

International Human Rights Practicum
Boston College Law School

Written observations regarding the Request for an Advisory Opinion from the Inter-American Court of Human Rights with respect to “Climate change and human rights”

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Abbreviations and Acronyms

The following abbreviations and acronyms are used in this brief:

2030 Agenda	2030 Agenda for Sustainable Development
Aarhus Convention OR AC	Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters
AO	Advisory Opinion
ACHR	American Convention of Human Rights
ADRDM	American Declaration of the Rights and Duties of Man
CCRI	UNICEF’s Children’s Climate Risk Index
CESCR	Committee on Economic, Social and Cultural Rights
Committee	UN Committee on the Rights of the Child
Convention	Convention on the Rights of the Child
ECHR	European Court of Human Rights
EHRD	Environmental human rights defender(s)
EIA	Brazilian Environmental Impact Assessment
Escazú Agreement OR EA	Regional Agreement On Access To Information, Public Participation And Justice In Environmental Matters In Latin America And The Caribbean
HRC	Human Rights Council
G.C. 26	General Comment No. 26, UN Committee on the Rights of the Child
IACHR	Inter-American Commission on Human Rights
IACtHR OR the Court	Inter-American Court of Human Rights
IASHR	Inter-American System of Human Rights

ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
Los Angeles Declaration	Los Angeles Declaration on Migration and Protection
NGO	Non-governmental organization
OAS	Organization of American States
OHCHR	United Nations Human Rights, Office of the High Commissioner
Protocol	Protocol of San Salvador
Rio Declaration	Report of the United Nations Conference on Environment and Development, Rio Declaration on Environment and Development
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNECE	United Nations Economic Commission for Europe
UNICEF	United Nations Children's Fund

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I. Introduction

A. Interest in submitting these written observations.

The International Human Rights Practicum (the “Practicum”) at Boston College Law School (“B.C. Law”) appreciates the open invitation of the Inter-American Court of Human Rights (the “Court” or “IACtHR”) to submit written observations on the Advisory Opinion requested by the Republic of Colombia and the Republic of Chile on “Climate Emergency and Human Rights” (the “Request”). The petitioners submitted the Request to this Court pursuant to Article 64.1 of the American Convention on Human Rights (the “ACHR”) and Article 70 of the Rules of Procedure of the Inter-American Court of Human Rights (the “Rules of Procedure”). We now submit this brief pursuant Article 73.3 of the Rules of Procedure.

The Practicum is a clinical course at B.C. Law that provides second-year and third-year Juris Doctor students and Master of Laws students from various international backgrounds with the opportunity to submit appellate briefs to regional and international courts that address questions of human rights. The Practicum operates under the supervision of human rights legal academics and experts. It is devoted to legal education through experiential learning with respect to defense and advocacy for the international protection of human rights and puts special emphasis on the study of the Inter-American System on Human Rights (“IASHR”), its legal framework, State obligations, and relevant principal entities. The Practicum appreciates the global dialogue with respect to human rights and the fundamental importance of human rights as a pillar of constitutional democracy and the rule of law. Thus, the Practicum is committed to teaching advocacy and protection of human rights and collaborating with the Court in the exercise of its jurisdictional functions.

B. Scope of these written observations.

In the Request for an Advisory Opinion, the Republic of Colombia and the Republic of Chile have requested the Court clarify the “scope of State obligations, in their individual and collective dimension, in order to respond to the climate emergency within the framework of international human rights law.”¹ This includes particularly devoting “special attention to the

¹ IACtHR, “Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile,” January 9, 2023.

differentiated impacts of this emergency on individuals from diverse regions and population groups, as well as on nature and on human survival on our planet."² The Court's opinion on the subject will allow clear standards for the protection of human rights in the context of climate change in the States party to the IASHR.

The Practicum's written observations focus on three of the topics faced in the Advisory Opinion Request: the obligations of States and international and regional standards to protect the human rights of children, environmental human rights defenders, and people facing involuntary human mobility in the climate change context. The focus of the written observations regarding the human rights protection of these three vulnerable populations does not indicate that the rest of the questions formulated in the request for an advisory opinion are unimportant. On the contrary, they each raise questions about the essential standards for the integral protection of human rights in the face of the climate emergency.

The ideas expressed in this brief are our own. They do not represent the opinions of any institution, group, or individuals, including Boston College, its staff, faculty, or students³. We have not received any money or direction from any groups or organizations to write the opinions expressed within these written observations, and we have no economic interest in the advisory opinion that the Court will provide.

C. Transversal principles on climate change and human rights⁴.

The Practicum acknowledges transversal principles to be considered in determining the scope of States' obligations to respect, protect, and guarantee the human rights of vulnerable populations disproportionately affected by climate change. The principles outlined below are essential to the interpretation and application of human rights across these populations. While the following list of transversal principles is not all encompassing, they are relevant to State obligations of protection for the three vulnerable populations analyzed in this brief: children, environmental human rights defenders, and people facing involuntary human mobility.

² *Ibid.*

³ The Practicum appreciates BC Law Dean and Professor Katharine Young's valuable feedback on these written observations.

⁴ The Practicum uses the term Transversal Principles to refer to fundamental principles common to the protection of the human rights of the three vulnerable groups addressed in this report.

1. **Climate Change:** As defined in the United Nations Framework Convention on Climate Change, climate change is “a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.”⁵ While climate change is not a human rights transversal principle, it is important to define climate change as a reason for human rights violations across the world. The effect of climate change varies across continent, country, State, and individual levels. The purpose of this brief is to not explain the reasons for this variance, but rather to articulate State obligations to protect human rights of vulnerable groups disproportionately affected in the context of climate change.
2. **Equal Protection and Non-Discrimination:** The right to equal protection and non-discrimination is recognized on an international and regional level as the *ius cogens* principle.⁶ Non-discrimination applies in two dimensions, negative discrimination and positive discrimination. The first is the concept of negative discrimination and equal treatment, which does not allow differential treatment or unjustified preferences based on circumstantial, arbitrary, or discriminatory reasons that are contrary to the idea of human rights.⁷ The second positive dimension establishes to guarantee the protection of the human rights of all people equally, with criteria of social inclusion, the States have the obligation to facilitate the minimum necessary conditions taking into account the differentiated approach they may have, especially groups in a particularly vulnerable situation as is the case with children, environmental defenders, and migrants in the climate change context. The climate change emergency makes these groups holders of special or reinforced protection, sometimes through positive measures by the States, necessary to comply with

⁵ United Nations, “United Nations Framework Convention on Climate Change” (UNFCCC). March 21, 1994, art. 4(1)(g–h).

⁶ OAS, Charter of the Organization of American States (“Charter of the OAS”). Adopted at the Ninth International Conference of American States in Bogotá, Colombia on April 30, 1948, arts. 34 and 35; OAS, “American Declaration of the Rights & Duties of Man.” Adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948, arts. II and XI of the Declaration of the Rights and Duties of Man; OAS, American Convention on Human Rights, Preamble and arts. 1 (1), 17 (4) (5), 23 (1) (b) (c) and 24, OEA N° 36, UN Reg. 08/27/1979, N° 17955, San José, Costa Rica, 1969.

⁷ OAS, American Convention on Human Rights, arts. 1, 27.

their general obligations to respect and guarantee human rights according to Article 1.1 and 24 of the Convention.⁸

3. **Human Rights Protection with a Differential Approach:** The prohibition of discrimination requires the adoption of criteria that would appear to give preferential treatment to one group of individuals over others. Rules and standards for such purposes must have a strong factual justification for such treatment to avoid being seen as arbitrary or capricious. In the case of children, EHRDs and people in situations of human mobility, a differentiated approach is justified by the many situations that lead to a situation of vulnerability, disproportionately increased in several occasions for different reasons that intersect in their human rights exercise, as will be explained in this brief.⁹
4. **Gender Perspective:** The differentiated protection of human rights also requires a gender approach. The Practicum attempts to give greater attention to the unique challenges faced by women, pregnant people, non-binary people, and LGBTQ+ people in the context of climate emergency, not only regarding the right to life, personal integrity, and human treatment, but also social, economic, and cultural rights.¹⁰
5. **Interdependence:** The protection and guarantee of the right to a healthy environment implies the necessary protection of all the human rights in an interconnected and holistic way.¹¹ Human rights are indivisible and interdependent among themselves, which means that their protection cannot be selective or to be separated from the protection of some

⁸ I/A Court H.R., Case of the Employees of the Santo Antônio de Jesús Fire Factory and their next of kin v. Brazil. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of July 15, 2020. Series C No. 407.

⁹ UN, The Economic, Social, And Cultural Rights Of Migrants In An Irregular Situation, HR/PUB/14/1, 2014. p. 5-7; United Nations Network on Racial Discrimination and Protection of Minorities, “Guidance Note On Intersectionality, Racial Discrimination & Protection Of Minorities,” September 2022.

¹⁰ I/A Court of H.R., Case of the Brítez Arce et al. v. Argentina. Merits, Reparations, and Costs. Judgment of November 16, 2022. Series C No. 474; I/A Court H.R., Case of Rodríguez Pacheco et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1, 2023. Series C No. 504.

¹¹ OAS, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”), arts. 13 & 16, OAS Treaty Series No. 69; 28 ILM 156 (1989). In the case of Kichwa Indigenous People of Sarayaku v. Ecuador and Kaliña and Lokono Peoples v. Suriname, the Court reinforces State obligations to prevent environmental degradation by articulating how the right to a healthy environment is inextricably linked to inalienable human rights. I/A Court H.R., Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, para. 234; I/A Court H.R., Case of the Kaliña and Lokoño Peoples v. Suriname. Merits, Reparations and Costs. Judgment of November 25, 2015. Series C No. 309, para. 172.

rights and not others equally affected in a specific context.¹² In application of the principles of interdependence and indivisibility, respect and protection of the human rights of children, EHRDs and people in situations of human mobility, cannot set aside or underestimate the protection of their economic, social and cultural rights among with the right to life, human dignity and right to an adequate standard of living.

6. **Intergenerational Equity:** The principle of intergenerational equity asserts all children have the right to enjoy a healthy environment that is equal to, or when possible, in better conditions, than their ancestors.¹³ The fundamental principle of intergenerational equity is articulated in the Convention on the Rights of the Child and in the Maastricht Principles.¹⁴ The Maastricht Principles specifically indicate children have an important role to play in multi-generational protections and their participation in long-term decisions must be given special weight.
7. **International Coordination, Cooperation, and Solidarity:** The guarantee of the right to a healthy environment cannot be addressed by States individually. International obligations in the face of the climate emergency impose a duty on States to jointly combat the adverse effects of climate change, prevent avoidable climate emergencies and coordinate responses to climate crises. States have an obligation to act, separately and jointly, through international cooperation, to respect, protect and fulfill human rights in the context of the climate emergency. The full realization of human rights in this context will depend in part on the way States interact.
8. **Strasbourg Principles:** Drafted by an expert panel in international law, human rights, and environmental regulations, the Strasbourg Principles establish “general principles that have emerged in international human rights law in the context of the environment.”¹⁵ This Principles assert that “environmental degradation and climate change are having negative impacts on the effective enjoyment of human rights.”¹⁶, emphasize the right to a “safe,

¹² I/A Court H.R., Case of Lagos del Campo v. Peru. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 340, para. 141.

¹³ IACHR, Resolution 03/21, “Climate Emergency: Scope Of Inter-American Obligations In Terms Of Human Rights,” December 31, 2021, para. 21.

¹⁴ United Nations Human Rights, Office of the High Commissioner (OHCHR), “Maastricht Principles on the Human Rights of Future Generations,” February 3, 2023.

¹⁵ “The Strasbourg Principles of International Environmental Human Rights Law – 2022.” 2022. *Journal of Human Rights and the Environment* 13 (0): 195–202.

¹⁶ *Ibid.*

clean, healthy and sustainable environment is a precondition for the full enjoyment of the whole range of civil, political, social, economic, cultural and solidarity rights”¹⁷ and bring accurate input for the determination of the victim, harm, burden of proof, extraterritorial jurisdiction, exhaustion of remedy, and states’ obligations in the climate change context that collaborate in the precision of standards for the protection of human rights in the face of climate change.

II. Amicus considerations

A. Considerations regarding differentiated obligations of the States concerning the rights of children in the climate emergency context.

1. Vulnerability of children in the climate emergency context.

According to UNICEF’s Children’s Climate Risk Index (CCRI), nearly half of the world’s children live in countries at high risk of adverse climate effects.¹⁸ While all human rights are at risk in the face of environmental degradation, vulnerable groups such as children will experience the adverse impacts of climate change with greater force. Children are particularly susceptible to direct and indirect impacts of climate change.¹⁹ Direct impacts include extreme climate events such as floods, heavy rains, and droughts that may violate the right to life, personal integrity, health, and a healthy environment. Indirect impacts include collateral consequences of climate emergencies such as when States reallocate resources from education programs to address environmental catastrophes.²⁰ The lack of clean water, poor sanitation, and pollution pose serious threats to children’s health. Rising temperatures also increase the risk of vector-borne diseases and concentrations of air pollutants may stunt brain and lung development. These adverse effects of climate change may result in increasing prevalence of autoimmune diseases with long-term effects on children.

In addition, children face violations of human rights in an intersectional manner. For example, indigenous children and children living in poverty are even more vulnerable to

¹⁷ *Ibid.*

¹⁸ UNICEF, “The Climate Crisis is a Child Rights Crisis: Introducing the Children’s Climate Risk Index.” 2021.

¹⁹ *Ibid.*

²⁰ *Ibid.* at 110 (citing warm environments without proper ventilation led to lower learning outcomes in early childhood).

environmental shocks and stresses. These children often depend on natural systems for their livelihood and lack financial resources or basic infrastructure critical to environmental resilience and recovery.²¹ The Inter-American Court has repeatedly held that when the rights of vulnerable groups are violated, other rights such as the right to physical integrity and to be treated with dignity are at heightened risk.²²

2. State obligations and standards of protection of children.

The Advisory Opinion Request asks the Court to clarify the scope of States' obligations to protect children's rights in the climate change context under Article 1 (obligation to respect rights), Article 4 (right to life), Article 5 (right to humane treatment), Article 11 (right to privacy), and Article 19 (rights of the child).²³ Article 1 of the ACHR expresses States have an obligation to respect human rights.²⁴ Article 19 specifically establishes that "[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the State."²⁵ The *corpus juris* of international children's rights reflects the progressive development of international human rights law to create a series of fundamental norms that recognize and bolster the human rights of children. Thus, the scope of States' obligations to children with regard to climate change must be interpreted within the context of international instruments such as the UN's Declarations on the Rights of the Child of 1924 and 1959, the 1989 Convention on the Rights of the Child (hereinafter "Convention"), and the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

Existing Inter-American Court jurisprudence also holds States have heightened responsibilities to guarantee the rights of children.²⁶ This heightened obligation was first

²¹ *Ibid.* at 54.

²² *See* I/A Court of H.R., Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits. Judgment of November 19, 1999. Series C No. 63, para. 166; *see also* I/A Court of H.R., Case of the Barrios Family v. Venezuela. Merits, Reparations, and Costs. Judgment of November 24, 2011. Series C No. 237, para. 80.

²³ OAS, "American Convention on Human Rights," arts. 1, 4, 5, 11, 19.

²⁴ *Ibid.* at art. 1.

²⁵ *Ibid.* at art. 19.

²⁶ *See* I/A Court of H.R., Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. paras. 192–94 (finding the State responsible for the death of five minors and stressing the fundamental nature of the right to life and the right to access to conditions necessary to lead a dignified life); *see also* I/A Court of H.R., Case of the Barrios Family v. Venezuela. para. 55 (emphasizing under art. 19 the State assumes a "special position of guarantor with greater care and responsibility" to "guarantee the principle of the best interests of the child."); *see also* I/A Court of H.R., Case of "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112, para. 160 (explaining that the State has an obligation to be "particularly attentive

articulated in the landmark case *Villagrán-Morales et al. v. Guatemala*, where the Court held not only does the right to life include minimum conditions for a dignified life, but also States are obligated to adopt additional measures to ensure this right for children.²⁷ Pursuant to the terms set out in *Villagrán-Morales et al.*, States must adopt legislative measures to protect and guarantee the rights of children. Subsequent cases such as *Barrios Family v. Venezuela, Instituto de Reeducción del Menor v. Paraguay*, and *Servellón García v. Honduras* repeatedly stressed States are responsible for heightened obligations to protect children.²⁸

The IACtHR recognizes the Convention as the most universally ratified international treaty on the rights of the child and holds the principles and rights recognized therein “contribute decisively” to establishing the scope of State obligations regarding the rights of children.²⁹ The Convention explains the fundamental principles behind affording special protection to children, articulates the rights of the child in the climate context, and provides recommendations to implement measures protecting these rights.³⁰ Particularly, the fundamental principle of the best interests of the child requires States to guarantee the necessary conditions for children to live and develop to their full potential.³¹ In the context of climate change, States must assess the specific ways children are at risk of environmental harm and ensure the implementation of laws, regulations, and policies ensure the best interests of the child.

The fundamental principle of intergenerational equity is articulated in the Convention and in the Maastricht Principles.³² This principle recognizes that while the rights of children living today require immediate attention, States also have an obligation to ensure future generations can

to a child’s living conditions”); *see also* I/A Court of H.R., Case of *Servellón García v. Honduras*. Merits, Reparations and Costs. Judgment of September 21, 2006. Series C No. 152, para. 116.

²⁷ I/A Court of H.R., Case of the “Street Children” (*Villagrán Morales et al.*) v. Guatemala, paras. 192–94.

²⁸ I/A Court of H.R., Case of the *Barrios Family v. Venezuela*, para. 55; *see also* I/A Court of H.R., Case of *Instituto de Reeducción del Menor v. Paraguay*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112, para. 160; *see also* I/A Court of H.R., Case of *Servellón García v. Honduras*, para. 116.

²⁹ I/A Court H.R., Advisory Opinion OC-21/August 19, 2014. Series A No. 21, para. 52 (emphasizing the existence of comprehensive international law on the protection of the rights of the child and focusing on the “Convention on the Rights of the Child” as a decisive guide to establishing the scope of the rights of a child); *see also* I/A Court H.R., Advisory Opinion OC-17/August 28, 2002. Series A No. 17.

³⁰ UN General Assembly, “Convention on the Rights of the Child,” 20 November 1989, United Nations, Treaty Series, vol. 1577. General Comment No. 26 (2023) on children’s rights and the environment, with a special focus on climate change, August 22, 2023.

³¹ UN General Assembly, “Convention on the Rights of the Child,” art. 3.

³² *Ibid.* at para. 11; *see also* United Nations Human Rights, Office of the High Commissioner (OHCHR), “Maastricht Principles on the Human Rights of Future Generations,” February 3, 2023.

realize their human rights to their full potential too. Adopted in February 2023, the Maastricht Principles assert that no human rights instrument contains a temporal limitation and that human rights extend to present and future generations. The protection of future generations is an essential dimension of humankind’s duty to uphold the inherent dignity, equality, and inalienable rights of all with particular importance when addressing the climate emergency. The Maastricht Principles specifically indicate children have an important role to play in multi-generational protections and their participation in long-term decisions must be given special weight. Thus, States have an obligation to respect, protect, and fulfill the human rights of future generations in the climate change context.³³

Inspired by youth climate activism, the Committee on the Rights of the Child also adopted General Comment No. 26 (“G.C. 26”) to articulate children’s rights in the climate emergency context and State obligations to protect those rights.³⁴ In addition to the right to health (Article 24), the Committee also emphasizes the right to be heard (Article 12),³⁵ the right to freedom of expression, association, and peaceful assembly (Article 13, Article 15),³⁶ and the right to access accurate environmental and climate-related information (Article 17).³⁷ G.C. 26 also emphasizes that States should facilitate the involvement of children’s associations and child-led organizations in environmental decision-making processes.³⁸ The Committee on the Rights of the Child has highlighted the important role that youth activists have to play as environmental human rights defenders in the context of climate change.³⁹

a. State obligations towards the rights of children to life, health, and a healthy environment.

i. State obligations to prevent violations to the right to life, health, and a healthy environment.

³³ United Nations, Office of the High Commissioner (OHCHR), “Maastricht Principles on the Human Rights of Future Generations,” p. 2–8.

³⁴ *Ibid.* at arts. 3, 6, 24, and 26.

³⁵ *Ibid.* at para. 26.

³⁶ *Ibid.* at paras. 29–31.

³⁷ *Ibid.* at paras. 32–4.

³⁸ *Ibid.* at para. 28.

³⁹ Economic Commission for Latin America and the Caribbean (ECLAC). “Climate Change And Human Rights: Contributions By And For Latin America And The Caribbean,” 2019, p. 39.

Children have the right to a healthy and sustainable environment. This right is inextricably linked to rights recognized in the ACHR such as the right to life (Article 4), the right to humane treatment (Article 5), and the right of the child (Article 19). In addition, the San Salvador Protocol (hereinafter “Protocol”) recognizes the right to a healthy environment and ability to access basic public services (Article 11).⁴⁰ States have an obligation to prevent environmental degradation and the degradation of housing, water, sanitation, and basic infrastructure such as schools, hospitals, and public transportation systems. In terms of preventative measures, States have a due diligence obligation to identify threats children face as a result of climate change, assess the environmental impact of legislation or policies, and identify responses to protect children in the face of potential climate emergencies.⁴¹ Preventative measures States can take include establishing early warning systems for extreme weather events, regulating third-party practices, and shifting toward clean energy infrastructure.

States parties to the IASHR have an obligation of prevention as promulgated by binding international instruments such as the ACHR and the Protocol, and persuasive instruments such as Advisory Opinion OC-17/2002, Advisory Opinion OC-23/2017, and IACHR’s Resolution 03/2021 (hereinafter “Resolution 03/2021”). The IACtHR has repeatedly established that States to the ACHR are under the obligation, pursuant to Article 19 and Article 1 of the ACHR, to adopt positive measures to ensure children are protected from violations of their rights.⁴² The IACtHR has also expressly recognized the adverse impacts of climate change on the realization of human rights.⁴³ In Advisory Opinion OC-23/17, the Court emphasized that in the climate emergency context, States are responsible for ensuring activities within their jurisdiction do not cause more environmental damage across land, water, and atmosphere.⁴⁴ Since it is not possible to restore the environment to a state before environmental damage occurred, prevention should be a primary goal in environmental protection policy.⁴⁵ Resolution 03/2021 emphasizes State obligations to act in accordance with the principles of due diligence, precaution, and prevention that require States

⁴⁰ OAS, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”), OAS Treaty Series No. 69; 28 ILM 156 (1989).

⁴¹ UN General Assembly, “Convention on the Rights of the Child,” General Comment No. 26 (2023), paras. 63–67.

⁴² I/A Court H.R., Advisory Opinion OC-17/2002, para. 87.

⁴³ I/A Court H.R., Advisory Opinion OC-23/November 15, 2017. Series A. No. 23. para. 47.

⁴⁴ *Ibid.* at paras. 127–29.

⁴⁵ *Ibid.* at para. 130.

to take good faith measures to prevent environmental harm to children in order to preserve an environment that allows for the exercise of rights of children.⁴⁶

ii. State obligations to mitigate the impact on violations to the right to life, health, and a healthy environment.

States also have a responsibility to mitigate potential damage in the face of climate disasters.⁴⁷ Even if the incident occurs despite all the required preventive measures having been taken, the State where environmental damage first occurs must ensure measures are taken to mitigate damage and, to this end, should rely upon the best available scientific data. Such measures should be taken immediately and include: (1) clean-up and restoration; (2) containment of damage; (3) collection of information about the incident and damage; (4) notify other jurisdictions that are likely to be affected by the damage; (5) once notified, the affected or potentially affected States should take all possible steps to mitigate consequences of environmental damage.⁴⁸ Under Resolution 03/2021, States must take proactive measures to mitigate the emission of greenhouse gases. Tactically, this includes the obligation to implement greenhouse gas mitigation targets under the obligations of the Paris Agreement.⁴⁹ States are in a position to enact these measures should contribute to covering the costs of mitigation of States prevented from doing so.⁵⁰ Resolution 03/2021 emphasizes States should focus efforts on mitigation efforts and give special emphasis to projects that will impact the lives of vulnerable populations.⁵¹

When determining the ways of fulfilment of these obligations and the public policies and actions to be implemented, States must consider the principles of the best interest of the child and the rights of future generations.

iii. State obligations to enact measures to protect the right to life, health, and a healthy environment.

⁴⁶ IACHR, Resolution 03/21, “Climate Emergency: Scope Of Inter-American Obligations In Terms Of Human Rights,” para. 11.

⁴⁷ I/A Court H.R., Advisory Opinion OC-23/2017, para. 121.

⁴⁸ *Ibid.* at paras. 172–173.

⁴⁹ IACHR, Resolution 03/21, “Climate Emergency: Scope Of Inter-American Obligations In Terms Of Human Rights,” para. 41.

⁵⁰ *Ibid.* at para. 11.

⁵¹ *Ibid.* at para. 56.

States must take positive measures to reduce greenhouse gas emissions, improve air quality, ensure safe water access, support sustainable food sources, and reduce pollutants and toxic substances. Existing jurisprudence, even if not regionally binding, has established valuable guidance for legal consequences before children rights when States fail to take measures to uphold their climate commitments on an international scale. For example, States may have an individual responsibility to fulfill their commitment contained in the Paris Agreement to hold the increase in global average temperatures to below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels by 2030.⁵² In *Sacchi et al. v. Argentina* and *Sacchi et al. v. Brazil*, the Committee released a landmark ruling on a complaint brought against Argentina, Brazil, France, Germany, and Turkey by sixteen children.⁵³ While the Committee ultimately held the complaint was inadmissible because the petitioners failed to exhaust domestic remedies, the ruling was significant in it did find a State could be held legally responsible for failing to meet its carbon emission targets and its implications on the rights of children within, and outside, its jurisdiction. The ruling was anchored in the IACtHR Advisory Opinion OC-23/2017, which clarified the scope of extraterritorial jurisdiction concerning environmental protection.⁵⁴ The Committee observed, in line with the position of the IACtHR, not all transboundary damage gives rise to the responsibility of the State in whose territory the activities causing transboundary harm took place. Instead, grounds for jurisdiction and mitigation must be based on the specific circumstances and the degree of harm caused. The decision further noted harm must lead to a real detrimental effect on human health, property, and the environment.⁵⁵

Advisory Opinion OC-23/2017 states Article 2 of the ACHR obliges States to adopt measures to give effect to protected rights or freedoms. Given the relationship between the environment and human rights, States must enact regulations to reduce and control significant

⁵² United Nations, “Paris Agreement to the United Nations Framework Convention on Climate Change,” Dec. 12, 2015, T.I.A.S. No. 16-1104, art. 4(2); *see also* UN General Assembly, “Convention on the Rights of the Child,” General Comment No. 26 (2023), sec. V, p. 17.

⁵³ UN Committee on the Rights of the Child, *Sacchi et al. v. Argentina, Brazil, France, Germany & Turkey*. September 22, 2021, CRC/C/88/D/104/2019. The central element of the complaint was that by “recklessly causing and perpetuating life-threatening climate change,” States failed to take preventive and precautionary measures to respect, protect, and fulfill the petitioners’ right to life, right to the highest attainable standard of health, and right to enjoy culture. Petitioners also emphasized the fundamental principle of the best interests of the child and its importance in the climate emergency context.

⁵⁴ I/A Court H.R., Advisory Opinion OC-23/2017, para. 91.

⁵⁵ UN Committee on the Rights of the Child, *Sacchi et al. v. Argentina, Brazil, France, Germany & Turkey*, paras. 10–12.

damage to the environment. For example, adopting laws to regulate polluting seabed activities or developing guidelines to regulate major development projects to minimize harmful environmental impacts.⁵⁶ Furthermore, the IACtHR considers States have an obligation to supervise and monitor activities within their jurisdiction that may cause significant damage to the environment. Accordingly, States must develop and implement adequate independent monitoring and accountability mechanisms. These mechanisms must not only include preventive measures but also appropriate measures to investigate, punish and redress possible abuse through effective policies, regulations, and adjudication.⁵⁷

As General Comment 26 states, in making decisions and adopting policies to achieve these environmental goals, states must consider how children will be impacted in the present and future, and take care not to negatively affect children, especially those in situations of intersectionality or poverty. This is supported, at the Inter-American level, by Articles 19 and 24 of the ACHR and by Advisory Opinion OC-23/2017.

b. State obligations towards the rights of children to freedom of expression, protest, access to information, and access to justice in the climate emergency context.

The past decade has witnessed the rise of children as leaders in the face of the climate emergency. Greta Thunberg's solitary climate strike outside the Swedish Parliament in 2018 marked the ignition of the youth-led climate movement that has grown into a global phenomena influencing both school strikes and speeches at international forums. The youth-led movement underscores the crucial role young leaders play in shaping policy. As young activists across the globe have emerged as powerful advocates for environmental stewardship, States must recognize the centrality of the leadership of children, adolescents, and young people in the fight against climate change.

In compliance with international and IASHR instruments affirming the rights of freedom of expression, right to protest, access to information, and access to justice, States must recognize these rights to children and generate the necessary protection mechanisms to guarantee the protection of children and adolescents' rights in the context of their environmental activism and

⁵⁶ *Ibid.* at 146–47.

⁵⁷ *Ibid.* at 154.

by promoting their inclusion and participation in decision-making spaces.⁵⁸ States must also guarantee these rights to children and create the necessary protection mechanisms in accordance with their special needs.

i. State obligations to promote the right of children to free expression, protest, access to information, and access to justice in the climate emergency context.

Under the International Covenant on Civil and Political Rights (hereinafter the “ICCPR”) and the ACHR, governments must ensure at all times that citizens have access to justice and integral reparation, as well as access to legal information and services. Such access to justice is of heightened importance in times of crisis when pre-existing inequalities are often exacerbated, and vulnerable groups are disproportionately impacted. The Escazú Agreement (hereinafter “Escazú Agreement” or “EA”), Resolution 03/2021 of the IACHR, AO OC-17/02 on the Juridical Condition and Human Rights of the Child, AO OC-21/14 on the Rights and Guarantees of Children in the Context Of Migration and/or in Need of International Protection, each contribute to a full understanding of the obligations of States to the children’s free expression, protest, access to information, and access to justice in the climate emergency context. Also, the Brasilia Rules Regarding Access to Justice for Vulnerable People help to implement those States obligations⁵⁹.

The “Escazú Agreement” is an international treaty signed at the 2012 United Nations Conference on Sustainable Development.⁶⁰ This Agreement guarantees the rights of access to climate information, public participation in the environmental decision-making process, access to justice in environmental matters of every person and protecting climate defenders. By taking care to highlight the necessity of extending access to rights to persons and groups in vulnerable situations, the Escazú Agreement strongly implies its application to children and materializes the 2030 Agenda Goal 13 on climate action and SDG 16 on peace, justice and strong institutions, which call for leaving no one behind. As the agreement indicates each Party shall provide the

⁵⁸ Crouch, David. “The Swedish 15-Year-Old Who’s Cutting Class to Fight the Climate Crisis.” *The Guardian*, Guardian News and Media, September 1, 2018; UNICEF, “Young Climate Activists Demand Action and Inspire Hope.” Accessed October 26, 2023.

⁵⁹ XIV Ibero-American Judicial Summit, “Brasilia Rules Regarding Access to Justice for Vulnerable People,” March 6, 2008, para. 78.

⁶⁰ Economic Commission for Latin America and the Caribbean (ECLAC), “Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean” (“Escazú Agreement”), United Nations, Treaty Series, vol. 3397, C.N.195.2018. TREATIES-XXVII.18 of April 9, 2018. The Escazú Agreement is not an Inter-American treaty but is used to inform and guide.

public with the information necessary to participate in the decision-making process, and “each Party shall ensure that guidance and assistance is provided to the public — particularly those persons or groups in vulnerable situations — in order to facilitate the exercise of their access rights⁶¹,” it is clear that States should guarantee the participation of children.

The Escazú Agreement solidifies the obligations of States to guarantee access to all types of environmental information regarding the environment and its elements and natural resources, including information related to environmental risks, and any possible adverse impacts affecting or likely to affect the environment and health, as well as to environmental protection and management, by establishing active and passive transparency obligations. It also promotes the dissemination of climate information, such as information about emissions information and all pertinent information in its possession that could help the public take measures to prevent or limit potential damage. It strengthens the right of public participation in climate issues, requiring each Party to ensure the public’s right to participation from the early stages of the decision-making process, committing to implement open and inclusive participation in environmental decision-making processes. To this end, each Party shall guarantee mechanisms for the participation of the public in environmental matters of public interest, including decision-making processes and in other processes for granting environmental permits that may have a significant impact on the environment, including climate change and carbon neutrality policies.

Regarding access to justice, Article 8 of the Escazú Agreement provides each Party shall guarantee access to judicial and administrative mechanisms to challenge and appeal any decision, action or omission related to the access to environmental information and to public participation in the environmental decision-making process, and other decision, action or omission that affects or could affect the environment adversely or violate laws and regulations related to the environment. In order to give effect to the right of access to justice, each Party shall meet the needs of persons or groups in vulnerable situations by establishing support mechanisms, including, as appropriate, free technical and legal assistance. Thus, States should conform all available support mechanisms to the needs of children, among other vulnerable groups.

Resolution 03/2021 of the IACHR reflects on the scope of IASHR obligations in the climate emergency context. There, the IACHR resolved that States must recognize the centrality

⁶¹ Economic Commission for Latin America and the Caribbean (ECLAC), Escazú Agreement, art. 4.5.

of leadership of children.⁶² This obligation also calls States to recognize movements led by children, adolescents, and young people generally, which involves generating the necessary protection mechanisms to guarantee children and adolescents can exercise their activism and defense of environmental rights. Like the Escazú Agreement, Resolution 03/2021 also promotes the inclusion by States of youth participation in decision-making spaces.

AO OC-17/02 on the Juridical Condition and Human Rights of the Child gives the IACTHR's interpretation of Articles 8 (right to a fair trial) and Article 25 (right to judicial protection) of the ACHR with the aim of determining whether the special measures set forth in Article 19 (rights of the child) of that same Convention establish "limits to the good judgment and discretion of the States" with respect to children. Article 19 sets forth specifically, "every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the State."

Like Article 12 of the Convention, AO OC-21/14 enshrines the right to participate, maintaining children have the right to express their views freely in all matters affecting them, and their opinions should be taken into account in accordance with their age and maturity. States are further called in the AO to establish legal procedures that are adapted to the needs and capacities of children, ensuring their participation and protection in legal matters affecting them. In order to operationalize these standards of protection, the Brasilia Rules on Access to Justice for Vulnerable Groups, mentioned above, provide guidelines in favor of children's and adolescents' access to justice. The regulations advise judicial proceedings involving minors should generally take into account the children's age and general development. It additionally provides that judicial proceedings should take place in an appropriate court or room, using easy-to-understand language, and avoiding unnecessary formalities, such as the use of robes and the physical distance with the tribunal.⁶³

ii. State obligations to guarantee children and adolescents education in times of environmental crisis.⁶⁴

⁶² IACHR, Resolution 03/21, "Climate Emergency: Scope Of Inter-American Obligations In Terms Of Human Rights," para. 21.

⁶³ XIV Ibero-American Judicial Summit, "Brasilia Rules Regarding Access to Justice for Vulnerable People," March 6, 2008, para. 78.

⁶⁴ Although the relevant part of the Advisory Opinion Request only inquires as to the obligations of State Parties to provide children with the means of self-expression and participation in administrative or judicial proceedings

General Recommendation No. 36 of the UN Committee on the Elimination of Discrimination Against Women observes women and children are the most vulnerable groups during any natural disaster and in interpreting that concept -natural disaster-, in a broad way, the effects of climate change must be understood as included.⁶⁵ Access to education inevitably suffers from the destruction of or use of schools as community shelters for affected families which often follows increasingly frequent natural disasters due to human impact. These emergencies and the measures taken to address them cause loss of time for classroom instruction and high dropout rates.⁶⁶ The Committee recommends States give priority to the rehabilitation of schools affected by natural disasters and guarantee the non-interruption of education services in any case, especially those serving disadvantaged girls and women; and ensure all new school buildings adhere to prescribed building codes which incorporate disaster resilience, and carry out regular audits on existing schools. In General Recommendation No. 37, the Committee on the Elimination of Discrimination Against Women noted that while all women and men are all affected differently by climate change, women and girls experience greater risks, burdens, and impacts.⁶⁷

Pursuant to Article XII of the American Declaration of the Rights and Duties of Man (hereinafter “ADRDM”), every person has the right to an education, specifically, at least a primary education that will “prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society.” “The right to an education includes the right to equality of opportunity in every case, in accordance with natural talents, merit and the desire to utilize the resources that the State or the community is in a position to provide.”⁶⁸

To adopt measures towards the progressive achievement of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States.⁶⁹ These educational obligations include working towards the

concerning climate change prevention, the right to education is central to the ability of anyone, but especially children, to fully exercise these rights.

⁶⁵ UN Committee on the Elimination of Discrimination against Women (CEDAW), Convention on the Elimination of All Forms of Discrimination against Women, General Recommendation No. 36 (2017) on the Right of Girls and Women to Education, CEDAW/C/GC/36, November 27, 2017.

⁶⁶ ECLAC, “Climate Change And Human Rights: Contributions By And For Latin America And The Caribbean,” p. 25.

⁶⁷ UN Committee on the Elimination of Discrimination against Women (CEDAW), Convention on the Elimination of All Forms of Discrimination against Women, General Recommendation No. 37 (2018) on Gender-Related Dimensions Of Disaster Risk Reduction In A Changing Climate, CEDAW/C/GC/37, March, 13, 2018.

⁶⁸ OAS, “American Declaration of the Rights & Duties of Man.”

⁶⁹ OAS, Charter of the Organization of American States (“Charter of the OAS”). Adopted at the Ninth International Conference of American States in Bogotá, Colombia on April 30, 1948, arts. 34, 48–50.

eradication of illiteracy and expansion of educational opportunity. Namely, through providing compulsory elementary education, extending middle-level education to as many as possible, and making higher education available to all meeting appropriate academic standards. Similarly, the States Parties to the Protocol recognize in Article 13, “Right to education”.⁷⁰ Further, Article 16, “Rights of children,” asserts “every child has the right to free and compulsory education, at least in the elementary phase, and to continue his training at higher levels of the educational system” and AO OC-21/14 holds children have the right to access quality education, and States must make efforts to ensure all children, including those in vulnerable situations, can enjoy this right.

Resolution 03/2021 advances the principle of intergenerational equity, namely the right of all children and adolescents “to enjoy a healthy environment and to live on a planet equal to or in better conditions than their ancestors.” In addition to the unique physical vulnerability children have to the impacts of climate change, States are called upon to also ensure climate change does not threaten the right of children to education, preventing this right from erosion by the destruction or alteration of basic infrastructure such as schools and public transport systems.⁷¹

3. Summary and recommendations

1. Children are particularly vulnerable to the effects of climate change. Therefore, in addressing the consequences of climate change and protecting human rights before its impact, States must pay special attention to the needs of children, adolescents and future generations.
2. International and regional standards of children's human rights apply in the climate emergency. Particular focus is placed on the fundamental principles of the best interest of the child, non-discrimination and intergenerational equity. These principles recognize that while the rights of children living today require immediate attention, States also have an obligation to ensure future generations can realize their human rights to their full potential too.
3. The scope of States' obligations with respect to climate change must be interpreted in the context of international and regional instruments on the human rights of children. Specific

⁷⁰ OAS, “Protocol of San Salvador,” art. 13.

⁷¹ IACHR, Resolution 03/21, “Climate Emergency: Scope Of Inter-American Obligations In Terms Of Human Rights,” para. 41.

State obligations and standards of protection toward children in the climate change context include:

- a. States have an obligation to prevent violations to the right to life, health, and a healthy environment as essential to the right to an adequate standard of living. The fundamental principles of due diligence, precaution, and prevention require States to take measures to prevent environmental harm in order to preserve an environment that allows for the exercise of rights of children. States have a due diligence obligation to identify threats children face as a result of climate change, assess the environmental impact of legislation or policies, and identify responses to protect children in the face of potential climate emergencies.
- b. States have an obligation to mitigate the impact on violations to the right to life, health, and a healthy environment. In instances of natural disasters or extreme climate events, States must take mitigation measures such as clean-up and restoration, containment of geographical range of damage, data collection on damage and future risks, and notify States likely to be affected. Resolution 03/2021 places special emphasis on State obligations to engage in mitigation efforts that will protect children from adverse effects of climate change. In making decisions and adopting policies to achieve these environmental goals, States must consider how children will be impacted in the present and future, and take care not to negatively affect children, especially those experiencing intersectional situations such as poverty or gender discrimination.
- c. States have an obligation to regulate activities that could cause significant environmental damage in a way that threatens the rights to life and to personal integrity. Among others, States must take steps to reduce greenhouse gas emissions, improve air quality, ensure safe water access, support sustainable food sources, and reduce pollutants and toxic substances to ensure children have access to an environment that will allow them the full expression of their rights. States must also guarantee these rights to children and create the necessary protection mechanisms in accordance with their special needs.
- d. States have an obligation to respect and guarantee the right of children to be heard and to participate in environmental and climate change matters. States must provide

the necessary means for them to express their views, including through special strategies appropriate to their age or situations of vulnerability, such as disability, ethnicity, membership or poverty.

- e. States must include mechanisms for children participation in all phases of environmental decision-making processes regarding laws, policies, regulations, or actions that may affect them and provide sufficient and age-appropriate information to allow children to exercise their right to participation.
- f. States must respect, promote and protect the rights of the child to freedom of expression, association and assembly in connection with the environment, providing them with a safe environment and an appropriate institutional framework. Children who participate in demonstrations on environmental issues must receive State protection to their life and personal integrity against potential acts of violence, in accordance with the principle of due diligence.
- g. States have the obligation to provide environmental information, with dissemination methods appropriate to the age and ability of children, with a differentiated approach according to the circumstances of illiteracy, disability, language, access to technology, among other differentiated circumstances.
- h. States must guarantee and facilitate the right to access to justice in environmental matters, to effective administrative and judicial remedies for the children and to an integral reparation, adapted to their needs and their condition of vulnerability.
- i. States are called to ensure climate change does not threaten the right of children to education, preventing this right from erosion by the destruction or alteration of basic infrastructure such as schools and public transport systems. States should also include environmental curriculum to all the education levels creating awareness of the climate change peril and children human rights.

B. Considerations regarding differentiated obligations of the States concerning the rights of environmental defenders in climate emergency context.

1. Vulnerability of environmental defenders in the climate emergency context.

Throughout the world and particularly in the Latin America region, environmental human rights defenders (hereinafter “EHRD”) must increasingly reckon with harassment, intimidation, and criminalization as they pursue their work in protecting the environment. Their fundamental contribution to democracy and efforts to safeguard a healthy environment for others have often resulted in injury or even death caused by those seeking to silence them on behalf of either public or private actors. This situation has worsened in recent years because of the democratic backlash that is occurring not only globally but also regionally⁷². Since EHRD frequently encounter minimal to no protection from their governments in the face of threats from private actors (or are occasionally the subject of similar actions on the part of the State), the consequences of their vulnerable condition result in the multitude of offenses perpetrated against them throughout the world.

The UN Human Rights Council emphasized in its Resolution 40/11 protection of EHRD is linked to the protection of their communities and should involve a “holistic approach that includes the strengthening of democratic institutions, the fight against impunity, a reduction in economic inequality and equal access to justice.”⁷³ Also, the UN Environmental Programme reported the most vulnerable defenders are those who have relatively little power, such as “indigenous people, ethnic and racial minorities, and women.”⁷⁴

EHRD throughout Latin America are no strangers to such developments. Global Witness has consistently ranked it as the worst-affected continent with respect to the murder of such defenders since it began publishing such data in 2012. Countries like Colombia rank among countries where defenders are hardest-hit, with human rights NGOs like Front Line Defenders concluding it had “the highest number of lethal attacks against HRDs in 2022, with 88

⁷² Ostebo, Peder, and Vegard Bye. *Democracy and Human Rights in Contemporary Latin America (2015-2020): Trends, Challenges, and Prospects*. Norwegian Institute of International Affairs, 2020.

⁷³ HRC Resolution 40/11, Rep. of the HRC, 40th Session, February 25-22 March, 2019, U.N. GAOR, A/HRC/RES/40/11, at 3 (April 2, 2019).

⁷⁴ Bruch, Carl. 2019. “Environmental Rule of Law: First Global Report.” Nairobi: United Nations Environment Programme.

environmental and indigenous rights defenders killed, 47% of the national total of 186.”⁷⁵ Over the course of several months just this year, the IACHR observed an alarmingly high rate of violence targeting EHRD, noting at least 36 defenders were murdered throughout the region from May to August.⁷⁶ In noting the appalling rate of threats, harassment and intimidation against the defenders throughout Latin America, the UN Special Rapporteur on the situation of human rights defenders noted EHRD often find themselves “demonized and stigmatized, smeared in the press and otherwise attacked, leaving them vulnerable to physical attacks or murder.”⁷⁷ As a result of the dearth or ineffectiveness of protection measures, defenders find themselves in danger, and in almost every affected Latin American country, “government and corporate actors are involved in the murders of environmental human rights defenders.”⁷⁸

The IACHR has recognized the persistent peril which EHRD and affiliated groups have found themselves in while striving to promote human rights relating to the environment. In establishing the importance of the defenders’ work in implementing human rights and bolstering the rule of law, the IACHR has acknowledged States’ impunity toward their plight “impairs victims’ right of access to justice” and “constitutes a factor that tends to obstruct the causes that defenders advocate” due to the failure to punish perpetrators.⁷⁹ Moreover, despite progress from several States in enacting policies to investigate such heinous conduct against EHRD and punish those who commit such acts, the IACHR in a recent report observed “progress in terms of access to justice has been, in general terms, non-existent” and “States must redouble their efforts to advance investigations of crimes committed against these groups.”⁸⁰ The same report noted such an effort is critical to implement, especially following the IACHR’s Special Rapporteur on Economic, Social, Cultural, and Environmental Rights conclusion that environmental degradation can negatively affect the enjoyment of various rights to life and health, among others.⁸¹

Thus, the Court’s jurisprudence has shown it is not reluctant to expound upon the State’s responsibilities in fostering and facilitating the work of EHRD. Such responsibilities take into

⁷⁵ Front Line Defenders, Global Analysis 2022.

⁷⁶ “IACHR, Notes Persistently Alarming Violence Against Human Rights Defenders Over the Period May–August 2023,” IACHR, October 20, 2023.

⁷⁷ Mary Lawlor, Situation of Human Rights Defenders, Human Rights Council, U.N. Doc. A/46/35 (Dec. 20, 2020), para. 49.

⁷⁸ *Ibid.*

⁷⁹ IACHR, “Integral Protection Policies for Human Rights Defenders.” OEA/Ser.L/V/II. Doc. 207, 2017, para 336.

⁸⁰ IACHR, “Northern Central America: Environmental Defenders.” OEA/Ser.L/V/II. Doc. 400/22, 2022, para. 302.

⁸¹ *Ibid.* at para. 25.

account the fact human rights defenders are a vulnerable demographic, and EHRD even more so due to the risks and dangers they face in carrying out their work. Furthermore, it is important to highlight standards of protection applicable to human rights defenders that also extend to cover EHRD from the Court's perspective. The Court emphasized this reinforced protection in interpreting States' obligations under ACHR Articles 1, 2, and 24, the last of which provides all persons with the right to equal protection of the law without discrimination.

In *Case of Luna López v. Honduras*, the Court held States are obligated to “adopt all necessary and reasonable measures to guarantee the right to life of those persons who find themselves in situations of special vulnerability” as well as “provide the necessary means for persons who are defenders of human rights, or who perform a public function, so that when they encounter threats or situations of risk or report violations of human rights, they can ‘freely carry out their activities [and] protect them when they receive threats so as to prevent attacks on their lives and integrity...’”⁸² With respect to the right for individuals and groups such as environmental human rights defenders to freely assemble and promote their cause, the Court has further elaborated that the State has a positive duty to establish “legal and factual conditions for its exercise,” including the duty of “preventing attacks against free association, protecting those who exercise it, and investigating violations.”⁸³ Furthermore, as a means of avoiding impunity, the State has a duty to “seriously investigate” and “prosecute those responsible” for human rights violations, as will be explained below.⁸⁴

EHRD sometimes are vulnerable as a result of the minimal protection and resources they receive by their governments in the face of external threats to their welfare and safety. In this context, States are obligated to provide reinforced protection to this group under the Court's jurisprudence and in accordance with the States obligations under regional and international standards.

2. States obligations and standards of protection of environmental defenders.

⁸² I/A Court H.R., *Case of Luna López v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, para. 123.

⁸³ I/A Court H.R., *Case of Yarce v. Colombia*. Merits, Reparations and Costs. Judgment of November 22, 2016. Series C No. 325, para. 271.

⁸⁴ I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 122, para. 190.

The foundation of this amicus brief is built upon the IASHR legal framework, or the Inter-American *corpus juris* arising out of the ADRDM, the ACHR, and other regional multilateral agreements and their principles and criteria. This amicus also turns to the criteria of regional bodies such as the Court and the IACHR, whose decisions set regional protection standards and States' responsibilities *vis-a-vis* to protect territorial and environmental defenders. Likewise, the standards set in conventions and other instruments at an international level and case law of judicial bodies in other human rights regional systems such as the European Court of Human Rights (hereinafter "ECHR") are useful for purposes of persuasive authority. States' obligations toward human rights defenders consist of four main affirmative duties: respecting their fundamental freedoms, guaranteeing their rights and reinforced protection while carrying out their advocacy work, providing access to justice and information while ensuring citizen participation in environmental matters, and investigating and punishing offenses against EHRD with due diligence.

a. State obligations in respecting and enabling the work of territorial and environmental human rights defenders.

Various principles and standards emanating from the IASHR legal framework provide the source of States' obligations to respect the rights of human rights defenders in pursuing their work. The Court has stressed in its jurisprudence that such standards of protection apply to EHRD, especially because of their heightened vulnerability.⁸⁵

Article 13 of the ACHR safeguards the freedom of expression for all, including the freedom to "seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice."⁸⁶ It is imperative for States bound to the ACHR to uphold such a right, since EHRD usually promote the protection of the environment in raising awareness of prevalent issues in their local communities and throughout the continent through multiple mediums and forums. The right to freedom of expression is also related to the right of assembly and peace protest, which the ACHR recognizes under Article 15. Oftentimes, defenders seek to spur political or social change with respect to the environment through protest and other forms of public assembly, which under the terms of the

⁸⁵ I/A Court H.R., Case of Human Rights Defender et. al. v. Guatemala. Preliminary Exceptions, Merits, Reparations and Costs. Judgment on August 28, 2014. Series C No. 283, para. 141.

⁸⁶ OAS, "American Convention on Human Rights," art. 13.

ACHR the State cannot restrict except under certain circumstances such as in the interests of national security or public safety. Moreover, States are obligated to respect the defenders' right to freedom of association under Article 16 of the ACHR, which states all have the right to "associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes."⁸⁷

Other legal instruments elaborate on States' obligations in enabling the work of EHRD. The ADRDM stresses adherence to preserving integral rights in its language, including acknowledging every individual has the "right to life, liberty, and the security of his person" in Article I as well as the rights of assembly and association under Articles XXI and XXII respectively.⁸⁸

Additionally, Article 11 of the Protocol mandates States promote the "protection, preservation, and improvement of the environment," in effect guaranteeing an individual's right to a healthy environment.⁸⁹ In its landmark Advisory Opinion 23/17, the IACtHR held for an individual to secure the aforementioned rights, States are obligated to ensure rights including but not limited to access to information regarding potential environmental damage, the right of public participation, and the right of access to justice with respect to State environmental obligations.⁹⁰

By recognizing the interdependence and indivisibility of the protection of the right to a healthy environment and the rest of the human rights stemming from the IASHR legal framework, the Court established the foundation for State obligations with respect to environmental protection.⁹¹

The Court has also made similar findings over the past two decades, affirming the State's duty to respect and protect the rights of EHRD and efficiently investigate any violations against them. In a 2009 case regarding the murder of environmental activist in Honduras who spoke out against illegal contamination of nearby bodies of water by private individuals, the Court emphasized "the State is required to fight such impunity by all means available, as impunity fosters the chronic repetition of human rights violations and renders victims -who have a right to know

⁸⁷ *Ibid.* at art. 14.

⁸⁸ OAS, "American Declaration of the Rights & Duties of Man."

⁸⁹ OAS, "Protocol of San Salvador," art. 11.

⁹⁰ I/A Court H.R., Advisory Opinion OC-23/17, para. 242.

⁹¹ *Ibid.* at para. 244.

the truth of the facts- completely defenseless.”⁹² Ultimately, the Court in its judgment acknowledged an “undeniable link between the protection of the environment and the enjoyment of other human rights,” establishing that to advocate for human rights, especially those related to preserving the environment, is a human right in itself.⁹³ This analysis was further bolstered nearly a decade later when the Court concluded acts against human rights defenders had a chilling effect on those who commit themselves to safeguarding the environment and the exercise of rights which stem from such activity. Moreover, with respect to EHRD among indigenous and tribal communities, the Court has ruled “the remedies offered by the State should provide a real possibility” to allow them “to defend their rights and exercise effective control over their territory.”⁹⁴

The ECHR endorsed a viewpoint similar to the Court’s when it reaffirmed the importance of public participation in environmental decision-making and held that environmental degradation could result in violations of human rights such as the right to life. In *Case of López Ostra v. Spain*, for example, the ECHR noted the connection between the interference of severe environmental pollution with citizens’ exercise of their right to life and the State’s positive duty to take “reasonable and appropriate measures” to secure such a right.⁹⁵ Accordingly, such measures which a State must undertake should include safeguarding the right for defenders to pursue their work and enabling them to promote and further a healthy environment.

Measures which a State can pursue to act in accordance with its obligations to respect such rights as applied to EHRD include refraining from the criminalization and stigmatization of their work and community. Scholars have noted where defenders were assaulted or murdered throughout the Americas, government-sponsored criminalization was a critical factor in causing defenders to be “marginalized, dismissed by the mainstream, and discarded in the resource-grab cycle of investors financing exploitative and environmentally destructive corporate projects.”⁹⁶ Furthermore, the IACHR has noted the States’ criminalization of EHRD often exacerbates existing

⁹² I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 189.

⁹³ *Ibid.* at para. 148.

⁹⁴ I/A Court H.R., *Case of the Kaliña and Lokono Peoples v. Suriname*, para. 240.

⁹⁵ Eur. Court H.R., *López Ostra v. Spain*, No. 16798/90. Judgment of December 6 1994, Reports of Judgments and Decisions 1994, para. 51.

⁹⁶ Glazebrook, Tina, and Emmanuela Opoku. 2018. “Defending the Defenders: Environmental Protectors, Climate Change and Human Rights.” *Ethics and the Environment*, 23, no. 2: 83–109 at 91.

inequalities they face, especially in the case of women defenders.⁹⁷ Thus, the State should avoid using arbitrary arrest, detention, and other means of depriving EHRD of their ability to further their cause and their “exercising their rights to protest and freedom of expression concerning hydroelectric, mining and extractive industries.”⁹⁸ The tragic murder of environmental human rights activist Berta Cáceres in 2016 highlighted the urgency for States to refrain from participating in the targeting of such defenders, especially after the IACHR stressed the need for States to provide for a “safe and conducive environment for the defense of human, land, and environmental rights, as well as promoting and protecting judicial independence in the country.”⁹⁹

b. State obligations in guaranteeing human rights of territorial and environmental human rights defenders with respect to their work.

The State is required to not only respect, but also guarantee certain rights to EHRD as part of their obligations to the ACHR provisions. Such obligations encompass the States’ responsibility to create the conditions to prevent and respond to violations by public or private actors against EHRD rights so they may exercise their activities.¹⁰⁰ Among such rights is the right to life, which Article 4 preserves in ensuring “no one shall be arbitrarily deprived of his life.”¹⁰¹ Furthermore, States are obligated to guarantee defenders their right to humane treatment under Article 5, including the right to have their “physical, mental, and moral integrity respected.”¹⁰² Lastly, States must guarantee the right to personal liberty and security in accordance with Article 7 of the ACHR, theoretically protecting EHRD from “arbitrary arrest or imprisonment.”¹⁰³ The Escazú Agreement, a U.N. legal instrument tailored to furthering public participation and justice in regional environmental affairs, similarly contains a provision addressing EHRDs under Article 9.¹⁰⁴ In enumerating that Parties to the instrument will implement “adequate and effective measures to

⁹⁷ IACHR, “Criminalization of the Work of Human Rights Defenders,” OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 223.

⁹⁸ United Nations Human Rights, Office of the High Commissioner (OHCHR). 2018. “End of Mission Statement by Michael Forst, United Nations Special Rapporteur on the Situation of Human Rights Defenders on his Visit to Honduras, 29 April to May 12.”

⁹⁹ IACHR, Resolution 88/2021, “Berta Isabel Cáceres, Her Nuclear Family, Members of COPINH, et al. Regarding Honduras,” November 15, 2021, para. 63.

¹⁰⁰ IACHR, “Northern Central America: Environmental Defenders,” para. 191.

¹⁰¹ OAS, “American Convention on Human Rights,” art. 4.

¹⁰² *Ibid.* at art. 5.

¹⁰³ *Ibid.* at art. 7.

¹⁰⁴ Economic Commission for Latin America and the Caribbean (ECLAC), “Escazú Agreement,” art. 9.

recognize, protect and promote all the rights of human rights defenders in environmental matters,” the Escazú Agreement stresses the need for EHRD to work “free from threat, restriction and insecurity.”¹⁰⁵

Accordingly, the IACHR has identified the minimum elements which it deems State policies should meet in guaranteeing the rights of EHRD in pursuing their work, including implementing a legal framework to counter violations, addressing structural problems, and promoting a culture of human rights and recognition of the defenders’ work.¹⁰⁶

One solution that has been put forward as a way for States to follow their obligation to protect EHRD lives and security is the establishment of certain precautionary measures. Domestic and regional “rapid response mechanisms” execute such measures as a means of providing “immediate relief in cases where environmental defenders are harassed, prosecuted or penalized,” with the most cited example being the mechanism stemming from Article 3(8) the Aarhus Convention (hereinafter “Aarhus Convention” or “AC”).¹⁰⁷ The Aarhus Convention’s mechanism does not require the exhaustion of domestic remedies for the threatened individual to bring a complaint to the Special Rapporteur, which experts believe is a major advantage which can allow for swift reaction to prospective dangers.¹⁰⁸

Other policies for implementation as a way to safeguard defenders’ safety is increased training of public safety officers and other law enforcement, since such groups often have the best means of preventing acts of violence against defenders by private actors. Similar prevention of acts against defenders stems from the right of judicial protection as outlined in Article 25 of the ACHR, which allows the IACHR to request a State adopt specific measures for the welfare of individuals or groups at risk.¹⁰⁹ With respect to the criteria for granting such precautionary measures, the IACHR has stressed it analyzes the request in terms of the “elements reported by the parties in light of the context in which they are stated.”¹¹⁰

¹⁰⁵ *Ibid.*

¹⁰⁶ IACHR, “Northern Central America: Environmental Defenders,” para. 194.

¹⁰⁷ United Nations Economic Commission for Europe, “Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters” (“Aarhus Convention”) art. 3(8), 2161 UNTS 447, 38 ILM 517 (1999).

¹⁰⁸ Weber, Teresa. 2023. “Are Climate Activists Protected by the Aarhus Convention? A Note on Article 3(8) Aarhus Convention and the New Rapid Response Mechanism for Environmental Defenders.” *Review of European, Comparative & International Environmental Law* 32, no. 1 (April): 67–76, 75.

¹⁰⁹ OAS, “American Convention on Human Rights,” art. 25.

¹¹⁰ IACHR, Resolution 55/2023, “Identified Members of the Municipal Committee for the Defense of Common Property and Publics of Tocoa and Others with Respect to Honduras,” Oct. 5, 2023, para. 33.

Ultimately, establishing an adequate legal framework will allow the State to codify and implement specific safeguards meant to protect defenders and subsequently allow them to peacefully pursue their work, especially with support from relevant government agencies such as the State's interior or justice ministries. Ultimately, for EHRD to undertake their efforts to preserve and secure a healthy environment for others, it is imperative States implement policies in accordance with their obligations to respect and guarantee such rights as listed in the terms of the Convention.

State practice over the past two decades is the best indicator of how nations throughout the Americas have understood their obligations to allow for environmental human rights defenders to pursue their work. Countries have enacted legislation establishing protection schemes for human rights defenders such as Mexico's "Law for the Protection of Human Rights Defenders and Journalists," which by 2017 had brought protection to over 380 human rights defenders and 250 journalists.¹¹¹ The policy improved coordination between federal and State governments in enforcing protections and allowing for further collaboration between public agencies and private groups such as civil society organizations and NGOs.¹¹²

Similarly, the Congress of Honduras unanimously approved the "Law on Protection for Human Rights Defenders, Journalists, Social Communicators and Justice Operators" in 2015, which created several public organs including the General Directorate of the Protection Mechanisms to receive and address requests for protection from human rights defenders.¹¹³ Additionally, the law creates a Technical Committee of the Protection Mechanism which is tasked with conducting and acting upon risk analysis of threats to human rights defenders.

Recognizing the increased vulnerability of human rights defenders, States like Colombia have stood up government bodies such as the Colombian National Protection Unit (UNP) under its Ministry of Interior in order to collect and analyze threats to human rights defenders and act upon them. The IACHR has noted such protection schemes are important to both promote and broaden, especially in the face of occasional budgetary shortfalls or cutbacks.

¹¹¹ UN, Special Rapporteur on the Situation of Human Rights Defenders, Human Rights Council, U.N. Doc. A/71/281 (Aug. 3, 2016), p. 13.

¹¹² Cámara de Diputados Del. H. Congreso De La Unión. Ley para la protección de personas defensoras de derechos humanos y periodistas, México, México DF, 25 de junio de 2012.

¹¹³ Congreso Nacional de Honduras. Decreto No.34-2015. Ley de Protección para las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia (Spanish only), 15 de abril de 2015.

Other countries such as Guatemala have informed the IACHR of their understanding that, with respect to human rights defenders, States should refrain from “making any declaration or affirmation that would stigmatize their work and consequently place their lives at risk.”¹¹⁴ Ultimately, States have undertaken such measures in accordance with their obligations to guarantee and enable the work of human rights defenders, especially those whose work addresses preserving the environment.

c. State obligations to enable the work of environmental human rights defenders through access to information, public participation, access to justice, and State obligations to investigate and punish offenses.

EHRDs face abuse, threats, and harassment for their work addressing the climate crisis. In 2020 there were on average four killings per week of environmental human rights. The existing IASHR legal framework supports States’ obligations to investigate and punish crimes against EHRD and provide access to justice, information and public participation. Resolution 03/2021 Climate Emergency: Scope of Inter-American Human Rights Obligations outlines the substantial obligations of States to provide access to information, public participation and access to justice in environmental and climate matters. Furthermore, the Resolution 03/2021 outlines States’ obligations to investigate and punish situations related to threats or violations of human rights related to climate change.¹¹⁵ In addition to the IASHR legal standards and jurisprudence from the IACtHR, the Aarhus Convention, the Escazú Agreement, the Esperanza Protocol: An Effective Response To Threats Against Human Rights Defenders (hereinafter “Esperanza Protocol”), Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter “Istanbul Protocol”), and the Minnesota Protocol On The Investigation Of Potentially Unlawful Death (hereinafter “Minnesota Protocol”) inform and guide States’ obligations to EHRD.

This section addresses States’ obligations to provide access to environmental information, ensure public participation in environmental matters, and to facilitate access to justice for the means of (1) environmental litigation and (2) personal safety before threats and offenses against

¹¹⁴ IACHR, Integral Protection Policies for Human Rights Defenders, para. 213.

¹¹⁵ IACHR, Resolution 03/21, “Climate Emergency: Scope Of Inter-American Obligations In Terms Of Human Rights,” para. 37.

EHRD. Furthermore, it addresses the obligation to investigate and punish crimes against EHRD with due diligence.

i. State obligations to provide access to environmental information

For EHRD to carry out their work they must have access to information on environmental and climate matters. Examples of this information can include the causes and consequences of the global climate crisis and/or the impact of projects on the climate. As outlined in Resolution 03/2021, States have a positive obligation of active transparency to generate clear and expeditious information on climate change for all people.¹¹⁶ Furthermore, all information on development projects that may potentially increase global temperature are governed by the principle of maximum publicity.¹¹⁷ The Resolution 03/2021 calls for States to strengthen their environmental information systems at national, subnational, and local levels to ensure climate related disclosures follow the principle of maximum publicity.¹¹⁸ Additionally, States have an obligation to make available to the public information pertaining to private actors involved in projects that could increase global temperatures.¹¹⁹

Important guidelines about what, when, and how States must provide access to environmental information is outlined in the recently agreed Escazú Agreement, as was mentioned above. The EA establishes basic obligations for States to make available to the public information relating to the environment. Article 5 and 6 govern access to environmental information.¹²⁰ Article 5 clearly sets out the right of access to environmental information upon request and Article 6 sets out the duties of relevant authorities to collect and disseminate information to the public on their own initiative.¹²¹

Environmental information means “any information that is written, visual, audio, and electronic, or recorded in any other format, regarding the environment and its elements and natural resources, including information related to environmental risks, and any possible adverse impacts affecting or likely to affect the environment and health, as well as to environmental protection and

¹¹⁶ *Ibid.* at para. 11.

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ Economic Commission for Latin America and the Caribbean (ECLAC), “Escazú Agreement,” art. 5(1) & 6.

¹²¹ *Ibid.*

management.”¹²² The principle of maximum disclosure applies to the public's right of access to environmental information.¹²³ Under the EA, when a State receives a request from the public, the State must: (i) provide the environmental information without the public needing to prove any special interest or explain the reasons for the request; (ii) provide prompt information about whether the requested information is in its possession or not; and (iii) provide information about the right to challenge and appeal when information is not delivered, and of the requirements for exercising this right.¹²⁴ Furthermore, the EA outlines States should publish and disseminate at regular intervals, not exceeding five years, national reports on the state of the environment, encourage independent environmental performance reviews, and promote access to environmental information contained in concessions, contracts, agreements or authorizations granted, which involve the use of public goods, services or resources.¹²⁵

In addition to when and how States’ must provide environmental information, there are also some restrictions that apply to access to environmental information under the EA.¹²⁶ This includes grounds for denying information where infringements to the following areas are identified: (i) life, safety, or health of individuals; (ii) national security, public safety or national defense; (iii) adversely affect the protection of the environment; and (iv) law enforcement, prevention, investigation and prosecution of crime.¹²⁷ However, the EA establishes the aforementioned restrictions play a secondary role and such restrictions of access to information should be established primarily in domestic legislation.¹²⁸ Nevertheless, the EA includes a series of boundaries when it comes to the discretionary power of States to design and apply their domestic legislation pertaining to exceptions, this includes for example, the States favoring the disclosure of information, consideration of human rights obligations, reasons for refusal.¹²⁹

¹²² *Ibid.* at art. 2(c).

¹²³ *Ibid.* at art. 3.

¹²⁴ *Ibid.* at art. 5, para. 2.

¹²⁵ *Ibid.* at art. 6 (6)-(9).

¹²⁶ *Ibid.* at art. 5.

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

ii. States obligations regarding public participation in environmental decision-making

As emphasized by the former OHCHR during the 75th session of the UN General Assembly, participation is a basic human right in itself.¹³⁰ In order for EHRD to be effective in their cause, they not only need access to environmental information but also the ability to participate in environmental matters. The right to participate in environmental matters is undeniably linked to broader principles of democratic governance. Several human rights instruments, such as the EA, Aarhus Convention and Rio Declaration on Environment and Development (hereinafter the “Rio Declaration”), and International Environmental Law principles protect the rights of public participation and access to information in environmental matters. As such States should ensure open and inclusive environmental decision-making by encouraging public participation in the decision-making process.

As established by the Court, public participation in environmental matters is derived from ACHR’s Article 23 which protects the right to participate in public affairs.¹³¹ The Court established the objective of public participation in environmental matters is to integrate the public concerns into public policy decisions affecting the environment.¹³² In order for States to guarantee effective participation, the Court outlined a series of guidelines: (i) the beneficiary of the right to participate is every person subject to the jurisdiction of State party; (ii) the type of process in which public participation should be guaranteed law-making, policy-making and decision making could affect the environment; (iii) the specific forms of public participation; (iv) minimum standards of public participation including public participation from an early stage of the decision-making process.¹³³ In Advisory Opinion OC-23/17, the Court drew upon a series of international instruments such as Principle 10 of the Rio Declaration, which emphasizes the importance of public participation in environmental decision-making.¹³⁴ The Rio Declaration underscores several key points including the opportunity for public participation with an emphasis of inclusivity. Additionally, the Aarhus

¹³⁰ United Nations Human Rights, Office of the High Commissioner (OHCHR) (Michelle Bachelet), Keynote Address at the 75th Session of the UN General Assembly, “Death Penalty and Gender Dimension – Exploring Disadvantage and Systemic Barriers Affecting Death Sentences.” (September 24, 2020).

¹³¹ OAS, “American Convention on Human Rights,” art. 23.

¹³² I/A Court H.R., Advisory Opinion OC-23/17. para. 228.

¹³³ *Ibid.*

¹³⁴ UN General Assembly, Report of the United Nations Conference on Environment and Development (“Rio Declaration”), principle 10.

Convention emphasizes the importance of public participation in environmental matters and obliges its state parties to facilitate such participation.¹³⁵

The EA further emphasizes the conclusions drawn by the Court in the Advisory Opinion. With regards to timing of public participation in environmental decision making, the EA recognises the public's comments, including that of EHRD, should be duly taken into account as a result of a meaningful public participation process at an early stage of climate related matters.¹³⁶ Article 7 of the EA requires open and inclusive public participation in environmental decision-making processes. Article 7 (2) applies environmental decision making to projects and activities and other processes for granting environmental permits have or may have a significant impact on the environment.¹³⁷ The agreement supports States adopting measures to ensure the public participate from the early stage of the decision-making process and ensure due consideration is given to the observations from the public.¹³⁸ Involvement of the public is based on a variety of factors including the expected outcome, scope, how many people will be impacted as established in the Aarhus Convention. Furthermore, the EA outlines how parties are required to promote public participation in decision making processes which may have a large impact on the environment.¹³⁹ Under the EA, States shall adopt measures to ensure the public can participate from an early stage of the decision making process and shall make efforts to identify the public directly affected by projects and promote specific actions, to facilitate their participation.¹⁴⁰

Finally, at domestic level, a few States have incorporated the principles of public participation in environmental matters into their laws and regulations. Brazil has various laws and regulations that promote public participation in environmental decision making. The Brazilian Environmental Impact Assessment (hereinafter the "EIA") establishes mechanisms for public consultation.¹⁴¹ Additionally, Colombia has laws that establish procedures for public participation in environmental decisions making processes.¹⁴² The obligation of States to ensure public

¹³⁵ *Ibid.*

¹³⁶ Economic Commission for Latin America and the Caribbean (ECLAC), "Escazú Agreement," art. 5.

¹³⁷ *Ibid.* at art. 7(2).

¹³⁸ *Ibid.* at art. 7(3).

¹³⁹ *Ibid.* at art. 7(6)(a)-(d).

¹⁴⁰ *Ibid.* at art. (16).

¹⁴¹ Organisation for Economic Co-operation and Development (OECD). Brazilian Environmental Impact Assessment. "Evaluating Brazil's Progress In Implementing Environmental Performance Review Recommendations And Promoting Its Alignment With Oecd Core Acquis On The Environment." 2021.

¹⁴² Colombia, Ley 1333 de 2009, "Por la cual se establece el procedimiento sancionatorio ambiental y se dictan otras disposiciones."

participation in environmental decision making is rooted in democratic principles, international agreements and the importance of environmental protection, transparency, accountability and justice. States' should continue to ensure rightful participation of the public and therefore EHRD in meaningful participation in environmental matters.

iii. State obligations to facilitate access to justice.

States should facilitate access to justice for the means of (1) environmental litigation and (2) for the exercise of the right to judicial protection and comprehensive reparation against threats, crimes or damages suffered by EHRD. The ACHR places a strong emphasis on access to justice as a fundamental human right.¹⁴³ Article 25, right to judicial protection provides the legal framework that allows victims of human rights violations and environmental defenders to access justice and find recourse when their rights have been violated.¹⁴⁴ The Article states “everyone has the right to prompt recourse, or any other effective recourse, to a court or tribunal for protection against acts that violate his fundamental rights.”¹⁴⁵ This Article obliges States to provide access to justice to human rights defenders, including environmental and territorial defenders.

Access to justice facilitates the ability of EHRD to claim the protection of environmental rights before judicial bodies to demand States fulfill their obligations in environmental matters. Moreover, Resolution 03/2021, outlines States obligations regarding access to justice in environmental and climate matters.¹⁴⁶ Furthermore, Article 8 of the EA outlines access to judicial and administrative mechanisms must be ensured to challenge and appeal, with respect to substance and procedure, any decision, act or omission related to access to environmental information and to participation in the environmental decision making process.¹⁴⁷ The EA goes further by providing a mechanism for the members of the public to enforce environmental law directly.¹⁴⁸ Additionally, States are required to make special efforts to guarantee effective judicial protection of environmental rights, which includes collective actions.¹⁴⁹ In *Acosta v. Nicaragua*, the Court

¹⁴³ OAS, “American Convention on Human Rights,” art. 25.

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

¹⁴⁶ IACHR, Resolution 03/21, “Climate Emergency: Scope Of Inter-American Obligations In Terms Of Human Rights,” para. 32-37.

¹⁴⁷ Economic Commission for Latin America and the Caribbean (ECLAC), “Escazú Agreement,” art. 8(2)(c).

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*

determined the State of Nicaragua violated the right to access to justice and truth suffered by two human rights defenders.¹⁵⁰ As such States should take various steps to establish accountability and public awareness of offenses perpetrated against environmental defenders.

d. State obligations to investigate and establish accountability for offenses perpetrated against territorial and environmental defenders.

The IASHR framework not only supports States' obligation to respect, protect and fulfill the rights of environmental human rights defenders but also its obligation to ensure accountability of attacks against environmental defenders. In line with States' obligations under the ACHR, Resolution 03/2021 outlines obligations of State parties requiring States' obligations in cases of abuses or violations of the rights of individuals or groups defending the land.¹⁵¹ Resolution 03/2021 obliges States to act decisively to prevent attacks, threats, intimidation, or killings and effectively investigate and punish those responsible.¹⁵² In *Escaleras vs. Honduras*, the Court found the State had not exhausted all methods of investigation of environmental defender Escalera, and the investigation itself was unreasonably delayed.¹⁵³ The Court's jurisprudence in *Escaleras* clarifies the due diligence required when investigating offenses committed against EHRD.¹⁵⁴

Within the United Nations Economic Commission for Europe (hereinafter the "UNECE"), the AC provides means for the public to engage in environmental matters by establishing right to information, participation and access to justice.¹⁵⁵ Compared to the AC, the Escazú Agreement places even further emphasis on the protection of environmental defenders. Article 9 of the Escazú Agreement prohibits certain harmful acts towards EHRD and explicitly outlines States' positive obligations to guarantee a safe and enabling environment for their actions'.¹⁵⁶ Article 9 further includes provisions adopting measures for investigating and punishing attacks, threats, and intimidation.¹⁵⁷ These provisions include that each State should take appropriate and timely

¹⁵⁰ I/A Court of H.R., Case of Acosta et al. v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 25, 2017. Series C No. 334.

¹⁵¹ IACHR, Resolution 03/21, "Climate Emergency: Scope Of Inter-American Obligations In Terms Of Human Rights," para. 29.

¹⁵² *Ibid.*

¹⁵³ I/A Court H.R., Case of Escaleras Mejía et al. v. Honduras. Merits. Judgment on September 26, 2018. Series C No. 361.

¹⁵⁴ *Ibid.*

¹⁵⁵ United Nations Economic Commission for Europe, "Aarhus Convention," art. 3(8).

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

measures to prevent, investigate, and punish threats that human rights defenders in environmental matters may suffer.¹⁵⁸ Under the agreement, States have the obligation to protect environmental defenders who face risk and threats for their advocacy work and calls for measures to prevent and address violence and intimidations against environmental defenders. Furthermore, the agreement EA ensures individuals have access to justice in environmental matters and establishes legal remedies for those States whose environmental rights have been violated.¹⁵⁹ The Escazú standards of protection for EHRD closely aligns with the jurisprudence of the IACtHR and the framework principles set out by the UN Special Rapporteur on Human Rights and the Environment in 2018.¹⁶⁰

States have general obligations in relation to EHRD. This includes State obligations to exercise specific due diligence obligations to prevent, investigate, prosecute and punish violations in relation to human rights defenders and as such environmental human rights defenders.¹⁶¹ The specific due diligence obligations exist when a State knows of a particular risk to a person or group. The Esperanza Protocol provides guidelines to promote an effective response to threats against human rights defenders and to support the investigation, prosecution and punishment of these threats.¹⁶² The Minnesota Protocol is a set of international guidelines for the investigation and documentation of deaths that may have resulted from human rights violations. The protocol emphasizes the importance of conducting comprehensive investigations into deaths that occur in circumstances suggesting human rights violations.¹⁶³ Lastly, the Istanbul Protocol provides a framework for the effective investigation and documentation of torture and ill-treatment.¹⁶⁴ These three protocols serve as a global standard for investigating human rights violations and can be applied to the EHRD to inform and guide standards of investigation.

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*

¹⁶⁰ UN, “Report of the Special Rapporteur on the Issue Of Human Rights Obligations Relating To The Enjoyment Of A Safe, Clean, Healthy And Sustainable Environment” including “Framework Principles On Human Rights And The Environment.” A/HRC/37/59 (2018).

¹⁶¹ Center for Justice and International Law (CEJIL), “The Esperanza Protocol: An Effective Response To Threats Against Human Rights Defenders.” Washington, D.C., United States. 2021.

¹⁶² *Ibid.*

¹⁶³ United Nations Human Rights, Office of the High Commissioner (OHCHR). “The Minnesota Protocol On The Investigation Of Potentially Unlawful Death (The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions).” HR/PUB/17/4. 2017.

¹⁶⁴ United Nations Human Rights, Office of the High Commissioner (OHCHR). “Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.” HR/P/PT/8/Rev. 2. June 29, 2022.

As mentioned before, precautionary measures should be used as a means to protect EHRD who may be at risk of serious harm as did the Court in *Bertha vs. Honduras*.¹⁶⁵ Precautionary measures is a tool States' can likely easily implement as most States have procedural rules to provide precautionary measures. As such the Court should create a general standard of precautionary measures to protect EHRD.

e. State obligations in guaranteeing the rights of environmental defenders from a gender and ethnic perspective: women and indigenous peoples

As we previously pointed out, when explaining the transversal principles, the gender approach and intersectional perspective are essential to the protection of human rights in the face of climate change, which derives from the Article 24 of the ACHR.¹⁶⁶ As such it is imperative State's not only respect the rights of EHRD as outlined above, but also recognize the additional layer of protection and intersectionality should exist for vulnerable groups. The two vulnerable classes we will examine are women and indigenous people.

Article 24 states all persons are equal before the law and are entitled to equal protection without discrimination.¹⁶⁷ This provision requires States to provide the same legal protection to vulnerable groups even if it means a reinforced protection for these groups. Ensuring the protection and support of marginalized groups such as women and indigenous environmental and territorial defenders is crucial to protecting human rights.

Under Resolution 03/2021 States must recognize the essential role women play as environmental, land and territory defenders and to ensure the effective participation of women environmental defenders.¹⁶⁸ As such States should implement public policies and concrete measures that protect women EHRD against aggression, attacks and other forms of harassment or gender-based violence in these contexts. These concrete measures can be guided by the Convention of Belém do Pará (hereinafter Belém do Pará) whereby States are required to take

¹⁶⁵ IACHR, *Dixie Miguel Urbina Rosales v. Honduras. Friendly Settlement*. Report No. 40/21, Case 11.562. March 20, 2021.

¹⁶⁶ OAS, "American Convention on Human Rights," art. 25.

¹⁶⁷ *Ibid.* at art. 24.

¹⁶⁸ IACHR, Resolution 03/21, "Climate Emergency: Scope Of Inter-American Obligations In Terms Of Human Rights," para. 30.

measures to prevent, investigate, and punish acts of violence against women.¹⁶⁹ This includes States' eliminating all forms of discrimination against women, modifying or abolishing laws that perpetuate gender-based violence, establishing effective protective measures, exercising due diligence, and providing training to relevant personnel on violence against women.¹⁷⁰ In *Yarce v. Colombia*, the Court found Colombia had breached, among others, the right to freedom of association of four female human rights defenders.¹⁷¹ The Court concluded Colombia had failed to guarantee the necessary means for four of the women to exercise freely their work as human rights defenders.¹⁷² As such, women EHRD, are in an intersectional situation and have an additional layer of protection the Court should take into consideration. In sum, human rights protection standards before climate change must have a gender perspective and take into account the special protection of women EHRD.

Indigenous EHRD face differentiated risks due to their intersectional position of vulnerability and rights whereby States should also provide specific standards of protection, specially to their right to life, personal integrity, right to association and right to protest, among others. Established in 2016, the American Declaration on the Rights of Indigenous Peoples outlines specific obligations of States to prevent, punish and remedy any discrimination against indigenous peoples and individuals.¹⁷³ Moreover Resolution 03/2021 outlines the specific rights of indigenous peoples in the context of climate change, including States must adopt measures to ensure the climate crisis does not jeopardize the effective protection of the human rights such as life and personal integrity, addresses the rights to effective judicial protection and judicial guarantees and States' action in taking necessary measures to combat all forms of discrimination in the context of the climate crisis.¹⁷⁴ Furthermore, the Escazú agreement outlines additional guarantees for indigenous people including access to environmental information and additional assistance in preparing their requests to obtain a response on environmental matters that should be applied to indigenous EHRD. These include 3 main obligations: 1) to guarantee a safe environment that

¹⁶⁹ OAS, "Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará)." June 9, 1994.

¹⁷⁰ *Ibid.*

¹⁷¹ I/A Court H.R., Case of *Yarce v. Colombia*.

¹⁷² *Ibid.*

¹⁷³ OAS, "American Declaration on the Rights of Indigenous Peoples." AG/RES.2888 (XLVI-O/16). June 15, 2016.

¹⁷⁴ IACHR, Resolution 03/21, "Climate Emergency: Scope Of Inter-American Obligations In Terms Of Human Rights," paras. 16–20.

enables the defense of human rights in environmental matters, 2) to take adequate and effective measures to recognize, protect and promote all the rights of defenders and 3) to prevent, investigate, and punish attacks, threats against or intimidation of human rights defenders in environmental matters.¹⁷⁵

3. Summary and recommendations.

1. Environmental human rights defenders are at the forefront of efforts across the Americas to advocate for a variety of public causes ranging from mitigating the deleterious effects of climate change on the welfare of others to preserving a clean and healthy environment. However, they remain a demographic particularly vulnerable in the face of peril and are often the target of harassment, intimidation, and even assault and murder.
2. Due to the nature of their work and the risks involved, States should guarantee their human rights according to the due diligence principle and without discrimination. The standards for the protection of human rights defenders established in the Inter-American legal framework must be applied in the protection of EHRDs, also addressing the special circumstances of territorial and environmental defenders with a differentiated approach and gender perspective.
3. States' obligations toward EHRDs consist of four main affirmative duties: (i) respecting their fundamental freedoms by refraining from interfering with the exercise of such rights through legislation, policy, or other means in addition to avoiding criminalizing them and their work, (ii) guaranteeing their rights and reinforced protection while carrying out their advocacy work by providing a legal framework for preventing actions targeting them, ensuring law enforcement can effectively prevent and respond to such conduct, and allowing for the exercise of protective mechanisms such as the IACHR's precautionary measures (iii) providing access to information, public participation and access to justice in environmental matters, and (iv) investigating and punishing offenses against EHRD with due diligence and resist impunity on behalf of its internal agencies or bodies.

¹⁷⁵ *Ibid.* at art. 9.

4. States must incorporate the intersectional perspectives of gender and ethnic populations with the understanding that such demographics are even more vulnerable in the face of danger due to their status.
5. In order for States to achieve such objectives in accordance with their international and regional obligations, we propose the following recommendations:
 - a. Establish a clear, all-encompassing definition of environmental human rights defenders so as to include not only formal activists, but also journalists, scientists, and others who seek to preserve the environment and other related causes. Identifying environmental human rights defenders should be based on the work of the individual or group rather than how they identify themselves.
 - b. Establish a robust national protection legal framework according to the regional standards. Regardless of whether such programs are enacted by law or by executive decree, implementing a formal legal framework embedding the principles of protecting environmental human rights defenders can ensure clarity for authorities to comply with it and prevent potential abuses against them. Such a framework should outline the specific responsibilities of government agencies and their officials involved in upholding the protection of the rights of environmental human rights defenders. Each State can pursue the formation of such a protection framework with support from regional and international bodies such as the IACHR and the UN as well as in conjunction with domestic civil society groups.
 - c. Ensure respective State organs and agencies are properly staffed and funded. Protecting the rights of environmental human rights defenders requires allocating sufficient resources to such government bodies so they can operate and address risks or threats posed to defenders rapidly.
 - d. Coordinate a multilateral rapid response mechanism for the protection of environmental human rights defenders. Following the model of the Aarhus Convention and applying their rules of procedure, regional bodies can seek input from States for the establishment of a mechanism for the implementation of precautionary measures tailored to cover responses to threats and risks which environment human rights defenders face in pursuing their work.

- e. Promote public awareness of protections afforded to environmental human rights defenders and increase public consciousness of not only the work of environmental human rights defenders, but also of the respective protection of their rights can allow others to be better informed and reassure defenders of their respective protections. Campaigns through various media can accomplish such an objective.
- f. States must exercise due diligence to prevent, investigate and punish violence against EHRD. Provide access to justice by ensuring that EHRD have access to judicial mechanisms and legal remedies when they are victims of violence. This should include access to legal aid, courts and supportive services.
- g. Provide access to information by publishing periodic reports on the environment and work of EHRD. To foster accountability and transparency States should provide comprehensive access to information on both environmental matters and the work of EHRD.
- h. Additional protections for indigenous and women EHRD with differentiated approach and intersectional perspective. States should establish effective mechanisms, including restraining orders and conducting specific analysis on how policies might impact women, including identifying potential disparities and vulnerabilities.

C. Considerations regarding differentiated obligations of the States concerning the rights of people facing involuntary human mobility in the climate emergency context.

The following definitions are meant to enhance inclusion of the people of migratory groups or those affected by forced human mobility, not to exclude the groups not explicitly explained in the Definitions. The amicus is informed by the definitions from the IACHR Resolution 04/19 (hereinafter “Resolution 04/19”). The Resolution 04/19 establishes the following sentiment, “considering that all migrants, refugees, asylum seekers, stateless persons, victims of human trafficking and other persons involved in international mobility processes are entitled to the same universal human rights and guarantees, which must be respected, protected and guaranteed at all times, even if they are governed by specific international and national protection provisions.”¹⁷⁶

1. **People in Involuntary or Forced Human Mobility Situations:** Section (C) often refers to people in involuntary or forced human mobility situations due to climate change. The use of the words “involuntary” or “forced” are to indicate this group of people have no other choice but to leave their home due to, in our case, climate change emergencies.¹⁷⁷ When referring to people in human mobility situations, the amicus is referencing those who have made the decision to leave their homes or state of origin to move to another place either temporarily or permanently. People in human mobility situations could be but are not limited to migrants, refugees, displaced persons, or asylum seekers.
2. **Migrant(s):** “Any person [or persons] who is outside the social, affective, or political territory to which they belong. For the purposes of these [IASHR] Principles, a migrant is specifically considered to be someone who is outside of a territory of which they are a citizen or national, regardless of migratory status, intent and temporality.”¹⁷⁸
3. **Refugee(s):** Persons “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail

¹⁷⁶ IACHR, Resolution 04/19, “Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking.” December 7, 2019. Definitions.

¹⁷⁷ UNHCR, “Guiding Principles of Internal Displacement,” E/CN.4/1998/53/Add.2, February 11, 1998, p. 10.

¹⁷⁸ IACHR, Resolution 04/19, “Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking.” Cit.

himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”¹⁷⁹

4. **Asylum-Seeker(s)**: Person(s) who request the protection of another State due to political persecution in the State of residence or origin, “in accordance with international instruments or regional regulations or the internal legislation of the country of asylum.”¹⁸⁰
5. **Internally Displaced Person(s)**: “Person who has been forced or obliged to flee or to leave their homes of habitual residence, as a result of armed conflict, situations of generalized violence, violations of human rights, or natural or human-made disasters and has not crossed in internationally recognized State border.”¹⁸¹
6. **Stateless Person(s)**: “Any person not considered as a national or citizen by any State in accordance with its legislation.”¹⁸²

1. Vulnerability of environmental migrants in the climate emergency context.

International Human Rights Law has long recognized the vulnerability of migrants and the many factors that impact populations facing voluntary or involuntary migration. Migrants are increasingly vulnerable in the face of conditions such as extreme climate events, resource insecurity, war and conflict, adverse migration conditions,¹⁸³ language barriers, and an inability to access legal migration services.

Despite the shared understanding that migrants are a vulnerable population, it is important to highlight that climate change-related migration has its own challenges. In particular, the absence of a specific legal category that enshrines the protection of migrants as a State obligation.¹⁸⁴ While some countries—such as Switzerland and Bolivia—have sought to legally protect migrants facing

¹⁷⁹ McAdam, Jane. 2016. “Climate Change-Related Displacement of Persons.” In *The Oxford Handbook of International Climate Change Law*, eds. Kevin R. Gray, Richard Tarasofsky, and Cinnamon P. Carlarne. Oxford University Press: 521-22; United Nations, “Convention Relating to the Status of Refugees” (1951 Refugee Convention). April 22, 1954. Ch. 1.

¹⁸⁰ IACHR, Resolution 04/19, Definitions.

¹⁸¹ UNHCR, “Guiding Principles of Internal Displacement.”

¹⁸² IACHR, Resolution 04/19, Definitions.

¹⁸³ United Nations Network on Migration, *Vías regulares para la admisión y la estancia de migrantes en situación de vulnerabilidad* 4–5 (2021).

¹⁸⁴ McAdam, Jane. “Climate Change-Related Displacement of Persons.”

involuntary human mobility due to climate change, there are no consistent international standards that offer sufficient protection to this vulnerable population.¹⁸⁵

The absence of an international criterion that enables climate-related migrants to be considered refugees, results in the absence of a series of benefits and rights that could change their situation and widen the protections they are entitled to: “(...) here are a number of difficulties in applying refugee law to climate change-related displacement more generally (...) it is difficult to characterize ‘climate change’ as ‘persecution’. (...) even if it were possible to establish that the impacts of climate change constituted ‘persecution’, the Refugee Convention poses an additional hurdle for those displaced by climate change (...) Courts around the world have explained that the Refugee Convention does not protect victims of natural disasters or those in search of better living conditions, even though ‘both of these cases might seem deserving of international sanctuary’, and ‘even when the home state is unable to provide assistance’.¹⁸⁶

In brief, the vulnerability of climate-change related migrants can be understood from two main points of view: (1) the material vulnerability, meaning the reality they must submit into, lack of water, food, shelter, difficult transport among others, and (2) the lack of legal category that could aid them to be specially protected by the Inter-American System Corpus Iuris or that sets particular obligations for the States to provide them with, at least, the refugee status.

In practice, guaranteeing social and economic rights to internally displaced persons is a difficult challenge, since forced displacement itself implies violations of human rights as well as limitations to the enjoyment of those rights: the IACHR has pointed out that “according to the American Convention on Human Rights and other international and domestic norms, displaced persons are entitled to freely exercise the same rights and freedoms the rest of the citizenry enjoy. However, in practice, they are seldom able to do so, because the displacement in itself is antithetical to the effective enjoyment of human rights. One of the principal characteristics of forced displacement is its victims have been forced to flee their homes or habitual places of residence, which means they are forced to abandon their life plans; in most cases, they lose land, housing and other property they own.”¹⁸⁷

¹⁸⁵ United Nations Human Rights, Office of the High Commissioner (OHCHR). “Climate Change: Protecting The Rights Of Migrants.”

¹⁸⁶ McAdam, Jane. “Climate Change-Related Displacement of Persons.”

¹⁸⁷ IACHR, “Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System.” OEA/Ser.L/V/II. Doc. 46/15. December 31, 2015.

Accordingly, it is clear that even in an internal displacement scenario people are forced to flee their home due to climate-related situations are subject to multiple vulnerabilities, and the lack of a formal legal category that provides specific protection to climate-related migrants or displaced persons, limits the access to benefits and rights that other people in human mobility situation will have access to.

Due to its vulnerability, the States are obliged to provide reinforced protection according to the specific needs that individuals may present in climate-related human mobility situations, as derived from Articles 1 and 24 ACHR.¹⁸⁸

2. States obligations and standards of protection of environmental migrants.

a. Obligation to prevent environmental risks, natural disasters, and potential forced displacements.

The IACHR has recognized climate change as a matter of urgent care for the international community, not only because of the consequences that may derive directly from it, but also because of its undeniable impact on human rights.¹⁸⁹

It is important to note the analysis that has been carried out on this subject has a double focus: (1) the obligation of the country of origin to prevent harmful human rights situations that will result in climate-change related migrations and (2) obligations of the countries of transit and of destination to protect the migrants they are receiving. In this section, the obligation that will be developed is assigned to the country of origin, the one obliged to take preventive measures for climate change, but more specifically to take preventive action towards the possible hazards that will trigger climate related migration.

In this matter, the States have an obligation to implement preventive actions¹⁹⁰, which means States should not simply strive to mitigate the damages that have been generated due to climate change, but should concentrate on preventing these damages from being aggravated or

¹⁸⁸ See OAS, “American Convention on Human Rights,” arts. 1, 2, & 24; I/A Court H.R., Case of Vález Llor v. Panama. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010. Series C No. 218.

¹⁸⁹ IACHR, Resolution 03/21, “Climate Emergency: Scope Of Inter-American Obligations In Terms Of Human Rights,” para. 20; IACHR Press Office, “The IACHR and REDESCA publish Resolution on Climate Emergency and Human Rights in the Americas,” No. 045/22. March 4, 2022.

¹⁹⁰ The Nansen Initiative: Disaster-Induced Cross-Border Displacement. “Agenda For The Protection Of Cross-Border Displaced Persons In The Context Of Disasters And Climate Change,” vol. I 6 (1st ed. December 2015).

new situations of this type from arising. This has been established in multiple documents such as Resolution 03/2021¹⁹¹

As explained above, for the IACHR it is clear climate change has a special impact on vulnerable populations among which are the climate-change related migrants.¹⁹² Therefore, the obligation of prevention is not only projected to prevent climate change itself, but also to prevent the harmful consequences for these vulnerable populations: food inequity, inequality of opportunities, shelter, access to water, education, and others¹⁹³. This, also following the principles of interdependence and indivisibility,¹⁹⁴ the protection of human rights cannot be selective but, on the contrary, comprehensive, encompassing all affected human rights.

Consistently, the UN Report “Human Rights, Climate Change and Migration: Key Messages” affirms the States’ obligation to prevent is not only focused on the prevention of disasters or of the worsening of climatic conditions, it is also focused on the provision of effective measures for survival and dignified conditions to ensure migration is no longer the only option: “To limit the need for climate-related migration, States must plan and prepare for natural disasters, extreme weather events and slow onset processes. Article 11 of the ICESCR, for example, requires States to take appropriate steps to ensure for all people the right to an adequate standard of living. People are more likely to leave their homes if they are not provided adequate protection and assistance to adapt to climate harms. Efforts to address the causes of forced migration in the context of climate change should seek to protect rights, strengthen social protection systems, reduce disaster risk and exposure, and increase adaptive capacity.”¹⁹⁵

In sum, the actual regional standard for the obligation to prevent, can be found in Articles 1, 2, 24 of the ACHR, Resolution 03/21, Resolution 04/19 and the San Salvador Protocol.

b. Obligation to equal protection and non-discrimination.

¹⁹¹ IACHR, Resolution 03/21, “Climate Emergency: Scope Of Inter-American Obligations In Terms Of Human Rights,” para. 20.

¹⁹² *Ibid.*; Pedro Cisterna-Gaete & Maria Antonia Tigre, “Inter-American Commission on Human Rights’ First Resolution on the Climate Emergency: Implications for Climate Litigation,” Sabin Center for Climate Change Law, Columbia Law School. April 11, 2022.

¹⁹³ Foster, Michelle. “Displacement and Social and Economic Rights.” In Young and Langford Ed. The Oxford Handbook of Economic and Social Rights. Oxford University Press, n.d. 9.

¹⁹⁴ I/A Court H.R., Case of Lagos Del Campo v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2017. Series C No. 12.795.

¹⁹⁵ United Nations Human Rights, Office of the High Commissioner (OHCHR). “Human Rights, Climate Change, and Migration.” March 2018.

There are numerous principles and rights that must be granted in favor of migrants, there is consensus on the need to provide them with a strengthened protection and a specific approach due to their vulnerable situation. Likewise, the international community has recognized States are obliged to take positive action to ensure the migrants (regardless of their "legal status") who have inhabited their country are able to fully exercise their fundamental rights.”¹⁹⁶

Thus, one of the main principles to be taken into account regarding migration is the principle of non-discrimination, which gives any person in a climate-change related mobility situation the guarantee that any right or treatment to be provided by the State will be given to them regardless of their migratory situation.

This is especially important when it comes to human mobility caused by climate change because many of the individuals affected have been forced to flee areas that have experienced natural disasters or conditions that are intolerable for humans. This makes them more likely to accept conditions that are not exactly dignified and could jeopardize the guarantees of their rights.¹⁹⁷

The above can be supported in Article 1, 2, and 24 of the ACHR and Principle 2 of “Principles and Guidelines: Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations,”¹⁹⁸ further developed in the Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons, Principles 12, 16 and 52 and in various UN documents: “All persons are rights-holders and all States have ratified at least one international human rights treaty. These obligations require a human rights-based approach to climate action and migration. States should address the needs of people affected by climate change and protect their rights before, during, and after migration. Such action includes measures to mitigate climate change and prevent its negative impacts on human rights (...).”¹⁹⁹ As a matter of human rights and taking into account that the efforts against climate change must be developed collectively, climate-related migrants shall be treated with all the

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ibid.*

¹⁹⁸ United Nations Human Rights, Office of the High Commissioner (OHCHR). “Principles and Guidelines: Supported By Practical Guidance, On The Human Rights Protection Of Migrants in Vulnerable Situations.” 2018; I/A Court H.R., Case of the Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, para. 108.

¹⁹⁹ OHCHR. “Principles and Guidelines.”

diligence and without discrimination, States must make sure every right has been granted and their living conditions are safe and dignified, just as they would be for any other citizen.

States must provide every possible effort to rescue and assist migrants. This is of utmost importance in climate change related mobility scenarios, since usually migration is related to natural disasters and unsustainable situations for life and health, which often means people on the move have urgent needs for immediate care and attention.²⁰⁰

c. Obligation to include gender perspective and differentiated approach for vulnerable groups when attending environmental human mobility.

Climate change is a global phenomenon that affects every person on the planet, however the impact will be different depending on the population. The IACHR has recognized the differentiated impacts of climate change in vulnerable populations, i.e. women, children, migrants, and those in coastal or drought-prone or low-lying states and other geographic areas who perceive greater consequences of climate change.²⁰¹ In this sense, any effort by the international community to mitigate the effects of climate change must be especially aimed at avoiding the growth of social inequality and thus the worsening of the living conditions of particular groups, such as women.

Climate change-related migration is no exception to gender disparities, in this process, women disproportionately experience severe risk and very particular situations on the basis of gender. “A person’s gender is one of the main factors that determines the overall experience of climate change and the migration processes that flow from it, including environmental migration and disaster displacement. Climate change will exacerbate existing inequalities and vulnerabilities, particularly of women and girls and marginalized groups, by reducing the resources available to communities, threatening livelihoods, and displacing families.”²⁰²

It is important to note, the role of women in the migration process is not only particularly vulnerable when they acquire their migrant status, meaning when they leave their habitation place. Their vulnerability starts from the moment they find themselves in a place affected by climate change, where they may be forced to migrate in a disadvantaged position, since they are less likely

²⁰⁰ *Ibid.*

²⁰¹ IACHR, Resolution 03/21, “Climate Emergency: Scope Of Inter-American Obligations In Terms Of Human Rights.”

²⁰² Economic Commission for Latin America and the Caribbean. “Advancing Gender Equality in Environmental Migration and Disaster Displacement in the Caribbean.” 2021, p. 21.

to find a job or to have enough assets to survive alone, and/or be forced to stay assuming the risk of living in a climate-affected territory taking care of their family. Migration is not always an open decision and women are most likely to be affected by the multiple variables that may affect the decision to migrate (or not).²⁰³

Also, even in the displacement process women are most likely to be affected by sexual assault or human trafficking.²⁰⁴ It is important to highlight a discussion that is particularly relevant regarding climate change related migration: the obligation to provide regular migration pathways. This will significantly impact the safety of women and girls who are trying to migrate, making them less likely to be sexually assaulted or human trafficked since these two phenomena are usually increased when human mobility is followed through irregular paths and circumstances. “However, both slow- and sudden-onset hazards associated with climate change are linked to increases in trafficking in persons. A lack of safe and regular migration pathways—including specific migration pathways related to climate change—may lead women and girls to turn to more dangerous irregular channels, where they face a greater likelihood of experiencing violence and exploitation by smugglers, human traffickers, police and border officials, intimate partners and other migrants. This may also take the form of men colluding with traffickers by selling their wives or female relatives, including children, in order to cope with the losses associated with changing climate.”²⁰⁵

Likewise, migrant women are more vulnerable in terms of economic and social rights; studies have shown girls and adolescents are less likely to access education during their migration journey.²⁰⁶ Not only because the access in the country of destination is harder and more complex for them, but also because they have a poorer educational background, therefore, it is difficult for them to pick up according to their age, furthermore, usually the cultural background in migrant families promotes the prioritization of male education rather than the access for their female minors. This is also expressed in the burden of household responsibilities imposed on them, leaving them very little time for school activities.²⁰⁷

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*

²⁰⁵ UN Women. “Ensuring Safe and Regular Migration for Women and Girls in the Context of Climate Change.” June 28, 2023.

²⁰⁶ North, Amy. “Gender, Migration and Non-Formal Learning for Women and Adolescent Girls.” ED/GEMR/MRT/2018/P1/42. 2019.

²⁰⁷ *Ibid.*

Health is another aspect in which women are more vulnerable, not only because of the particular needs they may have due to gender issues (pregnancy, breast cancer and others) but also because, due to lack of education, social pressure and household chores, they are less likely to seek professional help. In addition, taking into account what has been developed in previous points, since women are more vulnerable to sexual violence, they also have greater needs for urgent care and, in general, it could be said they do not have access to reproductive health when they are in situations of abuse.²⁰⁸

3. Principle of non-refoulement of environmental migrants

As stated by the UN, the principle of non-refoulement limits the power of States to remove or deport individuals in human mobility situations, when specific circumstances occur.²⁰⁹ The regional standards, derived especially from the Cartagena Declaration, are based on a broader and more comprehensive interpretation of refugee status and the principle of non-refoulement than international standards. In this regard, at the regional level, it is not possible to return to territories where life and personal integrity are in danger, whether for political or any other reason. This includes, then, the risk of returning when the effects of climate change affect life, adequate standard of living and the minimum enjoyment of social and economic rights, including health, education, food, clean water and housing.²¹⁰

Recently in the decision of the UNHRC *Ioane Teitiota vs. New Zealand* it was recognized that the principle of non-refoulement should be extended to persons who did not have access to refugee status, however given that the environmental risks that the person might face upon return to his or her country due to climate change should be considered in their entirety: “The obligation not to extradite, deport or otherwise transfer, pursuant to article 6 of the Covenant, may be broader than the scope of the principle of non-refoulement under international refugee law, since it may also require the protection of aliens not entitled to refugee status. States parties must, however, allow all asylum seekers claiming a real risk of a violation of their right to life in the State of origin

²⁰⁸ Carballo, M., Grocutt, M., & Hadzihasanovic, A. “Women and Migration: A Public Health Issue.” *World Health Stat Q.* 1996;49(2):158-64. PMID: 9050196.

²⁰⁹ OHCHR, “The Principle Of Non-Refoulement Under International Human Rights Law.” (1st ed. 2018). <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf/>.

²¹⁰ UNHCR, “Cartagena Declaration on Refugees.” Adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Cartagena de Indias, Colombia, 22 November 1984.

access to refugee or other individualized or group status determination procedures that could offer them protection against refoulement”.²¹¹

In conclusion, both at the regional and international level the principle of non-refoulement shall be interpreted broadly to protect environmental migrants when returning to their countries imply a risk to their lives or other human rights due to climate change effects. This is also consistent with the regional standard established in Resolution 04/19, which states that the interpretation of a principle must always be the most favorable to the person in matters of human rights.

4. Obligations related to particular social and cultural rights.

The following section is informed by Article 11 of the Protocol, the right to a healthy environment.²¹² Under Article 11, “everyone shall have the right to live in a healthy environment and to have access to basic public services.”²¹³ The State’s absolute obligation is to “promote the protection, preservation, and improvement of the environment.” The right to a healthy environment is further enforced by the Rio Declaration.²¹⁴ The United Nations General Assembly also adopted “environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.”²¹⁵ Climate change and the “adverse effects of climate change affect the real enjoyment of human rights,” thus it is up to the State to acknowledge and protect human rights.²¹⁶

In addition to the right to a healthy environment, there is also a recognition for safeguarding migrants. Firstly, the ACHR establishes “every person has the right to leave any country freely, including his own”²¹⁷ and the Resolution 04/19 expresses “every migrant has the inherent right to life.”²¹⁸ Secondly, according to the Los Angeles Declaration on Migration and Protection (hereinafter the “Los Angeles Declaration”), States should be “committed to protecting the safety

²¹¹ As a source of persuasive value, see UN Human Rights Committee, *Ioane Teitiota vs. New Zealand*, Comm. No. 2728/2016, U.N. Doc. CCPR/C/127/D/2728/2016 (January 7, 2020).

²¹² OAS, “Protocol of San Salvador.”

²¹³ *Ibid.*

²¹⁴ UN General Assembly, “Rio Declaration,” principle 1.

²¹⁵ *Ibid.* at principle 4.

²¹⁶ I/A Court H.R., *Advisory Opinion OC-23/17*. Para. 47.

²¹⁷ OAS, “American Convention on Human Rights.”

²¹⁸ IACHR, Resolution 04/19, principle 1.

and dignity of all migrants, refugees, asylum seekers, and stateless persons, regardless of their migratory status.”²¹⁹ This sentiment is also expressed in the Resolution 04/19.²²⁰ Thirdly, States must also “guarantee due process during the procedure leading to the recognition of their migratory status.”²²¹ There should be processes in place to welcome, register, and aid migrants when disasters occur. These processes should be widely shared and adopted on a domestic, regional, and international level.

Economic, social, and cultural rights are integral to migrants’ rights. Taking into account what has been considered in 2.1.2 of the Human Rights, Climate Change, and Migration from the OHCHR, it is an obligation for the States to guarantee without discrimination the human rights of their inhabitants, regardless of their migration status. This includes social and cultural rights. The OHCHR says these rights shall include, “the provision of food and clean water; access to adequate housing, health care and social security, education, and decent work opportunities; and safeguarding the principles of non-refoulement and the prohibition of collective expulsion, as well as the rights to liberty, personal integrity and family unity.”²²² As economic, social, and cultural rights are important to aiding migrants, the amicus has focused on minimum essential migrants’ rights to education, health, safe drinking water, adequate nutrition, and housing.²²³ The concept of minimum essential rights has been described as minimum core meaning “ascertaining the normative essence, minimum consensus or minimum obligation of economic and social rights” and “to give substance to minimum legal obligations in both national and global distributive justice debates.”²²⁴

a. Education²²⁵

²¹⁹ Summit of the Americas, “Los Angeles Declaration on Migration and Protection.” The White House. June 10, 2022.

²²⁰ IACHR, Resolution 04/19.

²²¹ IACHR, Resolution 03/21, “Climate Emergency: Scope Of Inter-American Obligations In Terms Of Human Rights,” para. 20.

²²² United Nations Human Rights, Office of the High Commissioner (OHCHR). “Human Rights, Climate Change, and Migration.”

²²³ United Nations Human Rights, Office of the High Commissioner (OHCHR). “CESCR General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant).” E/1991/23. December 1990.; Regarding the minimum core of human rights see Young, Katharine, “The Minimum Core of Economic and Social Rights: A Concept in Search of Content.” Yale Journal of International Law, Vol. 33, No. 1, 2008.

²²⁴ Young, Katharine, “The Minimum Core of Economic and Social Rights: A Concept in Search of Content.”

²²⁵ The following section focuses on migrants’ rights to education. The right to education is also discussed in Section II, (A)(b)(ii) of this brief.

It is of the utmost importance for States to recognize the right of education for all, and therefore migrants, under Article 13 of the Protocol stating “everyone has the right to education.”²²⁶ “States must ensure that their rights to education ... are not affected by the destruction or alteration of basic infrastructure” that results from climate emergencies.²²⁷ The migratory status of a person should not preclude them from gaining access to an education. This education shall include compulsory primary education, optional secondary education, and optional higher education.²²⁸ Although “parents should have the right to select the type of education to be given to their children,” migrant families should have the right to participate in education when forced to leave their homes.²²⁹ A child’s development should not be stunted due to a climate emergency, and it is imperative for all States to acknowledge and implement this.²³⁰

The individual obligations of States pertaining to education are two-fold. First, States should use resources to educate their populations about climate change and the emergencies that may unfold. This includes informed teachings about how to react to climate disasters, resources created to help populations during climate-related emergencies, and the ways citizens can aid each other in crisis situations. Second, States should have preexisting educational structures to aid people affected by climate emergencies. In this specific circumstance, States should have educational opportunities for children that have been displaced.

First, States should be responsible for allocating resources to educate their citizens about climate change and the effects it may have on their own country. This acts as a preventative goal to better educate people of climate change and how to best respond in dire situations. The Rio Declaration highlights this obligation by providing, “States shall facilitate and encourage public awareness and participation by making information widely available” when it comes to “environmental issues.”²³¹ This could be through national awareness or “environmental legislation.”²³² There are also State recommendations given in Goal Four of the UN 2030

²²⁶ OAS, “Protocol of San Salvador”; IACHR, Resolution 04/19, principles 2 & 37.

²²⁷ IACHR, Resolution 03/21, “Climate Emergency: Scope Of Inter-American Obligations In Terms Of Human Rights,” para. 21.

²²⁸ OAS, “Protocol of San Salvador.”

²²⁹ *Ibid.*

²³⁰ For more information on the rights of children under climate-related emergencies, please refer to Section II (A).

²³¹ UN General Assembly, “Rio Declaration,” principle 10.

²³² *Ibid.* at principle 11.

Agenda.²³³ It is important for States to “ensure that all learners acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles.”²³⁴

Second, States should instill educational structures to respond to climate change emergencies, especially for migrant children that are displaced as mentioned above. In Resolution 04/2019, the IACHR adopts policies of full availability of secondary education and higher education to migrants.²³⁵ The right to education must be guaranteed to all migrants regardless of their nationality, their immigration status, the lack of identity documents or schooling.²³⁶ Resolution 04/2019 also asks States to create “a more flexible approach to requirements for migrants’ access to education.”²³⁷ Policies and guidelines for States to best handle migrant populations and their education has been discussed in Goal Four of the 2030 Agenda.²³⁸ In addition, in the Buenos Aires Declaration, nations must make “[their] educational systems more responsive, adaptable and resilient in order to meet the rights and satisfy the needs of migrants and refugees, according to the policies of our countries, taking into account the current challenges associated with conflicts, violence, discrimination, pandemics and disasters.”²³⁹

b. Health

Access to healthcare is paramount to environmental migrants as they are displaced. First, it is important to outline migrants’ rights to health. Second, it includes preventive health measures for States before a climate crisis occurs. Third, a few protective, subsequent health precautions should be implemented rapidly once a crisis has occurred. Although best practice would be to have measures already in place, it is also important to acknowledge these climate emergencies can be unpredictable, not allowing for preparedness.

²³³ UN General Assembly, “2030 Agenda for Sustainable Development” (“2030 Agenda”), A/RES/70/1, October 21, 2015, Goal 4.

²³⁴ *Ibid.*

²³⁵ IACHR, Resolution 04/19, principle 37.

²³⁶ *Ibid.*; I/A Court H.R., Case of the Yean and Bosico Girls v. Dominican Republic, Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 8, 2005. Series C No. 130, para. 244.

²³⁷ IACHR, Resolution 04/19, principle 37.

²³⁸ UN General Assembly, “2030 Agenda,” Goal 4.

²³⁹ Education Ministers of Latin America and the Caribbean, “Buenos Aires Declaration: Regional Meeting of Education Ministers of Latin America and the Caribbean.” 2017, point 15; International Human Rights Practicum Boston College Law School, “Universal and Regional Standards Of Protection Of Economic, Social, Cultural And Environmental Rights (ESCE) In The Context Of Human Mobility.”

First, migrants encapsulate certain human rights that pertain to health. According to Article 10 of the Protocol, “everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.”²⁴⁰ Health was again recognized as a human right in the ICESCR.²⁴¹ In the IASHR, the right to health and well-being is recognized in Article XI of the ADRDM, as well as in Articles 34 and 45 of the Charter of the OAS.²⁴²

As non-nationals, individuals in human mobility situations, including environmental migrants, face difficulties in accessing health services and are generally not covered by State systems.²⁴³ The State has the duty, as the guarantor of health, to provide detainees with periodic medical examination and adequate medical attention when required.²⁴⁴ The States agreed the right to “primary health-care” and “satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.”²⁴⁵ As environmental migrants have been forced to leave their communities, they may be in desperate need of emergency healthcare or in treating particularly at-risk individuals with preexisting medical conditions, pregnant people,²⁴⁶ elderly people, and children. Additionally, it is known women and girls “face greater risks, threats and violations of their human rights, such as life, personal integrity and health, due to the adverse effects of climate change.”²⁴⁷ States must, therefore, “guarantee access to the right to health... to all people without discrimination based on national origin or any other reason prohibited under the contexts of human mobility.”²⁴⁸

Second, it is important to outline some preventative health measures for States to implement before a climate crisis. The access to healthcare services is paramount to any successful population. A State can prepare for climate change crises by having strong access to healthcare, quality health education, and an interest in improving the overall health of the nation. Specific provisions for what a successful health State can be seen through Goal Three in the 2030

²⁴⁰ OAS, “Protocol of San Salvador.”; I/A Court H.R., Advisory Opinion OC-23/17. Para. 47.

²⁴¹ International Human Rights Practicum Boston College Law School, “Universal and Regional Standards Of Protection Of Economic, Social, Cultural And Environmental Rights (ESCE) In The Context Of Human Mobility.” 2023

²⁴² *Ibid.*

²⁴³ *Ibid.*

²⁴⁴ *Ibid.*

²⁴⁵ OAS, “Protocol of San Salvador.”

²⁴⁶ I/A Court of H.R., Case of the Brítez Arce et al. v. Argentina.

²⁴⁷ IACHR, Resolution 03/21, “Climate Emergency: Scope Of Inter-American Obligations In Terms Of Human Rights,” para. 19; IACHR, Resolution 04/19, principle 8.

²⁴⁸ *Ibid.* at principle 2, 35.

Agenda.²⁴⁹ Further instruction for a State to reach the highest attainable standard of health can be found in CESCR General Comment 14, suggesting “every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.”²⁵⁰ A State can also better prepare for climate emergencies by instituting a national health plan. This plan can focus State officials toward common health goals, while also educating the public on health developments. It also can bolster the State’s health system to better prepare for migrant populations. Ways to treat migrant populations in an effective and culturally sensitive way can be seen through the Framework of Priorities and World Health Organization Guiding Principles to Promote the Health of Refugees and Migrants.²⁵¹

Third, there should be some protective, subsequent health precautions that can be implemented rapidly once a crisis has occurred. When a country is faced with a climate crisis, its population may need to change location to find safety. Although this movement can sometimes be achieved domestically, it also might need to occur internationally or within neighboring countries. It is important for States to have an agreement in place if a climate crisis occurs, stating one country’s people may need to seek refuge in another during an ongoing climate crisis. With this refuge, migrants should be given adequate health treatment regardless of their migrant status or national origin.²⁵² If a migrant does not have documents, passports, or other identification, the migrant should not be denied healthcare and adequate health evaluations.²⁵³

It is also essential that States have emergency health precautions in place to be implemented quickly. A rapid reaction to instigating emergency services can save lives, and its importance cannot be underestimated. The IACtHR has established States must provide medical attention in emergencies to migrants in a dire or irregular situation, and the State must therefore

²⁴⁹ UN General Assembly, “2030 Agenda,” Goal Three.

²⁵⁰ United Nations Human Rights, Office of the High Commissioner (OHCHR). “CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12),” E/C.12/2000/4. August 2000, p. 1.; *See* I/A Court H.R., Case of Guachalá Chimbo et al. v. Ecuador. Merits, Reparations, and Costs. Judgment on March 26, 2021. Series C No. 423.

²⁵¹ OHCHR, “Global Compact for Safe, Orderly and Regular Migration” (GCM). A/RES/73/195. December 19, 2018. Objective 15(e).

²⁵² I/A Court H.R., Case of Afro-Descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2013. Series C No. 270, paras. 452-453; I/A Court H.R., Case of the Yean and Bosico Girls v. Dominican Republic.

²⁵³ IACHR, Resolution 04/19, principle 35.

"provide comprehensive health care taking into account the needs of vulnerable groups."²⁵⁴ This comprehensive health care should also include mental health care as indicated in *Sacchi*.²⁵⁵

c. Access to Food, Water, and Shelter

Another way States must respond to a rapid increase in migrant communities is through providing access to basic necessities such as shelter, water, and food. In this section, first, the purpose is to focus on what rights migrants have to safe shelter, food, and water. Second, a discussion of ways to best provide these basic necessities is given.

First, migrants possess human rights that pertain to access to food, water, and shelter. Resolution 04/2019 says States should ensure “the right to health, food and nutritional security, drinking water, housing, environmental sanitation.”²⁵⁶

In terms of water, the right to water is not expressly enumerated in any IASHR instrument. This does not diminish its importance, however, as the right to water as an inherent human right has been recognized by the IACHR.²⁵⁷ The right to water has also been recognized in several IACtHR cases.²⁵⁸ The UN has also recognized the right to water through the Committee on Economic, Social and Cultural Rights (hereinafter the “CESCR”) and a General Assembly Resolution which predated that General Comment.²⁵⁹

In terms of food, Article 12 of the Protocol states “everyone has the right to adequate nutrition.”²⁶⁰ This encapsulates the right to food, saying “the availability of food in sufficient quantity and quality to meet dietary needs of individuals, free of harmful substances and acceptable within a given culture.”²⁶¹ In addition, the States have agreed to work to “improve methods of

²⁵⁴ I/A Court H.R., Case of the Nadege Dorzema et al. v. Dominican Republic, para. 108.

²⁵⁵ UN Committee on the Rights of the Child, *Sacchi et al. v. Argentina, Brazil, France, Germany & Turkey*.

²⁵⁶ IACHR, Resolution 04/19, principle 2, 38.

²⁵⁷ *Ibid.*

²⁵⁸ I/A Court of H.R., Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, Reparations and Costs. Judgment of February 6, 2020. Series C No. 400.; I/A Court H.R., Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of August 24, 2010. Series C No. 214, paras. 195–96.

²⁵⁹ UN Committee on Economic, Social and Cultural Rights, “CESCR General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant),” E/C.12/2002/11.

²⁶⁰ OAS, “Protocol of San Salvador”; OAS, Charter of the Organization of American States, art. 34.

²⁶¹ UN Committee on Economic, Social and Cultural Rights, “General Comment No. 12, The Right To Adequate Food, (Art. 11).” E/C.12/1999/5, para. 8.

production, supply and distribution of food.”²⁶² The CESCR provides “when an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to provide that right directly. This obligation also applies to people who are victims of natural or other disasters.”²⁶³

In terms of housing, the 1948 Universal Declaration of Human Rights mentions the right to an adequate standard of living.²⁶⁴ Resolution 03/21 has recognized the “rights to .. housing, water, and sanitation are not affected by the destruction or alteration of basic infrastructure” that results from climate change.²⁶⁵ Adequate housing means having a place to isolate yourself if desired, adequate space, security, lighting, ventilation, infrastructure, and location in relation to work and basic services, all at a reasonable cost.²⁶⁶ Housing rights include, but are not limited to, “(i) availability of services, materials, facilities and infrastructure, including permanent access to natural and common resources, drinking water, energy for cooking, heating and lighting, sanitary and washing facilities, food storage, waste disposal, drainage and emergency services; and (ii) habitability, in the sense of providing adequate space to its occupants and protecting them from cold, humidity, heat, rain, wind or other health threats, from structural risks and from disease vectors.”²⁶⁷

Second, there are many recommendations for States to be better prepared for migrants reacting to a climate emergency in terms of water. The first step to success is to provide safe drinking water for all inhabitants within a country. This goal is outlined in Goal 6 of the 2030 Agenda.²⁶⁸ The 2030 Agenda states, “by 2030, achieve universal and equitable access to safe and affordable drinking water for all.”²⁶⁹ In addition, it writes, “by 2030, substantially increase water-use efficiency across all sectors and ensure sustainable withdrawals and supply of freshwater to address water scarcity and substantially reduce the number of people suffering from water scarcity.”²⁷⁰ These goals may be realized through another suggestion of the 2030 Agenda by “water

²⁶² OAS, “Protocol of San Salvador.”

²⁶³ UN Committee on Economic, Social and Cultural Rights, “General Comment No. 12, para. 15.

²⁶⁴ UN, Universal Declaration of Human Rights. December 10, 1948, arts. 25, 217 A (III).

²⁶⁵ IACHR, Resolution 03/21, “Climate Emergency: Scope Of Inter-American Obligations In Terms Of Human Rights,” para. 21.

²⁶⁶ International Human Rights Practicum Boston College Law School, “Universal and Regional Standards Of Protection Of Economic, Social, Cultural And Environmental Rights (ESCE) In The Context Of Human Mobility.”

²⁶⁷ IACHR, Resolution 04/19, principle 38.

²⁶⁸ UN General Assembly, “2030 Agenda,” Goal 6.

²⁶⁹ *Ibid.*

²⁷⁰ *Ibid.*

harvesting, desalination, water efficiency, wastewater treatment, recycling and reuse technologies.”²⁷¹

In a specific water case study, “a group of UNHCR engineers developed a reliable and cost-effective monitoring system” for water using “smart water-level sensors that are installed in the tanks of water delivery trucks to provide real-time data on water deliveries and consumption” in Uganda.²⁷² This water system proved to be helpful for migrant populations fleeing South Sudan in 2017 in desperate need of a reliable, clean water supply.²⁷³

There are also efforts to create a sustainable food source for migrants. Goal 2 of the 2030 Agenda calls to “achieve food security and improved nutrition and promote sustainable agriculture.”²⁷⁴ Goal 2 highlights the need to create food security especially among vulnerable populations, such as migrants.²⁷⁵ Ways to achieve this is by “[doubling] the agricultural productivity and incomes of small-scale food producers,” “[ensuring] sustainable food production systems and [implementing] resilient agricultural practices that increase productivity and production, that help maintain ecosystems, that strengthen capacity for adaptation to climate change, extreme weather, drought, flooding and other disasters and that progressively improve land and soil quality,” and “[maintaining] the genetic diversity of seeds, cultivated plants and farmed and domesticated animals and their related wild species.”²⁷⁶ Other recommendations can be found in Goal 2 of the 2030 Agenda.²⁷⁷

Finally, there are also recommendations to create safe, affordable housing for migrants or people in human mobility situations. Goal 11 of the 2030 Agenda outlines these initiatives.²⁷⁸ First, to get this temporary housing, the 2030 Agenda suggests “provide access to safe, affordable, accessible and sustainable transport systems for all, improving road safety, notably by expanding public transport, with special attention to the needs of those in vulnerable situations.” Next in housing, the 2030 Agenda states guidelines for better housing to “enhance inclusive and sustainable urbanization and capacity for participatory, integrated and sustainable human

²⁷¹ *Ibid.*

²⁷² UNHCR and OHCHR, “Climate Change, Displacement and Human Rights,” March 2022.

²⁷³ *Ibid.*

²⁷⁴ UN General Assembly, “2030 Agenda,” Goal 2.

²⁷⁵ *Ibid.*

²⁷⁶ *Ibid.*

²⁷⁷ *Ibid.*

²⁷⁸ *Ibid.* at Goal 11.

settlement planning and management.”²⁷⁹ The 2030 Agenda also calls for States to “provide universal access to safe, inclusive and accessible, green and public spaces.”²⁸⁰ An initiative that may make these goals more achievable is by “[reducing] the adverse per capita environmental impact of cities.”²⁸¹ Lessening the negative environmental impact of a city can allow for more green spaces and sustainable housing for a nation’s current population and a migrant population.

5. Coordinated Obligations: Cooperation & Solidarity For Climate Disasters that compel Human Mobility

States should predict climate disasters, respond collectively to common climate change problems, and aid each other when a State is devastated by a climate crisis. Although each individual State has a specific, personal obligation to provide their people with a safe, healthy environment under Article 11 of the Protocol, it is unrealistic to ascertain that each State can combat climate change alone.²⁸² This section, therefore, seeks to establish how States can work together under the IASHR to combat climate change under the lens of migrants’ rights.

This section’s purpose, in terms of migrants, is to refer ways for States to 1) support one another in global environmental partnership, 2) create common national policies that address climate change, and 3) request help from one another when climate emergencies happen.

First, States should support one another in an international environmental coalition. As there are many climate disasters that can affect multiple States at once, it would be advantageous for States to plan for these disasters in conjunction with one another. States should, therefore, “cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem.”²⁸³ This global partnership includes “technical cooperation from the regional and international community.”²⁸⁴ States should work towards “[harmonizing] national legislation and policy measures that guarantee people affected by climate change and

²⁷⁹ *Ibid.*

²⁸⁰ *Ibid.*

²⁸¹ *Ibid.*

²⁸² OAS, “Protocol of San Salvador.”

²⁸³ UN General Assembly, “Rio Declaration,” principle 7.

²⁸⁴ IACHR, Resolution 04/19, principle 9.

environmental degradation procedural rights in environmental matters.”²⁸⁵ The Rio Declaration supports this idea in an economic fashion, by saying, “States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries.”²⁸⁶ Along with this global cooperation, the UNHCR calls on States to “cooperate internationally to ensure the protection of all those displaced in the context of climate change.”²⁸⁷

If a State finds a favorable provision that protects the human rights of migrants, the State should “coordinate” about the “instruments developed” to help other States.²⁸⁸ States should therefore support one another in growing economies, but not at the expense of the environment.

Second, States should create formal national policies to address climate change. Through all of these specific policies below, it is important to “ensure that all climate action is people-centered and adopts a human-rights based approach, ensuring the dignity, safety, and rights of those displaced” due to climate change.²⁸⁹

Through economic means, the Rio Declaration calls for States to “develop national law regarding liability and compensation for the victims of pollution and other environmental damage.”²⁹⁰ These efforts would be quite helpful to migrants because they could be given life-saving compensation to cover many expenses. The Los Angeles Declaration expresses the need to “convene multilateral development banks, international financial institutions, and traditional and non-traditional donors to review financial support instruments for countries hosting migrant populations and facing other migration challenges.”²⁹¹ The UNHCR also recommends “scale up adaptation financing and support to climate action in countries and host community areas where displaced people take refuge.”²⁹²

Through infrastructure, States should put resources toward “climate-resilient infrastructure” while recognizing their cities may need migratory precautions or “measures in

²⁸⁵ IACHR, Resolution 03/21, “Climate Emergency: Scope Of Inter-American Obligations In Terms Of Human Rights,” para. 38.

²⁸⁶ UN General Assembly, “Rio Declaration,” principle 12.

²⁸⁷ UNHCR and OHCHR, “Climate Change, Displacement and Human Rights.”

²⁸⁸ United Nations, “United Nations Framework Convention on Climate Change” (UNFCCC), art. 4(2)(e)(ii).

²⁸⁹ UNHCR and OHCHR, “Climate Change, Displacement and Human Rights.”

²⁹⁰ UN General Assembly, “Rio Declaration,” principle 13.

²⁹¹ Summit of the Americas, “Los Angeles Declaration.”

²⁹² UNHCR and OHCHR, “Climate Change, Displacement and Human Rights.”

favor of people in street situations, as well as people living in informal settlements and people in situations of extreme poverty.”²⁹³

Through border crossings, States should provide support for migrants by “[managing] mixed movements across international borders in a secure, humane, orderly, and regular manner.”²⁹⁴ The UNHCR also recommends “well-prepared and timely emergency evacuations [and] assisting communities to plan for relocation to safer settlement areas as a measure of last resort.”²⁹⁵ The Los Angeles Declaration envisions “[improving] ... protection-sensitive border management, visa regimes, and regularization processes” and [strengthening] and [expanding] temporary labor migration pathways.”²⁹⁶

Through anti-discrimination policies, States should be prepared to “to save lives, address violence and discrimination, counter xenophobia, and combat smuggling of migrants and trafficking in persons.”²⁹⁷ Resolution 04/2019 highlights particularly vulnerable migrant populations as “among others, irregular migrants; refugees; stateless persons or persons at risk of statelessness; children and adolescents; indigenous persons; persons living with HIV or medical needs; lesbian, gay, bisexual, transgender, intersex (LGBTI) persons or persons with non-heteronormative gender expressions; women; pregnant women;²⁹⁸ racially or religiously vulnerable groups; persons with disabilities; torture survivors; older adults and persons deprived of liberty.”²⁹⁹ It is the State’s obligation to make sure positive “steps [are] taken to ensure [vulnerable migrant populations] receive the protection and assistance required, as well as the treatment required to address migrant’s special needs.”³⁰⁰

²⁹³ IACHR, Resolution 03/21, “Climate Emergency: Scope Of Inter-American Obligations In Terms Of Human Rights,” paras. 7 & 56.

²⁹⁴ Summit of the Americas, “Los Angeles Declaration.”; IACHR, Resolution 04/19, principle 9.

²⁹⁵ UNHCR and OHCHR, “Climate Change, Displacement and Human Rights.”

²⁹⁶ Summit of the Americas, “Los Angeles Declaration.”

²⁹⁷ *Ibid.*; IACHR, Resolution 04/19, principles 12-13.

When using this quotation, the amicus is referencing all people who can become pregnant. To use the terminology of the IACtHR, the amicus examined Brítez Arce et al. v. Argentina and Rodríguez Pacheco et al. v. Venezuela. In Brítez Arce et al. v. Argentina, the IACtHR uses the phrasing “pregnant women” in para. 104. In Rodríguez Pacheco et al. v. Venezuela, the IACtHR uses “pregnant women” along the decision but does use “pregnant people” in para. 73. In AO 29/22 (*See* I/A Court H.R., Advisory Opinion OC-29/May 30, 2022. Series A No. 29), the IACtHR also uses “pregnant women” repeatedly but “pregnant people” in para. 158.

²⁹⁹ IACHR, Resolution 04/19 at principle 16.

³⁰⁰ *Ibid.*

Through labor, the Declaration recommends connections between “employers and migrant workers, robust safeguards for ethical recruitment, and legal protections for workers’ rights.”³⁰¹ “Every migrant has the right to work” and “every migrant shall have access on equal terms to just and favorable working conditions and to all labor rights.”³⁰² It is important for States to recognize this right to prevent “the migration status of a person [as a] justification for depriving that person of the enjoyment and exercise of his or her labor rights.”³⁰³ An example of a national policy to implement is State mechanisms “monitoring the workplaces of migrants, to verify working conditions and guarantee their labor rights regardless of their migratory status.”³⁰⁴

Third, States should feel comfortable and supported in reaching out to one another when climate emergencies occur. “States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted.”³⁰⁵ In terms of migrants, if there are populations that need to be evacuated to react to a climate-related disaster, individual States should help their migrant populations within their own State. If this proves untenable, States should be able to ask for and receive help from other States to support the migrant population. This idea is supported by the Los Angeles Declaration, “[States] intend to work to cooperate in emergency response and humanitarian assistance in situations of mass migration and refugee movements.”³⁰⁶

6. Summary and recommendations

1. International law has long recognized the vulnerability of migrants and the many factors that impact populations facing voluntary or involuntary migration. Migrants are increasingly vulnerable in the face of conditions such as extreme climate events, resource insecurity, war and conflict, adverse migration conditions,³⁰⁷ language barriers, and an inability to access legal migration services.

³⁰¹ Summit of the Americas, “Los Angeles Declaration.”

³⁰² IACHR, Resolution 04/19, principle 36.

³⁰³ *Ibid*; see I/A Court H.R., Case of Lagos Del Campo v. Peru; see I/A Court H.R., Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras. Merits, Judgment of August 31, 2021. Series C No. 432.

³⁰⁴ IACHR, Resolution 04/19, principle 36.

³⁰⁵ UN General Assembly, “Rio Declaration,” principle 18.

³⁰⁶ Summit of the Americas, “Los Angeles Declaration.”

³⁰⁷ United Nations Network on Migration, *Vías regulares para la admisión y la estancia de migrantes en situación de vulnerabilidad* 4–5 (2021).

2. Considering environmental migrants may be vulnerable to multiple human rights violations, the principle of interdependence is of utmost importance. States are responsible to guarantee migrants' human rights holistically so they can enjoy all the rights they are entitled to. The interdependence principle must be applied also when protecting human rights in the context of the climate emergency.
3. The absence of a formal definition for the legal status of climate change-related migrants significantly limits the protection that could be offered to them by the States, especially the countries of transition and destination. It is necessary to create a category -or expand any of the existing categories- in which environmental migrants are entitled to some specific protection, like the non-refoulement principle. Examples of such categories are refugees and forced displaced people, who are entitled to a more intense protection because of the circumstances in which they have migrated.
4. The category of internal forced displacement due to natural disasters should be interpreted broadly to include people displaced by climate change, which would allow them to be given greater protection of their human rights. This broad interpretation is supported by Article 29 of the ACHR.
5. The protection and guarantee of the right to a healthy environment must consider the principles of interdependence and indivisibility, and based on those principles work to guarantee all human rights. This means any action to be taken by the State should not be selective but, on the contrary, comprehensive, encompassing all affected human rights.
6. The State has the obligation to act under the principle of equal treatment and non-discrimination when guaranteeing human rights in the context of climate change, which includes people in situations of human mobility for climate reasons.
7. In emergency situations caused by climate effects, States must guarantee people in human mobility receive the necessary protection and humanitarian assistance, especially health regardless of their immigration status and without discrimination.
8. The protection of the human rights of climate migrants must be approached from a gender perspective. This means any measure adopted must take into account the intrinsic inequality and situation of intersectionality due to gender, especially for women.
9. International and regional human rights instruments recognize the right of education for all, this should certainly include environmental migrants. Therefore, States must guarantee

natural disasters and, in general, situations arising from climate change are not an obstacle to access to education by providing an adequate infrastructure to respond to the crisis. The right of education also includes the duty of States to inform and educate their community and promote participation about relevant climate issues. This can also be understood as part of the obligation to prevent climate catastrophes.

10. Access to medical care for environmental migrants must be recognized, which includes both preventive health and emergency medical care, regardless of their immigration status, and taking into consideration the gender perspective and differentiated needs based on age and disability.
11. States have an obligation to provide basic needs such as food, housing, clean water, and sanitation to environmental migrants as a result of the rights of human dignity, equal protection and non-discrimination, and adequate standard of living.
12. States shall respond collectively to common climate change problems and aid each other when a State is devastated by a climate crisis. Although each individual State has a specific obligation to guarantee human rights to people under its jurisdiction, States should act under the principles of cooperation, coordination and solidarity, to support one another in global environmental partnership, create common national policies that address climate change, and support one another when climate emergencies occur.

III. Final remarks

The Inter-American standards for the protection of the rights of vulnerable groups, especially children, EHRDs, and environmental migrants, in the framework of the climate emergency can be determined in the regional and international human rights instruments and jurisprudence articulated in each one of the sections of this brief, from which it is clear what the obligations of the States are, what the status of the victim is and potential comprehensive reparations in this context. The effective implementation of these regional standards should also consider the following aspects:

1. The transversal principles indicated in these written observations orient the standards of protection of the human rights of the three vulnerable groups here addressed in the context of climate change. Of particular relevance are the principles of (i) equal protection and non-discrimination; (ii) a differentiated protection approach, with attention to the special conditions of vulnerability, intersectionality, and the gender perspective; (iii) the principle of interdependence and interconnection that requires the holistic protection of the right to a healthy environment and the rest of human rights affected; (iv) the protection of future generations and intergenerational equity, as well as (v) the principle of coordination, solidarity, and cooperation directly linked to the principles of prevention and precaution of environmental damage. These principles give unique scope in the context of the emergency climate to the general obligations of international and regional protection of human rights.
2. The international and regional obligations of the States and the existing standards of human rights protection of the three groups analyzed -children and adolescents, EHRDs, and people in situations of human mobility- must be applied in the context of climate change in addition to the special standards required by the particularities of the climate emergency, guided by the aforementioned transversal principles.
3. It is necessary to establish clear standards of comprehensive reparation measures for human rights violations due to climate change, taking in to account the generational equity principle and the effectiveness and timely compliance with these remedies and reparation measures.
4. An interdisciplinary approach to protecting human rights in the face of the climate emergency is essential. International, regional, and national legal frameworks for human

rights guarantee and public policies and actions on climate matters must address the scientific, sociological, psychological, and economic factors of the problem beyond its strictly legal aspect.

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Notifications

Following the indications of the IACtHR in the open invitation to submit written observations to this request for an advisory opinion, we indicate the following address for any notification by physical or electronic means that may arise:

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