Santiago de Chile, 18 de diciembre de 2023

Señor
PABLO A. SAAVEDRA ALESSANDRI
Secretario Ejecutivo
Corte Interamericana de Derechos Humanos
San José, Costa Rica

Referencia: Observaciones a la solicitud de opinión consultiva sobre emergencia climática y derechos humanos de la República de Colombia y la República de Chile

Estimado Sr. Secretario Saavedra,

Mediante el presente escrito, y en nombre de los autores del informe que se adjunta, en mi calidad de profesor de la Universidad de Chile y subdirector del Centro de Derecho Ambiental, vengo en presentar informe de Amicus Curiae, en respuesta a la solicitud de Opinión Consultiva presentada por la República de Colombia y República de Chile a la Corte Interamericana de Derechos Humanos (en adelante, Corte IDH o la Corte), que tiene el propósito de aclarar el alcance de las obligaciones estatales, en su dimensión individual y colectiva, para responder a la emergencia climática en el marco del derecho internacional de los derechos humanos.

Ezio Costa Cordella
Profesor, Universidad de Chile

AMICUS CURIAE: THE STATE OBLIGATIONS TO PROTECT HUMAN RIGHTS IN THE FACE OF THE CLIMATE AND ECOLOGICAL CRISIS: BASES AND SPECIAL CASES

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On January 9th, 2023, the member states of Chile and Colombia filed a request for consultative opinion from the Interamerican Court on Human Rights, looking to understand the obligations that states must fulfill to protect human rights amid the climate crisis.

The request specifically asked about "*clarifying the scope of State obligations, in their individual and collective dimension, to respond to the climate emergency within the framework of international human rights law, taking into account, in particular, the effects of climate change on the environment*" and posed several questions from the States to produce such clarification of their obligations.

In January the Court opened the possibility for people and organizations to present their opinions on the matter.

The following paper presents research conducted by students from University of Chile Law School and University of Hamburg Law School, under the supervision of Professor Ezio Costa Cordella, from University of Chile, covering some of the most important issues that were asked by the member States. The works were created during an intercultural exchange and summer school named "International Law +".

INTRODUCTION AND GENERAL STRUCTURE

Ezio Costa Cordella[1]

Disregarding the efforts to minimize the damages produced by climate change, it is a fact that the coming decades will be defined by the way in which states and communities manage themselves amid the climate emergency.

It is a challenge for democracy and bureaucracy, especially since they were created without considering the environmental crisis that we are facing nowadays, and they are partially based on the existence of some certainty about the environment and its cycles.

Those cycles are no longer functioning as they did for centuries, and they probably will be even more disrupted in the next decades, forcing the states to change their practices and concerns, to protect their citizens and their livelihoods, to maintain legitimacy, and, in doing so, to uphold the rule of law.

Human rights, their interpretation, expansion, protection, and recognition are fundamental in this task. The tensions around the climate emergency can go in different directions. It can produce populist and authoritarian regimes, impacting people's rights, or it can move human rights forward when trying to build a just society.

Law schools can't avoid the challenges that this tension presents. What can be a personal and collective concern because of the consequences of climate change in people's lives and in the environment should also feed our research and academic work to help law understand the phenomena and create institutional solutions to the many connected challenges that it creates.

Collaboration among scholars, students, and universities should be enhanced if we are really putting efforts into this area. The crisis is global, as well as causes and solutions, and we need more transnational environmental law and policies to achieve the goals that we have created through the Paris Agreement and other international arrangements.

In this Amicus, 16 students from the Universidad de Chile Law School and Hamburg University Law School have come together to put their efforts into understanding some of the questions that the Inter-American Court on Human Rights has to answer. It has been a work of over 10 months in which I have seen the deep commitment of the students, both with the future of the environment and the future of Law.

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[1] Lawyer and Phd. In Law, University of C hile. Msc. In Regulation, London School of Economics. Professor and Subdirector at University of Chile Center of Environmental Law.

The first part (Section I) of the amicus entails a conceptual framework that includes the right to a healthy environment, an analysis of the common but differentiated responsibilities and the cooperation principle, and an analysis of how the idea of Just Transition can be applicable to the case.

The second part of the work will be devoted to the position of citizens. Departing from the idea of damages and how they can be addressed by States (Section II), continuing (Section III) will focus on the protection of vulnerable groups: children and environmental defenders. In the study of these groups, the intersections between international regimes will be addressed. This section ends with an analysis of judicial remedies and their evolution in regard to the climate crisis.

The last section (IV) expands the idea of our community and its obligations by considering animal rights and how they can be considered when protecting human rights and the environment.

I'm very grateful for the commitment, creativity, and hard work from the students, and even more grateful for having the possibility to know them and guide their work. The help from the Center of Environmental Law (CDA) of Universidad de Chile and the staff from Hamburg University International Office has also been crucial for this work to be produced.

This effort has been made in the frame of the International Law +, a program of short learning experiences directed to law students, managed by the University of Hamburg and the University of Chile Law School."

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LIST OF ABBREVIATIONS

Art.	Article
AC	Aarhus Convention
ACHR	American Convention on Human Rights
CBDR	Common but differentiated Responsibilities
CESCR	Committee on Economic, Social and Cultural Rights
CIDH	Interamerican Court on Human Rights
COP	Conference of the Parties
CRC	Committee on the Rights of the Child
CRIA	Child-rights impact assessment
COP	Conference of the parties
ECLAC	Economic Commission for Latin America and the Caribbean
ECHR	European Convention on Human Rights
ECtHR	European Court on Human Rights
GHG	Greenhouse gases
GDP	Gross domestic product
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ibid	Ibidem
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ILC	International Law Commission
ILO	International Labour Organisation
IPCC	Intergovernmental Panel on Climate Change
ITUC	International Trade Union Confederations

NDCs	Nationally Determined Contributions
R2HE	Right to a Healthy Environment
SERAC	Social and Economic Rights Action Center
SDGs	Sustainable Development Goals
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
UDHR	Universal Declaration of Human Rights
UNCh	United Nations Charter
US	United States of America
VCLT	Vienna Convention on the Law of Treaties
WCED	World Commission on Environment and Development

I. SECTION I: CONCEPTUAL FRAMEWORK

The ecological and climate crisis is harming both the natural and the human world. One of the main issues regarding this second aspect, is to understand how deep is the damage that the crisis is doing to humans and to their rights.

Human rights, among other things, are a synthesis of what are the standards that we pursuit in order to have dignity in our lives.

In other eras, this idea of dignity was a shield against great powers, mostly allocated in the States. Nowadays, our risks have multiplied and several of them are not coming from the States, but from other sources. The environmental risk comes from a huge range of activities and their consequences in the natural world and, in the medium-long term, the consequences in our bodies and health.

In this scenario, the question about protecting human rights when facing the climate crisis becomes crucial to understand how a State should operate in the 21th century. Will it be just a regulator of new activities and forget about the poisoning risks that are stalking society? will it take as a crucial activity to overcome those risk?

These questions are marked by the obligation to protect human rights and, at the same time, by the complicated task of understanding how is that possible in a scenario in which risks had multiply and most of them are not possible to control in the short term.

To help the Interamerican Court on Human Rights (CIDH) in it the work of defining the obligations of the States when responding to climate emergy, this Amicus Curiae will take as a basis the existence of the right to a healthy environment and from there, it will address 7 questions that are being asked to the CIDH and that relates directly with the position of citizens amid the climate crisis.

The first part of the amicus entails a conceptual framework that includes especially (i) the right to a healthy environment, (ii) An analysis on the common but differentiated responsibilities and the cooperation principle, and (iii) An Analysis on how the idea of Just Transition can be applicable to the case.

The second part will be devoted to the position of citizens. Departing from the idea of damages and how they can be addressed by States, this part will focus in two vulnerable groups: children and environmental defenders. In the study of these groups, the intersections between international regimes will be addressed. This section end with an analysis of judicial remedies and their evolution in regard of climate crisis.

The last part expands the idea of our community and its obligations, by considering animals right's and how they can be considered when protecting human rights and the environment.

A. THE (HUMAN) RIGTH TO A HEALTHY, CLEAN AND SUSTAINABLE ENVIRONMENT

By Vincent-Carlos Barduhn[2] and Magdalena Córdova[3]

1. The Protection of the environment through "People" Human Rights

Historically speaking, Human Rights did not have the purpose to protect the environment. The first Universal Declaration of Human Rights (UDHR), proclaimed by the United Nations General Assembly (UNGA) in 1948,[4] did not include any environmental concerns during UN discussions and negotiations.[5] It had mainly two kinds of goals. On one hand, it wanted to function as a reminder of the brutal human rights violations that happened during the 2nd World War.[6] At the same time, it provided a guideline for the future in which governments could be held accountable for their actions due to applicable human-rights-standards.[7]

Although Art. 3 of the UDHR declares that everyone has the right to life, liberty and security, it does not explicitly mention the right to a (healthy, clean and sustainable) environment as such. Other core international human rights instruments lack of such an explicit right as well.[8]

After the 2nd world war ended, environmental protection became an issue again. Severe air pollution originating from fastly-rising urban-industrial pollution, radioactive contamination and industrialization of agriculture introduced old and new environmental issues on political agendas.[9]

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[2] PhD candidate and research assistant with Prof. Dr. Claudio Franzius at the Research Center for European Environmental Law as well as member of the Network of Competence on Future Challenges on Environmental Law which is funded by the German Ministry of Education and Research.
[3] Law graduate from the University of Chile.
[4] 'Universal Declaration of Human Rights'.
[5] Marc Limon, 'United Nations Recognition of the Universal Right to a Clean, Healthy and Sustainable Environment: An Eyewitness Account' (2022) 31 Review of European, Comparative & International Environmental Law 155, 156.
[6] Emmaline Soken-Huberty, '10 Reasons Why Human Rights Are Important' (*Human Rights Careers*, 22 September 2019) <https://www.humanrightscareers.com/issues/10-reasons-why-human-rights-are-important/> accessed 30 June 2023.
[7] ibid.
[8] Puneet Pathak, 'Human Rights Approach to Environmental Protection' (2014) 07 OIDA International Journal of Sustainable Development 17, 19.
[9] Simo Laakkonen, Richard P Tucker and Timo Olavi Vuorisalo (eds), The Long Shadows: A Global Environmental History of the Second World War (Oregon State University Press 2017) 320.

On an international level, human rights still did not explicitly include protection regarding the environment. Human rights and environmental law have traditionally rather been considered two different pairs of shoes.[10]

Towards the end of the 20th century, the view emerged that environmental concerns could be further enhanced by incorporating them within the framework of human rights.[11] While some deny the existence of any link between human rights and the protection of the environment,[12] the majority believes that inserting environmental law into the context of human rights may be beneficial due to an intersection of social values with common goals like the accomplishment of great human life quality.[13] A "greening"[14] of existing human rights grants wider human rights enjoyment regarding the right to health, food and decent life quality when the environment is preserved, conserved and restored.[15] It was therefore evident that a unique human right for the environment needed to be established.

2. The present with a Stand-Alone Human Right for the Environment

2.1. UN-Resolutions: Stockholm, Rio and Paris

The first attempt to include environmental concerns launched in 1972 with the United Nations Conference on the Human Environment in Stockholm adopting the Stockholm Declaration and Action Plan for the Human Environment.[16] It sparked a global movement to successfully incorporate human rights and environmental concerns into national constitutions and laws, including governmental measures to recognize the inalienable right of citizens to a healthy environment through national and regional treaties as well as dialogues between countries.[17]

Principle 1 of the Stockholm Declaration states that "man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect

[10] Puneet Pathak, 'Human Rights Approach to Environmental Protection' (2014) 07 OIDA International Journal of Sustainable Development 17, 18.
[11] ibid.
[12] ibid 19.
[13] ibid 19; Paula Spieler, 'The La Oroya Case: The Relationship Between Environmental Degradation and Human Rights Violations' 19.
[14] Alan Boyle, 'Human Rights and the Environment: Where Next?' (2012) 23 European Journal of International Law 613, 614.
[15] Philippe Cullet, 'Definition of an Environmental Right in a Human Rights Context' (1995) 13 Netherlands Quarterly of Human Rights 25, 26; Puneet Pathak, 'Human Rights Approach to Environmental Protection' (2014) 07 OIDA International Journal of Sustainable Development 17, 19.
[16] 'Declaration of the United Nations Conference on the Human Environment, and Action Plan for the Human Environment, in Report of the United Nations Conference on the Human Environment, Stockholm, UN Doc. A/CONF.48/14/Rev.1'.
[17] Cf. Marc Limon, 'United Nations Recognition of the Universal Right to a Clean, Healthy and Sustainable Environment: An Eyewitness Account' (2022) 31 Review of European, Comparative & International Environmental Law 155, 156.

and improve the environment for present and future generations".[18] Due to the peculiarity at the time of a global conference with a resolution agreed on by consensus,[19] some believed that the first principle of the Stockholm Declaration was the foundation of a new environmental human right.[20]

However, on closer consideration, the wording as well as teleological aspects do not align with this position. The use of the word "man" does not imply an individual-subjective right but rather a general objective. The Stockholm Declaration does not actually declare an environmental human right: it suggests that to bring other human rights to bear it is indispensable to have a functioning fundamental environmental system.[21] Furthermore an UN-Declaration between states does not have any immediate and direct binding effect under international law. As part of "soft law",[22] it is not justiciable, cannot be legally enforced and is merely a declaration of intent.[23]

The next big attempt to include environmental concerns at an international level, the Rio Declaration on Environment and Development in 1992 was dissatisfying: most of the UN member states were certain that human rights and the environment are two separate areas of international politics and law that should not be combined; for them, creating a connection was highly unwelcome.[24]

Finally, the next attempt is the Paris Agreement, an international treaty about climate change, launched in 2015. This is the first treaty that includes a reference and connection between human rights and the environment. It aims to limit global warming to well below 2, preferably 1.5 degrees Celsius, compared to pre-industrial levels.[25] As its preamble notes, "states should, when taking action to address climate change, respect, promote and consider their respective human rights obligations".

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[18] 'Declaration of the United Nations Conference on the Human Environment, and Action Plan for the Human Environment, in Report of the United Nations Conference on the Human Environment, Stockholm, UN Doc. A/CONF.48/14/Rev.1' Principle 1.
[19] Cf. Silja Vöneky and Felix Beck, 'Umweltschutz und Menschenrechte' in Alexander Proelß (ed), *Internationales Umweltrecht* (2nd edn, De Gruyter 2022) para 7; Marcos Orellana, 'Quality Control of the Right to a Healthy Environment' in John H Knox and Ramin Pejan (eds), *The Human Right to a Healthy Environment* (Cambridge University Press 2018) 179.
[20] Louis B Sohn, 'The Stockholm Declaration on the Human Environment' (1973) 14 Harvard International Law Journal 423, 455, 514.
[21] Dinah Shelton, 'Human Rights, Environmental Rights, and the Right to Environment', *Environmental Rights* (Routledge 2012) 112; Silja Vöneky and Felix Beck, 'Umweltschutz und Menschenrechte' in Alexander Proelß (ed), Internationales Umweltrecht (2nd edn, De Gruyter 2022) para 7.
[22] For the concept of 'soft law' in environmental law: Ulrich Beyerlin, *Umweltvölkerrecht* (Beck 2000) para 134 ff.
[23] Silja Vöneky and Felix Beck, 'Umweltschutz und Menschenrechte' in Alexander Proelß (ed), Internationales Umweltrecht (2nd edn, De Gruyter 2022) para 7.
[24] Cf. Marc Limon, 'United Nations Recognition of the Universal Right to a Clean, Healthy and Sustainable Environment: An Eyewitness Account' (2022) 31 Review of European, Comparative & International Environmental Law 155, 156.
[25] United Nations, 'Paris Agreement' (*United Nations Climate Change*, 2016) <https://unfccc.int/es/acerca-de-las-ndc/el-acuerdo-de-pari>.

Furthermore, from international jurisprudence, the construction of environmental rights has occurred mainly from the European Court of Human Rights, the African Comission of on Human and People´s Rights and the Inter-American Court of Human Rights.

2.2. European Court of Human Rights

In the case of the European Court, the recognition of human environmental rights "has been determined indirectly - in the absence of an express provision in the European convention [sic] - the protection of the right to a healthy environment, through a progressive interpretation of the right contained in article 8 of the convention [sic] that protects respect for private and family life, home and correspondence".[26] In this way, the European Human Rights System has enshrined environmental rights through other fundamental guarantees, for which the European Convention for the protection of human rights and fundamental freedoms has been applied systematically.[27]

One of the first cases known by the Court in which the European System has given protection to the environment, through the right to health and family and private life, is the López Ostra case against Spain.[28] .

The Court pronounced itself stating that "naturally, severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health." The most important thing to note is that the Court not only prioritized the well-being of people in terms of health and family life but also affirmed the damages of the environment.

A second important case is Moreno Gómez against Spain[29]. The European court concluded that noise pollution in the environment, although it does not put health at risk, can affect the development of people's family and private lives. That is why, then, the court maintained that Spain has violated Article 8 of the Convention, which protects the right of people to family and private life, as well as their home and correspondence.

Thirdly, we find the case of Guerra et al. against Italy.[30] In this case, as in the previous one, the Court concludes that Article 8 of the Convention was being violated.

[26] Haideer Miranda, 'La Protección Del Ambiente En El Sistema Europeo de Derechos Humanos' (2007) 8 Panóptica 75, 76.
[27] ibid.
[28] *CASE OF LÓPEZ OSTRA v SPAIN* [1994] European Court of Human Rights 16798/90.
[29] *CASE OF MORENO GÓMEZ v SPAIN* [2004] European Court of Human Rights 4143/02.
[30] *CASE OF GUERRA AND OTHERS v ITALY* [1998] European Court of Human Rights 14967/89.

2.3. African Commission of Human and People´s Rights

In the case of the African Commission, the most emblematic case in environmental law is SERAC vs. Nigeria. This case dates back to 1996, to a conflict between the Ogoni people, because oil was being exploited in the area they inhabited. It was the first time the Commission has broadened the meaning, interpretation and scope of the right to an adequate environment enshrined in the African Charter on Human and People´s Rights.[31]

One of the most important parts of the judgment, related to the right to a satisfactory environment, is the fact that the Commission affirms that the oil industry in the Ogoniland reserves has been carried out without any concern regarding the health of the local communities, or their environment, to dispose of toxic waste in the environment and rivers, violating current international regulations.

The Commission stated that "the right to a general satisfactory environment, as guaranteed under article 24 of the African Charter or the right to a healthy environment [...] imposes clear obligations upon a government. It requires the state to take reasonable and other measures to prevent pollution and ecological degradation to promote conservation, and to secure and ecologically sustainable development and use of natural resources.[32]

2.4. Inter-American Court of Human Rights

In the case of the Inter-American System, the protection of the environment has been given through the protection of indigenous peoples and their fundamental rights, unlike the existing scenario in the European court.

We have the case of the Kichwa Indigenous Community of Sarayaku against Ecuador. In this case, environmental protection is related to the right to consultation and participation of indigenous peoples, enshrined in Article 21 of the Inter-American Convention, as well as in ILO Convention No. 169. The facts revolve around the tender that the state of Ecuador made with companies for the exploration and exploitation of hydrocarbons in the territory of the community.

Article 21 of the Convention protects the relationship of indigenous peoples with their lands, so that the protection of the environment, in this regard, requires respect for the worldview and identity of indigenous peoples, as well as the right to consultation that is linked to this right to respect culture and cultural identity. Finally, the court concludes

[31] Kaniye SA Ebeku, 'The Right to a Satisfactory Environment and the African Commission' (2003) 3 African Human Rights Law Journal 149.
[32] *CASE OF SERAC V NIGERIA* [1996] African Commission of Human and People´s Rights 155/96 [52 f.].

that the activity must be evaluated environmentally, in accordance with ILO Convention No. 169[33], respecting indigenous traditions and worldviews.

Secondly, the Mayagna Awas Tingi Community case against Nicaragua will be analyzed. The facts of this case arose in 1995, when the Regional Council signed an agreement with a company to initiate forestry operations that would affect the community's territory. In addition, the following year, the Ministry of the Environment and Natural Resources grants a concession to a company to build roads and exploit hectares of tropical forest also located in the area. After having exhausted the instances, the community files a complaint with the secretariat of the Inter-American Commission expressing its disagreement with both concessions, since the State of Nicaragua did not carry out a prior consultation with the community to determine its suitability, since it directly affected the territory belonging to the community.

The Inter-American Commission prepared a report, in which it concludes that the state of Nicaragua has not complied with the obligations contained in the American Convention on Human Rights, recommending that the state establish a legal system acceptable to indigenous communities, suspend all activities related to the concession and initiate a dialogue with the community. In this way, the Commission, through the protection of indigenous peoples, finds protection for the environment.

A case of indirect environmental protection is the case Claude Reyes and others against Chile. In this specific case, unlike the previous ones, a relationship of environmental protection with the right to judicial guarantees and access to information is shown. The facts of this case arise when the state of Chile denies the delivery of information to the plaintiffs for a deforestation Project, since in their opinion, the Project generated an enormous environmental impact and could endanger the environment and impede Development.

The Court, after hearing the facts, concludes that the state of Chile violated the rights of article 1, which is the obligation to respect the rights of all people, article 13, the right to freedom of thought and expression), Article 2, the duty to adopt provisions of domestic law, Article 23, related to political rights), Article 25, related to judicial protection, and Article 8, related to the judicial guarantees of the Convention.

This case is extremely interesting since the environment is protected through legal guardianship and judicial protection.

[33] ILO Convention No. 169, Article 7.1: "Governments must ensure that, whenever possible, studies are carried out, in cooperation with the peoples concerned, in order to assess the social, spiritual, cultural and environmental impact that planned development activities may have on those towns".

Finally, a very important case is Advisory Opinion 23/17[34], where the State of Colombia asks the Court about the obligations of the State in relation to the environment in the context of the protection and guarantee of the rights to life and personal integrity.

In this case, the Court reasoned that the enjoyment and exercise of many human rights are deeply connected to environmental protection. It acknowledged that the right to a healthy environment is pivotal for the enjoyment of other fundamental rights, defining it as an autonomous human right.

2.5. UN-Resolutions of 10/2021 and 07/2022

In October of 2021, the UNHRC, a subsidiary body of the General Assembly, adopted the resolution 48/13 which recognized for the first time the right to a clean, healthy and sustainable[35] environment as a universal human right.[36] The UNHRC is an intergovernmental body within the United Nations system, mandated to strengthen the promotion and protection of human rights around the world, address situations of human rights violations and make recommendations accordingly. Human Rights Council resolutions are not binding. They are merely political statements of the majority of the members of the council.[37] Nevertheless they can initiate debates among different actors, therefore having an indirect influence in the law.

One year later, in July 2022, the UNGA followed by adopting a resolution which recognized the same right.[38] As the main policy-making organ of the Organization, it provides a particular forum for multilateral discussion. However, just like the UNHCR, the UNGA-Resolution is not legally binding and therefore not justiciable in courts. While being the "culmination of a lengthy diplomatic process",[39] its effect remains, at least at first sight, symbolic since not being part of a universal binding treaty.

[34] Advisory Opinion OC-23/17 of the Inter-American Court of Human Rights dated 11/15/2017.
[35] For the reasons what the different adjectives mean why they were chosen: Marc Limon, 'United Nations Recognition of the Universal Right to a Clean, Healthy and Sustainable Environment: An Eyewitness Account' (2022) 31 Review of European, Comparative & International Environmental Law 155, 167.
[36] 'UNHRC Resolution 48/13, UN Doc A/HRC/RES/48/13 (2021)' <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G21/270/15/PDF/G2127015.pdf?OpenElement>.
[37] 'The Right to a Healthy Environment: 6 Things You Need to Know | UN News' (15 October 2021) <https://news.un.org/en/story/2021/10/1103082> accessed 3 July 2023.
[38] 'UNGA Resolution on the Human Right to A Clean, Healthy and Sustainable Environment, Doc A/RES/ 76/300' <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/442/77/PDF/N2244277.pdf?OpenElement>.
[39] Pau de Vilchez and Annalisa Savaresi, 'The Right to a Healthy Environment and Climate Litigation: A Game Changer?' (2021) 32 Yearbook of International Environmental Law 3, 3.

3. The fundamental content of the right to a healthy environment

Perhaps one of the most contentious topics in the discussion about the acknowledgement of a right to a clean, healthy and sustainable environment is its normative scope.[40]

The advantage of the long striving for UN approval of a right to a clean, healthy and sustainable environment is that much of the content is already developed.[41] Although there is no universally accepted definition, it is commonly understood to include two dimensions.[42] One is sustained by procedural duties which maintain a society's capacity to engage in civic discourse and create good environmental policy.[43] It involves pressing issues for the social discussion and exchange of ideas like information access, meaningful participation, access to justice and freedom of assembly, association and expression.[44] The other aspect entails substantive obligations that sustain a setting supportive of a life of dignity linking directly related to conditions that enable a healthy planet, a balanced climate system as well as healthy and diverse ecosystems.[45]

Starting from the premise that the environment has its own value and, furthermore, it is a prerequisite for human life, we maintain that it must have its own legal protection within the framework of human rights. Although due to this interdependence, part of the internationalist doctrine denies that the right to a clean, healthy and sustainable environment can be considered an autonomous right.[46] We maintain that it has structural differences with other human rights.

When authors point out that the right to a clean, healthy and sustainable environment is interdependent with other human rights, they emphasize that it's intrinsically related to other human rights, failing to see that this particular right has other connections too, especially the connection with natura and its value. This anthropocentric position seeks

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[40] Marcos Orellana, 'Quality Control of the Right to a Healthy Environment' in John H Knox and Ramin Pejan (eds), The Human Right to a Healthy Environment (Cambridge University Press 2018) 175.
[41] John H Knox, David Boyd and Limo, *The Time Is Now: The Case for Universal Recognition of the Right to a Clean, Healthy and Sustainable Environment* (Universal Rights Group) 6 <https://www.universal-rights.org/urg-policy-reports/the-time-is-now-the-case-for-universal-recognition-of-the-right-to-a-safe-clean-healthy-and-sustainable-environment-2/>; Marcos Orellana, 'Quality Control of the Right to a Healthy Environment' in John H Knox and Ramin Pejan (eds), The Human Right to a Healthy Environment (Cambridge University Press 2018) 184.
[42] Marcos Orellana, 'Quality Control of the Right to a Healthy Environment' in John H Knox and Ramin Pejan (eds), The Human Right to a Healthy Environment (Cambridge University Press 2018) 176.
[43] ibid; 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment A/HRC/43/53' 5 ff.; see for an overview: 'What Is the Right to a Healthy Environment? - Information Note' 8 <https://www.undp.org/publications/what-right-healthy-environment>.
[44] Marcos Orellana, 'Quality Control of the Right to a Healthy Environment' in John H Knox and Ramin Pejan (eds), The Human Right to a Healthy Environment (Cambridge University Press 2018) 176; 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment A/HRC/43/53' 5 ff.
[45] ibid.
[46] Elena de Luis García, 'El Medio Ambiente Sano: La Consolidación de Un Derecho' [2018] Revista boliviana de derecho 550, 556.

to protect the healthy environment due to its importance in human life and development.

This vision of the right to a clean, healthy and sustainable environment has a collective and an individual dimension. The internationalist doctrine points out that it is a right with *a two-faced character, because its holders are natural persons considered in their individual and collective dimension as members of a certain social group. We are faced with a right to enjoy a collective legal right not only very personal –uti singulus– but also collective –uti socius–.*[47]

The universal dimension is related to the fact that this right is not only for current generations, but that guaranteeing the right to a clean, healthy and sustainable environment seeks to protect the environment for future generations. The individual dimension is related to the fact that the violation of this right has direct or indirect repercussions on people due to its interdependent relationship with other rights, such as the right to health, personal integrity or life, or access to information.

It is from the previous examples that we see that the right to a clean, healthy and sustainable environment is an autonomous right and structurally different from other human rights, which protects the various elements of the environment and nature as legal interests in themselves, applying especially the precautionary principle.[48]

By postulating that the right to a clean, healthy and sustainable environment is a stand-alone right, it will be possible to prevent significant environmental damage and seek the responsibility of those who commit it by regulating and supervising activities that may cause damage to the environment, and will also help States to understand the extent of their obligations when dealing with the Climate Crisis.

4. Effects / Implications of the recognition

The right to a clean, healthy and sustainable environment has an impact on States in the exercise of their obligations under international law. Even though the resolutions are only soft law, they further strengthen the already existing obligations for the States to address the consequences of Climate Crisis, as they express a sort of common understanding of the extent of protection needed. It also clarifies the position of States which already assert certain rights to nature itself. Parties should establish actions to align with the new content of this right. The right to a healthy, clean and sustainable environment highlights the ongoing development of international environmental law which implies that some rules considered soft law as of today will impose binding

[47] Ángela Figueruelo Burrieza, 'Protección Constitucional Del Medio Ambiente En España y Europa' [2005] Criterio Jurídico 9, 14.
[48] The Rio Declaration states: "where there is a threat of serious and irreversible damage, the lack of absolute scientific certainty should not be used as a reason to postpone the adoption of cost-effective measures to prevent environmental degradation".

obligations on States in the near future. It is to be expected that States will be bound by law, to the extent that it is not already enshrined in national legal systems. The new right will work as a basis for effective reactions towards Climate Change and its problems. Currently the role of the right to a clean, healthy and sustainable life is already significant. Due to the following arguments, its importance will continue to rise permanently, therefore forcing States to protect the environment and its actors adequately.

5. "Normative Cascade" effect[49] and peer pressure

States should do more on a national level to protect the environment. The recognitions of the right to a clean, healthy and sustainable environment will push countries even further to implement more national environmental regulations. The main benefits of the resolutions are the ability to inspire other parties that have been previously filing objections. A resolution can act as a *potent mobilizing tool*[50] by causing other parts of the international system to change their point of view or find a common ground by sending signals or indicating a change of course.[51]

In principle, new rights can be introduced at any legal level and spread vertically or horizontally. In practice, however, it has been uncommon for new legislation to move bottom-up from the national to the international level.[52] This inspirational process on a global, regional and national scale is not to be underestimated as the recognition of the human right to access clean water and sanitation in 2010 demonstrates. They were recognized through resolutions by the UNGA[53] and UNHRC[54]. Shortly after, numerous countries responded by adapting their legal frameworks in order to introduce water and sanitation as a right into their national constitutions and legislations.[55] A lot of States made it their top priority to fulfill the resolutions.[56] The double recognition by the

[49] See for example Marc Limon, 'The Long and Winding Road to United Nations Recognition of the Universal Right to a Clean, Healthy and Sustainable Environment' 48; Bertrand G Ramcharan, 'Normative Human Rights Cascades, North and South' (2016) 37 Third World Quarterly 1234.
[50] César Rodríguez-Garavito, 'A Human Right to a Healthy Environment? - Moral, Legal and Empirical Considerations' in John H Knox and Ramin Pejan (eds), *The Human Right to a Healthy Environment* (Cambridge University Press 2018) 164.
[51] Marc Limon, 'The Long and Winding Road to United Nations Recognition of the Universal Right to a Clean, Healthy and Sustainable Environment' 48; Marc Limon, 'United Nations Recognition of the Universal Right to a Clean, Healthy and Sustainable Environment: An Eyewitness Account' (2022) 31 Review of European, Comparative & International Environmental Law 155, 169 f.
[52] John H Knox, 'Constructing the Human Right to a Healthy Environment' (2020) 16 Annual Review of Law and Social Science 79, 81.
[53] 'UNGA The Human Right to Water and Sanitation A/Res/64/292'.
[54] 'UNHRC Human Rights and Access to Safe Drinking Water and Sanitation A/HRC/RES/15/9'.
[55] ibid; 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment A/HRC/43/53' 5 ff.; see for an overview: 'What Is the Right to a Healthy Environment? - Information Note' 10 <https://www.undp.org/publications/what-right-healthy-environment>.
[56] Interview with David R Boyd, 'Why the UN General Assembly Must Back the Right to a Healthy Environment' (22 July 2022) <https://news.un.org/en/story/2022/07/1123142> accessed 4 August 2023.

UNHRC and the UNGA emphasized the importance of the matter as it underlines the work of its main body: it strengthened the declaration of the right to water. [57]

6. Indirect legal impact

Legally non-binding resolutions can indirectly have legally binding effects by providing a foundation for customary norms.[58] In other words, soft law can act as a cornerstone for implementing environmental norms to the same extent to develop "these" obligations; They can also provide a basis for entirely new sets of obligations.[59] Authors like Jean-Marc Sorel point out this occurs due to *the confusion between obligation and constraint leaves uncertainties about soft law. Soft law may not be binding but may be more constraining than a legal obligation*.[60]

In the field of international environmental law, authors point out the importance of soft law when states are reluctant to commit to environmental norms.[61]

The reasons that explain the importance of soft law in international environmental law are explained by Dupuy in 1991, which include *the existence and development of a network of permanent institutions at international and regional levels*, the *diversification of the components of the world community*, because they *are looked at with great enthusiasm as the means for modifying main rules and principles of the international legal regime*, and t*he rapid evolution of the international economy and the growing phenomenon of global interdependence, combined with progress in science and technology, creating a need for new branches of international law*.[62]

Furthermore, soft law can have interpretational effects of existing treaty obligations or when interpreting national laws.[63] To give an example: the Norwegian Supreme Court ruled in favor of the state which granted ten petroleum production licenses awarded for a total of 40 blocks in the Barents Sea in Norway.[64] The claimants, several Non-Governmental-Organizations, alleged a violation of the *right to a healthy environment* as contained in Art. 112 of the Norwegian Constitution. The Court rejected the claim and

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[57] Marcos Orellana, 'Quality Control of the Right to a Healthy Environment' in John H Knox and Ramin Pejan (eds), The Human Right to a Healthy Environment (Cambridge University Press 2018) 185 f.
[58] John H Knox, 'Constructing the Human Right to a Healthy Environment' (2020) 16 Annual Review of Law and Social Science 79, 88.
[59] John H Knox and Ramin Pejan (eds), *The Human Right to a Healthy Environment* (Cambridge University Press 2018) 5.
[60] Jean-Marc Sorel, 'The Role of Soft Law in Global Governance: Heading Towards Hegemonic Influence?' (2021) 2 RED 45, 45.
[61] AT Guzman and TL Meyer, 'International Soft Law' (2010) 2 Journal of Legal Analysis 171.
[62] Arif Ahmed and Md Jahid Mustofa, 'Role of Soft Law in Environmental Protection: An Overview' (2016) 4 Global Journal of Politics and Law Research 1, 5.
[63] John H Knox, 'Constructing the Human Right to a Healthy Environment' (2020) 16 Annual Review of Law and Social Science 79, 88.
[64] *People v Arctic Oil* [2020] Supreme Court of Norway case no. 20-051052SIV-HRET.

stated that the right to a healthy environment is to be interpreted as a mere principle rather than an explicit right "on which one may base a legal claim".[65] The court underlined this with a reference to international law. Due to a lack of a convention which establishes an individual right for the environment or climate, the interpretation that Art. 112 is modeled with rights that cannot be supported.[66] Therefore the absence of international law had a legal impact on the interpretation of a constitutional norm which influenced the ruling of the Norwegian Court.

7. Two are better than one

Currently, a very large number of constitutions have adopted a constitutional right to a healthy, clean and sustainable environment: more than half of the countries in the world include substantive and procedural environmental rights. [67] In 2019, a total of 150 countries have effectuated environmental provisions.[68] Due to this far-reaching protection, it must be determined what additional value a right to a healthy, clean and sustainable environment recognition would have for countries that have it already implemented in their constitution.

On the one hand, international recognition sets a common standard for environmental protection.[69] The scope of the constitutional rights differentiates broadly. While 88 countries guarantee a constitutionally protected right to a healthy, clean and sustainable environment, 62 countries only enshrine environmental provisions without being explicit rights.[70] In some cases, their content is limited to a state duty for environmental protection while in other situations it contains individual or collective judicially enforceable rights.[71] It would therefore enhance the benefits that the domestic environmental rights have generated and encourage an implementation in national laws.[72]

On the other hand, a codified right in a resolution groups the procedural and substantive dimensions on one spot. By doing so, the normative content of environmental human

[65] ibid 90.
[66] ibid 92.
[67] John H Knox and Ramin Pejan (eds), The Human Right to a Healthy Environment (Cambridge University Press 2018) 42.
[68] 'Environmental Rule of Law - First Global Report' 156.
[69] John H Knox and Ramin Pejan (eds), The Human Right to a Healthy Environment (Cambridge University Press 2018) 57.
[70] 'Environmental Rule of Law - First Global Report' 156, 158; James R May and Erin Daly, *Global Environmental Constitutionalism* (Cambridge University Press 2014) 64 ff.
[71] Marcos Orellana, 'Quality Control of the Right to a Healthy Environment' in John H Knox and Ramin Pejan (eds), The Human Right to a Healthy Environment (Cambridge University Press 2018) 181; Fatma Zohra Ksentini, 'Human Rights and the Environment :: Final Report E/CN.4/Sub.2/1994/9' Annex III.
[72] César Rodríguez-Garavito, 'A Human Right to a Healthy Environment? - Moral, Legal and Empirical Considerations' in John H Knox and Ramin Pejan (eds), The Human Right to a Healthy Environment (Cambridge University Press 2018) 165.

rights is finally unified under a single normative framework rather than being scattered or fragmented among many rights.[73] It aids in implementation and supports progressive development by complementing constitutional laws and jurisprudence on a national level.[74]

8. Third Generation Fundamental Right: Solidarity Rights

After analyzing the scope of the obligation to a healthy, clean and sustainable environment, regarding the nature of the right, "it is considered both a third-generation fundamental right and a guiding principle of social and economic policy, a distinction that will affect its effectiveness and means of protection".

Third generation human rights, instead, "can identify the so called solidarity rights, rights which can not be exerted only by an individuals".[75] Examples of international instruments containing third generation rights are the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment and the 1992 Rio Declaration on Environment and Development. Concrete examples of this generation rights are the right to peace, the right to development, environmental law, the right of sexual minorities, ethnic, religious, linguistic, etc.

And now, understanding that it is a new third generation right, the practical implications that this consecration of a right to a healthy environment would have are divided into two. The substantive elements of the law, and in the elements related to the procedure, that have been already described.

So, by enshrining this new right, not only are people protected in their spheres of private life or health as reviewed in international jurisprudence, but they also include different elements associated with other rights, such as air quality, soil, climate and the ecosystems.

Regarding procedural aspects, the rights of access to information, citizen participation, access to justice and effective judicial remedies are included. The latter is extremely important, and we can see it reflected in agreements between countries in different parts of the world such as the African Charter of People's and Human rights and the Escazú Agreement.

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[73] Marcos Orellana, 'Quality Control of the Right to a Healthy Environment' in John H Knox and Ramin Pejan (eds), The Human Right to a Healthy Environment (Cambridge University Press 2018) 176.
[74] Cf. César Rodríguez-Garavito, 'A Human Right to a Healthy Environment? - Moral, Legal and Empirical Considerations' in John H Knox and Ramin Pejan (eds), The Human Right to a Healthy Environment (Cambridge University Press 2018) 164.
[75] Adrian Vasile Cornescu, 'The Generations of Human Rights', Dny práva (2008) 5.

As the prologue to the Escazu agreement points out, "this treaty aims to fight inequality and discrimination and guarantee the rights of all people to a healthy environment and sustainable development, paying special attention to people and groups in situations of vulnerability and placing equality at the center of sustainable development".

From the above, we can say that without the recognition of this new right, which is associated with access to information and guaranteeing people's environmental rights, its consecration is of the utmost importance. We maintain that the implication that it should have in the states is that it will force them to regulate and enforce their environmental laws, such as controlling pollution, climate change effects and damage to the environment, in order to provide justice to people affected by environmental problems. Value would be added by confirming that the protection of a healthy environment is equally important as the rest of human rights, raising the urgency and priority of preventing serious environmental deterioration.

In addition, it would have a significant impact by promoting the fundamental rights of people, whose rights have been undermined by negligent practices by companies that pollute, and at the same time by the deficient regulation and protection that each government provides to its citizens. From a legal point of view, this recognition would help states improve their measures and resources to grant true protection to individuals who find themselves in situations where their right to live in a healthy environment is violated by irresponsible economic activities and, at the same time, inadequate state decisions. As well, this consecration would grant very important support to environmental defenders, by legitimizing their role in the preservation of environmental and cultural integrity, recognizing their position as guardians of natural and cultural resources on which essential aspects of daily life are based and community identity, as is the case of indigenous peoples in Latin America.

9. The application of the right to a healthy, clean and sustainable environment in the case

In view of the advisory opinion made by the State of Colombia 23/17,[76]

[76] The Court underscored extraterritorial obligations, affirming that a State's human rights responsibilities extend universally. Under Article 1(1) of the American Convention, States must uphold rights and freedoms for all individuals within their jurisdiction, a concept beyond territorial limits.

The opinion outlined that individuals can file claims within or under a State's authority if its actions cause environmental harm, breaching fundamental human rights. Additionally, States are obliged to cooperate in good faith, notifying and consulting when their actions may cause significant transboundary environmental harm.

Moreover, States are mandated to prevent significant environmental damage, defined as potential violations of the right to life and personal integrity. Preventive measures encompass regulation, monitoring, impact studies, contingency planning, and damage mitigation.

the Court should respond to the advisory opinion made by the states of Chile and Colombia in light of the right to a clean, healthy and sustainable environment because this right is established as fundamental and interconnected with other human rights. By considering this perspective, the Court can clearly delineate State obligations regarding environmental protection as an autonomous human right.

Value would be added by confirming that the protection of a healthy environment is equally important as the rest of human rights, raising the urgency and priority of preventing serious environmental and human deterioration, where States should regulate and enforce their environmental laws, in order to provide justice to people affected by environmental problems.

This approach will provide a solid foundation for understanding State responsibilities and would offer clarity and a robust legal framework for addressing transboundary environmental challenges, the importance of preserving a healthy environment for the effective enjoyment of children´s fundamental rights, on State obligations arising from consultation and judicial procedures given the climate emergency, on the conventional obligations of prevention and protection of environmental defenders, as well as women, indigenous peoples and communities, and the shared and differentiated responsibilities obligations facing the climate emergency

States must adhere to the precautionary principle, safeguarding life and personal integrity amidst potential severe environmental damage, even in scientific uncertainty.

Procedurally, access to information on environmental damages, public participation in environmental decision-making, and ensuring access to justice for enforcing environmental obligations are essential.

While initially interpreted concerning life and personal integrity rights, the Court affirmed these obligations' broad applicability to various vulnerable rights in environmental damage scenarios.

THE PRINCIPLE OF COMMON BUT DIFFERENTIATED RESPONSIBILITIES AND COOPERATION PRINCIPLE IN CLIMATE CHANGE AND DISASTER RISK REDUCTION INTERNATIONAL REGIMES

By Anais Irie[77] and Dafni Progulakis[78]

1. Introduction

No single country, regardless of its size, resources, or technological prowess, can mitigate the impacts of climate change on its own. The interconnectedness of our world means that actions taken in one part of the globe can have ramifications in another, making collective action a necessity.

The foundations of such global cooperation are enshrined in the principles of shared responsibility and mutual collaboration. These principles, often highlighted in various international conventions and declarations, underscore the need for nations to work hand in hand. By examining the various international conventions on climate change, such as the Paris Agreement, as well as those on disaster risk reduction, one can discern the emphasis placed on these principles.

The Paris Agreement, adopted in 2015, not only sets out specific goals to limit global temperature rise but also fosters international collaboration by establishing mechanisms for countries to share best practices, provide financial support, and hold one another accountable. The principle of "common but differentiated responsibilities," central to this agreement, acknowledges that while all nations must act, developed countries, owing to their historical contributions to global emissions and their financial capacity, have a greater obligation to lead and support mitigation and adaptation efforts.

Similarly, the Sendai Framework for Disaster Risk Reduction 2015-2030 emphasizes the collaborative spirit in reducing the risk of disasters, many of which are exacerbated by climate change. The framework promotes the sharing of knowledge, technology, and resources to ensure that countries, especially those most vulnerable, can build resilience against impending threats.

In conclusion, the significance of the principles of cooperation and responsibility cannot be overstated when discussing global responses to climate change and disaster risk. It is

[77] Law graduate from the University of Hamburg.
[78] Law graduate from the University of Chile.

by adhering to these principles, as outlined in major international conventions, that the world can hope to forge a united front against the perils of a warming planet

Article 3 of the United Nations Framework Convention anchors the principle of differentiated but common responsibilities.. This principle is particularly relevant in addressing the consequences of climate change because it postulates that all countries recognize a shared responsibility to take action to reduce greenhouse gas emissions and manage the impacts of climate change.[79]

For this major common task, however, it is questionable what concrete responsibility the individual states have in implementing climate protection.

In the UNFCCC the basis for the differentiation of the obligations is the respective development status of the countries. However, none of the countries in the Latin American and Caribbean region correspond to the original classification of developed countries, as in Annex I of the Framework Convention on Climate Change.

Therefore it remains questionable how effectively a principle can be applied here that precisely differentiates the design of the commitments in favor of economically and otherwise disadvantaged nations. Just because countries such as Brazil and Mexico have secured the status of advanced and economically strong nations in the context of Latin America and the Caribbean, it cannot be concluded that these countries also have a global obligation to enter commitments vis-à-vis other countries.

Countries that are part of the Interamerican system on Human Rights are not part of Annex I and II of the Framework Convention on Climate Change for good reasons. It cannot be in line with the core idea of the principle of common but differentiated responsibility to make those poorer countries- that are a shade more prosperous- responsible. It is therefore necessary to analyze whether the traditional division of countries into developed and developing countries is still practicable in this context.

2. The principle of shared but differentiated responsibilities and its problems

The principle of common but differentiated responsibilities is not sufficiently concretized about the different substantive and financial obligations it imposes on individual countries. The principle requires reassessment and correction to do justice to today's global realities and to provide a practicable, effective and equitable response to the challenges of climate change.

This issue is particularly relevant for the Latin American and Caribbean region because it's vulnerability against climate change, both geographically and economically. The

[79] *Dupuy Pierre-Marie; Viñuales*, *Jorge E.,* International Environmental Law (Cambridge University Press 2018) 83.

damages caused by human induced natural disasters will pose major challenges for the region in the future and no country is in a well position to tackle the effects of the crisis.

The phenomena associated with climate emergency will change the environment tremendously. The occurrence of heavy rains, storms, heat waves or droughts will affect the guarantee of human rights. In particular, the rights to food, water, housing, work, health, life and property are affected.[80] States have a duty to ensure the exercise of human rights to people within their sphere of influence. The State must not contribute to people losing access to the previously mentioned rights.[81] However, the duty does not only apply to the territory of a State, because States have a clear basic legal obligation to respect human rights beyond their borders and not to undermine them, thus also avoiding foreseeable human rights violations in other countries.[82] These obligations are set out for example in the UN Charter[83] and the Universal Declaration of Human Rights.[84]

Unequal responsibility also plays a role here. It is precisely those countries that have contributed comparatively little to causing the climate emergency that are most affected by its negative impacts. It should be noted at first that the principle originates in international environmental law and that there is first a need to discuss in general terms how this principle can be applied in the field of human rights. It would be conceivable to argue that it is particularly important to note that in countries with lower incomes, certain population groups are disproportionately affected by the climate emergency, for example due to intersectionality. It is therefore questionable how these countries can be supported in adapting to future conditions in a way that is human rights-based and takes into account the particularly vulnerable groups. It would therefore be conceivable to derive differentiated responsibilities with regard to the protection of human rights from this historical responsibility coupled with the obligation to respect human rights outside the territorial sphere of influence. However, since this historical responsibility and a corresponding factor of prosperity do not exist for any of the countries in Latin America and the Caribbean, this idea fails to be implemented for this region.

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[80] Deutsches Institut für Menschenrechte, Michael Windfuhr Menschenrechte und Klimakrise (2021) 5: https://www.bundestag.de/resource/blob/843062/97d06032b78c4eef61f095ce94ef2843/Stellungnahme-SV-Windfuhr-data.pdf, last acces 4th October.
[81] Deutsches Institut für Menschenrechte, Michael Windfuhr Menschenrechte und Klimakrise (2021) 5: https://www.bundestag.de/resource/blob/843062/97d06032b78c4eef61f095ce94ef2843/Stellungnahme-SV-Windfuhr-data.pdf, last acces 4th October.
[82] Center For Economic And Social Rights, Universal Rights, Differentiated Responsibilities: Safeguarding human rights beyond borders to achieve the Sustainable Development Goals (2015) 2: https://cesr.org/sites/default/files/CESR_TWN_ETOs_briefing.pdf., last acces 4th October.
[83] United Nations, Charter of the United Nations (24 October 1945), UN Doc. 1 UNTS XVI, Article 55.
[84] UN General Assembly, Universal Declaration of Human Rights (10 December 1948), UN Doc. 217 A (III), Article 28.

That's why we argue that addressing the crisis in the region should be based on the principles of responsibility and cooperation. On the one hand, we understand responsibility as addressing the impacts of the climate crisis and disaster risk reduction; on the other hand, we define cooperation by the development of responses to this crisis, considering all countries and their capacities and needs, according to their specificities and characteristics and vulnerabilities.

The Parties should protect the climate system for the benefit of present and future generations of humankind, based on equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.

The principle acknowledges that countries have different historical emissions, levels of economic development, and capacities. Developed countries, which are responsible for the majority of historical emissions, have a greater responsibility to reduce their emissions and to provide and share technologies[85] and financial resources to assist developing countries in their climate change mitigation efforts. In the past, the wealthier countries have played a much greater role in causing climate change than the poorest countries in the world.

Developing countries, on the other hand, have the right to sustainable development and need support to transform their economies and adapt to climate change.[86] This includes, for example, access to technologies and finance to implement climate-friendly measures and reduce their vulnerability to the impacts of climate change. These countries are likely to face the most severe consequences of climate change.[87] In view of this imbalance, the demand for more intensive treaty obligations on the part of the wealthier countries is understandable. The principle of common but differentiated responsibilities in the context of climate change mitigation intends to achieve a fair and balanced burden sharing in order to achieve global climate goals. Finally, this principle should also prevent countries from having to take measures that run counter to their national priorities and individual performance.

The example of Latin America and the Caribbean shows that the principle of common but differentiated responsibility has reached its limits in view of geopolitical and economic changes. The categorization of countries as either industrialized or developing is no longer practical. Emerging economies now also contribute to a not inconsiderable extent to emitted emissions. The classification in the Framework Convention on Climate

[85] *Josephson, Per*, Common But Differentiated Responsibilities In The Climate Change Regime, Historic Evaluation and Future Outlooks Stockholm (2017) 10.
[86] ibid 11.
[87] ibid 1.

Change no longer adequately reflects different responsibilities and capacities. Interrelationships of economic development, emission patterns, and opportunities to adapt to climate change are of increasing complexity and diversity.

In the area of Latin America and the Caribbean, there are fundamental differences of responsibilities in terms of historical greenhouse gas emissions and economic development of nations. At first, this makes the applicability of the principle of shared but differentiated responsibility regarding climate protection seem possible. Developed countries in the region, such as Brazil or Mexico, have a greater responsibility to reduce their emissions because of their larger contributions in the past. At the same time, they should also provide technical and financial assistance to other countries in the region, especially to the less developed countries, to support their adaptation to climate change.

The impacts of climate change vary in different regions of Latin America and the Caribbean. Coastal areas and small island states[88] in the Caribbean are vulnerable to sea level rise, hurricanes, and other climate-related risks.

3. Evaluation of the principle of common but differentiated responsibility in the face of climate disasters

Climate disasters do not affect countries uniformly but depending on their geographical location and climatic influences. The CBDR principle tends to allocate responsibilities based on categories such as developed and developing countries without considering the actual nature of natural disasters and their impacts.

Another difficulty in applying the principle to natural disasters is that natural disasters cannot always be clearly explained in terms of whether they are the result of human behavior or have a natural origin. The distribution of responsibilities in these cases is not sufficiently specified.

Moreover, vulnerability to natural disasters may also change over time. Some developing countries may become more vulnerable to disasters due to changing climate patterns and increasing urbanization. The traditional view of the principle of common but differentiated responsibilities is not flexible enough to capture these dynamic changes.

It is also questionable whether the principle of common but differentiated responsibility can adequately address the fact of sometimes limited adaptive capacities. Limited financial, technological, and institutional capacities to take adequate preparedness and adaptation measures against natural disasters are the reality in many countries. Poorer countries often only have few financial and technological resources to deal with natural

[88] ibid 13.

disasters. Applying the principle may come with additional burdens for these countries, as they often face essential social and economic challenges and face more "acute" problems. For these same countries, the focus then tends to be on tasks such as poverty reduction, health care, and education.

The consistent application of the principle could mean that already limited resources of these affected countries are diverted to climate protection instead of addressing these urgent social issues. It cannot be concluded from this that poorer countries have no responsibility in dealing with the climate crisis and implementing climate-friendly behavior. . Yet they must selectively use the capacities they have to address other concerns, such as achieving sustainable development goals. For the region of Latin America and the Caribbean, a transfer of the principle of shared but differentiated responsibility could lead to a worsening of existing precarious living conditions in the countries. The higher responsibility assumed due to a relatively slightly better socioeconomic starting position and higher emissions participation in the recent past could sabotage development successes and higher living standards in these countries. None of the States is in a position to undertake such a far-reaching responsibility also for other countries without endangering their own development goals in the process.

As an alternative or counterbalance to the gaps of the common but differentiated responsibilities principle, a stronger emphasis on local and regional cooperation as well as targeted support for particularly vulnerable countries is obvious.

4. The principle of cooperation

Delving deeper into the intricacies of Latin America and the Caribbean region, the plethora of challenges and concerns becomes abundantly clear. This vast area, composed of diverse ecosystems ranging from dense rainforests to arid deserts and vast coastal areas, has become a bellwether for the cataclysmic repercussions of climate change. The menaces of climate change aren't just hypothetical or distant for this region. They are palpably present, casting dark shadows over the lives and livelihoods of millions.

The recurring bouts of extreme weather events such as droughts, hurricanes, and floods have painted a disturbing picture. Such events not only disrupt the natural balance but also play havoc with economies, displace communities, and imperil food and water security. For instance, the droughts experienced in certain parts of the region have directly affected agriculture, leading to crop failures and consequential food shortages. On the other hand, unexpected floods have devastated infrastructure, homes, and even claimed lives.

While these phenomena are environmental in origin, they are exacerbated by human activities, particularly the unfettered emission of greenhouse gasses on a global scale. The ramifications of these actions have transcended beyond mere environmental concerns to embody grave socio-economic and political implications.

The region of Latin America and the Caribbean is extremely vulnerable to the impacts of climate change, such as extreme climatic events like droughts and floods. The situation around the world and especially in the region is worrying, and a rapid response is needed. International cooperation seems the way to tackle this crisis. In international law the principles of cooperation and responsibilities are part of many initiatives that have been designed to improve Climate Change Adaptation and Disaster Risk Reduction becoming fundamental elements.

The principle of cooperation has existed in international environmental law since its inception at the Stockholm Conference in 1972. It is referred to in Principles 13, 24, 25 and 26 of the Conference. The Rio Declaration on Environment and Development, Article 3 of the Framework Convention on Climate Change also addresses cooperation.[89]. The Convention reaffirms the principle of sovereignty of States in international cooperation to address climate change and acknowledges that the nature of climate change as a problem is global and calls for the widest cooperation by all countries according to their common but differentiated responsibilities and respective capabilities and their social and economic conditions.

The Paris Agreement also includes cooperation. The Agreement reaffirms the importance of cooperation at all levels while addressing the compromises of the Convention on Climate Change and the Agreement itself. The article 6 of the Agreement recognizes the importance of voluntary cooperation in the implementation of the nationally determined contributions to allow a higher ambition in their mitigation and adaptation actions. Article 7 recognizes the importance of international cooperation on adaptation efforts and the importance of considering the needs of the developing countries like those from Latin America and the Caribbean, especially the ones that are more vulnerable to the effects of climate change like small islands and the obligations of the countries to strengthen international cooperation. Article 8 identifies the different areas of cooperation like the following early warning systems, emergency preparedness and slow-onset event

This very principle is also specifically promoted in the Escazu agreement which describes the objective of the agreement as being, among other things, to promote

[89] Jordi Jaria. ”Los Principios del Derecho ambiental: Concreciones insuficiencias y reconstrucción” (2019) Revista Ius et Praxis (403).

cooperation between the contracting parties to strengthen environmental protection and sustainable development.

An important example of international cooperation is the UN Sustainable Group. They set the United Nations Sustainable Cooperation Framework

The linkage of the CBDR principle with enhanced implementation of cooperative mechanisms in the global community is already suggested by the wording of Article 7 of the Rio Declaration. The CBDR principle here also springs from the idea of international cooperation to preserve, protect, and restore the environment.

The Sustainable Development Goals are another example of international cooperation. These are closely linked to climate change, particularly Goal 13, which aims to tackle urgent action to climate change and its impacts specially to limit global warming to 1.5° C. To achieve the 2030 Agenda, the United Nations is counting on the United Nations Framework for Sustainable and supports national implementation of the Agenda helping the countries with its gasps.

5. Principle of cooperation and Disaster Risk Reduction

The principle of cooperation on climate change is a key principle enshrined in international agreements. It emphasizes the importance of cooperation, solidarity and joint efforts among all states to effectively address issues such as climate change and disaster risk reduction. is fundamental to adapting to climate change and reducing the risk of natural disasters. Is enshrined in several PACs and instruments on DRR, such as the Sendai Framework for Disaster Risk Reduction and the Hyogo Framework for Action.

In fact, one of the Sendai Campaign's seven global goals is international cooperation with special emphasis in developing countries. Target f: Substantially enhance international cooperation to developing countries through adequate and sustainable support to complement their national actions for implementation of the present Framework by 2030.

The Campaign also considers information as an important part of Disaster Risk Reduction. Target (g**):** Substantially increase the availability of and access to multi-hazard early warning systems and disaster risk information and assessments to people by 2030. Remarking the importance of cooperation for information regarding disaster risk reduction.

The Sendai Framework for Disaster Risk Reduction 2015-2030[90] makes an important reference to international cooperation as an important element in supporting developing countries in their efforts to reduce disaster-related risks also introduces four priorities for action regarding DRR[91].

Latin America and the Caribbean have their own platform of disaster risk reduction. The platform established the Regional Action Plan for the Implementation of the Sendai Framework for Disaster Risk Reduction 2015-2013 in the Americas and the Caribbean. The last adjustment was made in March 2023.

The multifaceted challenges of climate change and disaster risk reduction cannot be approached in isolation. The evident vulnerability of regions like Latin America and the Caribbean accentuates the urgency of collaborative international interventions. The principle of cooperation, deeply embedded in pivotal international agreements such as the Sendai Framework, underscores the necessity of shared responsibility, resource allocation, knowledge dissemination, and technology transfer. While every nation bears the onus of fortifying its disaster management capabilities, the variability in resources and vulnerabilities necessitates an overarching cooperative approach. The intrinsic relationship between climate change adaptation and disaster risk reduction mandates an integrated strategy to counter the global crisis, and international cooperation is not only the most pragmatic solution but also a moral and legal imperative. With the looming threats of climate extremities and heightened vulnerabilities, it's time for nations to evolve from mere acknowledgment of cooperative principles to tangible collaborative actions. Only through such synergistic efforts can we hope to bridge the disparities in disaster response capabilities and cultivate a global community resilient to climate adversities.

6. Conclusion

Shared but differentiated responsibilities, grounded in worldwide environment law, may disregard the lively and varied character of climate-caused catastrophes, as well as the shifting vulnerabilities and skills of nations. In this setting, the thought seems

[90] Each State has the primary responsibility to prevent and reduce disaster risk, including through international, regional, subregional, transboundary, and bilateral cooperation. The reduction of disaster risk is a common concern for all States and the extent to which developing countries can effectively enhance and implement national disaster risk reduction policies and measures in the context of their respective circumstances and capabilities can be further enhanced through the provision of sustainable international cooperation;

[91] Understanding disaster risk, strengthening disaster risk and governance to manage disaster risk, investing in disaster risk reduction for resilience and enhancing disaster preparedness for effective response and to Build Back Better in recovery, rehabilitation and reconstruction and acknowledge that the way to concrete its priorities is with forms of global, national, regional, and local cooperation.

insufficient in offering a sensible, powerful, and reasonable structure for tackling the difficulties presented by climate change, specifically in areas like Latin America and the Caribbean. The countries in this region, whilst historically contributing less to climate alteration, face disproportionately severe influences and have restricted abilities to react successfully.

The CBDR principle, coming from international environmental law, allocates duties according to historical participation in damaging the environment and modern potentials. While this idea acknowledges the varying abilities and periods of progression of nations, its stiff classification into industrialized and established countries regularly fails to deal with the refined responsibilities and capacities inside territories like Latin America and the Caribbean Sea. The intricacy of climate change impacts and the intertwined character of catastrophe risk decrease require a more adaptable and flexible method.

The diverse region of Latin America and the Caribbean faces notable environmental and socioeconomic gaps, presenting a case where limitations of differentiated responsibilities based on capabilities are distinctly impactful. Nations in this area, despite contributing less in prior emissions overall, confront significant and disproportionate consequences of climate change. These effects include intensified frequency and severity of natural disasters such as hurricanes, flooding, and droughts, exacerbating preexisting vulnerabilities and hindering sustainable progression. The CBDR principle, in its conventional interpretation, does not adequately account for these evolving and compounding challenges, nor does it sufficiently mobilize the necessary support and resources for effective action in these countries.

Instead, embracing partnerships offers a more pertinent and helpful framework for addressing environmental shifts and risk mitigation in such a diverse and interconnected situation. Collaboration emphasizes communal effort, mutual accountability, and backing each other, going past the constraints of the different but shared duties structure. This method nurtures worldwide teamwork, sharing resources, and trading knowledge, which are crucial for constructing resilience and flexibility to change in vulnerable regions. It also aligns with the principles outlined in international agreements like the Paris Agreement and the Sendai Framework, which advocate for inclusive and integrated approaches to handling climate change and disaster risks.

Further, the idea of collaboration understands the intertwined nature of worldwide ecological difficulties and the necessity for a united reaction. It promotes the advancement of local and universal systems that can adjust to the particular necessities and situations of various nations and groups. This is particularly critical for Latin America and the Caribbean, where the diverse scope of socio-financial conditions and natural settings requires customized arrangements.

It seems that moving towards a cooperative framework in international climate policy and disaster risk management is a necessity. It ensures all countries, regardless of their historical emissions or economic status, are actively engaged in a collective effort to mitigate climate change impacts and enhance resilience. This is especially relevant for the most vulnerable countries, like those in this region. That approach is essential for creating a sustainable and equitable future where the burdens and benefits of climate action are shared more evenly across nations.

To sum up, while the CBDR principle has played a critical role in shaping international environmental policy, it faces limitations in the face of contemporary climate challenges. In the face of escalating climate risks, a shift towards a more cooperation-centric approach is necessary to effectively address the unique and pressing needs of regions like Latin America and the Caribbean. This transformation aligns with the principles of equity and justice and enhances the collective capacity of the global community to respond to the climate crisis in a more integrated, effective, and sustainable manner.

B. JUST TRANSITION

By Paul Enders[92] and Joaquín Abarzúa[93]

1. Introduction

The fight against the Climate Crisis had also incorporated an equity perspective, looking to support regions and groups of people with higher vulnerability to climatic hazards. It is in this context that "just transition" makes its way as an idea. While changing towards a carbon neutral system there must be mechanisms to make this change affordable for all of society. Therefore, the just transition is demanding sustainable development including an economical, social and environmental dimension, considering that a socioeconomic transformation without these considerations runs the risk of increase even more the social inequality, exclusion, and the loss of market competitiveness[94].

This concept has become relevant in domestic and international politics, principally in climate policy as nations define and adopted their Nationally Determined Contributions (NDC) under Paris Agreement and considering the implicated changes in domestic legislation. Even more, the concept reached international jurisdiction, as the recent request of Chile and Colombia for a Consultative Opinion by the Interamerican Court of Human Rights show. The letter B, number 1 of its document asked about "States obligations to preserve the right to life and survival in the face of climate emergency in light of science and human rights, taking into account (…) just transition policies for groups and individuals particularly vulnerable to global warming (…)"[95]. Answering this question necessarily also implies answering the question about the status of the concept of just transition in international law.

Even if there are not many expressed mentions of just transition in international law and also the exact extent of its "justice" aspect is not yet finalized, we can observe elements of just transition being already part of the international framework. Considering that people claim energetic justice, social justice, climate justicie, etc and recognizing States

[92] Law graduate from the University of Hamburg.
[93] Law graduate from the University of Chile.
[94] UNPD 'How Just Transition Can Help Deliver the Paris Agreement' [2022] <https://www.undp.org/publications/how-just-transition-can-help-deliver-paris-agreement> accessed 31 August 2023.
[95] Inter-American Court of Human Rights 'Request for Consultative Opinion on Climate Emergency and Human Rights from the Republic of Colombia and Chile to the Interamerican Court of Human Rights', 2023, <https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_es.pdf> accessed 31 June 2023 (hereinafter: Inter American Court).

actions the "trend" is leading us to the *de facto* existence of an emerging just transition obligation in international law.

2. Evolution of the concept of just transition

The concept of just transition originally stemmed from the US labor movement in the 1970s, and then evolved putting forward the idea that during a transition from high-carbon to low-carbon industry the process has to be "just" for the affected workers, which should be equipped with the means to prevail also in a new working environment.[96] Whilst the concept was originally designed to join labor and environmental justice groups in the fight for clean and healthy working places the term was taken up by the environmental movement and filled with various meanings.[97]

In the 1990s the labor organizations forged alliances with environmental justice groups, which lead to the International Labor Organization (ILO) and the International Trade Union Confederations (ITUC) getting involved in climate negotiations and increasing their influence within the UNFCCC, thereby paving the way for the inclusion of just transition in international instruments. At first, the Cancún Agreement at COP 16 mentioned it in the shared vision that facing climate change requires "building a low-carbon society (...) while ensuring a just transition of the workforce that creates decent work and quality jobs."[98], leading us to the situation in 2015.

In 2015 the term was used not only by the ILO which published "Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All"[99] but also within the preamble to the Paris Agreement where it was stated that States should act "Taking into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities."[100]

After the term got established in this way at an international level, it was used more frequently internationally in the context of the Glasgow Pact, the agreement of the

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[96] Ann Eisenberg 'Just Transitions' (2019) 92 Southern California Law Review 273, 280-281; Annabel Pinker 'A Report prepared for the Just Transition Commission' The James Hutton Institute & SEFARI Gateway [2020] <https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2020/08/transitions-comparative-perspective2/documents/transitions-comparative-perspective/transitions-comparative-perspective/govscot%3Adocument/transitions-comparative-perspective.pdf> accessed 31 August 2023 (hereinafter: Annabel Pinker 'A Report prepared for the Just Transition Commission'); Xinxin Wang, Kevin Lo 'Just Transition: A Concept Review' (2021) 82 Energy Research & Social Science <https://www.sciencedirect.com/science/article/abs/pii/S2214629621003832> accessed 31 August 2023.

[97] Raquel Aguila Kiwi, Sofia Rivera Riveros, Ezio Costa Cordella, Victoria Belemmi Beaza 'The Road to Socio-Ecological Transition in Chile'[2021] *FIMA NGO Environmental Law Review* (hereinafter: Raquel Aguila Kiwi) 253.

[98] UNFCCC, Cancún agreement

[99] ILO '*Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All*' [2015].

[100] Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UNTS 3156 preamble; FCCC/CP/2015/10/Add.2

Parties after COP26 in 2021 where is stated in Art. 32 that Parties should provide strategies "towards just transition to net zero emissions"[101], thereby clearly demanding just transition as the means to act in response to the Climate Crisis.

The COP26 of the UNFCCC in Glasgow, 2021, also served as a meeting for the Parties to the Paris Agreement and in this function especially recalled the tenth preambular paragraph of the said convention which is the one mentioned above, implementing just transition.[102] That the concept of just transition has emerged to be a permanent tool in the UNFCCC's toolkit fighting the Climate Crisis can be seen from the Report of the COP27, held in 2022, where it is noted that different angles of the just transition concept are investigated.[103]

The term just transition was also used by the Parties to the Kyoto Protocol who met during the COP27 and stated not only that Parties should enter a planning stage to prepare for just transition[104], but also that the Parties should share their experiences with just transition[105] to embrace fast progress. Also, the Parties to the Paris Agreement held their meeting during COP27 and in their Report the term just transition is used in connection to the Green Climate Fund which is operating globally to "combat climate change and adapting to its impacts while taking into account the needs of developing countries"[106], showing awareness of the concept of just transition being applicable internationally.[107]

3. The link between Just Transition and international environmental law

The problem which is the basis for the application or development of a just transition principle in environmental law lies within the Climate Crisis and how our society can deal with the resulting challenges. It is important to note that just transition as a concept aims to address the interdependence of environment and economy.[108] In an economic system which is aimed at constant growth the impact of and on the environment has played a marginal role for far too long given that firstly the physical boundaries of our

[101] Glasgow Pact FCCC/PA/CMA/2021/10/Add.1 [2022] art 32.
[102] Glasgow Pact FCCC/PA/CMA/2021/10/Add.1 [2022] Decision 3.
[103] UNFCCC 'Report of the Conference of the Parties on its twenty-seventh session, held in Sharm el-Sheikh from 6 to 20 November' FCCC/CP/2022/10/Add.3 [2023].
[104] UNFCCC 'Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its seventeenth session, held in Sharm el-Sheikh from 6 to 20 November' FCCC/KP/CMP/2022/9/Ad.1 [2022] art 16 Decision 7/CMP.17.
[105] UNFCCC 'Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its seventeenth session, held in Sharm el-Sheikh from 6 to 20 November' FCCC/KP/CMP/2022/9/Ad.1 [2022] art 23 Decision 7/CMP.17.
[106] UNFCCC 'Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its fourth session, held in Sharm eö-Sheikh from 6 to 20 November' FCCC/PA/CMA/2022/10/Add.3 [2022] art 3 Decision 16/CMA.4.
[107] UNFCCC 'Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its fourth session' (102) art 7 Decision 16/CMA.4. FCCC/PA/CMA/2022/10/Add.3.
[108] Raquel Aguila Kiwi 248.

planet are limited but also that secondly development is not capable of balancing the effects of exploitation and pollution.[109]

That our resources provided by the planet could at some point be insufficient to provide for all humans - even if we would consider a perfect sharing of food and water different from our today's situation - was addressed already by scholars in the late 18th century in relation to population growth as for example by Robert Thomas Maltus.[110] This problem is not limited to the population but extends to our current economic system - which is dependent on permanent growth - and in this capacity was addressed in 1972 by the so-called Meadows Report.[111] It establishes the idea of "Global Equilibrium"[112] for which a "transition" is needed which leads to the redemption of growth as the engine of progress.[113]

Since then, the debate established the term sustainable development, used within the Report of the World Commission on Environment and Development [WCED] "Our Common Future" as a way "to ensure that it [the development] meets the needs of the present without compromising the ability of future generations to meet their own needs."[114] as well as at the Earth Summit in Rio de Janeiro 1992,[115] later at the World Summit on Sustainable Development, held in Johannesburg in 2002[116]. The term sustainable development as it is used today was specified by the UN Sustainable Development Summit which was held in New York 2015 and where the 2030 Agenda for Sustainable Development was adopted.[117] The agenda contains 17 Sustainable Development Goals (SDGs) which embark to connect our existing (economical) society to an ideal of an economy which can thrive without cutting the branch it grows on.[118]

To create such a transformation away from a carbon intensive economy towards a low carbon economy which works inclusively and is handled in a way future generations

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[109] Raquel Aguila Kiwi 250.
[110] Robert Thomas Maltus 'An Essay on the Principle of Population' 1798, 58, <https://archive.org/details/MalthusThomasAnEssayOnThePrincipalOfPopulationEN1798140p./page/n57/mode/1up> accessed 31 August 2023.
[111] Donella H. Meadows, Dennis L. Meadows, Jørgen Randers, William W. Behrens III. *The Limits of Growth: a Report for the Club of Rome's Project on the Predicament of Mankind* Potomac Associates Book 1972 (hereinafter: *The Limits of Growth*) 150-153.
[112] Global balance.
[113] *The Limits of Growth* 180-181.
[114] UNGA 'Development and international economic co-operation: environment' (4 August 1987) A/42/427 p 24.
[115] Earth Summit; UNGA '85th plenary meeting' (22. December 1989) A/44/228; UNCED 'Rio Declaration' (June 1992) A/CONF.151/26/Rev.1 (Vol.1) [1993] Annex 1 Res 1 Principles 1, 4, 5, 7, 8, 9, 12, 20, 21, 22, 24, 27, 3-8.
[116] 'World Summit on Sustainable Development' <https://sustainabledevelopment.un.org/milesstones/wssd> accessed 31 August 2023.
[117] UNGA 'Transforming our world: the 2030 Agenda for Sustainable Development' (25 September 2015) A/70/1.
[118] UNGA 'Transforming our world: the 2030 Agenda for Sustainable Development' (25 September 2015) A/70/1. 14.

can "feast at the same table as their ancestors" in a legal way the concept of just transition bares the opportunities to be a successful tool.

The struggle with the early effects of the Climate Crisis have shown that the legal obligations and implications lack the simplicity - or rather the continuance - legal systems were able to provide in the past. Not only question arises about who will be able to claim rights, but also about the timeframe relevant for the enjoyment of those rights since there is an intertemporal aspect being attached to environmental rights[119]?

4. The Content of just transition

The exact content of the term of just transition however is still dependent on the party using it.[120] It can be said however that there are mainly two elements to just transition of which the first one is an element of protection whilst the second is an element of change. Both elements are to be seen in the light of sustainable development.

The **element of change** affects the economy as well as the social system and their relation to the environment - to a scale which is dependent on the Party[121]. The **element of protection** however always works parallel to the change element and embraces participation and rights of workers.[122] Both - protection and change - are the means to achieve the goals of just transition.

The intensity with which the concept of just transition aims to change the baselines of our society vary depending on the scholar or Party using the term[123], but the concept as proposed above can work on different scales and to different intensities. From small communities up to the relations between countries.

The **element of change** (as a part of just transition) has to be evaluated on a case by case basis but it can be said in general that it is described as mitigation and adaptation measures taken by States in response to the Climate Crisis.

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[119] ILO '*Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All*' [2015] art 2; BVerfG, Beschluss vom 24.03.2021 - 1 BvR 2656/18; 1 BvR 78/20; 1 BvR 96/20; 1 BvR 288/20 NJW 2021, 1723.

[120] Raquel Aguila Kiwi 253; African Development Bank Group 'Just Transition Initiative to address Climate Change in the African Contect - Definitions by the Climate Investment Fund and the African Development Bank Group' <https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/climate-investment-funds-cif/just-transition-initiative> accessed: 31 August 2023; Youba Sokona et al.'Just Transition - a climate, energy and development vision for Africa' (2023) <https://justtransitionafrica.org/wp-content/uploads/2023/05/Just-Transition-Africa-report-ENG_single-pages.pdf> accessed: 31 August 2023 p. 60.

[121] Annabel Pinker 'A Report prepared for the Just Transition Commission' 8.

[122] ILO '*Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All*' [2015] art 1.

[123] Annabel Pinker 'A Report prepared for the Just Transition Commission' 3.

The **element of protection** (as a part of just transition) relies on the strengthening of rights, while at the same time embracing social dialogue[124], pursuing an anthropocentric approach similar to the one pursued by sustainable development[125]. It demands a certain form of justice and it is this justice which opens the concept to legal debate.

While change is a typical power of policy - which itself might result from an legal obligation or not - and as such is open to a wide discretion of policy makers, justice is generally something that can be claimed (by an individual) in front of a court.[126] As an integrated framework for justice, just transition makes its way to incorporate the principles of climate justice, environmental justice and energetic justice into human rights protection.[127]

Any possible claim based on just transition is aimed at a mandatory assessment of goals and rights which have to be balanced against each other. The necessary measures needed for protection of climate and environment cannot outweigh equally important human rights, social rights at the workplace as well as the rights of future generations.[128] The resulting obligation for States - if there is one - would be to consider the impact mitigation and adaptation measures have on intergenerational human rights as well as workers and workplace rights and to counter any arising or existing inequalities.[129] By this approach the overall acceptance of the mitigation and adaptation measures forming the changing element would increase.

In general, the concept of just transition has been raised on mostly inner State matters as labor rights, governance strategies, a socio-technical transition and public perception.[130] Those fall under the *domaine réservé*[131] as established by the International Court of Justice [ICJ] for an area typically managed by States on their own.[132] But - as for all of the Climate Crisis - an effective effort has to be made internationally and some of the problems

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[124] ILO '*Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All*' [2015] art 13 (a).
[125] Alexander Proelß 'Vom Verursacher- zum Nachhaltigkeitsprinzip: Wo steht das Umweltvölkergewohnheitsrecht?' in *Dokumentation zur 1. Digitalen Sondertagung der Gesellschaft für Umweltrecht e.V. 2022 - Umweltvölkerrecht: heute und morgen* Erich Schmidt Verlag Berlin 2023 (hereinfter: Alexander Proelß) 46.
[126] Christoph Degenhart *Staatsrecht I Staatsorganisationsrecht* 34 ed C. F. Müller 2018 14.
[127] Claudia Fuentes; Sara Larraín Et.al. 'Transición justa: desafíos para el proceso de descarbonización, la justicia energética y climática en Chile' (*Chile Sustentable*, 2020) 11.
[128] Alexander Proelß 46.
[129] Alexander Proelß 49.
[130] Xinxin Wang, Kevin Lo 'Just Transition: A Concept Review' (2021) 82 Energy Research & Social Science <https://www.sciencedirect.com/science/article/abs/pii/S2214629621003832> accessed 31 August 2023.
[131] Reserved domaine.
[132] *Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v United States)* (Merits) [1986] ICJ Rep 4 [205].

addressed by just transition also exist on an international level and have given rise to a debate about international just transition.[133]

5. Just Transition in current International Law

As we mentioned previously, it's the International Trade Union Confederation (ITUC) and the International Labour Organization (ILO) the ones that played the fundamental role of promoting the incorporation of the just transition in international climate change negotiations, specifically in the UNFCCC negotiations[134].

However, the explicit mention of the concept is not included till the Paris Agreement in 2015. The resolution established in its preamble that the Parties should comply their agreements "Taking into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities"[135].

In the same year, and taking into account the content of the Paris Agreement, the International Labour Organization published the Guidelines for a just transition towards environmentally sustainable economies and societies for all, a non-binding international instrument meant to provide "practical orientation to Governments and social partners with some specific options on how to formulate, implement and monitor the policy framework, in accordance with national circumstances and priorities."[136]

Another milestone in the incorporation of Just Transition in international law took place at the COP24 in Katowice, in which more than 30 nations signed the Silesia Declaration on Solidarity and Just Transition, an international instrument that reaffirms that Parties to the Paris Agreement "are taking into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs, in accordance with nationally defined development priorities (…)"[137]. This declaration also mentions the ILOs Guidelines for Just Transition as appropriate for Parties to fulfill their commitments under the Paris Agreement.[138]

To address the legal status of Just Transition under the Paris Agreement, we should take into account the principal rules of treaty interpretation, established under the VCLT. Its

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[133] Glasgow Pact, 2022, FCCC/PA/CMA/2021/10/Add.1 arts 36, 85.
[134] Adrien Thomas, 'Framing the just transition: How international trade unions engage with UN climate negotiations, Global Environmental Change', (2021) 70 Global Environmental Change <https://www.sciencedirect.com/science/article/pii/S0959378021001266> accessed 31 August 2023.
[135] Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UNTS 3156 preamble.
[136] ILO '*Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All*' [2015] Background and scope.
[137] 24th Conference of the Parties (COP24) to the United Nations Framework Convention on Climate Change (UNFCCC), 'Silesia Declaration on Solidarity and Just Transition', 3 December 2018, Katowice, Poland.
[138] ibid.

article 31.2 mentions that a treaty should be interpreted in good faith and in accordance with its ordinary meaning, which means we should firstly address its natural and obvious sense[139]. However, the Paris Agreement only mentions to "take into account" just transition imperatives, which is not enough to give an absolute response to its legal implications.

Moreover, the location in the Paris Agreement preamble is problematic when it comes to assessing its legal status, because the VCLT only mentions preambles as a part of the text of a treaty that will also be considered as part of the context in interpretation[140]. Therefore, the role of preambles had to be developed by scholars, creating different positions about the function of them.

When it comes to the role of preambles, there is a position that says that just transition does not create any direct legal obligations because of its location in the preamble[141], as preambles are generally not considered as a source to create mandatory legal obligations. Moreover, they are used to incorporate substantive matters that couldn't acquire the support of all parties to include it in the operative part of the agreement.[142]

Despite that, we can argue that the location in a treaty does not affect the legal implications of it. About this, the technical committee of the San Francisco Conference remarked that the preamble and rest of the provisions of a treaty "*being indivisible as in any other legal instrument, are equally valid and operative (…) each of them is construed to be understood and applied in function of the others.*"[143] This also makes sense if we consider that the Paris Agreement established that just transition imperatives should be taken into account to apply every one of the provisions of the agreement.

However, although doctrine also mentions that only precise expressions contained in preambles can lead to legal consequences[144], an important matter considering the lack of a common definition of just transition, we can recur to another means of interpretation. The same VCLT in its article 32 specifies that there are complementary means of interpretation, like preparatory work and different international instruments related to the treaty,[145] to figure out Parties intentions towards just transition under the treaty. In this way, the Silesia Declaration, adopted in the COP24, should be considered as an ulterior agreement related to the Paris Agreement that can be used to provide a more

[139] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (hereinafter: Vienna Convention).
[140] Vienna Convention art 31 (2).
[141] Vilja Johansson 'Just Transition as an Evolving Concept in International Climate Law' in: Journal of Environmental Law 35/2023 229-249.
[142] Jan Klabbers,'Treaties and Their Preambles' in Michael Bowman and Dino Kritsiotis Ed. *Conceptual and Contextual Perspectives on the Modern Law of Treaties* 2018.
[143] UNIO, Commission I, Committe I, Vol. VI, (34) I, 1945 447.
[144] José Corriente, 'Valoración Jurídica de los Preámbulos de los Tratados Internacionales', 1973.
[145] Vienna Convention art 32.

detailed definition of just transition, helping with the interpretation of the own concept and its implications under this treaty.

Continuing addressing its legal status, we must refer again to the recent Consultative Opinion that Chile and Colombia requested from the Inter-american Court of Human Rights. The fact that those States asked about the scope of their obligations considering just transition should be mentioned, not only as precedent of the legal-binding understanding of just transition, but also to understand its connection to human rights content, taking into account that the same Consultative Opinion asks about the scope of States obligations "to respond to the climate emergency within the framework of international human rights law."[146]

Furthermore, the Resolution No. 3/2021 Climate Emergency: Scope of Inter-American Human Rights Obligations, published by the Inter American Commission of Human Rights, mentions in its paragraph No. 50 that States had the responsibility to ensure that social protection programs are adapted to face not only the effects of climate change, but also the effects of climate-related policies[147]. In this way, just transition can be understood not only as an abstract public policy concept but also as a human right.[148]

6. Just transition in customary international law

After having established that just transition could be treaty law it could be customary law under Art. 38 paragraph 1 *litera* b ICJ statute.[149] Therefore there must be "evidence of a general practice accepted as law"[150] which comprises both an objective element - *diuturnitas*[151] - as well as a subjective element - *opinio iuris sive necessitatis*[152]. To prove the existence of the customary nature of a principle of international law is connected to three main difficulties: 1. The amount of empirical effort and the uncertainty over the amount and quality which is necessary,[153] 2. The ongoing practice that - due to the huge effort needed - States as well as scholars of public international law wait for norms to be determined by the ICJ to be of customary character,[154] 3. Even if there would be the

[146] Interamerican Court of Human Rights.
[147] Interamerican Commission of Human Rights, *Climate Emergency: Scope of Inter-American Human Rights Obligations* (No. 2/2021, 2021) [50].
[148] Ruwan Subasinghe; Jeff Vogt, 'A just transition guaranteed by international law is within reach – here's how', (Equal Times, 25 May 2023) <https://www.equaltimes.org/a-just-transition-guaranteed-by?lang=es> accessed: 31 August 2023.
[149] Statute of the International Court of Justice (adopted 26 June 1945, entered into force 18 April 1946) UNTS 993 (hereinafter: ICJ-Statute) art 38.
[150] ICJ-Statute art 38 (1) (b).
[151] A repeating behavior of states.
[152] The belief that the behavior in question bases on a legal obligation.
[153] Tullio Treves 'Customary International Law' in Max Planck Encyclopedia of Public International Law 2006 <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1393?rskey=Qr3kGn&result=1&prd=MPIL> accesssed 31 August 2023).
[154] Alexander Proelß 28.

determination of a customary character States could withdraw from that obligation by becoming a persistent objector[155].

Firstly the practice which might or might not be of customary international law must be general according to the ILC which defines a general practice as "sufficiently widespread and representative , as well as consistent."[156] The practice further has to follow from "a sense of legal right or obligation"[157] meaning that the international subjects are convinced that a practice is a rule that can also be applied to other States. which is not to be mistaken with "mere usage or habit".[158]

Secondly the exact amount and the exact nature of the empirical information needed to determine *opinio iuris* are difficult to grasp as the ILC states that "evidence (...) include, but are not limited to: public statements made on behalf of States; official publications; government legal opinions; diplomatic correspondence; decisions of national courts; treaty provisions; and conduct in connection with resolutions adopted by an international organization or at an intergovernmental conference."[159] Not only is the list provided by the ILC not final but also in their commentary on Conclusion 10 the ILC elaborates that customary *opinio iuris* "be made known through various manifestations of State behavior, which should be carefully assessed to determine whether, in any given case, they actually reflect a State's views on the current state of customary international law"[160] which makes it hard to connect a State's practice to their *opinio iuris.*

Several States already concern themselves with just transition in their national law, referring to a set of rules matching elements of just transition. Since the International Law Commission also said in its Conclusion 11 paragraph 1 *littera* c that a norm stated under an international treaty can reflect a norm of international customary law when it has been given rise to a generally accepted practice as law (*opinio iuris*), thus generating a new norm of customary international law[161]. Therefore, we should analyze the most common practice born by the Paris Agreement, which is the implementation of NDC through domestic laws.

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[155] Olufemi Elias 'Persistant Objector' in Max Planck Encyclopedia of Public International Law 2006 <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1455?rskey=Qr3kGn&result=4&prd=MPIL> accessed 31 August 2023) [3].
[156] ILC 'Draft Conclusions on Identification of Customary International Law' in: Report of the International Law Commission UNGA A/73/10 [2018], Conclusion 8.
[157] ILC 'Draft Conclusions on Identification of Customary International Law' in: Report of the International Law Commission UNGA A/73/10 [2018], Conclusion 9; Edmundo Vargas Carreño, 'Derecho Internacional Público', 2º Ed, 2017, El Jurista.
[158] ILC 'Draft Conclusions on Identification of Customary International Law' in: Report of the International Law Commission UNGA A/73/10 [2018], Conclusion 9.
[159] ILC 'Draft Conclusions on Identification of Customary International Law' in: Report of the International Law Commission UNGA A/73/10 [2018], Conclusion 10.
[160] ibid.
[161] ibid Conclusion 11.

Colombia passed its legislation regarding just transition in 2021 and did not stop at the just transition of the workforce but added that the transition should be directed "towards sustainable production mechanisms, and that (... it should) provide quality of life and social inclusion.".[162]

This analysis shows two things: first, that the implementation of just transition on a national level can be found in countries. This however does not change the fact that many states - as to the knowledge of the authors - do not have integrated just transition in their national laws. But it nevertheless seems that the Paris Agreement has set a baseline which is exceeded not only by the Parties to the COP but also by States individually.

7. Conclusions

In this article we firstly analyzed the history of just transition and thereby made clear the shift of content from an instrument for the insurance of workers' rights to a principle and tool of environmental law both nationally as well as on an international level. We further defined just transition as consisting of a change alongside a protection element. The prior - on the one hand - is of an descriptive nature and subject to the actions of States and policy makers it bears no obligation on its own. Whether action by States is taken e.g. mitigation and adaptation measures, might depend on other sources of law but not on just transition. The latter - on the other hand - bears an obligation for States which lies firstly in a necessary consideration prior to any action to ensure the enjoyment of equality-, employment- and human- rights as well as secondly an inclusive element of participation.

Thereby just transition ensures that human rights are protected even in the great urge to act in response to climate change. It also takes into account the rights and needs of vulnerable groups (i.e. Indigenous People, Children, Environmental Protectors and Women). At the same time the ensurance of human rights in combination with social rights and participatory rights can enhance the reception of mitigation and adaptation measures. A widely accepted just transition policy would ease the tensions in society by taking away pressure from the outside by addressing the Climate Crisis while at the same time facing rights problems on the inside. As a result just transition would create a more human rights friendly environment throughout the member States.

For this reason, just transition should become an evolving standard in the legal systems of all Parties whenever they take measures to combat the Climate Crisis. As under the Paris Agreement the concept of just transition is already established and started to

[162] Lei 2169 Por medio de la cual se impulsa el desarrollo bajo en carbono del país mediante el establecimiento de metas y medidas mínimas en materia de carbono neutralidad y resiliencia climática y se dictan otras disposiciones 2021 art 3 (2) (Colombia).

evolve, a positive and progressive definition of the concept by this Court would encourage member States to implement the concept to the benefits shown above.

We would welcome a just transition principle as an instrument to enhance the implementation of mitigation and adaptation measures.

II. SECTION II: DAMAGES FROM CLIMATE CHANGE AND ACCESS TO JUSTICE

This following Section – Section II – will focus on the rights from citizens within the climate crisis. The Section is centering around the damages coming from the climate crisis and the access of affected communities to justice. Access to justice can be seen as an important part of helping vulnerable groups and affected citizens to better handle the climate crisis and receive remedies.

C. DAMAGES DERIVED OF THE CLIMATE CRISIS, AND THE ACCESS TO JUSTICE

By Lea-Magdalena Gerken[163] and Ignacia Godoy Tello[164]

1. Introduction

This section analyses the right to access to justice and the right to remedy and redress regarding citizens environmental damage caused by climate emergency. The section considers international and regional law with a special focus on the South American and Caribbean region.

The section concludes that States have the obligation to (1) provide access to justice for claims alleging violations of their human rights, including the right to access to information and to public participation, resulting from environmental damage caused by the action or omission of public authorities in relation to environmental protection obligations in climate emergencies; (2) provide judicial resources that are simple, speedy and affordable for citizens within the State's territory, including individual and collective persons in vulnerable situations; (3) provide redress mechanisms that include measures by public authorities to restore and continue the safe existence of claimants in their respective countries and monetary relief, as well as redress mechanisms that take into account moral reparation, in particular satisfaction; (4) provide redress mechanisms that include victim-beyond measures like the adoption and implementation of enforceable legislation to protect human rights from future impacts from climate emergency; (5) provide remedies that ensure procedural fairness between the claimant and the respondent public authority in proceedings relating to environmental damage caused by climate emergencies.

These obligations arise from article 25, article 8(1), article 1(1) and article 63 of the American Convention. The obligations are supported by the principle 10 Rio Declaration, article 8 of the Escazú Agreement, article 23 of the World Charter for Nature and paragraph 8.18 of Agenda 21. The fifth obligation is also based on the human rights principle *in dubio pro libertate et dignitate*.

This section addresses the question of Chile and Colombia about the nature and scope of a State Party's obligation in relation to the establishment of effective remedies to

[163] Law graduate from the University of Hamburg.
[164] Law graduate from the University of Chile.

provide adequate and timely protection and redress for the impact on human rights of the climate emergency (Question D.1.).

The climate and ecological crisis is a *common concern of humanity*.[165] It does affect future generations and humanity itself, but also individuals' human rights in the present. The need for people to invoke their human rights in the context of climate change and climate emergencies has been acknowledged and developed by the international forum since the last decade.[166]

Serious concerns have been expressed, saying that *environmental degradation, climate change, and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life*.[167] The environmental damage is felt most by the part of the population already in vulnerable situations.[168] Today, an increasing number of people are facing real-life consequences posed by climate emergencies. Although there are efforts to curb greenhouse gas emissions and adapt, those are not enough to tackle the speed and scale of the climate and ecological crisis. In some instances, the occurrence of damage due to climate emergencies will be inevitable.[169]

Future and present affected individuals depend, inter alia, on measures taken by States to preserve the environment and protect it against climate emergencies.[170]

2. History and origin of procedural instruments in the environmental context

It is possible to track the obligation to access justice in environmental matters in the International Environmental Law, dating back to the 1992 UN Conference on Environment and Development held in Rio de Janeiro. The result of that effort is the Rio Declaration on Environment and Development, which includes a set of principles that have not been considered before and sets the environmental agenda for the international community.

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[165] 1992 United Nations Framework Convention on Climate Change (UNFCCC), adopted 9 May 1992, entered into force 21 March 1994, 7 UNTS XXVII Preamble.
[166] United Nations General Assembly (UNGA), *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, by John H. Knox (2013) UN Doc A/HRC/25/53.
[167] Human Rights Committee, *General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life* (30 October 2018) UN Doc CCPR/C/GC/36.
[168] UNGA, *Human rights and the environment* (12 April 2011), UN Doc. A/HRC/RES/16/11.
[169] Preety Bhandari, Nate Warzawski, Deidre Cogan and Rhys Gerholdt, 'What Is "Loss and Damage" from Climate Change? 8 Key Questions, Answered' (*World Resource Institute*, 14 December 2022) <https://www.wri.org/insights/loss-damage-climate-change#:~:text=1> accessed 11 August 2023.
[170] Alan E Boyle and Catherine Redgwell, *International Law and the Environment* (4th edn, Oxford University Press 2021) 303.

Access to justice obliges States to provide their citizens with a range of mechanisms to protect their rights and resolve disputes of a legal nature through the possibility of simple, speedy, and accessible legal remedies with an adequate system of enforcement.[171].

Principle 10 of the Rio Declaration states that *[...] effective access to judicial and administrative procedures, including redress and remedies, shall be provided*, in conjunction with the statement that people should have access to information and the right to participate in decision-making.

The Paris Agreement, on the other hand, only refers to the general term *climate justice* and emphasises its importance solely in the preamble. The notion of climate justice goes hand in hand with the idea that it *refers to the equitable sharing of burdens and benefits in the use and enjoyment of natural resources of common interest*[172], and therefore refers to an aspect that is, at least in the narrower sense, not access to justice.

Looking now at the regional covenants, the ACHR does not explicitly recognise the right of access to justice, but it has been developed through the jurisprudence and doctrine of the IACHR. The most relevant articles for the construction of jurisprudence are Article 1, which states that *the States Parties to the present Convention undertake to respect the rights and freedoms recognised in this Convention and to ensure to all persons subject to their jurisdiction the free and full exercise of these rights and freedoms [...]*, Article 8, which contains a series of obligations related to the right to a fair trial, and Article 25, which refers to the right to judicial protection. Thus, in cases such as *Trabajadores Cesados del Congreso (Aguado Alfaro et al.) v. Peru*, Articles 1, 2, 8, 25, and 26 of the Convention have been used to argue the notion of effective *access to justice* in the merits analysis[173].

The Escazú Agreement, for its part, expressly establishes *obligation of States to guarantee, in accordance with national legislation, a broad right of defense of the environment* and with regard to the possibility of ordering precautionary and provisional measures *to prevent, stop, mitigate, or remedy, inter alia, damage to the environment*.

In the European region, as in the AC, the ECHR has had to construct this concept in relation to the environmental sphere through case law, as it is not explicitly enshrined. Following this idea, the ECHR has stated that the violation of Article 6, which refers to the right to a fair trial, i.e., a fair trial without undue delay, includes the right to access to justice. For example, in the case of *Zander v. Sweden*, the right to access justice is linked

[171] Sergio Muñoz Gajardo, 'El acceso a la justicia ambiental' (2014) 6 Revista de Justicia Ambiental 25.
[172] Dominique Hervé., Lorena Cordero and Pilar Moraga, 'Cápsula Climática: ¿Qué es la justicia ambiental?' (2020) Center for Climate and Resilience Research <https://www.cr2.cl/capsula-climatica-que-es-la-justicia-ambiental/> accessed 30 August 2023.
[173] IACtHR, *Trabajadores Cesados del Congreso (Aguado Alfaro et al) v Peru*, Decision, 30 November 2007, Serie C No. 158, 174.

to the protection of the environment since the case concerned a cyanide treatment plant in the water of the plaintiffs' locality, who did not have the opportunity to complain.[174] It is important to note that, as *Peter* says, *under the ECHR, procedural environmental rights may not be invoked where there is no immediate threat to a right protected by the Convention. Application of the right of access to justice is limited to incidents where national courts deem this right violated at the national level*[175].

Finally, Art. 9 of the AC establishes access to justice, i.e., anyone with sufficient interest in the case or who claims that his or her right has been infringed may appeal to the courts or to another independent and neutral body established by law.

3. Redress and remedy

The Rio Declaration was the first international instrument that contained an explicit reference to the concept of redress and remedy in Article 10, which states that *effective access to judicial and administrative procedures, including redress and remedies, shall be provided*.

Against that, the Paris Agreement does not explicitly mention the idea of redress and remedy at the global level but refers in Article 9 to *the provision of enhanced financial resources should aim to achieve a balance between adaptation and mitigation*, which can be understood as a form of redress, but not in the sense of compensation to citizens but rather in the sense of provision of financial resources to developing countries in general.

In Latin America and the Caribbean, Article 25 of the ACHR includes the right to an adequate remedy. In its letter c), it refers to the *guarantee by the competent authorities of the execution of any decision in which the right to reparation has been recognised*. This idea implies that once one has access to justice and a decision has been made, that decision should not be illusory but should be effective and lead to adequate reparation. In this way, Article 63 of the ACHR provides guidelines for the measures that the IACHR Court will take in the case of violation of the rights and freedoms recognised in the Convention, such as *payment of fair compensation* or *measures to suppress, mitigate, adapt, and compensate for the damage caused*.[176] In conclusion, States must provide full reparation to victims in accordance with the guidelines of the American Convention and provide effective mechanisms for reparation, such as the determination of criminal, civil, or administrative liability.

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[174] *Zander v Sweden* App no 1482/88 (ECtHR, 25 November 1993).
[175] Birgit Peters, 'Unpacking the Diversity of Procedural Environmental Rights: The European Convention on Human Rights and the Aarhus Convention' (2017) 30 Journal of Environmental Law 9.
[176] Aída Kemelmajer de Carlucci, 'Las Medidas de Reparación En Las Sentencias En Las Que La Argentina Resultó Condenada Por La Corte Interamericana de Derechos Humanos' (2013) 10 Derecho Internacional de los Derechos Humanos: Principios, fuentes, interpretación y obligaciones 68, 77.

For its part, the Escazú Agreement provides for the possibility of going to court and obtaining redress if any of the agreed obligations, such as access to justice, the right to information, or the right to participation, are violated or breached.

In the European region, the right to an effective remedy is explicitly included in Article 13 of the ECHR. According to the ECtHR, Article 13 is intended to provide a means by which individuals can obtain redress for violations of their Convention rights at the national level before having to resort to international complaints before the Court.[177].

Finally, Article 9.4 of the Aarhus Convention explicitly includes the *requirement of adequate and effective remedies, including injunctive relief*. However, it does not specify whether this is a procedural remedy or some other type of remedy[178], leaving it, in a broad sense, to be understood as such.

4. Environmental protection: human rights issues and procedural rights

Cases in the international human rights law show that human rights can be used to compel governments to regulate environmental risks, enforce environmental laws, or disclose environmental information.[179] Thus, human rights law serves to prevent damage resulting from climate emergencies or to protect individuals from them.

Procedural rights, including access to environmental information, access to justice, and participation in decision-making, play an important role in the implementation of this approach. They help to ensure that individuals and communities can advocate for and achieve satisfactory levels of environmental protection.[180] Procedural rights are characterized as an instrument of *environmental democracy*[181]. They are an argument for improving the quality and transparency of governmental decisions and promoting more effective enforcement and protection.[182]

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[177] ECtHR, *Guide on Article 13 of the European Convention on Human Rights - Right to an Effective Remedy* (31 December 2020) <https://www.refworld.org/docid/6048e2962.html> accessed 9 June 2023.
[178] Yaffa Epstein, 'Access to Justice: Remedies – Article 9.4 of the Aarhus Convention and the Requirement for Adequate and Effective Remedies, Including Injunctive Relief' [2011] SSRN Electronic Journal 7 <https://uu.diva-portal.org/smash/get/diva2:874844/
FULLTEXT01.pdf> accessed 30 August 2023.
[179] See e.g., *Guerra v Italy* (1998) 26 EHRR 357; *Lopéz Ostra v Spain* (1994) 20 EHRR 277; *Öneryildiz v Turkey* (2005) 41 EHRR 20; *Taskin v Turkey* (2006) 42 EHRR 50; Elena Cima, 'The right to a healthy environment: reconceptualizing human rights in the face of climate change' [2022] RECIEL 31, 38.
[180] John H. Knox, 'Human Rights' in Rajamani Lavanya and Jacqueline Peel (eds), *The Oxford Handbook of International Environmental Law* (2nd ed, Oxford University Press 2021).
[181] UNEP, *Putting Rio Principle 10 into Action: An Implementation Guide for the UNEP Bali Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters*, 2015, < https://wedocs.unep.org/20.500.11822/11201> accessed 18 August 2023 2, 11, 12.
[182] ECLAC, *Access to information, participation and justice in environmental matters in Latin America and the Caribbean: Towards achievement of the 2030 Agenda for Sustainable Development* (February 2018) UN Doc LC/TS.2017/83, 13-14.

A crucial role is played by the right to an effective remedy, which guarantees redress for injury.[183] This right directly addresses the issue of compensation for damage resulting from climate emergencies, taking into account that the effects of climate emergencies vary between past, present and future impacts, causing economic and non-economic damage and thus affecting citizens in multiple ways, although the link may not always be obvious.

In addition, the right to access justice functions as a procedural guarantee within a legal system necessary to enforce other rights.[184] It is a central precondition required for any further complaint of human rights violations filed before a judicial or similar body. From a claimant's perspective, these claims are crucial for the actual redress for injury but also for generating and sustaining consciousness about the impacts of climate emergencies on human rights.[185]

The right to access justice and to effective remedies also play a role in the rising trend of *climate litigation*. The term commonly refers to lawsuits raising questions of law or fact regarding climate science, mitigation, or adaptation.[186]

Human rights institutions contribute an important part to *climate litigation*.[187] An increasing number of human rights-based claims have been brought before international human rights bodies concerning climate change and its impacts.[188] Therefore, it seems important to provide a brief observation on this phenomenon to develop a broad understanding of how judicial mechanisms are approached globally in order to allege human rights impacts resulting from climate emergency.

Until today, the invocation of procedural rights, including the right to access justice and the right to remedy, has been less prominent in international climate litigation than that of substantive obligations. The fact is underscored by the recent study by *Luporini* and *Savaresi*, who analysed complaints concerning climate change before international human rights bodies.[189] Only six out of eighteen covered claimants invoked procedural obligations associated with the right to a fair trial or to an effective remedy alongside

[183] Margaretha Wewerinke-Singh, 'Remedies for Human Rights Violations Caused by Climate Change' (2019) 9 Climate Law 224, 227.
[184] Dinah Shelton, *Remedies in International Human Rights Law* (2nd ed, Oxford University Press 2006) 96.
[185] Shalini Iyengar, 'Human rights and climate wrongs: Mapping the landscape of rights-based climate litigation' (2023) 32(2) RECIEL 299, 304.
[186] David Markell and J B Ruhl, 'An Empirical Assessment of Climate Change in the Courts: A New Jurisprudence or Business as Usual?' (2012) 64 Florida Law Review 15.
[187] See the summary of Benoit Mayer and Harro van Asselt, 'The rise of international climate litigation' (2023) 32(2) RECIEL 177-180.
[188] Ricardo Luporini and Annalisa Savaresi, 'International human rights bodies and climate litigation: Don't look up?' (2023) 32(2) RECIEL 267, 267.
[189] *Luporini and Savaresi*.

other rights.[190] Claimants typically use the right to access justice and an effective remedy when lawsuits before national courts fail or when they have exhausted domestic remedies.[191] Another study reveals the same result, although this one was conducted in 2021 and was not limited to lawsuits before international human rights bodies but analysed the 112 human rights-based cases that were listed in the world's largest climate litigation database.[192] The results of both studies suggest that it is likely that complaints based on procedural rights will become more widespread in the future as climate litigation expands.[193]

The importance of judicial mechanisms may be further explained by the objectives of claimants in international right-based lawsuits. *Iyengar* analysed those recently by interviewing actors in the climate litigation movement that brought these claims before court.[194] The study shows that the primary focus of claimants was on policy change. Interviewees recognised the importance of rights that *could be pressed into service when the statutes were silent, or absent, or inadequate*.[195] The research bolsters the assumption that international climate litigation before human rights bodies is approached as a *forum of protest*, which allows advocates to attract public attention and keep issues on the political agenda.[196] Along with this, recent research underscores the speculation that international climate litigation could be used as an approach to put pressure on governments to draft and implement plans for climate mitigation and adaptation.[197]

Interestingly, the recent trend contradicts scholarly speculation. Scholars point towards an important role that human rights-based climate cases could play in seeking redress, especially compensation, for actual damage resulting from climate emergencies.[198] Their

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[190] *Verein KlimaSeniorinnen Schweiz v Switzerland* App no 53600/20 (ECtHR, 26 November 2020); *Müllner v Austria* (ECtHR, not communicated); *Greenpeace Nordic* et al *v Norway* App no 34068/21 (ECtHR, 15 June 2021); *Uricchio v Italy* et al App no 14165/21 (ECtHR, not communicated); *Plan B Earth and others v the United Kingdom* (ECtHR, not communicated); *De Conto v Italy* et al App No 14620/21(ECtHR, not communicated).
[191] Annalisa Savaresi and Joana Setzer, 'Rights-based litigation in the climate emergency: mapping the landscape and new knowledge frontiers' (2022) 13(1) Journal of Human Rights and the Environment 7.
[192] The analysis is based on lawsuits that rely whole or in part on human rights and were brought before international or domestic judicial, quasi-judicial and other investigatory bodies. See *Savaresi and Setzer* (n 27) 28.
[193] *Savaresi and Setzer* 28.
[194] *Iyengar*.
[195] For the interview and the cited remarks see *Iyengar*.
[196] *Iyengar* 309; See also *Mayer and van Asselt* 183.
[197] David B Hunter, 'The Implications of Climate Change Litigation: Litigation for International Environmental Law-Making' in William C.G. Burns and Hari M. Osofsky (eds) *Adjudicating Climate Change: State, National and International Approaches* (Cambridge University Press 2009) 357; *Iyengar*; See also *Mayer and van Asselt* 183, *Luporini and Savaresi* 270.
[198] See e.g., Alan E Boyle and Michael R Anderson, *Human Rights Approaches to Environmental Protection* (1st ed, Oxford University Press 1998); Richard S J Tol and Roda Verheyen, 'State Responsibility and Compensation for Climate Changes Damages – A Legal and Economic Assessment' (2004) 32 Energy Policy 1109; Margaretha Wewerinke-Singh, *State Responsibility, Climate Change and Human Rights under International Law* (1st ed, Hart Publishing 2019).

speculation is built around the approach of using human rights as a *gap filler to provide remedies where other areas of law do not*.[199]

Scholars argue that the existing liability schemes like the polluter pays principle and joint and several liability regimes scarcely seem fit to address harm associated with the impacts of climate emergency.[200] Voices agree that the UNFCCC itself and the Paris Agreement have not delivered any concrete means to address that issue yet.[201] As indicated in the section on *redress and remedy*, funds under international law like the Green Climate Fund and the fund for addressing loss and damage established at the COP27 can rather not be understood in the sense of compensation for citizens.

By that, it is important to understand that the right to access justice and to effective remedy, as well as judicial mechanisms in general, play an important role in environmental protection, may it be through the notion of *environmental democracy* or by litigation addressing climate emergencies.

5. Climate emergency impacts and climate action

5.1. Damage resulting from climate change

Given the importance of judicial mechanisms for individuals and communities to protect their human rights from the adverse impacts of climate emergencies, it is useful to take a closer look at these adverse impacts and the actions that take these impacts into account.

The adverse impacts can result from extreme weather events like cyclones, droughts, and heatwaves and from slow-onset changes like sea-level rise, desertification, glacial retreat, land degradation, ocean acidification, and salinization.[202] Apart from the concept of *loss and damage*, which became important within the climate change regime over the last few years, climate emergency impacts result in economic and non-economic harm.

Economic harms are those affecting resources, goods, and services that are commonly traded in markets and thus material damages, like, for example, flood and drought-

[199] Annalisa Savaresi and Jaques Hartmann, 'Using Human Rights Law to Address the Impacts of Climate Change: Early Reflections on the Carbon Majors Inquiry' in Jolene Lin and Douglas A Kysar (eds) *Climate Change Litigation in the Asia Pacific* (Cambridge University 2022) 74.
[200] *Savaresi and Hartmann* 77-79.
[201] See e.g., M J Mace and Roda Verheyen, 'Loss, Damage and Responsibility after COP21: All Options Open for the Paris Agreement' (2016) 25(2) RECIEL 197; Audrey R Chapman and A Karim Ahmed, 'Climate Justice, Human Rights, and the Cases for Reparations' (2021) 23(2) Health and Human Rights Journal; *Mayer and van Asselt*.
[202] See UNFCCC, *Decision 2/CP.19 Report of the Conference of the Parties on its nineteenth session, held in Warsaw from 11 to 23 November 2013, Part Two: Action taken by the Conference of the Parties at its nineteenth session* (31 January 2014) UN Doc FCCC/CP/2013/10/Add.1.

related acute food insecurity and a decrease in agriculture productivity.[203] Non-economic harms may be the toll of losing family members, the disappearance of cultures and ways of living, or the trauma of being forced to migrate from homes, and therefore refer to mental injuries.[204]

5.2. Measures under the climate change regime

Climate emergency actions can work in three ways. First, they can be designed to reduce the causes of climate emergencies, which scientists generally agree are greenhouse gas emissions. Actions can also be pre-emptive, to protect communities from the consequences of climate emergencies. A crucial third pillar are actions to help people after they have experienced damage associated with a climate emergency.

Under the climate change regime these actions are based on the concept of *loss and damage* and regulate inter-State relations rather than between a State and its citizens. The actions are called, *mitigation, adaptation and addressing*.[205] In the climate change regime, the interrelationship between the actions is well understood. Scholars note that *the level of mitigation determines the necessary level of adaptation, and the more mitigation and adaptation, the less residual damage*.[206] Also, there will be less need to support citizens, if there is more mitigation and adaptation action.[207] This shows that all these actions together are crucial to prevent and protect people and their human rights from the impacts of climate emergencies. The second part of the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) recognises the importance of pre-emptive protective actions and support actions for citizens after they have experienced the impacts of climate emergencies, as the report underlines that the occurrence of impacts will increase in the following years.[208]

Although these considerations relate to the inter-State level, some lessons can be drawn from them with regard to the relationship between States and the human rights of their citizens, in particular their right to access justice and to an effective remedy.

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[203] *Bhandari/ Warzawski/ Cogan/ Gerholdt*; IPCC, 'Summary for Policymakers' in IPCC, *Climate Change 2022 - Impacts, Adaption, and Vulnerability: Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (H-O Pörtner et al (eds) 2022 <https://www.ipcc.ch/report/ar6/wg2/chapter/ summary-for-policymakers/> accessed 30 August 2023 11.
[204] *Bhandari/ Warzawski/ Cogan/ Gerholdt*.
[205] *Boyle and Redgwell* 399; Preety Bhandari, Nate Warzawski and Chikondi Thangata, 'The Current State of Play on Financing Loss and Damage' (*World Resources Institute*, 28 December 2022) < https://www.wri.org/technical-perspectives/current-state-play-financing-loss-and-damage> accessed 17 August 2023.
[206] Sven Harmeling, 'Climate Change Impacts: Human Rights in Climate Adaptation and Loss and Damage' in Sébastien Duyck, Sébastien Jodoin and Alyssa Johl (eds), *Routledge Handbook of Human Rights and Climate Governance* (1st ed, Routledge 2018) 104.
[207] *Bhandari, Warzawski and Thangata*).
[208] IPCC, 2022 26.

6. The right to access to justice and the right to remedy: a human rights approach for reparation

By the right to access justice and to adequate remedies, courts but also human rights institutions can be approached to enable actual victims of human rights violations to obtain redress for the injury they have suffered.[209] Scholars[210], experts[211], and intergovernmental bodies[212] point, although in various variations, to the connection between the redress for injury they have suffered from damage resulting from climate emergency and the right to remedy. States have the obligation to provide effective remedies in their domestic law, which poses the question of which the appropriate remedies are and how these can provide an adequate protection of persons' human rights, and thus the environment.

Remedies for climate emergencies are distinct between those that address future harm and those that address past harm. This leads to a distinction between measures that are designed to prevent the occurrence of damage and measures that are intended to correct damage that has already occurred.[213] In the context of climate emergencies, that could be mitigation and adaptation action as well as supporting people after they have experienced harm. According to the court in *Urgenda*, remedies might also address a violation that has not yet occurred or that is ongoing at the time in question.[214] However, the term *redress* specifically appears to refer to violations that have already occurred.[215]

The international forum recognises two forms of redress: namely cessation of unlawful conduct and guarantees of non-repetition, as well as reparation.[216] With regard to material damages, redress in the form of *full reparation* is arguably the most adequate remedy. The ILC draft articles on States responsibility for internationally wrongful acts[217]

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[209] Sumudu Atapattu, *Human Rights Approaches to Climate Change: Challenges and Opportunities* (1st ed, Taylor & Francis Group 2015) 267-268.
[210] See e.g., *Wewerinke-Singh*; Annalisa Savaresi and Juan Auz, 'Climate Litigation and Human Rights: Pushing the Boundaries' (2019) 9(3) Climate Law 244; *Savaresi and Hartmann*.
[211] See e.g., UNGA, UN Doc A/HRC/25/53.
[212] See e.g., 'Global update at the 42nd session of the Human Rights Council: Opening statement by the UN High Commissioner for Human Rights Michelle Bachelet' (*Office of the High Commissioner for Human Rights*, 9 September 2019) < https://www.ohchr.org/en/statements/2019/09/global-update-42nd-session-humanrights-council> accessed 25 August 2023.
[213] *Atapattu* 279 citing Maxine Burkett, 'Climate Reparations' (2009) 10 Melbourne Journal of International Law < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1539726> accessed 26 August 2023; Supreme Court of the Netherlands, *Urgenda v State of the Netherlands*, Judgement, 20 December 2019, ECLI:NL:HR:2019:2006 (Urgenda) para 5.5.2.
[214] *Urgenda* para 5.5.2.
[215] *Urgenda* para 5.5.2; See also Human Rights Committee, *General Comment No. 31 [80] The Nature of the General Obligation Imposed on States Parties to the Convenat* (29 March 2004) UN Doc CCPR/C/21/Rev.1/Add.13, para 8.
[216] See Human Rights Committee, UN Doc CCPR/C/21/Rev.1/Add.13.
[217] The ILC is an independent expert body that develops and codifies international law. The Draft Articles on Responsibility of States for internationally wrongful acts captured attention by e.g., the International Court of Justice (IJC) and the European Court of Human Rights and domestic constitutional courts and became a point of reference. See Ineta Ziemele, 'The Function of the International Law Commission: Identifying Existing Law or Proposing New

recognised the obligation of States to provide *full reparation* for injury caused by the wrongful act.[218] Forms of reparation include restitution[219], compensation[220], and satisfaction[221]. Restitution, which requires the re-establishment of prior status, may often be materially impossible in the context of a climate emergency. This is especially the case if climate impacts cause loss of life.[222] Therefore, monetary compensation may be the default form of reparation, especially for material damages like destroyed or damaged homes as a result of an extreme weather event.[223] However, compensation may be inappropriate for physical and mental injuries, which are often difficult to quantify.

Mental injuries caused by climate emergencies play a crucial role for the right to remedy in this context. Here, the duty of cessation of unlawful conduct and guarantees of non-repetition are an important form of redress. According to the Human Rights Committee, the duty of cessation is *an essential element of the human right to remedy' and entails the 'need for measures, beyond a victim-specific remedy, to be taken to avoid recurrence of the type of violation*.[224] This could *entail an obligation to adopt and implement enforceable legislation to protect human rights from future climate impacts*.

In this context, the perspective of complainants whose communities were affected by the damages of climate emergencies is interesting. They stressed the psychological damage and argued that *there is a healing process, and part of that process is saying that we need to see how we can prevent this from happening again*.[225] The statement underscores that cessation and guarantees of non-repetition serve as appropriate remedies to address mental injuries. This argument bolsters the assessment of earlier studies that pointed to the importance of non-repetition alongside monetary relief.[226]

The redress for violations caused by mental injuries is also part of States' obligation to provide *full reparation* for injuries caused by the wrongful act. It is important to point out that the former duty of *guarantee of non-repetition* is sometimes argued as a form of satisfaction.[227]

Law?' in United Nations (ed) *Seventy Years of the International Law Commission: Drawing a Balance for the Future* (1st ed, Brill 2020) 265.
[218] International Law Commission (ILC), *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries* (2001) UN Doc A/CN.4/SER.A/2001/Add.1 (Part 2) para 31(1).
[219] ILC, UN Doc A/CN.4/SER.A/2001/Add.1 para. 35.
[220] ILC, UN Doc A/CN.4/SER.A/2001/Add.1 para 36.
[221] ILC, UN Doc A/CN.4/SER.A/2001/Add.1 para 37.
[222] *Wewerinke-Singh* 239.
[223] *Wewerinke-Singh* 240; See also *Iyengar* 307.
[224] Human Rights Committee, UN Doc CCPR/C/21/Rev.1/Add.13.
[225] *Iyengar* 307.
[226] Pablo de Greiff, 'Repairing the Past: Compensation for Victims of Human Rights Violations' in Pablo de Greiff (ed) *The Handbook of Reparations* (2006) 11.
[227] See e.g., *Burkett*.

Scholars stressed that *compensation can rarely restore the enjoyment of rights that were violated*.[228] Therefore, a part of redressing mental injury is the need for moral repair[229], especially for traumas caused by the loss of cultural heritage and traditions[230]. Often, those will not be restored by compensation alone. In this context, satisfaction might serve as an appropriate form of reparation. States are under an obligation to provide measures of satisfaction insofar as injuries *cannot be made good by restitution or compensation*.[231] Satisfaction may involve *an acknowledgement of the breach, an expression of regret, a formal apology, or other appropriate modalities*.[232] The apology might be a crucial act for addressing States' responsibility for climate change and its impacts, as the respondent State would potentially, if sincere, fully accept its share of responsibility for causing climate change.[233]

To achieve *full reparation*, it is appropriate to combine several of the reparation measures.[234] This phenomenon can be observed in recent climate cases, especially when cases ask for remedies that are specific to the applicant personally or to a group.[235] In *Daniel Billy et al. v. Australia*, for example, the UN Human Rights Committee asked Australia, the respondent state, to compensate the claimants, who were indigenous islanders, for the harm suffered, engage in meaningful consultation with their communities to assess their needs, and take measures to continue to secure the communities' safe existence on their respective islands.[236] Altogether, the redress for human rights violations caused by climate emergency should combine reparation for past damage with the guarantee of non-repetition, or, in other words, prevention, of future damage as a part of redress.

In judicial proceedings at the domestic level, the right to remedy also serves as an argument to facilitate claims for human rights violations resulting from damage caused by climate emergencies.[237] First, the right to remedy can be relevant in cases of transboundary harm, as often the case due to the global nature of climate change. Scholars argue that the right to remedy can be a guideline for the interpretation of

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[228] *Wewerinke-Singh* 241.
[229] *Wewerinke-Singh* 242.
[230] Chie Sakakibara, 'Our home is Drowning: Inupiat Storytelling and Climate Change in Point Hope, Alaska' (2008) 456 Geographical Review 471.
[231] ILC, UN Doc A/CN.4/SER.A/2001/Add.1 para 37(1).
[232] ILC, UN Doc A/CN.4/SER.A/2001/Add.1 para 37(2).
[233] *Burkett* (n 49); See also Martha Minow, *Between Vegenace and Forgiveness: Facing History after Genocide and Mass Violence* (1st ed, Beacon Press 1998).
[234] *Burkett*; See also *Atapattu*.
[235] See e.g., United Nations, *Rights of the Indigenous Peoples in Addressing Climate-Forced Displacement*, Complaint, 16 January 2020, USA 16/2020; United Nations Human Rights Committee, *Daniel Billy et al v Australia (Torres Strait Islanders Petition),* Decision from the Human Rights Committee, 23 September 2022, UN Doc CCPR/C/135/D/3624/2019 (Billy).
[236] *Billy*.
[237] See Margaretha Wewerinke-Singh, 'Litigating Human Rights Violations Related to the Adverse Effects of Climate Change in the Pacific Islands' in Jolene Lin and Douglas A Kysar (eds), *Climate Change Litigation in the Asia Pacific* (Cambridge University Press 2022) 102, 105.

domestic constitutions that do not expressly provide remedies for human rights violations caused by action elsewhere.[238]

The Inter-American Court of Human Rights underscored in its Advisory Opinion on the Environment and Human Rights in 2017, although in a different context, that the right to access justice includes a transnational component. The court clarified that *States must ensure access to justice, without discrimination, to persons affected by environmental damage originating in their territory, even when such persons live or are outside this territory.*[239] As the court supported its acknowledgement with the principle of prevention, the obligation seems to only apply within the scope of the principle. The court itself pointed out that the obligation to ensure access to justice regarding transboundary harm refers to *projects and activities that have been or will be executed in a State's territory.*[240] As observed in the section on *damages resulting from climate emergencies* and *climate measures*, damages resulting from climate emergencies are not based on specific projects or activities, but are affected by several factors. Therefore, this obligation, as observed by the court, cannot be as relevant in the context of this section.

Secondly, the right to remedy and the right to access justice include aspects of procedural fairness between the complainant and the respondent State. Commentators consider this issue in the context of the burden of proof of causality, which is required to hold victimhood and thus obtain redress,[241] but also with regard to standing to sue in cases concerning climate emergencies and the lack of judicial expertise in environmental matters[242]. Their considerations overall seem to focus on more relaxed standards in domestic judicial proceedings for victims of a human rights violation to prove their victimhood and obtain redress.

By applying the human rights principle *in dubio pro libertate et dignitate* applied in the context of the right to remedy, judicial or quasi-judicial bodies could *find in favor of a victim where the link between a State's conduct and the harm to the victim cannot be established with certainty*. Here, procedural fairness is achieved by shifting the burden of proof from the complainant to the respondent State's defendants.[243]

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[238] *Wewerinke-Singh*, 'Climate Change in the Pacific Islands' 102.
[239] Inter-American Court of Human Rights, *A Request for an Advisory Opinion from the Inter-American Court of Human Rights Concerning the Interpretation of Article 1(1), 4(1) and 5(1) of the American Convention on Human Rights*, Advisory Opinion, 15 November 2017, OC-23/17, para 240.
[240] Inter-American Court of Human Rights, *A Request for an Advisory Opinion from the Inter-American Court of Human Rights Concerning the Interpretation of Article 1(1), 4(1) and 5(1) of the American Convention on Human Rights*, Advisory Opinion, 15 November 2017, OC-23/17, para 238.
[241] *Wewerinke-Singh* 237.
[242] United Nations General Assembly (UNGA), *Right to a healthy environment: good practices: Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment* (2019) UN Doc A/HRC/43/53.
[243] *Wewerinke-Singh* 237.

Aspects of procedural fairness can also be observed in the *good practices* elaborated by the UN Special Rapporteur on human rights and the environment. The *good practices* are not binding, but they show that environmental progress and the protection of human rights from environmental harm are possible and function to encourage other States.[244] *Good practices* relating to access to justice and effective remedies include specialized environmental courts and relaxed requirements for standing for claimants in environmental cases, as well as *the power to file lawsuits or intervene in cases against the government on behalf of communities whose rights are being violated* or the establishment of the right to remedy in any case *a person is harmed by environmental degradation*.[245] Also, actors in Latin America participating in the expert seminar convened by the Special Rapporteur considered *a constitutional reform, including the creation of institutions such as the public prosecution service and the office of the ombudsman with mandates to protect collective interests*.[246] Still, one must keep in mind that these considerations are underscored in the context of the human right to a healthy environment. Nevertheless, the former statements show that remedies should include aspects of procedural fairness in order to be *adequate*.

Third, the right to remedy can function as an interpretative guideline for the interpretation of other human rights and the national obligations of States that flow from them in the context of climate emergencies, as underscored by *Urgenda*.[247]

7. Challenges in accessing justice

The success of human rights remedies depends upon whether a victim can substantiate that a duty-bearer has failed to comply with human rights obligations.[248] Looking at the requirement of a causal linkage, one particular issue that undermines the right remedy is the question of who is responsible for ensuring this right. If inhabitants of a climate-vulnerable country bring a claim against their domestic country, this is arguably contrary to any notion of justice in the context of the climate and ecological crisis, keeping in mind that these states often contribute a negligible amount to the accumulated greenhouse gasses.[249]

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[244] United Nations General Assembly (UNGA), *Right to a healthy environment: good practices: Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment* (2019) UN Doc A/HRC/43/53, para 7.
[245] United Nations General Assembly (UNGA), *Right to a healthy environment: good practices: Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment* (2019) UN Doc A/HRC/43/53, para 32.
[246] United Nations General Assembly (UNGA), *Good practices of States at the national and regional level with regard to human rights obligations relating to the environment* (2020) UN Doc A/HRC/43/54, para 36.
[247] *Urgenda* paras 5.5.1-5.5.3.
[248] *Savaresi and Auz*.
[249] *Weweinke-Singh*, 'Climate Change in the Pacific Islands' 100.

On the other hand, claims before domestic courts or international human rights bodies against foreign states that have majorly contributed to anthropogenic climate change face difficult issues like extraterritorial jurisdiction[250] and have so far been without success.[251] The study on rights-based climate litigation for reparation for damages resulting from climate emergency is subject of ongoing scholarly research and faces difficult issues like responsibility, extraterritoriality and retrospectivity.[252] Their studies may be especially interesting for those communities or groups that will be the most climate-vulnerable and that are already experiencing such harm.[253] Nevertheless, States should be aware of the issue of climate justice, when establishing judicial remedies in the context of climate emergencies taking into account that this issue will become more central in the upcoming years.

8. Conclusion

The fact that there is a serious need for individuals to be protected from climate emergencies and to be assisted when they suffer environmental harm as a result of climate emergencies is generally accepted in the international forum.

The right to a remedy and access to justice could facilitate their claims alleging a human rights violation resulting from climate emergency, as they can be used as legal arguments to overcome procedural obstacles in litigation, such as the burden for exhaustion of remedies in domestic disputes.

States need to address the obstacles to access justice. In order to do so, States have an obligation, first and foremost, to provide access to justice for claims alleging violations of human rights, including the right to access to information and public participation, resulting from environmental damage caused by the acts or omissions of public authorities in relation to environmental protection obligations in climate emergencies. To this end, they should provide redress mechanisms that include measures by public authorities to restore and maintain the safe existence of claimants in their respective countries, as well as monetary relief and redress mechanisms that take into account moral reparation, in particular satisfaction. Further, they should include victim-beyond redress mechanisms such as the adoption and implementation of enforceable legislation to protect human rights from the future impacts of climate emergencies.

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[250] *Luporini and Savaresi* 273-274.
[251] See e.g., United Nations Committee on the Rights of the Child, *Sacchi* et al *v Argentina* et al, Decision adopted by the Committee on the Rights of the Child, 8 October 2021, UN Doc CRC/C/88/D/104/2019.
[252] See Michael G. Faure and André Nollkaemper, 'International Liability as an Instrument to Prevent and Compensate for Climate Change' (2007) 46A Stanford Journal of International Law 123; *Wewerinke-Singh*; *Wewerinke-Singh*, 'Climate Change in the Pacific Islands'; *Savaresi and Hartmann*.
[253] Recent studies mainly focus on the Small Pacific Island States. See *Wewerinke-Singh*, 'Climate Change in the Pacific Islands'; *Savaresi and Hartmann*.

It is necessary for States to provide simple, expeditious and affordable access to justice for citizens within their territory, including individual and collective persons in vulnerable situations, and to provide remedies to ensure procedural fairness between the claimant and the respondent public authority in proceedings relating to environmental damage caused by climate emergencies, including mechanisms that balance the burden of proof of victimhood.

III. SECTION III: VULNERABLE GROUPS

This section will focus on vulnerable groups. Three papers will talk about the most vulnerable group, children. A next work will focus on the problem of involuntary migration due to the climate crisis and the focus will the switch to human right defenders in environmental matters.

Children are the most vulnerable group since their young age makes it impossible for them to protect themselves from the harms. That's why it will be talked about how children can be protected within the scope of the climate crisis and how their development can be granted.

The next part will deal with the involuntary human mobility and migration due to climate change. The climate change will make regions of the planet impossible for people to live there anymore. It will focus on the question of whether there is a duty to explore and plan options, so people affected by involuntary human mobility due to climate change have possibilities to move to be able to live without the infringement of any subsequent rights.

Continuing it will be dealt with how the rights of environmental protectors can be ensured. Those groups fighting for the protection of the environment are specially put on the line since they are facing in the front in the real world against harms put towards the environment. Often those groups derive from indigenous communities making them even more vulnerable.

D. THE RIGHT TO PLAY OF CHILDREN THREATENED BY THE CLIMATE EMERGENCY

By Julie Jentzen[254] and Cristobal Melo[255]

1. Introduction

This section analyzes the relevance of ensuring the children's right to play as a measure of protection for their overall rights in the context of threats that the climate and ecological crisis implies. As is scientifically stated, recreational activities like playing are essential for the whole well-being and development of children, but in a world constructed by adults, possibilities to get engaged into play are decreasing. This becomes critical in the triple crisis context of climate change, biodiversity loss, and pollution, where playing is heavily endangered, posing significant threats to children's access to safe play environments.

While proposing a child-centered approach to the issue, the section concludes that States have the obligation to i) address the importance of play for children in every decision that concerns them; ii) respect and guarantee their right to play;and iii) implement all needed measures that ensure that children can play in a safe and healthy environment.

The legal basis for these obligations is Article 1 and 19 of the American Convention in the light of the corpus of international children rights law, specifically Article 31 of the Convention on the Rights of the Child.

The question of Chile and Colombia to the IACtHR addressed by this section is C.1, related to the differentiated obligations of States regarding children's rights, specifically the nature and scope of the obligation to adopt timely and effective measures in order to ensure the protection of the rights of the children in the context of climate emergency.

In emergency scenarios such as the climate and ecological crisis in which we live, children suffer the worst consequences because of their special vulnerability.[256] As the climate emergency intensifies, it poses significant threats to children's access to safe play environments, already endangered. Climate-related disasters affect children's

[254] Law graduate from the University of Hamburg.
[255] Law graduate from the University of Chile.
[256] Lawrence R. Stanberry et al., 'Prioritizing the needs of children in a changing climate' (2018) 15 (7) *PLoS Med* 15; United Nations Children's Fund (UNICEF), 'The Climate Crisis is a Child Rights Crisis: Introducing the Children's Climate Risk' (2021).

opportunities to play. States have the obligation to ensure this fundamental right, crucial for children's physical, mental, and social development.

Child interests are usually underestimated and misconsiderated in the climate discussion. States need to implement timely and effective measures to protect the children in the climate emergency, and in that matter, ensuring the right to play is central. If not taken as a primary consideration, children will suffer unproportionally restrictions and affections to their rights, well-being and development.

Under Article 19 of the American Conventions, States are obligated to provide "measures of protection required by his condition as a minor", which must be interpreted in the light of the United Nations Convention on the Rights of the Child (UNCRC). One provision of this international treaty is the right to engage in play, protected by Article 31 of the UNCRC which has been ratified by all signatories to the American Convention. The right to play protects one of the most important activities for their well-being and development. But in a degraded or polluted environment it gets difficult to play. This can have critical impacts on children. However, play is a way for children to express themselves, and especially in situations of crisis and emergency, play builds resilience and helps children to cope with those hard events.[257]

Ensuring the right to play has a positive and synergistic effect on protecting other rights. Conversely, its lack and restriction lead to the violation of other fundamental rights. States in order to protect the rights of this vulnerable group in the context of the climate emergency must consider specific and appropriate measures to ensure the access to play.

2. The right to play in the international corpus juris for child protection

The content and scope of the general provision established in Article 19 of the American Convention has to be fulfilled with the UNCRC and the developments made by the Committee on the Rights of the Child (CRC).[258] Through ratification of the UNCRC, states assume a legal obligation to ensure the fulfillment of children's rights. This duty is explicitly articulated in article 4 of the UNCRC which states, "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention" as well as other regional or international human rights law instruments.

[257] United Nations CRC: *General comment No. 17* on the right of the child to rest, leisure, play and recreational activities, cultural life and the arts, art. 31 (2013) 4; Stephanie A. Alexander et al., 'Playing for health? Revisiting health promotion to examine the emerging public health position on childrens' (2012) *Health Promotion International* 155, 156.
[258] Inter-American Court of Human Rights, Case of the 'Street Children' (Villagran-Morales et al.) v. Guatemala (1999) 194 <https://www.refworld.org/cases,IACRTHR,4b17bc442.html> accessed 3 October 2023.

At the same time, human rights are indivisible and interdependent: therefore, one right cannot be fully enjoyed without the enjoyment of the others, and their nuclear content is fulfilled in relation with the others.[259] This general principle of human rights also applies to children's rights under the UNCRC. Because of this interdependence of rights, state actions can simultaneously strengthen several rights or, by its actions or omission, violate several rights. This is particularly relevant regarding the right to play. When states enact measures to safeguard the right to play, they concurrently uphold other rights.

There is a special link between the right to engage in play with the right to a healthy environment. Despite not being explicitly included in the UNCRC, the right to a clean, healthy and sustainable environment seeks the protection of sustain and basis of all other rights. This right was recently recognized by the UN General Assembly in July 2022[260], after it was first introduced by the UN Human Rights Council in October 2021[261], followed by a historic evolution of the concept within the international community. It includes the right to clean air, a safe and stable climate, a healthy ecosystem, healthy biodiversity, safe and sufficient water, healthy and sustainable food, and a pollution-free environment.[262] A healthy environment is a necessary condition to the enjoyment of every other right, and the climate emergency has illustrated this around the world. There's no sustain to life without an environment at least liveable. In this context, it's a precondition that states ensure a clean, healthy, and sustainable environment in order to fulfill their obligation under the UNCRC, and a fresh from the oven General Comment of the CRC addresses it clearly.[263]

This dependence to a clean, healthy, and sustainable environment applies particularly to the right to play. Unsafe and polluted environments undermine the realization of article 31 rights, such as the right to play.[264] For children to play, they need inclusive and accessible play spaces near their homes, free from environmental hazards.[265] Climate and ecological crisis stresses society in general and also families, leaving children with less time for rest, leisure, recreation and play. Pollution makes it harder for children to play healthily. Thus, the right to play cannot be enjoyed without the existence of a clean, healthy, and sustainable environment.

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[259] United Nations, 'What are Human Rights?' <https://www.ohchr.org/en/what-are-human-rights#:~:text=All%20human%20rights%20 are%20 indivisible,economic%2C%20social%20and%20cultural%20rights> accessed 16 August 2023.
[260] General Assembly resolution 76/300.
[261] Human Rights Council resolution 48/13.
[262] United Nations CRC, General comment No. 26: children's rights and the environment, with a special focus on climate change (2023) 11.
[263] General comment No. 26, 11.
[264] General comment No. 26, 10.
[265] ibid 10.

Further close links with other rights can be highlighted. Article 3 of the UNCRC obligates all States Parties to act solely in the best interests of the child. It constitutes one of the four main principles of the treaty, along with the right to non-discrimination (art. 2); right to life, survival, and development (art. 6); and right to be heard (art. 12). Those 4 principles can be directly linked with the protection of play. Playing is essential for children and this importance sometimes gets forgotten, as adults cannot see the value and implications of playing. This may be explained by what has been conceptualized as adultcentrism, which will be addressed subsequently. Now, what's relevant is that, given the centrality of play for children's interests, States must be aware of this aspect when trying to act "in the best interest of the child" as it is mandated by Article 3 of the UNCRC. States aren't ensuring the best interest of the child when they don't prioritize children's right to get engaged in play activities.

Regarding the overall principle of non-discrimination established in article 2 of the UNCRC, measures from state parties should not be discriminating against the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.[266] Moreover, under the overlapping of vulnerabilities, states must implement specific actions in order to fulfill the rights of these especially vulnerable groups.

As will be stated in detail, playing is crucial for all dimensions of the development of a child. In this sense, article 6 of the UNCRC, which protects the rights to life, survival, and development links directly with art. 31. Consequently, it can be argued that any measure that supports the right to play also supports the principles outlined in article 6, as playing is a fundamental activity for the life of children. Furthermore, article 27 protects the right of every child to a standard of living adequate for their physical, mental, spiritual, moral and social development. An adequate standard of living includes the opportunity to play.[267] States Parties must be aware of this, when they develop policies relating to article 27 of the UNCRC, to ensure the access to play.

Regarding their right to be heard of article 12, children must be empowered about their playing, and entitled to exercise choice and autonomy in the recreational activities that they get engaged in. Additionally, States must ensure that children are participants of the development of legislation, policies and measures related to the protection of the rights of article 31, for example, on urban planning and the design of child-friendly communities and environments.[268]

[266] General comment No. 17, 7.
[267] General comment No. 17, 9.
[268] General comment No. 17, 11.

Then, article 13 of the UNCRC protects the right to freedom of expression. Children express themselves during play in many ways, creating their own imaginary worlds and communicating their thoughts, feelings and emotions. There is a strong interdependence between article 31 and article 13 of the UNCRC.[269]

This special bond between the right to play and other human rights must be addressed by States. Ensuring the right to play has positive impacts on the assurance of other rights. On the contrary, threats and affectations to the right to play are potential hazards of other children's rights.

States, in their obligation to respect and guarantee rights provided by Article 1 of the American Convention, must ensure the free and full exercise of the rights protected by the Inter-American Human Rights System. The special measures needed for the protection of children that Article 19 of the American Convention obligates, implies that States must address the provisions of UNCRC and the decisions adopted by the CRC[270]. In that sense, ensuring the right to play is essential.

The climate emergency demands special, timely and effective measures. In this line, restrictions or violations to the right to play may imply infringement of other States obligations provided by the American Convention, such as the obligation to respect honor and recognize dignity of Article 11; the obligation to treat children humanly as provided by article 5; and even the State obligation to respect life. This, because of the holistic nature of child development, which "embraces the child's physical, mental, spiritual, moral, psychological and social development"[271], where recreational activities play a central role.

2.1. Adultcentrism

However, in an adult-centered world, where the understandings and functionings of adults prevails, children's interests, and specifically their right to play, gets displaced to the background, not being properly considered in decision-making. This entangled relation could be explained with the concept of adultcentrism and interferes in the assessment of the child's best interest. States must be especially aware of the existence of this paradigm when addressing measures that concern childhood. In order to counteract

[269] General comment No. 17, 8.
[270] Inter- American Commission on Human Rights, The Rights of the Child in the Inter-American Human Rights System, OEA/Ser.L/V/II.133 (2008) 43.
[271] United Nations CRC, *General comment No. 5:* on the general measures of implementation of the Convention on the Rights of the Child (2003) 12.

this issue, the appliance of two principles of UNCRC, best interest of the child and children's right to participate are fundamental.[272]

This relatively recent concept has a good approach in the work of Florio, Caso & Castelli (2020), referring it as a symbolic and material paradigm of thought and construction of our sociocultural system where, despite conviction of acting for their best interests, adults provide inadequate or distorted responses to children's needs.[273] Instead, it imposes imaginaries of childhood, that define certain roles from adults towards children, influencing the way parents understand their requests and needs, modeling the socialization of children and educational practices, defining caring policies and even the interpretation of their rights.[274]

Adultcentrism creates a dualism of adult/child, conceiving them as passive recipients waiting to be fulfilled with the expertise and wisdom of adults; an undeveloped, incomplete and incompetent would-be being. By contrast, under this paradigm, adults are self considered "substantially better, complete and fully human".[275] This leads to an understanding of a childhood that, as David A. Goode (1986)[276] states, needs the action of adult society in order to acquire the basic competences needed in the world, as a necessary pathway which imposes a finalism in their development that undermines a holistic understanding of child development with value on itself, reducing it as a way to be adult.

It's important to recognize the partiality of and adultcentric perspective when rethinking States obligations at the light of climate emergency. "The principal obstruction to our clear vision of the nature of the child is our own adulthood".[277] Adultcentrism has been analogued with ethnocentrism that also constructs a hierarchy and has common negative consequences: miscommunication, inaccurate judgment, misuse of power, and undermining strengths and competences.[278] It positions the adults in the center of everything, as a scale and ratio of reference of childhood. "But children's culture exists as well, and it is very different from the one of adults, having its own priorities, transmission of skills, knowledge and characteristics".[279]

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[272] This is clearly addressed in the Committee's General Comments CRC/C/GC/12 of the right of the child to be heard, and CRC/C/GC/14 on the right of the child to have his or her best interests taken as a primary consideration.
[273] Elenora Florio et al., 'The Adultcentrism Scale in the educational relationship: Instrument development and preliminary validation' (2020) 57 *New Ideas in Psychology* 1.
[274] ibid 1.
[275] ibid 2.
[276] David A. Goode, 'Kids, Culture and Innocents' (1986) 9 *Human Studies* 83–106 on Floria et al. 2.
[277] Patterson Du Bois, 'Fireside child-study: The art of being fair and kind' (1903) 16; Florio et al. 2.
[278] Florio et al. 2.
[279] ibid 2.

This may explain why in climate discussion play has no importance. But through a child-centered approach, play should be central.

3. Understanding the importance of play

Article 31 of the UNCRC states: "States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts". This article dates back to 1989, when the UNCRC was adopted. The CRC understands playing as an activity that is structured by the "children themselves (that) takes place whenever and wherever the opportunities for playing arise. (…) Play itself is non-compulsory, driven by intrinsic motivation (…) rather than as a means to an end. Play (…) has the potential to take infinite forms. (…) The key characteristics of play are fun, uncertainty, challenge, flexibility and non-productivity. This is the reason why play is often considered as non-essential. But it is the other way around and playing is an essential component of the physical, social, cognitive, emotional and spiritual development."[280]

Play can encompass everything children do. They engage in play constantly and in all places. That is why play is a fundamental need for every child. "Play is paradoxical – it is serious and non-serious, real and not real, apparently purposeless and yet essential to development"[281]. Because of this, for children "play is at the heart of the everyday things that matter".[282]

Early childhood is, after gestation period, the most critical growth stage, where most brain pathways and cortical networks shape and refine.[283] The range and quality of the experiences in this stage are crucial for the formation of this complex system of synapses.[284] If not used, it won't develop afterwards, impacting on the potential of the brain for the rest of their life.[285] Therefore, it is crucial to have exposure to rich and nurturing experiences, in order to stimulate the brain using as many pathways as possible. In this context, playing is essential for the development and well-being of a child.[286] During play children develop cognitive, social, communicational, emotional, and physical skills, having a direct impact in their brains.[287] Creativity, social interaction, movement, and emotions, between others, are central parts of the playing activity.

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[280] General comment No. 17, 5.
[281] Jane Hewes, 'Let the children play: Nature's answers to early learning.' (2006) Early childhood learning knowledge centre 2.
[282] Stuart Lester, Wendy Russel, 'Play for a Change: Play, policy and practice. A review of contemporary perspectives. Summary report (University of Gloucestershire, Play England, 2008) 1.
[283] John Oates et al., 'Developing Brains' (2012) 7 Early Childhood in Focus 24.
[284] Hewes 4.
[285] Frost 6.
[286] Roger, Hard, 'Containing children: some lessons on planning for play from New York City' (2002) 16 *Environment and urbanisation* 135, 136; Alexander et al. 156; Frost 9; Kenneth Ginsburg, 'The Importance of Play in Promoting Healthy Child Development and Maintaining Strong Parent-Child Bonds' (2007) 119 (1) *Pediatrics* 182, 183.
[287] Ginsburg 183; Forst 9 f.

Playing is a way to use the brain in very diverse ways, so that playing promotes the development of neurons and synapses.[288]

Children submerged in these activities interact and stimulate each other building their own language, self-confidence, identity and understanding of their world.[289] In addition, free play allows children to learn to understand others and to improve skills of cooperation, sharing and caring. Moreover children can learn how to deal with different circumstances because every play has its own imagined situation.[290]

There are several classifications for play and many ways in which children can get engaged in this activity. A particular type of play that contributes significantly to children's development and well-being which is threatened by the climate emergency is the play activity that takes place outdoors.[291]

3.1. A crucial but disregarded and endangered matter

The CRC is deeply concerned about the inadequate acknowledgment of the right to play by State parties.[292] At institutional levels, playing has not been positioned with the needed relevance. As illustrated before, it's not just about a simple interest to be considered between others, yet a human right enshrined in the corpus juris of child protection.

We are facing a phenomenon of 'play deprivation'[293], having children less opportunities to engage in that activity.[294] The CRC on its General comment No. 17 exposes main current challenges against its realization, such as the lack of recognition of its importance; unsafe and hazardous environments; restrictions to children's use of public spaces; overprotection and fear of risk exposure; lack of access to nature; pressure for educational achievement and overly structured and programmed schedules.[295]

The city has transformed into an adults-only place. This 'shrinking territory'[296] for children restricts the possibilities of children to play and to move freely. Then, indoor playing has increased, and with the growing role of electronic media[297], digital playing is on its top, which doesn't have the same benefits as non digital play. Even, according

[288] Forst 8.
[289] Hewes 4.
[290] Hard 138.
[291] Florence Undiyaundeye, 'Outdoor Play Environment in Early Childhood for Children' (2014) 14 European Journal of Social Sciences Education and Research.
[292] General comment No. 17 1.
[293] Joan Almon, 'Improving Children's Health through Play: Exploring Issues and Recommendations' (Alliance for Childhood and the US Play Coalition, 2018) 2.
[294] Ginsburg 183.
[295] General comment No. 17, 11-15.
[296] Alexander et al. 156.
[297] General comment No. 17, 14.

to some evidence, long exposure to digital games has potential harmful effects and may cause addiction[298]. In this context, by effect of technology, traffic and new urban land-use patterns, and even violence and organized crime[299], the opportunities for outdoor play in the neighborhood are disappearing.[300]

UNICEF has reported the necessity of public play spaces in urban settings, especially designing natural landscapes for children to have access and exposure to trees, water and other natural elements.[301] Natural play spaces can increase affordances for play, with a greater proportion of children and for longer time.[302] Polluted environments and climate disasters make it more difficult for children to play outside in a safe and healthy environment. States must take proper measures to ensure access to play.

4. Threats and pressures of climate emergency on play opportunities

Free, unstructured outdoor play is the way of play that has the most positive impacts for children, developing several tools and abilities. But the increasing effects of the climate emergency are reducing and will progressively reduce the opportunities for children to enjoy themselves playing in safe and healthy environments. The climate and ecological crisis will affect us all, but children will suffer more.[303] The climate emergency will amplify pre-existing vulnerabilities to extreme weather events.[304] For example, children under the age of five, are especially vulnerable to heat waves because of their low body surface that leads to a smaller sweat production and a higher need for continuous supply with nutrition and water.[305] The exacerbation of diseases spread, or the rise of air pollution affects their health and development[306], which may impede children from going to outside environments in their daily lives, undermining the possibility of outdoor playing.

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[298] Gary W. Small et al., 'Brain health consequences of digital technology use' (2020) 22 (2) *Dialogues in Clinical Neuroscience* 179-187.
[299] For a treatment about the deterioration and loss of city areas because of organised crime, where play activities used to occur, see [IACHR, 'Violence, children and organised crime' (2015) *OEA/Ser.L/V/II. Doc. 40/15* 384-385].
[300] Hewes 1.
[301] United Nations Children's Fund (UNICEF), 'The state of the world's children: children in an urban world' (2012) 62.
[302] Susan Herrington, Mariana Brussoni, 'Beyond Physical Activity: The Importance of Play and Nature-Based Play Spaces for Children's Health and Development' (2015) 4 *Curr Obes Rep* 478.
[303] Tara J. Crandon et al., 'A social–ecological perspective on climate anxiety in children and adolescents'(2022) 12 *Nature Climate Change* 123, 124.
[304] Eichinger et al., 'Kinder- und Jugendgesundheit in der Klimakrise' (2023) *Monatsschrift Kinderheilkunde* 114, 115; Carndon et al. 124.
[305] ibid.
[306] United Nations Children's Fund (UNICEF), 'The Climate Crisis is a Child Rights Crisis: Introducing the Children's Climate Risk' (2021) 43.

Along with these physical vulnerabilities, the climate emergency is also driving a public mental health crisis.[307] The uncertainty of the future panorama generates stress, endangering mental health. Children and young people know that they still have a long time to live in the world, so they are more afraid of the future because they'll suffer the long term effects of the crisis. Extreme climate-related weather events lead to traumatic experiences that stay with people throughout their lives and can trigger depression and anxiety disorders. Negative experiences are strongly imprinted on children. For example floods inflicts enduring emotional distress upon children and the water itself engenders the destruction of residences and critical infrastructure, such as educational institutions, where play takes place.[308] Traumatic experiences harm children more than adults because children are still in their developmental stages, having in general less emotional and adaptive tools. External circumstances and safety of the environment are quite crucial to a child's development, so children are more sensitive to them.

In addition to this climate change impacts, negative impacts regarding human decisions may inflict unproportional restrictions and affectations to children rights. Exposure to crisis has already significant impacts on social and emotional wellbeing of children[309], but bad planned emergencies measures can inadvertently and unreasonably violate children's rights, as these measures, while well-intentioned, may not adequately consider their interests.

This scenario was evident in the COVID-19 pandemic, where rights were restricted for the sake of public health. But, as studies have shown, children suffered multiple negative consequences from these restrictions.[310] Even the Inter-American Commission on Human Rights was concerned about this[311]. Children and young people suffered from social isolation due to permanent school closures and of all places where face-to-face social activities took place. These social isolations have negatively impacted the mental health and well-beeing of children and adolescents. Depression, anxiety, disturbance in sleep and appetite, as well as impairment in social interactions, binded together are the four main consequences of this isolation.[312] In this context, the possibility to play outdoor

[307] Guddi Sinqu et al., 'Climate emergency, young people and mental health: time for justice and health professional action' (2022) 6 BMJ Paediatrics Open 1.
[308] UNICEF 2021 37.
[309] Sudeshna Chatterjee 'Children's Coping, Adaptation and Resilience through Play in Situations of Crisis' (2018) 28 *Children, Youth and Environment* 119, 120.
[310] Luis Rajmil et al., 'Impact of lockdown and school closure on children's health and well-being during the first wave of COVID-19: a narrative review' (2021) 5 BMJ Paediatrics Open 2021; Russel Viner et al., 'School Closures During Social Lockdown and Mental Health, Health Behaviors, and Well-being Among Children and Adolescents During the First COVID-19 Wave: A Systematic Review'(2022) 4 JAMA Paediatrics; Salima Meherali et al., 'Mental Health of Children and Adolescents Amidst COVID-19 and Past Pandemics: A Rapid Systematic Review' (2021) 18 (7) Int. J. Environ. Res. Public Health.
[311] Inter-American Commission on Human Rights, 'Pandemic and Human Rights' (2022), OEA/Ser.L/V/II. Doc.396/22.
[312] Meherali et al. 1.

with other children was severely restricted. During emergencies, a more adult-centric approach tends to prioritize certain rights at the expense of children's rights, including their right to play freely outdoors.

States, in the context of climate emergency, have the obligation to ensure that children have the opportunities to get engaged in play. If the proper, timely and effective measures aren't taken, and this matter stays as a secondary issue, the lack of play may inflict serious effects to their development and well-being. This may imply States responsibility for not assuring their obligation of article 1 to respect children's human rights and to ensure their free and full exercise, specifically of those that are protected by the appliance of Article 19 of the American Convention, provided by the UNCRC and the decisions of the CRC.

4.1. Ensuring right to play builds resilience

Because climate emergency increase the frequency and magnitude of disasters, caregivers, society in general, and States must build capacities to minimize impacts, adapt to changes, recover and even thrive facing these challenging scenarios. Resilience is a key aspect when talking about how we manage with the climate emergency. Building child resilience depends on diverse factors, from children's own inner competences and resources, to interpersonal relationships' health, community bonding and social fabric, to safe infrastructure and strong institutions.[313] Through free play, especially with peers, children develop important tools, which are needed for critical contexts, such as decision making, problem solving, self-control, emotional regulation and rule-following. Having safe places available for playing -especially if they include nature elements- means important relief and escape spaces for children when faced with crisis or persistent everyday hazards.[314]

Play can build resilience mechanisms against crisis, and by playing children cope with crisis complications, finding "fun, freedom and friendship" despite the context. It helps children to cope with adversity, and to adapt to a progressively changing and unpredictable world. Also, play allows them to express, process and peer-share their emotions and fears in a safe and constructive manner.[315] It can especially work as a natural stress and anxiety reliever. If play is community supported, it creates bonding's and belonging, crucial against climate-related disasters and for building collective resilience.

[313] Chatterjee 122.
[314] ibid.
[315] Kornelija Mrnjaus, 'The Child's Right to Play?!' (2014) 16 *Croatian Journal of Education* 222.

Climate change is producing and will increasingly produce more conflict and violence suffering the vulnerable groups the worst consequences.[316] But promoting resilience reduces vulnerability. This can be done by improving their access to resources and information, and strengthening disaster responses.[317] Ensuring access to play is a way of building resilience to the impacts of climate emergency. States must take into account the right to play in disaster contexts, a crucial subject to address if measures and resources are aimed to overcome catastrophes from a right-based approach. If not, States will be diminishing the development of tools needed to cope and even thrive against the potential hazards to face.

5. States obligations and special recommended measures

In order to adopt timely and effective measures which ensure the protection of the rights of the children in the context of climate emergency, States must, on one hand, respect the children's right to play by abstaining to harm or unproportionately restrict access to play, and on the other, ensure by all necessary means the conditions where children can fully and freely enjoy that right. Also, States must implement all needed measures that ensure children can play in a safe and healthy environment. To fulfill these obligations states may implement the following measures:

(1) To predict the impacts of state measures. Child-rights impact assessment (CRIA)[318] procedures guarantee a reasonable and proportional ponderation of interests. States must prioritize measures less harmful to this right, limiting its enjoyment only when strictly necessary; (2) to implement special measures for ensuring equal access to play over poor children, girls, children with disabilities, indigenous children, and other vulnerable groups; (3) to develop a disaster preparedness plans that consider the specific needs of children. After climate disasters, states could deliver 'Emergency Playing Kits' to ensure safe play in those complex scenarios; (4) to elaborate and disseminate educational campaigns for professionals working for and with children, caregivers, and civil society in general, to build awareness about play's importance; (5) to design mechanisms that ensure public participation of childhood in the elaboration and implementation of policies and measures regarding children's right to play; (6) to make public investment and encourage private investment for the designing and building of safe and accessible playgrounds, preferably with natural elements integrated; (7) to collect data and fund research to find out how far children are from being able to engage in play and to use the results to inform and evaluate planning and measure progress[319]; (8) to decontaminate polluted areas used as playgrounds by children, preventing

[316] Richard Akresh, 'Climate Change, Conflict, and Children' (2016) 26 T*he Future of Children* 51.
[317] Lori Peek (2008) 'Children and Disasters: Understanding Vulnerability, Developing Capacities and Promoting Resilience – An Introduction' (2008) 18 (1) *Children, Youth and Environments* 20.
[318] General comment No. 14, 99.
[319] Sheridan Barlet et al., 'Children's Right to Play and the Environment' (2016) *International Play Association* 5.

diseases from the exposure to contaminants, and; (9) to respect the international principle of non-regression, accomplishing their Nationally Determined Contributions (NDCs) in order to reduce the greenhouse gas emissions and adapt to climate change.

6. Conclusion

Playing is something essential for children and it has profound impacts on children's development and well-being, more than just a recreational activity. Article 31 of the UNCRC recognizes the importance of this activity and provides protection to the right to engage in play. Unfortunately, this international legal protection contrasts with its current enjoyment, being a disregarded matter. States need to overcome adult-centric perspectives to put the child's interest on the center, such as the right to play. The climate emergency strongly threatens children's rights. For States to be able to protect children in this uncertain era, they must guarantee that children can enjoy their right to engage in play, ensuring timely and effective measures for creating conditions for play to happen. In this context, playing can be taken as a mechanism for children to overcome and even thrive despite the climate hazards. By doing so, States would be forging resilience on the face of the progressively chaotic world that they are inheriting, and protecting the enjoyment of other children's rights, essentially interconnected.

Children are the most affected group by climate emergency, and at the same time, they are the less represented group. This matter poses challenges for courts, child advocates and states to establish democratic solutions that include children in the decision-making process and puts children as protagonists of their own future on this planet. This section ends with a quote from children who worked together with the CRC on the elaboration of the General Comment No. 26 (2023) about children's rights and the environment with a special focus on climate change. There, children say: "The environment is our life." "Adults [should] stop making decisions for the future they won't experience. [We] are the key means [of] solving climate change, as it is [our] lives at stake." "I would like to tell [adults] that we are the future generations and, if you destroy the planet, where will we live?!".[320]

[320] General comment No. 26, 1.

E. STATE OBLIGATIONS AND PRINCIPLES TO DEAL WITH INVOLUNTARY HUMAN MOBILITY, EXACERATED BY THE CLIMATE EMERGENCY

By **Emilio Valente Salinas Tohá**[321] **and Anna Yifei Guo**[322]

1. Introduction

The UNFCCC understands climate change as "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".[323] While this prominently affects the environment, it also entails changes for the people living in it. One of those consequences is Climate Change induced migration. The Republic of Colombia and the Republic of Chile, in their request for an advisory opinion to the IACtHR, presuppose that human mobility is increased by climate change[324] and enquire more clarity on the question of what obligations and principles should guide the states in the region.[325]

Therefore, this part, following that general request, deals with the more specific question of whether there is a duty to explore and plan options, so people affected by involuntary human mobility due to climate change have possibilities to move to be able to live without the infringement of any subsequent rights.

The main argument of this section is that there is such an obligation governed by international legal framework and the reality of climate change induced mobility for states to take concrete action to explore and plan options.

2. Climate change and Human Rights

According to the General Comment No. 26 on land and economic, social and cultural rights, challenges related the usage and management of land are intensifying due to climate change and human mobility, putting the guarantee of Human Rights at risk.[326]

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[321] Law graduate from the University of Chile.
[322] Law graduate from the University of Hamburg.
[323] United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) UNTC XVII.7 art. 1 Nr. 2.
[324] cf. *Request for an Advisory Opinion on Climate Emergency and Human Rights to the Inter-American Court of Human Rights from the Republic of Colombia and the Republic of Chile* (Request for Advisory Opinion to the Inter-American Court of Human Rights) (9 January 2023) 14; *The Environment and Human Rights* (Advisory Opinion) IACtHR Series OC-23/17 (15 November 2017) [182].
[325] *Request for an Advisory Opinion on Climate Emergency and Human Rights to the Inter-American Court of Human Rights from the Republic of Colombia and the Republic of Chile* (Request for Advisory Opinion to the Inter-American Court of Human Rights) (9 January 2023) 14.
[326] UN Economic and Social Council, 'General Comment No. 26 on Land and Economic, Social and Cultural Rights' (Committee on Economic, Social and Cultural Rights 24 January 2023) E/C.12/GC/26 2.

These changes and the risk increase with absence of organisation in terms of regulatory or legislative frameworks.[327]

2.1. International legal framework

The protection or non-infringement of obligation applies to persons impacted by climate change or any other environmentally related condition, whether at an individual level or collectively.[328]

2.1.1. American Convention on Human Rights

The ACHR, the main human rights instrument for the region, stands in the context and continuance with the American Declaration of the Rights and Duties of Man, the so-called Bogota Declaration.[329] In Art. 1 (1) ACHR, the duty to respect the rights of the Convention is codified. Therefore, any infringement of Articles of the ACHR means a subsequent violation of Art. 1 (1) ACHR.[330] According to the IACtHR in its judgement concerning the Velásquez Rodríguez Case, Human Rights have superiority over state power, as they inherently protect human dignity[331] and cannot necessarily be lawfully limited by the state[332]. The ACHR, next to specific rights also holds the obligation to ensure or guarantee[333] them. The obligation to ensure codified in Art. 1(1) ACHR relates to the rights and freedoms in the ACHR[334]. The aim of the provision entails that the state power must structure itself in a way in which it can guarantee the rights.[335] Therefore, it must organize itself as a whole accordingly.[336] Consequently, the state has four obligations under this article which the Court concretizes firstly as the duty to prevent, secondly the duty to investigate potential violations, thirdly the duty to punish violations of the rights of the ACHR and lastly to provide remedy in case of violations.[337]

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[327] UN Economic and Social Council, 'General Comment No. 26 on Land and Economic, Social and Cultural Rights' (Committee on Economic, Social and Cultural Rights 24 January 2023) E/C.12/GC/26 2.
[328] Inter-American Commission on Human Rights, 'Climate Emergency, Scope of Inter-American Human Rights Obligations' (31 December 2021) Organization of American States Resolution 3/2021 13.
[329] American Declaration of the Rights and Duties of Man, OAS Res XXX adopted by the Ninth International Conference of American States (1948) reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System OEA/Ser L V/II.82 Doc 6 Rev 1 at 17 (1992).
[330] *Velásquez Rodríguez Case* (Judgment) IACtHR Series C No. 4 (29 July 1988) [162].
[331] *Velásquez Rodríguez Case* (Judgment) IACtHR Series C No. 4 (29 July 1988) [165].
[332] *The Word "Laws" in Article 30 of the American Convention on Human Rights* (Advisory Opinion) Advisory Opinion OC-6/86 IACtHR Series A No. 6 (9 May 9 1986) [21].
[333] *Case of the Barrios family v. Venezuela* (Merits, Reparations and Costs) IACtHR Series C No. 237 (24 November 2011) [116].
[334] Ludovic Hennebel, Hélène Tigroudja (eds), *The American Convention on Human Rights: A Commentary* (Oxford University Press March 2022) 26 ff.
[335] *Velásquez Rodríguez Case* (Judgment) IACtHR Series C No. 4 (29 July 1988) [166].
[336] *Velásquez Rodríguez Case* (Judgment) IACtHR Series C No. 4 (29 July 1988) [166].
[337] *Velásquez Rodríguez Case* (Judgment) IACtHR Series C No. 4 (29 July 1988) [166]; cf Ludovic Hennebel, Hélène Tigroudja (eds), *The American Convention on Human Rights: A Commentary* (Oxford University Press March 2022) 28.

Not the mere existence of a system created for compliance is enough, but the state power must effectively ensure the compliance with the rights recognized by the Convention.[338]

The obligation itself is measured against the standard of due diligence,[339] being the standard in case of obligations of conduct rather than obligations of result.[340] Therefore, a State must establish specific and reasonable mechanisms[341] regarding the endangered right[342] and situation of the affected[343]. A situation must therefore be created in advance from which it is possible for the State to comply with its substantive human rights obligations.[344] Especially the jurisprudence of the IACtHR seems to shift from a mere obligation of conduct to stricter standards of a duty to obtain a defined outcome, which is the protection of Human Rights.[345]

Consequently, states are obligated to use all resources available to prevent Human Rights violations.[346]

In its judgment regarding the case of López Soto et al. v. Venezuela the Court describes two preconditions for the responsibility of a State in the case of a duty to prevent human rights violations (in the case at hand between individuals).[347] Firstly, if the competent authorities had positive knowledge or should have had positive knowledge of an imminent danger and secondly if they failed to adopt appropriate measures which would expectedly avert the danger.[348] Even though that particular jurisprudence dealt with the question whether the state was the responsible for an breach of the duty to

[338] *Velásquez Rodríguez Case* (Judgment) IACtHR Series C No. 4 (29 July 1988) [167].
[339] *The Environment and Human Rights* (Advisory Opinion) IACtHR OC-23/17 (15 November 2017) [123]; *Case of Ximenes-Lopes v. Brazil* (Merits, Reparations, and Costs) IACtHR Series C No. 149 (4 July 2006) [147].
[340] *cf. Pulp Mills on the River Uruguay (Argentina v. Uruguay)* (Judgment) [20 April 2010] ICJ Rep 14 [197]; ILC 'Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries' (2001) Supplement UN Doc, art 3 [7f.]
[341] Ludovic Hennebel, Hélène Tigroudja (eds), *The American Convention on Human Rights: A Commentary* (Oxford University Press March 2022) 29.
[342] *Case of Cruz Sánchez et al. v. Peru* (Preliminary Objections, Merits, Reparations and Costs) IACtHR Series C No. 292 (17 April 2015) [347].
[343] ACHR art 1 (1) in conjunction with art 19; *Case of V.R.P., V.P.C. et al. v. Nicaragua* (Preliminary Objections, Merits, Reparations, and Costs) IACtHR Series C No. 350 (8 March 2018).
[344] *Case of the Pueblo Bello Massacre v. Colombia* (Merits, Reparations, and Costs) IACtHR Series C No. 140 (31 January 2006) [140]; Ludovic Hennebel, Hélène Tigroudja (eds), *The American Convention on Human Rights: A Commentary* (Oxford University Press March 2022) 28.
[345] See for instance *Case of the Pueblo Bello Massacre v. Colombia* (Merits, Reparations, and Costs) IACtHR Series C No. 140 (31 January 2006) [125-126, 132, 134]; Case of Baldeón García v. Peru (Merits, Reparations, and Costs) IACtHR Series C No. 147 (6 April 2006) [93].
[346] Ludovic Hennebel, Hélène Tigroudja (eds), *The American Convention on Human Rights: A Commentary* (Oxford University Press March 2022) 28.
[347] *Case of López Soto et al. v. Venezuela* (Merits, Reparations, and Costs) IACtHR Series C No. 362 (26 September 2018) [140 f.].
[348] *Case of López Soto et al. v. Venezuela* (Merits, Reparations, and Costs) IACtHR Series C No. 362 (26 September 2018) [140 f.].

prevent in regards in the case of acts of a private individual,[349] this standard must then also be applicable to actions by the state itself following the argumentum a *minore ad maius*[350]. Accordingly, if the State is responsible in case of conduct by a private individual it must necessarily also be so in case of its own conduct.

Further, states must be mindful of the different influences of Climate Change on different people in regards to their ability to live without any violations to their Human Rights.[351] Those factors can for instance be poverty or homelessness or migration.[352]

Specific rights protected by the Convention are among others the Right to Life,[353] the Right to Humane Treatment,[354] the Rights of the Child[355] and the Freedom of Movement and Residence[356]. Suspensions of rights can be based on Art. 27 ACHR in case of circumstances enumerated in the first paragraph of the Article. These are "times of war"[357] or "public danger"[358], or circumstances threatening the state's "independence or security". Further, non-derivable rights are listed in Art. 27 (2) ACHR. That displacement can lead to the violation of different Human Rights can be drawn from case law.[359]

2.1.2. Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights

The UNs General Assembly itself proclaimed the UDHR as a "common standard of achievement for all peoples and all nations" and emphasized the extension of respect for and the adoption of measures to respect the rights included.[360]

In addition to the preamble, Art. 1 UDHR, stipulating equality, and Art. 25 (1) UDHR are noteworthy. The latter contains the right to an adequate life-standard in relation to "health and well-being (...) including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment,

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[349] *Case of López Soto et al. v. Venezuela* (Merits, Reparations, and Costs) IACtHR Series C No. 362 (26 September 2018).
[350] The conclusion from the smaller to the larger.
[351] Inter-American Commission on Human Rights, 'Climate Emergency, Scope of Inter-American Human Rights Obligations' (31 December 2021) Organization of American States Resolution 3/2021 15 [16].
[352] Inter-American Commission on Human Rights, 'Climate Emergency, Scope of Inter-American Human Rights Obligations' (31 December 2021) Organization of American States Resolution 3/2021 15 f. [18, 20].
[353] ACHR art. 4.
[354] ACHR art. 5.
[355] ACHR art 19.
[356] ACHR art 22.
[357] ACHR art 27 (1).
[358] ACHR art 27 (1).
[359] See for instance Teitiota v New Zealand Communication No 2728/2016 (Teitiota) and Human Rights Committee 'Views Adopted by the Committee under Article 5 (4) of the Optional Protocol, Concerning Communication No. 3624/2019' (07 January 2020) UN Doc CCPR/C/127/D/2728/2016; Daniel Billy et al v Australia, Communication No 3624/2019 (Billy) and Human Rights Committee 'Views Adopted by the Committee under Article 5 (4) of the Optional Protocol, Concerning Communication No. 3624/2019' (22 September 2022) UN Doc CCPR/C/135/D/3624/2019.
[360] UDHR Preamble.

sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control".[361] This article was partly mirrored in Art. 11 (1) ICESCR[362] and the idea of an adequate standard of living is for instance reflected in the Statute of the Office of the UNs High Commissioner for Refugees,[363] Convention Relating to the Status of Refugees,[364] chapter IV or regarding disaster relief[365].

Art. 11 (1) ICESCR also contains a provision regarding an adequate living standard and the continuous improvement thereof[366]. Further, Art. 11 (2) ICESCR, codifying the right to not be exposed to hunger, links the consequent state obligation to the usage of resources, among others land.[367] Therefore, according to the Committee on Economic, Social and Cultural Rights, states are obligated to construct and implement systems to efficiently reform and use their resources.[368]

2.1.3. Climate Change specific Framework

Art. 3 (3) UNFCCC codifying the principles under the Convention entails a precautionary approach. Therefore, states have the obligation to respond preemptively to possible factors increasing Climate Change.[369] A precautionary approach in opposition to a mere preventive approach does not require scientific certainty in case of the danger of severe or irreversible harm.[370] In addition, a duty to reduce the impact of climate change is included in the same article.[371] Considering that forced mobility is exacerbated by Climate Change, the state therefore has an obligation to mitigate the impact of the same.

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[361] UDHR art 25 (1).
[362] Ben Saul, David Kinley, Jacqueline Mowbray (eds), *The International Covenant on Economic, Social and Cultural Rights Commentary, Cases, and Materials (*Oxford University Press 2014) 862.
[363] UNGA Res 428 (V) 'Statute of the Office of the United Nations High Commissioner for Refugees' (14 December 1950) A/RES/428(V).
[364] Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.
[365] See for example UNGA Res 2816 (XXVI) 'Assistance in cases of natural disaster and other disaster situations' (14 December 1971) A/RES/2816(XXVI), establishing The United Nations Disaster Relief Organization; UNGA Res 36/225 'Strengthening the capacity of the United Nations system to respond to natural disasters and other disaster situations' (17 December 1981) A/RES/36/225; UNGA Res 46/182 'Strengthening of the coordination of humanitarian emergency assistance of the UN' (14 April 1992) A/RES/46/182.
[366] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 art. 11 (1).
[367] *C.f.* UN Economic and Social Council, 'General Comment No. 26 on Land and Economic, Social and Cultural Rights' (Committee on Economic, Social and Cultural Rights 24 January 2023) E/C.12/GC/26 3.
[368] UN Economic and Social Council, 'General Comment No. 26 on Land and Economic, Social and Cultural Rights' (Committee on Economic, Social and Cultural Rights 24 January 2023) E/C.12/GC/26 3.
[369] UNFCCC art. 3 (3).
[370] UNFCCC art 3 (3); 'Report of the United Nations Conference on the Human Environment' (Stockholm, 5-16 June 1972) A/CONF.48/14/Rev.1 Stockholm Declaration, Principle 15; Sonia Boutillon, 'The Precautionary Principle: Development of an International Standard' [2002] 23 Michigan Journal of International Law 429 442.
[371] UNFCCC art 3 (3).

The Paris Agreement on Climate Change[372] falls within the framework of the UNFCCC. While it is called "agreement", it is a treaty in the sense of Art. 1 and Art. 2 (1) VCLT.[373] Art: 2 (1) lit. b Paris Agreement stipulates that the "ability to adapt to the adverse impacts of climate change" should be enhanced. It further stresses mitigation efforts mentioning them over 20 times in the 29 articles of the Paris Agreement. Further, the preamble of the Paris Agreement explicitly acknowledges migration, as it calls upon states to "respect, promote and consider their respective obligations on human rights, […] migrants, […]".[374]

Further, the 2030 Agenda for Sustainable Development[375] holds 17 Sustainable Development Goals. The 2030 Agenda itself requires "coherent and comprehensive responses" towards migration and it to be "safe, orderly and regular".[376] The latter is complemented by "responsible migration" as part of Goal 10 of the 17 Sustainable Development Goals.[377] The same goal requires the enforcement of a properly prepared migration policy.[378] Further Goal 6 on water security, Goal 7 on energy security, and Goals 13 and 15, on Climate Change and life related to land are part of the Sustainable Development Goals.

2.1.4. Interim conclusion

Even though several of the legal sources examined in this part contain some form of preventive obligation towards a state, scholarly work regarding prevention often refer to UN Treaty Bodies, individual complaints or prevention on national levels.[379] Nevertheless, the Report of the Security-General of the UN, Kofi Annan, stressed the importance of preventive measures in 1997[380], and those being timely and adequate, shifting the focus from promoting and protecting Human Rights to preventing Human

[372] Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UNTS 3156.
[373] Alexander Proelß, 'Klimaschutz im Völkerrecht nach dem Paris Agreement: Durchbruch oder Stillstand' [2016] Zeitschrift für Umweltpolitik und Umweltrecht 58 62 f.
[374] Paris Agreement preamble.
[375] UNGA Res 70/1 'Transforming our world: the 2030 Agenda for Sustainable Development' (25 September 2015) A/RES/70/1.
[376] UNGA Res 70/1 'Transforming our world: the 2030 Agenda for Sustainable Development' (25 September 2015) A/RES/70/1. [29].
[377] UNGA Res 70/1 'Transforming our world: the 2030 Agenda for Sustainable Development' (25 September 2015) A/RES/70/1 Goal 10 [10.7].
[378] UNGA Res 70/1 'Transforming our world: the 2030 Agenda for Sustainable Development' (25 September 2015) A/RES/70/1 Goal 10 [10.7].
[379] cf. Elias Kastans, 'The Preventive Dimension of the Activities of United Nations Treaty Bodies' in: Linos-Alexander Sicilianos (ed), The prevention of Human Rights Violations, (Kluver Law International 2001) 57-66.
[380] UNGA A/51/950 'Renewing the United Nations: A programme for reform, Report of the Secretary General' (UN Secretary General 14 July 1997) A/51/950.

Rights violations[381]. Even though the focus was on the role of the UNs,[382] such efforts regarding states cannot be overlooked.

Regarding legal obligations to prevent Human Rights violations, article 1 (1) ACHR codifies such obligations measured by the standard of due diligence. The IACtHR has further specified the obligation by developing a stricter standard for whether a measure under the duty to prevent is effectively able to prevent such breach. In that regard, the two-prong test of firstly, whether the state knew or should have known about a threat and secondly, whether it took the measures necessary to prevent a violation of Human Rights stand out.

Generally, Human Rights protection of the UDHR and ICESCR regarding the adequate life standard as well as the specific rights of the ACHR are applicable.

Lastly, specific Climate Change frameworks as the UNFCCC or the Paris Agreement on Climate Change supplement general Human Rights law, explicitly adding the angle of Climate Change induced dangers and codifying the precautionary approach as well as the duty to mitigate.

2.2. Climate migration and its effects on Human Rights

As described in the introduction, state obligations regarding forced mobility exacerbated by Climate Change are being examined. The first part showed that one of the prerequisites for a violation of Art. 1 (1) ADHR is the knowledge or that the state should have known of a danger. Nevertheless, Avidan Kent and Simon Behrman, in their contribution to the publication of the Heinrich Böll Foundation on 'Climate Justice and Migration' after describing past occurrences of displacement in relation to Climate Change write that "the effects are not merely speculation about what may occur in the future".[383] This is also reflected in the Sendai Framework for Disaster Risk Reduction, the 2016 UN Summit for Refugees and Migrants or under the UNFCCC system.[384]

[381] cf. UNGA A/51/950 'Renewing the United Nations: A programme for reform, Report of the Secretary General' (UN Secretary General 14 July 1997) A/51/950 [110]; cf. Linos-Alexander Sicilianos, 'The Prevention of Human RIghts Violations: Utopia or Challenge?' in Linos-Alexander Sicilianos (ed), *The prevention of Human Rights Violations*, (Kluver Law International 2001) 280.
[382] UNGA A/51/950 'Renewing the United Nations: A programme for reform, Report of the Secretary General' (UN Secretary General 14 July 1997) A/51/950 [110].
[383] Avidan Kent, Simon Behrman, 'Mind the gap: Addressing the plight of climate refugees in international law' in Ali Nobil Ahmad and the Heinrich Böll Foundation (ed), *Climate Justice and Migration Mobility, Development, and Displacement in the Global South* (Volume 57 Heinrich Böll Foundation, 2019) 21.
[384] Furthermore, see the Agenda for Humanity or Global Compact for Migration and the Global Compact on Refugees.

According to the 2014a IPCC report, Climate Change poses a great threat to ecosystems and the people living in them.[385] From 2008-2015 an average of 25,4 million people were displaced internally by weather-related and geophysical hazards.[386] In 2022, 32,6 million people were internally displaced by weather-related (98 %: floods, storms, droughts, wildfires, landslides and extreme temperatures) or geophysical (earthquakes, volcanic eruptions and landslides) disasters with over 2 million in the Americas.[387] Storms caused 1,2 million displacements, and almost half again were displaced by floods.[388] Generally, according to the Groundswell report by the World Bank, 216 million people could be forced to migrate internally due to climate change.[389] The Andes, for example, stretching from Venezuela through Colombia, Ecuador, Peru, Bolivia, Argentina, and Chile are one of the region's most vulnerable to Climate Change induced migration and forced displacement.[390]

The 2030 Agenda for Sustainable Development stresses migration as a "multidimensional reality".[391] While Data shows that there will be Climate Change induced mobility, the migration can be internal (within a country) or external (across a border). It can be of planned nature or for example due to an environmental hazard. For migration to be considered by this paper, it must also be linked to Climate Change, which is a factor for it.[392] This link can for instance be due to slowly materializing effects of Climate Change such as changing temperatures, changing rainfall patterns or the rising sea level forcing people to migrate within the country or across a border.[393] These, in addition to sudden occurring events increase the risk for human rights violations.[394]

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[385] Christopher B. Field, et al (eds), *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2014) 183.
[386] Alexandra Bilak, Gabriel Cardona-Fox, Justin Ginnetti, Elizabeth J. Rushing, Isabelle Scherer, Marita Swain, Nadine Walicki, Michelle Yonetani, '*Global Report on internal Displacement'* (Internal displacement monitoring centre, 2016) 20.
[387] Alexandra Bilak et al, *'Internal displacement and food security'* (Global Report on internal Displacement, Internal Displacement Monitoring Centre 2023).
[388] Alexandra Bilak et al, *'Internal displacement and food security'* (Global Report on internal Displacement, Internal Displacement Monitoring Centre 2023) 73.
[389] Viviane Clement et al, *'Groundswell Part 2: Acting on Internal Climate Migration'* (World Bank, 2021) 80.
[390] Inter-American Commission on Human Rights, 'Climate Emergency, Scope of Inter-American Human Rights Obligations' (31 December 2021) Organization of American States Resolution 3/2021.
[391] UNGA Res 70/1 'Transforming our world: the 2030 Agenda for Sustainable Development' (25 September 2015) A/RES/70/1 [29].
[392] UN Res 53/L.9 'Human rights and climate change' (12 July 2023).
[393] Viviane Clement et al, *'Groundswell Part 2: Acting on Internal Climate Migration'* (World Bank, 2021) 2.
[394] UNGA 77/189 'Report of the Special Rapporteur on the human rights of migrants' (Note by the Secretary-General, 19 July 2022) [31].

Further reasons for migration can be desertification or frequent and severe weather events,[395] which is also mirrored in the Global report on internal Displacement[396].

These data on migration show not only that displacement is taking place already, but also that it will continue and even increase as the consequences of climate change persist. The migration and related risks will be magnified the less Climate Change is mitigated and the less the factors exacerbating it are addressed. Moreover, the reports show that migration goes hand in hand with other factors that are affecting people. For example, food security is linked to migration because it affects not only the people who migrate, but also those who are residing in the areas that people are migrating to.[397] In addition, areas that people migrate to and are often unable to provide migrants with an adequate standard of living as they are not well prepared, may also face water shortages, which then affects all people involved.[398] Therefore, as the Special Rapporteur on the human rights of migrants, Felipe González Morales, puts it, the factors also leading to Climate Change induced migration "undermine[s] the enjoyment of human rights, including the right to life, food, water and sanitation, health and adequate housing".[399]

Therefore, the Human Rights of the people already living in the places other people migrate to and those on the move are affected by (Climate Change induced) migration. In this context, the specific rights occurring in various sources governing Human Rights are endangered by human mobility exacerbated by Climate Change. This endangerment is not unknown as data shows and can be drawn from past occurrences. Therefore, the risk is predictable for states.

This relates to the criteria drawn from the Case of López Soto et al. v. Venezuela mentioned in the first part of the paper. This establishes that the competent authorities of the state must have positive knowledge or should have had positive knowledge of an imminent danger and that they fail to adopt appropriate measures which would expectedly avert the danger creating the violation of Art. 1(1) ACHR.[400] Accordingly, the states have the following state obligation. In order to comply with Art. 1(1) ACHR, states must implement appropriate measures to avert danger to Human Rights, if they have positive knowledge or should have positive knowledge of that same danger.

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[395] UNGA 77/189 'Report of the Special Rapporteur on the human rights of migrants' (Note by the Secretary-General, 19 July 2022) [15].
[396] Alexandra Bilak et al, *'Internal displacement and food security'* (Global Report on internal Displacement, Internal Displacement Monitoring Centre 2023) 73.
[397] Alexandra Bilak et al, *'Internal displacement and food security'* (Global Report on internal Displacement, Internal Displacement Monitoring Centre 2023), 103.
[398] Viviane Clement et al, *'Groundswell Part 2: Acting on Internal Climate Migration'* (World Bank, 2021) 2.
[399] UNGA 77/189 ,Report oft he Special Rapporteur on the human rights of migrants' (Note by the Secretary-General, 19 July 2022) [15].
[400] *Case of López Soto et al. v. Venezuela* (Merits, Reparations, and Costs) IACtHR Series C No. 362 (26 September 2018) [140 f.].

Drawn from the data presented by this paper (which is just a fragment of data available on the impacts of Climate Change affecting migration), the state should at least have positive knowledge of the risks of Human Rights violations in regard to the people migrating and the people living in the areas other people migrate to. Therefore, states must establish the necessary measures (legislative and/or political) to comply with their obligation.

Quoting the Special Rapporteur on the human rights of migrants the "absence of public policies on prevention and mitigation […] may be drivers that exacerbate these impacts [poverty, inequality and exclusion as a consequence of slowly occurring impacts of Climate Change] on territories and peoples"[401] making efficient systems to ensure the protection of rights and sustainable and long-term approaches necessary[402].

3. Obligation to plan migration by managing risks and preventing disasters

Migration is a complex phenomenon that has been part of global dynamics since the dawn of time[403]. In a climate change context, where risks are increasing but uncertainty rules[404], environmental issues can catalyze social conflicts[405], so that it ends up configuring a scenario that seems inauspicious for the development of migratory events, understanding the difficulties that these can bring if there is no proper design[406].

Besides, when we talk about migration, we face the difficulty that it is rarely a monocausal phenomenon[407], which could lead us to question the attribution of a migratory event to the climate crisis, however, this does not translate into a justification for state inaction, but quite the opposite.

States have obligations towards their population, which are identified with duties as a counterpart to the fundamental rights guaranteed by their constitutional order[408]. And as we have seen, the human rights of those who migrate in a context of climate change are particularly at risk, because despite the urgency of their treatment, and unlike other statutes, that of the climate migrant is in a diffuse space, given the complexity of its

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[401] UNGA 77/189 ‚Report of the Special Rapporteur on the human rights of migrants' (Note by the Secretary-General, 19 July 2022) [35].
[402] UNGA 77/189 ‚Report of the Special Rapporteur on the human rights of migrants' (Note by the Secretary-General, 19 July 2022) [43].
[403] Beatriz Felipe, *Las migraciones climáticas: retos y propuestas desde el Derecho internacional* (Tesis Doctoral, Universitat Rovira i Virgili 2016) 346.
[404] International Organization for Migration (IOM), *Cuadernos Migratorios N° 8 – Migraciones, ambiente y cambio climático: Estudio de Caso en América del Sur* (IOM 2017) 33.
[405] Daniel Abrahams and Edward R. Carr, 'Understanding the Connections Between Climate Change and Conflict: Contributions From Geography and Political Ecology' [2017] 3*(4) Current Climate Change Reports* 233-242.
[406] *The Environment and Human Rights*, Advisory Opinion OC-23, Inter-American Court of Human Rights Series A No 18 (15 November 2017) [66].
[407] Kira Vinke et al., *A Region at Risk: The Human Dimensions of Climate Change in Asia and the Pacific* (Asian Development Bank 2017) 86.
[408] John Rawls, *A Theory of Justice* (Harvard University Press, 1971).

causes and the unpredictability of its consequences[409]. Indeed, it is the potential human rights affectation that justifies the state obligation to prevent the risk from materializing, because otherwise it would incur in responsibility by omission as guarantor of those rights. That said, the alternative to inaction is migration planning, on the understanding that only states have the appropriate tools to zone the territory and provide information to potential migrants in order to guarantee a displacement that, instead of exacerbating the problem, serves as a viable solution.

In this context, and for a proper treatment of the issue, it is useful to keep in mind the classic distinction between temporary and permanent migrants[410], because even though both deserve attention, the scope of the state obligation will depend on which one we are thinking of.

The decision to migrate usually involves the identification of a destination to go to.[411] This exercise responds to the weighing of a series of elements that end up constructing the perception of the benefits as well as the risks of moving to the intended destination[412], and it is here where the cause of migration becomes relevant, since it is desirable that the anomaly that forces the abandonment of the home does not manifest itself again in the place to which one migrates, leading to a renewed need for displacement. Instead, the assumptions of migration are the certainty that the new home –whether temporary or permanent– will be durable enough to guarantee the certainty that the life project can be resumed[413].

However, to date, there is a debate as to whether international refugee law or international human rights law is the most appropriate regime to deal with the issue, a dispute that has led to its postponement and has kept climate migrants unprotected[414].

In this scenario, this sections follows the second option, affirming that not only does the State have an obligation towards its citizens, but also that of the international community, since ignoring the global nature of the phenomenon only conspires against the effectiveness of fundamental rights as an institution, so that we seek not only to defend the existence of such an obligation, but also to elaborate on the role of the

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[409] Idil Atak and François Crépeau, 'Managing Migrations at the External Borders of the European Union: Meeting the Human Rights Challenges' [2014] 5 *Journal Européen des Droits de l'Homme* 591-622.
[410] IOM, *Cambio climático, degradación ambiental y migración N°. 18.* (IOM 2012).
[411] cf. Carmen Egea and Javier Soledad, 'Los desplazados ambientales, más allá del cambio climático Un debate abierto' [2011] 49*(2) Cuadernos Geográficos* 201-215. It is important to say that this is not a peaceful assertion, as some distinguish between voluntary and forced climate migrants, using a somewhat strict temporal criterion despite the complexity of the issue. For example, the authors characterize the first kind by the preparation of their displacement, while the latter lack such time and are therefore coerced.
[412] ibid.
[413] Maxine Burkett, Robert R.M. Verchick and David Flores, *Reaching Higher Ground: Avenues to Secure and Manage New Land for Communities Displaced by Climate Change* (Center for Progressive Reform (CPR) 2017).
[414] cf. Carlos Espósito and Alejandra Torres, "Cambio climático y derechos humanos: El desafío de los 'nuevos refugiados'" [2012] 1*(1) Revista de Derecho Ambiental de la Universidad de Palermo* 7-32.

principles of prevention, precaution and cooperation as guiding principles of State action, allowing the effective protection of the human rights of migrants. In short, it is an obligation that has both an individual and a collective dimension, that together with its implications, will be developed in what follows.

3.1. Individual dimension of the State obligation facing episodes of internal displacement.

Climate change is currently expected to favor the development of internal displacement phenomena rather than cross-border migration, despite the special attention that the first one deserves and will continue to receive in the next sub-chapter given its particularities.[415]

Indeed, when it comes to justifying the existence of the obligation to plan climate migration, it seems that the case of internal displacement is simpler than that of cross-border migration, since if the Paris Agreement is conceived as a human rights treaty[416], and to the extent that it has been ratified by the state responsible, we are dealing with a commitment to mitigate and adapt to climate change. Thus, given that displacements are one of its many effects, and given the fragility of the legal assets at risk, the actions of states should pay special attention to the measures they must adopt in this matter.

Having established the above, it is important to insist on the idea that both the meaning and the entity of the obligation is given by the legal assets at risk, and considering the spontaneous nature of climatic disasters, the timing of the action is vital to avoid their harm. In effect, while the preventive and precautionary principles are those called upon to guide the state action, the scope can be limited to the necessary territorial planning, whether to prevent displacement caused by buildings in risk areas, or to plan future urbanizations that enable displacement without jeopardizing the safety of those who have been forced to do so, for example.

As we saw in the first chapter, there are many human rights potentially affected by climate change in relation to migration motivated by this phenomenon, however, given the limited scope of this article, it is methodologically convenient to focus on one of them: the right to adequate housing.

[415] World Bank Group, *Policy Note #3 – Groundswell: Preparing for Internal Climate Migration* (2018).
[416] As it follows from the chapter B.I.4 of this article.

This right is broadly recognized by the UDHR[417] and the ICESCR[418], developed by the CESCR[419] and defined as a goal among the SDGs[420], but to understand the way it is guaranteed in a climate change context, turns mandatory to cite the Guidelines for the Implementation of the Right to Adequate Housing[421], which can be summarized as follows[422]:

i) Integrate the right to adequate housing into strategies for the adaptation to (…) climate change, as well as in strategies for addressing climate change displacement;

ii) Give priority to adaptation measures to preserve existing communities that are particularly vulnerable to the effects of climate change and climate change-related disasters (…);

iii) Conduct thorough analyses of anticipated climate displacement and identify communities at risk and possible relocation sites. And;

iv) Work with affected communities when developing and promoting environmentally sound housing construction and maintenance (…).

Far from interpreting the content of the right, the guidelines come to make its satisfaction probable by way of recommendations, of "good practices", which, if carried out, increase the probability that the human right to adequate housing will be guaranteed, given the context of climate change where we live and the specific type of migration that we intend to base the obligation on.

These four points will be further developed below in order to give some context to the obligation here argued, instrumentally, allowing us to specify its scope while clarifying its meaning and content.

3.1.1. Preventive and precautionary principles as adaptation guidelines.

As can be seen from the above reasoning, the obligation to plan for migration is part of the effort to adapt to and mitigate the effects of climate change. International environmental law calls for a proactive approach based on prevention and precautionary principles, because planning ahead helps mitigate risks, protect

[417] Article 25 of the Universal Declaration of Human Rights.
[418] Article 11.1 of the International Covenant on Economic, Social and Cultural Rights.
[419] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)* (13 December 1991) E/1992/23, and; CESCR, *General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions* (20 May 1997) E/1998/22.
[420] Sustainable Development Goal No. 11.1.
[421] UNGA, *Guidelines for the Implementation of the Right to Adequate Housing* (26 December 2019) A/HRC/43/43.
[422] United Nations Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No 38 – Frequently Asked Questions on Human Rights and Climate Change* (2021) 16.

communities, and respond more effectively to climate-related crises. It also acknowledges the urgency of climate action, even in the absence of complete scientific certainty. In summary, migration planning is crucial for protecting vulnerable populations and ensuring a sustainable response to climate challenges.[423]

In order to guarantee the rights of those who are displaced, States have an obligation to take preventive and remedial measures during all stages of migration[424], and not in the sense of preventing or correcting the migration phenomenon as such, but rather of anticipating it, identifying communities at risk, their vulnerabilities and potential destinations, as indicated in points i) and iii) of the Guidelines for the Implementation of the Right to Adequate Housing. This requirement translates into the incorporation of preventive resettlement programs as well as the control that must exist with respect to the installation of new settlements in areas identified as being at risk. In other words, it is a matter of comprehensive risk reduction planning within the framework of territorial planning, from a preventive perspective and in order to safeguard the human rights of those who are at risk of being displaced or who have already been displaced.[425]

On the other hand, the diversity of human rights put at risk in a situation of unplanned migration and the complexity involved in the satisfaction of many of these rights, such as housing, also requires the adoption of a precautionary approach. For the difficulty of attributing a migration event exclusively to climate change cannot deprive states from taking action, especially when the consequence of such inaction is a potential violation of human rights.

Here it is worth recalling that Principle 15 of the Rio Declaration calls on states to take a precautionary approach to environmental protection and to act "where there are threats of serious or irreversible damage", even when there is a lack of absolute scientific certainty.[426]

Therefore, if we consider the human environment as part of the protected legal good, and given that the effects of climate change turns probable that the rights of migrants will be harmed or damaged, it is imperative that the necessary actions be taken to prevent this probability from becoming a reality.[427]

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[423] Koko Warner et al., 'National Adaptation Plans and Human Mobility' (2015) *Forced Migration Review*.
[424] OHCHR, *Human rights, climate change and migration* (2022) 2.
[425] Narzha Poveda, 'Nueva Esperanza. Una experiencia de reasentamiento con enfoque de gestión de riesgo y ordenamiento territorial'. En: *Reasentamiento preventivo de poblaciones en riesgo de desastre: Experiencias de América Latina*, Elena Correa (Comp.) (1st edn, World Bank and Global Facility for Disaster Reduction and Recovery 2011).
[426] OHCHR, *Fact Sheet No 38 – Frequently Asked Questions on Human Rights and Climate Change* (2021) 55.
[427] Mauricio Ferro, 'El reconocimiento del Estatuto de Refugiado por la afectación a Derechos Fundamentales como consecuencia del Cambio Climático' [2016] 19*(December) Observatorio Medioambiental* 71-89.

3.1.2. Right of access to information as a guarantor of security in decision-making regarding the migrant's situation.

The right of access to information includes information held by the State. This principle has been especially developed regarding environmental law, so that an extension of its application to urban and land-use planning matters is urgently needed for an adequate satisfaction of this right and effective compliance with the State's obligation here defended, that of planning migration.

On the other hand, the right of access to information also allows for bottom-up citizen oversight of the state to control compliance with its international obligations on climate change, especially those related to the design and implementation of public policies aimed at adaptation.

Although in Europe there is the Aarhus Agreement and in Latin America the Escazú Agreement, these instruments are only in force for some members of the international community, so that at the domestic level countries do not necessarily find this right enshrined. This is relevant because the Rio Declaration, despite having been adopted by more than 150 countries, is a soft law instrument, so that since it is not binding for the parties, it cannot be enforced. However, based on the Guidelines for the Implementation of the Right to Adequate Housing, we see that points iii) and iv) are applicable to this case.

Indeed, the analysis of expected climate displacement, the identification of communities at risk and potential relocation sites, coupled with the requirement to work together with affected communities, is a prerequisite for successful territory zoning underlying migration planning.

The fulfilment of this right is important because it provides the necessary security that a migrant must have when he or she decides to leave home for another.

3.1.3. Resilience building and capacity development of vulnerable communities.

Migration planning responds to the recognition of a reality, which is the proliferation of forced displacement as a result of the accentuation of the effects of climate change. Adaptation to this reality can be approached from bottom-up and/or top-down perspectives, and although this paper argues for the existence of a state obligation, we understand that the state cannot act on the basis of mere legal-technical criteria but must

take into account local particularities and give value to ancestral knowledge in decision-making.[428]

However, while knowledge of the territory at the local level is key to successful territorial planning in a context of proliferating disasters exacerbated by climate change, the territories where planning is urgently needed are also those with the most vulnerable populations. Vulnerability has different manifestations depending on the territory in question, for example, indigenous peoples are highly dependent on the natural resources that surround them[429], so that climate change is not only an affront to their customs but, above all, to their lives.

States adopting risk management measures often fail to take vulnerable communities into consideration[430], which apparently contradicts points ii) and iv) of the Guidelines for the Implementation of the Right to Adequate Housing.: to give priority to adaptation measures to preserve existing communities that are particularly vulnerable to the effects of climate change and climate change-related disasters, and to work with affected communities when developing and promoting environmentally sound housing construction and maintenance.

In addition to endangering vulnerable communities, this undermines the very recognition of the right to housing that has been made in various international instruments, such as the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities[431], all of which are motivated by the special attention that these groups require given their disparate vulnerabilities. In a context of climate change, vulnerabilities increase, so working on building capacity and resilience is essential if these groups are not to see their human rights violated by the displacement to which they are most likely to be forced.

3.2. Collective dimension of the State obligation in view of the global nature of the phenomenon.

Latin America and Africa are among the regions that will face the most intense climate migration scenarios between now and 2050.[432]

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[428] José Sandoval and Francisco Astudillo, 'Comunidades en movimiento ante el cambio climático. ¿Resistentes o resilientes? El caso de Paipote, Chile' [2019] 58*(December) Ecología Política - Cuadernos de Debate Internacional* 79-83.
[429] Ángela San Martín, 'Incorporación del enfoque étnico-racial en el abordaje jurídico y político de las migraciones climáticas' [2023] 42*(July) UNIVERSITAS* 75-108.
[430] OHCHR, *Fact Sheet No 38 – Frequently Asked Questions on Human Rights and Climate Change* (2021) 17-19.
[431] OHCHR, *Special Rapporteur on the right to adequate housing: International standards*, available at https://www.ohchr.org/en/special-procedures/sr-housing/international-standards.
[432] Kanta Rigaud et al., *Groundswell: Preparing for Internal Climate Migration* (World Bank 2018).

In Africa there is the 2021 Protocol of Free Movement of Persons in the Intergovernamental Authority on Development, which in its article 16[433], guarantees the right to migrate across borders in the event of disasters. On the other hand, from Latin America, there is the Cartagena Declaration on Refugees, which calls for the application of international humanitarian law in a more generalized way when classifying refugees[434], broadening a definition that is known to be restrictive[435].

However, while the Protocol has been slow to be implemented (of the 55 member states of the African Union, only XX have ratified it), the Cartagena Declaration is a non-binding treaty dating back to 1984, when the climate crisis was not as manifest as it is today.

These two examples illustrate the current state of the international scene in terms of agreements to deal with a phenomenon that is eminently global in nature, such as climate migration.

In view of this, there is an urgent need to conceptualize a state obligation that, given the normative gaps that exist at international level, prevents possible human rights violations. However, in order to do so, there is the difficulty that not all countries have the same catalogue of fundamental rights, although the rights to life, personal integrity and property ("first generation rights"), to health, water, food and housing ("second generation rights") and to participation in cultural life and a healthy environment ("third generation rights") are found in a cross-cutting manner around the world.

And beyond the relevance of the classification[436], it should be noted that, traditionally, the right not to be forcibly displaced is conceptualized within the first group, where the state is to abstain rather than to provide a counter-performance. There are historical explanations for this, consisting of the war context of the mid-20th century, which gave

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[433] *Article 16. Movement of Persons Affected by Disasters.*
1. Member States shall allow citizens of another Member State who are moving in anticipation of, during or in the aftermath of disaster to enter into their territory provided that upon arrival they shall be registered in accordance with national law.
2. Member States shall take measures to facilitate the extension of stay or the exercise of other rights by citizens of other Member States who are affected by disaster in accordance with the provisions of this Protocol when return to their state of origin is not possible or reasonable.

[434] *The Colloquium adopted the following conclusions:*
3. TO REITERATE that, in view of the experience gained from the massive flows of refugees in the Central American area, it is necessary to consider enlarging the concept of a refugee, (...). Hence the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by (...) massive violation of human rights or other circumstances which have seriously disturbed public order.

[435] UNHCR, *Memorias del Trigésimo Aniversario de la Declaración de Cartagena sobre Refugiados* (2015) 14.

[436] Moisés Bailón, 'Derechos humanos, generaciones de derechos, derechos de minorías y derechos de los pueblos indígenas; algunas consideraciones generales' [2009] 4*(12) Revista del Centro Nacional de Derechos Humanos* 103-128.

rise to mass migrations due to political or ethnic persecution[437], so that he traditional conceptualization of this right does not seem consistent with the motivations of the climate migrant.

This is why many efforts have been made to reconceptualize the right[438], recognized in Principle 6 of the Guiding Principles on Internal Displacement[439], since, although they appear in principle to have disparate origins, the legal goods they seek to safeguard are the same: the life and integrity of those who are forcibly displaced. This connection is neatly illustrated by former UNEP Director El Hinnawi, who conceptualized 'environmental refugees' as follows:

> *Environmental refugees are those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life [sic]. By 'environmental disruption' in this definition is meant any physical, chemical, and/or biological changes in the ecosystem (or resource base) that render it, temporarily or permanently, unsuitable to support human life.*[440]

As can be seen, El Hinnawi's definition is broad enough to encompass "climate refugees", in their different classifications (temporary or permanent) and according to their respective motivations.

In this way, this sub-chapter seeks to conceive of the case of climate migrants as one in which a solidarity dimension - transforming the right not to be forcibly displaced into a third-generation right - is demanded, taking into account the principles of cooperation and common but differentiated responsibilities, and therefore making the obligation to plan migration enforceable.

3.2.1. Greater social and international solidarity.

According to Savaresi & Luporini's (2023)[441] review of the proliferation of climate litigation before international human rights bodies, at least 3 cases[442] are recognised in

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[437] Jérôme Elie, 'The Historical Roots of Cooperation Between the UN High Commissioner for Refugees and the International Organization for Migration' [2010] 16*(3) Global Governance* 345-360.
[438] íbid Carlos Espósito and Alejandra Torres (2012).
[439] UN Economic and Social Council, *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39 Addendum Guiding Principles on Internal Displacement* (11 February 1998) E/CN.4/1998/53/Add.2.
[440] Essam El-Hinnawi, *Environmental refugees* (UNEP 1985).
[441] Riccardo Luporini and Annalisa Savaresi, 'International human rights bodies and climate litigation: Don't look up?' [2023] 32*(2) Review of European, Comparative & International Environmental Law* 1-12.
[442] *Teitiota v New Zealand*, Communication No 2728/2016 (Teitiota) and Human Rights Committee 'Views Adopted by the Committee under Article 5 (4) of the Optional Protocol, Concerning Communication No. 3624/2019' UN Doc CCPR/C/127/D/2728/2016 (7 January 2020); *Daniel Billy et al v Australia*, Communication No 3624/2019 (Billy) and Human Rights Committee 'Views Adopted by the Committee under Article 5 (4) of the Optional Protocol, Concerning

which applicants claim a violation of their human rights because of their particular vulnerability to the impacts of climate change and the corresponding forced displacement they risk.

We will focus on the Teitiota case, where one asylum seeker sued New Zealand before the UN HRComm, claiming that New Zealand's refusal to grant him asylum resulted in a violation of his right to life because of the involuntary displacement he was forced to endure due to the effects of climate change. His complaint was rejected on the merits on the following grounds: (a) the threat to the author's right to life was not imminent; and (b) the Republic of Kiribati was actively pursuing adaptation measures. The Immigration and Protection Tribunal of New Zealand added that Mr. Teitiota failed to establish personal injury (c).

And although the IACHR Commission's decision is relevant in that it recognises the concept of climate refugees[443], it shows certain weaknesses in the international human rights protection system regarding the situation of such refugees, since the Commission's reasons for endorsing the decision of the New Zealand Immigration and Protection Tribunal can be read, a contrario sensu, as the requirements to be met for future applications from potential climate migrants. Thus, it would be necessary that (a) the migrant's life is in imminent danger; (b) the Republic of Kiribati is not undertaking adaptation measures (given that there is no assessment of their adequacy), and; (c) personal injuries are established, although as Atapattu[444] points out, the establishment of certain injuries as sufficient brings with it the difficulty of comparison with the injuries of the migrant's former cohabitants, producing a public policy problem that is difficult to address from a judicial point of view.

The UN Secretary General recently called on states to show greater solidarity[445], which makes sense given the fact that the countries that most meet the UNFCCC criteria for vulnerabilities to climate change are also the countries that are furthest behind, which translates into a lower capacity to react[446]. Returning to the Teitiota v. New Zealand case, it is worth highlighting the fact that while the Republic of Kiribati averaged a GDP per capita of €1.647 by 2022, New Zealand closed the year at €45.591, so the call for this kind of cases should be stronger.

Communication No. 3624/2019' UN Doc CCPR/C/135/D/3624/2019 (22 September 2022), and; *Rights of Indigenous Peoples in Addressing Climate-Forced Displacement*, AL USA 16/20 (15 January 2020).

[443] cf. Espósito and Torres (2012), about the relevance of the legal recognition of climate refugees.

[444] Sumudu Atapattu et al., 'Sobre el desplazamiento por cambio climático y su regulación en el Derecho Internacional' [2020] 3*(3) Revista Electrónica de Derecho Internacional Contemporáneo* 121-126.

[445] UN News, "Guterres calls for phasing out fossil fuels to avoid climate 'catastrophe'"(15 June 2023), available at: https://news.un.org/en/story/2023/06/1137747.

[446] Nicholas Stern, *The Economics of Climate Change: The Stern Review* (Oxford University Press 2006) 431.

3.2.2. Principle of cooperation.

The principle of cooperation, reflected in various sources[447], stems from the general principle of good faith[448]. It regulates relations between the individual states and prescribes cooperation between states when such cooperation is necessary[449]. Therefore, for cooperation in good faith, states must therefore compromise by balancing their own interests with the interests of the other states[450].

The Paris Agreement has various manifestations of this principle, although it is generally associated with mitigation (article 6) and adaptation (article 7) work associated with NDCs.

In this regard, it is necessary that the interpretation of the promotion of cooperation through "Sharing information, good practices, experiences and lessons learned, including, as appropriate, as these relate to (…) planning"[451] and "strengthening of institutional arrangements (…) to support the synthesis of relevant information and knowledge, as well as the provision of guidance and technical support to the Parties"[452] eventually leads to the submission of a binding multilateral agreement, at least at regional level, that allows migration planning but without losing sight of the principle of common but differentiated responsibilities.

3.2.3. Common but differentiated responsibilities.

Understanding the principle of common but differentiated responsibilities as one that originates in the historical responsibility of industrialised states for environmental degradation, it is argued that this principle can underpin the responsibility of industrialised states to collaborate in the design and implementation of adaptation measures in poorer countries.[453]

There are authors who consider that the principle of common but differentiated responsibilities should also apply when assessing the merits of a climatic refugee's application to be received by a country other than his or her own.[454] However, we believe

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[447] cf. UNCLOS art 123, 197; Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79 art 5; Stockholm Declaration, Principle 24.
[448] cf. UNCh art 2 (2); UNGA Res 2625(XXV) (24 October 1970) Principle 4.
[449] cf. UNGA Res. 2625 (XXV) (24 October 1970) Principle 4.
[450] North Sea Continental Shelf (Federal Republic of Germany/Netherlands) (Judgment) [1969] ICJ Rep 3 [85]; cf. Fisheries Jurisdiction (UK and Northern Ireland v Iceland) (Judgment) [1973] ICJ Rep 3[78]; cf. Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/US) (Judgment) [1984] ICJ Rep 246 [87].
[451] Article 7.7, letter a).
[452] Article 7.7, letter b).
[453] Esteban Muñoz, Ana Cuarán, and Juan Pablo Marín, 'Alcance del principio de Responsabilidades Comunes pero Diferenciadas y Respectivas Capacidades en las obligaciones derivadas en el Acuerdo de París sobre cambio climático' [2020] Preprint.
[454] Justo Corti, '¿Qué debería ser un migrante climático para el Derecho Internacional? En búsqueda de una definición jurídica que brinde una protección adecuada y justa' [2023] XIV*(1) Revista Catalana de Dret Ambiental* 1-47.

that this could bring certain difficulties: (i) if integrated into the assessment matrix reviewed above, it would probably come into competition with other categories such as the assessment of the level of risk faced by the migrant's life or the suitability of the injuries suffered by the migrant; (ii) if applied in such a way as to generate some case law, it is highly likely to result in arbitrary discrimination on the basis of the nationality of the migrant, putting migrants whose origin may be a country with high contributions (and therefore responsibilities) but also vulnerable to climate change in a less privileged position.

Although the path proposed by Corti Varela would probably have allowed the Teitiota v. New Zealand case to be resolved differently, we consider that it is not the most appropriate for the reasons outlined above.

Given the reality that it is the countries of the global south where the minerals and other resources required for the decarbonisation of the energy matrix are concentrated; the fact that these countries represent a miniscule percentage of total global emissions, and therefore are not responsible for the current crisis situation; and the fact that these are countries with lower rates of human development and are particularly vulnerable to the effects of climate change, what matters most is the transfer of resources and capacities under the principle, as only in this way will communities and recipient states themselves be able to build resilience.

3.3. Interim conclusion.

Today, the human rights of migrants are protected (or attempted to be protected) through litigation strategies or through the application of statutes specific to International Humanitarian Law or International Human Rights Law.

We have seen that the situation of internal migration differs both quantitatively and qualitatively from that of cross-border migration, meriting differentiated treatment. Also, other classifications of migration (permanent/temporary; forced/voluntary) were considered, and we concluded that the situation of the temporary cross-border migrant is the most unprotected.[455]

As a result, only through the strengthening of climate change adaptation plans focused on migration, together with an effort to reach multilateral agreements at regional level, will it be possible to guarantee compliance with the state's obligation to plan for migration in its two dimensions.

[455] Sumudu Atapattu et al., 'Sobre el desplazamiento por cambio climático y su regulación en el Derecho Internacional' [2020] 3*(3) Revista Electrónica de Derecho Internacional Contemporáneo* 121-126 [5].

It is not climate change that violates human rights; to argue that would be tantamount to attributing responsibility to an unwilling phenomenon. The violation of the human rights of climate migrants recognises as the responsible agent the state that, being capable of doing so, did not warn in advance of the possible development of a climate event that makes the space inhabited by the migrant uninhabitable; as well as the state that resists receiving the migrant or, while receiving them, allows them to settle in a territory that, due to climate change, will suffer the same fate as their previous home, to the extent that it has the means to carry out such an assessment.

And while the obligation exists, as we saw in the Teitiota case, it only covers the most extreme cases of climate migrants. The problem with the IACHR's reasoning is that from its interpretation it could be inferred that if the migrant's human rights to remain in his or her country of origin are threatened, there is no reason to think that his or her neighbours are not in the same situation. On the other hand, it also does not take into account the situation in which they will find themselves in the receiving country, and it is possible that the situation of threat to their human rights will persist despite the displacement. Nevertheless, it is clear that the IACHR cannot take responsibility for these aspects, since it is up to the states to deal with the matter both in their domestic legislation and at the multilateral level. No other solution is possible. In order to fulfil their obligations, they need to reconcile positions and reach binding agreements for the parties.

Finally, in view of the situation of vulnerable communities, we see that the way in which planning is carried out does not matter, as it must be guided by the principles mentioned (preventive, precautionary, cooperative and of common but differentiated responsibilities) and in strict compliance with the human rights involved, because otherwise, the possible violation of any of the elements mentioned here would give rise to the international responsibility of the offending state.[456]

4. Conclusion and further challenges

Just as António Guterres, UN Secretary General, declared a few weeks ago that we had entered the era of "global boiling"[457] –leaving behind that of "global warming"–, the IOM Director General, Amy Pope, declared just a few days ago that we are in "the era of climate migration"[458]. In view of this, it is urgent to coordinate the reaction of states to

[456] Rodrigo Contreras, 'El principio de prevención en el derecho internacional del medio ambiente' [2016] 69*(abril) Revista de Derecho Público* 339-350 [2].
[457] UN News, "Hottest July ever signals 'era of global boiling has arrived' says UN chief" (27 July 2023), available at: https://news.un.org/en/story/2023/07/1139162
[458] IOM, 'Africa Climate Summit: Towards a Greater Response to Climate Change Impacts on Human Mobility' (1 September 2023), available at: https://www.iom.int/news/africa-climate-summit-towards-greater-response-climate-change-impacts-human-mobility

prevent potential violations of fundamental rights through individual and coordinated measures.

And while there is an obligation for States to plan for migration, both at the national and multilateral levels, it is no less true that better instruments are needed to more closely regulate the implications of this obligation, in order to guarantee the protection of human rights.

The complexity of migratory phenomena, their multi-causality, is not a sufficient argument for refusing to act, mainly because what is at risk is the satisfaction of the most basics human rights of migrants. That is why it is worthwhile to establish the existence of an obligation to – at least – plan migration.

And it is in this planning that we find the main implementation challenges, as we know that the countries with the greatest vulnerability to climate change - and therefore the most susceptible to migratory phenomena - are also those that have the least means to cope with it.

However, there are good practices that should be highlighted, such as the case of Chile, which meets 7 of the 9 vulnerability criteria of the United Nations Framework Convention on Climate Change, where a large part of the socio-economic activity is directly related to climate, and where 51% of the population believes that they will be forced to migrate as a result of the exacerbation of the effects of climate change.[459]

[459] Conferencia Suramericana sobre Migraciones (CSM), *Mapeo sobre migración, medio ambiente y cambio climátco en América del Sur* (2022) 76-77.

F. THE PROTECTION OF ENVIRONEMNTAL DEFENDERS

By Florencia Anguita[460] and Christian Renno[461]

1. Introduction

In recent years, Latin America has witnessed a deeply concerning and escalating trend of violence against environmental activists. The killing of these activists from 2012 to 2021 reached a staggering number of 1733, 1200 of which were Latin American activists.[462] Making up around 68% of the total killings. These brave individuals, who advocate for the protection of diverse ecosystems, indigenous rights, and sustainable development, often find themselves in the crosshairs of powerful interests that prioritize economic gain over environmental conservation. This situation has led to a distressing cycle of intimidation, harassment, and even murder that threatens both the activists themselves and the vital ecosystems they selflessly seek to defend.

Several countries in Latin America have become hotspots for these alarming incidents. The region's vast reserves of natural resources, which contain around 40% of the global biodiversity, including minerals, and agricultural land, have attracted significant investment from industries eager to capitalize on these riches. Unfortunately, this drive for profit has come at the expense of local communities, indigenous peoples, and the environment itself. Activists who attempt to challenge or expose unsustainable and dangerous practices often face threats from powerful individuals or entities with interests in maintaining the status quo. Threats that unfortunately result far too many times in the murder of the activists.

The information presented in the report conducted by Global Witness in the year 2022[463] reveals that a significant portion of the attacks spanning a decade have occurred in Brazil, Colombia, and the Philippines, collectively accounting for more than half of the incidents. In the context of data specifically from the year 2021, it becomes evident that Mexico emerges as the nation with the highest documented count of killings.

Furthermore, the research delves into a particularly concerning aspect, shedding light on the fact that Indigenous communities find themselves disproportionately targeted by these attacks. Astonishingly, these communities, constituting a mere 5% of the global

[460] Florencia Anguita is a student from the Universidad de Chile.
[461] Christian Renno is a student from the University of Hamburg.
[462] Press Release Global Witness, 'A deadly decade for land and environmental activists – with a killing every two days' (Global Witness, 29 September 2022) <https://www.globalwitness.org/en/press-releases/deadly-decade-land-and-environmental-activists-killing-every-two-days/> accessed 12 December 2023.
[463] ibid.

population, bear the brunt of nearly 40% of these assaults. This grim reality underscores an alarming disparity in the distribution of these attacks, raising questions about equity, protection, and human rights for Indigenous populations across the world.

It becomes evident that it is crucial to recognize the multifaceted implications of such statistics. The geographical concentration of attacks in Brazil, Colombia, and the Philippines speaks to the complex interplay of social, economic, and political factors that contribute to the vulnerability of certain regions. The prominence of Mexico in the 2021 data further underscores the need for nuanced analysis to comprehend the underlying reasons driving the prevalence of such violence within the nation.

Moreover, the overwhelming concentration of attacks within Latin America during the specified year invites a deeper exploration into the socio-cultural dynamics of the region. Unearthing the root causes behind this clustering demands an examination of historical legacies, economic disparities, and the effectiveness of local governance structures. Consequently, addressing the disproportionate attacks on Indigenous communities necessitates not only immediate attention but also long-term strategies that address the systemic inequalities embedded in societies around the world.

The report's revelations regarding the distribution of attacks over time and across regions call for a comprehensive understanding of the intricate forces shaping these statistics. By acknowledging the disparity faced by Indigenous communities, we are prompted to reevaluate the mechanisms in place to safeguard the rights and dignity of these marginalized populations, striving for a future where such alarming discrepancies cease to persist.

The lack of effective legal protections and the prevalence of corruption in some Latin American countries further exacerbate the tragic and dangerous situation for environmental activists. Many cases of violence against these activists go unresolved, perpetuating a culture of impunity that emboldens those who would use force to suppress opposition. The situation is particularly terrible for indigenous communities, whose deep connection to the land puts them at the forefront of struggles against extractive industries and land invasions. Despite their essential role in preserving biodiversity and knowledge, indigenous activists often find themselves marginalized and disproportionately targeted.

International organizations, human rights advocates, and environmental groups have been working tirelessly to raise awareness about this crisis and to pressure governments and international organizations to take meaningful action to protect environmental defenders. Efforts have included advocating for improved legal frameworks, calling for thorough investigations into attacks, and providing support to affected communities.

However, the complex web of economic interests, political dynamics, and cultural challenges makes finding lasting solutions a difficult task.

Addressing the killing of environmental activists in Latin America requires not only local and national efforts to enforce the rule of law and protect human rights, but also international collaboration to ensure that these issues are raised on the global stage. By shedding light on the critical role that environmental defenders play in preserving the planet's natural treasures, it is hoped that increased awareness and collective action can help stem the tide of violence and create a safer environment for those who courageously stand up for the Earth's well-being.

As an effort to achieve an effective protection of environmental defenders the Latin American and the Caribbean states developed the Escazú Agreement. The Escazú Agreement, officially known as the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean was adopted in March 2018 in Escazú, Costa Rica.[464] Within this work a special focus will be laid on Article 9 which centers on the protection of environmental defenders, acknowledging the need for their recognition, guaranteeing their rights and most notably, ensuring their safety. With Chiles and Colombia's advisory opinion[465] the countries are asking the Inter-American Court of Human Rights to specify which obligations states have under Article 9 and to which extent states need to take appropriate measures to protect environmental defenders. This work will analyze the existing human rights framework and to which extent it protects environmental defenders and then moving on to an in-depth review of the provision Article 9 of the Escazú Agreement offers for environmental defenders.

This work will start by providing a hypothesis, moving onwards to defining the relevant terms and then to the main body, where the existing protection of environmental defenders in the human rights instruments is presented and then talking about the new provisions Article 9 of the Escazú Agreement brings to the field. Hereinafter, a short lookout and further challenges will be presented before finishing with the conclusion.

2. Hypothesis

This work seeks to underscore the crucial notion that the existing human rights framework often proves inadequate in safeguarding the fundamental rights of environmental defenders. This inadequacy becomes all too evident when we examine the necessity for specialized provisions, such as those delineated in Article 9 of the

[464] See the original document of the Escazú Agreement, P. 5: downloadable here: <https://www.cepal.org/en/escazuagreement> accessed 12 December 2023.
[465] *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,* Inter-American Court of Human Rights [2023] <https://corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf> accessed 12 December 2023.

Escazú Agreement. However, it is imperative to recognize that the insufficiency of this framework does not absolve states of their responsibilities. Even in the absence of comprehensive and specific regulations, it is incumbent upon governments to take decisive action in order to ensure the protection of environmental defenders. This duty is rooted not only in the moral imperative to uphold human rights but also in the recognition of the vital role these defenders play in preserving the planet's ecological balance and fostering sustainable development. Therefore, as we delve into the limitations of the current framework, we must simultaneously emphasize the urgency for states to proactively safeguard the rights and well-being of those who courageously champion environmental causes, irrespective of the regulatory voids that may exist.

Looking at the existing human rights framework consisting of international instruments, regional agreements, and national legislation, the above-mentioned threats and killings seem to show that environmental defenders often face significant challenges and dangers in carrying out their work. This raises concerns about the effectiveness of the contemporary human rights framework in terms of adequately protecting environmental defenders.[466] Hence the question arises if there is a need for more policies in the international human rights system specifically protecting environmental defenders comparable to Article 9 of the Escazú Agreement.

In the following, a comparative analysis between the existing human rights framework to the provisions outlined in Article 9 of the Escazú Agreement will be carried out. By examining case studies, statistical data, and relevant articles, this hypothesis can be further evaluated to assess the extent to which the human rights framework is or is not adequately protecting environmental defenders. The findings may help identify gaps in the current system and provide insights into potential areas of improvement to ensure better protection for those defending the environment.

3. Definitions

To fully comprehend the significance of Article 9 of the Escazú Agreement, it is necessary to define a few key concepts.

'Access to Justice' embodies a fundamental principle that underscores the inherent right of both individuals and businesses to effectively navigate and engage with legal systems. In doing so they initiate and secure equitable and impartial solutions to a diverse spectrum of legal challenges. This overarching concept encompasses the capacity and entitlement of these stakeholders to initiate the process of seeking redress for their legal grievances. But this concept also helps to navigate the intricate terrain of legal proceedings, aided by an extensive array of legal and justice services. This entails not

[466] cf. Lalanath de Silva, 'Escazú Agreement 2018: A Landmark for the LAC Region' (2018) 2 Chinese Journal of Environmental Law, 93 (94, 97).

only the right to avail themselves of legal representation, advice, and consultation, but also extends to the assurance of a fair and just culmination to their legal quandaries, fostering an environment where the rule of law is upheld, and the rights of all are preserved.[467]

'Access to Information' pertains to the entitlement to actively pursue, receive, and communicate information that is in the possession of governmental entities. This aspect forms an essential component of the broader principle of freedom of expression, as outlined in Article 19 of the Universal Declaration of Human Rights. This article underscores the intrinsic right of individuals to convey and receive information and ideas using any medium, transcending geographical boundaries.[468]

'Risk Assessment' is defined as "Technical support for decision making under uncertainty"[469]. This concept is a useful tool in understanding and prioritizing potential risks, guiding the preventive measures and effectively managing the risks.

'Safeguards' in the context of international agreements refer to measures or provisions put in place to ensure compliance with the terms and objectives of the agreement, as well as to prevent any unintended negative consequences. Safeguards are meant to provide a level of protection, security, or assurance that the parties involved will adhere to the agreed-upon standards, rules, or commitments. Safeguards can take various forms depending on the nature of the agreement. They might include mechanisms for monitoring, verification, enforcement, and dispute resolution. These measures are designed to maintain the integrity of the agreement and prevent any potential violations or deviations that could undermine its goals.

Article 9 of the Escazú Agreement states that each Party must protect "persons, groups and organizations that promote and defend human rights in environmental matters". The question then arises who those persons, groups and organizations are that defend human rights in environmental matters.

The United Nations General Assembly defines 'environmental human rights defenders' as "individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna".[470]

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[467] Organisation for Economic Co-operation and Development, Access to justice in Government at a Glance, (OECD Publishing, Paris, 2021) 230.
[468] United Nations Educational, Scientific and Cultural Organization, 'Access to Information Laws' <https://www.unesco.org/en/access-information-laws> accessed 31 August 2023.
[469] Glenn W. Suter, *Ecological Risk Assessment,* Second Edition, (CRC Press 2007) 3.
[470] United Nations General Assembly – A/71/281, 'Report of the Special Rapporteur on the situation of human rights defenders' [2016] 4.

Meanwhile the United Nations Environment Programme "considers an environmental defender to be anyone (including groups of people and women human rights defenders) who is defending environmental rights, including constitutional rights to a clean and healthy environment, when the exercise of those rights is being threatened".[471]

Both definitions basically cover the same concept. Given the definitions of environmental defenders[472] it can be said that they go very far as to protect people who defend the environment in any way, not necessarily in a predetermined way or with the need to comply with certain requirements. For the purpose of this work the second, more contemporary definition by the United Nations Environment Programme will be used.

4. Comparative law study between the existing protection in the international human rights law and Article 9 of the Escazú Agreement

4.1. Protection of environmental defenders in the existing human rights system

Firstly, the focus will lay on the *status quo* of the protection of environmental defenders. The chapter will be divided into 1. The existing protection of environmental defenders in international or regional treaties and national legislation and 2. Outlining cases that are connected to or dealt with the protection of environmental defenders.

4.1.1. Protection on the International Level

In the international perspective the Escazú agreement is the first treaty also directly including the protection of environmental defenders. [473]

The United Nations are aware of the problem and have created the so-called United Nations Environmental Programmes' Policy on Promoting Greater Protection for Environmental Defenders in 2018. Also, in 2019 the Human Rights Council adopted a Resolution on the Recognition of environmental human rights defenders and their enjoyment of their rights. [474]

With the United Nations Environmental Programmes Policy, a definition for environmental defenders is formed (see above in "Definitions"). Following, they present the contemporary situation and the day-to-day life which environmental defenders are facing, threats, misplacements, and killings. The United Nations Environmental

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[471] United Nations Environment Programme, 'Promoting Greater Protection for Environmental Defenders Policy' [2018] 1 f.
[472] In this work environmental defenders, environmental protectors, environmental activists, and human rights defenders in environmental matters are used as synonyms.
[473] Lalanath de Silva, 'Escazú Agreement 2018: A Landmark for the LAC Region' (2018) 2 Chinese Journal of Environmental Law, 93 (96).
[474] United Nations General Assembly – Human Rights Council A/HRC/RES/40/11, 'Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development' [2019].

Programme shows the sad truth that the number and cases of harm towards environmental defenders has been growing in the last couple of years reaching a new peak year after year.[475] Continuing essentially four key measures are presented:

1. Denounce harms, intimidations, and killings towards environmental defenders.

2. Advocate for an improved protection of their rights.

3. Support a sustainable exploitation of natural resources also taking into consideration protected areas.

4. Request accountability of those actors who are responsible for harms towards environmental defenders.[476]

The United Nations Environmental Programme most importantly tries to end the violence towards environmental defenders. Following, a rapid response mechanism is established where environmental defenders can directly call upon the United Nations Environmental Programme by sending an email in case of any violation of their rights. The next step is then to offer legal assistance and information to all relevant stakeholders in the field of human rights and the environment.[477]

Rather than offering concrete and strong measures the United Nations Environmental Programmes' policy mostly raises awareness for the problems environmental defenders are facing.[478] It is hence a mechanism of information towards actors to also implement the interconnection between environment and human rights into their national legislation. But in this concern, it needs to be said that information and awareness does not necessarily help environmental defenders.[479] Those responsible for harming the rights of environmental defenders know about their wrongdoing and in Latin America it is a common and well-known problem. So, the United Nations Environmental Programme Policy and the Resolution by the Human Rights Council is a reminder of the risks and problems environmental defenders face, but other than common international law wording there are no relevant measures that really protect environmental activists.[480]

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[475] Ali Hines, 'Decade of defiance: Ten years of reporting land and environmental activism worldwide' (*Global Witness*, 29 September 2022) <https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/#list-victims-2021> accessed 12 December 2023.
[476] United Nations Environment Programme, 'Promoting Greater Protection for Environmental Defenders Policy' [2018] 1 ff.
[477] United Nations Environment Programme, 'Promoting Greater Protection for Environmental Defenders Policy' [2018] 3 ff.
[478] ibid 4 ff.
[479] cf Arnim Scheidel and others, 'Environmental conflicts and defenders: A global overview' (2020) 63 Global Environmental Change, 8.
[480] ibid.

By common international law wording phrases like: "calling upon all States to consider the recommendations contained in the report [about the rights of indigenous peoples]" [481] are meant. Or "developing tools and resources"; "engaging closely with" and "raising awareness".[482] All of these wordings are loose and do not establish concrete measures and are open to interpretation. This is especially worrying in a context of human rights violations. The only mechanism worthy to point out is the possibility for threatened people to send an email to the United Nations Environmental Programme rapid response mechanism, but after all an email does not really protect people from active threats.[483]

The ineffectiveness is seen by the rise of murders towards environmental defenders in the last couple of years even since the United Nations Environmental Programme Policy has been established.[484] Still the United Nations Environmental Programme Policy is a step into the right direction, even if it is only a small one.[485]

In 2021 the United Nations also appointed a new Special Rapporteur on Human Rights and Climate Change.[486] Technically not directly addressing environmental protectors the Special Rapporteur still draws attention towards the interconnection between human rights and environmental issues (see the following chapter 3.1.2.) for the Special Rapporteur under the Aarhus Convention[487]). The Special Rapporteurs task is to gather information for three years on the effects climate change has on the enjoyment of human rights.[488] Since the task is not directly connected to environmental defenders it will not be talked about any further.

The principle 10 of the Rio-Convention from 1992 also talks about the right to public participation in environmental issues and that states are supposed to facilitate and

[481] United Nations General Assembly – Human Rights Council A/HRC/RES/40/11, 'Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development' [2019], 2.
[482] United Nations Environment Programme, 'Promoting Greater Protection for Environmental Defenders Policy' [2018], 4 ff.
[483] For the common wording and its problems in international law see: Jean d'Aspremont, 'Wording in International Law' (2012) 25 Leiden Journal of International Law, 575 (590).
[484] Ali Hines, 'Decade of defiance: Ten years of reporting land and environmental activism worldwide' (*Global Witness*, 29 September 2022) <https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/#list-victims-2021> accessed 12 December 2023.
[485] Yiwen Zeng, Fangqi Twang, L. Roman Carrasco, 'Threat to land and environmental defenders in nature's last strongholds' (2021) 51 Ambio, 269 (277). They point out how identifying the problems for environmental defenders helps monitoring attacks and then supports international policies for a further protection.
[486] United Nations General Assembly – Human Rights Council A/HRC/48/L.27, 'Mandate of the Special Rapporteur on the promotion and protection of human rights in the context of climate change' [2021], 2.
[487] United Nations Economic Commission for Europe, Convention on access to information, public participation in decision-making and access to justice in environmental matters 1998, in the following referred to as 'Aarhus Convention'.
[488] United Nations General Assembly – Human Rights Council A/HRC/48/L.27, 'Mandate of the Special Rapporteur on the promotion and protection of human rights in the context of climate change' [2021], 3.

encourage public awareness and effective access to jurisprudence.[489] Even with not directly addressing the protection of environmental defenders this principle was used as a basis for following acts like the United Nations Environmental Programmes' Policy.[490]

In recent years there have been multiple initiatives by the United Nations to address the protection of human rights defenders in environmental issues. To this date most of the policies are loose informative documents that try to address the problem but do not yet establish an effective protective mechanism for environmental activists.

4.1.2. Protection on the Regional Level and Aarhus Convention

As mentioned before on the regional level the Escazú Agreement is the only notable treaty protecting environmental defenders.[491]

The Aarhus Convention from 1998 is a well-established regional treaty that was at its time way-breaking for the new approach to access to information, participation, and justice in environmental matters by the public.[492] In Article 3 (8) of the Aarhus Convention a state's obligation to not penalize environmental defenders is established. During the 7th session of the meeting of the Parties to the Aarhus Convention in 2022 a rapid response mechanism for the protection of environmental defenders was established under the leadership of Austria and Ireland. By this for the first time the issue of environmental defenders received broader interest under the Aarhus Convention.[493] Michel Forst is the world's first Special Rapporteur in the field of environmental defenders.[494]

The Special Rapporteur task is to protect environmental defenders from further persecution, penalization, and harassment or threats in that field. Environmental defenders can raise complaints towards the Special Rapporteur who will then investigate the matter. In order to then fulfill his function, the Special Rapporteur can take immediate or ongoing protective measures against the states and its institutions harming environmental defenders. Furthermore, outside of individual claims the Special

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[489] United Nations General Assembly A/CONF:151/26 (Vol. I), 'Report of the United Nations Conference on environment and development – Rio Declaration on environment and development'.
[490] United Nations Environment Programme, 'Promoting Greater Protection for Environmental Defenders Policy' [2018] 5.
[491] Attila Pánovics, 'The Escazú Agreement and the Protection of Environmental Human Rights Defenders', (2021) 1 Pécs Journal of International and European Law, 23 (32).
[492] Epiney Atrid, *Umweltschutz durch Verfahren* in Proelß A (ed) Internationales Umweltrecht 2022, 179.
[493] United Nations Economic Commission for Europe MP.PP/2021/2/Add.1 'Report of the seventh session of the Meeting of the Parties' [2022], 78 ff.
[494] United Nations Economic Commission for Europe, 'World's first Special Rapporteur on environmental defenders elected under the Aarhus Convention' (UNECE Information Unit 24 June 2022) <https://unece.org/environment/press/worlds-first-special-rapporteur-environmental-defenders-elected-under-aarhus> accessed 12 December 2023.

Rapporteur task is to raise awareness towards states for their obligations under Article 3 (8) of the Aarhus Convention.[495]

Due to the recent development of this instrument its effectiveness cannot be measured by now. But in a general term it needs to be said that the effectiveness of the Aarhus Convention has been very high. The Aarhus Convention has a big influence on national legislation especially since it is part of European law.[496] Yet again the Aarhus Convention is only a regional treaty[497] in a geographical region where environmental defenders do not face as severe threats compared to Latin America or other regions in the world.[498]

4.2. Court cases on the protection of environmental defenders

Rulings connected to the rights of environmental defenders are still rare and many cases are only broadly dealing with the protection of environmental defenders. For this chapter a couple most notable cases will be mentioned that are connected to the protection of environmental defenders.

Probably one of the most relevant cases that has so far made it to a ruling in the international field is the case Baraona Bray vs. Chile. In this case Baraona Bray was investigating in the field of illegal logging and found how a corrupt senator was taking part in the illegal activities. After publishing his truthful findings, the senator filed a prosecution which led to the imprisonment of Bray for 300 days. The Interamerican Court of Human Rights found the ruling by the Chilean court unlawful and thus harming the complainants' rights.[499]

This case centers around the human right of freedom of speech and expression and is only indirectly connected to the protection of the environment. Continuing, the case proves how human right and environmental defenders are criminalized and punished for their actions. By this, it is evident how the above-mentioned weakness of the domestic legal structure falls short in sufficiently protecting environmental defenders. For Baraona Bray the flipside was the case, rather than being protected he was punished and criminalized for his actions.

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[495] Economic Commission for Europe MP.PP/2021/2/Add.1 'Report of the seventh session of the Meeting of the Parties' [2022], 79 f.
[496] Epiney Astrid, *Umweltschutz durch Verfahren* in Proelß A (ed) Internationales Umweltrecht 2022, 180.
[497] Even with the adhesion of Guinea-Bissau in 2023 it is still mostly a European regional treaty (United Nations Economic Commission for Europe MP.pp/2021/2/Add.1 'Decision VII/10 on the accession by Guinea Bissau' [2021]).
[498] In the period from 2012 to 2021 out of a total of 1733 killing of environmental defenders 12 took place in the jurisdiction of the Aarhus convention. Ali Hines, 'Decade of defiance: Ten years of reporting land and environmental activism worldwide' (*Global Witness*, 29 September 2022) <https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/#list-victims-2021> accessed 12 December 2023.
[499] *Baraona Bray v Chile* [2022] Inter-American Court of Human Rights, Resumen 481.

Before the European Court of Human Rights many cases are pending but no relevant ruling was made in the field of environmental defenders.[500]

There are many cases that show how environmental defenders were killed in the past and thus did not have sufficient protection. Incidences like Berta Cáceres[501], Ogoni Nine[502] and Chut Wutty[503] – just to name some of them – made terrible news and echoed around the world. But those incidents are at best criminal cases punishing those responsible, but do not establish any further protective mechanism. Even with the punishment of the murderers the international and national human rights protection system falls short in preventing the harm that environmental defenders face.

All in all, the rights of environmental defenders are not yet commonly debated before international human rights courts. The number of national criminal cases centering around the murders and breaches towards environmental defenders show the lack of efficient protection.

4.3. Conclusion on the Protection of environmental defenders in the existing human rights system

Summarizing, the protection of environmental defenders remains a pressing global concern that spans international, regional, and national levels. While various efforts have been made to address this issue, there are substantial challenges that persist in ensuring the safety and rights of those who advocate for environmental preservation.

On the international level, initiatives such as the United Nations Environmental Programme's Policy and the Human Rights Council's Resolution signify steps towards acknowledging the threats faced by environmental defenders. However, these measures primarily raise awareness and are of informative nature and lack concrete enforcement mechanisms. The Aarhus Convention has also seen some steps towards a greater protection, but its area of application is mostly limited to a spot where the protection of environmental defenders isn't a serious issue.

At the national level, countries like Colombia and Ecuador showcase the disconnection between strong legal frameworks and the effective enforcement of protections. Despite laws aimed at safeguarding environmental defenders, challenges related to corruption,

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[500] For an overview of pending cases in front of the ECHR see: Marta Torre-Schaub, 'The Future of European Climate Change Litigation' (Verfassungsblog, 10 August 2022) <https://verfassungsblog.de/the-future-of-european-climate-change-litigation/> accessed 12 December 2023.
[501] Kate Hallam, 'Environmental defenders: murdered, missing and at risk' (2017) 75 Socialist Lawyer, 40.
[502] *Wiwa v Royal Dutch Shell* [1996] United States District Court for the Southern District of New York; Amnesty International, 'Oil & Injustice in Nigeria: Ken Saro-Wiwa' (2005) 32 Review of African Political Economy, 636.
[503] Sabrina Lawreniuk, *'Hun Sen Won't Die, Workers Will Die' The Geopolitics of Labour in the Cambodian Crackdown* in Fransechini I and others (eds), Made in China Yearbook 2018, 217.

lack of rule of law, and economic interests contribute to a disparity between legal ideals and on-the-ground realities.

Court cases, like Baraona Bray vs. Chile, highlight instances where defenders face criminalization for their actions, demonstrating the precarious nature of their work and the inadequacy of existing protection mechanisms. Though individual criminal cases receive attention, comprehensive protection often arrives too late to prevent harm.

5. The Escazú Agreement

The Escazú Agreement stands out as a notable treaty directly addressing environmental defenders' protection at the regional level. This treaty will now be addressed in detail in the following chapter.

This Agreement, formally known as the Regional Agreement on access to information, public participation, and justice in environmental matters in Latin America and the Caribbean, was designed to be an environmental and human rights protection instrument. Its main objectives include access to information, public participation, and access to justice regarding environmental issues in Latin America.[504] The Agreement establishes goals to ensure and facilitate access to environmental information for the public.[505] It also makes a point to consult affected communities in the process of decision making related to environmental issues.[506] And maybe its most notable and original approach is the promotion of environmental defenders' protection and the emphasis on respecting local communities and indigenous peoples rights.[507]

The Agreement is a groundbreaking treaty that emerged as a response to the growing concerns regarding environmental protection, access to information, and public participation in the Latin American and Caribbean regions. This agreement marked a significant milestone in the region's efforts to promote sustainable development and enhance environmental governance through transparency, participation, and justice mechanisms.[508]

The origins of the Escazú Agreement can be traced back to a confluence of factors, including the increasing recognition of the link between environmental degradation and social inequality, as well as the influence of international environmental agreements such as the Rio Declaration on Environment and Development (1992) and the Aarhus Convention (1998) in Europe. These agreements underscored the importance of public

[504] Article 1 of the Escazú Agreement.
[505] Article 5, Article 6 of the Escazú Agreement.
[506] Article 7 of the Escazú Agreement.
[507] Article 9 of the Escazú Agreement.
[508] Damien Barchiche, Elisabeth Hege, Andrés Napoli, 'The Escazú Agreement: an ambitious example of multilateral treaty in support of environmental law' (2019) Institute for Sustainable Development and International Relations, 1 (3).

access to environmental information and participation in decision-making processes for effective environmental governance.[509]

In Latin America and the Caribbean, the region's diverse ecosystems, rich biodiversity, and economic dependence on natural resources underscored the urgent need for a comprehensive legal framework that would address the unique challenges faced by these nations. Furthermore, the region had witnessed instances of environmental conflicts and human rights abuses related to resource extraction, infrastructure development, and pollution, emphasizing the necessity for legal mechanisms that safeguarded both the environment and the rights of affected communities.[510]

The negotiation process for the Escazú Agreement was characterized by extensive consultations and dialogues among governments, civil society organizations, indigenous communities, and other stakeholders. These consultations aimed to identify key issues, concerns, and priorities that the agreement should address. The Escazú Agreement's negotiation was facilitated by the United Nations Economic Commission for Latin America and the Caribbean (ECLAC), serving as the Secretariat for the process.[511]

The Escazú Agreement stands as a pivotal achievement in the pursuit of sustainable development, environmental protection, and social justice in Latin America and the Caribbean. Its historical underpinnings in the context of global environmental agreements and regional challenges emphasize the region's commitment to fostering transparent governance, promoting public participation, and ensuring environmental accountability. As nations in the region continue to grapple with complex environmental issues, the Escazú Agreement serves as an embodiment of their collective efforts to create a more equitable and ecologically conscious future.[512]

In the following an extensive view will be put upon Article 9 of the Escazú Agreement. After pointing out the importance of protecting environmental defenders the states obligations under Article 9 will be addressed and the finishing off with concrete measures states should adopt to protect environmental activists.

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[509] Nicole Stopfer, Marie-Christien Fuchs, Georg Dufner, 'Das Escazú-Abkommen – Licht und Schatten regionaler Umweltpolitik' (2021) Länderbericht Konrad Adenauer Stiftung, 1 ff.
[510] Sofía López-Cubillos and others, 'The landmark Escazú Agreement: An opportunity to integrate democracy, human rights, and transboundary conservation' (2021) 15 Conservation Letters, 1 ff.
[511] United Nations Economic Commission for Latin America and the Caribbean, 'History of the Regional Agreement' < https://www.cepal.org/en/subsidiary-bodies/acuerdo-regional-acceso-la-informacion-la-participacion-publica-acceso-la-justicia/history-regional-agreement> accessed 12 December 2023.
[512] Sofía López-Cubillos and others, 'The landmark Escazú Agreement: An opportunity to integrate democracy, human rights, and transboundary conservation' (2021) 15 Conservation Letters, 1 ff.

5.1. The importance of the protection of environmental defenders

After all, the importance is quite evident, since those are human rights defenders and therefore have the right to be protected and to execute their human rights. The interconnection between environmental activists and human rights is inextricable.[513]

Another essential factor is that environmental defenders protect the well-being of the planet earth and with that help to create a sustainable environment to live in. With their work they aid to prevent harms to ecosystems, endangered species, the biodiversity, and the climate. This is an environmental aspect why the protection of environmental activists is crucial.[514]

Moreover, protection is important since environmental defenders and especially those linked to indigenous communities do not necessarily protect the environment for the protection of the planet but also for the protection of themselves.[515] Harm towards environmental components then takes away the basis of living for those affected by the environmental damages, since they depend on a healthy environment and ecosystems.[516] This then also leads to social conflicts when nature was essential for growing food or an economic basis. Ultimately environmental impacts can push people into poverty.[517] This aspect is a social reason why environmental defenders need to be protected.[518]

Lastly it needs to be named that environmental activists often fight for corporate accountability and transparency of multinational businesses or in general those ones harming the environment. They research in such cases where pollution and harm were put into the environment. Environmental defenders and non-governmental organizations can also at times be the supplier for funding into the research and prosecution of responsible actors, especially in those cases where the ones affected – for

[513] Attila Pánovics, 'The Escazú Agreement and the Protection of Environmental Human Rights Defenders', (2021) 1 Pécs Journal of International and European Law, 23 (25), he talks about a "twin protection".
[514] Yiwen Zeng, Fangqi Twang, L. Roman Carrasco, 'Threat to land and environmental defenders in nature's last strongholds' (2021) 51 Ambio, 269 (271).
[515] The United Nations Environment Programme, 'Promoting Greater Protection for Environmental Defenders Policy' [2018] 2 names how: "Around 40-50% of all victims come from indigenous and local communities who are defending their lands, and their access to the natural resources their communities depend on for survival and livelihoods." Showcasing how important the conservation of nature is for those vulnerable groups.
[516] Arnim Scheidel and others, 'Environmental conflicts and defenders: A global overview' (2020) 63 Global Environmental Change, 3.
[517] Ian Granit, 'Protecting the Defenders: Exploring the Role of Global Corporations and Treaties' (*E-International Relations*, 8 July 2020) <https://www.e-ir.info/2020/07/08/protecting-the-defenders-exploring-the-role-of-global-corporations-and-treaties/> accessed 12 December 2023.
[518] Yiwen Zeng, Fangqi Twang, L. Roman Carrasco, 'Threat to land and environmental defenders in nature's last strongholds' (2021) 51 Ambio, 269 (271).

example indigenous communities – cannot pay for legal remedy. Environmental defenders add up to a system of increased corporate transparency.[519]

Concluding there are multiple aspects why the protection of environmental defenders is crucial. Most importantly the protection of environmental activists is synonymous to the protection of their human rights and hence one of the most important elements of contemporary international law.

5.2. States duties to protect environmental defenders

For the following chapters the main question that was also brought up to the Inter American Court on Human Rights is, which obligations states have under Article 9 of the Escazú Agreement, and which measures states need to take in order to fulfill their duty under Article 9.

5.2.1. Obligations

Initially, we will discuss the responsibilities that states hold under Article 9 of the Escazú Agreement.

The first obligation and probably the most important one is the duty to protect environmental defenders. As talked about in detail in the introduction and pointed out in the following chapters, environmental activists face a long list of harms going as far as threats towards their life. States therefore need to make sure that the integrity of human rights defenders in environmental matters is granted.[520] This obligation clearly arises from Article 9 Paragraph 1 of the Escazú Agreement: "Each Party shall guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters, so that they are able to act free from threat, restriction and insecurity". Article 9 Paragraph 1 tries to call on parties to create a "safe space for environmental defenders".[521]

Following, under Article 9 Paragraph 2 of the Escazú Agreement parties are supposed to take effective measures in order to protect all of the rights of human right defenders. These rights include basically all the common civil and political human rights[522] like right to life, right to personal integrity, freedom of speech and opinion, right to assembly and

[519] cf. Virgine Rouas, *Achieving Access to Justice in a Business and Human Rights Context: An Assessment of Litigation and Regulatory Responses in European Civil-Law Countries* (University of London Press, Institute of Advanced Legal Studies 2022), 45 ff.
[520] cf. Damien Barchiche, Elisabeth Hege, Andrés Napoli, 'The Escazú Agreement: an ambitious example of multilateral treaty in support of environmental law'(2019) Institute for Sustainable Development and International Relations, 1 (3).
[521] Lalanath de Silva, 'Escazú Agreement 2018: A Landmark for the LAC Region' (2018) 2 Chinese Journal of Environmental Law, 93 (97).
[522] For an overview of the International Covenant in Civil and Political Rights see Dinah Shelton (ed), *The Oxford Handbook of International Human Rights Law*, (Oxford University Press 2013), 509 ff.

association, and free movement. States are hence held responsible that environmental activists can fulfill all their rights in the full scope that they want and need to. This has a multi-level effect since international obligations, a state's constitutional principles and the state's obligations under its own legal system are included, making it a groundbreaking milestone in the protection of environmental defenders.[523]

Another obligation arising from Article 9 Paragraph 3 is that in case of any harm or threats that were made towards environmental defenders the state needs to investigate and punish those threats.[524] After a criminal act the state's legal system needs to effectively and timely investigate and punish those attacks and in the best case also prevent any further damages. An effective criminal system is seen as a protective shield for environmental defenders. Offenders are determined if a strong criminal jurisdiction is in power.[525]

The last obligation that states need to consider under Article 9 of the Escazú Agreement and that already arises from question E. 1. of the request for an advisory opinion[526] is that it is not only about the protection of environmental defenders but also about actively aiding their work. This obligation cannot be clearly found in the text of Article 9 of the Escazú Agreement, but with the request for an advisory opinion Chile and Colombia assume that such an obligation exists. This would mean that, under Article 9 of the Escazú Agreement, states need to help environmental and territorial defenders to facilitate and to be able to fulfill their work.[527] This is an obligation that goes further than the more basic obligation to protect environmental defenders since it obliges the state to willingly help them with their work. How this is done and what measures states need to take to fulfill their obligation will be talked about in the following chapter b).

Concluding there are four key obligations that states need to fulfill. The first three directly derive from Article 9 of the Escazú Agreement: 1. obligation to protect environmental defenders, 2. guaranteeing that environmental defenders can enjoy their rights and 3. investigating and punishing any harms towards environmental defenders.

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[523] Núria Saura-Freixes, 'Environmental human rights defenders, the rule of law and the human right to a healthy, clean, and sustainable environment: last trends and challenges'(2022) 8 UNIO – EU Law Journal, 53 (65 f.).
[524] Article 9 Paragraph 3 of the Esaczú Agreement: "Each Party shall also take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidations that human rights defenders in environmental matters may suffer while exercising the rights set out in the present Agreement".
[525] cf. Núria Saura-Freixes, 'Environmental human rights defenders, the rule of law and the human right to a healthy, clean, and sustainable environment: last trends and challenges'(2022) 8 UNIO – EU Law Journal, 53 (66).
[526] Question E. 1.: "What measures and policies should States adopt to facilitate the work of environmental human rights defenders?".
[527] Verena Kahl, 'Warming Up: The Chilean and Colombian Request for an Inter-American Advisory Opinion on the Climate Emergency and Human Rights (Verfassungsblog, 10 March 2023) <https://verfassungsblog.de/warming-up/> accessed 12 December 2023.

The fourth and last obligation arises from the request for an advisory opinion and is the obligation to support the work of environmental defenders.

5.2.2. Concrete Measures

In the present chapter, the focus shifts towards a comprehensive exploration of the necessary actions that individual states must undertake to effectively meet and uphold the array of obligations as previously delineated.

One important measure to take into consideration is the decriminalization of the environmental defenders' peaceful practices. This imperative measure encompasses a comprehensive reassessment of existing legal frameworks, with the goal of mitigating or entirely removing punitive measures imposed upon individuals and groups who actively advocate for environmental protection and sustainability. The decriminalization complemented with protective measures that shield environmental defenders from intimidation, harassment and violence in all forms will result in a healthier and safer environment for the activists to continue their indispensable role as environmental defenders, where they are not only allowed to develop their fight but also protected and celebrated for their selfless labor.[528]

Another important measure to fulfill the obligation to actively aid environmental defenders, is to help with funding and information. Providing economic aid to environmental defenders can help cover a spectrum of needs, ranging from on-ground activities, legal counselling, reforestation efforts and so much more. In addition to financial support, the provision of accessible information is an indispensable tool for defenders. Setting up databases with scientific information, creating accessible platforms to the public and repositories, can maximize the support given to the defenders, help them advocate as effectively as possible, to make informed decisions and much more.[529]

Following it is important that states ensure their fulfillment of the obligations of the Escazú Agreement within their national jurisdictions. Guaranteeing the fulfillment of the obligations enshrined in the Escazú Agreement not only involves monitoring the implementation of the Agreement but also encourages active participation and collaboration within civil society, indigenous communities, and environmental

[528] Arnim Scheidel and others, 'Environmental conflicts and defenders: A global overview' (2020) 63 Global Environmental Change, 10.
[529] United Nations Environment Programme, 'Promoting Greater Protection for Environmental Defenders Policy' [2018] 6.

defenders. Ultimately this collaboration derives in a collective spirit of responsibility towards the environment, facilitating the activists task.[530]

Continuing, another vital measure to take into consideration by the obligated states is to take the conflict potential away, creating a clear division between the different spaces where the environment is protected and where mining, logging and in general the exploitation of natural resources is allowed. Because states still need to develop and engage in some industrial and infrastructure projects for some economic growth.[531] But those projects need to be developed away from protected areas affecting the local communities. The uneven distribution of resources is a conflict potential so by eliminating this uneven distribution and perfecting the above-mentioned division, states should be able to eliminate conflict derived by these factors. [532]

Reaffirm and recognize the role of environmental human rights defenders and respect, protect, and fulfil their rights. By acknowledging the indispensable role of environmental defenders, protecting their well-being, and actively fostering an environment where they can fully embrace their role as activists, the states can create a solid foundation where environmental defenders can stand. Allowing them to safely protect the environment and conquer sustainability without fear of reprisals. This way, states pave the way for a more just and ecologically balanced world. [533]

Taking into consideration all the measures mentioned above, it becomes evident that a comprehensive and integral approach to safeguarding environmental defenders is not only a desire but a need. By taking all measures as whole and implementing them, states can create a strong framework that not only recognizes the labor of the defenders, but also empowers them to operate in an environment characterized by its safety, transparency, security, and support. This results in an effective and efficient fight for the environment.

5.3. Conclusion on Article 9 of the Escazú Agreement

In conclusion, the Escazú Agreement marks a significant stride in promoting environmental protection, human rights, and sustainable development in Latin America and the Caribbean. Safeguarding environmental defenders is essential, as they ensure both a healthy planet and uphold fundamental rights. Article 9 of the Escazú Agreement

[530] cf. Gastón Medici-Colombo, Thays Ricarte, 'The Escazú Agreement Contribution to Environmental Justice in Latin America: An Exploratory Empirical Inquiry through the Lens of Climate Litigation' (2023) Journal of Human Rights Practice, 17.
[531] Nicole Stopfer, Marie-Christien Fuchs, Georg Dufner, 'Das Escazú-Abkommen – Licht und Schatten regionaler Umweltpolitik' (2021) Länderbericht Konrad Adenauer Stiftung, 3.
[532] cf. Yiwen Zeng, Fangqi Twang, L. Roman Carrasco, 'Threat to land and environmental defenders in nature's last strongholds' (2021) 51 Ambio, 269 (271).
[533] United Nations General Assembly – A/71/281 'Report of the Special Rapporteur on the situation of human rights defenders' [2016], 25.

places clear obligations on states: creating a safe environment for defenders, ensuring their rights, investigating threats, and actively supporting their work. By decriminalizing activism, providing funding, facilitating information access, and delineating protected areas, states can empower defenders and fulfill their obligations.

6. Lookout and further challenges

As we consider the road ahead for safeguarding environmental defenders, it is imperative to acknowledge the persistent challenges they face despite existing protective measures. The journey toward ensuring a safe environment for these activists is met with complexities that demand ongoing attention and concerted efforts at various levels.

While the establishment of the Escazú Agreement and in some ways also the United Nations Environmental Program's Policy marks significant milestones, the momentum must be sustained. These agreements should be embraced as frameworks for action, not merely symbolic gestures. The international community must work together to ensure that these agreements translate into tangible protections on the ground. Especially the Escazú Agreement bears the hope for significant improvement. With the advisory opinion from Chile and Colombia the Inter-American Court of Human Rights now has the possibility of extending and clearly stating the obligations that states need to take into consideration when protecting environmental human rights defenders.

One of the greatest challenges lies in enforcing and implementing the protective measures outlined in international and regional agreements. Many environmental defenders continue to face violence and intimidation, demonstrating that international treaties and national laws alone are insufficient. It is essential to bolster enforcement mechanisms, holding accountable those responsible for threats and harms, whether state actors or private entities. Another important aspect lies within the ratification of relevant international agreements. The Escazú Agreement wasn't ratified by Brazil[534] – the deadliest nation for environmental protectors[535] – and hence isn't applicable in its jurisdiction. Same goes for many other states in Latin America – like Honduras, Guatemala, and Peru just to name some of them – that have either not signed the agreement or haven't ratified it.[536] The international community hence needs to advertise for the ratification of the Escazú Agreement.

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[534] Observatory on Principle 10 in Latin America and the Caribbean, 'Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (United Nations, 22 April 2021) < https://observatoriop10.cepal.org/en/treaty/regional-agreement-access-information-public-participation-and-justice-environmental-matters> accessed 12 December 2023.

[535] Ali Hines, 'Decade of defiance: Ten years of reporting land and environmental activism worldwide' (Global Witness, 29 September 2022) <https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/#list-victims-2021> accessed 12 December 2023.

[536] Oberservatory on Principle 10 in Latin America and the Caribbean, 'Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (United Nations, 22

A big hope lies upon the advisory opinion from the Inter-American Court of Human Rights, this will have the potential to comprehensively depict states obligations for the protection of environmental defenders.[537] Still, the Escazú Agreement remains a regional treaty not covering some of the regions where environmentalists face threats.[538]

It needs to be called upon the international community to create more efficient regional or international treaties to protect environmental defenders. Only with these killings, threats, and violence towards those protecting the planet earth can be stopped. Summing up, by acknowledging these challenges and actively addressing them, we can pave the way for a future where environmental defenders are safe to advocate for a healthier planet.

7. Conclusion

The existing human rights framework is incapable of fully protecting environmental protectors, as demonstrated, the existing protective mechanism driven from international and regional treaties, national laws and court decisions fall short in adequately protecting environmental defenders. Most of those systems do not establish efficient and comprehensive protection for human rights defenders in environmental matters.

Article 9 of the Escazú Agreement adds very important clauses to the protection of environmental defenders in a sense that wasn't offered before in the international, regional, and national human rights system. Irreplaceable for really working on the improvements for environmental defenders is the active and comprehensive implementation of Article 9 of the Escazú Agreement into national legislation. Article 9 of the Escazú Agreement is an important and striking step for the protection of environmental defenders most notably because its area of application is the most dangerous region for environmental activists. The advisory opinion from the Inter-American Court of Human Rights will desperately be awaited, hoping that it will extend and deepen the understanding of obligations towards the protection of environmental defenders.

In the pursuit of fully achieving comprehensive protection for environmental defenders, it is imperative that states, as signatories to the Agreement, commit to the stringent

April 2021) < https://observatoriop10.cepal.org/en/treaty/regional-agreement-access-information-public-participation-and-justice-environmental-matters> accessed 12 December 2023.

[537] Nicole Stopfer, Marie-Christien Fuchs, Georg Dufner, 'Das Escazú-Abkommen – Licht und Schatten regionaler Umweltpolitik' (2021) Länderbericht Konrad Adenauer Stiftung, 2 f.

[538] For example, Philippines is the third deadliest country for environmental activists. Also, other states outside of Latin America have a severe problem like India or the Democratic Republic of Kongo: Ali Hines, 'Decade of defiance: Ten years of reporting land and environmental activism worldwide' (*Global Witness*, 29 September 2022) <https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/#list-victims-2021> accessed 12 December 2023.

obligations set forth within it. This commitment entails not merely a passive compliance but an active and unwavering dedication to creating a secure and conducive environment for the defenders.

To truly ensure the safety and rights of environmental activists, states must go beyond the mere words on paper. They should proactively implement a comprehensive framework of measures designed to safeguard the fundamental rights of these individuals. This framework includes, but is not limited to, robust mechanisms for the prevention, reporting, and investigation of threats, attacks, and harassment faced by environmental defenders.

Moreover, states must take all necessary and pertinent actions to not only prevent such attacks but also to ensure that those responsible are held accountable through appropriate legal channels. This involves the establishment of fair and equitable judicial processes that swiftly address any violations of environmental laws and regulations.

Furthermore, states should foster a culture of support and recognition for the invaluable work of environmental protectors. This can be achieved through public awareness campaigns, education initiatives, and collaboration with civil society organizations to promote the vital role these defenders play in preserving our natural heritage and fostering sustainable development.

Ultimately, the true measure of commitment lies in the unwavering dedication of states to uphold the principles of the Agreement, transcending rhetoric to actually enact meaningful change. It is only through such dedication that we can collectively ensure a safe and flourishing environment for those who selflessly champion the cause of environmental protection.

Outside of the regional agreement the hope needs to be expressed that an international agreement is formed also covering those jurisdictions where environmental defenders face threats but don't have any protective mechanism in place. After all, the protection of human rights defenders in environmental matters remains one of the most important and challenging matters in contemporary international human rights law.

IV. SECTION IV: PREVENTING DAMAGES FROM ANIMAL INDUSTRY

This section analyzes the impact and possible solutions of the animal industry on the climate emergency and concludes that the States have the obligation to prepare preventive measures for every conceivable environmental disaster as well as to pay reparation for the damages caused in and out their territory, caused by nationals.

This obligation is based in human rights, such as the right to life (Art. 6 Para. 1 Civil Pact, Art. 6 Para. 1 Convention on the Rights of the Child); The right of every person to the highest attainable level of physical and mental health: A healthy environment and protection from harmful substances in the environment and at the workplace is an integral part of the right to health, Art. 12 Social Pact, Art. 5 Anti-Racism Convention, Art .12 Women's Rights Convention, Art. 24 Children's Rights Convention; Right to an adequate standard of living (Art. 11 Social Pact, Art. 14 Women's Rights Convention, Art. 27 Children's Rights Convention)

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

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

G. PREVENTING DAMAGES FROM ANIMAL INDUSTRY

By Simone Gindl[539] and Carezza Cortes[540]

1. Introduction: The importance of action in animal industry and why the governments should act

Digestion is about the fact that ruminants such as cattle produce plenty of methane, which is the most common greenhouse gas from agriculture and, according to the Intergovernmental Panel on Climate Change, is 86 times more harmful to the climate than CO2 over a period of 20 years. In Germany, for example, 39.4% of agricultural greenhouse gas emissions in 2018 were due to the digestion of the animals used.[541]

If fewer meat and dairy products were produced and consumed in the EU, the USA, Australia, New Zealand and Brazil, this would have drastic effects on global greenhouse gas emissions, because if things continue unchanged, a research team from Cambridge calculated that emissions from agriculture in 2050 increased by 77% compared to 2009, making it a key driver of climate change. However, reducing factory farming would not only reduce greenhouse gas emissions, but also gradually restore the fertility of the soil and the diversity of the ecosystem, because these are the losers of the intensive and destructive use of land through monocultures and overgrazing.[542]

2. States obligation to protect the environment in international law

Despite the many international environmental agreements and the recognition of the right to a clean, safe, healthy and sustainable environment as a human right, there are currently no international agreements that legally record possible reparation payments for damage caused, but only demands and proposals for such.[543]

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[539] Law graduate from the University of Hamburg.
[540] Law graduate from the University of Chile.
[541] jw, Animal products fuel global warming, Albert-Schweitzer-Foundation; Food and Agriculture Organization of the United Nations (FAO) 2013: Tackling climate change through livestock – A global assessment of emissions and mitigation opportunities. Rom, S. xii; 2. IPCC 2014: Smith, P., et al. 2014. Agriculture, Forestry and Other Land-Use (AFOLU) In: Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA.; Goodland, R. / Anhang, J. 2009: Livestock and Climate Change. What if the key actors in climate change are … cows, pigs and chickens? In: World Watch, November/December 2009, page 13; Dessau-Roßlau, Sustainable and environmentally friendly use of global land areas and biomass, in: Federal Environment Agency of Germany 2013 (12).
[542] jw, Animal products fuel global warming, Albert-Schweitzer-Foundation, Bajželj, B. / Richards, K. S. / Allwood, J. M. / Smith, P. / Dennis, J. S. / Curmi, E. / Gilligan, C. A. 2014: Importance of food-demand management for climate mitigation. In: Nature Climate Change, August 2014 (3).
[543] Alexandre Kiss/ Dinah L. Shelton, Strict Liability in International Environmental Law, 2007 (1151).

Therefore, our subsequent work will focus on the question of whether states are obliged to guarantee compliance with and implementation of environmental protection measures from which an obligation to pay reparations can be derived.

Such an obligation could arise, for example, from human rights, either explicitly through the recognition of the right to a safe, clean, sustainable and healthy environment as a human right, or implicitly through deriving such an obligation from the right to life (Art. 6 Para. 1 Civil Pact, Art. 6 Para. 1 Convention on the Rights of the Child); The right of every person to the highest attainable level of physical and mental health: A healthy environment and protection from harmful substances in the environment and at the workplace is an integral part of the right to health, Art. 12 Social Pact, Art. 5 Anti-Racism Convention, Art .12 Women's Rights Convention, Art. 24 Children's Rights Convention; Right to an adequate standard of living (Art. 11 Social Pact, Art. 14 Women's Rights Convention, Art. 27 Children's Rights Convention).

2.1. International affirmation of the explicit and implicit use of human rights to interpret the scope of states' environmental protection obligations

The international legal community has therefore confirmed in various International declarations, like the 1992 Stockholm Declaration, that the *States have, in accordance with the Charter of the United Nations and the principles of international law the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction*. This principle was first formulated by the International Court of Justice within the Trail Smelter arbitration.

The rule was reiterated in Principle 2 of the 1992 Rio Declaration and was again confirmed in the 2002 World Summit on Sustainable Development. It has also been reafirmed in declarations adopted by the United Nations, including the Charter of Economic Rights and Duties of States and the World Charter for Nature, and has been adopted by other international organizations and conferences[544].

By July 2004 a draft set of principles on Allocation of Loss in the Case of Transboundary Harm Arising Out of Hazardous Activities was adopted on second reading in May 2006 by the UN General Assembly[545].

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[544] See e.g., Preliminary Declaration of a Program of Action of the European Communities in respect to the Environment, OJEC C 112/1, 20 December 1973; Final Act, Conference on Security and Cooperation in Europe, Helsinki, August 1976.

[545] See Draft Report of the International Law Commission on the Work of its Fifty-Eighth Session, Chapter V: International Liability for Injurious Consequences Arising out of Acts not Prohibited by International Law; International Liability in Case of Loss from Transboundary Harm Arising out of Hazardous Activities, UN Doc. A/CN.4/L.693/ Add.1, 9 June 2006.

The draft principles correctly approach the issue as one of allocating the risk of loss due to harm resulting from lawful economic or other activities, when the relevant State has complied with its due diligence obligations to prevent transboundary harm. The articles have merit in providing a general framework for States to adopt domestic law or conclude international agreements to ensure prompt and adequate compensation for the victims of transboundary damage caused by lawful hazardous activities[546]. While there is an important restriction in the exclusion of harm to the commons from the scope of these principles, on the whole they give a prominent place to the protection and preservation of the environment per se for the benefit of present and future generations. The draft principles support existing State practice which largely channels liability to the owner or operator and demands financial guarantees against future harm. As with many existing environmental treaties, the Principles call for imposing strict liability on the operator or other person or entity and requiring financial security to cover claims of compensation.[547]

On October 8th, 2021, at its 48th session, the UN Human Rights Council passed a resolution that protects the right to a healthy environment as a universal human right.

The framework principles do not formulate any new state obligations, but specify the obligations arising from existing human rights treaties and their interpretations by the UN specialist committees, by regional human rights adjudicating bodies or from state practice according to the UN Special Rapporteur on Human Rights and the Environment, more than 80 percent of UN member states . Already three of the four regional human rights treaties contain the right to a healthy environment, such as the African Charter on Human and Peoples' Rights , the Additional Protocol of San Salvador to the American Convention on Human Rights and the Arab Charter of Human Rights.[548]

The European Court of Human Rights has developed extensive case law in the area where environmental pollution or impairments have directly led to the violation of human rights such as the right to life or health, due to a lack of provisions in the European Court of Human Rights, corresponding claims have already been recognized in a number of court decisions.[549]

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[546] Francesca Capone, in: International Law and Chemical, Biological, Radio-Nuclear (CBRN) Events, 24th March 2022, chapter 34, p. 619-642.
[547] Alexandre Kiss/ Dinah L. Shelton, Strict Liability in International Environmental Law, 2007 (1139).
[548] Inter-American Court of Human Rights (2018): OPINIÓN CONSULTIVA OC-23/17); American Society of International Law (2018): Inter-American Court of Human Rights' Advisory Opinion on the Environment and Human Rights, https://www.asil.org/insights/volume/22/issue/6/inter-american-court-humanrights-advisory-opinion-environment-and-human; German Institute for Human Rights, Statement, International recognition of a human right to a safe, clean, healthy and sustainable environment, october 2021.
[549] European Court of Human Rights (March 2019): Factsheet – Environment and the European Court of Human Rights, https://www.echr.coe.int/Documents/FS_Environment_ENG.pdf.

This suggests that the right to a clean, safe, sustainable and healthy environment is to be interpreted very broadly as a human right and that the standards of state obligations are based on those of other human rights, even if they are not explicitly recognized as human rights.

2.2. UN Guiding Principles on Business and Human Rights

In order to simplify and generalize this, the Human Rights Council adopted the UN Guiding Principles on Business and Human Rights in its Resolution 17/4 of June 16, 2011. While states are not per se responsible for human rights violations committed by private actors, they can arise when violations by private actors can be attributed to them or when they fail to take appropriate measures to prevent such violations. While discretion is generally applicable in choosing an appropriate response, States should consider the full range of allowable preventive and remedial responses. Even the privatization of the provision of a service that could affect human rights does not relieve states of their obligations under international human rights. Consequently, if the state does not ensure that the service provided by the private actor is compatible with the state's human rights obligations, this can have detrimental and legal consequences for the state itself.[550] In doing so, they should draw on internal and/or external human rights expertise and initiate meaningful consultations with potentially affected groups, taking into account the nature and context of their legal capacity. Although this check can be integrated into other procedures such as risk assessment or environmental and social impact assessment, the human rights situation, and above all the current environmental situation, is very dynamic, which is why it should be carried out at regular intervals, more specifically: before starting a new job or the approval of a new venture, before major decisions or changes such as entering the market, launching a product or even expanding the business, in response to changes in the environment such as rising social tensions, and over the course of the job.[551]

2.3. Interpretation of the UN Guiding Principles

In expansion, it too implies that the state is dependable for taking the lawful measures inside its control to particularly control manufacturing plant cultivating, not just by denying approvals but also by installing better mechanisms of control to determine the necessary conditions for projects that may be harmful to the environment and in this manner moderate down climate alter and in this way guarantee a clean, secure, healthy and sustainable environment for presently and within the future eras.

[550] UN Guiding Principles, Chapter I, p. 3, 9.
[551] ibid, p.28, 29.

3. Current international efforts to establish regulations to reduce environmental harm of factory farming

Be that as it may, there are still vulnerabilities with respect to the substance of successful natural commitments, with it being especially vague which national or worldwide guidelines can be utilized to decide natural dangers and the measures required to turn them away within the supply chain. Also, the specificity of what solid natural due perseverance requires seem posture tall obstacles due to the tall complexity of natural dangers and the reliance of fitting preparatory and preventive measures on the sectoral and geographical setting in transnational supply chains.[552] To this conclusion, a few of the proposed directions moreover incorporate administrative powers in arrange to characterize the natural due perseverance commitments in as much detail as conceivable, so that a adequately concrete system of measures can be made for the states and companies. All things considered, due to the complexity of the actualities and the assortment of conceivable harm courses in numerous application settings, it'll be troublesome to decide ex stake the measures required to turn away particular natural dangers.[553] The permissibility of such leeway for assessment and the regulatory design of its concretization in individual cases also varies depending on whether criminal or regulatory law or civil law enforcement mechanisms are provided for. enforcement mechanisms under criminal or regulatory law, environmental administration law or civil law are provided for prevention obligations relating to protected goods.[554] This lack of specification of the sovereign enforcement of the prevention obligations can be counteracted by a civil law liability regulation in the law. In the event of damage, the courts then determine which measures the damaging party, in particular the state or a private company acting, should have taken according to objective standards in order to avoid the specific damage in the individual case, with the standard of care being measured by the severity and urgency of the impending danger and being beside it based on the information and possibilities of the damaging party. Such a regulation therefore has the potential to contribute to corporate standards of care being developed in an international context and thus to extending corporate responsibility to harmful consequences for the environment and thus for the people collectively, both locally and abroad caused by behavior contrary to the duty of care, such as draining moors or clearing forests.[555]

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[552] Dr Peter Gailhofer, Legal Issues in the Context of Supply Chain Regulation, A Contribution to the Discussion on Understanding Legally Binding Environmental Due Diligence, Federal Environment Agency of Germany, October 28, 2020; v. Henn/Jahn, legal opinion on the design of an environmental duty of care in a supply chain law, 2020, p. 44 ff.
[553] Dr Peter Gailhofer, Legal Issues in the Context of Supply Chain Regulation, A Contribution to the Discussion on Understanding Legally Binding Environmental Due Diligence, Federal Environment Agency of Germany, October 28, 2020, p. 9
[554] ibid, p. 11.
[555] ibid p. 24; compare to that Simons/Mackling, The Governance Gap, p. 7 f.

With regard to transnational human rights violations, it has also been increasingly considered to establish liability on the basis of tort law dogmatics of traffic safety and organizational duties.[556]

4. What actions can be taken to make a meaningful contribution to the battle against climate change?

Around the world, there exist various legislative and regulatory measures, both already in place and in the pipeline, aimed at mitigating the environmental impact of our actions.

One of the most pivotal milestones in the fight against climate change is encapsulated in the Paris Agreement, primarily articulated in Article 2.[557]

For instance, in Chile, we have legislation like N°19.300, that the objective is to provide a comprehensive interpretation and a sound legal framework for the constitutional guarantee that ensures every individual the right to reside in an environment free from pollution.

It is crucial to emphasize that the effective enforcement and adherence to these measures are imperative in addressing the environmental repercussions not only of the animal industry but also of other industries.

Nevertheless, it's worth noting that the efficacy of these measures may vary significantly depending on the individual circumstances of each country, encompassing its political, economic, and social context.

However, these measures alone are insufficient to combat climate change. Addressing climate change is an overarching global challenge necessitating collaborative efforts at the international, national, and individual levels.

At the international level, there's a pressing need for additional international agreements and treaties to establish global targets and undertake a multitude of commitments to combat climate change.

At the national level, governments should implement policies and regulations governing the animal industry. This can encompass measures such as enhancing the availability of plant-based products, conducting educational campaigns for the populace, and safeguarding ecosystems and biodiversity, all of which are crucial steps in conserving the indigenous flora and fauna of each region.[558]

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[556] ibid, p. 15; S. Weller/Thomale, Menschenrechtsklagen gegen deutsche Unternehmen, ZGR 4/2017; Peters et. al., Business and Human Rights: Making the Legally Binding Instrument work in Public, Private and criminal law, MPIL Research Paper Series No. 2020-06; von Falkenhausen, Menschenrechtsschutz durch Deliktsrecht, 2020.

[557] Rogelj, J., den Elzen, M., Höhne, N. *et al.* Paris Agreement climate proposals need a boost to keep warming well below 2 °C. *Nature* 534, p. 631–639, 2016.

[558] Gerber, P.J., Steinfeld, H., Henderson, B., Mottet, A., Opio, C., Dijkman, J., Falcucci, A. & Tempio, G. 2013. Enfrentando el cambio climático a través de la ganadería – Una evaluación global de las emisiones y oportunidades de mitigación. Organización de las naciones unidas para la alimentación y la agricultura (FAO), Roma.

On a personal level, it is equally imperative to undergo lifestyle adjustments. As individuals, we can contribute to the global endeavor by making sustainable choices in our everyday lives, which may involve reducing our consumption of meat and dairy products and adopting plant-based diets. This, in turn, diminishes the demand for animal products.

These measures represent diverse approaches to addressing climate change and can be tailored to suit the specific circumstances and requirements of each country.

In summary, the battle against climate change is a collective endeavor involving all segments of society, spanning from individuals to governments and international organizations. Cooperative and coordinated actions at multiple levels are indispensable for effectively tackling this global challenge and steering us toward a more sustainable future.

5. The Environmental Benefits of Mitigating Climate Change

Currently, the demand for animal products is soaring, with many people relying on them as a dietary staple. Consequently, large-scale animal product industries have emerged to meet this demand. However, in doing so, they often neglect sustainability and the development of sustainable livestock practices, leading to adverse consequences for our planet.

As a result, animal agriculture and the production of animal products have become significant issues for our ecosystem and, by extension, the environment as a whole.

There are several reasons for this. Firstly, animal products are responsible for a greater share of greenhouse gas emissions compared to other food sources, a fact well-documented in multiple studies.

The global food system, including land-use changes associated with agriculture, is presently responsible for a quarter of all greenhouse gas (GHG) emissions that contribute to climate change.[559]

Approximately 60% of these emissions can be attributed to animal products. These greenhouse gases significantly impact climate change, with the livestock industry being a prominent contributor.[560]

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[559] Smith P., M. Bustamante, H. Ahammad, H. Clark, H. Dong, E.A. Elsiddig, H. Haberl, R. Harper, J. House, M. Jafari, O. Masera, C. Mbow, N.H. Ravindranath, C.W. Rice, C. Robledo Abad, A. Romanovskaya, F. Sperling, and F. Tubiello, 2014: Agriculture, Forestry and Other Land Use (AFOLU). In: Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Edenhofer, O., R. Pichs-Madruga, Y. Sokona, E. Farahani, S. Kadner, K. Seyboth, A. Adler, I. Baum, S. Brunner, P. Eickemeier, B. Kriemann, J. Savolainen, S. Schlömer, C. von Stechow, T. Zwickel and J.C. Minx (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA.

[560] ibid.

Furthermore, extensive cattle ranching, especially in tropical regions, plays a significant role in deforestation.[561] Forests are cleared to establish pastures and cultivate fodder for livestock. This deforestation has dire consequences for biodiversity and exacerbates climate change by releasing substantial carbon stored in trees.[562]

Regarding land use, livestock farming, particularly intensive practices, necessitates vast areas of land to rear animals and produce feed. This competition for land can lead to soil degradation and the loss of natural habitats.

Additionally, there's the issue of soil and water pollution. Large-scale livestock operations generate substantial waste, such as manure, which, when improperly managed, can contaminate nearby soil and water resources. This poses a severe threat to soil and water quality and the overall health of surrounding ecosystems.

In general, livestock production consumes significant resources, including water and feed for the animals, placing immense pressure on natural resources and leading to potential shortages in certain regions.

On the other hand, the increased consumption of animal products, refined grains, and sugar has been linked to the global rise in obesity.[563]

Studies have shown a more than tripling of global consumption of animal products in rural areas and nearly quadrupling in urban areas between 1989 and 2000.564

An equally crucial aspect to consider is animal welfare. This is a fundamental ethical concern that must be addressed within the discussion of the animal products industry. Animals are sentient beings capable of experiencing pain, suffering, and pleasure, making it essential to treat them with respect and consideration.

Slaughter of animals should be carried out humanely to minimize suffering, employing methods like stunning before slaughter to reduce stress and pain. Additionally, the use of antibiotics and hormones in some livestock operations to promote growth and prevent disease raises concerns. Overuse of these chemicals can have adverse effects on animal and human health if residues end up in our food.[565]

Therefore, it is imperative to explore more ethical alternatives and agricultural practices in the production of animal-based food, aiming to reduce animal suffering. This can include approaches such as organic farming, regenerative agriculture, and vegetarian or vegan diets.

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[561] Kissinger, G., M. Herold, V. De Sy. Drivers of Deforestation and Forest Degradation: A Synthesis Report for REDD+ Policymakers. Lexeme Consulting, Vancouver Canada, August 2012.
[562] Machovina, B., et al. 2015. Conserving biodiversity: Reducing meat consumption is the key. Science of the Total Environment, p. 419-431.
[563] Malik VS, Willett WC, Hu FB. Global obesity: trends, risk factors and policy implications. Nat Rev Endocrinol. 2013 Jan;9(1), doi: 10.1038/nrendo.2012.199. Epub 2012 Nov 20. PMID: 23165161, :p. 13-27
[564] ibid.
[565] https://www.worldanimalprotection.cr/nuestro-trabajo/sistemas-alimentarios/no-futuro-en-granjas-industriales

The debate on animal welfare in the animal products industry has intensified in recent years, with many individuals and organizations working to promote more ethical and sustainable practices in food production. Considering animal welfare is essential both from an ethical perspective and for the long-term sustainability of our food production.

Based on these considerations, it's evident that the livestock industry exerts a significant impact on the environment through greenhouse gas emissions, deforestation, natural resource consumption, biodiversity loss, ecosystem degradation, and pollution of soil and water.

Hence, there is a pressing need to focus on reducing the consumption and production of animal products to preserve our planet and its resources. Ensuring a safe climate for all species on Earth, including humans, necessitates a reevaluation of our relationship with the environment.

This entails a shift toward a more conscious and sustainable way of living, not only to combat climate change but also to protect the ecosystems and creatures that make human life on this planet possible.

Reducing the environmental impact of animal products yields numerous significant benefits for both the environment and society at large.

One of these benefits is the reduction of greenhouse gas emissions. Meat and other animal products are major sources of greenhouse gases such as carbon dioxide (CO2), methane (CH4), and nitrous oxide (N2O). By reducing the consumption of these products, we can decrease our contribution to global warming and climate change.

Additionally, mitigating climate change measures can help conserve natural resources. Meat and dairy production demand substantial amounts of resources like water, land, and feed. Reducing this demand can help preserve these precious resources and protect natural ecosystems harmed by intensive agriculture.

Furthermore, biodiversity stands to benefit. The expansion of animal agriculture often leads to habitat degradation and deforestation, resulting in biodiversity loss and species extinction. A reduced demand for animal products can contribute to the conservation of ecosystems and wildlife.[566]

Improved water and soil quality are additional advantages. Livestock production can contribute to water and soil pollution through nutrient runoff and the use of chemicals. By reducing meat and dairy production, we can enhance water and soil quality, benefiting both aquatic and terrestrial ecosystems.

It's important to note that a shift toward plant-based diets and reduced reliance on meat and dairy products can improve human health. Such dietary choices have been shown

[566] Stehfest, E.2009. Climate benefits of changing diet. Climatic Change, p. 83–102.

to reduce the risk of chronic diseases, including heart disease, type 2 diabetes, and certain types of cancer.[567]

Ultimately, these measures support long-term sustainability. Reducing the environmental impact of animal products is crucial to ensuring the sustainability of food production and the overall health of our planet. This shift can create a healthier environment for present and future generations.

In summary, reducing the consumption of animal products brings about positive effects in mitigating climate change, conserving natural resources, preserving biodiversity, enhancing water and soil quality, promoting human health, and fostering global sustainability. Adopting more plant-based diets and reducing dependence on meat and dairy products are essential strategies for addressing environmental challenges and improving the quality of life for all.[568]

6. Conclusion

In my supposition, the best international solution to this issue, which is able to offer the best assistance to the environment and the individuals influenced, is to amass a committee to talk about rules on the measures to be taken to anticipate natural harm of any kind, and after that bring these proposition to the UN Common Gathering for appropriation. This committee ought to not comprise basically of lawmakers, but or maybe of the driving judges of the different mainland courts, such as the European Court of Human Rights and the Inter-American Court of Human Rights, different human rights agents from the diverse districts of the world, naturalists, as well as the natural priests of the nations and the natural agents of the companies most influenced. Such reparation installments may too have the impact of having an obstacle impact on companies and states, so that there seem by and large be a lower number of clashes and harms. In rundown, it is time to require the following step of setting up worldwide rules on the subject of natural due tirelessness for states and companies.

[567] Rouhani MH, Salehi-Abargouei A, Surkan PJ, Azadbakht L. Is there a relationship between red or processed meat intake and obesity? A systematic review and meta-analysis of observational studies. Obes Rev. 2014 Sep;15(9), doi: 10.1111/obr.12172. Epub 2014 May 12. PMID: 24815945, p. 740-8

[568] Hedenus, F., 2014. The importance of reduced meat and dairy consumption for meeting stringent climate change targets. Climatic Change, p. 79-91.

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