The Promise Institute for Human Rights

UCLA SCHOOL OF LAW

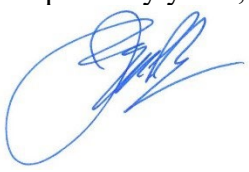
December 18, 2023

Pablo Saavedra Alessandri
Secretary
Inter-American Court of Human Rights

Dear Secretary Saavedra Alessandri,

On behalf of my colleagues E. Tendayi, Achiume, S. Priya Morley, Kate Mackintosh, Mollie Cueva-Dabkoski, Heliya Izadpanah, Annika Krafcik, and Paula Angarita Tovar, please receive this Amicus Brief with our **Opinion and Observations to the January 9, 2023 Request from the Republic of Chile and the Republic of Colombia to the Inter-American Court of Human Rights for an Advisory Opinion on the Climate Emergency and Human Rights.**

Respectfully yours,



Joseph P. Berra
Human Rights in the Americas Director
Promise Institute for Human Rights
University of California Los Angeles (UCLA) School of Law

385 Charles E. Young Drive East | Los Angeles CA 90095-1476

Filed with the Inter-American Court of Human Rights
Pablo Saavedra Alessandri
Secretary
Inter-American Court of Human Rights

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

Amicus Brief submitted by E. Tendayi, Achiume, S. Priya Morley, Joseph Berra, Kate Mackintosh, Mollie Cueva-Dabkoski, Heliya Izadpanah, Annika Krafcik, and Paula Angarita Tovar

Promise Institute for Human Rights
University of California Los Angeles (UCLA) School of Law

December 18, 2023

I. Introduction

A. Information about Amici

The former United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (former UN Special Rapporteur on Racism), E. Tendayi Achiume, appreciates the invitation by the Inter-American Court of Human Rights (IACtHR or the Court) to submit written observations in response to Chile and Colombia's request for an advisory opinion on the Climate Emergency and Human Rights (the Request). Achiume is the inaugural Alicia Miñana Professor of Law, former Faculty Director of the Promise Institute for Human Rights (Promise Institute) at UCLA School of Law, and a current MacArthur Fellow. The focus of her scholarship is the global governance of racism and xenophobia and the legal and ethical implications of colonialism for contemporary international migration. More generally, her research and teaching interests lie in international human rights law, international refugee law, and, international migration. She held the mandate of the UN Special Rapporteur on Racism from 2017-2022. This brief contains Achiume's observations in response to the Request, as well as the observations of her colleagues, who are human rights experts at the Promise Institute.

The Promise Institute is at the center of human rights education, research, and advocacy at UCLA and regionally. At Promise we work to empower the next generation of human rights lawyers and leaders, generate new thinking on human rights, and engage our students and

research to drive positive real-world impact. The Promise Institute's strategic focus areas are Race and Indigeneity, Migration, the Environment and Human Rights, Technology and Human Rights, and Accountability. A substantial part of the Promise Institute's work is engaged in the Inter-American system and focuses on Reimagining Human Rights in the Americas. The Promise Institute hosted the Inter-American Commission for Human Rights (IACHR) at UCLA in March 2023 for its 186th Period of Sessions.

S. Priya Morley is the Director of the International Human Rights Clinic at UCLA Law (the Clinic) and Racial Justice Policy Counsel at the Promise Institute. Morley conducts research and supervises clinical projects that explore how racism shapes migration and climate justice, particularly in the Americas. She also studies gender and human rights, feminist legal theory, and the regulation of sex work in the context of migration. The Clinic provides UCLA Law students with firsthand experience in international human rights lawyering, helping them to develop important skills for this practice and for public interest-oriented lawyering more broadly. The Clinic students involved in writing this brief are Mollie Cueva-Dabkoski, Heliya Izadpanah, and Annika Krafcik.

Joseph Berra is the Human Rights in the Americas Director for the Promise Institute and the Director of the Human Rights in Action Clinic: International Field Experience. Berra has ongoing collaborations in human rights advocacy in Honduras with Indigenous and Afro-descendant communities in their struggle to defend their territories, the environment, and their rights with respect to extractivist industries. Human Rights in the Americas partnerships include the Organización Fraternal Negra de Honduras (OFRANEH), the Consejo de Organizaciones Populares e Indígenas de Honduras (COPINH), and the communities of Pajuiles and Jilamito. Berra's research focus is the international human rights framework on the rights of Indigenous peoples and the impact of extractivist industries on the human rights of Indigenous and Afro-descendant communities. Berra's research assistant Paula Angarita Tovar also contributed to this brief. Tovar is a Colombian human rights lawyer, graduate of the Universidad Externado de Colombia, and current LLM student at UCLA Law, focusing on the intersections of business and economics with human rights.

Kate Mackintosh is the Executive Director of the UCLA Law Promise Institute Europe, which is based in the Netherlands. She was previously the inaugural Executive Director of the Promise Institute from 2018 to 2023. Mackintosh was appointed deputy chair of the Independent Expert Panel for the Legal Definition of Ecocide in summer 2020, which published its first draft proposal one year later. Mackintosh's current work focuses on the protection of the environment through human rights and international criminal justice.

B. Summary of Argument

In their Request for an Advisory Opinion, Chile and Colombia have asked this Court to clarify the scope of State obligations in the context of the climate emergency and, particularly, its

impact on "vulnerable groups."[1] Drawing on the work of the former UN Special Rapporteur on Racism, our primary intervention in this brief is to underscore that a racial justice and equity lens is crucial for understanding and responding to the differentiated impacts of climate change. The global ecological crisis is a racial justice crisis; it is racially marginalized groups who are most vulnerable to and impacted by climate change. We ask the Court to take seriously the experiences of racially marginalized groups, and to foreground the principles of racial equality and non-discrimination, when it clarifies the scope of States' human rights obligations in relation to the climate emergency in its forthcoming Advisory Opinion.

This brief responds directly to several questions raised by Chile and Colombia, including B, E.3, F.1, F.2.[2] Question B asks respondents to outline "state obligations to preserve the right to life and survival in the face of climate emergency in the light of science and human rights."[3] Question E.3 asks: "What specific considerations should be taken into account to guarantee the right to defend the healthy environment and territory in view of intersectional factors and differentiated impacts, among others, on indigenous peoples, peasant communities and Afro-descendants in the face of the climate emergency?"[4] Question F.1 queries "What considerations and principles should States and international organizations take into account, collectively and regionally, to analyze shared but differentiated responsibilities in the face of climate change from a human rights and intersectionality perspective?"[5] Lastly, question F.2 asks: "How should States act both individually and collectively to guarantee the right to reparation for damages

[1] 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 1, 3, 8, 9 (Jan. 9, 2023), https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf.

[2] 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 9, 11-13 (Jan. 9, 2023), https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf.

[3] 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 9 (Jan. 9, 2023), https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf.

[4] 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 11-12 (Jan. 9, 2023), https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf.

[5] 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 12-13 (Jan. 9, 2023), https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf.

generated by their actions or omissions in the face of the climate emergency, taking into account considerations of equity, justice, and sustainability?"[6]

We answer these questions in the sections below. Section II establishes critical connections between historical and contemporary systems of racial subordination and injustice and the climate emergency, calling for climate remedies that center racial justice as an essential dimension of State obligations. Section III outlines the principles of non-discrimination and equality in international human rights law, with a special focus on the rights of Indigenous and Afro-descendant peoples, explaining that these rights and obligations must be applied to the climate emergency. Sub-section III(C) highlights the importance of using an intersectional approach when analyzing issues of racial justice. Sub-section III(D) adopts an intersectional approach to provide examples of how the climate emergency disproportionately impacts racially marginalized groups and, in the case of Indigenous and Afro-descendant peoples, impacts them in a qualitatively different way than other groups. Section IV focuses on Indigenous and Afro-descendant peoples' rights to self-determination, territory and survival as a people, the safeguard right to free, prior, and informed consent (FPIC), and the urgency of protecting these rights in the face of the climate emergency. Section V focuses on the criminalizing ecocide on the level of other grave, international crimes and using it to hold powerful actors accountable and protect vulnerable communities. Finally, Section V urges the Court to enumerate human rights standards that guide States regarding their obligations in relation to climate reparations, the protection of Indigenous rights, as well as the criminalization of ecocide to redress corporate and government climate accountability. The brief encourages the Court to take a structural approach to reparations in its own jurisprudence, including relating to the racially discriminatory human rights violations connected to the global ecological crisis, and offers guidance to the Court on enumerating human rights standards for States responding to the global ecological crisis.

II. Background: The Global Ecological Crisis is a Racial Justice Crisis

The global ecological crisis[7] is a racial justice crisis. Unabated greenhouse gas emissions benefitting transnational corporations that funnel wealth towards the global North and privileged global elites, create "racial sacrifice zones," places where the disastrous effects of the climate crisis, such as aridification of their lands, drought, rising sea levels, and climate-induced

[6] 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 12-13 (Jan. 9, 2023), https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf.

[7] The global ecological crisis, as used in the report by the former mandate holder of the UN Special Rapporteur on Racism refers to the environmental crisis resulting both from climate change and other forms of environmental degradation (like point source pollution, for example). In this brief, where our focus is climate change, the terms global ecological crisis, climate emergency, climate crisis, and climate change are treated interchangeably.

migration, are disproportionately borne by racially marginalized groups.[8] Racial sacrifice zones include the ancestral lands of Indigenous Peoples, territories of small island developing States (SIDS), and racially segregated neighborhoods in the global North and occupied territories facing drought and environmental devastation.[9] Communities located in racial sacrifice zones—economically marginalized and thus lacking the financial resources necessary to mitigate and adapt to the effects of the global ecological crisis—suffer some of the most egregious forms of historical and contemporary racial subordination and human rights violations in the global ecological crisis context.[10]

Although discrimination on the basis of race and related identities is a critical determinant of climate and environmental harms, this is often overlooked in conventional responses to the climate emergency. The climate emergency, and environmental injustice more broadly, is often analyzed solely in terms of socioeconomic inequities, with limited attention to racial and ethnic inequities. In many jurisdictions, including in the Americas, States do not collect data disaggregated on racial and ethnic bases. Without discounting the importance of poverty, gender, age and other social characteristics in exposing people and communities to environmental and climate change harms, it is necessary to confront the roles played by race and related grounds.[11] A racial justice lens requires intersectional analysis. Intersectionality "seeks to capture both the structural and dynamic consequences of the interaction between two or more forms of discrimination or systems of subordination."[12] Within the context of the global ecological crisis, intersectional forms of discrimination, including discrimination on the basis of disability status, gender and immigration status, often exacerbate the disproportionate harms of climate change on racially marginalized groups. For example, racially marginalized women,

---

[8] E. Tendayi Achiume (U.N. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), *Ecological crisis, climate justice and racial justice*, ¶¶ 2, 19, A/77/549 (Oct. 25, 2022).

[9] A/77/549 ¶ 2.

[10] A/77/549 ¶ 50 ("The economic marginalization of racially marginalized peoples plays a major role in constraining their control over the development of their communities and their exposure to toxic waste and climate disasters. Relatedly, racially marginalized peoples frequently lack true self-determination over economic development that occurs on or near their communities, making them frequent victims of racial sacrifice zones created by national authorities or transnational corporations.")

[10] Intergovernmental Panel on Climate Change (IPCC), *Poverty, Livelihoods, and Sustainable Development*, *in* 2023: CLIMATE CHANGE 2023: SYNTHESIS REPORT, https://www.ipcc.ch/report/ar6/wg2/chapter/chapter-8/; s*ee generally* E. Tendayi Achiume (U.N. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), *Global extractivism and racial equality*, A/HRC/41/54 (May 14, 2019).

[12] United Nations Division for the Advancement of Women (DAW), Office of the High Commissioner for Human Rights (OHCHR), & United Nations Development Fund for Women (UNIFEM), Gender and racial discrimination: Report of the Expert Group Meeting (Nov. 21-24, 2000), www.un.org/womenwatch/daw/csw/genrac/report.htm; *see also* A/HRC/41/54 ¶ 18.

especially refugee, migrant, and stateless women, face higher rates of mortality and morbidity in the face of the climate emergency, as well as higher rates of sexual violence.[13]

As outlined in Section II of this brief, international human rights law requires States to address not only explicit racism and intolerance but also indirect and structural forms of discrimination that result from the global ecological crisis. Yet racial discrimination and injustice, including as they intersect with other forms of discrimination, are often ignored or marginalized within the human rights framework.[14] We urge this Court to avoid a "color-blind" approach to climate justice; "color-blind analysis of legal, social, economic and political conditions professes a commitment to an even-handedness that entails avoiding explicit racial analysis in favor of treating all individuals and groups the same, even if these individuals and groups are differently situated, including because of historical projects of racial subordination."[15] In the context of the global ecological crisis, racially marginalized communities are undeniably differently situated than other groups, and a color-blind approach further entrenches the subordination of these groups. Indigenous and Afro-descendent peoples in particular are disproportionately impacted by climate harms. Climate justice requires deliberate and targeted efforts to undo and redress racially and ethnically differentiated harms, which are not possible through measures that treat all racial and ethnic groups as similarly situated.

International human rights law provides that Indigenous peoples are the bearers of collective rights based on their status as original peoples. Even though colonizers sought to extinguish these rights, they are now recognized and affirmed in the international human rights framework on the rights of Indigenous peoples, as will be discussed in Section IV. Similarly, as this Court has affirmed, Afro-descendant communities that were transplanted or escaped to territories on the margins of new colonial and imperial nations over the course of the Trans-Atlantic Slave Trade are bearers of these same collective rights.[16] As culturally differentiated communities in collective territories, Afro-Descendant peoples hold the status of Tribal or Indigenous peoples under International Labor Organization (ILO) Convention No. 169[17] and within the Inter-American framework of international law on the rights of Indigenous peoples.[18]

---

[13] Rashida Manjoo (UN Special Rapporteur on violence against women, its causes and consequences), *Report on mission to Papua New Guinea*, ¶¶ 48–50, A/HRC/23/49/Add.2 (Mar. 18, 2013).
[14] E. Tendayi Achiume & Gay McDougall, *Anti-Racism at the United Nations*, 117 AJIL UNBOUND 82–87 (2023).
[15] A/77/549 ¶ 9; A/HRC/41/54 ¶ 14.
[16] *See Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172 (Nov. 28, 2007); *Garifuna Triunfo de la Cruz Community and its Members v. Honduras*, Report on Merits, Report No. 76/12, Inter Am. Comm'n H.R., Case No. 12.548 (Nov. 7, 2012).
[17] Int'l Lab. Org. (ILO), Indigenous and Tribal Peoples Convention (No. 169) art 1(b), 1650 U.N.T.S. 383 (June 27, 1989).
[18] In proceedings and thematic reports, the IACtHR and IACHR refer to Afro-descendant communities as Tribal peoples. *See* Ariel Dulitzky, *When Afro-Descendants Became 'Tribal Peoples': The Inter-American Human Rights System and Rural Black Communities,*15 UCLA J. INT'L L. & FOREIGN AFF. 29 (2010); and IACHR, *Indigenous and*

International human rights law has rightfully repudiated the concept of "race" as a biological category. Instead, "race" must be understood as a socially constructed category, "informed by physical features and lineage not because features and lineage are a function of biological racial variation but because societies invest morphology and ancestry with social meaning."[19] "Race" as a social construction played a crucial role in European colonial domination.[20] Europeans conceptualized race as a "different biological structure that placed some in a natural situation of inferiority to others."[21] For hundreds of years, White colonizers used colonialism to rationalize their brutal transnational extractivist regimes through slavery and indentured servitude in the Americas.[22]

In the settler-colonial territories of the Americas, as European colonialism oversaw global capitalist expansion, Indigenous peoples were subject to processes of extermination and dispossessed of their land in the name of development. Indigenous peoples—those who survived—and Afro-descendant peoples were commodified to ensure cheap labor supplies.[23] These racially marginalized groups were forced to power the very industries and capitalistic projects that were killing them. This dynamic continues today. Settler colonial structures continue into the present in the persistent power dynamics and relationships established by the European settler societies in settler States through logics of subordination, dispossession, displacement, and extermination of Indigenous and Afro-descendant peoples.

Processes related to resource extraction continue to rely on and perpetuate racial subordination in racial sacrifice zones.[24] Extractivist economies exploit Indigenous and Afro-descendant-majority lands, as well as a workforce made up of their inhabitants,[25] all while exponentially increasing greenhouse gas emissions that disproportionately harm racially marginalized groups.[26] Across the Americas, the effects are especially severe for Indigenous communities, whose spirituality, culture, livelihoods, and socio-economic well-being is deeply intertwined with their lands and natural resources. As extractivist industries intrude on and exploit their lands under the guise of "growth," "sustainable development," or "economic

---

Tribal People's Rights over Their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System, ¶ 34, OEA/Ser.L/V/II. Doc. 56/09 (Dec. 30, 2009).

[19] IAN HANEY LÓPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE 10 (10th Anniversary ed. 2006); E. Tendayi Achiume, *Racial Borders*, 110 Georgetown L. J. 453 (2022); A/HRC/41/54 ¶ 12-13.

[20] *See generally* Aníbal Quijano, *Coloniality of Power and Eurocentrism in Latin America*, in 15 INT'L SOCIOLOGY 215-232 (2000).

[21] *Id.*

[22] Anibal Quijano & Michael Ennis, *Coloniality of Power, Eurocentrism, & Latin America*, 1 INT'L SOCIOLOGY 533 (2000).

[23] Appel, *The Subcontract* at 174.

[24] A/77/549 ¶ 2.

[25] *Id.*

[26] A/77/549 ¶ 4.

development," Indigenous and Afro-descendant peoples are forcibly dispossessed of their homes, cultural and spiritual foundations, livelihoods, food systems, and traditional medicines. Natural resources are depleted in these once resource-rich regions, greenhouse gas emissions increase, and extreme weather and slow-onset disasters surge. The air, water, and land become polluted, affecting crops, drinking water, health, and right of Indigenous and Afro-descendant peoples to enjoy their lands and culture.[27]

The attitudes, doctrines and policies developed to justify the taking of lands from Indigenous peoples continue to be largely driven by the economic agendas of the global North.[28] Consumers reap the rewards of neocolonial extractivist structures in the form of more affordable energy and consumer products, while investors in extractivist companies that increase the severity of the global ecological crisis enjoy increased profits.[29] The international legal system has largely failed to address systems of racial and colonial subordination, including their persistent racially discriminatory impacts, which remain a feature of the global extractivist economy.[30]

As we argue in Section IV, rather than investing in profit-driven solutions to the climate crisis and responses based in technochauvinism,[31] States should move toward remedying the enduring structures of slavery and colonialism, including their persistent impacts, in partnership with affected communities. This requires reimagining human rights standards and state obligations with respect to the right to consultation and free, prior and informed consent, the protection of Afro-descendant and Indigenous land defenders, and care for the environment. States should take steps to mitigate unequal power relations in international legal processes by ensuring marginalized groups are treated as valuable knowledge producers, whose lived experience can inform decision-makers on how best to formulate and carry out remedies that respond not only to individual harms but also the structural inequities at the root of racially discriminatory impacts of the global ecological crisis. States should: take affirmative steps to

---

[27] IACHR, *Indigenous Peoples, Afro-Descendant Communities & Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II., Doc. 47/15 (Dec. 31, 2015); UN Special Rapporteur on human rights and the environment, *The right to a clean, healthy and sustainable environment: non-toxic environments*, ¶¶ 28-29, A/HRC/49/53 (Jan. 12, 2022).
[28] Erica-Irene A. Daes (UN Special Rapporteur on Indigenous People and Their Relationship to Land), *Prevention of Discrimination and Protection of Indigenous Peoples and Minorities*, ¶ 23, E/CN.4/Sub.2/2001/21 (June 11, 2001).
[29] A/HRC/49/53 ¶ 28.
[27] A/HRC/41/54 ¶ 17 ("To neglect the global structures of inequality and the global systems that promote or permit the consistent exploitation of certain nations and geographic regions at the expense of others is to endorse an "international" system that exists largely for the benefit of powerful nations and their transnational corporations.")
[31] Technochauvinism refers to "quick-fix" technologies that claim to "solve" climate change without putting in the hard work of addressing the root causes of climate change, such as racial subordination and unsustainable, inequitable consumption patterns. As we argue in Sections IV and VI, without addressing the root causes of climate change, these technologies actually perpetuate systems of racial subordination and other underlying inequities of the climate crisis.

safeguard autonomous Indigenous and Afro-descendant institutions and customary law; monitor and sanction business practices that detract from the rights of marginalized populations; and establish meaningful mechanisms of complaint and redress. Moreover, States must urgently mitigate the impacts of the global ecological crisis in vulnerable communities, and with respect to racially marginalized people, as disparate impacts require differing responsibilities. As such, States and transnational corporations should shift investments away from neoliberal market-driven innovations and the pitfalls of technochauvinism. Lastly, the crime of ecocide should be adopted by regional governments to ensure that corporations are accountable for their impact on the environment and the life and lands of racially marginalized groups.

III. Non-Discrimination and Equality Norms and Obligations in International Human Rights Law in Relation to the Climate Emergency

A. The Prohibition on Racial Discrimination in International Law

International human rights law is based on the premise that all persons, by virtue of their humanity, should enjoy all human rights without discrimination on any grounds.[32] The prohibition on racial discrimination has achieved the status of a peremptory norm of international law and is thus an obligation *erga omnes.*[33] Under international human rights law, States have further elaborated on racial equality and non-discrimination obligations across several different treaty regimes; the principles of equality and non-discrimination are codified in all core human rights treaties.[34] Article 26 of the International Covenant on Civil and Political Rights (ICCPR) states that the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[35] The International Covenant on Economic, Social and Cultural Rights (ICESCR) also prohibits discrimination on these grounds.[36]

Racial discrimination is defined, in Article 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), as "any distinction, exclusion,

---

[32] UN Special Rapporteur on Racism, *Racial and Xenophobic discrimination and the use of digital technologies in border and immigration enforcement*, ¶¶ 46-47, A/HRC/44/57 (Sept. 22, 2021), quoting the former UN Special Rapporteur on Racism directly.
[33] Human Rts. Comm., *Gen. Comment No. 29: States of Emergency (Art. 4)*, ¶ ¶ 8, 13(c), CCPR/C/21/Rev.1/Add.11 (Aug. 31, 2001); s*ee also* Int'l L. Comm'n, *Fourth report on peremptory norms of general international law* (jus cogens), ¶ 59, A/CN.4/727 (Jan. 31, 2019).
[34] UN Special Rapporteur on Racism, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, ¶¶ 10–14, A/HRC/32/50 (May 13, 2016) (naming the Convention on the Elimination of Discrimination against Women, the Convention on the Rights of the Child, and the United Nations Declaration on the Rights of Indigenous Peoples).
[35] International Covenant on Civil and Political Rights art. 26, Dec. 19, 1966, 999 UNTS 171 [hereinafter ICCPR].
[36] International Covenant on Economic, Social and Cultural Rights art. 12, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."[37] Similarly, under the Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance (Inter-American Convention on Racism), racial discrimination includes discrimination based on "race, color, lineage, or national or ethnic origin."[38]

As noted by the former UN Special Rapporteur on Racism, ICERD aims at much more than a formal vision of equality.[39] The Committee for the Elimination of Racial Discrimination (CERD) makes clear that "[e]quality in the international human rights framework is substantive and requires States to take action to combat intentional or purposeful racial discrimination, as well as to combat de facto, unintentional or indirect racial discrimination.[40] Within that vision, ICERD requires States[41] "to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms."[42] Accordingly, States may engage in special measures "for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection" as a means of promoting equal enjoyment and exercise of fundamental human rights.[43] ICERD explicitly protects civil, political, economic, social, and cultural rights, including: the right to freedom of movement and residing within the border of a State, the right to leave any country, including one's own, and return to one's

---

[37] Int'l Convention on the Elimination of All Forms of Racial Discrimination art. 1(1), Dec. 21, 1965, 660 U.N.T.S 195 [hereinafter ICERD].

[38] "Racial discrimination shall mean any distinction, exclusion, restriction, or preference, in any area of public or private life, the purpose or effect of which is to nullify or curtail the equal recognition, enjoyment, or exercise of one or more human rights and fundamental freedoms enshrined in the international instruments applicable to the States Parties. / Racial discrimination may be based on race, color, lineage, or national or ethnic origin."
Inter-Am. Conv. Against Racism, Racial Discrimination, and Related Forms of Intolerance art. 1(1), June 5, 2013, A-68 [hereinafter Inter-Am. Conv. Against Racism].

[39] A/HRC/41/54 ¶ 47, quoting directly.

[40] Comm. on the Elimination of Racial Discrimination (CERD), Gen. Recommendation No. 32: The meaning and scope of special measures in the Int'l Convention on the Elimination of All Forms Racial Discrimination, ¶¶ 6–7, CERD/C/GC/32 (Sept. 24, 2009).

[41] All 35 OAS members are parties to ICERD, although roughly 25% of member States do not recognize the complaint mechanism prescribed in Article 14 of the Convention. *About CIRDI*, REGIONAL CAMPAIGN FOR THE RATIFICATION & IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST RACISM, https://cirdi2024.org/en/about-cirdi (last accessed Nov. 29, 2023).

[42] ICERD art. 2.

[43] ICERD arts. 1(4), 2; CERD/C/GC/32 ¶¶ 6–7 (stating that the Convention "combines formal equality before the law with equal protection of the law, with substantive or de facto equality in the enjoyment and exercise of human rights as the aim to be achieved by the faithful implementation of its principles", meaning that State obligations to address racial discrimination may necessarily include treating racially marginalized peoples *differently* than other groups so that facially neutral laws do not *de facto* disadvantage or harm them).

country, the right to nationality, the right to housing, and the right to public health.[44] Every one of these rights is implicated in the global ecological crisis.

As noted above, racial discrimination occurs in many forms, including direct, indirect, and structural discrimination. Direct discrimination, or intentional or purposive discrimination, "occurs when an individual is treated less favourably than another person in a similar situation for a reason related to a prohibited ground" or when "detrimental acts or omissions on the basis of prohibited grounds where there is no comparable similar situation."[45] Indirect discrimination "refers to laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of [human rights] as distinguished by prohibited grounds of discrimination."[46] The Inter-American Convention Against Racism[47] defines indirect discrimination as: "when a seemingly neutral provision, criterion, or practice has the capacity to entail a particular disadvantage for persons belonging to a specific group based on the reasons set forth in Article 1.1[48], or puts them at a disadvantage, unless said provision, criterion, or practice has some reasonable and legitimate objective or justification under international human rights law."[49] This treaty requires States to "ensure that the adoption of measures of any kind, including those on security matters, does not discriminate directly or indirectly" against racially marginalized groups."[50] Finally, structural discrimination refers to systemic inequalities that consistently force racially marginalized groups into subordinated societal positions, including *inter alia* poverty, low political representation, poor access to education and the labor market, and mass incarceration.[51]

---

[44] ICERD art. 5. The Inter-Am. Conv. against Racism does not enumerate protected rights, instead it provides in article 3 that: "Every human being has the right to the equal recognition, enjoyment, exercise, and protection, at both the individual and collective levels, of all human rights and fundamental freedoms enshrined in their domestic law and in international law applicable to the States Parties."

[45] Comm. on Econ., Soc. and Cultural Rts. (CESCR), Gen. Comment 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), ¶ 10(a), E/C.12/GC/20 (July 2, 2009); CERD/C/GC/32 ¶¶ 6–7.

[46] E/C.12/GC/20 ¶ 10(b); see also CERD/C/GC/32 ¶ 7. The Committee on Elimination of Racial Discrimination has explained that ICERD protects against indirect discrimination even though the term "indirect discrimination" does not appear in the Convention text. *See* Gen. Recommendation No. 34: Racial discrimination against people of African descent, ¶ 7, CERD/C/GC/34 (Oct. 3, 2011).

[47] "Today, only 6 of the 35 OAS Member States are party to the Inter-American Convention against Racism. Of the remaining 29 members, 7 have signed, but not ratified, the Convention." *About CIRDI*, REGIONAL CAMPAIGN FOR THE RATIFICATION & IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST RACISM, https://cirdi2024.org/en/about-cirdi (last accessed Nov. 29, 2023).

[48] Inter-Am. Conv. Against Racism art. 1 states: "Racial discrimination shall mean any distinction, exclusion, restriction, or preference, in any area of public or private life, the purpose or effect of which is to nullify or curtail the equal recognition, enjoyment, or exercise of one or more human rights and fundamental freedoms enshrined in the international instruments applicable to the States Parties."

[49] Inter-Am. Conv. on Racism arts. 1(2), 8.

[50] Inter-Am. Conv. on Racism art. 8.

[51] CERD/C/GC/34 ¶ 6.

It is important to note that the creation of racial sacrifice zones entails direct, indirect and structural discrimination.[52] Structural discrimination is particularly relevant to the arguments advanced in this brief, in that it captures how slavery, colonization, extractivism, and other structures of racial and colonial subordination produce racially discriminatory human rights violations in the context of the global ecological crisis.

Both ICERD and the Inter-American Convention on Racism protect against all forms of discrimination and create State obligations that firmly apply in the context of the climate emergency. Under ICERD, State Parties must "condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms."[53] Specifically, States shall "take effective measures to review governmental, national, and local policies, and to amend, rescind of nullify any laws and regulations," which create or perpetuate racial discrimination.[54] Moreover, States shall "prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group, or organization."[55] Regarding social, economic, and cultural rights, States also "undertake to adopt immediate and effective measures, particularly in the field of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination."[56] In the Inter-American System, States must "undertake to adopt the special policies and affirmative actions needed to ensure the enjoyment or exercise of rights and fundamental freedoms of persons or groups that are subject to racism, racial discrimination, and related forms of intolerance for the purpose of promoting equitable conditions for equal opportunity, inclusion, and progress for such persons or groups."[57] Through these provisions, ICERD and the Inter-American Convention on Racism serve as crucial tools for dismantling deeply entrenched racially discriminatory structures, including those that have led to and result from the global ecological crisis.[58]

Within the context of the global ecological crisis, for States to meet their non-discrimination obligations they must protect racially and ethnically marginalized communities and individuals, regardless of their socio-economic background or status, from the adverse

---

[52] A/77/549 ¶¶ 45-46 (defining "environmental racism" as the result of "environmental policies, practices or directives that differentially affect or disadvantage (whether intentionally or unintentionally) individuals, groups or communities based on race or colour").
[53] ICERD art. 2.
[54] ICERD art. 2(c).
[55] ICERD art. 2(d).
[56] ICERD art. 7.
[57] Inter-Am. Conv. against Racism art. 5.
[58] *See* E. Tendayi Achiume (U.N. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), *Elimination of racism, racial discrimination, xenophobia and related intolerance: comprehensive implementation of and follow-up to the Durban Declaration and Programme*, ¶¶ 8-9, A/74/321 (Aug. 21, 2019) (stating that full implementation on ICERD is a central pillar to achieving reparations for slavery and colonialism, two structures that are at the heart of the today's climate crisis).

impacts of climate change and ensure that they do not face discrimination in claiming their human rights. Article 2(2) of ICESCR requires States to guarantee the exercise of social, cultural, and economic rights without discrimination.[59] Article 2(1) of the ICESCR requires States to "take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."[60] Although ICESCR acknowledges that guaranteeing certain social, cultural, and economic rights will require progressive realization, it also imposes obligations with an immediate effect, including that States satisfy a "minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights" and that States guarantee all rights will be exercised without discrimination.[61] These immediate and progressive steps must combine to create a programme for the full realization of social, cultural, and economic rights.[62]

ICESCR Art. 15(1)(a) recognizes the right to participate in cultural life.[63] As CESCR Comment No. 21 states, “cultural rights are an integral part of human rights and, like other rights, are universal, indivisible, and interdependent.”[64] Cultural rights are closely related to the right to enjoy the benefits of scientific progress and its applications (art. 15, para. 1 (b)); the right to education (arts. 13 and 14), through which individuals and communities pass on their values, religion, customs, language and other cultural references, and which helps to foster an

---

[59] ICESCR art. 2(2). Discrimination is defined in CESCR General Comment No. 20 as "any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights." E/C.12/GC/20 ¶ 7.

[60] ICESCR art. 2(1). CESCR, Gen. Comment No. 3: The Nature of State Parties’ Obligations (Art. 2, Para. 1 of the Covenant), ¶ 9, E/1991/23 (Dec. 14, 1990) (stating that "the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content.... the phrase must be read in the light of the overall objective, indeed the raison d’être, of the Covenant which is to establish clear obligations for States parties in respect of the full realization of the rights in question."); see also *id.* ¶¶ 3-7 (noting that appropriate steps toward progressive realization of rights in the Covenant includes, most importantly, legislation, as well as the incorporation of those rights into state constitutions, the creation of justiciable causes of action if those rights are denied to individuals, and other administrative, financial, educational, and social measures).

[61] E/1991/23 ¶¶ 1, 9-10, E/1991/23; ICESCR art. 2(2) ("The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."); *see also* E/C.12/GC/20 ¶ 7 (”Non-discrimination is an immediate and cross-cutting obligation in the Covenant.”).

[62] E/1991/23 ¶ 9.

[63] ICESCR art. 15(1)(a). CESCR, Gen. Comment No. 21: Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), ¶ 21, E/C.12/GC/21 (Dec. 21, 2009) (clarifying that the non-discrimination principles of international law apply to ICESCR art. 15).

[64] E/C.12/GC/21 ¶ 1.

atmosphere of mutual understanding and respect for cultural values; the right of all peoples to self-determination (art. 1) and the right to an adequate standard of living (art. 11).[65] Each of these rights is intimately bound up in the climate context, as climate harms disproportionately result in racially marginalized groups losing access to their ancestral lands, homes, work, education, and more. Under the ICESCR, State Parties are obligated to construct adaptation measures that prioritize the rights and needs of affected communities, especially those at risk of displacement or loss of livelihoods due to climate impacts.[66] States have a duty to prevent third parties, including corporations, from violating economic, social, and cultural rights. In the context of climate change, this includes holding corporations accountable for their contributions to climate change and their impacts on human rights.[67] In addition, States Parties to the ICESCR must ensure a transition to a low-carbon economy that is just and equitable, protecting the livelihoods and rights of workers in high-carbon industries and marginalized communities affected by economic shifts.[68]

In its report on State obligations during the climate emergency, the IACHR states that "States have a reinforced obligation to guarantee and protect the rights of individuals or groups who are in situations of vulnerability or who are particularly vulnerable to the damage and adverse impacts of climate change because they have historically and systematically borne the greatest burden of structural inequality."[69] The Commission emphasizes that States must adopt measures to protect the human rights of Indigenous peoples, Afro-descendant, tribal or peasant communities in the context of the climate emergency, given their particular vulnerability to

---

[65] E/C.12/GC/21 ¶ 2.

[66] CESCR, Gen. Comment No. 26 on Land & Econ., Soc. and Cultural Rts, ¶¶ 56-57, E/C.12/GC/26 (Jan. 24, 2023).

[67] E/C.12/GC/26 ¶ 41("The extraterritorial obligation to protect requires States parties to establish the necessary regulatory mechanisms to ensure that business entities, including transnational corporations, and other non-State actors that they are in a position to regulate do not impair the enjoyment of rights under the Covenant in land-related contexts in other countries. Thus, States parties shall take the necessary steps to prevent human rights violations abroad in land-related contexts by non-State actors over which they can exercise influence, without infringing on the sovereignty or diminishing the obligations of the host States"); CESCR, Gen. Comment No. 24 on State obligations in the context of business activities, ¶¶ 33-34, E/C.12/GC/24 (June 23, 2017) (providing that mechanisms to hold corporations accountable may include requiring companies to report on their policies and procedures to ensure respect for human rights and providing effective means of redress for abuses of Covenant rights). We address the importance of State adoption of the crime of ecocide as one method of encouraging corporate accountability in Section V.

[68] E/C.12/GC/26 ¶¶ 2(d)-(f), 58 ("Cooperation mechanisms for climate change mitigation and adaptation measures shall provide and implement a robust set of environmental and social safeguards to ensure that no project negatively affects human rights and the environment and to guarantee access to information and meaningful consultation with those affected by such projects."); *see also* Olivier De Schutter (UN Special rapporteur on extreme poverty and human rights), *The "just transition" in the economic recovery: eradicating poverty within planetary boundaries*, A/75/181/Rev.1 (Oct. 7, 2020).

[69] IACHR & REDESCA, *Climate Emergency: Scope of Inter-American Human Rights Obligations*, ¶ 16, Res. No. 3/2021 (Dec. 31, 2021).

climate change.[70] Therefore, in asking the Court to consider racially marginalized groups as it contemplates specific State obligations and remedies for human rights violations in the context of the climate emergency, we are merely asking the Court to extend the guidance already established by its sister Commission.

B. Special Protections for Indigenous and Afro-Descendant Peoples Under International Human Rights Law

International human rights law provides special legal protections for Indigenous and Afro-descendant peoples. This body of law is particularly important given the outsized impact of the global ecological crisis—and climate change mitigation strategies—on these racially marginalized groups.[71] Both the American Declaration on the Rights of Indigenous Peoples (ADRIP) and United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) protect Indigenous peoples' rights to self-determination, land and territory, resources and livelihood, culture, religion, a healthy environment, and food sovereignty–rights that arise from Indigenous peoples' ancestral connection to their land. In addition, the rights to freedom of movement, right to remain on ancestral lands, and right to participation are protected.[72]

The UN Human Rights Committee, interpreting the ICCPR, recently reinforced the protective power of the right to culture and the right to home for Indigenous peoples in *Daniel Billy and others v. Australia*.[73] The Committee found for the first time that a State's failure to adapt to the foreseeable harms of climate change violated the right to culture and the right to home and privacy.[74] Moreover, CESCR makes clear that engaging participation and consultation with affected communities is non-negotiable.[75] Both UNDRIP and ADRIP reiterate the importance of Indigenous peoples' participation, holding that States should actively involve Indigenous and Tribal peoples affected by the development and implementation of climate policies and strategies, and requiring States to obtain their free, prior and informed consent for

---

[70] *Id.* ¶ 23

[71] *See generally* IACHR, Indigenous Peoples, Afro-Descendant Communities & Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities, OEA/Ser.L/V/II., Doc. 47/15 (Dec. 31, 2015).

[72] Am. Decl. on the Rts. of Indigenous Peoples, June 15, 2016, AG/RES. 2888 (XLVI-O/16), OEA/Ser.D/XXVI.19 [hereinafter ADRIP]; UN Decl. on the Rts. of Indigenous Peoples, Oct. 2, 2007, A/RES/61/295 [hereinafter UNDRIP]; IACHR & Special Rapporteur for Economic, Social, Cultural and Environmental Rights (REDESCA), Economic, Social, Cultural and Environmental Rights of Persons of African Descent: Inter-American Standards to Prevent, Combat and Eradicate Structural Racial Discrimination, OEA/Ser.L/V/II., Doc. 109 (2021); *see also* CERD, Gen. Recommendation No. 23: Indigenous Peoples, A/52/18 annex V 122 (Aug. 18, 1997).

[73] Daniel Billy et al. v. Australia, CCPR/C/135/D/3624/2019 (Sept. 18, 2023).

[74] Daniel Billy et al. v. Australia, CCPR/C/135/D/3624/2019, ¶¶ 8.9-12 (Sept. 18, 2023).

[75] E/C.12/GC/26 ¶¶ 20-21, 28, 35, 44, 53 ("Individuals and communities *shall* be properly informed about and allowed to meaningfully participate in decision-making processes that may affect their enjoyment of rights under the Covenant in land-related contexts, without retaliation.") [emphasis added].

decisions and activities affecting their substantive rights, territories and livelihoods, as will be further addressed below in Section IV.[76]

The Committee on the Elimination of Racial Discrimination (CERD) recognizes that Afro-descendant people have specific rights to property and the use, conservation and protection of lands traditionally occupied by them, to cultural identity, to the protection of traditional knowledge and culture, and to prior consultation with respect to decisions which may affect their rights.[77] The UN system acknowledges States' obligations to protect Afro-descendant peoples from racial discrimination through its implementation and follow-up to the Durban Declaration and Programme of Action.[78] The UN Human Rights Council has also published several resolutions to promote and protect the human rights and fundamental freedoms of Africans and Afro-descendant peoples.[79]

The Inter-American Commission on Human Rights (IACHR), has recognized, pursuant to the principles of equality and non-discrimination, that Afro-descendant communities inhabiting collective territories must enjoy the same territorial rights that are granted to Indigenous peoples.[80] In addition, recognizing the historical injustices and ongoing discrimination faced by Afro-descendant communities, the IACHR actively monitors and investigates cases of racial discrimination and violence against Afro-descendants, working to ensure their right to live free from discrimination and prejudice, while also advocating for policies and initiatives that promote equality and social inclusion for Afro-descendant individuals and communities across the region.[81]

C. International Human Rights Law Requires an Intersectional Approach to Discrimination, Including Discrimination on the Basis of Race and Ethnicity

Both the UN and Inter-American systems have recognized the need for an intersectional approach to discrimination. As mentioned above, intersectionality is an analytical framework

---

[76] UNDRIP arts. 5, 15(2), 17, 18, 19, 27, 30(2), 36(2), 38; ADRIP arts. XXIII, XXVIII and XXIX.
[77] CERD/C/GC/34 ¶¶ 4(a)-(d).

[78] Resolution adopted by the General Assembly on 24 December 2021, A/RES/76/226 (Jan. 10, 2022).
[79] See e.g., Resolution adopted by the Human Rights Council on 13 July 2021, A/HRC/RES/47/21 (July 26, 2021) (Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers through transformative change for racial justice and equality); Resolution adopted by the Human Rights Council on 19 June 2020, A/HRC/RES/43/1 (2020) (Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers).
[80] IACHR & REDESCA, Economic, Social, Cultural and Environmental Rights of Persons of African Descent, ¶¶ 18-19.
[81] *See generally* IACHR & REDESCA, Economic, Social, Cultural and Environmental Rights of Persons of African Descent.

that describes how different identities a person holds results in intersecting forms of privilege or oppression, reflecting existing power structures, such as patriarchy, ableism, colonialism, imperialism, and racism. As outlined in the CERD, racial discrimination manifests alongside multiple, intersecting forms of discrimination, such as gender, class, nationality, disability, and age.[82] Many other treaty bodies and international organizations adopt an intersectional lens to discrimination, including: the Committee on Economic, Social, and Cultural Rights (CESCR),[83] the Committee on the Elimination of Discrimination against Women,[84] UN Human Rights Council,[85] Committee on the Rights of Persons with Disabilities (CRPD),[86] and UN Women.[87] The Inter-American System has also used an intersectional approach to its analysis of vulnerable groups and human rights.[88] For example, in its report on State obligations in the climate emergency, IACHR stated that the State "must immediately adopt measures" to address the intersectional nature of climate harms, especially as they relate to Indigenous, Afro-descendant, and peasant communities; women and girls; migrant workers; children and the elderly; people experiencing poverty and/or homelessness; and people with disabilities.[89]

Drawing on the work of these international human rights bodies, the following subsections address how intersections of race with gender, disability, and immigration status compound the

---

[82] *See generally* CERD/C/GC/32; E/C.12/GC/20 (emphasizing the importance of recognizing and addressing intersecting forms of discrimination because many people face overlapping injustices due to discriminatory norms in modern society); CERD, Gen. Recommendation No. 25: General Related Dimensions of Racial Discrimination, U.N. Doc. A/55/18 annex V 152 (2003).

[83] *See* E/C.12/GC/20 ¶ 17 (noting that "[s]ome individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example women belonging to an ethnic or religious minority. Such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying."); see also CESCR, Gen. Comment No. 22 on the right to sexual and reproductive health (article 12 of the Int'l Covenant on Econ., Soc. & Cultural Rts.), ¶¶ 30-3, E/C.12/GC/22 (May 2, 2016); CESCR, Gen. Comment No. 23 on the right to just and favourable conditions of work (article 7 of the Int'l Covenant on Econ., Soc., & Cultural Rts.), ¶ 47, E/C.12/GC/23 (Apr. 27, 2016); E/C.12/GC/24 (State obligations in the context of business activities); E/C.12/GC/26 ¶¶ 13-19 (addressing non-discrimination obligations and groups (women, Indigenous Peoples, and peasants) needing particular attention in the context of protecting land rights under ICESCR).

[84] *See e.g.* Gen. Recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R (Dec. 5, 2008); Gen. Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32 (Nov. 14, 2014); Gen. Recommendation No. 37 on the gender-related dimensions of disaster risk reduction in the context of climate change, CEDAW/C/GC/37 (Mar. 13, 2018); Gen. Recommendation No. 39 on the rights of Indigenous women and girls, CEDAW/C/GC/39 (Oct. 31, 2022).

[85] Rights of persons with disabilities, ¶¶ 31-34, A/HRC/46/27 (Jan. 19, 2021).

[86] Gen. Comment No. 6 on equality and non-discrimination, ¶¶ 11, 55(a), CRPD/C/GC/6 (Apr. 26, 2018).

[87] UN Women & UNPRPD, Intersectionality Resource Guide and Toolkit: An Intersectional Approach to Leave No One Behind (2022); UN Women, Addressing Exclusion Through Intersectionality in Rule of Law, Peace and Security Context (2020).

[88] *See, e.g.,* IACHR & REDESCA, *Pobreza, Cambio Climático y DESCA en Centroamérica y México, en el Contexto de Mobilidad Humana*, ¶ 14, OEA/Ser.L/V/II. Doc. 158 (July 28, 2023) (stating "*todo el informe se abordará con perspectiva de género e interseccionalidad*.")

[89] IACHR & REDESCA, *Climate Emergency: Scope of Inter-American Human Rights Obligations*, ¶¶ 17-23, Res. No. 3/2021 (Dec. 31, 2021).

harms of global ecological crisis for racially marginalized peoples, and how States are obligated to respond.

1) Gender

Both the UN and Inter-American System support an intersectional approach to eradicating discrimination based on race and gender. CEDAW has said repeatedly that "discrimination against women is inextricably linked to other factors that affect their lives," such as their race.[90] The Convention on the Elimination of Discrimination Against Women is dedicated to eradicating every form of discrimination[91] and achieving equality, including addressing forms of discrimination that intersect with gender.[92] In the Inter-American system, the Convention of Belem do Para (or the Convention on the Prevention, Punishment and Eradication of Violence against Women) also addresses the intersectional nature of gender and race: "States Parties shall take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons."[93]

This Court should encourage States to develop intersectional approaches to the climate emergency context in its forthcoming advisory opinion, given how gender and race intersect in the context of the climate emergency. Gender increases the risk of discrimination and displacement in the context of the global ecological crisis. Eighty percent of people displaced by

---

[90] CEDAW/C/GC/37 ¶ 29, citing CEDAW, Gen. Recommendations Nos. 19, 28, 32, 33, 34, 35, 36.

[91] Article 1 defines discrimination against women as "any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." Convention on the Elimination of Discrimination Against Women art.1, Dec. 18, 1979, 1249 U.N.T.S. 1.

[92] Convention on the Elimination of Discrimination Against Women art. 2 requires States parties to take steps to eliminate discrimination against women and to ensure equality by making changes to their national constitutions and other legislative measures, fair treatment in national tribunals and other public spaces, regulating public authorities and institutions, modify or abolish any existing laws, regulations, customs, or practices with a discriminatory impact on women, and to take measures against any person, organization, or enterprise that discriminates against women.

Moreover, CEDAW includes among its priorities freedom for women in political and public life, education, employment, cultural rights, and health, each which are categories impacted by the climate emergency. See CEDAW, arts. 3, 5, and 11.

CEDAW unambiguously requires States to take legislative, administrative, and other measures to bring their laws and practices in line with these provisions to eliminate gender discrimination and punish femicide: CEDAW Article #.

[93] Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem do Para) art. 9, June 9, 1994, 33 ILM 1534.

climate disaster are women.[94] Women and girls are more likely to be exposed to disaster-induced risks and losses related to their livelihood because they tend to have less control over decisions governing their lives, and less access to resources such as food, water, technology, and health services.[95] Women and girls face higher rates of morbidity and mortality in situations of disaster, such as those caused by the climate emergency, as well as higher rates of gender-based violence during and following disasters.[96] When gender discrimination intersects with other forms of marginalization, outcomes worsen: Indigenous women,[97] as well as refugee and asylum-seeking women, internally displaced, stateless, and migrant women,[98] all experience disproportionate harm caused by the climate emergency.[99] Another startling example of intersectional discrimination in the climate context is the disproportionate rate of femicide in relation to female environmental defenders who are murdered with impunity, as discussed in depth in Section IV of this report in the case of Indigenous environmental defender Berta Cáceres.[100] Section IV provides further examples of these intersectional harms.

*2) **Disability***

Both the UN and Inter-American systems prohibit discrimination against people with disabilities. CPRD incorporates intersectionality into its inclusive equality model, recognizing "the dignity of human beings and their intersectionality"[101] as a core element of the UN Convention on the Rights of People with Disabilities.[102] CPRD notes that the Convention on the

---

[94] *Climate change exacerbates violence against women and girls*, UN OFF. HIGH COMM'R (July 12, 2022), https://www.ohchr.org/en/stories/2022/07/climate-change-exacerbates-violence-against-women-and-girls.

[95] CEDAW/C/GC/37 ¶ 3.
[96] CEDAW/C/GC/37 ¶ 4-5 (noting that one reason women face higher gender-based violence during and after disasters is because in the absence of social protection schemes, food-insecure women have to risk their lives and safety to find food.)
[97] *See also* CEDAW/C/GC/39.
[98] *See* CEDAW/C/2009/WP.1/R.
[99] CEDAW/C/GC/37 ¶ 2.
[100] *See generally* Dalena Tran & Ksenija Hanaček, *A global analysis of violence against women defenders in environmental conflicts*, 6 NATURE SUSTAINABILITY 1045-1053 (Apr. 18, 2023).
[101] CRPD/C/GC/6 ¶ 11.
[102] The Preamble to the CRPD also obligates States to engage in participatory justice with disabled individuals, as they are an "integral part of relevant strategies of sustainable development". Convention on the Rights of Persons with Disabilities, Preamble (g), Dec. 13, 2006, 2515 UNTS 3.

Furthermore, CPRD Article 21 mandates that States "take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion," emphasizing the need for participatory justice. As such, individuals with disabilities and DPOs should be stakeholders in the design, development, and implementation of these plans and policies. This has ensured that people with disabilities from around the world are represented and provided with speaking rights during Ad Hoc Committee sessions.

Rights of People with Disabilities protects against discrimination on all grounds, including race, sex, Indigenous or social origin, migrant, refugee, or asylum status, etc.[103] The Convention asks States to "adopt all appropriate legislative, administrative, and other measures," "modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities," and take "other appropriate measures" to ensure the promotion, protection, and "full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities."[104] This includes people in "situations of risk," "humanitarian emergencies and the occurrence of natural disasters," such as the global ecological crisis and its resulting events.[105]

The Inter-American Convention on the Rights of People with Disabilities creates State obligations regarding equality and non-discrimination for people with disabilities.[106] The Inter-American Convention foregrounds state cooperation and collaboration, including with relation to prevention, treatment, rehabilitation, and integration, as well as the development of resources, participatory models of engagement, and the establishment of a Committee for the Elimination of All Forms of Discrimination against Persons with Disabilities.[107]

In considering State obligations to address the racially disparate impacts of the climate emergency, the Court should consider the intersection of disability with racial discrimination. People with disabilities are some of the most vulnerable to climate change, because in emergency situations, they experience disproportionately higher rates of morbidity and mortality and are among "the least able to access emergency support."[108] Further, Indigenous peoples suffer high rates of disability; in some countries, rates of disability among Indigenous peoples

---

Article 9 requires accessibility and reasonable accommodations in the built environment, while Article 25 recognizes the right to health, and Article 28 emphasizes the right of persons with disabilities to an adequate standard of living and social protection, which includes access to adequate food, clothing and housing, and clean water. Article 32 highlights the importance of international cooperation in promoting and protecting the rights of persons with disabilities, including through "technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies." Collectively, these provisions require nations to actively improve existing harms caused by climate change and also proactively prepare for and safeguard against climate-related threats that impact the human rights of their disabled populations.

[103] CRPD/C/GC/6 ¶¶ 17, 21.

[104] Convention on the Rights of Persons with Disabilities art. 4(1)(a)-(e).

[105] Convention on the Rights of Persons with Disabilities art. 11.

[106] Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities art. III, June 7, 1999, OAS AG/Res 1608 (XXIX-O/99).

[107] Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities arts. III, IV(1)-(2).

[108] UN Human Rts. Comm., *Analytical study on the promotion and protection of the rights of persons with disabilities in the context of climate change*, ¶¶ 5, 6, A/HRC/44/30 (2020) (noting that "[m]ultiple and intersecting factors of discrimination related to gender, age, displacement, Indigenous origin or minority status can further heighten the risks of persons with disabilities experiencing negative impacts of climate change.")

are thought to be as high as 50 percent.[109] Reasons for the disproportionate rate of disability among Indigenous peoples include higher levels of poverty, increased exposure to environmental degradation, the impact of large projects, such as dams or mining activities, and higher risk of being victims of violence.[110]

3) Immigration Status

International human rights law establishes anti-discrimination protections for refugees, migrants, and stateless persons. The 1951 Geneva Convention provides that all treaty States shall not discriminate against refugees "as to race, religion, or country of origin."[111] The International Covenant on Civil and Political Rights (ICCPR) confirms the right to culture,[112] the right to life,[113] the right to liberty and security of person,[114] the right to acquire a nationality,[115] which are each critical to ensuring the rights of climate refugees and migrants.

As discussed in more depth in Section I and clarified by CERD, ICERD requires that States take affirmative "action to counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin,"[116] including, "undocumented non-citizens and persons who cannot establish the nationality of the State on whose territory they live, even where such persons have lived all their lives on the same territory."[117] Under Article 5 of ICERD, State parties are under obligations "to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights," and to "to guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extent recognized under international law"[118]

The IACHR's "Principles on Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking" outline state obligations "to respect, protect, promote, and guarantee the human rights of all persons... including refugees, stateless persons, and victims of

---

[109] U.N. Econ. & Soc. Council, *Study on the situation of indigenous persons with disabilities, with a particular focus on challenges faced with regard to the full enjoyment of human rights and inclusion in development*, ¶ 5, E/C.19/2013/6 (Feb. 5, 2013); *see generally* Jen Deerinwater, *Indigenous People with Disabilities are on the Front Lines of the Climate Crisis,* TRUTHOUT (Oct. 11, 2021); Agnes Portalewska, *Simply, Real Consultation: Indigenous Persons with Disabilities Demand Action*, CULTURAL SURVIVAL (Sept. 4, 2015).
[110] E/C.19/2013/6 ¶ 7.
[111] U.N. Convention and Protocol Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; *see also* CERD, Gen. Recommendation No. 22: Article 5 and refugees and displaced persons, A/54/18 (Aug. 24, 1996).
[112] ICCPR art. 27.
[113] ICCPR art. 6.
[114] ICCPR art. 9.
[115] ICCPR art. 24.
[116] CERD, *Gen. Recommendation No. 30*, 64th Session, ¶ 3, CERD/C/64/Misc.11/rev.3, 1 ¶ 3 (March 2004).
[117] CERD, *Gen. Recommendation No. 30*, 64th Session, ¶ 12, CERD/C/64/Misc.11/rev.3, 1 ¶ 3 (March 2004).
[118] ICERD art. 5.

human trafficking."[119] Specifically, it recognizes that "migration movements require differentiated and individualized forms of protection that cater to people at all stages of international displacement," including for environmental reasons.[120]

Moreover, the IACtHR has a strong jurisprudential history of recognizing the *erga omnes* State obligations to protect and uphold the human rights of non-nationals.[121] The Court has held that State non-action and/or State actions that fail in combatting discrimination against non-nationals do not meet party non-discrimination obligations.[122] The Court has also held that there exists a "general obligation to respect and ensure human rights binds States, regardless of any circumstance or consideration, including a person's migratory status."[123]

As the global ecological crisis compels mass migration around the world, it is increasingly important for the Court to consider the ways in which immigration status or perceived "outsider status" impact how racially marginalized groups experience climate change. Immigration or outsider status impacts access to fundamental human rights. Individuals and groups identified as "foreigners" or outsiders are at risk of facing a wide range of human rights abuses due to their outsider status, whether that status is real or perceived.[124] Racial and ethnic designations are often central to determining "foreigner" and "outsider" status.[125]

Furthermore, coerced displacement and immobility experienced in the context of ecological crises disproportionately impact racially marginalized groups. Nine out of ten refugees and internally displaced persons originate from nations highly vulnerable to climate disaster.[126] In turn, nations with significant climate vulnerabilities provide refuge to more than 40 percent of refugees.[127] Within these host nations, spatial separation and housing-based prejudice confine racially marginalized communities to specific geographic areas, often with fewer resources, high legal barriers, racial profiling, housing discrimination, transportation barriers, stereotyping, and prejudice.[128] Thus, the intersection of discrimination based on

---

[119] IACHR, *Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking* 3, OAS Res. 04/19 (Dec. 7, 2019), https://www.oas.org/en/iachr/decisions/pdf/Resolution-4-19-en.pdf.
[120] OAS Res. 04/19 at 2.

[121] Juridical Condition and the Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R., ¶ 1 (Sep. 17, 2003) [hereinafter, "Advisory Opinion 2003"].
[122] Advisory Opinion 2003 ¶¶ 108-109.
[123] Advisory Opinion 2003 ¶¶ 140-141, 162.
[124] E. Tendayi Achiume (Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), *Note by the Secretariat,* ¶ 30, A/HRC/38/52 (Apr. 25, 2018).
[125] A/HRC/38/52 ¶ 30.
[126] A/77/549 ¶ 35.

[127] A/77/549 ¶ 35.
[128] A/77/549 ¶ 35.

immigration status, and race or ethnicity intensifies climate change harms and must be considered by the Court.

Having illuminated how addressing human rights violations arising from the global ecological crisis requires an intersectional approach, as mandated by international human rights law, the next subsection demonstrates how race and related grounds are critical determinants of human rights violations related to the global ecological crisis.

D. The Global Ecological Crisis Disproportionally Impacts Racially Marginalized Groups, and Subjects Them to Qualitatively Different Harms from Other Groups

Climate change manifests itself in myriad ways, including extreme temperatures, hurricanes, sea level rise, wildfire, and drought. Racially marginalized groups are more likely than others to face the worst effects of climate change, while possessing fewer resources for adaptation and mitigation.[129] Racially marginalized groups are subject to disproportionate harm from climate change because they are disproportionately located in "racial sacrifice zones."[130] As discussed in Section II, racial sacrifice zones include the ancestral lands of Indigenous peoples, territories of small island developing States, racially segregated neighborhoods in the global North, and occupied territories facing drought and environmental devastation.[131] In different regions in the Americas, transnational corporations funnel resources and wealth away from these racial sacrifice zones while the inhabitants of these zones bear the brunt of the harmful consequences of pollution and environmental destruction.[132] Such consequences negatively affect communities, causing significant spiritual, cultural, economic, and health-related effects.[133] In this section, we draw on the submissions to the former UN Special Rapporteur on Racism and other sources to offer some examples of these disproportionate harmful impacts.

In the United States, the disproportionate health impacts on racially marginalized communities resulting from climate change are well-documented. As the U.S. Environmental Protection Agency has found: “Black and African American individuals are 40 percent more likely than non-Black individuals to currently live in areas with the highest projected increases in mortality rates due to climate-driven changes in extreme temperature.”[134] “Black and African American individuals are 34 percent more likely than non-Black individuals to live in areas with the highest projected increases in childhood asthma diagnoses due to climate-driven changes in particulate air pollution.”[135]

---

[129] A/77/549 ¶ 4.
[130] See discussion in Section II; *see also* A/77/549 ¶ 2.
[131] See discussion in Section II; *see also* A/77/549 ¶ 2.
[132] A/77/549 ¶ 2.
[133] *See generally* A/77/549.
[134] U.S. Env’t Prot. Agency, *Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts* 6, EPA 430-R-21-003 (Sept. 2021).
[135] *Id.*

Afro-descendant populations similarly experience disproportionate harms in Latin America. In the Brazilian Northeast, heavy rains, an anticipated effect of climate change, have disproportionately harmed and killed Afro-descendant people, who live in urban areas that are more susceptible to flooding and landslides.[136] The lack of long-term urban planning in these cities deepens social and environmental inequalities and puts Afro-descendant peoples' lives at risk, as well as reducing their average lifespans.[137] Also in Brazil, the Quilombola, descendants of enslaved Afro-Brazilians, have fought significant threats from extractivist industries that emit greenhouse gas emissions, causing environmental degradation and exacerbating climate change. For example, the Quilombola territory of Sapê do Norte has faced an onslaught of eucalyptus and sugarcane monoculture, the construction of a highway, and the installation of a gas pipeline, all of which have led to large-scale deforestation, the drying up of streams and the filling of springs, the death of animals and the high dumping of pesticides in the water and soil.[138] This has led to the contamination of water sources, destruction of habitats, and disrupted access to essential resources.[139] These changes effectively violate Quilombola rights of access to water, food, and a healthy environment.

These racially marginalized groups are not only disproportionately harmed by the climate crisis, but they are also persecuted for defending their lands from environmental degradation. In the case of Brazil, Quilombola activists are routinely persecuted for speaking out about the environmental injustices they experience on their land.[140] They face physical violence, threats, and harassment, assassinations, murders, false accusations meant to criminalize them, forced evictions, defamation campaigns, private and government surveillance, restrictions on movement, economic pressures and dependencies, legal harassment, and environmental degradation.[141]

As racial sacrifice zones become uninhabitable due to climate change, climate-induced migration disproportionately affects racially marginalized peoples.[142] In Haiti, for example, decades of slavery, colonization, and extractive industry[143] have left Haitians extremely

---

[136] Submission to the U.N. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Coalizão Negra Por Direitos (June 20, 2022).
[137] *Id.*
[138] *Id.*
[139] *Id.*
[140] A/77/549 ¶¶ 20, 55.
[141] A/77/549 ¶¶ 20, 55, 58.
[142] Climate-induced migration creates qualitatively different impacts on Indigenous Peoples who have a protected right to remain and right to access the material foundation of their culture protected under international human rights law. This will be discussed at length later in this section.
[143] A/77/549 ¶ 30.

vulnerable to the effects of a changing climate, including hurricanes,[144] loss of forests and biodiversity,[145] and soil erosion.[146] This climate vulnerability is leading many Haitians, particularly Haitian farmers who can no longer make a living, to leave their country of origin.[147] However, racism limits Haitian's freedom of movement, as States like the U.S. target Haitians for deportation.[148]

Climate-induced migration involves intersecting forms of discrimination based on race, gender, and immigration status. For example, after hurricanes Maria in Puerto Rico and Irma in the Bahamas—extreme weather events caused by climate change—racially marginalized women faced disproportionate challenges. Because of their child and elder care responsibilities, women had a harder time than men evacuating and recovering from the disasters.[149] Additionally, post-disaster relief efforts sometimes failed to address the specific needs of women, such as access to hygiene products and reproductive health services.[150]

Sea level rise presents the risk of permanent land loss for Indigenous peoples in Arctic and coastal communities and small island developing states (SIDS), and disproportionately impacts these populations and territories.[151] For example, American Indian and Alaska Native individuals are 48 percent more likely than non-Native peoples in the US to currently live in areas where the highest percentage of land is projected to be flooded by sea level rise.[152] SIDS, like those in the Caribbean, are expected to face substantial land loss—and in some cases, complete underwater submersion by the end of the 21st century (or sooner).[153] In 2023, the

---

[144] *See generally* Adelle Thomas & Lisa Benjamin, *Climate justice and loss and damage: Hurricane Dorian, Haitians and human rights,* 189 GEOGRAPHICAL J. 584 (2023).
[145] *See generally* Vereda Johnson Williams, *A case study of desertification in Haiti*, 4 J. SUSTAINABLE DEV. 20 (2011).
[146] *See generally* Stefan Alscher, *Environmental Degradation and Migration on Hispaniola Island*, 49 INT'L MIGRATION 164 (2011).
[147] A/77/549 ¶ 36.
[148] A/77/549 ¶ 36.
[149] Dept. of Gender & Family Affairs, Beijing + 25 Bahamas National Review on the Implementation of the Beijing Declaration and Platform for Action 17-18 (2019), https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/64/National-reviews/Bahamas-en.pdf
[150] Anusha Ravi, Disaster Relief for Puerto Rico Must Accomodate Women's Needs, AM. PROGRESS (Feb. 9, 2018), https://www.americanprogress.org/article/disaster-relief-puerto-rico-must-accommodate-womens-needs/.
[151] A/77/549 ¶¶ 33, 40, 57, 59. As documented by the IACHR, loss of land can also negatively affect access to a nutritious food supply, preventive health services, education, and clean water. REDESCA & IACHR, Concluding Observation and Recommendations from REDESCA After Its Visit to Louisiana and Alaska: Climate Induced Displacement of Indigenous Communities, ¶¶ 32, 34, 53-54 (Aug. 2023).
[152] U.S. Env't Prot. Agency, *Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts* 6, EPA 430-R-21-003 (Sept. 2021).
[153] A/77/549 ¶ 33; *see generally* Michelle Mycoo et al., *Small Islands*, in CLIMATE CHANGE 2022 (Cambridge Univ. Press, 2022); Jacob Assa & Riad Meddeb, *Towards a Multidimensional Vulnerability Index* (UNDP, Discussion Paper, 2021).

IACHR's Special Rapporteur for Economic, Social, Cultural, and Environmental Rights (REDESCA) visited Tribes in the United States in Alaska and Louisiana whose lands are threatened by sea level rise, erosion, and other climate change effects.[154] Her report notes that as of 2019, an estimated 144 Native communities in Alaska are likely to face some degree of infrastructure damage from these climate change effects, but between 2016 and 2020 more than 1/3 of these Native Villages did not receive federal assistance.[155] The Native Villages who did receive federal or state assistance, such as the Village of Newtok, are far from safe. For instance, despite a federal commitment of funds towards the relocation of Village of Newtok to Mertarvik, the relocation will not be completed before coastal erosion and flooding make Newtok uninhabitable.[156] Additionally, many Indigenous peoples would prefer to stay on their ancestral lands than move to a new, unfamiliar place.[157] Relocation efforts that fail to adequately consult and engage Tribal members violate Tribes' rights of self-determination.[158]

In addition to disproportionately impacting racially marginalized groups, the global ecological crisis also impacts racially marginalized groups in qualitatively different ways than other groups. Although land loss and degradation due to climate change affects a range of human rights, some violations are specific to Indigenous and Afro-descendant peoples, affecting them in a qualitatively different way than other groups. Degrading land to the point of imminent uninhabitability violates rights to culture and freedom of religion, as traditional lands are the material foundation of many Tribal cultures and provide a physical means of connection for many Indigenous belief systems. Furthermore, dispossession of traditional lands undermines a Tribe's ability to transmit important cultural knowledge—such as subsistence and medicinal practices—to future generations.[159]

Extractive projects exacerbate the effects of climate change and impact racially marginalized groups in a qualitatively different manner than other groups. As mentioned in the prior section, extractive industries tend to site their projects on or near Indigenous or Afro-descendant land, in "racial sacrifice zones," either forcing communities to flee their lands or

---

[154] IACHR & REDESCA, *Concluding Observations and Recommendations from REDESCA After Its Visit to Louisiana and Alaska: Climate Induced Displacement of Indigenous Communities*, ¶¶ 1, 44 (2023), https://www.oas.org/en/iachr/media_center/PReleases/2023/REDESCA_OR_Louisiana_Alaska_ENG.pdf.
[155] *Id.* ¶¶ 44-46.
[156] *Id.* ¶ 18.
[157] *See e.g.,* concerns raised by members of the Isles de Jean Charles Choctaw Nation and Atakapa-Ishak-Chawasha of the Grand Bayou in *id.* ¶¶ 37, 42.
[158] *Id.* ¶ 63, 42 (noting that the Newtok tribal relocation efforts did not include adequate consultation, nor sufficient funds); *see also* UNDRIP art. 10.
[159] For discussion of the interconnection between land and cultural knowledge for Indigenous Peoples, *see* Wilma Mankiller, *Being Indigenous in the 21st Century*, 33 CELEBRATION OF PAC. CULTURE (June 9, 2010), https://www.culturalsurvival.org/publications/cultural-survival-quarterly/being-indigenous-21st-century.

otherwise destroying or degrading the land with extractive pollution.[160] This land dispossession consequently violates peoples' freedom of religion, right to self-determination, right to life, right to culture, and right to standards of free, prior, and informed consent.

When Indigenous and Afro-descendant peoples across the Americas protest these violations and environmental destruction, States and corporate entities fail to protect them, instead permitting their persecution and at times even sponsoring their criminalization.[161] For instance, rising sea levels and coastal soil erosion resulting from the global ecological crisis have significantly reduced much of the arable land and sustainable marine environments of the Garifuna peoples.[162] As the Garifuna live in coastal communities and have traditionally sustained themselves on agriculture and fishing, these losses have resulted not only in the loss of homes, but also much of the Garifuna's culture and livelihoods.[163] Land grabs by the tourism industry and extractive industries—at times carried out with the approval of State governments in contravention of the Garifuna's centuries-old land rights—exacerbate the problem.[164] Consequently, the Garifuna have been increasingly displaced and forced to migrate. But as a community with perceived "outsider" status, the Garifuna have faced hostility and discrimination in their attempts to resettle, secure land rights, and gain access to basic services, education, and employment opportunities.[165] Furthermore, Garifuna leaders and activists have received no government protection and have instead been persecuted, criminalized, imprisoned, abducted, and even killed for advocating for their land rights and resisting further displacement.[166] Section IV analyzes in detail the struggle of Garifuna communities in Honduras and their cases in the Inter-American system.

---

[160] *See e.g.*, James Anaya (U.N. Special Rapporteur on the rights of indigenous peoples), *The situation of indigenous peoples in the United States of America*, ¶ 41, A/HRC/21/47/Add. 1 (Aug. 30, 2012) (addressing loss of Indigenous lands in western United States due to uranium mining); Riat Izák (U.N. Special Rapporteur on minority issues on her mission to Brazil) ¶ 63, A/HRC/31/56/Add. 1 (Feb. 9, 2016) (addressing political and economic pressures on Quilombos in Brazil who lack clear formal title to their lands); A/HRC/41/54, ¶ 56 (noting violent evictions of Indigenous communities in Colombia, Guatemala, and Honduras to make space for soybean, palm oil, and sugar cane plantations).

[161] A/HRC/41/54 ¶¶ 50, 51, 55-56, 59-60; A/77/549 ¶¶ 20, 54-55. See also Section IV on the persecution of Indigenous land and human rights defenders.

[162] *Garifuna in Belize facing loss of land and culture due to sea level rise,* CLIMATE TRACKER (Aug. 14, 2023), https://feedreader.com/observe/climatetracker.org/garifuna-in-belize-facing-loss-of-land-and-culture-due-to-sea-level-rise%2F%3F+itemId=9455410884.

[163] *Id.*

[164] Loperena, Christopher Anthony. "Conservation by racialized dispossession: The making of an eco-destination on Honduras's North Coast." *Geoforum* 69 (2016): 184-193.

[165] *Inter-American Court of Human Rights Affirms Indigenous Peoples' Right to Freedom of Expression in Guatemala*, CULTURAL SURVIVAL (Dec. 17, 2021), https://www.culturalsurvival.org/news/inter-american-court-human-rights-affirms-indigenous-peoples-right-freedom-expression.

[166] Press Release No. 022/23, IACHR (Feb. 14, 2023), https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2023/022.asp.

IV. Spotlight on Indigenous Rights: Self-Determination, Collective Territory and Free, Prior and Informed Consent in the Context of the Climate Emergency and Green Capitalism[167]

The Court has developed a broad and robust jurisprudence on the rights of Indigenous peoples,[168] however States have failed to respect and protect those rights. As noted in section III above, Indigenous peoples' rights are crucial to the Court's analysis of the impact of the climate emergency on human rights. This section draws on fieldwork and collaborative projects of the UCLA Human Rights in Action Clinic in Honduras and Promise Institute's Human Rights in the Americas Project, in addition to the submissions made to the former UN Special Rapporteur on Racism. However, it is not intended to single out Honduras for failing to respect and protect Indigenous rights. The struggles of Indigenous communities in Honduras are emblematic of struggles across the Americas, as exemplified below. The failures by States to respect and protect the rights of Indigenous peoples are endemic to the region as a whole and a product of systemic and structural violence against Indigenous peoples arising from the settler colonial history of the hemisphere. These conditions require a strengthening of the guidelines and standards of the rights of Indigenous peoples for States to comply with their obligations. This is especially true with respect to extractivist industries, which in pursuit of resources needed for the green economy are reproducing patterns and practices of dispossession and structural genocide of Indigenous peoples, often with the complicity of States.

Green capitalism is an approach to climate change mitigation that is deeply problematic for Indigenous peoples.[169] A core assumption of green capitalism is that market-centered "solutions" can solve the global ecological crisis. Carbon offsets, widely marketed by corporate sectors as justifications for "business as usual" operations, allow entities to purchase "rights" to certain activities that, in theory, result in reductions of atmospheric carbon dioxide.[170] However, research into existing carbon offset programs finds that the vast majority do not effectuate stated reductions in carbon emissions; instead, programs commonly exaggerate their claims, inflate

---

[167] In line with the previous Sections, this Section responds especially to question E.3 of the request by Chile and Colombia in so far as Indigenous human rights defenders, and in particular Indigenous women, are defending and vindicating collective Indigenous rights and the Court seeks to protect these rights in the context of the climate emergency. Similarly implicated are mitigation measures for vulnerable populations (question A.2), access to information (questions B.1 and B.2), judicial remedies and consultation measures (questions D.1 and D.2) and the question of reparations (question F.1 and F.2) to be addressed below in the Section on Remedies.

[168] As noted in Section III above, this Court has found the framework for the rights of Indigenous peoples to apply to Afro-descendant peoples existing as culturally differentiated communities in collective territories. In this section, the analysis of the rights of Indigenous peoples applies equally to these Afro-descendant communities.

[169] Oriol Batalla, Green Capitalism? Politics from the Neocrocene to the Eleutherocene, 34 E-cadernos CES, 73-75 (2020), https://doi.org/10.4000/eces.5553.

[170] Angelo Gurgel, Carbon Offsets, MIT Climate Portal (Nov. 8, 2022), https://climate.mit.edu/explainers/carbon-offsets.

their carbon baselines, are impermanent, or result in carbon leakage.[171] For example, researchers have critiqued the United Nations Collaborative Partnership on Reducing Emissions from Deforestation and Forest Degradation (REDD+ Program), which aims to protect and restore forests in the global South by supplying technical assistance and knowledge, "for its use of over-optimistic projections but also its use of Indigenous territories and denial of certain communities' rights of self-determination."[172] One submission received by the former UN Special Rapporteur on Racism reported that REDD+ provided cover for land grabs from Indigenous peoples.[173] This section details in a granular way the mechanics of those land and resource grabs.

Similarly, the expansion of the renewable energy sector has meant the expansion of extractive industries that provide the minerals to support this technology, often resulting in "green sacrifice zones,"[174] where vulnerable racial and ethnic communities are subjected to the destruction and pollution of extractive industries.[175] As the IACHR has previously recognized, extractive activity and renewable energy development in support of the green transition often violates international norms of maintaining and upholding free, prior, and informed consent for Indigenous and Afro-descendant communities on resource-rich land.[176] This section is dedicated to that very issues and will provide examples that illuminate the urgent need for strengthening and developing the standards for free, prior and informed consent.

A. State obligations regarding the right of Indigenous peoples to consultation and free, prior and informed consent.

This Court has developed its jurisprudence on the rights of Indigenous peoples by interpreting the American Convention on Human Rights (The American Convention or The Convention) within the progressive development of the *corpus juris gentium* of international

---

[171] Nina Lakhani, Revealed: Top Carbon Offset Projects May Not Cut Planet-Heating Emissions, the Guardian (Sept. 19, 2023), https://www.theguardian.com/environment/2023/sep/19/do-carbon-credit-reduce-emissions-greenhouse-gases.

[172] A/77/549 ¶ 66.
[173] A/77/549 ¶ 66.
[174] Christos Zografos & Paul Robbins, Green Sacrifice Zones, or Why a Green New Deal Cannot Ignore the Cost Shifts of Just Transitions, 3 One Earth 543, 543-544 (2020), https://doi.org/10.1016/j.oneear.2020.10.012.
[175] Nicole Greenfield, Lithium Mining Is Leaving Chile's Indigenous Communities High and Dry (Literally), Be a Force for the Future | NRDC (Apr. 26, 2022), https://www.nrdc.org/stories/lithium-mining-leaving-chiles-indigenous-communities-high-and-dry-literally; Fossil Fuel Extraction is Harming Indigenous Communities, HARV. T.H. CHAN SCH. PUB. HEALTH (Apr. 20, 2022), https://www.hsph.harvard.edu/news/features/fossil-fuel-extraction-harming-indigenous-communities/.
[176] *See* IACHR, *supra* note 27, ¶ ¶ 15-24.

human rights law, as the framework in which it is inscribed. [177] It thus ensures the evolution of the Inter-American system in accordance with the development of this framework, complying with the principle contained in Article 29(b) of the Convention of not interpreting it in a way that limits the human rights recognized in other instruments. [178] In this sense, the Court has used instruments such as Convention 169 of the International Labour Organisation (ILO Convention 169), the U.N. Declaration on the Rights of Indigenous Peoples (UNDRIP), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the mechanisms of control and interpretation of these instruments to establish the principles of the rights of Indigenous peoples, interpret the provisions of the American Convention, and determine the obligations of States in the area of human rights as applied to Indigenous peoples.[179] More recently, the Court has had at its disposition the American Declaration on the Rights of Indigenous Peoples (ADRIP) for the development of this framework.

The international body of human rights law on the rights of Indigenous peoples represents the application of general human rights principles to the particular situation of Indigenous peoples in today's world.[180] As noted by the UN Special Rapporteur on Indigenous Peoples and as embodied in the preambles to ILO Convention 169, UNDRIP and ADRIP, this body of law is *reparative* in nature, in recognition of the social and historical conditions giving rise to the actual situation of Indigenous peoples, and based on their inherent right to self-determination.[181] As such, it provides this Court with tools to address the structural and systemic causes of harms suffered by Indigenous communities in relation to the climate emergency and promote positive alternatives from the perspective and wisdom of Indigenous peoples to the collective challenges that the emergency presents. Protection of Indigenous peoples' right to self-determination and right to consultation and free, prior and informed consent is key to ensuring redress for harms and protection of Indigenous lands and livelihoods. This is especially urgent given the failures of States to respect and protect these rights and given the reproduction of the

---

[177] Corte IDH. Caso Comunidad Indígena Yakye Axa vs. Paraguay, Sentencia de 17 de junio de 2005, Fondo, Reparaciones y Costas, Serie C, No. 125, párrs. 124-30. (Cites to Court decisions available only in Spanish will be made here in the Spanish format)

[178] *Id.*

[179] Id.; Corte IDH. Caso del Pueblo de Saramaka vs. Surinam, Sentencia del 28 de noviembre de 2007, Excepciones Preliminares, Fondo, Reparaciones y Costas, Serie C, No. 172, párr. 93-6. (Cites to Court decisions available only in Spanish will be made here in the Spanish format).

[180] James Anaya, Report of the Special Rapporteur on the Rights of Indigenous Peoples, A/HRC/9/9, at ¶ 36. (11 August 2008).

[181] *Id.*; American Declaration on the Rights of Indigenous Peoples, Preamble: "…CONCERNED that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and the dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests…."

same schemes that led to the climate emergency in the extraction of resources on Indigenous lands for the so-called green economy.

This Court has recognized and developed standards on the right of Indigenous peoples to prior consultation and free, prior, and informed consent (FPIC), based on the international instruments above and particularly as found in article 6 of ILO Convention 169, articles 19, 32 and 38 of UNDRIP, and articles XXIII, XXVIII and XXIX of ADRIP.

The duty to consult and obtain the consent of Indigenous peoples "requires the State to accept and provide information and implies constant communication between the parties. Consultations must be conducted in good faith, through culturally appropriate procedures, and must be aimed at reaching an agreement." [182] Indigenous people should "be consulted, in accordance with their own traditions, at the earliest stages of the development or investment plan and not only when the need arises to obtain community approval if this be the case. Early notice provides time for internal discussion within the communities and to provide an adequate response to the State."[183] As in the case of the Saramaka People vs. Suriname, the State must also ensure that members of the Indigenous communities "are aware of the potential risks, including environmental and health risks, so that they accept the proposed development or investment plan knowingly and voluntarily."[184] Finally, the consultation should take into account the traditional decision-making methods of the Indigenous people.[185]

The Court further held in *Pueblo de Saramaka vs. Surinam* that "when it comes to large-scale development or investment plans" the State has the obligation not only to consult, "but must also obtain the free, informed and prior consent of [Indigenous people], according to their customs and traditions." [186] In this the Court agrees with the position taken by the United Nations Special Rapporteurs on the rights of Indigenous peoples and other international bodies that protect their human rights, who consider that obtaining consent is a duty of the State in relation to large development projects.[187] Indeed, in the Saramaka People case, the Court saw that because of the profound impact the concession had on the property rights of the people, the State had "an obligation to obtain the free, prior and informed consent of the Saramaka people, according to their customs and traditions."[188]

---

[182] See, Caso del Pueblo de Saramaka vs. Surinam, *supra note 179,* párrs. 6-93.
[183] *Id.*
[184] *Id.*
[185] *Id.*
[186] *Id.* párr. 134.
[187] *Id.* párrs. 135-36 y sus notas acompañantes.
[188] *Id.* párr. 137.

In this framework, the Court sees consultation and consent as a safeguard, when fundamental rights of Indigenous peoples are affected. [189] The UN Special Rapporteur on the Rights of Indigenous Peoples also developed this conception, saying that "neither consultation nor consent are an end in themselves, nor are they independent rights. ... It is a norm that complements and contributes to the realization of substantive rights." [190] These substantive rights include the right to self-determination, the right to territory, land and resources necessary to sustain themselves, the right to culture and religion, the right to participate in decisions that affect them, and the right to determine their own priorities and strategies for the development and use of their lands, territories or resources. [191] In the context of the climate emergency, the territory and natural habitat of Indigenous peoples is not only threatened (as noted in the other sections of the submission), but their substantive rights are increasingly threatened by the drive to extract resources from their territories for the global economy, including resources for the green economy.

The standard on consultation and consent does not represent a simple mechanism to be complied with. As the UN Special Rapporteur noted, "it is a means of giving effect to these rights and is further justified by the generally marginalized nature of indigenous peoples in the political sphere, but it is a standard that undoubtedly does not represent the full scope of these rights." [192] This norm works alongside other safeguards of Indigenous rights, such as prior social and environmental impact studies of development projects, and where appropriate, the establishment of mitigation measures, benefit-sharing, and the payment of compensation, [193] and ultimately must rely on the judicial safeguards provided by articles 8 (judicial guarantees) and 25 (judicial protection) of the American Convention. Moreover, considering the jurisprudence of the Court, the UNDRIP, and other sources, the Special Rapporteur considers that "whenever the rights affected are essential to the survival of indigenous groups as distinct peoples and the anticipated effects on the exercise of the rights are significant, *indigenous consent to those effects will be necessary and should go beyond merely being an objective of the consultations*." [194]

B. The failure to implement FPIC and the impact on Indigenous rights and Indigenous defenders in the context of extractivist industries.

The failure of States to adequately implement prior consultation and comply with their obligations regarding free, prior and informed consent follows a consistent pattern. It is rooted in

---

[189] *Id*, párrs. 129-31.
[190] James Anaya, (U.N. Special Rapporteur on the Rights of Indigenous Peoples) Report of the Special Rapporteur on the Rights of Indigenous Peoples, ¶ 49, A/HRC/21/47, (jul. 6, 2012).
[191] Id. ¶ 50.
[192] *Id.* ¶ 51.
[193] Id. ¶ 52.
[194] Id. ¶ 65 (emphasis added).

settler colonial logics[195] and the dominant, neoliberal economic model governing the extraction of resources. This includes those resources driving the green economy, such as water, wind and solar resources as part of the transition to clean energy, carbon capture, rare earth metals used in batteries, and ecotourism. This failure to meet obligations under the safeguard right to consultation and FPIC results in a common set of violations of the substantive rights that the safeguard right is meant to protect. The significant substantive rights of Indigenous peoples impacted by this process include the right to self-determination, the right to land and territory and control over their resources, the ability to preserve and reproduce their cultural identity, social structures, lifeways and livelihoods, and to assert and defend their rights as Indigenous peoples, as well as their right to life, to a healthy environment and survival as a people. This Court should reinforce and strengthen its standards regarding FPIC for major development projects on Indigenous lands and when their substantive rights are directly impacted. Furthermore, the Court should strengthen standards for the protection of Indigenous lands and territories sufficient to detain and deter the ongoing dispossession of those lands by settler societies and States.

What follows are examples of this process of human rights degradation drawn from collaborative research and advocacy by the Promise Institute's Human Rights in the Americas project with partners in Honduras. This is supplemented by a sampling of other examples from across the Americas to show a common thread of struggle by Indigenous peoples resisting extractivist industries and settler dispossession in defense of their territories and way of life and demanding respect for their right to consultation and free, prior and informed consent. Taken together, they demonstrate the urgent need for strengthening the standards and guidance to States on respecting and protecting these rights in the context of the climate emergency.

1) The Garifuna cases in the Inter-American System

The *Organización Fraternal Negra de Honduras (OFRANEH)*[196] is currently litigating six cases in the Inter-American System. The Court has issued sentences in two of those cases: The Garifuna Community of Triunfo de la Cruz Vs. Honduras and The Garifuna Community of

[195] For an analysis of settler colonialism and settler capitalism in Latin America, *see* Speed, Shannon. "Structures of settler capitalism in Abya Yala." *American Quarterly* 69.4 (2017): 783-790. For a seminal text on settler colonialism as a structure, not an event, *see* Patrick Wolfe (2006) Settler colonialism and the elimination of the native, Journal of Genocide. Research, 8:4, 387-409, DOI: 10.1080/14623520601056240an eventCite settler colonial literature. For application of the concept to Honduras and the extractivist development model, *see* Loperena, Christopher A. "Settler violence?: race and emergent frontiers of progress in Honduras." American Quarterly 69, no. 4 (2017): 801-807.

[196] The Black Fraternal Organization of Honduras.

Punta Piedra Vs. Honduras.[197] In both, the Court found violations to the right of collective property, the right to consultation, and the right to judicial guarantees and protection.

In all these cases there is a pattern of failing to delimit, demarcate and title the collective property of the Garifuna people, a process which involves clearing title and defending that title against third parties. Even where the State has recognized the territorial claims of the Garifuna people and is under this Court's order to delimit, demarcate, clear title and provide judicial security to communal lands as in the case of Triunfo de la Cruz, it has been unable or unwilling to fulfill its obligations.[198] This has resulted in the ongoing violation of their territorial rights, generating new affectations and putting the community at risk due to the increase of social conflictivity.[199]

The Court should recognize the structural determinants of the failure due to the State's complicity in a history of land grabs by third parties. This history involves both State and private actors failing to respect the customary norms of collective land tenure by the Garifuna people.[200] Third parties have acquired Garifuna lands by squatting on (appropriating) the land and excluding Garifunas by force or threat of force. They have acquired Garifuna land through private exchanges and purchases from individual members of the community, even though communal land is inalienable, and any sale of usufruct rights must be approved by the community's governing body or assembly. Many dealings with individual community members were also tainted by unequal power dynamics, coercion, or fraud. The State allowed this erosion of collective property rights and in some cases was complicit is granting formal recognition to the pretensions of third parties through acts of registration or annexation by municipal authorities, or through the extension of supplemental title by local courts and subsequent

---

[197] Corte IDH. Caso Comunidad Garífuna Triunfo de la Cruz y sus Miembros Vs. Honduras Fondo, Reparaciones y Costas. Sentencia de 8 de octubre de 2015. Serie C No. 305; Caso Comunidad Garífuna de Punta Piedra y sus miembros Vs. Honduras. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 08 de octubre de 2015. Serie C No. 304.

[198] Corte IDH. Caso Comunidad Garífuna Triunfo de la Cruz y sus miembros Vs. Honduras. Supervisión de cumplimiento de Sentencia. Resolución de la Corte Interamericana de Derechos Humanos de 14 de mayo de 2019, Considerandos 7 a 25; Caso Comunidad Garífuna de Punta Piedra y Caso Comunidad Garifuna de Triunfo de la Cruz y sus miembros Vs. Honduras. Supervisión de cumplimiento de Sentencia. Resolución de la Corte Interamericana de Derechos Humanos de 30 de abril de 2021, párrs. 35-39.

[199] See, supra note 198, párr. 37.

[200] The processes described here are well documented in: Caribbean Central American Research Council (CCARC) (formerly Central American and Caribbean Research Council, CACRC), "*Diagnóstico de la Tenencia de la Tierra en Comunidades Garífunas y Miskitas de Honduras*," (2003). Available at: http://ccarcresearch.org/portfolio_page/tenencia-de-la-tierra-en-las-comunidades-garifunas-y-miskitas-en-honduras/. They were also confirmed in recent interviews by Joseph Berra with the Comité de Tierra (Land Committee) and Comisión de Cumplimiento de la Sentencia (Commission for Compliance with the Sentence) of the Community of Triunfo de la Cruz, November 30, 2023.

enforcement of the purported rights of third parties while failing to enforce the Garifuna's communal property rights.[201]

It is in large part because of this settler colonial legacy that the State has been unable or unwilling to fulfill its obligations with respect to the collective title of Garifuna lands. In other words, settler society actors take advantage of the deficits and gaps brought about by the state's failures with respect to collective property and rely on the legal system to defend their interests. They trust that the system will disregard the violence, threat of violence or oppression used in acquiring the lands and the fact that these lands are not subject to prescription or alienation. The complicity of the administrative and legal system in this regard is a classic example of the ongoing logics of Indigenous dispossession by the settler state.[202]

The Garifuna cases are intimately tied to the climate crisis as their lands and territories are both coveted for their natural beauty and in danger due to deforestation and extreme weather events such as the hurricanes Eta and Iota in 2020.[203] In both the cases of Triunfo de la Cruz and Punta Piedra the Court found the State violated the communities' right to prior consultation with respect to the creation of a national park in the former case, and a mining concession in the latter.[204] Moreover, the Garifuna communities of Cayos Cochinos and Punta Piedra have alleged similar violations of the right to consultation in the creation of a national park and a forestry reserve in their traditional territories. The Court in the case of Triunfo de la Cruz made clear that "mere socialization with the Community or providing information does not necessarily meet the minimum elements of adequate prior consultation, insofar as it does not constitute a genuine dialogue as part of a participatory process with a view to reaching an agreement."[205] The State has yet to implement a plan in consultation with the community of Triunfo de la Cruz to guarantee access for the use and enjoyment of communal lands within the Parque Nacional Punto Izopo, and remains under this Court's supervision for compliance with that measure.[206]

While the conservation of forests and natural resources is an important tool for addressing the climate emergency, the Court should monitor and strengthen standards and guidelines for the implementation of prior consultation and the protection of collective property when those dispositions affect Indigenous lands and livelihoods.

---

[201] *Id.*
[202] *See supra,* note 22.
[203] Christopher Anthony Loperena, Conservation by Racialized Dispossession: The Making of an Eco-Destination on Honduras's North Coast, 69 Geoforum184, 185-193 (2016), https://doi.org/10.1016/j.geoforum.2015.07.004.
[204] See supra, note 197, Caso Comunidad Garífuna Triunfo de la Cruz y sus Miembros Vs. Honduras, párr. 170; Caso Comunidad Garífuna de Punta Piedra y sus miembros Vs. Honduras, párr. 224.
[205] See supra, note 197 Caso Comunidad Garífuna Triunfo de la Cruz y sus Miembros Vs. Honduras, párr. 173. Translation of the original Spanish: "La mera socialización con la Comunidad o brindar información no necesariamente cumple con los elementos mínimos de una consulta previa adecuada, en la medida que no constituye un diálogo genuino como parte de un proceso de participación con miras a alcanzar un acuerdo."
[206] See supra, note 198 párr. 40-42.

2) The Case of the Lenca Community of Rio Blanco

The case of Rio Blanco and the Lenca resistance to the Agua Zarca hydroelectric project is well-known through the struggle of Berta Cáceres and the Lenca organization COPINH-*Consejo de Organizaciones Populares e Indígenas de Honduras*. Once again, we find intertwined the rights to free, prior and informed consent, collective property, and judicial guarantees and protection. The state's failure to respect, protect and ensure those rights led to conflict and violence, resulting in the assassination of Berta Cáceres and other members of the community.

This case fits squarely within the model of green resource extraction.[207] The rush to approve the General Water Law following the 2009 coup was a direct response to the neoliberal drive to open up the country's resources to foreign and private investment, including the development of clean energy sources.[208] The law was passed on September 30, 2009 without meaningful consultation with Indigenous communities in spite of the fact that many of the country's rivers and hydrological resources run through Indigenous lands and are protected and held sacred by Indigenous people, not only as the source of their lives and livelihoods but as a part of their community.

Over 40 concessions for hydroelectric projects in Lenca territories were granted in the first years after the passage of the General Water Law, none of them with prior consultation.[209] The ongoing demand for justice in the cause of Berta Cáceres by the community of Rio Blanco, COPINH, and civil society has revealed the corrupt granting of the concession of the Rio Gualcarque in the case of Rio Blanco,[210] and the subsequent revelation of a criminal structure in the assassination of Berta Cáceres that included the president of the dam-building company, DESA, an active military intelligence officer, mid-level managers of DESA, and former military personnel.[211]

---

[207] Loperena, Christopher A. "Settler violence?: race and emergent frontiers of progress in Honduras." *American Quarterly* 69, no. 4 (2017): 801-807.
[208] *Id.* Ley General de Aguas, Decreto No. No 181-2009, Gaceta, Dec. 14, 2009, (Honduras).
[209] Consejo Cívico de Organizaciones Populares e Indígenas de Honduras (COPINH), Las redes de corrupción detrás de la concesión de ríos en honduras., Berta Cáceres (June 2, 2021), https://berta.copinh.org/2021/06/las-redes-de-corrupcion-detras-de-la-concesion-de-rios-en-honduras-gualcarque-la-evidencia-de-la-colusion-entre-la-empresa-privada-y-los-poderes-del-estado/
[210] Id.; See also, Consejo Cívico de Organizaciones Populares e Indígenas de Honduras (COPINH), Peritaje de Harald Waxenecker: Análisis de poder de David Castillo y su vinculación con el asesinato, Berta Cáceres (June 14, 2022), https://berta.copinh.org/2022/06/peritaje-de-harald-waxenecker-analisis-de-poder-de-david-castillo-y-su-vinculacion-con-el-asesinato-de-berta-caceres/.
[211] Tribunal declara culpable a David Castillo por el asesinato de Berta Cáceres, Misión de Observación Causa Berta Cáceres (July 8, 2021), https://www.observacionbertacaceres.org/post/transcriprición-de-fallo-del-juicio-contra-david-castillo-por-asesinato-de-berta-cáceres.

In the case of Rio Blanco, the state improperly delegated its obligation to consult to the company DESA. DESA sought to obtain community approval through "socialization" of the project, a superficial process that does not meet the standards of prior consultation.[212]

Moreover, COPINH alleged that the company tried to fraudulently obtain signatures of community members.[213] In addition, as in the Garifuna cases, the lack of delimitation, demarcation and clear title to the communal lands of Rio Blanco allowed the municipality to improperly recognize third-party possessors who sold communal land to the company for their project.[214]

What the Rio Blanco case exposes is how the deficits in the protection of collective property and respect for the standards of consultation and free, prior and informed consent are exploited by businesses and entrepreneurs seeking to take advantage of market-based solutions in the green economy. For these reasons, the Court should strengthen its standards and guidelines with respect to these rights of Indigenous peoples and require states to exercise due diligence in monitoring the conduct of businesses, conducting environmental and social impact studies, and providing judicial remedies to Indigenous peoples for the violation of their rights.

3) *The Case of the Tolupán Tribe of San Francisco Locomapa*[215]

The case of the Tolupán Tribe of San Francisco Locomapa demonstrates how market-driven resource extraction under settler colonial logics has not only degraded Indigenous rights to collective property and prior consultation, but also torn the tribe's social fabric and structures of autonomous self-governance. The resource extraction at issue in the Tolupán territory involves both forestry reserves and the mining of antimony, a rare-earth metal used in batteries for the green economy.

The tribal territory was targeted for its forestry resources after neoliberal reforms were instituted in the early 1990s and the State made those resources available to private investors. In 1994 a management plan prepared by a private company was approved by the state forestry

---

[212] Joseph Berra, El derecho de los pueblos indígenas a la consulta y el consentimiento libre, previo e informado: Su significado en el derecho internacional y su aplicación al caso del pueblo lenca y el proyecto hidroeléctrico agua zarca 17-18 (University of California, Los Ángeles UCLA, 2017), https://law.ucla.edu/sites/default/files/PDFs/Academics/27-02-2017%20Peritaje%20Derecho%20a%20la%20Consulta%20y%20CLPI%20FINAL%201.pdf. See, Supra note 197 Caso Comunidad Garífuna Triunfo de la Cruz y sus Miembros Vs. Honduras, párr. 173.

[213] Id. párr. 24

[214] Id. párr 23-24.

[215] The information for this case is derived from ongoing research by the Promise Institute's Human Rights in the Americas Project to be published in a forthcoming report "Genocide at a slow drip: consciousness, resistance and survivance in a Tolupán community."

agency for the extraction of forestry resources on tribal land.[216] According to members of the Preventive Committee of the Tolupán Tribe of San Francisco Locomapa, an agreement was signed with tribal leaders for the extraction of the resources in exchange for a price paid to the tribe.[217] No meaningful tribal consultation took place, and the terms were set by the State and the company. The management plan was extended every five years, and the agreement between tribal leaders and the company was extended with little participation by tribal members or tribal consultation. Tribal leaders were paid directly by the company with little or no accountability to tribal members. According to members of the community, these few tribal leaders used their powerful alliance with the company to maintain their power within the community, for example, inviting the business owners to take part in community assemblies, underwrite costs and provide small cash benefits to people.[218]

Members of the community became alarmed at the growing corruption of the enterprise, the tribal organization, and the environmental degradation. In 2006 a Preventive Committee of the Tribe was formed to defend the territory and demand accountability. Complaints were made to the Institute of Forestry Conservation for logging beyond what was permitted in the management plan, destruction of the environment and their sources of water, and for failure to pay the tribe its benefits.[219] They called for termination of the management plan and any agreement made between the company and the tribal council. They accused the Institute of failing to adequately supervise and monitor the plan in the interests of the Tribe.[220]

The latest iteration of this pattern has been the intrusion of a mining company with capital from the United States that made a direct agreement with the then tribal council in 2020 to operate illegally (without permits) a mine to extract antimony. The community has denounced the illegal mine and alleged it has contaminated the Guaymas River, a major water source in the territory. Leaders of the Preventive Committee of the Tribe have been approached by the mine's owners and offered bribes to quell their resistance and buy their support. These were followed by more ominous threats from the mine's operators.[221]

These conflicts have resulted in the assassination of more than twenty tribal leaders of the resistance and community members in the last 25 years with virtual impunity, part of a process which, together with erosion of the Tribe's territorial rights, the intrusion into its organizational

---

[216] Joseph Berra, Consultation of the archives of the Instituto de Conservación Forestal (ICF), Yoro, Honduras, January 2021.
[217] Joseph Berra, Interviews with members of the Preventive Committee of the Tribe, research field notes of January 2022, July 2022 and July 2023.
[218] *Id.*
[219] *Id.*; Javier Sulé Ortega & Marta Saiz, El grito de los bosques en tierra Tolupán: 100 asesinados por protegerlos, El País (Mar. 19, 2021), https://elpais.com/planeta-futuro/2021-03-20/el-grito-de-los-bosques-en-tierra-de-los-tolupanes.html.
[220] *Id.*
[221] *Id.*

structures, and the rupturing of its social fabric, advocates have characterized as a slow genocide.[222] These patterns are indicative of settler colonialism as a "structural genocide," a logic which continues into the present.[223] It is worth noting that members of the Preventive Committee of the Tribe are the beneficiaries of precautionary measures by the Inter-American Commission on Human Rights in 2013, in spite of which one of the beneficiaries, Santos Matute, and his son were assassinated in 2019.[224]

In March of this year, the community elected a new tribal council made up of leaders aligned with the Preventive Committee in defense of the tribe and its territory. These leaders continue to receive threats to their personal security, and a brother of one of the new tribal council members was brutally assassinated along with a companion in May of this year.[225] The actions the new tribal leaders have initiated have for the time being resulted in the suspension of the forestry management plan and the cessation of the illegal mining, although no one has been held accountable for environmental and other harms to the community.

Current efforts by the state to protect the rights of the community are limited. The area is remote, local authorities are ineffective, and authorities from the central government have limited resources to pursue the cases. In November of last year, a mission of the environmental prosecutor's office and the environmental ministry was prevented from reaching the site of the illegal mine by a group aligned with the mining company.[226]

The modus operandi of the businesses in this area is to use their economic power to intrude and interfere in the tribal governance structures to obtain some form of consent of tribal leaders through any means necessary, as a cost of doing business. There is no effective oversight of this process by the state. The state is complicit in this by engaging in the logics of settler colonialism in its omissions and actions. It does not fulfill its obligation to consult with

---

[222] Juan Antonio Mejía Guerra, Genocidio por extractivismo de la tribu Tolupán San Francisco Locomapa, Eric SJ (Dec. 23, 2021), https://eric-sj.org/noticias/genocidio-por-extractivismo-de-la-tribu-tolupan-san-francisco-de-locomapa/; Juan Antonio Mejía Guerra, Genocidio por extractivismo del pueblo tolupán (parte II), Eric SJ (May 24, 2022), https://eric-sj.org/noticias/genocidio-por-extractivismo-del-pueblo-tolupan-parte-ii/.

[223] Patrick Wolfe, Settler Colonialism and the Elimination of the Native, 8 Journal of Genocide Research 387, 387-409 (2006), https://doi.org/10.1080/14623520601056240.

[224] Inter-American Commission of Human Rights (IACHR), IACHR Condemns Murder of Indigenous Tolupan Precautionary Measure Beneficiary and His Son in Honduras, OAS - Organization of American States: Democracy for peace, security, and development (Mar. 1, 2019), https://www.oas.org/en/iachr/media_center/PReleases/2019/053.asp.

[225] OACNUDH – Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos en Honduras, OACNUDH condena el asesinato del defensor tolupán de la tierra y el territorio, Amilcar Vieda y de Naún Ismael Chacón – OACNUDH, OACNUDH – Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos en Honduras (May 12, 2023), https://oacnudh.hn/oacnudh-condena-el-asesinato-del-defensor-tolupan-de-la-tierra-y-el-territorio-amilcar-vieda-y-de-naun-ismael-chacon/.

[226] Interview with Ariel Madrid, Secretary, Secretariate of the Environment and Natural Resources (SERNA) de Honduras, July 2023.

Indigenous peoples and fails to monitor the actions of businesses or local officials. It is complicit when it recognizes formal paperwork or documentation without any meaningful supervision, such as paperwork alleging consent of the tribe or compliance with environmental management plans, and fails to respond to complaints of deficiencies or corruption in the process in a timely and effective manner.[227] Governing the process is the *de facto* subordination of the Indigenous rights to consultation, free, prior and informed consent, and judicial protections to the state's development priority of securing private investment in the extraction of resources.

The Court should address the structural causes of these patterns of intrusion and exploitation of Indigenous resources and Indigenous autonomy by providing clear standards to States on monitoring the conduct of businesses in Indigenous communities and respecting and protecting the Indigenous autonomous structures of self-governance.

4) The Rush to Invest in Carbon Capture

This process and the reproduction of its vices are now on display with the recent passage by the Honduran National Congress of the Special Law of Carbon Transactions for Climate Justice on July 27, 2023.[228] The law is specifically designed to promote Honduras' entry into the carbon credit market and to alleviate the national debt.[229] Representatives of OFRANEH denounced the law as contrary to their interests and for having been passed without prior consultation.[230] The twelve territorial councils of the Miskitu Indigenous People sent a formal demand to the Congress denouncing the action of the Congress as discriminatory and in violation of their fundamental rights.[231] The Miskitu leaders demanded that the Honduran government respect their consultation right, their right to participation and to decide over their territories under ILO Convention 169, and to initiate a process to modify or reform the law before it takes

---

[227] Joseph Berra, Interviews with members of the Preventive Committee of the Tribe, research field notes of January 2022, July 2022 and July 2023.

[228] CN aprueba ley especial de las transacciones de carbono forestal para la justicia climática en honduras, Poder Popular, El Gobierno del Pueblo (Dec. 17, 2023), https://www.poderpopular.hn/vernoticias.php?id_noticia=4797#:~:text=La%20ley%20tiene%20como%20objetivo,equidad,%20participación,%20y%20transparencia.

[229] María Celeste Maradiaga, Honduras busca entrar en el mercado de carbono sin claridad sobre su regulación - Contra Corriente, Contra Corriente (May 8, 2023), https://contracorriente.red/2023/05/08/honduras-busca-entrar-en-el-mercado-de-carbono-sin-claridad-sobre-su-regulacion/.

[230] Denuncia OFRANEH: Por unos dólares más el Congreso Nacional dio la espalda a los pueblos indígenas al aprobar la Ley Especial de las Transacciones de Carbono para la justicia climática, Pasos de Animal Grande (Aug. 1, 2023), https://pasosdeanimalgrande.com/pag/index.php/articulos/denuncia/212-denuncia-ofraneh-por-unos-dolares-mas-el-congreso-nacional-dio-la-espalda-a-los-pueblos-indigenas-al-aprobar-la-ley-especial-de-las-transacciones-de-carbono-para-la-justicia-climatica.

[231] "Reclamo del Pueblo Miskito por la Discriminación y la Violación de Derechos Fundamentales," July 27, 2023. Letter to the National Congress and President of the Republic signed by the presidents of the 12 Miskito territorial councils in the Honduran Moskitia. Available on the Facebook group Noticias Muskitia hn (post of July 28, 2023) at https://www.facebook.com/groups/462831031034937/user/100064917541278/

effect.[232] On July 28, 2023, the Miskitu federation Mosquitia Asla Takanka (MASTA) presented a formal complaint to the Special Prosecutor for Ethnic Peoples[233] against the NGO "Ayuda en Acción" and the transnational group "South Pole" for promoting a project that purports to grant a concession of 30 years to these non-indigenous organizations to manage the carbon capture in Miskitu territories. The non-indigenous organizations put a name for the project in the Miskitu language and alleged agreement by Miskitu leaders, but MASTA, the maximum authority of the Miskitu people, denounced that it was not consulted and asked the Special Prosecutor to investigate the alleged agreement and to demand declarations from any Miskitu leader who allegedly signed it without authorization.[234]

Similarly, external business entrepreneurs seeking to manage carbon capture in the Tolupán territories are approaching individual leaders to have them sign off on agreements without consultation. The governing council of the Federation of Xicaque (Tolupán) Tribes of Yoro (FETRIXY)[235], maximum authority of the Tolupán people, is currently divided over the efforts by the entrepreneurs. Members of the council have had to circulate a letter advising authorities that the president does not have authority to sign contracts or agreements alone but only with approval of the whole council. Since any agreement would affect tribal territorial rights, it would be subject to the free, prior and informed consent of the Tolupán people. The council members denounce that the president is working privately on his own to promote the business proposal to other individual presidents of tribal councils.[236]

These ongoing practices in the promotion of carbon capture and entry into the carbon credit market as a development strategy, in pursuit of private and state goals of profit and reducing the national debt, evidence the ongoing logics of settler colonial dispossession. Indigenous people denounce the lack of consultation while investors and business actors are engaging in their own influence strategy to coerce individual leaders. The intrusion and intervention into Indigenous governing structures represents a grave violation of Indigenous autonomy and self-determination which this Court should be aware of and seek to prevent in identifying state obligations and standards for protecting the rights of Indigenous people.

5) A pattern and practice across the Americas

---

[232] *Id.*
[233] *Fiscalía Especial de las Etnias*
[234] MASTA, "Denuncia presentada en contra de la ONG denominada "Ayuda en Acción," presidida por el ciudadano Roberto Busi; así mismo se investigue a la empresa denominada South Pole ambas por violentar el derecho a la consulta libre, previa e informada hacia los pueblos originarios," presentada al Ministerio Público, Fiscalía de las Etnias, 28 de julio de 2023. On file with the Promise Institute's Human Rights in the Americas Project.
[235] Federación de Tribus Xicaques de Yoro (FETRIXY).
[236] Conversation with members of the governing council of FETRIXY, July 2023. Under the Statutes of FETRIXY decisions over tribal territories must be approved by the General Assembly of the Tribe.

The protection of Indigenous rights to self-determination, health and livelihoods, collective territories, consultation and free, prior and informed consent, and corresponding judicial protections are all directly impacted by the climate emergency. The vulnerability of these rights of Indigenous peoples in the context of the climate emergency and specifically in the context of resource extraction for the green economy is demonstrated across the Americas. The predominantly Indigenous Wayuu territory in La Guajira, Colombia has already suffered serious health impacts from El Cerrejón, the largest open-pit coal mine in Latin America.[237] In 2016, The Colombian Constitutional Court ruled in favor of the Wayuu indigenous people, suspending the environmental management plan of the license obtained by the company El Cerrejón, for its expansion project 'Puerto Bolivar' for the export of coal.[238] It ordered a prior consultation with the communities and the implementation of an immediate plan to mitigate environmental, social, and cultural damages. The project is indefinitely suspended until consultation takes place.

The experience of Indigenous communities in La Guajira demonstrates the limited reach of consultation to protect the rights of these communities in the context of resource extraction. The Colombian Constitutional Court has upheld these rights, but litigation is often expensive, lengthy and not accessible to the majority of Indigenous communities. In Colombia, there are still problems with the full exercise of the right to consultation and free, prior and informed consent, as demonstrated by the recent push to implement renewable energy projects in la Guajira.

Many renewable energy projects are being built in places with a history of extractive activities and human rights violations. Colombia is promoting the construction of 57 wind farms by 16 multinational and 3 local companies in the Guajira region. According to reports, there have been complaints from the Wayuu communities of the process of consultation.[239] INDEPAZ, a Colombian human rights organization, has identified serious problems with fragmentation of the consultation process conducted separately with each Wayuu group, as well as problematic issues, from an Indigenous rights perspective, with the different economic models being proposed and

---

[237] Democracia Abierta, La gigantesca mina de carbón de Cerrejón, denunciada por atentar contra derechos humanos y ambientales, OpenDemocracy (Jan. 21, 2021), https://www.opendemocracy.net/es/gigantesca-mina-de-carbón-colombiana-denunciada-por-atentar-contra-derechos-humanos-y-ambientales/.
Colectivo de Abogados "José Alvear Restrepo" (CAJAR), Diez verdades sobre carbones de cerrejón 7;15-22 (Colectivo de Abogados "José Alvear Restrepo" (CAJAR) 2019), https://www.colectivodeabogados.org/old/IMG/pdf/diez_verdades_sobre_carbones_de_cerrejon.pdf.

[238] T-704/2016, Corte Constitucional de Colombia, 13 de diciembre de 2016, en párrs. 2-5 (Colombia), https://www.corteconstitucional.gov.co/relatoria/2016/t-704-16.htm.
Colprensa, Corte suspende plan de El Cerrejón, www.elcolombiano.com (Mar. 1, 2017), https://www.elcolombiano.com/colombia/corte-suspende-plan-de-el-cerrejon-CE6060316.

[239] *González Posso, C.; Barney, J. (2019): El viento del este llega con revoluciones: multinacionales y transición con energía eólica en territorio Wayúu. Bogotá: Fundación Heinrich Böll Colombia/ Indepaz.* https://indepaz.org.co/portfolio/el-viento-del-este-llega-con-revoluciones-2da-edicion/; Natalia Torres Garzón, "Colombian wind farm end-of-life raises circularity and indigenous questions." November 9, 2023. https://news.mongabay.com/2023/11/colombian-wind-farm-end-of-life-raises-circularity-and-indigenous-questions/

the long-term effects of the projects.[240] These projects run the risk of aggravating the systematic and long-standing violations of the rights of Wayuu people in La Guajira.[241]

Mining for lithium, which is used for electric car batteries, has devastated the drinking and farming water supplies of the Lickan Antay Indigenous community and others across Chile's Atacama Desert, where private mineral companies use water-intensive drainage and evaporation techniques.[242]

In the Tonto National Forest, the Rio Tinto mining company threatens the existence of Oak Flat, a site of extreme cultural and spiritual importance to the Apache peoples, as it sits on one of the largest undeveloped copper-ore deposits in the world.[243] With high electrical conductivity, copper is one of the most valuable metals for renewable energy developments.[244]

The Rio Madeira hydroelectric complex in Brazil has caused displacement of Indigenous people and serious social, economic and environmental impacts in their lives. Indigenous people complained that they were denied their right to consultation and free, prior and informed consent regarding the project and compensation and mitigation measures.[245]

In Guatemala, the San Mateo and San Andrés hydroelectric projects were cancelled following the Inter-American Development Bank's decision to withdraw financing. This was the result of a process before the Bank's Independent Consultation and Investigation Mechanism (MICI), where Indigenous communities affected by the project alleged the lack of adequate consultations. Likewise, the environmental assessments were insufficient and did not take into

---

[240] *Id.*

[241] Constitutional Court. Decision T-302 of 2017. Declared the State of Unconstitutional Affairs regarding the special protection of the rights to water, health and food for the Wayuu indigenous communities of the municipalities of Riohacha, Manaure, Uribia and Maicao of the Department of La Guajira.

[242] Greenfield, *Lithium Mining is Leaving Chile's Indigenous Communities High and Dry (Literally)*, *supra,* note 175.

[243] Anita Snow, *Oak Flat Timeline: Native American vs. pro-mining interests*, A.P. NEWS (June 28, 2023), https://apnews.com/article/oak-flat-sacred-apache-copper-mine-26fa76965cf75a4addb4108c4818af09; Emma Rickets, *The Fight for Oak Flat: Indigenous voices in the green energy transition* (Aug. 4, 2023), https://nativenewsonline.net/environment/the-fight-for-oak-flat-indigenous-voices-in-the-green-energy-transition.

[244] *Renewable Energy*, COPPER ALLIANCE, https://copperalliance.org/policy-focus/climate-environment/renewable-energy/ (last visited Nov. 28, 2023).

[245] Padilla Gómez, E. (2021, 30 de agosto). El complejo hidroeléctrico del río madera. Interaprendizaje | IPDRS. https://interaprendizaje.ipdrs.org/noticias-interaprendizaje/248-el-complejo-hidroelectrico-del-rio-madera. Amazon Watch, "Fact Sheet: the Madeira dam complex." Available at: https://amazonwatch.org/assets/files/BMD2011-madeira-complex.pdf; Sonya Cunningham, "Santo Antônio mega-dam on Brazil's Madeira River disrupts local lives." Mongabay, 3 December 2018. Available at: https://news.mongabay.com/2018/12/santo-antonio-mega-dam-on-brazils-madeira-river-disrupts-local-lives/

account the damage to the area's ecosystem, as well as the damage to the sacred sites and archeological sites located in the project's area of influence.[246]

In Peru, Indigenous communities protested the creation of the Parque Nacional Cordillera Azul, for violation of the territorial rights of at least 29 Kichwa Indigenous communities for the purchase of carbon credits. This carbon credit is part of the energy company Petrolera Total Energies' so-called climate strategy. However, not only does it not imply a real reduction of the company's emissions - which continues to invest in the extraction of more fossil fuels - but, as the Kichwa warn, it also contributes to the violation of the rights of Indigenous peoples, making it difficult to defend their territories and livelihoods. The creation of the Cordillera Azul National Park was carried out without proper prior consultation, violating the territorial rights of the Kichwa communities by denying them access to and use of their ancestral territories.[247]

In 2018, a protection action was filed in Ecuador due to the granting of the environmental registration of the Magdalena River Mining Project that would allow the mining of metallic minerals. The plaintiffs argued that the authorized project violates the rights of nature, the right to a healthy environment and water, by allowing mining activity within the Los Cedros Protected Forest. They also alleged that the constitutional norms on environmental consultation and those related to consultation with Indigenous peoples were not observed. The Ecuadorian Constitutional Court agreed, utilizing jurisprudence from this Court and valuing Indigenous knowledges on the relationship to nature that signified a "paradigm shift." The case demonstrates the importance of this Court's guidance and jurisprudence on the appropriate standards of consultation and the rights of nature, as well as the importance of incorporating Indigenous knowledges in those standards.[248]

In Colombia, members of Indigenous communities of the Gran Resguardo de Cumbal sued for the suspension of a project of carbon credits in their territory in the high Andean forests, which they claimed had been sold without prior consultation of the communities. They also claimed that they had been denied access to the documents that support the project known as the REDD+ Pachamama Cumbal project and had not been given an account of how the resources generated by the sale of 849,000 carbon credits to the U.S. oil company Chevron had been

---

[246] Calles, J. (2022, 14 de abril). San Mateo Ixtatán: La historia de una comunidad indígena que derrotó a un gigante empresarial. Prensa Comunitaria. https://prensacomunitaria.org/2022/04/san-mateo-ixtatan-la-historia-de-una-comunidad-indigena-que-derroto-a-un-gigante-empresarial/.

[247] *Perú: Organizaciones Kichwa alegan que TotalEnergies está contribuyendo a la violación de los derechos de los pueblos indígenas - Business & Human Rights Resource Centre*. (2023, 24 de julio). Business & Human Rights Resource Centre. https://www.business-humanrights.org/es/últimas-noticias/perú-organizaciones-kichwa-alegan-que-total-energies-está-contribuyendo-a-la-violación-de-los-derechos-de-los-pueblos-indígenas/.

[248] Autoridades municipales vs. Ecuador, por minería en el "Bosque Protector los Cedros" | Plataforma de Litigio Climático para Latinoamérica. (s.f.). Plataforma de Litigio Climático para Latinoamérica. https://litigioclimatico.com/es/ficha/autoridades-municipales-vs-ecuador-por-mineria-en-el-bosque-protector-los-cedros-n73

invested. For this reason, they argued that the project violated their fundamental rights to prior consultation, effective participation and collective property. An appellate court affirmed a lower court ruling in their favor suspending the project. The judges in the case criticized the REDD+ project as negatively impacting the level of social cohesion, equity and livelihoods ("buen vivir") of the communities, and had been carried out surreptitiously with "minimum socialization."[249] Like the previous case, this case also demonstrates the importance of judicial remedies and the need for strong standards and guidelines from this Court to ensure access to those remedies for State and corporate overreach in the rush to profit from carbon capture and the green economy.

V. Spotlight on Ecocide: Prevention of Grave Climate Harms and Protection of Vulnerable Communities from an Ecocentric Approach[250]

A. The duty to prevent harms

The State's duty of prevention derives from its obligation to respect, protect and fulfill the human rights of those within its jurisdiction. As is long established within the jurisprudence of the Inter- American and other international human rights systems, the duty to protect human rights includes a duty to prevent acts of third parties that would impair the enjoyment of human rights.[251] There are many ways in which this duty to prevent can be fulfilled. In cases of grave violations of human rights, prevention will include criminalizing the acts, investigating the violations, prosecuting those responsible, and providing redress to victims.[252]

Severe and widespread or long-term damage to the environment is a grave violation of the human right to a healthy environment, which has been recognized as an autonomous right by

---

[249] Andrés Bermúdez Liévano, A. (2023, 19 de septiembre). Un juez suspende el proyecto de carbono en Colombia hecho de espaldas a la comunidad. El País América. https://elpais.com/america-colombia/2023-09-19/un-juez-suspende-el-**pVroyecto**-de-carbono-en-colombia-hecho-de-espaldas-a-la-comunidad.html

[250] This section responds specifically to Questions A.1 (States' duty of prevention of harms); A.2 (differentiated measures to protect vulnerable populations); A.2A (State obligations to regulate, monitor and oversee); and D.1 (provision of effective judicial remedies).

[251] Velásquez Rodríguez case, Merits Judgment Inter-Am. Ct. H.R. (IACtHR) (Sept. 10, 1996).

[252] Hum. Rts. Comm., Gen. Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, ¶ 8, CCPR/C/21/Rev.1/Add.13 (May 26, 2004); *Case of the Hacienda Brasil Verde Workers v. Brazil,* Preliminary Objections, Merits, Reparations & Costs, Judgment, IACtHR, ¶¶ 316-317 (Oct. 20, 2016); and specifically with regard to the right to life, Afr. Comm'n Hum. & Peoples' Rts., Gen. Comment No. 3 on the African Charter on Human and People's Rights: The Right to Life (Article 4), ¶¶ 2, 41 (Nov. 2015); *Case of the Pueblo Bello Massacre v. Colombia,* Merits, Reparations & Costs, Judgment, IACtHR, ¶ 120 (Jan. 31, 2006); *Osman v. The United Kingdom*, Judgment, Eur. Ct. Hum. Rts., ¶ 115 (Oct. 28, 1998). *See also* NIENKE VAN DER HAVE, THE PREVENTION OF GROSS HUMAN RIGHTS VIOLATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW 33 (2018).

the Inter-American Court[253] and the United Nations General Assembly,[254] and appears in the Protocol of San Salvador. Such grave violations should be considered atrocity crimes: the crime of ecocide, on a par with other grave violations such as genocide, war crimes and crimes against humanity. Indigenous voices have been at the forefront of calling for this new international crime. At its Grand Assembly held in Brasilia in 2017, the Alliance of Guardians of Mother Nature, consisting of nearly 200 Indigenous representatives from around the world, called upon states to:

> Recognise the actions of corporate and governmental policies that result in the destruction, degradation, contamination, and toxic poisoning of the environment, ecosystems, and habitat as an eco-crime against the territorial integrity of Mother Earth – also called ecocide. This shall align with the initiative to bring provisions of international crime of ecocide to the International Criminal Court.[255]

Chief Raoni of the Kayapo people is among the many Indigenous leaders, activists, artists, and scholars from the Americas who have called for ecocide to be made a crime.[256] Many of these voices also call for understanding of ecocide's connection to genocide. Sleydo' (Molly Wickham), spokesperson for the Gidimt'en reoccupation site within the Wet'suwet'en Nation has expressed the issue this way:

> I asked a couple of our … matriarchs and women chiefs about the word ecocide and what it means and what that might mean in our language, and … they couldn't readily come up

---

[253] Environment & Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation and Scope of Articles 4(1) and 5(1) in Relation to Articles 1(1) and 2 of the American Convention on Human Rights), Advisory Opinion OC 23-17, Inter-Am. Ct. H.R. (Nov. 15, 2017) [hereinafter "2017 Advisory Opinion"].

[254] G.A. Res. 76/300, The Human Right to a Clean, Healthy & Sustainable Environment (July 2022).

[255] The Declaration of the Alliance of Guardians and Children of Mother Earth: A Global Call to the States and Humanity for the Preservation of Life on the Planet and Future Generations, ¶ 9 (Oct. 2017), http://allianceofguardians.org/en/

[256] Chief Raoni on Ecocide, May 2022, YOUTUBE (uploaded May 30, 2022), https://youtu.be/sjJcdIL87b8. *See also* the powerful collection of voices brought together by Stop Ecocide Venezuela on August 1 2023, including activist and journalist Roxana Sarmiento, of the Wayu people, Venezuela; director of the Pies de Mezcal art company Yaremi Cham, of Mayan origin, Mexico; Apu Julio Cusurichi, Indigenous leader of the Shipibo people in Madre de Dios in the Peruvian Amazon; Fany Kurio, Jitoma Monaiyanhö (Sol del Amanecer), of the Uitoto people of the Jitomagaro clan, people of the sun of the Colombian Amazon, General Coordinator of the Coordinator of Indigenous Organizations of the Amazon Basin; Juana Calfunao, Mapuche leader and founder of the Chilean non-governmental organization Ethical Commission Against Torture; Irma Perriot, from the Mapuche Nation, Argentina, psychologist and member of the movement of Indigenous Women and Diversities for Good Living; Shirley Djukurnã Krenak, leader and activist of the Krenak people of Minas Gerais, Brazil; Uyunkar Domingo Peas Nampichkai, leader of the Achuar Nation of the Ecuadorian Amazon and coordinator of Sacred Basins of the Amazon. Pachamama, Indigenous Peoples & Their Protection Through the Establishment of the Crime of Ecocide [webinar recording], Stop Ecocidio (Aug. 1, 2023), https://stopecocidio.org/eventos/pachamama-pueblos-originarios-y-su-proteccion-a-traves-del-establecimiento-del-crimen-de-ecocidio.

> with a definition … and it's because our laws would not allow for ecocide to happen, so we didn't have a term in our language that would describe ecocide, because our whole governance system, our whole body of laws is built to protect the land… our laws are derived from our relationship to our land and our dependence on the land … our relationship is so deep with the land that to me the term ecocide is really similar to genocide because it is not only destroying our enjoyment and the animals and the other life beings' enjoyment of a territory, but it's about … the way we rely on one another for life to be sustainable …its more similar to genocide because we are the land and the land is us.[257]

Understanding ecocide to be among "the most serious crimes of concern to the international community"[258] alongside genocide, crimes against humanity and war crimes responds to these calls for law to better reflect the interrelated character of human well-being and that of other living creatures and elements of the natural environment. It reflects the movement within international human rights law (as well as in national constitutions in the Americas) away from a fully anthropocentric approach towards a more ecocentric understanding of rights. This trajectory is visible in the Court's previous Advisory Opinion on the environment and Human Rights, which states that:

> The Court considers it important to stress that, as an autonomous right, the right to a healthy environment, unlike other rights, protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals. This means that it protects nature and the environment, not only because of the benefits they provide to humanity or the effects that their degradation may have on other human rights, such as health, life, or personal integrity, but because of their importance to the other living organisms with which we share the planet that also merit protection in their own right. In this regard, the Court notes a tendency, not only in court judgments, but also in Constitutions, to recognize legal personality and, consequently, rights to nature.[259]

---

[257] Raven Trust & Stop Ecocide Canada, From Grassroots to the Courts: How Criminalizing Ecocide Could Benefit Frontline Defenders (Feb. 26, 2021), YOUTUBE, https://www.youtube.com/watch?v=3sHncObM2yc. Other, non-Indigenous, voices making this last point were recently collected in DAMIEN SHORT & MARTIN CROOK, THE GENOCIDE-ECOCIDE NEXUS (2022). *See also* L. Eichler, *Ecocide is Genocide: Decolonizing the Definition of Genocide*, 14 GENOCIDE STUD. & PREVENTION 104 (Sept. 2020).

[258] Rome Statute of the Int'l Crim. Ct., Preamble, July 17, 1998, 2187 U.N.T.S. 90.

[259] 2017 Advisory Opinion. The draft crime of ecocide proposed by the 2021 Independent Expert Panel for the Legal Definition of Ecocide ("IEP ecocide proposal") embraces this ecocentric approach: "ecocide" means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts." *See* ECOCIDE LAW, https://ecocidelaw.com/definition/ (last accessed on Nov. 30, 2023).

In line with these developments, States should criminalise ecocide, investigate credible allegations of ecocide, prosecute those responsible and provide redress to victims. States should further support the codification of an international crime of ecocide.

The understanding that grave harm to the environment should amount to an international crime is not new. In the 1970s, in the context of its work on state responsibility, the International Law Commission declared the safeguarding and preservation of the human environment to be 'one of the fundamental interests of the international community,'[260] and as a result included serious breaches of environmental obligations in its definition of international crimes. This featured (as article 19) in the full draft adopted on first reading in 1996,[261] but did not make it to the final draft adopted in 2001 where the idea of state crimes in general was not retained.[262]

In its contemporaneous work on the Draft Code of Crimes against the Peace and Security of Mankind, the Commission's draft of 1991 included article 26: willfully causing or ordering to

---

[260] International Law Commission (ILC), *Fifth report on State responsibility by Mr. Roberto Ago, Special Rapporteur - the internationally wrongful act of the State, source of international responsibility*, 75, ILC Yearbook 1976, vol. II(1) (1976). https://legal.un.org/ilc/publications/yearbooks/english/ilc_1976_v2_p1.pdf

[261] ILC, *Draft Articles on State Responsibility with Commentaries Thereto Adopted by the International Law Commission on First Reading*, 105, 97-02583 (1997). The full 1996 draft article reads:

Article 19: – International crimes and international delicts

1. An act of a State which constitutes a breach of an international obligation is an internationally wrongful act, regardless of the subject matter of the obligation breached.
2. An internationally wrongful act which results from the breach by a State of an international obligation so essential for the protection of fundamental interests of the international community that its breach is recognized as a crime by the international community as a whole constitutes an international crime.
3. Subject to paragraph 2, and on the basis of the rules of international law in force, an international crime may result, inter alia, from
    a. A serious breach of an international obligation of essential importance for the maintenance of international peace and security, such as that prohibiting aggression;
    b. A serious breach of an international obligation of essential importance for safeguarding the right of self-determination of peoples, such as that prohibiting the establishment or maintenance by force of colonial domination;
    c. A serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery, genocide and apartheid;
    d. A serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environment, such as those prohibiting massive pollution of the atmosphere or of the seas.

Any internationally wrongful act which is not an international crime in accordance with paragraph 2 constitutes an international delict.

[262] ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, ILC Yearbook 2001, vol. II (Part Two) (2001).

be caused widespread long-term and severe damage to the natural environment.[263] The commentary to that article stated that:

> The Commissions' concern regarding harm to the environment has already been reflected in the adoption on first reading of draft article 19, on state responsibility. … "the safeguarding and preservation of the human environment is already regarded as one of the fundamental interests of the international community, and a breach of an obligation of essential importance for the safeguarding and preservation of the human environment has been defined as an international crime. In considering the draft code, the Commission also took the view that protection of the environment was of such importance that some particularly serious attacks against this fundamental interest of mankind should come under the Code and the perpetrators should incur international criminal responsibility.[264]

That article was dropped from the Draft Code in 1995 when the list of crimes was whittled down significantly, and the prohibition on environmental destruction was maintained instead as a war crime.

The criminalization of extreme environmental destruction, as a particularly grave violation of human rights on a par with other international crimes, is an important tool for holding violators accountable and overcoming structural impunity. However, care must be taken in the crafting of a definition, as well as in the implementation of the law, to ensure that it targets those most responsible and is not instrumentalized against the very people it is designed to protect. Criminal law, including that protecting the environment, has been and continues to be used against racially and ethnically marginalized groups in violation of their rights to non-discrimination, due process, and liberty and security of person. An example of this is the enforcement of environmental crimes such as illegal logging against Indigenous actors for felling a tree in order to build a house or canoe - while turning a blind eye to large scale violations by powerful corporate actors. Another example is the criminalization of environmental defenders resisting extractivist industries and subsequent use of violence against them.[265] The high threshold of a crime of ecocide, which corresponds to the gravest violations of the right to a healthy environment, should by contrast capture only those actors at a level to inflict severe and either widespread or long-term damage to the environment through their individual actions. As in the example cited, such actors often avoid criminal sanction not only for environmental crimes, but for exploiting, abusing and even killing members of those same less powerful groups. An international crime is significant in opening jurisdictional possibilities for holding corporate

---

[263] This drew upon the language of Additional Protocol I to the 1949 Geneva Conventions, which in 1977 had introduced the absolute prohibition on employing 'methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment' in its Article 35.
[264] ILC, *Draft Code of Crimes against the Peace and Security of Mankind*, 107, ILC Yearbook 1996, vol. II (Part Two) (1996).
[265] See Section IV above.

agents and other powerful actors accountable beyond the confines of a single, potentially complicit State.

The risk of new laws being used to reinforce existing inequalities applies equally on the international plane. International justice mechanisms have been criticized for focusing their attention on politically weaker actors in the global south, while giving state actors in the global north, in particular, a free pass.[266] As noted below, States have a legal obligation to consider and confront structural inequalities in the implementation of their human rights obligations. This applies equally to their obligations in relation to the climate emergency as well as to the deployment of an international crime of ecocide.

It is of particular relevance to environmental rights that the translation of the human rights obligation into (international) criminal law introduces accountability for influential private actors, such as the leaders and decision-makers in large corporations. With a crime of ecocide, these powerful agents can be held personally responsible for actions that have a devastating impact on the human rights of entire populations.[267] The deterrent impact of this on corporate actors provides a meaningful contribution to the discharge of the State's duty of prevention.

B. Differentiated measures to protect vulnerable populations in the criminalization of ecocide[268]

As has been established earlier in this Brief, international human rights law requires resisting color-blind analyses and instead using an intersectional approach to combatting racial discrimination and guaranteeing equality and non-discrimination rights in the context of the climate emergency. Both the definition and the interpretation of the crime of ecocide must respond to its full consequences, in particular the differentiated impacts of the climate emergency on vulnerable groups. Specifically, in regard to Indigenous and tribal Peoples, the Court has recognised:

> the close links that exist between the right to a dignified life and the protection of ancestral territory and natural resources. In this regard, the Court has determined that,

---

[266] In the first decade of its life, the ICC was criticized for a heavy focus on African suspects. Perceptions of unequal treatment were aggravated in 2021 by the new prosecutor's decision to deprioritize investigations of U.S. forces (and Afghan government troops) in Afghanistan. Earlier, the prosecutor at the International Criminal Tribunal for the former Yugoslavia controversially declined to open an investigation into the 1999 NATO air strikes in Serbia.
[267] Consider, for example, the deterrent effect the crime of ecocide would have on corporate actors responsible for grave harms to the environment and vulnerable communities such as those experienced in La Guajira, Colombia, as detailed in Section IV above.
[268] Responding to Question A.2 of the Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile 8 (Jan. 9, 2023), https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf.

> because Indigenous and tribal peoples are in a situation of special vulnerability, States must take positive measures to ensure that the members of these peoples have access to a dignified life – which includes the protection of their close relationship with the land – and to their life project, in both its individual and collective dimension.[269]

Assessments of the gravity of environmental damage, and whether they rise to the level of ecocide, must reflect this understanding, and include the cultural or spiritual value of elements of the environment, including ancestral territories, which are destroyed.[270]

Conceiving of ecocide as the most egregious violation of the right to a healthy environment foregrounds the disproportionate impact of environmental destruction on those marginalized through racialization and intersecting structures of subordination. As the Court stated in its 2017 Advisory Opinion,

> The Court also bears in mind that the effects on these rights may be felt with greater intensity by certain groups in vulnerable situations. It has been recognized that environmental damage "will be experienced with greater force in the sectors of the population that are already in a vulnerable situation"; hence, based on "international human rights law, States are legally obliged to confront these vulnerabilities based on the principle of equality and non-discrimination …
>
> … in general, the Court stresses the permanent need for States to evaluate and execute the obligations described in Chapter VIII of this Opinion taking into account the differentiated impact that such obligations could have on certain sectors of the population in order to respect and to ensure the enjoyment and exercise of the rights established in the Convention without any discrimination.[271]

Executing these obligations through criminalising ecocide involves ensuring that prosecutions protect the most vulnerable. As stated earlier in the Brief, climate justice cannot be achieved through color-blind approaches: it requires explicit efforts to redress racially and ethnically differentiated harms. Indictments must capture the disparate impact of environmental

---

[269] The Environment and Human Rights, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R., ¶ 48 (2017) (referencing case of the *Yakye Axa Indigenous Community v. Paraguay* and case of the *Kaliña and Lokono Peoples v. Suriname*).
[270] The IEP ecocide proposal to criminalize severe and either widespread or long-term damage, defined "severe" as "damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, ***cultural*** or economic resources." Ecocide Law, *Legal Definition and Commentary 2021* (2021), https://ecocidelaw.com/definition/ (emphasis added).
[271] The Environment and Human Rights, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R., ¶ 67 (2017) (quoting the UN Human Rights Council Resolution 16/11, the 2016 Report of the UN Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, and the 2016 Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights).

destruction on marginalized groups, including in particular Afro-descendant and Indigenous groups in the Americas, and prosecutions must give those experiences center stage in presentation of evidence. As these cases accumulate they will build not only jurisprudence which specifically protects these groups, but also a detailed account that illuminates structural discrimination and the relationship between power and environmental harms. This is crucial to establishing a body of law which reflects lived experience and can trace a path towards environmental and climate justice.

VI. Remedies

A. International Human Rights Law Requires Adequate and Effective Remedies for Racially Discriminatory Human Rights Violations, Including the Racially Discriminatory Impacts of the Climate Emergency

1) States have duties to provide reparations for international human rights violations

International law defines clear obligations for States to effectively and adequately redress and repair harms experienced by victims of human rights violations through adequate and effective reparations.[272] Human rights violations requiring reparations include violations of non-discrimination and equality obligations. As outlined in Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD): "State Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination."[273] It is a longstanding principle of international law and international human rights law that victims must be "provided with full and effective reparation," which may include "restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition."[274] Reparations may take any or all of these forms as appropriate to

[272] ICERD art. 6; ICCPR art. 2.3; E/1991/23 ¶ 5 (describing that though ICESCR lacks a provision like the one in the ICCPR, explicitly mandating that States provide individuals with a remedy for rights violations under the Covenant, "the enjoyment of rights recognized [under the ICESCR], without discrimination, will often be appropriately promoted, in part, through the provision of judicial or other effective remedies."); G.A. Res. 60/147, Basic Principles & Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Dec. 15, 2005).
[273] ICERD art. 6.
[274] G.A. Res. 60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,* ¶ 18 (Mar. 21, 2006); *see also* Chorzów Factory Case, Merits Judgment No. 13, 47 (Sep. 23, 1928), https://jusmundi.com/en/document/decision/en-factory-at-chorzow-merits-judgment-thursday-13th-september-1928.

repair the harm and should be "proportional to the gravity of the violations and the harm suffered."[275]

In the UN system, States should first aim to restore victims of human rights abuses to their "status quo" prior to the wrongful act, and if this not possible, should compensate victims monetarily.[276] Where neither are feasible, such as many violations in the context of the climate emergency, States may enforce "forms of satisfaction" like acknowledgement or apology, as well as ensure non-repetition of harm.[277] The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) enumerates rights to reparation, mandating that States shall provide redress to Indigenous communities for actions resulting in land, territory, or resource dispossession or degradation, cultural deprivation, and forcible relocation from land and territories.[278]

The Inter-American system similarly provides for reparations to confront and remedy human rights violations. Article 63 of the American Convention on Human Rights (American Convention) outlines the established right to redress; where the Court finds a violation of rights enumerated in the American Convention, the Court must rule, "if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remediated and that fair compensation be paid to the injured party."[279] Like UNDRIP, the American Declaration on the Rights of Indigenous Peoples mandates that “Indigenous peoples and individuals have the right to effective and suitable remedies, including prompt judicial remedies, for the reparation of any violation of their collective and individual rights. States, with the full and effective participation of indigenous peoples, shall provide the necessary mechanisms for the exercise of this right.”[280]

Within a conventional analysis of international law, it can be difficult for advocates to argue for reparations for human rights violations rooted in colonialism and slavery (such as those that arise from the global ecological crisis), because of legal hurdles such as the intertemporal principle. According to the intertemporal principle, States are only accountable for violations of international law where the actions were illegal at the time of the commission.[281] However, as the former UN Special Rapporteur on Racism has explained elsewhere, the intertemporal principle is not a complete bar to reparations for racially discriminatory human rights violations

---

[275] G.A. Res. 60/147 ¶ 15. Relatedly, ICERD mandates that States party to the treaty must "pursue by all appropriate means and without a delay a policy of eliminating discrimination in all its forms." ICERD art. 2.
[276] E. Tendayi Achiume, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and racial intolerance*, ¶ 36, A/74/321 (Aug. 21, 2019); Int’l L. Comm., *Report of the International Law Commission on the work of its fifty-third session,* arts. 35-37, A/56/10 (2001).
[277] *Id.* at art. 37.
[278] UNDRIP arts. 8, 10, 28.
[279] American Convention on Human Rights art. 63, Nov. 22, 1969, 1144 U.N.T.S.123.
[280] ADRIP art. XXXIII. See also ADRIP art. XXVII(1) (”States shall take all special measures necessary to prevent, punish and remedy any discrimination against indigenous peoples and individuals.”).
[281] A/74/321 ¶ 48.

rooted in slavery and colonialism because the principle is subject to two important exceptions.[282] The intertemporal principle does not apply "when (a) an act is ongoing and continues into a time when international law considered the act a violation, or (b) the wrongful act's direct ongoing consequences extend into a time when the act and its consequences are considered internationally wrongful."[283] Importantly, this means that claims for reparations for contemporary racial discrimination rooted in colonialism and slavery must not be barred by the intertemporal principle.[284] The intertemporal principle does not bar state obligations to provide reparations for present-day racially discriminatory effects of slavery and colonialism, including in the context of the global ecological crisis.[285]

This Court should encourage States to consider exceptions to the intertemporal principle and other legal hurdles to reparations claims and demands for racial justice.[286] International law is rife with colonial-era doctrines that prevent the remediation of inequality and discrimination.[287] As the former UN Special Rapporteur on Racism has explained, where States fail to examine potential applications of the intertemporal principle for enacting reparations for the harms of slavery and colonialism, they are, in effect, insisting on the application of neocolonial law.[288]

2) In the climate emergency context, reparations must address structural racial inequality and discrimination rooted in historic injustice

This brief has outlined that the global ecological crisis is a racial justice crisis. Both climate change itself, and its disproportionate harms on racially marginalized groups, are rooted in histories of slavery and colonialism and their persistent inequities. This Court, when grappling with violations of non-discrimination and equality in the context of the global ecological crisis, should take a structural approach to reparations and encourage States to do the same. As the former UN Special Rapporteur on Racism has argued, a structural approach to reparations does not just implicate individual wrongful acts but also "entire legal, economic, social and political structures that enabled slavery and colonialism, and which continue to sustain racial discrimination and inequality today."[289] Reparations "entail moral, economic, political and legal

---

[282] A/74/321 ¶¶ 32, 48-50.
[283] A/74/321 ¶ 49.
[284] A/74/321 ¶¶ 49-50.
[285] A/74/321 ¶ 49.
[286] A/74/321 ¶¶ 49-50.
[287] A/74/321 ¶ 50; *see generally* ANTHONY ANGHIE, IMPERIALISM, SOVEREIGNTY, & MAKING OF INTERNATIONAL LAW (1st ed. 2007).
[288] A/74/321 ¶ 50; *see also* Sarah Riley Case & Julia Dehm, *Redressing Historical Responsibility for the Unjust Precarities of Climate Change in the Present* in DEBATING CLIMATE LAW (Benoit Mayer and Alexandra Zahar eds., 2021) (detailing compounding impacts of historic climate emissions and failures of decolonization as reasons for applying reparations through a decolonized international human rights legal system).
[289] A/74/321 ¶ 8.

responsibilities" and States must "pursue a just and equitable international order as an urgent dimension of reparations."[290] This is imperative in the context of the climate emergency, considering that formerly colonized States and racially marginalized groups are the least responsible for the global emissions that created the global ecological crisis and are simultaneously the most harmed by it.[291] [292]

As an enforcer and adjudicator of international human rights law across the Americas, this Court should apply and enumerate standards for States to adopt a structural approach to reparations for violations arising from the global ecological crisis. In so doing, this Court would be building on its own jurisprudence with respect to transformative reparations.[293] Transformative reparations, as defined by this Court, represent a unique approach to reparations that goes beyond merely compensating victims for the harm they have suffered. Instead of being limited to returning the victim to their original situation, transformative reparations take a structural, corrective approach and seek positive and enduring changes to social, economic, and political inequalities by rectifying the root causes of social problems and promoting a more just future.[294]

This Court, in its *Gonzales et al v. Mexico* ruling from 2009 ("the Cotton Field Judgment"), found that the State was required to provide reparations that rectify the structures that led to the violations and State failure to act in response.[295] This case concerned Mexico's failure to investigate the disappearances and murders of several teenage girls outside Juarez. In its ruling, the Court not only ordered individualized reparations for victims, but also delineated the extent to which the Mexican state must take responsibility for its failure to uphold human

---

[290] A/74/321 ¶ 9.

[291] U.S. Env't Prot. Agency, *Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts*, EPA 430-R-21-003 (Sept. 2021); Anuradha Varansi, *How Colonialism Spawned and Continues to Exacerbate the Climate Crisis*, STATE OF THE PLANET: NEWS FROM THE COLUMBIA CLIMATE SCHOOL (Sept. 21, 2022), https://news.climate.columbia.edu/2022/09/21/how-colonialism-spawned-and-continues-to-exacerbate-the-climate-crisis/.

[292] Consider for example the nation of Haiti. Haiti has contributed 0.003 percent of global GHG emissions but is one of the top five countries most affected by climate change. Similarly, Alaska Native and First Nations peoples living in the Arctic, who have contributed very little to global emissions, are experiencing global warming at a rate four times faster than the rest of the world. Jonathan Bamber, *The Arctic is warming nearly four times faster than the rest of the world*, PBS NEWS HOUR (Aug. 15, 2022), https://www.pbs.org/newshour/politics/the-arctic-is-warming-nearly-four-times-faster-than-the-rest-of-the world#:~:text=That%20warming%20has%20not%20been,over%20the%20past%2043%20years.

[293] *See Gonzales et al. v. Mexico ("Cotton Field case")*, Judgment Inter-Am. Ct. Hum. Rts. (IACtHR) (Nov. 16, 2009); *Saramaka People v. Suriname*, Judgment IACtHR (Nov. 28, 2007).

[294] Ruth Rubio-Marín & Clara Sandoval, *Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights; The Promise of the Cotton Field Judgment,* in 33 HUMAN RTS. Q. Human Rights Quarterly 1062-1091 (2011); *see generally* NANCY FRASER, JUSTICE INTERRUPTUS: CRITICAL REFLECTIONS ON THE "POSTSOCIALIST" CONDITION 11-40 (1st ed. 1997), https://ethicalpolitics.org/blackwood/fraser.htm.

[295] *Gonzales et al. v. Mexico ("Cotton Field case")*, Judgment IACtHR (Nov. 16, 2009).

rights and adjust its policies and laws accordingly.[296] Thus, this Court has viewed transformative reparations as a potent instrument for recognizing and redressing harm and influencing the legislative landscape on the national level.[297]

In its upcoming advisory opinion, we invite the Court to expound upon State obligations to take a structural approach to reparations for racially marginalized groups that face harms arising from the global ecological crisis, in order to meaningfully respond to the histories of slavery and colonialism, and its persistent and racially discriminatory impacts.

3) *States Must Recognize Racially Marginalized Groups as Knowledge Producers and Participants in the Devising of Climate Remedies*

This Court should foreground, and encourage States to foreground, racially marginalized groups as knowledge producers and decisionmakers in climate change adaptation and mitigation strategies as well as in developing appropriate remedies for racially discriminatory human rights violations. As argued elsewhere in this brief, Indigenous and Afro-descendant epistemologies should shape State responses to the climate emergency. Indigenous peoples can guide climate responses by utilizing their traditional knowledge, including specific climate monitoring and reporting techniques, management or co-management of protected areas, protection of sacred sites, protection of their traditional lands and territories, disaster preparedness and response and early warning systems, rainwater harvesting, and traditional agriculture techniques.[298] They must simply be given the chance to do so.[299] Place-based, community-based local knowledge is often dismissed as unscientific, and thus this knowledge has largely been ignored by formal environmental and climate change mitigation strategies.[300] But where such expertise has been neglected, climate risks and environmental damage often increase. For example, the U.S. Forest Service's Smokey the Bear anti-forest fire campaigns ("Only YOU Can Prevent Forest Fires") in the 1940s onward contributed to a rise in forest fires across the American west.[301] Today, regions

---

[296] Rubio-Marín & Sandoval, *Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights* at 1063, 1087-90.
[297] *See Gonzales et al. ("Cotton Field") v. Mexico*, Judgment IACtHR)(Nov. 16, 2009); *Saramaka People v. Suriname*, Judgment IACtHR (Nov. 28, 2007).
[298] A/HRC/36/46 ¶ 24.
[299] *See generally* A/HRC/36/46.
[300] Jessica Hernandez et al., *Re-Centering Indigenous Knowledge in climate change discourse*, 1 PLOS CLIMATE 1 (2022); Jeanine Pfeiffer, *Forests in the American West Need More "Good Fire." Tribes Can Help.*, SLATE (July 27, 2022), https://slate.com/technology/2022/07/cultural-burning-california-wildfires-usfs.html.
[301] Christopher Joyce, *How The Smokey Bear Effect Led to Raging Wildfires,* NPR (Aug. 23, 2012), https://www.npr.org/2012/08/23/159373691/how-the-smokey-bear-effect-led-to-raging-wildfires.

across the U.S. are in the process of adopting Indigenous-led controlled burn strategies, which have been shown to reduce fire risk.[302]

Similarly, the Ecuadorian Constitutional Court provided an example of this appreciation of Indigenous knowledges in its 2018 decision in Bosque Protector de Cedros when it spoke of a "paradigm shift" in the recognition of our relationship to nature.[303] But States can go much further in incorporating Indigenous knowledge and participation. This Court should consider outlining obligations for States to adopt and implement Indigenous and Afro-descendant climate change mitigation strategies in its Advisory Opinion. This may include reparation financing obligations, which should emphasize local, community-led initiatives.

Indigenous and Afro-descendant communities—and other groups disproportionately impacted by climate harms—should be involved in the design and implementation of this Court's approaches to remedies. This includes incorporating these communities' knowledge and experience in the development of human rights standards and obligations, including those standards and obligations necessary to protect their rights. The right of Indigenous and Afro-descendant peoples to help structure these climate remedies is affirmed by international law, which provides that impacted communities have a right to participate in the remedies intended to undo the discrimination impacting them.[304] As discussed above, UNDRIP states that States must involve Indigenous communities in the development of any climate policies and strategies that impact them.[305] The International Covenant on Economic, Social, and Cultural Rights also encourages participation of and consultation with affected communities.[306]

4) ***States must implement meaningful consultation with Indigenous and Afro-descendant peoples for all decisions affecting their rights and livelihoods, and respect their right to free, prior and informed consent regarding major development projects in their territories or decisions that significantly affect their substantive rights.***

This Court should ensure incorporating Indigenous peoples' knowledge and experience in the development of human rights standards and obligations, including those necessary to protect their rights.

---

[302] Robyn Schelenz, *How the Indigenous practice of 'good fire' can help our forests thrive*, UNIV. CAL. (Apr. 6, 2022), https://www.universityofcalifornia.edu/news/how-indigenous-practice-good-fire-can-help-our-forests-thrive; U.S. Dept. Agric., *Prescribed Fire* (June 2023), https://www.fs.usda.gov/managing-land/prescribed-fire

[303] *Supra,* note 237, Autoridades municipales vs. Ecuador, por minería en el "Bosque Protector los Cedros" | Plataforma de Litigio Climático para Latinoamérica. (s.f.). Plataforma de Litigio Climático para Latinoamérica. https://litigioclimatico.com/es/ficha/autoridades-municipales-vs-ecuador-por-mineria-en-el-bosque-protector-los-cedros-n73

[304] CERD/C/GC/32 ¶ 18; UNDRIP arts. 18, 27.

[305] UNDRIP arts. 8, 10, 19, 26, 27, 29, 32.

[306] ICESCR art. 2(1).

Inter-American jurisprudence has held that States should adopt a participatory justice model of engagement with Indigenous and Tribal communities, grounded in right to consultation and free, prior and informed consent.[307] This Court should strengthen its standards and provide further guidance to States in this matter. The Court should reiterate to States the requirement to obtain the free, prior and informed consent of Indigenous peoples for major development projects in their territories and when their decisions or dispositions will significantly impact Indigenous peoples' substantive rights.[308] In consultation with Indigenous peoples, the Court should further develop the consultation standards and guidelines in order for States to effectively implement meaningful engagement and consultation with Indigenous and Afro-descendant peoples. This should include guidance on the non-delegation of the consultation obligation to private entities and businesses and standards to monitor and supervise the conduct and activities of businesses in Indigenous communities and territories. It should also include special attention to respecting the traditional decision-making methods of Indigenous peoples, their free self-determination, and their autonomous governance structures, protecting them against interference from outside actors, including States. The Court should reiterate and strengthen standards to mitigate unequal power relations in the consultation process, ensuring arms-length engagement and adequate access by Indigenous peoples to their own independent experts.

The Court should further develop the guidance of the IACHR on the participation of Indigenous peoples in the context of development projects which may harm or threaten their communities and their rights. Specifically, IACHR has stated that Indigenous groups "are entitled to immediate suspension of the execution of the development or investment plans or projects or of projects for the exploration and exploitation of natural resources which threaten" their rights over their ancestral lands and properties.[309] The IACHR has also underscored State obligations to implement, in the framework of projects for the exploration or exploitation of natural resources in Indigenous or Tribal peoples' territories, participation mechanisms for determining the environmental damages which have been caused and their impact upon such

---

[307] *See* Section IV above. *See also,* IACHR, *Indigenous and Tribal Peoples' Rights Over Their Ancestral Land and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*, ¶ 180, OE/Ser.L/V/II., Doc 56/09 (Dec. 30, 2009), https://www.oas.org/en/iachr/indigenous/docs/pdf/ancestrallands.pdf ("Inter-American jurisprudence has identified rights of indigenous and tribal peoples that States must respect and protect when they plan to extract subsoil resources or exploit water resources; such rights include the right to a safe and healthy environment, the right to prior consultation and, in some cases, informed consent, the right to participation in the benefits of the project, and the right of access to justice and reparation.")

[308] Caso del Pueblo de Saramaka vs. Surinam, Sentencia del 28 de noviembre de 2007, *Excepciones Preliminares, Fondo, Reparaciones y Costas*, Serie C, No. 172, párr. 134; Informe del Relator Especial sobre los derechos de los pueblos indígenas, James Anaya, (6 de julio de 2012), A/HRC/21/47, ["Informe del RE de 2012] párr. 65.

[309] IACHR, *Democracy and Human Rights in Venezuela*. ¶ 1141, OEA/Ser.L/V/II., Doc. 54 (Dec. 30, 2009); *see also* IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, ¶ 297, OEA/Ser.L/V/II, Doc. 34, (June 28, 2007).

peoples' basic subsistence activities.[310] These participation mechanisms must allow for the "immediate suspension of the execution of the projects that bear an impact upon life or personal integrity; they must guarantee the imposition of the pertinent administrative or criminal sanctions, and they must allow for the determination and materialization of indemnities for any damages to the environment and basic subsistence activities which are being caused."[311]

5) States must also offer effective remedies for violations of Indigenous and Afro-descendant peoples and protect collective property

The Court should also offer guidance to States on providing effective judicial remedies to Indigenous and Afro-descendant peoples for the exercise of their collective rights. This should include adequate training for justice operators, adequate funding and resources for specialized courts or prosecutorial units to enforce Indigenous rights, and effective consultation with Indigenous and Afro-descendant peoples to reform the justice system and overcome the structural injustices historically suffered by these communities. The Court should require States to have prompt, effective remedies for challenging the State's failure to consult with Indigenous peoples and for challenging the conduct of businesses and private actors in Indigenous communities and territories.

The Court should strengthen standards for the protection of collective property. This should include prompt delimitation, demarcation, and titling of Indigenous lands and territories, and developing policies for clearing Indigenous title taking into account the history of dispossession and failure to respect and protect collective property. In its articulation of standards and guidance, the Court should take care to safeguard customary Indigenous law with respect to collective property as inalienable and not subject to seizure or prescription.

This Court, with its regional human rights mandate, is uniquely situated to be a catalyst in strengthening and extending the scope of human rights duties and obligations relating to the climate emergency. The Court's existing jurisprudence has already recognized collectively held Indigenous ancestral land as property under Article 21 of the American Convention on Human Rights[312] and has granted reparations to Indigenous communities that exceed mere monetary

---

[310] IACHR, *Indigenous & Tribal Peoples' Rights Over Their Ancestral Land and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*, ¶ 386, OE/Ser.L/V/II., Doc 56/09 (Dec. 30, 2009), https://www.oas.org/en/iachr/indigenous/docs/pdf/ancestrallands.pdf.

[311] IACHR, *Indigenous and Tribal Peoples' Rights Over Their Ancestral Land and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*, ¶ 386, OE/Ser.L/V/II., Doc 56/09 (Dec. 30, 2009), https://www.oas.org/en/iachr/indigenous/docs/pdf/ancestrallands.pdf; *see also* IACHR, *Democracy and Human Rights in Venezuela*, ¶ 1141, OEA/Ser.L/V/II., Doc. 54 (Dec. 30, 2009); IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, ¶ 297, OEA/Ser.L/V/II, Doc. 34 (June 28, 2007).

[312] *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment IACtHR (Aug. 31, 2001) (holding that collective Awas Tingni land is recognized and protected as property under Article 21 of the American Convention of Human Rights and Nicaragua must return ancestral Awas Tingni land to the community).

compensation and address underlying structural injustices.[313] In this way, this Court has long recognized the specific needs and experiences of vulnerable populations. As the devastating impacts of the global ecological crisis continue to escalate, so too does the urgency for this Court to enumerate and expound upon the requirements of States across the Americas to redress its racially discriminatory human rights violations.

B. Neoliberal, Market-Based Solutions and Technochauvinism Reinforce Racial Discrimination and Injustice

In enumerating human rights standards, we ask the Court to consider the failings of current responses and reparatory frameworks that are being developed in the international legal system, which fail to tackle non-discrimination and racial equality. These shortcomings are most evident in the rise of neoliberal, market-based solutions to climate change and "quick-fix" technological solutions that in some cases reinforce racially discriminatory effects because they seek to satisfy unsustainable demands of the dominant society.

The impact of green capitalism on the Indigenous and Afro-descendant communities and their right to free, prior and informed consent was detailed in Section IV, with consequent recommendations for remedies for Indigenous and Afro-descendant peoples in Section A.4 and A.5 above.

Underlying the rising popularity of green capitalist doctrine is the proliferation of technological solutions that aim to reduce or undo the impacts of climate change, or reduce the carbon footprint of large emitters, such as manufacturers and airlines.[314] Where climate mitigation strategies from impacted communities are largely ignored, technocratic knowledge and those who market it are epistemologically prioritized and marketed in climate strategy as

---

[313] *Yakye Axa Indigenous Community v. Paraguay*, Judgment IACtHR (June 17, 2005) (holding that Paraguay must restitute Yakye Axa ancestral land to the community, provide the community goods and services prior to the land restitution, and incorporate domestic protections for Indigenous land, among other remedies, for its failure to ensure community's ancestral property rights); *Plan de Sánchez Massacre v. Guatemala*, Judgment IACtHR (Apr. 29, 2004) (holding that Guatemala should provide health services and adequate housing for survivors of the state-sponsored massacring of Maya Indigenous communities and publicly acknowledge and apologize for its actions, among other remedies); *Moiwana Community v. Suriname,* Judgment IACtHR (June 15, 2005) (holding that Suriname must recover the remains of slain Moiwana community members and adopt domestic collective property protections, among other actions, for the state's role in murdering Indigenous Moiwana villagers and desecrating their collective property); *Saramaka People v. Suriname*, Judgment IACtHR (Nov. 28, 2007) (holding that Suriname must provide territorial demarcation, monetary compensation, and social services to the Saramaka People for the state's role in logging and mining on their territory); *Aloeboetoe et al., v. Suriname*, Judgment IACtHR (Sep. 10, 1993) (holding that Suriname must provide monetary compensation to survivors' family and offspring, among other remedies, for the state's role in killing Saramaka individuals).

[314] Nick J. Fox, *Green capitalism, climate change and the technological fix: A more-than-human assessment* 71 SOCIO. REV. 1115 (2022).

cutting-edge, technically informed, and focused on "immediate, winnable gains."[315] The rise of such "techno-chauvinism" as a response to the global ecological crisis is part of a larger global overreliance on technocratic knowledge, which takes the place of traditional and ancestral knowledge of local communities.[316] Technochauvinism excludes Indigenous and Afro-descendant local communities from climate change leadership. It distracts from the need for systemic changes necessary for combatting the global ecological crisis and demanded by front-line communities by instead advocating for quick-fix or novel "speculative technologies" that come with their own negative impacts.[317] The Intergovernmental Panel on Climate Change "has warned against overreliance on unproven technologies that could disrupt natural systems and disproportionately harm global South communities."[318]

As such, the Court should require States to avoid approaches to the climate ecological crisis that rely on quick, profit-driven, technocratic solutions. The Court should require States to take affirmative steps to safeguard autonomous Indigenous and Afro-descendant institutions and customary law, monitoring and sanction business practices that detract from the rights of marginalized populations and establish meaningful mechanisms of complaint and redress. The Court itself should also ensure procedures for complaints and means of redress with regards to techno-chauvinist climate initiatives, extractivist solutions to the global ecological crisis, and development projects. More broadly, the focus of initiatives should be centered around the needs of impacted communities, and ensure their rights are not violated in the implementation of "climate solutions." Lastly, States must urgently mitigate the impacts of the global ecological crisis in vulnerable communities, as disparate impacts require differing responsibilities.

C. Providing effective judicial remedies through criminalizing ecocide

Establishing an (international) crime of ecocide, corresponding to the gravest violations of the right to a healthy environment, on a par with other international crimes such as genocide and crimes against humanity goes toward fulfilling States Parties' obligations to establish effective judicial remedies. The creation and adjudication of this crime should complement, not displace more structural remedies which are included within the framework of reparations. States must make reparations for victims of the crime of ecocide as for victims of other grave human rights violations rising to the level of international crimes.

---

[315] Climate Nexus, *The Technocratic Approach to Climate Change, Explained*, CLIMATE NEXUS (last visited Nov. 28, 2023), https://climatenexus.org/climate-change-us/politics-and-policy/climate-change-technocratic-approach/ .
[316] A/77/549 ¶ 63.
[317] A/77/549 ¶ 63.
[318] A/77/549 ¶ 65.

Respectfully submitted,

Joseph P. Berra
Human Rights in the Americas Director
Promise Institute for Human Rights
University of California Los Angeles (UCLA) School of Law

385 Charles E. Young Drive East | Los Angeles CA 90095-1476

On behalf of: E. Tendayi, Achiume, S. Priya Morley, Joseph Berra, Kate Mackintosh, Mollie Cueva-Dabkoski, Heliya Izadpanah, Annika Krafcik, and Paula Angarita Tovar