

INTER-AMERICAN COURT OF HUMAN RIGHTS

Request for an Advisory Opinion on the Climate Emergency and Human Rights submitted by the
Republic of Colombia and the Republic of Chile

Amicus Brief Submitted to the Inter-American Court of Human Rights by Oxfam America

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I. EXECUTIVE SUMMARY

1. Climate change, poverty, and inequality are inextricably linked. The impact of shifting weather patterns, droughts, flooding, and storms impacts poor and marginalized communities first and worst, causing unpredictable growing seasons, crop failures, and sharp increases in food prices. People in low and lower-middle-income countries are approximately five times more likely than people in high-income countries to be displaced by sudden extreme weather disasters. Longstanding gender, racial and economic inequalities mean that historically marginalized communities are the hardest hit and most impacted by the climate crisis.
2. Climate change contributes to the fragile nature and the risk of conflict and disaster. Climate-fueled disasters were the number one driver of internal displacement over the last decade—forcing an estimated 32 million people from their homes in 2022 alone. Hunger is already increasing due to climate change. People are forced to abandon their livelihoods, homes and communities due to climate shocks and persistent climate stress—with Indigenous Peoples being among those at greatest risk of displacement. Climate change increases the need for life-saving assistance and protection for those facing humanitarian disasters.
3. We also know that climate change has worsened global inequality. Across societies, the impacts of climate change affect women and men differently. Climate-induced drought and displacement mean that women and girls must walk further to collect water and fuel, and as they are often the last to eat, are more likely to go hungry.¹ During and after extreme weather events, they are at increased risk of violence and exploitation.² These inequalities also manifest in many other, often overlapping, ways too. And because Indigenous Peoples, Black and other communities facing racial discrimination are more likely to live in poverty, they face these impacts while having fewer resources to respond to climate-induced natural disasters and adapt to changes in the climate.
4. In these proceedings, the Inter-American Court of Human Rights (the “**IACtHR**” or “**Court**”) has a historic opportunity to give specific, meaningful content to the guarantee of protection of human rights in relation to the climate emergency in the Americas, building

¹ See Oxfam, “Climate change and inequality: Climate change is a human-made disaster that is already reversing progress made in the fight against inequality”, available [here](#).

² See *ibid*.

on the foundation laid in its 2017 Advisory Opinion (the “**2017 Advisory Opinion**”).³ Based on our experience responding to the impacts of climate change, Oxfam seeks to assist the Court as it considers the scope of States’ duty of prevention with regard to climate events caused by global warming based on the obligations enshrined in the American Convention on Human Rights (the “**American Convention**”).⁴

5. Accordingly, Oxfam respectfully makes this submission to the Court to address certain questions presented by the Republic of Colombia and the Republic of Chile in their Request for an advisory opinion on the Climate Emergency and Human Rights dated 9 January 2023 (the “**Advisory Opinion Request**”). In **Section II**, we summarize Oxfam’s work as it relates to these proceedings and in particular our experience working with affected communities to respond to the impacts of climate change. In **Section III**, we address State obligations to preserve the right to life and survival in the face of the climate emergency with a human rights and science-based focus (Advisory Opinion Request, Section IV.B), emphasizing the right to food as a component of the right to life. In **Section IV**, we address the conventional obligations of protection and prevention for environmental and territorial defenders in the context of the climate emergency (Advisory Opinion Request, Section IV.E), focusing on obligations owed to Indigenous Peoples and, in particular, Indigenous women environmental defenders. In **Section V**, we address the shared and differentiated obligations and responsibilities in terms of the rights of States in the face of the climate emergency (Advisory Opinion Request, Section IV.F), focusing on States’ extraterritorial human rights obligations and the duty to cooperate. In **Section VI**, we provide our concluding observations.

II. STATEMENT OF INTEREST

6. Oxfam America, Inc. and its affiliates (“**Oxfam**”) have worked around the globe in more than 90 countries to combat poverty and injustice. Although Oxfam plays a critical role in responding to immediate crises, its ultimate goal is to address the root causes of poverty by supporting civil society so that communities can address their own problems. In addition to responding to humanitarian crises, Oxfam tackles the root causes of poverty such as inequality, discrimination, and unequal access to land, food, and other resources.

³ IACtHR, Advisory Opinion OC-23/17, 15 November 2017, available [here](#).

⁴ American Convention on Human Rights (adopted on 22 November 1969, entered into force 18 July 1978) 1144 UNTS 23, Article XI, available [here](#).

7. As part of its mission to safeguard human rights, Oxfam works to advance land and natural resource rights on behalf of Indigenous Peoples. Oxfam supports Indigenous Peoples to secure property rights to their ancestral territories, advocates that governments adopt standards in line with their international obligations, and assists Indigenous communities to defend their land and obtain compensation when companies or governments violate their property rights. Oxfam believes that secure land rights are a precondition to the meaningful enjoyment of the rights to food, adequate housing, an adequate standard of living and many other socioeconomic rights as enshrined in multiple human rights treaties, including the American Convention, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (the “**Escazú Agreement**”),⁵ and the International Covenant on Economic, Social and Cultural Rights (the “**ICESCR**”).⁶ Oxfam recognizes that secure Indigenous land rights not only promote the health and economic development of affected communities but also promote environmental conservation and serve as an invaluable bulwark against climate change.
8. In addition, Oxfam works to ensure that private sector actors respect the human rights of communities whose lives they impact. We have developed rich expertise in the field of business and human rights, successfully advocating for the adoption of these international standards by a range of multinational corporations across the extractive, agribusiness, financial, fashion, and other industries. Oxfam’s decades of experience in business and human rights provide it with unique insight into the legal norms that companies must adopt, and the steps that States must take to protect human rights from the activities of third-party actors, including businesses that are fueling climate change with greenhouse gas emissions (“**GHG**”).
9. Climate change has emerged as one of poverty’s greatest drivers globally, exacerbating factors like societal instability and food insecurity. Because of that link, Oxfam has been fighting for decades to protect the rights and livelihoods of people most affected by the climate crisis. This includes providing emergency humanitarian support when climate disasters strike, advocating that governments proactively protect their populations from the adverse impacts of climate change, and ensuring that the people and corporations who harm the planet are held accountable. Globally, we support communities recovering from

⁵ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (adopted on 4 March 2018, entered into force 22 April 2021) 3397 UNTS, available [here](#).

⁶ International Covenant on Economic, Social and Cultural Rights (adopted on 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, available [here](#).

disasters caused and exacerbated by climate change. Oxfam works with local partners to provide clean water, food, financial support, and information critical to recovery efforts. We also help local responders break their dependence on aid by investing in local efforts to develop climate adaptation and resilience strategies. Finally, Oxfam fights to hold powerful corporate interests that are driving the climate crisis, particularly the fossil fuel industry, accountable. We have organized public campaigns to push wealthy polluters to reduce their emissions, pay their fair share of damages, and support a fair transition from fossil fuels to clean energy.

10. Accordingly, Oxfam respectfully makes this submission to the Court to address questions presented by the Republic of Colombia and the Republic of Chile in their Advisory Opinion Request.

III. STATES MUST PREVENT THE SEVERE NEGATIVE IMPACT OF CLIMATE CHANGE ON THE RIGHT TO LIFE CAUSED BY FOOD INSECURITY

11. This Section III addresses the questions listed in Section IV.B of the Advisory Opinion Request regarding State obligations to preserve the right to life, which includes the right to food, in the context of the climate emergency. In particular, considering the right to life:

1. What is the scope that States should give to their obligations under the Convention vis-à-vis the climate emergency, in relation to:

[...]

ii) The climate adaptation and mitigation measures to be adopted to respond to the climate emergency and the impacts of such measures, including specific 'just transition' policies for groups and individuals who are particularly vulnerable to the effects of global warming;

iii) Responses to prevent, minimize and address economic and noneconomic damage and losses associated with the adverse effects of climate change;

[...]

v) Determination of human impacts, such as human mobility – migration and forced displacement – effects on health and on life, non-economic losses, etc.?

12. The right to life is the most basic human right enshrined in all international human rights treaties and declarations,⁷ and the right to food is a component of the right to life. Without access to adequate food, individuals are at severe risk malnutrition, illness, or even starvation.
13. As discussed below, numerous treaties, international bodies, and court decisions confirm that the right to food is a foundational component of the right to life, including in the context of the climate crisis. Article 4 of the American Convention provides:

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life [...].

14. Pursuant to Article 26 of the American Convention, State Parties should adopt measures, both internally and through international cooperation, that promote the full realization of the rights in the Charter of the Organization of American States (the “**OAS Charter**”).⁸ Article 34j of the OAS Charter requires States to devote their utmost efforts to accomplishing the “*basic goal*” of “[p]roper nutrition, especially through the acceleration of national efforts to increase the production and availability of food”.⁹ The American Convention, therefore, obliges States to promote sustainable food production and protect food systems from the effects of climate change.
15. As discussed below, food security is a prerequisite for the enjoyment of all human rights.¹⁰ Climate change seriously threatens food security, particularly for some regions and

⁷ International Covenant on Civil and Political Rights (adopted on 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (“**ICCPR**”), Article 6(1), available [here](#); Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (“**UDHR**”), Articles 2 and 3, available [here](#); African Charter on Human and Peoples’ Rights (adopted on 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217 (“**Banjul Charter**”), Article 4, available [here](#); Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (adopted on 9 June 1994, entered into force 5 March 1995) (“**Convention of Belém do Pará**”), Article 4, available [here](#); Escazú Agreement, Article 9(2), available [here](#).

⁸ Charter of the Organization of American States (adopted on 30 April 1948, entered into force 13 December 1951) 119 UNTS 3, Article 34(j), available [here](#); Protocol of Amendment to the Charter of the Organization of American States (adopted on 27 February 1967, entered into force 27 February 1970) OAS Treaty Series No 1-A (“**Protocol of Buenos Aires**”), available [here](#).

⁹ OAS Charter, Article 34(j), available [here](#).

¹⁰ CESCR, General Comment No 12 on the right to adequate food, E/C.12/1999/5, 12 May 1999, ¶ 4, available [here](#). This has been recognized in a number of international instruments such as the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (adopted on 17 November 1988, entered into force 16 November 1999) OEA/Ser.A/44 (the “**Protocol of San Salvador**”), Article 12, available [here](#); OAS Charter, Article 34(j), available [here](#); UDHR, Article 25, available [here](#); ICESCR, Article 11, available [here](#); Universal Declaration on the Eradication of Hunger and Malnutrition, Article 1, available [here](#); World Declaration on Nutrition, ¶ 1, available [here](#).

communities in Latin America.¹¹ States therefore have a duty to act to prevent, minimize and address the effects of climate change on the availability of adequate food in order to protect the right to life.

A. States have obligations to respect and ensure the right to food in the context of the climate emergency in order to guarantee the right to life

16. It is well established by this Court and international law that the right to food must be respected in order for States to uphold the right to life.¹²
17. This Court has clarified that States have a positive obligation to take appropriate measures to protect and preserve the right to life, and a negative obligation to refrain from breaching the right to life.¹³ In addition, States must take the necessary measures to create an appropriate legal framework to deter threats to the right to life, including adopting positive measures to prevent the violation of the right to life.¹⁴
18. The Court has recognized the relationship between environmental protection and the realization of human rights.¹⁵ The right to food constitutes a part of “*minimum living conditions*” under the framework of the right to life: “*One of the obligations that the State must inescapably undertake as guarantor, to protect and ensure the right to life, is that of*

¹¹ See Section A below.

¹² The Human Rights Committee (the “HRC”) has noted that the “*inherent right to life*” should be interpreted expansively and that States must take all possible measures to increase life expectancy, including measures to eliminate malnutrition. See HRC, General Comment No 6 on the right to life, 30 April 1982, available [here](#). Other international instruments have also confirmed that the right to food is a component of the right to life. See ICESCR, Article 11, available [here](#) (recognizing “*adequate food*” as a component of “*the right of everyone to an adequate standard of living*”, elaborating protection of “*the fundamental right of everyone to be free from hunger*”, and requiring States, individually and through international cooperation, to take necessary measures “[t]o improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge”); UDHR, Article 25, available [here](#) (“*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control*”); Protocol of San Salvador, Article 12, [here](#); (“*1. Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development. 2. In order to promote the exercise of this right and eradicate malnutrition, the States Parties undertake to improve methods of production, supply and distribution of food, and to this end, agree to promote greater international cooperation in support of the relevant national policies*”).

¹³ *Street Children (Villagrán Morales et al) v Guatemala*, IACtHR, Judgment (Merits), ¶ 144, available [here](#).

¹⁴ *Sawhoyamaya Indigenous Community v Paraguay*, IACtHR, Judgment (Merits, reparations and costs), 29 March 2006, ¶ 153, available [here](#).

¹⁵ 2017 Advisory Opinion, ¶ 49, available [here](#).

generating minimum living conditions that are compatible with the dignity of the human person [...]".¹⁶

19. The Court has addressed the interconnectedness of the rights to a healthy environment, to adequate food and to water that collectively form a part of the right to life. In its 2017 Advisory Opinion, the Court commented that the right to a healthy environment “constitutes a universal value” that “is a fundamental right for the existence of humankind”.¹⁷ The right to food forms part of this “universal value” framework. Moreover, the Court further noted that, “as an autonomous right [the right to life] protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals”.¹⁸ Thus, a causal relationship can be established between the preservation and protection of environmental resources and the availability of food. The Court noted that the right to food “protects access to food that permits nutrition that is adequate and appropriate to ensure health”.¹⁹
20. The IACtHR is not the only regional human rights body to recognize the link between the right to food and the right to life. Considering a communication alleging that the Nigerian government had destroyed and threatened the food sources of the Ogoni People through a variety of means, the African Commission on Human and Peoples’ Rights (the “ACHPR”) found a violation of the right to life, among other human rights violations.²⁰
21. Other regional courts have considered comparable cases seeking to effect “the move towards a more sustainable balance between human activity and socioeconomic

¹⁶ *Yakye Axa Indigenous Community v Paraguay*, IACtHR, Judgment (Merits, reparations and costs), 17 June 2005, ¶ 162, available [here](#). See also *Sawhoyamaxa Indigenous Community v Paraguay*, IACtHR, Judgment (Merits, reparations and costs), 29 March 2006, ¶ 152, available [here](#).

¹⁷ 2017 Advisory Opinion, ¶ 59, available [here](#).

¹⁸ *Ibid*, ¶¶ 56-68, available [here](#). The close interaction between the right to food and States’ obligation to preserve and protect the environment is evidenced in multiple instances: also see for example ¶ 54: “[E]nvironmental degradation, desertification and global climate change are exacerbating destitution and desperation, causing a negative impact on the realization of the right to food, in particular in developing countries”; available [here](#); ¶ 66: “The Court considers that the rights that are particularly vulnerable to environmental impact include the rights to life, personal integrity, private life, health, water, food, housing [...]” available [here](#); ¶ 109: “Among the conditions required for a decent life, the Court has referred to access to, and the quality of, water, food and health, and the content has been defined in the Court’s case law, indicating that these conditions have a significant impact on the right to a decent existence and the basic conditions for the exercise of other human rights” available [here](#).

¹⁹ *Indigenous Communities of the Lhaka Honhat (Our Land) Association v Argentina*, IACtHR, Judgment (Merits, reparations and costs), 6 February 2020, ¶ 216, available [here](#).

²⁰ *Social and Economic Rights Action Center and Center for Economic and Social Rights v Nigeria*, (ACHPR 2002, Communication 155/96), 13-27 October 2001, ¶ 9 and *dictum*, available [here](#).

development, on the one hand, and the resources and regenerative capacity of nature, on the other".²¹

22. At the national level, courts have also recognized the right to resources of healthy food without adulteration of the quality of natural food resources by emissions and climate change. For example, in 2018, the Supreme Court of Colombia reaffirmed the well-established principle that States have a duty to protect the right to life—which includes the right to food—from climate change.²²
23. National courts outside the Americas have also treated food security as part of the right to a healthy and clean environment, and thus of the right to life. For example, the case of *Ashgar Leghari v Pakistan* concerned a failure to protect food security being framed as a violation of the right to life. In its final order, the Lahore High Court held that it is necessary to safeguard the rights of vulnerable peoples and share “*the burdens and benefits of climate change and its impacts equitably and fairly*”.²³ The High Court commented that climate change threatens “*lead to major survival concerns for Pakistan, particularly in relation to the country’s water security, food security and energy security*”.²⁴

B. Ensuring food security requires States to act across four dimensions: availability, access, utilization and stability

24. The World Bank defines food security as “*when all people, at all times, have physical and economic access to sufficient safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life*”.²⁵ This definition has four dimensions, which must be fulfilled together to achieve food security: availability, access, utilization and stability.

²¹ *Council and Commission v Stichting Natuur en Milieu and Pesticide Action Network Europe*, Case T-338/08 ECLI:EU:C:2011:348, 26 May 2011, ¶ 4.3, available [here](#).

²² *Demanda Generaciones Futuras v Minambiente et al*, Supreme Court of Justice of Colombia, STC No 4360-2018, 4 April 2018, ¶¶ 11.3 and 5.3 available [here](#). The Supreme Court of Colombia held: “[I]t is imperative to adopt immediate mitigation measures, and to protect the right to environmental welfare, both of the plaintiffs, and to the other people who inhabit and share the Amazonian territory, not only nationals, but foreigners, together with all inhabitants of the globe, including ecosystems and living beings [...] without an equitable and prudent approach to consumption, the future of humankind may be compromised due to the scarcity of essential life resources”. Also see ¶ 13 where the Supreme Court of Colombia underlined that “*fundamental rights of life, health, the minimum subsistence, freedom, and human dignity are substantially linked and determined by the environment and the ecosystem*”.

²³ *Ashgar Leghari v Federation of Pakistan* [2015] WP No 25501/2015, 25 January 2018, ¶ 21, available [here](#).

²⁴ *Ibid*, section 3, available [here](#).

²⁵ The World Bank, “What is Food Security?”, available [here](#).

25. Availability means that the physical supply element of food production must be secure. While there may be adequate availability of food, access refers to the removal of economic barriers to food. Utilization considers how a body makes the most of nutrients through good feeding practices, food preparation, diversity of the diet and intra-household distribution of food. Stability requires a continued equilibrium of the previous factors, as food insecurity is said to arise if, for example, there is only adequate food on a periodic basis. All of the factors of food security can be affected by climate change. For example, adverse weather conditions affect both the availability and the stability of crops and the supply of food.
26. The United Nations Committee on Economic, Social and Cultural Rights (the “CESCR”) has provided the following guidance on States’ positive obligations in respect of food security: “*The obligation to fulfil (facilitate) means the State must proactively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security*”.²⁶
27. In addressing implementation of the obligation to fulfil at a national level, the CESCR identified practical steps that States should take to ensure food security:

[...] This will require the adoption of a national strategy to ensure food and nutrition security for all, based on human rights principles that define the objectives, and the formulation of policies and corresponding benchmarks.

[...]

*The strategy should address critical issues and measures in regard to all aspects of the food system, including the production, processing, distribution, marketing and consumption of safe food, as well as parallel measures in the fields of health, education, employment and social security. Care should be taken to ensure the most sustainable management and use of natural and other resources for food at the national, regional, local and household levels.*²⁷

28. The CESCR makes clear that these positive obligations persevere in the face of climate change:

Even where a State faces severe resource constraints, whether caused by a process of economic adjustment, economic recession, climatic

²⁶ CESCR, General Comment No 12 on the right to a dequate food, E/C.12/1999/5, 12 May 1999, ¶ 15, available [here](#).

²⁷ CESCR, General Comment No 12 on the right to a dequate food, E/C.12/1999/5, 12 May 1999, ¶¶ 21-25, available [here](#).

*conditions or other factors, measures should be undertaken to ensure that the right to adequate food is especially fulfilled for vulnerable population groups and individuals.*²⁸

29. Accordingly, States are under an obligation to take active and progressive steps to ensure the full enjoyment of human rights via the formulation of laws, policies, strategies and other necessary and adequate measures. States' obligation to take active steps is enshrined in Article 1 of the American Convention which requires States "*to ensure to all persons subject to their jurisdiction the free and full exercise of [the] rights and freedoms [provided for in the American Convention]*".²⁹
30. This Court has emphasized on multiple occasions that States have an obligation to take positive steps to ensure the enjoyment of the rights provided for in the American Convention,³⁰ noting that "*damage to the environment may affect all human rights, in the sense that the full enjoyment of all human rights depends on a suitable environment*".³¹
31. There are various actions States can take to alleviate food insecurity in relation to climate change and promote diversity of food sources, such as those proposed by the World Bank: "[States can encourage] *farming systems that use climate-smart techniques, and produce a more diverse mix of foods, to improve food systems' resilience, increase farm incomes and enable greater availability and affordability of nutrient-dense foods*".³²
32. States also have an obligation to refrain from any practice or activity that restricts or prevents the enjoyment of the right to food as part of their negative obligations.³³ This includes refraining from unlawfully disrupting, polluting or otherwise harming the environment in a way that has a negative impact on the conditions and sources of food.

²⁸ *Ibid*, ¶ 28, available [here](#).

²⁹ American Convention, Article 1, available [here](#). See also American Convention, Article 26, available [here](#); Protocol of San Salvador, Article 2, available [here](#).

³⁰ See for example, *Indigenous Communities of the Lhaka Honhat (Our Land) Association v Argentina*, IACtHR, Judgment (Merits, reparations and costs), 6 February 2020, ¶ 207, available [here](#); *Petro Urrego v Colombia*, IACtHR, Judgment (Preliminary objections, merits, reparations and costs), 8 July 2020, ¶ 93, available [here](#).

³¹ 2017 Advisory Opinion, ¶ 64, available [here](#).

³² The World Bank, "What is Food Security?", available [here](#).

³³ Jean-François Akandji-Kombe, *Positive obligations under the European Convention on Human Rights: A guide to the implementation of the ECHR*, p 10, available [here](#). See also 2017 Advisory Opinion, ¶ 117, available [here](#).

C. Climate change seriously diminishes the availability of food

33. Climate change is playing a significant role in decreasing the availability of food. The impact of increasing temperatures on the oceans, land, and biodiversity is decreasing food supplies in a variety of ways:
- a) **Ocean:** The increasing global temperature is melting the world's ice regions, which affects the salinity of surface and groundwater in coastal areas.³⁴ The salinization of water reduces water sources available for irrigation, and the acidification of oceans affects fisheries by decreasing fish stocks.³⁵
 - b) **Land:** The intensification of droughts and floods is decreasing crop yields, harming rural populations whose livelihood is dependent on agriculture.³⁶ It also impacts the global supply chain of food.³⁷ There is an increasing trend towards land-based solutions to combat climate change, which threatens rural populations. For example, small scale farmers are losing access to arable land or being reduced to smaller plots of land and Indigenous Peoples are losing their territories, which in turn affects their food security. This issue is discussed further in Section IV below.
 - c) **Biodiversity:** Marine, terrestrial and freshwater ecosystems are being altered by climate change, causing the loss of local species, increased diseases, and mass mortality of plants and animals.³⁸ The risk of species extinction (caused, for example, by a reduction in certain plant species' pollination and seed dispersal) increases with each degree of warming, further diminishing food supplies.³⁹
34. The adverse impact of climate change on the availability of food is felt most acutely by countries and populations located in arid and semi-arid areas, landlocked countries and

³⁴ Food and Agricultural Organization (“FAO”), “Climate Change and Food Security: Risks and Responses” (2015), available [here](#).

³⁵ CESCR, “Climate change and the human right to a adequate food, Contribution of the Special Rapporteur on the right to food”, 13 May 2010, available [here](#).

³⁶ FAO, “Climate Change and Food Security: Risks and Responses” (2015), available [here](#).

³⁷ FAO, “Climate Change and Food Security: Risks and Responses” (2015), p 74, available [here](#).

³⁸ UN Climate Action, “Biodiversity - our strongest natural defense against climate change”, available [here](#).

³⁹ Eike Lena Neuschulz, Thomas Mueller, Matthias Schleuning and Katrin Böhning-Gaese, “Pollination and seed dispersal are the most threatened processes of plant regeneration” (2016) 6 Scientific Reports, Article 29839, available [here](#).

small island developing States.⁴⁰ This includes Latin American States, including their Indigenous communities.

35. The OAS Department of Social Inclusion Secretariat for Access to Rights and Equity cited in its June 2022 report that:

*In the Americas in 2020, 41% of individuals had moderate or severe food insecurity, with 14% experiencing extreme food insecurity, defined as running out of food and going a day or more without eating. In addition, 267 million people were affected by moderate or severe food insecurity, indicating that 60 million more individuals than in 2019 lacked physical or economic access to the amount and quality of food needed for health and development.*⁴¹

36. Hunger is dramatically rising in Central America as it becomes harder and harder for families to access nutritious food. As of October 2021, the United Nations (“UN”) World Food Programme estimated that the number of hungry people in El Salvador, Guatemala and Honduras grew by three times, from 2.2 million people in 2019 to 6.4 million in 2021.⁴² This is attributable to climate change, as households in Central America bore the brunt of extreme weather events, from a devastating drought in 2018 to the twin Hurricanes Eta and Iota in 2020.⁴³
37. Food shortage leads to increased migration as Latin American individuals experiencing food insecurity are more likely (23%) to make concrete preparations to migrate than those who are food secure (7%).⁴⁴
38. Climate change is exacerbating this phenomenon. The Intergovernmental Panel on Climate Change (“IPCC”) states that “*all aspects of food security are potentially affected by climate change, including food access, utilization, and price stability*”.⁴⁵

⁴⁰ FAO, “Climate Change and Food Security: Risks and Responses” (2015), p ix, available [here](#).

⁴¹ Department of Social Inclusion Secretariat for Access to Rights and Equity of the Organization of American States, “Confronting Food Insecurity In The Americas: Best Practices And Lessons Learned During The Covid-19 Pandemic”, June 2022, p 9, available [here](#).

⁴² World Food Program USA, “Hunger, Poverty, Climate Shocks and Threat of Violence Force Hundreds of Thousands of Families From Their Homes in Central America”, 17 December 2021, available [here](#).

⁴³ World Food Program USA, “The Complex Motivations and Costs of Central American Migration”, 22 November 2021, p 6, available [here](#).

⁴⁴ World Food Program USA, “The Complex Motivations and Costs of Central American Migration”, 22 November 2021, p 2, available [here](#).

⁴⁵ John R Porter, Liyong Xie, Andrew J Challinor, Keverm Cochrane, S Mark Howden, Muhammad Mohsin Iqbal, David B Lobell, Maria Isabel Travasso, “Food Security and Food Production Systems” in *Climate Change 2014:*

39. A recent UN report estimates that nearly 670 million people may face hunger in 2030—twice the June 2022 estimate of 345 million.⁴⁶ The substantial increase in the figure is, in part, due to more frequent and intense weather events that are disrupting each of the four aspects of food security (availability, access, utilization and stability).
40. The Sustainable Development Goals, adopted by all UN Member States in 2015, serve as a shared blueprint for peace and prosperity for people and the planet. The achievement of Sustainable Development Goal 2 (“zero hunger”) is strongly connected to climate risk management, particularly in terms of the food chain, which is highly vulnerable to extreme weather events and climate changes, such as droughts, rising sea levels, ocean warming and ocean acidification.⁴⁷ In addition:

*[H]eat and water stress conditions may result in food losses at the production stage, while excess rainfall may cause losses during the harvest and storage stages. Other hazards such as landslides caused by heavy rainfall may affect road infrastructure, hindering transportation and access to markets. As a result, food spoilage and waste may pose risks to food safety and consequently threaten food security.*⁴⁸

1) The effect of climate change limiting the availability of food has been recognized at the international level

41. Climate change poses a serious threat to the full and effective realization of the right to food.⁴⁹ The negative impact of climate change and its effect on the availability of food has been repeatedly recognized internationally. For example:

Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects, Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (2014), p 48, available [here](#).

⁴⁶ World Meteorological Organization, “United in Science 2023”, p 15, available [here](#).

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ See for example (i) UN General Assembly, Report of the Special Rapporteur on the right to food, A/64/170, 23 July 2009, available [here](#); (ii) UN General Assembly, Interim report of the Special Rapporteur on the right to food, A/67/268, 8 August 2012, available [here](#); (iii) UN General Assembly, Interim report of the Special Rapporteur on the right to food, A/69/275, 7 August 2014, available [here](#); (iv) UN General Assembly, Interim report of the Special Rapporteur on the right to food, A/70/287, 5 August 2015, available [here](#). See also Cheikh Mbow, Cynthia Rosenzweig, Luis G Barioni, Tim G Benton, Mario Herrero, Murukesan Krishnapillai, Emma Liwenga, Prajal Pradhan, Marta G Rivera-Ferre, Tek Sapkota, Francesco N Tubiello, Yinlong Xu, “Food Security” in *Climate Change and Land: an IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems* (2019), available [here](#).

- a) The UN Special Rapporteur on the Right to Food reported in 2010 that climate change will have a severe impact on the availability of food in certain regions and for certain communities.⁵⁰
- b) The former US President, Mr Barack Obama, stated at a talk at the Seeds & Chips Global Food Innovation Summit in 2017 that:

*Our changing climate is already making it more difficult to produce food, and we've already seen shrinking yields and spiking food prices that, in some cases, are leading to political instability. And when most of the world's poor work in agriculture, the stark imbalances that we've worked so hard to close between developed and developing countries will be even tougher to close. The cost will be borne by people in poor nations that are least equipped to handle it.*⁵¹

- c) The UN Secretary-General, Mr António Guterres, commented in 2021 that food production and local producers are increasingly vulnerable to the adverse impacts of climate change.⁵²
- d) The Asian Development Bank Vice-President for Finance and Risk Management, Ms Roberta Casali, stated in 2022 that:

*Climate warming is already increasingly disrupting natural phenological patterns and the risks [...] are already creating immense pressure on the agricultural sector. With constantly decreasing agricultural land available, farmers are forced to produce more. Use of natural and synthetic fertilizer are, however, not a sustainable solution. Their increased use only reinforces the emission of greenhouse gases. We need to break this vicious cycle. Asia will face a huge problem for food production due to phenological shifts in crops due to escalated average temperature.*⁵³

- e) The UN High Commissioner for Human Rights, Mr Volker Türk, stated in July 2023 that “*on the current course, the average temperature increase by the end of this century would be 3° Celsius, and the world's ecosystems – the air, the food, the water, and*

⁵⁰ CESCR, “Climate change and the human right to a dequate food, Contribution of the Special Rapporteur on the right to food”, 13 May 2010, available [here](#).

⁵¹ Barack Obama, “Barack Obama on food and climate change: ‘We can still act and it won’t be too late’”, The Guardian, 26 May 2017, available [here](#).

⁵² UN, “Secretary-General’s Chair Summary, Statement of Action on United Nations Food Systems Summit”, SG/2258, 23 September 2021, available [here](#).

⁵³ Asian Development Bank, “Battling Climate Change and Transforming Agri-food Systems - Roberta Casali”, 22 March 2022, available [here](#).

human life itself – would be unrecognizable. The right to food was comprehensively threatened by climate change".⁵⁴

f) The Director of the Geneva Global Office of the World Food Programme, Mr Gian Carlo Cirri, said "*there was a strong consensus that the climate crisis was the crisis of our lifetime, with its impact on food security evident across the world. Without additional investment in climate adaptation, there would be starvation, destabilization and migration*".⁵⁵

42. The threat posed to food security by climate change has been repeatedly recognized by the UN. For example:

a) In a resolution on 21 March 2019, the UN Human Rights Council (the "**HR Council**") recognized the interlinkages between climate change and food insecurity and expressed a deep concern that the negative (and ever increasing) impact of climate change, alongside other factors, will threaten agricultural production and food and nutrition security;⁵⁶

b) In a resolution on 8 October 2021, the HR Council acknowledged the importance of a clean, healthy and sustainable environment as critical to the enjoyment of all human rights and recognized the protection of the environment contributes to the enjoyment of human rights, including the right to adequate food;⁵⁷

c) In a resolution on 16 December 2021 and concurring with the HR Council, the UN General Assembly recognized that the recurring food insecurity is a result of, *inter alia*, the adverse impact of climate change, expressed a concern that such adverse impacts are harming agricultural productivity, food production and cropping patterns, thus contributing to food availability shortfalls, and further recognized the impacts of climate change on agricultural production and food security around the world and the

⁵⁴ HR Council, "High Commissioner for Human Rights: the Environment is Dying and the Right to Food is Comprehensively Threatened by Climate Change - the World Demands Action Now", 3 July 2023, available [here](#).

⁵⁵ *Ibid.*

⁵⁶ HR Council, Resolution 40/7 "The right to food" adopted on 21 March 2019, A/HRC/RES/40/7, 5 April 2019, available [here](#).

⁵⁷ HR Council, Resolution 48/13 "The human right to a clean, healthy and sustainable environment" adopted on 8 October 2021, A/HRC/RES/48/13, 18 October 2021, available [here](#).

importance of designing and implementing actions to reduce its effects, in particular on vulnerable populations;⁵⁸ and

- d) In a further resolution on 28 July 2022 and concurring with the HR Council’s resolution of 8 October 2021 entitled “*The human right to a clean, healthy and sustainable environment*” (see subparagraph b) above), the UN General Assembly recognized that the impact of climate change interferes with the enjoyment of a clean, healthy and sustainable environment and that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights (which include a right to food) and that climate change constitutes one of the most pressing and serious threats to the ability of present and future generations to effectively enjoy all human rights.⁵⁹
43. Courts analyzing States’ treaty obligations have also consistently acknowledged the risk climate change poses to the availability of food. For example, within the Inter-American system, in the case of *Lhaka Honhat v Argentina*, this Court stated that “*States have the obligation not only to respect, but also to ensure the right to food, and should understand that this obligation includes the obligation to ‘protect’ this right [...]*”⁶⁰ and “[t]he right to food [...] and the right to water, are ‘particularly vulnerable’ to ‘environmental impact’ [...]”.⁶¹ In its 2017 Advisory Opinion, this Court considered the right to food to be one of the rights that are “*particularly vulnerable to environmental impact*”.⁶²
44. Oxfam’s research shows that one in three people globally are without access to adequate food, and that women (particularly rural and pregnant women)⁶³ are more food-insecure than men by a margin of 10%.⁶⁴ Food insecurity is not only widespread, but also discriminatory in its impact.

⁵⁸ HR Council, Resolution 76/166 “The right to food” adopted on 16 December 2021, A/RES/76/166, 7 January 2022, available [here](#).

⁵⁹ HR Council, Resolution 76/300 “The human right to a clean, healthy and sustainable environment” adopted on 28 July 2022, A/RES/76/300, 1 August 2022, available [here](#).

⁶⁰ *Indigenous Communities of the Lhaka Honhat (Our Land) Association v Argentina*, IACtHR, Judgment (Merits, reparations and costs), 6 February 2020, ¶ 221, available [here](#).

⁶¹ *Id.* ¶ 245.

⁶² 2017 Advisory Opinion, ¶ 66, available [here](#).

⁶³ Oxfam, “Gender Inequalities and Food Insecurity: Ten years after the food price crisis, why are women farmers still food-insecure?” (2019), available [here](#).

⁶⁴ Oxfam, “Food Security: Supporting the Smallholder Farmers, Women, and Indigenous Peoples at the Heart of Our Food Systems” (2023), available [here](#).

2) As a result of the insufficient action on climate change, food insecurity is having a serious detrimental impact on certain regions and communities which are particularly vulnerable to the effects of global warming

45. While climate change poses a threat to the global right to food, some regions and communities are more vulnerable to food insecurity than others. Individuals in Latin American States, Indigenous communities, children, and women (particularly rural and pregnant women) are among the most vulnerable to this climate-generated food insecurity.⁶⁵
46. In the IPCC Sixth Assessment Report titled “*Climate Change 2022: Impacts, Adaptation and Vulnerability*”, it was found that Latin American States are particularly susceptible to food insecurity because of their natural geographic conditions, level of socio-economic development, dependency on agriculture, and inherent inequalities in funding:
- a) Latin America—which hosts the world’s largest biodiversity and carbon repository, the Amazon forest, as well as one of the largest snow-covered and glacial regions, the Andes mountains—is strongly impacted by climate change.
 - b) The region has a high level of socio-economic, ethnic and gender inequality and a dependence on agriculture. Climate change has caused more frequent and extreme droughts to occur in the region, and this will cause a substantial decrease in yield for key crops, disruption of food provision chains, reduced capacity for the production of goods, reduced food security, and increased malnutrition.
 - c) For Latin America in particular, the projected impact on its food systems caused by climate change entails a significant reduction of yields (for example, beans: 19%; maize: 4-21%; rice: 23%) by 2050. This is due to seasonal droughts which are projected to last longer, be more intense, and occur more frequently, due to climate change.⁶⁶
47. Rising food insecurity has a particularly pernicious impact on certain groups. Women and culturally distinct communities experience a disproportionately greater negative impact of food insecurity:

⁶⁵ HR Council, “Report of the Secretary-General - Adverse Impact of Climate Change On The Full Realization of The Right To Food”, A/HRC53/47, 19 June 2023, ¶ 5, available [here](#).

⁶⁶ Working Group II Contribution to the Sixth Assessment Report of the IPCC, “Climate Change 2022: Impacts, Adaptation and Vulnerability” (2022), p 1692, available [here](#).

- a) The impact of food insecurity caused by climate change does not equally affect men and women. Women (particularly rural and pregnant women) are more vulnerable in terms of availability, access, utilization and stability of food sources, due in part to pay inequality and limited bargaining power over household income.⁶⁷ Indeed, a study conducted by Oxfam found that women faced with food insecurity tend to cope with it by reducing their own consumption of food in order to feed others.⁶⁸
- b) Indigenous Peoples (estimated to represent nearly 8% of the Latin American population)⁶⁹ are culturally and socially distinct groups whose needs are not to be ignored.⁷⁰ Food insecurity caused by climate change has an acute impact on Indigenous groups worldwide through increasing human-animal conflicts, decreased access to wild plants and animals as food sources, and decreased availability or safety of local and traditional food.⁷¹ Indigenous communities' vulnerability is succinctly summarized by Dr Pasang Dolma Sherpa, Executive Director of the Centre for Indigenous Peoples' Research and Development:

[I]ndigenous resilience to cope with the impact of climate change was decreasing, which was chaos for indigenous people. It was therefore very important to put access to fundamental human rights, especially the rights of indigenous people, at the forefront. This was the pull and basis for the protection of knowledge. This was the basis needed to address the impacts of climate change.⁷²

48. The impact of climate change on Indigenous communities and their rights under international law is discussed further in Section IV below.

⁶⁷ Oxfam, "Gender Inequalities and Food Insecurity: Ten years after the food price crisis, why are women farmers still food-insecure?" (2019), p 8, available [here](#).

⁶⁸ *Ibid.*

⁶⁹ World Bank Group, "Indigenous Latin America in the Twenty-First Century" (2015), p 25, Table 2, available [here](#).

⁷⁰ Inter-American Commission on Human Rights ("IACHR"), "Climate Emergency: Scope of Inter-American Human Rights Obligations", 31 December 2021, p 17, ¶ 23, available [here](#): "States must adopt measures to ensure that the climate crisis does not affect or jeopardize the effective protection of the human rights of indigenous peoples, Afro-descendant, tribal or peasant communities such as life, personal integrity, freedom of expression, protection of family life, water, food, the healthy environment, or communal property, among others".

⁷¹ Working Group II Contribution to the Sixth Assessment Report of the IPCC, "Climate Change 2022: Impacts, Adaptation and Vulnerability" (2022), pp 1053-1054, available [here](#).

⁷² UN Office of the High Commissioner for Human Rights, "High Commissioner for Human Rights: the Environment is Dying and the Right to Food is Comprehensively Threatened by Climate Change - the World Demands Action Now", 3 July 2023, available [here](#)

D. States must protect food systems from the effects of climate change and promote sustainable food production

49. Article 26 of the American Convention imposes an obligation on States to realize economic, social and cultural rights.⁷³ The OAS Charter develops State obligations imposed through the American Convention, committing States to “*a united effort*” achieve a wide array of development-related goals in the economic, social, educational, cultural, scientific, and technological fields including importantly “[p]roper nutrition, especially through the acceleration of national efforts to increase the production and availability of food”.⁷⁴
50. The Protocol of Buenos Aires reaffirms these goals, committing States to “*dedicate every effort*” to achieving them:

*To accelerate their economic and social development, [...] the Member States agree to dedicate every effort to achieve the following basic goals: [...] d) Modernization of rural life and reforms leading to equitable and efficient land-tenure systems, increased agricultural productivity, expanded use of undeveloped land, diversification of production, and improved processing and marketing systems for agricultural products; and the strengthening and expansion of facilities to attain these ends; [...] j) Proper nutrition, especially through the acceleration of national efforts to increase the production and availability of food [...].*⁷⁵

51. These obligations require States to promote sustainable food production and protect food systems from the effects of climate change in line with the IACtHR’s growing jurisprudence and broad advisory jurisdiction.⁷⁶ The American Convention, OAS Charter and the Protocol of Buenos Aires, like the European Convention on Human Rights (“ECHR”) and the

⁷³ American Convention, Article 26, available [here](#): “*The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires*”.

⁷⁴ OAS Charter, Articles 30 and 34, available [here](#), which state respectively “*the Member States [...] pledge themselves to a united effort to ensure international social justice in their relations and integral development for their peoples, as conditions essential to peace and security. Integral development encompasses the economic, social, educational, cultural, scientific, and technological fields through which the goals that each country sets for accomplishing it should be achieved [...]*” and “[t]he Member States [...] agree to devote their utmost efforts to accomplishing the following basic goals: [...] d) *Modernization of rural life and reforms leading to equitable and efficient land-tenure systems, increased agricultural productivity, expanded use of land, diversification of production and improved processing and marketing systems for agricultural products; and the strengthening and expansion of the means to attain these ends; [...] j) Proper nutrition, especially through the acceleration of national efforts to increase the production and availability of food*”.

⁷⁵ Protocol of Buenos Aires, Article 31, available [here](#).

⁷⁶ American Convention, Article 64, available [here](#).

European Social Charter, are living instruments whose provisions must be interpreted and applied so as to make their safeguards practical and effective in the context of today's reality.⁷⁷ This is a principle repeatedly underlined by this Court, which has noted that “*human rights treaties are living instruments, the interpretation of which must accompany the evolution of the times and current living conditions*”.⁷⁸

52. Accordingly, States must protect food systems from the effects of climate change and promote sustainable food production, by reference to modern technologies and evolving science. There is a continuing duty for States to ensure that necessary measures are implemented to protect food production systems from climate change sufficient for “*the evolution of the times and current living conditions*” following this Court's guidance.
53. The increasingly negative impacts of climate change on food security place a special onus on States to take concrete preventive measures. Two categories of concrete measures are paramount as discussed below.

1) States must address the disastrous effects of climate change on food systems by preventing, minimizing and addressing economic and non-economic damages and losses associated with the adverse effect of climate change

54. Climate justice requires that climate action is consistent with States' human rights obligations. States' positive duty to take action to prevent harm to all human beings in the context of right to food includes but is not limited to:
- a) Taking affirmative measures to mitigate and adapt to climate changes including through international cooperation for example engaging in international negotiations that effectively allows for reducing the impact of climate changes on humans and food systems;⁷⁹

⁷⁷ *International Federation of Human Right Leagues v France*, Collective Complaint No 14/2003, Decision on the merits, 4 March 2005, ¶ 27, available [here](#), which states, “*It is a living instrument dedicated to certain values which inspired it: dignity, autonomy, equality and solidarity. The rights guaranteed are not ends in themselves but they complete the rights enshrined in the European Convention of Human Rights*” and affirmed in *Defence For Children International v Netherlands*, Complaint No 47/2008, Decision on the merits, 28 February 2010, ¶ 34, available [here](#).

⁷⁸ IACtHR, Advisory Opinion OC-26/20, 9 November 2020, ¶ 41, available [here](#). See also IACtHR, Advisory Opinion OC-16/99, 1 October 1999, ¶ 114, available [here](#); IACtHR, Advisory Opinion OC-25/18, 30 May 2018, ¶ 137, available [here](#); IACtHR, Advisory Opinion OC-24/17, 24 November 2017, ¶ 58, available [here](#).

⁷⁹ Office of the United Nations High Commissioner for Human Rights, “Frequently Asked Questions on Human Rights and Climate Change” (2021), pp 19, 22, 25, available [here](#).

- b) Adhering to self-reporting practices as imposed by treaties so as to subject to public scrutiny and leave sufficient scientific data regarding climate change impacts on food security;⁸⁰ and
 - c) Avoiding transboundary human rights violation in the context of climate change including through thorough agreements that create a common level playing field for reduced emissions of GHG and building a resilient food system.⁸¹
55. States can no longer shield themselves from the realities of climate change on food systems and must pivot towards solutions that are climate smart, promoting sustainable and conservation-based agriculture. These include introducing a human rights-based approach to existing food systems and building a responsible agricultural system.⁸²
56. The Organization for Economic Co-operation and Development (“OECD”) recommends policies that:
- a) Increasingly favor long-term investments that will create strong, competitive farm businesses while satisfying the growing demand for food and non-food products, conserving natural resources, restoring the environment and coping with climate change, and avoiding trade distortions;
 - b) Enable resources to be channeled into strengthening innovation systems and ensuring that farmers have the information and skills for farming sustainably in the face of climate change;
 - c) Ensure that economy-wide and sectoral policy interventions are as coherent and consistent as possible such that incentives and disincentives are aligned across economy, including the implementation of agricultural policies which do not undercut efforts to combat climate change;
 - d) Shift away from agricultural production and trade distorting policies such as those that place an emphasis on the evaluation of whether to continue with subsidized use of inputs such as fossil energy and fertilizers which in turn lead to production practices which harm the environment and link to climate change; and

⁸⁰ Human Rights Institute, “Climate Change and the Right to Food A Comprehensive Study” (2009) 8 Columbia Law School, p 101, available [here](#).

⁸¹ *Ibid*, p 126, available [here](#).

⁸² OECD Legal Instruments, “Recommendation of the Council on OECD Legal Instruments the OECD-FAO Guidance for Responsible Agricultural Supply Chains” (2023), available [here](#).

e) Develop policies that respect the environment and scarce resources.⁸³

57. In addition to these recommendations, consideration should also be given to:

a) The OECD-FAO Guidance for Responsible Agricultural Supply Chains, which provides a step-by-step approach to how companies can integrate due diligence into their operations and supply chains, and guidance for companies engaging with Indigenous Peoples;⁸⁴

b) The Food and Agriculture Business Principles which include, *inter alia*, the principle that “[b]usinesses should support sustainable intensification of food systems to meet global needs by managing agriculture, livestock, fisheries and forestry responsibly. They should protect and enhance the environment”;⁸⁵ and

c) The Principles for Responsible Investment in Agriculture and Food Systems as published by the Committee on World Food Security which stress the needs to increase the resilience of agriculture and food systems, the supporting habitats and related livelihoods to combat the effect of climate changes through adaptation measures.⁸⁶

2) States must mitigate climate change by implementing climate adaption and mitigation measures to limit the greenhouse gas emissions resulting from food production

58. While promoting agricultural development is critical to ensuring adequate food supply, because agriculture is also a significant source of GHG, States must take steps to limit agriculture’s aggravating impact on climate change. It is estimated that 33% of GHG arise from agriculture.⁸⁷ Without immediate action, emissions from conventional agriculture will continue to rise due.

⁸³ OECD, “Food and agriculture: A new policy paradigm - short-term thinking must give way to long-term approach”, April 2016, available [here](#).

⁸⁴ OECD and FAO, “OECD-FAO Guidance for Responsible Agricultural Supply Chains” (2016), p 31 and Annex B, available [here](#).

⁸⁵ UN Global Compact, “Food and Agriculture Business Principles”, available [here](#).

⁸⁶ Committee on World Food Security, “Principles for Responsible Investment in Agriculture and Food Systems”, 15 October 2014, available [here](#).

⁸⁷ Contribution of the Special Rapporteur on the right to food, Mr Olivier De Schutter, to the meeting convened by the Friedrich-Ebert-Stiftung with the CESCR, “Climate change and the human right to adequate food”, 13 May 2010, available [here](#).

59. States can address the adverse effects of food production via at least two key approaches: 1) increasing the resilience of agriculture to extreme climate events resulting from climate change; and 2) mitigating its contribution to climate change through reducing carbon emissions.⁸⁸
60. The OECD Meeting of Agriculture Ministers recommends that governments:
- a) Develop concrete adaptation plans that facilitate both on-farm adaptive response as well as long-run sectoral transformation to avoid or mitigate damages from recurring and increasingly severe climate shocks.
 - b) Phase out barriers to adaptive transformations of production systems, such as subsidized insurance schemes that distort farmers' decisions and potentially environmentally harmful forms of support that can increase GHG.
 - c) Reorient budgetary support towards innovation to foster emission-saving and sustainable productivity growth and ensure emergence of new mitigation technologies, as well as new varieties and breeds more resistant to extreme events. Such investments would benefit from stronger partnerships between the public and private sectors to enhance synergies in research and development.
 - d) Implement an effective pricing system for agricultural GHG to incentivize the transition to low emissions agriculture. This may include a mix of emissions taxes and tradeable permit schemes, and in some cases carbon offsets, free permit allocations and abatement subsidies to shelter poor farmers and consumers from higher costs or to ease the transition to full emission pricing.
 - e) Approach transformations for adaptation and mitigation from a food systems perspective, by also shifting consumption to better adapted and lower-emission production systems, and by lowering resource pressures through reduction of food loss and waste.
 - f) Ensure, through coordination between relevant ministries, that agricultural policy is fully aligned and coherent with long-term strategies and policies to fulfill international climate commitments, including those emerging from the 27th Conference of the Parties of the UN Framework Convention on Climate Change.⁸⁹

⁸⁸ FAO, "The State of Food and Agriculture: Climate change, agriculture and food security" (2016), available [here](#).

⁸⁹ OECD Meeting of Agriculture Ministers, "Agriculture and climate change" (2022), p 2, available [here](#). See also OECD, "Declaration on Transformative Solutions for Sustainable Agriculture and Food Systems", 4 November 2022,

61. Reducing GHG generated by the global food system is one of the essential steps States must take to prevent the severe impact of climate change on people's ability to feed themselves.

IV. STATES MUST PROTECT INDIGENOUS ENVIRONMENTAL HUMAN RIGHTS DEFENDERS FROM THE DISPROPORTIONATE HARM SUFFERED AS A RESULT OF THE CLIMATE EMERGENCY AND FACILITATE THEIR WORK

62. Section IV addresses States' obligations toward environmental human rights defenders and in particular, Indigenous Peoples defending the environment.
63. Specifically, this Section responds to the following questions from Section IV.E of the Advisory Opinion Request:

Pursuant to the obligations arising from Articles 1(1) and 2 of the American Convention and in light of article 9 of the Escazú Agreement:

1. What measures and policies should States adopt to facilitate the work of environmental human rights defenders?

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

3. What specific considerations should be taken into account to guarantee the right to defend a healthy environment and the territory based on intersectional factors and differentiated impacts, inter alia, of indigenous peoples [...] in the context of the climate emergency?

64. States have overarching obligations to protect Indigenous Peoples against the effects of climate change, and to empower and protect Indigenous environmental defenders fighting environmental degradation. Breaches of State obligations—either through action or inaction—in both these respects have the potential to give rise to legal liability. This potential liability also extends to responsibility for the operations of businesses and private actors operating within the territory of the State.⁹⁰

available [here](#); Ben Henderson, Stefan Frank, Petr Havlik and Hugo Valin, "Policy strategies and challenges for climate change mitigation in the Agriculture, Forestry and Other Land Use (AFOLU) sector", 149 OECD Food, Agriculture and Fisheries Papers, 28 January 2021, available [here](#).

⁹⁰ For example, Article 1 of the UN Guiding Principles on Business and Human Rights affirms that "States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication". See UN Office of the High Commissioner for Human Rights, "Guiding Principles on Business and Human Rights", HR/PUB/11/04, 2011, available [here](#).

65. Despite this, Indigenous Peoples continue to suffer unfairly and disproportionately as a result of States' actions and inaction in the face of the climate crisis. This prevents Indigenous Peoples from fully and freely exercising their culture, traditional knowledge and customary practices with respect to their lands, including in the protection of crucial biodiversity.
66. In this context, States must take all appropriate and necessary measures to respect, ensure, and protect Indigenous Peoples' rights and prevent the disproportionate harm and threats inflicted upon them as a result of the climate crisis. States must also fully integrate Indigenous Peoples into decision-making processes by respecting and enforcing Indigenous Peoples' right to free, prior and informed consent ("FPIC") in the context of the climate crisis. Further, States should ensure that Indigenous environmental defenders are protected from harm, harassment, intimidation and targeting for defending their lands and Indigenous communities from the disastrous effects of climate change.

A. Environmental human rights defenders, particularly Indigenous Peoples and Indigenous women environmental defenders, are at the frontlines of the fight against the climate crisis

67. Indigenous Peoples are among "*the first to face the direct consequences of climate change owing to their dependence upon and close relationship with the environment and its resources*".⁹¹ At the same time, Indigenous Peoples have been leading environmental defenders, particularly in the area of biodiversity, which remains the most concentrated in Indigenous Peoples' lands. Preserving biodiversity serves as a strong natural defense against climate change.⁹²
68. For example, the UN Special Rapporteur on the Rights of Indigenous Peoples notes that "*Indigenous Peoples have long stewarded and protected the world's forests, a crucial bulwark against climate change [...] [T]he rate of tree cover loss is less than half in community and indigenous lands compared to elsewhere*".⁹³ The World Bank notes that

⁹¹ HR Council, Resolution No 40/11 "Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development" adopted on 21 March 2019, A/HRC/RES/40/11, 2 April 2019, available [here](#).

⁹² Eugenia Recio and Dina Hestad, "Indigenous Peoples: Defending an Environment for All", International Institute for Sustainable Development, 22 April 2022, available [here](#).

⁹³ Indigenous Peoples are "*achieving at least equal conservation results with a fraction of the budget of protected areas*". Victoria Tauli-Corpuz, "A letter from United Nations Special Rapporteur on the Rights of Indigenous Peoples" (2018), available [here](#).

*“empowering Indigenous peoples to manage biodiversity in their own territories has resulted in a more sustained and cost-effective way to protect biodiversity”.*⁹⁴

69. Indigenous Peoples’ leadership in this area stems, in significant part, from:

*the intrinsic connection between indigenous and tribal peoples and their territory [...] The connection between the territory and the natural resources that have been used traditionally and that are necessary for the physical and cultural survival of these peoples and for the development and continuity of their world view must be protected to ensure that they can continue their traditional way of life and that their cultural identity, social structure, economic system, and distinctive customs, beliefs and traditions are respected, guaranteed and protected by States.*⁹⁵

70. As a result of this close relationship with their lands and resources, Indigenous Peoples suffer disproportionately as a result of States’ actions and inaction in the face of the climate crisis and have often been thwarted in their efforts to mitigate climate change and protect biodiversity. For example, Oxfam’s campaigns and research have shown that climate change is increasingly *“forcing people from their land and homes and putting many more at risk of displacement in the future”*.⁹⁶

71. The fact that Indigenous Peoples remain among the most vulnerable to climate change despite bearing little responsibility for its causes has been widely recognized.

72. For example, the IACHR in Resolution 3/2021 acknowledged that the disproportionate impact on Indigenous Peoples occurs *“despite the fact that they have contributed marginally to greenhouse gas emissions, the main cause of the climate crisis”*.⁹⁷ Further, the UN Special Rapporteur on Indigenous Peoples has stated that *“Indigenous peoples are among those who have contributed least to the problem of climate change, yet they are the ones suffering from its worst impacts. They are disproportionately vulnerable to climate*

⁹⁴ Claudia Sobrevila, “The Role of Indigenous Peoples in Biodiversity Conservation: The Natural but Often Forgotten Partners” (2008) 45 *The World Bank*, available [here](#); Cindy Campbell, “Implementing a Greener REDD+ in Black & White: Preserving Wounaan Lands and Culture in Panama with Indigenous-Sensitive Modifications to REDD+” (2016) 40 *American Indian Law Review* 193, available [here](#).

⁹⁵ 2017 Advisory Opinion, ¶ 169 (on respect for the traditions and culture of Indigenous peoples), available [here](#).

⁹⁶ Oxfam, “Uprooted by climate change: responding to the growing risk of displacement”, November 2017, p 2, available [here](#).

⁹⁷ IACHR, “Climate Emergency: Scope of Inter-American Human Rights Obligations”, 31 December 2021, p 6, available [here](#).

change because many of them depend on ecosystems that are particularly prone to the effects of climate change".⁹⁸

73. The UN General Assembly has also recognized that while climate change affects individuals and communities around the world, "*the adverse effects of climate change are felt most acutely by those segments of the population that are already in vulnerable situations owing to factors such as geography, poverty, gender, age, indigenous or minority status, national or social origin, birth or other status and disability*".⁹⁹ This Court recognized Indigenous Peoples as being in a situation of "*special vulnerability*" in its 2017 Advisory Opinion.¹⁰⁰
74. In this regard, within Indigenous communities, Indigenous women are particularly affected by challenges to the realization of their human rights, including when acting to protect themselves and their communities from the causes and impacts of climate change, as set out in Section IV.B below.

B. Indigenous Peoples and Indigenous women environmental defenders must be protected from harm, harassment, intimidation and targeting for defending their lands in the context of the climate crisis

75. Not only are Indigenous Peoples disproportionately harmed by the effects of the climate crisis, they have also become targets of attack, harassment, and intimidation for their work as environmental defenders seeking to protect Indigenous life and lands.¹⁰¹ Disturbingly, "[r]esearch shows Latin America is the most dangerous region in the world to defend land, Indigenous rights and the environment".¹⁰² The targeting of members of Indigenous communities affects all Indigenous Peoples, as attacks are undertaken "*with the express*

⁹⁸ See HR Council, "Report of the Special Rapporteur on the rights of indigenous peoples", A/HRC/36/46, 1 November 2017, ¶ 6, available [here](#).

⁹⁹ UN General Assembly, Resolution 41/21 "Human Rights and Climate Change" adopted on 12 July 2019, A/HRC/RES/41/21, 23 July 2019, available [here](#).

¹⁰⁰ 2017 Advisory Opinion, ¶¶ 48, 67, available [here](#).

¹⁰¹ HR Council, Resolution No 40/11 "Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development" adopted on 21 March 2019, A/HRC/RES/40/11, 2 April 2019, available [here](#). To this end, the HR Council urged all States, among other things, to take all measures necessary to ensure the rights, protection and safety of environmental human rights defenders, "*who exercise, inter alia, the rights to freedom of opinion, expression, peaceful assembly and association*"; ensure that all legal provisions and their application affecting human rights defenders are "*clearly defined, determinable and non-retroactive*" to avoid potential abuse; prevent and put an end to arbitrary arrest and detention of human rights defenders; and combat impunity by conducting prompt, impartial and independent investigations and pursuing accountability for all attacks and threats by State and non-State actors against environmental human rights defenders.

¹⁰² Amnesty International, "Earth Defenders Under Attack in Latin America", available [here](#).

*intent to silence their voices, disrupt their organization and impede their ability to express their concerns over matters affecting their communities”.*¹⁰³

76. A report from Front Line Defenders indicated that out of “*the targeted killings of 401 [human rights defenders] for their human rights work in 2022*”, “*defenders working on land, environmental and indigenous peoples’ rights were most frequently targeted, accounting for 48% of killings*”.¹⁰⁴ Despite only comprising approximately 6% of the global population,¹⁰⁵ “*indigenous peoples’ rights defenders accounted for 22% of the total killings of [human rights defenders] across all human rights sectors, illustrating the disproportionate levels of killings of indigenous rights defenders globally*”.¹⁰⁶ The gravity of the dangers that Indigenous Peoples in Latin America face is stark:

*In 2022, indigenous peoples’ rights defenders were killed in Brazil, Colombia, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Peru [...] and Venezuela. Colombia recorded the highest number of lethal attacks against [human rights defenders] in 2022, with 88 environmental and indigenous rights defenders killed, 47% of the national total of 186.*¹⁰⁷

77. In particular, extractive industry operations and a lack of States’ willingness or ability to protect local populations from related abuses has fueled this rise in violence against environmental defenders. As Oxfam explains:

*[T]he expansion of large scale mining activities and agribusiness in Latin America has greatly increased territorial disputes and resulted in an alarming rise in violence suffered by individuals who defend water, land, forests and the rights of women, afro-descendants, indigenous and farming communities. Threats, bullying, judicial harassment, illegal surveillance, forced disappearances, blackmail, sexual assault and murder are common practice.*¹⁰⁸

¹⁰³ HR Council, “Report of the Special Rapporteur on the rights of Indigenous Peoples”, A/HRC/39/17, 10 August 2018, ¶ 71, available [here](#).

¹⁰⁴ Front Line Defenders, “Global Analysis 2022”, available [here](#). See also Juan Carlos Granados and Pilar Puentes, “Latin America had the most attacks on environmental defenders in 2022, says report”, Mongabay, 5 May 2023, available [here](#).

¹⁰⁵ The World Bank, “Indigenous Peoples”, 6 April 2023, available [here](#).

¹⁰⁶ Front Line Defenders, “Global Analysis 2022”, available [here](#).

¹⁰⁷ *Ibid.*

¹⁰⁸ Oxfam, “Women defenders of the land and the environment: silenced voices” (2023), available [here](#).

78. Indigenous women defenders in particular find themselves “*in the eye of the storm*”.¹⁰⁹ They are “*at heightened risk*” of attacks “*because in addition to challenging powerful economic interests, their outspoken efforts may transgress gender norms. Women defenders often face gender-specific rights violations including sexual violence and threats made against their children*”.¹¹⁰

79. Moreover, women defenders:

*are perceived as a threat because they question and jeopardize the power structures that are based on class privileges and gender discrimination. Moreover, they routinely and clearly denounce just how harmful it is for humanity to continue supporting a system that permanently exploits life on the planet. These women are the victims that most suffer the consequences of the loss of access to land and natural resources.*¹¹¹

80. The Committee on Elimination of All Forms of Discrimination Against Women (the “**CEDAW Committee**”), which monitors the Convention on the Elimination of All Forms of Discrimination against Women (“**CEDAW**”), in its General Recommendation No 39 on the Rights of Indigenous Women and Girls called upon:

*States parties to take into consideration the challenging context in which Indigenous women and girls exercise and defend their human rights. They are heavily affected by existential threats connected to climate change, environmental degradation, the loss of biodiversity and barriers in gaining access to food and water security. Extractive activities carried out by business enterprises and other industrial, financial, public and private actors often have a devastating impact on the environment, air, land, waterways, oceans, territories and natural resources of Indigenous Peoples and may infringe the rights of Indigenous women and girls. Indigenous women and girls are at the forefront of the local, national and international demand and action for a clean, safe, healthy and sustainable environment.*¹¹²

81. It is clear that Indigenous women environmental defenders have suffered and remain at risk of particular harm as a result of the climate crisis, especially based on their intersectional experience as women and members of Indigenous communities. For example, they have been subject to gendered violence by certain extractive companies—including through high

¹⁰⁹ *Ibid.*

¹¹⁰ Amnesty International, “Earth Defenders Under Attack in Latin America”, available [here](#).

¹¹¹ Oxfam, “Women defenders of the land and the environment: silenced voices” (2023), available [here](#).

¹¹² See CEDAW Committee, General Recommendation No 39 on the rights of Indigenous women and girls, CEDAW/C/GC/39, 31 October 2022, ¶ 7, available [here](#).

levels of sexual assault and other violence against women, which is underreported. Threats, bullying, judicial harassment, illegal surveillance, forced disappearances, blackmail, sexual assault and murder are common practice and examples of the violence suffered by those who defend water, land and forests.¹¹³

82. As Oxfam has highlighted, “[w]omen defenders of land, territories and the environment are a nuisance to those that have an economic interest in areas with rich natural resources. As a result, they are being threatened and murdered for raising their voices, demanding respect and dignity”.¹¹⁴ For example:

a) Berta Cáceres, a Honduran environmental activist and Indigenous leader, was murdered in March 2016 after she highlighted illegalities in the Agua Zarca hydroelectric project run by Desarrollos Energéticos Sociedad Anónima. Years after her murder, Indigenous Peoples were still being excluded from any consultative process in the extractives industry.¹¹⁵

b) Janeth Pareja Ortiz, a defender of human, territorial and environmental rights from the Ipuana community in Colombia, lived near the Aguas Blancas stream, which was her main source of livelihood until a mining company began to pour toxic waste. Shortly after, the company decided to divert the stream until it dried up. Ms Pareja Ortiz denounced the company’s practices to the authorities, though she began receiving death threats until she had to flee.¹¹⁶

83. These and numerous other examples reflect the distressing reality that States have emphatically failed to protect Indigenous women environmental defenders from persecution, harm and threats of harm.¹¹⁷

84. In spite of the risks that these women face, they continue to be fervent leaders and defenders of their environments and communities. As Miriam Miranda, a Garifuna defender in Honduras states:

¹¹³ Oxfam, “Women defenders of the land and the environment: silenced voices” (2023), available [here](#).

¹¹⁴ *Ibid.*

¹¹⁵ Oxfam, “Oxfam urges Honduran Government to protect rights and autonomy of indigenous people”, 5 March 2019, available [here](#).

¹¹⁶ Oxfam, “Why indigenous and community land rights matter for everyone”, available [here](#).

¹¹⁷ Oxfam, “Women defenders of the land and the environment: silenced voices” (2023), available [here](#); Dalena Tran and Ksenija Hanaček, “A global analysis of violence against women defenders in environmental conflicts” (2023), 6 Nature Sustainability 1045, available [here](#); Justine Calma, “Why violence against women environmental defenders is undercounted”, 6 June 2023, available [here](#).

*In Honduras, like in the rest of Latin America and the Caribbean, women are in the frontline when it comes to fighting for our rights, against racial discrimination and to defend our environment and our survival. We don't just fight with our own bodies; we also provide our strength, our ideas and our proposals. We don't just give birth to children, but also ideas and actions.*¹¹⁸

C. States have obligations to ensure Indigenous Peoples' multifaceted human rights in the context of climate change

85. States have obligations to respect, protect, and ensure the human rights of Indigenous Peoples in the context of climate change, including as a consequence of interference with their lands. The pressing nature of these obligations in recent times has been recognized at the international level. For example, at an interactive dialogue held in June 2023, the HR Council acknowledged that members of Indigenous communities who protest against development projects continue to be the targets of threats and attacks, and reiterated the need for States “to create an enabling environment for [these] vulnerable groups to exercise freedom of opinion and expression”.¹¹⁹ Similarly, the UN High Commissioner for Human Rights expressed in a recent statement the need for States to “end impunity for attacks against environmental human rights defenders, including notably those who are members of Indigenous Peoples”.¹²⁰
86. In the Inter-American context, it is well-recognized that:

*States must adopt measures to ensure that the climate crisis does not affect or jeopardize the effective protection of the human rights of indigenous peoples, Afro-descendant, tribal or peasant communities such as life, personal integrity, freedom of expression, protection of family life, water, food, the healthy environment, or communal property, among others.*¹²¹

87. These rights are interrelated and interdependent. The OAS General Assembly has recognized that “States have an obligation to protect human rights in the context of the

¹¹⁸ Oxfam, “Women defenders of the land and the environment: silenced voices” (2023), available [here](#).

¹¹⁹ HR Council, “Human Rights Council Holds an Interactive Dialogue on the Elimination of Discrimination against Persons Affected by Leprosy and their Family Members and Concludes a Dialogue on the Right to Freedom of Opinion and Expression”, 23 June 2023, available [here](#).

¹²⁰ UN High Commissioner for Human Rights Statement, “Addressing climate and digital challenges: International Geneva”, 26 June 2023, available [here](#).

¹²¹ IACHR, “Climate Emergency: Scope of Inter-American Human Rights Obligations”, 31 December 2021, p 17, available [here](#).

climate crisis” and that “the adverse effects of climate change have a negative impact on the enjoyment of human rights”.¹²²

88. In light of this, attention is drawn below to the specific legal obligations engaged by States’ responsibilities to Indigenous Peoples in the context of climate change.

89. Article 1(1) of the American Convention requires that:

States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

90. Moreover, under Article 2 of the American Convention:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

91. Key rights in this context include, *inter alia*, Indigenous Peoples’ right to life under Article 4, right to humane treatment under Article 5, and right to personal liberty and security prescribed under Article 7(1) of the American Convention.

92. Article 9 of the Escazú Agreement contains express protections for human rights defenders in environmental matters and states:

1. Each Party shall guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters, so that they are able to act free from threat, restriction and insecurity.

2. Each Party shall take adequate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters, including their right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement, as well as their ability to exercise their access rights, taking into account its international obligations in the field of human

¹²² See OAS General Assembly, Resolution XXXVIII/O/08 “Human Rights and Climate Change in the Americas”, AG/RES. 2429, 3 June 2008, available [here](#). See also Paris Agreement (adopted on 12 December 2015, entry into force 4 November 2016), FCCC/CP/2015/10/Add.1 Decision 1/CP.21, available [here](#), preamble (“Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities”).

rights, its constitutional principles and the basic concepts of its legal system.

3. Each Party shall also take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidations that human rights defenders in environmental matters may suffer while exercising the rights set out in the present Agreement.

93. Myriad international legal instruments including the UDHR,¹²³ the UN Declaration on the Rights of Indigenous Peoples (“**UNDRIP**”),¹²⁴ and the International Convention on the Elimination of All Forms of Racial Discrimination (“**CERD**”)¹²⁵ require State protection against violence or bodily harm whether inflicted by government officials or by any individual, group or institution.

94. As stated by the CEDAW Committee in General Recommendation No 39:

*States parties have an obligation to ensure that State actors and business enterprises take measures without delay to guarantee a clean, healthy and sustainable environment and planetary system, including the prevention of foreseeable loss and damage, socioeconomic and environmental violence, and all forms of violence against Indigenous women who are environmental human rights defenders and their communities and territories.*¹²⁶

95. Where States do not implement effective measures to mitigate the climate crisis and fail to create a safe and enabling environment for Indigenous environmental rights defenders, they risk violating well-established human rights of Indigenous Peoples, including their obligations under Articles 1(1) and 2 of the American Convention and Article 9 of the Escazú Agreement.

96. More specifically, the following human rights of Indigenous Peoples are also under threat:

- a) **Indigenous Peoples’ right to a healthy environment**, which is connected to (among other rights) the right to life, personal integrity, freedom of expression, protection of family life, water, food, and communal property. This Court has recognized in its 2017 Advisory Opinion the autonomous human right to a healthy environment in the context

¹²³ UDHR, Article 3, available [here](#).

¹²⁴ UN General Assembly, Resolution 61/295 “United Nations Declaration on the Rights of Indigenous Peoples”, 13 September 2007, Article 7(1), available [here](#).

¹²⁵ CERD (adopted on 7 March 1966, entered into force 4 January 1969) 660 UNTS 195, Article 4(b), available [here](#).

¹²⁶ See CEDAW Committee, General Recommendation No 39 on the rights of Indigenous women and girls, CEDAW/C/GC/39, 31 October 2022, ¶ 7, available [here](#).

of the Inter-American human rights system.¹²⁷ In particular, this Court observed that “*damage to the environment may affect all human rights, in the sense that the full enjoyment of all human rights depends on a suitable environment*”.¹²⁸ As noted above, the IACHR has recognized States must adopt measures to ensure the climate crisis does not jeopardize the human rights of Indigenous Peoples.¹²⁹ For instance, this would include adjusting government social protection programs in locations most vulnerable to the impacts of climate change, such as droughts and flooding.

b) **Indigenous Peoples’ rights to natural resources, land and communal property**, which this Court has repeatedly confirmed.¹³⁰ The Court has grounded such rights in a wide range of the American Convention’s enumerated rights—centrally the right to property,¹³¹ but also rights to self-determination, life, cultural identity, equality and non-discrimination, and social and economic development. Such land rights are also

¹²⁷ 2017 Advisory Opinion, ¶¶ 62-67, available [here](#). See also *Indigenous Communities of the Lhaka Honhat (Our Land) Association v Argentina*, IACtHR, Judgment (Merits, reparations and costs), 6 February 2020, ¶ 208, available [here](#).

¹²⁸ 2017 Advisory Opinion, ¶ 64, available [here](#).

¹²⁹ IACHR, “Climate Emergency: Scope of Inter-American Human Rights Obligations”, 31 December 2021, preamble, available [here](#). See also Protocol of San Salvador, Article 11, available [here](#); American Convention, Article 4, available [here](#); Escazú Agreement, Article 4(1), available [here](#); UDHR, Article 3 (life) and Article 25 (right to a standard of living adequate for the health and well-being), available [here](#); ICESCR, Article 11 (right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions) and Article 12(1-2) (right of everyone to the enjoyment of the highest attainable standard of physical and mental health), available [here](#); Stockholm Declaration of the UN Conference on the Human Environment, UN General Assembly, Resolution 2994, 15 December 1972 (the “**Stockholm Declaration**”), Principle 1, available [here](#); Rio Declaration of the UN Conference on Environment and Development, UN General Assembly, “Report of the United Nations Conference on Environment and Development”, Annex 1: Rio Declaration on Environment and Development, A/CONF.151/26 (Vol. I), 12 August 1992 (the “**Rio Declaration**”), Principle 2, available [here](#); ICCPR, Article 6, available [here](#); UNDRIP, Article 7(1), available [here](#).

¹³⁰ *Mayagna (Sumo) Awas Tingni Community v Nicaragua*, IACtHR, Judgment (Merits, reparations and costs), 31 August 2001, available [here](#); *Moiwana Community v Suriname*, IACtHR, Judgment (Preliminary objections, merits, reparations and costs), 15 June 2005, available [here](#); *Yakye Axa Indigenous Community v Paraguay*, IACtHR, Judgment (Merits, reparations and costs), 17 June 2005, available [here](#); *Sawhoyamaya Indigenous Community v Paraguay*, IACtHR, Judgment (Merits, reparations and costs), 29 March 2006, available [here](#); *Saramaka People v Suriname*, IACtHR, Judgment (Preliminary objections, merits, reparations and costs), 28 November 2007, available [here](#); *Xákmok Kásek Indigenous Community v Paraguay*, IACtHR, Judgment (Merits, reparations and costs), 24 August 2010, available [here](#); *Kichwa Indigenous People of Sarayaku v Ecuador*, IACtHR, Judgment (Merits and reparations), 27 June 2012, available [here](#); *Kaliña and Lokono Peoples v Suriname*, IACtHR, Judgment (Merits, reparations and costs), 25 November 2015, available [here](#); *Xucuru Indigenous People and its Members v Brazil*, IACtHR, Judgment (Preliminary objections, merits, reparations and costs), 5 February 2018, available [here](#); *Indigenous Communities of the Lhaka Honhat (Our Land) Association v Argentina*, IACtHR, Judgment (Merits, reparations and costs), 6 February 2020, available [here](#).

¹³¹ Article 21 of the American Convention, available [here](#), which makes clear that “[e]veryone has the right to the use and enjoyment of his property”, has been central in the Court’s decision-making. See also ICESCR, Article 1(2) and Article 17 (right to own property), available [here](#); CERD, Article 4(v) (right to own property alone), available [here](#); ICCPR, Article 1(2), available [here](#); Indigenous and Tribal Peoples Convention (adopted on 27 June 1989, entry into force 5 September 1991), International Labour Organization Convention No 169, Articles 13, 14, 15, 16, 17, available [here](#); UNDRIP, Articles 10 and 26, available [here](#).

recognized explicitly in the American Declaration on the Rights of Indigenous Peoples (“**ADRIP**”),¹³² which includes, among others, the right of Indigenous Peoples “*to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired*”.¹³³ These rights are imperiled when the impacts of climate crisis (such as wildfires, droughts, or flooding) destroy or limit access to Indigenous Peoples’ lands and natural resources.

- c) **Indigenous Peoples’ right to food, which is affected by the climate crisis.** As explained in Section III *supra*, the climate crisis has gravely impacted access to food and sustenance for Indigenous communities.
- d) **Indigenous Peoples’ rights to culture, traditions and ways of life in the context of the climate crisis.** As this Court explained in its 2017 Advisory Opinion:

*the intrinsic connection between indigenous and tribal peoples and their territory must be taken into account. The connection between the territory and the natural resources that have been used traditionally and that are necessary for the physical and cultural survival of these peoples and for the development and continuity of their world view must be protected to ensure that they can continue their traditional way of life and that their cultural identity, social structure, economic system, and distinctive customs, beliefs and traditions are respected, guaranteed and protected by States.*¹³⁴

¹³² American Convention, Article 21, available [here](#); ADRIP, preamble and Articles VI, XIX, XXV, XXVI(2), XXIX(4), XXX(4) and (5), available [here](#).

¹³³ ADRIP, Article XXV(3), available [here](#).

¹³⁴ 2017 Advisory Opinion, ¶ 169, available [here](#). See also *Yakye Axa Indigenous Community v Paraguay*, IACtHR, Judgment (Merits, reparations and costs), 17 June 2005, ¶¶ 124, 135 and 137, available [here](#); *Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their Members v Panama*, IACtHR, Judgment, 14 October 2014, ¶ 112, available [here](#); *Punta Piedra Garifuna Community and its Members v Honduras*, IACtHR, Judgment (Preliminary objections, merits, reparations and costs), 5 October 2015, available [here](#); *Kaliña and Lokono Peoples v Suriname*, IACtHR, Judgment (Merits, reparations and costs), 25 November 2015, ¶ 164, available [here](#).

The IACtHR has ruled on the obligation to protect Indigenous Peoples’ ancestral territories owing to the relationship that such lands have with their cultural identity. See *Kaliña and Lokono Peoples v Suriname*, IACtHR, Judgment (Merits, reparations and costs), 25 November 2015, available [here](#); *Kichwa Indigenous People of Sarayaku v Ecuador*, IACtHR, Judgment (Merits and reparations), 27 June 2012, available [here](#); *Mayagna (Sumo) Awas Tingni Community v Nicaragua*, IACtHR, Judgment (Merits, reparations and costs), 31 August 2001, available [here](#); *Saramaka People v Suriname*, IACtHR, Judgment (Preliminary objections, merits, reparations and costs), 28 November 2007, available [here](#); *Indigenous Communities of the Lhaka Honhat (Our Land) Association v Argentina*, IACtHR, Judgment (Merits, reparations and costs), 6 February 2020, available [here](#). In *Yakye Axa Indigenous Community v Paraguay*, IACtHR, Judgment (Merits, reparations and costs), 17 June 2005, ¶ 154, available [here](#), the Court held that “[t]o guarantee the right of indigenous peoples to communal property, it is necessary to take into account that the land is closely linked to their oral expressions and traditions, their customs and languages, their arts and rituals, their knowledge and practices in connection with nature, culinary art, customary law, dress, philosophy, and values”. In *Saramaka People v Suriname*, IACtHR, Judgment (Interpretation of the judgment on

97. Crucial to the realization of all the rights above is the standard of FPIC, as set out in further detail in Section IV.D below.¹³⁵ FPIC requires engaging in meaningful consultation with Indigenous Peoples and obtaining approval in circumstances where a project will significantly affect an Indigenous community's access to its lands or natural resources. FPIC has been codified in numerous international legal instruments.¹³⁶

D. States must implement concrete measures and policies to protect Indigenous environmental human rights defenders and to facilitate their work

98. The following are concrete measures that States should adopt and enforce in order to realize Indigenous Peoples' human rights in the context of the climate crisis and to protect Indigenous environmental defenders.

1) States must mitigate their emissions and realize their commitments made under the Paris Agreement in a way that respects the rights of Indigenous Peoples over their land and natural resources

99. As the 2017 Advisory Opinion confirmed, States have an obligation under the American Convention to respect the right to a healthy environment on behalf of their residents,

preliminary objections, merits, reparations and costs), 12 August 2008, ¶ 121, available [here](#), the Court held that “members of tribal and indigenous communities have the right to own the natural resources they have traditionally used within their territory for the same reasons that they have a right to own the land”. The IACtHR has indicated that the acceptable level of impact, revealed by environmental impact assessments that would allow a State to grant a concession in Indigenous territory may differ in each case, though the permitted level of impact must not negate the ability of Indigenous and tribal peoples to ensure their own survival. See *Saramaka People v Suriname*, IACtHR, Judgment (Interpretation of the judgment on preliminary objections, merits, reparations and costs), 12 August 2008, ¶ 42, available [here](#); *Kaliña and Lokono Peoples v Suriname*, IACtHR, Judgment (Merits, reparations and costs), 25 November 2015, ¶ 214, available [here](#).

¹³⁵ Processes giving effect to FPIC can be contrasted with mere consultation. FPIC is the appropriate standard and requires States to consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. See UN Office of the High Commission of Human Rights, “Consultation and free, prior and informed consent (FPIC)”, available [here](#).

¹³⁶ See, e.g., UNDRIP, Article 19 (“States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them”), Article 5 (“Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State”), Article 30(2) (“States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities”); and Article 32(2) (“States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources”), available [here](#).

including Indigenous Peoples. In order to realize this right, States must adopt and implement policies to reduce emissions, foster climate resilience and ensure that public and private investments are consistent with a pathway towards low carbon emissions and climate-resilient development.¹³⁷ As recommended by the joint statement of several UN human rights committees, States should contribute to phasing out fossil fuels, promote renewable energy and address emissions from the land sector, including by combatting deforestation, and discontinue financial incentives or investments in activities and infrastructure which are inconsistent with low GHG pathways.¹³⁸

100. As this Court recognized in its 2017 Advisory Opinion, States must, at a minimum, regulate, supervise, and monitor activities under their jurisdiction that could cause significant harm to the environment and mitigate any significant harm to the environment in line with the best available science.¹³⁹ This would include, for example, regulating private actors and holding them accountable for harm generated both domestically and extraterritorially.¹⁴⁰
101. In taking these measures, States must do so in a manner that protects and ensures the rights of Indigenous Peoples. For example, in General Comment No 26 on Land and Economic, Social and Cultural Rights, the CESCR stressed the importance that States cooperate at the international level and comply with their duty to mitigate emissions and their respective commitments made in the context of the implementation of the Paris Agreement. The CESCR also highlighted that mitigation efforts must not imperil other human rights of Indigenous Peoples, stating that:

States shall avoid adopting policies to mitigate climate change, such as carbon sequestration through massive reforestation or protection of existing forests, that lead to different forms of land grabbing, especially when they affect the land and territories of populations in vulnerable situations, such as peasants or Indigenous Peoples. Mitigation policies should lead to absolute emissions reductions through the phasing out of fossil fuel production and use. States have an obligation to design climate change adaptation policies at the national level that take into consideration all forms of land use change induced by climate change,

¹³⁷ CEDAW Committee, CESCR, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (“**CMW**”), Committee on the Rights of the Child (the “**CRC Committee**”), and the Committee on the Rights of Persons with Disabilities (the “**CRPD Committee**”), “Joint Statement on Human Rights and Climate Change”, HRI/2019/1, 16 September 2019, available [here](#).

¹³⁸ CEDAW Committee, CESCR, CMW, CRC Committee, and the CRPD Committee, “Joint Statement on Human Rights and Climate Change”, HRI/2019/1, 16 September 2019, available [here](#).

¹³⁹ 2017 Advisory Opinion, ¶¶ 127-174, available [here](#).

¹⁴⁰ CEDAW Committee, CESCR, CMW, CRC Committee, and the CRPD Committee, “Joint Statement on Human Rights and Climate Change”, HRI/2019/1, 16 September 2019, available [here](#).

*to register all affected persons and to use the maximum available resources to address the impact of climate change, particularly on disadvantaged groups.*¹⁴¹

102. Consequently, this Court should require States to adopt specific domestic laws and implement domestic measures to mitigate carbon emissions to comply with their commitments under the Paris Agreement. States must also curb activities causing harm to the environment, while ensuring that such mitigation does not violate the rights of Indigenous Peoples over their land and natural resources.
103. This would include, for example, increasing public investment in resilient road infrastructure, health and education for Indigenous Peoples, with the support of transparent social auditing mechanisms. Moreover, this Court should require States to tackle structural factors contributing to the displacement of Indigenous Peoples caused by climate change, especially with regards to young people.

2) States must strictly comply with FPIC and ensure that third-party actors also comply with FPIC

104. In order to give effect to the range of human rights protecting Indigenous Peoples from the deleterious effects of the climate crisis, States must recognize Indigenous communities' communal land rights over their territories. This is key to ensuring their survival and one of the most effective ways to address the massive loss of biodiversity and attendant climate disasters.
105. To facilitate this, States must comply with the principle of FPIC and ensure that Indigenous Peoples are involved in decisions adopting or implementing measures that may affect them. In particular, States must seek FPIC from Indigenous Peoples with regards to any developments that take place or have effects on Indigenous lands and territories. These include but are not limited to new agricultural activities which encroach or have effects on Indigenous land and new fossil fuel or mining explorations, expansions or developments in Indigenous territories.
106. As expressed by the IACtHR in *Lhaka Honhat v Argentina*, States:

must abstain from carrying out actions, infrastructure works or undertakings on indigenous territory that could affect its existence,

¹⁴¹ See CESCR, General Comment No 26 on land and economic, social and cultural rights, E/C.12/GC/26, 24 January 2023, ¶¶ 56-57, available [here](#).

*value, use or enjoyment by the communities victims, or ordering, authorizing, tolerating or allowing third parties to do this. If any of the said actions are carried out, they must be preceded, as appropriate, by providing information to the indigenous communities victims, and conducting prior, adequate, free and informed consultations [...].*¹⁴²

107. In relation to works or activities on Indigenous territory, the IACtHR has identified the following three mandatory steps:
- a) *“First, ‘ensure the effective participation’ of the peoples or communities, ‘in conformity with their customs and traditions,’ an obligation that requires the State to receive and provide information and also to ensure constant communication between the parties. The consultations should be conducted in good faith, using culturally acceptable procedures and should be aimed at reaching an agreement”;*
 - b) *“Second, it should be ‘guaranteed that no concession will be granted on the territory unless and until independent and technically capable entities, under the State’s supervision, have made a prior environmental impact assessment’”; and*
 - c) *“Third, the State must ensure that the indigenous communities ‘receive reasonable benefit from the projects implemented on their territory’”.*¹⁴³
108. A key factor to ensure that consultations are fit for purpose includes the transfer of information according to the language and culture of the communities in question, including the way in which the Indigenous communities in question organize themselves.
109. In addition to consultations, States must obtain Indigenous Peoples’ consent through the FPIC process prior to launching any large-scale projects that will have impacts on Indigenous lands and resources.¹⁴⁴ The IACtHR recommended applying FPIC over any plans, programs, or projects that the State wishes to develop on Indigenous territory,

¹⁴² *Indigenous Communities of the Lhaka Honhat (Our Land) Association v Argentina*, IACtHR, Judgment (Merits, reparations and costs), 6 February 2020, ¶ 328, available [here](#) (referencing its case law from *Mayagna (Sumo) Awas Tingni Community v Nicaragua* and *Kalina and Lokono Peoples v Suriname*).

¹⁴³ *Indigenous Communities of the Lhaka Honhat (Our Land) Association v Argentina*, IACtHR, Judgment (Merits, reparations and costs), 6 February 2020, ¶ 174, available [here](#) (referencing its case law from *Saramaka v Suriname*, *Sarayaku v Ecuador*, *Kaliña and Lokono v Suriname*, as well as testimony to the HR Council from the UN Special Rapporteur on the human rights and fundamental freedom of Indigenous peoples). See also IACHR, “Indigenous Peoples, Afro-Descendant Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities”, 31 December 2015, ¶¶ 219-224, available [here](#).

¹⁴⁴ *Saramaka People v Suriname*, IACtHR, Judgment (Preliminary objections, merits, reparations and costs), 28 November 2007, ¶¶ 133-35, available [here](#); *Kichwa Indigenous People of Sarayaku v Ecuador*, IACtHR, Judgment (Merits and reparations), 27 June 2012, ¶¶ 129 and 134, available [here](#).

regardless of the potential scale of impact.¹⁴⁵ While States may consider some restrictions on FPIC based on a legitimate public interest, any restrictions must be necessary, proportional, established by law and still guarantee FPIC safeguards to the extent possible.¹⁴⁶ In addition, the ADRIP requires that “*States shall provide redress [...] with respect to Indigenous Peoples when their [...] property [is] taken without their free, prior and informed consent*”.¹⁴⁷

110. Based on these obligations, the Court should require States to adopt and enforce the following measures in recognition of Indigenous Peoples’ right to a healthy environment and the right to defend it:
- a) Require all public and private actors to accord Indigenous Peoples the right to FPIC, conducted in good faith and pursuant to culturally acceptable procedures, prior to launching any development project or activity on Indigenous lands or with impact on Indigenous lands.
 - b) Adopt and enforce domestic laws to ensure that no concession will be granted on Indigenous territory unless and until independent and technically adept actors have concluded an environmental impact assessment.
 - c) Adopt and ensure that Indigenous Peoples receive reasonable benefits from projects and activities impacting their lands and lives.
 - d) Adopt and enforce domestic laws to ensure appropriate civil and/or criminal penalties and remedies for violations of the right to FPIC, including but not limited to monetary penalties, revocation of business or other operating licenses, termination of project development, and reparations to Indigenous Peoples for any and all damage caused by violations of FPIC.
 - e) Ensure that any project that has not provided Indigenous Peoples and communities with meaningful FPIC is immediately suspended.
 - f) Adopt and enforce domestic laws that punish any reprisals or retaliation against Indigenous Peoples based on the exercise of the right to FPIC.

¹⁴⁵ *Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their Members v Panama*, IACtHR, Judgment, 14 October 2014, ¶ 5(d)(ii), available [here](#).

¹⁴⁶ *Yakye Axa Indigenous Community v Paraguay*, IACtHR, Judgment (Merits, reparations and costs), 17 June 2005, ¶¶ 144 and 149, available [here](#).

¹⁴⁷ ADRIP, Article XIII(3), available [here](#).

g) Adopt and enforce domestic laws to ensure that Indigenous Peoples have access to effective remedies for violation of the right to FPIC, including but not limited to reparations for any and all damages caused by a violation of FPIC and restitution of Indigenous lands or other lands of equal extension and quality.¹⁴⁸

3) States must protect Indigenous environmental defenders and punish harm, attacks, harassment, intimidation and threats against Indigenous environmental defenders

111. Moreover, States must protect Indigenous environmental defenders from harm, attacks, harassment, intimidation and threats, including from third parties operating on their territories. As discussed in Section IV.B *supra*, Indigenous leaders and climate defenders face unique threats and are often subject to harm and intimidation for pursuing their human rights to life, health, and a healthy environment.
112. States must implement effective measures to prevent violence, promote good business practice, raise awareness and punish harm, attacks, harassment, intimidation and threats against Indigenous environmental defenders, such as through adoption of new laws and/or proper implementation of existing laws.
113. States must ensure comprehensive investigations into instances of harm, attacks, harassment, intimidation and threats against Indigenous environmental defenders. States must also ensure their respective domestic laws appropriately impose penalties for any attacks and threats against environmental defenders, whether such acts are taken by government-affiliated actors, or domestic or foreign businesses.¹⁴⁹
114. In the Inter-American human rights system, to satisfy their obligations to prevent and punish third-party actors involved in human rights abuses, States must conduct due diligence. The IACtHR has repeatedly found that “[t]he obligation to act with necessary due diligence to protect individuals from human rights violations committed by private actors, including corporations, is well-established in Inter-American case law, including

¹⁴⁸ CESCR, General Comment No 26 on land and economic, social and cultural rights, 24 January 2023, ¶ 11, available [here](#).

¹⁴⁹ See, for example, IACHR, “Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources”, OEA/Ser.L/V/II Doc 56/09, 30 December 2009, available [here](#); IACHR, “Captive Communities: Situation of the Guaraní Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco”, OEA/Ser.L/V/II Doc 58, 24 December 2009, available [here](#).

*that the State can be held internationally responsible for human rights violations committed by private actors”.*¹⁵⁰

115. As this Court established in *Velásquez-Rodríguez v Honduras*, States must take steps to prevent, investigate, and punish human rights violations including those that private sector actors commit against Indigenous environmental defenders.¹⁵¹ Private actors likewise have a direct responsibility to “*respect and protect human rights, as well as prevent, mitigate, and accept responsibility for the adverse human rights impacts directly linked to their activities*”.¹⁵²
116. Consequently, the Court should require States to adopt and enforce the following measures in recognition of States’ obligations to punish harm, attacks, harassment, intimidation and threats against Indigenous environmental defenders:
- a) Implement measures to prevent public, private, and third-party actors from committing human rights abuses, including the commission or threat of persecution, attacks or harm against Indigenous environmental defenders.
 - b) Ensure that all public, private and third-party actors comply with international and national law protections for Indigenous environmental human rights defenders and create a system that monitors this compliance.
 - c) Prevent, investigate, and prosecute the commission or threat of persecution, attacks, or harm against Indigenous environmental defenders.
 - d) Ensure that existing domestic laws are enforced and/or adopt appropriate domestic laws to prevent, investigate, and punish human rights abuses committed against Indigenous environmental defenders.
 - e) Implement monitoring and due diligence systems that ensure that third-party actors, including corporate actors and businesses operating in the State respect human rights of Indigenous Peoples and Indigenous environmental defenders.

¹⁵⁰ Conectas, DAR – Derecho Ambiente y Recursos Naturales, Dejusticia, Observatorio Ciudadano, Intemational Corporate Accountability Roundtable, PODER – Project on Organization, Development, Education and Research, DPLF – Fundación para el Debido Proceso, “Human Rights Due Diligence to Identify, Prevent, and Account for Human Rights Impacts by Business Enterprises,” 168th Period of Sessions, available [here](#).

¹⁵¹ *Velásquez-Rodríguez v Honduras*, IACtHR, Judgment (Merits), 29 July 1988, available [here](#).

¹⁵² *Kaliña and Lokono Peoples v Suriname*, IACtHR, Judgment (Merits, reparations and costs), 25 November 2015, ¶ 224, available [here](#). See also *Miskito Divers (Lemoth Morris et al) v Honduras*, IACtHR, Judgment, 31 August 2021, ¶ 51, available [here](#).

- f) Adopt a system that monitors human rights violations committed against Indigenous environmental defenders, including but not limited to the creation of a record-keeping system and/or database that tracks instances of harm, attacks, harassment, intimidation and threats against Indigenous environmental defenders to be flagged for appropriate investigation and punishment (including any appropriate civil and criminal penalties, revocation of business licenses, payment of reparations and according other remedies to harmed Indigenous environmental defenders).
- g) Ensure access to justice and effective remedies for Indigenous environmental defenders, including but not limited to investigation, prosecution, civil and/or criminal sanctions, and reparations.

4) States must protect Indigenous women environmental defenders so as to enable them to defend their rights to a healthy environment and territory in the context of the climate emergency

117. As highlighted in Section IV.B above, States must recognize the challenging context in which Indigenous women and girls exercise and defend their human rights, particularly when taking action in defense of their environment. This includes the recognition that actors deliberately target Indigenous women human rights defenders in ways unique to the intersectional identities.
118. Consequently, in addition to adopting the measures set out in Section IV.D, the Court should require States to adopt and enforce the following measures in recognition of States' obligations to protect the rights of Indigenous women environmental defenders:
- a) Create a specialized domestic task force dedicated to preventing, investigating, and punishing abuses committed against Indigenous women environmental defenders.
 - b) Ensure that harmed Indigenous women environmental defenders have access to comprehensive health care, including but not limited to sexual and reproductive health care services and abortion services.

V. STATES MUST COOPERATE IN RESPECT OF TRANSBOUNDARY, EXTRATERRITORIAL ENVIRONMENTAL HARM IN ORDER TO ENSURE COMPLIANCE WITH HUMAN RIGHTS AFFECTED BY CLIMATE CHANGE

119. Section V addresses the following questions from Section IV.F of the Advisory Opinion Request:

Taking into account that the climate emergency affects the entire world, and that obligations to cooperate and also to provide redress arise from the American Convention and other international treaties:

1. What considerations and principles should States and international organisations 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?

2. How should States act, both individually and collectively, to guarantee the right to redress for the damage caused by their acts and omissions in relation to the climate emergency, taking into account considerations of equity, justice and sustainability?

Bearing in mind that the climate crisis has a greater impact on some regions and populations, including the Caribbean countries and territories, as well as on the coastal areas and islands of our region and their inhabitants:

1. How should inter-State cooperation obligations be interpreted?

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

120. The Advisory Opinion Request notes that obligations of States to cooperate form a fundamental aspect of the response to the climate emergency.¹⁵³ Additionally, this Court has already recognized the obligation of States to avoid transboundary environmental damage that could violate the human rights of persons outside their territory.¹⁵⁴ These two aspects are inexorably connected. Transboundary harm, by its nature, has extraterritorial effects. Accordingly, States have positive obligations to cooperate in order to respect, protect and ensure that the human rights of those persons who may otherwise be affected

¹⁵³ See Advisory Opinion Request, Section F, p 12, available [here](#).

¹⁵⁴ 2017 Advisory Opinion, ¶ 101, available [here](#).

by acts within their territory are protected.¹⁵⁵ This Court has recognized the duty of cooperation as an important element of the obligation to respect and to ensure the protection of human rights of persons outside a State’s territory who may be affected by activities within its territory.¹⁵⁶ This Section details the nature of this obligation as well as how it should be understood and given effect by States. We use the term “*extraterritorial obligations*” to refer to two distinct obligations:

- a) First, international human rights obligations (including those in the American Convention and the Protocol of San Salvador) that apply as a result of the acts and omissions of a State, within or beyond its territory, that have effects on the enjoyment of human rights outside of that State’s territory; and
- b) Second, obligations of a global character that are set out in human rights instruments (including the American Convention and the Protocol of San Salvador) to take action, separately, and jointly through international cooperation, to realize human rights universally.¹⁵⁷

A. States have extraterritorial obligations in respect of human rights

121. In an increasingly globalized world, the conduct of States affects the lives of people beyond their territorial borders. As States’ spheres of operation expand, so does their responsibility to protect human rights. Although international obligations have typically been envisaged as obligations with which States have to comply only in their own territory, international human rights law has developed to account for the universal nature of these rights and the need for extraterritorial obligations in this regard.
122. The jurisprudence of this Court has recognized and affirmed the extraterritorial nature of certain human rights obligations, as detailed further in Section V.A(1)(i) below. As set out in the 2017 Advisory Opinion, the term “*jurisdiction*” set out in Article 1(1) of the American Convention signifies the State’s obligations apply in respect of every person within the State’s territory or who is in any way subject to its authority, responsibility or

¹⁵⁵ IACHR, “Climate Emergency: Scope of Inter-American Human Rights Obligations”, 31 December 2021, p 7, ¶ 11, available [here](#): “States have an obligation to cooperate in good faith in order to prevent pollution of the planet, which entails reducing their emissions to ensure a safe climate that enables the exercise of rights”.

¹⁵⁶ 2017 Advisory Opinion, ¶ 182, available [here](#).

¹⁵⁷ 2011 Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, including Olivier De Schutter, Asbjørn Eide, Ashfaq Khalfan, Marcos Orellana, Margot Salomon and Ian Seiderman, “Commentary to the Maastricht principles on extraterritorial obligations of states in the area of economic, social and cultural rights” (2012) 34(4) Human Rights Quarterly 1084 (the “**Maastricht Principles**”), available [here](#).

control.¹⁵⁸ This Court has recognized that the meaning of “*jurisdiction*” is not limited to the concept of national territory, but covers a “*broader concept that includes certain ways of exercising jurisdiction beyond the territory of the State in question*”.¹⁵⁹ It held that in the context of transboundary harm, the exercise of jurisdiction will arise when the State of origin exercises effective control over the activities that caused the damage and the consequent human rights violation.¹⁶⁰

123. This is in line with the approach of the IACHR, which has also recognized the extraterritorial obligations of States in environmental and climate matters, holding that States have an obligation to regulate and supervise activities that may significantly affect the environment inside or outside their territory.¹⁶¹
124. The robust approach of the Inter-American system in recognizing the extraterritorial application of human rights obligations in the context of the environment and pollution is supported by the values and principles underpinning the UN Charter. It is also supported by a purposive reading of universal human rights instruments, such as the UDHR. For example, within the UN Charter:
 - a) Article 56 provides that all Members pledge themselves to take joint and separate action in co-operation with the UN for the achievement of the purposes set forth in Article 55. The latter article includes “*universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion*”.
 - b) Article 1 establishes that the purpose of the UN is to achieve “*international cooperation in solving international problems*” and in “*promoting and encouraging respect for human rights and for fundamental freedoms for all*”.
125. These key provisions in the UN Charter therefore recognize that States must respect, protect and fulfill human rights, not only for their own populations, but universally.¹⁶² Leading

¹⁵⁸ IACtHR, Advisory Opinion OC-21/14, 19 August 2014, ¶ 61, available [here](#), as cited in 2017 Advisory Opinion, ¶ 73, available [here](#).

¹⁵⁹ 2017 Advisory Opinion, ¶ 74, available [here](#).

¹⁶⁰ *Ibid*, ¶ 104(h), available [here](#).

¹⁶¹ IACHR, “Climate Emergency: Scope of Inter-American Human Rights Obligations”, 31 December 2021, p 7, ¶ 40, available [here](#).

¹⁶² See, for example, Ibrahim Kanalan, “Extraterritorial State Obligations Beyond the Concept of Jurisdiction” (2018) 19 German Law Journal 43, pp 51-52, available [here](#): “*If the universal validity of human rights rests on the assumption that human rights are valid in all countries, and that all states are bound to respect human rights everywhere, then the limitation of the application and, thus, the obligations of states to the sphere of jurisdiction, must be questioned. The traditional notion that human rights are binding only within a state’s jurisdiction is altogether too narrow, and is therefore incompatible with the idea that human rights must be realized universally*”.

commentary on the UN Charter recognizes that Article 56 implies a duty of States to take action “*jointly*” to implement, *inter alia*, “*universal respect for, and observance of, human rights*”.¹⁶³

126. This provision is paraphrased in the preamble of the UDHR, adopted by the UN General Assembly in 1948. The UDHR confirms many of the general principles set out in the UN Charter, including the importance of human rights and their universal respect and observance. For example:
- a) Its preamble establishes that the “*Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms*”;
 - b) Article 22 provides that everyone “*is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality*”; and
 - c) Article 28 recognizes that “[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”.
127. Article 22 of the UDHR explicitly requires international cooperation whereas the entitlements in Article 28 by definition require cooperation by many or all States to achieve international order that can realize the rights and freedoms contained in the UDHR.
128. Thus, the UN Charter and the UDHR recognize that all people are entitled to fundamental protections by virtue of their humanity. These instruments were adopted well before the recognition of climate change as a pressing and serious threat to the enjoyment of human rights. Nonetheless, a purposive reading of these two foundational documents supports the current recognition of extraterritorial application of human rights obligations, particularly in the context of climate change and the uniquely shared responsibility that States have for addressing its challenges.¹⁶⁴

¹⁶³ Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, and Nikolai Wessendorf, *The Charter of the United Nations - A Commentary* (2012, Oxford University Press, 3rd edition), Volume II, Chapter IX, Article 56, ¶¶ 5 and 19, available [here](#).

¹⁶⁴ See, for example, Lea Raible, “Justifying Extraterritorial Human Rights Obligations and Climate Change as a Counterexample”, EJIL: Talk!, 12 July 2023, available [here](#): “[I]nternational human rights law is principally informed by the values of integrity and equality [...]. These values generate the principle that whatever agent is in a position to guarantee equal treatment in an area of human existence covered by a recognised international human right is justifiably allocated the burdens of the corresponding obligations. This is because this position best describes the power that human rights are meant to channel and constrain”.

1) States have obligations to respect and ensure the human rights of persons outside their territory who are significantly impacted by activities originating in their territory or under their effective control or authority

129. In the decades following the adoption of these instruments, a number of international human rights instruments were created, reinforcing the human rights system on both global (UN bodies, international covenants) and regional levels (the Inter-American, European and African systems). The decisions and jurisprudence of these tribunals and bodies—such as the ACHPR¹⁶⁵ and the European Court on Human Rights (“ECtHR”)¹⁶⁶—further confirm and support the understanding of human rights and their protective ambit as not being necessarily bound by territory and physical borders. The IACHR has also confirmed that States are bound by their human rights obligations extraterritorially when they exercise authority or control over persons outside their sovereign territory.¹⁶⁷
130. The effect of this jurisprudence is that it is now beyond reasonable dispute that a State’s jurisdiction under human rights treaties may include territories under its sovereignty and control, as well as all persons over whom it exercises authority, control, or effects.¹⁶⁸
131. Of particular relevance in this area are the Maastricht Principles.¹⁶⁹ Authored by legal experts, these principles assess and clarify existing extraterritorial obligations under international law. Article 9 of the Maastricht Principles explains the scope of a State’s jurisdiction under human rights treaties, recognizing that:

¹⁶⁵ The ACHPR has confirmed extraterritorial State obligations in cases where States were in effective control of parts of the territory of another or when measures affected the rights of people in other countries. See *Democratic Republic of the Congo v Burundi, Rwanda and Uganda* (ACHPR 2003, Communication 227/99), ¶¶ 63 and 91, available [here](#); *Mohammed Abdullah Saleh Al-Asad v The Republic of Djibouti* (ACHPR 2014, Communication 383/10), ¶¶ 134-135, available [here](#).

¹⁶⁶ The ECtHR has held that jurisdiction under the ECHR applies to situations in which a State exercises physical power and control over a person, but also when a State exercises effective control of an area outside its national territory, whether such control is exercised directly by its own armed forces, or through a subordinate local administration. See *Al-Skeini and others v The United Kingdom* (2011), Application 55721/07, Judgment, 7 July 2011, ¶¶ 136-138, available [here](#).

¹⁶⁷ Whereas the IACHR used the phrase “*authority and control*” in *Coard et al v United States*, IACHR, Report No 109/99, 29 September 1999, ¶ 37, available [here](#), it used the phrase “*authority or control*” in *Saldaño v Argentina*, IACHR, Report No 38/99, 11 March 1999, ¶ 21, available [here](#).

¹⁶⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136, ¶¶ 107-113, available [here](#); *Armed Activities on the Territory of the Congo (Democratic Republic of Congo v Uganda)* (Judgment) [2005] ICJ Rep 168, ¶ 220, available [here](#); CESCR, Concluding Observations: Israel, E/C.12/1/Add.90, 26 June 2003, ¶ 31, available [here](#).

¹⁶⁹ Maastricht Principles, available [here](#). The Maastricht Principles constitute an international expert opinion which clarifies extraterritorial obligations of States on the basis of existing international law.

A State has obligations to respect, protect and fulfil economic, social and cultural rights in any of the following:

a) situations over which it exercises authority or effective control, whether or not such control is exercised in accordance with international law;

b) situations over which State acts or omissions bring about foreseeable effects on the enjoyment of economic, social and cultural rights, whether within or outside its territory;

*c) situations in which the State, acting separately or jointly, whether through its executive, legislative or judicial branches, is in a position to exercise decisive influence or to take measures to realize economic, social and cultural rights extraterritorially, in accordance with international law.*¹⁷⁰

132. International and regional human rights bodies have considered this matter from multiple perspectives, as set out below. Many of the interpretations of these bodies on extraterritoriality support the notion that States' extraterritorial human rights obligations apply in the context of climate change.

(i) The jurisprudence of the Inter-American Court of Human Rights

133. Under Article 1(1) of the American Convention, States undertake to ensure for “*all persons subject to their jurisdiction the free and full exercise of [the] rights and freedoms*”.¹⁷¹ Some of these rights require States “*to take all appropriate measures to protect and preserve the right*”.¹⁷²

134. The IACtHR has a long history of recognizing the need for States to respect and protect human rights extraterritorially.¹⁷³ This is because “*the ‘jurisdiction’ referred to in Article*

¹⁷⁰ Maastricht Principles, Article 9 (emphasis added), available [here](#).

¹⁷¹ American Convention, Article 1(1), available [here](#).

¹⁷² 2017 Advisory Opinion, ¶ 108, available [here](#).

¹⁷³ The *Saldaño* case (*Saldaño v Argentina*, IACHR, Report No 38/99, 11 March 1999, ¶ 21, available [here](#)) involved the first petition decided by the IACHR on extraterritorial responsibility under the American Convention. The petitioner, an Argentine national who had been sentenced to death in the United States, alleged that Argentina had an obligation to lodge a complaint against the United States and that the failure to do so was a breach of its human rights obligations. Although the IACHR declared that Argentina had no such obligation, it recognized that “*jurisdiction*” in the sense of Article 1(1) of the American Convention is not limited to national territory. In ¶ 17, it also established that “*a state party to the American Convention may be responsible under certain circumstances for the acts and omissions of its agents which produce effects or are undertaken outside that state’s own territory*”. In ¶ 19, it provided that “*the understanding of jurisdiction and therefore responsibility for non-compliance with international obligations is a notion linked to authority and effective control, and not merely to territorial boundaries*”. See also *Franklin Guillermo Aisalla Molina v Ecuador-Colombia*, IACHR, Report No 112/10, 21

*1(1) of the American Convention is not limited to the national territory of a State but contemplates circumstances in which the extraterritorial conduct of a State constitutes an exercise of its jurisdiction”.*¹⁷⁴

135. In the 2017 Advisory Opinion, the IACtHR remarked upon the “*interdependence and indivisibility of human rights and environmental protection*”¹⁷⁵ and how “*States have the obligation to avoid transboundary environmental damage that can affect the human rights of individuals outside their territory*”.¹⁷⁶

136. It also confirmed that:

For the purposes of the American Convention, when transboundary damage occurs that effects treaty-based rights, it is understood that the persons whose rights have been violated are under the jurisdiction of the State of origin, if there is a causal link between the act that originated in its territory and the infringement of the human rights of persons outside its territory. The exercise of jurisdiction arises when the State of origin exercises effective control over the activities carried out that caused the harm and consequent violation of human rights.

*In cases of transboundary damage, the exercise of jurisdiction by a State of origin is based on the understanding that it is the State in whose territory or under whose jurisdiction the activities were carried out that has the effective control over them and is in a position to prevent them from causing transboundary harm that impacts the enjoyment of human rights of persons outside its territory. The potential victims of the negative consequences of such activities are under the jurisdiction of the State of origin for the purposes of the possible responsibility of that State for failing to comply with its obligation to prevent transboundary damage. [...].*¹⁷⁷

October 2010, available [here](#). At ¶ 90, the IACHR provided that “*States not only may be held internationally responsible for the acts and omissions imputable to them within their territory, but also for those acts and omissions committed wherever they exercise jurisdiction*”. At ¶ 91, it also provided that “*human rights are inherent in all human beings and are not based on their citizenship or location [...] each American State is obligated therefore to respect the rights of all persons within its territory and of those present in the territory of another state but subject to the control of its agents*”. See also *Coard et al v United States*, IACHR, Report No 109/99, 29 September 1999, ¶ 37, available [here](#).

¹⁷⁴ 2017 Advisory Opinion, ¶ 78, available [here](#).

¹⁷⁵ *Ibid*, ¶ 55, available [here](#).

¹⁷⁶ *Ibid*, ¶ 101, available [here](#).

¹⁷⁷ *Ibid*, ¶¶ 101-102 (emphasis added), available [here](#).

137. Therefore, a State’s activities contributing to climate change beyond its borders can fall within its jurisdiction if the State exercised effective control over the activities that caused the harm.¹⁷⁸ This is because:

*the fact that a person is subject to the jurisdiction of a State does not mean that he or she is in its territory. According to the rules for the interpretation of treaties, as well as the specific rules of the American Convention [...] the ordinary meaning of the word ‘jurisdiction,’ interpreted in good faith and taking into account the context, object and purpose of the American Convention, signifies that it is not limited to the concept of national territory, but covers a broader concept that includes certain ways of exercising jurisdiction beyond the territory of the State in question.*¹⁷⁹

138. Accordingly, a State’s control over the activities causing the harm in question provides a sufficient basis for finding that the State’s jurisdiction includes individuals whose human rights were violated by that harm, even if these individuals are outside of a State’s territory or territorial control.

139. In turn, the party bringing the environmental human rights claim must show that:

*(i) at the time of the facts the authorities knew or should have known of the existence of a situation of real and imminent danger for the life of a specific individual or group of individuals and failed to take the necessary measures within their area of responsibility that could reasonably be expected to prevent or to avoid that danger, and (ii) that there was a causal link between the impact on life and integrity and the significant damage caused to the environment.*¹⁸⁰

140. In the context of climate change, it is undeniable (i) that States are aware of the effects of climate change as well as the “*real and imminent danger*” this phenomenon has on humanity as a whole and on certain communities in particular; and (ii) that there is a causal link between the damaging effects of climate change and the enjoyment of many human

¹⁷⁸ See *ibid*, ¶ 82, available [here](#); Monica Feria-Tinta and Simon Milnes, “The Rise of Environmental Law in International Dispute Resolution: Inter-American Court of Human Rights issues Landmark Advisory Opinion on Environment and Human Rights”, EJIL: Talk!, 26 February 2018, available [here](#).

¹⁷⁹ 2017 Advisory Opinion, ¶ 74 (emphasis added), available [here](#). See also *Franklin Guillermo Aisalla Molina v Ecuador-Colombia*, IACHR, Report No 112/10, 21 October 2010, ¶ 91, available [here](#); *Saldaño v Argentina*, IACHR, Report No 38/99, 11 March 1999, ¶¶ 15-20, available [here](#); *Armando Alejandro Jr et al v Cuba*, IACHR, Report No 86/99, 29 September 1999, ¶¶ 23-25, available [here](#); *Coard et al v United States*, IACHR, Report No 109/99, 29 September 1999, ¶ 37, available [here](#).

¹⁸⁰ 2017 Advisory Opinion, ¶ 120, available [here](#). See also Juan Auz, “‘So, This Is Permanence’: The Inter-American Human Rights System as a Liminal Space for Climate Justice” (2021) 22 *Melbourne Journal of International Law* 188, p 218, available [here](#).

rights. Accordingly, the decisions of the Inter-American system confirm that States have extraterritorial obligations to protect human rights in the context of climate change under the American Convention.

(ii) UN human rights bodies

141. The interpretation of States' extraterritorial obligations under the American Convention set out above, especially in the context of climate change and environmental protection, accords with the interpretations provided by UN human rights bodies with regard to other human rights conventions. The decisions of UN bodies provide helpful guidance as to how the rights set out in international treaties can be interpreted in a cohesive manner with those in the American Convention. Such an approach is in line with the requirements of treaty interpretation set out in Article 31(3)(c) of the Vienna Convention on the Law of Treaties ("VCLT"), which requires taking into account any relevant rules of international law applicable in the relations between the parties.¹⁸¹
142. In the present case, all the Member States to the American Convention¹⁸² are also members of the following international instruments:
- a) The ICCPR (whose monitoring body is the HRC);¹⁸³
 - b) The ICESCR (whose monitoring body is the CESCR);¹⁸⁴
 - c) CEDAW (whose monitoring body is the CEDAW Committee);¹⁸⁵
 - d) Convention on the Rights of the Child ("CRC", whose monitoring body is the CRC Committee);¹⁸⁶ and

¹⁸¹ Vienna Convention on the Law of Treaties (adopted on 23 May 1969, entry into force 27 January 1980) 1155 UNTS 331, available [here](#).

¹⁸² The Member States to the American Convention are Argentina, Barbados, Bolivia, Brazil, Colombia, Costa Rica, Chile, Dominica, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Suriname, Venezuela and Uruguay as per OAS records, available [here](#).

¹⁸³ Member States to the ICCPR are available [here](#).

¹⁸⁴ Member States to the ICESCR are available [here](#).

¹⁸⁵ CEDAW (adopted on 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, including its Member States, are available [here](#).

¹⁸⁶ CRC (adopted on 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, including its Member States, are available [here](#).

e) Convention on the Rights of Persons with Disabilities (“CRPD”, whose monitoring body is the CRPD Committee).¹⁸⁷

143. In 2019, the CESCR, the CEDAW Committee, the CRC Committee and the CRPD (together with the CMW) issued a joint statement on human rights and climate change.¹⁸⁸ According to the joint statement:

*State parties have obligations, including extra-territorial obligations, to respect, protect and fulfil all human rights of all people. Failure to take measures to prevent foreseeable human rights harm caused by climate change or to regulate activities contributing to such harm, could constitute a violation of States’ human rights obligations.*¹⁸⁹

144. It further stated:

*Additionally, States must regulate private actors, including by holding them accountable for harm they generate both domestically and extraterritorially. States should also discontinue financial incentives or investments in activities and infrastructures which are not consistent with low greenhouse gas emissions pathways, whether undertaken by public or private actors as a mitigation measure to prevent further damage and risk.*¹⁹⁰

145. This joint statement is consistent with previous decisions of the HRC, the CESCR, the CEDAW Committee, the CRC Committee and the CRPD Committee. For instance, in its General Comment No 36 on the right to life, the HRC interpreted the term “*jurisdiction*” in Article 2 of the ICCPR as follows:

[A] State party has an obligation to respect and to ensure the rights under article 6 of all persons who are within its territory and *all persons subject to its jurisdiction, that is, all persons over whose enjoyment of the right to life it exercises power or effective control. This includes persons located outside any territory effectively controlled by the State, whose right to life is nonetheless impacted by its military or other activities in a direct and reasonably foreseeable manner.*¹⁹¹

¹⁸⁷ CRPD (adopted on 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3, including its Member States, available [here](#).

¹⁸⁸ CEDAW Committee, CESCR, CMW, CRC Committee, and the CRPD Committee, “Joint Statement on Human Rights and Climate Change”, HRI/2019/1, 16 September 2019, available [here](#).

¹⁸⁹ *Ibid*, “States’ Human Rights Obligations”, ¶ 3, available [here](#).

¹⁹⁰ *Ibid*, “States’ Human Rights Obligations”, ¶ 3, available [here](#).

¹⁹¹ HRC, General Comment No 36 on the right to life, CCPR/C/GC/36, 3 September 2019, ¶ 63 (emphasis added), available [here](#).

146. The HRC has also affirmed that climate change constitutes a pressing and serious threat to the ability of present and future generations to enjoy the right to life and that:

*[I]mplementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.*¹⁹²

147. Concerning the ICESCR, Article 2(1) provides that States parties undertake:

*[T]o take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant [...].*¹⁹³

148. This article requires States to take steps “to the maximum of [their] available resources” and does not limit the realization of economic, social and cultural rights (and corresponding State obligations) to persons within the territory of the State. The CESCR has consistently confirmed this extraterritorial interpretation. For example, in a 2018 statement on climate change, where it affirmed that States Parties are required to respect, protect and fulfill all human rights for all and that “[t]hey owe such duties not only to their own populations, but also to populations outside their territories, consistent with articles 55 and 56 of the [UN] Charter”.¹⁹⁴

149. This interpretation also accords with:

- a) General Comment No 15 on the right to water, where the CESCR confirmed that States should take steps to “prevent their own citizens and companies from violating the right to water of individuals and communities in other countries”.¹⁹⁵
- b) General Comment No 14 on the right to the highest attainable standard of health, where the CESCR provided that:

States parties have to respect the enjoyment of the right to health in other countries, and to prevent third parties from violating the right in other countries, if they are able to influence these third parties by way of legal

¹⁹² *Ibid*, ¶ 62 (emphasis added), available [here](#).

¹⁹³ ICESCR, Article 2(1), available [here](#).

¹⁹⁴ CESCR, “Climate change and the International Covenant on Economic, Social and Cultural Rights”, E/C.12/2018/1, 31 October 2018, ¶ 5, available [here](#).

¹⁹⁵ CESCR, General comment No 15 on the right to water, E/C.12/2002/11, 20 January 2003, ¶ 33, available [here](#).

*or political means, in accordance with the Charter of the United Nations and applicable international law.*¹⁹⁶

150. As to the CRC, Article 2(1) states that “*States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind [...]*”.¹⁹⁷ Moreover, Article 4 of the CRC specifies that:

*States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.*¹⁹⁸

151. Similar to the ICESCR, this undertaking to take all necessary measures to implement the recognized rights does not have any inherent territorial limitations and it does not limit a State’s obligations to its own people or only within its own territorial jurisdiction. This is further confirmed by General Comment No 16 on State obligations regarding the impact of the business sector on children’s rights, which confirms that “*the Convention does not limit a state’s jurisdiction to ‘territory’*”.¹⁹⁹
152. This conclusion is further supported by the findings of the CRC Committee in the *Sacchi* case. In this case, 16 children filed a complaint against Argentina, Brazil, France, Germany and Turkey on the grounds that the States knowingly disregarded scientific evidence on climate change and violated the petitioners’ rights to life and health.²⁰⁰ Although the CRC Committee declared the communication inadmissible because of a failure to exhaust local remedies, it recognized that it had jurisdiction over the case and that the petitioners had victim status. The CRC Committee also found that the appropriate test for jurisdiction in the case before was that adopted by the Court in its 2017 Advisory Opinion.²⁰¹ Specifically,

¹⁹⁶ CESCR, General comment No 14 on the right to the highest attainable standard of health, E/C.12/2000/4, 11 August 2000, ¶ 39, available [here](#).

¹⁹⁷ CRC, Article 2(1), available [here](#).

¹⁹⁸ See also CRC Committee, General Comment No 26 on children’s rights and the environment, with a special focus on climate change, CRC/C/GC/26, 22 August 2023, ¶ 72, available [here](#).

¹⁹⁹ CRC Committee, General comment No 16 on State obligations regarding the impact of the business sector on children’s rights, CRC/C/GC/16, 17 April 2013, ¶ 39, available [here](#). See also CRC Committee, Decision on communications No 79/2019 and No 109/2019, CRC/C/85/D/79/2019–CRC/C/85/D/109/2019, 2 November 2020, available [here](#).

²⁰⁰ CRC Committee, Decision on communication No 104/2019, CRC/C/88/D/104/2019, 11 November 2021, available [here](#).

²⁰¹ *Ibid*, ¶¶ 10.5 and 10.7, available [here](#).

it held that, when transboundary harm occurs, children are under the jurisdiction of the State on whose territory the emissions originated if (1) there is a causal link between the acts or omissions of the State in question and the negative impact on the rights of children located outside its territory; and (2) the State of origin exercises effective control over the sources of the emissions in question.

153. Moreover, as set out by the CRC Committee, States have obligations to address any harm and climate change-related risks to human rights in the context of extraterritorial activities of businesses. They should also enable access to effective remedies for rights violations. This includes cooperation to ensure the compliance of business enterprises operating transnationally with applicable environmental standards and the provision of international assistance and cooperation with investigations and enforcement of proceedings in other States.²⁰² The Committee further specifies that States should prioritize rapid and effective emissions reductions now in order to support children's full enjoyment of their rights in the shortest possible period of time and to avoid irreversible damage to nature, that they should not delay a rapid phase out of fossil fuels, and should not rely on removing greenhouse gases from the atmosphere in the future through unproven technologies.²⁰³ Furthermore, States should discontinue subsidies to public or private actors for investments in activities and infrastructure that are inconsistent with low greenhouse gas emission pathways.²⁰⁴
154. Accordingly, the common understanding of the monitoring bodies of UN human rights treaties to which Member States of the American Convention are parties support the understanding that human rights obligations apply to all situations in which States Parties are in a position to harm the rights of people outside their borders or to regulate a private actor whose conduct can harm the rights of people outside their borders.

²⁰² CRC Committee, General Comment No 26 on children's rights and the environment, with a special focus on climate change, CRC/C/GC/26, 22 August 2023, ¶ 108, available [here](#).

²⁰³ *Ibid*, ¶ 98, available [here](#).

²⁰⁴ *Ibid*, ¶ 99, available [here](#).

(iii) The African Commission on Human and Peoples' Rights and the European Court of Human Rights

155. The respective interpretative approaches of other regional human rights bodies, the ACHPR and the ECtHR, accord with this Court's recognition of the extraterritorial application of human rights obligations in the context of environmental protection and climate change.
156. The Banjul Charter contains no express language on the territorial scope of States' human rights obligations. However, in its General Comment No 3 on the right to life, the ACHPR acknowledged a "*cause-and-effect*" model of jurisdiction as follows:

*A State shall respect the right to life of individuals outside its territory. A State also has certain obligations to protect the right to life of such individuals. The nature of these obligations depends for instance on the extent that the State has jurisdiction or otherwise exercises effective authority, power, or control over either the perpetrator or the victim (or the victim's rights), or exercises effective control over the territory on which the victim's rights are affected, or whether the State engages in conduct which could reasonably be foreseen to result in an unlawful deprivation of life. In any event, customary international law prohibits, without territorial limitation, arbitrary deprivation of life.*²⁰⁵

157. While the ECtHR has held that its jurisdiction is "*primarily territorial*", it has recognized that its jurisdiction can also encompass "*acts of the Contracting Parties performed, or producing effects, outside their territories*".²⁰⁶ The ECtHR has also recognized the principle that domestic activities with transboundary or extraterritorial effects may engage State responsibility.²⁰⁷ While the ECtHR has not recognized extraterritorial application of obligations in the ECHR in some situations of armed conflict, these cases were those that

²⁰⁵ ACHPR, General Comment No 3 on the right to life, 18 November 2015, ¶ 14 (emphasis added), available [here](#). See also *Association of Victims of Post-Electoral Violence and Interrights v Cameroon* (ACHPR 2009, Communication 272/03), 25 November 2009, ¶ 89, available [here](#); *Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria* (ACHPR 2002, Communication 155/96), 13-27 October 2001, ¶¶ 45-47, available [here](#).

²⁰⁶ *Al-Skeini and others v The United Kingdom*, Application No 55721/07, Judgment, 7 July 2011, ¶¶ 109 and 131, available [here](#). See also *Banković and Others v Belgium and Others*, Application No 52207/99, Admissibility decision, 12 December 2001 (elucidating well-settled principle that jurisdiction is territorial and centers on exclusive control and authority by State agents over persons or activities abroad), available [here](#).

²⁰⁷ See *Soering v United Kingdom*, Application No 14038/88, Judgment, 7 July 1989, ¶¶ 88, 90-91 (one State exposes an applicant to human rights violations in another), available [here](#); *Ben ElMahi v Denmark*, Application No 5853/06, Admissibility decision, 11 December 2006 (where jurisdiction is necessary to preclude States from committing rights violations abroad that they could not commit at home), available [here](#); *Andreou v Turkey*, Application No 45653/99, Admissibility decision, 3 June 2008, ¶ 25 (where "*direct and immediate*" cause of the harm concerned took place on the territory of the first State), available [here](#).

raised unique consideration of *jus ad bellum* and *jus in bello*, and thus can be distinguished from cases of environmental harm occurring outside armed conflict.²⁰⁸

158. Specifically, extraterritorial obligations under the ECHR arise when a State’s action (or inaction) “*ha[s] sufficiently proximate repercussions on rights guaranteed by the Convention*”.²⁰⁹
159. The ECtHR has not yet explicitly ruled on the obligations of Member States to the ECHR concerning the impact of climate change on human rights. At present, there are three applications on this issue pending before the ECtHR.²¹⁰ In one case, civil society has filed a written submission on the matter, focusing on why the term “*jurisdiction*” in the ECHR must be interpreted “*in the light of the urgency of climate change and its foreseeable, continuous and severe impact on the enjoyment of human rights within and beyond borders*”.²¹¹ This is in line with the ECtHR’s previous interpretation that the ECHR applies to “*situations in which a Contracting Party has exercised a form of power, authority or control over an individual or the territory in which that individual is present*”.²¹² As regards climate change, although the Contracting Parties to the ECHR are not assumed to have full control over individuals or territory abroad, they do have such control over activities within their territory that emit GHG, and the ability to regulate activities within their jurisdiction that exacerbate emissions in other States and, consequently, on the fulfillment of a range of rights found in the ECHR.²¹³
160. Accordingly, a holistic interpretation of the term “*jurisdiction*” under the American Convention, including with reference to the approach of other bodies tasked with interpreting regional and international human rights conventions, must recognize the

²⁰⁸ See *Banković and Others v Belgium and Others*, Application No 52207/99, Admissibility decision, 12 December 2001, available [here](#); *Georgia v Russia (II)*, Application No 38263/08, Judgment, 21 January 2021, available [here](#).

²⁰⁹ *Ilaşcu v Russia and Moldova*, Application No 48787/99, Judgment, 8 July 2004, ¶ 317, available [here](#).

²¹⁰ Currently, these cases are: *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*, Application No 53600/20, *Carême v France*, Application No 7189/21 and *Duarte Agostinho and Others v Portugal and 32 Other States*, Application No 39371/20.

²¹¹ Written Submission to the ECtHR in the case of *Duarte Agostinho and Others v Portugal and Others* on behalf of the Extraterritorial Obligations Consortium; Amnesty International; the Center for Legal and Social Studies; the Center for Transnational Environmental Accountability; the Economic and Social Rights Centre; FIAN International; the Great Lakes Initiative for Human Rights and Development; the University of Antwerp Law and Development Research Group; Prof Dr Mark Gibney; Dr Gamze Erdem Turkelli; Dr Sara Seck; Prof Dr Sigrun Skogly; Dr Nicolas Carrillo-Santarelli; Prof Dr. Jernej Letnar Cernic; Tom Mulisa; Dr Nicholas Orago; Prof Dr Wouter Vandenhoele; Jingjing Zhang, 6 May 2021 (the “**Agostinho Amicus Submission**”), ¶ 14, available [here](#).

²¹² *Agostinho Amicus Submission*, ¶ 15, available [here](#).

²¹³ *Ibid*, ¶ 16, available [here](#).

extraterritorial effect and application of human rights obligations in the context of climate change.

2) States are obligated to take all necessary measures to avoid activities in their territory or under their control that adversely affect the rights of persons within or outside their territory

161. States, in spite of their territorial sovereignty, may not alter the conditions of their own territory to the disadvantage of persons or territory of other States. Prevention, reduction, and control of transboundary harm to the environment is an important principle in customary international law. Similarly, every State has an obligation not to knowingly allow its territory to be used for acts contrary to the rights of other States,²¹⁴ including environmental damage. This is recognized across a range of international treaties.
162. The Stockholm Declaration represented one of the first international efforts to highlight the global importance of environmental issues. Principle 21 of the Stockholm Declaration asserts that States have the “*responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond national jurisdiction*”.²¹⁵ This is known as the transboundary harm principle. The Rio Declaration reaffirmed the foregoing language in its Principle 2.²¹⁶
163. The importance of the transboundary harm principle, including its customary international law status, has also been recognized by the International Court of Justice (“ICJ”). For instance, in its 1996 *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*, the ICJ recognized that:

*The existence of the general obligations of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.*²¹⁷

²¹⁴ *Corfu Channel Case (UK v Albania)* (Merits) [1949] ICJ Rep 4, p 22, available [here](#). See also *Trail Smelter Case (Decision of 11 March 1941) (United States v Canada)* (1941) 3 RIAA 1938, p 1965, available [here](#), in which the tribunal indicated that, “*under the principles of international law [...], no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein [...]*”.

²¹⁵ Stockholm Declaration, Principle 21, available [here](#).

²¹⁶ See also UN Framework Convention on Climate Change (adopted on 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107, preamble, available [here](#).

²¹⁷ *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226, ¶ 29, available [here](#).

164. The ICJ also acknowledged that there is a “*general obligation to protect the natural environment against widespread, long-term and severe environmental damage*”.²¹⁸ Similarly, in *Pulp Mills*, the ICJ held that a State must “*use all the means at its disposal in order 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*”.²¹⁹ Moreover, it held that the obligation to act with due diligence:

*entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators [...] to safeguard the rights of the other party.*²²⁰

165. The transboundary harm principle, and its ramifications, were also the subject of study and codification in the International Law Commission’s Articles on Prevention of Transboundary Harm from Hazardous Activities (the “**ILC Articles on Transboundary Harm**”).²²¹ The ILC Articles on Transboundary Harm recognize the obligation to prevent significant transboundary harm as one of due diligence,²²² which requires States to take active measures within their territory to prevent harmful outcomes in other States.²²³ The commentary to the ILC Articles on Transboundary Harm also notes that:

- a) “*The State of origin shall take appropriate measures to prevent significant transboundary harm or at any event to minimize the risk thereof*” (Article 3).
- b) “*Any decision in respect of the authorization of an activity within the scope of the present articles shall, in particular, be based on an assessment of the possible transboundary harm caused by that activity, including any environmental impact assessment*” (Article 7).

166. This has also been recognized in the 2017 Advisory Opinion as follows:

[T]he obligation to prevent transboundary environmental damage or harm is an obligation recognized by international environmental law,

²¹⁸ *Ibid*, ¶ 31, available [here](#).

²¹⁹ *Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment)* [2010] ICJ Rep 14, ¶ 101, available [here](#).

²²⁰ *Ibid*, ¶ 197, available [here](#).

²²¹ International Law Commission, “Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries”, Report of the International Law Commission on the Work of its 53rd session (2001) A/56/10, available [here](#).

²²² ILC Articles on Transboundary Harm, Article 3(7), available [here](#).

²²³ See also 2017 Advisory Opinion, ¶¶ 123-124, available [here](#).

*under which States may be held responsible for any significant damage caused to persons outside their borders by activities originating in their territory or under their effective control or authority. It is important to stress that this obligation does not depend on the lawful or unlawful nature of the conduct that generates the damage, because States must provide prompt, adequate and effective redress to the persons and States that are victims of transboundary harm resulting from activities carried out in their territory or under their jurisdiction, even if the action which caused this damage is not prohibited by international law. That said, there must always be a causal link between the damage caused and the act or omission of the State of origin in relation to activities in its territory or under its jurisdiction or control.*²²⁴

167. Customary international law therefore clearly recognizes obligations related to the environmental impact of States' activities. These activities are constrained by a State's obligation to prevent, reduce, and control transboundary harm. While the customary international law principles relating to transboundary harm arose in the context of a State's responsibility to another State,²²⁵ such rules of international law must necessarily be taken into account when interpreting and giving effect to a State's obligations to individuals and peoples under human rights treaties.²²⁶ The obligation to prevent transboundary harm thus supports and complements an extraterritorial application of States' human rights obligations generally and under the American Convention, in the context of climate change.

B. States must cooperate to bring about compliance with human rights imperiled by climate change

168. The duty of States to cooperate is "*the bedrock of international law*"²²⁷ and is enshrined in the UN Charter. It entails cooperation among States as well as cooperation with the UN in the maintenance of international peace and security, in solving economic, social, cultural, environmental or humanitarian problems, and in promoting and respecting human rights.²²⁸

169. The 2030 Agenda for Sustainable Development explicitly recognizes the centrality of cooperation to climate change action, setting out that:

²²⁴ *Ibid*, ¶ 103, available [here](#).

²²⁵ *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgment) [2010] ICJ Rep 14, ¶ 266, available [here](#).

²²⁶ VCLT, Article 31(3)(c), available [here](#).

²²⁷ Patricia Wouters, "'Dynamic Cooperation' in International Law and the Shadow of State Sovereignty in the Context of Transboundary Waters (Part 2)" (2013) 4 *Environmental Liability* 88, p 131, available [here](#).

²²⁸ UN Charter, Article 1, available [here](#).

*The global nature of climate change calls for the widest possible international cooperation aimed at accelerating the reduction of global greenhouse gas emissions and addressing adaptation to the adverse impacts of climate change.*²²⁹

170. Similarly, commenting on international cooperation to combat climate change, the Office of the High Commissioner for Human Rights has said that such cooperation “*is not only expedient but also a human rights obligation and that its central objective is the realization of human rights*”.²³⁰
171. This duty to cooperate in environmental matters and its customary nature is not limited to a State’s human rights obligations.²³¹ As held by the ICJ, the duty to cooperate is derived from the principle of good faith in international relations,²³² is essential for protection of the environment,²³³ and allows States jointly to manage and prevent risks of environmental damage that could result from projects undertaken by one State.²³⁴
172. Regarding the duty of cooperation in the Inter-American system, Article 26 of the American Convention also establishes the obligation to undertake measures, including through international cooperation, with a view to the development and protection of economic, social and cultural rights. The Protocol of San Salvador includes an undertaking to adopt the necessary measures, both domestically and through international cooperation, to the extent allowed by their available resources, and taking into account their degree of development. for the full observance of the rights recognized therein.²³⁵ Similarly, the 2017 Advisory Opinion recognizes that:

In the specific case of activities, projects or incidents that could cause significant transboundary environmental harm, the potentially affected State or States require the cooperation of the State of origin and vice

²²⁹ UN General Assembly, Resolution 70/1, “Transforming our world: the 2030 Agenda for Sustainable Development”, UN Doc A/RES/70/1, 21 October 2015, ¶ 31, available [here](#).

²³⁰ Office of the High Commissioner for Human Rights, “The Relationship between Climate Change and Human Rights”, UN Doc A/HRC/10/61, 15 January 2009, ¶ 99, available [here](#).

²³¹ ITLOS, *MOX Plant case (Ireland v United Kingdom)*, Order on provisional measures, 3 December 2001, ¶ 82, available [here](#): “the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under [...] general international law”.

²³² *Nuclear Tests Cases (Australia v France) (New Zealand v France) (Judgments)* [1974] ICJ Rep 253 and 457, ¶¶ 46 and 49 respectively, available [here](#) and [here](#); *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226, ¶ 102, available [here](#); *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgment) [2010] ICJ Rep 14, ¶ 145, available [here](#).

²³³ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* (Judgment) [1997] ICJ Rep 7, ¶¶ 17 and 140, available [here](#).

²³⁴ *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgment) [2010] ICJ Rep 14, ¶ 77, available [here](#).

²³⁵ See Protocol of San Salvador, preamble and Articles 1, 12 and 14, available [here](#).

*versa in order to take the measures of prevention and mitigation needed to ensure the human rights of the persons subject to their jurisdiction. In addition, compliance by the State of origin with its duty to cooperate is an important element in the evaluation of its obligation to respect and to ensure the human rights of the persons outside its territory who may be affected by activities executed within its territory.*²³⁶

173. As held by the IACtHR, this duty of cooperation includes the duty to notify,²³⁷ the duty to consult and negotiate with potentially affected States,²³⁸ and a duty to exchange information.²³⁹ Although these are obligations of means as opposed to obligations of result, they are linked to the obligation of States to respect and protect human rights from the effects of climate change as examined in Section V.A above. Accordingly, States have an obligation to act immediately to the best of their resources and despite the fact that some rights concerned are those of progressive development.
174. This duty of cooperation is also recognized in most international human rights instruments.²⁴⁰ For example, in General Comment No 3 on the nature of obligations under the ICESCR, the CESCR stated:

*The Committee wishes to emphasize that in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, **international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States.** It is particularly incumbent upon those States which are in a position to assist others in this regard. [...].*²⁴¹

²³⁶ 2017 Advisory Opinion, ¶ 182, available [here](#).

²³⁷ *Ibid*, ¶¶ 187-196, available [here](#).

²³⁸ *Ibid*, ¶¶ 197-205, available [here](#).

²³⁹ *Ibid*, ¶¶ 206-208, available [here](#). Member States to the American Convention also have a series of procedural obligations such as a access to information, public participation, and a access to justice. See ¶¶ 213-240, available [here](#).

²⁴⁰ 2017 Advisory Opinion, ¶ 100, available [here](#).

²⁴¹ CESCR, General Comment No 3 on the nature of States Parties' obligations, E/1991/23, 14 December 1990, ¶ 14 (emphasis added), available [here](#). See also CESCR, General Comment No 4 on the right to a adequate housing, E/1992/23, 13 December 1991, ¶ 19, available [here](#); CESCR, General Comment No 12 on the right to a adequate food, E/C.12/1999/5, 12 May 1999, ¶¶ 36-39, available [here](#); CESCR, General Comment No 13 on the right to education, E/C.12/1999/10, 8 December 1999, ¶ 56, available [here](#); CESCR, General Comment No 14 on the right to the highest attainable standard of health, E/C.12/2000/4, 11 August 2000, ¶¶ 38-41, available [here](#); CESCR, General Comment No 15 on the right to water, E/C.12/2002/11, 20 January 2003, ¶¶ 31-36, available [here](#); CESCR, General Comment No 17 on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author, E/C.12/GC/17, 12 January 2006, ¶¶ 36-38 and 40, available [here](#); CESCR, General Comment No 18 on the right to work, E/C.12/GC/18, 6 February 2006, ¶¶ 29-30, available [here](#); CESCR, General Comment No 19 on the right to social security, E/C.12/GC/19, 4 February 2008, ¶¶ 52-58, available [here](#); CESCR, General Comment No 20 on non-discrimination in economic, social and

175. Article 23(4) of the CRC likewise requires States to “*promote, in the spirit of international cooperation, the exchange of information in the field of preventive health care and of medical, psychological and functional treatment of disabled children [...]*”. Article 24 of the CRC, addressing the right to the enjoyment of the highest attainable standard of health, also clearly provides for an extraterritorial obligation of cooperation with particular regard being taken of the “*needs of developing countries*”.²⁴²
176. The CRC Committee confirmed in General Comment No 16 that “*States have obligations to engage in international co-operation for the realization of children’s rights beyond their territorial boundaries*”.²⁴³ In General Comment No 26, the CRC Committee reaffirmed the duty of cooperation and noted that:
- a) “*States have an obligation to take action, separately and jointly, through international cooperation, to respect, protect and fulfill children’s rights*”.²⁴⁴
 - b) “*Climate change, pollution and biodiversity loss clearly represent urgent examples of global threats to children’s rights that require States to work together, calling for the widest possible cooperation by all countries and their participation in an effective and appropriate international response*”.²⁴⁵
 - c) “*In the context of climate change, such obligations are appropriately guided by taking into account the historical and current emissions of greenhouse gases and the concept of common but differentiated responsibilities and States’ respective capabilities, in the light of different national circumstances, while requiring the provision of technical and financial assistance from developed States to developing States consistent with article 4 of the Convention*”.²⁴⁶

cultural rights, E/C.12/GC/20, 2 July 2009, ¶ 14, available [here](#); CESCR, General Comment No 21 on the right of everyone to take part in cultural life, E/C.12/GC/21, 21 December 2009, ¶¶ 56-58, available [here](#).

²⁴² See also CRC, Article 24(4), available [here](#).

²⁴³ CRC Committee, General comment No 16 on State obligations regarding the impact of the business sector on children’s rights, CRC/C/GC/16, 17 April 2013, available [here](#), ¶ 41. See also Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (adopted on 25 May 2000, entered into force 12 February 2002) 2173 UNTS 222, Article 7, available [here](#); Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (adopted on 25 May 2000, entered into force 18 January 2002) 2171 UNTS 227, Article 10(1), available [here](#).

²⁴⁴ CRC Committee, General Comment No 26 on children’s rights and the environment, with a special focus on climate change, CRC/C/GC/26, 22 August 2023, ¶ 91, available [here](#).

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.*

177. Accordingly, it is clear that States must cooperate to ensure the fulfillment of human rights affected by climate change, which undeniably has an extraterritorial component. As will be shown in the following sub-sections, this duty of cooperation also includes the obligation to cooperate to (1) remedy damage caused by climate change; and (2) prevent further damage from climate change.

1) States have an obligation to cooperate to remedy damage caused by climate change

178. In the unique context of climate change, the fact that it is the responsibility of all States to cooperate to bring about compliance with human rights imperiled by climate change does not mean that a State can elude its individual responsibility. Any breach of conventional obligations such as those contained in human rights treaties gives rise to State responsibility.²⁴⁷ If a State has committed an internationally wrongful act leading to State responsibility, then the State has an obligation to repair that damage.²⁴⁸ As recognized in the 2017 Advisory Opinion:

*The State must mitigate significant environmental damage if it occurs. Even if the incident occurs despite all the required preventive measures having been taken, the State of origin must ensure that appropriate measures are adopted to mitigate the damage and, to this end, should rely upon the best available scientific data and technology. Such measures should be taken immediately, even if the origin of the pollution is unknown. Some of the measures that States should take are: (i) clean-up and restoration within the jurisdiction of the State of origin; (ii) containment of the geographical range of the damage to prevent it from affecting other States; (iii) collection of all necessary information about the incident and the existing risk of damage; (iv) in cases of emergency in relation to an activity that could produce significant damage to the environment of another State, the State of origin should, immediately and as rapidly as possible, notify the States that are likely to be affected by the damage [...]; (v) once notified, the affected or potentially affected States should take all possible steps to mitigate and, if possible, eliminate the consequences of the damage, and (vi) in case of emergency, any persons who could be affected should also be informed.*²⁴⁹

²⁴⁷ International Law Commission, “Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries” (2001) A/56/10 (“ARSIWA”), Commentary to Article 2, ¶¶ 1-3, available [here](#).

²⁴⁸ ARSIWA, Article 31, available [here](#).

²⁴⁹ 2017 Advisory Opinion, ¶ 172, available [here](#).

179. Recently, this was echoed by the CRC Committee, which noted in its General Comment No 26 that:

*[I]t is critical to acknowledge loss and damage as a third pillar of climate action, along with mitigation and adaptation. States are encouraged to take note that, from a human rights perspective, **loss and damage are closely related to the right to remedy and the principle of reparations, including restitution, compensation and rehabilitation. States should undertake measures, including through international cooperation, to provide financial and technical assistance for addressing loss and damage that have an impact on the enjoyment of the rights under the Convention.***²⁵⁰

180. Under international law, a State's responsibility for an internationally wrongful act is not diminished by the fact that other States are also responsible for the same act or effect.²⁵¹ ARSIWA considers circumstances in which several States separately carry out internationally wrongful conduct that contributes to causing the same damage. A State's responsibility is not reduced by reason of the concurrent responsibility of a third State since "*the responsibility of each participating State is determined individually, on the basis of its own conduct and by reference to its own international obligations*".²⁵² This also accords with recent developments in national case law, which support the general principle that multiple States may bear responsibility for an internationally wrongful act in the area of climate change. Consistent with this understanding, courts in Germany, France, the Netherlands, Belgium and Australia have held that these individual States are required to cut their part of global emissions to protect their own residents.²⁵³
181. The duty to cooperate in repairing harm caused by climate change has also been recognized in the 2017 Advisory Opinion since "*the State of origin and the States potentially affected have the obligation to cooperate in order to take all possible measures to mitigate the effects*

²⁵⁰ CRC Committee, General Comment No 26 on children's rights and the environment, with a special focus on climate change, CRC/C/GC/26, 22 August 2023, ¶ 106, available [here](#).

²⁵¹ ARSIWA, Commentary to Article 47, ¶ 1, available [here](#); *Corfu Channel Case (UK v Albania)* (Merits) [1949] ICJ Rep 4, pp 22-23, available [here](#).

²⁵² ARSIWA, Commentary to Article 47, ¶ 8, available [here](#).

²⁵³ Bundesverfassungsgericht, *Neubauer and Others*, Order of the First Senate, 1 BvR 2656/18, 24 March 2021, ¶¶ 175-178, available [here](#); *Commune de Grande-Synthe et al v France*, Conseil d'État, 1 July 2021, dictum (1) and (2), available [here](#); *Notre Affaire à Tous and Others v France*, Tribunal Administratif de Paris, 14 October 2021, dictum (2), available [here](#); *Urgenda Foundation v State of the Netherlands*, Supreme Court of the Netherlands, 20 December 2019, ¶¶ 5.7.7-5.7.8, available [here](#); *VZW Klimaatzaak v Kingdom of Belgium & Others*, Brussels Court of First Instance Judgment, 17 June 2021, p 61, available [here](#); *Minister for the Environment v Sharma*, Decision from the Federal Court of Australia, 15 March 2022, ¶ 253, available [here](#).

*of the damage [...]”.*²⁵⁴ The CRC Committee provides that States should undertake measures, including through international cooperation, to provide financial and technical assistance for addressing loss and damage that have an impact on the enjoyment of the rights under the Convention.²⁵⁵

182. To account for respective capabilities, States’ national circumstances need to be taken into account in efforts to address climate change. Therefore, high-income States should cooperate with lower-income States in providing financing for climate action that upholds human rights, in line with the international climate-related commitments that States have made, including under the American Convention.²⁵⁶

2) States have an obligation to cooperate to prevent further damage from climate change

183. States also have an obligation under general international law and human rights law to cooperate to prevent further damage from climate change. As recognized in the ILC Articles on Transboundary Harm, States “*shall take all appropriate measures to prevent significant transboundary harm or at any event to minimize the risk thereof*”.²⁵⁷ “Harm” is defined as “*harm caused to persons, property or the environment*”,²⁵⁸ which includes elements of many human rights such as the right to be free from physical harm under the right to health or the right to a healthy environment.
184. To this end, States should cooperate in good faith, seeking the assistance of international organizations as necessary.²⁵⁹ In the Inter-American system, the 2017 Advisory Opinion held that:

[T]he State of origin should have a contingency plan to respond to environmental emergencies or disasters that includes safety measures and procedures to minimize the consequences of such disasters. Even though the State of origin is the main entity responsible for the contingency plan, when appropriate, the plan should be implemented

²⁵⁴ 2017 Advisory Opinion, ¶ 173, available [here](#).

²⁵⁵ CRC Committee, General Comment No 26 on children’s rights and the environment, with a special focus on climate change, CRC/C/GC/26, 22 August 2023, ¶ 106, available [here](#).

²⁵⁶ *Ibid*, ¶ 112, available [here](#).

²⁵⁷ ILC Articles on Transboundary Harm, Article 3, available [here](#).

²⁵⁸ *Ibid*, Article 2(b), available [here](#).

²⁵⁹ *Ibid*, Article 4, available [here](#).

*in cooperation with other States that are potentially affected, and also competent international organizations.*²⁶⁰

185. The Maastricht Principles also interpret international law as requiring that:

*All States must cooperate to ensure that non-State actors do not impair the enjoyment of the economic, social and cultural rights of any persons. This obligation includes measures to prevent human rights abuses by non-State actors, to hold them to account for any such abuses, and to ensure an effective remedy for those affected.*²⁶¹

186. In line with these obligations and as recognized by the CRC Committee in its General Comment No 26, States should take urgent collective action to mitigate GHG.²⁶² Mitigation measures should reflect each State's respective capabilities and national circumstances. For example, high-income States should undertake significant and ambitious absolute GHG reduction targets. Nonetheless, all States should enhance their GHG mitigation measures in the light of their national circumstances and in a manner that protects human rights to the maximum possible extent.²⁶³

187. The CRC Committee indicates that States should set out mitigation objectives and measures which transparently and explicitly indicate how they respect, protect and fulfill human rights as per their international obligations.²⁶⁴ High-income States should assist lower-income States in planning and implementing these mitigation measures. The CRC Committee indicates that States should incentivize sustainable investment in and use of renewable energy, energy storage and energy efficiency, enforce progressive taxation schemes and adopt strict sustainability requirements for public procurement contracts.²⁶⁵

VI. CONCLUSION

188. Building on the right to a healthy environment and concomitant State obligations clarified in the Court's 2017 Advisory Opinion, Oxfam respectfully requests that the Court further articulate what is required of States under the American Convention to ensure the protection

²⁶⁰ 2017 Advisory Opinion, ¶ 171, available [here](#).

²⁶¹ Maastricht Principles, Article 27, a available [here](#).

²⁶² CRC Committee, General Comment No 26 on children's rights and the environment, with a special focus on climate change, CRC/C/GC/26, 22 August 2023, ¶ 95, a available [here](#).

²⁶³ *Ibid*, ¶ 98(b), a available [here](#).

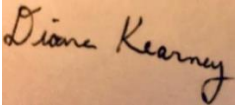
²⁶⁴ *Ibid*, ¶ 98(a), a available [here](#).

²⁶⁵ *Ibid*, ¶ 109, a available [here](#).

of human rights in relation to the climate emergency in the Americas. This submission has sought to assist the Court in connection with three critically important issues raised by the Advisory Opinion Request.

189. First, as detailed above, States must prevent the severe negative impacts of climate change on the right to life caused by food insecurity. Because climate change seriously threatens food security, particularly for some regions and communities in Latin America, States have a duty to act to prevent, minimize and address the effects of climate change on the availability of adequate food in order to protect the right to life.
190. Second, States must protect Indigenous environmental human rights defenders from the disproportionate harm suffered as a result of the climate emergency and also empower and protect Indigenous environmental defenders fighting environmental degradation. This includes implementing measures to protect Indigenous environmental defenders from harm, harassment, intimidation and targeting for defending their rights to a healthy environment (and appropriately punishing such conduct whenever it occurs, whether by State organs or by private actors) and ensuring that Indigenous Peoples' right to FPIC is respected, protected and fulfilled.
191. Third, States must cooperate in respect of transboundary, extraterritorial environmental harm to uphold human rights negatively impacted by climate change. This entails cooperating both to remedy existing damage caused by climate change and to prevent further damage from climate change. States' national circumstances should be taken into account in the collective effort to address climate change to ensure effective, equitable climate action that upholds human rights, in line with the international climate-related commitments that States have made, including under the American Convention.

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