lack of full scientific certainty is no excuse for postponing or failing to implement such preventive measures.

A.3.A.2. The Efficacy of the States' Measures

This Court found that regulating dangerous activities aims to “ensure the effective protection of citizens whose lives might be endangered by the inherent risks.”²⁵ This suggests that states should ensure that they are implementing their obligations and that their measures effectively protect their citizens.

Such emphasis on the efficacy of the States' measures is also evident in the Court's finding that States must provide appropriate procedures to identify non-compliance with regulations, continually monitor the environmental activities beyond the impact assessment, mitigate

²³ Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights (Inter-American Court of Human Rights November 17, 2017), para. 148.

²⁴ Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights (Inter-American Court of Human Rights November 17, 2017), paras. 154, 157, 160.

²⁵ Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights (Inter-American Court of Human Rights November 17, 2017), para. 148.

damages immediately even if the origin of the pollution is unknown, and develop investigation and enforcement measures.²⁶

Similarly, States should consider the efficacy of their measures in implementing the obligations to address activities that exacerbate or could exacerbate the climate emergency.

A.2.A.2. Vulnerable Communities

In explaining the States' obligation to implement environmental impact assessments in indigenous communities, the Court emphasized that "[t]he purpose of such assessments is not merely to have an objective measurement of the possible impact on the land and peoples, but also to ensure that the members of these peoples are aware of the possible risks, including the environmental and health risks so that they can evaluate, in full knowledge and voluntarily, whether or not to accept the proposed development or investment plan."²⁷

In other words, the State's obligations are not merely formalistic duties – they are a mechanism for communities to be informed of possible risks to their rights and express their opinions. Such consideration is more important for especially vulnerable groups, including women, children, farmers, persons with disabilities, and indigenous people who may lack relevant knowledge of the consequences of climate emergency. Accordingly, States should consider how the vulnerable communities may access, contribute to, and utilize the States' implementing obligations.

A.2.B. What principles should inspire the actions of mitigation, adaptation and response to the losses and damage resulting from the climate emergency in the affected communities?

A.2.B.1. All Actions Should be Inspired by Recognition of Human Rights and the Principle of Sustainable Development and Intergenerational Equity.

The American Convention on Human Rights clearly outlines a principle that should inspire and guide actions to address the climate emergency: States must take *all necessary measures* to protect and guarantee human rights (Articles 1 and 2). The Principles of Sustainable Development and Intergenerational Equity²⁸ add that States must meet the needs of the present generation without compromising the ability of future generations to meet their own. Taken together, these principles suggest that all mitigation, adaptation, and responses to losses and damage should be geared toward effectively protecting the human rights of current and future generations.

²⁶ Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights (Inter-American Court of Human Rights November 17, 2017), para 153, 172, and 154.

²⁷ Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights (Inter-American Court of Human Rights November 17, 2017).

²⁸ UN General Assembly, "Transforming Our World: The 2030 Agenda for Sustainable Development," A/RES/70/1 _____ § _____ (2015), _____ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement>.

A.2.B.2. Other Principles include: 1) the Principles of Equity and Common but Differentiated Responsibilities, 2) the Polluter Pays Principle, 3) the Principle of Cooperation, and 4) the Principle of Intersectionality.

More specifically, mitigation actions should be inspired by the Principles of Equity and Common but Differentiated Responsibilities (CBDR),²⁹ the Polluter Pays Principle,³⁰ and the Principle of Cooperation.³¹ While each party must be held accountable for its share of GHG emissions, the global nature of the project suggests that all States must cooperate and aid each other to meet the collective goal. On a related note, responses to the Losses and Damages should be inspired by the Principle of Cooperation and the Polluter Pays Principle.

The Principle of Cooperation should similarly inspire adaptation actions, and also the Principle of Intersectionality.³² The Paris Agreement recognized that adaptation measures should “tak[e] into consideration vulnerable groups, communities, and ecosystems” (Article 7) and be “integrat[ed] into relevant socioeconomic and environmental policies and actions.” (Article 7(5)). Recognizing that intersectionality is crucial for developing inclusive and equitable climate solutions by involving affected communities in the decision-making and addressing social injustices related to the climate emergency.

²⁹ UN General Assembly, “United Nations Framework Convention on Climate Change (UNFCCC)” (n.d.), art. 3(1).

³⁰ UN General Assembly, “United Nations Conference on Environment and Development, Rio Declaration on Environment and Development” A/CONF.151/26 (Vol. I) § (1992), Principle 16.

³¹ UN General Assembly, “United Nations Framework Convention on Climate Change (UNFCCC)” (n.d.), art. 4(4)-(5).

³² UN General Assembly, “Paris Agreement to the United Nations Framework Convention on Climate Change,” T.I.A.S. No. 16-1104 § (2015), art. 7.

B. Regarding State obligations to preserve the right to life and survival in relation to the climate emergency in light of science and human rights

B.1. What is the scope that States should give to their obligations under the Convention vis-à-vis the climate emergency in relation to:

B.1.i) Environmental information for every individual and community, including such information related to the climate emergency

Regarding environmental information dispersal, Article 5(6) of the Escazú Agreement provides an effective baseline for state obligations. At a minimum, under this Article, environmental information should be kept publicly accessible for individuals and communities up to the level where:

1. Disclosure would put at risk the life, safety, or health of individuals;
2. Disclosure would adversely affect national security, public safety, or national defence;
3. Disclosure would adversely affect the protection of the environment, including any endangered or threatened species; or
4. Disclosure would create a clear, probable, and specific risk of substantial harm to law enforcement, prevention, investigation, and prosecution of crime.³³

Under Escazú Agreement Article 5(8), these reasons for refusal must be “clearly defined and regulated, taking into account the public interest, and shall thus be interpreted restrictively. The burden of proof will lie with the competent authority.”³⁴ In other words, States should not be allowed to restrict disclosure if their reasons for doing so are overly broad, leading to potential abuses of ambiguous “national security” defenses.

This minimum limit has been adjudicated in an environmental human rights context. In *Claude-Reyes et al. v. Chile*, this Court ruled that Chile violated multiple human rights, including freedom of expression, due process, and judicial protection, in refusing a request for State information on the Río Cóndor forestry exploitation project without adequate written legal justification.³⁵ This Court held that Chile had thus failed in its obligation to adopt adequate national legal provisions protecting the right to State-held information. *Gomes Lund et. Al. v. Brazil* further described the public right to State information as stronger when such information concerns victims of human rights violations – compelling heightened disclosure responsibilities when States have climate change data that may potentially infringe on Article 4 or 5 Convention rights.³⁶

³³ *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean* [Treaty No. XXVII.18] (2018). Retrieved Aug. 5, 2023, from <https://www.cepal.org/en/subsidiary-bodies/regional-agreement-access-information-public-participation-and-justice/text-regional-agreement>.

³⁴ Escazú Agreement, Art. 5(8) (2018), <https://repositorio.cepal.org/server/api/core/bitstreams/7e888972-80c1-48ba-9d92-7712d6e6f1ab/content>.

³⁵ *Marcel Claude Reyes et al. v. Chile*, Case 12.108, Report No. 60/03, Inter-Am. C.H.R., OEA/Ser.L/V/II.118 Doc. 70 rev. 2 at 222 (2003).

³⁶ *Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil*, Inter-American Court of Human Rights (IACrTHR), 24 November 2010, available at: <https://www.refworld.org/cases,IACRTHR,4d469fa92.html> [accessed 6 August 2023].

Under this combined legal precedent, States must favor a transparency policy regarding environmental information unless such transparency would create express, widespread national security or human safety concerns.

However, to effectively provide the public with environmental information critical to national and international public safety, States must necessarily go beyond these minimum obligations: they must proactively ensure public awareness of such information. A State's environmental information is not adequately informative or applicable to public safety if it sits in a national database, either unnoticed, misunderstood, or actively misrepresented by false or misleading public rhetoric. Therefore, to render state environmental information effective in protecting human rights to life and humane treatment under Art. 4 and 5 of the Convention, states have a positive responsibility to initiate the delivery of information to the broad public on environmental hazards affecting these rights. This effort should be multifaceted; not only should States be obligated to publish and circulate national, provincial, and local advisories, but also to require environmental education in public school curriculums.

The latter stipulation has been widely recognized as critical for effectuating environmental safety. Article 6 of the United Nations Framework Convention on Climate Change expressly commits member States to promoting and facilitating climate change education.³⁷ Article 12 of the Paris Agreement likewise commits parties to "cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information, recognizing the importance of these steps with respect to enhancing actions under this Agreement."³⁸ The UNESCO Global Action Programme on Education for Sustainable Development (ESD) further encourages countries to integrate climate change education into formal and non-formal education systems,³⁹ and the 1996 ICJ Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons recognizes the duty and importance of education in both informing and engaging with the public regarding critical global issues.⁴⁰

This reporting must be protected by established public oversight systems to facilitate genuine transparency. To this end and in light of the aforementioned database necessity, States should propagate easily-accessible public forums, such as websites and libraries, where people from all economic and social backgrounds can access and understand State information regarding environmental concerns that may impact civilian human rights. Indigenous peoples, in particular, should have easy access to information on the climate emergency, particularly in light of their existing right to informed, prior consent regarding any project the State undertakes on their lands.⁴¹

³⁷ United Nations. (1992). *United Nations Framework Convention on Climate Change*. https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf.

³⁸ United Nations. (2015). *Paris Agreement under the United Nations Framework Convention on Climate Change*. https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

³⁹ UNESCO. (2003). *UNESCO Global Action Programme on Education for Sustainable Development*. <https://unesdoc.unesco.org/ark:/48223/pf0000246270>.

⁴⁰ United Nations. (last visited 2023). Education is the key to addressing climate change. *United Nations*, <https://www.un.org/en/climatechange/climate-solutions/education-key-addressing-climate-change>; Anderson, A., et al. (2013). Climate Change Education for Mitigation and Adaptation. *Journal of Education for Sustainable Development*,

https://journals.sagepub.com/doi/pdf/10.1177/0973408212475199?casa_token=3MLzZeMeHmsAAAAA:0Hi2IdSQHGJ-MFKYfy5FW_22bNbYnEO6VH5vqk55dKWh2Lvh1h_5VGvKSrXrGCB_-1LoTG_o675BwQ.

⁴¹ See Cultural Survival. (last visited 2023). Confirming Rights: Inter-American Court Ruling Marks Key Victory for Sarayaku People in Ecuador. *Cultural Survival*, <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/confirming-rights-inter-american-court-ruling-marks-key>; Orellana, M. (2007). Saramaka

B.1.ii) The climate adaptation and mitigation measures to be adopted to respond to the climate emergency and the impacts of such measures, including specific “just transition” policies for groups and individuals who are particularly vulnerable to the effects of global warming

States have a common duty to balance constitutional and fundamental rights to make decisions that minimally affect human rights and public safety. Appropriate State adaptation and mitigation measures vary wildly between different topographies, needs, climates, geographical features, and financial resiliencies. Thus, no singular set of specific affirmative actions should or can be assigned universally to States. However, States should use their best efforts to protect the rights listed in section 1C of this Part.

Regardless of variability between States’ mitigation and adaptation strategies or the widely diverse social and economic ramifications of those measures, States have universal positive responsibilities to mitigate such ramifications through “just transition” policies. These policies should compel States to use their best efforts to adequately and comfortably compensate for losses or damage caused by climate change, including efforts such as:

- Mandating adequate housing construction and regulation to combat more frequent and fiercer storms, flooding, and related damages, and
- Providing positive rights to housing, food, and medicine to those displaced by global warming or pollutive hazards.

Such duties are outlined in the United Nations Guiding Principles on Internal Displacement (UNGPID), particularly in Principle 3 (vesting in States the “primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction”), Principle 6 (vesting in all persons the “right to be protected against being arbitrarily displaced from his or her home or place of habitual residence”), and Principle 7 (mandating that national authorities explore “all feasible alternatives” to avoid internal displacement, and if displacement is not avoided, that they shall provide “proper accommodation” to displaced persons).⁴²

The International Labor Organization Guidelines for a Just Transition outline just transition policies such as compensating or hiring back coal workers during coal phaseout transitions, generating subsequent decent, clean jobs, creating “social inclusion” through improved access to affordable green energy and environmental services, providing relevant training and assistance, and offering social security protection policies, among others.

B.1.iii) Responses to prevent, minimize, and address economic and non-economic damage and losses associated with the adverse effects of climate change

As discussed in Part A of this submission, proactive mitigation and adaptation are integral to effective State responses to prevent, minimize, and address economic and non-economic damage and losses associated with the adverse elements of climate change. However, as stated in section 1(b) of this Part, a State’s mitigative and adaptative methods must be

People v. Suriname. *The American Journal of International Law*, Vol. 102, No. 4, https://www.escri-net.org/sites/default/files/ORELLANA_Marcos_SaramakaPeopleVSuriname.pdf.

⁴² United Nations. (2004). Guiding Principles on Internal Displacement. *United Nations Office for the Coordination of Human Affairs*, <https://www.internal-displacement.org/sites/default/files/publications/documents/199808-training-OCHA-guiding-principles-Eng2.pdf>.

adequate within its financial and practical capabilities to broadly ensure the following rights and policies for various peoples living in various topographies:

1. The right to life and physical integrity, as emphasized by Article 4(1) of the Convention;
2. Article 26 of the American Convention, which defines the human right to health;⁴³
Exemplary responses: Governments should address the health risks associated with climate change, including increased frequency and intensity of heatwaves, extreme weather events, and the spread of diseases. This may involve implementing public health measures, improving healthcare infrastructure, and ensuring access to healthcare services in the face of climate-related challenges.
3. The right to a healthy environment, as recognized by this Court and as established in the Protocol of San Salvador;⁴⁴
Exemplary responses: States should take measures to protect the environment from the adverse effects of climate change and promote sustainable development, including adopting policies to reduce pollution, conserve ecosystems, and preserve biodiversity.
4. The right to public participation and access to information, as explained in section 1(a) of this Part;
*Exemplary response: Governments should ensure that affected individuals and communities have the right to participate in climate-related decision-making, as well as access to relevant information and data.*⁴⁵
5. Policies for just transition and social justice, as explained in section 1(b) of this Part;
*Exemplary responses: States should prioritize a just transition that takes into account the needs and rights of vulnerable groups, as explained in section 1(b) of this Part and which include marginalized communities, indigenous peoples, & workers in carbon-intensive industries. Climate policies and responses should promote social justice, equity, and the protection of human rights, avoiding disproportionate impacts on disadvantaged populations.*⁴⁶
6. The right to property, as defined by Article 21 of the American Convention;
*Exemplary responses: States should take measures to protect private and public property from the adverse effects of climate change, such as flooding, storms, and sea-level rise. This may involve implementing land-use planning, building regulations, and infrastructure improvements to enhance resilience and minimize economic losses.*⁴⁷

⁴³ Inter-American Commission on Human Rights. (1969). American Convention on Human Rights. *Organization of American States*, <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>.

⁴⁴ Inter-American Commission on Human Rights. (1988). Protocol of San Salvador. *Organization of American States*, <https://www.oas.org/en/iachr/mandate/Basics/sansalvador.asp#:~:text=Everyone%20shall%20have%20the%20right%20to%20live%20in%20a%20healthy,and%20improvement%20of%20the%20environment>.

⁴⁵ See section 1(a) of this Part.

⁴⁶ International Labor Organization. (2015). Guidelines for a just transition towards environmentally sustainable economies and societies for all. *International Labor Organization*, https://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/documents/publication/wcms_432859.pdf.

⁴⁷ See Special Rapporteur. (last visited 2023). Climate Change and the Right to Adequate Housing. *United Nations Office of the High Commissioner*, <https://www.ohchr.org/en/special-procedures/sr-housing/climate-change-and-right-housing>.

7. Policies protecting economic and social rights, such as the right to work, the right to an adequate standard of living, and the right to food;

*Exemplary responses: States should adopt policies and measures to prevent and minimize economic damage and losses associated with climate change, ensuring that individuals and communities can maintain their livelihoods, access basic necessities, and recover from climate-related shocks. This may involve supporting sustainable economic activities, promoting green jobs, and providing social protection mechanisms.*⁴⁸

8. Policies protecting access to justice and remedies;

*Exemplary responses: States should ensure that individuals and communities affected by economic damage and losses caused by climate change have access to justice and effective remedies. This includes providing avenues for affected parties to seek compensation, redress, and accountability for climate-related harm. Governments should establish legal frameworks, administrative procedures, and judicial mechanisms that enable affected individuals to assert their rights and seek appropriate remedies for economic losses.*⁴⁹

9. Policies enhancing international cooperation; and

*Exemplary responses: Countries should collaborate with each other, in line with their obligations under the IACHR, to prevent and address economic damage and losses associated with climate change. This may involve sharing best practices, providing financial and technical assistance to vulnerable countries, and engaging in collective efforts to reduce greenhouse gas emissions and promote sustainable development.*⁵⁰

10. Non-discrimination and equity policies.

*Exemplary responses: Countries should ensure non-discrimination and promote equity. Vulnerable and marginalized groups, including indigenous peoples, women, children, and people living in poverty, are often disproportionately affected by climate change impacts. Governments should adopt measures that address the specific groups' needs and vulnerabilities, ensuring that climate policies and actions do not exacerbate existing inequalities or discriminate against certain populations.*⁵¹

States should prioritize these enumerated rights and policies to the extent that they become financially or practically unrealistic or infringe on other, more fundamental public rights.

B.1.iv) Production of information and access to information on greenhouse gas emissions, air pollution, deforestation, and short-lived climate forcers; analysis of activities and sectors that contribute to emissions or other factors

⁴⁸ International Labor Organization. (2015). Guidelines for a just transition towards environmentally sustainable economies and societies for all. *International Labor Organization*, https://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/documents/publication/wcms_432859.pdf.

⁴⁹ For an analysis of climate risk factors, see OECD. (2021). Managing Climate Risks, Facing up to Losses and Damages. *OECD Publishing, Paris*, <https://doi.org/10.1787/55ea1cc9-en>.

⁵⁰ See Intergovernmental Panel on Climate Change. (2018). PCC 7: Public Education and Information Mechanisms (213). *Intergovernmental Panel on Climate Change*, https://www.ipcc.ch/site/assets/uploads/2018/03/ipcc_far_wg_III_chapter_07.pdf.

⁵¹ See Intergovernmental Panel on Climate Change. (2018). PCC 7: Public Education and Information Mechanisms (213). *Intergovernmental Panel on Climate Change*, https://www.ipcc.ch/site/assets/uploads/2018/03/ipcc_far_wg_III_chapter_07.pdf.

This Court has already laid out precedent regarding the need for States to disclose information on environmental harm absent a compelling written justification for doing otherwise, as described in section 1(a) of this Part.⁵² Because greenhouse gas emissions, air pollution, deforestation, short-lived climate forcers, and various emission-creating activities and sectors all may objectively contribute to potential human rights crises as outlined throughout this submission, States should thus have positive obligations to produce and explain information on such data or analyses in line with the policies described in section 1(a).

B.1.v) Determination of human impacts, such as human mobility – migration and forced displacement – effects on health and on life, non-economic losses, etc.

States have a broad responsibility to protect the right to life and health for communities whose forced displacement may be very consequential to their health. This responsibility includes preventing displacement both through short-term adaptative strategies and long-term mitigative policies. Part F of this submission explores migration and forced displacement in detail. States should employ section 1(b)'s discussion of just transition policies in addressing the short- and long-term human impacts of migration and forced displacement.

States should develop sound policies to identify populations most vulnerable to or affected by climate change. These groups may be geographical (those vulnerable due to proximity to potential coastal storms, drought, or sea level rise), financial (older adults, immigrant communities, or impoverished regions that cannot as easily adapt to environmental changes), or professional (those whose careers rely on particular weather and climate, such as outdoor tourism or agriculture).⁵³ Indigenous populations, female-headed households, the disabled, ethnic minorities, and other socially marginalized groups are especially vulnerable as a result of combined geographical, financial, and socio-economic conditions exacerbated by limited access to resources, services, and climate justice.⁵⁴ States must develop comprehensive procedures to adequately identify and monitor where such populations are concentrated - particularly through financial and demographic census work, as well as extensive public health surveillance measures.⁵⁵

B.2. Pursuant to State obligations under the American Convention, to what extent does access to environmental information constitute a right the protection of which is necessary to guarantee the rights to life, property, health, participation, and access to justice, among other rights that are negatively affected by climate change?

Access to environmental information is inherently, universally necessary in our objectively changing climate to guarantee the above fundamental rights and should itself be upheld as a fundamental right unless a State can narrowly, specifically, and in writing

⁵² *Marcel Claude Reyes et al. v. Chile*, Case 12.108, Report No. 60/03, Inter-Am. C.H.R., OEA/Ser.L/V/II.118 Doc. 70 rev. 2 at 222 (2003).

⁵³ EPA. (last visited 2023). Climate Impacts on Society. U.S. Environmental Protection Agency, <https://climatechange.chicago.gov/climate-impacts/climate-impacts-society#:~:text=Climate%20change%20may%20specially%20impact,considerable%20challenges%20from%20climate%20change.>

⁵⁴ The World Bank. (last visited 2023). Social Dimensions of Climate Change. *The World Bank*, [https://www.worldbank.org/en/topic/social-dimensions-of-climate-change.](https://www.worldbank.org/en/topic/social-dimensions-of-climate-change)

⁵⁵ For a comprehensive discussion of surveillance strategies, see Anthony Moulton & Paul Schramm. (2017). Climate Change and Public Health Surveillance: Toward a Comprehensive Strategy. *National Library of Medicine*, [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5603401/.](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5603401/)

demonstrate a valid objection in line with those restricted exceptions enumerated in Article 5(6) of the Escazú Agreement. Outside of these distinctly limited exceptions, States should favor dispersing environmental information relevant to climate change or any other environmental harm that may feasibly help protect the rights to life and humane treatment under Articles 4 and 5 of the Convention, as well as the rights to life, property, health, participation, & access to justice. However, as discussed in section 1(a) of this Part, States have a positive right to ensure adequate, truthful information delivery. Information hidden, convoluted, or misleading does not adequately protect human rights or public health; therefore, climate information accessibility through public websites, libraries, and educational programs remains critical.

Environmental education should be considered an obligatory right provided by States, given its particular importance and effectiveness in encouraging societal environmental consciousness. Worldwide, studies have demonstrated education to be a powerful means of generating green behavior.⁵⁶ A Spanish study has further found that environmental education and intrapersonal factors were the “main drivers” of “green behavior,” and that “human behavior [has] a critical role in protecting the environment.”⁵⁷

In sum, because States have an obligation to protect the public’s aforementioned rights, climate change poses a substantial threat to those rights, and environmental education is critical in fostering generational “green” behavior, States must have an additional positive obligation to not only publish environmental information onto accessible message boards or advisories but also actively to provide universal public environmental education.

⁵⁶ See, e.g., Varela-Candamio, L. et al. (2018). The importance of environmental education in the determinants of green behavior: A meta-analysis approach. *Journal of Cleaner Production*, Science Direct, https://www.sciencedirect.com/science/article/abs/pii/S0959652617322175?casa_token=0Sz3MwtXwxIAAAA:LLgyVSPyww5eBVVjeKAoaTScZbCxcV07e9jlgRjR7SRj5IYM5JYPWkw2duTxyw0O0phLJ5qO5As (Spain); Wang, Q. et al. (2022). Green returns to education: Does education affect pro-environmental attitudes and behaviors in China? *National Library of Medicine*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8812898/#:~:text=Our%20results%20indicate%20that%20the,positive%20influence%20on%20economic%20sustainability> (China); de Wetering et. al. (2021). Does environmental education benefit environmental outcomes in children and adolescents? A meta-analysis. *Journal of Environmental Psychology* (Vol. 81), <https://www.sciencedirect.com/science/article/pii/S0272494422000275> (Netherlands); Pirchio, S. et al. (2021). The Effects of Contact With Nature During Outdoor Environmental Education on Students’ Wellbeing, Connectedness to Nature and Pro-sociality. *Frontiers in Psychology* (Vol. 12), <https://www.frontiersin.org/articles/10.3389/fpsyg.2021.648458/full> (Italy); Roman Hoffmann & Raya Muttarak. (2020). Greening through schooling: understanding the link between education and pro-environmental behavior in the Philippines. *Environmental Research Letters* (Vol. 15), <https://iopscience.iop.org/article/10.1088/1748-9326/ab5ea0/pdf> (Philippines).

⁵⁷ Varela-Candamio, L. et al. (2018). The importance of environmental education in the determinants of green behavior: A meta-analysis approach. *Journal of Cleaner Production*, Science Direct, https://www.sciencedirect.com/science/article/abs/pii/S0959652617322175?casa_token=0Sz3MwtXwxIAAAA:LLgyVSPyww5eBVVjeKAoaTScZbCxcV07e9jlgRjR7SRj5IYM5JYPWkw2duTxyw0O0phLJ5qO5As.

C. Regarding the differentiated obligations of States in relation to the rights of children and the new generations in light of the climate emergency

Children are a vulnerable group particularly affected by climate change since the decisions taken today will affect how they will enjoy their rights in the future. The children need special protection for their right to a healthy environment because of their vulnerability and the long-term risk created by climate change. Considering this particular situation, we highlight some aspects to consider when raising the questions presented by the States of Colombia and Chile.

As mentioned by the Court, the right to a healthy environment includes substantive rights (to life, humane treatment, health, or property) and procedural rights (to freedom of expression and association, information, and participation in decision-making, for example, when deciding public policies).⁵⁸ This explains why the request for an advisory opinion divided this chapter into two questions regarding children's rights. Therefore, this first part will focus on substantive rights and the second on procedural rights. The Court "requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures."⁵⁹

C.1. What is the nature and scope of the obligation of a State Party to adopt timely and effective measures with regard to the climate emergency in order to ensure the protection of the rights of children derived from its obligations under Articles 1, 4, 5, 11 and 19 of the American Convention?

The substantive right to life (art. 4), humane treatment (art. 5), and privacy (art. 11) are some of the rights derived from the right to a healthy environment.⁶⁰ On top of the child's right to protection measures (art. 19), the Convention on the Rights of the Child includes the right to life, survival, and development (art. 6), the right to the highest attainable standard of health (art. 24), and the principle that all institutions should work with the child's best interests as a primary consideration (art. 3).⁶¹

Considering the children a vulnerable group whose right to a healthy environment has been affected by the climate emergency, the question can be rephrased as whether the State has an obligation to protect from the affection produced by the climate emergency the right to life, human treatment, and privacy related to the children's right to a healthy environment. In other words, how should states protect children's lives and humane treatment from climate emergencies?

⁵⁸ Inter-American Court of Human Rights, Advisory Opinion OC-17/2002, para. 64 (Inter-American Court of Human Rights August 28, 2002).

⁵⁹ Committee on the Rights of the Child, "General Comment No. 5, General Measures of Implementation of the Convention on the Rights of the Child," CRC/GC/2003/5, November 27, 2003, 4, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/455/14/PDF/G0345514.pdf?OpenElement>.

⁶⁰ Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights, para 64 (Inter-American Court of Human Rights November 17, 2017).

⁶¹ UN General Assembly, "Convention on the Rights of the Child," Resolution 44/25 § (1989), arts. 24 and 3, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

On the one hand, the Inter-American Co heard two cases concerning children's rights to a healthy environment. First, in the case *Comunidad de La Oroya v. Perú*,⁶² the Commission reported that the Peruvian State failed to take measures to protect children's health from the risk produced by the pollution of the environment caused by the metallurgy industry in Peru.⁶³ Second, in the case *Pueblos Indígenas Tagaeri y Taromenane v. Ecuador*, the Commission reported that two girls who were part of a self-isolated and ecosystemic indigenous people Taromenane were not protected from being separated from their people. This separation happened after third parties killed their parents in the context of a conflict caused by a project affecting their protected territories, natural resources, and form of life.⁶⁴ The Court has not yet decided on these two cases, but it shows the increasing need for protecting children's rights from human rights violations caused by the interest to exploit natural resources (interests different from children's interests) and resource conflicts generated by climate change.

On the other hand, in other human rights regional systems, the European Court of Human Rights ordered the Istanbul City Council to compensate a child for losing his house and relatives in an explosion of methane gases in a rubbish tip used for waste storage because the city did not take preventive measures.⁶⁵ The African System of Human Rights has not decided on any particular case related to children's right to a healthy environment. Nevertheless, the African Charter on Human and Peoples' Rights introduced the right to a "general satisfactory environment favourable to their development."⁶⁶ Even if not applicable to American countries, the concept of favorable development poses the helpful question of what would be a healthy environment for children's development. Coming back to the IACtHR, the Court mentioned that the State is obliged to protect the children's environment for healthy development:

"[E]xtreme weather events and increased water stress already constitute leading causes of malnutrition and infant and child mortality and morbidity. Likewise, increased stress on livelihoods will make it more difficult for children to attend school. Girls will be particularly affected as traditional household chores, such as collecting firewood and water, require more time and energy when supplies are scarce. Moreover, like women, children have a higher mortality rate as a result of weather-related disasters."⁶⁷

Therefore, places where children live should be protected to secure a healthy environment. Schools, parks, and public spaces mainly used by children should be protected to secure a healthy environment. States must abstain from pollution,⁶⁸ guarantee protection and

⁶² Corte Interamericana de Derechos Humanos, Caso Comunidad de La Oroya Vs. Perú. Resolución de convocatoria a audiencia (Corte Interamericana de Derechos Humanos July 12, 2022).

⁶³ Inter-American Commission of Human Rights, "Case Before IA Court on Peru's Responsibility for the Effects of Contamination in La Oroya Community," October 14, 2021, https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/274.asp.

⁶⁴ Corte Interamericana de Derechos Humanos, Caso Pueblos Indígenas Tagaeri y Taromenane Vs. Ecuador. Resolución de convocatoria a audiencia (Corte Interamericana de Derechos Humanos July 19, 2022).

⁶⁵ Grand Chamber, Judgment, case Öneriyildiz v. Turkey, application no. 48939/99 (European Court of Human Rights November 30, 2004).

⁶⁶ Organization of African Unity, "African Charter on Human and Peoples' Right" (1981), art. 24, https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf.

⁶⁷ Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights, para 67.

⁶⁸ Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights, para 117.

preservation,⁶⁹ and implement due diligence by prevention and precaution.⁷⁰ States are obliged to regulate, supervise, and monitor the environment; at least in this case, in schools and parks, to protect the places where children live and grow. The household is also a place to protect where the right to live in a healthy environment includes access to clean water and non-polluted food. The UN independent expert report explains that:

“The rights of children, too, may be particularly affected by environmental degradation. The Convention on the Rights of the Child states that environmental pollution poses “dangers and risks” to nutritious foods and clean drinking water (art. 24, para. 2(c). In its concluding observations on country reports, the Committee on the Rights of the Child regularly addresses environmental hazards as barriers to the realization of the right to health and other rights. The Special Rapporteur on hazardous substances and wastes has emphasized the harm to children’s rights to health caused by exposure to mercury and other hazardous substances in extractive industries (A/HRC/21/48, paras. 28–30).”⁷¹

According to this excerpt, children’s environment close to extractive industries is usually affected, mainly where the industries use mercury and hazardous substances. Therefore, States should take specific measures to protect children’s environment when they live close to these industries. In conclusion, States must protect the rights to a healthy environment increasingly affected by the climate change emergency by avoiding pollution, monitoring their environment, and securing places where children can develop freely.

C.2. What is the nature and scope of a State Party’s obligation to provide children with significant and effective means to express their opinions freely and fully, including the opportunity to initiate or, in any other way, to participate in any administrative or judicial proceedings concerning prevention of the climate change that represents a threat to their lives?

The nature and the scope of a State Party’s obligation to provide children with significant and effective means to express their opinion freely and fully concerning the prevention of the climate is determined by States’ obligation to protect the right to a healthy environment and related human rights discussed above. The Convention on the Rights of the Child includes the right to express one’s views and to have those views in accordance with the age and maturity of the child.⁷² Among the obligation of diligence, the Court identified the “obligation of procedure”, which is the possibility to participate in public policies, such as environmental studies.⁷³ According to this idea, two questions arise:

1. Where can children freely and fully express their opinion concerning the climate crisis, including the opportunity to participate in any administrative or judicial proceedings?

⁶⁹ Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights, para 119.

⁷⁰ Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights, para 124–125.

⁷¹ Knox John H, “Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment” (UN General Assembly, Human Rights Council, December 30, 2013), para. 24, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/192/11/PDF/G1319211.pdf?OpenElement>.

⁷² UN General Assembly, Convention on the Rights of the Child, 12.

⁷³ Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights para 167.

2. Do the children have particular difficulties expressing their opinion concerning the climate change crisis?

Several cases where children raised their voices on such issues answer these questions. Different names come to our mind before even researching, names such as Greta Thunberg (the Swedish environmental activist who, when 16 years old, asked the countries' world leaders "how dare you" in the 2019 UN Climate Action Summit),⁷⁴ and Francisco Vera (the Colombian 12-year-old environmental activist who requested the Colombian Congress⁷⁵ and the Conference of the Parties at the COP26⁷⁶ to legislate for the right to live. We do not need to state further to say that children have been one of the main actors in raising awareness for the protection of the environment and making a worldwide call for protecting the right to live. Despite the difficulty acceding to the COP26 or the national congresses, some have been able to do it. Recognizing this fact, the Human Rights Council reported that:

"As today's children and young persons will shape the world of tomorrow, children are central actors in promoting behavior change required to mitigate the effects of global warming. Children's knowledge and awareness of climate change also influence wider households and community actions."⁷⁷

How many could not reach these policy/legislative forums is unclear, but the judicial proceedings tell a more visible story. Some American countries have protected children's access to justice administration, but others have not. In Colombia, 25 children, adolescents, and young adults from 7 to 25 years old sued the government for violating the rights of future generations because of permitting the deforestation of the Colombian Amazon. The Supreme Court decided that 12 children had standings to sue because their specific regions were particularly affected by uncontrolled deforestation. The Court recognized the rights of future generations and ordered the government to include the plaintiffs in the process of creating a public policy to protect the Amazon. This is based on the holding that logging in the Amazon directly harms future generations because of uncontrollable CO2 emissions producing a greenhouse effect and, therefore, the transformation of ecosystems where the children live.⁷⁸ In Mexico, 113 children in Cancun sued the federal government and municipalities for destroying the Tajamar mangroves to develop tourism. The Cancun Tribunal dismissed the suit, considering the children did not have standing to sue; later, the Supreme Court sent back the case for a decision on the merits because they recognized children's rights to sue. The decision prohibited new constructions in the area and ordered the restoration of the mangroves.⁷⁹ In 2019, a court ordered the re-opening of the mangroves to vehicle traffic after a child plaintiff, represented by his father, sued it. In the United States, 21 children of the youth NGO Earth

⁷⁴ Thunberg, Greta, *How Dare You?* (The Telegraph, 2019), <https://www.youtube.com/watch?v=xVIRompclYE>, accessed 06/29/2023.

⁷⁵ Vera Manzanares, Francisco Javier, *Niño Ambientalista Solicitó a Los Congresistas "Legislar Para La Vida"* (El Espectador, 2019), <https://www.youtube.com/watch?v=TkGJrQnLcoA>, accessed 06/29/2023.

⁷⁶ Vera Manzanares, *El Esperpéntico Discurso Del "Greta" Latino, Francisco Vera, Un Colombiano de 13 Años* (LibertadDigital, 2022), <https://www.youtube.com/watch?v=wX42vSxQ-gw>, accessed 06/29/2023.

⁷⁷ Human Rights Council, "Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights" (United Nations General Assembly, January 15, 2009), para. 49, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/103/44/PDF/G0910344.pdf?OpenElement>.

⁷⁸ Luis Armando Tolosa Villabona, Sentencia STC4360 (Colombian Supreme Court, Civil Cassation Chamber April 5, 2018).

⁷⁹ Suprema Corte de la Justicia de la Nación, Segunda Sala, Amparo en revisión 659/2017 (Suprema Corte de Justicia de la Nación, Segunda Sala March 14, 2018).

Guardian sued the US federal government for the actions causing climate change, particularly the support to the fossil fuel industry and the lack of CO2 emissions regulation. The Appeals Court decided the children had no standing to sue. In 2020, they filed a petition for rehearing, which was decided in 2022.⁸⁰ These three countries reacted differently to the children's participation in judicial proceedings. These are examples of why protecting children's rights to express their opinions in judicial and administrative processes is necessary.

This is not only a regional problem, but the issue is also raised worldwide. In the Philippines, 45 children, their parents, and the Philippine Ecological Network presented a class action to sue the government to cancel all existing timber licenses because of the excessive logging. The Supreme Court sent the case back to the lower Court, considering that the children had standing to sue on behalf of themselves and future generations and because they had cause of action based on the right to a balanced and healthful ecology. Nevertheless, the children did not have the funds to continue the case.⁸¹ In the Netherlands, The Urgenda Foundation, including some children among 886 individuals, sued the government for not reducing CO2 emissions. The Trial Court rejected Urgenda's claim,⁸² but the Appeal Court favored Urgenda.⁸³ In India, a 9-year-old child, represented by her father, sued the government for failing to regulate and reduce greenhouse gas emissions. In 2019, the State court dismissed the case, and the plaintiff appealed to the Supreme Court, which sent the ongoing case to the Green Tribunal.⁸⁴

These American and worldwide examples demonstrate that children's right to express their opinions in judicial proceedings and administrative decisions has not always been respected. To protect this right, the Inter-American Court should recommend that States develop protocols to facilitate children's access to their rights by eliminating age requirements, facilitating representatives to help them participate in adult discussions, and monitoring with particular attention any intent of children to participate in these topics to make sure that their right is not being violated.

⁸⁰ Supreme Court of the United States, *West Virginia v. Environmental Protection Agency* (Supreme Court of the United States June 30, 2022).

⁸¹ Supreme Court of the Philippines, *Minors Oposa v. Factoran or Minors Oposa*, No. No. 101083, 224 S.C.R.A. 792 (Supreme Court of the Philippines July 30, 1993).

⁸² The Hague Court of Appeal, Civil-law Division, *Urgenda Foundation v. State of the Netherlands*, No. 200.178.245/01 (The Hague Court of Appeal, Civil-law Division September 10, 2018).

⁸³ Supreme Court of the Netherlands, *Urgenda Foundation v. State of the Netherlands*, No. 19/00135 (Supreme Court of the Netherlands December 20, 2019).

⁸⁴ National Green Tribunal of India, *Ridhima Pandey v. State of Uttarakhand*, No. 429/2022, accessed July 16, 2023.

D. Regarding State obligations arising from consultation procedures and judicial proceedings owing to the climate emergency

This court has, in previous opinions, recognized an “undeniable link between the protection of the environment and the enjoyment of other human rights.”⁸⁵ These rights, such as the right to life, among others guaranteed by the American Convention, have been read consistently by this court as *positive obligations* of states to not merely refrain from depriving persons subject to their jurisdiction of these rights but to take all appropriate measures to protect and preserve these rights.⁸⁶ Such rights are not merely guaranteed against violation by state actors; the state has an obligation to guard such rights against violations by third parties in the private sphere as well.⁸⁷

The case of Velásquez Rodríguez v. Honduras referred to this double obligation of, first, respecting rights and liberties and, second, guarantee the free and full exercise of the rights in the Convention, such as the right to life and the right recognized by the Court to a live in a healthy environment. In this case, the Court explained that the second obligation includes the duty of States to organize the governmental apparatus to ensure the free and full exercise of human rights, which encompass the obligation to prevent, monitor, and sanction any violation of rights in the Convention. It also considers necessary the restoration of violated rights and repair the harm caused by such violations.⁸⁸

Additionally, Article 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (the Protocol of San Salvador) explicitly recognizes a right to a healthy environment.⁸⁹ Notably, that right to a healthy environment exists as an autonomous right, even in lieu of potential harm to individuals.⁹⁰ Finally, various overlapping declarations provide for specific consideration for indigenous communities and a right to both a healthy environment as well as consultation by their state for those communities prior to the approval of projects that may affect those communities.⁹¹

D.1. What is the nature and scope of a State Party’s obligation in relation to the establishment of effective judicial remedies to provide adequate and timely protection and redress for the impact on human rights of the climate emergency?

The climate emergency has significant implications for human rights. The UN’s Council on Human Rights has resolved that “climate change-related impacts have a range of

⁸⁵ Inter-American Court of Human Rights, Case of Kwas-Fernández v. Honduras, Judgment Merits, Reparations and Costs (Inter-American Court of Human Rights April 3, 2009), para. 148.

⁸⁶ Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights (Inter-American Court of Human Rights November 17, 2017), para. 66 and 108.

⁸⁷ Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights (Inter-American Court of Human Rights November 17, 2017), para. 118.

⁸⁸ Inter-American Court of Human Rights, Case of Velásquez-Rodríguez v. Honduras, Judgement on Reparations and Costs (Inter-American Court of Human Rights July 21, 1989), para. 166.

⁸⁹ Organization of American States (OAS), “Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social And Cultural Rights ‘Protocol of San Salvador,’” A-52 § (1999), art. 11.

⁹⁰ Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights (Inter-American Court of Human Rights November 17, 2017), para. 62.

⁹¹ UN General Assembly, “United Nations Declaration on the Rights of Indigenous Peoples,” A/RES/61/295 § (2007), art. 32; Organization of American States (OAS), “American Declaration on the Rights of Indigenous Peoples,” AG/RES.2888 § (2016), art. 29.

implications, both direct and indirect, for the effective enjoyment of human rights.”⁹² Brazil’s Supreme Court, responding to the paralysis of the country’s Climate Fund under the Bolsonaro government, recently recognized the human rights character of Brazil’s many multilateral environmental commitments under international law, such as the Kyoto Protocol and Paris Agreement as well as the constitutional and non-discretionary nature of these commitments. As the court remarked, “environmental protection is not part of the Chief Executive’s political judgment of convenience and opportunity. It is an obligation which the Chief Executive is bound to fulfill,” and, quoting the UNEP representative in Brazil, “There are no human rights on a dead or sick planet.”⁹³

The Brazilian judiciary is not alone in coming to this conclusion. In Pakistan, the Lahore High Court similarly recognized the interwoven nature of human rights and the climate emergency in *Leghari v. Federation of Pakistan*, suggesting that the rights to life, human dignity, property, and information provide the “necessary judicial toolkit” for overseeing state action on the climate emergency.⁹⁴ The Dutch Supreme Court reached a similar conclusion, ruling that the state’s failure to achieve those climate targets deemed scientifically necessary for protecting and preserving human rights was illegal under the country’s national and international obligations.⁹⁵

It is well-established that a state has a comprehensive obligation to provide effective judicial remedies sufficient to protect and preserve human rights, including the right to a healthy environment as well as the associated rights to life and security, which cannot exist without a healthy environment.⁹⁶ Article 2 of the American Convention on Human Rights establishes, that State Parties have an obligation to adopt “such legislative or other measures as may be necessary to give effect to those rights or freedoms.”⁹⁷ Article 25 of the Convention establishes that, with regard to recourse against human rights violations, states have an obligation to ensure a competent legal system capable of providing effective judicial remedies.⁹⁸ The duties laid out in Article 2 and Article 25 are, as applied by this Court, distinct and comprehensive.⁹⁹ As this Court explained in *Case of the Saramaka People v. Suriname*,¹⁰⁰ reaffirming prior jurisprudence:

“The State’s obligation to provide judicial recourse is not simply met by the mere existence of courts or formal procedures or even by the possibility of resorting to the courts. Rather, the State has the duty to adopt positive measures to guarantee that the remedies it provides through

⁹² UN Human Rights Council, “Resolution on Human Rights and Climate Change,” Resolution 10/4 § (2009).

⁹³ Federal Supreme Court of Brazil, *PSB et al. v. Brazil* (Federal Supreme Court of Brazil July 1, 2022), pp. 16-17.

⁹⁴ Lahore High Court, *Ashgar Leghari v. the Federation of Pakistan* (Lahore High Court W.P. No. 25501 2015), pp. 6-7.

⁹⁵ Supreme Court of the Netherlands, *Urgenda Foundation v. State of the Netherlands*, No. 19/00135 (Supreme Court of the Netherlands December 20, 2019); The Hague Court of Appeal, Civil-law Division, *Urgenda Foundation v. State of the Netherlands*, No. 200.178.245/01 (The Hague Court of Appeal, Civil-law Division September 10, 2018).

⁹⁶ See David Kosar and Lucas Lixinski, *Domestic Judicial Design by International Human Rights Courts*, American Journal of International Law, Cambridge University Press: 20 January 2017.

⁹⁷ Organization of American States (OAS), “American Convention on Human Rights, ‘Pact of San Jose’” (1969), art. 2.

⁹⁸ Organization of American States (OAS), “American Convention on Human Rights, ‘Pact of San Jose’” (1969), art. 25.

⁹⁹ P 104 *Case of the Saramaka People v. Suriname*

¹⁰⁰ Inter-American Court of Human Rights, *Case of the Saramaka People v. Suriname*, Judgment Preliminary Objections, Merits, Reparations, and Costs (Inter-American Court of Human Rights November 28, 2007), para. 104.

the justice system are “truly effective in establishing whether there has been a violation of human rights and in providing redress.”¹⁰¹

In that particular case, the court found that remedies available through the Surinamese judiciary were insufficient on account of only being available to individuals and not to communities, in this case, the Saramaka people, who lacked formal recognition within the Surinamese legal framework. This ruling suggests a state obligation to make such judicial remedies available to group entities, even if read narrowly as applying only to indigenous communities, is particularly pertinent given the collectivized harms resulting from the climate emergency.

This court has yet to hear a contentious case, which requires it to consider the adequacy of domestic judicial remedies within the context of the climate emergency. However, it has been recognized that human rights can only be enjoyed within the context of a healthy environment, which in lieu of state mitigation, is in acute jeopardy due to the climate emergency. It has also been recognized that under the Convention, the state has a comprehensive obligation to protect persons subject to its jurisdiction from degrading their human rights. Thus, it reasonably follows that providing adequate and appropriate judicial remedies against acts that exacerbate the climate emergency is within the obligations provided for by the Convention.

Indeed, regarding the nexus of climate change, environmental justice, and human rights specifically, the Constitutional Court of Colombia in 2017 considered the availability of the remedies of *Amparo* and *tutela* to indigenous communities regarding the diversion of the Bruno River. The Court applied these remedies, intervening to suspend the project until estimates could be provided for several “context conditions,” including climate change’s impact on the local ecosystem.¹⁰² This judicial intervention represents a novel approach to ensuring state compliance with its human rights obligation to mitigate the climate emergency and could serve as a blueprint for this court and for other international and national courts.

D.2. To what extent should the consultation obligation take into account the consequences of an activity on the climate emergency or the emergency projections?

There exists within the Inter-American Human Rights System and, under international law, generally, an obligation to provide for consultation with indigenous communities on planned but potentially impactful projects. Under Article 32 of the UN Declaration on the Rights of Indigenous Peoples and Article 29 of the American Declaration on the Rights of Indigenous Peoples, states are obliged to consult and cooperate with indigenous peoples according to their customs and traditions with regard to the approval of projects which may affect their land.¹⁰³ In several prior cases, this Court has read that consultative obligation extends to projects that may have an environmental impact on indigenous peoples’ lands and that indigenous communities with interest should be invited to participate in the obligatory

¹⁰¹ Inter-American Court of Human Rights, Case of the Saramaka People v. Suriname, Judgment Preliminary Objections, Merits, Reparations, and Costs (Inter-American Court of Human Rights November 28, 2007), para. 177.

¹⁰² Constitutional Court of Colombia, Decision SU-698/17 (Constitutional Court of Colombia November 28, 2017).

¹⁰³ UN General Assembly, “United Nations Declaration on the Rights of Indigenous Peoples,” A/RES/61/295 § (2007), art. 32; Organization of American States (OAS), “American Declaration on the Rights of Indigenous Peoples,” AG/RES.2888 § (2016), art. 29.

environmental impact assessment.¹⁰⁴ Such impact assessments must also respect the traditions and culture of the indigenous peoples involved.¹⁰⁵

Although this Court has established that the consultative obligation applies to projects that pose potential environmental harm to indigenous lands, it has not explicitly addressed the scope of the consultative obligation in the context of climate change. The aforementioned Bruno River case provides a helpful example and potential blueprint. Here, the indigenous Wayuu people faced a loss of access to water, both due to the diversion of the river and climate change-induced drought and challenged the diversion project because the relevant bodies had failed to consult them. On these grounds, the Colombian Court enjoined the action, highlighting in particular the region's high vulnerability and the Wayuu people who live there to the adverse effects of climate change.¹⁰⁶ Thus, a heightened scope of consultative obligation may arise in regions and for indigenous communities, which are especially vulnerable to the effects of the climate emergency.

Under international law, a consultative obligation to other potentially affected states exists as well¹⁰⁷ As established by the Rio Declaration, regarding projects with a potential environmental impact, there is an obligation to consult “at an early stage and in good faith.”¹⁰⁸ Notably, this obligation differs from the consultative obligation owed to indigenous communities.¹⁰⁹ It requires the state of origin “to take into consideration the various interests involved, to seek to give them every satisfaction compatible with the pursuit of its own interests, and to show that in this regard it is genuinely concerned to reconcile the interests of the other [...] States with its own.”¹¹⁰ While there does not exist much jurisprudence from this Court or others addressing to what degree, if any, the needs and concerns raised by the climate emergency impact the transboundary consultative obligation, similar to the expanded scope of the indigenous consultative obligation, it is reasonable to assert that the heightened vulnerability to climate change of specific countries and of certain regions obligates a more rigorous consultation in some instances.

¹⁰⁴ Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights (Inter-American Court of Human Rights November 17, 2017), para. 166.

¹⁰⁵ Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights (Inter-American Court of Human Rights November 17, 2017), para. 169.

¹⁰⁶ Constitutional Court of Colombia, Decision SU-698/17 (Constitutional Court of Colombia November 28, 2017).

¹⁰⁷ Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights (Inter-American Court of Human Rights November 17, 2017), para. 197.

¹⁰⁸ UN General Assembly, “Report of the United Nations Conference on Environment and Development” (Rio de Janeiro, August 12, 1992) principle 19, https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf.

¹⁰⁹ Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights (Inter-American Court of Human Rights November 17, 2017), para. 197.

¹¹⁰ Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights (Inter-American Court of Human Rights November 17, 2017), para. 199.

E. Regarding the Convention-based obligations of prevention and the protection of territorial and environmental defenders, as well as women, indigenous peoples, and Afro-descendant communities in the context of the climate emergency

E.1. What measures and policies should States adopt to facilitate the work of environmental human rights defenders?

To facilitate the work of environmental human rights defenders (“EHRD”), States must promote holistic research and advocacy, intra- and inter-state, that applies a multifaceted approach focusing on intersectionality and amplifying marginalized voices.¹¹¹ Mexico’s position in the Economic Commission for Latin America and the Caribbean’s Report of the First Annual Forum on Human Rights Defenders in Environmental Matters in Latin America and the Caribbean (“ECLAC’s First Annual Forum”) underscored the importance of this approach.¹¹² Emphasizing the importance of centering the perspectives of Indigenous communities, women, and other EHRD, the Mexican representative reminded the conference that EHRD is particularly vulnerable because their rights are frequently violated, violators regularly enjoy impunity for their crimes, and EHRD’s work remains under-recognized.¹¹³

State action should encompass support for both quantitative and qualitative research methods; not only must States collect and disseminate reliable data about quantifiable climate events (e.g., deforestation acreage, water pollution, increased temperatures, sea-level rise, earthquake magnitude) but also engage EHRD and their communities about their experiences with specific impacts and threats. Additionally, it is crucial to facilitate the synthesis, publication, and dissemination of these findings, ensuring they reach a wider audience.¹¹⁴ While states should collect data at the national and regional levels, they also must ensure that information reaches impacted communities and policymakers; providing information only upon request is the bare minimum.¹¹⁵ To facilitate adequate collection and analysis of regional data, higher-income States should provide supplementary funding to ensure that lower-income States can fully participate. The effects of the climate emergency and the work of EHRD are not limited by

¹¹¹ E.g., Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean [Treaty No. XXVII.18], arts. 9(2), 11(1)-(3) (2018), <https://www.cepal.org/en/subsidiary-bodies/regional-agreement-access-information-public-participation-and-justice/text-regional-agreement>.

¹¹² Economic Commission for Latin America and the Caribbean (ECLAC), *Report of the First Annual Forum on Human Rights Defenders in Environmental Matters in Latin America and the Caribbean*, Seminars and Conferences series, No. 102 (LC/TS.2023/38), 26-27 (2023), <https://repositorio.cepal.org/server/api/core/bitstreams/011364b2-3d9a-4089-a69f-046b69ac6e4f/content>.

¹¹³ Economic Commission for Latin America and the Caribbean (ECLAC), *Report of the First Annual Forum on Human Rights Defenders in Environmental Matters in Latin America and the Caribbean*, Seminars and Conferences series, No. 102 (LC/TS.2023/38), 26-27 (2023), <https://repositorio.cepal.org/server/api/core/bitstreams/011364b2-3d9a-4089-a69f-046b69ac6e4f/content>.

¹¹⁴ E.g., Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean [Treaty No. XXVII.18], art. 5 (2018), <https://www.cepal.org/en/subsidiary-bodies/regional-agreement-access-information-public-participation-and-justice/text-regional-agreement>.

¹¹⁵ E.g., Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean [Treaty No. XXVII.18], art. 6(1)-(2), 6(6) (2018), <https://www.cepal.org/en/subsidiary-bodies/regional-agreement-access-information-public-participation-and-justice/text-regional-agreement>.

national borders, which States cannot allow to limit the effective collection of comprehensive data.¹¹⁶

States should host meetings and conferences to foster collaboration among diverse stakeholders, including academics, community leaders, EHRD (primarily Indigenous and women representatives), and government officials, to formulate policy recommendations based on their collective findings.¹¹⁷ Effective compliance with the Escazú principles requires that governments meaningfully engage with EHRD and integrate findings into all levels – regional, national, provincial, and local – of official State policy. Such integration of the work of EHRDs into policy frameworks is essential to guarantee that their insights and advocacy efforts translate into tangible State action.

Conferences should prioritize the work and experiences of affected communities, integrating their insights into climate adaptation and disaster preparedness plans. For example, the University of São Paulo Fundação Getulio Vargas School of Law’s Sustainable Development Clinic, a member of the regional Alianza de Clinicas Juridicas Ambientales de Latinoamerica y el Caribe, monitors the living conditions of people displaced by projects such as the Belo Monte dam. They do so by mobilizing local leaders, directly engaging with displaced individuals, and providing training in environmental rights, which are the community’s unique experiences and vulnerabilities. This holistic approach ensures that warning systems and emergency evacuation plans are in place and consider specific community feedback and realities.¹¹⁸ By bringing together such innovators, States can facilitate the implementation of additional community-focused resources and policies.

EHRD, especially in the Latin American and Caribbean regions,¹¹⁹ are vulnerable to violent retaliation for their advocacy work.¹²⁰ The absence of government officials and lack of accountability in remote and rural areas leave these communities particularly vulnerable.¹²¹ In order to assist EHRD’s on-the-ground work, States must provide security in the regions and

¹¹⁶ See, e.g., Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean [Treaty No. XXVII.18], art. 11(2)-(5) (2018), <https://www.cepal.org/en/subsidiary-bodies/regional-agreement-access-information-public-participation-and-justice/text-regional-agreement>.

¹¹⁷ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean [Treaty No. XXVII.18], art. 11(3)-(4) (2018), <https://www.cepal.org/en/subsidiary-bodies/regional-agreement-access-information-public-participation-and-justice/text-regional-agreement>; Economic Commission for Latin America and the Caribbean (ECLAC), *Report of the First Annual Forum on Human Rights Defenders in Environmental Matters in Latin America and the Caribbean*, Seminars and Conferences series, No. 102 (LC/TS.2023/38), 24-27 (2023), <https://repositorio.cepal.org/server/api/core/bitstreams/011364b2-3d9a-4089-a69f-046b69ac6e4f/content>.

¹¹⁸ Economic Commission for Latin America and the Caribbean (ECLAC), *Report of the First Annual Forum on Human Rights Defenders in Environmental Matters in Latin America and the Caribbean*, Seminars and Conferences series, No. 102 (LC/TS.2023/38), 24 (2023), <https://repositorio.cepal.org/server/api/core/bitstreams/011364b2-3d9a-4089-a69f-046b69ac6e4f/content>.

¹¹⁹ Global Witness, *Decade of Defiance: Ten years of reporting land and environmental activism worldwide*, 9, Sept. 2022 (updated May 10, 2023), <https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/#recommendations>.

¹²⁰ E.g., Global Witness, *Decade of Defiance: Ten years of reporting land and environmental activism worldwide*, Sept. 2022 (updated May 10, 2023), <https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/#recommendations>.

¹²¹ E.g., Global Witness, *Decade of Defiance: Ten years of reporting land and environmental activism worldwide*, 11, 13, 21, Sept. 2022 (updated May 10, 2023), <https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/#recommendations>.

communities in which they operate.¹²² This is an indispensable part of States' Escazú duties and ability to understand and implement recommendations from EHRD working in the most dangerous areas.

After gathering data-based recommendations from diverse stakeholders, States should also conduct awareness campaigns, which play a pivotal role in promoting transparency and the public's right to access environmental information in accordance with the Escazú Agreement Article 5(1)'s maximum disclosure mandate. Such campaigns must give special consideration to addressing the challenges of reaching rural areas, indigenous people, and under-served populations.¹²³

Finally, mitigation measures and training are imperative for State departments and employees involved in facilitating the work of EHRD. Measures should include diverse hiring practices, officials' direct engagement with communities, and cultural and gender sensitivity training to ensure that the concerns and needs of marginalized groups – including women, low-income communities, indigenous peoples, and Afro-descendant populations – are duly considered in climate-related decision-making processes.¹²⁴

E.2. What specific considerations should be taken into account to guarantee the right of women human rights defenders to defend a healthy environment and the territory in the context of the climate emergency?

The Inter-American Court of Human Rights recognized the specific challenges faced by Women Human Rights Defenders (“WHRD”) in the context of climate change.¹²⁵ Governments must take concrete steps to guarantee the rights of WHRD as they work to defend a healthy environment and territory. WHRD is a critical voice in addressing the climate emergency, as they simultaneously have “specific and valuable knowledge” and suffer disproportionate harm in the context of climate change.¹²⁶ Due to women's integral roles in the

¹²² E.g., Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean [Treaty No. XXVII.18], art. 9(1) (2018), <https://www.cepal.org/en/subsidiary-bodies/regional-agreement-access-information-public-participation-and-justice/text-regional-agreement>; Economic Commission for Latin America and the Caribbean (ECLAC), *Report of the First Annual Forum on Human Rights Defenders in Environmental Matters in Latin America and the Caribbean*, Seminars and Conferences series, No. 102 (LC/TS.2023/38), 19 (2023) (presentation of Ángel González Ramírez, Director of Human Rights Policy and Management of the Ministry of Justice and Human Rights of Peru regarding multilevel protection mechanism of EHRD), <https://repositorio.cepal.org/server/api/core/bitstreams/011364b2-3d9a-4089-a69f-046b69ac6e4f/content>.

¹²³ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean [Treaty No. XXVII.18], art. 5(3)-(4) (2018), <https://www.cepal.org/en/subsidiary-bodies/regional-agreement-access-information-public-participation-and-justice/text-regional-agreement>.

¹²⁴ Economic Commission for Latin America and the Caribbean (ECLAC), *Report of the First Annual Forum on Human Rights Defenders in Environmental Matters in Latin America and the Caribbean*, Seminars and Conferences series, No. 102 (LC/TS.2023/38), 19-21 (2023), <https://repositorio.cepal.org/server/api/core/bitstreams/011364b2-3d9a-4089-a69f-046b69ac6e4f/content>.

¹²⁵ The Environment and Human Rights Requested by the Republic of Colombia, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A), para. 67 (Nov. 15, 2017).

¹²⁶ L. Aguilar Revelo, *Women's autonomy and gender equality at the centre of climate action in Latin America and the Caribbean*, Project Documents (LC/TS.2022/64), Economic Commission for Latin America and the Caribbean (ECLAC), 11 (2022) (citing Montevideo Strategy for Implementation of the Regional Gender Agenda within the Sustainable Development Framework by 2030 (LC/CRM.13/5) (2019)), <https://repositorio.cepal.org/server/api/core/bitstreams/76aba0a3-2e36-42ea-852f-2ce021115384/content>.

family and the community, experts have found that measures combatting gender discrimination and empowering women improve a community's resilience in the event of an extreme weather event.¹²⁷ However, “discriminatory, violent and patriarchal cultural patterns” and privilege mean that policy, scientific, and technical sectors often exclude women.¹²⁸ Even within their communities and families, women's attempts to contribute to discussions about environmental, land, and natural resource policies may result in ostracism and condemnation as “bad women” or “bad mothers.”¹²⁹

Structural gender inequality throughout the world, including the Latin American and Caribbean region, underlies the disproportionate harm that the climate emergency inflicts on women.¹³⁰ For example, women are significantly more likely to die during a climate emergency than men due to a variety of gender-discriminatory reasons.¹³¹ Addressing structural gender inequality includes protecting women's rights to employment, participate in public life, reproductive health, living free from sexual and gender-based violence, and self-determination. It will be impossible to guarantee the rights of WHRD without addressing the broader structural inequalities that disadvantage and marginalize women in all sections of society.

To address the disproportionate impact of the climate crisis on women and guarantee the rights of WHRD, States must increase women's participation in policy-making processes and institutions.¹³² A critical component of addressing systemic inequality is to incorporate women from low-income, rural, indigenous, and Afro-descendant backgrounds. These women play essential roles in their communities, which are at heightened risk from the climate emergency and often bear the brunt of climate risks. For example, experts have found that marginalized women experience higher rates of “asset erosion, cycles of poverty, and limits on adaptive capacity.”¹³³ Low-income women, particularly from rural and marginalized communities, are

¹²⁷ UN Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*, 15 January 2009, A/HRC/10/61, paragraph 46 (citing IPCC AR4 WGII Report, p. 398; International Strategy for Disaster Reduction, *Gender Perspectives: Integrating Disaster Risk Reduction into Climate Change Adaptation. Good Practices and Lessons Learned*, UN/ISDR 2008).

¹²⁸ L. Aguilar Revelo, *Women's autonomy and gender equality at the centre of climate action in Latin America and the Caribbean*, Project Documents (LC/TS.2022/64), Economic Commission for Latin America and the Caribbean (ECLAC), 11 (2022), <https://repositorio.cepal.org/server/api/core/bitstreams/76aba0a3-2e36-42ea-852f-2ce021115384/content>.

¹²⁹ L. Aguilar Revelo, *Women's autonomy and gender equality at the centre of climate action in Latin America and the Caribbean*, Project Documents (LC/TS.2022/64), Economic Commission for Latin America and the Caribbean (ECLAC), 21 (2022), <https://repositorio.cepal.org/server/api/core/bitstreams/76aba0a3-2e36-42ea-852f-2ce021115384/content> (citing Forst, M. (2018), “End of mission statement by Michel Forst, United Nations Special Rapporteur on the situation of human rights defenders on his visit to Honduras, 29 April to 12 May”, Geneva, Office of the United Nations High Commissioner for Human Rights (OHCHR), 11 May 2018, <https://www.ohchr.org/en/statements/2018/05/end-mission-statement-michel-forst-united-nations-special-rapporteur-situation>).

¹³⁰ L. Aguilar Revelo, *Women's autonomy and gender equality at the centre of climate action in Latin America and the Caribbean*, Project Documents (LC/TS.2022/64), Economic Commission for Latin America and the Caribbean (ECLAC), 7 (2022), <https://repositorio.cepal.org/server/api/core/bitstreams/76aba0a3-2e36-42ea-852f-2ce021115384/content>.

¹³¹ Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*, UN Doc. A/HRC/10/61, para. 45 (Jan. 15, 2009).

¹³² M. Picard, *Empowering Women in Climate, Environment and Disaster Risk Governance: From National Policy to Local Action*, United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), 5 (2021), https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15_Full_Report_High_Res.pdf.

¹³³ L. Aguilar Revelo, *Women's autonomy and gender equality at the centre of climate action in Latin America and the Caribbean*, Project Documents (LC/TS.2022/64), Economic Commission for Latin America and the

often responsible for household tasks that rely on natural resources (including food, water, and firewood), which become even more challenging during environmental crises.¹³⁴ Taking into account these women's lived experiences and suggested solutions are critical components of a comprehensive climate change strategy.

A second vital consideration regarding the protection of WHRD is the disproportionate and specific violence they experience as a result of their work. While violence is pervasive throughout the EHRD, WRHD are specific targets for sexual and gender-based violence ("SGBV").¹³⁵ Global Witness, an organization that tracks attacks on EHRD, found that nearly two-thirds of the WHRD killed in 2021 were Indigenous women, which underscores the need to ensure an intersectional approach to protecting WHRD's rights.¹³⁶ Local experts echo these concerns about the impact of SGBV on Indigenous women and girls, particularly in rural areas like the Amazon, where local officials estimate that 8 of 10 EHRD are women.¹³⁷

To address specific harms to WHRD in compliance with the Escazú Agreement, governments must develop effective reporting and accountability mechanisms that consider women's specific needs and vulnerabilities.¹³⁸ This requires significant investment in rural areas, where women have reported that they have to defend their communities and children with no outside support.¹³⁹ In order to develop meaningful mechanisms, States must provide information to local communities about their rights and how to report violations. To provide safe reporting spaces, States must prioritize gender-diverse employment and implement comprehensive gender-sensitive training for all levels of law enforcement and prosecution officials. Finally, the State must provide translation services in all levels of accountability mechanisms to ensure adequate access by marginalized communities.

Caribbean (ECLAC), 11 (2022), <https://repositorio.cepal.org/server/api/core/bitstreams/76aba0a3-2e36-42ea-852f-2ce021115384/content>.

¹³⁴ L. Aguilar Revelo, *Women's autonomy and gender equality at the centre of climate action in Latin America and the Caribbean*, Project Documents (LC/TS.2022/64), Economic Commission for Latin America and the Caribbean (ECLAC), 11 (2022) (citing Olsson, L. and others (2014), "Livelihoods and poverty", *Climate Change 2014: Impacts, Adaptation, and Vulnerability*, C. Field and others (eds.), Cambridge, Cambridge University Press), <https://repositorio.cepal.org/server/api/core/bitstreams/76aba0a3-2e36-42ea-852f-2ce021115384/content>.

¹³⁵ L. Aguilar Revelo, *Women's autonomy and gender equality at the centre of climate action in Latin America and the Caribbean*, Project Documents (LC/TS.2022/64), Economic Commission for Latin America and the Caribbean (ECLAC), 21 (2022), <https://repositorio.cepal.org/server/api/core/bitstreams/76aba0a3-2e36-42ea-852f-2ce021115384/content>.

¹³⁶ Global Witness, *Decade of Defiance: Ten years of reporting land and environmental activism worldwide*, 11, Sept. 2022 (updated May 10, 2023), <https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/#recommendations>.

¹³⁷ E.g., Economic Commission for Latin America and the Caribbean (ECLAC), *Report of the First Annual Forum on Human Rights Defenders in Environmental Matters in Latin America and the Caribbean*, Seminars and Conferences series, No. 102 (LC/TS.2023/38), 17, 19-20 (2023) <https://repositorio.cepal.org/server/api/core/bitstreams/011364b2-3d9a-4089-a69f-046b69ac6e4f/content>.

¹³⁸ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean [Treaty No. XXVII.18], arts. 8(4)(3), 9(3) (2018), <https://www.cepal.org/en/subsidiary-bodies/regional-agreement-access-information-public-participation-and-justice/text-regional-agreement>.

¹³⁹ E.g., Economic Commission for Latin America and the Caribbean (ECLAC), *Report of the First Annual Forum on Human Rights Defenders in Environmental Matters in Latin America and the Caribbean*, Seminars and Conferences series, No. 102 (LC/TS.2023/38), 17, (2023) (presentation of Elvira Jossa, an Indigenous leader in Colombia) <https://repositorio.cepal.org/server/api/core/bitstreams/011364b2-3d9a-4089-a69f-046b69ac6e4f/content>.

E.3. What specific considerations should be taken into account to guarantee the right to defend a healthy environment and the territory based on intersectional factors and differentiated impacts, *inter alia*, of indigenous peoples, peasant farmer communities, and Afro-descendant persons in the context of the climate emergency?

As Latin America and the Caribbean remain by some measures the “most unequal region in the world,”¹⁴⁰ it is critical that States incorporate the intersectional impact of the climate emergency on the rights of indigenous peoples, peasant farmers, and people of African descent (“PAD”).

An indispensable element of protecting Indigenous rights is Indigenous peoples’ collective property rights to their territories. This Court has held that collective ownership requires State protection of Indigenous territories because those specific territories and their natural resources “are necessary for the very survival, development, and continuity of [Indigenous] ways of life.”¹⁴¹ The loss of land and native species integral to Indigenous ways of life poses a significant threat to collective land rights. Displacement from traditional areas of land not only disrupts specific ways of life but also leads to the erosion of traditional knowledge. Many Latin American and Caribbean countries grapple with land tenure issues, often tied to corporate interests, which further exacerbate the challenges Indigenous communities face in preserving their cultural heritage, way of life, and survival.¹⁴²

Despite legal protection of Indigenous land rights, States have struggled with the mandate to protect these rights in pursuit of economic and infrastructure development, sometimes even in pursuit of otherwise “green” climate-friendly development. For example, Guatemala’s hydropower projects ran afoul of the Q’eqchi’ peoples’ water rights and access to sacred rivers in their territory. Without consulting the Q’eqchi’, the government authorized the construction of “mega” projects. The resulting protests have led to criminal charges against community leaders, further infringing on their rights and weakening the community.¹⁴³ States must rectify

¹⁴⁰ L. Aguilar Revelo, *Women’s autonomy and gender equality at the centre of climate action in Latin America and the Caribbean*, Project Documents (LC/TS.2022/64), Economic Commission for Latin America and the Caribbean (ECLAC), 9 (2022), <https://repositorio.cepal.org/server/api/core/bitstreams/76aba0a3-2e36-42ea-852f-2ce021115384/content>.

¹⁴¹ Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights, para. 48; Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs; Judgment of June 17, 2005. Series C No. 125, para. 137; Case of the Sawhoyamaya Indigenous Community v.

Paraguay. Merits, reparations and costs; Judgment of March 29, 2006. Series C No. 146, para. 118; Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations and costs. Judgment of November 28, 2007. Series C No. 172, paras. 121 - 122, and Case of the Kaliña and Lokono Peoples v. Suriname, para. 173.

¹⁴² E.g., Economic Commission for Latin America and the Caribbean (ECLAC), *Report of the First Annual Forum on Human Rights Defenders in Environmental Matters in Latin America and the Caribbean*, Seminars and Conferences series, No. 102 (LC/TS.2023/38), 23 (2023), <https://repositorio.cepal.org/server/api/core/bitstreams/011364b2-3d9a-4089-a69f-046b69ac6e4f/content>; Global Witness, *Decade of Defiance: Ten years of reporting land and environmental activism worldwide*, 27-28, Sept. 2022 (updated May 10, 2023), <https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/#recommendations>.

¹⁴³ Economic Commission for Latin America and the Caribbean (ECLAC), *Report of the First Annual Forum on Human Rights Defenders in Environmental Matters in Latin America and the Caribbean*, Seminars and Conferences series, No. 102 (LC/TS.2023/38), 17 (2023) (presentation of Bernard Caal Xol, a Q’eqchi’ leader and environmental human rights defender), <https://repositorio.cepal.org/server/api/core/bitstreams/011364b2-3d9a-4089-a69f-046b69ac6e4f/content>.

their frequent failure to incorporate Indigenous rights and voices into decision-making by actively soliciting and prioritizing communities' input and needs.

Low-income, small-scale farmers experience similar threats to their land as Indigenous people despite similar concerns regarding the protection of their rights.¹⁴⁴ Like Indigenous EHRD, peasant farmers are at significant risk of violence from illegal occupiers of their land, extreme climate events, pollution, and exploitation throughout the Latin American and Caribbean region.¹⁴⁵ In addition, their rural locations and small numbers make it difficult for them to defend their human rights, land tenure, and use of natural resources.¹⁴⁶ States must ensure the protection of farmers' land rights, which requires confronting corporate malfeasance, large-scale organized crime, and government corruption.

PAD are largely concentrated in urban areas,¹⁴⁷ which adds to the challenges they already face due to the ongoing legacy of racism, inequality, and marginalization in the Americas.¹⁴⁸ In rural areas, PAD experiences many of the same problems as Indigenous and peasant farmers: land seizures, violence, including sexual and gender-based violence, and lack of State support.¹⁴⁹ Broadly, States must work to address historical inequality and underrepresentation of PAD. In addition to protecting from violence and ensuring accountability, state guarantees of PAD rights to health, housing, education, and representation in government and policymaking would make a significant difference in the community's survival and resilience amid the climate emergency.¹⁵⁰ Specifically, States must address PAD's particular vulnerability to fire and flooding due to substandard and overcrowded housing, hurricanes and tsunamis in coastal areas, pollution, and a general lack of sanitation.¹⁵¹

¹⁴⁴ U.N.G.A. Human Rights Council, United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, 39th Sess., A/HRC/RES/39/12 (September 10-28, 2018).

¹⁴⁵ E.g., U.N.G.A. Human Rights Council, United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, 39th Sess., A/HRC/RES/39/12 (September 10-28, 2018); Global Witness, *Decade of Defiance: Ten years of reporting land and environmental activism worldwide*, 11, 13, 23, Sept. 2022 (updated May 10, 2023), <https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/#recommendations>.

¹⁴⁶ U.N.G.A. Human Rights Council, United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, 39th Sess., A/HRC/RES/39/12 (September 10-28, 2018); Economic Commission for Latin America and the Caribbean (ECLAC), *Report of the First Annual Forum on Human Rights Defenders in Environmental Matters in Latin America and the Caribbean*, Seminars and Conferences series, No. 102 (LC/TS.2023/38), 19, 29 (2023), <https://repositorio.cepal.org/server/api/core/bitstreams/011364b2-3d9a-4089-a69f-046b69ac6e4f/content>.

¹⁴⁷ Pan American Health Organization, *Health of Afro-descendant People in Latin America*, 4 (2021), https://iris.paho.org/bitstream/handle/10665.2/55856/9789275124895_eng.pdf?sequence=1&isAllowed=y.

¹⁴⁸ E.g., Pan American Health Organization, *Health of Afro-descendant People in Latin America*, iv-v (2021), https://iris.paho.org/bitstream/handle/10665.2/55856/9789275124895_eng.pdf?sequence=1&isAllowed=y; 2020 Capstone Report produced for the Office of the United Nations High Commissioner for Human Rights, Graduate Institute of International and Development Studies, Geneva, i-ii (2020), <https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/WGEAPD/Session28/written-input/capstone.pdf>.

¹⁴⁹ Capstone Report produced for the Office of the United Nations High Commissioner for Human Rights, Graduate Institute of International and Development Studies, Geneva, 49-50 (2020), <https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/WGEAPD/Session28/written-input/capstone.pdf>.

¹⁵⁰ E.g., Capstone Report produced for the Office of the United Nations High Commissioner for Human Rights, Graduate Institute of International and Development Studies, Geneva, i-ii (2020), <https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/WGEAPD/Session28/written-input/capstone.pdf>.

¹⁵¹ Pan American Health Organization, *Health of Afro-descendant People in Latin America*, 4, 15-19 (2021), https://iris.paho.org/bitstream/handle/10665.2/55856/9789275124895_eng.pdf?sequence=1&isAllowed=y; 2020

In order to address the rights of marginalized communities to defend a healthy environment and territory in the context of the climate emergency, States must implement a nuanced, intersectional approach that begins with including and amplifying the voices of these communities. States must consider the unique challenges and needs of indigenous peoples, peasant farmer communities, and Afro-descendant persons, prioritizing cultural preservation, land rights, and resilience in the face of climate-related threats.

E.4. With regard to the climate emergency, what type of information should the State produce and publish in order to establish the capability to investigate different offenses committed against defenders, including, reports of threats, kidnappings, murders, forced displacements, gender-based violence, and discrimination?

Perpetrator impunity is one of the greatest challenges facing EHRD.¹⁵² To establish the capability to investigate and monitor various offenses committed against EHRD, States must prioritize the production and publication of information that enhances transparency, accountability, and the defense of human rights.¹⁵³ The American Convention on Human Rights and this Court affirm the people's right to information in accordance with the principle of maximum disclosure.¹⁵⁴ In a case involving forced disappearances, this Court held that the State has a heightened duty to provide information in the context of human rights violations.¹⁵⁵ Presentation and publication of this data should be part of the States' contributions to stakeholder collaborations outlined [above](#) in section E(1).

In order to increase transparency about the prevalence and nature of attacks on EHRDs, States must establish reporting mechanisms with local law enforcement to collect and compile comprehensive incident reports. The publication of this information should form the basis of a

Capstone Report produced for the Office of the United Nations High Commissioner for Human Rights, Graduate Institute of International and Development Studies, Geneva, 48-49 (2020), <https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/WGEAPD/Session28/written-input/capstone.pdf>.

¹⁵² E.g., The role of businesses and States in violations against human rights defenders of the rights to land, territory and the environment, Civil Societies Joint Report to the Inter-American Commission on Human Rights 156th period of sessions, 6, 25 (Oct. 2015), https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/ImplementationReport/Civil_society_organization_joint_reoprt_EN.pdf; Global Witness, Decade of Defiance: Ten years of reporting land and environmental activism worldwide, 12, Sept. 2022 (updated May 10, 2023), <https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/#recommendations>;

Economic Commission for Latin America and the Caribbean (ECLAC), Report of the First Annual Forum on Human Rights Defenders in Environmental Matters in Latin America and the Caribbean, Seminars and Conferences series, No. 102 (LC/TS.2023/38), 26 (2023), <https://repositorio.cepal.org/server/api/core/bitstreams/011364b2-3d9a-4089-a69f-046b69ac6e4f/content>.

¹⁵³ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean [Treaty No. XXVII.18], arts. 5, 9 (2018), <https://www.cepal.org/en/subsidiary-bodies/regional-agreement-access-information-public-participation-and-justice/text-regional-agreement>; e.g., Economic Commission for Latin America and the Caribbean (ECLAC), *Report of the First Annual Forum on Human Rights Defenders in Environmental Matters in Latin America and the Caribbean*, Seminars and Conferences series, No. 102 (LC/TS.2023/38), 19 (2023) (outlining Peru's multilevel Intersectoral Mechanism for the Protection of Human Rights Defenders), <https://repositorio.cepal.org/server/api/core/bitstreams/011364b2-3d9a-4089-a69f-046b69ac6e4f/content>.

¹⁵⁴ American Convention on Human Rights, art. 13; Case of Claude Reyes et al. v. Chile, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 151, paras. 77, 92 (Sept. 19, 2006).

¹⁵⁵ Case of Gomes Lund et al. v. Brazil, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 219, paras. 201-202 (Nov. 24, 2010).

national dataset that is publicized and distributed to stakeholders. It is also critical that States provide this information to affected communities both on a regular basis and urgently in times of emergency. Effectively providing this information to affected communities requires knowledge of local language and culture.

These reports must include information about the victims, local investigation, and perpetrators. Anonymized information about the victim must include geographical area, gender, age, position (e.g., community member or leader, EHRD, journalist), nature of the offense, and climate connection (e.g., extractive industries, emergency displacement, illegal hunting). This data is essential to understanding specific population vulnerabilities, allocating resources effectively, and tailoring responses to the climate emergency's unique human rights challenges. Transparency regarding the investigation process is vital for (i) evaluating the government's fulfillment of its duty to investigate and (ii) deriving best law enforcement practices. As part of the transparency reporting, officials must explain in detail all decisions not to investigate or prosecute. With regard to perpetrator data, States should ensure the collection of detailed information regarding indictments and convictions. Such data will not only guide local officials in adapting accountability mechanisms to the climate emergency but will also allow other stakeholders and policymakers to better understand perpetrators of offenses against EHRD and develop prevention and protection mechanisms tailored to the climate emergency.

To fulfill their duty to investigate and pursue accountability, States must create comprehensive reporting mechanisms. As discussed in section E(3), many victims of offenses against EHRD are in remote, under-served areas. States cannot establish meaningful investigative capabilities without significantly investing in the creation of monitoring, reporting, and communication mechanisms in remote, under-served areas. Perpetrators of offenses against EHRD work to prevent effective reporting mechanisms by, for example, attacking journalists.¹⁵⁶ In order to ensure that these mechanisms are effective and accessible, States must incorporate diversity in hiring practices, direct and regular community engagement to build trust, gender sensitivity training, cultural knowledge, and language services.¹⁵⁷ Community outreach, trust, and linguistic accessibility are critical because reporting mechanisms will be useless if victims are unaware of the resources or do not trust officials to investigate and protect adequately.

Finally, as part of community outreach and engagement, States should provide “know-your-rights” training and information sessions for EHRD and affected communities, specifically focusing on intersectionality and marginalized communities. Such training will help communities advocate for themselves and protect against exploitation.¹⁵⁸ Similarly, States

¹⁵⁶ E.g., Economic Commission for Latin America and the Caribbean (ECLAC), Report of the First Annual Forum on Human Rights Defenders in Environmental Matters in Latin America and the Caribbean, Seminars and Conferences series, No. 102 (LC/TS.2023/38), 18 (2023), <https://repositorio.cepal.org/server/api/core/bitstreams/011364b2-3d9a-4089-a69f-046b69ac6e4f/content>.

¹⁵⁷ E.g., Economic Commission for Latin America and the Caribbean (ECLAC), Report of the First Annual Forum on Human Rights Defenders in Environmental Matters in Latin America and the Caribbean, Seminars and Conferences series, No. 102 (LC/TS.2023/38), 31-32 (2023), <https://repositorio.cepal.org/server/api/core/bitstreams/011364b2-3d9a-4089-a69f-046b69ac6e4f/content>.

¹⁵⁸ E.g., Economic Commission for Latin America and the Caribbean (ECLAC), Report of the First Annual Forum on Human Rights Defenders in Environmental Matters in Latin America and the Caribbean, Seminars and Conferences series, No. 102 (LC/TS.2023/38), 20, 33 (2023), <https://repositorio.cepal.org/server/api/core/bitstreams/011364b2-3d9a-4089-a69f-046b69ac6e4f/content>; The role of businesses and States in violations against human rights defenders of the rights to land, territory and the environment, Civil Societies Joint Report to the Inter-American Commission on Human Rights 156th period of sessions, 48 (Oct. 2015),

should require that corporations operating in climate-sensitive areas inhabited by marginalized people implement human rights training designed by independent experts in accordance with the UN's "Guiding Principles on Business and Human Rights."¹⁵⁹ States should also require that businesses operating in climate-sensitive contexts (i) publish regular periodic reports about their activities in these areas and compliance with human rights and (ii) submit to in-depth investigations and impact assessments by independent human rights and environmental experts the results of which should be publicly available and open for community comment.¹⁶⁰

Establishing State capacity and capability to investigate offenses against EHRD demands a holistic approach to information production and publication. By prioritizing transparency, comprehensive incident reporting, know-your-rights training, and affirmative transparency, States can empower EHRD and their communities, hold perpetrators accountable, and enhance the protection of human rights in the face of environmental challenges.

E.5. What are the measures of due diligence that the States should take into account to ensure that attacks and threats against environmental defenders in the context of the climate emergency do not go unpunished?

Accountability for attacks and threats against environmental human rights defenders ("EHRD") is crucial for addressing the climate emergency and maintaining the rule of law. In addition to the measures outlined previously in Section E, States must implement various mechanisms and procedures to ensure the duly diligent pursuit of accountability for perpetrators of attacks and threats against EHRD. In particular, States should ensure that their domestic legal frameworks adequately address attacks on EHRD, guarantee impartial and fair investigations and prosecutions of crimes against EHRD, and provide protection for EHRD complainants and whistleblowers.

States must approach the implementation of due diligence measures in accordance with the rights to life and the free exercise of all rights and freedoms as enumerated in the American Convention on Human Rights and explained by this Court in *Velasquez-Rodriguez v Honduras*.¹⁶¹ Impunity for attacks on EHRD constitutes violations of these rights and state

https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/ImplementationReport/Civil_society_organization_joint_reoprt_EN.pdf.

¹⁵⁹ Guiding Principles on Business and Human Rights, UN OHCHR, HR/PUB/11/04, 5-6 (2011), https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf; The role of businesses and States in violations against human rights defenders of the rights to land, territory and the environment, Civil Societies Joint Report to the Inter-American Commission on Human Rights 156th period of sessions, 48-50 (Oct. 2015), https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/ImplementationReport/Civil_society_organization_joint_reoprt_EN.pdf.

¹⁶⁰ E.g., Global Witness, *Last Line of Defence*, 25 (Sept. 13, 2021), <https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/>; The role of businesses and States in violations against human rights defenders of the rights to land, territory and the environment, Civil Societies Joint Report to the Inter-American Commission on Human Rights 156th period of sessions, 49 (Oct. 2015),

https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/ImplementationReport/Civil_society_organization_joint_reoprt_EN.pdf

¹⁶¹ American Convention on Human Rights, arts. 1, 4; Inter-American Court of Human Rights, *Velasquez-Rodriguez v. Honduras*, paras. 165-166, 174, 188 (July 29, 1988), https://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf.

obligations to protect them.¹⁶² Not only do States have “a legal duty to take reasonable steps to prevent human rights violations,”¹⁶³ as discussed throughout this section in the context of the climate emergency, but also “to use the means at [their] disposal to carry out a serious investigation of violations committed within [their] jurisdiction[s], to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.”¹⁶⁴

Accountability for crimes against EHRD and protecting the free exercise of their fundamental human rights require the development of a comprehensive legislative framework tailored to these specific challenges. Regarding the former, states must strengthen oversight of corporate activities and governmental corruption.¹⁶⁵ Despite the UN Guiding Principles on Business and Human Rights, NGOs have documented insufficient progress¹⁶⁶ because of the reliance on corporate voluntary and self-reporting mechanisms.¹⁶⁷ Governments must require that corporations transparently identify and address business activities that currently infringe, or have the potential to infringe, on the rights of EHRD and proactively assist governments in holding violators accountable.¹⁶⁸ Part of effectively identifying the risks of infringing on the rights of EHRD is meaningful engagement with local communities during the planning and implementation stages of projects that affect the environment. Solely negotiating the terms of such projects with national or even local governments is insufficient to protect the rights of communities and the EHRD who advocate on their behalf.

In order to effectively protect EHRD, legislation must encompass more than environmental rights; States must protect EHRD’s broad exercise of their fundamental human rights, particularly those related to freedom of speech and the right to protest.¹⁶⁹ Global Witness found

¹⁶² E.g., Soledad García Muñoz, Special Rapporteur on Economic, Social, Cultural and Environmental Rights, Business and Human Rights: Inter-American Standards, Inter-American Commission on Human Rights, paras. 247-248 (2019),

https://www.oas.org/en/iachr/reports/pdfs/Business_Human_Rights_Inte_American_Standards.pdf.

¹⁶³ Inter-American Court of Human Rights, Velasquez-Rodriguez v. Honduras, para. 174, (July 29, 1988), https://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf.

¹⁶⁴ Inter-American Court of Human Rights, Velasquez-Rodriguez v. Honduras, para. 174, (July 29, 1988), https://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf.

¹⁶⁵ Global Witness, *Standing Firm*, 56, Sept. 13, 2023, <https://www.globalwitness.org/en/campaigns/environmental-activists/standing-firm/#recommendations>; Global Witness, *Last Line of Defence*, 18 (Sept. 13, 2021), <https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/>; Soledad García Muñoz, Special Rapporteur on Economic, Social, Cultural and Environmental Rights, Business and Human Rights: Inter-American Standards, Inter-American Commission on Human Rights, paras. 16-18 (2019), https://www.oas.org/en/iachr/reports/pdfs/Business_Human_Rights_Inte_American_Standards.pdf; Paul J. Angelo, David Gevarter, “Who is Killing Latin America’s Environmentalists?”, Council on Foreign Relations (Apr. 20, 2020), <https://www.cfr.org/in-brief/who-killing-latin-americas-environmentalists>.

¹⁶⁶ E.g., Soledad García Muñoz, Special Rapporteur on Economic, Social, Cultural and Environmental Rights, Business and Human Rights: Inter-American Standards, Inter-American Commission on Human Rights, para. 19 (2019), https://www.oas.org/en/iachr/reports/pdfs/Business_Human_Rights_Inte_American_Standards.pdf

¹⁶⁷ Global Witness, *Standing Firm*, 56, Sept. 13, 2023, <https://www.globalwitness.org/en/campaigns/environmental-activists/standing-firm/#recommendations>; Global Witness, *Last Line of Defence*, 18 (Sept. 13, 2021), <https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/>.

¹⁶⁸ Soledad García Muñoz, Special Rapporteur on Economic, Social, Cultural and Environmental Rights, Business and Human Rights: Inter-American Standards, Inter-American Commission on Human Rights, paras. 26, 250(2019), https://www.oas.org/en/iachr/reports/pdfs/Business_Human_Rights_Inte_American_Standards.pdf; Global Witness, *Standing Firm*, 56, Sept. 13, 2023, <https://www.globalwitness.org/en/campaigns/environmental-activists/standing-firm/#recommendations>; Global Witness, *Last Line of Defence*, 25 (Sept. 13, 2021), <https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/>.

¹⁶⁹ E.g., Global Witness, *Standing Firm*, 44, Sept. 13, 2023, <https://www.globalwitness.org/en/campaigns/environmental-activists/standing-firm/#recommendations>.

that the majority of EHRD killings occurred in States with limited or repressed civic space, such as the freedoms of assembly, association, and speech.¹⁷⁰ Yet, in a troubling global trend, many States are enacting legislation in pursuit of shutting down peaceful environmental protests and advocacy.¹⁷¹ The UN Special Rapporteur on Human Rights Defenders described EHRD as “trying to save the planet, and in doing so save humanity [...] but are seen by governments and corporations as a threat to be neutralized.”¹⁷² The prioritization of “power and economics”¹⁷³ over human rights will only exacerbate the climate emergency and allow crimes against EHRD to go unpunished.

In addition to developing a comprehensive legal framework, States must ensure that it is effectively enforced to meet their obligations to protect the fundamental human rights of EHRD.¹⁷⁴ Currently, EHRD reports that their complaints are ignored by law enforcement and prosecutors.¹⁷⁵ In order to ensure timely, fair, and impartial investigations and prosecutions, States must address corrupt officials and illegal business practices by holding them civilly and criminally liable for their direct and indirect roles in attacks against EHRDs. Law enforcement must also ensure transparency in its decisions regarding investigations and prosecutions, as discussed in section E(4). States should provide funding for dedicated investigation and prosecution teams specially trained and equipped to address crimes against EHRD. For example, as discussed previously in Section E, States should incorporate women, Indigenous experts, and local community members in these special teams. States must also provide the resources and tools necessary to investigate remote rural areas where many attacks go unaddressed. Due to the international nature of many offenses against EHRD and porous borders in remote areas, states must also implement regional information-sharing procedures to pursue accountability effectively.¹⁷⁶ Another critical component of effective investigations and prosecutions of crimes against EHRD is providing meaningful protection mechanisms, such as witness protection, for complainants, witnesses, and whistleblowers.

¹⁷⁰ Global Witness, *Standing Firm*, 56, Sept. 13, 2023, <https://www.globalwitness.org/en/campaigns/environmental-activists/standing-firm/#recommendations>; Global Witness, *Last Line of Defence*, 18 (Sept. 13, 2021), <https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/>.

¹⁷¹ E.g., Nina Lakhani, Damien Gayle and Matthew Taylor, “How criminalization is being used to silence climate activists across the world”, *The Guardian* (Oct. 12, 2023), <https://www.theguardian.com/environment/2023/oct/12/how-criminalisation-is-being-used-to-silence-climate-activists-across-the-world>.

¹⁷² Nina Lakhani, Damien Gayle and Matthew Taylor, “How criminalization is being used to silence climate activists across the world”, *The Guardian* (Oct. 12, 2023), <https://www.theguardian.com/environment/2023/oct/12/how-criminalisation-is-being-used-to-silence-climate-activists-across-the-world>.

¹⁷³ Nina Lakhani, Damien Gayle and Matthew Taylor, “How criminalization is being used to silence climate activists across the world”, *The Guardian* (Oct. 12, 2023), <https://www.theguardian.com/environment/2023/oct/12/how-criminalisation-is-being-used-to-silence-climate-activists-across-the-world>.

¹⁷⁴ E.g., Soledad García Muñoz, Special Rapporteur on Economic, Social, Cultural and Environmental Rights, Business and Human Rights: Inter-American Standards, Inter-American Commission on Human Rights, paras. 245-247 (2019), https://www.oas.org/en/iachr/reports/pdfs/Business_Human_Rights_Inte_American_Standards.pdf

¹⁷⁵ Global Witness, *Standing Firm*, 19, Sept. 13, 2023, <https://www.globalwitness.org/en/campaigns/environmental-activists/standing-firm/#recommendations>; Paul J. Angelo, David Gevarter, “Who is Killing Latin America’s Environmentalists?”, Council on Foreign Relations (Apr. 20, 2020), <https://www.cfr.org/in-brief/who-killing-latin-americas-environmentalists>.

¹⁷⁶ E.g., Soledad García Muñoz, Special Rapporteur on Economic, Social, Cultural and Environmental Rights, Business and Human Rights: Inter-American Standards, Inter-American Commission on Human Rights, paras. 244, 249-250 (2019), https://www.oas.org/en/iachr/reports/pdfs/Business_Human_Rights_Inte_American_Standards.pdf.

Ensuring that authorities effectively investigate and prosecute offenses against EHRD requires significant government investment in the rule of law and the will to enforce it. States must prioritize the needs of communities and the findings of impartial experts, as discussed throughout Section E, over business interests and profits. Integral components of this shift in priorities requires (i) legislative developments, (ii) complete transparency regarding investigations and prosecutions, and (iii) a zero-tolerance policy for State corruption, corporate violations of the law, and attacks and threats against EHRD.

F. Regarding the shared and differentiated human rights obligations and responsibilities of States in the context of the climate emergency

F.1. What considerations and principles should States, and international organizations take into account, collectively and regionally, when analyzing shared but differentiated responsibilities in the context of climate change, from the perspective of human rights and intersectionality?

The principle of ‘common but differentiated responsibilities’ (hereinafter ‘CBDR’) is one of the most important principles of the international climate change regime. CBDR constitutes a fundamental pillar of international environmental law (‘IEL’), with its first introduction in the 1992 Rio Declaration on the Environment and Development,¹⁷⁷ subsequently codified in related hard law instruments¹⁷⁸ and further elaborated on relevant soft law documents.¹⁷⁹ According to this principle, all states are equally responsible for protecting the environment; thus, they are responsible for taking all necessary measures in that regard.¹⁸⁰ This principle recognizes, however, that the scope and extension of each state’s responsibilities differ depending on their economic, social, and ecological capabilities.¹⁸¹ Hence, instead of establishing objective responsibilities *in abstracto*, the CBDR principle considers states’ particularities and capabilities and obliges accordingly.¹⁸²

While different IEL principles inform the content of CBDR, the principles of (1) common concern of humankind, (2) equity, and (3) cooperation hold the utmost significance.¹⁸³ As its name suggests, humankind's principle of common concern defines the first part of CBDR,

¹⁷⁷ United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 3-14, 1992, Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), Annex I (Aug. 12, 1992). Some scholars, however, point to an early introduction of the principle of CBDR by referencing the principle of differential economic treatment. See Philippe Cullet, “Differential Treatment in International Law: Towards a New Paradigm of Inter-State Relations,” *European Journal of International Law* 10, no. 3 (1999): 549–82.

¹⁷⁸ See, among others, the United Nations Framework Convention on Climate Change, art. 3; Montreal Protocol on Substances that Deplete the Ozone Layer, art. 5; Stockholm Convention on Persistent Organic Pollutants, Preamble.

¹⁷⁹ OAS, Climate Emergency: Scope of Inter-American Human Rights Obligations, Res. 13 /2021.

¹⁸⁰ D. Hunter, J. Salzman, and D. Zaelke, *International Environmental Law and Policy*, University Casebook Series (Foundation Press, 2022), 445.

¹⁸¹ The traditional divide between wealthier and less wealthy states or states from the Global North and the Global South is intrinsically acknowledged in this principle. In other words, the principle does not apply equally, but its scope depends fully on each state’s capabilities. See, Hunter, Salzman, and Zaelke, *International Environmental Law and Policy*.

¹⁸² Hunter, Salzman, and Zaelke; Pierre-Marie Dupuy and Jorge E Viñuales, *International Environmental Law* (Cambridge University Press, 2018).

¹⁸³ These principles are pivotal standards in IEL and, of course, in the steadily nascent and growing international climate change law area.

while the principle of equity explains the second. Per the common concern of humankind, the environment is critical for living organisms, including humans. Therefore, states are expected to take serious action to safeguard the environment, including adopting any necessary measures to prevent environmental damage and further global warming. Simultaneously, the principle of equity acknowledges intrinsic differences among nation-states, which make them act according to their capabilities, resources, and share of emissions. Thus, there is no ‘one-size-fits-all’ approach to determining environmental obligations, but other factors, such as resources and capabilities, have a role in their determination. Finally, the principle of cooperation seeks to fill the gap between the varying capabilities of wealthier and less wealthy states or those from the Global North and Global South, respectively.¹⁸⁴ In this respect, wealthier states should provide financial and technical support to less wealthy countries so they can contribute to protecting the environment and mitigating and adapting to climate change impacts.¹⁸⁵

Like the international climate change regime, the principle of CBDR has also evolved from a top-down approach to a bottom-up approach.¹⁸⁶ While the Kyoto Protocol (1997) established fixed reduction targets for developed countries, the Paris Agreement (2015) left those decisions to every sovereign state.¹⁸⁷ This change means that state signatories no longer determine ‘the differentiated responsibilities’ of other states; instead, the parties involved establish their responsibilities. By acknowledging its duty to contribute to tackling climate change, each state party now decides its reduction targets according to their socio-economic and ecological conditions. Their environmental responsibilities depend not only on their income level but also on their technical capabilities, resources, and share of emissions.¹⁸⁸

While the principle of CBDR may seem too broad to have practical application,¹⁸⁹ the truth is that each state’s ‘differentiated responsibilities’ are determined by each (1) state’s social, (2) economic, and (3) ecological considerations. A country such as the United States, which is considered a wealthy, Global North country with one of the largest shares of GHG emissions worldwide,¹⁹⁰ will have different, more significant environmental responsibilities than countries such as Barbados, the Dominican Republic, or Haiti,¹⁹¹ which are among the least developed countries from the Global South and members of small island developing states (SIDS)¹⁹² with substantially fewer capabilities than the US. The same is true for countries such as Colombia, Mexico, and Chile, which are still developing countries, even if their situation is slightly better than SIDS.

¹⁸⁴ The Global North and Global South divide has been widely utilized in environmental and climate change negotiations over the years. See, Joyeeta Gupta, *The History of Global Climate Governance* (Cambridge: Cambridge University Press, 2014), <https://doi.org/10.1017/CBO9781139629072>.

¹⁸⁵ UNFCCC, art 4(3) *supra* note 2; Paris Agreement, art 9.

¹⁸⁶ Gupta, *The History of Global Climate Governance*.

¹⁸⁷ The Paris Agreement obliges state parties to determine their nationally determined contributions (NDC) or GHG emissions reduction targets. State parties are responsible for determining and updating their NDC according to their own capabilities. Unlike the Kyoto Protocol, no third parties impose reduction targets on other states, regardless of their development level. Enforcement issues concerning the reduction targets established in the Kyoto Protocol motivated this evolution. See Paris Agreement, art 3.

¹⁸⁸ Hunter, Salzman, and Zaelke, *International Environmental Law and Policy*; Dupuy and Viñuales, *International Environmental Law*.

¹⁸⁹ Daniel Bodansky, “The United Nations Framework Convention on Climate Change: A Commentary,” *Yale J. Int’l L.* 18 (1993): 451.

¹⁹⁰ Johannes Friedrich et al., “This Interactive Chart Shows Changes in the World’s Top 10 Emitters,” 2023, <https://www.wri.org/insights/interactive-chart-shows-changes-worlds-top-10-emitters#>.

¹⁹¹ Small island states from the Americas; OAS members.

¹⁹² “Small Island Developing States,” Sustainable Development Goals, n.d., <https://sustainabledevelopment.un.org/topics/sids/list>.

The principle of CBDR considers this distinction and urges wealthier countries to take the lead in protecting the environment and adopt all necessary measures to prevent further planet warming.¹⁹³ Expressions of such measures include, for instance, having more ambitious reduction targets and earlier transition deadlines. It also accommodates cooperation by providing financial and technical assistance to developing countries. Besides monetary aid, technical or non-monetary assistance could take different forms, including but not limited to technology transfer, training personnel, or equipment.¹⁹⁴ This assistance is not only critical for developing states to help them adapt to the impact of climate change but also because most carbon sinks,¹⁹⁵ which are of common concern to humankind, are located in their territories.¹⁹⁶ Developing states can hardly do enough to protect and safeguard them without such contributions.

Developing countries are usually afforded ‘subsistence’ emissions for more extended periods¹⁹⁷ while implementing climate adaptation programs tailored to their needs – their obligation is to utilize such aid to implement adaptation measures. The rationale behind this support is straightforward: despite their low GHG emissions, developing countries are the most vulnerable to the impact of climate change, and yet, their structural conditions prevent them from having the capacity to implement adaptation measures to climate change impacts.

With the signing of the Paris Agreement, the principle of CBDR recognizes nuances and differences among nation-states instead of acknowledging two categories only – those with reduction targets and those without, as was formerly prescribed by the Kyoto Protocol. Despite its continuing open-ended nature, CBDR is far from being non-operational. Even when no relevant climate change instrument elaborates on its meaning, its continuing reiteration across hard and soft law documents, declarations, and scientific reports elucidates its importance. CBDR is a tool capable of enforcing or operationalizing asymmetrical obligations of asymmetrical states. While it has not been formally recognized as customary international law, its wide recognition could pave the way for this principle to reach such a status soon enough. For the time being, states and international organizations should consider the principles of common concern of humankind, equity, and cooperation when analyzing its meaning and scope. Each state’s social, economic, and ecological considerations also play a part when determining the extension of such a principle.

F.2. How should States act, both individually and collectively, to guarantee the right to redress for the damage caused by their acts and omissions in relation to the climate emergency, taking into account considerations of equity, justice and sustainability?

¹⁹³ United Nations Framework Convention on Climate Change (UNFCCC), art 3(1).

¹⁹⁴ Hunter, Salzman, and Zaelke, *International Environmental Law and Policy*.

¹⁹⁵ UNFCCC, art 1(8) *supra* note 16. According to the UNFCCC, carbon sinks are natural or artificial reservoirs that remove GHG emissions from the atmosphere. Ocean and forests are examples of carbon sinks.

¹⁹⁶ Monica L. Noon et al., “Mapping the Irrecoverable Carbon in Earth’s Ecosystems,” *Nature Sustainability* 5, no. 1 (January 1, 2022): 37–46, <https://doi.org/10.1038/s41893-021-00803-6>.

¹⁹⁷ Henry Shue, “Subsistence Emissions and Luxury Emissions,” *Law & Policy* 15, no. 1 (1993): 39–60. Since developing aspirations are inherently connected to high-emission industries (e.g., coal), developing countries are afforded certain levels of emissions, usually higher than those afforded to developed countries, to guarantee their right to development.

States should differentiate two sets of scenarios when providing redress for damages caused by their actions and omissions in relation to the climate emergency. On the one hand, climate change-related human rights violations and, on the other, environmental damages as such. While human rights frameworks could provide a basis to address both scenarios, such frameworks are insufficient to address environmental damage as such due to their irreversible nature.

Regarding climate change-related human rights violations, states must protect and ensure human rights, including monitoring, controlling, and supervising third parties' behavior. If human rights violations arise in any capacity, including the climate change emergency, states are obliged to provide remedies for the harm to affected people within and beyond borders.¹⁹⁸ International organizations¹⁹⁹ and other non-state actors²⁰⁰ have long acknowledged the relationship between climate change and human rights, particularly how the impacts of the former are likely to infringe on the latter. Although this relationship was only legally recognized in 2015 with the adoption of the Paris Agreement,²⁰¹ providing remedies is a fundamental principle of international human rights law,²⁰² and, therefore, states are required to provide such remedies.

Two elements comprise the duty to guarantee remedies for climate change-related human rights violations: (1) access to justice and (2) substantive redress. Regarding the first element, the ICtHR has recognized the peremptory nature of such a right²⁰³ and the importance of inter-state cooperation to hold accountable those responsible whenever necessary.²⁰⁴ In practical terms,

¹⁹⁸ Office of the High Commissioner of Human Rights, "Understanding Human Rights and Climate Change" (Paris, OHCHR, 2015), <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/COP21.pdf>.

¹⁹⁹ Office of the High Commissioner of Human Rights.

²⁰⁰ JANE MCADAM, MARC LIMON, & UNIVERSAL RIGHTS GROUP, HUMAN RIGHTS, CLIMATE CHANGE AND CROSS-BORDER DISPLACEMENT: THE ROLE OF THE INTERNATIONAL HUMAN RIGHTS COMMUNITY IN CONTRIBUTING TO EFFECTIVE AND JUST SOLUTIONS (2015).

²⁰¹ Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104 (Preamble).

²⁰² Most human rights instruments include related prescriptions. *See, e.g.*, Universal Declaration of Human Rights, art. 8 ("Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law"); International Covenant on Civil and Political Rights, 999 UNTS 171, art. 2 ("3. Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted"); American Declaration of the Rights and Duties of Men, art. XVIII ("Every person may resort to the courts to ensure respect for his legal rights"); American Convention on Human Rights, 1144 UNTS 123, art. 25 ("1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties").

²⁰³ *See, e.g.*, Case of Goiburú et al. v. Paraguay. Merits, reparations, and costs. Judgment of September 11, 2006. Series C No. 153, para. 131 ("Access to justice is a peremptory norm of international law and, as such, gives rise to obligations *erga omnes* for the States to adopt all necessary measures to ensure that such violations do not remain unpunished, either by exercising their jurisdiction to apply their domestic law and international law to prosecute and, when applicable, punish those responsible, or by collaborating with other States that do so or attempt to do so").

²⁰⁴ *See, e.g.*, Case of La Cantuta v. Peru. Merits, reparations, and costs. Judgment of November 29, 2006. Series C No. 162, para. 160 ("The Court points out that, under the collective guaranteed mechanism set out in the

‘access to justice’ means states shall take all necessary measures to guarantee that every individual can appeal to an effective redress mechanism of an administrative or judicial nature, including the possibility of holding third parties accountable “and the determination of their criminal, civil, or administrative responsibility.”²⁰⁵ Measures could take numerous forms, including removing any social, economic, or regulatory obstacle hindering access to redress mechanisms for vulnerable populations.²⁰⁶ This right is broad in nature; thus, it involves not only physical access to such mechanisms but also fairness throughout the proceedings, the capability of the institution to afford redress, and a prompt and opportune resolution.

The extent of substantive redress – the second element of the right of access to justice – follows the general rules of state responsibility.²⁰⁷ In other words, this element entails the restoration of the *status quo ante*,²⁰⁸ cessation of the wrongful act,²⁰⁹ provision of guarantees of non-repetition,²¹⁰ and obligation to make reparations.²¹¹ States shall modify, adopt, or pass new legislation or programs as compliance with these obligations requires. Particularly, in the context of climate change-related human rights violations, states may need to adopt stringent laws to reduce GHG emissions, remove subsidies to high-emitter industries, or implement fossil fuel phase-out plans.²¹² Developed states may also be bound to increase their financial or technical assistance to developing countries to help them comply with their human rights obligations. When considering other external, non-climate-related programs, states are also bound to consider climate impacts as a defining factor for their implementation.

As for the obligation to make reparations, there must be a causal link between the wrongful act and the harm produced; thus, it is mandatory to prove causation or attribution. While individual responsibilities for climate change impacts are highly variable, the responsibility of other entities does not exempt a single state from its own responsibility. Not only do the IPCC²¹³ and other scholars²¹⁴ acknowledge how advances in attribution science²¹⁵ could point to individual responsibilities, but the Corfu Channel Case is also an excellent example of how a state’s

American Convention, and the regional and universal international obligations in this regard, the States Parties to the Convention must collaborate with one another towards that end”).

²⁰⁵ Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights (Inter-American Court of Human Rights November 17, 2017).

²⁰⁶ This prescription is not only logical but desirable as the poor, rural communities, *campesinos*, indigenous communities, children, and women are among the most vulnerable people to the impacts of climate change.

²⁰⁷ Margaretha Wewerinke-Singh, “Remedies for Human Rights Violations Caused by Climate Change,” *Climate Law* 9, no. 3 (2019): 224–43.

²⁰⁸ International Law Commission (ILC), Articles on the Responsibility of States for Internationally Wrongful Acts, art. 29 (“The legal consequences of an internationally wrongful act under this part do not affect the continued duty of the responsible State to perform the obligation breached”).

²⁰⁹ ILC ARS, art 30(a).

²¹⁰ *Ib.*, art 30(b).

²¹¹ *Ib.*, art 31.

²¹² Margaretha Wewerinke-Singh, *State Responsibility, Climate Change and Human Rights under International Law* (Oxford: Bloomsbury Publishing, 2019), 136.

²¹³ Intergovernmental Panel on Climate Change (IPCC) et al., *Climate Change 2021: The Physical Science Basis*, vol. 2 (Cambridge University Press, 2021).

²¹⁴ See, e.g., Sophie Marjanac and Lindene Patton, “Extreme Weather Event Attribution Science and Climate Change Litigation: An Essential Step in the Causal Chain?,” *Journal of Energy and Natural Resources Law* 36, no. 3 (2018), <https://doi.org/10.1080/02646811.2018.1451020>; Rupert F. Stuart-Smith et al., “Filling the Evidentiary Gap in Climate Litigation,” *Nature Climate Change* 11, no. 8 (2021), <https://doi.org/10.1038/s41558-021-01086-7>.

²¹⁵ Marjanac and Patton, “Extreme Weather Event Attribution Science and Climate Change Litigation: An Essential Step in the Causal Chain?” Attribution science studies the relationship between extreme weather events and anthropogenic emissions.

responsibility does not diminish because of other states' respective wrongful acts.²¹⁶ In other words, no exemption from individual responsibility is possible when multiple factors trigger the harm. On the contrary, all parties may cooperate to compensate victims, as in *Certain Phosphate Lands in Nauru*.²¹⁷ When the actors, harm, wrongful act, and causation link are established, the respective state shall make reparations in pursuit of restoring victims' human rights. Such reparations could take the form of "restitution, compensation, rehabilitation, and measures of satisfaction such as public apologies, public memorials, [and] guarantees of non-repetition."²¹⁸ National and international mechanisms have extensively used these traditional modes of reparations in human rights-related judgments.

These forms of reparations, however, are ill-suited to provide redress for environmental or climate-related damage. While, in principle, the right to an effective remedy and its elements – access to justice and substantive redress – also apply to cases of environmental damages, the rules for state responsibility in this latter case are more difficult to execute. The IACtHR's progressive recognition of the right to a healthy environment²¹⁹ and the rights of nature as independent, autonomous rights²²⁰ demonstrate how environmental damages are not only undesirable but challenging to repair. The reasons are manifold. First, most environmental damages are irreversible,²²¹ meaning it is impossible to restore the *status quo ante* as prescribed by human rights frameworks, and most of the reparation methods mentioned above can hardly do enough to repair adequately. Second, even with advances in attribution science, establishing individual responsibility for environmental damage is extremely complex, which complicates demonstrating the causal link between a wrongful act and the respective environmental harm. These obstacles render the laws on state responsibility redundant or superfluous when it comes to providing reparations for environmental damage.

In this regard, the precautionary and prevention principles have greater importance than restorative measures like reparations. Since the environment is of utmost importance for all living organisms, including humans, and most environmental damages are irreversible, adopting all necessary measures to protect the environment and prevent further warming of the planet is paramount. This does not mean human rights violations are permissible so long as reparations are possible, but rather that prevention measures, which are usually important, shall prevail when it comes to impacting the environment. Nonetheless, when environmental damage occurs, the principle of cooperation (including technical and financial assistance) becomes relevant. While restoring the environment to its condition *ex-ante* is impossible, environmental-specific obligations, such as the principle of cooperation, are critical to addressing the situation immediately, taking action, and avoiding further damage.

²¹⁶ *Corfu Channel (United Kingdom v. Albania)*, Merits, 1949 I.C.J. 4 (Apr. 9). (Explosion of mines in the Albanian waters resulted in the death of a British naval personnel. "Every state has an obligation not to knowingly allow its territory to be used for acts contrary to the rights of other states")

²¹⁷ *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, Preliminary Objections, 1992 I.C.J. 240 (June 26). While Nauru and Australia reached a settlement, other states, New Zealand and the United Kingdom, who did not participate in the proceedings, contributed to compensating Nauru.

²¹⁸ Wewerinke-Singh, *State Responsibility, Climate Change and Human Rights under International Law*, 142–43.

²¹⁹ While Article 11 of the Protocol of San Salvador explicitly recognizes the right to a healthy environment, this instrument's limited scope of application has paved the way for the IACtHR to develop a progressive interpretation of Article 26 of the American Convention on Human Rights. Accordingly, Article 26 encompasses the right to a healthy environment. *See*, *Indigenous Communities Members of the Lhaka Honhat Association v. Argentina*, Inter-Am. Ct. H.R., Judgment, Series C No. 335 (Feb. 6, 2020).

²²⁰ Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights paragraph 62.

²²¹ Intergovernmental Panel on Climate Change (IPCC) et al., *Climate Change 2021: The Physical Science Basis*.

Bearing in mind that the climate crisis has a greater impact on some regions and populations, including the Caribbean countries and territories, as well as on the coastal areas and islands of our region and their inhabitants:

F.1.bis. How should inter-State cooperation obligations be interpreted?

Despite their insignificant GHG emissions,²²² most countries in the Americas and the Caribbean have geographical conditions that make them extremely vulnerable to climate change. For instance, small island developing states (SIDS), such as Antigua and Barbuda, Barbados, Bahamas, Belize, Cuba, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago,²²³ experience similar extreme weather events repeatedly throughout the year. Despite their different degrees of development and location, most face similar challenges, such as rising sea levels, hurricanes, flooding, and droughts.²²⁴ In the Andean region, states face similar challenges,²²⁵ including, among others, precipitation increase, longer periods of rainfall (*la niña*), extended drought episodes (*el niño*), and temperature intensification. Droughts and floods are unpredictable in the Northern Triangle, decimating people's livelihoods, predominantly rural communities.²²⁶ In other Latin American countries, climate change impacts have already prompted indigenous peoples to flee their ancestral lands, threatening their cultural identity and survival.²²⁷ Although GHG emissions in the Americas and the Caribbean are remarkably low compared to other regions, climate change impacts affect these areas with disproportionate severity.

With few exceptions,²²⁸ most nation-states in the Americas and the Caribbean are developing countries with structural socio-economic problems, such as poverty, inequality, and violence, which means their public agendas tend to prioritize non-environmental issues.²²⁹ While the Paris Agreement²³⁰ and the UN 2030 Agenda for Sustainable Development²³¹ emphasized the importance of tackling climate change and limiting global temperature increase below 2°C, most American and Caribbean countries lack the capacity, resources, and technology to pursue these goals. In this context, the principle of cooperation gains relevance.

²²² With a few exceptions, United States and Canada, most states in the Americas and the Caribbean emit GHG the least.

²²³ Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, "List of SIDS," n.d., <https://www.un.org/ohrrls/content/list-sids>.

²²⁴ For more information, see these countries' nationally determined contributions (NDCs).

²²⁵ The Andean countries are Colombia, Perú, Bolivia, and Ecuador.

²²⁶ Lisa Viscidi and MK Vereen, "Climate Threats in the Northern Triangle" (The Dialogue. Leadership for the Americas, 2022), <https://www.thedialogue.org/wp-content/uploads/2021/10/climate-change-policy-brief-EN-draft-5.pdf>.

²²⁷ Terrace Neal, "Climate Change Adaptation and the Protection of Indigenous Peoples' Land & Resources in Latin America," *Harvard Environmental Law Review*, 2023.

²²⁸ The exceptions are the United States and Canada. Most Latin American and Caribbean countries are developing states. While their circumstances could vary, most of these countries face structural socio-economic issues, such as poverty.

²²⁹ While the sociopolitical conditions of most Latin American countries differ, there is a tendency to find non-environmental issues on top of their agendas. For instance, gang conflicts in El Salvador, the adoption of transitional laws in Colombia, and the war on drugs in Mexico.

²³⁰ See Paris Agreement, art 2.

²³¹ See, UN 2030

Cooperation is not only a cornerstone principle in public international law²³² but also one of the main foundations of IEL and is included in most IEL conventions and declarations.²³³ The duty to cooperate is applicable in both transboundary and global contexts. In the first case, when two or more states share environmental resources, the duty to cooperate involves specific obligations, including, among others, joint conservation of the respective resource,²³⁴ exchange of information,²³⁵ joint conduction of environmental impact assessments,²³⁶ and notification, consultation, and negotiations, also known as prior and informed consent.²³⁷ In global context cases – global commons or global threats, such as climate change – the climate change regime emphasizes the importance of cooperation to achieve mitigation, adaptation, and loss and damage goals.²³⁸ In this regard, the UNFCCC recognizes states’ diverse contributions to the problems and their differentiated capabilities to address them. Accordingly, ‘developed country parties should take the lead in combating climate change and the adverse effects thereof’ [while considering] ‘the special needs and special circumstances of developing country parties.’²³⁹ The Paris Agreement further clarifies this idea by alluding to the importance of financial²⁴⁰ and technical²⁴¹ assistance, capacity building,²⁴² and technology transfer.²⁴³ These mechanisms are critical to enhance compliance of countries that lack the means to comply independently, such as most countries in the Americas and the Caribbean.

Tackling climate change is a common concern of humankind, which means that every state needs to mitigate and adapt to the impacts of climate change. Since some states are unable to implement mitigation and adaptation measures due to their limited resources and means, the climate change regime urges developed states to facilitate compliance from developing countries.²⁴⁴ In this respect, providing financial assistance to developing countries constitutes a critical component of Inter-state cooperation and an obligation from developed states to help developing parties achieve climate goals of common concern. Expressions of such commitments include the pledge of 100 billion US dollars per year to facilitate climate action and the creation of different funds, such as the Green Climate Fund, Adaptation Fund,²⁴⁵ and the Least Developed Countries Fund (‘LDCF’).

²³² The principle of cooperation can be found in the UN Charter. See UN Charter, Art 1(3) (“The purposes of the United Nations are: (...) “3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”)

²³³ According to some scholars, the principle of cooperation has more than two hundred years of relevance for PIL. More recently, this principle could also be traced down to the 1972 Stockholm Declaration (“Local and national governments will bear the greatest burden for large-scale environmental policy and action within their jurisdictions. International cooperation is also needed in order to raise resources to support the developing countries in carrying out their responsibilities in this field”). It has been widely included in other, more recent instruments, such as the Rio Declaration, Convention on Biological Diversity, UNFCCC, and Paris Agreement.

²³⁴ See, e.g., Convention on Transboundary Watercourses, art 2.

²³⁵ *Ib.*, art 6.

²³⁶ *Ib.*, art 3.

²³⁷ *Ib.*, art 10.

²³⁸ See, UNFCCC, Preamble, and arts 3, 4, 5, 6, 7, and 9; Kyoto Protocol, arts 2, 10, and 13; Paris Agreement, Preamble, arts 6, 7, 8, 10, 11, 12, and 14.

²³⁹ UNFCCC, art 3.

²⁴⁰ Paris Agreement, art 7.

²⁴¹ Paris Agreement, arts 8 and 9.

²⁴² Paris Agreement, art 11.

²⁴³ Paris Agreement, arts 10 and 11.

²⁴⁴ United Nations Framework Convention on Climate Change (UNFCCC), art 3(1).

²⁴⁵ Adaptation Fund, “Adaptation Fund,” n.d., <https://www.adaptation-fund.org/>.

Technical assistance is likewise pivotal. Providing monetary assistance to developing countries without facilitating access to cutting-edge information, equipment, experts, and personnel training is like granting them the means to implement measures without specifying them. In other words, developed or industrialized countries must help build the capacity of developing countries to effectively address climate change impacts, mainly because developed countries' high GHG emissions are the leading cause of deleterious environmental effects in the developing world. For example, in the context of sea-level rise, a major concern for coastal and Caribbean states in the Americas developed states facing similar challenges could offer substantive information on the best practices, infrastructure, and equipment to lessen sea-level rise environmental and human impacts. The market mechanisms established in the Kyoto Protocol, still in use today,²⁴⁶ could also offer relevant solutions to enhance inter-state cooperation. Whereas the duty to provide technical assistance, including capacity building and technology transfer, could have a general nature, these duties are fully enforceable. Its implementation in practice depends on the specific situation and conditions of the parties involved.

Finally, the principle of solidarity could also enhance and strengthen the scope of inter-state cooperation. While the nature of these two standards differs – solidarity is a principle while cooperation is a duty – the principle of solidarity has the potential to bolster cooperation. For example, the Americas and the Caribbean have similar climate and socio-economic challenges, making their regional alliance paramount to developing a concerted action plan that addresses similar needs and concerns. In this context, the cooperation duty, however open-ended, can be operationalized and implemented even if specific contexts dictate its scope.

F.2.bis. What obligations and principles should guide State actions in order to ensure the right to life and survival of the most affected regions and populations in the different countries and in the region?

The right to life is an absolute, fundamental principle in international law. Not only does it constitute ‘the supreme right’²⁴⁷ without which other rights cannot be exercised, but it is also customary international law and a norm of *ius cogens* from which no derogation is permissible.²⁴⁸ As mentioned earlier, most climate change impacts are life-threatening, which obligates states to take all necessary measures to protect their population and address the effects. In the Americas and the Caribbean, the Inuit have long signaled the adverse effects of climate change on their identity and survival, including ice melting, food scarcity, and unpredictable weather patterns.²⁴⁹ More recently, the Intergovernmental Panel on Climate Change (IPCC) issued a report establishing how global warming is triggering more extreme weather events (natural disasters) with deadly outcomes,²⁵⁰ especially for low-lying coastal regions and small island developing states (SIDS).

²⁴⁶ UN Climate Change, “A Guide to UN Market-Based Mechanisms,” October 31, 2022, <https://unfccc.int/blog/a-guide-to-un-market-based-mechanisms>.

²⁴⁷ Human Rights Committee, “General Comment No. 36 on Article 6: Right to Life” (United Nations Human Rights Committee, April 30, 1982).

²⁴⁸ International Covenant on Civil and Political Rights (ICCPR), arts 4, 6.q

²⁴⁹ Petition to the Inter-American Commission on Human Rights Seeking Relief from Violation Resulting from Global Warming Caused by Acts and Omissions of the United States (2005) Inter-American Commission on Human Rights,

²⁵⁰ Intergovernmental Panel on Climate Change (IPCC) et al., *Climate Change 2021: The Physical Science Basis*.

Different national and international tribunals have expanded the scope and meaning of the right to life. For instance, the IACtHR has upheld a broad interpretation, urging states to take positive actions not only to protect people from arbitrary deprivation of their lives but also to guarantee them a dignified existence.²⁵¹ In the context of the climate emergency, this broad interpretation implies that states are obliged to adopt ‘preventive steps to preserve and protect the natural environment.’²⁵²

While different human rights law instruments have consistently affirmed the non-derogation character of the right to life, judicial decisions have developed their content and scope in the context of the climate crisis. The connection between climate change’s adverse effects and states’ obligations to protect the right to life has also been qualified depending on the people affected. For example, in *Urgenda*, the Netherlands Supreme Court held that the government failed to comply with its obligation to reduce its share of GHG emissions by 25% by the end of 2020, risking people’s lives. Accordingly, the Netherlands has an obligation to enforce such an obligation to fulfill its human rights commitments. Protecting people from the effects of climate change is grounded in articles 2 (right to life) and 8 (right to respect for private and family life) of the European Convention on Human Rights.²⁵³ Similarly, in *Leghari v Pakistan*, the Lahore High Court ruled that Pakistan had an obligation to implement and enforce its National Climate Change Policy of 2012 and its respective framework to guarantee water, food, and energy security in the country.²⁵⁴ In other words, effective implementation of such a policy is necessary to protect people’s fundamental rights to life and human dignity, which, in turn, includes a right to a healthy environment. Therefore, the Court ordered Pakistan to create an effective institutional framework, including a climate change commission, to ensure effective implementation and enforcement of this policy.

Other decisions have specifically addressed climate change’s undue interference with vulnerable people’s human rights, such as indigenous peoples, women, and children. States’ obligations concerning the right to life in the context of the climate crisis have been qualified depending on the people affected. Concerning indigenous peoples, the United Nations Human Rights Committee (‘UNHRC’ or ‘HRC’) has ruled that Australia’s insufficient climate adaptation plans amounted to a violation of Torres Strait Islanders’ rights to family, private life, and home.²⁵⁵ Although extreme weather patterns continued to intensify, affecting these people’s lives, culture, and identity, Australia has not done enough to tackle such impacts. The HRC further established that these islanders’ steady dependence on the environment meant Australia had to adopt positive measures to help them deal with, among others, sea-level rise, flooding, storms, and precipitation. Thus, the Committee ordered Australia to compensate the affected people, establish periodic consultations, address their needs, and take all necessary measures to secure their survival. Likewise, the Interamerican System on Human Rights has also affirmed the interdependence of a healthy environment and the right to life, especially for indigenous communities, and how the former is pivotal for exercising the other fundamental

²⁵¹ Villagrán-Morales, et al., v Guatemala (1999) Inter-American Court of Human Rights (IACtHR) Ser C No 63, para 144.

²⁵² General Comment No. 3 on the African Charter on Human and People’s Rights: The Right to Life (Article 4), adopted during the 57th Ordinary Session of the ACHPR (4-18 November 2015) para 3.

²⁵³ The *Urgenda Foundation v. Kingdom of the Netherlands*, Hoge Raad, ECLI:NL:HR:2019:2007 (Dec. 20, 2019). The *Urgenda Foundation v. Kingdom of the Netherlands*, Hoge Raad, ECLI:NL:HR:2019:2007 (Dec. 20, 2019).

Torres Strait Islanders Petition) (United Nations Human Rights Committee Case CCPR/C/135/D/3624/2019, 2022). The Torres Strait Islanders are indigenous communities inhabitants of low-lying islands in Australia.

human rights.²⁵⁶ In *Lakha Honhat*, for example, the IACtHR recognized the importance of the right to a healthy environment to preserve indigenous people's culture, identity, livelihoods, and survival. States must regulate, supervise, execute environmental impact assessments, and mitigate environmental damage in this context.

Courts have also upheld comparable measures for protecting children and future generations, who are deemed an extremely vulnerable group to the impact of climate change. In *Future Generations*, the Colombian Supreme Court held that Colombia failed to comply with its commitments to reduce deforestation in the Amazon, violating future generations' rights to a healthy environment, life, health, food, and water.²⁵⁷ The Court agreed with the plaintiffs' petitions, acknowledging their vulnerability to the impacts of climate change. It further recognized the Amazon as an 'entity of rights' and ordered the government to develop an action plan to reduce deforestation, delegating functions to different authorities and mobilizing its institutional apparatus accordingly.²⁵⁸ Similarly, in *Herrera Carrion*, the Provincial Court of Justice of Sucumbíos declared that Ecuador had violated the rights to a healthy environment and health of the nine young plaintiffs because it allowed gas flaring activities in the region on a regular basis. Thus, the Court ordered the government to develop a plan for the progressive elimination of such a practice, urging the adoption of renewable and cleaner energies instead. In a similar vein, in *Neubauer v Germany*, the Federal Constitutional Court ruled that Germany's GHG reduction targets were incompatible with its commitments under the Paris Agreement to keep temperature increases well below 2° C and, if possible, 1.5° C, affecting different generations' constitutional rights to life and integrity.²⁵⁹ It further explained that constitutional rights are 'intertemporal guarantees of freedom' and that emission reduction targets shall not be unilaterally imposed on future generations. Accordingly, the Court ordered the legislature to establish specific, clear GHG emission reduction provisions for the short and medium term.

Women have also voiced their concerns about climate change's severity and disproportionate effect on their human rights. According to the Sabin Center for Climate Change Law's climate change litigation database, there are currently two pending cases filed by women who seek redress for the disparate impacts of climate on their lives. Whereas these cases, *Maria Khan v Pakistan*²⁶⁰ and *Women from Huasco v Chile*,²⁶¹ are yet to be decided, their claims appear relevant for developing state obligations regarding protecting women's right to life in the context of the climate crisis. These decisions could further clarify the scope and extension of women's right to life affected by climate change impacts as well as state obligations and gender-based responses thereto, which international organizations and other non-state actors have repeatedly stressed.

In accordance with the above, the open-ended texture of the right to life and its non-derogatory character seems to have obtained a more detailed, specific interpretation via judicial decisions. In general terms, states are obliged to protect their population's right to life, with particular

²⁵⁶ Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. The Environment and Human Rights.

²⁵⁷ *Future Generations v. Ministry of the Environment and Others*. Colombian Supreme Court, 2018.

²⁵⁸ Dejusticia, "Climate Change and Future Generations Lawsuit in Colombia: Key Excerpts from the Supreme Court's Decision," Dejusticia, April 13, 2018, <https://www.dejusticia.org/en/climate-change-and-future-generations-lawsuit-in-colombia-key-excerpts-from-the-supreme-courts-decision/>.

²⁵⁹ *Neubauer v Germany* (24 March 2021) 1 BvR 2656/18.

²⁶⁰ *Maria Khan et al. v. Federation of Pakistan et al.* Lahore High Court, 2018 (pending)

²⁶¹ *Women from Huasco and Others v. the Government of Chile, Ministry of Energy, Environment and Health, Court of Appeals of Copiapo*, 2021.

regard to those considered most vulnerable to climate change impacts, such as indigenous peoples, children, future generations, and women. This idea implies that states shall take positive actions to reduce their share of GHG emissions, enforce climate legislation, implement effective climate adaptation plans, make consultations and negotiations whenever necessary, and, among others, build communities' resilience and capacity. States are also bound to monitor, verify, and control third parties' activities to prevent their unduly interference with people's human rights. While these obligations are not exhaustive, climate judicial decisions are a critical source of law to expand environmental and human rights obligations –after all, most of these obligations are 'living' commitments rather than fixed duties.

In addition, some IEL principles are relevant to protect people's right to life, especially climate-vulnerable people. Notably, states are bound to prevent environmental damage (principle of prevention), which could have deadly effects in most cases, take precautionary measures whenever possible (precautionary principle), conduct environmental impact assessments, avoid harming other states' populations (no-harm principle), and provide extraterritorial redress if necessary. Although these principles seem too broad to have practical application, most have been developed and expanded via judicial rulings, acquiring even customary international law status in some cases. The *Fisheries Jurisdiction Case*,²⁶² *Pulp Mills*,²⁶³ and *Lake Lanoux*²⁶⁴ are good examples of landmark cases exploring some key principles in IEL. These principles are also standards of conduct, seeking to guide states' behavior and prompt them to avoid interfering with people's enjoyment of their right to life.

Considering that one of the impacts of the climate emergency is to intensify the factors that lead to human mobility – migration and forced displacement:

F.3. What obligations and principles should guide the individual and coordinated measures that the States of the region should adopt to deal with involuntary human mobility, exacerbated by the climate emergency?

Cross-border climate-induced displacement is always involuntary. While the involuntary nature of sudden environmental disasters (hurricanes, tornadoes, earthquakes) is evident, people who must flee their home countries due to slow-onset weather events, such as sea-level rise or land degradation, often appear as "regular" migrants, meaning people who migrate to improve their living conditions. This is because slow-onset weather events are a progressive, incremental threat, which may disguise people's displacement motivation as less severe, critical, or dire than displacement due to sudden singular disasters.

²⁶² *Fisheries Jurisdiction*, United Kingdom v Iceland, Judgment, Jurisdiction, [1973] ICJ Rep 3, ICGJ 141 (ICJ 1973), 2nd February 1973, United Nations [UN]; International Court of Justice [ICJ].

²⁶³ *Pulp Mills on the River Uruguay*, Argentina v Uruguay, Order, Provisional Measures, ICJ GL No 135, [2006] ICJ Rep 113, (2006) 45 ILM 1025, ICGJ 2 (ICJ 2006), 13th July 2006, United Nations [UN]; International Court of Justice [ICJ].

²⁶⁴ *Lake Lanoux Arbitration*, (France v. Spain) (1957) 12 R.I.A.A. 281.

Regardless of the event's nature, 'environmental refugees' lack special protection in international law.²⁶⁵ Unlike asylum seekers²⁶⁶ or internally displaced persons (IDPs),²⁶⁷ no special legal framework addresses cross-border climate-induced displacement or environmental refugees' particular needs. Despite this lacuna, international law and its compounded regimes may provide insights into the scope of state obligations regarding cross-border climate-induced displacement.

In principle and under normal circumstances,²⁶⁸ people are free to choose their place of residence, move freely within the boundaries of their home country, and leave for a different one if convenient.²⁶⁹ Forced displacement is, therefore, prohibited in international law.²⁷⁰ This general idea indicates an obligation to prevent forced displacement. In other words, states must take all necessary measures to prevent forced displacement and address its root causes, such as conflict, violence, and environmental issues. Thus, the general duty to guarantee people's right to freedom of movement could involve the implementation of other, more specific obligations, such as ensuring *de facto* and *de iure* sovereignty in conflict areas, implementing climate mitigation measures to reduce GHG emissions, and adaptation plans so vulnerable communities can continue living in their ancestral lands peacefully without being prompted to flee.

While states must prevent displacement, cross-border forced displacement occurs.²⁷¹ Under these circumstances, states must protect displaced persons before, during, and after displacement.²⁷² As mentioned earlier, the duty of prevention is critical to thwart displacement situations. This general obligation requires positive state action to address the root causes of displacement, including violence, conflict, and environmental concerns. In the context of the climate crisis, states are obliged to adopt climate mitigation and adaptation measures to reduce their share of GHG and its impacts, including forced displacement, as well as help vulnerable communities cope with detrimental environmental effects. To achieve this goal, states have the obligation to mitigate vulnerabilities, identify risks, and address them adequately. For instance, coastal communities could become resilient to sea-level rise and prevent related displacements

²⁶⁵ The United Nations Environment Program (UNEP) has endorsed the term 'environmental refugees' since mid-1980s. Accordingly, environmental refugees are considered forcibly displaced people who need to cross borders due to environmental reasons. This term has been widely criticized as 'environmental refugees' do not fall under the definition of 'refugee' in international law. Despite this term's imprecision, the term has been widely used by international organizations, NGOs, and scholars, and, as result, it has a strong literature foundation. In consequence, the observation will also follow this convention.

²⁶⁶ The 1951 Convention on the Status of Refugees and its 1967 Protocol affords asylum seekers or refugees with protection.

²⁶⁷ The 1998 Guiding Principles on Internal Displacement affords *special* protection to people who are forcibly displaced on different grounds, including, conflict, violence, and environmental motivations.

²⁶⁸ Unlike the right to life, the right of freedom of movement may have limitations. For example, in cases of public emergency, states could limit the extent and scope of this right. See, International Covenant on Civil and Political Rights, arts. 4, 12(3).

²⁶⁹ International Covenant on Civil and Political Rights, art. 12. While people have the right to enjoy such a right, the host country is free to demand additional requirements to allow the entry of non-citizens to its territory, such as visas or special permits. Regardless of this additional paperwork, states have the last word when it comes to determine who enters their territory.

²⁷⁰ While these rights prompt at the existence of such a prohibition, other, regional instruments explicitly acknowledge it. See, Kampala Convention, art 4.

²⁷¹ Walter Kälin, "Conceptualising Climate-Induced Displacement," *Climate Change and Displacement: Multidisciplinary Perspectives* 81 (2010): 93.

²⁷² Inter-Agency Standing Committee, *IASC Framework on Durable Solutions for Internally Displaced Persons* (Washington DC: Brookings Institution - University of Bern, 2010).

with state assistance in building new infrastructure or providing equipment. Other relevant measures for disaster management include setting up alarms and evacuation systems.²⁷³

During situations of sudden-onset climate events or disasters, it is common for host states to admit displaced people, but there are no guarantees, and migrants risk rejection.²⁷⁴ In this scenario and bearing in mind their human rights obligations, states are bound to provide humanitarian assistance, address people's needs effectively, and ensure they can enjoy their human rights freely.²⁷⁵ While this protection is likely to be temporary, climate refugees' admission and continued stay in a host state depends on the principle of non-refoulment.

The principle of non-refoulment prevents host states from returning or 'refouler' (climate) refugees or asylum seekers to their home countries if there are strong reasons to believe they are facing torture or inhuman or degrading treatment upon their return. Although this principle has limitations in international refugee law,²⁷⁶ such limitations are non-existent in international human rights law (IHRL). Since the prohibition of torture and inhumane treatment is a peremptory norm of international law from which derogation is impermissible, this principle has no limitations in IHRL; some scholars have also considered the principle as customary international law.²⁷⁷ In practical terms, this protection imposes an obligation upon the host state to verify the particular circumstances surrounding the (climate) refugee, grant them admission and temporary, continued leave to remain in its territory if there is strong evidence of torture or inhuman treatment upon their removal from the host state. In other words, when a situation of cross-border climate-induced displacement occurs, the host state, in observing the IHRL obligations, including the proscription of torture and inhumane treatment, must grant the refugee admission and leave to stay in its territory, at least until no risk is foreseeable. In the climate crisis context, the non-refoulment principle could protect climate-induced displaced people from being returned to their home country immediately after a disaster or when sea-level rise has turned living conditions insurmountable.²⁷⁸ Alongside this obligation, host states are also obliged to guarantee the free exercise of refugees' civil and political rights.

The *Teitiota* case is an example of states' duty to assist climate refugees and apply the principle of non-refoulment when people are forced to be displaced beyond borders due to insurmountable sea-level rise. In this case, the Kiribati national applicant applied for refugee status on environmental grounds.²⁷⁹ New Zealand rejected their application because they did not meet the definition and criteria of a 'refugee' according to the 1951 Convention on the Status of Refugees. While New Zealand's reasoning was not incorrect, the UN Human Rights Committee ('HRC') ruled that New Zealand should not have expelled the applicants since their removal and return to their home country represented a threat to their lives and integrity. This particular decision evinces the broad extent and scope of the principle of non-refoulment in IHRL and its application to climate refugees.

²⁷³ *Budayeva and Others v Russian Federation* (App Nos 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02), European Court of Human Rights (20 March 2008).

²⁷⁴ Based on the principles of sovereignty and territorial integrity, each state is free to decide whom to enter their territory. There are also situations of national security grounds that permits states to reject foreigners into their territory.

²⁷⁵ Kälén, "Conceptualising Climate-Induced Displacement," 83.

²⁷⁶ Convention on the Status of Refugees, art 33(1).

²⁷⁷ Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, Fourth Edition (Oxford: Oxford University Press, 2021).

²⁷⁸ See, *Ioane Teitiota v New Zealand*, HRC.

²⁷⁹ *Ioane Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, UN Human Rights Committee (HRC), 7 January 2020.

Finally, after cross-border displacement, the host state is obliged to provide them with durable solutions to their vulnerabilities.²⁸⁰ These solutions could entail (1) return to their home country, (2) local integration, or (3) resettlement in a different place. Return is always possible whenever the principle of non-refoulment does not forbid it. It is also the most common solution for those forced to flee their home countries due to sudden-onset environmental events when the situation in their home countries has improved. In the case of slow-onset climate events, such as sea-level rise or land degradation, the possibility of return is unclear, especially for SIDS that are set to disappear within the present century.²⁸¹ In this particular scenario, host states are therefore required to assist climate refugees and help them settle in their territory (local integration) or elsewhere (resettlement) because returning is not possible.

From the perspective of IEL, durable solutions constitute adaptation and loss and damage measures. Considering the irreversible nature of some environmental damages, cross-border displacement is the only option for some people. Since GHG emissions cause most of these displacements, states must acknowledge their responsibility for causing environmental-induced displacement and provide durable solutions. An example of such acknowledgment is New Zealand's policy to issue humanitarian visas for climate refugees,²⁸² which also constitutes a durable solution to their displacement situation as a way to help refugees integrate locally.

To recapitulate, states are obliged to protect climate refugees (climate-induced displaced persons) in all phases of displacement. Starting with prevention, states are required to adopt all necessary measures to prevent forced displacements, such as reducing their share of GHG and adopting climate adaptation plans. If prevention measures fail, states must protect people during displacement pursuant to non-refoulment and guarantee their human rights as if they were nationals. When climate refugees no longer need displacement-specific assistance, states remain bound to provide them with durable solutions to overcome their vulnerabilities. These durable solutions could take the form of return, local integration, and resettlement elsewhere. While these obligations apply in cases of sudden-onset and slow-onset climate events, some of them are more suitable to address specific circumstances on a case-by-case basis. Even when there is no special legal framework for climate or environmental refugees, IHRL frameworks help determine effective obligations in regard to their situation.

Finally, the abovementioned obligations apply to internally displaced persons ('IDPs'), meaning people flee their homes due to environmental grounds without crossing an international border. Unlike the situation of climate or environmental refugees, there are special frameworks protecting IDPs. Globally, the 1998 Guiding Principles on Internal Displacement²⁸³ and regionally, the Cartagena Declaration, along with the Kampala Convention, include provisions for those who flee on environmental grounds. IDPs are entitled to, *inter alia*, displacement prevention (principles 6 and 7), safety, nutrition, hygiene (principle

²⁸⁰ Committee, *IASC Framework on Durable Solutions for Internally Displaced Persons*; United Nations High Commissioner for Refugees, "Solutions," n.d., <https://www.unhcr.org/what-we-do/build-better-futures/solutions>.


²⁸¹ M Mycoo, M Wairiu, and D Campbell, "Small Islands.," in *Climate Change 2022: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2022).

²⁸² Charles Anderson, "New Zealand Considers Creating Climate Change Refugee Visas," *The Guardian*, October 31, 2017, <https://www.theguardian.com/world/2017/oct/31/new-zealand-considers-creating-climate-change-refugee-visas>.

²⁸³ UN High Commissioner for Refugees (UNHCR), "Guiding Principles on Internal Displacement," ADM 1.1.PRL 12.1, PR00/98/109 § (1998).

7), protection from torture and inhuman treatment (principle 11), humanitarian assistance (principles 6 and 24 to 27), respect for private and family life (principle 17), dignified standard of living (principle 18), no property dispossession (principle 21), no discrimination (principle 22), education (principle 23), and durable solutions (principle 28 to 30). Although the Internal Displacement Monitoring Center has argued that climate-induced displaced people are usually IDPs instead of climate refugees,²⁸⁴ it is still important to further clarify state obligations regarding cross-border and in-border climate-induced displacement. As mentioned previously, the lack of a specific framework for environmental refugees does not preclude IHRL from providing them with protection and assistance.

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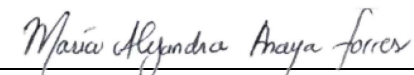
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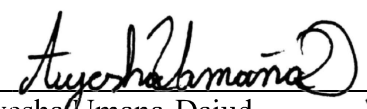
Jocelyn Hackett




Erin Elliott




Maria Alejandra Anaya-Torres




Ayesha Umana-Dajud



Muna Ndulo



Leo Ray



Allison M. Chatrchyan

²⁸⁴ Internal Displacement Monitoring Center, “Displacement, Disasters, and Climate Change,” accessed April 8, 2023, <https://www.internal-displacement.org/research-areas/Displacement-disasters-and-climate-change>.