Advisory Opinion on Climate Change: Summary of Written Observations Submitted to the Inter-American Court of Human Rights (Part 1)

Maria Antonia Tigre

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ADVISORY OPINION ON CLIMATE CHANGE: SUMMARY OF WRITTEN OBSERVATIONS SUBMITTED TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS (PART 1)

APRIL 2024

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The Sabin Center for Climate Change Law develops legal techniques to fight climate change, trains law students and lawyers in their use, and provides the legal profession and the public with up-to-date resources on key topics in climate law and regulation. It works closely with the scientists at Columbia University’s Climate School and with a wide range of governmental, non-governmental and academic organizations.

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STATE BODIES
1. OMBUDSMAN OF GUATEMALA
2. THE NATIONAL PUBLIC DEFENSE SERVICE (ARGENTINA)
3. THE DEFENSE COUNSEL OF THE SUPREME COURT OF JUSTICE OF THE PROVINCE OF SANTA FE (ARGENTINA)
4. THE CHILDREN’S OMBUDSMAN (ARGENTINA)
5. THE FEDERAL PUBLIC DEFENSE INSTITUTE (MEXICO)
6. THE HUMAN RIGHTS COMMISSION OF THE STATE OF JALISCO (MEXICO)
7. THE HUMAN RIGHTS COMMISSION OF THE STATE OF PUEBLA (MEXICO)
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9. THE OMBUDSMAN (ECUADOR)
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COMMUNITIES, DIRECTLY OR TOGETHER WITH NONGOVERNMENTAL ORGANIZATIONS
1. ORGANIZACIÓN IDENTIDAD TERRITORIAL MALALWECHE
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6. COMMUNITIES OF THE LENCA PEOPLE, COMMUNITIES OF THE TOLUPÁN PEOPLE, CONSEJO CÍVICO DE ORGANIZACIONES POPULARES E INDÍGENAS DE HONDURAS (COPINH), MOVIMIENTO AMPLIO POR LA DIGNIDAD Y LA JUSTICIA (MADJ) AND WOMEN’S LINK WORLDWIDE (WLW)
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8. CONFEDERACIÓN INDÍGENA DE NEUQUÉN (ARGENTINA)
9. COORDINADORA DE DESARROLLO Y DEFENSA DE LOS PUEBLOS INDÍGENAS DE LA REGIÓN SAN MARTÍN (CODEPISAM), FEDERACIÓN DE PUEBLOS INDÍGENAS KECHWA CHAZUTA AMAZONIA (FEPIKECHA), FEDERACIÓN DE PUEBLOS INDÍGENAS KECHWAS DEL BAJO HUALLAGA SAN MARTÍN (FEPIKBHSAM), INSTITUTO DE DEFENSA LEGAL (IDL), FOREST PEOPLES PROGRAMME (FPP), AND DUE PROCESS OF LAW FOUNDATION (DPLF)
10. CONFEDERACIÓN DE NACIONALIDADES INDÍGENAS DEL ECUADOR (CONAIE), FUNDACIÓN PACHAMAMA, HUMAN RIGHTS CENTER AT THE PONTIFICIA UNIVERSIDAD CATÓLICA DEL ECUADOR (CDH/PUCE), COORDINADORA ECUATORIANA DE ORGANIZACIONES PARA LA DEFENSA DE LA NATURALEZA Y EL MEDIOAMBIENTE (CEDEMA)
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12. GUADALUPE COBOS PACHECO, ÁUREA SÁNCHEZ HERNÁNDEZ, YESenia DEL SOCORRO ALBINO SÁNCHEZ ON BEHALF OF THE COMMUNITY OF EL BOSQUE (TABASCO, MEXICO), NUESTROS DERECHOS AL FUTURO Y MEDIO AMBIENTE SANO A.C. (NUESTRO FUTURO), CONEXIONES CLIMÁTICAS A.C. AND GREENPACE MEXICO

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15. ANDRÉ SOARES OLIVEIRA, ADRYEL GOMES DOS SANTOS, ALISSA LAURA AMARO PEREIRA, JOSÉ GABRIEL GOMES RIBEIRO, LARA VICTORIA ARNAUD Sampaio CAMPOS, LETÍCIA LOPES DE ALMEIDA AND MATEUS DE SÁ BARRETO SABIA

16. PATRICIA GUALINGA MONTALVO, POLITICAL ADVISER TO THE KICHWA INDIGENOUS PEOPLE OF SARAYAKU
EXECUTIVE SUMMARY

On January 9, 2023, the Foreign Ministers of Chile and Colombia requested an advisory opinion from the Inter-American Court of Human Rights (IACtHR) on the scope of state obligations for responding to the climate emergency under the frame of international human rights law and, specifically, under the American Convention on Human Rights. Within this context, the IACtHR received a total of 255 amicus brief submissions. With respect to the language of submissions, 25 were in Portuguese, 52 in English, and 180 in Spanish.

This report includes summaries of the amicus briefs submitted to the Court. Due to the number of submissions received and the short timeframe prior to the hearings, the report is divided into parts. This first part includes written submissions from (i) States, (ii) organs of OAS, (iii) international organs and bodies, (iv) state bodies, and (v) communities, amounting to 54 briefs. The submissions highlight several major themes related to the intersection of human rights and the climate crisis, particularly focusing on the obligations of states:

1. **Human Rights Affected by Climate Crisis**: The submissions emphasize the various human rights impacted by the climate crisis, including the right to life, health, food, water, a healthy and sustainable environment, and self-determination.

2. **State Obligations**: There's a strong emphasis on the obligations of States in response to the infringement of human rights due to climate change. These obligations include mitigation efforts to reduce greenhouse gas (GHG) emissions, adaptation measures to protect vulnerable communities, and provision of support and resources to affected populations.

3. **Differentiated Responsibilities and CBDR-RC Principle**: The principle of Common But Differentiated Responsibilities and Respective Capacities (CBDR-RC) is heavily focused upon. It underscores the notion that while all countries share responsibility for addressing climate change, developed nations bear a greater burden due to their historical emissions and greater capacity to address the crisis.

4. **Impact on Vulnerable Groups**: Climate change exacerbates existing vulnerabilities and inequalities, disproportionately affecting marginalized and vulnerable communities. Vulnerable groups, including indigenous communities, women, children, and the elderly, are differently impacted by the climate crisis. There's a recognition of the need for differentiated obligations tailored to the specific needs and vulnerabilities of these groups.

5. **Regional Impacts in Latin America and the Caribbean**: The submissions provide descriptions of the diverse impacts of climate change across different regions of Latin America and the Caribbean. This includes impacts on ecosystems, agriculture, water resources, and livelihoods, with particular attention to the vulnerabilities of coastal communities and small island states.

6. **Impact on Indigenous Groups**: Indigenous communities are highlighted as particularly vulnerable to the impacts of climate change due to their close relationship with the environment. State obligations related to free, prior, and informed consent are emphasized, along with the protection of indigenous cultural knowledge and biodiversity.

Overall, the submissions underscore the urgent need for comprehensive and equitable responses to the climate crisis, grounded in principles of human rights, justice, and solidarity.
INTRODUCTION

1. THE ROLE OF ADVISORY OPINIONS IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

The IACtHR is a regional human rights tribunal established under the 1969 American Convention on Human Rights (Convention). Pursuant to Article 62.3, the IACtHR has jurisdiction over matters related to the interpretation or application of the Convention. It has both a contentious and an advisory function. The IACtHR’s advisory function relates to interpreting treaties adopted within the framework, or under the auspices, of the Inter-American system (such as the 1988 San Salvador Protocol) and other treaties concerning the protection of human rights in the American States.

Article 64.1 of the Convention allows the Member States to request an advisory opinion from the IACtHR for the interpretation of the Convention or other treaties related to the protection of human rights. Article 70 of the Rules of Procedure (RoP) of the Court dictates that any Member State or the Inter-American Commission on Human Rights (Commission) that request an advisory opinion shall identify, among other things (i) the provisions that need to be interpreted and (ii) the considerations giving rise to the request.

The IACtHR has interpreted this function broadly. In an advisory opinion issued in 1982 (OC-1/82), the IACtHR found that its advisory role applies to “any provision dealing with the protection of human rights set forth in any international treaty applicable in the American States, regardless of whether it be bilateral or multilateral, whatever be the principal purpose of such a treaty, and whether or not non-Member States of the inter-American system are or have the right to become parties thereto.” This expanded interpretation may open the door to the IACtHR considering not only the American Convention and related framework in answering the 2023 request but also other international agreements. For example, the 2023 request for an advisory opinion specifically calls on the IACtHR to identify measures to be adopted under the Escazú Agreement for States to protect the rights to life, property, health, and participation in the context of the climate emergency. The IACtHR could also, conceivably, discuss other international agreements such as the United Nations Framework Convention on Climate Change and Paris Agreement in its advisory opinion.

2. THE ADVISORY OPINION OC-23/17’S INFLUENCE

The IACtHR has previously acknowledged the inextricable link between protection of the environment and the enjoyment of human rights. In its 2017 Advisory Opinion on “the Environment and Human Rights” (OC-23/17) the IACtHR explicitly recognized, for the first time, the autonomous human right to a healthy environment in the context of the Inter-American Human Rights System. Arguably, the 2017 Advisory Opinion opened the door for rights-based climate litigation through the recognition of States’ responsibilities for transboundary harms (including climate change-related harms) and the precautionary principle. (For a full discussion of the potential of such litigation, see Tigre & Urzola, The 2017 Inter-American Court’s Advisory Opinion: changing the paradigm for international environmental law in the Anthropocene, 2021.)

Notably, the IACtHR broadened the interpretation of extraterritorial jurisdiction in the 2017 Advisory Opinion to accept a link based on the factual nexus between a conduct in the territorial boundaries of the State and a human rights violation abroad. The IACtHR stated that jurisdiction could be established over human rights violations that take place outside the territory of a State if that State exercises effective control over damaging activities that cause the violation and thus could prevent the consequent harm (OC-23/17, paras. 102-104). This jurisdictional link is broader than any nexus previously recognized by a human rights court and reflects the responsibility of a State based on its failure to exercise due diligence within its territory in the context of human rights violations.
Chile and Colombia’s advisory opinion request builds on the reasoning in Advisory Opinion OC-23/17 to argue that there is a need to establish Inter-American standards to accelerate the region’s response to the climate crisis. The request places significant attention on the benefits of human rights’ obligations as in advancing just, equitable and sustainable responses to climate change. As a result, the request underscores how the Advisory Opinion OC-23/17 was crucial in deepening the regional understanding of the interdependence of human rights and the environment, and its effect in policy making.

3. CONTENT OF CHILE AND COLOMBIA’S REQUEST

On January 9, 2023, the Foreign Ministers of Chile and Colombia jointly sought an advisory opinion from the Inter-American Court of Human Rights (IACtHR) regarding the extent of state obligations in addressing the climate emergency within the framework of international human rights law, particularly the American Convention on Human Rights (American Convention). They requested clarification on the human rights impacted by the climate emergency, spanning issues of climate mitigation, adaptation, and addressing loss and damage. The query encompasses considerations such as the application of the principle of common but differentiated responsibilities (CBDR) and inter-state cooperation.

Their request specifically addresses the diverse groups affected by the climate emergency, including children, women, indigenous communities, future generations, and environmental defenders. They stress the importance of considering the varying impacts on present generations, the differentiated geographic effects, and the rights of future generations as dictated by international human rights law. Furthermore, they seek guidance on both individual and collective state obligations in tackling the root causes and consequences of climate change, in alignment with the Paris Agreement’s goal of limiting global warming to 1.5°C. This includes inquiries into regulatory measures, monitoring, environmental impact assessments, contingency planning, and mitigating activities exacerbating the climate emergency.

Furthermore, the request seeks clarity on states’ substantive and procedural obligations to safeguard fundamental rights such as the right to life, property, health, and participation amidst the climate emergency. They specifically inquire about states’ differentiated duties to protect the rights of children and future generations, including defining children’s rights to access justice in climate-related cases. Regarding the protection of environmental defenders, particularly indigenous peoples and women, the applicants reference both the American Convention and the Escazú Agreement. They seek elucidation on states’ obligations in this regard.

Additionally, the Foreign Ministers inquire about states’ duty to cooperate in addressing climate change regionally, emphasizing the need to delineate shared and differentiated responsibilities among nations. They highlight the necessity of guidelines to ensure equitable reparation measures and uphold principles of climate justice. Finally, they inquire about the scope of obligations regarding climate migration in the region.

4. STATEMENTS AND BRIEFS

Article 44 of the Convention allows any institution or person to submit an amicus brief. The Court had initially set August 18, 2023, as the deadline for the presentation of written observations on the request. This deadline was subsequently extended to October 18, and December 18, 2023.

The IACtHR received a total of 255 amicus brief submissions. With respect to the language of submissions, 25 were in Portuguese, 52 in English, and 180 in Spanish. The majority of submissions came from NGOs, totaling 76 submissions, followed by academic institutions with 71 submissions. Other notable contributors include individual members of civil society, with 44 contributions; communities, directly or together with NGOs, with 16 submissions; and States, which provided nine submissions. Additionally, there were four submissions from Organs of the Organization of American States (OAS), 13 from international organs and bodies, 11 from NGOs collaborating with civil society or academic institutions, 10 from State bodies, and one from corporate actors.
Table One: Submissions by Type of Organizations

<table>
<thead>
<tr>
<th>Type of Organization</th>
<th>Number of Submissions</th>
</tr>
</thead>
<tbody>
<tr>
<td>States</td>
<td>9</td>
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<tr>
<td>Organs of the Organization of American States</td>
<td>4</td>
</tr>
<tr>
<td>International Organs and Bodies</td>
<td>13</td>
</tr>
<tr>
<td>State Bodies</td>
<td>10</td>
</tr>
<tr>
<td>Communities, directly or together with NGOs</td>
<td>16</td>
</tr>
<tr>
<td>NGOs</td>
<td>76</td>
</tr>
<tr>
<td>NGOs, with civil society or academic institutions</td>
<td>11</td>
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<tr>
<td>Corporate Actors</td>
<td>1</td>
</tr>
<tr>
<td>Academic Institutions</td>
<td>71</td>
</tr>
<tr>
<td>Briefs by Member of Civil Society</td>
<td>44</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>255</strong></td>
</tr>
</tbody>
</table>

5. NEXT STEPS

The Presidency then decides to convene a public hearing that usually takes place six months after the deadline for the submission of written opinions. The Court decided to hold two in-person public hearings during the 166th and 167th regular sessions of the Court. The first hearing will be held in Bridgetown, Barbados, on April 23-25, 2024. The second hearing will be held in Brasilia, Brazil, on May 24, 2024, and in Manaus, Brazil, on May 27-29, 2024.

The Court usually issues the advisory opinion around one year after the hearings. While advisory opinions are not generally binding, the IACtHR has previously noted that national judiciaries that have ratified the Convention must consider the interpretation made by the IACtHR, deeming an opinion from the IACtHR on climate change extremely influential for global climate litigation (Almonacid-Arellano et. al. v. Chile, ¶124; OC-24/17, ¶26).

6. ABOUT THIS REPORT

This report includes summaries of the amicus briefs submitted to the Court. Due to the amount of submissions received and the short timeframe prior to the hearings, the report is divided into two parts. This first part of the report includes written submissions from States, organs of OAS, international organs and bodies, state bodies, and communities.
Nine States submitted written observations to the IACtHR, namely: (1) Republic of Costa Rica; (2) Republic of Vanuatu; (3) Republic of Barbados; (4) Republic of Paraguay; (5) Republic of Colombia; (6) Republic of Chile; (7) Republic of El Salvador; (8) Republic of Brazil, and (9) United Mexican States.

1. REPUBLIC OF COSTA RICA

Nature and reach of States’ obligation of providing effective judicial resources for protection and reparation of rights threatened by the climate emergency

Principle 21 of the Stockholm Declaration and Principle 2 of the Rio Declaration establish the right of States to exploit resources within their territory following environmental policies to avoid damage to the environment of other States or out-of-bounds areas. Each State must comply with international treaties regulating climate change, and those international instruments must be incorporated into national judgments (Resolution 3/2021 of the IACtHR, Paris Agreement, IPCC, Special Rapporteur on Economic, Social, Cultural and Environmental Rights). All international climate instruments call on States and organizations to comply with their obligations within the frame of the Inter-American Human Rights system and environmental and climate justice.

Regarding the scope of action of each State’s system of administration of justice, justice officers must be prepared to understand their role regarding the social, environmental, and economic consequences of the climate emergency. Firstly, judges and other judicial officers must have a strong foundation in environmental law and climate change and the design of appropriate legal mechanisms that ensure an ideal solution to environmental conflicts. Those mechanisms require modern judicial processes with orality, celerity, real truth, procedural legitimacy, the incorporation of widespread interest, interim measures, and due process, among others.

The judicial power must establish the responsibilities and compensations for those responsible for the causes that accelerate climate change. Furthermore, laws on civil liability and compensation for climate damages and GHG emissions are required. Environmental justice shall always ensure the protection of climate-related human rights.

States’ differentiated obligations regarding the rights of children and future generations

Costa Rica has been working on creating the 2024-2036 Children and Adolescent Policy that promotes the defense, guarantee, and protection of their rights. This policy has an environmental axis based on children’s constitutional right to a healthy environment and ecological balance. The environmental axis of the policy seeks preventive, appropriate, and reconstruction actions to reinstate services as quickly as possible and ensure the rights of children and adolescents. Lastly, it is fundamental to educate children and adolescents regarding climate change.

Obligations and principles regarding non-voluntary human mobility in the context of climate change

States must have instruments that facilitate migration governance. This is particularly important for countries like Costa Rica, which is acknowledged as a destiny and transition country. Law N° 8764 addresses migration guided by the principles of equality, equity, non-discrimination, enforceability, solidarity, joint responsibility, respect for labor rights for migrant workers, and the best interests of the child and adolescent. Costa Rica already has experience with climate change migration (i.e., Mitch, Otto and María hurricanes and the Cinchona earthquake). Lastly, Costa Rica implements the 23 objectives of the Global Compact for Migration.
2. REPUBLIC OF VANUATU

Human-induced climate change has caused widespread loss and damage to people and nature

The term “loss and damage” is defined as “terminology used to describe the harm to individuals, peoples, and the environment effectively resulting from climate change. The conduct of States relevant to loss and damage includes, without limitation (i) conduct – acts and omissions – that has resulted over time in significant harm to the climate system, (ii) conduct involving responses (or a failure to respond) to the adverse effects of climate change, and which exposes individuals and peoples to violations of their human rights, including in the context of displacement, and (iii) conduct – acts and omissions – resulting in a lack of redress for human rights violations connected with loss and damage. Conduct (i), (ii), and (iii) is together referred to as the “Relevant Conduct.”

The Intergovernmental Panel on Climate Change (IPCC) has expressed scientific and State consensus that climate change has caused widespread loss and damage. Some of the loss and damage have caused irreversible changes on centennial to millennial global ocean temperatures. The IPCC furthermore confirms that the adverse and widespread impacts of climate change affect vulnerable communities who have historically contributed the least to current climate change. Furthermore:

- Global warming has already exceeded 1°C, and the resulting scale of changes in the climate system are unprecedented over many centuries to many thousands of years.
- Climate and weather extremes and their adverse impacts on people and nature will continue to increase with every additional increment of rising temperatures.
- The global sea level has risen faster since 1900 than in any preceding century in at least the last 3000 years. It is driven by human influence and will continue to rise over the 21st century.
- The risks associated with sea level rise are exacerbated for small islands, low-lying coastal areas and deltas, with resulting damage and adaptation costs of several percentage points of gross domestic product.
- Without urgent and significant increase in mitigation efforts beyond those in place today, warming by the end of the 21st century will lead to severe, widespread and irreversible impacts globally, and it will slow down economic growth, make poverty reduction more difficult, further erode food security, and prolong existing and create new poverty traps.
- Countries must urgently increase the level of ambition and action in relation to climate change mitigation, adaptation and finance in this critical decade to address the gaps in the implementation of the goals of the Paris Agreement.

Article 8 of the Paris Agreement recognizes loss and damage, and despite the decision of the United Nations Framework Convention on Climate Change (UNFCCC) that Article 8 does not provide a basis for any liability or compensation, this provision effectively confirms the occurrence of loss and damage. This paragraph of the UNFCCC is, at best, an interpretive aid for Article 8, and irrelevant in the interpretation or limitation of the rights of States, peoples, and individuals under other provisions of the Paris Agreement, the UNFCCC, other treaties (including human rights treaties), general international law or other relevant laws.

Vanuatu, like several other small island developing States (SIDS), has expressly reserved its rights under general international law when ratifying the Paris Agreement. The declaration entered by Vanuatu reads: “Whereas the Government of the Republic of Vanuatu declares its understanding that ratification of the Paris Agreement shall in no way constitute a renunciation of any rights under any other laws, including international law, and the communication depositing the Republic’s instrument of ratification shall include a declaration to this effect for international record.”

The United Nations General Assembly (UNGA) Resolution 77/276 notes with utmost concern the IPCC finding that “human-induced climate change, including more frequent and intense extreme events, has caused widespread
adverse impacts and related losses and damages to nature and people." This shows the consensus of States on loss and damage as a fact. Loss and damage, in this characterization, is the embodiment of climate injustice, and yet the level of injustice is only grasped when a human face is added. The daily life of the Indigenous people of Vanuatu (the Ni-Vanuatu), at the forefront of loss and damage, illustrates a concrete meaning to “widespread adverse impacts and related losses and damages to nature and people” in that:

- Ni-Vanuatu people have personal experiences with a changing climate, which range from slow-onset changes, such as sea level rise, saltwater intrusion, longer dry periods, and increasing temperatures, to extreme weather events, such as more intense cyclones, heavy downpours, and flooding.
- Climate change impacts affect an interconnected and complex system centered on the critical relationships between Pacific Islanders and their environment.
- These and other impacts of climate change on Ni-Vanuatu’s human rights are producing cascading implications on numerous other interconnected human rights and can transcend across generations.

These are merely glimpses of the vast human suffering behind loss and damage, and reference is made to the IPCC 2023 Synthesis Report at the Summary for Policymakers of the high vulnerability to climatic hazards for regions and people with considerable development constraints, exposing millions of people in locations such as Africa, Asia, Central and South America, LDCs, Small Islands and the Arctic, to acute food insecurity and reduced water security. Thus, present and future generations must be kept in mind in determining States’ conduct and the legal consequences thereof.

**Obligations of States regarding loss and damage**

Acts and omissions from activities within certain States have, over time, resulted in anthropogenic climate change. These contributions may not be the only or the main cause of climate change, but States are obliged to prevent significant harm to the environment. Breach of States’ obligations to respect, protect, and fulfill human rights in different contexts occur (i) due to acts and omissions that have resulted in significant harm to the climate system, and (ii) responding or failing to respond to the adverse effects of climate change, and (iii) by conduct resulting in a lack of redress for human rights violations connected with loss and damage.

The individual contributions of States to causing climate change are well-established and highly unequal. Despite their lack of significant contribution to climate change, LDCs and SIDS are disproportionately impacted by loss and damage.

Examples of relevant acts and omissions of States that have resulted in significant harm to the climate system include (i) providing subsidies to the use and exploitation of fossil fuels, (ii) adopting laws, rules, or regulations concerning energy policy, including granting licenses fossil fuel exploitation, or selling fossil fuels, and (iii) the failure to take measures to limit GHG emissions. When GHG emissions of an individual State reach a threshold wherein such emissions cause significant harm to the climate, the conduct in the aggregate becomes wrongful as a “composite act” as defined by Article 15 of the Articles on the responsibility of States for internationally wrongful acts (ARSIWA), with the breach extending over the “entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.” It is, therefore, possible that certain States may face attributable conduct extending back in time decades or more. The acts or omissions of a group of States, taken together, which cause not only significant harm to the climate system but catastrophic harm also amount to a composite act in breach of the relevant rules of international law. In this case, the rules in Article 15 (Breach of a composite act) and Article 47 (Plurality of responsible States) would operate together for a group breach.

States may also be in breach of their international obligations with respect to the second aspect of the Relevant Conduct, the Adverse Impacts Conduct. These breaches occur where a State’s responses (or failure to respond) to climate change impacts result in human rights violations, including in the context of displacement. States may also be in breach of their international obligations with respect to the third aspect of the Relevant Conduct, the Failure to Redress. Individuals and peoples injured from loss and damage from the adverse impacts of climate change are entitled to access an effective remedy, including reparation and as guided by the Basic
Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UNGA Res. 60/147)

Obligations under International Human Rights Law governing the relevant conduct

International human rights law governs the Relevant Conduct. These include the UN Charter, the Charter of the OAS, the American Declaration, the Universal Declaration of Human Rights, the American Convention, and the ‘Climate Emergency Resolution’ (Resolution 3/2021), which affirms that the human rights obligations of States are intertwined with international environmental law “in the contexts of polluting activities within their jurisdiction, or under their control, so that they do not cause serious harm to their environment or that of other countries or areas outside the limits of national jurisdiction.” Vanuatu addressed the obligations arising concerning the Relevant Conduct from the perspective of three specific human rights: (i) the right to life, (ii) the right to a healthy environment, and (iii) the right of Indigenous and tribal peoples to their existence and survival, as well as (iv) the fundamental right of self-determination of all peoples, including peoples comprising States and Indigenous Peoples.

The relevant conduct constitutes a prima facie breach of International Human Rights Law

The breach is classified as ‘the acts and omissions of States in their Contribution Conduct, Adverse Impacts Conduct, and Failure to Redress Conduct are attributable to them and breach a variety of international legal obligations.’ Loss and damage resulting from the Relevant Conduct amounts to a breach of the human right to life, and the Contribution Conduct is altering the climate system and threatening human life. It also amounts to a breach of the rights (i) to a clean, healthy, and sustainable environment, (ii) of the existence and survival of Indigenous and tribal peoples protected by Article 21 of the American Convention, (iii) of self-determination of peoples, and the Failure to Redress Conduct, including (iv) the failure to provide effective remedies and full reparation to injured peoples on account of such loss and damage. People face loss and damage from infringements on their cultural self-determination. For developing countries, a connection between cultural rights and self-determination has historically been a means of attaining their political self-determination and providing a sense of national dignity. Failure to Redress Conduct, and to provide effective remedies and full reparation for the loss of culture, is also a breach of international law. Lastly, economic self-determination is adversely impacted by the Relevant Conduct.

Legal consequences of the breach with respect to peoples and individuals affected in their human rights by loss and damage

Two legal consequences flow from an internationally wrong act: (i) cessation, which includes stopping all conduct contributing to significant and/or catastrophic damage to the climate system, and (ii) full reparation, which includes restitution, compensation, and satisfaction, either singly or in combination. In addition, serious breaches of obligations owed erga omnes which include (i) an obligation to cooperate to bring to end such a breach, (ii) an obligation not to recognize the illegal situation resulting from the violative act, and (iii) an obligation not to render aid or assistance to the breaching State or States in maintaining the illegal situation; as well as jus cogens norms carry further consequences for third States.

3. REPUBLIC OF BARBADOS

Factual Background

The scientific definition and impacts of climate change are discussed in much detail, providing a historical account and highlighting undisputed and scientifically proven consequences of anthropogenic climate change. The section concludes with a discussion of the harms caused by anthropogenic gas emissions to all States and areas outside national jurisdiction, including causing rising temperatures on land and ocean which affect air
quality, rising sea levels, extreme weather events, harm to wildlife and ecosystems. The section further makes reference to the ITLOS submissions where the impact of anthropogenic gas emissions had been accepted by numerous States and international organizations. The section concludes with a discussion on the loss and damage caused by climate change that are already being experienced by Barbados and its citizens.

Shared and differentiated human rights obligations and responsibilities of States in the context of the climate emergency

Barbados explains that States are obligated to protect the climate system and other parts of the environment from anthropogenic emissions of GHG for States, present and future generations. The considerations and principles States and international organizations should take into account, collectively and regionally, when analyzing shared but differentiated responsibilities in the context of climate change, from the perspective of human rights and intersectionality comprises (i) international environmental law; (ii) the obligation not to cause transboundary harm; (iii) the obligation to protect and preserve the environment within a State’s own jurisdiction; (iv) the obligation to protect and preserve the environment in areas beyond national control; (v) the obligation to mitigate and repair; (vi) the obligation to cooperate; and (vii) the obligation to compensate.

How should States, individually and collectively, guarantee the right to redress for climate damage caused by their acts and omissions, considering equity, justice and sustainability?

States should offer reparations for damage caused by climate change and other forms of redress to assist other States in mitigating, adapting, and repairing the negative impacts of climate change. International law requires that: (i) States must provide full monetary reparation to other States for climate change damage caused by their wrongful acts in breach of obligations; (ii) States must offer full monetary reparation to other States for acts and omissions attributable to them in whole or in part; (iii) States must offer other redress for damage due to climate change by inter alia contributing to climate change funds, offering financial resources and ensuring transfers of technology; and (iv) full reparation and other assistance to address climate change must take account of the circumstances of affected States and peoples.

How should inter-state cooperation obligations be interpreted?

States should interpret inter-State cooperation obligations as including duties to notify, consult, and negotiate, exchange information, and assist in mitigation, adaptation, and repair of the consequences of climate change. The constituent elements of the duty to cooperate are addressed as (i) Inter-State cooperation obligations should be interpreted to include a duty to notify; (ii) Inter-State cooperation obligations should be interpreted to include a duty to consult and negotiate; (iii) Inter-State cooperation obligations should be interpreted to include a duty to exchange information; and (iv) Inter-State cooperation obligations should be interpreted to include a duty to assist in the mitigation, adaptation and repair of the consequences of climate change.

What obligations and principles should guide State actions to ensure the right to life and survival of the most affected regions and populations in different countries and the region?

States should be guided by the obligations and principles set out in prior answers. Amongst others, these are (i) the content and legal basis of States’ obligations as regards the climate emergency and human rights; (ii) climate change is fundamentally undermining the fulfillment of internationally protected human rights, including the right to life; (iii) some of the worst effects of climate change are felt by small island States and among other developing States; and (iv) it is critical, so that Barbados and similarly situated Caribbean States can mitigate the effects of climate change and protect the right to life of their people, that they should have the financial means to do so.

Further, States should have regard to the following principles: (i) States must ensure that activities within their jurisdiction and control do not cause environmental transboundary harm; (b) States are under an obligation both to mitigate harm already caused by their activities (as well as those taken by individuals for which States are internationally responsible), as well as to repair harm to the environment even if the State in question has not
caused it; (iii) States’ obligation to cooperate is a further critical component of their climate obligations and should guide States’ actions when implementing actions taken to ensure the right to life and survival of the most affected regions and populations; (iv) the precautionary principle; and (v) the polluter pays principle should guide States.

States must observe certain practical requirements to effectively ensure the right to life and survival of the most affected regions and populations, including providing access to environmental information and access to justice. Finally, States are obliged to make full reparations for breaches of international obligations concerning environmental matters, taking into account the particular situations of a given State or its people, including the provision of financial and non-financial resources.

4. REPUBLIC OF PARAGUAY

The climate crisis and human rights at the international level

Climate change directly impacts the enjoyment of basic human rights, including the right to water, food security, housing, and health. States have the duty to promote and protect human rights amid the climate crisis. This duty entails formulating public policies to mitigate, adapt, and prevent the adverse effects of climate change on human rights. Climate change transcends national borders, so international cooperation and collaboration are vital to addressing the crisis.

Paraguay is a developing country and a land-locked state. Despite this, 100% of Paraguay’s electric grid comes from renewable and clean energy. 44% of the country is made up of forests. Paraguay’s contribution to global carbon emissions is 0.1%.

The Human Rights’ Council (HRC) Resolution (October 8, 2021) emphasizes that climate change impacts individuals and communities worldwide, particularly in developing countries, small island states, less developed states, and land-locked states. Further, the differentiated impacts of climate change are more severely experienced by women, children, people with disabilities, Indigenous communities, local communities, peasants, and rural workers. Equally, the impacts of climate change adversely impact people who live in conditions of water scarcity, droughts, desertification, minority groups, the unhoused population, impoverished communities, elderly, migrants, refugees, internally displaced people, people living in conflict zones, and those already in vulnerable situations. Additionally, the HRC recognized the vital contribution of environmental and human rights defenders to protecting human rights, the environment, and sustainable development. Due to its differentiated impacts, climate change effects require an integral, intersectoral, global, and intersectional lens.

Paraguay’s legal framework in the context of climate change and the environment

Paraguay’s 1992 Constitution establishes principles and fundamental rights related to the environment, setting the baseline for environmental protection and conservation (arts. 7, 8, 17, 46, and 47). Moreover, Paraguay has ratified the UNFCCC and the Kyoto Protocol. Following Paraguay’s commitments under these instruments, the government implemented the National Programme on Climate Change (Decree No. 14943 of 2001). Paraguay also ratified the Paris Agreement and issued several laws that specifically deal with environmental issues, including endangered species, wildlife, Indigenous communities, climate change, and biodiversity, among others.

Since 2011, Paraguay implemented a National Policy on Climate Change. This public policy aims to consolidate climate change at a national level and to promote the implementation of measures coherent with national development and international commitments. Additionally, since 2016, Paraguay has had a National Strategy for Climate Change Adaptation, as well as a National Plan for Climate Change Adaptation in place. The government also set forth a Mitigation Strategy and Plan, in tandem with a National Gender Strategy on Climate Change. The gender strategy promotes a gender perspective in formulating and implementing public policies that address climate change. Furthermore, Paraguay’s criminal law includes a specific section dedicated to environmental crimes.
Legal and judicial assistance to vulnerable people

Since climate change disproportionately impacts vulnerable people, Paraguay established a National Ombudsman Office to provide legal and judicial assistance to this population segment. This includes children and youth, women victims of violence, migrants, refugees and asylum seekers, Indigenous communities, elders, and people with disabilities. Paraguay has a strong institutional and legal framework directed towards assisting in the climate crisis.

5. REPUBLIC OF COLOMBIA

The Inter-American Court of Human Rights’ jurisdiction

According to Article 64(1) of the American Convention on Human Rights, every member State of the OAS can request an advisory opinion from the IACtHR. The scope of the advisory opinion is to interpret the American Convention or any other treaty related to protecting human rights within the American States. In so doing, the IACtHR can interpret any provision from the American Convention related to the request’s object. Further, Article 29 allows the IACtHR to bring in other instruments of International Law when their provisions relate to and could impact the protection of human rights.

In this case, multiple sources and legal frameworks conflate in protecting human rights and the environment, making it challenging for the IACtHR to provide a fully comprehensive advisory opinion. Following Advisory Opinion 23-17, these other instruments have the potential to contribute to a more effective advisory opinion that answers the questions posed by Chile and Colombia. The amicus calls on the IACtHR to consider the significance of providing specific guidelines concerning the questions posed and the diverse international regimes, particularly concerning the environment and human rights.

General comments regarding the questions posed in the Advisory Opinions’s request

The request seeks clarification concerning the States’ international obligations regarding human rights. Colombia argues that the request is built upon two central issues: (i) identifying the principles and obligations of the environmental legal framework that could aid the IACtHR to establish the States’ obligations to protect human rights and (ii) categorizing differentiated, emerging, and specific obligations that concern segments of the population that are more vulnerable to climate change.

Guiding principles on States’ obligations amid the climate crisis

The principle of common but differentiated responsibilities (CBDR) is foundational. CBDR recognizes the importance of ensuring that all States adopt efficient measures to protect the environment from degradation. These measures must be related to the damages and follow the cause of the damage and the respective capabilities of each State, with a particular focus on developing countries. Cooperation is the basis of CBDR, as established in Principle 12 of the Stockholm Declaration and consolidated by the Rio Declaration. Other instruments, like the Montreal Protocol and the UNFCCC, also included this principle. Given the disproportionate impacts of climate change, historic contributions should be considered when establishing mitigation and remediation measures.

The principle of intergenerational equity is central to sustainable development. Present generations have an unavoidable commitment to future generations. This principle is built upon the concept of justice in using and conserving the environment between generations. The Stockholm Declaration was the first instrument to mention equity for future generations in the context of environmental protection. The UNFCCC also included intergenerational equity in Article 3.1. Domestic jurisdictions, including Peru, Colombia, Brazil, India, Pakistan, Sri Lanka, and Kenya, have alluded to this principle. The principle is divided into three elements: (i) access to natural resources, (ii) ensuring future generations have options to survive, and (iii) preventing from leaving the planet in
worse conditions (quality). Further, this principle promotes meaningful and more just participation of future generations.

The principle of prevention and precaution focus refers to the obligation to prevent environmental harm or limit and control activities that may have caused such damages, as stated in Advisory Opinion 23-17. Further, the precautionary principle, as established in principle 15 of the Rio Declaration, urges States to avoid using scientific uncertainty as an excuse to delay the adoption of measures to prevent environmental harm. This is particularly relevant in the context of climate change's unknown effects.

The principle of maximum ambition possible is related to the commitments included in the Paris Agreement. NDCs are the instruments States must use to determine their own climate-related goals. In so doing, States must reflect their maximum ambition possible based on due diligence, CBDR and national circumstances.

Environmental obligations relevant to the climate crisis

The duty to prevent transboundary harm is essential amid the climate crisis. Advisory Opinion 23-17 consolidated the international obligation to prevent transboundary harm. This duty is two-fold: (i) it includes the hands-off obligation, and (ii) the active duty to ensure all activities under a state’s jurisdiction or control do not cause transboundary harm. This duty has also been codified by the International Court of Justice (ICJ). This obligation of conduct entails due diligence reflected in administrative and regulatory measures to protect the environment.

The duty to cooperate is the bedrock of international law, including international environmental law. States must acknowledge their interests and those of other States, particularly those common to the international community. Several international tribunals, including the IACtHR and the ICJ, have recognized this customary norm as key to environmental protection under good faith. Particularly relevant is financial and technological cooperation. The duty to cooperate includes the duty to notify and consult, the duty to negotiate with potentially affected countries, and the duty to exchange relevant information. Another relevant environmental obligation is the duty to prevent in the event of an environmentally significant risk that affects human rights. As the Advisory Opinion 23-17 stated, all harm that may affect the right to life or personal integrity must be considered significant.

The right to access information, participation, and justice in environmental matters

The right to access information has consolidated as a human right at the international and regional level (in the IACtHR’s jurisprudence and the Escazú Agreement). This right is two-fold: (i) it refers to the right of individuals to obtain information, and (ii) it is also a procedural right that makes possible the enjoyment and protection of other human rights. Accessing information allows for more effective participation and implementation of environmental obligations.

The right to access to justice is vital to address the climate crisis. Despite the extensive international legal framework, the environment worsens, leading to devastating effects. Many judicial bodies have stepped up to demand the enforcement of climate-related obligations and commitments. For example, the rights of nature and future generations broaden the ability of climate litigation to protect environmental rights.

States’ obligations regarding vulnerable populations

According to the IPCC, between 3300 and 3600 million people live in contexts vulnerable to climate change. As a result, a differentiated approach is necessary.

Climate migrants

Climate change impacts have increasingly affected mobility and human behavior patterns. In 2022, 32.6 million people were displaced due to natural disasters like floods, storms, droughts, fires, earthquakes, volcanic eruptions, and extreme temperatures. These numbers only refer to internal displacement but reflect the general State of human mobility. According to the IPCC, Latin America and the Caribbean are particularly vulnerable to climate-induced forced migration. As a result, Colombia asserts that the advisory opinion could help determine a
legal framework to consolidate the protection of climate migrants within the region and to establish guiding principles, obligations, and States’ duties.

Especially significant is the fact that there is no current binding international instrument that covers climate migrants. The IACtHR could consider other types of instruments, including the Guiding Principles of Internal Displacement, the Draft Articles of the International Law Commission of the United Nations for the Protection of People in the Context of Disasters, and the Interamerican Principles on the Human Rights of all Migrants, Refugees, Stateless and Victims of Human Trafficking.

**Vulnerable groups: children and youth, women, Indigenous and Afro-descendant communities, and environmental and human rights defenders**

Children and youth are particularly vulnerable to climate change. Climate change impacts such as water scarcity, food insecurity, vector-borne diseases, air pollution, and physical harm disproportionately affect children. The Committee on the Rights of the Child has recognized the interdependence of children’s rights and the protection of the environment. The child’s best interest must be a guiding principle in formulating and adopting environmental policies, including climate mitigation and adaptation measures.

Women and girls experience climate change, including extreme weather events, in a differentiated way. Women and girls’ rights to life, access to food and nutrition, water, education, adequate housing, land, and decent work are particularly affected. Women’s economic independence can also be affected due to their exposure to disasters, especially in less developed countries. Further, gender-based violence is also heightened by climate change. Equally, gender inequality is intensified by the climate crisis.

The IACtHR recognized that the right to a healthy environment and the enjoyment of related human rights has a different perspective concerning Indigenous communities. The environment is crucial to Indigenous culture and is a pillar of their political, social, economic, and spiritual lives. Indigenous communities derive their livelihoods from natural resources, so environmental degradation is particularly impactful. The IACtHR also recognized the importance of protecting the Indigenous rights to land, natural resources, and territory. Likewise, Afro-descendant communities and coastal and islanders are also particularly affected by climate change. Climate change exacerbates pre-existing social, economic, and environmental vulnerabilities.

Environmental and human rights defenders (EHRD) are another segment of the population vulnerable to climate change. States must protect EHRD from threats and retaliation so they can keep doing their work. Their rights to life, dignity, freedom of expression and association are constantly threatened. Further, intersecting axes of oppression can heighten their vulnerability to climate change.

**Peace and climate change**

Climate change also acts as an intensifier in conflict-ridden countries. The climate crisis exacerbates limited adaptation capacity. In some cases, conflicts emerge due to the pre-existing degradation of natural resources that leads to resource scarcity and unequal access. In other cases, the conflict context causes environmental harm, directly or indirectly.

6. **REPUBLIC OF CHILE**

**The climate crisis and the case of Chile**

The request for advisory opinion comes from a context of global climate emergency as acknowledged by the international scientific community. South and Central America are among the global hotspots that present high human vulnerability to climate impacts, particularly those living in a condition of poverty, with limited access to services and resources, those living in conflict-ridden zones, or those whose livelihoods highly depend on weather
(rural communities, farmers, fishers, etc.). The questions deal with the State’s obligations to address the climate crisis. This question should not be answered in a vacuum; instead, it should consider existing international and regional instruments, including the UNFCCC.

Chile is particularly vulnerable to climate change. The country presents seven of the nine characteristics determined by the UNFCCC to define vulnerability to climate change: low-lying coastal zones, arid and semi-arid zones, forests, socio-natural disasters zones, drought and desertification-prone zones, and high atmospheric contamination and fragile ecosystems. This vulnerability has been exacerbated recently due to climate change effects, including extreme droughts, wildfires, and extreme heat. Chile has complied with its obligations under the Paris Agreement by submitting its updated Nationally Determined Contributions (NDCs), which includes a pillar that connects it to the SDGs and considers just transition as a guiding framework. Chile has also submitted a Long-Term Climate Strategy under Article 4 of the Paris Agreement and has issued relevant statutes and norms within its domestic legal framework.

**States’ obligations derived from the duties to prevent and fulfill human rights in the context of the climate crisis**

Climate change and its devastating impacts are a type of harm to human rights. Hence, general obligations regarding human rights apply to the climate crisis. The IACtHR’s Advisory Opinion OC-23/17 established the content of States’ obligations in environmental matters, including (i) substantive obligations, such as the obligation to prevent significant environmental harm within and outside national boundaries, the obligation to act according to the precautionary principle, the obligation to cooperate, good faith and protection against transboundary harm. The IACtHR also identified (ii) procedural obligations, including the obligation to guarantee the right to access to environmental information, the obligation to guarantee access to public participation, and the obligation to guarantee access to justice.

Considering the effects of the climate crisis, the duty to prevent demands reading of these obligations under the climate change international legal framework (UNFCCC and the Paris Agreement). Chile argues that the IACtHR must consider human rights and climate change-related obligations jointly. According to the UNFCCC and the Paris Agreement, all States must prepare, communicate, and update their NDCs. However, there is no specific obligation regarding NDC contents other than each updated NDC must be more ambitious than the previous one. Further, developed states must provide financial and technological resources to support developing countries. Moreover, Chile asserts that the recognized principles are also relevant for aiding the Court’s interpretation of obligations, such as intergenerational equity, CBDR, precautionary principle, and international cooperation.

Under international human rights law and international environmental law, States must adopt climate adaptation and mitigation measures to reduce their GHG emissions and improve their resilience. Even though there is no specific obligation in international environmental law to mitigate, the Paris Agreement includes a general obligation to follow mitigation efforts at the domestic level to reach NDC goals. These measures will depend on each country’s development level and respective capacities. Developed countries have more stringent and concise obligations in the UNFCCC and the Paris Agreement.

Regarding adaptation, the American Convention obliges states to take action to prevent future human rights violations concerning the environment, as stated in OC-23/17. Many prevention obligations relate to States’ obligations to adopt adaptation measures as these measures are vital to mitigate climate change’s adverse impacts and protect human rights. Adaptation obligations are not voluntary. Instead, these obligations derive from the duties to protect and ensure universally recognized rights, including the right to life and food. Adaptation obligations aim to prevent and reduce vulnerability, increase resilience, reduce harm, and seize new opportunities. These obligations should follow inclusive, participatory processes that apply a differentiated lens to vulnerability drivers, including poverty, inequality, discrimination, and marginalization. Furthermore, Article 7 of the Paris Agreement establishes guidelines for adopting adaptation measures. While the guidelines do not constitute obligations per se, they provide parameters to guide the adoption of these measures.
Lastly, States must adopt differentiated measures that recognize the vulnerability of specific population segments. Among those considered most vulnerable are children, women, people living in poverty, the Indigenous population, the elderly, persons with disabilities, and sexual and gender minorities. Hence, there is a need for an intersectional lens that recognizes multiple forms of discrimination.

The IACtHR has already touched upon obligations to regulate, monitor, and require environmental and social impact assessment and establish a contingency plan, establishing States’ duty to supervise and monitor activities that could cause environmental harm under their jurisdiction. The obligation to conduct an environmental impact assessment (EIA) is clear and must be complied with regardless of whether the project is led by the state or private parties. EIA must be done according to international standards and good practices.

Relevant to these questions are, among others, the principles of intergenerational equity, common but differentiated responsibilities, the recognition of specific needs and particular circumstances, the precautionary principle, the adoption of cost-effective measures to deal with climate change, and international cooperation. These principles are explicitly embedded in the UNFCCC. Furthermore, human rights principles are also relevant, including equality and non-discrimination, the best interest of the child, non-regression, transparency and public participation.

**States’ obligations to preserve and protect the right to life and survival in the context of human rights and scientific consensus**

The IACtHR’s jurisprudence on rights to access to information, public participation, and access to remedy is vast. These rights are recognized as integral to the enjoyment of other rights, especially in the context of environmental harm. Moreover, the Escazú Agreement consolidated this jurisprudence. Article 13 of the Paris Agreement also establishes a transparency framework that fosters mutual faith and effective application. The country reports contribute to enhancing access to information and participation and monitoring NDC’s progress.

Particularly relevant is the concept of just transition included in the Preamble of the Paris Agreement. The energy transition must, thus, be achieved through three correlated pillars: (i) low carbon and biodiverse societies, (ii) decent work opportunities, and (iii) access to affordable goods and services to promote human rights. This was also recognized in Resolution 3/21 issued by the Inter-American Commission and REDESCA.

The UNFCCC provides the necessary framework regarding loss and damage. Further, Article 8 of the Paris Agreement acknowledges the importance of preventing, reducing, and addressing the loss and damages derived from climate change. It provides a list of measures to facilitate cooperation in this matter.

Environmental information is crucial to ensure the enjoyment of other human rights. The Escazú Agreement consolidated the most relevant standards in this matter. These standards could guide the IACtHR’s opinion regarding the scope and relationship between procedural and substantive rights.

**States' differentiated obligations regarding the rights of children and future generations amid the climate crisis**

At the international level, human rights obligations are more stringent as they relate to children’s rights due to their particularly vulnerable situation and the fact that they are sometimes unable to demand the protection of their rights. The Convention on the Rights of the Child establishes the obligation of states to adopt all necessary measures to fight diseases and malnutrition in the context of health services through the application of available technology and food supply, considering the risks of environmental pollution (article 24). The IACtHR has also examined children’s particular situation amid the climate crisis, mainly through Indigenous peoples’ rights decisions. Lack of access to their traditional lands results in a disruption of food and clean water supply, which affects Indigenous children in a differentiated way. States must then adopt a unique position to guarantee better
care for children and provide primary conditions to ensure their vulnerability will not affect their development or life projects.

The international human rights law framework has recognized the importance of children’s participation in processes related to the climate crisis. Their knowledge influences the actions of their families and communities. States must, thus, recognize children as active participants and natural resource administrators. As stated in the CRC and by the Special Rapporteur on Human Rights and the Environment, it is extremely relevant to ensure children’s meaningful participation in decision-making spaces concerning climate change adaptation and mitigation measures.

**Emerging States’ consultation and judicial processes obligations amid the climate crisis**

The American Convention covers judicial remedies in Articles 8 and 25. These provisions establish a set of requisites to consider a judicial remedy effective following legal due process. Access to justice is recognized as a right, so States must avoid unnecessary barriers undermining this right. The Rio Declaration and the Escazú Agreement also include a right to access environmental justice, where States must adopt a series of institutions, processes, and rules that allow the enjoyment of this right, including specific support measures for vulnerable populations.

Advisory Opinion OC-23/17 recognized the close link between the right to life with dignity and the protection of traditional land and natural resources, considering Indigenous communities’ vulnerable situation. Hence, the obligation of consultation aids in guaranteeing the enjoyment of Indigenous rights and reduces vulnerability caused by an activity. Chile asserts that this obligation refers only to those activities and measures that specifically affect vulnerable communities and does not cover all activities. As such, national application measures, including NDCs or long-term strategies, do not need to observe the consultation obligation. However, when implementing the measures adopted therein, consultation might be required if the activities specifically impact Indigenous or local communities.

**States’ obligations to protect environmental and human rights defenders (EHRD), women, Indigenous, and Afro-descendant communities amid the climate crisis**

States’ obligations to protect EHRD stem from the responsibility and fundamental duty to protect all human rights. Particularly relevant is the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, which is the starting point for recognizing the right to defend human rights. This Declaration includes several rights that allow EHRD to do their work. The Escazú Agreement further consolidated EHRD rights and the State’s obligations to ensure their protection.

Women and girls EHRD are disproportionately affected. Their identity as members of Indigenous, Black, or other marginalized communities makes them more vulnerable to structural inequalities, including poverty and lack of land tenure. Additionally, gender-based discrimination leads to violence and threats against women and girls.

The UN Declaration on the Rights of Indigenous Peoples and the Escazú Agreement establish a wide range of rights to protect Indigenous communities, considering their worldviews. More importantly, these instruments aim to guarantee Indigenous and other marginalized communities' active participation in decision-making spaces.

Both IACHR and the IACtHR have emphasized States’ obligations to investigate and prosecute crimes against EHRD. Preventing EHRD’s rights violations implies an active role of the state to ensure (i) a free environment to do their work, (ii) avoid preventing them from doing their work, (iii) protect EHRD when in risk, including through precautionary measures, and (iv) investigate, prosecute, and sanction crimes committed against EHRD. Furthermore, Article 8 of the Escazú Agreement obliges State parties to guarantee a safe and adequate environment for the work of EHRD.
The IACtHR has recognized the importance of judicial processes to clarify circumstances surrounding attacks and threats against EHRD to achieve truth and adequate reparation. States must investigate all crimes against EHRD amid the climate crisis. Failing to investigate and prosecute these acts negatively impacts the free enjoyment of human rights. Moreover, articles 1.1, 8.1, and 25 of the American Convention establish a state obligation to provide effective judicial resources to victims according to legal due process.

**Shared and differentiated states' obligations and responsibilities**

The principle of CBDR has allowed flexibility in climate negotiations, which is needed to reconcile the interests of diverse actors. Chile argues that analyzing these responsibilities requires understanding the situation of countries under the IACtHR jurisdiction in relation to their obligations under the UNFCCC. Chile recalls that some countries in the region have yet to accept the IACtHR's jurisdiction and are among the countries in Annex I of the UNFCCC. These countries must lead climate action due to their historical emissions.

Establishing causation on climate matters is harder than environmental harm generally. GHG emissions effects can travel through space and be delayed in time. This adds complexity to establishing the causal link and subsequent responsibility. Following OC-23/17, Chile asserts that the right to remedy is directly interlinked with the right to access justice. Hence, states have a double duty to guarantee (i) access to resources to challenge any norm, act, or decision and (ii) access to justice without discrimination. Given the highly technical nature of environmental and climate information and action, measures directed towards leveling the playing field are needed to ensure responsibility in climate litigation.

According to the Paris Agreement, all States must consider the interests and concerns of developing countries that might be more affected by the adopted climate measures. States must also cooperate in adopting measures to implement the Climate Empowerment Action. In terms of voluntary commitments, the UNFCCC and the Paris Agreement include provisions for cooperation. Developed states are expected to have more involvement at the international level to aid developing countries in achieving their obligations and commitments.

Particularly relevant is the need to acknowledge these regions' increased vulnerability to climate change effects. Hence, states must consider these regions differently when adopting climate mitigation and adaptation measures.

The UN Special Rapporteur on Human Rights and the Environment has underscored the particular vulnerability of climate migrants or displaced persons. Their special vulnerability stems from the fact that they are not considered within the definition by the Convention relating to the Status of Refugees or its Protocol and are therefore excluded from the protection granted therein. Nevertheless, climate refugees need to be protected. The IACHR has affirmed the need to implement a legal framework to guarantee their protection, domestically and internationally.

7. **REPUBLIC OF EL SALVADOR**

State obligations under the duty of prevention and guarantee of human rights connected with the climate emergency

The extent of the duty of prevention that States have under the climate change phenomenon is broad and multiphasic and based on Article 1 of the American Convention, the Paris Agreement, and the IPCC. Climate change impacts mainly affect economic, social, cultural, and environmental rights ("ESCE"), with special emphasis on vulnerable groups. El Salvador considers that States' obligations should be aligned to protect the human rights inherent to every individual. Also, States must recognize that climate change has wide repercussions on the effective enjoyment of human rights and that environmental degradation, desertification, and climate change are causing an impact and dramatic rise of the conditions of vulnerability, negatively impacting the rights of food, health, and security. States must act in a coordinated manner and respond comprehensively and sufficiently to
the crisis by sharing knowledge and technology and recognizing the principle of CBDR under the Paris Agreement. Likewise, States must develop and implement adaptation strategies to protect their ecosystems and populations from climate change impacts. The obligations and duties of the ACHR and the Paris Agreement must be applied in internal and external regulations.

**State measures to minimize the impact of climate change damages under the ACHR**

States must ensure social and environmental benefits through performance indicators in four dimensions: (i) conservation and protection of the environment; (ii) appropriate development that does not significantly affect the ecosystems, based on the intergenerational responsibility principle; (iii) a culture of peace and respect of human rights and the promotion of environmental education; and (iv) effective participation mechanisms of the communities to promote real environmental democracy. This can be achieved by applying the duty of prevention and the effective management of the environment. States must invest in investigating and developing clean technologies and adaptive solutions that integrate climate science into political decisions.

Regarding the differentiated measures that shall be taken, the duty of guarantee and prevention shall be different in benefit of women, children, elderly people, and people with disabilities, among others, that transverse the protection of the ESCE rights against extreme climate change phenomenon or slow development and apply environmental indicators that allow the prediction of the impacts of climate emergencies in a differentiated way. States must identify risk zones and offer measures of prevention and quick answers to the high-risk population.

**What considerations shall a State to implement its obligation of (i) regulate, (ii) monitor and audit, (iii) request and approve environmental and social impact assessment, (iv) establish a contingency plan and (v) mitigate the activities that may aggravate or aggravate the climate emergency?**

States shall consider (i) prevention principle and obligation, (ii) obligation to prevent transboundary environmental damages, (iii) obligation to repair, (iv) obligation to regulate, and (v) obligation to mitigate. El Salvador highlights the due diligence principle and also considers the principles of precaution, prevention, intergenerational justice, climate justice, inclusive participation, international solidarity, environmental sustainability, resilience, community autonomy, circular economy, low carbon, no regression, adaptation based on ecosystems, intergenerational equity, transparency, and accountability.

**Obligation to preserve the right to life and survival against the climate emergency**

Article 9 of the Environmental Law gives the right to the population to be informed in a timely manner, clearly and sufficiently in a term not higher than fifteen business days about the environmental policies, plans and programs related to health and life quality. The mitigation and adaptation measures shall begin with adequate and differentiated environmental information allowing vulnerable communities and populations to decide, adopt and implement mechanisms and measures connected to their reality. States also have the responsibility to act proactively to prevent, mitigate and tackle the impacts of climate change.

**States’ differential obligations regarding the rights of children and new generations facing the climate emergency**

Each State must implement reinforced guarantees in favor of children and an intergenerational obligation to protect the environment. Furthermore, States must ensure the right of children to be heard and participate, mainly in situations that directly affect them. Those rights must be framed as a procedural right to access the mechanisms established in the Human Rights Protection System.
Emerging States’ obligations of the consultancy and judicial procedures facing the climate emergency

States must ensure access to justice for every individual within its jurisdiction. Judicial procedures must comply with the standards of a fair and impartial trial.

Obligations of protection and prevention of environmental and territorial defenders, like women, indigenous and afro-descendant communities

El Salvador reformed its Criminal Code to classify as a criminal aggravation regarding any offence against someone who was doing humanitarian labor. As part of the NDC, women are understood as agents of change and have a higher level of empowerment in risk disaster management. For each milestone or mitigation and adaptation goal, the NDC of El Salvador highlights the gender approach, commitments with local communities and ancestral knowledge. Mitigation measures must also be done with a fair and tailored approach and participation of vulnerable populations.

CBDR and obligations of States facing a climate emergency

States and international organizations must acknowledge and apply the CBDR where every State has the responsibility to take action, but those actions must be proportionate to the historical and present contribution of the States to climate change as well as their economic and technological capacity.

8. REPUBLIC OF BRAZIL

The Brazilian State considers that the request for an advisory opinion meets the necessary formal requirements. Considers that the request is opportune and convenient, since the IPCC points out that South America and Central America are highly vulnerable and exposed to the effects of climate change and the regions face interconnected ecological and socio-economic vulnerabilities. The State considers that the assessment of climate change in the Latin American context must take into account the global scope of the phenomenon, in light of the unequal distribution of its impacts, with Latin America being one of the regions in the world most vulnerable to its intensification, despite having historically contributed to a smaller extent to its occurrence. It calls for countries to take responsibility for the problem in light of the principle of CBDR.

Brazil suggests that the Court takes into account when deciding, in a non-exhaustive list, the principles of respect for human rights and fundamental freedoms, equality and non-discrimination on the grounds of race, color, sex, gender, language, religion, political or other opinions, sexual orientation and gender identity, equity for present and future generations, priority consideration of children’s rights, prevention, due diligence and precaution, use of the best possible scientific evidence and, where appropriate, traditional, local and indigenous peoples’ knowledge, democratic participation, access to information and access to justice, national sovereignty and non-intervention, CBDR and respective capacities in the light of different national circumstances, international cooperation, protection of natural systems and biodiversity as autonomous legal interests with intrinsic value, regardless of their usefulness for human activities.

The principle of CBDR

To specify the content and scope of States’ obligations to each other, it is important to consider the principle of CBDR-RC, which is widely recognized by international standards. It should also be considered Latin America’s proportionally smaller historical contributions to climate change, the region’s specific vulnerability and the need for capacity building, based on international financial and technological cooperation and assistance.
The obligation of international cooperation

The Court has the opportunity to deepen the meaning of the scope of the obligation of international cooperation already recognized in Advisory Opinion No. 23/17 about protection against environmental damage and set out in international standards. This principle is linked to that of CBDR and the idea of equity within and between countries. It is necessary to establish criteria to legally assess the relationship between non-compliance with commitments assumed in environmental agreements and international cooperation obligations defined by international human rights law. Brazil suggests that the Court also consider the commitments of Articles 4.4 and 4.5 of the Paris Agreement. Human rights obligations related to climate change must be harmonized with the NDCs. The concept of sustainable development must be interpreted in a balanced way, in its economic, social and environmental dimensions.

Substantive obligations

In this group of questions, Brazil discussed the obligations to prevent, mitigate, and adapt to climate change. Regarding the first, it asserted that climate change is a human rights problem. It affirms that when states fail to prevent it and combat its impacts on rights, they breach their duty to prevent human rights violations. Applying the obligation to prevent requires recognizing that climate change is a global problem, linked to human action and preventable, and that it is necessary to adapt natural and human systems to the effects of climate change. The Court can elaborate on the content and scope of the prevention obligation in the context of climate change, focusing on human rights, mitigation, and adaptation. Regarding prevention obligations, Brazil believes that the adoption of emission reduction targets of the highest possible ambition should be included within national circumstances and capacities and in line with international environmental agreements, particularly the Paris Agreement. The targets should be translated into appropriate measures by States based on the best available scientific evidence. Brazil affirms its legal system treats the right to an ecologically balanced environment with constitutional status, establishing duties to the public authorities and the community. The Brazilian State understands climate balance as central to the right to an ecologically balanced environment. As such, adopting specific measures to maintain a balanced climate is a constitutional obligation. It expects that the Court will guide states on the content and scope of mitigation obligations in the light of international human rights commitments.

Regarding the obligation to adapt, it is believed that these measures need to consider the possibility of transformations in the relationship between the economy and ecology to move towards sustainable development. It argues that the norms and rules for access to resources for adaptation measures should consider simplified mechanisms that favor access by the most vulnerable populations and their representative organizations. Access to information and education should be considered, guaranteeing the population access to information on climate change and climate risk and ways to protect themselves and adapt.

Procedural obligations

Brazil first discussed the right of access to justice regarding procedural obligations. To guarantee the right to an ecologically balanced environment and its climate component, States need to define the instruments for individual and collective protection. It is, therefore, appropriate for the Court to define the nature of the right to an ecologically balanced environment, its climate component, and legal instruments of protection. The Court should also rule on the obligations of States to meet the needs of vulnerable people, per Article 8.5 of the Escazú Agreement, to ensure equal and non-discriminatory access to justice. On access to information, it argues that the Court should elaborate on the role of the best available scientific evidence in formulating public policies related to climate change and on producing and disseminating information to the public. It should further explore the meaning of access to information in the context of climate change. Regarding participation in decision-making processes, it considers that the Court should highlight the role of the right to participation in its advisory opinion as an indispensable tool for the democratic guarantee of decisions to tackle climate change.

Non-discrimination obligations
Regarding children and adolescents, Brazil argued that the Court will have the opportunity to reaffirm the priority to be given to children’s rights in formulating and implementing mitigation and adaptation measures. The Court should recognize the centrality of women’s participation in decision-making processes related to climate change, as well as special measures to protect their rights in light of gender inequalities, which result in disproportionate impacts on women and girls. Regarding Afro-descendants, it is considered that guaranteeing the social, economic, environmental, and territorial rights of traditional peoples and communities are state obligations that contribute to adaptation and mitigation objectives. Land regularization is an efficient way of reducing carbon emissions. Concerning indigenous peoples, it affirmed that indigenous lands, quilombola territories, territories of traditional peoples and communities, and conservation units are essential for maintaining cultural diversity, tackling climate change, and protecting biodiversity. It is necessary to recognize the deep relationship between these peoples and the environment, promoting land regularization. The impacts of climate change on these territories are increased because of peoples’ close relationship with nature. The participation and prior and informed consultation of indigenous peoples must be respected in the case of measures that directly affect their interests. Furthermore, it is important that the Court recognizes the role of environmental and human rights defenders and the special duties of protection applicable, and that international environmental cooperation programs take into account the decisive role of environmental defenders as local articulators and indispensable actors for the success of cooperation measures. Finally, the Court must consider the importance of preserving the environment and climate balance for the enjoyment of future generations through mitigation and adaptation policies that consider the medium and long-term horizon.

9. UNITED MEXICAN STATES

Prevention Principle

The Paris Agreement and the UNFCCC must be interpreted to mean that States have a duty to employ every measure at their disposal to avoid activities that cause significant harm to the environment and limit the sustainable development of present and future generations. Even if the Paris Agreement has more lenient obligations around environmental protection than other international instruments, it must be understood that those other obligations are also applicable in implementing the Paris Agreement.

Climate science

States must consider the best available scientific evidence when interpreting the scope of the duties of due diligence and to prevent activities that have a significant impact in the environment. This is applicable to the Paris Agreement and the UNFCCC.

Access to environmental information

States have a duty to provide environmental information without demanding proof that the applicant has a direct interest in it. States must generate statistics with a gender perspective on climate change. This data must allow for a disaggregation of variables like sex, sexual orientation, disabilities, and the care duties that generally befall women. Additionally, all information generated by states must be accessible and comprehensible to society. Finally, the right to access environmental information is interrelated and interdependent with other rights contained in the American Convention, and, as such, States must safeguard it to protect other rights like the right to life, health, and participation.

Children and Human Rights
State obligations that stem from the Paris Agreement and the UNFCCC must be interpreted considering relevant international instruments around the protection of children, such as the Convention on the Rights of Children. States must also urgently design and implement adaptation measures that consider children’s opinions and vulnerabilities. States must include children in environmental decision-making. They must also promote environmental education to prepare children to act, defend and protect themselves from environmental harm.

**States duties around judicial and consultation duties**

The duty to provide access to effective judicial remedies contains the duty to protect and repair human rights violations derived from climate change. States must adopt necessary measures to allow victims of such rights violations to access justice in state courts and obtain adequate remedies. To this end, states must (i) legislate clear and accessible mechanisms for victims, (ii) eliminate procedural obstacles that victims face, and (iii) establish integral repair mechanisms for victims. Additionally, Mexico considers that the duty to consult is a procedural duty of the general obligation to cooperate in good faith. Its fulfillment is a part of due diligence measures like conducting environmental impact assessments, as well as the duty to notify affected parties and negotiate alternative measures to avoid environmental harm.

**Climate defenders, women, and indigenous and Afro-descendant communities**

The measures and policies that states must implement to enable the work of climate defenders and women, are all those which can prevent any threat against them. Mexico highlights the (i) awareness campaigns to promote the importance of environmental defenders and of the participation of women and girls as activists, as well as of their rights; (ii) training for state agents on human rights standards and on how to treat risk situations involving environmental defenders; (iii) protection mechanisms and protocols to investigate threats and aggressions suffered by environmental defenders; (iv) mechanisms to protect witnesses, victims, and their families as a result of their participation in investigations; (v) independent and autonomous forensic services; (vi) training for state agents to apply the aforementioned policies; (vii) periodic reports on the effectiveness of the enacted policies; (viii) implementing improvements on enacted policies based on the effectiveness reports.

Specifically regarding the protection of women’s right to defend the environment, States must consider, at least (i) implementing intersectional, intercultural gender perspective in investigations related to risk situations and in risk mitigation policies; (ii) consider that women often have less access and control of natural resources and that gender violence is often used to perpetuate power asymmetries between men and women; (iii) give a central role to the complexities that ensue from the multiple intersectional forms of discrimination and violence that women defenders face due to their profession and gender; (iv) implement protection measures that ensue from the women defender’s own priority and needs definition in order to accompany them while respecting their will; (v) ensure women defenders have effective access to justice in conditions of equality; (vi) recognize and reject personal and institutional prejudices, gender stereotypes, and stigmatization that women defenders face.

Specific factors that must be considered due to intersectional and disproportionate impacts include, at least: (i) policies aimed to protect the environment from the climate crisis must incorporate an intersectional, intergenerational, intercultural perspective and also considers the disparate impacts that vulnerable groups face from climate change; (ii) remove obstacles that vulnerable groups face in accessing justice and mass media; (iii) private and state actors must be made aware of the important role that environmental defenders play, as well intersectional factors and disparate impacts vulnerable groups face; (iv) vulnerable groups must be made aware of the mechanisms and measures to protect environmental defenders; (v) effective participation of vulnerable groups in the design of measures aimed at protecting them.

Finally, States must consider the factors outlined by the Interamerican Human Rights Commission’s guidelines for due diligence when investigating crimes against human rights defenders. These guidelines include four central factors: (i) environmental defense as the central hypothesis of the investigation; (ii) the need to consider context, the complexity of the facts and possible risk patterns that could come into play in crimes against environmental
defenders; (iii) the need to determine differentiated levels of responsibility and penalties; and (iv) employing intersectional and differentiated perspectives.

**State’s common and differentiated responsibilities**

International organisms must consider the factors and hardships that each state faces to comply with environmental treaties. International cooperation is an effective way to access scientific knowledge and transfer technology that helps address climate change. The principle of common but differentiated responsibilities must be considered when applying the principle of cooperation.

**International cooperation**

Climate change cooperation measures must have a preventive and precautionary approach. States must take individual and collective measures to ensure GHG emissions reduction, adequate resource assignation to counter, adapt, and remedy environmental harm, and everyone’s meaningful participation.
Four organs of the Organization of American States (OAS) presented their written observations, namely: (1) *Pan-American Institute of Geography and History*; (2) *Inter-American Commission of Women*; (3) *Inter-American Commission on Human Rights (IACHR) and Special Rapporteurship on Economic, Social, Cultural and Environmental Rights (REDESCA)*; and (4) *Inter-American Children’s Institute*.

### 1. PAN-AMERICAN INSTITUTE OF GEOGRAPHY AND HISTORY

This summary will be included in the next iteration of the report.

### 2. INTER-AMERICAN COMMISSION OF WOMEN

**Legal Framework and international *corpus iuris***

The main legal framework of the right to a healthy environment and its implications shall be addressed from the perspective of Article 26 of the ACHR and the new jurisprudence of the Court’s economic, social, cultural, and environmental rights. Since Advisory Opinion 23/2017 (OC-23), the Court has recognized the environment as an autonomous right protected by Article 26 of the ACHR. Regarding climate change, the Court must consider the following international legal instruments:

- United Nations Framework Convention on Climate Change;
- Paris Agreement;
- Escazú Agreement;
- Aarhus Convention;
- IPCC reports;
- Special Rapporteur on Economic, Social, Cultural and Environmental Rights reports;
- Biodiversity Convention;
- Kunming-Montreal Global Biodiversity Framework;
- 2030 Agenda;
- World Heritage resolutions;
- The Strasbourg Principles of International Environmental Human Rights Law;
- General Comment on Children’s Rights and the Environment with a Special Focus on Climate Change (General Comment No. 26);
- Belém do Pará Convention;
- CEDAW Convention.

**Gender topics related to the Advisory Opinion**

Art.9 of the Escazú Agreement establishes that each Party member shall guarantee a safe and favorable environment for the people, groups, or organizations that promote and defend human rights related to environmental matters and that they can act without restrictions, threats, or insecurity. Within this group of people and human rights defenders, women suffer a differentiated impact when violations of human rights emanate from
their role as environmental and territorial defenders. The Court has engaged in this topic in the cases *Kawas Fernández Vs. Honduras* and *Luna López Vs. Honduras*, where the last one emphasizes the obligations of the State to adopt all necessary measures to ensure the right to life for people with a special vulnerability. Additionally, the Court mentioned the Escazú Agreement, specifically Article 9 in the case *Baraona Bray Vs. Chile*.

Global Witness’ reports show that in 2019, 212 defenders of the environment and territory were murdered, of which 2/3 were in Latin America. In *Digna Ochoa Vs. México*, the Court highlighted that women suffer more obstacles related to gender discrimination and are victims of stigmatization.

Meanwhile, the CEDAW Committee, in its General Recommendation 33, stated that other factors limit women’s access to justice. CEDAW Recommendation 35 highlights that discrimination against women is linked to other factors that affect their lives, like stigmatization of women who fight for their rights and, particularly, women human rights defenders.

Regarding Climate Change, the ACHR, in its Resolution 3/2021, stated that States must recognize the essential role women play as environmental, land, and territorial defenders and their leadership in defending the right to a healthy environment on the continent. Also, States are responsible for ensuring the real participation of women environmental defenders and their movements in decision-making processes related to fighting climate change, including a just transition.

Furthermore, the report of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights states that indigenous women who are environmental defenders confront additional barriers such as sexual violence, sexual discrimination, harassment to their children and families and a higher vulnerability of bad treatment from the public force and armed groups.

All the reports and statements point out the work of human rights defenders but with a gender scope that includes the differentiated impact women suffer when facing climate emergencies. The Court must analyze the due diligence duties of protection, attention and investigation of aggression against women defenders by emphasizing in Art. 1, 4, 5, 8 and 25 of the ACHR and Art. 2 of the ACHR regarding the obligation by the States to take internal actions to eradicate stereotypes and stigmatization against women environmental defenders.

### 3. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR) AND SPECIAL RAPPOREURSHIP ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS (REDESCA)

**State obligations’ scope to protect the right to a healthy environment in the context of the climate emergency**

The IACHR and REDESCA have underscored the interdependence and indivisibility of the right to a healthy environment with other human rights, emphasizing the consequential determination of State obligations. From this vantage point, it is conceivable to invoke the rights and obligations of international environmental law as an integral part of the international *corpus iuris*.

Considering the scope of state obligations in safeguarding the right to a healthy environment amid the climate emergency, the IACHR has emphasized the critical need for states to concentrate their endeavors on achieving a continuous and progressive reduction of GHG emissions. States should refrain from facilitating or promoting such emissions to uphold and guarantee human rights. This imperative mandate ensures that investments, public activities, and private enterprises align with their commitments on the matter. In practical terms, this obligation
translates into implementing preventive measures, including regulation, supervision, and oversight in GHG reduction in both the public and private sectors.

**Scope of the obligation to prevent in a climate emergency**

The IACHR referred to this obligation by adopting appropriate measures to mitigate the effects of climate change, implementing adaptation measures, and remedying the resulting damage. In this context, the duty to prevent must encompass (i) the prevention of environmental damage, (ii) the prevention of exacerbation of such damage, (iii) the mitigation of its effects, and (iv) where feasible, the restoration of the environment. Additionally, the IACHR also includes in the prevention category the obligation to impose regulations on private entities as part of due diligence processes related to human rights, underscored by the efficacy of the polluter pays principle.

The IACHR considers that, in compliance with the obligation to prevent damage and to guarantee the rights impacted by climate change, States should require EIAs. In addition to the requirements already established by the Inter-American System bodies, States should include in their assessment the accumulated impacts derived from the GHG emissions and the environmental risks or dangers associated with climate change. These latter requirements are applicable in certain cases.

**Duty to regulate and adopt provisions in domestic law**

The IACHR observes that both the duty to respect human rights and the duty to guarantee that the State ensures the behavior of its agents, as well as non-state actors, comply with a legal framework that enables the realization of the rights enshrined in the Convention. In accordance with Article 2 of the Convention, States must adopt the necessary internal measures to ensure the effective realization of such rights. This obligation includes the adoption of internal legislation or the suppression of internal provisions.

The IACHR maintains that states must act individually and collectively to regulate and reduce GHG emissions and mobilize adequate resources for mitigation and adaptation to climate change. This means incorporating substantive and procedural guarantees that ensure respect for the human rights at stake in those provisions that regulate business actions, including the creation, operation, and dissolution of companies, as well as the consequent repeal and prohibition of adopting internal regulations or policies that weaken, undermine, or deny these rights, for example, in the productive, commercial, or investment spheres.

**Differentiated approaches in compliance with human rights**

Additionally, the IACHR presents a differential approach to compliance with human rights obligations in the face of the climate emergency, placing particular emphasis on populations in vulnerable situations such as women, people with disabilities, Afro-descendants, Indigenous and tribal peoples, migrants, older persons, people in poverty, and children.

The IACHR urges States to define actions that include prevention measures against environmental impacts and climate emergencies, encompassing the design of public policies to recognize and protect territories and the rights of indigenous and Afro-descent peoples. The IACHR also reiterates the need to include in the legal mechanisms and instruments of environmental protection, such as environmental and social impacts assessment, the risk of displacement of communities due to development projects or their effects on the territory.

Regarding climate action with a gender focus, the IACHR calls for the active participation of women and girls, not only because it is their rights but also as a matter of effectiveness response to climate change. The IACHR urges the modification of the regulatory frameworks, public policies, and/or discriminatory sociocultural behavior patterns.
The protection of people with disabilities and older people requires actions and efforts to address and remedy the disproportionate impacts of climate change on them. The IACHR mentioned a series of special considerations, adding their explicit inclusion in policies and plans designed to prevent and mitigate damage caused by climate.

Furthermore, the IACHR emphasizes special protection for girls, boys, and new generations. Seeking to ensure the defense of their interests the IACHR pointed out the substantive and procedural rights of children whose enjoyment is particularly vulnerable to climate change to support better formulation policies regarding the climate emergency.

Since defenders are part of the groups that require a differential approach, the IACHR raises special considerations to guarantee the right to safeguard a healthy environment and the territory of Indigenous peoples of African descent. Along the same lines, the IACHR reiterated the duty to investigate, prosecute, and punish crimes committed against environmental defenders.

Concluding, the IACHR addressed the principle of common but differentiated responsibilities, providing insightful interpretation and establishment of the international State cooperation obligation within the context of the climate emergency. In this comprehensive analysis, the IACHR elaborates on the obligation's scope, encompassing: (i) cooperation to promote a sustainable economic system, (ii) cooperation to address losses and damages arising from the climate emergency, (iii) cooperation for research and systematic observation, (iv) cooperation for the exchange of information, and (v) promotion of education and collaboration in financial matters.

4. INTER-AMERICAN CHILDREN’S INSTITUTE

In the context of climate change, children and adolescents are subject to greater vulnerability and their rights may be affected in multiple ways, including the right to life, loss of parental care and protective environment for their development, lack of access to drinking water and food, health, education, among others. It can also increase risks such as exploitation. Many reports from international organizations demonstrate that.

Citing the resolution on Climate Emergency and Human Rights in the Americas, the IIN argues that climate change constitutes one of the greatest threats to the human rights of present and future generations, including the health of ecosystems and the environment. The IIN also cites Advisory Opinion 23 of the IACtHR on the right to a healthy environment and the forthcoming general comment from the Committee on the Rights of the Child, which will provide guidelines for State actions. It is necessary to adopt a human rights approach, a comprehensive protection approach, a gender approach and consider the needs and perspectives of children and adolescents.

On the state obligations derived from the duties of prevention and guarantee of human rights related to the climate emergency

In accordance with General Comment No. 15 of the Committee on the Rights of the Child (CRC), the American Convention, and the Convention on the Rights of the Child, States have the obligation to mitigate climate phenomena and to protect the rights of children and adolescents, giving special significance to equality and non-discrimination. Mitigation measures must be taken in accordance with conventional inter-American obligations and scientific consensus as reflected in the Paris Agreement. These measures must be differentiated and focused on vulnerable populations. States must regulate, monitor, and supervise harmful activities; they must require and approve social and environmental impact studies, notably with the participation of children and adolescents; and establish contingency plans. The principles that should inspire actions are caution, a human rights approach, participation, intergenerational equity, and non-discrimination.

State obligations to preserve the right to life and survival in the face of a climate emergency
States must ensure access to information as an essential component for the protection of human rights. Active participation is even more relevant in a climate emergency, where children and adolescents should be aware of climate mitigation and adaptation measures. Easy access for children and adolescents to accurate and understandable information is key, as well as the possibility to express their concerns and opinions. As a result, States must collect, produce and disseminate relevant information in line with the Escazú Agreement. This reinforces the protection of the rights to life, property, health, participation, and access to justice, which are protected by the American Convention.

Differential obligations of States with respect to the rights of children and new generations in the face of climate emergency

Almost all children worldwide are exposed to at least one climatic or environmental stress. States must adopt measures to prevent and mitigate impacts on children. Advisory Opinion OC-17/2002 of the IACtHR has highlighted the specific vulnerability of this public. To determine the scope of the States’ obligations in the face of climate change and its impact on the rights of children and adolescents, the Court should be guided by the principle of the Best Interests of the Child, Human rights as an integral framework, a rights-based approach and comprehensive protection. Active participation should also guide the Court and is notably addressed in advisory Opinion OC-25/18 and the Declaration of Buenos Aires. This Declaration focuses on children’s participation and expresses the need to include in school programs the guarantee of environmental education. Finally, a gender approach, access to justice and international cooperation are key tenets for the Court’s advisory opinion.

Moreover, it is important to mention the differentiated obligations of the States in the region between developed and developing countries. The opinion should give special consideration to the situation of Indigenous, Afro-descendant, or peasant children and adolescents. It should further express the need to set quantifiable adaptation and mitigation goals with a focus on children and highlight that developing countries must have the tools to exploit their resources without negatively impacting the rights of children and adolescents.

Children themselves gave their opinions within the network coordinated by the IIN in the region. They insisted on the need for a comprehensive approach in the consideration of these issues. They have highlighted the importance of fostering social awareness about the origin and magnitude of environmental and climate problems. Awareness campaigns and effective public policies to stimulate change, notably through education, should be implemented. An active practice of environmental care, a holistic approach linking mental health and environmental well-being, should also be taken into account.

State obligations arising from the consultation and judicial procedures

The right to due process and the right to judicial protection enshrined in the American Convention place a responsibility on States to ensure that children and adolescents have access to effective judicial procedures and legal remedies. Strengthening judicial systems is necessary to guarantee children and adolescents the ability to access courts expeditiously and without undue obstacles. In addition, a timely implementation of judicial decisions should be ensured by States to provide adequate redress. Consultation of children and adolescents should also be genuine, participatory, and meaningful and should extend beyond purely formal considerations.

Conventional obligations of protection and prevention for environmental and territorial defenders, women, indigenous peoples, Afro-descendant communities

The American Convention and the Escazú Agreement provide a framework to adopt specific measures and policies to safeguard these vulnerable groups. Facilitating the work of environmental defenders through early warning systems and guaranteeing their meaningful participation in decision-making should be adopted. Differentiated mechanisms must be implemented to ensure greater consideration of children and adolescents. States should also adopt measures that consider the specific needs of women defenders.
An intersectional approach is required to address the situation of indigenous peoples, peasant communities and Afro-descendants and it is necessary to take special account of the children of those communities. Their participation in projects that affect them through free, prior and informed consent has been emphasized by the Court. Adequate information on crimes committed against environmental defenders should be made accessible, and States must implement clear protocols for the prosecution of those crimes.

**On the shared and differentiated obligations and responsibilities in terms of the rights of States**

A collective and regional approach that recognizes the inequalities of impacts on vulnerable groups should be embraced. Solidarity, equity, and common but differentiated responsibility should guide actions considering the unique capabilities and circumstances of each State.

The principle of environmental non-regression and precaution, established by the Court, should guide the measures aimed at reducing disaster risk, strengthening resilience, and guaranteeing food security and access to basic services.

States must recognize the link between climate emergency and forced mobility, which can be informed by the San José Declaration on Migration and Development, as well as the Court’s Opinion OC-25/18. Opinion OC-21/14 is also relevant since it refers to the rights and guarantees of children in the context of migration and refuge.
INTERNATIONAL ORGANS
AND BODIES
Twelve international organs and bodies presented their written observations, namely: (1) **Special Representative of the UN Secretary-General on Violence Against Children**; (2) United Nations Human Settlements Programme; (3) United Nations High Commissioner for Human Rights; (4) **United Nations Special Rapporteur on the promotion and protection of human rights in the context of climate change**; (5) **Scientific Advisory Panel to the Clean Air and Climate Coalition**; (6) **United Nations Special Rapporteurs on toxics and human rights, on human rights and the environment, and on the right to development**; (7) **International Organization for Migration (IOM)**; (8) **United Nations Special Rapporteur on human rights of internally displaced persons**; (9) **United Nations Permanent Forum on Indigenous Issues**; (10) **Commission of Small Island States on Climate Change and International Law**; (11) **Office of the United Nations High Commissioner for Refugees**; (12) **The South Centre**, and (13) **Office of the Secretariat of the Aarhus Convention and of the United Nations Special Rapporteur on environmental defenders under the Aarhus Convention**.

### 1. SPECIAL REPRESENTATIVE OF THE UN SECRETARY-GENERAL ON VIOLENCE AGAINST CHILDREN

The Special Representative of the Secretary-General on Violence against Children submitted two analytical materials to the IACtHR: (1) the Annual report to the UN General Assembly A/77/221 (25 July 2022) and (2) a corresponding report, *The Climate Crisis and Violence against Children* (October 2022). The submission identifies and highlights the multiple and interconnected drivers of violence against children in the climate context.

**The Climate Crisis is a Threat Multiplier for Violence Against Children**

Rising sea levels, air pollution, frequent floods, cyclones, fires, droughts, and heatwaves put children’s physical and mental health and overall development at an extremely high risk. The consequences of climate change affect children disproportionately compared to adults, with vulnerable groups of children living in poverty, rural areas, or under other disadvantaged circumstances (e.g., children with disabilities, indigenous children, or children living without family care), being even more affected than their peers. The climate crisis has been described as one of the most testing issues of our time, intensifying existing challenges and magnifying risk factors for children experiencing violence. That includes gender-based and sexual violence, child labor, trafficking, child marriage, and recruitment into criminal activities and networks, which make children susceptible to further exploitation. The long-lasting and, on some occasions, irreparable consequences of violence, ranging from death and health damage for victims to crippling economic costs for States, are well-documented. The authors underline that the climate crisis acts as a ‘threat multiplier’ for violence against children. Its results must be examined in conjunction with, and in addition to, the effects of parallel global emergencies, such as the COVID-19 pandemic, the armed conflict in Ukraine, and global poverty.

Poverty constructs the conditions in which violence against children can manifest. As a driver for violence, poverty also links to climate resilience and adaptability. Resilience to climate-related and environmental stressors depends on several factors, including the different financial and socioeconomic status of children's families. Children of poorer households, with a lessened resilience to climate-triggered financial hardships, are at greater risk of disrupting their education. Girls and young women are more likely to support their struggling families by taking up child-care or household responsibilities, interrupting or inevitably abandoning their education.

Food insecurity and displacement exacerbate these effects. Forced displacement, caused by climate-related disasters and other extreme phenomena, increases the likelihood of violence. Coupled with unsafe living conditions, deprivation of liberty due to the parents’ undetermined migration status, inaccessibility to essential services and aid, statelessness, and child separation, climate displacement poses a major threat to child well-being. The ways in which climate-related disasters and consequences affect the already most vulnerable communities of children make clear that climate crisis is intrinsically unequal in its impact. Those who are least responsible for it and less equipped to tackle its severity are also those most hardly hit by it. That necessitates child-sensitive policies and initiatives at the global, regional, and national levels, dealing with the detrimental
effects of the climate crisis specific to children and their well-being. Crucially, children should be key contributors to the solutions envisaged, inspiring and driving climate responses.

Involving, Empowering, and Listening to Children

Child participation in climate-related movements, negotiations, protests, and lawsuits has been increasing worldwide. Children have been organizing locally to find solutions to climate problems specific to their countries and communities. Some of the child-led initiatives include creating the first children’s bank in Peru (the Eco Banco del Estudiante), operating on the basis of cleaning up trash from the streets, planting trees to facilitate coastal recovery from erosion in Fiji, and organizing countless environmental campaigns and platforms. Nevertheless, children still face barriers to participating in climate decision-making processes, which are not trivial. Child environment and human rights defenders can be a powerful and catalytic force towards child-focused climate justice. Yet, the risks they face, including criminalization, reprisals, and stigmatization, are significant and are complemented by traditionally restrictive attitudes towards children’s abilities and right to have a voice. The multiple obstacles to child participation also mandate the urgency to safeguard participation avenues for children.

The Way Forward and Concluding Remarks

The authors emphasize that climate change and development are necessarily interconnected. This link indicates that responding to the climate crisis is a prerequisite for realizing the goals of the 2030 Agenda for Sustainable Development. Drastic and integrated action across the environmental and socioeconomic realms is needed, focusing on child-sensitive services designed for and with children. Securing the climate resilience and adaptability of essential social services should become a priority of investment. That is not restricted to protection, welfare, and care services but expands to ensuring the inclusivity of education, access to digital learning, health services, justice, and special support for vulnerable families. Child participation and involvement in developing and implementing child-sensitive laws and policies is key to reaching sustainable climate solutions and transformations. Strengthened accountability mechanisms, multilateralism, and international cooperation should underpin these steps.

2. UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME

“Urban environment” in Law

The legal concept of “environment” encompasses the concept of “urban environment”. Within Latin American legal systems, the concept of environment is understood from a wide perspective that goes beyond the biological. Thus, “urban environment” is part of the nature of the “environment” as a legal institution. The environment is a super-ecosystem formed by different intertwined, albeit autonomous, systems that interact with biological and non-biological elements. Therefore, from this perspective, the protected legal interest is both the natural and urban environment.

Urbanism and climate emergency

Cities all over the world contribute to climate change. Their significant carbon footprint is the result of bad urban planning and design. However, they can also be part of the solution to achieve a reduction of dangerous GHG effects. The solutions and innovation in the energy, construction, mobility, and planning sectors of cities have the potential to considerably reduce emissions that cause climate change.

While Latin America and the Caribbean have an international framework based on binding human rights treaties, they need to be made effective in relation to urban issues. A solid regional urban legal framework is needed. This
will allow authorities on a national, subnational, and regional level to address urban issues. Furthermore, an urban legal system with a regional focus on Latin America will allow the appropriate coordination between national authorities.

Latin America and the Caribbean are ideal for developing legal instruments on common urban issues that address climate emergencies. This is due to the relevant similarities in this region between social and legal systems, history, and language and the parallelisms between the difficulties, opportunities, and urban, climate, rural, and environmental possibilities.

**The Right to the City as an Environmental Right**

The “urban” and an “environmental right” are considered or developed in several Latin American legal systems. This allows the recognition of this right and inclusion within the Inter-American Human Rights System through the resolution of the Court in this advisory opinion.

**A proposal on the scope of the State obligations to address the climate crisis**

The right to the city constitutes a new human rights paradigm for cities and urban areas of the Americas that develops and makes effective the content of the right to life and life with dignity. It can be interpreted and considered as part of the right to a healthy environment. Since cities have contributed significantly to the climate crisis, UN Habitat strongly believes that to address its impact on urban areas, it is necessary to strengthen the right of the city on the international level, particularly in the IACtHR. This strives to develop the obligation of American States to guarantee this right. To do that, UN Habitat respectfully propose that the Court states:

- The recognition and development of the right to the city, as part of the right to a healthy environment.
- The implementation of a binding Latin American Agreement, based on international human rights treaties and instruments, establishing the normative guidelines, principles, and development of the rights comprising the right to the city.

**Specific answers to the questions of the request**

On the States’ duty to prevent, UN-Habitat states that they have a primordial responsibility to prevent the negative effects of climate change, especially in urban areas. For that, sustainable urban planning is an essential tool. This implies the construction of resilient infrastructure, the promotion of low-carbon urban practices, and the inclusion of green areas that work as carbon sinks.

Strategic measures must be taken to minimize the impact of climate emergencies. They include the transition to renewable energy sources, the promotion of public transport and sustainable mobility systems, and energy-efficient construction of buildings and infrastructure, the establishment of monitoring systems to prevent natural disasters provoked by climate change, reforestation and conservation of ecosystems, international cooperation, and the exchange of technologies and information on climate change.

The mitigation and climate adaptation measures that are incorporated in urban development plans must not only address the challenges of climate change, but also must promote equity and social justice. The policies of just transition must be integrated into all decision-making levels, from urban planning to the formulation of national public policies on climate change.

In relation to the response to prevent, minimize, and address the losses and economic and non-economic damages associated with climate change, the processes of diagnostic formulation in urban development plans must include an evaluation of tangible and intangible damages. This will allow them to proactively define strategies in urban plans for possible scenarios and rapid response mechanisms.
Concerning protecting children and teenagers from the climate emergency, from the perspective of the right to the city, children require special protection from the negative effects of climate change, due to their inherent vulnerability. States are responsible for guaranteeing that urban and rural areas are secure and inhabitable for children, which entails protection from extreme heat, poor air quality, flooding, and other natural disasters. Playing areas, schools, and other vital spaces for the development of children must be designed and maintained in accordance with climate resilience. Furthermore, it is essential that children are informed on climate change and their rights, and that they can participate in decisions that affect their future.

Finally, UN-Habitat recommends the adoption of a binding Latin American Agreement that establishes common principles applicable to the urbanistic continental reality. This agreement must also recognize and develop the Right to the City as an environmental right, and specify the obligations that it entails for American States.

5. UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

Scope of the States’ obligation to stop climate change

Several human rights treaty bodies of the United Nations have stated in different opportunities that climate change negatively affects the enjoyment of different human rights, such as the right to life, adequate food, access to water, health, a healthy environment, children’s rights, among others. Climate change is an existential threat that will disproportionately affect vulnerable peoples and poses a significant risk for different regions of the Americas, as well as for insular nations. Consequently, to fight back against climate change is a human rights issue. International human rights treaties entail the general obligation to guarantee the rights that they establish. There is a duty of protection, which in some cases entails protecting against environmental harm. Climate-related obligations include adopting adequate measures to protect life and life with dignity against the effects of climate change, protecting present and future generations, and regulating private entities to ensure their due diligence. Based on the available scientific evidence, the consequences of climate change on human rights are incompatible with international law. States’ obligations demand that they adopt all the necessary measures to effectively stop climate change. This includes reducing GHGs and abandoning or reducing the use of fossil fuels.

States’ obligation to cooperate

In accordance with several human rights treaties and their respective bodies, the measures to mitigate climate change must be internationally coordinated to be effective. However, international cooperation has to be implemented following the principles of equity and CBDR. This means that the duty to cooperate mostly falls on developed countries, who have to contribute in accordance with their capabilities to the related costs. The duty to cooperate is not only monetary but also entails the obligation to share resources, knowledge, and technologies to face climate change with developing countries.

International cooperation should be focused on combating and redressing the negative effects of climate change on vulnerable people. Also, in accordance with the Paris Agreement, there is an obligation to address the losses and harms that climate change produces. This includes economic and non-economic harm, such as the internal and international displacement of people. International cooperation must be sufficient, transparent and have a human rights perspective. This entails that the projects must be administered in participative and non-discriminatory processes. Access to information, effective participation, and access to justice are fundamental for people to be involved in climate action and for this action to address their needs.

Access to an effective judicial remedy

Based on what was stated by different UN treaty bodies on the right to an effective judicial remedy, judicial remedies must guarantee, among other things, that (i) all the necessary measures to mitigate and adapt to climate change are taken, and (ii) victims are provided with a just and effective remedy.
change have been implemented, (ii) business activities are adequately regulated, (iii) States or businesses face responsibilities when they do not comply with climate change related obligations, and iv) victims obtain redress.

In the context of climate change, ensuring access to justice has been difficult. The global nature of climate change requires states to adopt proactive measures to avoid procedural barriers that prevent effective access to justice. To ensure the right to access to justice, States must guarantee that their legislations do not establish unlawful restrictions on judicial remedies related to possible human rights violations due to climate change. An example of this restriction is the limitation of legal standing in environmental cases. In accordance with Article 8.3.c of the Escazú Agreement, States must guarantee access to justice through wide understandings of legal standing in the defense of the environment. Additionally, in the context of climate change, access to justice and redress must extend to all holders of rights in relation to the harm both within and outside the borders of the state.

States must also adopt all the necessary measures to ensure access to justice for people particularly affected by climate change, such as people with disabilities, Indigenous peoples, and minors. Lastly, environmental human rights defenders must be guaranteed access to justice. Their work is fundamental for an effective protection of climate action based on rights. Thus, States must create the legal and factual conditions for environmental defenders to freely carry out their work.

6. UNITED NATIONS SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS IN THE CONTEXT OF CLIMATE CHANGE

This summary will be included in the next iteration of the report.

7. SCIENTIFIC ADVISORY PANEL TO THE CLEAN AIR AND CLIMATE COALITION

Definition of Short-Lived Climate Pollutants and their impacts

Short Lived Climate Pollutants (SLCPs) are a subset of short-lived climate forcers (SLCFs), specifically those that cause warming rather than cooling. The main SLCPs are methane, ground-level ozone (O3), hydrofluorocarbons, and black carbon. SLCPs and co-emitted pollutants have important impacts on the climate system and air quality. SLCPs are many times more powerful than carbon dioxide per unit mass and are considered ‘short-lived' because they have a much shorter residence time in the atmosphere than CO2. Combined, SLCPs are responsible for up to 45% of global warming to date (net warming due to all warming agents; approximately 30% of gross warming considering only warming climate forces). Many SLCPs are, or can form, air pollutants that are harmful to people, ecosystems, and agricultural productivity.

The contribution of SLCPs to anthropogenic climate change, alongside their impact on air quality, means that they pose a direct threat to human rights, including the right to access a standard of living adequate for health and well-being, including food for nutrition and the right to a clean, healthy and sustainable environment. Example of these SLCPs are Methane and Tropospheric Ozone, Black Carbon, ad Hydrofluorocarbons (HFCs).

Fast SLCP Mitigation contributes to Climate and Development Goals
The shorter atmospheric lifetime of SLCPs compared to CO\textsubscript{2} means that they can be removed from the atmosphere much more quickly by reducing their emissions. They, therefore, provide the strongest plausible leverage to reduce the rate of warming over the next few decades. The speed at which SLCPs can be removed from the atmosphere presents an opportunity for quick, coordinated action to address global warming and to achieve immediate benefits for development and human health. Simultaneous mitigation of SLCPs and CO\textsubscript{2} is the best possible scenario for achieving the Paris Agreement target. Delayed action on CO\textsubscript{2} or SLCP control measures will have significant and potentially irreversible negative impacts on temperature, cumulative sea-level rise, and human well-being.

Fast and immediate action on SLCPs can avoid around 0.6°C of warming by 2050. It will also avoid over 50% of predicted warming in the Arctic by 2050 and significantly reduce the risk of triggering dangerous climate tipping points. The melting of ice sheets has nearly unstoppable momentum once it has begun, but early mitigation could reduce its rate by up to one-half, reducing vulnerability by giving coastal communities and low-laying states additional time to adapt. There are also multiple health, social, and development benefits that can be taken to reduce SLCPs. These benefits can be perceived almost immediately when action has been taken. Early mitigation of SLCPs helps meet the SDGs and the goal of climate action.

**How to get SLCP reductions**

Since GHGs and air pollutants are often emitted from the same source, we can achieve near-term climate mitigation along with co-benefits for development through integrated climate and clean air action to reduce SLCPs. UNEP and the World Meteorological Organization (WMO) have identified a package of control measures to reduce short-lived climate pollutants that can achieve 90% of the total potential emission reductions potential for black carbon, methane, and HFCs.

**Mitigation Measures for Methane & Tropospheric Ozone**

Methane mitigation is very likely the strategy with the most potential to decrease warming in the next 20 years. Most of these measures come from the fossil fuel sector (by reducing intended and inadvertent emissions during extraction, storage, and long-distance transport of coal, oil, and gas) and from waste and rice production through improved waste management and alternative growing techniques. However, these measures are not enough to achieve 1.5°C by 2030. Additional measures are needed, like decarbonization policies, including a transition to renewable energy and economy-wide energy efficiency improvements. Behavioral change measures and innovative policies, such as reducing food waste and loss, improving livestock management, and adopting healthy diets, are particularly important to preventing emissions from agriculture.

**Mitigation Measures for Black Carbon**

There are many options to reduce black carbon emissions and co-emissions (e.g., Organic Carbon, Carbon Monoxide). By deploying measures such as improved brick kilns and coke ovens, industrial sector emissions could be reduced by more than 75%. Emissions from households could be reduced by 60% by improving traditional biomass cooking and heating stoves, converting to LPG, and eliminating coal stoves and kerosene wick lamps. Transport sector emissions could be reduced by 50% by phasing out high-emitting diesel vehicles through electrification and applying EURO-VI diesel vehicle emissions standards. Emissions from burning of municipal solid waste and agricultural residue could be eliminated entirely.

**Mitigation Measures for HFCs**

HFC production and use is currently managed through the Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer. Full global compliance with the Kigali Amendment will reduce global consumption and HFC production by 85% by the late 2040s. However, an estimated 3.6 billion cooling appliances containing HFCs are currently in use globally and could grow to 14 billion by 2050 when the phase-down is complete. These ‘banks’ of HFCs will eventually be emitted into the atmosphere through regular equipment
leakage, poor maintenance, and improper end-of-life controls. Establishing end-of-life controls and strengthening systems for maintenance and repair could provide significant additional mitigation and development benefits.

8. UNITED NATIONS SPECIAL RAPPOTEURS ON TOXICS AND HUMAN RIGHTS (MARCOS ORELLANA), ON HUMAN RIGHTS AND THE ENVIRONMENT (DAVID BOYD), AND ON THE RIGHT TO DEVELOPMENT (SURYA DEVA)

The climate emergency

The Rapporteurs emphasize the already-manifest and ongoing impact of the climate emergency, including its specific impacts on the Latin American and Caribbean (LAC) region, as well as the particular vulnerabilities faced by groups such as Indigenous peoples and residents of SIDS. The Rapporteurs emphasize the scientific consensus that these impacts will worsen over time, and that existing mitigation and adaptation measures are “grossly insufficient.”

Human rights impacts of the climate emergency

The Rapporteurs emphasize that the climate emergency “impairs the full range of human rights. States should proactively respect, protect, and fulfill human rights in the context of the climate emergency.” Such obligations are owed to individuals and communities within a State’s jurisdiction, but also to those outside the State’s territory in certain circumstances (citing IACtHR Advisory Opinion OC-23/17). Drawing on the jurisprudence of the Human Rights Committee, the Rapporteurs emphasize that “[w]here States fail to safeguard rights of individuals and communities both inside and outside their territories against foreseeable climate-related threats of serious harm, they should provide an appropriate remedy” (Billy v. Australia).

Emphasizing the principle of CBDR-RC, the Rapporteurs argue that all States owe human rights obligations. However, “the degree of urgency with which they [States] should act [in reducing GHG emissions] depends in part on their historical emissions and status as low-income or developing States.” Furthermore, the principle of systemic integration guides the interpretation of Inter-American Convention rights in international environmental law. This sets the scene for the argument that many principles of international environmental law are relevant to this opinion.

The Rapporteurs identify a range of human rights implicated by climate change – many of which have been cataloged by organs of the Inter-American system and UN human rights bodies. The brief includes specific discussion of the rights to life (including its necessary conditions), health, food, water, sanitation, a clean, healthy, and sustainable environment (“right to a healthy environment”), rights of Indigenous Peoples (including their rights to property), the right to self-determination (particularly those of Indigenous Peoples and SIDSs), and the right to home, privacy and family life.

The Rapporteurs identify several “guiding principles” that are relevant to assessing States’ human rights obligations concerning climate change. These include:

- **International cooperation** requires that States (i) notify other States of significant environmental damage, (ii) consult and negotiate with potentially affected States in good faith, and (iii) exchange current information concerning risks of transboundary harm.
- **Prevention of environmental harm** requires each State to (i) use all the means at its disposal to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage
to the environment of another State; (ii) implement “appropriate rules and measures” to prevent significant transboundary harm; and (iii) ensure “vigilance in the enforcement of those measures.” This includes the obligation of due diligence, which incorporates both procedural and substantive elements. The Rapporteurs support the IACtHR’s earlier finding that the harm prevention principle applies to domestic as well as transboundary harm.

- **Precaution.** “Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”
- **Polluter pays.** The cost of addressing environmental harm should be borne by the polluter, “[s]pecifically, its application requires major historic and current emitters of greenhouse gases to provide greater financial contributions to ongoing mitigation, adaptation and loss and damage obligations.”
- **Best available scientific knowledge** relies on the recognition of the right to science in the International Covenant on Economic, Social and Cultural Rights, and argue— together with international environmental law — “States adopt mitigation and adaptation measures on the basis of the best available scientific evidence.”
- **Non-regression.** “States should not allow or pursue actions that have the effect of diminishing the legal protection of the environment or of access to environmental justice.” The Rapporteurs emphasize that the obligation of non-regression applies to all States, regardless of resources.
- **Equality and non-discrimination.** These duties are applied under the International Bill of Rights, regardless of a State’s level of resources, and to both mitigation and adaptation activities.
- **Intergenerational equity** is increasingly reflected in international instruments and jurisprudence and “requires States to act as responsible stewards of the planet, protect the interests of future generations, and ensure that they will be able to meet their development and environmental needs.”
- **Differentiated obligations.** Some principles and obligations may apply differently to different States, reflecting their available resources as well as historic and ongoing contributions to the climate emergency. They specifically identify the following principles:
  - Common but differentiated responsibilities and respective capabilities.
  - Highest possible ambition and maximum available resources. The principle (ambition), derived from the Paris Agreement, requires all States to enact ambitious climate policies. Nevertheless, the principle of maximum available resources – derived from the ICESCR and San Salvador Protocol – recognizes that what is “possible” may be conditioned by a State’s available resources.

**State obligations derived from duties of prevention and guarantee of human rights, including the right to a healthy environment**

The Rapporteurs argue that “State duties are engaged where there exists a foreseeable risk of serious environmental harm that adversely affects the effective enjoyment of human rights, including the right to a healthy environment.” These duties include obligations of prevention, mitigation, adaptation, cooperation, and loss and damage, among others, in line with the best available science. Accordingly, States, especially historic and current high emitters, should phase out fossil fuels, end deforestation, and transform industrial agriculture to fulfill their obligations. State policies must be comprehensive, address all economic sectors and forms of GHG pollution, align with UNFCCC and Paris Agreement obligations, and regulate non-state actors. Policies should also be “binding and enforceable,” and include effective implementation, monitoring, and enforcement measures.

**State obligations to preserve the right to life and survival concerning the climate emergency in light of science and human rights**

The Rapporteurs begin by observing that threats to the right to life are, by definition, serious. Accordingly, States owe obligations to respect and ensure human rights wherever threats to the right to life are foreseeable. Protection of the right to life requires the urgent phaseout of fossil fuels, preservation and restoration of carbon sinks, and providing adequate information and resources to individuals and communities. This obligation must be consistent with the right of access to justice, ensuring that domestic and international forums are available to hold
States and businesses responsible when they fail to meet their obligations and responsibilities. States should also be guided by the best available science, and share and disclose information with one another and the public.

**State obligations concerning the rights of children and future generations**

Children are uniquely vulnerable to climate change, with the risk of widespread violations of the right to health. Therefore, States owe a ‘heightened duty of care’ toward children, who are far more likely than adults to suffer serious harm. They further observe that children have the right to be heard in decision-making on climate change, and that States should proactively seek out their views. Adaptation planning should be consistent with children’s rights, and failure to mitigate future heating means that “the human rights of future generations are implicated and threatened.” Finally, international cooperation in the context of children’s rights is crucial.

**State obligations arising from consultation procedures and judicial proceedings owing to the climate emergency**

Four core procedural rights are recognized as components of the right to a healthy environment in Advisory Opinion OC-23/17, namely, access to information, the right to participate in decision-making, access to justice, and the right to an effective remedy. These rights are further elaborated and protected by the Escazu Agreement.

The right to access information is protected by Art. 13(1) of the Convention, and is a proactive obligation, particularly relevant in the context of environmental emergencies. The right to participate in environmental decision-making is protected by Article 23 of the Convention. It should “include all affected and interested individuals, including those who are most vulnerable. Effective public participation depends on protecting and fulfilling rights to expression, association, and assembly. This is a proactive obligation, particularly concerning vulnerable groups and Indigenous Peoples. Environmental and social impact assessments are one mechanism through which groups and individuals can participate in climate-related decision-making, including decisions related to States’ mitigation and adaptation policies. As such, States must consider foreseeable risks of serious harm to the rights of potentially affected communities as part of the environmental impact assessment for projects that contribute to the emission of greenhouse gases or the degradation of natural carbon sinks.

The right of access to justice is protected by Article 25(1) of the Convention. States should ensure that restrictive standing rules do not prevent individuals, communities or civil society organizations from bringing rights-based climate lawsuits. Specifically, the core of the right is the provision of effective remedies for violations of human rights, including those related to the climate emergency. This means that States should ensure access to procedures and institutions that: (i) are impartial, independent, affordable, transparent and fair; (ii) review claims in a timely manner; (iii) have necessary expertise and resources; (iv) incorporate a right of appeal; and (v) issue binding decisions, and apply to loss and damage.

**State obligations related to the protection of territorial and environmental defenders, as well as women, Indigenous Peoples, and Afro-descendant communities**

The Court’s earlier finding that in the context of the climate emergency, “States are legally obliged to confront these vulnerabilities based on the principle of equality and non-discrimination” (Advisory Opinion OC-23/17) applies equally to industrialized and developing States. States should be guided by the principle of intersectionality. Several groups of people are at heightened risk:

- **Climate defenders**: States are bound to respect their full range of Convention rights, including those to freedom of expression, assembly, association, and participation. They observe that climate defenders who are women, girls, Indigenous or Afro-descendant are particularly vulnerable (para. 188). In particular, the Rapporteurs emphasize that States should refrain from criminalizing climate defenders (para. 190); adopt and implement laws consistent with human rights standards; recognize the contributions of climate
defenders; develop effective programs for protection; provide appropriate training for law enforcement officials; ensure prompt and impartial investigations; and provide for effective compensation (para. 191, citing Principle 11 of the Framework Principles on Human Rights and the Environment).

- On women, girls, and gender-diverse persons, the Rapporteurs observe that the climate emergency can undermine economic independence and give rise to risk violence, particularly for those whose vulnerabilities are intersectionally compounded ( paras. 192-95). The Rapporteurs stress that women, girls and gender-diverse persons must be engaged as “active participants in environmental decision-making”, and not merely be “categorize[d] … passively into ‘vulnerable groups’ … [c]limate policies are strengthened by the inclusion of women.” (para. 196, citing Committee on the Elimination of Discrimination against Women General Recommendation No. 37). States should adopt an intersectional lens in gender-based climate policy (para. 197), and a gender-based lens should apply to both domestic policies and international cooperation (para. 198).

- On Indigenous Peoples, the Rapporteurs stress their right to self-determination, including the right to free, prior and informed consent (para. 199). They emphasize the vulnerability of Indigenous Peoples and their lands to climate change (para. 200), and the duty of States to consult Indigenous groups in good faith – including in relation to renewable energy and carbon credit projects (para. 201).

- On Afro-descendant peoples, the Court emphasizes their vulnerability to the climate emergency arising from “existing socioeconomic inequality, structural racism, and exposure to violence”, particularly among those Afro-descendant people who rely on their lands for subsistence (para. 202). They stress that procedural guarantees of access to information, public participation and access to justice must be available to Afro-descendant individuals and communities (para. 205), and their specific needs should be considered in the course of States’ due diligence analysis (para. 206).

The common but differentiated human rights obligations and responsibilities of States in the context of the climate emergency

The Rapporteurs stress the importance of the CBDR-RC and the duty of cooperation. They stress that cooperation “entails sharing information, best practices, and lessons learned, as well as providing technical and financial assistance to enhance the capacity of vulnerable countries and communities to address climate-related challenges” (para. 209). Specific duties are owed to SIDS and Least Developed Countries (para. 211). They stress that inter-state cooperation should include adaptation and resilience-building measures (para. 212). And in line with the polluter pays principle, “States should ensure that domestic and regional mechanisms are available for individuals and communities to seek redress against State governments – as well as private actors” (para. 213).

Specific measures to comply with obligations

Having set out the general principles and obligations owed by States, State should consider:

- Phasing out burning fossil fuels (coal, oil, and natural gas). The energy transition should be led by human rights considerations. Specifically:
  - States should avoid new investments in fossil fuels
  - States should avoid new fossil fuel subsidies and phase out existing fossil fuel subsidies
  - States should phase out coal extraction and use
  - States should reduce and phase out existing oil and gas production
  - States should reduce emissions from methane and other short-lived climate pollutants

- Increasing renewable energy production. This includes a shift of subsidies away from fossil fuels and toward renewables; increasing private and public investments; and securing, scaling up, and diversifying critical components and raw materials. States should also treat renewable technologies as global public goods, removing obstacles in technology transfer in line with the right to science.

- Managing the energy transition responsibly, accounting for human rights in exploiting minerals critical to the energy transition. The Americas are an important source of such minerals, and their extraction should
be regulated through high environmental social and governance standards; maximize public returns; and ensure tangible benefits for local communities. In particular, the rights of Indigenous Peoples should be protected, including their rights to free, prior and informed consent.

- Avoiding overreliance on carbon removal technologies, and ensure that human rights are respected in the application of such technologies.
  - Bioenergy, Carbon Capture and Storage and Direct Air Capture technologies raise human rights concerns.
  - States should preserve and restore natural carbon mitigation ecosystems.
  - States should ensure the protection of human rights in any implementation of carbon markets program, including forestry credits.
  - States should reduce and end deforestation.
  - States should increase their levels of climate financing. The Rapporteurs observe that existing levels of climate financing are grossly insufficient, and argue that “[i]ndustrialized members of the OAS should enhance their financial support for the climate actions of developing members of the OAS, particularly the least developed States and the Small Island Developing States.” Such financing should be in line with the Paris Agreement, as well as the principle of maximum available resources.
  - States should be proactive in overcoming the barriers to adequate financing. The Rapporteurs endorse the Bridgetown Initiative 2.0 key action points.
  - States should consider putting a price on GHG emissions
  - States should consider participating in collaborative schemes, including debt-for-climate swaps
- Implementing oversight and education programs to promote awareness of the climate emergency

**Loss and damage**

Addressing loss and damage arising from or related to the climate emergency requires a human rights-based approach. States must operationalize the Loss and Damage Fund agreed to by the international community, and “[t]he Fund should not only be aimed in remedying past injustices suffered by vulnerable States and peoples, but also adopt a forward-facing outlook.”

**9. INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM)**

The IOM is submitting this brief since migration, displacement and human mobility in general is an effect caused by climate change, especially in the Andes region. It generally impacts vulnerable populations. The IOM has experience in addressing these topics: it aims to bring migration in the context of climate change, environmental degradation, and disasters to the international community’s attention. In particular, the IOM has included human mobility and climate change in its framework for the Americas and the Caribbean.

The IOM recognizes that some migrants are in situations of vulnerability and cannot effectively enjoy their human rights, notably those that are vulnerable to violence, exploitation, and abuse. Structural factors such as climate change are key elements in identifying and responding to certain vulnerabilities of migrants. The IOM promotes safe migration and seeks to support States in maximizing the positive outcomes of migration. It understands the link between migration and the environment through the lens of human security. This is a fundamental concern in Latin American and Caribbean countries.

**Preliminary elements on the impacts of the climate emergency on people in terms of human mobility**

There is no internationally agreed-upon definition to identify people who move due to environmental or climatic factors. International organizations have begun to use the term “human mobility” to encompass the full range of types of movements that can occur in climate change. There is a need to consider the diversity of the impacts of
climate change on human mobility and the multiplicity of factors that affect human mobility. Some climate hazards, such as droughts or hurricanes, may increase mobility processes, but they may also imply a reduction in mobility due to the decreased available resources needed to migrate. It is, therefore, reductive to consider only migratory flows when a high risk of trapped population also exists.

In the causal chain, a wide array of factors may mediate the impact of climate change on human mobility. Loss of livelihood, employment and income, food, health, violence, and conflicts are among those factors. In Central America, the high livelihood dependency on subsistence agriculture strengthens the link between climate change and human mobility.

Human mobility in the context of climate change is usually framed under a triad of displacement, migration, and planned relocation. Those terms tend to account for the range of voluntariness in movements, from forced to more voluntary forms of movement. Those concepts help frame the context in which mobility is happening. Sometimes viewed as an adaptive and proactive response, reducing socioeconomic vulnerability, it can also be a risky and reactive response to climate change effects.

Nonetheless, the impacts of climate change on human mobility do not affect all people equally. Indeed, depending on gender, age, disability, socioeconomic status, and belonging to an ethnical group, resilience will vary significantly. For example, as a result of traditional gender roles and limited access to land tenure, information, and resources, girls and women suffer differently from climate change and the resulting mobility processes. Yet, their point of view is often absent from the narrative. The Indigenous populations’ perspectives are also to be considered, as some examples of relocations have demonstrated their impacts on the well-being of the affected communities. The specific vulnerabilities of children and adolescents should also be addressed through the lens of their relevant rights and best interests.

A lack of data and scientific evidence is one of the main obstacles to understanding the relationship between climate change and mobility. So far, the focus has been on sudden-onset hazards generating internal displacement, while the impacts of slow-onset hazards and the resulting cross-border displacements are under-researched. Further research and the recognition of a corresponding responsibility of States to mobilize data to help understand and address this phenomenon is needed.

Obligations and principles that should guide actions to address non-voluntary human mobility, exacerbated by climate change

In addressing the protection of migrants, the IOM promotes full use of existing bodies of law and instruments, including humanitarian and human rights law, instruments on internal displacement, disaster management frameworks and regular migration pathways, as well as frameworks for labor migration. Transnational criminal law should also be mobilized. The IOM argues that the type of environmental phenomenon, as well as the impact on the migrants, are key to determining the type of response and the obligations of the States involved.

Human rights obligations arise at different stages. In the prevention phase, the right to information and participation are central. The State has obligations of risk assessment, risk information, establishment of early warning systems, evacuation plans, and community training and awareness. This derives notably from the Escazú Agreement. During the event, many rights are involved, such as the right to request and receive humanitarian assistance, non-discrimination, prohibition of arbitrary displacement, respect for the family unit, the right to full information, safe conditions of travel and voluntary movement, adequate standard of accommodation, safe shelter during displacement, freedom of movement, right to seek security in other parts of the country, choice of residence, right to leave the country, the principle of non-refundability and the right to protection of property and assets left behind. The State has the obligation to seek assistance, implement protection measures, minimize displacement, provide assistance in the event of displacement, and seek the free and informed consent of the persons. The law should identify the authorities that have these primary responsibilities. During return, relocation, or reintegration, the principle of non-refundability applies as well as the right to voluntary, safe, and dignified return, the right to information and participation, access to employment, the right to retake the possessions left
behind and to access justice and compensation. Authorities should allow voluntary return, integration to the host community or voluntary resettlement in another part of the country. They should facilitate the reintegration of the person and her recovery of land, houses, property, and other possessions left behind.

Human rights instruments can guide States in addressing some of the challenges created by the impacts of climate change, as they are flexible and focus on the needs and vulnerabilities of migrants. The two International Covenants, the Conventions on Statelessness, the Convention on the Rights of All Migrant Workers and Members of Their Families, the UNDRIP, and the American Convention are relevant. The jurisprudence of human rights bodies has recently opened up important perspectives.

Legal solutions should focus on identifying the relevant needs and vulnerabilities, the corresponding rights and guaranteeing the State’s obligations in each case. Human rights law and the principle of non-refoulement are more flexible solutions than refugee law. Citing a resolution from the UNHRC, the IOM underlines that human rights obligations have the potential to inform and strengthen international and national policymaking in the area of climate change. The IACtHR, meanwhile, recognizes the right not to be forcibly displaced for environmental reasons and recognizes environmental vectors of human mobility in the region. It also recognizes the rights of Indigenous peoples who face the issue of displacement, especially those who live in urban areas.

Migrants in the context of disasters are likely to become victims of trafficking, which is a crime that most countries in the Americas have integrated into their legal framework. States must offer immediate protection and support, provide legal assistance, including temporary residence authorization, and not criminalize or detain victims of trafficking. The UNFCCC and the Paris Agreement, as well as other binding instruments, also underline the duty of States to mitigate the adverse effects of climate change, taking into account their obligations regarding human rights and vulnerable people.

Soft law instruments, including concrete recommendations for States, have equally addressed the impacts of climate change on human mobility. Notably, States committed through the Global Compact for Safe, Orderly, and Regular Migration to minimize and address the factors that compel people to leave their countries of origin in the context of disasters and climate change. They also committed to cooperating to identify, develop, and strengthen solutions for migrants forced to leave.

The rights of people in situations of vulnerability to climate emergencies include protection from displacement. Furthermore, the individual right to life requires States to take positive measures to ensure its protection. Other rights entail positive obligations on States to ensure access to the resources (food, water, housing, health) necessary for their realization. Environmental rights and the prevention of displacement are closely linked. Besides, the protection of environmental rights may be related, in certain cases, to the obligation of States to facilitate the mobility of vulnerable people to avoid cases of trapped population. Planned relocation is an innovative area of work, but it should not violate, in any case, the freedom from forced displacement and the right to free and informed consent.

Freedom of movement within a State, enshrined in the ICCPR and the ACHR, should be granted to all those in a regular migration situation. In situations where an area is at risk of a disaster event, freedom of movement should be granted to everyone. The obligation to comply with the freedom of movement of persons under the jurisdiction of States could be related to the measures that States can take to avoid, minimize, and address loss and damage under the Warsaw International Mechanism.

States equally have a duty to protect during and after displacement, according to the Guiding Principles on Internal Displacement. Internal displacement protection is also extended to non-nationals. It is important to highlight that most climate-related displacement occurs within national borders or across neighboring countries. Moreover, since there is a continuum between situations of greater or lesser voluntariness in movements, the duty to protect should be extended to persons with certain agency and decision-making power who may be in situations of vulnerability. For cross-border displacement, comprehensive protection through temporary protection measures, humanitarian visas, or measures providing temporary authorization to stay would be appropriate. Besides, many States like Brazil, Ecuador, and Peru have adopted human-rights-based protection practices.
The obligations of States in the context of cross-border environmental migrants include the principle of non-refoulement, which is highly relevant and has already been applied, notably in its more expansive interpretations. These obligations are worth not only to mobility related to climate change but also to disaster situations in general. Resolution No. 3/21 from the Inter-American Commission on Human Rights highlights the duty of Members to ensure due process during the procedure leading to the recognition of their migratory status and guarantee their human rights, such as the safeguard of non-refoulement pending the determination of their status. Health care, justice, and reparation measures must also be accessible.

Although climate, environmental degradation, and natural disasters do not cause refugee movements in themselves, climate change can strengthen evidence of a well-founded fear of persecution. Furthermore, the 2014 Brazil Declaration under the Cartagena Declaration urges States to pay more attention to the problem of people displaced across international borders by climate change and disasters. States and subnational entities bear obligations and responsibilities as recipients of migrants and disaster risk managers. There is a need to clarify the obligations of States to facilitate the mobility of persons in vulnerable situations, and notably in the case of populations in an irregular migratory situation who move to leave areas affected by disasters. The advisory opinion must clarify the duty to protect populations during and after displacement, including displaced non-nationals.

10. UNITED NATIONS SPECIAL RAPPORTEUR ON HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS (PAULA GAVIRIA BETANCUR)

Freedom to seek, receive, and impart information:

Reference is made to the Advisory Opinion on human rights and the environment where the Court has recognized that the right to information is an important procedural right, and its exercise supports better environmental policymaking. The duty to provide relevant information to affected persons as well as to seek information from them, and thus to consult, is particularly relevant in the following contexts: (i) prevention; (ii) evacuations; (iii) planned relocations; (iv) protection during internal displacement; (v) durable solutions for internally displaced persons; and (vi) migrants caught up in disasters.

Preventing, addressing, and resolving displacement in the context of adverse effects of climate change:

Based on how non-voluntary human mobility in the context of climate change (hereafter displacement) is best understood, and because the relationship between global warming and displacement is complex, to properly understand climate-related displacement, it is important to stress that there is no direct causality between global warming and displacement. Rather, people are forced to leave their homes and seek refuge when they are exposed to a climate-related natural hazard and too vulnerable to withstand and cope with its impacts and ensuing damages. Thus, it is the combination of the elements of (i) a natural or human-made hazard, (ii) exposure, and (iii) vulnerability or the lack of resilience that force people to move.

In the case of climate change, hazards include the adverse effects of global warming, such as sea-level rise, the increased occurrence and severity of drought, more powerful tropical storms, or increased flooding. Vulnerability and lack of resilience result from a multitude of factors. They include socio-economic marginalization, the lack of disaster risk reduction measures, bad governance, and many more. Displacement in the context of disasters and adverse effects of climate change always has multiple causes.

To prevent and mitigate displacement, States can reduce the hazard by reducing GHG emissions in accordance with the Paris Agreement; reduce vulnerability, and help people stay with disaster risk reduction and climate change adaptation measures and action to build their resilience; where these efforts are not possible or ineffective, reduce exposure by helping people moving out of harm’s way through planned relocation or the
provision of pathways for regular migration. Where these measures fail, States must protect people displaced within their country or across state borders.

The duty to protect life, as enshrined in Article 4(1) of the American Convention, Article 6 of the International Covenant on Civil and Political Rights (ICCPR) and corresponding guarantees in other regional human rights conventions, is the legal cornerstone of duties to prevent displacement in the context of disasters linked to natural hazard such as tropical storms, floods, landslides, wildfires, drought or sea-level rise. In Budayeva v Russia, the European Court of Human Rights (ECtHR) developed a series of principles regarding due diligence obligations that authorities have to prevent disaster-related deaths.

Other legal developments that suggest that the IACtHR’s conclusion in relation to major environmental accidents that States must prepare contingency plans, respect and to ensure the rights to life and to personal integrity include first, Article 6 of the ICCPR, where the failure of a State to protect the lives of its citizens amounts to a human rights violation if competent authorities fail ‘to take reasonable, positive measures that do not impose disproportionate burdens on them in response to reasonably foreseeable threats to life.’ Secondly, the case of Teitiota v New Zealand, involving a citizen of Kiribati who (unsuccessfully) claimed that returning him to his country of origin would violate his right to life due to the impacts of sea-level rise, the Committee alluded to State obligations to reduce and mitigate displacement risks when, in an obiter dicta, it mentioned that without ‘robust national and international efforts, the effects of climate change … may expose individuals to a violation’ of their right to life.

Reducing exposure in anticipation of climate change-related hazards is an important way to protect the life and personal integrity of persons and allow them to avoid displacement and ensuing humanitarian crises. These instruments are planned relocation and the creation of pathways for safe, orderly and regular migration. Planned relocation is a preventive measure and a possible solution if in the aftermath of a disaster affected people are unable to remain or (in the case of evacuation or internal displacement) return to their homes because a hazard rendered that location uninhabitable or too dangerous for human habitation. As the IPCC emphasized in 2014, greater opportunities for voluntary migration can reduce the vulnerability of populations at risk of displacement and be an effective strategy to adapt to climate change impacts.

Displacement in the context of adverse impacts of climate change is predominantly internal. Such internally displaced persons (IDPs) are covered by the UN Guiding Principles on Internal Displacement as persons who have been forced or obliged to leave their homes ‘as a result of or in order to avoid the effects of […] natural or human-made disasters.’ While legally non-binding, the Guiding Principles ‘reflect and are consistent with international human rights law’ and have been recognized by the international community as an ‘important international framework for the protection of internally displaced persons.’

**Cross-border displacement**

The Global Compact on Migration (GCM) highlights the importance of admission and stay for persons moving across borders in situations where return to or adaptation in countries of origin is temporarily or permanently impossible. While these measures are discretionary and based on humanitarian considerations and are not understood as being required by international law, the question arises whether, under certain circumstances, non-rejection at the border and non-execution of deportation orders are legally required by the principle of non-refoulement. The IACtHR has repeatedly recognized the principle of non-refoulement. Persons displaced across borders in the context of disasters and adverse effects of climate change are normally not at risk of becoming victims of human rights violations for the reasons set out by these guarantees.

International law fully recognizes the obligation of States to cooperate in areas relevant for the protection of human rights. While Articles 55 and 56 of the Charter of the United Nations – reflected in Chapter VII of the Charter of the Organization of American States – remain at a general level, Article 26 of the American Convention and several articles of the Protocol of San Salvador concretize this obligation for economic, social and cultural rights.

Codifying present international law, the International Law Commission (ILC) highlighted in its 2016 Draft Articles on the Protection of Persons in the Event of Disasters ‘the fundamental value of solidarity in international relations
and the importance of strengthening international cooperation in respect of all phases of a disaster’ as well as the duty of affected States to seek assistance from the international community ‘as appropriate’.

11. UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES

Impacts of climate change on the rights of Indigenous Peoples

For Indigenous Peoples, climate change is not a problem in itself. But an accelerated modification of these changes is: that it is not a natural phenomenon anymore, but a consequence of human actions. Every Indigenous Peoples across the world are affected by these effects, particularly the effects on the water cycle. Particularly in the Americas, there are both concrete and short-term effects, as well as prolonged effects over time. For instance, the scarcity of resources, mining for the energy transition, or deforestation forces people to move to other places.

State responses to the impacts of the climate crisis on Indigenous People’s rights

States lack the capacity to respond to the climate crisis, and in particular to Indigenous Peoples, because they cannot deal with diversity. Besides, their mono-scientific vision makes States measure the impacts (costs, volume, emergency) only from a single point of view. Indigenous People have responded, but today their capacity to adapt or mitigate is diminishing because of the institutional actions. States have failed to recognize territorial rights, self-determination rights, as well as a permanent exchange of knowledge between Western science and Indigenous Peoples knowledge, which has hindered the capacity to respond.

Still today, States adopt only the human rights perspective and have tended to recognize (limitedly) collective rights as the ones that belong to a sum of individuals. They fail, however, to enhance mechanisms, data, responses, and accounting with respect to the rights of collective subjects, which are preexistent to the State and represent the aggregate of territorial rights, cultural, political rights, and historical rights.

The needs and their understanding depend on the region. There are Indigenous Peoples located in the Southern Cone, the Amazon region, the Caribbean, the Andes, Central America, and North America. Indigenous peoples must communicate with each other and organize to cope with the current challenge. It is not enough to act in each State; it is necessary to standardize and improve rights through the association and multilateralism of governments. For example, in the Amazon region, territorial rights granted in one State to a community are not the same as the ones granted by the neighboring State: walking a few meters on a border means changing legal status.

Concerning the legal framework, several countries have changed their political constitutions or ratified ILO Convention 169. The American Declaration on the Rights of Indigenous Peoples and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) should be considered binding, according to the special mechanism, since they are the development of human rights conventions that are themselves binding in the international system.

From the institutional point of view, mechanisms of dialog must be permanently activated, and not only in times of crisis or retaliation. There is a tendency to favor the subsidiary right of participation over the right of self-determination. The focus should not be on free, prior and informed consent (FPIC) but rather on right to autonomy. Besides, racism and discrimination frame society, increasingly conveyed through corporate media.

Indigenous Peoples and the defense of human rights

The Western world calls an environmental defender a person who defends a right and takes care of a resource and of the relationship with the territory. However, for Indigenous Peoples, this distinction between human culture
and nature is fictitious. And if defending is dangerous, then being Indigenous, which is not a decision, becomes dangerous. There is not only a need to protect and to relate better with Indigenous Peoples but also to approach the issue through the lens of prevention, to strengthen Indigenous Peoples’ capacity, and to establish a dialogue.

Another problem is that Indigenous People are usually conceived or valued from their fragility and not their capacity. They are valued through their divisions and fragmentation, which is used as an excuse not to discuss with them or finance their projects. Yet there is an urgent need for dialogue, given that they have demonstrated that they can live while respecting the territory and vital resources.

**State obligations with respect to the right to consultation, self-determination of Indigenous Peoples and the environment**

The analysis of the Court should pursue its progressive way and anchor its analyses not only in the domestic law of each country but also in the international standards. The analysis must bear in mind that Indigenous Peoples are fundamentally collective subjects, depending on the place they live in, their history, and their needs. The obligation of the states is to strengthen the capacity of Indigenous Peoples to recognize their territorial rights of self-determination. States must also adapt their policies to strengthen the intersection, territorial, and gender perspectives and should pursue the idea of the right of the collective subject to have its own knowledge systems.

Health systems and other services ‘adapted to Indigenous Peoples’ should not end up being soft forms of cultural assimilation because, in the face of emergencies, it is their own form of government. In turn, it affects their value system, knowledge systems and culture, which are their main driver in creating responses to the climate crisis. Hence the states must deepen the recognition of particular and own rights of Indigenous Peoples, as well as the need to adapt institutions and public policies so that the services are not made from the perspective of cultural assimilation of the states.

**Mitigation and adaptation measures to address the urgency of climate change**

Indigenous Peoples invest their efforts in rescuing or building their organizational capacity. This, as well as how they have conceptualized their rights, should be considered by the Court as a heritage. The right to identity means belonging to a system and a form of organization. The words that they employ (resistance and not mitigation) must be conserved as part of this heritage and resource. Respond urgently means establishing a profound dialogue on the transformation of institutions and the way in which Indigenous Peoples can participate in this process. Further, it means replacing the market perspective of environmental services with the perspective of territorial administration of resources and a strengthened public capacity.

There are multiple examples of cases where climate change has caused harm to the rights of Indigenous Peoples, but the Court should bear in mind the Brazilian case where the Constitutional Court recognized that the territorial rights of Indigenous Peoples are preexistent to the States. The IACtHR must also address the mechanisms through which Indigenous Peoples are assured access to financing for adaptation and mitigation.

**12. COMMISSION OF SMALL ISLAND STATES ON CLIMATE CHANGE AND INTERNATIONAL LAW**

This summary will be included in the next iteration of the report.
13. OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

This summary will be included in the next iteration of the report.

14. THE SOUTH CENTRE

This summary will be included in the next iteration of the report.

15. OFFICE OF THE SECRETARIAT OF THE AARHUS CONVENTION AND OF THE UNITED NATIONS SPECIAL RAPPORTEUR ON ENVIRONMENTAL DEFENDERS UNDER THE AARHUS CONVENTION

The submission consisted of an analysis concerning the legal framework on i) the rights of access, collection and dissemination of environmental information, ii) public participation in decision-making, and iii) access to justice in environmental matters under the Aarhus Convention. The document also addresses the rights and obligations of the State under the Aarhus Convention for the protection of environmental defenders and to facilitate their work.

It draws from provisions of the Aarhus Convention, the Implementation Guide to the Aarhus Convention, relevant findings of the Aarhus Convention Compliance Committee, and public statements and commentary from the UN Special Rapporteur on environmental defenders.

The document outlines the legal framework under the Aarhus Convention, focusing on the general overview, key definitions, and provisions. It highlights the close relationship between the human right to a healthy environment and the procedural rights prescribed under the Convention, emphasizing the critical role of public participation in decision-making on environmental matters. It explains the obligations of States and public authorities under the Aarhus Convention, addressing the access to environmental information upon request, collection and dissemination of environmental information, and public participation in decision-making. It also delves into the specific threats and risks faced by environmental defenders, including physical attacks, strategic lawsuits against public participation, criminalization of civil disobedience, and digital threats. The document underscores the obligation of each party to ensure that persons exercising their rights under the Convention should not be penalized, persecuted, or harassed in any way for their involvement. Furthermore, it emphasizes the need for States to adopt measures and policies to facilitate the work of environmental human rights defenders, recognizing the diversity and interconnectedness of defenders, and involving them in the development, choice, and implementation of protection strategies. It also stresses the importance of adopting a rights-based approach to protection, acknowledging the significance of gender and applying an intersectionality approach to the assessment of risks. The document provides a comprehensive overview of the legal framework, risks, and obligations related to environmental defenders and public participation in the context of the climate emergency.
STATE BODIES
Ten State bodies presented their observations, namely: (1) the Ombudsman (Guatemala); (2) the National Public Defense Service (Argentina); (3) the Defense Counsel of the Supreme Court of Justice of the province of Santa Fe (Argentina); (4) the Children’s Ombudsman (Argentina); (5) the Federal Public Defense Institute (Mexico); (6) the Human Rights Commission of the state of Jalisco (Mexico); (7) the Human Rights Commission of the state of Puebla (Mexico); (8) the Municipality of Montevideo (Uruguay); (9) the Ombudsman (Ecuador), and (10) the National Human Rights Commission of Honduras (CONADEH).

1. OMBUDSMAN OF GUATEMALA

Children’s rights

A major concern in children’s rights protection is malnutrition. Guatemala is one of the Latin American countries with the highest prevalence of chronic malnutrition, with 46.5% of boys and girls under five years of age suffering from it. This leads to a delay in growth, cumulative deficiencies in long-term health and nutrition, and affecting the cognitive development. This condition puts children in danger. As of May 27, 2023, 11,031 cases of boys and girls with acute malnutrition and 9 deaths associated with this cause have been reported. The departments with the highest cases are Guatemala, Escuintla and Alta Verapaz with more than 1,000 cases.

The judicial proceedings in Guatemala

Guatemala is obliged to guarantee the human right to a healthy environment to the entire Guatemalan population. Institutions (such as the Ministry of Environment and Natural Resources and etc., in the administrative sphere; the Judicial Branch and the Attorney General’s Office etc., in the judicial sphere) have constitutional mandates to guarantee this right to reparation for people who are affected through the due process, right of defense, principles of environmental law and international standards on human rights.

Guatemala has ratified Convention 169 on Indigenous and Tribal Peoples in Independent Countries of the International Labor Organization which constrained governments to consult the indigenous peoples concerned through appropriate procedures and in particular through their representative institutions whenever legislative or administrative measures are contemplated that may directly affect them (article 6.1). In its article 7, the Convention establishes that the peoples concerned should have the right to decide their own priorities regarding the development process to the extent that it affects their lives and their lands. The people must participate in the formulation, application and evaluation of national and regional development plans and programs that may directly affect them.

Article 8 of the Escazú agreement establishes the right to access justice in environmental matters. To guarantee this right, there must be competent state bodies with access to specialized knowledge on environmental matters; effective procedures that are timely, public, transparent, impartial and without prohibitive costs; taking measures to reduce or eliminate barriers to the exercise of the right to justice.

How defenders of the land are protected

In terms of human rights, it is recognized that although rights are for all people, people from vulnerable groups must receive specific and priority attention from the State. The Escazú agreement constitutes the first Regional Agreement to incorporate the figure of protection by States for defenders of land, territory and human rights and establishes that each Party will guarantee a safe and conducive environment in which people, groups and organizations that promote and defend human rights in environmental matters can act without threats, restrictions and insecurity; for which they must take appropriate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters.

The CBDR principle

From the interrelation of rights, the climate crisis not only affects the human right to a healthy environment, but also access to water, sanitation and purification, nutrition, health and life.
According to the common but differentiated principle, which considers that the impact that the planet suffers from climate change due to industrialized or first world countries is not the same as that of developing countries. The responsibility of taking care of the planet and not contributing to greenhouse gas emissions belongs to everyone. 

human beings but in a differentiated way.

States must comply with their obligations regarding climate change and this will translate, for example, into: the incorporation of environmental principles such as precaution, comprehensive risk management, adaptability, sustainability, citizen participation with gender equity and cultural relevance, who pollute pays and restores, environmental education, shared but differentiated responsibility, precaution and progressiveness in public policies, legislation and national policy of governments that guarantee the human right to a healthy environment of the population through the implementation of urgent measures of both adaptability and mitigation of the effects of climate change as established in Resolution 3/2021 of the Inter-American Commission on Human Rights on the Climate Emergency, Scope and Inter-American Obligations in Human Rights adopted by the Inter-American Court on December 31, 2021.

2. THE NATIONAL PUBLIC DEFENSE SERVICE (ARGENTINA)

Preliminary considerations

The Public Prosecutor’s Office for Defense (MPD) is an independent constitutional body with functional autonomy and financial autarky whose main mission is the defense and protection of human rights. Among several Programs, the Program for the Implementation of Human Rights Instruments manages public defense intervention with international protection bodies. By virtue of its institutional functions and competencies, the MPD is a central actor in access to justice. In addition to exercising the role of the public defender in judicial proceedings (criminal and non-criminal), the institution promotes actions aimed at removing existing obstacles to ensure such access.

With regard to the environment, the Public Prosecutor’s Office stresses the importance of the adoption of instruments such as the Escazú Agreement, which is essential for clarifying the duties and obligations of States. The Escazú Agreement sets out elements for addressing climate change (art. 8) since States undertake to ensure access to judicial and administrative bodies. In Argentina, it is noted that the complexity of judicial processes relating to environmental rights requires taking into consideration particular elements, which are not presented in other litigations.

Mention may be made of: the need for expert reports or technical reports as tools to prove damages or damages to rights; the delay in judicial decisions, even when urgent precautionary measures are proposed or requested; the incidents that delay the proceedings; such as jurisdictional disputes that violate the precautionary principle. In addition, expedited or urgent legal action in cases of a different nature may not be adequate to resolve the problems involved in a timely manner. All these aspects compromise access to justice, which, as the Inter-American Court itself has recognized, "is the means to remedy human rights violations for non-compliance with environmental standards" (Inter-American Court, Advisory Opinion OC-23/17, November 15, 2017).

Access to public information and participation, Role of public defense

Since 2003, the Argentine Republic has had Law 25,831, establishing free access to environmental public information. Principle 10 of the UNFCC Declaration and the Escazú Agreement (which was approved by Argentina by Law N° 27.566 in 2020, and ratified on 22/01/2021) both seek to ensure that everyone has access to information, participates in decision-making and access justice in environmental matters. For this reason, the MPD considers it crucial to enforce the full exercise of the right of access to public information, as it allows for full and integral decision-making, as well as controlling public management through the participation of citizens.
On the other hand, it should be mentioned that since the implementation of the OAS Model Inter-American Law 2.0 on Access to Public Information in 2020, the efforts being made in the region to guarantee the right to information are recognized, providing greater guarantees based on the challenges and good practices achieved since the adoption of the 2010 Model Law. However, these mechanisms adopted at the national and regional level should not overlook the particularity of groups that are particularly vulnerable to climate change, including indigenous peoples, children and adolescents, women, and displaced persons.

It is also essential to highlight the fundamental role of the right to citizen participation since effective access to information cannot be guaranteed if the intervention of the main actors affected by the climate emergency is not guaranteed. Undoubtedly, access to environmental public information is materialized through the participation of the population. Recognizing both the right to public participation in decision-making processes and the right to access to justice in environmental matters implies respecting current environmental standards and thus allows a healthy and ecologically sound environment balanced.

From the role of public defense, recognizing that the climate crisis does not affect all people equally is a way of highlighting the existence of an asymmetric reality, which has historically been invisible, the United Nations Commission on the Status of Women, through Resolutions 56/2 and 58/2 on gender equality and the empowerment of women in natural disasters, has shown that risks, the burdens and impacts of climate change on children and adults are different. Public defense, with its many forms of intervention, plays a fundamental role in legal and administrative matters. This actor, free of charge, guarantees technical and legal assistance to the vulnerable population.

**Need for differentiated measures**

While it is important that States work to fulfill their duties in the climate emergency, stresses that such actions must necessarily consider respect for the fundamental human rights of vulnerable populations as recognized between the principles of the 2030 Agenda for Sustainable Development and SDGs.

**Children/ Future Generations**

Future generations are the most vulnerable group in the long term to the risks posed by climate change. It is important to provide for the adoption of concrete measures aimed at mitigating the effects of the climate emergency on this population in a differentiated manner. The Office of the United Nations High Commissioner for Human Rights has already pointed out that the negative impact of climate change threatens children's rights to health, life, food, water and sanitation, education, housing, culture and development, among others. In OHCHR (2017) Analytical study on the relationship between climate and the full and effective enjoyment of the rights of the child A/HRC/35/13. Girls and boys are exceptionally vulnerable to climate change; those with disabilities, displaced, living in poverty, or separated from their families are those most at risk.

With regard to the work of the Office of the Attorney-General, the Cultural Diversity Program has carried out research on the Office of the Ombudsman (2012) Access to Justice for Indigenous Children and Adolescents: criteria for Action for Specific Technical Advocacy on Access to Justice for indigenous children and adolescents. There, the need to exercise a proactive role and provide a comprehensive approach to the defense of human rights in this sector was not only noted, but also the need to remove the structural barriers that prevent indigenous children from accessing justice from a human rights perspective. The guiding principle to be considered in dealing with the problem is the best interests of the child, since from this principle it is possible that minors are heard and that their opinion is considered in the decisions that the/s involve.

**Indigenous communities**

In the case of indigenous peoples and other groups with special links to the land (peasants, former settlers, islanders), differentiated measures require attention to fundamental principles and rights that make for the cultural survival of the people or community, provisions relating to the climate emergency should especially consider the
legal framework (ILO Convention 169, United Nations Declaration on the Rights of Indigenous Peoples, American Declaration on the Human Rights of Indigenous Peoples, among others). It remains central to strengthen standards on this issue to achieve societies that respect cultural diversity and to repair the link that States have with communities. Taking steps to eliminate all forms of discrimination against indigenous peoples is directly linked to the idea of recognizing them as protectors of the environment. This was indicated by the Paris Agreement when referring to the work of States' adaptation measures, when it noted that "should be based and inspired, in addition to scientific knowledge, (...) where appropriate, by traditional knowledge, indigenous peoples' knowledge and local knowledge systems" (Article 7.5).

At the same time, climate change is deepening other situations of vulnerability experienced by indigenous communities. They are the first to face their consequences because of their dependence on the environment and its resources and their close relationship with them, as demonstrated by the United Nations Permanent Forum on Indigenous Issues (2009). In this connection, carrying out EIAs is another relevant element in the field of environmental rights. Once the EIAs are carried out, the duty to monitor, on a continuous basis, the effects of a project or activity on the environment is respected (IDH Court, Advisory Opinion OC-23/17, and ICJ, Case of Pulp Plants on the Uruguay River (Argentina Vs. Uruguay).

The Special Rapporteur on adequate housing as an integral element of the right to an adequate standard of living and the right to non-discrimination stressed before the Human Rights Council that “the climate crisis poses a serious threat to the enjoyment of the right to adequate housing worldwide” and that “climate change mitigation and adaptation policies and misguided responses to climate phenomena can undermine this right.” He also indicated that “marginalized groups and their households are particularly exposed to this risk and to the effects of climate change, and therefore need to be involved in climate-related responses at all levels” (UN, Human Rights Council, A/HRC/52/28). The report further argues that “marginalized groups and individuals are often excluded from climate adaptation measures.” It further notes that “if States fail to take concrete measures to ensure that the climate crisis does not extend to the housing crisis and vice versa, socio-spatial segregation and housing discrimination and exclusion may be further aggravated.”

Conclusion

It is of interest to the MPD that the Inter-American Court adopt advisory opinions that define the main axes to follow in environmental matters. In this sense, it is considered important to continue adopting measures that involve access to justice as a key tool for the realization of rights in the context of the fight against climate change. All State sectors, according to the scope of their competences and functions, are involved in the climate emergency and the decisions they take must be carried out from a human rights perspective. This undoubtedly includes the judicial system and the public defense as a guarantee of equal access.

3. THE DEFENSE COUNCIL OF THE SUPREME COURT OF JUSTICE OF THE PROVINCE OF SANTA FE (ARGENTINA)

This summary will be included in the next iteration of the report.

4. THE CHILDREN’S OMBUDSMAN (ARGENTINA)

The Ombudsmen for the Rights of Children and Adolescents, an independent state agency, seeks to protect and promote the rights of children and adolescents in Argentina. They aim to ensure that these rights, as stated in the National Constitution, the Convention on the Rights of the Child, and national laws, are upheld and improved. One of their main roles is to investigate any instances of rights violations through complaints or their own initiative. The
American Convention recognizes the special need for protection for children and adolescents due to their developmental stage, and States are obligated to implement policies that guarantee their full growth. Given this perspective, the Ombudsman is submitting a request to the Committee on the Rights of the Child for an Advisory Opinion on the impact of the climate emergency on the lives and development of children and adolescents. This action seeks to address the urgent issue of climate change and its potential effects on the rights and well-being of the younger generation.

Article 11 of the Protocol of San Salvador acknowledges the right of individuals to live in a healthy environment and have access to basic public services while also encouraging States to promote environmental protection. The urgent need to address the negative consequences of the environmental crisis is emphasized, as it directly impacts the right to life with dignity, the highest attainable standard of health, and the overall development and education of individuals. The IACtHR has previously acknowledged the connection between environmental protection and the realization of other human rights (Advisory Opinion 23/17).

The Ombudsman in Argentina has highlighted the importance of protecting the rights of children and adolescents in relation to the environment. The Ombudsman recalls that the country has committed to combating malnutrition and ensuring access to healthy food for children by ratifying the Convention on the Rights of the Child. Additionally, the Ombudsman has emphasized the need for decent housing in suitable environmental areas with basic services such as drinking water, sanitation, and sewage.

A regional consultation took place in November 2022 for drafting the "Buenos Aires Declaration". This consultation was the first of its kind and brought together over 700 children, adolescents, representatives from Latin American and Caribbean countries, national States, international organizations, social organizations, and experts on climate change and the environment. Overall, the focus is on recognizing and addressing the critical challenges that children and adolescents face in relation to the environment, and ensuring their rights are protected in these areas.

The declaration suggested integrating its considerations into the Advisory Opinion to be developed. In terms of development, there is recognition of the differentiated impact of the climate emergency on children and adolescents. The negative impacts are already visible and urgent attention is required, as noted in a UNICEF report and the Children's Climate Risk Index. Climate change is happening rapidly, with human activities causing global warming of about 1.0°C above pre-industrial levels, according to the latest IPCC Special Report, especially boys and girls are more vulnerable to the impacts of climate change due to their physical and physiological differences compared to adults. They have different levels of organ and tissue maturity which makes them less capable of withstanding extreme weather events. Gender also plays a role in the perception of impact, with girls and female adolescents being more vulnerable and likely to experience deepened inequalities from climate impacts. The report warns of the observed and expected consequences of climate change on children and adolescents, including effects on food systems and security, water security, physical and mental health, malnutrition, susceptibility to diseases, and even infant mortality. Forest fires, caused by extreme heat, drought, and human intervention, have particularly severe effects on the physical health and daily lives of children and adolescents, impacting their respiratory tract, eyesight, skin, and development.

Many children and adolescents are living near open-air dumps, which exposes them to infectious and polluting sources that harm their health. These young individuals are not responsible for causing the problem, contributing the least to GHG emissions, and having the fewest resources and influence to address it. In Latin America and the Caribbean, 46.2% of children between 0 and 14 live in poverty.

Children and adolescents, especially those living in poor housing conditions, are the most vulnerable to the food and water insecurities caused by the climate crisis. Extreme weather events like floods and droughts exacerbate their situation, pushing them deeper into poverty and increasing their risk of suffering the deadly effects of climate change. Indigenous children are particularly at risk as they often reside in rural areas highly exposed to environmental degradation. It is essential for state policies and actions to prioritize the respect and preservation of indigenous children's relationship with their lands. The American Declaration on the Rights of Indigenous Peoples emphasizes the conservation and protection of habitat, and States have a responsibility to assist
indigenous communities in ensuring the preservation of their lands, thus securing their right to a dignified life, health, self-determination, and more.

The Declaration of Buenos Aires highlights the relationship between indigenous communities and the land, emphasizing their respect for and dependence on natural resources. The modification and overexploitation of ecosystems directly impact their ways of life. Governments are responsible for addressing the climate emergency and should focus on the social inequalities experienced by children, including those who are forced to migrate due to climate disasters. Measures taken should be timely and effective, tailored to the specific needs of developed and developing nations, and should uphold the principle of non-regression and progressivity in protecting children's human rights. The best interests of children and their need for special protection should be taken into consideration.

According to General Comment No. 16 (2013) and General Comment No. 15 (2013), States have a responsibility to require companies to take preventive measures to minimize their environmental impact, particularly on children's rights to life, survival, and development, as well as their right to the highest attainable standard of health. This includes regulating and monitoring the environmental impact of business activities, especially those that may jeopardize children's right to health, food security, and access to safe drinking water and sanitation. It is important for States to conduct impact studies and research to understand the potential negative effects on children and adolescents, who will be exposed to these impacts for the longest time.

Additionally, States have an obligation to provide meaningful and effective spaces for children and adolescents to be heard and participate in decision-making processes, as it is establish in Article 12 of the Convention on the Rights of the Child. It is not only a fundamental right, but it also applies to crisis and post-crisis situations. There is evidence to suggest that children can make important contributions in conflict situations, conflict resolution, and post-emergency reconstruction processes. Therefore, it is crucial for States to implement mechanisms that allow for the effective participation of children and adolescents in the promotion, design, implementation, and evaluation of environmental projects and policies. By involving children in these processes, their voices can be heard and their perspectives can be taken into account, leading to more inclusive and effective decision-making.

The text discusses the creation of the "Manifesto of Adolescents for the Rights of Children and Adolescents, the Environment and Climate Change," in which adolescents from all over the country demand that companies stop polluting and respect their rights. The manifesto urges companies to recognize the impact of their actions on the environment and the health of children and adolescents. Additionally, the manifesto calls on national, provincial, and local governments to create laws that regulate and protect the environment. The goal is to have these laws enforced throughout the country and to hold those who do not comply accountable. This manifesto aligns with General Comment No. 12, which emphasizes the right of children to be heard. Overall, the text highlights the passion and concerns of adolescents regarding the environment and their desire for action to be taken to safeguard their future.

According to the IACHR, the right of the child to be heard has both individual and collective dimensions. The IACHR emphasizes the importance of meaningful and protagonist participation, and highlights the need for appropriate spaces and processes for children and adolescents to exercise their right to participate and be heard. In 2019, 16 children from 12 different countries filed a complaint with the Committee on the Rights of the Child, although it was unsuccessful. However, it is noted that the Office of the Ombudsman General of the Nation and the Ombudsman for the Rights of Children and Adolescents are responsible for providing free legal representation and assistance to children in environmental litigation. The World Health Organization has also warned about the vulnerability of adolescents to environmental anxiety and the significant impact of the climate emergency on their mental health.

The Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights has emphasized the importance of the leadership of children and youth in the fight against climate change. It calls on States to provide protection mechanisms that enable children and adolescents to exercise their activism and defend environmental rights. This includes promoting their inclusion and participation in decision-making spaces.
The Escazú Agreement is aimed at ensuring the implementation of rights related to access to environmental information, public participation in environmental decision-making, and access to justice in environmental matters in Latin America and the Caribbean. These rights also extend to children, even if not explicitly mentioned. Furthermore, environmental education starting from early school years is important to shift perspectives and create a multiplying effect in the protection of the environment. The Argentine Republic has enacted the National Law for the Implementation of Integral Environmental Education as a national public policy, in alignment with Article 41 of the National Constitution.

The societies in Latin America and the Caribbean are facing significant challenges due to socioeconomic poverty and the intersectionality of vulnerabilities. To address the climate emergency, urgent measures need to be adopted with a focus on the human rights of children and adolescents who are the most vulnerable population and will be exposed to the consequences of climate change for the longest period of time. Developed countries should provide support and resources to developing countries in the form of climate impact research, mitigation plans, and adaptation measures. This collaboration not only serves as a regional effort but also as a means of reparation considering the transboundary nature of pollution.

5. THE FEDERAL PUBLIC DEFENSE INSTITUTE (MEXICO)

Intergenerational Equity Principle

The IACtHR has previously recognized the duty to safeguard the environment for future generations in the Advisory Opinion 23/17. As such, the Federal Institute of Public Defense asks the Court to comment on the following: (i) Which duties around climate change stem from the American Convention on Human Rights and other Interamerican human rights treaties? (ii) Which specific policies should States implement to mitigate climate change? (iii) Which affirmative actions should States implement to prevent violations to the human rights of vulnerable groups? (iv) Which adaptation measures should States implement to protect and safeguard the rights of all persons but particularly those most threatened by the effects of climate change like seaside communities? (v) What position should States adopt around the protection of current and future generations’ rights from climate change? (vi) Which are the duties that State have around the protection of current and future generations’ right to a healthy environment and before the effects of climate change? (vii) Which institutional and administrative measures should States adopt regarding current and future generations to reduce the risks of natural disasters derived from climate change?

Climate Refugees and internal displacement

Considering there is no international consensus around the topics of climate displacement, environmental displacement, and climate refugees it is important to address the following: (i) Is there a distinction between the aforementioned categories and what would their interpretative meaning be in light of article 22.1 of the American Convention on Human Rights and the Guiding Principles on Internal Displacements? (ii) How are the principles of protection against and during internal displacement enshrined in the Guiding Principles on Internal Displacements interrelated with the duties States have to safeguard the right to not be forcibly internally displaced as a consequence of climate change? (iii) What is the interpretative scope of the “Pinheiro Principles”, The Basic Principles and Guidelines on Development-based Evictions and Displacement, the Framework on Durable Solutions for Internally Displaced Persons and the “Kampala Convention” in light of the American Convention on Human Rights, specifically regarding its article 22.1? (iv) What principles and duties are involved in the discussion about durable solutions according to the Guiding Principles on Internal Displacements in relation with the American Convention on Human Rights and what is their scope with regards to internally displaced persons by climate change? (v) What is the scope of the duty to prevent the negative effects of internal displacement in light of the American Human Rights Convention and other international treaties? (vi) What principles and duties should States adopt in the development and implementation of durable solutions to internal displacement caused by climate change? (vii) What are the duties of due diligence that States must comply with to guarantee that people
displaced by climate change can access an effective judicial remedy? (viii) How are state duties on mobility protection measures related to planned relocation? (ix) Does the right to asylum enshrined in articles 22.7 and 22.8 of the American Human Rights Convention protect environmental refugees?

**Climate Science**

The Federal Institute of Public Defense asks the Court to comment on the following: (i) Should duties to address the climate emergency be established according to the type of territory where each State is located? (ii) If, according to the Court, scientific evidence is not necessary to prove climate change, do States have a duty to gather scientific evidence to establish the type of obligations they have on it? (iii) Should the duties States have to act before the climate crisis be extended to living being (plants, animals, etc.) and not only to humans?

### 6. THE HUMAN RIGHTS COMMISSION OF THE STATE OF JALISCO (MEXICO)

**The current situation of environmental and territorial defenders in Latin America**

Environmental defenders play an indispensable role in the protection and defense of the right to a sustainable environment in Latin America. There is extensive legislation in defense of the environment with a biocentric approach that recognizes the human right to a healthy environment from a collective and individual perspective, as specified in Article 25.1 of the Universal Declaration of Human Rights and Article 12 of the Covenant. International of Economic, Social and Cultural Rights, among other international regulatory bodies.

Mexico is a country with extensive regulatory development that seeks to preserve its ecology and provide obligations that guarantee a healthy environment without discrimination and with access to basic public services. The IACHR, in its capacity as the highest jurisdictional body of the human rights system, has been evidencing environmental cases with the main connection in the property rights of indigenous communities.

The resolution of the IACHR in the case of the Garifuna Community of La Cruz and its Members vs. Amicus report of the State Human Rights Commission of Jalisco – Mexico Honduras specifies the fundamental role played by Article 7.3 of ILO Convention 169, which indicates the prior studies that every state must carry out in indigenous communities and after that, only to be able to carry out the planned economic activities. as long as they do not generate harmful effects on the subsistence of the surrounding towns. With this, we seek to determine the complementary relationship between the right to environmental protection and the realization of other human rights that have been impaired by climate change.

In 2010, the United Nations Special Rapporteur expressed the widespread phenomenon of threats made against human rights defenders, hindering them in their work and violating their rights to life and physical integrity. Between 2012 and 2022, 1,910 environmental defenders had been murdered and 88% of them happened in Latin America, that is, one person was murdered every two days for an entire year, with the majority of cases occurring in Colombia, Brazil and Mexico.

During the COVID-19 pandemic, Mexico recorded at least 18 murders and 197 attacks on environmental defenders, however, the number in subsequent years has gone up. increasing. The attacks usually come from the primary, secondary and tertiary economic sectors, such as mining, electrical energy, forestry, urban development, among others. The problem presented not only concerns Mexico but the entire world, for which was decided to implement the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), which recognizes the importance of work and contributions that human defenders have in environmental and territorial matters for the strengthening of democracy, human rights and sustainable development. Mexico has ratified all the documents that promote the protection of human rights, the Escazú Agreement being one of them. It is worth mentioning that the protection
measures to be taken have a vital relationship with domestic law to the extent that rights imply legitimacy of state work.

**The complex work of environmental and territorial defenders in Mexico**

Mexico has had the Law for the Protection of Human Rights Defenders and Journalists for a decade, which created the Protection Mechanism for Human Rights Defenders and Journalists, however, the numbers are not positive because the links between Federal entities are weak and have legal loopholes. In 2022, only 7 of 32 Mexican states had agreements and coordination with the purpose of protecting, promoting, and guaranteeing the rights of environmental defenders. Despite this implementation, cases were increasing. SRESCER itself, in its 2021 report, indicated that, in Mexico, there had been pronouncements from all levels of the state that delegitimized the work of people defending the environment and territory, and even limits were being generated on the protests of these people with the disproportionate use of police force. Currently, you can see the total vulnerability in which environmental defenders find themselves since even the main aggressors are public officials at all levels of government. As such, Mexico has been showing legal fragility and latent impunity regarding the attacks suffered by environmental defenders, legal opacity for carrying out their activities and the lack of political-social consensus. Therefore, the IACtHR has ordered the pertinent actions of the case to be taken that concern the creation and implementation of a specific and specialized protocol for the investigation of attacks on human rights defenders.

**Legal and judicial assistance to environmental and territorial defenders in Jalisco**

The State Human Rights Commission of Jalisco has identified the increase in attacks that have been perpetuated over the years against defenders of the environment and territory, making the situation they face throughout the Mexican territory worrying; attacks, grievances, disqualifications and crimes against them must be a priority for all authorities, who must provide at all times, an openness regarding recognition, trust and cooperation with this vulnerable group, taking into account the transversality and intersectionality that must be applied in the case of environmental human rights defenders with greater emphasis on belonging to indigenous peoples, indigenous communities and Afro-descendants. In this line of argument, the CEDHJ has been aware of and intervened in several cases in which defenders have been affected, issuing precautionary measures and initiating an ex officio investigation into the murder of indigenous leaders and environmental activists.

7. **THE HUMAN RIGHTS COMMISSION OF THE STATE OF PUEBLA (MEXICO)**

**State obligations derived from the duties of prevention and guarantee of human rights linked to the climate emergency**

Globalization is a determining factor that contributes to the increase in Global Warming, which generates climate change. Companies are the main agents that contribute to the impact of climate change, which is due to the excessive use of chemicals, fuel consumption, increase in waste, among others. In 2017, a report was issued detailing that a hundred companies were responsible for 71% of GHG emissions; in addition, it was stated that only 60% of companies had a sustainability strategy.

The UN, through the resolution of June 16, 2011, indicated in guiding principle No. 11 that companies must respect human rights and not infringe them by actions they have in their production process. In this line of argument, the Paris Agreement emphasized that the temperature increase must be kept below 1.5°C in relation to industrial levels. Likewise, the “Emissions Gap Report” detailed the importance of progressively eliminating non-renewable energy by 2030. In that sense, it is imperative that companies in America gradually transition from voluntary social responsibility participation to an obligation for the private sector to contribute responsibly to addressing the climate emergency.
Although this must be generated, it must be considered that the main engine of an economic-social unit whose purpose is to generate capital, so if we want a change in the advances of climate change it is important that every company generates an investment socially responsible.

An emblematic case that showed society's discontent with the practices carried out by companies was “the Exxon Valdez disaster”, which occurred in 1970, as a result of a bad maneuver that generated a spill of 40.9 million liters of hydrocarbons into the sea. In that sense, to shield and prevent this type of operations, the compliance program was created. Finally, to make a change, there must be a state obligation that responds to possible violations of the limit of global warming by the private sector, urgently legislating on the matter, that is, it is essential that the member governments of the OAS encourage effective policies and regulations aimed at transnational companies, as well as small and medium-sized businesses.

**The nature and scope of the obligation of a State Party to the ACHR, in the provision of effective judicial remedies to provide timely protection and reparation for the impact on their rights due to the climate change emergency**

The ICESCR recognized that certain rights are inherent to human beings. States parties must promote the necessary measures for their protection, especially in the economic and technical aspects. Likewise, at the regional level, the Pact of San José, in its article 26, mentions said protection, complemented by paragraph 1 of the Protocol of San Salvador.

Although at the beginning a certain controversy was generated around the applicability of the protocols, it can be stated that the ESCER is currently recognized by International Treaties, both at the universal and regional level, legal instruments that have sufficient binding force and that provide for the commitments assumed by the States, where they are obliged to act and adopt the appropriate and necessary mechanisms in order to guarantee the full effectiveness and, therefore, the real enjoyment of the ESCER.

The challenges of the justiciability of ESCER in the International System are due because up to now certain countries have not ratified the ESCER, such as the case of Mexico. In this way, persuasion is avoided to the authorities that make up the Judicial Powers of the States Parties to acquire a guarantee vision and confront climate change, making the procedural rules of admission more flexible at the request of a party, only when it comes to the right to healthy environment; Thus, any person who believes they have the right or has been harmed can come to ask for justice and comprehensive reparation. It should be noted that the provision of effective judicial resources to provide timely protection and reparation for the impact on their rights due to the climate change emergency must include jurisdictional and non-jurisdictional systems.

**The conventional obligations of protection and prevention to defenders of the environment and territory, as well as women, indigenous peoples and Afro-descendant communities in the framework of the climate emergency**

Faced with an ambiguous panorama that defines indigenous peoples, ILO Convention 169 points to articles 1 and 2, which help understand that indigenous peoples cannot be fully delimited only by geography or by territorial demarcations that have been established, as a result of the results of conquering or colonial processes, but rather it has to do with other aspects related to their social circle, way of life , among others. In Mexico, it has not always been an easy resolution. Since the dawn of constitutionalism, indigenous work has always been a current issue that, at times, has tried to be left aside, but today, it is a topic that has provoked, in more than once, the mobilization and adaptation of the justice system, in directions that are at least striking.

The IACtHR issued a ruling in 2007, where it highlighted the importance of the territorial rights of indigenous and tribal peoples, therefore establishing the significant principles of prior consultation, territorial rights and state obligation. Along these lines, these principles marked a milestone in the conversation about the territory and way of life of indigenous and Afro-descendant peoples. Indigenous peoples and Afro-descendants are two different types of communities. Identification as black is not only related to physical appearance but also to cultural heritage.
and shared historical experience. The black designation highlights the need to address structural inequalities and discrimination rooted in history, recognizing diversity within the African diaspora and fostering inclusion and respect for all identities.

The shared and differentiated obligations and responsibilities in the rights of States in the face of the climate emergency

Each country has shared and differentiated obligations and responsibilities in the face of the climate emergency; these responsibilities are not uniform due to differences in the areas of economic development, technical capacity, and historical contribution to GHG emissions. Mexico has a wide range of regulations, both national and international, regarding environmental care. The truth is that it is not reflected in the statistics of our country, for this reason, as there are no favorable results that demonstrate that the Mexican State correctly applies the aforementioned regulations, we can affirm that it is not carrying out forceful actions to address the climate emergency, specifically in demanding those actors that mostly affect climate change, such as private companies, to effect that they comply with the corpus iuris that requires the care of a healthy environment; which, if fully complied with, would considerably reduce the damage generated to the environment that, as a consequence, accelerates climate change.

In this sense, it is necessary to reform the criminal codes and laws that contain criminal offenses related to the deterioration of the ecosystem, so that they can be sanctioned and forced to compensate the victims caused, including the environment, as a subject who owns rights and who, in turn, is a potential victim. Therefore, it is proposed that the criminal classification of the States Parties be reformulated so that the environment, in all its variants, is recognized as a subject of rights.

8. THE MUNICIPALITY OF MONTEVIDEO (URUGUAY)

On the duty of local governments, such as that of Montevideo, in responding to the climate emergency, taking into account the differentiated impact on different regions and population groups.

In Montevideo's experience, local governments are the first level of containment for the population in the face of slow-onset and extreme weather events. Thus, the local government of Montevideo, through the Departmental Emergency Council (CECOED), is involved in mitigating and responding to climate events. Montevideo's experience includes the following:

- **Water risk prevention:** Montevideo's experience in water risk prevention has the ultimate goal of increasing the community's resilience to flooding, and to this end, they propose the following guidelines: reduce the neighborhood's exposure and vulnerability to flooding and improve its capacity to prepare and respond. To this end, it is essential to educate residents in flood-prone areas on how to reduce existing risks, prevent future risks and protect themselves from loss and damage during emergencies.
- **Transparency and Open Data Policy of the Government of Montevideo:** The "Open Montevideo" concept is based on four fundamental principles: open data, open services, free software, and open knowledge, based on technology, transparency, infrastructure building, and public knowledge. The aim is to make the majority of public data managed by the City Council available to citizens in its original format. In this way, it can be processed by anyone.
- **Management of the Covid-19 pandemic:** The Basic Citizen Support Plan (ABC) was created, through which the Government of Montevideo implemented, from 2020 to 2023, actions throughout the territory to address the social, economic and cultural scourges caused by the Covid pandemic. Actions included...
access to health and food, gender equality, improving housing and the quality of life in neighborhoods, improving access to public transport, and creating temporary jobs for the most vulnerable sections of the population.

- Water crisis management: The Government of Montevideo implemented a series of measures in 2023 to address the water crisis, which mainly affected the country's metropolitan area. Among the measures taken were: the delivery of bottled water to patients at risk, the distribution of bottled water in more than 220 picnic areas, the measurement of water quality at different points of the drinking water distribution network, and the publication of information as part of the open data policy, among others.

On the scope of States’ duty of prevention

The importance of considering the human rights impacts of extreme weather events from an intersectionality of inequalities perspective is highlighted. This is because climate disasters affect different population groups differently, especially women, children, and the elderly, and therefore such differences need to be taken into account when formulating responses to the climate crisis, incorporating a human rights approach that recognizes and addresses the differential impact on historically vulnerable groups. It also raises the question of the degree of responsibility of States in the relocation of people displaced from their territories for climate-related reasons.

From a human rights perspective, based on the American Convention, States must adopt provisions and measures to ensure The reintegration of children and adolescents into the education system as soon as possible; the supply of food and drinking water in good conditions; the approach, from a gender perspective, to the new care burdens imposed by the emergency situation; immediate health care; the assessment of the territory before the return of the displaced population; training and work centers in the territory; bodies for monitoring climate variability and forecasting; early warning systems in coordination with the academic and scientific community; and, finally, broad governance bodies to take prevention, adaptation and mitigation measures. Furthermore, in the light of the Escazu Agreement, states must ensure access to environmental information and have an obligation to report on mitigation and adaptation measures related to the climate emergency (this includes providing detailed information on policies, programs and actions being implemented to address the climate crisis), as well as an obligation to report on just transition policies.

Local governments have the responsibility to be the first line of contact and containment between the local and the national, but it is the nation-states that have the duty and competence to protect their populations. Local governments have both exclusive and shared responsibilities with national governments. Local governments are therefore key actors in the effective implementation of climate change strategies. Their ability to act at the community level and their proximity to citizens enable them to address specific challenges and contribute significantly to broader climate change mitigation and adaptation goals.

With regard to monitoring and enforcement obligations, a holistic approach that includes the active participation of civil society, the protection of vulnerable populations and transparency at all stages is essential for effective climate emergency management at the state level.

On the principles that should inspire action to mitigate, adapt and respond to the loss and damage caused by climate emergencies in affected communities.

Key principles that should guide these actions include climate justice, participation and empowerment, human rights-based approach, gender perspective, environmental sustainability, community resilience, inclusiveness and intersectionality, international cooperation, precaution and prevention, social impact assessment, and intergenerational equity. These principles must be applied in an integrated manner at all stages of planning, implementation, and evaluation of climate-related emergencies to ensure that action is effective, equitable, and respectful of the rights and needs of affected communities.
On state obligations to uphold the right to life and survival in the face of a climate emergency

The obligations of states in the context of climate emergencies under the American Convention and the Escazú Agreement are broad and multidimensional. The scope of these obligations is discussed in relation to environmental information, mitigation and adaptation measures, and just transition policies.

Governments have an obligation to provide information on all decisions that affect the environment, so that people can take a critical stance on administrative actions that may have a negative impact on the guarantee of the rest of their rights, so that access to environmental information also constitutes a guarantee dimension of the right to access to justice. The development of information systems for sustainable development and environmental justice would imply the availability of objective data for monitoring and planning, but also for positioning in public debates.

The proposal put forward in this amicus is made in the context of International Development Cooperation (IDC) and involves the adoption of a South-South Cooperation (SSC) strategy. These strategies are currently being incorporated into the agendas of Latin American countries in relation to the debate on which development models and policies promote spaces for regional integration, and reaffirm the idea that countries of the South can and should cooperate with each other.

9. THE OMBUDSMAN (ECUADOR)

Regarding the scope of the duty of States in prevention, regulation, monitoring, supervision, and mitigation

States are obligated to adopt effective and timely measures to mitigate climate change through regulatory actions and control of legal and illegal extractive activities (mining, hydrocarbons, timber, etc.), and other anthropogenic activities that cause pollution. Preventive actions are based on the issuance of regulations and public policies in favor of the rights of people and nature in relation to climate change. Likewise, strategies for climate action should consider the participation and support of migrant, peasant, Afro-Ecuadorian, and diverse genders.

In addition, it is necessary to issue local and global regulations and public policies aimed at reducing and/or avoiding the consumption of fossil fuels, considering that they are the major producers of GHGs. Companies play an important role as they are responsible for a large part of the generation of these gases. It is required that the State generates regulations and conducts controls that are carried out with greater rigor and periodicity, ensuring that companies act with due diligence. In cases of natural disasters, it is the duty of the State to generate permanent monitoring plans for the vulnerable population to be protected from damages, as well as to follow up on their situation after a natural disaster. The State will establish and execute programs, with the participation of the community, to ensure the conservation and sustainable use of biodiversity. It is recommended to consider the intercultural approach so that the State, in its intervention, preserves and respects the worldview, cultural reality, and ancestral knowledge of indigenous peoples and nationalities, Afro-Ecuadorian people, and Montuvio people, the gender and human rights approach.

Legal framework of Ecuador in the context of climate change Ecuador is a Party State to the Paris Agreement and the Scientific Consensus on Climate Change. Additionally, the Constitution of the Republic of Ecuador (CRE) recognizes the right to a healthy environment in its art. 14, and refers to the adoption of prevention and precautionary measures to protect nature (art. 73 and 72 CRE). The precautionary principle is enshrined in art. 396 of the same legal body. In addition, it has provisions for prevention, restriction, and precaution, and strictly for climate change, art. 414 of the CRE. In such article, the State is to adopt appropriate and cross-cutting measures for the mitigation of climate change. Likewise, the CRE recognizes fragile ecosystems in its art. 406. In case of doubt about the scope of legal provisions in environmental matters, they shall be applied in the sense most favorable to the protection of nature, according to art. 395.4 of the CRE.
Finally, the CRE recognizes environmental consultation as a right (art. 398 CRE). Environmental information, being a type of public information, its access is guaranteed by the Organic Law of Access to Public Information (LOTAIP) and its regulation, the Escazú Agreement; additionally, the Unique Environmental Information System of the Ministry of Environment, Water, and Ecological Transition is available. Likewise, Ecuador has a National Climate Change Strategy ENCC, 2012-2025.

On the differential obligations of States regarding the rights of children and new generations facing the climate emergency

It is the duty of the State to generate a public policy that considers the creation and implementation of awareness and training spaces for children and adolescents, so that they become agents of change in their families as the first environment of life, creating spaces for discussion, developing plans together with children and adolescents, and listening to their proposals on how to help the planet. In the field of rights protection, it is proposed to adopt measures that include the mitigation of the impact of climate change; the development of plans, decisions, and adaptation solutions that include children and adolescence; the coordination of financial and technical assistance to countries in which this population group has been affected by losses and damages caused by the effects of climate change; and ensuring that corporate responsibility is implemented in the field of children's and adolescents' rights, guaranteeing the reduction of emissions and promoting the use of renewable energies. In this section, the case of nine girls who filed a protective action based on their rights being violated by ash emissions from authorized oil companies in the areas of Shushufindi and Sacha in the province of Sucumbíos is mentioned. Although the protective action was initially denied, the Provincial Court of Sucumbíos determined that the rights to nature and a healthy environment had been violated, overturning the initial judgment and accepting the protective action. The Court declared that the Ecuadorian state had disregarded the girls’ right to live in a healthy environment.

Nature as a subject of rights

In Ecuador, nature is a subject of rights. Different real cases are considered that exemplify the provision of effective judicial resources to provide adequate and timely redress for the infringement of rights due to the climate crisis: Subject of Right Paramo: Chaupi Case, which referred to possible water contamination and damage to the paramo due to cattle trampling in this ecosystem; and Fierro Urco case, referring to the development of mining activities in the paramo ecosystem. In both cases, Amicus Curiae were presented. Subject of rights Cloud Forest: The Cedars case and the Llurimagua case are considered, both referring to the development of mining activities. In the Cedars case, an Amicus Curiae was presented to the Constitutional Court, while the Llurimagua case corresponds to a defense investigation that culminated in a resolution. Amicus curiae were presented within a request for precautionary measures, and subsequently the community and the DPE (Public Defender's Office) filed a protective action. Subject of rights tropical rainforest: Guarantees have been presented on this subject for the rights of nature and people. On the protection of environmental defenders Ecuador is working on public policy for defenders. Alerts have been issued to the State and a report in 2022 on processes of criminalization, and also, the Public Defender issued Resolution DP-DPG-DAJ-2018-037, which contains instructions for the defense of people protecting the rights of nature. However, clear normative public policies and educational processes that recognize the work of nature defenders are required. It is proposed to generate a Law project for the protection and prevention of these people.

10. THE NATIONAL HUMAN RIGHTS COMMISSION OF HONDURAS (CONADEH)

Measures and policies to facilitate the work of environmental defenders

It is necessary to improve access to information, public participation, and access to justice. States have positive obligation to act to avoid violations of human rights damage.
Considerations to guarantee the right of women human rights defenders to defend the healthy environment and territory in the context of the climate emergency

In general terms, the role played by human rights defenders contributes to making situations of social injustice visible, combating impunity, and giving life to democratic processes. The Commissioner proposes to implement or improve the legislative and regulatory frameworks necessary to establish national protection programs for defenders. On the other hand, states can adopt an intersectional and differentiated approach. As an example, in Honduras, CONADEH has identified that the food security crisis, climate change, and natural disasters lead women to lose traditional control over their crops and water sources, leading them to move to precarious conditions and increasing their exposure to trafficking and sexual abuse.

It is also important to add attention to people with disabilities during the emergency caused by climate change. The situation of vulnerability of this population is the lack of knowledge in the proper management of displacement and accessible communication to information because it is not possible to offer the necessary attention to rescue people with disabilities and this in turn increases the levels of suffering sequelae or leads to death. Finally, the Commissioner calls for the implementation of environmental risk and climate change assessments.

Considerations to guarantee the right to defend the healthy environment and territory by international factors and differentiated impacts

Attacks against defenders are generally intended to deter them from carrying out defense and protection activities. Another consideration to be taken into account is to guarantee, through procedures established in domestic regulations, the right to defend the healthy environment and the territory around climate change, in addition, these indicators and variables of ethnic-racial self-identification must have an intercultural perspective.

Information required investigate crimes committed against defenders, including complaints of threats, kidnappings, homicides, forced displacements, gender-based violence, discrimination

The information related to the obligation to investigate is reinforced when it comes to human rights defenders; In this regard, the organs of the inter-American system must seek effective protection The States must implement, or may implement, an exhaustive search of all information related to various crimes committed against defenders to design protocols or other similar ones, for the publication of necessary information that leads to the analysis of hypotheses of authorship by action by omission at different levels.

Due diligence measures to ensure that attacks and threats against environmental defenders do not go unpunished

In the first instance, the violation against them must be prevented, and on the other hand, the protection of the people who are at risk must be prevented, this also implies:

- Ensure the conditions to carry out their activities freely.
- The duty not to impede work and to resolve obstacles to its work.
- Prevent and respond to acts aimed at unduly criminalizing the work of defenders.
- Protect people who are at risk, which may involve compliance with the precautionary measures issued by the IACHR.
- The cross-cutting obligation to investigate, clarify, prosecute, and punish crimes committed against them: based on the above, applicants around climate change must carry out effective investigations that complete the diligence to identify, prosecute, and punish the perpetrators of threats and attacks on defenders, stop the sharing of risks and prevent related human rights violations.
Likewise, to admit or discard the hypothesis that it is correct in the cause of the crime; That is to say, these investigations must have a focus on protecting the legal right of "life", specifically that of defenders in acts of violence.
COMMUNITIES, DIRECTLY OR TOGETHER WITH NONGOVERNMENTAL ORGANIZATIONS
Sixteen communities, directly or together with nongovernmental organizations, presented their written observations: (1) Organización Identidad Territorial Malalweche; (2) Organización Territorial Mujeres en Zona de Sacrificio en Resistencia (MUZOSARE); (3) Mujeres Unidas en Defensa del Agua Lago Titicaca Peru-Bolivia; (4) Comunidades de La Gran Parada, El Rócio, and Organización Fuerzas de Mujeres Wayuu de La Guajira (Colombia); (5) the Wiwa and Kankuamo Peoples of the Sierra Nevada de Santa Marta (Colombia); (6) Communities of the Lenca People, Communities of the Tolupán People, Consejo Cívico de Organizaciones Populares e Indígenas de Honduras (COPINH), Movimiento Amplio por la Dignidad y la Justicia (MADJ) and Women’s Link Worldwide (WLW); (7) Indigenous Councils of the macroterritory of the Jaguares of the Yurupari (in the Colombian eastern Amazonian region) and the Fundación Gaia Amazonas; (8) Confederación Indígena de Nequén (Argentina); (9) Coordinadora de Desarrollo y Defensa de los Pueblos Indígenas de la región San Martin (CODEPISAM), Federación de Pueblos Indígenas Chiquitos Amazonia (FEPIKECHA), Federación de Pueblos Indígenas Chiquitos del Bajo Huallaga San Martín (FEPIKBHSA), Instituto de Defensa Legal (IDL), Forest Peoples Programme (FPP), and Due Process of Law Foundation (DPLF); (10) Confederación de Nacionalidades Indígenas del Ecuador (CONAIE), Fundación Pachamama, Human Rights Center at the Pontificia Universidad Católica del Ecuador (CDH/PUCE), Coordinadora Ecuatoriana de Organizaciones para la Defensa de la Naturaleza y el Medio Ambiente (CEDENMA); (11) Articulação dos Povos Indígenas do Brasil (APIB), Articulação dos Povos e Organizações Indígenas do Nordeste, Minas Gerais e Espírito Santo (APOINME), Conselho Terena; (12) Guadalupe Cobos Pacheco, Aurea Sánchez Hernandez, Yesenia del Socorro Albino Sánchez on behalf of the Community of El Bosque (Tabasco, Mexico), Nuestros Derechos al Futuro y Medio Ambiente Sano A.C. (Nuestro Futuro), Conexiones Climáticas A.C. and Greenpeace Mexico; (13) EarthRights International, together with the indigenous, peasant and Afro-descendant communities and organizations that signed the brief; (14) Amazon Watch, Observatorio dos Protocolos Autónomos de Consulta e Consentimento Prêmio, Livre e Informado, Centro de Pesquisa e Extensão em Direito Socioambiental (CEPEDIT), Articulação dos Povos e Organizações Indígenas do Nordeste, Minas Gerais e Espírito Santo (APOINME), Associação Indígena Munduruku Dace, Instituto ClimaInfo, Organización de Pueblos Indígenas de la Amazonia Colombiana (OPIAC), Asociación Intercultural de Desarrollo de la Selva Peruana (AIDESEP), Articulação dos Povos Indígenas do Brasil (APIB), Confederación de Nacionalidades Indígenas de la Amazonia Ecuatoriana (CONFENIAE), Alianza por los Derechos Humanos de Ecuador, Unión de Afectados y Afectadas por las Operaciones Petroleras de Texaco (UDAPT) and Confederación de Organizaciones indígenas del Napo (FOIN); (15) André Soares Oliveira, Adryel Gomes dos Santos, Alissa Laura Amaro Pereira, José Gabriel Gomes Ribeiro, Lara Victoria Arnaud Sampaio Campos, Leticia Lopes de Almeida and Mateus de Sá Barreto Sabiá, and (16) Patricia Gualinga Montalvo, Political Adviser to the Kichwa Indigenous People of Sarayaku.

1. ORGANIZACIÓN IDENTIDAD TERRITORIAL MALALWECHE

The territorial organization of Malalweche (hereinafter referred to as “The Community”) is an autonomous indigenous organization representative of the Mapuche people in the province of Mendoza, Argentina. The Malalweche organization presents the ancestral territories of 26 indigenous communities belonging to the Mapuche people, these being: Lof Malal Pincheira; Lof Kupan Kupalme; Lof El Altepal; Lof Ranquil Ko; Lof Limay Kurref; Lof Laguna Iberá; Lof Poñwe; Lof Butamallín, Lof El Morro; Lof Yanten Florido; Lof El Sosneado; Lof Elvney; Lof Suyai Levuf; Lof Epv Levuf; Lof Loncoche; Lof Chenque Ko; Lof La Blanca; Lof Ruka Che; Lof La Triakka; Lof Yanten, Lof Tremunko, and Lof Bardas Bayas. They request the validation of traditional knowledge and cultural practices, for which they present perceptions and experiences of the communities in the face of the evident climate impacts and social conflicts generated in the territory.

In the south of the province of Mendoza is located the territory of ancestral occupation of the Mapuche people from the south of the department of San Rafael to the south of the department of Malargüe, where more than 20 original communities belonging to the Mapuche and Mapuche-Pehuenche people are located. of those who were violently expelled after colonization.

In these territories, for several years, hydrocarbon, mining, and tourism exploitation projects not only violate the rights of environmental, social, and economic impacts; but They have also promoted a legal offensive by the business sector and large landowners to develop them in the territories of the community.
Despite the environmental impact of hydrocarbon exploration and exploitation activities in their territories, they have been denied the right to due participation in the process before the issuance of government regulations (prior consultation); Not only does the law collide with the rights of this community, but the text of the decree itself finally establishes regulations that limit access to the exercise of their fundamental rights in a regressive and restrictive way that is today.

**Climate vulnerability**

Future climate scenarios show that the water situation in Mendoza will be even more critical in the future: the National Plan for Adaptation and Mitigation of Climate Change foresees a panorama of special vulnerability for the Mapuche communities of Mendoza because the practices of this community are dependent on rivers and their flows.

**Community Experiences**

The impacts of the climate crisis territorial conflict are reflected in the property dispute. There are changes in the real estate sector, new owners are beginning to appear, as there is no legal security and guarantees of ownership of the territories. The Community has traditional ways of seeing the sky, stars, animals, and the behavior of the waters, to predict the annual climate; However, this has become unbalanced. Traditional knowledge, as a way of interpreting and responding to impacts for the community, is important, since knowledge is transmitted from generation to generation. Along these lines, they consider that there is no clear policy to identify and validate the traditions of these people as knowledge.

**Health Impact of Traditional Food and Culture**

According to the community's thinking, health is physical and psychological, and it is also being able to transmit traditions. In terms of medicine, people continue to use herbs and elements of traditional medicine that they have been recovering.

**The problem of mitigation and adaptation without links to territories**

The community produces healthy food and they are green employment at its best, but they do not have any recognition of any State agency that is dedicated to identifying the way of life and recognizing it within the standard of conservation, today there are no axes of work in this regard neither from the State of provincial nor municipal, the national in recent times was present through regional calls. But there is still no work in the territory more specifically.

**Importance of Participation**

The community has established relations with the most productive axis of the national organizations, they are also working on the issue of forests, which is a challenge because the province of Mendoza has not finished its survey of native forests since 2010.

**Community Sharing of the Benefits of Development Activities**

At the Travún community meeting, the community said that in 40 years of oil extraction in the territory, millions and millions of dollars were produced. However, they still have bad roads, live in the same conditions, and would have to apply for a job in the oil industry if they wanted to recover any funds to distribute it. Emphasizing demands for climate mitigation and adaptation measures include:

- Identify and support the contributions of communities to climate change adaptation and mitigation.
- Inclusion in consultation processes in decisions regarding activities that affect their territory.
- Recognition: That their perceptions regarding the change in behavior of animals, plants and rainfall regimes, floods and droughts, and other environmental indicators be recognized as valid information (knowledge) on which to discuss policies and not as anecdotes.
• Waste management: It is the role of the State, first to reduce the amount of packaging by controlling companies and then to say where the waste goes and who is in charge of reusing, recycling, or other treatment. Although we have taken courses in environmental promoters, we cannot cover the role of the State.

Demands for regulatory recognition and state commitment:

• They demand equal access to these regulations, especially in the business world.
• That the state's commitments do not remain unfulfilled and momentary promises due to electoral periods.
• That the State articulates with the companies regarding the actions.

2. ORGANIZACIÓN TERRITORIAL MUJERES EN ZONA DE SACRIFICIO EN RESISTENCIA (MUZOSARE)

The concentration of industrial activities in Quintero - Puchuncaví disproportionately affects populations in vulnerable situations, worsening environmental injustices and human rights violations

The Quintero - Puchuncaví region in Chile has been delineated as one of the nation's five designated sacrifice zones, distinguished by its prolonged concentration of industrial activities. This circumstance has engendered significant environmental challenges, disproportionately impacting vulnerable demographics such as women, the elderly, and children. Despite the anticipated economic advancements associated with industrial undertakings, the actuality reflects palpable environmental inequities and infringements upon rights, with the burden of environmental ramifications disproportionately borne by these susceptible population segments.

The establishment and operation of the Ventanas Industrial Complex within the communes of Puchuncaví and Quintero have precipitated a suite of adverse consequences, including environmental degradation, human rights transgressions, and socio-economic disenfranchisement. Evident pollution of soil, air, and water, underscored by studies illustrating elevated risks of severe health afflictions, notably cancer, particularly among proximate residents, underscores the gravity of the situation. Despite governmental initiatives, such as the Contamination Plan, the response has been characterized by inadequacy and tardiness, exacerbating environmental degradation throughout the region.

The environmental predicament in Quintero-Puchuncaví is further compounded by the repercussions of climate change, with a substantial proportion of GHG emissions emanating from the energy sector. While decarbonization and energy transition measures have been proclaimed, the dearth of meaningful engagement with affected communities and the absence of comprehensive environmental remediation strategies cast doubt upon the efficacy and equitability of these endeavors, particularly concerning the protection of the rights of the most vulnerable cohorts.

The exacerbation of intoxication incidents within Chile's sacrifice zone, attributable to the climate crisis, has unveiled earlier and more severe consequences

Over the course of the past half-decade, the climate crisis has intensified instances of intoxication within the Chilean sacrifice zone, marking a discernibly earlier onset and heightened severity. This phenomenon underscores discernible shifts in temperature patterns and other physicochemical metrics correlated with the broader spectrum of climate change. Such alterations have been evidenced by observable deviations in seasonal dynamics, characterized by delayed ripening of fruits, precocious blossoming of flora, and augmented coastal tides impacting locales like Horcón, where the erection of a containment structure has precipitated shoreline erosion and precipitates structural vulnerabilities.
The protracted drought, which has persisted since 2006, has precipitated a marked reduction in precipitation levels, exacerbating the phenomenon of the coastal trough, particularly exacerbated by the proliferation of monoculture practices, notably avocado cultivation. Consequently, the scarcity of potable water resources has become pronounced, necessitating community reliance on water deliveries via tanker trucks while grappling with pervasive well contamination. This confluence of factors has precipitated stringent prohibitions on the consumption of locally sourced produce and seafood, owing to pervasive environmental pollution.

The conspicuous absence of an equitable and participatory paradigm for energy transition has left communities within the sacrifice zone grappling with initiatives ostensibly geared towards promoting green energy, yet often devoid of a comprehensive assessment of attendant adverse ramifications. Illustrative examples include the implementation of desalination facilities along coastal expanses and the establishment of expansive photovoltaic projects.

Notwithstanding these challenges, the Women in Resistance of the Sacrifice Zones have emerged as stalwart proponents of environmental justice. Their endeavors have been characterized by a steadfast commitment to shedding light on territorial contamination, resisting the imposition of ventures deleterious to public health, and confronting systemic disparities and environmental degradation. Despite encountering reprisals and harassment from corporate entities and governmental entities, Women in Resistance of the Sacrifice Zones indomitable resolve has proven instrumental in fostering heightened community consciousness vis-à-vis environmental hazards, while fervently advocating for sustainable alternatives, such as localized food production in controlled settings. Additionally, their meticulous research efforts have yielded crucial insights into heavy metal contamination within shellfish and mollusks, underscoring the acute imperative for stringent regulatory oversight within this domain.

Climate impacts exacerbate pollution in rural areas, yet State fails to address it effectively

Climate impacts are exacerbating preexisting challenges in rural regions, intensifying widespread pollution and leading to new adversities such as water scarcity and contamination of food and water resources. Despite this context, the State fails to adequately recognize these impacts and perpetuates the invisibility and exclusion of vulnerable communities. Furthermore, effective measures for cleaning and restoring the affected areas and communities are not being implemented. Paradoxically, actions such as installing desalination plants are being pursued, which do not contribute to resolving the issues and could potentially worsen the situation. Therefore, it is imperative to cease any new projects in the area and establish a participatory recovery plan aimed at addressing environmental degradation and promoting the well-being of local residents.

Concurrently, the political and economic measures devised for energy transition fail to adequately address the climate crisis and the region's severe environmental and health pollution. These plans must uphold human rights and environmental integrity. However, these solutions are inadequate in resolving local issues, with the negative consequences outweighing the benefits. Additionally, the lack of transparency regarding State actions, such as the closure of power plants without communicating the fate of refineries, exacerbates the situation. The absence of reliable scientific data and the exclusion of community participation in project implementation further contribute to the deteriorating circumstances.

### 3. MUJERES UNIDAS EN DEFENSA DEL AGUA: LAGO TITICACA PERU-BOLIVIA

**The urgent need to address the declining water levels and environmental degradation threatening Lake Titicaca**

Lake Titicaca, historically entrenched as a crucial source of sustenance and cultural richness for local communities spanning millennia, confronts a concerning decline in its water levels, attributed to diminished precipitation and river flux. This phenomenon not only presents a direct peril to the lake's biodiversity but also adversely affects the
daily routines and livelihoods of its dependents. The implications of climate change, increasingly discernible, compound the inherent vulnerability of this distinctive ecosystem. The climatic extremities of the Altiplano, marked by low temperatures and scant rainfall, are experiencing accelerated alterations that imperil the age-old ecological equilibrium. Concurrently, pollution, particularly evident in the Cohana Bay, exacerbates this dilemma by compromising water quality and jeopardizing the well-being of local communities and lacustrine biodiversity alike.

The societal and economic ramifications stemming from this environmental predicament are profound. The diminution in the lake’s water level severely impacts vital economic activities such as fishing and agriculture, foundational to the sustenance of multitudes in the region. Moreover, pollution engenders supplementary concerns regarding public health and community welfare, heightening the vulnerability of those directly reliant on the lake for their sustenance. Against this backdrop, the imperative need to address this issue comprehensively and expeditiously becomes palpable, necessitating the implementation of efficacious conservation and sustainable development measures to safeguard this invaluable natural and cultural heritage and ensure the welfare of both present and future generations.

The climatic vulnerability of Lake Titicaca represents a long-anticipated crisis, with climatic changes foreseen for generations by local communities. The heightened sensitivity of the region, where primary economic activities directly hinge on atmospheric phenomena such as precipitation and frost, is compounded by significant exposure to adverse climatic impacts, exemplified by the recent heatwave resulting in historically diminished lake levels. Despite this critical juncture, the absence of a continuous monitoring system leaves the region susceptible. However, there is recognition of the potential efficacy of community-based monitoring, particularly among indigenous women, in bolstering resilience against the climate crisis and ensuring the sustainable adaptation of local populations.

**Bolivia’s legal framework emphasizes environmental protection, indigenous rights, and sustainability, pioneering recognition of water and food as fundamental rights**

Within the framework of Bolivia’s legal system, a constitutional imperative exists to safeguard the environment and ensure societal well-being. Recognizing the rights of indigenous peoples to their territories, the Constitution also enshrines the right to a healthy environment and participation in environmental governance.

Furthermore, Bolivia’s Constitution has pioneered the recognition of water and food as fundamental rights. The country’s legislation, including the Mother Earth Rights Law, underscores the imperative of adapting to environmental disruptions, outlining specific rights of Mother Earth to inform governmental policies and promote sustainability. Moreover, the Mother Earth Framework Law underscores the imperative of harmonious coexistence with nature and indigenous communities, reclaiming and reinforcing local and ancestral wisdom to develop effective responses to the impacts of climate change.

**Women United in Defense of Lake Titicaca advocates for environmental awareness and government action to combat pollution in the region**

The organization solemnly commits to leveraging its expertise in formulating policies for watershed protection and environmental awareness. They urgently call upon authorities to heighten awareness concerning pollution and allocate funds for appropriate treatment facilities. Both nations must swiftly implement concrete and transparent measures to address the lake’s pollution. It is of paramount importance to instill awareness among civil society regarding pollution and vigorously advocate for reforestation initiatives. Inclusive community policies are imperative for effectively systematically managing water resources and harvests. The glaring absence of comprehensive studies in irrigation and well-drilling projects is deeply troubling, underscoring the urgent need for more rigorous and participatory planning processes.

The government must allocate substantial resources to invest in treatment plants to curb lake pollution. The inertia in taking action exacerbates the spread of pollution, with repercussions felt in new regions and communities. A more meticulous and participatory planning approach is imperative, wherein local communities are empowered to contribute to decisions affecting their environment.
4. COMUNIDADES DE LA GRAN PARADA, EL ROCÍO, AND ORGANIZACIÓN FUERZAS DE MUJERES WAYUUU DE LA GUAJIRA (COLOMBIA)

The communities of La Gran Parada, El Rocío, and the Organization Fuerzas de Mujeres Wayuu, located in the department of La Guajira (Colombia), present the brief to shed light on the implications of climate change on the enjoyment of rights due to the realities faced by the members of the indigenous Wayuu people, in contexts marked by economic vulnerability, water crisis, and open-pit coal mining activities carried out in their territories. These, among other factors, reduce the possibilities of adaptation to global warming, affecting human rights. Among the negative impacts of climate change in La Guajira are modifications in the local climate; water scarcity; impacts on cultural practices linked to daily activities such as agriculture, livestock, and quality of life; dignified food; forced displacement and lack of dignified housing; and undermining the right to health. It is primarily the mining industry that undermines all aspects of indigenous life and threatens its very existence, as evidenced by the example of the Coal Mine in El Cerrejón and the diversion of the Bruno stream; open-pit mining activity is carried out, generating repercussions in the deepening of the water and environmental crisis verified in the area. The communities propose different solutions from the territory in terms of adaptation and mitigation to climate change:

- It is necessary to raise awareness of the problem, that is, importance is given to not silence the problems related to the climate emergency and to show the reality of what is happening, including all causes, effects, and consequences for the population.
- It is necessary to work together with the government and other organizations to seek ways to mitigate the serious impacts of the climate emergency and reduce the damage caused, highlighting the importance of respecting the worldview and culture of the affected ethnic communities.
- Criticism of the current prior consultation process for its commodified approach and suggests restructuring said procedure to ensure effective community participation in decision-making affecting their territory and rights.
- They question the lack of responsibility and respect on the part of extractive companies towards affected communities and expose the need for the State to take a more active role in protecting rights and the environment.
- Environmental education should be integrated from the perspective of local communities, promoting responsible environmental care and greater awareness of climate change and its causes.
- It is suggested that the IACtHR evaluate the situation of ethnic communities in La Guajira and take measures to guarantee their rights and protect the environment. In addition, a call is made to major powers to assume their responsibility for mitigating the climate crisis globally.

5. THE WIWA AND KANKUAMO PEOPLES OF THE SIERRA NEVADA DE SANTA MARTA (COLOMBIA)

The Wiwa and Kankuamo peoples, along with the Kogui and Arhuaco peoples, who share the territory of the Sierra Nevada de Santa Marta (hereinafter SNSM), consider it necessary to establish international standards through this advisory opinion procedure that specify the obligations of the Colombian State to safeguard the Ancestral Knowledge Systems of Indigenous Peoples in the context of the climate crisis, as an effective way to ensure the preservation of the environment and mitigate climate change. Multiple threats face the SNSM and its sacred spaces, declared Intangible Cultural Heritage of Humanity. The SNSM is a biosphere reserve declared by
UNESCO, which, however, has proven to be especially susceptible to climate change, threatening the set of life-sustaining practices linked to nature and climate, as the indigenous peoples' ways of life depend on soil, geology, water, and biodiversity. The Sierra's peoples are heirs to a set of knowledge that has allowed the survival and flourishing of their cultures for thousands of years.

Regarding the negative impacts of climate change in the Sierra Nevada, the following are highlighted: alterations in the native calendar (established times for activities and rituals), loss of native forest, decrease in water sources, reduction in food sources, modification of animal diversity, undermining the health of indigenous peoples, and other cultural impacts. Communities have taken some measures to adapt to climate change, such as the "Indigenous Guard," which helps protect nature and the environment, environmental education in schools, the construction of infrastructure, etc. Nevertheless, they request the State to adapt and mitigate climate change.

As for the local legal framework, the Law of Origin or Own Law (Ley de Sé, She, or Seyn Zare) is a set of norms, mandates, codes, and procedures established to regulate the order and function of the Universe, the territory, and the natural systems, as well as the social, political, economic, and cultural organization of the ancestral peoples of the SNSM. In essence, the Law of Origin guarantees the permanence of everything in the territory. According to this Law of Origin, the ancestral territory and the governance area of the peoples of the SNSM are defined by a spiritual Black Line that is “an invisible thread, a dark reality through which the energy of life flows, and where this energy thread passes, there are the visible sacred sites and spaces.” In addition, international and national courts recognize the importance of protecting ancestral territories and the worldview of indigenous peoples, as established by ILO Convention 169. Thus, the ancestral territory of the Sierra Nevada and its sacred sites are formally recognized by Colombian law in various decisions of the Constitutional Court.

However, the most important milestone in the recognition and protection of ancestral territories of the SNSM is marked by Decree 1500 of 2015, which recognizes the cosmogony of the four peoples of the Sierra, consolidated through the results of a consultation and participation process between the Colombian state and indigenous communities of the SNSM, carried out by the National Government, by order of the Court, to redefine the regulatory rules of the Black Line. This decree represents a way to comply with Article 21 of the American Convention and, simultaneously, an effective strategy for climate change mitigation because it grants indigenous communities linked to the Black Line prerogatives over the use of the subsoil and its intrinsic resources, allowing the consolidation of the close relationship of peoples with their lands and the management of their natural resources and intangible elements derived from them according to their traditional practices, which have proven to be suitable and adequate for conserving the integrity of the Sierra Nevada as an important carbon sink internationally. Therefore, the Court is requested to:

- Urge OAS states to protect, respect, and guarantee the link between the ancestral territories of indigenous communities and the subsoil as part of their commitments arising from the American Convention.
- Issue instructions to replicate throughout the Americas as a best practice the exercises of legal recognition and protection of indigenous ancestral territories, to guarantee environmental sustainability and the conservation of cultural heritage.
- Assess that the sacred spaces of the Black Line face threats and damages associated with mining and consider measures to protect these territories and the spiritual integrity of indigenous peoples.

6. COMMUNITES OF THE LENCA PEOPLE, COMMUNITIES OF THE TOLUPÁN PEOPLE, CONSEJO CÍVICO DE ORGANIZACIONES POPULARES E INDÍGENAS DE HONDURAS (COPINH), MOVIMIENTO AMPLIO POR LA DIGNIDAD Y LA JUSTICIA (MADJ) AND WOMEN’S LINK WORLDWIDE (WLW)
The Amicus Brief presented by the organizations was constructed in a participatory and intercultural manner, incorporating the ancestral knowledge and the voices of the various indigenous communities belonging to the Lenca and Tolupán peoples in Honduras. To achieve this, in-depth meetings and dialogues were held with the participation of 52 women leaders and 20 men leaders of the communities.

Structural and systemic causes of the climate emergency and the imperative to overcome the dominant legal model that considers nature as an object of appropriation and exploitation

The extractivist development model and the excessive consumption imposed by the capitalist system have driven an unprecedented environmental imbalance. This system has perpetuated the unbridled exploitation of nature, disregarding planetary limits and generating a growing accumulation of wealth in the hands of a few, while leaving millions of people in poverty and marginalization. Added to this are racism and patriarchy, systems that deepen inequalities and perpetuate the exploitation of those considered as "others," both at the human level and in relation to nature. Addressing these problems require a profound transformation of these structural pillars and of the prevailing legal model, adopting instead an ecocentric paradigm of respect, sustainability, equality, diversity and inclusion to preserve our planet and ensure a just future for all people and life forms that inhabit it.

Differential impacts of the climate emergency on indigenous communities and women and the need to adopt a gender and intersectional approach

For the organizations, the climate emergency must be approached from a gender and intersectional perspective because its impacts and consequences differentially affect those who face multiple forms of discrimination, particularly women. Indigenous communities and historically excluded people, such as indigenous women, face additional challenges, as their rights and needs are disproportionately impacted by environmental degradation. By addressing the climate emergency from a gender and intersectional approach, the Court will be able to ensure that responses and solutions are more inclusive, equitable and effective, addressing structural inequalities and promoting climate justice for all people. As recognized by the Economic Commission for Latin America and the Caribbean and the Committee on the Elimination of Discrimination against Women, crisis situations such as the climate emergency exacerbate existing gender inequalities and intersecting forms of discrimination; women often suffer the consequences disproportionately compared to men.

In the Lenca and Tolupán communities, women struggle with post-traumatic stress due to natural disasters, with feelings of anguish and hopelessness, accompanied by episodes of insomnia, as well as respiratory, cardiovascular, skin, and gastrointestinal diseases aggravated by air pollution and declining water quality. Uncertainty about the future of future generations is mixed with a feeling of spiritual disconnection from nature and their environment, as well as the loss of their ancestral knowledge. Additionally, women are the first to get up to fetch water due to scarcity, and domestic work is exacerbated by having to deal with the lack of basic resources. Violence against women has also intensified, both at home and in the community, as pressure and uncertainty increase. Food insecurity directly affects women, and their families as extractive projects divert rivers and deplete nature necessary for their livelihoods. In addition, women defenders of the Tolupán territory are facing threats and violence from external actors seeking to exploit the region’s resources.

Obligations of the States to guarantee consultation and participation of indigenous communities in developing mitigation and adaptation measures

The human rights perspective in indigenous consultations means guaranteeing through processes of prior, free, and informed consultation the real, effective, and active participation of Indigenous Peoples and indigenous women in the processes of design, decision-making, and implementation of mitigation and adaptation measures. In addition, this approach implies that the Court recognizes that the traditional and ancestral knowledge of
Indigenous Peoples, as well as their territories, are essential to address the climate emergency and are at the level of scientific knowledge, so they deserve special attention and protection.

Indigenous communities play a key role in formulating and implementing solutions to counteract the impacts of the climate emergency and develop adaptation strategies, thanks to their vast ancestral knowledge. There are many examples of initiatives implemented by indigenous communities in Latin America and the Caribbean that demonstrate the capacity of Indigenous Peoples to mobilize, adapt and mitigate the effects of climate change, taking advantage of their traditional knowledge and local leadership.

The right of Indigenous Peoples to free, prior, and informed consultation has been widely recognized and developed by international law and the various human rights protection bodies, starting with the ILO Convention 169. Unfortunately, free, prior and informed consultation with indigenous peoples has been a process that, in practice, in numerous cases has perpetuated and legitimized the extractivist, colonialist, racist and patriarchal model. Instead of serving as a mechanism to protect the rights of Indigenous Peoples, it has been used to give the appearance of legitimacy to the exploitation of nature in the territories. The current model needs to be transformed into one that guarantees the meaningful and integral participation of indigenous communities and women in decision-making that affects their lands and incorporates international standards that respect indigenous rights and the protection of nature as a subject of rights.

It is imperative to adopt an approach to consultation that places consent based on the self-determination of Indigenous Peoples and the preservation of the environment at the center of decisions. This principle is intrinsically linked to the right to development, particularly as established in Article 32.1 of the United Nations Declaration on the Rights of Indigenous Peoples, which states that “Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.” To this end, CEDAW has recommended that States include a gender assessment in all environmental impact assessments and establish a mechanism to monitor the implementation of such assessments and ensure that Amerindian and rural women can fully contribute, and give their free, prior and informed consent before domestic or foreign companies initiate projects that affect their traditional lands and resources, take advantage of appropriate benefit-sharing arrangements and have adequate alternative livelihoods.

Conclusions and Recommendations

The organizations consider that the obligations of the States derived from the duties of prevention and guarantee in the face of a climate emergency should be governed by the following principles:

- Free, prior and informed consultation and consent, in accordance with the principle of self-determination;
- Bottom-up approach through full participation;
- Intersectional and gender approach;
- Ecocentric approach;
- Participation of indigenous women in all their diversity;
- Recognition of ancestral knowledge;
- Culture and traditions;
- Non-discrimination;
- Binding nature of the decisions made by the indigenous peoples during the consultation process;
- Guarantees of security and protection for human rights defenders; and
- Effective monitoring and evaluation through indicators.

In this regard, the organizations requested the Court, among others:

- Recognize the structural and systemic causes of the climate emergency that are inherent to the extractivist, colonial, patriarchal, and racist model.
• Reiterate that the human rights of indigenous peoples, peasant communities, and women should take precedence over the interests of the extractivist, colonial, patriarchal, and racist extractivist model.

• Reiterate that nature and the environment are subjects of law and therefore worthy of protection in themselves so States are obliged to protect them.

• Incorporate gender and intersectionality approaches to address the climate emergency.

• Recognize that the differentiated impact faced by indigenous women and girls as a consequence of the climate emergency is serious and evident and develop the necessary standards to address it in a comprehensive and intersectional manner and from a gender perspective.

• Require States to guarantee through processes of prior, free, and informed consultation, in accordance with the principle of self-determination, the effective and active participation of Indigenous Peoples and Indigenous women in the processes of design, decision-making and implementation of mitigation and adaptation measures from a human rights approach, as a fundamental principle for addressing the climate emergency.

• Recognize that the traditional and ancestral knowledge of Indigenous Peoples, as well as their territories, are essential to address the climate emergency and are at the level of scientific knowledge, and therefore deserve special protection.

• Make its processes for receiving information more flexible, allowing for non-written observations, respecting the principle of orality of indigenous cultures and cosmovisions, and incorporate the video with the statements of the people who make up the communities as an integral part of these observations.

7. INDIGENOUS COUNCILS OF THE MACROTERRITORY OF THE JAGUARES OF THE YURUPARÍ (IN THE COLOMBIAN EASTERN AMAZONIAN REGION) AND THE FUNDACIÓN GAIA AMAZONAS

The macroterritory of Jaguars of Yurupari in the Colombian Eastern Amazon

The Macroterritory of the Jaguars of Yurupari (MTJY) is a geographical space in the Colombian Amazon inhabited and governed by around 51 indigenous peoples who share a common cultural and knowledge system. The biocultural characteristics of this region make it highly vulnerable to transformations caused by the climate emergency and the economic intervention of external agents who disregard indigenous ways of life despite the proven effective environmental protection of their territory, and people settled in the region.

Violations of the human rights of indigenous peoples by REDD+ projects

REDD+ (Reducing Emissions from Deforestation and Forest Degradation) seeks to reduce emissions GHGs from deforestation and forest degradation, along with the conservation and sustainable management of these forests. It is a mechanism of payment based on environmental results, whose objective is for states with higher GHG emissions to finance mitigation projects in territories with fewer resources and emissions but with a larger capacity to capture and store carbon, such as the Amazon region. Despite these objectives, the implementation of REDD+ has been marked by environmental conflicts and violations of human rights in the territories where projects are executed, with indigenous people being particularly vulnerable. Some issues identified include the lack of clear and timely access to project information and deficiencies in community participation in project decisions, among others. Thus, this mechanism becomes a false solution to climate change, prioritizing business over protecting or engaging with indigenous ways of life and ancestral knowledge systems regarding relevant decisions. All of this is enabled by the insufficient regulatory framework in Colombia for REDD+ projects, as seen in the case of the Pirá Paraná community with the project executed by the Corporation for the Sustainable Management of Forests (Masbosques).
Gold mining in the northeastern Colombian Amazon

The people of MTJY are affected by legal and illegal gold mining, jeopardizing the protection of the biocultural diversity of the Amazon. In Colombia, Bolivia, Brazil, Ecuador, Peru and Venezuela, most illegal gold mining occurs in fragile and strategic ecosystems that often coincide with territories of indigenous communities, as seen in the case of the mining project by the Canadian company Cosigo Resources LTD in a reserve area of the Amazon. There is also a high degree of water source contamination due to the mercury used to extract gold, both in artisanal and small-scale mining (ASGM) and industrial mining. As a result, rivers, flora, and fauna species are polluted. Mercury is released into the air leading to negative effects on the environment, individuals’ health in nearby communities, and the collective rights of indigenous peoples. State's inadequate responses to these issues are reflected in the absence of control over the entire gold production chain, as well as insufficient or non-existent measures to mitigate, remedy, and restore affected sites, ecosystems, and the lives of indigenous peoples.

International responsibility of Colombia within the framework of the Inter-American Human Rights System

The concept of jurisdiction in environmental matters cannot only refer to the territory where the violation occurs but must be extended to anyone who engages in regulation, control, and monitoring activities. Therefore, States have extraterritorial duties, for example, if a company with headquarters in their jurisdiction violates rights abroad. Consequently, the obligations of States to respect, protect, and guarantee human rights require the creation of internal regulations for business activities to promote actions that make rights effective. Furthermore, in case of human rights violations adequate access to justice for victims must be ensured.

The situation in indigenous territories in the Amazon reflects a violation of the right to enjoy a healthy environment, the territory, their ways of life, and the autonomous management of communities, as established in the American Convention and other regional regulations. These rights must be guaranteed by states and companies promoting project development. However, there is a lack of suitable policies and programs related to the individual and collective rights of local communities and the development of REDD+ projects. Therefore, the IACtHR must determine the scope of duties that companies have regarding the prevention, punishment, and compensation for the damage to a healthy environment, a stable and secure climate, and the rights of indigenous peoples.

Final recommendations

It is necessary to reformulate REDD+ mechanisms to make them feasible within the system of local communities, as well as human rights criteria should be determined when implementing projects. On the other hand, regarding the mining industry, there should be an effective recognition of the principles and commandments established in the “Action Plan to Prevent, Control, and Mitigate the Illegal Exploitation of Minerals in The Indigenous Territories of The Colombian Amazon” with a cross-border and culturally appropriate approach. Additionally, the Court should encourage the implementation of the Ecazu Agreement, setting a precedent for communities guarantees. Finally, the Court is requested to urge States to recognize the autonomy and self-management of land and its elements by communities.

8. CONFEDERACIÓN INDÍGENA DE NEUQUÉN (ARGENTINA)

The Amicus Brief of the Confederación Indigena Neuquina presents a factual and legal analysis of the megaproject “Vaca Muerta” and its impacts in the context of the climate emergency, the right to the environment and climate change, and the lack of information from the Argentine State regarding methane emissions and GHGs. The brief states that the organization is extremely concerned by the absence of state policies that consider the climate
emergency and indigenous peoples, as well as their territorial rights. The Confederación Indigena Neuquin has represents the communities of the Mapuche Indigenous People in Argentina.

The megaproject “Vaca Muerta” and its impacts in the context of the climate emergency.

Vaca Muerta is a massive shale formation in western Argentina with a great potential for oil and gas extraction. Hydrocarbons are being extracted by fracking, by oil and gas companies. This project has affected the fundamental rights of the communities of the Mapuche Indigenous People. In terms of environmental and health impacts, the constant emanation of “flares” or “torches” that vent the gas that decompresses wells and gas pipelines stand out. In addition to the lack of state control, there is a lack of technology to effectively control the venting and gaseous emissions. It has been concluded that these methane emissions are hazardous to health and are serious pollutants throughout the oil and gas supply chain in Argentina. Furthermore, the communities' right to consultation, which is mandatory under ILO Convention 169, as well as the American Declaration on the Rights of Indigenous Peoples, has not been respected.

From 2015 to March 2022, 9,242 environmental incidents were recorded in the oil and gas industry in Neuquén, adding up to the figure of 5.6 incidents per day in the Vaca Muerta fields. Most of the cases recorded are oil and produced water spills and gas leaks.

Regarding the impact on GHG emissions from the exploitation of unconventional hydrocarbons in Vaca Muerta, according to a report conducted by the National University of the Center of the Province of Buenos Aires, national emissions would increase between 205 and 240 MtCO2e. This represents between 57% and 67% of the national emissions that Argentina can emit by 2030, based on its commitments in its NDC.

There has been evidence of carcinogenic, mutagenic, and teratogenic diseases; affections to the respiratory tract, organs, and skin, or those related to the nervous system, as a result of prolonged contact of people with the residues from the exploitation of unconventional hydrocarbons, as well as in those who live near crude oil treatment, purification and gas compression facilities. There is also evidence of health affection of those who consume water from wells that could be connected to water sources contaminated with hydrocarbons, where there have been incidents with surface spills that reached water receiving bodies. The consequences of these diseases range from birth with malformations to disabilities of various kinds.

Human rights, the right to the environment and climate change

The organization mentions that the IACtHR has recognized in Advisory Opinion OC-23/17 the existence of an “undeniable relationship between environmental protection and the realization of other human rights, insofar as environmental degradation and the adverse effects of climate change affect the effective enjoyment of human rights.” In addition, it has recognized the close link between the right to a dignified life and the protection of ancestral territory and natural resources. In this regard, the Court has determined that, in view of the situation of special vulnerability of indigenous and tribal peoples, States must adopt positive measures aimed at ensuring that the members of these peoples have access to a life in dignity - which includes the protection of the close relationship they maintain with the land - and their life project, both individually and collectively.

Furthermore, the Court has emphasized that the lack of access to territories and the corresponding natural resources can expose indigenous communities to precarious or subhuman living conditions, to greater vulnerability to disease and epidemics, as well as subject them to situations of extreme vulnerability that can lead to various violations of their human rights, in addition to causing them suffering and harming the preservation of their way of life, customs and language. In this regard, the organization states that the adverse effects of climate change must be mitigated to protect the human rights of vulnerable people and communities.

The lack of information from the Argentine State regarding methane emissions and GHGs
Finally, the Confederación Indígena Neuquina points out that there is a serious lack of environmental and climate information in Argentina, despite having signed the Escazú Agreement. In addition, at the last COP28, several oil companies, including the Argentine oil company YPF, signed the "Oil and Gas Decarbonization Charter" in which decarbonization objectives are set, such as: "Increasing transparency, including improved measurement, monitoring, reporting and independent verification of greenhouse gas emissions and their performance and progress in reducing emissions." In addition to proposing "greater alignment with broader industry best practices to accelerate decarbonization of operations and we aim to implement current best practices by 2030 to collectively reduce emissions intensity." There is a failure to meet those targets at least by YPF, which is involved in the Vaca Muerta megaproject, and who is also listed as a signatory to the letter.

Conclusion

Considering the above, the Confederación Indígena Neuquina maintains that the Argentine State must comply with:

• The responsibility of the State with respect to the international obligations to respond to the climate emergency, vis-à-vis the different population groups and particularly the obligations specifically directed to indigenous peoples;
• Recognition of the ownership of indigenous community territories;
• Compliance with the methane and GHG emissions quantification and access to immediate and transparent information on methane emissions in the territories;
• Free, prior, and informed consent of communities and binding participation.

9. COORDINADORA DE DESARROLLO Y DEFENSA DE LOS PUEBLOS INDÍGENAS DE LA REGIÓN SAN MARTÍN (CODEPISAM), FEDERACIÓN DE PUEBLOS INDÍGENAS KECHWA CHAZUTA AMAZONÍA (FEPIKECHA), FEDERACIÓN DE PUEBLOS INDÍGENAS KECHWAS DEL BAJO HUALLAGA SAN MARTÍN (FEPIKBHSAM), INSTITUTO DE DEFENSA LEGAL (IDL), FOREST PEOPLES PROGRAMME (FPP), AND DUE PROCESS OF LAW FOUNDATION (DPLF)

Many countries have adopted the UNFCCC and the Paris Agreement to reduce GHG emissions. Nevertheless, despite being the main contributors to climate change, northern countries and multinational corporations are still emitting substantial amounts of GHGs while investing in ineffective mitigation measures. These measures frequently rely on carbon credits and establishing natural protected areas (NPAs) within indigenous, tribal lands and communities. This practice enables companies with significant carbon footprints to persist in pollution while ostensibly striving for a net-zero emissions target.

Moreover, carbon credits and NPAs often violate the rights of indigenous tribal peoples and communities. Therefore, it is crucial for the Inter-American Court of Human Rights (IACtHR) to mandate states’ obligations in guaranteeing inclusive, fair, and equitable mitigation measures.

Internationally Recognized Rights of Indigenous and Tribal Peoples

Indigenous, tribal peoples, and local communities face threats from carbon credit agreements established between states and companies involved in reforestation initiatives. Frequently, this occurs alongside the establishment of NPAs without the consent of the indigenous peoples, resulting in imposed limitations on
agricultural practices and traditional lifestyles, ultimately leading to the displacement of communities from their ancestral lands. Another concern is the commercialization of carbon credits through fraudulent contracts on titled territories. In the region, a widespread absence of regulatory frameworks and public policies aligned with international standards on indigenous rights persists, with thousands of communities lacking title, demarcation, and regulation of their territories. Therefore, it is crucial to recognize and guarantee the rights of indigenous, tribal, and community peoples, including:

- The right to self-determination, self-government, and territorial autonomy: These rights are acknowledged by the ILO Convention 169 and UNDRIP. This encompasses the right to uphold and reinforce their distinct political, legal, economic, and social institutions, as well as their spiritual connection with their traditionally owned and utilized lands, territories, waters, and seas, among other resources. Various international bodies, including the General Assembly, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights (CESCR), have recognized the rights of indigenous and tribal peoples to self-determination.
- Right to cultural identity and integrity: This right is embedded in the autonomy of indigenous peoples to determine the cultural and value systems they choose to embrace. It also encompasses the safeguarding of their traditions, institutions, customary laws, methods of land use, organization, and cultural identity.
- Right to ownership of land, territory, and natural resources: The 169 Convention mandates the States to acknowledge the ownership and possession of lands traditionally occupied by indigenous and tribal peoples. Likewise, UNDRIP affirms that indigenous peoples have the right to govern and utilize the lands, territories, and natural resources they have traditionally owned or inhabited.
- The right to free, prior, and informed consent and consultation: Both the 169 Convention and UNDRIP outline principles for conducting the process of prior consultation with indigenous peoples. In all cases, it must be free, informed, culturally appropriate, conducted in good faith, and aimed at reaching an agreement.

**Correlative Obligations of States and the Right to Equitably Share Benefits**

The IACtHR has established the obligation of states to conduct a social and environmental impact assessment (SEIA) and to equitably share the benefits of economic projects with affected indigenous peoples. SEIA must precede the commencement of economic activities, be conducted by independent entities supervised by the state, address cumulative impacts, and respect the traditions and culture of indigenous peoples. The right to share reasonable benefits is intrinsic to ensuring compensation for the limitation of the right to property (Art. 21 ACHR). Moreover, arbitrary constraints in the decision-making processes of indigenous peoples concerning territories and resources contravene the 169 Convention (Art. 15).

**Declarations by Universal System Bodies on the Issue of Carbon Credits**

The Special Rapporteur on the Rights of Indigenous Peoples, in the report titled “Green Finance and Fair Transition,” underscored the significance of private entities, including certification bodies, within the carbon market and initiatives aimed at reducing emissions from deforestation and environmental degradation. It emphasized the critical role of these entities in directing financial resources towards projects that could potentially harm indigenous peoples. In General Comment 26, the CESCR asserted that states should refrain from implementing climate change mitigation policies, such as large-scale reforestation or the establishment of NPAs for carbon sequestration, which could lead to various forms of land grabbing, particularly when they impact the lands and territories of vulnerable populations.

**Specific Obligations Applicable to Carbon Trading in Indigenous Territories**

States are obligated to respect the territories of indigenous and tribal peoples by refraining from imposing carbon credit projects or establishing NPAs without consulting the affected indigenous or tribal communities. All administrative and legislative decisions related to carbon credit trading must undergo prior consultation with the indigenous peoples affected.
The obligation to guarantee and prevent necessitates the adoption of all legislative and administrative measures required to recognize, demarcate, and title these territories. The absence of legal certainty over these territories exposes indigenous communities to risks from third parties seeking to exploit their natural resources, including the economic utilization of carbon preserved within their territories. In Peru, the majority of native communities lack land titles, rendering them ineligible as direct beneficiaries of any conservation project. Furthermore, the duty to guarantee entails providing an effective response within a reasonable timeframe to any administrative or judicial claim aimed at safeguarding indigenous rights impacted by carbon trading. Regarding the obligation to prevent private actors from engaging in carbon credit trading, states must regulate and oversee this activity, ensuring that private actors act with due diligence. As the guardian of the rights of indigenous peoples, the state must adopt all necessary measures to prevent economic and informational disparities from diminishing the ability of indigenous peoples to exercise their rights in agreements signed with private entities and fraudulent indigenous representatives.

Obligation to Provide Remedies for Violations of Indigenous Peoples' Rights

In cases of violations of indigenous, tribal, and community rights, restitution must be ensured through processes such as delimitation, demarcation, and titling, as reparation for the land dispossession experienced by indigenous and Afro-descendant peoples. Additionally, indigenous, tribal, and community peoples must be consulted in every reparation or remedy process for violations of their territorial and natural resources, with assurances of non-repetition.

10. CONFEDERACIÓN DE NACIONALIDADES INDÍGENAS DEL ECUADOR (CONAIE), FUNDACIÓN PACHAMAMA, HUMAN RIGHTS CENTER AT THE PONTIFICIA UNIVERSIDAD CATÓLICA DEL ECUADOR (CDH/PUCE), COORDINADORA ECUATORIANA DE ORGANIZACIONES PARA LA DEFENSA DE LA NATURALEZA Y EL MEDIO AMBIENTE (CEDENMA)

Precautionary and preventive principles must guide mitigation and adaptation measures

The Ecuadorian Constitutional Court has developed (No. 1149-19-JP/20) the following elements of the precautionary principle: (i) the potential risk of serious and irreversible damage to the rights of nature; (ii) scientific uncertainty about these negative consequences; (iii) given the risk of serious and irreversible harm, and precisely because of the uncertainty of scientific knowledge in this regard, it is necessary not to assume the risk and for the State to take certain measures in a timely and effective manner to prevent these negative effects. The Mexican Supreme Court has decided (A.R.307/2016) that "anticipation" is one of the guiding principles of environmental management, as its primary objective is to prevent, monitor, and avoid environmental degradation. This "anticipation" has different scopes: (i) it operates as an interpretative guideline in the face of the limitations of science to establish with absolute certainty the risks that nature faces; (ii) in relation to public administration, it implies the duty to warn, regulate, control, monitor, or restrict certain activities that are risky for the environment; (iii) it can serve as motivation for decisions that would otherwise be contrary to the principles of legality or legal certainty; (iv) for judges, precaution requires incorporating the uncertain nature of scientific knowledge into their decisions.

The main differences between the interpretation of those principles by aforementioned courts are: In the case of the Ecuadorian Court, the precautionary principle differs from the prevention principle in that the latter is applied when there is scientific certainty about the impact or harm, that is, when both the effects and their probabilities are known in advance. In contrast, the Mexican Court determines the existence of an indissoluble link between
the principles of prevention and precaution, and the pro-nature principle, establishing that in case of doubt about the certainty or scientific accuracy of environmental risks, a decision must be made in favor of nature.

**State Obligations to Preserve the Right to Life and Survival in the face of the climate emergency in the light of science and Human Rights:**

States are obliged to generate timely, complete, understandable, clear, accessible, culturally appropriate, truthful, and expeditious information on adaptation, mitigation, and implementation measures regarding climate change for all individuals, considering the particularities and specific needs of vulnerable individuals and groups. Likewise, all information on development projects that potentially increase global temperature through greenhouse gas emissions must be governed by the principle of maximum publicity, which is based on the possibility of citizens of an OAS Member State to seek, receive, and disseminate information (*Gomes Lund and others vs. Brazil*).

States must guarantee the right to free, prior, and informed consent and consultation recognized by international conventions and by the Ecuadorian Constitution. States must consider their human rights obligations, including labor and union rights, when designing and implementing policies related to a transition to a carbon-free future. Therefore, it must be a fair transition, implementing agricultural insurance, unemployment benefits, pensions for elderly workers, universal access to healthcare, systems that offer payments for ecosystem services as compensation to communities that maintain healthy ecosystems.

Furthermore, States must focus their efforts on all strategies that rapidly drive investments in climate-resilient infrastructure, forms of mobility and energy free of polluting emissions, the reduction of fossil fuel use, the creation and/or updating of urban plans for adaptation and mitigation to climate change, and efficient waste management, with a special emphasis on incorporating these measures in favor of people experiencing homelessness.

Article 13 of American Convention and the Escazu Agreement guarantee access to environmental information. Nevertheless, in the coming months with the prior consultation on the Yasuní ITT would be much simpler if there were access to real information on how this protected area could be affected in the event of a vote against it.

**Conventional Obligations of Protection and Prevention for Environmental and Territorial Defenders, as well as Women, Indigenous Peoples, and Afro-descendant Communities within the Framework of the Climate Emergency:**

Indigenous peoples have a differentiated impact compared to other groups because they are among the poorest segments of societies and depend on renewable natural resources for their subsistence, which are highly susceptible to variability and extreme weather events. Indigenous women are not only victims of disasters and emergency situations, but climate change also plays a significant role in increasing their daily workload and exposure to violence. For example, water scarcity affects indigenous women, as they are primarily responsible for household tasks.

The Human Rights Alliance of Ecuador documented 22 cases demonstrating systematic violations of rights affecting at least 449 human rights and environmental defenders in the last 10 years. However, it warns that these do not represent all cases. It is proposed to apply a human rights approach in all decisions taken by the government, considering the following parameters. Based on interviews conducted with indigenous women leaders defending their territories and the environment, the following recommendations are suggested:

- Include investment in cutting-edge technology to expedite investigations and reduce bureaucracy;
- Continuous training should be provided on justice, access to information, and environmental regulations to ensure that professionals;
- States are urged to establish transparent mechanisms for the declassification of information related to cases of violence against environmental defenders.
11. ARTICULAÇÃO DOS POVOS INDÍGENAS DO BRASIL (APIB), ARTICULAÇÃO DOS POVOS E ORGANIZAÇÕES INDÍGENAS DO NORDESTE, MINAS GERAIS E ESPÍRITO SANTO (APOINME), CONSELHO TEREÑA

The institutions submitting the Amicus are organizations representing Brazil’s indigenous peoples, working on various fronts to protect the rights of native peoples. Concepts about climate change have historically been constructed without the participation of indigenous peoples. In Brazil, more participation by indigenous organizations and leaders in debates on the issue began 20 years ago. As a result, the Organized Brazilian Indigenous Movement (MIBO) developed a concept of climate change that involves not only the impact of the increase in the concentration of GHG in the atmosphere but also actions that, according to indigenous peoples, aggravate the climate crisis, such as the construction of large projects close to their territories and the halting of demarcation processes for indigenous lands (TIs), among others. Brazilian indigenous action on the climate agenda is guided by the territorial dispute, which involves the demarcation of their territories and actions to strengthen environmental and territorial management. Indigenous lands are the last barrier against deforestation and forest degradation, and their inhabitants are the main defenders and guardians of the environment. Protecting indigenous rights offers more effective and sustainable solutions to climate change globally. Forests with the legal status of indigenous lands have lower deforestation rates than those managed by third parties. However, territorial and environmental management plans are underfunded. The environmental services offered by indigenous peoples are not properly recognized and valued, as they are the target of various types of violations of their rights, mainly in the form of invasion of their lands, which intensifies climate change. Thus, the only way to guarantee human rights in this emergency context is to strengthen indigenous territorial rights and the active participation of these peoples in spheres of deliberation on policies that impact the climate.

Local impacts of climate change suffered by Brazil’s indigenous peoples

The impacts of climate change are acutely felt by traditional peoples, given their relationship with nature. The ecological imbalance caused by climate change has a multidimensional impact on their lives. These peoples adopt a stance of confronting climate change that alters their traditional ways of life, and the state must take an active and responsible position in this indigenous process of confrontation.

Impacts of large projects and the adoption of renewable and/or clean energy sources on traditional territories

The vulnerability of indigenous peoples is increased by the construction of major projects close to their lands, and the installation of these projects contradicts the goals of the Paris Agreement. In this way, the states must guarantee the effective participation and integration of ancestral knowledge into the scientific and technical studies developed when making decisions that affect the human rights of indigenous and riverine populations.

Environmental defenders

The climate emergency and the expansion of the extractive frontier contribute to worsening the conditions of violence faced by environmental defenders, who are often indigenous and traditional community leaders themselves. The Escazú Agreement is an important tool and should be considered by states when building local programs and initiatives to protect and guarantee the freedom and autonomy of people who defend nature.

Decarbonization initiatives and their threats to indigenous peoples

Despite the international commitments made, countries do not seem willing to adopt a degrowth policy, changing the logic in which they operate and consume natural goods. The mechanisms for offsetting carbon emissions appear to be instruments for the financialization of nature and the expansion of a new frontier of extractivism.
already so well known on the Latin American continent. These instruments have led to the harassment of indigenous peoples into signing disadvantageous extractive contracts. It is in this sense that states must act to protect indigenous rights and the environment, guaranteeing that communities have access to all the information necessary to make qualified decisions about the proposals offered to them; demanding and ensuring that free, prior and informed consultation is carried out with the community before the project is implemented; guaranteeing those communities have the right to veto any stage of the project or program; observing the socio-environmental safeguards agreed at international level; and demanding the fair and equitable sharing of benefits in favor of the indigenous peoples affected by the projects. It is the role of the states to ensure that the socio-ecological transition is indeed just and a movement of historical reparation.

**Demarcation of indigenous lands and territorial protection as a state obligation to guarantee human rights linked to the climate emergency**

In the Brazilian Legal Amazon, less than 2% of historical deforestation has taken place within indigenous lands, and they occupy more than 25% of the region. The presence of traditional peoples in their territories is essential for environmental protection, stability, and climate justice. Data shows that the cost of securing traditional territories for their original owners is financially advantageous. Therefore, the main, most effective and least costly measure that states can adopt to guarantee the protection of human rights in the face of advancing climate change in Latin America and the Caribbean is the demarcation and protection of traditional territories. States must comply with inter-American standards in terms of recognizing the collective property rights of indigenous peoples over their territories. Otherwise, they will violate their internationally protected human rights.

**Answers to the questions submitted to the IACtHR**

There must be the recognition of a right of environmental self-determination for indigenous peoples, which would allow them to maintain their unique political and cultural status as traditional land peoples. This recognition represents affirmative obligations for states to protect indigenous peoples within their traditionality. The right to traditional land must be guaranteed by states as a way of realizing other human rights, as well as the guarantee of active participation in decision-making and deliberation on climate-related issues. To this end, the state must fulfill its duty to provide qualified data and build mediating bodies that allow for informed participation.

Regarding the state obligations derived from the duties of prevention and guarantee of human rights linked to the climate emergency, the following are required: the obligations to recognize and value the importance of traditional territories and their inhabitants as fundamental; the obligation to demarcate, diligently and in a reasonable time, indigenous lands; the obligation of states to conform to inter-American parameters on the matter of recognizing the collective property rights of indigenous peoples over their territories; obligation to instruct and finance policies for effective territorial and environmental protection and management of indigenous lands; the obligation to include such plans as priority axes in national climate change policies; the obligation to establish and strengthen bodies responsible for implementing and monitoring indigenous and environmental policies; the obligation to establish collegiate bodies that ensure indigenous participation in the drafting and implementation of public policies that concern them and that they participate effectively in governance spaces; the obligation to establish non-regression policies.

Regarding state obligations to preserve the rights to life and survival in the face of the climate emergency, the following obligations should be established: transparency and the provision of information by states in the native languages of indigenous peoples; the development of continuing education programs that engage in dialogue on climate change and the reality of traditional peoples; the obligation to carry out Free, Prior and Informed Consultation on REDD+ projects; the obligation to ensure that the just transition does not intensify historical processes of injustice; the obligation to create or update national policies on climate change and adopt coping measures taking into account the indigenous perspective; the obligation to order national banks to block financing to companies that may be involved in deforestation.

Concerning the state obligations arising from the consultation and judicial processes related to the climate emergency, the following should be established: the obligation to enforce ILO Convention 169; the obligation to
prioritize the processing of judicial processes dealing with indigenous lands; and the obligation to promote greater awareness among judicial operators about indigenous rights and the climate crisis.

Concerning the conventional protection obligations related to environmental and territorial defenders, a safe environment must be guaranteed for their work, access to the human rights defenders' program must be facilitated and rapid response actions must be implemented to protect people under threat; investigations must be swift and there must be means of guaranteeing collective protection for vulnerable communities. Gender equality and the protection of environmental defenders should be promoted through laws and public policies, and specific official channels should be created to assist women who are victims of violence resulting from their actions in defense of human rights, especially women from traditional communities. Direct channels of contact should be created between environmental defenders and state authorities that take into account the cultural specificities of indigenous and traditional communities, the main targets of environmental crimes. Cross-cutting public policies on climate and human rights should be formulated, incorporating the intrinsic relationship between indigenous peoples and the environment and funding for projects by indigenous organizations, so that they can strengthen their actions and influence in a qualified and active way in spaces of dialogue and power.

12. GUADALUPE COBOS PACHECO, ÁUREA SÁNCHEZ HERNÁNDEZ, YESENIA DEL SOCORRO ALBINO SÁNCHEZ ON BEHALF OF THE COMMUNITY OF EL BOSQUE (TABASCO, MEXICO), NUESTROS DERECHOS AL FUTURO Y MEDIO AMBIENTE SANO A.C. (NUESTRO FUTURO), CONEXIONES CLIMÁTICAS A.C. AND GREENPEACE MEXICO

The profound and devastating impacts of climate change are increasingly evident. Mexico, due to its geographical characteristics and socio-economic inequalities, stands as one of the most vulnerable countries to climate change. It faces the prospect of experiencing a higher increase of average temperatures in the countries with respect to the global increase of temperatures in average temperatures compared to the global average over the next decade. Mexico has already endured natural disasters such as hurricanes, rising sea level, extreme hydrological events, heatwaves, and declining agricultural productivity. These events have resulted in significant economic losses for the country and heightened vulnerability among its population. Climate change has led to the spread of diseases and increased mortality rates, particularly among indigenous and rural communities. The IPCC has documented the escalation of these phenomena over the past three decades. Its Six Assessment Report highlights the particular vulnerability of coastal communities to sea-level rise. For Mexico this could mean the loss or severe damage to at least 20 cities by 2100.

Justification of interest in the Advisory opinion for Comunidad del Bosque Tabasco México

[Testimonies from a directly affected community]

The geographical location of the Comunidad de El Bosque exposes it to a range of hydrometeorological hazards, including hurricanes, floods, and coastal erosion. The community serves as a poignant example of how the climate crisis disproportionately impacts vulnerable communities. Once home to 300 inhabitants, it now hosts only 100 residents due to displacement caused by climate-related disasters. Families have lost their homes and livelihoods, primarily reliant on fishing, resulting in a loss of economic stability. The community seeks recourse from the Court as the Mexican government has been slow to respond to loss and damages. Relocation efforts have been sluggish, and adaptation plans have not been implemented.

State obligations arising from the duty to prevent and guarantee human rights linked to the climate emergency
States are obliged to assist forcibly displaced persons due to climate change. This entails implementing measures for planned, just and dignified relocation while ensuring the protection of their human rights. These rights include the right to life, personal integrity, family protection, private property, and freedom of movement and settlement, as enshrined in the American Convention, articles 3;5;17;21;22. The Comunidad del Bosque highlights impacts on livelihood, as lots of people of the community have lost their homes due to coastal erosion, have experienced lack of water and electricity, and many of them were forced to move causing economic difficulties to provide for themselves and their families; impacts in the right of health, especially for elderly people, people with disabilities and peoples with chronic diseases; impacts on freedom of religion, as a displaced community experiments difficulties in gather and cannot rely on a building to serve as church; impacts on psychological integrity, as the situation constitutes a constant fear and worry.

**State obligations to preserve the right to life and survival**

States must prevent climate-induced displacement and provide compensation for loss and damages associated with climate change's adverse effects.

**Differentiated obligations of States with respect to the rights of and children, and new generations facing the climate emergency**

States must prioritize the protection of children’s rights and take measures to prevent their forced displacement due to climate change, as stated in the American Convention article 19. The Comunidad del Bosque underscores Mexico’s current lack of measures, leading to homelessness, lack of education, basic services and compromised security and mental health among children.

**Relocation as a climate change adaptation measure**

States must implement adaptation plans to address, including mechanisms for relocating affected communities and providing for loss and damage, thereby safeguarding fundamental human rights. Consequently, it is imperative for States to establish just, planned, and dignified relocation for individuals forcibly displaced due to climate change. Internationally, effective practices exist for planned relocation, which prioritizes the safety of individuals by ensuring that relocation sites do not expose them to increased disaster risk. These practices also consider the specific needs of vulnerable groups, particularly those with a strong connection to their land or cultural heritage, as outlined in the UN Guiding Principles on Internal Displacement of 1998. Furthermore, involving affected persons in all stages of planning and implementation, as emphasized by the UN Human Rights Council, helps to ensure the success and sustainability of relocation efforts. Additionally, these practices prioritize the preservation of community ties and cultural values, provide access to livelihood opportunities and essential services, and establish mechanisms to prevent and resolve conflicts related to land tenure and resource access.

13. **EARTHRIGHTS INTERNATIONAL, TOGETHER WITH THE INDIGENOUS, PEASANT AND AFRO-DESCENDANT COMMUNITIES AND ORGANIZATIONS THAT SIGNED THE BRIEF**

The amicus discusses the severe impacts of climate change on indigenous and tribal peoples and peasant communities, who are among the most affected despite contributing the least to the climate crisis. These communities are particularly vulnerable due to their dependence on marginal lands and fragile ecosystems, which are highly sensitive to climate change effects. This situation exacerbates their challenges, as climate change disrupts traditional agricultural practices, leads to forced displacement, and threatens their cultural identity and self-determination. The amicus highlights the urgency of addressing these impacts through a human rights lens, emphasizing these communities’ disproportionate vulnerabilities.
Impacts of climate change on the territories of indigenous and tribal peoples of the Americas

The loss of the Amazon: A threat to global climate patterns and the rights of Amazonian indigenous peoples

The Amazon rainforest, spanning across South America, is crucial for its biodiversity, climate regulation, and as a water source. It harbors thousands of species and serves as a significant carbon sink, mitigating climate change by absorbing about 200 billion tons of carbon yearly. The region is home to over 350 indigenous groups, including more than 60 isolated tribes, whose livelihoods and cultures are deeply intertwined with the forest. However, deforestation driven by oil, mining, forestry, and agribusiness poses severe threats to the ecosystem and indigenous rights, exacerbating climate change impacts and jeopardizing their access to food, water, and health. Addressing deforestation and climate change is imperative to protect this vital ecosystem and its dependent communities.

Indigenous and tribal peoples in Mesoamerica and South America are already living with the impacts of the climate crisis

Indigenous and tribal peoples across Mesoamerica and South America are experiencing severe impacts from the climate crisis, similar to those in the Amazon. In Guatemala, communities face droughts, crop losses, floods, and diseases affecting agriculture. Honduras sees climate change exacerbating poverty in mountainous regions through floods and landslides. In Peru, Ecuador, Colombia, and Brazil, increased temperatures and delayed rains are noticeable, with Brazil’s Quilombola communities experiencing extreme heat. Forest fires in Peru and the thawing of sacred sites like Zizuma in Colombia are attributed to rising temperatures. Other significant impacts include pest and disease outbreaks, migration and death of native species (including freshwater dolphins), coastal erosion, and the endangerment of critical species like the Cana turtles in Colombia.

The climate crisis is also affecting the spiritual relationship indigenous peoples have with natural elements and their access to water. Peru's indigenous communities report the drying up of significant water bodies like Lake Titicaca. Similar water scarcity issues are reported in Brazil and Colombia, where the drying up of lakes and lagoons is linked to oil exploitation, impacting biodiversity and sacred indigenous sites. These changes not only represent environmental and economic challenges but also erode the cultural and spiritual foundations of indigenous and tribal peoples in the region.

Impacts of climate change on Native peoples of North America

The communities of Kivalina, Newtok and Nunapitchuk and other Alaska Native communities

The Arctic region is experiencing rapid and unprecedented warming, reducing sea ice, thawing permafrost, and warmer oceans. This warming severely impacts Alaskan communities, including increased storm impacts and flooding due to the loss of natural barriers like land-based sea ice. The village of Kivalina, for example, is facing significant erosion and danger due to permafrost thaw, with its living space reduced by half in 50 years. Historical decisions, such as the forced relocation to Kivalina for schooling under threat of imprisonment, ignored the traditional ecological knowledge about the area’s unsuitability for permanent settlement. Other native villages like Nunapitchuk and Newtok in the Yukon-Kuskokwim Delta are also facing existential threats from permafrost thaw and erosion, endangering infrastructure and leading to health and environmental crises due to inadequate sanitation and waste disposal. The broader context of these challenges is the colonial relationship with the U.S. government, which historically placed Alaska Natives in vulnerable locations without considering local input or the suitability of these sites. This history, combined with the current impacts of climate change, places Alaska Native peoples in a particularly vulnerable position, facing threats to their safety, well-being, and cultural rights.

Impacts of climate change on indigenous communities in South Louisiana

Native communities in southeast Louisiana face significant challenges due to climate change, compounded by a lack of basic services such as adequate septic systems, drainage, broadband internet, and accessible grocery
stores. This neglect not only infringes upon their rights to life, health, food, work, culture, water, and sanitation but also heightens their vulnerability to natural disasters and inequitable disaster relief. Coastal Louisiana is experiencing rapid land loss, the fastest in the United States, with significant portions of wetlands disappearing, affecting the traditional territories of the Jean Charles Choctaw Nation, the Pointe-au-Chien Indian Tribe, and the Grand Caillou/Dulac Band of Biloxi-Chitimacha-Choctaw Tribe. The Jean Charles Choctaw Nation, for example, has seen its habitable land on Isle de Jean Charles reduce from 22,000 acres in 1955 to just 110 acres in 2020, with Hurricane Ida in 2021 devastating the remaining homes.

The Pointe-au-Chien Indian Tribe and the Grand Caillou/Dulac Band are also facing land loss and saltwater intrusion, leading to uninhabitable lands and the threat of destruction to sacred sites. The Atakapa-Ishak Chawasha Tribe’s village of Grand Bayou is particularly vulnerable, with homes built on platforms to mitigate flooding and land loss risks. Despite these challenges, Native communities have been largely left to manage on their own, relying on mutual aid, donations, and volunteers due to systemic barriers to equitable disaster relief from state and local governments. This situation highlights the dire need for improved infrastructure, services, and fair disaster relief mechanisms to support the resilience and rights of Native communities in the face of climate change.

**Threats of climate change in the Great Lakes region**

The Anishinaabe Peoples of the Great Lakes region, spanning the U.S. and Canada, are facing climate change threats that endanger their traditional way of life and cultural resources. Their deep connection to the environment makes them particularly vulnerable, with the aging Line 5 pipeline by Enbridge posing an additional risk. Climate change impacts, such as rising temperatures and volatile weather, threaten vital ecosystems like wild rice, blueberries, sugar maples, and whitefish, crucial for the Anishinaabe’s livelihood and cultural practices. These indigenous and tribal communities across the Americas are experiencing severe effects and human rights violations from a climate crisis they did not create, underscoring the need for protective measures to safeguard these vulnerable groups.

**Measures to minimize the impact of the damages caused by the climate emergency**

States must urgently address their climate and indigenous peoples’ obligations by protecting crucial ecosystems like the Amazon, reversing ecosystem damage, respecting indigenous rights, and ensuring human rights in clean energy transitions.

**States must take measures to protect the Amazon as a strategic ecosystem within the framework of the climate emergency**

States are urged to implement measures to safeguard the Amazon, a critical ecosystem, amidst the climate crisis. Extractive activities have led to deforestation and degradation, impacting indigenous communities and the forest’s ability to provide ecosystem services and withstand climate change effects. The United Nations Sustainable Development Solutions Network reports that 18% of the Amazon has been deforested, with an additional 17% degraded. Recent data from Brazil shows a significant increase in deforestation, with about 11,000 km² cleared in a year. This deforestation is shifting the Amazon from a carbon sink to a carbon source, with fires for agribusiness and high deforestation rates causing carbon emissions. The IPCC highlights that current global emissions exceed the rainforest’s absorption capacity. Given the Amazon’s role in the global climate balance, states must take decisive actions to restore and protect it to mitigate the worst impacts of climate change.

**States must control, reverse and prevent the damage caused by activities that destroy and degrade ecosystems and cause the climate crisis**

In accordance with the American Convention, states are required to address and mitigate the damage caused by activities that contribute to ecosystem degradation and the climate crisis. This involves a comprehensive approach
to managing, reversing, and preventing the adverse impacts of such activities, with a specific focus on the rights and well-being of indigenous and tribal communities.

**Logging Activities**

Both legal and illegal logging activities are major drivers of deforestation and ecosystem degradation, particularly in the Amazon region. Indigenous communities, such as the Wampis Nation in Peru, have reported significant challenges associated with forestry concessions and the over-extraction of timber. Despite existing regulations and conservation plans, these activities continue to threaten the forest's integrity and the livelihoods of indigenous populations. Illegal logging, facilitated by insufficient oversight and enforcement, exacerbates these challenges, leading to increased deforestation and threatening the safety and rights of indigenous defenders.

**Illegal Gold Mining**

Illegal gold mining is identified as another significant cause of deforestation in the Amazon, with severe environmental and social implications. The practice not only transforms rainforest areas into deserts but also leads to water contamination through the use of mercury. Indigenous communities, such as the Wampis Nation, face conflicts with miners, which contribute to social instability and environmental degradation. The state's failure to effectively address illegal mining and logging, including alleged collusion between state officials and illegal actors, undermines indigenous efforts to protect their territories.

**Fossil Fuel Exploitation**

The exploitation of fossil fuels is highlighted as the leading cause of greenhouse gas emissions, driving the climate crisis. Oil spills in the Peruvian Amazon, for example, have resulted in significant contamination of land and water sources, adversely affecting the health and ecosystems upon which indigenous communities depend. Despite opposition from indigenous groups, projects like the exploitation of Block 64 pose ongoing threats to indigenous lands, livelihoods, and cultural heritage.

**Pipeline Concerns**

The operation of the Line 5 pipeline through Anishinaabe territory in the Great Lakes region is presented as a significant environmental and rights issue. The pipeline, transporting crude oil and natural gas, risks causing catastrophic oil spills and exacerbates the impacts of climate change. Indigenous opposition to the pipeline, supported by international calls for its dismantling, underscores the conflict between fossil fuel infrastructure development and indigenous rights and environmental protection.

Ultimately states must take specific actions to control, reverse, and prevent the damage caused by these activities, emphasizing the importance of respecting and protecting the collective rights of indigenous and tribal peoples. This includes addressing the root causes of deforestation and ecosystem degradation, ensuring meaningful consultation and participation of indigenous communities in decision-making processes, and transitioning towards sustainable and renewable energy sources to mitigate the impacts of climate change.

**States must recognize and adequately protect the collective rights of indigenous and tribal peoples**

States must recognize and protect the collective rights of indigenous and tribal peoples to effectively address the climate crisis, particularly through the conservation of forests such as the Amazon, which are crucial carbon sinks. Indigenous territories, covering about 50% of the Amazon rainforest, have shown significantly lower deforestation rates compared to unprotected areas. This is attributed to indigenous and tribal peoples' vital role in forest protection and sustainable management practices. However, these territories face threats from agricultural expansion, infrastructure development, extractive industries, and legal changes, putting indigenous communities
at risk of increased pressure, threats, and violence. Recognition and protection of their rights are therefore essential for halting deforestation and tackling the climate crisis effectively.

Moreover, evidence from the Amazon region demonstrates the positive impact of protecting indigenous and tribal lands on reducing deforestation and carbon emissions, with indigenous management proving effective in conservation efforts. Despite this, indigenous and tribal peoples often remain unprotected, with their rights unrecognized, exacerbating their vulnerability to climate change. In the United States, the failure to recognize many indigenous groups federally limits their access to support and compounds their vulnerability. The ongoing neglect of indigenous rights, combined with historical and contemporary challenges, underscores the urgent need for states to uphold and enforce the collective rights of indigenous and tribal peoples as a crucial step towards fulfilling climate commitments and ensuring sustainable and respectful coexistence with nature.

**States should adopt a human rights approach to energy transition policies and legislation in order to prevent the transition to clean energy from causing further human rights violations**

To ensure that the transition to clean energy does not lead to human rights violations, it is crucial to adopt a human rights-centered approach, especially in regions where the extraction of minerals essential for renewable energy technologies, such as lithium and uranium, takes place. This is particularly important in Latin America, where significant reserves of these minerals are located. The extraction and exploitation of these resources can have profound impacts on local communities, many of which are indigenous, tribal, and peasant populations already vulnerable to climate change effects.

The discovery of large lithium and uranium reserves in Peru highlights the potential for economic benefits but also raises concerns about environmental and health impacts. These concerns are compounded by the fact that mining operations could infringe on the rights and well-being of local communities if not managed responsibly. In Peru, the rush to exploit these resources has led to tensions over environmental protection, community rights, and mining operations’ safety due to uranium’s presence.

To prevent human rights violations, states must implement regulatory frameworks that prioritize environmental monitoring, community consent, and impact mitigation. This includes conducting thorough Environmental and Social Impact Assessments (ESIAs) and ensuring that mining projects only proceed with the free, prior, and informed consent of affected communities. Additionally, there must be mechanisms in place for communities to access information and participate in decision-making processes related to mining activities.

**Differentiated measures with respect to populations in situations of vulnerability or intersectional considerations**

Indigenous, tribal, and peasant communities in the Americas, particularly in the Amazon, face severe impacts from climate change on their rights and territories due to their dependency on natural resources. Despite contributing least to climate change, their vulnerability is acknowledged by the IACtHR, which mandates states to consider these groups' customs and self-determination in protecting their rights and implementing related projects.

**Guarantee and promote the right to free, prior and informed consultation and consent as an exercise of self-determination of indigenous and tribal peoples**

The section emphasizes the critical importance of ensuring and promoting the right to free, prior, and informed consultation and consent as a form of self-determination for indigenous and tribal peoples in the Americas. These communities have raised concerns about how climate change policies might affect their territories. For instance, conservation programs targeting conserved forests in the Amazon risk being implemented without indigenous consent, impacting their ability to manage their territories. There's a notable trend of climate change measures,
including NDCs, being pursued without guaranteeing indigenous and tribal peoples' right to consent, especially in the planning and implementation phases of projects that could affect their lands.

During the Latin American and Caribbean Climate Week 2023, indigenous peoples issued a declaration demanding states respect their right to consultation and consent in all developmental and policy processes impacting their territories due to climate change. This right is intertwined with self-determination, encompassing decisions on economic, social, and cultural development and the management of natural resources according to traditional practices within the context of state territorial integrity.

The right to consultation and consent is fundamental for protecting the cultural, social, and economic integrity of ethnic groups and their participation rights, arising from international human rights law. It's essential for these groups to self-determine their development priorities, considering their life, beliefs, and land use. Various international instruments support this right, including ILO Convention No. 169 and the UNDRIP.

Inter-American jurisprudence has set standards for this right, identifying essential elements like prior consultation, conducted in good faith with the aim of agreement, adequacy, accessibility, conducting social and environmental impact studies, and ensuring the consultation is informed. These elements aim to facilitate a genuine dialogue between indigenous peoples and states, respecting indigenous traditions, timeframes, and ensuring transparency and understanding of the impacts of legislative or administrative measures.

**On the need to advance in guaranteeing the right to consent to address the climate crisis and the opportunity that this IACHR Court has to do so**

The necessity of securing the right to consent for indigenous and tribal peoples in addressing the climate crisis is critical, and the IACHR Court plays a key role in reinforcing this right. Despite a solid international legal foundation supporting the rights to consultation, consent, and self-determination, these principles are often inadequately applied in practice. Misapplications include bad faith negotiations, post hoc consultations, coercive tactics, and withholding information, reducing the consultation process to a mere formality for legitimizing extractive projects without genuine agreement or due process.

This situation presents a significant opportunity for the IACHR Court to strengthen the consultation and consent process, particularly in the context of the climate crisis. Establishing stringent standards to ensure that consultations transcend procedural formalities can help safeguard the rights of indigenous and tribal peoples. Consent, firmly rooted in international law, is not merely aspirational but a fundamental requirement for any actions that directly affect these communities. The Court's role in clarifying this obligation is crucial for preventing rights violations and respecting the self-determination of indigenous and tribal peoples.

**Conclusions**

Indigenous, tribal peoples, and peasant communities, the least contributors to the climate crisis, face significant vulnerabilities due to their dependence on natural resources and territories prone to climate change. The crisis threatens their way of life, rights to self-determination, and cultural identity. To combat these impacts, states must collaborate with these communities to ensure their rights, particularly to autonomy and self-determination, are protected. This involves taking measures to safeguard ecosystems like the Amazon rainforest, crucial for global climate stability and indigenous livelihoods. States are urged to tackle the root causes of the climate crisis, such as deforestation and fossil fuel exploitation, by adopting human rights-based approaches to energy transition. Ensuring the rights of indigenous and tribal peoples, including their consent on affecting projects, is crucial to preventing further human rights violations in addressing the climate emergency.

**14. AMAZON WATCH, OBSERVATORIO DOS PROTOCOLOS AUTÓNOMOS DE CONSULTA E CONSENTIMENTO PRÉVIO, LIVRE E INFORMADO, CENTRO DE PESQUISA E EXTENSÃO EM DIREITO SOCIOAMBIENTAL**
This summary will be included in the next iteration of the report.

15. ANDRÉ SOARES OLIVEIRA, ADRYEL GOMES DOS SANTOS, ALISSA LAURA AMARO PEREIRA, JOSÉ GABRIEL GOMES RIBEIRO, LARA VICTORIA ARNAUD SAMPAIO CAMPOS, LETÍCIA LOPES DE ALMEIDA AND MATEUS DE SÁ BARRETO SABIÁ

This Amicus was submitted by Brazilian citizens, residents of Juazeiro do Norte, located in Ceará state, in the Northeastern region of Brazil. This region contains the Caatinga biome and this city specifically has a low HDI rate. The region is historically marginalized, including from the climate change perspective. Caatinga is a semiarid climate biome, with high temperatures, few and badly distributed rains, with long periods of droughts, where 27 million people live. The individuals stress that, usually, the reflections about climate change are focused on the Amazon and Cerrado biomes regions, and little is thought of from a Northeastern Brazil perspective. Until the 18th century, the region was isolated in socioeconomic and governmental terms and its economy rose slowly compared to other country’s regions, based afterwards on cattle raising for subsistence. During the 1970s and 1980s, there was an intense migratory flow in the region, periods when the public policies were concentrated in the capitals near the seaside, which left the countryside region unattended. This phenomenon contributed to the subdevelopment of this semiarid location, which is documented in historical documents and through cultural manifestations.

The main threat to the Caatinga region from climate change is the decrease in rainfall, which could lead to desertification. This is already happening in some areas of the biome and can make the local population even more vulnerable, living in an area of remarkable population density, subject to forced displacement. It argues about the scope of the impact that the climate emergency has on this population, which is not the target of concerns about mitigation and adaptation in the way that the Amazon and Cerrado biomes attract international attention.

Human rights responses to the climate emergency considering the specificities of the Caatinga
Climate change is a problem of development and global inequalities. The problem requires a restructuring of the economic model that has been in place since the Industrial Revolution. It is necessary to understand that, especially for developing countries, climate change negotiations call into question much more than simply the implementation of mitigation obligations through the reduction of emissions, but mainly issues related to injustice and inequality, whether in the context of climate change itself - in terms of responsibility, mitigation and vulnerability - or even structural inequalities in the context of international relations (international division of labor) that are reflected throughout the global environmental policy and in other areas of international politics. Climate change cannot be understood in isolation but needs to be contextualized among other intricate and urgent problems, and its governance should not be studied in isolation from international politics. It is, therefore, necessary to pay attention to the specific needs of the most vulnerable sections of society and issues of climate injustice. A development model that reaches everyone must be promoted - be they countries or citizens, whether at a global or local level. This development model can only be implemented in terms of human rights as a political language that is almost universally accepted because it must be implemented with the good of all in mind.

**Development, climate emergency and human rights**

Article 26 of the American Convention is the norm that legally accommodates demands related to economic, social and cultural rights. In addition, Chapter VII of Part One of the Charter of the Organization of American States establishes obligations that should be a guide for responding to the issues raised by Chile and Colombia.

**The water issue in the Caatinga**

According to experts, the Caatinga biome could become more arid by the end of the 21st century and suffer from a water deficit due to climate change. Future climate scenarios indicate a reduction in water flows and an increase in extreme drought events, which will affect an entire bio-economic system through livestock and agriculture and the consumption of drinking water and could worsen the situation of many people. In this sense, the right to life must be understood as directly linked to water consumption and in previous cases, the IACtHR has already highlighted the right to water as intrinsic to a healthy environment, health and proper nutrition. These situations prove the need to recognize the right to consume water resources as a human right, analyzing the impact that climate change can have on an environment like the Caatinga. For its inhabitants to cope with the impacts of climate change in the region, there must be better management of the storage of water resources. Since this biome is known for its droughts and high temperatures, in addition to the fact that the area is already difficult to live in, an increase in the Earth's temperature would have an abrupt impact on water consumption in the region, reducing the level of basins, dams and the soil.

**Children and adolescents**

In 2022, the United Nations Children's Fund (UNICEF) published a report on the impact of climate change on children and adolescents in Brazil, which highlighted the vulnerability of children and adolescents in the Northeast region of Brazil, with a clear focus on the Caatinga. This implies risks to their health, food security and education.

**Internal migration and forced displacement due to climate change**

Climate change will increase migratory flows away from the Caatinga region, making agriculture and livestock farming unviable, even if they are subsistence farming. It is up to the State to guarantee alternative public policies for developing resilience in the region.

**Conclusion**
International human rights law must offer guidelines to guide the actions of States. Brazil, a country of continental dimensions that includes large biomes within its territory, has different realities within its borders that deserve equal attention when it comes to the deleterious effects of climate change.

16. PATRICIA GUALINGA MONTALVO, POLITICAL ADVISER TO THE KICHWA INDIGENOUS PEOPLE OF SARAYAKU

An interview with Mrs. Patricia Gualinga Montalvo, Political Advisor of the Kichwa Indigenous People of Sarayaku, addresses the impacts of the climate emergency on the human rights of indigenous peoples, as well as the violations of their rights and the response of states to this crisis. It also discusses state obligations, good practices identified in indigenous territories, and the measures that the IACHR should take into account.

- Impacts on the human rights of indigenous peoples: The climate emergency mainly affects crops, and river tributaries, which dry up, extreme temperature changes, damage the few infrastructures they have, and exacerbate diseases.
- Violations of the rights of indigenous peoples: The abandonment by governments is pointed out, as the affectation of health, the exploitation of natural resources, and the lack of adequate consultation in projects related to the climate crisis. In this sense, the paternalistic attitude of governments is denounced.
- Response of the States: The participation of governments in climate summits is discussed, and the signing of agreements and conservation programs, but also the lack of adequate consultation and the intervention of intermediaries that do not benefit indigenous peoples are criticized. NGOs that do not want the autonomy of indigenous peoples are also criticized.
- Elements that the IACHR should consider, especially regarding the rights to consultation, life, personal integrity, health, and the environment, and regarding the risks of resource capture: The importance of communities being well informed is emphasized, about technical terms and the effects of conservation projects, so that adequate consultations can be carried out, and informed consent can be given. That is, ensuring the real participation of indigenous peoples in decisions that affect their territories and rights.
- State obligations, considering the right to equality and non-discrimination, regarding indigenous women, indigenous defenders, and indigenous children: The importance of taking into account the organizational structures of communities and their functioning to integrate the protection of their rights is pointed out, as within indigenous structures it is observed that men are the ones who make decisions.
- Differentiated protection for indigenous peoples against the impacts of the climate emergency: Advocacy for equitable participation in decision-making within indigenous peoples is advocated, considering gender, age, and roles within the community.
- State obligations regarding rights to consultation, defense of territory, and the environment: The need to investigate and sanction threats and impacts against defenders of territory and the environment is highlighted, as well as promoting environmental awareness and respect for indigenous rights.
- Good practices identified in indigenous territories: The case of Sarayaku is mentioned as an example of self-determination and resistance to external projects, advocating for active participation and a unique vision in resource management and response to the climate crisis.