

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

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**Advisory Opinion on Climate Emergency and Human Rights**

**AMICUS BRIEF SUBMITTED TO THE INTER-AMERICAN COURT OF  
HUMAN RIGHTS BY THE UN SPECIAL RAPPOREUR ON THE  
PROMOTION AND PROTECTION OF HUMAN RIGHTS IN THE  
CONTEXT OF CLIMATE CHANGE (IAN FRY)**

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*Taking into account that the climate crisis is having a greater impact on some regions and populations, including the Caribbean, island and coastal countries and territories of our region and their inhabitants: .....29*

*Considering that one of the impacts of the climate emergency is to aggravate the factors that lead to human mobility - migration and forced displacement of people: .....30*

*Conclusion.....30*

## **IDENTITY AND INTERESTS OF AMICUS CURIAE**

1. The UN Special Rapporteur on the promotion and protection of human rights in the context of climate change (Dr. Ian Fry), makes this *amicus* submission to the Inter-American Court of Human Rights as it addresses the Advisory Opinion Request made by Chile and Colombia regarding obligations of States under the American Convention on Human Rights and international law regarding the climate emergency (the “Advisory Opinion Request”).

2. The mandate of the UN Special Rapporteur on the promotion and protection of human rights in the context of climate change (hereafter Special Rapporteur”) was established in 2021. The mandate includes studying and identifying how the adverse effects of climate change affect the full and effective enjoyment of human rights; identifying challenges to States’ efforts to protect human rights while addressing the effects of climate change; and raising awareness of the human rights affected by climate change.

3. Dr. Ian Fry is the Pacific Regional Representative to the UN for the International Council on Environmental Law, a member of the IUCN World Commission on Environmental Law, and a member of the Australasian Association for Pacific Studies, the International Studies Association, and the International Association for Small Island States. He worked for the Tuvalu government for over 21 years and served as their Ambassador for Climate Change and Environment from 2015 to 2019. Dr Fry is a Senior Lecturer at the Australian National University’s Fenner School of Environment and Society and specializes in international environmental policy and environmental law. Dr. Fry commenced his term as the Special Rapporteur on Climate Change in March 2022.

## **RESPONSE TO REQUEST TO SUBMIT AN AMICUS CURIAE**

4. This brief is provided in response to an invitation by President, Judge Ricardo C. Pérez Manrique, to Dr Fry to submit a written opinion on the issues you consider relevant according to your area of expertise, field of work or interest as noted in document CDH-OC-1-2023/173, San José, March 22, 2023.

5. The Special Rapporteur undertook a country visit to Honduras in September 2023 and witnessed first-hand how the climate emergency is adversely affecting the rights of people within that country and people moving through the country due to climate change displacement.<sup>1</sup>

## **CONSIDERATION OF THE JURISDICTION OF THE COURT AND INTERPRETATION OF THE SCOPE OF STATE OBLIGATIONS**

6. In their request for this Advisory Opinion, the Republic of Colombia and the Republic of Chile submitted a request for an advisory opinion to the Inter-American Court of Human Rights (hereinafter, IACHR Court or the Court) with the purpose of clarifying the scope of State obligations, in their individual and collective dimension, to respond to the climate

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<sup>1</sup> Statement at the conclusion of the country visit to Honduras by the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Mr. Ian Fry, <https://www.ohchr.org/sites/default/files/documents/issues/climatechange/statements/eom-statement-honduras-sr-climate-2023-09-27-en.pdf>

emergency within the framework of international human rights law, taking into account the differentiated effects that such emergency has on the people of different regions and population groups, nature and human survival on our planet.

7. In consideration of determining the jurisdiction and scope of State obligations, this brief draws from the Court's interpretation of scope in its Advisory Opinion to Colombia<sup>2</sup> in which it stated:

the Court has considered that, when referring to its authority to provide an opinion on "other treaties concerning the protection of human rights in the States of the Americas," Article 64(1) of the Convention is broad and non-restrictive. In general, the advisory jurisdiction of the Court can be exercised with regard to any provision dealing with the protection of human rights set forth in any international treaty applicable in the American States, whether it be bilateral or multilateral, whatever the principal purpose of such a treaty, and whether or not non-Member States of the inter-American system are or have the right to become parties thereto. Consequently, when interpreting the Convention within the framework of its advisory function and in the terms of Article 29(d) of the Convention, the Court may invoke the Convention or other treaties concerning the protection of human rights in the American States.<sup>3</sup>

8. The Court has concluded that "jurisdiction" referred to in Article 1(1) of the American Convention is not limited to the national territory of a State but contemplates circumstances in which the extraterritorial conduct of a State constitutes an exercise of its jurisdiction.<sup>4</sup>

9. The Court further provided guidance on its jurisdictional competence by stating:

Given the broad scope of the Court's advisory function, which, as previously indicated, encompasses not only the States Parties to the American Convention, everything indicated in this Advisory Opinion also has legal relevance for all OAS Member States, as well as for the OAS organs whose sphere of competence relates to the matter that is the subject of the request.<sup>5</sup>

10. In its Advisory Opinion the Court recognised the consequence of the interdependence and indivisibility of human rights and environmental protection is that, when determining these State obligations, the Court may avail itself of the principles, rights and obligations of international environmental law, which, as part of the international *corpus iuris* make a decisive contribution to establishing the scope of the obligations under the American Convention in this regard.<sup>6</sup> In this respect, the Court should give consideration to obligations of States with respect to the UN Framework Convention on Climate Change and the Paris Agreement (see next section).

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<sup>2</sup> *Advisory Opinion* OC-23/17, November 15, 2017, requested by the Republic of Colombia

<sup>3</sup> *Article 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, sole operative paragraph, and Advisory Opinion OC-22/16, para. 18.

<sup>4</sup> *Advisory Opinion* OC-23/17, para 78.

<sup>5</sup> *Ibid* para 30.

<sup>6</sup> *Ibid* para 55

## **CONSIDERATION OF OBLIGATIONS WITH RESPECT TO RESPONSIBILITIES OF STATES DETERMINED BY THE UN FRAMEWORK CONVENTION ON CLIMATE CHANGE AND THE PARIS AGREEMENT**

11. Having consideration for the fact that the request for an advisory opinion on the climate emergency, it should be noted that States have particularly responsibilities and considerations articulated in the UN Framework Convention on Climate Change (hereafter UNFCCC) and the Paris Agreement (hereafter PA).

12. Under the UNFCCC, Parties to Convention are either defined as either Annex I Parties (developed countries) or Non Annex I Parties (developing countries). In the context of OAS members, the United State and Canada are prescribed as Annex I Parties, while all other AOS members are defined as Non Annex I Parties. Article 4.8 of the UNFCCC also recognises the particular circumstances of Small Island States. A number of AOS Caribbean island members fall within this category. The UNFCCC also recognises the particular circumstances of least developed countries. The only AOS member state that fits this category in Haiti.

13. The UNFCCC also gives attention to developing country Parties that are particularly vulnerable States under Article 4.4 where it states:

The developed country Parties and other developed Parties included in Annex II shall also assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects.

14. The UNFCCC also notes in its principles that:

The specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration.<sup>7</sup>

15. The UNFCCC notes that “(a)ll Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances” shall undertake various commitments as prescribed in Article 4.<sup>8</sup>

16. The PA notes that that the “Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.”<sup>9</sup>

17. The PA further prescribes differing responsibilities for developed and developing country parties. For example, with respect to taking emission reduction targets the PA states:

Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue

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<sup>7</sup> UNFCCC Art. 3.2

<sup>8</sup> UNFCCC Art. 4.1

<sup>9</sup> PA Art. 2.2

enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances.<sup>10</sup>

18. Developed country Parties and developing countries Parties are not directly defined in the PA.

19. While prescribing differing responsibilities depending on development status, the PA also prescribes common responsibilities for all Parties. For instance, it states:

“...all Parties are to undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 with the view to achieving the purpose of this Agreement as set out in Article 2. The efforts of all Parties will represent a progression over time, while recognizing the need to support developing country Parties for the effective implementation of this Agreement.”<sup>11</sup>

20. This brief also notes that certain AOS States can be considered high greenhouse gas emitters, irrespective of their status as either developed or developing country Parties. While this category has no legal status within the UNFCCC or the PA, it is worthy to note with respect to responsibilities to reduce emissions. This requirement is based on the “polluter pays principle”. In this context, the Rio Declaration on Environment and Development states:

National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regards to the public interest and without distorting international trade and investment.<sup>12</sup>

## **CONSIDERATION OF THE CLIMATE EMERGENCY**

21. Climate Change represents the single greatest threat to humanity. In his report to the UN General Assembly, the Special Rapporteur stated:

Throughout the world, the rights of people are being denied as a consequence of climate change. This includes a denial of the right to, inter alia, life, health, food, development, self-determination, water and sanitation, work, adequate housing and freedom from violence, sexual exploitation, trafficking and slavery.<sup>13</sup>

22. This serious concern about the climate emergency is articulated in the request for an Advisory Opinion submitted by Chile and Colombia.<sup>14</sup> For the sake of brevity this brief concurs with Part II “The climate emergency and its consequences from a human rights perspective” provided by Chile and Colombia in their request for an Advisory Opinion.

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<sup>10</sup> PA Art 4.4

<sup>11</sup> PA Art. 3

<sup>12</sup> Declaration of the United Nations Conference on the Human Environment, Art 16, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/NL7/300/05/PDF/NL730005.pdf?OpenElement>,

<sup>13</sup> UN Doc. A/77/226, para. 88.

<sup>14</sup> Request for an Advisory Opinion on Climate Emergency and Human Rights to the Inter-American Court of Human Rights from the Republic of Colombia and the Republic of Chile, January 9, 2023

## RESPONSE TO QUESTIONS

23. The following represent a response to the questions asked of Court by Chile and Colombia. Each question is addressed separately:

**24. 1A. *On the state obligations derived from the duties of prevention and guarantee of human rights related to the climate emergency***

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

25. **Response:** On the **duties of prevention**, the Court has indicated that certain activities that involve significant risks to the health of the individual and therefore, States have the specific obligation to regulate them, including the introduction of monitoring and oversight mechanisms.<sup>15</sup>

26. The PA places obligation of member States to:

(a) Holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;

(b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production;

(c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate- resilient development.<sup>16</sup>

27. The UN Human Rights Council has passed a number of resolutions concerning human rights and climate change, culminating in the creating of the Special Rapporteur on the promotion and protection of human rights in the context of climate change.<sup>17</sup>

28. In addition, the UN General Assembly passed on resolution on the human right to a clean, healthy and sustainable noting in particular, the need to fully implement multilateral environmental agreements under the principles of international environmental law;<sup>18</sup>

**29. *In particular, what measures should States take to minimize the impact of the damages caused by the climate emergency, in light of the obligations established in the American***

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<sup>15</sup> *Advisory Opinion* OC-23/17, para 141

<sup>16</sup> PA Art. 2.1

<sup>17</sup> 48/14. Mandate of the Special Rapporteur on the promotion and protection of human rights in the context of climate change

<sup>18</sup> The human right to a clean, healthy and sustainable environment: resolution / adopted by the General Assembly (2022) A/RES/76/300, Preamble



***Convention? In this regard, what differentiated measures should be taken with respect to populations in situations of vulnerability or intersectional considerations?***

30. **Response:** Article 1 of the American Convention creates obligations on all States to

“undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.”<sup>19</sup>

31. There are various obligations established in the American Convention which are affected by climate change. These include: the right to life (A4), the right to human treatment (A5), the right to freedom from slavery (A6), the right to personal liberty (A7), the rights of family (A17), the rights of the child (A19), the right to property (A21), the right to freedom of movement and residence, the right to equal protection (A24) and the right to progressive development. Under the San Salvador Protocol<sup>20</sup> further rights are affected by climate change. These include: the right to work (A6), the right, to equitable and satisfactory conditions to work (A7), the right to social security (A9), the right to health (A10) the right to food (A12), the right to education (A13) the rights to benefits of culture (A14), the right to formation and protection of families (A15), the rights of children (A16), the protection of elderly and the protection of the handicapped (A18).

32. The Working Group on the Protocol of San Salvador indicated that the right to a healthy environment guarantees everyone, without any discrimination, a healthy environment in which to live.<sup>21</sup> While these are guarantees for everyone, State should apply differentiated measures with respect to populations in situations of vulnerability or facing other intersectional disadvantage. Consistent with the Court’s finding with respect to the right to a healthy environment,<sup>22</sup> the Court should recognise that the impacts of climate change affect the rights with greater intensity by certain groups in vulnerable situations. The Court should recognise that climate change will be experienced with greater force in the sectors of the population that are already in a vulnerable situation; hence, based on “international human rights law, States are legally obliged to confront these vulnerabilities based on the principle of equality and non-discrimination. Various human rights bodies have recognized that indigenous peoples, children, people living in extreme poverty minorities, and people with disabilities, among others, are groups that are especially vulnerable to environmental damage, and have also recognized the differentiated impact that it has on women. In addition, the groups that are especially vulnerable to environmental degradation include communities that, essentially, depend economically or for their survival on environmental resources from the marine environment, forested areas and river basins, or run a special risk of being affected owing to their geographical location, such as coastal and small island communities.

33. This approach is consistent with the preamble to the Paris Agreement which states:

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<sup>19</sup> American Convention on Human Rights, 1969, Art 1.

<sup>20</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, 1988, Protocol of San Salvador

<sup>21</sup> The Working Group to examine the periodic reports of the States Parties established in the Protocol of San Salvador established in May 2010

<sup>22</sup> *Advisory Opinion OC-23/17*, para. 67

*Acknowledging* that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity,<sup>23</sup>

34. In its resolution of July 2021, the Human Rights Council recognized that the rights of people in vulnerable situations were disproportionately affected by the negative impact of climate change.<sup>24</sup>

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

**36. Response:** With respect to **regulating activities** Article 2 of the American Convention obliges States Parties to adopt, in accordance with their constitutional processes and the provisions of this instrument, such legislative or other measures as may be necessary to give effect to the rights or freedoms protected therein. In this regard, the State obligation to adapt domestic laws to the provisions of the Convention is not limited to the constitutional or legislative text, but must extend to all legal provisions of a regulatory nature and result in effective practical implementation.

37. The European Court of Human Rights has indicated that States must regulate dangerous activities taking into account “the level of the potential risk to human lives.” In this regard, States “must govern the licensing, setting up, operation, security and supervision of the activity in question, and must make it obligatory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks.”<sup>25</sup>

38. With respect to **monitoring and overseeing**, the Court has indicated that, at times, States have the duty to establish appropriate mechanisms to supervise and monitor certain activities in order to guarantee human rights, protecting them from the actions of public entities and private individuals. Furthermore, in the context of inter-State relations, the International Court of Justice has indicated that, as part of the obligation of prevention, States must ensure compliance and implementation of their environmental protection laws and regulations, as well as exercise some form of administrative control over public and private agents, for example, by monitoring their activities.<sup>26</sup>

39. Furthermore, the Paris Agreement requires Parties to monitor, evaluate and learn from adaptation plans, policies, programmes and actions.<sup>27</sup>

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<sup>23</sup> Paris Agreement Preamble

<sup>24</sup> Human Rights Resolution 47/24

<sup>25</sup> ECHR, *Case of Öneriyildiz v. Turkey* [GS], No. 48939/99. Judgment of November 30, 2004, para. 90, and ECHR, *Case of Budayeva and Others v. Russia*, Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02. Judgment of March 20, 2008, para. 132.

<sup>26</sup> Cf. ICJ, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay)*. Judgment of April 20, 2010, para.

<sup>27</sup> Paris Agreement, Art 7.9 (d)

40. With respect to **requiring and approving social and environmental impact studies**, the Inter-American Court has ruled on the obligation to carry out environmental impact assessments in relation to activities implemented in the territory of indigenous communities. The Court has noted that the obligation to make an environmental impact assessment also exists in relation to any activity that may cause significant environmental damage. In this regard, the Rio Declaration established that “[e]nvironmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.”<sup>28</sup>

41. The Court has indicated that environmental impact assessments must be made pursuant to the relevant international standards and best practice and has indicated certain conditions that environmental impact assessments must meet. These are outlined in its Advisory Opinion OC/27.<sup>29</sup>

42. The Court has also noted that the International Court of Justice has indicated that the obligation of due diligence involves making an environmental impact assessment when there is a risk that a proposed activity may have a significant adverse transboundary impact and, particularly, when it involves shared resources.<sup>30</sup>

43. The Paris Agreement requires Parties to undertake an assessment of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems.<sup>31</sup>

44. With respect to **establishing a contingency plan** the Court the Court considers that the State of origin should have a contingency plan to respond to environmental emergencies or disasters that includes safety measures and procedures to minimize the consequences of such disasters.<sup>32</sup>

45. The Paris Agreement does not specifically mention contingency plans but instead refers to adaptation plans. Under the Paris Agreement “(e)ach Party shall, as appropriate, engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions, which may include:

- (a) The implementation of adaptation actions, undertakings and/or efforts;
- (b) The process to formulate and implement national adaptation plans;
- (c) The assessment of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems;
- (d) Monitoring and evaluating and learning from adaptation plans, policies, programmes and actions; and
- (e) Building the resilience of socioeconomic and ecological systems, including through economic diversification and sustainable management of natural resources.<sup>33</sup>

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<sup>28</sup> 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), Principle 17.

<sup>29</sup> *Advisory Opinion OC-23/17*, paras 161-170

<sup>30</sup> *Cf. ICJ, Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay)*. Judgment of April 20, 2010, para. 204,

<sup>31</sup> Paris Agreement, Art 7.9 (c)

<sup>32</sup> *Advisory Opinion OC-23/17*, para 171

<sup>33</sup> Paris Agreement, Art 7.9

46. With respect to **mitigating activities** within its jurisdiction, the Court has recognised that each State must mitigate significant environmental damage if it occurs.<sup>34</sup>

47. The Court has further noted that the State of origin and the States potentially affected have the obligation to cooperate in order to take all possible measures to mitigate the effects of the damage.<sup>35</sup>

48. The notion of the State of origin is critical in this respect. States must take the necessary diligent steps to prevent harm by third parties (both persons and non-state entities) over which they can exercise control. General Comment 31 the UN Human Rights Committee stressed that the state must ‘exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities’.<sup>36</sup> In the context of food justice, the primary obligation of the state is its duty to protect the right to food and in this it must display due diligence. This is ‘a duty to act *in protection of a substantive right*’. Due diligence is an obligation of conduct, not of result, and a reasonability criterion is applied in the assessment of the conduct.<sup>37</sup>

49. The Paris Agreement Parties recognizes the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage.<sup>38</sup>

50. In order to ensure the rights to life and integrity, States have the obligation to prevent significant environmental damage within and outside their territory.<sup>39</sup>

51. Consequently, the Court considered that States have a duty to cooperate in good faith to ensure protection against environmental damage. This duty to cooperate is especially important in the case of shared resources, the development and use of which should be carried out in an equitable and reasonable manner in keeping with the rights of the other States that have jurisdiction over such resources.<sup>40</sup> The consideration of the concept of “within its jurisdiction is critical.

52. Consideration of extra-territorial jurisdictional responsibility was noted by Chief Justice Preston in *Gloucester Resources* where he refused consent on a coal mine based on a number of considerations. The extraterritorial implications of the greenhouse gas emissions was one such reasoning where he stated:

“The GHG emissions of the Project and their likely contribution to adverse impacts on the climate system, environment and people adds a further reason for refusal.”<sup>41</sup>

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<sup>34</sup> *Advisory Opinion OC-23/17*, para 172

<sup>35</sup> *Advisory Opinion OC-23/17*, para 172

<sup>36</sup> HRCtee General Comment 31 on the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev1/Add,13, 29 March 2004, para. 8.

<sup>37</sup> *Ibid*

<sup>38</sup> Paris Agreement Art 8.2

<sup>39</sup> *Advisory Opinion OC-23/17*, para 174

<sup>40</sup> *Advisory Opinion OC-23/17*, para 185

<sup>41</sup> *Gloucester Resources Limited v Minister for Planning [2019] NSWLEC 7*

53. The Court may wish to consider the Maastricht Principles<sup>42</sup> which provide guidance of States with respect to their extraterritorial responsibilities. The Maastricht Principles suggest that:

All States have obligations to respect, protect and fulfil human rights, including civil, cultural, economic, political and social rights, both within their territories and extraterritorially.<sup>43</sup>

54. The International Covenant on Civil and Political Rights and the European Convention on Human Rights require states parties to respect and ensure the rights of persons subject to or within their 'jurisdiction'. The notion of within its jurisdiction has been defined by analyses of the European Court of Human Rights' jurisprudence and practice of the UN human rights bodies, and argues that extraterritorial human rights obligations have become an integral part of international human rights law and are not considered to be customary international law.

55. The responsibility of States to do no harm other States is founded in the Rio Declaration which states:

"States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."<sup>44</sup>

**56. 2.B. *What principles should inspire mitigation, adaptation and response actions to the losses and damages generated by the climate emergency in the affected communities?***

**57. Response:** The **principles to inspire** mitigation, adaptation and response actions to the losses and damages generated by the climate emergency can be derived from a number of sources.

58. UNGA Resolution to the right to a healthy environment<sup>45</sup>, the Human Rights Council Resolution on the right to a healthy environment,<sup>46</sup> and the Framework Principles on Human Rights and the Environment;<sup>47</sup>

59. The Convention on the Rights of the Child explicitly addresses environmental issues in article 24 (2) (c), by which States are obliged to take measures to combat disease and malnutrition, taking into consideration the dangers and risks of environmental pollution, and under article 29 (1) (e), by which they are required to direct the education of children to the development of respect for the natural environment.

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<sup>42</sup> Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, (2012) <https://www.icj.org/wp-content/uploads/2012/12/Maastricht-ETO-Principles-ENG-booklet.pdf>

<sup>43</sup> Maastricht Principles, I.3

<sup>44</sup> Declaration of the United Nations Conference on the Human Environment, Principle 21, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/NL7/300/05/PDF/NL730005.pdf?OpenElement>

<sup>45</sup> General Assembly resolution 76/300

<sup>46</sup> Human Rights Council resolution 48/13.

<sup>47</sup> A/HRC/37/59, annex.

60. The General Comment 26 on children’s rights and the environment, places specific obligations with respect to mitigation activities, where it states: <sup>48</sup>

(d) Equitably phase out the use of coal, oil and natural gas, ensure a fair and just transition of energy sources and invest in renewable energy, energy storage and energy efficiency to address the climate crisis;

61. The Paris Agreement requires Parties to mitigate (Art 4), adapt (Art 7) and take action with respect to loss and damage (Art 8).

**62. B. On state obligations to preserve the right to life and survival in the face of climate emergency in the light of science and human rights**

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

**i) environmental information for all people and communities, including those linked to the climate emergency;**

63. **Response:** With respect to **environmental information**, the Court has noted in its Advisory Opinion that Article 13 of the Convention, which expressly stipulates the right to seek and receive information, protects the right of the individual to request access to information held by the State, with the exceptions permitted under the Convention’s regime of restrictions. State’s actions should be governed by the principles of disclosure and transparency in public administration that enable all persons subject to the State’s jurisdiction to exercise the democratic control of those actions, and question, investigate and consider whether public functions are being performed adequately.<sup>49</sup>

64. The right to information is enshrined in the Covenant on Civil and Political Rights.<sup>50</sup>

65. The UNFCCC requires each Party shall communicate to the Conference of the Parties, through the secretariat, the following elements of information<sup>51</sup>:

- (a) A national inventory of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, to the extent its capacities permit, using comparable methodologies to be promoted and agreed upon by the Conference of the Parties;
- (b) A general description of steps taken or envisaged by the Party to implement the Convention; and
- (c) Any other information that the Party considers relevant to the achievement of the objective of the Convention and suitable for inclusion in its communication, including, if feasible, material relevant for calculations of global emission trends.

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<sup>48</sup> General comment No. 26 (2023) on children’s rights and the environment, with a special focus on climate change, CRC/C/GC/26, Sect. 111, para 65 (d)

<sup>49</sup> *Advisory Opinion OC-23/17*, para 213-218

<sup>50</sup> CCPR Art 19.2

<sup>51</sup> UNFCCC Art 12

66. The Paris Agreement encourages Parties to strengthen their cooperation on enhancing action on adaptation, taking into account the Cancun Adaptation Framework, including with regard to:

(a) Sharing information, good practices, experiences and lessons learned, including, as appropriate, as these relate to science, planning, policies and implementation in relation to adaptation actions;

(b) Strengthening institutional arrangements, including those under the Convention that serve this Agreement, to support the synthesis of relevant information and knowledge, and the provision of technical support and guidance to Parties;<sup>52</sup>

67. Furthermore, the Paris Agreement states that Parties shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information, recognizing the importance of these steps with respect to enhancing actions under this Agreement.<sup>53</sup>

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

68. **Response:** With respect to just **transition policies**, this concept is relatively new and legal obligations have not been extensively developed. Nevertheless, the UN Working Group on Business and Human Rights in its report to the UNGA in October 2023<sup>54</sup> has indicated that to advance policy coherence, energy, environmental and investment policies must be collaboratively developed and implemented in a manner that protects, respects and promotes all human rights, including the right to a clean, healthy and sustainable environment. A just transition requires systemic changes that promote sustainable consumption patterns, foster equitable access to clean energy, and prioritise the well-being of both people and the planet with full regard to international human rights law and the UN Guiding Principles on Business and Human Rights

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

69. **Response:** With respect to **loss and damage**, the Paris Agreement states that Parties should enhance understanding, action and support, including through the Warsaw International Mechanism, as appropriate, on a cooperative and facilitative basis with respect to loss and damage associated with the adverse effects of climate change.

70. Accordingly, areas of cooperation and facilitation to enhance understanding, action and support may include:

- (a) Early warning systems;
- (b) Emergency preparedness;
- (c) Slow onset events;

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<sup>52</sup> Paris Agreement Art 7.7

<sup>53</sup> Paris Agreement Art. 12

<sup>54</sup> A/78/155: Extractive sector, just transition and human rights

- (d) Events that may involve irreversible and permanent loss and damage;
- (e) Comprehensive risk assessment and management;
- (f) Risk insurance facilities, climate risk pooling and other insurance solutions;
- (g) Non-economic losses;
- (h) Resilience of communities, livelihoods and ecosystems.<sup>55</sup>

71. The obligations with respect to loss and damage are closely connected to international obligations with respect to redress and reparations, which will be discussed later in this brief.

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

72. **Response:** With respect to the **production of information and access to information** on greenhouse gas levels etc, the Paris Agreement requires each Party shall regularly provide the following information:

- (a) A national inventory report of anthropogenic emissions by sources and removals by sinks of greenhouse gases, prepared using good practice methodologies accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement;
- (b) Information necessary to track progress made in implementing and achieving its nationally determined contribution under Article 4.<sup>56</sup>

73. Furthermore, the Intergovernmental Panel on Climate Change also shares relevant information through its Assessment Reports. States should support the IPCC in their collection of information. Following a call to governments and IPCC observer organisations for nominations and the submission of detailed CVs, authors are selected on the basis of their expertise. The composition of author teams aims to reflect a range of scientific, technical and socio-economic views and backgrounds. A comprehensive assessment requires author teams to include a mix of authors from different regions and from developed and developing countries to ensure that reports are not biased towards the perspective of any one country or group of countries and that questions of importance to particular regions are not overlooked.<sup>57</sup>

74. The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement is required to periodically take stock of the implementation of this Agreement to assess the collective progress towards achieving the purpose of this Agreement and its long-term goals (referred to as the “global stocktake”). It shall do so in a comprehensive and facilitative manner, considering mitigation, adaptation and the means of implementation and support, and in the light of equity and the best available science.<sup>58</sup>

75. The General Comment 26 on the Rights of the Child notes that children have the right to access to accurate and reliable environmental information, including about the causes, effects

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<sup>55</sup> PA Art 8.4

<sup>56</sup> Paris Agreement Art.13.7

<sup>57</sup> IPCC Factsheet: How does the IPCC select its authors,  
[https://www.ipcc.ch/site/assets/uploads/2021/07/AR6\\_FS\\_select.pdf](https://www.ipcc.ch/site/assets/uploads/2021/07/AR6_FS_select.pdf)

<sup>58</sup> Paris Agreement Art. 13



and actual and potential sources of climate and environmental harm, adaptive responses, relevant climate and environmental legislation, regulations, findings from climate and environmental impact assessments, policies and plans and sustainable lifestyle choices. Such information empowers children to learn what they can do in their immediate environment related to waste management, recycling and consumption behaviours.<sup>59</sup>

*v) the determination of impacts on people, such as human mobility - migration and forced displacement-, effects on health and life, loss of non-economic assets, etc.?*

**76. Response:** Parties to the Paris Agreement are required to cooperate and facilitate to enhance understanding, action and support which may include:

- (a) Early warning systems;
- (b) Emergency preparedness;
- (c) Slow onset events;
- (d) Events that may involve irreversible and permanent loss and damage;
- (e) Comprehensive risk assessment and management;
- (f) Risk insurance facilities, climate risk pooling and other insurance solutions;
- (g) Non-economic losses;
- (h) Resilience of communities, livelihoods and ecosystems.<sup>60</sup>

77. In addition, the Task Force on Displacement (TFD) was established in 2015 at COP 21.<sup>61</sup> The work of the TFD aims to enhance cooperation and facilitation in relation to human mobility, including migration, displacement and planned relocation. In particular, this strategic workstream focuses on better understanding the impacts of climate change on human mobility, disseminating and facilitating the uptake of the recommendations developed in the first phase, as well as facilitating stakeholder engagement for further action.

78. This issue of people displaced across international borders due to climate change was addressed in the Special Rapporteur's report to the Human Rights Council in June 2023.<sup>62</sup> The Special Rapporteur found that there were serious legal gaps with respect to the protection of people displaced across international borders due to climate change. These people are not defined as refugees under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.<sup>63</sup>

79. It is noted in the Special Rapporteur's Report that the Cartagena Declaration on Refugees, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama in 1984 expands the regional definition of refugee in the Americas to include persons who have fled their countries because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights "or other circumstances that have seriously disturbed the public

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<sup>59</sup> General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, CRC/C/GC/26, Sect. 111, para 33

<sup>60</sup> Paris Agreement Art. 8.4

<sup>61</sup> UNFCCC Decision 1/CP.21

<sup>62</sup> A/HRC/53/34: Providing legal options to protect the human rights of persons displaced across international borders due to climate change, <https://www.ohchr.org/en/documents/thematic-reports/ahrc5334-providing-legal-options-protect-human-rights-persons-displaced>

<sup>63</sup> 1951 Convention Relating to the Status of Refugees and its 1967 Protocol <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees>

order”.<sup>64</sup> Thirty years after the adoption of the Cartagena Declaration, in the Brazil Declaration and Plan of Action, parties encouraged new strategies to further enhance opportunities for local integration, resettlement, voluntary repatriation and regional labour mobility programmes, as well as guaranteed rights for refugees and the displaced.

80. In Argentina, South American nationals can apply for a residence visa due to humanitarian reasons.<sup>65</sup> Since 2022, the humanitarian reasons have included natural disasters. The residence permit lasts six months, with the possibility of renewal before the expiration date. The Plurinational State of Bolivia has explicitly referenced climate change migration and the need to protect those migrating in its immigration law when there is a risk or threat to life, whether due to natural causes or environmental, nuclear, chemical, environmental or famine disasters.<sup>66</sup> Brazil provides humanitarian reception for two years, subject to renewal, in cases of an environmental disaster.<sup>67</sup> In Canada, special measures are applied to certain serious disasters; this included Typhoon Haiyan in the Philippines in 2013. Special measures apply mostly to people who can prove their link to the disaster and have immediate family members in Canada.<sup>68</sup>

81. Despite these efforts, there is no international legally binding standard to give protection to people displaced across international borders due to climate change. For this reason, the Special Rapporteur in his report to the Human Rights Council recommended that regional human rights bodies should be encouraged to expand their definition of refugees to include persons displaced across international borders due to climate change.<sup>69</sup>

82. Furthermore, the Special Rapporteur recommended that the Human Rights Council make a recommendation to the General Assembly to commence negotiations on an optional protocol to the Convention relating to the Status of Refugees to define and give legal protection to persons displaced across international borders due to climate change.<sup>70</sup>

**83. Recommendation for the Court:** The Court may wish to give due consideration to the two recommendations provided by the Special Rapporteur above.

**84. 2. *To what extent does access to environmental information constitute a right whose protection is necessary to guarantee the rights to life, property, health, participation and access to justice, among other rights negatively affected by climate change, in accordance with the state obligations protected under the American Convention?***

**85. Response:** The American Convention states that every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.<sup>71</sup> This fundamental right is threatened by climate change. Many people within member States of the American Convention have lost their lives to the impacts of climate change, either through droughts,

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<sup>64</sup> Cartagena Declaration on Refugees (1983) <https://www.unhcr.org/media/cartagena-declaration-refugees-adopted-colloquium-international-protection-refugees-central>

<sup>65</sup> Argentina, Dirección nacional de migraciones, Disposición No. 891/2022. Available at [www.boletinoficial.gob.ar/detalleAviso/primera/262784/20220519](http://www.boletinoficial.gob.ar/detalleAviso/primera/262784/20220519).

<sup>66</sup> Plurinational State of Bolivia, Law No. 370 (2013). Available at [www.refworld.org/docid/55b636204.html](http://www.refworld.org/docid/55b636204.html).

<sup>67</sup> Brazil, Law No. 13.445 of 24 May 2017. Available at [www.refworld.org/es/pdfid/592c6f744.pdf](http://www.refworld.org/es/pdfid/592c6f744.pdf).

<sup>68</sup> Canada, Immigration and Refugee Protection Act of 2001. Available at <https://perma.cc/EYW7M5Ey>.

<sup>69</sup> A/HRC/53/34: Providing legal options to protect the human rights of persons displaced across international borders due to climate change, para 69

<sup>70</sup> A/HRC/53/34: para 71

<sup>71</sup> American Convention, Art. 1

floods, storm surges, and hurricanes. More will be lost as the impacts of climate change increase.

86. As noted by the Court in its Advisory Opinion, the right to a healthy environment is established expressly in Article 11 of the Protocol of San Salvador:

1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.
2. The States Parties shall promote the protection, preservation, and improvement of the environment.<sup>72</sup>

87. In the UN General Assembly Resolution on the right to a clean, healthy and sustainable environment, the preamble states:

*Recognizing* that the exercise of human rights, including the rights to seek, receive and impart information, to participate effectively in the conduct of government and public affairs and to an effective remedy, is vital to the protection of a clean, healthy and sustainable environment,<sup>73</sup>

88. People need the environmental information to make the necessary decisions to save themselves from the impacts of climate change.

**89. C. *On the differential obligations of States with respect to the rights of children and new generations in the face of climate emergencies***

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

90. **Response:** As noted by the Human Rights Council, environmental degradation exacerbates health risks and undermines support structures that protect children from harm. This is particularly evident in the case of children in the developing world. “For example, extreme 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.<sup>74</sup>

91. The General Comment 26, notes that States should take positive measures to ensure that children are protected from foreseeable premature or unnatural death and threats to their lives that may be caused by acts and omissions, as well as the activities of business actors, and enjoy their right to life with dignity. Such measures include the adoption and effective implementation of environmental standards, for example, those related to air and water

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<sup>72</sup> *Advisory Opinion* OC-23/17, para 56

<sup>73</sup> The human right to a clean, healthy and sustainable environment: resolution / adopted by the General Assembly(2022) A/RES/76/300

<sup>74</sup> 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. 48

quality, food safety, lead exposure and greenhouse gas emissions, and all other adequate and necessary environmental measures that are protective of children's right to life.<sup>75</sup>

92. The General Comment 26 further states that the obligations of States under article 6 of the Convention on the Rights of the Child also apply to structural and long-term challenges arising from environmental conditions that may lead to direct threats to the right to life and require taking appropriate measures to tackle those conditions, for example, the sustainable use of resources needed for covering basic needs and the protection of healthy ecosystems and biodiversity. Special measures of protection are needed to prevent and reduce child mortality from environmental conditions and for groups in vulnerable situations.<sup>76</sup>

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

94. **Response:** General Comment 26, notes that children identify environmental issues as being highly important to their lives. Children's voices are a powerful global force for environmental protection, and their views add relevant perspectives and experience with respect to decision-making on environmental matters at all levels. It states that States must ensure that age-appropriate, safe and accessible mechanisms are in place for children's views to be heard regularly and at all stages of environmental decision-making processes for legislation, policies, regulations, projects and activities that may affect them, at the local, national and international levels. For free, active, meaningful and effective participation, children should be provided with environmental and human rights education, age-appropriate and accessible information, adequate time and resources and a supportive and enabling environment.<sup>77</sup>

95. This view is reinforced by the fundamental right by children under the Convention on the Rights of the Child (CRC) to express their own views freely in all matters affecting the child.<sup>78</sup>

96. The CRC further states that the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.<sup>79</sup>

**97. *D. On the state's obligations arising from consultation and judicial procedures in the event of a climate emergency***

***1. What is the nature and extent of a State Party's obligation with respect to the provision of judicial remedies?***

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<sup>75</sup> General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, CRC/C/GC/26, para 20

<sup>76</sup> Ibid, para 21

<sup>77</sup> General comment No. 26 (2023), para 27

<sup>78</sup> Convention on the Rights of the Child (1989) Arts. 12 and 13

<sup>79</sup> CRC Art. 12.2

98. **Response:** The Court has noted that if Parties fail to reach agreement, they should resort to peaceful diplomatic or judicial dispute settlement mechanisms.<sup>80</sup>

99. Under the American Convention, Parties would also be able to submit a dispute to the inter-American human rights system if a State Party alleges that another State Party has violated the rights established in the Convention.<sup>81</sup> The Court also recalled that the Rio Declaration stipulates that “States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.”<sup>82</sup>

100. The UNFCCC has provisions for events of a dispute between any two or more Parties concerning the interpretation or application of the Convention, the Parties concerned shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.<sup>83</sup> A similar provision applies to the Paris Agreement.<sup>84</sup>

101. The Convention on the Rights of the Child also provides for a child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.<sup>85</sup>

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

103. **Response:** With respect to the consultation obligation, the Court has noted in its Advisory Opinion that consultation of the potentially affected State or States should be carried out in a timely manner and in good faith. In this regard, the Rio Declaration establishes that “States [...] shall consult with [potentially affected] States at an early stage and in good faith.”<sup>86</sup>

104. Regarding the meaning of good faith consultations, the Court has noted in the *Case of Lake Lanoux*, the Arbitral Tribunal<sup>87</sup> that this meant that the consultation mechanism could not “be confined to purely formal requirements, such as taking note of complaints, protests or representations” made by the potentially affected State. According to the Arbitral Tribunal, in this case the rules of good faith obliged 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.”<sup>88</sup>

105. ***E. On the conventional obligations of protection and prevention for environmental and territorial defenders, as well as women, indigenous peoples and Afro-descendant communities in the context of the climate emergency.***

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<sup>80</sup> *Advisory Opinion* OC-23/17, para 205

<sup>81</sup> American Convention, Art 47.

<sup>82</sup> Rio Declaration on Environment and Development, adopted at the United Nations Conference on Environment and Development, Rio de Janeiro, June 14, 1992, UN Doc. A/CONF.151/26 (Vol. I), Principle 26.

<sup>83</sup> UNFCCC, Art 14

<sup>84</sup> PA, Art 24

<sup>85</sup> CRC, para 12.2

<sup>86</sup> *Advisory Opinion* OC-23/17, para 198

<sup>87</sup> Arbitral Tribunal. *Lake Lanoux Arbitration (France v Spain)* Decision on November 16, 1957, p.32.

<sup>88</sup> *Ibid* para 199

*In accordance with the obligations arising from Articles 1.1 and 2 of the American Convention and in light of Article 9 of the Escazú Agreement:*

*What measures and policies should States adopt in order to facilitate the work of environmental defenders?*

106. **Response:** The Court in its Advisory Opinion underscores the right of the public to take part in the management of public affairs is established in Article 23(1)(a) of the American Convention.<sup>89</sup>

107. In the context of Indigenous Peoples, the Court has determined that the State must ensure the rights to consultation and to participation at all stages of the planning and implementation of a project or measure that could have an impact on the territory of an indigenous or tribal community, or on other rights that are essential for their survival as a people in keeping with their customs and traditions. The State must, therefore, create sustained, effective and trustworthy channels for dialogue with the indigenous peoples, through their representative institutions, in the consultation and participation procedures.<sup>90</sup>

108. With respect to facilitating the work of environmental defenders, the Special Rapporteur on the Rights of Environmental Defenders defines those defenders through the inclusive term “environmental human rights defenders”<sup>91</sup>, whose rights to exercise such fundamental freedoms as the rights to expression, privacy, association and peaceful assembly have been enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

109. With regard to exercising the right to protect environmental and land rights, article 1 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms — the Declaration on Human Rights Defenders<sup>92</sup> further holds that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels”.

110. The State’s primary responsibility to protect the rights to life, liberty and security of person is enshrined in article 3 of the Universal Declaration and in articles 6 (1) and 9 (1) of the International Covenant on Civil and Political Rights. This obligation is further emphasized in the Declaration on Human Rights Defenders, in particular in its articles 2, 9 and 12.

111. The Declaration on Human Rights Defenders notes that States have a responsibility to implement and respect all the provisions of the Declaration. However, articles 2, 9, 12, 14 and 15 make particular reference to the role of States and indicate that each State has a responsibility and duty:

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<sup>89</sup> American Convention, Art. 23(1)(a)

<sup>90</sup> *Advisory Opinion* OC-23/17, 227

<sup>91</sup> Report of the Special Rapporteur on the situation of human rights defenders (2016) A/71/281

<sup>92</sup> The Declaration on human rights defenders was adopted by consensus by the General Assembly in 1998, on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights. (See General Assembly Resolution A/RES/53/144 adopting the Declaration on human rights defenders).

- To protect, promote and implement all human rights;
- To ensure that all persons under its jurisdiction are able to enjoy all social, economic, political and other rights and freedoms in practice;
- To adopt such legislative, administrative and other steps as may be necessary to ensure effective implementation of rights and freedoms;
- To provide an effective remedy for persons who claim to have been victims of a human rights violation;
- To conduct prompt and impartial investigations of alleged violations of human rights;
- To take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration;
- To promote public understanding of civil, political, economic, social and cultural rights;
- To ensure and support the creation and development of independent national institutions for the promotion and protection of human rights, such as ombudsmen or human rights commissions;
- To promote and facilitate the teaching of human rights at all levels of formal education and professional training.

112. For those States who are Party to the Escazu Agreement, there is an obligation to guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters, so that they are able to act free from threat, restriction and insecurity.<sup>93</sup>

113. In respecting the obligations to protect the rights of environmental human rights defenders, States should enact legislation to ensure that such rights are guaranteed by law.

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

114. **Response:** It is well recognised that gender-based violence is disproportionately used against women environmental human rights defenders to control and silence them and suppress their power and authority as leaders.<sup>94</sup>

115. Consideration of guaranteeing the right to defend the healthy environment and territory of women human rights defenders should be seen through the legal framework of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Art 3 of CEDAW states:

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the

<sup>93</sup> Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, 2018, Art. 9.

<sup>94</sup> Women Environmental Human Rights Defenders: Facing gender-based violence in defense of land, natural resources and human rights, [https://www.iucn.nl/app/uploads/2021/03/iucn-srjs-briefs-wehrd-gbv-en\\_01.pdf](https://www.iucn.nl/app/uploads/2021/03/iucn-srjs-briefs-wehrd-gbv-en_01.pdf)

exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.<sup>95</sup>

116. *What specific considerations should be taken into account to guarantee the right to defend the healthy environment and territory in view of intersectional factors and differentiated impacts, among others, on indigenous peoples, peasant communities and Afro- descendants in the face of the climate emergency?*

117. **Response:** Specific considerations to guarantee the right to defend the healthy environment and territory should be framed under responsibilities created by the Covenant on Civil and Political Rights. The Covenant requires that each State Party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>96</sup>

118. Furthermore, the Paris Agreement in its preamble notes:

*Acknowledging* that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity,

119. Furthermore, States should respect the UN Declaration on the Rights of Indigenous Peoples.<sup>97</sup>

120. *In the face of the climate emergency, what information should the State produce and publish in order to determine the capacity to investigate various crimes committed against human rights defenders, including reports of threats, kidnappings, homicides, forced displacement, gender-based violence, discrimination, etc.?*

121. **Response:** Article 9.3 of the Escazu Agreement, while not applying to all AC States, gives legal guidance on how to respond. It states (e)ach Party shall also take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidations that human rights defenders in environmental matters may suffer while exercising the rights set out in the present Agreement. All AC states should be encouraged to follow these measures.

122. In the Special Rapporteur's Report to the UN General Assembly, it was noted that within one of the AC States, a Government has been accused of criminalizing popular leaders and social movements that dare to question the socio-environmental impacts of climate change and large mitigation projects in the region. Furthermore, some civil society organizations are being red-tagged and vilified, and some human rights advocates have been

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<sup>95</sup> Convention on the Elimination of All Forms of Discrimination against Women (1979) Art. 3

<sup>96</sup> International Covenant on Civil and Political Rights (1966) Art. 2.1

<sup>97</sup> UN Declaration on the Rights of Indigenous Peoples,

[https://www.ohchr.org/sites/default/files/Documents/Publications/Declaration\\_indigenous\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/Declaration_indigenous_en.pdf)



imprisoned on the basis of false charges, while others have been murdered.<sup>98</sup> This is unacceptable behaviour.

123. It was noted in the Special Rapporteur's report that Indigenous Peoples defending their rights have been the target of serious attacks and human rights abuses. In 2020, there was a total of 227 lethal attacks against land and environmental defenders. A disproportionate five out of seven mass killings of defenders recorded in 2020 were of indigenous peoples. Indigenous women acting as environmental defenders face additional obstacles to their well-being, such as sexual violence, sexual discrimination, harassment of their children and families and increased vulnerability to mistreatment from State forces and armed groups.<sup>99</sup>

124. The Special Rapporteur recommends that the International Law Commission be mandated to develop, within a two-year time frame, an international legal procedure to give full and effective protection to environmental and indigenous human rights defenders, including by establishing an international tribunal for the prosecution of perpetrators of violence against and the killing of environmental and indigenous human rights defenders.<sup>100</sup>

125. **Recommendation to the Court:** The Court may wish to give consideration to the recommendation of the Special Rapporteur with respect to establishing an international tribunal as stated above.

126. *What due diligence measures should States consider to ensure that attacks and threats against environmental defenders in the context of the climate emergency do not go unpunished?*

127. **Response:** Consistent with Art 9.3 of the Escazu Agreement each Party shall also take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidations that human rights defenders in environmental matters may suffer while exercising the rights set out in the present Agreement. All AC states should be encouraged to take such measures.

128. The Organization for Security and Co-operation in Europe (OSCE) has produced "Guidelines on the Protection of Human Rights Defenders". The Guidelines state that OSCE participating States should protect human rights defenders from abuses by third parties on account of their human rights work and to exercise due diligence in doing so.<sup>101</sup> The Court may wish to use these Guidelines in its deliberations.

129. Further to this, the "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms" notes that everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation

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<sup>98</sup> Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation, Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, A/77/226

<sup>99</sup> Ibid

<sup>100</sup> Ibid para 94.

<sup>101</sup> Guidelines on the Protection of Human Rights Defenders, OSCE Office for Democratic Institutions and Human Rights, 2014, <https://www.osce.org/files/f/documents/c/1/119633.pdf>, Art 5.

due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.<sup>102</sup>

130. *F. On the shared and differentiated obligations and responsibilities in terms of the rights of States in the face of the climate emergency.*

*Bearing in mind that the climate emergency affects the entire world, and that there are obligations to cooperate and also to make reparations arising from the American Convention as well as from other international treaties:*

*What considerations and principles should States and international organizations take into account, collectively and regionally, to analyze shared but differentiated responsibilities in the face of climate change from a human rights and intersectionality perspective?*

131. **Response:** As stated earlier in this brief, States have differentiated obligations depending on whether they are Parties to the American Convention, the Organisation of American States, the UN Framework Convention on Climate Change and the Paris Agreement.

132. From a human rights perspective, those States that are responsible for a significant proportion of greenhouse gas emissions must bear a higher responsibility for reducing greenhouse gas emissions and to support countries that are vulnerable to the impacts of climate change and are low greenhouse gas emitters. In this context, the US and Canada as members of the Organisation of American States have a primary responsibility to reduce their emissions, to support vulnerable States adapt to the impacts of climate change and pay reparations for the harm they have created (discussed below).

133. According to UNEP, over the last decade, the top four emitters (China, the United States of America, EU27+UK and India) have contributed to 55 per cent of the total GHG emissions without including emissions from the land sector.<sup>103</sup>

134. Among the Non Annex I Parties, Mexico, Brazil and Argentina Chile and Colombia also have responsibilities with respect to their own relatively high emissions to support vulnerable States in the region.<sup>104</sup> Such obligations to take the lead in reducing emissions and supporting vulnerable countries are consistent with the principle of equity and common but differentiated responsibilities and respective capabilities.<sup>105</sup>

135. The UNFCCC further states that developed country Parties and other developed Parties included in Annex II shall also assist the developing country Parties that are particularly

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<sup>102</sup> 53/144. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Art 9.2

<sup>103</sup> United Nations Environment Programme (2020), Emissions Gap Report 2020 – Executive summary, Nairobi. P xvii, <https://www.unep.org/emissions-gap-report-2020>

<sup>104</sup> Mexico and Brazil are highest GHG emissions in the region and are the 13<sup>th</sup> and 14<sup>th</sup> highest in world. Argentina 31<sup>st</sup> Chile 39<sup>th</sup> Colombia 45<sup>th</sup> highest in the world, <https://worldpopulationreview.com/country-rankings/greenhouse-gas-emissions-by-country>

<sup>105</sup> UNFCCC Art 3.1

vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects.<sup>106</sup>

136. The UNFCCC states that Parties shall give full consideration to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures, especially on:

- (a) Small island countries;
- (b) Countries with low-lying coastal areas;
- (c) Countries with arid and semi-arid areas, forested areas and areas liable to forest decay;
- (d) Countries with areas prone to natural disasters;
- (e) Countries with areas liable to drought and desertification;
- (f) Countries with areas of high urban atmospheric pollution;
- (g) Countries with areas with fragile ecosystems, including mountainous ecosystems;
- (h) Countries whose economies are highly dependent on income generated from the production, processing and export, and/or on consumption of fossil fuels and associated energy-intensive products; and
- (i) Landlocked and transit countries.

137. A number of AC States would fit within one or more of these categories.

138. The UNFCCC also requires that Parties shall take full account of the specific needs and special situations of the least developed countries in their actions with regard to funding and transfer of technology. As noted earlier, this provision has particular relevance for Haiti.

**139. *How should States act both individually and collectively to guarantee the right to reparation for damages generated by their actions or omissions in the face of the climate emergency, taking into account considerations of equity, justice and sustainability?***

140. **Response:** Without any doubt, climate change is creating gross violations of international human rights law and serious violations of humanitarian law. This fact was noted in the Special Rapporteur report to the UN General Assembly where it was stated:

Throughout the world, the human rights are being negatively impacted and violated as a consequence of climate change. For many millions, climate change constitutes a serious threat to the ability of present and future generations to enjoy the right to life. Human induced climate change is the largest, most pervasive threat to the natural environment and human societies the world has ever experienced.<sup>107</sup>

141. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of

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<sup>106</sup> UNFCCC Art 4.4

<sup>107</sup> Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation, Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, A/77/226

International Humanitarian Law gives guidance on how remedy and reparations can be provided.<sup>108</sup>

142. Under the Basic Principles, victims can be individual or collective. They may have suffered “physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights” (Art. 8). In addition to direct victims, their family members and dependents can also be victims, as well as persons who tried to intervene to help the victim.

143. Victims are entitled to “adequate, effective and prompt reparation” for violations of their rights. Reparation can be individual or collective. If the State is responsible for the violations, the State should be responsible for reparation. Where individuals or private entities are responsible, that person or entity should provide reparation, or compensate the State if the State has already done so. However, reparation does not have to be exclusively monetary, or even material; reparation can be symbolic acts such as apologies and recognition of the plights of victims through construction of memorials. This is especially helpful where there are very large numbers of victims. The Basic Principles set out the actions States should take to help ensure reparation, and establish the main forms of reparation: restitution<sup>109</sup>, compensation<sup>110</sup>, rehabilitation<sup>111</sup>, satisfaction<sup>112</sup> and guarantees of non-repetition<sup>113</sup>.

144. The Principles note that the obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law emanates from: (a) Treaties to which a State is a party; (b) Customary international law; (c) The domestic law of each State.<sup>114</sup>

145. The responsibility for paying reparations was confirmed when the Human Rights Committee in *Billy et al. v Australia* found that the State party had failed to mitigate the impact of climate change and Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated.<sup>115</sup>

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108 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (A/RES/60/147).

109 According to the Basic Principles and Guidelines, **restitution** means returning victims to their situation before the violations occurred. For example, this could include releasing them from detention, returning them to their place of residence or employment, or returning their property.

110 **Compensation** should be paid where the violation of rights can be assessed economically. Economic damages apply for physical or mental harm, lost opportunities (such as education and social benefits), lost wages or potential future wages, moral damages, and the costs of dealing with the violation (such as lawyers, doctors, and other services).

111 **Rehabilitation** means medical and psychological care, and legal and social services.

112 **Satisfaction** can take many forms, including: a) measures to end ongoing violations, b) verification of facts and disclosure of the truth, c) searching for missing persons or their remains, and appropriate treatment of their remains, d) an official declaration or judicial decision restoring the dignity, reputation, and rights of victims, e) public apologies including acknowledging the facts and accepting responsibility, f) judicial and administrative sanctions against those who are responsible, g) commemorations and tributes to victims, and h) including accurate information about the violations in training and educational materials at all levels.

113 **Guarantees of non-repetition** means that the State must take steps to ensure that violations stop and do not happen again. For example, the State could work to ensure effective civilian control over the military, strengthen its judiciary, change policies to protect lawyers, doctors, journalists, and human rights defenders, and reform laws that allow violations to happen, among other actions.

114 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (A/RES/60/147, Art 1

115 Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019, CCPR/C/135D/3624/2019, para 11

146. Further to this the General Comment 26, States should also ensure the availability of regulatory agencies, monitor abuses and provide adequate remedies for violations of children’s rights related to environmental harm.

147. It continues to state that “appropriate reparation includes restitution, adequate compensation, satisfaction, rehabilitation and guarantees of non-repetition, with regard to both the environment and the children affected, including access to medical and psychological assistance. Remedial mechanisms should consider the specific vulnerabilities of children to the effects of environmental degradation, including the possible irreversibility and lifelong nature of the harm. Reparation should be swift, to limit ongoing and future violations. The application of novel forms of remedy is encouraged, such as orders to establish intergenerational committees, in which children are active participants, to determine and oversee the expeditious implementation of measures to mitigate and adapt to the impacts of climate change.”<sup>116</sup>

148. ***Taking into account that the climate crisis is having a greater impact on some regions and populations, including the Caribbean, island and coastal countries and territories of our region and their inhabitants:***

***1. How should the obligations of cooperation between States be interpreted?***

148. **Response:** As stated previously, the UNFCCC identifies certain States that are particularly vulnerable to the impacts of climate change.<sup>117</sup> These provisions place particular responsibilities on developed countries to support vulnerable countries.

***2. What obligations and principles should guide the actions of States in order to ensure the right to life and survival of the most affected regions and populations in the various countries and in the region?***

149. **Response:** With respect to ensure the right to life and survival, the International Covenant on Civil and Political Rights states that every person has the inherent right to life.<sup>118</sup> This right has been reinforced by American Convention.<sup>119</sup> The European Court of Human Rights has introduced environmental protection through the guarantee of rights, such as the rights to life, to respect for private and family life, and to property.<sup>120</sup>

150. With respect to the most affected populations, the American Declaration on the Rights of Indigenous Peoples provides for the protection of a healthy environment establishing that indigenous peoples “have the right to live in harmony with nature and to a healthy, safe, and sustainable environment, essential conditions for the full enjoyment of the right to life, to their spirituality, worldview and to collective well-being.”<sup>121</sup>

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<sup>116</sup> General Comment 26, paras 88 and 89.

<sup>117</sup> UNFCCC Articles 4.4, 4.8 and 4.9

<sup>118</sup> CCPR, Art 6

<sup>119</sup> American Convention, Art 4

<sup>120</sup> The Charter of Fundamental Rights of the European Union, Art 37 establishes that “[a] high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.” Charter of Fundamental Rights of the European Union proclaimed on December 7, 2000, amended by the Treaty of Lisbon of December 1, 2009, 2012/C 326/02

<sup>121</sup> American Declaration on the Rights of Indigenous Peoples, adopted at the third plenary session of the OAS General Assembly held on June 15, 2016, AG/RES. 2888 (XLVI-O/16), Art 19

151. *Considering that one of the impacts of the climate emergency is to aggravate the factors that lead to human mobility - migration and forced displacement of people:*

*3. What obligations and principles should guide the individual and coordinated actions to be taken by States in the region to address non-voluntary human mobility exacerbated by the climate emergency?*

152. **Response:** As stated previously and based on observations by the Special Rapporteur during a country visit to Honduras, people within AC region are being displaced across international borders as a consequence of climate change. An earlier section of this brief provides options for coordinated actions to address this migration. This includes broadening the scope of the Cartagena Declaration on Migration to include a definition of refugee that includes people displaced by climate and the suggestion to commence negotiations of an Option Protocol under the UN Refugee Convention to give protection to people displaced across international borders due to climate change.

153. **Conclusion:** The climate emergency is having a profound impact on the rights of people within the AC region. Greater action is needed to address these impacts, to reduce emissions, to provide support for adaptation and to provide reparations for the damage caused by climate change. Member States of the AC and OAS must uphold their obligations to properly address the climate emergency. The obligations are found within treaty law, regional agreements and customary international law.

Respectfully submitted



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