
INTER-AMERICAN COURT OF HUMAN RIGHTS

**IN THE MATTER OF THE REQUEST FOR AN ADVISORY OPINION ON THE
SCOPE OF STATE OBLIGATIONS FOR
RESPONDING TO THE CLIMATE EMERGENCY**

AMICUS CURIAE BRIEF OF THE PETER A. ALLARD SCHOOL OF LAW'S
INTERNATIONAL JUSTICE AND HUMAN RIGHTS CLINIC

Nicole Barrett, Director
International Justice & Human Rights Clinic
Peter A. Allard School of Law

Ben Risk, Student Clinician
International Justice & Human Rights Clinic
Peter A. Allard School of Law

Avery Pasternak, Student Clinician
International Justice & Human Rights Clinic
Peter A. Allard School of Law

Delivered via email to: tramite@corteidh.or.cr

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Introduction

This amicus curiae brief is submitted by the Peter A. Allard School of Law’s International Justice and Human Rights Clinic (“IJHRC”) pursuant to Article 44 of the Inter-American Court of Human Rights Rules of Procedure.¹ The IJHRC is a legal clinic for upper-level law students at the University of British Columbia’s Peter A. Allard School of Law focusing on the protection of human rights and global justice. The brief is submitted in response to a March 22, 2023 letter from the Secretary of the Inter-American Court of Human Rights, sent on behalf of the President of the Inter-American Court of Human Rights. The letter invited the IJHRC to submit views “on the issues you consider relevant” to the request for an Advisory Opinion, filed by Chile and Colombia on January 9, 2023, on the scope of State human rights obligations in light of the climate emergency.

We write this brief at a time when Canada, the country in which the IJHRC is located, is experiencing the most damaging wildfire season in its history. Wildfires have threatened the lives, homes, and livelihoods of Canadians across the country.² Devastating wildfires have been paired with lethal flooding caused by unusually strong rains in many regions of the country,³ and unprecedented drought in others.⁴ These recent events demonstrate how climate change is impacting human rights within the country.

Until now, courts around the world have struggled to effectively employ the law to protect individuals from climate change, with attempted law suits dismissed due to uncertainty on how the law can and should respond to a casually complex phenomenon that transcends jurisdictions. The requested Advisory Opinion offers the Inter-American Court of Human Rights an important opportunity to clarify how human rights law can protect individuals whose rights, protected by the American Convention on Human Rights (“ACHR” or “American Convention”), have been violated due to climate change. As international climate change litigation increases, the Court’s guidance will be invaluable for those seeking justice both domestically and internationally.

The IJHRC submits, as expanded further below, that the Court’s Advisory Opinion should include the following legal findings:

1. The duty of prevention, set out previously by this Court, is triggered by the threat of climate change and requires States to act to reduce their harmful greenhouse gas emissions.
2. The right to a healthy environment requires States to reduce harmful greenhouse gas emissions under their control. To effectively remedy violations of the right to a healthy environment resulting from climate change, courts should order respondents to reduce harmful greenhouse gases.

¹ Rules of Procedure of the Inter-American Court of Human Rights, approved in the LXXXV Regular Period of Sessions of the Inter-American Court of Human Rights of November 2009, art. 44.

² Peter Zimonjic, “Canada still faces a high risk of wildfire for the rest of the summer, government warns (July 2023)” online: CBC News at < <https://www.cbc.ca/news/politics/federl-wildfire-record-worst-summer-1.6898955>>.

³ “Nova Scotia facing rains just two weeks after historic floods (July 2023)” online: CBC News < <https://www.cbc.ca/news/canada/nova-scotia/nova-scotia-heavy-rains-1.6929012>>.

⁴ “Drought conditions at highest level in parts of B.C. as province warns of tightening water restrictions (July 2023)” online: CBC News < <https://www.cbc.ca/news/canada/british-columbia/bc-drought-update-july13-1.6905724>>.

3. State responsibility for human rights violations resulting from climate change should be assessed using a due diligence standard that incorporates the precautionary principle.

Argument

I. The duty of prevention requires States to reduce harmful greenhouse gas emissions

The Court has been asked to clarify the scope of States' duty of prevention with regard to climate change and the resulting consequences. The IJHRC submits that the duty of prevention places an obligation on States to limit and decrease harmful greenhouse gas emissions resulting from activities under their control.

A) The duty of prevention, as previously set out by the Court, is triggered by climate change

In the Court's previous advisory opinion, *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights)* (Advisory Opinion OC-23/17), this Court explained that the duty of prevention could be understood to encompass two overlapping obligations. The first is to take measures to prevent rights violations that result from activities under a State's control. The second is the obligation for States to avoid using their territory in a way that violates the rights of other States. Both of these obligations have been held to extend to the prevention of environmental damage. The Court explained the duty of prevention succinctly in *Advisory Opinion OC-23/17*, writing that "States have the obligation to prevent significant environmental damage within and outside their territory."⁵ Significant environmental damage, as described by the Court, includes environmental damage which threatens the enjoyment of the rights to life and personal integrity.⁶

States' duty to prevent human rights violations of the rights to life and personal integrity from environmental damage within its own territory is grounded in the Court's previous jurisprudence. This Court has held that parties to the American Convention on Human Rights are under an obligation to guarantee the creation of conditions that prevent violations to the right to life and personal integrity.⁷ In *Advisory Opinion OC-23/17*, the Court confirmed that the American Convention requires States to ensure the rights protected in the Convention.⁸ This obligation extends beyond the relationship between the State and those subject to the State's jurisdiction to include the prevention of rights violations resulting from the actions of third parties.⁹ While a State is not responsible for every human rights violation which results from the actions of third parties,

⁵ IACtHR, *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights)*, Advisory Opinion OC-23/17, Judgement of November 15, 2017, Series A No. 23 [*Advisory Opinion OC-23/17*], at para. 174.

⁶ *Ibid.*

⁷ IACtHR, "Case of the "Street Children" (*Villagrán Morales et al.*) v. Guatemala," Merits, Judgement of November 19, 1999, Series C no. 63, at para. 144.

⁸ *Advisory Opinion OC-23/17*, *supra* note 5, at para. 118

⁹ *Ibid.*

States do have obligations to protect against threats to protected rights, including through regulation or mitigation of risk.¹⁰

The findings of the Court on the duty to prevent environmental damage to other states were similarly based on longstanding legal principles. The obligation of a State not to use its territory in a way that is contrary to the rights of other States is a foundational principle of international environmental law.¹¹ This principle has been repeatedly confirmed by the International Court of Justice,¹² and has been considered by this Court to be part of customary international law.¹³ The principle has been widely accepted to extend to environmental damage,¹⁴ and both the Stockholm Declaration on the Human Environment and the Rio Declaration on the Environment and Development include obligations on States to ensure that activities within their jurisdiction do not cause environmental damage to other States.¹⁵ The Court has reinforced this obligation through its recent jurisprudence on extraterritorial jurisdiction. In *Advisory Opinion OC-23/17*, the Court established that State responsibility was not limited to only those residing within its borders. States owe duties to persons whose rights are violated as a result of activities over which the State exercises effective control, regardless of the injured person's citizenship or the State in which they are located.¹⁶

In *Advisory Opinion OC-23/17*, the Court found that the duty of prevention is invoked in situations where there is a risk of significant harm. Damage to the environment amounts to significant harm, as described by the Court, when it may lead to a violation of the right to life or personal integrity.¹⁷ The duty of prevention therefore applies when a threat to the environment constitutes a threat to the enjoyment of the rights to life or personal integrity. The consensus of the scientific community regarding the impacts of climate change demonstrates that continuing harmful greenhouse gas

¹⁰ *Ibid*, at para. 119.

¹¹ See ICJ, *Certain activities carried out by Nicaragua in the border area (Costa Rica v. Nicaragua) and Construction of a road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment of December 16, 2015; ITLOS, *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Advisory Opinion of February 1, 2011.

¹² *Advisory Opinion OC-23/17*, *supra* note 5, at para. 97. See also ICJ, *Corfu Channel case (The United Kingdom v. Albania)*, Judgment of April 9, 1949, p. 22; Court of Arbitration, *Trail Smelter Case (United States v. Canada)*. Decision of April 16, 1938, and March 11, 1941.

¹³ IACtHR, *Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina*. Merits, reparations and costs, Judgment of February 6, 2020, Series C No. 400 [*Indigenous Communities of the Lhaka Honhat*], at para. 208.

¹⁴ For example, see ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment of April 20, 2010, paras. 101 and 204.

¹⁵ Stockholm Declaration on the Human Environment, United Nations Conference on the Human Environment, Stockholm, June 5 to 16, 1972, UN Doc. A/CONF.48/14/Rev.1 [Stockholm Declaration], principle 21; Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, Rio de Janeiro, June 3 to 14, 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. 1) [Rio Declaration], principle 2.

¹⁶ *Advisory Opinion OC-23/17*, *supra* note 5, at paras. 95-103. See N. Urzola, & M. Tigre, "The 2017 Inter-American Court's advisory opinion: Changing the paradigm for international environmental law in the Anthropocene," *Journal of Human Rights and the Environment*, Iss. 1 Vol. 12 (2021), p. 24. See also the ECtHR's comments on the doctrine of effective control in ECtHR, *Case of Al-Skeini and Others v. The United Kingdom [GS]*, No. 55721/07, Judgment of July 7, 2011, paras. 138-139; ECtHR, *Case of Catan and Others v. Moldova and Russia [GS]*, No. 43370/04, 8252/05 and 18454/06. Judgment of October 19, 2012, paras. 106-107.

¹⁷ *Advisory Opinion OC-23/17*, *supra* note 5, at para. 140.

emissions present a clear and undeniable risk to the right to life and personal integrity of all those living in the Americas, with certain populations being exceptionally vulnerable.¹⁸

The Court has extensive jurisprudence on what constitutes a threat to the rights to life and personal integrity. The right to life is protected under Article 4(1) of the American Convention.¹⁹ As the Court has explained on numerous occasions, the obligations placed on States by Article 4(1) must be interpreted broadly and include generating minimum living conditions compatible with the full enjoyment of the right to life and refraining from creating conditions which may lead to the deaths of individuals.²⁰ In the past, the Court has found violations of this right resulting from State failures to address circumstances in which communities faced conditions depriving them of health, food, and clean water.²¹ The right to personal integrity is protected by Article 5(1) of the American Convention,²² and protects against cruel, inhuman or degrading treatment.²³ The Court has recognized that the enjoyment of this right is particularly vulnerable to environmental damage.²⁴ Moreover, the Court has found that threats to personal integrity have resulted from interventions to the natural environment.²⁵ The Inter-American Commission on Human Rights has emphasized that certain vulnerable populations such as children, women, and Indigenous peoples face increased risk to their rights to life and personal integrity as a result of extreme weather events.²⁶

The Intergovernmental Panel on Climate Change's ("IPCC") Climate Change 2023 Synthesis Report²⁷ clearly illustrates the myriad ways in which climate change threatens human rights, including the rights to life and personal integrity.²⁸ Many of the impacts of climate change can already be seen throughout the world. Climate change has increased the prevalence of extreme weather events such as heatwaves, heavy precipitation, droughts, and tropical cyclones.²⁹ In all regions, these extreme weather events result in increased human mortality and morbidity.³⁰ The world has also experienced an increase in the incidence of food-borne, water-borne, and vector-

¹⁸ IACHR, Resolution 3/2021 entitled *Climate Emergency: Scope of Inter-American Human Rights Obligations*, Adopted December 31, 2021 [IACHR Resolution 3/2021], at paras. 8, 19, 21, and 23.

¹⁹ American Convention on Human Rights (San Jose, 23 August 1979), United Nations, Treaty Series, vol. 1144 [American Convention], art. 4(1).

²⁰ IAtHR, *Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Judgment of June 17, 2005, Series C No. 125, [*Yakye Axa Indigenous Community*] at paras 161-162; IACtHR, *Sawhoyamaxa Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Judgement of March 9, 2006, Series C No. 146, at paras. 156-180.

²¹ *Ibid.*, at para. 176.

²² American Convention, *supra* note 19, art. 5(1).

²³ Advisory Opinion OC-23/17, *supra* note 5, at para. 112.

²⁴ *Ibid.*, at para. 66.

²⁵ IACtHR, *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, Merits and reparations, Judgement of June 27, 2012, at paras. 148-149.

²⁶ IACHR Resolution 3/2021, *supra* note 18, at paras. 8, 19, 21, and 23.

²⁷ Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, "Climate Change 2023: Synthesis Report. A Report of the Intergovernmental Panel on Climate Change," IPCC (2023) [Climate Change 2023: Synthesis Report].

²⁸ For an explanation of the content of these rights in relation to environmental damage see *Advisory Opinion OC-23-17*, *supra* note 5, at paras. 108-114.

²⁹ Climate Change 2023: Synthesis Report, *supra* note 27, at p. 46.

³⁰ *Ibid.*

borne diseases as a result of climate change.³¹ As emphasised by the IPCC, the cumulative impacts of climate change have had significant adverse impacts on food security and human health generally.³² Increased temperatures are expected to lead to a reduction in certain crop and fisheries yields in most of the world, including Central and South America.³³

If countries allow the climate crisis to worsen, it will continue to have increasingly severe impacts on the global population. The IPCC has explained that the destructive impacts of the climate crisis will be more severe depending on the extent to which harmful greenhouse gas emissions continue unabated.³⁴ Should harmful greenhouse gas emissions be allowed to continue unabated and the planet experiences two degrees of global warming, the IPCC estimates with high confidence that food insecurity will worsen and millions more will experience undernourishment and malnutrition-related illnesses.³⁵ These impacts are likely to be felt more acutely in Central America, Sub-Saharan Africa, and South Asia.³⁶ Beyond two degrees, the severity of these effects will drastically increase.³⁷

The observed and expected impacts of climate change underscore that the climate crisis faced by the global community presents a clear threat to the enjoyment of the rights to life and personal integrity for those under the jurisdiction of the parties to the American Convention. As found in Advisory Opinion OC-23/17, the American Convention obliges States to prevent environmental damage which threatens the enjoyment of the rights to life and personal integrity. Based on the impacts highlighted by the IPCC's Climate Change 2023 Synthesis Report, there can be no doubt that this duty applies to the threat of climate change.

B) Fulfilling the duty of prevention requires states to reduce harmful greenhouse gas emissions

The conclusions of the global scientific community leave little doubt that climate change presents a threat to the life and personal integrity of everyone living in the Americas and thus triggers the duty of prevention set out in *Advisory Opinion OC-23/17*. Where the duty of prevention is invoked, the Court has explained that States “must regulate activities that could cause significant environmental damage in a way that reduces any threat to the rights to life and personal integrity.”³⁸ In the case of the threat of climate change, fulfilling this obligation necessarily entails the reduction of greenhouse gas emissions.

The evidence linking human activity to climate change and its impacts is incontrovertible. This year, the IPCC concluded that “[i]t is unequivocal that human influence has warmed the

³¹ *Ibid*, at p. 49.

³² *Ibid*.

³³ *Ibid*, at p.73; Jonas Jagermayer et al., “Climate impacts on global agriculture emerge earlier in new generation of climate and crop models,” *Nature Food*, Iss. 22 (2021) pp. 873-885; Eshe Nelson, Ana Swanson, and Jeanna Smialek, “Heat, War and Trade Protections Raise Uncertainty for Food Prices (August 2023)” online: *New York Times* <<https://www.nytimes.com/2023/08/10/business/global-food-prices-volatility.html>>.

³⁴ *Climate Change 2023: Synthesis Report*, *supra* note 27, at p. 68.

³⁵ *Ibid*, at p. 71.

³⁶ *Ibid*.

³⁷ *Ibid*.

³⁸ *Advisory Opinion OC-23/17*, *supra* note 5, at para. 149.

atmosphere, ocean and land”³⁹ and that “[h]uman-caused climate change is already affecting many weather and climate extremes in every region across the globe”. Evidence of observed changes in extreme events such as “heatwaves, heavy precipitation, droughts, and tropical cyclones, and, in particular, their attribution to human influence, has strengthened” since the publication of the previous IPCC synthesis report in 2022.⁴⁰

The connection between greenhouse gas emissions and climate change is now widely accepted by both the global scientific community and by domestic and international courts.⁴¹ Further, all members of the American Convention have either signed or ratified the Paris Agreement,⁴² which specifically recognizes the importance of reducing greenhouse gas emissions to mitigate the effects of climate change.⁴³ Moreover, the Inter-American Commission of Human Rights has recognized a “directly proportional relationship between the increase in greenhouse gas emissions into the atmosphere and the frequency and intensity of meteorological changes, which implies the amplification of risks to societies, people and natural systems”.⁴⁴

This Court has not yet had the opportunity to determine how States are obliged to regulate their greenhouse gas emissions in order to comply with their duty to regulate. However, the issue has been considered at length by domestic courts and by legal scholars around the world. On this point, interpretations of the European Convention on Human Rights (the “ECHR” or the “European Convention”) should guide the Court’s interpretation of State obligations under the American Convention. The most relevant case for the current Advisory Opinion is *Urgenda Foundation v. State of the Netherlands* (“*Urgenda*”).⁴⁵

In *Urgenda*, a case brought by a Dutch environmental group against the Netherlands, the Supreme Court of the Netherlands found that the Netherlands was obliged to act to reduce their greenhouse gas emissions to fight climate change. The European Convention has long held that States have a positive obligation to prevent threats to life that applies to activities which could endanger the enjoyment of that right.⁴⁶ In this case, the Supreme Court of the Netherlands discussed how that obligation applies to the threat of climate change. The court also addressed the application of the “no harm principle”, a term used to identify the obligation on States not to act in a way that is

³⁹Climate Change 2023: Synthesis Report, *supra* note 27, at p. 46.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*, at p. 42; UNCRC, *Sacchi, et al. v. Argentina, et al.*, CRC/C/88/D/104/2019, September 22, 2021, at para. 10.11; Supreme Court of the Netherlands, *Urgenda Foundation v. State of the Netherlands*, 19/00135, 20 December 2019 [*Urgenda*], at para. 4.1-4.8; Federal Constitutional Court, *Neubauer, et al. v. Germany*, March 24, 2021 [*Neubauer*], at para. 18; Corte Suprema de Justicia, *Demanda Generaciones Futuras v. Minambiente*, Reporter No. 11001-22-03-000-2018-00319-01, April 5, 2018, at p. 34.

⁴² “Status of Treaties: Chapter XXVII, 7.d)” online: United Nations Treaty Collection <<https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XXVII/XXVII-7-d.en.pdf>>.

⁴³ Paris Agreement (Paris, 12 December 2015), United Nations, Treaty Series, vol. 3156 [Paris Agreement], art. 2.

⁴⁴ IACHR Resolution 3/2021, *supra* note 18, Introduction.

⁴⁵ *Urgenda*, *supra* note 41.

⁴⁶ ECtHR, *Budayeva and Others v. Russia*, Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, Judgement of March 20, 2008, at para. 132.

contrary to the rights of other States and a principle on which the duty of prevention outlined in *Advisory Opinion OC-23/17* is based.⁴⁷

The Supreme Court of the Netherlands determined that the level of risk to the enjoyment of rights guaranteed under the European Convention presented by climate change was sufficient to require the Netherlands to act to address that risk. As the Court wrote in its judgment, “[t]he mere existence of a sufficiently genuine possibility that this risk will materialise means that suitable measures must be taken.”⁴⁸ The Supreme Court went on to determine that the “no harm principle”, when applied to greenhouse gas emissions causing climate change, obliges States to do their part in reducing greenhouse gas emissions. The judgement emphasised that a State cannot be exempted from fulfilling its duty of prevention due to the fact that its contributions to climate change are small in comparison with those of the rest of the global community as such an exemption would allow States to escape responsibility for their contributions to rights violations.⁴⁹ The Supreme Court further explained that all reductions in greenhouse gas emissions will have a positive impact on climate change consequences by reducing the severity of the consequences.⁵⁰ It concluded that the duty of a State not to act in a way contrary to the rights of other states obliged the Netherlands to reduce greenhouse gas emissions by at least 25% by 2020.⁵¹

The IJHRC submits that State obligations under the American Convention should be identical to State obligations under the European Convention as identified by the Supreme Court of the Netherlands in *Urgenda*. It would not make sense for this Court to decide differently given *Advisory Opinion OC-23/17*’s clear guidance that when undertaking activities that will harm the environment in a way that threatens the right to life and personal integrity, States must take action to regulate the threat in order to minimize the risk presented by the activity.⁵² Moreover, as stated above, States have an obligation not to cause harm to other States, and continued greenhouse gas emissions contribute to destructive consequences far beyond of the emitting State. With regards to climate change, the only way a State can fulfil both of these obligations is to limit its harmful greenhouse gas emissions, and thereby reduce its contributions causing harmful impacts of climate change and adding to the severity climate crisis.

Not all States have contributed equally to climate change, however, and thus each State’s obligation to reduce emissions should be determined differently. The Court should be guided by the principle of “common but differentiated responsibility” as enunciated in a number of multilateral climate agreements, including the 2015 Paris Agreement.⁵³ This principle recognizes that states have contributed unequally to the climate crisis and have different capacities to implement climate adaptation and mitigation measures or respond to climate-related loss and damages.⁵⁴ Therefore, though all States are obliged to reduce their greenhouse emission to comply

⁴⁷ *Advisory Opinion OC-23/17*, *supra* note 5, at para. 97.

⁴⁸ *Urgenda*, *supra* note 41, at para. 5.6.2.

⁴⁹ *Ibid*, at para. 5.7.7.

⁵⁰ *Ibid*, at para. 5.7.8.

⁵¹ *Ibid*, at para. 8.3.5.

⁵² *Advisory Opinion OC-23/17*, *supra* note 5, at para. 149.

⁵³ Paris Agreement, *supra* note 43, art. 2(2).

⁵⁴ See Stockholm Declaration, *supra* note 15, principle 12; Rio Declaration, *supra* note 15, principles 6 and 7.

with their obligations of prevention under the American Convention, each States' obligation to reduce their greenhouse gas emissions will need to be determined on a case-by-case basis. This brief proposes a framework for establishing State responsibility for climate change in a following section.

II. Reducing harmful greenhouse gas emissions is required to ensure the right to a healthy environment and to remedy violations of that right

The Court has been asked to address State obligations to establish effective judicial remedies to provide protection and redress from the impacts of climate change. It also has been asked to address how States should guarantee both individually and collectively, the right to redress for the damage caused by their acts and omissions in relation to the climate emergency. In addressing these questions, the Court will have the opportunity to provide guidance on the relationship between climate change and the right to a healthy environment to help States guarantee the continued enjoyment of that right. In doing so, the Court should concretely establish that in order to effectively protect the right to a healthy environment, States must reduce harmful greenhouse gas emissions resulting from activities under their control. Further, the Court should provide direction to States on how to remedy violations of the right to a healthy environment that result from the consequences of climate change and how to protect against further violations of that right.

A) The right to a healthy environment is protected by the American Convention on Human Rights

In *Advisory Opinion OC-23/17*, the Court confirmed that Article 26 of the American Convention protects an independently actionable right to a healthy environment.⁵⁵ In *Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina* (“*Indigenous Communities of the Lhaka Honat*”), the Court for the first time clarified the nature of the right. Here, the Court explained that states not only have an obligation to respect the right to a healthy environment, but also an obligation to ensure it.⁵⁶ The Court continued, stating that the obligation to ensure the right to a healthy environment extends to actions in the “private sphere”, and that States have obligations to establish mechanisms to protect the right from infringement from public entities and private individuals.⁵⁷ The Court emphasized that this is an obligation of conduct, measured on a standard of due diligence, and non-compliance of a State is not proven solely through the occurrence of harm to the environment.⁵⁸

Unlike other rights, the right to a healthy environment protects components of the environment as legal interests in themselves. The Court also stressed that, though environmental damage can lead to the violation of other human rights, the autonomous right to a healthy environment is protected even without evidence of risk to individuals resulting from environmental destruction.⁵⁹

⁵⁵ *Advisory Opinion OC-23/17*, *supra* note 5, at para. 62.

⁵⁶ *Indigenous Communities of the Lhaka Honhat*, *supra* note 13, at para. 207.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ IACHR Resolution 3/2021, *supra* note 18.

B) Ensuring the right to a healthy environment requires states to reduce harmful greenhouse gas emissions

Article 1(1) of the American Convention obliges States to ensure the enjoyment of the human rights protected by the other articles of the convention for all those under their jurisdiction.⁶⁰ Though there is still little guidance as to the content of the right to a healthy environment, *Advisory Opinion OC-23/17* and the Judgement in the case of the *Indigenous Communities of the Lhaka Honhat Association* provide sufficient description of the right for there to be no doubt that the perpetuation of climate change constitutes a violation of the right to a healthy environment. Therefore, for a State to ensure effectively ensure the enjoyment of the right to a healthy environment for those falling under its jurisdiction, it must reduce harmful greenhouse gas emissions.

In *Indigenous Communities of the Lhaka Honat*, the Court found that environmental degradation resulting from logging and grazing livestock violated the claimants right to a healthy environment.⁶¹ The combination of these destructive factors had resulted in the disappearance of wildlife and vegetation that Indigenous communities relied upon for subsistence.⁶² Though the cause of the environmental damage differs, climate change has and will continue to have comparable impacts on the global natural environment, though much broader in scope and potentially more severe.

The IPCC's Climate Change 2023 Synthesis Report again provides a comprehensive and up to date summary of the impacts on climate change. The observed impacts of climate change in the context of the right to life and personal integrity have already been detailed in this brief. The consequences of climate change that present a threat to the rights to life and personal integrity also constitute violations of the right to a healthy environment as they will cause severe environmental damage. This includes the observed increase in extreme heat throughout all of the Americas,⁶³ the increased prevalence of wildfires and floods,⁶⁴ and the increase in the frequency and severity of drought conditions.⁶⁵ Moreover, the IPCC has highlighted the irreversible losses to biodiversity that has occurred in ecosystems all over the world, including throughout the Americas. Impacts of climate change have resulted in an increased frequency of "mass mortality" events on land and in the ocean.⁶⁶ Damage to the environment has also resulted from other consequences of climate change, such as ocean acidification and desertification.⁶⁷

As has been mentioned above, the consequences of climate change will become increasingly severe should there be no reductions in global greenhouse gas emissions. As detailed in the IPCC's Climate Change 2023 Synthesis Report, climate change is expected to increase the frequency and

⁶⁰ American Convention, *supra* note 19, art. 1(1); *Advisory Opinion OC-23/17*, *supra* note 5, at para. 72.

⁶¹ *Indigenous Communities of the Lhaka Honhat*, *supra* note 13, at para. 289.

⁶² *Ibid*, at para. 280.

⁶³ Climate Change 2023: Synthesis Report, *supra* note 27, at p. 48.

⁶⁴ *Ibid*, at p. 51.

⁶⁵ *Ibid*, at p. 46.

⁶⁶ *Ibid*.

⁶⁷ *Ibid*.

intensity of extreme weather events.⁶⁸ The extreme weather events the States in the Americas will endure should harmful greenhouse gas emission continue unabated include increasingly severe drought, wildfires, heatwaves,⁶⁹ and further irreversible loss of biodiversity.⁷⁰

Recognizing that finding a violation of the right to a healthy environment does not rest upon a finding of a violation of any other protected rights, the environmental damage that will result from climate change will undoubtedly result in violations of the right to a healthy environment. This is true regardless of any adaptation measures taken to protect other protected rights, such as the right to life and personal integrity. In response to the threat that climate change poses to the right to a healthy environment, States must reduce their greenhouse gas emissions in order to mitigate the negative consequences of climate change. As is highlighted above, the global scientific community has repeatedly emphasised the close causal relationship between greenhouse gas emissions and climate change,⁷¹ and the connection between climate change and greenhouse gas emissions has been accepted by the parties to the American Convention. There is thus a close relationship between harmful greenhouse gas emissions and the ability of States to effectively guarantee the right to a healthy environment. To effectively ensure the enjoyment of the right to a healthy environment for those under their jurisdiction, States have no choice but to reduce their harmful greenhouse gas emissions to reduce the impact of the climate crisis.

C) To effectively protect the right to a healthy environment, domestic courts should grant judicial remedies that require reduction of harmful greenhouse gas emissions

Beyond clarifying the impact of greenhouse gas emissions on the right to a healthy environment, the Court should also offer guidance as to how domestic courts should remedy violations of the right to a healthy environment which result from climate change. Article 25 of the American Convention guarantees that everyone has the right to “simple and prompt recourse... to a competent court or tribunal for protection against acts that violate his fundamental [...] this convention, even though such a violation may have been committed by persons acting in the course of their official duties.”⁷² Without effectively providing judicial remedies for violations of the right to a healthy environment caused by climate change, States cannot fulfil this obligation.

An effective remedy that fulfils the obligation set out in Article 25 of the American Convention, a judicial remedy must “provide results or answers to the violations of rights in the [American] Convention”.⁷³ An effective remedy must be “truly effective” at providing redress for the rights

⁶⁸ *Ibid*, at p. 69.

⁶⁹ Climate Change 2023: Synthesis Report, *supra* note 27, at p. 72.

⁷⁰ *Ibid*, at p. 77.

⁷¹ *Ibid*, at p. 42.

⁷² American Convention, *supra* note 19, art. 25.

⁷³ IACtHR, *Case of Duque v. Columbia*, Preliminary objections, merits, reparations and costs, Judgement of 26 February 2016, Series C No. 310, at para. 148.

violation.⁷⁴ If no remedy meeting standard is available, States are obliged to create such a remedy and ensure its implementation by judicial authorities.⁷⁵

When human rights violations have been found, domestic courts have employed a wide array of remedies. In some past cases, courts have ordered that governments or private actors create and implement plans for the restoration of damaged environments.⁷⁶ In other cases, courts have required that States create governing bodies with the mandate to monitor and protect against threats to the environment.⁷⁷ There are, therefore, a broad range of mechanisms available to domestic courts to remedy violations of the right to a healthy environment.

In the Advisory Opinion in question, we invite the Court to guide domestic government and courts by clarifying that when ordering remedies for violations of the right to a healthy environment attributable to climate change, the remedy should be tailored to reduce harmful greenhouse gas emissions. Otherwise, the remedy fails to address the true cause of the environmental damage and, by extension, the violation of the right to a healthy environment. It is open to courts to select from the broad range of remedies that have already been utilized to remedy human rights violations resulting from environmental damage, from injunctions prohibiting polluting activities to broad orders to government to meet certain emissions targets.

III. State responsibility for human rights violations resulting from climate change should be assessed using a due diligence standard that incorporates the precautionary principle

In responding to the questions submitted to the Court regarding State obligations to establish judicial remedies to provide adequate and timely protection and redress for the impacts of the climate emergency, the Court has the opportunity to provide guidance on a challenging aspect of climate change litigation: causation. As all States have contributed to climate change through decades or centuries of greenhouse gas emissions, it is difficult to attribute the failures of one State to climate change induced human rights violations in their own territory, let alone abroad. However, the multi-causal nature of climate change cannot preclude this Court from adjudicating climate-induced human rights claims, just as it cannot act as an excuse for states to refuse to adopt bold climate action strategies. Without a method of assigning liability for human rights violations to parties that fail to comply with their obligations to curtail their greenhouse gas emissions, States will remain unaccountable for their contributions to climate change.

⁷⁴ *Ibid*, at para. 149.

⁷⁵ IACtHR, “*Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala*,” Merits, Judgement of November 19, 1999, Series C no. 63, at para. 237; IACtHR, *Case of Omar Humberto Maldonado Vargas et al. v. Chile*, Merits, reparations and costs, Judgment of September 2, 2015, Series C No. 300, para. 123.

⁷⁶ See, for example, Constitutional Court of Columbia, *Centro de Estudios para la Justicia Social ‘Tierra Digna’ y otros v. Presidente de la República y otros*, T-622/16, Judgment of November 10, 2016.

⁷⁷ See, for example, Corta Suprema de Justicia de la Nación, *Equística Defensa del Medio Ambiente Aso. Civ. v. Provincia de Santa Fe y otros*, CSJ 468/2020, Fallos 343:726, Judgment of August 11, 2020, where the court ordered that a committee be established with a mandate to implement measures to prevent irregular wildfires.

This Court requires that reparations have a causal nexus with the facts of the case, the violation, and the harm sustained.⁷⁸ The term “causal nexus” is not specifically defined in the Court’s jurisprudence. It is thus imperative for the Court to adopt a standard of causation that accommodates the unique, multi-causal nature of climate change. Failure to adopt a workable standard of causation would likely make many climate-related human rights violations irremediable. Without access to appropriate redress, court will be unable to provide effective human rights protections at a time where the human rights impact of anthropocentric climate change continues to manifest in greater severity and frequency. The Court should adopt a due diligence standard to determine liability for human rights violations resulting from climate change that aligns with the precautionary principle.

A) The precautionary principle should be used in developing the Court’s standard of liability for climate change cases.

The precautionary principle is increasingly recognized as a guiding principle in both domestic and international climate change law. This Court recognized the applicability of the precautionary principle in *Advisory Opinion OC-23/17*. It stated that in order for states to safeguard the rights to life and personal integrity under Articles 4 and 5 of the American Convention, the precautionary principle requires that States act with due diligence when undertaking activities that could result in severe and irreversible damage to the environment in order to prevent such damage to the best of that state’s abilities, even in the absence of scientific certainty.⁷⁹

The precautionary principle is similarly embedded in international climate change and human rights law. Article 3 of the UNFCCC provides that parties “should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects.”⁸⁰ The Rio Declaration on Environment and Development states that “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”⁸¹ The United Nations Human Rights Committee has directed states to consider the precautionary principle when responding to the threats to human rights posed by climate change.⁸² The European Court of Human Rights has likewise stated that even in cases with an absence of causal probability, there exists a positive obligation for a state to protect human rights where a serious and substantial risk to the applicant’s health and well-being exists.⁸³

⁷⁸ IACtHR, *Ticona Estrada v. Bolivia*, Merits, reparations and costs, Judgment of November 27, 2008, Series C No. 191, at para. 110; IACtHR, *Deras García et al. v. Honduras*, Merits, reparations and costs, Judgement of August 25, 2022, Series C No. 462, at para. 93.

⁷⁹ *Ibid*, at paras 175, 180.

⁸⁰ See United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 2 March 1994) 1771 UNTS 107, art. 3.

⁸¹ Rio Declaration, *supra* note 15, principle 15.

⁸² General Comment No. 36 on Article 6: right to life (Article 6 of the International Covenant on Civil and Political Rights) UN Doc. CCPR/C/GC/36, September 3, 2019, at para. 62.

⁸³ ECtHR, *Case of Öneriyildiz v. Turkey [GS]*, No. 48939/99, Judgment of November 30, 2004, at paras. 89, 101; ECtHR, *Case of Tătar v. Romania*, No. 67021/01, Judgment of January 27, 2009.

Climate change is a global phenomenon that poses a real and substantial threat to civilians' health and well-being. As stated above, the IPCC has concluded that climate change has already caused adverse impacts on human health, livelihoods, infrastructure in urban settings, contributed to food insecurity by reducing agricultural productivity, and contributed to humanitarian crises where climate change interacts with existing vulnerabilities.⁸⁴ Any method of assessing liability or responsibility for the consequences of the climate crisis must incorporate the precautionary principle in order to be capable of holding States accountable for human rights violations they have contributed to, even in the absence of causal probability or complete scientific certainty.

B) Existing causation standards can be used to evaluate a State's liability in climate change cases

Both international and domestic courts have adopted various methods of assessing causation and responsibility that provide a workable baseline for a standard for causation that allows a State to be held liable for human rights violations stemming from its contributions to climate change, whether it be a failure to reduce its greenhouse gas emissions or failure to implement adaptation measures. The Court should draw from the body of jurisprudence created by international and domestic courts to establish a concrete framework for assessing responsibility for the impacts of climate change.

1. International law on causation affirms that the multi-causal nature of climate exchange does not relieve a State from responsibility for harmful climate change

International Courts and organizations have considered state responsibility in circumstances comparable to climate change in the past. The Commentary to Article 31 of the *Articles on State Responsibility for Internationally Wrongful Acts* expressly provides that “international practice and the decisions of international tribunals do not support the reduction or attenuation of reparation for concurrent causes, except in cases of contributory fault”.⁸⁵ Article 47 (1) likewise provides that “[w]here several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act.”⁸⁶

International courts and quasi-judicial bodies have adopted similar standards for assessing responsibility. The ICJ requires a “direct and certain causal nexus” between the alleged wrongful act and the harm in order for reparations to be ordered. When applying this standard, the ICJ has rejected states' claims that their non-compliance with international obligations was a result of the difficulty of the challenge and/or the need for the assistance of other states. In the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and*

⁸⁴ Climate Change 2023: Synthesis Report, *supra* note 27, at pp. 50-51. See also Eshe Nelson, Ana Swanson, & Jeanna Smialek, *supra* note 33.

⁸⁵ International Law Commission, *Commentaries on the draft articles on state responsibility for internationally wrongful acts*, Yearbook of the International Law Commission 2001, vol. II, Part Two (A/56/10), art. 31, para. 12.

⁸⁶ *Ibid*, art. 47(1).

Herzegovina v. Serbia and Montenegro) case, the ICJ held “it is irrelevant whether the State whose responsibility is in issue claims, or even proves, that even if it had employed all means reasonably at its disposal, they would not have sufficed to prevent the commission of genocide” because this claim is “irrelevant to the breach of the obligation of conduct in question, the more so since the possibility remains that the combined efforts of several States, each complying with its obligation to prevent, might have achieved the result [...] which the efforts of only one State were insufficient to produce.”⁸⁷ In *Cordella and Others v. Italy*, the European Court of Human Rights accepted the causal link between emissions from a steel production plant and the health risks experienced in the neighbouring community because of the number and quality of reports proving the existence of a causal nexus.⁸⁸

2. Domestic courts have found that State responsibility attaches to climate change

Domestic courts have found that States cannot escape liability or responsibility for the human rights violations that stem from insufficient State efforts to mitigate climate change through reductions in national greenhouse gas emissions and implementing climate adaptation measures through reference to other State’s contributions to climate change. This Court should adopt domestic courts’ approach to causation in climate change litigation. Domestic courts have correctly followed international law on State Responsibility and provide the following guidance on causation in cases related to climate change and environmental harm.

i. Small contributions are causally related to climate change

In *Milieudefensie et al v Royal Dutch Shell*, the District Court in The Hague, Netherlands held that there may be a causal link between even small contributions to climate change and its related impacts.⁸⁹ In *Urgenda*, the Dutch Supreme Court determined that a state “cannot escape its own share of the responsibility to take measures by arguing that compared to the rest of the world, its own emissions are relatively limited in scope and that a further reduction of its own emissions would have very little impact on a global scale”.⁹⁰

Importantly, these links need not be proven with absolute certainty. The Constitutional Court of Colombia, the nation’s highest court for constitutional matters, affirmed in its decision *La Sociedad Arrocería Potrerito Laserna y Cía vs. Cementos Diamante de Tolima S.A.* that in cases of environmental damage it is not imperative to be “certain about the specific consequences of a substance or to have direct and unequivocal proof of the relationship between the damaging action and the damaging event (causal link)”.⁹¹ Rather, to find a party liable for environmental damage it

⁸⁷ ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, ICJ Reports [2007] 43, paras. 5.7.1-5.8.

⁸⁸ ECtHR, *Cordella and Others v. Italy*, Nos. 54414/13 and 54264/15, Judgment of January 24, 2019.

⁸⁹ The Hague District Court, *Milieudefensie et al v Royal Dutch Shell*, C/09/571932 / HA ZA 19-379, Judgement of May 26, 2021, at para. 4.3.5.

⁹⁰ *Urgenda*, *supra* note 41, at paras. 5.6.1-5.8.

⁹¹ Constitutional Court of the Republic of Colombia, *La Sociedad Arrocería Potrerito Laserna y Cía vs. Cementos Diamante de Tolima S.A.*, Decision SU-455/20, October 16, 2020, para. 6.8.4.

suffices to draw logical inferences about this causal relationship provided there is an adequate body of evidence.⁹²

ii. The multiple causes of climate change do not relieve a State from responsibility for its contribution to climate change harms

Importantly, many of these domestic courts rejected the state government's assertion that the global, multi-causal nature of climate change and its related impacts precluded a finding of individual state responsibility. In *Urgenda*, the Dutch Supreme Court rejected the Netherlands' assertion that its contribution to global GHG emissions was small and thus reducing its emissions would not make a difference on the global scale.⁹³ Rather, "a country cannot escape its own share of the responsibility to take measures by arguing that compared to the rest of the world, its own emissions are relatively limited in scope and that a further reduction of its own emissions would have very little impact on a global scale".⁹⁴

In *Neubauer, et al. v. Germany*, the German Constitutional Court affirmed that climate change engaged Germany's individual State responsibility, despite the fact that it is a multi-causal phenomenon resulting from the cumulative effects of global greenhouse gas emissions.⁹⁵ Furthermore, it rejected the German government's attempt to evade responsibility by referencing the greenhouse gas emissions of other states, affirming that "the obligation to take national climate action cannot be invalidated by arguing that such action would be incapable of stopping climate change."⁹⁶ In the Belgian case of *VZW Klimaatzaak v. Kingdom of Belgium and Others*, the Court of First Instance of Brussels held that the global dimensions of climate change did not absolve the Belgian government of its responsibility to fulfil its obligations under Articles 2 and 8 of the European Convention.⁹⁷

C) This Court should adopt a due diligence standard of liability in the context of human rights violations resulting from climate change.

This Court has recognized that States are bound to comply with their obligations under the American Convention with due diligence.⁹⁸ The standard of due diligence is flexible, requiring states to address threats to the environment in a manner that is appropriate and proportionate to the risk of environmental harm.⁹⁹ Due diligence is the appropriate framework to assess state responsibility for human rights violations linked to the climate crisis. The application of this

⁹² *Ibid*, at para. 6.8.5.

⁹³ *Urgenda*, *supra* note 41, at para. 5.7.7.

⁹⁴ *Ibid*.

⁹⁵ *Neubauer*, *supra* note 41, at para. 202.

⁹⁶ *Ibid*, at para. 201.

⁹⁷ Tribunal de première instance francophone de Bruxelles, *VZW Klimaatzaak v. Kingdom of Belgium and Others*, Judgement N. 167, Judgement of June 17, 2021, at p. 61.

⁹⁸ *Advisory Opinion OC-23/17*, *supra* note 5, at para. 123.

⁹⁹ *Ibid*, at para 142; ITLOS, *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Advisory Opinion of February 1, 2011, para. 117; International Law Commission, Commentaries on the draft articles on prevention of transboundary harm from hazardous activities, Yearbook of the International Law Commission 2001, vol. II, Part Two (A/56/10), art. 3, para. 11.

standard would simplify the causation issue that stymies climate change litigation. A causal nexus between state conduct and an alleged human rights violation would exist when the respondent state failed to do all that it could to prevent and mitigate climate change and its associated human rights impacts.

The due diligence standard is well-suited to situations where causal links cannot be proven with absolute certainty. Climate change is one such situation. Every state contributes in part to the foreseeable interference with the enjoyment of human rights under the American Convention through their past and future production of greenhouse gas emissions. While it is true that all states therefore bear some degree of responsibility for the human rights harms of climate change, the due diligence standard allows the Court to isolate and evaluate the respondent state's acts or omissions as they relate to the specific claim before it. As long as the plaintiff's claims against the respondent state focus on that state's failure to meet its obligations, it is possible to evaluate that state's responsibility under the due diligence standard of conduct. As the due diligence standard assesses state conduct, it is flexible enough to accommodate claims where state action or state inaction forms the basis of alleged human rights violation.

Under the American Convention, States owe a positive obligation to “take all appropriate steps to protect and preserve the rights to life and to integrity.”¹⁰⁰ Within the context of climate change, what constitutes an “appropriate step” must be interpreted in light of that state's obligations under the Paris Agreement. Under the Paris Agreement, state parties resolved to hold the increase in the global average temperature to well below 2°C above pre-industrial levels. Each party committed to “undertake and communicate ambitious efforts” in the form of nationally-determined contributions (“NDC”) that represent “a progression over time”, and each successive NDC must represent each party's “highest possible ambition”.¹⁰¹ This principle of “highest possible ambition” aligns with the principle of due diligence.

When faced with the global existential risk of climate change, each government must take measures to address this risk commensurate with its scope and severity.¹⁰² A failure to take all “appropriate steps” could entail a state's failure to reduce its GHG emissions in line with its NDC commitments or to properly implement adaptation projects in regions known to be particularly vulnerable to climate change impacts, including but not limited to “Indigenous communities, women and children, coastal or low-lying communities, people living in poverty, and people with disabilities, [and c]ommunities whose economic, social, or spiritual livelihoods are tied to land and resources”.¹⁰³ A standard of due diligence is sufficiently flexible to account for the many different ways in which State governments could fail to take appropriate steps to address the risk

¹⁰⁰ *Advisory Opinion OC-23/17*, *supra* note 5, at para. 118.

¹⁰¹ Paris Agreement, *supra* note 43, arts. 2(1)(a), 3, 4(3).

¹⁰² ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment of April 20, 2010, at para. 187. See also ITLOS, *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area*, Advisory Opinion, ITLOS Reports 2011, at p. 10.

¹⁰³ *Advisory Opinion OC-23/17*, *supra* note 5, at para 67; 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, January 15, 2009, UN Doc. A/HRC/10/61, para. 42; Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, February 1, 2016, UN Doc. A/HRC/31/52, para. 81.

of climate change, while also accommodating the many different strategies a state may successfully employ to address the climate crisis.

Crucially, the due diligence standard is able to accommodate the principle of “common but differentiated responsibility” when assessing liability for climate change impacts.¹⁰⁴ It allows courts to consider the capabilities of States to reduce their greenhouse gas emissions when assessing their obligation to take measures that mitigate climate change impacts. Further, it allows for the consideration of States’ historic contribution to global greenhouse gas emissions in determining the extent of their individual forward-looking obligations to act to reduce their harmful greenhouse gas emissions.

D) A due diligence approach appropriately balances the evidentiary burden of climate change claims

A due diligence standard would appropriately balance the evidentiary burden between the plaintiff and respondent State. While the scientific evidence on the dangerous impacts of climate change is indisputable, the precise causal links between individual state behaviour and specific climate-change related events or environmental degradation remain difficult to isolate with scientific certainty. Nevertheless, the observed and potential dangers of climate change constitute a sufficient threat to human rights within a majority of States such that all States should be required to act with due diligence and implement measures to prevent and remedy serious environmental harm.¹⁰⁵

Requiring absolute scientific certainty on a) the attribution of specific human rights violations to climate change and b) the contribution of specific respondent States to climate change would erect too great a barrier for plaintiffs to access reparations. Therefore, it is imperative that this Court adopt an approach to assessing State liability that reflects the multi-causal nature of climate change, embraces the uncertainties of attribution science, and balances the evidentiary burden between plaintiffs and respondent states, who often have greater access to information.

The UN Human Rights Committee (“HRC”) has previously redistributed the burden of proof between the author and complainant state in cases dealing with environmental harm. For example, in *Cáceres et al. v. Paraguay*, the HRC ruled that the complainant’s allegations of human rights violations caused by environmental harm would be causally substantiated if the respondent state did not provide evidence to refute the allegations.¹⁰⁶ The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and Caribbean (“Escazu Agreement”) similarly endorsed using the reversed burden of proof in cases involving environmental damage.¹⁰⁷

¹⁰⁴ Paris Agreement, *supra* note 43, art. 2(2).

¹⁰⁵ *Advisory Opinion OC-23/17*, *supra* note 5, at paras 123-4, 128.

¹⁰⁶ United Nations Human Rights Committee, Communication 2751/2016, *Cáceres et al. v. Paraguay*, CCPR/C/126/D/2751/2016, July 25, 2019, para. 7.2.

¹⁰⁷ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and Caribbean, (Escazu, 4 March 2018), United Nations, Treaty Series, vol. 3397, art. 8(3)(e).

Conclusion

In sum, the Inter-American Court of Human Rights should, in its Advisory Opinion on the climate emergency and human rights, establish several important points related to assist parties with climate change cases brought before the Court under the American Convention on Human Rights. First, it should decide that the threat of climate change triggers the duty of prevention set out by the Court in its *Advisory Opinion OC-23/17* and find that States must reduce their harmful greenhouse gas emissions to mitigate the threat that climate change poses to the enjoyment of rights to life and personal integrity for those within their jurisdiction. Second, the Court should decide that continued harmful greenhouse gas emissions violate the right to a healthy environment of those under the jurisdiction of the emitting State. Third, the Court should decide that States, in order to meet their obligation under Article 25 of the American Convention related to the right to a healthy environment, must ensure that domestic courts grant remedies that seek to reduce harmful greenhouse gas emissions to address violations of the right to a healthy environment resulting from climate change. Last, the Court should establish a framework for determining State responsibility for individual harms related to climate change using a standard of due diligence that integrates the precautionary principle.



Nicole Barrett
Director
International Justice and Human Rights Clinic
Peter A. Allard School of Law



Ben Risk
Student Clinician
International Justice and Human Rights Clinic
Peter A. Allard School of Law



Avery Pasternak
Student Clinician
International Justice and Human Rights Clinic
Peter A. Allard School of Law