



**WRITTEN OBSERVATIONS ON THE REQUEST FOR AN ADVISORY OPINION ON THE
CLIMATE EMERGENCY AND HUMAN RIGHTS, AS REQUESTED BY THE STATES OF
COLOMBIA AND CHILE**

**AMICUS BRIEF SUBMITTED TO THE
INTER-AMERICAN COURT OF HUMAN RIGHTS**

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EXECUTIVE SUMMARY

Climate change is a super-wicked problem, in part because it can be hard to disentangle the multifarious impacts it has for societies and humanity writ large. The complexity of climate challenge does not dissolve when it intersects with human rights, though the advisory opinion that the Inter-American Court of Human Rights will issue on climate change and human rights will inevitably provide much needed clarity and certainty regarding state and nonstate obligations on climate change.

To assist the Court in rendering its opinion, Earth Rights Advocacy at New York University School of Law is pleased to submit this intervention. This intervention will assess the standards and benchmarks offered by both the international climate regime and the human rights system in order to provide an ‘integrated regime approach’ that sheds light on states’ obligations in the context of climate change and how the human rights system can lay down the binding boundaries that ensure that states act with sufficient urgency and ambition on climate change.

The intervention will begin with an overview of why climate change implicates human rights and states’ obligations under human rights law. Thereafter, it will sketch out the basics of the international climate regime and the key metrics and standards for state action that it establishes. It then turns to how reading the core principles and duties of international human rights regimes and the international climate regimes together clarify the boundaries within which states must operate to safeguard people and their rights, including the urgency and ambition with which states must comport. Finally, it concludes by applying this joint reading of the regimes to the Inter-American system – widely defined to comprise its organs and the domestic courts of State Parties to the American Convention on Human Rights and San Salvador Protocol. In doing so, the intervention identifies and examines in detail the state duties – including substantive and procedural obligations as well as special obligations towards peoples in vulnerable situations– that flow from this integrated interpretation of the two regimes.

An integrated interpretation of the two regimes is essential because it clarifies the scope of states’ substantive, procedural, and special obligations to act on climate change to an extent not possible when only looking at each regime in isolation. Nevertheless, the human rights regime – both within the international context as well as within the Inter-American system – makes one thing abundantly clear: *whether or not progress on climate action stalls within the international climate regime, the protection of human rights requires the preservation of a stable climate system, and states must act accordingly.*

I. An Integrated Reading of the International Human Rights and Climate Change Regimes Best Clarifies States' Duties on Climate Change

Though climate change is aptly characterized as a “defining challenge of our time,”¹ it is perhaps better thought of as a ‘bundle’ of interconnected challenges – encompassing greenhouse gas mitigation and adaptation but also climate finance, reparations for losses and damages, and other regulatory issues raised by rising temperatures.

Given the complexity of the regulatory challenges posed by the climate emergency, global governance around climate change has blossomed over the past several decades. Two of the most significant regulatory regimes tasked with elements of the climate emergency are the international human rights regime and the international climate regime, as established by the UN Framework Convention on Climate Change (UNFCCC) and further refined by the Paris Agreement.

Though the precise content of these two regimes varies, they are mutually reinforcing and, read together, clarify the scope of states’ obligations on climate change.

As such, an integrated interpretation of both of these regimes speaks directly to a question posed by the Republic of Colombia and the Republic of Chile in their request for an advisory opinion – namely, question A(1), which asks:

What is the scope of the duty of States to prevent climate phenomena generated by global warming, including extreme events and slow onset events, in accordance with inter-American treaty obligations in light of the Paris Agreement and the scientific consensus that encourages not to increase global temperature beyond 1.5°C?²

Given this, **NYU Earth Rights Advocacy** is pleased to submit this intervention, which will offer an integrated interpretation of the international human rights and climate change regimes to assist the Inter-American Court of Human Rights as the Court prepares to issue its advisory opinion on human rights and the climate emergency.

Earth Rights Advocacy (ERA) is based at the **Center for Human Rights and Global Justice at New York University School of Law** in New York, New York. ERA is a global collaborative hub for research, advocacy, and strategic litigation on ecological emergencies, including climate change and biodiversity loss. Working with scholars, activists, and litigants from around the world, ERA initiates and supports efforts that build the speed and scale necessary to spur action on ecological emergencies within the limited timeframe left to avoid triggering extreme scenarios of ecological collapse. ERA helps fill gaps in existing practice; connects practitioners, litigators, and experts in different fields (from biological science to strategic communications to philosophy to economics); and spearheads and supports lawsuits and other forms of action and advocacy.

Read together, as this intervention will show, the international human rights and climate change regimes define the *urgency* and *ambition* with which states must act in a manner that offers greater clarity and specification around obligations than interpreting each regime in isolation does.

We will begin with an overview of why climate change implicates human rights and states’ obligations under human rights law. Thereafter, we sketch out the basics of the international climate regime and the key metrics and standards for state action that it establishes. We then turn to how reading the core principles and duties of

¹ *Leghari v. Pakistan* (Lahore High Court (Pakistan) 2015), ¶ 6.

² THE REPUBLIC OF COLOMBIA AND THE REPUBLIC OF CHILE, REQUEST FOR AN ADVISORY OPINION ON THE CLIMATE EMERGENCY AND HUMAN RIGHTS TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS, § IV(A)(I) (2023), https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf.

international human rights regimes and the international climate regimes together clarify the boundaries within which states must operate to safeguard people and their rights, including the urgency and ambition with which states must comport. Finally, we conclude by applying this joint reading of the regimes to the InterAmerican system – widely defined to comprise its organs and the domestic courts of State Parties to the ACHR and San Salvador Protocol. In doing so, we identify and examine in detail the state duties – including substantive and procedural obligations as well as special obligations towards vulnerable groups – that flow from this integrated interpretation of the two regimes.

II. Climate Change Falls Within the Ambit of the International Human Rights Regime

Climate change has far-reaching and profound implications for the protection and enjoyment of human rights, a reality affirmed time and again by courts, human rights bodies, and officials around the world and at all levels of governance. As a result, climate change has become a central concern for the international human rights regime, which has, in turn, delineated how human rights norms, doctrines, and obligations apply in the context of the climate emergency.

A. *Climate Change has Profound Implications for the Protection and Enjoyment of Human Welfare in Latin America*

Climate change impacts materialize both abruptly and slowly, disrupting human welfare across the world in a myriad of ways. Compared to other regions of the world, however, Latin America’s vulnerability profile is evident. The Latin American region is highly vulnerable to climate change owing to its geography, climate, socioeconomic conditions and demographic factors, as well as the great sensitivity of its natural assets such as forests and its biodiversity to climate change.³ Key ecosystems like Amazonia, northeastern Brazil, Central America, the Caribbean, and parts of Mexico have seen and will continue to see increased drought conditions, while hurricanes impacts may increase in Central America and the Caribbean. Other vital systems in the region, such as the glaciers in the Andes, the coral reefs in Central America, the Amazon Forest, are also already approaching critical conditions under risk of irreversible damage.⁴

These and other impacts of climate change acutely threaten the well-being of those in the region. Indeed:

“[...] increasing sea-level rise and ocean warming are expected to continue to affect coastal livelihoods, tourism, food, energy, and water security, particularly in small islands and Central American countries. For many Andean cities, melting glaciers represent the loss of a significant source of freshwater currently used for domestic use, irrigation, and hydroelectric power. In South America, the continued degradation of the Amazon rainforest is still being highlighted as a major concern for the region but also for global climate, considering the role of the forest in the carbon cycle.”⁵

The examples don’t stop there.

³ UNITED NATIONS (U.N.) ECONOMIC COMMISSION FOR LATIN AMERICA AND THE CARIBBEAN (ECLAC) ET AL., THE ECONOMICS OF CLIMATE CHANGE IN LATIN AMERICA AND THE CARIBBEAN, at 9 (2015), <https://repositorio.cepal.org/server/api/core/bitstreams/9e7fa968-a288-467f-a05b-003f32fc0400/content>.

⁴ *New Report Details Dire Climate Impacts in Latin America and the Caribbean*, U.N. CLIMATE CHANGE (July 22, 2022), <https://unfccc.int/news/new-report-details-dire-climate-impacts-in-latin-america-and-the-caribbean>.

⁵ *Id.*

The “Central Chile Mega Drought” has affected Chileans for at least the past 13 years to date – constituting the longest drought in this region in at least one thousand years and putting Chile at the forefront of the region’s water crisis.⁶

In Brazil, extreme rainfall in 2021 produced floods and landslides. The substantial losses experienced by Brazilians included tens of thousands of fatalities, the destruction and damage of tens of thousands of homes, and hundreds of thousands of people displaced. To put it in financial terms, these events have led to an estimated loss of US\$ 3.1 billion in the Brazilian states of Bahia and Minas Gerais, alone.⁷

In Guatemala, El Salvador, and Nicaragua, a total of 7.7 million people have experienced high levels of food insecurity in 2021.⁸ Relatedly, the IPCC Sixth Assessment Report observes that “changes in the timing and magnitude of precipitation and extreme temperatures are impacting agricultural production”.⁹

The prospect for the region and for a world with climate change has indeed become so dire that legal experts and institutions across the globe have embraced that climate change is – unequivocally – a human rights crisis.

B. Courts Around the World, Including Throughout the Americas, Have Recognized Climate Change as an Existential Threat to the Protection and Enjoyment of Rights

On every continent, apart from Antarctica, courts have confirmed that climate change can have and has had severe impacts on human rights, impacts which will only intensify if states fail to take sufficiently ambitious action to mitigate and adapt to the climate emergency.

In the Netherlands, for example, the Dutch Supreme Court, in *Urgenda Foundation v. Netherlands*, stated pointedly that “climate change threatens human rights,”¹⁰ a finding that was later echoed by the Hague District Court in *Milieudefensie v. Royal Dutch Shell*, which noted the “serious and irreversible consequences and risks for the human rights of Dutch residents” posed by climate change.¹¹

Meanwhile, in Pakistan, the Lahore High Court found that anthropogenic greenhouse gas emissions have “led to dramatic alterations in our planet’s climate system,” which have “resulted in heavy floods and droughts, raising serious concerns regarding water and food security. On a legal and constitutional plane this is clarion call for the protection of fundamental rights of the citizens of Pakistan, in particular, the vulnerable and weak segments of the society who are unable to approach this Court.”¹²

In the United States, moreover, the Supreme Court of Hawai’i affirmed that the state constitutional right to a clean and healthful environment encompasses the “right to a life-sustaining climate system,” which is inherently threatened by climate change.¹³ In expanding upon this point, the Hawai’i Supreme Court emphasized the toll of climate change on Hawai’ian society and the nature of the action that is, as a result, necessary:

⁶ WORLD METEOROLOGICAL ORGANIZATION, STATE OF THE CLIMATE IN LATIN AMERICA AND THE CARIBBEAN 2021, at 18 (2022), https://library.wmo.int/viewer/58014/download?file=1295_WMO_State_of_the_Climate_in_LAC_2021_en.pdf&type=pdf&navigator=1.

⁷ *Id.* at 25.

⁸ *Id.* at 22.

⁹ EDWIN J. CASTELLANOS ET AL., *Central and South America*, in CLIMATE CHANGE 2022: IMPACTS, ADAPTATION AND VULNERABILITY (2022), https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_Chapter12.pdf.

¹⁰ *Urgenda Foundation v. Netherlands* (Supreme Court of the Netherlands 2020), ¶ 5.7.9.

¹¹ *Milieudefensie v. Royal Dutch Shell* (District Court of the Hague 2021), ¶ 4.4.37.

¹² *Leghari v. Pakistan*, *supra* note 1.

¹³ *In re Hawai’i Electric Light Company, Inc.* (Supreme Court of Hawai’i 2023), at 18.

“The people of Hawai’i have declared ‘a climate emergency.’ . . . Hawai’i faces immediate threats to our cultural and economic survival: sea level rise, eroding the coast and flooding the land; ocean warming and acidification, bleaching coral reefs and devastating marine life; more frequent and more extreme droughts and storms . . . *For the human race as a whole, the threat is no less existential* . . . With each year, the impacts of climate change amplify and the chances to mitigate dwindle . . . ‘A stepwise approach is no longer an option.’ . . . The reality is that yesterday’s good enough has become today’s unacceptable.”¹⁴

In a concurring opinion, Justice Michael Wilson characterized climate change as “the single greatest threat to the natural environment and human societies that ‘the world has ever experienced,’”¹⁵ adding that “climate change is a human rights issue at its core; not only does it inordinately impact young people and future generations, but it is also a profound environmental injustice disproportionately impacting native peoples.”¹⁶

And in Canada, the Canadian Supreme Court observed that:

“[I]t is well-established that climate change is causing significant environmental, economic and human harm nationally and internationally, with especially high impacts in the Canadian Arctic, in coastal regions and on Indigenous peoples. This includes increases in average temperatures and in the frequency and severity of heat waves, extreme weather events like floods and forest fires, significant reductions in sea ice and sea level rises, the spread of life-threatening diseases like Lyme disease and West Nile virus, and threats to the ability of Indigenous communities to sustain themselves and maintain their traditional ways of life.”¹⁷

According to the court, climate change represents “an existential threat to human life in Canada and the world” as well as “a threat of the highest order.”¹⁸

This finding has been echoed by the myriad of courts that make up and enforce the laws and norms of the Inter-American System of Human Rights. Indeed, the Inter-American Court of Human Rights (IACtHR) pointed this out when it observed that:

“The ways in which the environmental degradation and the adverse effects of the climate change have impaired the effective enjoyment of human rights in the continent has been the subject of discussion by the General Assembly of the Organization of American States and the United Nations.”¹⁹

Similarly, the Supreme Court of Mexico has stressed that:

“[I]n recent decades, the global community has begun to become aware of the link between human rights and the environment. Few issues have been occupying as much space on the contemporary international agenda as those that make up this binomial. Human rights and the environment are intimately related.”²⁰

And echoing a UN Representative, the Supreme Court of Brazil succinctly summarized the link between human rights and climate change when it said, “there are no human rights on a dead or sick planet.”²¹

¹⁴ *Id.* at 19 (emphasis added) (internal citations omitted).

¹⁵ *In re Hawai’i Electric Light Company, Inc.* (Supreme Court of Hawai’i 2023) (Wilson, J., concurring) at 6.

¹⁶ *Id.* at 15.

¹⁷ *In re Greenhouse Gas Pollution Pricing Act* (Supreme Court of Canada 2021), ¶ 187.

¹⁸ *Id.* ¶¶ 167, 171.

¹⁹ *Kawas Fernández v. Honduras* (IACtHR 2009), ¶ 148.

²⁰ *Amparo en Revisión 610/2019* (Supreme Court of Justice of Mexico 2020), ¶ 1.1.

²¹ *PSB et al. v. Brazil (on Climate Fund)* (Supreme Court of Brazil 2020), at 171.

C. National and International Human Rights Bodies and Officials Identify Climate Change as One of the Most – and Often the Most – Pressing Threat to Human Rights in the 21st Century

Likewise, international and national human rights bodies – tasked with clarifying the boundaries and content of human rights protection – have classified climate change and its profound impacts as a grievous threat to the guarantees safeguarded by human rights.

UN human rights bodies, for example, have made clear that climate change represents a core human rights issue. In 2019, five UN human rights bodies – the Committee on the Elimination of Discrimination Against Women; the Committee on Economic, Social and Cultural Rights; the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families; the Committee on the Rights of the Child; and the Committee on the Rights of Persons with Disabilities – issued a Joint Statement on Human Rights and Climate Change. In it, the committees affirm “that climate change poses significant risks to the enjoyment of the human rights protected by the International Convention on the Elimination of all Forms of Discrimination Against Women, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of the Child, and the International Convention on the Rights of Persons with Disabilities.”²² This includes risks to “the right to life, the right to adequate food, the right to adequate housing, the right to health, the right to water and cultural rights.”²³

The Human Rights Committee – charged with overseeing the implementation of the International Covenant on Civil and Political Rights (ICCPR) – succinctly summarized the risk climate change poses to the right to life in its General Comment 36: “Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”²⁴ This is a particularly weighty finding given that the “right to life is the supreme right from which no derogation is permitted.”²⁵ The Committee reiterated this finding in *Daniel Billy v. Australia*.²⁶

At the national level as well, human rights bodies and commissions have understood climate change as a major human rights issue. In the Philippines, for example, the Philippines Commission on Human Rights, in its seminal Carbon Majors Inquiry, spelled out the systemic impact of climate change on human rights protection:

“Anthropogenic climate change is ‘the greatest human rights challenge of the 21st century.’ It negatively affects a host of, if not all, human rights. Climate change impacts, including the degradation of the environment; deprivation of resources; prevalence of life-threatening diseases; widespread hunger and malnutrition; and extreme poverty, among others, prevent an individual from living a dignified life.

Some of the individual rights adversely impacted are the rights to life, food, water, sanitation, and health. Collective rights are also affected, including the rights to food security, development and sustained economic growth, self-determination, preservation of culture, equality and non-discrimination.

Vulnerable sectors are also impacted, such as women and children, indigenous peoples, older adults, and persons with disabilities.

²² U.N. COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN ET AL., JOINT STATEMENT ON “HUMAN RIGHTS AND CLIMATE CHANGE,” ¶ 3 (2019) <https://www.ohchr.org/en/statements/2019/09/five-un-human-rights-treaty-bodies-issue-joint-statement-human-rights-and>.

²³ *Id.* ¶ 3.

²⁴ U.N. HUMAN RIGHTS COMMITTEE, GENERAL COMMENT NO. 36, U.N. DOC. CCPR/C/GC/36, ¶ 62 (2018).

²⁵ *Id.* ¶ 2.

²⁶ *Daniel Billy and Others v. Australia* (U.N. Human Rights Committee 2019), ¶ 8.3.

Climate change also impacts the rights of future generations, which brings to fore the duty of stewardship upon the present.”²⁷

The Commission later summed up this relationship between climate change and human rights by noting that climate change “directly and indirectly impacts the whole gamut of human rights under international law.”²⁸

Meanwhile, the Special Rapporteurs on human rights and the environment have, over a series of analytic reports, underscored the multiplicity of human rights harms that have and will stem from climate change.²⁹ In 2019, in the *Safe Climate* report, the Special Rapporteur observed that: “Climate change is having a major impact on a wide range of human rights today, and could have a cataclysmic impact in the future unless ambitious actions are undertaken immediately. Among the human rights being threatened and violated are the rights to life, health, food, water and sanitation, a healthy environment, an adequate standard of living, housing, property, self-determination, development and culture.”³⁰

The Inter-American System of Human Rights, for its part, has been recognized as a leader in establishing that environmental harm can interfere with human rights.³¹ And by now, various organs of the system have also recognized – in a clear and explicit manner – the connection between climate change and human rights. By the beginning of the millennium and even before the Paris Agreement was drafted, the General Assembly of the Organization of American States had already adopted AG/RES. 2429 (XXXVIII-O/08) on human rights and climate change in the Americas.³² More recently, the Inter-American Commission on Human Rights (IACHR) adopted Resolution no. 03/2021, “*Climate Emergency: Scope of Inter-American Human Rights Obligations*,” where it stated:

“The nexus between climate change and human rights is increasingly evident and its recognition at the international level has reached significant levels of consensus, not only in the legal regime pertaining to climate change, but also in the international human rights regime. The basis of this development lies in the existence of a directly proportional relationship between the increase in greenhouse gas emissions into the atmosphere and the frequency and intensity of meteorological changes, which implies the amplification of risks to societies, people and natural systems.”³³

The IACHR then proceeded to identify the human rights obligations of State Parties to the ACHR in the context of climate change, concluding that, “climate change is one of the greatest threats to the full enjoyment and exercise of human rights of present and future generations, to the health of ecosystems and all species that inhabit the planet.”³⁴

²⁷ COMMISSION ON HUMAN RIGHTS OF THE PHILIPPINES, NATIONAL INQUIRY ON CLIMATE CHANGE REPORT, at 33 (2022),

<https://www.ciel.org/wp-content/uploads/2023/02/CHRP-NICC-Report-2022.pdf> (hereinafter “CARBON MAJORS INQUIRY”) (internal citations omitted).

²⁸ *Id.* at 78 (internal citations omitted).

²⁹ U.N. SPECIAL RAPPORTEUR ON HUMAN RIGHTS AND THE ENVIRONMENT, SAFE CLIMATE REPORT, U.N. DOC. A/74/161, § 26 (2019).

³⁰ *Id.*

³¹ JOHN H. KNOX, ACCESS RIGHTS AS HUMAN RIGHTS, at 2 (2013) <https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/AccessRightsAsHumanRights.pdf>.

³² ECLAC, CLIMATE CHANGE AND HUMAN RIGHTS: CONTRIBUTIONS BY AND FOR LATIN AMERICA AND THE CARIBBEAN, at 51 (2019), <https://repositorio.cepal.org/server/api/core/bitstreams/a04b3051-dcc8-4c08-b140-c4fe1360ee69/content>. ORGANIZATION OF AMERICAN STATES (OAS), DERECHOS HUMANOS Y CAMBIO CLIMÁTICO EN LAS AMÉRICAS, AG/RES. 2429, XXXVIII-O/08 (2008) (hereinafter OAS AG/RES. 2429).

³³ INTER-AMERICAN COMMISSION OF HUMAN RIGHTS AND THE OFFICE OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS, CLIMATE EMERGENCY: SCOPE AND INTER-AMERICAN HUMAN RIGHTS OBLIGATIONS, RESOLUTION 3/2021, at 4 (2021) (hereinafter “RESOLUTION 3/21”).

³⁴ *Id.* at 8.

D. The Threats Posed by Climate Change to Human Rights Trigger State Duties to Protect Human Rights

To summarize, climate change currently burdens and infringes upon human rights – including those protected within the Inter-American system – as well as poses a foreseeable threat to the future enjoyment of human rights. This present and future threat, as a result, triggers’ the gamut of states’ duties to protect against and prevent human rights violations as well as adequately remedy those that have already occurred.

“Simply put,” the OHCHR has concluded, “climate change is a human rights problem and the human rights framework must be part of the solution.”³⁵ Specifically, “[c]limate change impacts, directly and indirectly, an array of internationally guaranteed human rights. States (duty-bearers) have an affirmative obligation to take effective measures to prevent and redress these climate impacts, and therefore, to mitigate climate change, and to ensure that all human beings (rights-holders) have the necessary capacity to adapt to the climate crisis.”³⁶

We will return, in greater detail, to the specific substantive, procedural, and special obligations owed by states that are part to the Inter-American System of Human Rights in Section V, which will outline how those states must act on climate change in order to uphold their obligations as further refined by the contours of the international climate regime. It suffices now to say that climate change implicates the human rights system, including the principles, doctrines, and norms that have been articulated over time to safeguard rights.

III. The Key Metrics and Standards Established by the International Climate Regime

The content of the international climate regime, as formed by the UNFCCC and refined by the Paris Agreement, provides essential benchmarks against which state action (or inaction) can be measured. In particular, the regime establishes: (1) a collective temperature target, (2) the need for climate adaptation, and (3) a progressive regulatory logic.

We will turn to these metrics and standards in turn, but we begin below with a brief overview of the international climate regime.

A. The Basics of the International Climate Regime

In 1992, the international community recognized climate change as a “common concern of humankind”³⁷ as it signed onto the United Nations Framework Convention on Climate Change (UNFCCC), the foundational text of the international climate regime. The UNFCCC establishes the institutional framework through which State Parties meet each year to make and monitor commitments to reduce greenhouse gas emissions, provide much-needed climate finance and technology transfers, and adapt to the impacts of climate change.

Though there have been a number of key texts and agreements negotiated under the auspices of the UNFCCC – including the Kyoto Protocol³⁸ – since 2015, the Paris Agreement has been the core international agreement that defines the objectives of the climate regime and the obligations of State Parties thereunder.

³⁵ U.N. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR), UNDERSTANDING HUMAN RIGHTS AND CLIMATE CHANGE, at 6 (2015), <https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf>.

³⁶ *Id.* at 2, n. 20.

³⁷ See the preamble of UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (1994) (hereinafter “UNFCCC”).

³⁸ The Kyoto Protocol was adopted in 1997, entered into force in 2005, and currently has 192 State Parties. It operationalizes the UNFCCC because it establishes the commitments of industrialized countries and economies in transition to limit and reduce greenhouse gas emissions, according to individual targets. The Kyoto Protocol is also based

Above all else, the Paris Agreement aims to limit “the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change.”³⁹ Beyond this, the Agreement aims to increase countries’ adaptive capacity to the consequences of climate change already being felt. Through this, it aims to increase resilience and reduce the vulnerability of people to increasing and compounding climate impacts.⁴⁰

In order to achieve these objectives, State Parties are required to submit Nationally Determined Contributions (NDCs) which detail their contributions to the global response to climate change, including the greenhouse gas emission reduction targets and adaptation targets they set and the measures through which they will achieve those targets. Though states are required to submit these NDCs, their precise content and implementation are voluntary. Nevertheless, the NDCs are supposed to reflect each State’s “highest possible ambition” and “represent a progression” in ambition over time.⁴¹ States in Latin America and the Caribbean have widely supported the adoption of the Paris Agreement, with all but one country having signed and ratified the Paris Agreement. In addition, thirty-three countries from Latin America and the Caribbean are parties to the UNFCCC and have submitted NDCs.⁴²

Iterative stocktaking processes – where State Parties monitor progress in implementation of the Agreement and towards its key objectives – are intended to ensure States act with the ambition and urgency needed to limit global warming and increasingly adapt to climate change. According to the regulatory logic of this model, these processes – ideally – would create material and reputational incentives for State Parties to articulate adequate commitments and subsequently implement them.

B. Holding Global Warming to 1.5°C

As noted by one Australian court, “[f]or climate change impacts, the key indicator for harm is the temperature outcome.”⁴³ In other words, the harms ultimately generated by climate change will depend on the level at which the global average temperature stabilizes.

The Paris Agreement, through the temperature target it contains,⁴⁴ sets this level at which the global average temperature must stabilize. This is perhaps *the* key contribution of the international climate regime to global climate governance.

on the norms of the UNFCCC, and has coined the concept of “common but differentiated responsibility and respective capabilities”, placing a higher burden and binding developed countries. *See also What Is the Kyoto Protocol?*, UNITED NATIONS CLIMATE CHANGE, https://unfccc.int/kyoto_protocol (last visited Nov. 8, 2023).

³⁹ THE PARIS AGREEMENT UNDER THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (2015) art. 2(a) (hereinafter “PARIS AGREEMENT”).

⁴⁰ *Id.* art. 2(b).

⁴¹ *Id.* art. 4(3). Note that all 33 countries of Latin America and the Caribbean provided to a greater or lesser extent for some form of public participation in processes for drawing up their NDCs, including by making information available to relevant stakeholders or ensuring their participation in formal consultation mechanisms and meetings, or public hearings and consultations. *See* ECLAC, *supra* note 32, at 44.

⁴² INSTITUTE FOR GLOBAL ENVIRONMENTAL STRATEGIES (IGES), NATIONALLY DETERMINED CONTRIBUTIONS (NDC) DATABASE (2022), <https://www.iges.or.jp/en/pub/iges-indc-ndc-database/en>.

⁴³ *Waratah Coal Pty. Ltd. v. Youth Verdict Ltd. and Others* (Land Court of Queensland 2020), at 183.

⁴⁴ As mentioned above, Article 1(a) of the Paris Agreement provides that states must collectively limit “the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change.” PARIS AGREEMENT art. 1(a).

Through the Paris Agreement, the international community unified around “the concept of a safe climate as ‘well below’ a 2°C increase in the average global temperature, and ideally limited to a 1.5°C increase.”⁴⁵ Or, as the Supreme Court of Canada has observed: “The *Paris Agreement* identifies imperatives of holding the increase in the global average temperature to well below 2.0°C above pre-industrial levels and achieving net zero emissions in the second half of the 21st century.”⁴⁶ Accordingly, the international consensus – informed by the scientific assessments of the Intergovernmental Panel on Climate Change (IPCC) – is that warming above this temperature limit poses too great a risk of triggering cascading climate impacts that may threaten the integrity of the global climate system.

As a result, the Paris temperature target has become a primary quantitative benchmark against which risks of harm as well as adequacy of state action can be assessed. The Hague District Court has said as much, emphasizing the standard that the Paris Agreement sets, which was, in turn, derived from the best available science:

“The goals of the Paris Agreement are derived from the IPCC reports. The IPCC reports on the relevant scientific insights about the consequences of a temperature increase, the concentrations of greenhouse gases that give rise to that increase, and the reduction pathways that lead to a limitation of global warming to a particular temperature. Therefore, the goals of the Paris Agreement represent the best available scientific findings in climate science, which is supported by widespread international consensus. *The non-binding goals of the Paris Agreement represent a universally endorsed and accepted standard that protects the common interest of preventing dangerous climate change.*”⁴⁷

The German Constitutional Court echoed this, agreeing that the Paris temperature target serves as a highly relevant quantitative standard and noting that the “Paris climate targets . . . were formulated as maximum warming or temperature targets. The methodological advantage of using such temperature targets lies in their direct correlation with the effects of global warming, because the mean temperature of the Earth is a core indicator for the state of the Earth system as a whole.”⁴⁸

C. Increasing Adaptation to the Adverse Impacts of Climate Change

Beyond the mitigation of greenhouse gases, IPCC reports and the Paris Agreement reflect the fact that the effects of climate change are already being felt and that, as the global temperature continues to rise, the impacts of climate change are likely to increase rapidly and unpredictably.⁴⁹ Indeed, adaptation – that is, measures taken to protect individuals and communities from extreme weather events and other effects of global warming that are already inevitable given the dangerously high accumulation of greenhouse gases in the atmosphere – is an equally important pillar of the Paris Agreement.

Both adaptation and mitigation are indispensable elements of the global response to climate change. The IPCC has confirmed that “many adaptation and mitigation options can help address climate change, but no single option is sufficient by itself.”⁵⁰ This is because even if emissions are dramatically decreased over the coming decade, additional warming has already become unavoidable, making adaptation necessary to confront the climatic changes already locked in. Implementing adaptation measures now is more feasible and less costly than pushing such measures to the future, when climate impacts have become more drastic and difficult to manage.

⁴⁵ U.N. DOC. A/74/161, *supra* note 29, ¶ 54.

⁴⁶ *In re Greenhouse Gas Pollution Pricing Act*, *supra* note 18, ¶ 174.

⁴⁷ *Milieudefensie v. Royal Dutch Shell*, *supra* note 11, ¶ 4.4.27 (emphasis added).

⁴⁸ *Neubauer et al. v. Germany* (Federal Constitutional Court of Germany 2020), at 25.

⁴⁹ INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (IPCC), CLIMATE CHANGE 2014 IMPACTS, ADAPTATION, AND VULNERABILITY: PART A: GLOBAL AND SECTORAL ASPECTS (2014), https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-PartA_FINAL.pdf. PARIS AGREEMENT, arts. 2, 7.

⁵⁰ IPCC, *Adaptation and Mitigation*, in CLIMATE CHANGE 2014 SYNTHESIS REPORT (2014), https://ar5-syr.ipcc.ch/topic_adaptation.php.

Although reporting on adaptation is a voluntary element of a State Party's NDC, it is nonetheless another quantitative benchmark against which risks of harm as well as adequacy of state action can be assessed. Indeed, the overwhelming majority of extant statements by UN Treaty Bodies and decisions relating to climate change specifically address adaptation to global warming.⁵¹ For example, the UN Human Rights Committee found that Australia violated the petitioners' rights under the International Covenant on Civil and Political Rights by failing to implement adequate and timely adaptation measures in the Torres Strait Islands, and consequently noted that the State was required to provide an effective remedy in the form of, *inter alia*, adequate adaptation measures:

“Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to provide adequate compensation, to the authors for the harm that they have suffered; engage in meaningful consultations with the authors' communities in order to conduct needs assessments; continue its implementation of measures necessary to secure the communities' continued safe existence on their respective islands; and monitor and review the effectiveness of the measures implemented and resolve any deficiencies as soon as practicable. The State party is also under an obligation to take steps to prevent similar violations in the future.”⁵²

D. Progression Over Time: The International Climate Regime as Fundamentally Non-Regressive

As mentioned above, Nationally Determined Contributions (NDCs) are the primary mechanism envisaged by the Paris Agreement to avert warming past 1.5°C and promote adaptation to climate change.

These NDCs are not static commitments. According to Article 4(3) of the Paris Agreement, each State Party's “successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution.”⁵³ In other words, NDCs – states' commitments to climate action – are designed to evolve progressively over time. The adequacy of states' NDCs thus cannot be assessed in isolation but rather must be viewed relative to past levels of ambition embodied in previous NDCs. Revised NDCs that represent either a reduction or stagnation in climate action ambition – for example, a reduced quantity or the same quantity of greenhouse gas emission reductions – fail to satisfy this core criterion of progressivity laid down by the Paris Agreement. Such NDCs would, therefore, represent a breach of states' responsibilities under the Agreement.

And so, states' commitments to climate action must reflect their “highest possible ambition,” which, according to the logic of the Agreement, evolves over time to require progressively more substantial actions, including deeper greenhouse gas emission reductions and voluntary but ideally enhanced adaptation plans. In this way, the Paris Agreement reflects climate change's sensitivity to time. Climate change compounds over time, as each additional ton of CO₂ brings us closer to tipping points that threaten to destabilize the global climate system in a non-linear fashion. This non-linearity renders delays in action costly: actions pushed to tomorrow will be more difficult than those taken today.

As a result, states do not have unlimited time to take the action needed to prevent dangerous scenarios of climate change. Instead, they're expected to ratchet up their efforts to comport with the non-linear development of climate change, adapt to current threats, and narrow the window of time in which state action bends the greenhouse gas emission curve to net zero. NDCs' progressive structure, therefore, puts a temporal boundary on states' obligations to act to prevent dangerous scenarios of climate change.

⁵¹ U.N. SPECIAL RAPPORTEUR ON EXTREME POVERTY AND HUMAN RIGHTS, CLIMATE CHANGE AND POVERTY, U.N. DOC. A/HRC/41/39, ¶ 13 (2019).

⁵² *Daniel Billy and Others v. Australia*, *supra* note 26, ¶ 11.

⁵³ PARIS AGREEMENT art. 4(3).

E. Latin American States Actively Engage with the International Climate Regime

States in Latin America and the Caribbean have widely supported the adoption of the UNFCCC regime, with all but one country having signed and ratified the Paris Agreement.⁵⁴ Further, multiple Latin American states have indeed implemented climate action at municipal, state and federal levels in accordance with the targets of the international climate regime.⁵⁵ For example, in Colombia the Ministry of Environment and Sustainable Development, along with local authorities and civil society organizations have begun embedding climate change resilience in coastal city planning since 2011.⁵⁶ In Bolivia, different legal frameworks highlight the importance of incorporating indigenous knowledge with climate science in the evaluation of vulnerability and definition of climate action.⁵⁷

In addition, thirty-three countries in Latin America and the Caribbean have submitted NDCs.⁵⁸ The NDCs of Latin American states largely include express references to mitigation and adaptation efforts.⁵⁹ Many of them can also be seen as pushing for the implementation of good practices in areas such as monitoring mechanisms and questions of participation and inclusion.⁶⁰ However, as is true for other regions of the world, the quality or ambition of every NDC in Latin America is contingent on various factors, including the national political context, economic opportunism, and risk aversion. Furthermore, when taking into account the emissions that are projected to result from Latin American countries' NDCs, pledges and current policies, the region's efforts have been found to be insufficient.⁶¹

IV. Urgency and Ambition: Fleshing Out State Duties Using an Integrated Regime Approach

Reading the international climate regime and basic principles of the international and regional human rights regimes together more clearly defines states' duties on climate change than either could alone. That is primarily because, together, the regimes clarify the *ambition* and *urgency* with which states must act.

A. Ambition

Ambition, in this context, refers to the scale and depth of action a state takes to address the drivers and inevitable effects of the climate emergency. This ambition is, moreover, partly measured relative to a particular benchmark: preservation of a stable climate system.

⁵⁴ Nicaragua is the only country in Latin America that has not signed and ratified the Paris Agreement. See *Paris Agreement – Status of Ratification*, U.N. CLIMATE CHANGE, <https://unfccc.int/process/the-paris-agreement/status-of-ratification> (last visited Oct. 30, 2023).

⁵⁵ *Good Practice Database*, NATIONALLY DETERMINED CONTRIBUTIONS (NDC) PARTNERSHIP, <https://ndcpartnership.org/knowledge-portal/climate-toolbox/good-practice-database> (last visited Oct. 30, 2023).

⁵⁶ *Embedding Climate Change Resilience in Coastal City Planning: Early Lessons from Cartagena de Indias, Colombia*, NDC PARTNERSHIP, <https://ndcpartnership.org/knowledge-portal/good-practice-database/embedding-climate-change-resilience-coastal-city-planning-early-lessons-cartagena-de> (last visited Oct. 30, 2023).

⁵⁷ *Building Resilience to Climate Change Through Indigenous Knowledge: The Case of Bolivia*, NDC PARTNERSHIP, <https://ndcpartnership.org/knowledge-portal/good-practice-database/building-resilience-climate-change-through-indigenous-knowledge-case-bolivia> (last visited Oct. 30, 2023).

⁵⁸ IGES, *supra* note 42.

⁵⁹ *Id.*

⁶⁰ The best practices of Latin American NDCs can be found in the NDC Partnership Database, which is supported by the Global Climate Action Partnership, the UNDP and the Partnership on Transparency in the Paris Agreement. *Good Practice Database*, *supra* note 55.

⁶¹ Juan Auz, *The Configurations of Latin American Climate Law*, CENTER FOR INTERNATIONAL LAW NATIONAL UNIVERSITY OF SINGAPORE (Sept. 19, 2022), <https://cil.nus.edu.sg/blogs/the-configurations-of-latin-american-climate-law/>.

To preserve a stable climate system, according to the consensus embodied in the Paris Agreement, global warming must be limited to “well below 2°C,” with all efforts geared towards capping it to 1.5°C. Warming past this compromises the ability to maintain a stable global climate system. State action that would collectively fail to respect this hard temperature limit cannot be categorized as preservative of the climate system and therefore ranks low on ambition. Similarly, state action that fails to adapt to the unraveling of the climate system ranks low on ambition as well.

This, in turn, exceeds another boundary imposed by the Paris Agreement: states must act with their “highest possible ambition,” which, as explained earlier, ratchets up over time.

In other words, the international climate regime requires states to take actions consistent with *actually limiting warming to the temperature target* and with confronting the *existing and unavoidable* effects of climate change. Doing otherwise falls below the level of ambition required of them.

Nevertheless, though the international climate regime imposes these boundaries on state action, there are no clear mechanisms to enforce these boundaries and hold states accountable to them. UNEP has determined that full implementation of current NDCs would still likely cause a global average temperature increase of well over 2°C and quite possibly over 3°C.⁶² That is where the human rights system comes into play.

As examined in Section V, climate change triggers the gamut of states’ duties to safeguard human rights and prevent foreseeable rights violations. Courts and human rights bodies, moreover, have imported the Paris standards set for mitigation and adaptation as benchmarks to assess compliance with state duties to protect human rights, as they represent the boundaries beyond which the risk to the global climate system and the human rights dependent upon it becomes too high. Indeed, “human rights obligations apply not only to decisions about how much climate protection to pursue, but also to the mitigation and adaptation measures through which the protection is achieved.”⁶³

State action that is actually consistent with the Paris temperature and adaptation targets comports with “the obligations of States, acting together in accordance with the duty of international cooperation, to protect human rights from the dangerous effects of climate change.”⁶⁴ Meanwhile, a failure to act in a manner consistent with achieving these targets, including by failing to fulfil international climate commitments, has been considered “a prima facie violation of the State’s obligations to protect the human rights of its citizens.”⁶⁵

In this way, the two governance regimes are mutually reinforcing.

The crucial added value of the human rights system, however, is its enforceability: states are *individually accountable for meeting their human rights obligations*. Human rights law protects *substantive outcomes* in the context of the climate emergency – in particular, the limitation of global warming to around 1.5°C and implementation of adaptive measures. Warming past this, coupled with a lack of adaptive measures to reduce risk and vulnerability to inevitable climate impacts, would trigger harms and impacts so catastrophic as to be substantively unacceptable from a human rights perspective. This means that mere promises do not cut it: *states must actually implement measures that are consistent, in terms of both ambition and timing, with limiting global warming to the consensus temperature target and with reducing the effects of existing and impending warming*. In other words, states must do their ‘fair share’ of emissions reductions for their climate measures to be *actually effective* and thus consistent with their human rights

⁶² U.N. ENVIRONMENT PROGRAMME, THE EMISSIONS GAP REPORT, at XVIII (2015).

⁶³ U.N. SPECIAL RAPPORTEUR ON HUMAN RIGHTS AND THE ENVIRONMENT, REPORT OF THE SPECIAL RAPPORTEUR ON THE ISSUE OF HUMAN RIGHTS OBLIGATIONS RELATING TO THE ENJOYMENT OF A SAFE, CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT, U.N. DOC. A/HRC/31/52, ¶ 33 (2016).

⁶⁴ *Id.* ¶ 73.

⁶⁵ U.N. DOC. A/74/161, *supra* note 29, ¶ 74.

obligations. Much of what is required under the international climate regime is voluntary; in contrast, state obligations to act on climate change under human rights law are binding.

Whilst the IPCC and Paris Agreement provide key guiding numerical metrics, what is particularly required of states is given further content by the norms of the international and Inter-American human rights systems – with the duty to cooperate, mobilization of maximum available resources, and progressive realization being especially relevant.

i. Ambition Demands Compliance with the Duty to Cooperate

The enforceable accountability provided by the human rights regime is especially salient given the global nature of climate change – that emissions emitted anywhere in the world contribute to global warming everywhere – and that therefore there is no possibility for effectively addressing the issue without meaningful international cooperation.⁶⁶ Even if developed countries were to reach zero carbon emissions by 2030, to meet the targets set by the Paris Agreement, developing countries would also need to reduce their emissions by at least one-third below 2010 levels by 2030.

The Paris Agreement represents the international community’s attempt to concretize a framework to cooperate internationally, and its value largely rests in the measurable shared targets that it provides.⁶⁷ Yet, as previously mentioned, human rights require states to take actions that would *actually* and *effectively* contribute to averting dangerous scenarios of climate change. Mere participation in the governance framework established by the Paris Agreement does not guarantee this.

Because the regulatory logic of the Agreement hinges on transparency, mutual trust, and commitment to voluntary efforts that collectively suffice to achieve the Agreement’s objectives, state actions that undermine these values undermine the practical possibility of efficacious international cooperation. Such state action, therefore, is inconsistent with states’ human rights duty to cooperate internationally – a hallmark of the international and Inter-American Systems of Human Rights.⁶⁸ It also leads to a violation of the related principle of international law to carry out international obligations in good faith so as not to undermine the ability of other states to meet their own obligations, since the failure of states to effectively address climate change through international cooperation would prevent individual states from meeting Paris Agreement goals and

⁶⁶ *Id.* ¶ 44.

⁶⁷ Article 7(7) of the Paris Agreement calls on the parties to strengthen their cooperation on enhancing action on adaptation, including with regard to sharing information, improving the effectiveness of adaptation actions and assisting developing countries, and developed countries reiterated in Paris their commitment to assist developing countries with respect to both mitigation and adaptation. PARIS AGREEMENT art. 7(7).

⁶⁸ The duty of international cooperation has support in the general practice of States and, more specifically, in the Charter of the United Nations. Article 55 of the Charter requires the United Nations to promote “universal respect for, and observance of, human rights and fundamental freedoms for all,” and in Article 56, “all Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55”. UNITED NATIONS CHARTER (1954) arts. 55, 56. Similarly, Article 2(1) of the International Covenant on Economic, Social and Cultural Rights requires each of its parties to take steps not only individually, but also “through international assistance and cooperation”, towards the progressive realization of the rights recognized in the Covenant. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1976) art. 2(1) (hereinafter “ICESCR”). For the Inter-American system, the ACHR demands international cooperation as a means through which to achieve the progressive realization of human rights derived from it. In addition, the relevance of international cooperation has been reinforced by the San Salvador Protocol, which recognizes its benefits in its Preamble and expresses it as a general obligation in its Article 1, as well as a specific obligation relevant to the right to food and culture. *See Advisory Opinion OC-23/17* (IACtHR 2017), ¶ 181 and U.N. DOC. A/HRC/31/52, *supra* note 63, ¶ 42. *See also* ECLAC, *supra* note 32, at 13.

therefore fulfilling their duties under human rights law.⁶⁹ This was recognized in direct terms by the German Constitutional Court, among other courts:

“The state may not evade its responsibility here by pointing to greenhouse gas emissions in other states On the contrary, the particular reliance on the international community gives rise to a constitutional necessity to actually implement one’s own climate action measures at the national level – in international agreement wherever possible. It is precisely because the state is dependent on international cooperation in order to effectively carry out its obligation to take climate action under Art. 20a GG that it must avoid creating incentives for other states to undermine this cooperation. Its own activities should serve to strengthen international confidence in the fact that climate action – particularly the pursuit of treaty-based climate targets – can be successful while safeguarding decent living conditions, including in terms of fundamental freedoms. In practice, resolving the global climate problem is thus largely dependent on the existence of mutual trust that others will also strive to achieve the targets. . . . The Paris Agreement very much relies on mutual trust as a precondition for effectiveness. . . . Creating and fostering trust in the willingness of the Parties to achieve the target is therefore seen as a key to the effectiveness of the Paris Agreement.”⁷⁰

Further, in hashing out the duty to cooperate in the climate context, courts around the world are cogently addressing the argument that no single government can be held accountable for climate inaction, as all states produce carbon emissions and thus global warming cannot be fully tackled unless governments act. In *Sacchi v. Argentina*, the Committee on the Rights of the Child found that, even though climate change is “a *global collective issue*[] that require[s] a global response, States parties still carry *individual responsibility* for their own acts or omissions in relation to climate change and their contribution to it.”⁷¹ Even further, in accordance with guidance by United Nations Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, the Committee found that states are responsible for the transboundary harm caused by greenhouse gas emissions.⁷² Similarly, in *Leghari v. Pakistan*, the Supreme Court of Pakistan held that even though the country is “not a major contributor to global warming and is actually a victim of climate change,”⁷³ the state must act as a “responsible member of the global community.”⁷⁴ Pakistan’s status as a developing country and its relatively small contribution to global greenhouse gas emissions was not an excuse to “do nothing.”⁷⁵

By holding that governments have a legal duty to contribute their “fair share” of climate emission reductions regardless of what other governments do, courts and human right bodies across jurisdictions are updating conceptions about responsibility for human rights violations to reflect the nature of climate change. Indeed, according to an integrated regime reading, the Supreme Court of the Netherlands in *Urgenda v. Netherlands* explained how the IPCC and Paris Agreement can be read together with rights norms to create a “fair share” standard:

⁶⁹ See U.N. DOC. A/HRC/31/52, *supra* note 63, n. 27 (citing *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* (International Court of Justice 1997), ¶ 142 and MARK E. VILLIGER, COMMENTARY ON THE 1969 VIENNA CONVENTION ON THE LAW OF TREATIES 367 (2009)).

⁷⁰ *Neubauer et al. v. Germany*, *supra* note 48, ¶¶ 201-203 (internal citations omitted).

⁷¹ *Sacchi et al. v. Argentina* (U.N. Committee on the Rights of the Child 2021), ¶ 10.8.

⁷² See U.N. SPECIAL RAPPORTEUR ON HUMAN RIGHTS AND THE ENVIRONMENT, REPORT OF THE SPECIAL RAPPORTEUR ON THE ISSUE OF HUMAN RIGHTS OBLIGATIONS RELATING TO THE ENJOYMENT OF A SAFE, CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT, U.N. DOC. A/HRC/37/59, Framework Principle 13 (2013).

⁷³ *Leghari v. Pakistan*, *supra* note 1, ¶ 3.

⁷⁴ *Id.* ¶ 8.

⁷⁵ *Id.*

“Under certain circumstances, there may also be such clear views, agreements and/or consensus in an international context about the distribution of measures among countries that the courts can establish what – in accordance with the widely supported view of states and international organisations, which view is also based on the insights of climate science – can in any case be regarded as the State’s minimum fair share. [...] [T]he courts are then obliged to proceed to establishing such and to attach consequences to it in their judgment on the extent of the State’s positive obligations.”⁷⁶

ii. *Ambition Demands Compliance with the Duty of Maximum Available Resources*

Reaching a state’s “highest possible ambition” also overlaps with and reflects states’ obligation within the international and Inter-American human right systems to take action “to the maximum of its available resources” to advance and protect human rights.⁷⁷ This again means that the mere submission of NDCs is not sufficient.⁷⁸ States must ensure they secure and deploy resources to guarantee substantive outcomes that protect and fulfill human rights in the context of the climate emergency, which means effectively implementing targets set by the Paris Agreement. Simply put:

“[F]ailure to prevent foreseeable human rights harm caused by climate change, or a failure to mobilize the maximum available resources in an effort to do so, could constitute a breach of their obligation to respect, protect and fulfil all human rights for all. States must, therefore, dedicate the maximum available financial and material resources to shift to renewable energy, clean transport and agroecological farming; halt and reverse deforestation and soil deterioration; and increase adaptive capacity, especially in vulnerable and marginalized communities.”⁷⁹

States’ overall use of resources may be reviewed by courts to determine whether it demonstrates that adequate priority has been given to the realization of human rights through climate measures. For example, subsidizing or funding fossil fuels, in which facilitates greenhouse gas emissions, may imply a violation of state obligations. Relatedly, a failure to mobilize financial resources, including by setting low and regressive levels of taxation

⁷⁶ *Urgenda Foundation v. Netherlands*, *supra* note 10, ¶ 6.3.

⁷⁷ U.N. COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR), CLIMATE CHANGE AND THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, ¶ 6, n. 27 (2018). U.N. DOC. A/HRC/31/52, *supra* note 63, ¶ 48 (citing ICESCR art. 2(1)). Both the American Convention on Human Rights and the San Salvador Protocol also allude to the use of resources and implementation of measures as may be necessary to give effect to the protection and fulfillment of rights and freedoms. *See* AMERICAN CONVENTION ON HUMAN RIGHTS (1978) art. 2 (hereinafter “ACHR”) and ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (PROTOCOL OF SAN SALVADOR) (1999) art. 1 (hereinafter “PROTOCOL OF SAN SALVADOR”). *See also* U.N. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR), HUMAN RIGHTS AND CLIMATE CHANGE, at 3 (2016), <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/materials/KMClimateChange.pdf>.

⁷⁸ Indeed, petitioners in the aforementioned 2019 *Torres Strait Islanders v. Australia* submission before the UN Human Rights Committee explicitly drew the connection between the principle of maximum available resources in ESR law and the Paris Agreement’s principle that states’ mitigation measures must represent their “highest possible ambition.” PARIS AGREEMENT art. 4.3. Interpreting the Paris Agreement in light of international human rights law, the petitioners argued that states must assess their capacity to cut emissions in light of the obligation to reduce emissions “to the maximum extent possible” – which, in the case of Australia, would mean increasing its mitigation commitments as a means of addressing the existential threat that climate-induced sea level rise poses to inhabitants of the country’s Torres Strait Islands.

⁷⁹ U.N. DOC. A/74/161, *supra* note 29, ¶ 70, n. 37. *See also* CESCR, *supra* note 177, ¶ 6, n. 27.

compared to peer states or providing a high level of tax exemptions for private parties that are not justified by any public policy, could demonstrate a failure to utilize maximum available resources.⁸⁰

This means that while the reduction of greenhouse gas emissions can be expected to vary based on differing capabilities and conditions, as foreseen by the Agreement, each state ought to act to the best of its capabilities or “do what it can.”⁸¹ Similarly, at the national level, each state has an obligation to protect those within its jurisdiction from the harmful effects of climate change. “This obligation is relatively straightforward with respect to the establishment and implementation of effective adaptation measures. States must adopt a legal and institutional framework that assists those within their jurisdiction to adapt to the unavoidable effects of climate change.”⁸² And they must do what they can. Like with mitigation, this means that developing countries must seek international assistance if necessary to reach targets set by the Paris Agreement.

iii. Ambition Demands Compliance with the Principle of Progression

Both the international climate regime and the human rights regime establish that state action on climate change must be progressive and avoid retrogressive steps without cause. For the former, this derives from the requirement that states’ Nationally Determined Contributions reflect a “progression over time.”⁸³ For the latter, the requirement that state action be progressive derives from the prohibition on regression that is a hallmark of human rights law, in particular socioeconomic rights law.⁸⁴ The obligation of progression and the prohibition on retrogression in human rights law provide those states, in developing and implementing measures to advance the enjoyment of human rights, must progressively realize rights that are not immediately achievable. States may not, moreover, modify or revise these measures such that they reflect a downshift in ambition or level of protection. To be compliant with human rights, the scale and depth of climate ambition must therefore be forward-looking.

Courts have recognized that state measures to address climate change – including NDCs – must comply with the principles of progression and non-regression that comprise core human rights standards. In short, in this emphasis on progression and non-regression, the two regulatory regimes are again mutually reinforcing.

Applying the abovementioned norms, courts can – and have – held states to account for failing to take sufficiently ambitious action on climate change, an aspect of which includes consistency with the Paris targets. The German Constitutional Court, for example, stressed that the constitutional obligation to take climate action – itself grounded in the protection of fundamental rights and freedoms – “is not confined to the task of seeking to resolve the climate problem at the international level and ideally reaching some agreement to that effect.

⁸⁰ And courts have held that the opposite —taxing greenhouse gas activities in order to collect resources to meet Paris Agreement goals— is a valid legislative exercise. *See generally Amparo en Revisión 888/2018* (Supreme Court of Justice of Mexico 2018).

⁸¹ U.N. DOC. A/HRC/31/52, *supra* note 63, ¶ 48.

⁸² *Id.* ¶¶ 68-71.

⁸³ PARIS AGREEMENT art. 3.

⁸⁴ The principle of progressivity and its corollary of non-regression are well-established principles of the Inter-American System of Human Rights. Article 26 of the ACHR on “Progressive Development” more specifically imposes an obligation upon state parties to “undertake to adopt measures [...] 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.” ACHR art. 26. The San Salvador Protocol reinforces this. In Article 1 on the “Obligation to adopt measures,” it demands that State Parties to the Protocol, “undertake to adopt the necessary measures [...] for the purpose of achieving progressively and pursuant to their internal legislations, the full observance of the rights recognized in this Protocol.” PROTOCOL OF SAN SALVADOR art. 1. Also note that the principles of progressive realization and non-retrogression were identified as particularly relevant within the context of human right protection. *See* U.N. DOC. A/HRC/37/59, *supra* note 72, Framework Principle 2, ¶ 4 and U.N. SPECIAL RAPPORTEUR ON HUMAN RIGHTS AND THE ENVIRONMENT, MAPPING REPORT, U.N. DOC. A/HRC/25/53, ¶ 55, n. 33 (2013).

Rather, the constitutional obligation to take climate action also extends to the implementation of agreed solutions... Moreover, Art. 20a GG⁸⁵ also makes it obligatory to take national climate action even in cases where it proves impossible for international cooperation to be legally formalized in an agreement. *State organs are obliged to take climate action irrespective of any such agreement* and would have to continue seeking opportunities to make national climate action efforts more effective within a framework of international involvement.”⁸⁶

In addition, as is true with respect to the enjoyment of many human rights, courts may expect states to enhance their climate ambition as their economic situations improve. The Committee on Economic, Social and Cultural Rights (CESCR) has further stated that where a state explains and seeks to justify retrogressions due to resource constraints, it will assess such explanations by taking into account, *inter alia*, the country’s level of development, its economic situation, and the extent to which it had sought or rejected international assistance.⁸⁷

In sum, the human right system adds ‘teeth’ to the boundaries around state action and ambition level laid down by the climate regime.

B. Urgency

Urgency, in the context of state action on climate change, refers to the timeframe in which states must act.

The substantive goals of the Paris Agreement – again, the temperature target and adaptation to climate change – also shape the urgency with which states must act. The ever-increasing risk of passing tipping points – beyond which the global climate system may unravel, and at which point it would be too difficult to properly adapt – demonstrates the non-linearity of climate change and puts a premium on acting now, when action is more effective and less costly relative to the future.

Beyond this and the requirement that state action be progressive, the climate regime does not specify how state action must be distributed over time.

This is significant because facially ambitious measures that are implemented without sufficient urgency can also offend human rights. This was precisely the issue in *Leghari v. Pakistan*, where the Lahore High Court found that the “delay and lethargy of the State in implementing the Framework [for the Implementation of Climate Change Policy (2014 – 2030)] offends the fundamental rights of the citizens which need to be safeguarded.”⁸⁸ As a result, the court ordered each named government agency and ministry to appoint a climate change focal person to oversee the implementation of the Framework and the creation of a Climate Change Commission to monitor progress on implementation.”⁸⁹

In France, the Administrative Court of Paris, in discussing the injunction the court would order in response to the failure of the State to fulfil its obligation to sufficiently reduce greenhouse gas emissions, underscored the need for state measures to be implemented with an urgency commensurate with the timeframe of the climate emergency:

⁸⁵ Article 20a of the German Basic Law covers the “Protection of the natural foundations of life and animals” and provides that “Mindful also of its responsibility towards future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order.” BASIC LAW FOR THE FEDERAL REPUBLIC OF GERMANY (1949) art. 20(a).

⁸⁶ *Neubauer et al. v. Germany*, *supra* note 48, at 60 (emphasis added) (internal citations omitted).

⁸⁷ See generally CESCR, GENERAL COMMENT NO. 3: THE NATURE OF STATES PARTIES’ OBLIGATIONS (ART. 2, PARA. 1. OF THE COVENANT) (1990), <https://www.refworld.org/pdfid/4538838e10.pdf>.

⁸⁸ *Leghari v. Pakistan*, *supra* note 1, ¶ 8.

⁸⁹ *Id.*

“The ecological damage stemming from the surplus greenhouse gas emissions is of a continuous and cumulative nature to the extent that failure to comply with the first carbon budget has resulted in additional greenhouse gas emissions on top of the preceding emissions which will continue to have an effect over the life of these gases in the atmosphere, which is for around 100 years. Consequently, *the measures ordered by the judge in the framework of his power of injunction must be carried out rapidly enough, wherever possible, to repair the damage and prevent it from worsening in the future.*”⁹⁰

This temporal dimension is also significant because it may be possible to offload emission reduction burdens to the future to spare present generations from the restrictions associated with emission reduction burdens, creating a risk that young and future generations will be required to shoulder draconian limitations on their activities – indeed, on their freedoms – in order to make the Paris temperature target possible.

In other words, the road to the Paris temperature target, without the input of the human rights regime, could be filled with serious rights infringements. This was the key insight of the seminal *Neubauer v. Germany* case. In *Neubauer*, the German Constitutional Court found that the government’s failure to specify post-2030 targets that would clarify how the country would achieve climate neutrality in 2050 risked imposing the brunt of emission reduction burdens on young and future generations close to 2050. The risk that freedoms and rights would be disproportionately and severely encumbered in the future was, according to the court, inconsistent with constitutional rights protections. The court explained that:

“[E]ven provisions that only begin posing significant risks to fundamental rights over the course of their subsequent implementation can fall into conflict with the Basic Law... This is certainly the case where a course of events, once embarked upon, can no longer be corrected...⁹¹As ever more of the CO2 budget is consumed, the requirements arising from constitutional law to take climate action become ever more urgent and the potential impairments of fundamental rights that would be permissible under constitutional law become ever more extreme . . . The restrictions on freedom that will be necessary in the future are thus already built into the generosity of the current climate change legislation. Climate action measures that are presently being avoided out of respect for current freedom will have to be taken in future – under possibly even more unfavorable conditions – and would then curtail the exact same needs and freedoms but with far greater severity. . . The amount of time remaining is a key factor in determining how far freedom protected by fundamental rights will have to be restricted – or how far fundamental rights may be respected – when making the transition to a climate-neutral society and economy.”⁹²

Accordingly, human rights law specifies how states must implement emission reductions over time so as to not unduly burden young and future generations and exacerbate intergenerational inequities, serving to safeguard rights-consistent outcomes for young and future generations. This puts additional boundaries on the urgency with which states must act in order to implement a climate action timeline that is just across generations.

V. Substantive, Procedural, and Special Obligations: The Specifics of State Duties in the Inter-American System of Human Rights Under an Integrated Regime Approach

To demarcate state duties that dictate the necessary urgency and ambition with which states must act, the international climate regime and human rights regime must be read together. Understanding the state duties stemming from one regime in isolation of the other fails to capture the full contours of state obligations because such an approach fails to understand how the two regimes build off each other.

⁹⁰ *Notre Affaire à Tous and Others v. France* (Administrative Court of Paris 2021), ¶ 11 (emphasis added).

⁹¹ *Neubauer et al. v. Germany*, *supra* note 48, ¶ 108.

⁹² *Id.* ¶¶ 120-21.

This integrated regime approach has indeed been vastly undertaken and endorsed by domestic, regional and international courts and institutions.⁹³ In enforcing the obligation of states to respect, protect, and fulfill human rights⁹⁴ in the context of the climate emergency, courts and human rights bodies around the world have found that failure to apply such an integrated regime approach violates substantive and procedural obligations, as well as special obligations to groups in vulnerable situations.⁹⁵ In other words, states *must* achieve *certain concrete outcomes* that meet a required level of urgency and ambition to be in compliance with such obligations. Indeed, as the Office of the High Commissioner for Human Rights (OHCHR) and other international institutions have made clear:

“A human rights approach must be mainstreamed into the two principal strategies to deal with climate change, namely mitigation and adaptation. [...] The *integration* of a human rights approach is therefore a *legal and ethical imperative*, since climate action should not infringe people’s rights and *such an approach can improve the effectiveness of those actions and result in greater benefits for all sectors of society*.”⁹⁶

This section will specifically delve into the Inter-American System of Human Rights—again widely defined to comprise its organs and the domestic courts of State Parties to the ACHR and San Salvador Protocol—to provide an overview of the ambition and urgency demanded by courts in the enforcement of substantive, procedural and special obligations that result from the application of an integrated regime approach. It is by no means an exhaustive list, as the rapidly growing scale and depth of human rights affected by the climate emergency call for ever-increasing ambition and urgency of state action.

A. Inter-American Human Rights Institutions Recognize the Integrated Regime Approach

States in the region have been leaders in calling for a human rights-based approach to climate change and climate action.⁹⁷ Over the last two decades, the IACtHR has identified and developed key jurisprudence regarding rights that are “particularly vulnerable to environmental impact.”⁹⁸ These include the well-established “rights to life, personal integrity, private life, health, water, food, housing, participation in cultural life, property, and the right to not be forcibly displaced.”⁹⁹

Climate change directly and indirectly threatens these essential rights at an unprecedented scale. The IACtHR has therefore “recognized the existence of an undeniable relationship between the protection of the environment and the realization of other human rights, in that environmental degradation and the adverse effects of climate change affect the real enjoyment of human rights.”¹⁰⁰ Along with an integrated regime

⁹³ See, e.g., *Leghari v. Pakistan*, *supra* note 1, ¶ 8; *Notre Affaire à Tous and Others v. France*, *supra* note 90, ¶ 11. *Neubauer et al. v. Germany*, *supra* note 48, at 44. See also ECLAC, *supra* note 32, at 7.

⁹⁴ ECLAC, *supra* note 32, at 11-12. CARBON MAJORS INQUIRY, at 69-70.

⁹⁵ U.N. DOC. A/HRC/31/52, *supra* note 63. See also OHCHR, KEY MESSAGES ON HUMAN RIGHTS AND CLIMATE CHANGE (2016), https://www.ohchr.org/Documents/Issues/ClimateChange/KeyMessages_on_HR_CC.pdf and U.N. DOC. A/HRC/37/59, *supra* note 72.

⁹⁶ ECLAC, *supra* note 32, at 11-12.

⁹⁷ *Id.* at 7. Furthermore, “[t]countries of Latin America and the Caribbean have also been extremely active in incorporating the human rights perspective into other areas covered by UNFCCC and the Paris Agreement. Through the Independent Association for Latin America and the Caribbean (AILAC), the countries of the region have requested consideration be given to human rights in general and to specific matters, such as the Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts or the mechanisms outlined in article 6 of the Paris Agreement.” *Id.* at 47.

⁹⁸ *Advisory Opinion OC-23/17*, *supra* note 68, ¶ 64. See also *Kawas Fernández v. Honduras*, *supra* note 19, ¶ 148; *Yakye Axa Indigenous Community v. Paraguay* (IACtHR 2005), ¶ 137; *Sawhoyamaya Indigenous Community v. Paraguay* (IACtHR 2006), ¶ 118; *Saramaka People v. Suriname* (IACtHR 2007), ¶¶ 121-22.

⁹⁹ *Advisory Opinion OC-23/17*, *supra* note 68, ¶ 66.

¹⁰⁰ *Id.* ¶ 47. *Kawas Fernández v. Honduras*, *supra* note 19, ¶ 148. See also OAS AG/RES. 2429.

approach, the Court consequently pointed to the utility of international law – which includes the Paris Agreement – to guide the scope of state obligations:

“Specifically, another consequence of the interdependence and indivisibility of human rights and environmental protection is that, when determining these *State obligations*, the Court may avail itself of the principles, rights, and obligations of international environmental law, which, as part of the international corpus iuris, make a decisive contribution to establishing the scope of *the obligations under the American Convention*.”¹⁰¹

Other organs of the InterAmerican System have also pointed in the direction of an integrated regime approach. In doing so, they have made clear that the goals of the international climate regime—as set out in the Paris Agreement—are the quantitative benchmarks to measure state fulfillment of obligations stemming from the American Convention on Human Rights and San Salvador Protocol in the context of climate change.

As explained above, the recognition of the binding nature of human rights in this context is especially important in light of the voluntary nature of the climate regime and that, as the IACHR put it, “according to the Intergovernmental Panel on Climate Change (IPCC), the commitments reflected by States in their obligations under the Paris Agreement would be far from limiting the average global temperature to 1.5°C.”¹⁰² This in turn “threatens the very future of human rights and would undo the last fifty years of progress in development, health and poverty reduction.”¹⁰³

Accordingly, these bodies have confirmed that the implementation of measures that move the global community closer to achieving the Paris Agreement targets is not a matter of choice: “for the effective protection of human rights, States *must* take appropriate measures to mitigate greenhouse gases, implement adaptation measures and remedy the resulting damages.”¹⁰⁴ The IACHR has therefore proposed “the implementation of international *human rights standards*” as “an *effective framework* proposed by the International Community, States and civil society to adopt *urgent measures to combat climate change* and a necessary roadmap to ensure the protection of the right to a healthy environment and related human rights.”¹⁰⁵

More specifically, this has translated to the expectation that states will meet appropriate urgency and ambition in meeting Paris Agreement targets – as guided by the duty to cooperate, maximum available resources and progressive realization – to meet their obligations under the American Convention on Human Rights and San Salvador Protocol. While the Office of the Special Rapporteur on Economic, Social, Cultural, and Environmental Rights (herein REDESCA) has applauded international cooperation in climate issues,¹⁰⁶ the IACHR has, for example, stated:

“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*. This involves exchanging resources, technology, knowledge and capacities to build societies that operate in a low-emission environment, move towards a clean and just energy transition, and protect people’s rights.”¹⁰⁷

The IACHR proceeded to establish a mutual transboundary duty of “do no harm,” clarifying that states have the responsibility to prevent transboundary environmental harm through “the development and

¹⁰¹ *Advisory Opinion OC-23/17, supra* note 68, ¶ 55 (emphasis added).

¹⁰² RESOLUTION 3/21, at 4-5.

¹⁰³ *Id.* at 5.

¹⁰⁴ *Id.* at 14.

¹⁰⁵ *Id.* at 8.

¹⁰⁶ REDESCA, ANNUAL REPORT OF THE SPECIAL RAPPORTEURSHIP IN ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS (REDESCA) OF THE IACHR, ch. IV (2002), https://www.oas.org/en/iachr/docs/annual/2022/Chapters/IA2022_Anexo_REDESCA_EN.pdf.

¹⁰⁷ RESOLUTION 3/21, at 14.

implementation of *GHG mitigation targets that reflect a level of ambition consistent with the obligations of the Paris Agreement* and other applicable instruments, particularly with the *obligation not to exceed global temperature to such an extent as to jeopardize the enjoyment of human rights*.”¹⁰⁸

The IACHR has established with equal clarity the duty to mobilize maximum available resources in the context of climate change:

“[F]or the effective protection of human rights, States must take appropriate measures to mitigate greenhouse gases, implement adaptation measures and remedy the resulting damages. These obligations should not be neglected because of the multi-causal nature of the climate crisis, as all States have common but differentiated obligations in the context of climate action. As with economic, social, and cultural rights, environmental rights, in the context of climate change, must be guaranteed to the maximum of the resources available to the State in order to progressively achieve their full effectiveness by all appropriate means.”¹⁰⁹

This duty to provide ambitious mitigation and adaptation measures, the IACHR affirmed, exists even in the context of limited resources:

“Given the limitation of resources, States must undertake an active search for them for the formulation and implementation of ambitious public climate policies in the face of public and private climate funds, such as multilateral banks, as well as mobilize their own resources towards mitigation and adaptation actions.”¹¹⁰

And finally, the IACHR has established that such measures must be applied progressively:

“[T]he principle of progressivity and non-regression is fundamental for the realization of economic, social, cultural, and environmental rights and for the fulfillment of international and *inter-American commitments* assumed under the human rights and environmental law instruments in force to combat climate change, such as the *United Nations Framework Convention on Climate Change* and the *Paris Agreement*, among others.”¹¹¹

B. The Courts of State Parties to the ACHR and San Salvador Protocol Apply an Integrated Regime Approach

Similarly, in enforcing the American Convention on Human Rights and the San Salvador Protocol in the context of the climate emergency, the domestic courts of state parties have made clear that state obligations in this context must stem from an integrated reading of the climate and human rights regimes.

i. In Applying an Integrated Regime Approach, Courts Establish Climate Regime Metrics as Benchmarks

As explained above, this first and foremost means that domestic courts have embraced the Paris Agreement targets as the gold standard for assessing human rights violations in the context of climate change. In *Ruling on Modification to Ethanol*, for example, the Supreme Court of Mexico emphasized this approach when using the Paris Agreement to assess whether its ethanol policy violated the right to a healthy environment of its citizens:

“This Court considers that such regulation should be analyzed and be the subject of state discussion, with as much scientific information as possible, *under the broader context of the international commitments*

¹⁰⁸ *Advisory Opinion OC-23/17*, *supra* note 68, ¶ 182. *See also* RESOLUTION 3/21, at 20.

¹⁰⁹ RESOLUTION 3/21, at 14-15. *See also id.* at 19.

¹¹⁰ *Id.* at 12.

¹¹¹ *Id.* at 10.

acquired by our country to combat global warming, as established in the so-called 'Paris Agreement,' since climate change may endanger the enjoyment of a wide range of human rights, in particular the rights to life, health, food and water.” It continued, “the Paris Agreement signifies that the international community “recognizes that climate change poses unacceptable threats to the full enjoyment of human rights and that measures to address it must comply with human rights obligations.”¹¹²

Similarly in *Generaciones Futuras*, the Supreme Court of Colombia vocalized the guiding value of the Paris Agreement in the assessment of human rights violations when it stated that the Paris Agreement and the UNFCCC “constitute the global ecological public order and serves as guiding criteria for national legislation, as to resolve citizen complaints on the destruction of our habitat, in favor of the protection of the subjective rights of people, of present and future generations.”¹¹³

And the relationship between the Paris Agreement and human rights obligations has been recognized as so essential that that, in *ADPF 708*, the Supreme Court of Brazil declared the Paris Agreement to be a human rights treaty. With this, the nature of the Paris Agreement as a guiding benchmark for state action was declared to be binding and above other domestic laws: “Treaties on environmental law are a species of the genus human rights treaties and enjoy, for this reason, supranational status. Thus, *there is no legally valid option of simply omitting to combat climate change.*”¹¹⁴

ii. *In Applying an Integrated Regime Approach, Courts Establish the Scope of Their Authority and the Enforceability of Human Rights*

Along with placing an emphasis on the binding and enforceable nature of human rights in the climate context, domestic courts have firmly pointed out their corresponding competency to mandate, as a matter of human rights enforcement, state action in line with the climate regime’s goals. The Supreme Court of Brazil, for example, has affirmed that “the issue pertaining to climate change is a constitutional matter. Therefore, *environmental protection is not part of the Chief Executive's political judgment of convenience and opportunity. It is an obligation which the Chief Executive is bound to fulfill.*”¹¹⁵ It has pragmatically concluded: “clearly, the problem will only be adequately solved by means of a direct action that results in a decision with binding and general effects for the Judiciary and the Public Administration.”¹¹⁶

In *Alberto Salazar v. Colombia*, the Supreme Court of Colombia explained that the determination of whether the state undertakes actions compliant with the Paris Agreement is “*not exclusively a task of the legislature or the executive, to the extent that their importance lies in the preservation of environmental resources or services necessary to guarantee constitutional rights, or to protect constitutionally protected legal assets.*”¹¹⁷ And in *Ruling on Modification on Ethanol*, the Supreme Court of Mexico explained with respect to climate action: “it is the obligation of this Court to ensure that the authorities comply with human rights, such as the right to a healthy environment, so that these fundamental rights have a real impact in our country and are not reduced to mere ideals or good wishes.”¹¹⁸

Through such rulings, these domestic courts have protected and demanded substantive outcomes. In doing so, they have clearly developed obligations of urgency and ambition regarding a myriad of well-established substantive, procedural and special duties stemming from the American Convention on Human Rights and San

¹¹² *Amparo en Revisión 610/2019*, *supra* note 20, at 71.

¹¹³ *Future Generations v. Ministry of the Environment and Others* (Supreme Court of Colombia 2018), at 22-25.

¹¹⁴ *PSB et al. v. Brazil (on Climate Fund)*, *supra* note 21, ¶ 17.

¹¹⁵ *Id.* ¶ 16.

¹¹⁶ *Id.* ¶ 4.

¹¹⁷ *Alberto Castilla Salazar and Others v. Colombia* (Constitutional Court of Colombia 2016), ¶ 171 (emphasis added).

¹¹⁸ *Amparo en Revisión 610/2019*, *supra* note 20, at 71.

Salvador Protocol. In this way, the domestic courts of State Parties to the Inter-American System are marking a clear pathway of binding duties in the climate context.

iii. Courts Find Substantive Human Rights Obligations and Violations in Applying an Integrated Regime Approach

More specifically, in applying the integrated regime approach, the domestic courts enforcing the American Convention and San Salvador Protocol have assessed state compliance with numerous core human rights in the context of the climate emergency. To make this assessment, they have scrutinized the appropriateness of the ambition and urgency of state action as guided by the above-mentioned human rights norms related to the duty to cooperate, the use of maximum available resources, and progressive realization. And in doing so, they have indeed found violations of:

- A. The right to life and integrity by the State of Ecuador, Colombia, and Brazil;¹¹⁹
- B. The right to a healthy environment by the State of Brazil, Colombia, Ecuador, Mexico and Chile;¹²⁰
- C. The right to food by the State of Ecuador and Colombia;¹²¹
- D. The right to water by the State of Ecuador and Colombia;¹²²
- E. The right to health by the State of Brazil, Colombia, and Ecuador;¹²³ and
- F. The right to a home by the State of Ecuador and Colombia.¹²⁴

¹¹⁹ Among the cases that found a violation of this right were: *Herrera Carrion v. Ministry of the Environment* (Multicompetent Chamber of the Provincial Court of Justice of Sucumíos (Ecuador) 2021); *Future Generations v. Ministry of the Environment and Others*, *supra* note 113; and ADPF 708 (Brazil).

¹²⁰ Among the cases that found a violation of this right were: *PSB et al. v. Brazil (on Climate Fund)*, *supra* note 21, *PSB et al. v. Brazil (on Deforestation and Human Rights)* (Supreme Federal Court of Brazil 2020), *ADPF 651* (Supreme Federal Court of Brazil 2022), and *ADO 54* (Supreme Federal Court of Brazil 2022) (**Brazil**); *Herrera Carrion v. Ministry of the Environment*, *supra* note **Error! Bookmark not defined.** (**Ecuador**); *Mejillones Tourist Service Association and Others with the Environmental Evaluation Service (SEA) of Antofagasta* (Supreme Court of Chile 2022) y *Jara Alarcon Luis/Environmental Assessment Service* (Second Environmental Tribunal of Chile 2019) (**Chile**); *Future Generations v. Ministry of the Environment and Others*, *supra* note 113, *Combeima River Case of September 14, 2020* (Administrative Tribunal of Colombia 2020), *Josefina Huffington Archbold v. Office of the President and Others* (Constitutional Court of Colombia 2022), *Sentence C-048/18* (Constitutional Court of Colombia 2018), *Atrato River Decision T-622/16* (Constitutional Court of Colombia 2016), *Alberto Castilla Salazar and Others v. Colombia*, *supra* note 117 (**Colombia**); *Amparo in Revision 888/2018* (Supreme Court of Justice of Mexico 2018), *Ruling on Modification to Ethanol Fuel Rule* (Supreme Court of Justice of Mexico 2020), *Greenpeace Mexico v. Ministry of Energy and Others (on the National Electric System Policies)* (District Court in Administrative Matters of Mexico City 2020) (**Mexico**).

¹²¹ Among the cases that found a violation of this right were: *Herrera Carrion v. Ministry of the Environment*, *supra* note **Error! Bookmark not defined.** (**Ecuador**); *Josefina Huffington Archbold v. Office of the President and Others*, *supra* note **Error! Bookmark not defined.**, *Decision SU-698/17* (Constitutional Court of Colombia 2017), *Atrato River Decision T-622/16*, *supra* note **Error! Bookmark not defined.** (**Colombia**).

¹²² Among the cases that found a violation of this right were: *Herrera Carrion v. Ministry of the Environment*, *supra* note **Error! Bookmark not defined.** (**Ecuador**); *Future Generations v. Ministry of the Environment and Others*, *supra* note 113, *Combeima River Case of September 14, 2020*, *supra* note **Error! Bookmark not defined.**, *Josefina Huffington Archbold v. Office of the President and Others*, *supra* note **Error! Bookmark not defined.**, *Atrato River Decision T-622/16*, *supra* note **Error! Bookmark not defined.**, *Alberto Castilla Salazar and Others v. Colombia*, *supra* note **Error! Bookmark not defined.**, *Decision SU-698/17*, *supra* note 121 (**Colombia**).

¹²³ Among the cases that found a violation of this right were: *PSB et al. v. Brazil (on Deforestation and Human Rights)*, *supra* note 120, *ADO 54*, *supra* note 120 (**Brazil**); *Herrera Carrion v. Ministry of the Environment*, *supra* note **Error! Bookmark not defined.** (**Ecuador**); *Future Generations v. Ministry of the Environment and Others*, *supra* note 113, *Josefina Huffington Archbold v. Office of the President and Others*, *supra* note **Error! Bookmark not defined.**, *Decision SU-698/17*, *supra* note **Error! Bookmark not defined.** (**Colombia**).

¹²⁴ Among the cases that found a violation of this right were: *Herrera Carrion v. Ministry of the Environment*, *supra* note **Error! Bookmark not defined.** (**Ecuador**) and *Josefina Huffington Archbold v. Office of the President and Others*, *supra* note **Error! Bookmark not defined.** (**Colombia**).

Further, in developing this line of jurisprudence, the domestic courts have fleshed out the details of state action that would meet the ambition and urgency necessary to respect, protect, and fulfill human rights in the context of the climate crisis.

a. In Applying an Integrated Regime Approach, Courts Clarify the Contours of and Demand Appropriate Ambition in State Climate Action

For example, in *Greenpeace Mexico* and in *Generaciones Futuras*, the First Circuit Collegiate Tribunal of Mexico and the Supreme Court of Colombia made clear that a violation of the duty to cooperate – both internationally and domestically – falls short of the ambition necessary to meet human rights obligations. Specifically, the courts found their respective states in violation of the right to a healthy environment by passing policies to limit the use of renewables and of the rights to life, health, freedom, human dignity, and a healthy environment by not delivering on its international pledges to reduce deforestation in the Amazon as a means to contribute to mitigation. The Supreme Court of Colombia explained:

The principle of solidarity, for the specific case, is determined by the duty and co-responsibility of the Colombian state to stop the causes of the GHG emissions from the abrupt forest reduction in the Amazon; thus, it 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.¹²⁵

On the other hand, in *Amparo en Revisión 888/2018*, the Supreme Court of Mexico declared the State of Zacatecas' taxation on greenhouse gas emissions to implement adaptation measures not only constitutional but also appropriately ambitious, as federal and state authorities shared responsibilities pursuant to the rights to health and to a healthy environment. By cooperating to meet the goals of the UNFCCC, domestic agencies would in turn move the state closer to compliance with its duty to cooperate internationally, as the court understood the Convention to “recognizes the right of the parties to sustainable development (...) to take measures to combat climate change. Finally, (...) provides for the principle of cooperation between the parties for sustainable development”.¹²⁶ The court further made clear that the duty to cooperate in the realm of climate action applies to both developed and developing states:

[...] *It is a duty of all parties*, so that when it refers to the fact that developed countries should take the initiative with respect to combating climate change and its adverse effects, this does not imply that they are the only ones, but only the first ones for such effect, because *the countries that are not developed also have to comply with such duty*.¹²⁷

Relatedly, the same case established that such taxation measures were an appropriate means to fulfill the state's duty to mobilize maximum available resources for adaptation and therefore comply with the required level of ambition needed to safeguard the rights to health and to a healthy environment.¹²⁸

Another example is *ADPF 708*, in which the Supreme Court of Brazil established that appropriate “resource allocation and expenditure” in accordance with the principle of maximum available resources invited a valid review by the court of the state's allocation and spending of its Climate Fund – an instrument created by national climate policy that financed mitigation measures in accordance with the Paris Agreement. In this case, the court

¹²⁵ *Future Generations v. Ministry of the Environment and Others*, *supra* note 113, at 37. See also *Greenpeace Mexico v. Ministry of Energy and Others (on the National Electric System Policies)*, *supra* note 120, at 168, and, more generally *PSB et al. v. Brazil (on Deforestation and Human Rights)*, *supra* note 120, and *ADPF 651*, *supra* note 120.

¹²⁶ *Amparo in Revision 888/2018*, *supra* note 120, at 127.

¹²⁷ *Id.* at 128.

¹²⁸ *Id.* at 22, 115, 141, 153.

found that the misallocation and underspending of the financial resources for mitigation from the fund violated its citizens' right to a healthy environment, since "the allocation of resources from the Climate Fund materializes the constitutional duty to protect and restore the environment."¹²⁹

ADPF 708 also exemplifies domestic courts' consensus that walking backwards on climate commitments defaults states to a level of inappropriate climate ambition and therefore represents a violation of human rights. In this case, the Supreme Court of Brazil also concluded that by reneging on its Paris commitments, the paralysis of the Climate Fund violated the principle of non-regression, exacerbating the state's violation of the right to a healthy environment:

"The principle of the prohibition of regression is especially prominent when it comes to environmental protection. It is violated when the level of environmental protection is lowered through inaction or when relevant public policies are suppressed without adequate substitution.¹³⁰ It concluded: The results objectively ascertained indicate that the country is, in fact, moving in the *opposite direction to the commitments made and to the mitigation of climate change*, and that the situation has worsened substantially in recent years. This is the worrying and persistent situation in which the confrontation with climate change in Brazil finds itself, *which puts at risk the life, health and food security of its population, as well as the economy in the future.*"¹³¹

The Court proceeded to order the Ministry of the Environment to "move forward" with its Paris commitments by allocating resources to the fund and prohibiting the government from pausing the use of the fund again.¹³² Similarly, in *ADPF 651*, the Supreme Court of Brazil once again held the state responsible for retrogressing on its Paris commitments and violating its citizens' right to participate in climate policy matters, reinforcing the role of human rights as a mechanism to halt such retrogression:

"In fact, it [the State] has been going in the *opposite direction: instead of reducing, it is increasing its greenhouse gas emissions and deforestation*. If the Brazilian State were complying with the legislation and its international obligations, I would agree that the Judiciary and the Supreme Federal Court should not interfere, but, when faced with a situation of manifest non-compliance with the Constitution and international agreements, what option is left for a Constitutional Court, for a Court of Justice? Where there is non-compliance with the Constitution, non-compliance with international treaties, non-compliance with legislation, non-compliance with global commitments, *judicial intervention is justified.*"¹³³

In *Greenpeace Mexico*, the First Circuit Collegiate Tribunal in Mexico declared that two electricity sector policies that reduced the availability of renewable energy violated the right to a healthy environment in part by retrogressing commitments on and undermining needed greenhouse gas emission reductions:

"The challenged agreements also imply the *implementation of regressive measures in relation to the right to a healthy environment*, because instead of contributing to increase the goals of minimum participation of clean energies in the generation of electric energy, they reduce or inhibit its progress, despite the benefits that this has in the preservation and real protection of this prerogative."¹³⁴ It concluded: "Therefore, it is possible to conclude that the challenged provisions *contravene the principle of progressivity that governs human rights and, specifically, in environmental matters, since they break with the gradualness to which its effectiveness refers, as a process and as progress, that is, that its enjoyment, even in its collective dimension, must always improve.*"¹³⁵

¹²⁹ *PSB et al. v. Brazil (on Climate Fund)*, *supra* note 21, ¶ 16.

¹³⁰ *Id.* ¶ 18.

¹³¹ *Id.* at 9. See also, generally, *ADPF 651*, *supra* note 120; *PSB et al. v. Brazil (on Deforestation and Human Rights)*, *supra* note 120; and *ADI 6808* (Supreme Federal Court of Brazil 2022).

¹³² *PSB et al. v. Brazil (on Climate Fund)*, *supra* note 21, ¶¶ 36-37. A similar case on the use of the Amazon Fund is the pending case, *ADPF 651*, *supra* note 120.

¹³³ *ADPF 651*, *supra* note 120, at 127. See also *id.* at 107.

¹³⁴ *Greenpeace Mexico v. Ministry of Energy and Others (on the National Electric System Policies)*, *supra* note 120, at 173.

¹³⁵ *Id.* at 187.

And in Colombia, in the case *Office of Inspector General*, the Council of the State – the highest Court for disputes arising from administrative conduct or omissions in the country –¹³⁶ also held the state to be in violation of its domestic climate legislation and other human rights through its inaction on necessarily progressive aspects of the law drawn from the Paris Agreement, such as NDC.¹³⁷

b. In Applying an Integrated Regime Approach, Courts Clarify the Contours of and Demand Appropriate Urgency in State Climate Action

In these rulings, domestic courts have placed an equal emphasis on the *urgency* of implementation of climate action that aligns with the Paris Agreement. This has translated into a clear obligation by states to implement those court orders that promptly ratchet up climate ambition. Slow implementation of court orders in this context, domestic courts have held, can constitute an overt and continuing violation of the human rights of present and future generations by the state.

More specifically, courts have emphasized “the urgent need to adopt mitigation and corrective measures”¹³⁸ and, as the First Circuit Collegiate Tribunal put it in *Greenpeace Mexico*, the judiciary’s role in “finding agile, adequate and effective responses to protect [rights].”¹³⁹ In *Herrera Carrion*, the Supreme Court of Ecuador also said as much:

“International instruments, in particular the American Convention on Human Rights, the International Covenant on Civil and Political Rights [...] recognize that the purpose of the State and social organization is to satisfy *the rights of human beings and nature, for which there must be instruments that generate agility to achieve the tasks, being these procedures simple, fast and effective*, because of this, is that the State through its *jurisdictional organs (judges or competent courts), must seek the protection of Nature, and the human being against violations, actions or omissions, decreeing peremptory measures, where there is imminent transgression of rights.*”¹⁴⁰

In addition to the binding nature of their orders, courts facilitate the urgent implementation of climate action by providing states with detailed timetables with which to act and correct omissions that contribute to climate change and its effects. In *Herrera Carrion*, for example, the court provided a binding multi-year schedule for the gradual and progressive elimination of the gas flares to promptly reduce this activity’s climate and human rights implications. Similarly, in *Office of the Inspector General*, the court ordered the Ministry of the Environment and Sustainable Development of Colombia to regulate goals related to its NDC.¹⁴¹ Such regulations primarily included establishing and monitoring an annual number of appropriate greenhouse gas emissions quotas.¹⁴²

And in *Josefina Huffington*, the Supreme Court of Colombia declared the state in violation of the right to a home due to its failure to promptly implement reconstruction and adaptation measures despite the impending climate catastrophes that would affect the area. It explained:

“The destruction of 98% of the infrastructure of the islands of Providencia and Santa Catalina by Hurricane Iota demonstrates that climate change is currently the main threat to the guarantee of human rights. It is therefore *essential to adopt forceful and timely measures to prevent and adapt to natural disasters*. It is not

¹³⁶ *Nuestra Institución*, COLOMBIAN COUNCIL OF STATE, <https://www.consejodeestado.gov.co/misio-y-vision/index.htm> (last visited Oct. 31, 2023).

¹³⁷ *Greenpeace Mexico v. Ministry of Energy and Others (on the National Electric System Policies)*, *supra* note 120, at 72.

¹³⁸ *Future Generations v. Ministry of the Environment and Others*, *supra* note 113, at 113.

¹³⁹ *Greenpeace Mexico v. Ministry of Energy and Others (on the National Electric System Policies)*, *supra* note 120, at 72.

¹⁴⁰ *Herrera Carrion v. Ministry of the Environment*, *supra* note **Error! Bookmark not defined.**, at 54.

¹⁴¹ *Office of the Inspector General and Others v. Ministry of Environment and Sustainable Development and Others* (Administrative Tribunal of Cundinamarca (Colombia) 2023), at 29.

¹⁴² *Id.*

enough to eliminate the causes of global warming; it is also necessary to prepare adequately to mitigate the adverse effects of global warming, which are already occurring.”¹⁴³

The court then ordered various domestic agencies to promptly – in a matter of fifteen to ninety days – restore habitable conditions of the land in question and refine the housing action plan to include climate action in accordance with the Paris Agreement targets.¹⁴⁴

Similarly, in *Generaciones Futuras*, the Supreme Court of Colombia ordered the state to update its land management plan to include effective climate mitigation and adaptation measures.¹⁴⁵ In doing this, the court emphasized the effect of contemporary harm to the environment for future generations:

“The factors reviewed directly generate deforestation in the Amazon, causing short, medium, and long term imminent and serious damage to the children, adolescents and adults who filed this lawsuit, and in general, all inhabitants of the national territory, *including both present and future generations*, as it leads to rampant emissions of carbon dioxide (CO₂) into the atmosphere, producing the greenhouse gas effect, which in turn transforms and fragments ecosystems, altering water sources and the water supply for population centers and land degradation.”¹⁴⁶

It therefore articulated the state obligation to act in the present in order to prevent violations of the human rights of generations to come:

“What has been stated then, develops a *binding legal relationship regarding the environmental rights of future generations*, such as an “omission,” whose impact translates into a limitation to the freedom of action of present generations, while simultaneously implicitly demanding new burdens of environmental commitments, to the extent that they take on the care and stewardship of natural resources and the future world.”¹⁴⁷

Importantly, domestic courts have made clear that acting with urgency does not excuse a state from its obligation to act with appropriate ambition – both are required for the effective protection of human rights in the context of the climate emergency. For example, in explaining that the state erred in hurriedly building housing without incorporating adaptation mechanisms in compliance with its Paris Agreement commitments, the Supreme Court of Colombia stated that eagerness on the part of state cannot be a replacement for substantive fulfillment of duties.¹⁴⁸ In this way, courts have ensured that efficiency does not come at the expense of substantive outcomes, making human rights protections merely “illusory.”¹⁴⁹

iv. Courts Find Procedural Human Rights Obligations and Violations in Applying an Integrated Regime Approach

State climate action that fails to follow core procedural safeguards of the international and Inter-American human rights systems necessarily fails to meet an appropriate level of ambition.¹⁵⁰ As the then UN Independent Expert on Human Rights and the Environment stated:

¹⁴³ *Josefina Huffington Archbold v. Office of the President and Others*, *supra* note **Error! Bookmark not defined.**, at 110, ¶ 7.3.1.

¹⁴⁴ *Id.* at 119-25.

¹⁴⁵ *Future Generations v. Ministry of the Environment and Others*, *supra* note 113, at 48-50.

¹⁴⁶ *Id.* at 34.

¹⁴⁷ *Id.* at 21.

¹⁴⁸ *Josefina Huffington Archbold v. Office of the President and Others*, *supra* note **Error! Bookmark not defined.**, at 92, ¶ 7.1.2; and at 113.

¹⁴⁹ *Greenpeace Mexico v. Ministry of Energy and Others (on the National Electric System Policies)*, *supra* note 120, at 72.

¹⁵⁰ UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948) arts. 7, 8, 19, 20 and 21; INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1976) arts. 2, 19, 21, 22 and 25; RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT

“[S]trong compliance with these duties to provide access to information, participation, and remedies produces a healthier environment, which in turn contributes to a higher degree of compliance with substantive rights such as rights to a healthy environment, life, health, property and privacy. The converse is also true. Failure to meet procedural obligations can result in a degraded environment, which interferes with the full enjoyment of human rights.”¹⁵¹

Also, climate action that is carried out without attention to procedural safeguards may be inadequate due to, for example, lack of valuable input from local communities. The IACtHR explained:

“The rights especially linked to the environment have been classified into two groups: (i) rights whose enjoyment is particularly vulnerable to environmental degradation, also identified as substantive rights (for example, the rights to life, personal integrity, health or property), and (ii) *rights whose exercise supports better environmental policymaking*, also identified as procedural rights (such as the rights to freedom of expression and association, to information, to participation in decision-making, and to an effective remedy).”¹⁵²

The violation of procedural safeguards also works against the central objective of ambitious climate action – to respect, protect, and fulfill human rights. Compliance with the Paris Agreement does not simply substitute compliance with a state’s bundle of human rights obligations. As a UN Special Rapporteur has put it, “the obligations of States to respect and protect human rights apply with no less force when they are taking mitigation or adaptation measures.”¹⁵³ Attempting to fulfill substantive human rights by violating procedural human rights in the process nulls the core objective of positive state action.

In addition, procedural safeguards may provide guidelines that allow for the implementation of climate action in a more efficacious manner. As the IACHR has explained, this can in turn aid states in meeting an appropriate level of urgency in their climate action:

“The effective implementation of the procedural rights of access to information, public participation and justice in environmental matters is an accelerator of climate action in the region and enhances the fulfillment of the substantial obligations of States. In this sense, it is a priority not only to advance in the consecration of these rights but also in the effective implementation of them.”¹⁵⁴

The organs and the domestic courts of states comprising the Inter-American System of Human Rights have emphasized the value that each right plays in ensuring both ambition and urgency of climate action. In particular, they have done so when holding states accountable to those procedural rights identified by human rights bodies to be “vital to the protection of the environment” – that is, the rights to participation, information,

(1992) principle 10; UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE (UNECE) CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS (AARHUS CONVENTION) (2001); and ACHR arts. 8, 13, 14, 15, 16, 23, 24 and 25. The IACHR and IACtHR have also worked to define a range of minimum standards to guarantee the effective implementation of procedural rights. Paradigmatic examples are the IACtHR case law on the right to access environmental information and on the participation of Indigenous Peoples in environmental decision-making processes, as well as the IACHR guidelines on the protection of human rights defenders. *See, e.g., Claude Reyes et al. v. Chile* (IACtHR 2006); *Kichwa Indigenous People of Sarayaku v. Ecuador* (IACtHR 2012); and PRINCIPLES AND BEST PRACTICES ON THE PROTECTION OF PERSONS DEPRIVED OF LIBERTY IN THE AMERICAS, OAS (2008).

¹⁵¹ JOHN H. KNOX, *supra* note 23, at 2.

¹⁵² *Advisory Opinion OC-23/17*, *supra* note 68, ¶ 64. *See also* JOHN H. KNOX, *The Paris Agreement as a Human Rights Treaty*, in *HUMAN RIGHTS AND 21ST CENTURY CHALLENGES: POVERTY, CONFLICT AND THE ENVIRONMENT*, at 332 (2020). *See also* ECLAC, *supra* note 32, at 13.

¹⁵³ U.N. DOC. A/HRC/31/52, *supra* note 63, ¶ 54.

¹⁵⁴ RESOLUTION 3/21, at 19.

as well as access to justice.¹⁵⁵ In doing so, they have pointed out the way in which, according to an integrated regime approach, the climate and human rights regimes are mutually reinforcing and complementary.

a. Right to Information

To protect human rights from infringement from environmental harm, states should provide access to environmental information and provide for the assessment of environmental impacts that may interfere with the enjoyment of human rights.¹⁵⁶ Considerable efforts to fulfill this right at the international level are seen in states' provision and assessment of information on climate change as part of the IPCC and UNFCCC frameworks. Indeed, UN experts have lauded that "by regularly publishing detailed reports summarizing the state of scientific and technical knowledge, the Panel has given Governments and people around the world information about the effects of climate change and the consequences of various approaches to addressing it."¹⁵⁷

The UNFCCC and Paris Agreement also contain provisions calling for the guarantee of the right to information in the implementation of both mitigation and adaptation measures.¹⁵⁸ Along these lines, according to the IACHR, states are obliged to "ensure transparency and access to information on the causes and consequences of the global climate crisis, measures to address it, the impacts of projects on the climate and how to achieve them. *States have a positive obligation* of active transparency to generate timely, complete, understandable, clear, accessible, culturally appropriate information, truthful and *expeditious* on *adaptation, mitigation and means of implementation on climate change* [...]"¹⁵⁹

Importantly, implementing the right to information can enrich a state's ambition on climate action by improving the quality of decisions and the accountability of public officials: "all persons subject to the State's jurisdiction to exercise the democratic control of those actions, and question, investigate and consider whether public functions are being performed adequately [...]. It also fosters transparency in the State's activities and promotes the accountability of its officials in the performance of their duties."¹⁶⁰ Domestic courts in the Inter-American System have acknowledged this. In *Josefina Huffington*, for example, the court held that the state not only had to translate the case at hand into the creole language of the Raizal peoples, but in implementing adaptation measures, the state "must allow the Raizal people, in accordance with Law 1712 of 2104, access to all the

¹⁵⁵ U.N. SPECIAL RAPPORTEUR ON HUMAN RIGHTS AND THE ENVIRONMENT, REPORT OF THE SPECIAL RAPPORTEUR ON THE ISSUE OF HUMAN RIGHTS OBLIGATIONS RELATING TO THE ENJOYMENT OF A SAFE, CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT, U.N. DOC. A/73/188, ¶ 34 (2018). U.N. DOC. A/HRC/31/52, *supra* note 63, ¶ 70. Climate cases of State Parties to the ACHR that have articulated the right to access information include: *ADO 54*, *supra* note 120; *ADPF 651*, *supra* note 120; *Instituto Preservar et. al. v. Copelmi Mineração Ltda. and IBAMA* (Ninth Federal Court of Rio Grande do Sul (Brazil) 2021); *PSB et al. v. Brazil (on Climate Fund)*, *supra* note 21; *Ruling on Modification to Ethanol Fuel Rule*, *supra* note 120; *Office of the Inspector General and Others v. Ministry of Environment and Sustainable Development and Others*, *supra* note 141; *Herrera Carrion v. Ministry of the Environment*, *supra* note 119, and *Greenpeace Mexico v. Ministry of Energy and Others (on the National Electric System Policies)*, *supra* note 120.

¹⁵⁶ U.N. DOC. A/HRC/31/52, *supra* note 63, ¶ 51.

¹⁵⁷ *Id.* ¶ 52.

¹⁵⁸ Article 6(a) of UNFCCC requires its parties to promote and facilitate educational and public awareness programs, as well as public access to information, and article 12 of the Paris Agreement calls on its parties to cooperate in taking measures to enhance such measures. UNEP describes the efforts by many States to assess the impacts of climate change and to make this information publicly available. UNFCCC, *supra* note 37, art. 6(a).

¹⁵⁹ RESOLUTION 3/21, at 19.

¹⁶⁰ *Advisory Opinion OC-23/17*, *supra* note 68, ¶ 213 (citing *Claude Reyes et al. v. Chile*, *supra* note 150, ¶ 77, 86; *The Kaliña and Kokono Peoples v. Suriname* (IACtHR 2015), ¶ 261; *I.V. v. Bolivia* (IACtHR 2016), ¶ 156). IACtHR jurisprudence demands states to "publish, ex officio, relevant and necessary information on the environment in order to ensure the human rights under the Convention. This includes information on environmental quality, environmental impact on health and the factors that influence this, and also information on legislation and policies, as well as assistance on how to obtain such information. ACHR art. 13; *Advisory Opinion OC-23/17*, *supra* note 68, ¶ 223.

administrative and financial information of the reconstruction process of the islands of Providencia and Santa Catalina.”¹⁶¹

Similarly, the First Circuit Collegiate Tribunal in *Greenpeace Mexico* connected the importance of the right to information with the right to participation, stating that that the right “requires the prerogative of citizens to have access to information on the environment held by the authorities and the correlative obligation of the State, not only to provide it, but also to encourage and raise awareness of citizen participation in this area.”¹⁶²

b. Right to Participation

The related obligation to facilitate public participation in environmental decision-making has strong roots in human rights law. Human rights bodies have developed the right in the environmental context, clarifying the duty to facilitate public participation in environmental decision-making in order to safeguard a wide spectrum of rights from environmental harm.¹⁶³

More specifically, to be effective, the IACtHR has elaborated that public participation must include the provision of information to the public in a manner that enables interested persons to understand and discuss the situation in question, including the potential effects of a proposed project or policy. Such public participation must also provide real opportunities for the views of the affected members of the public to be heard and to influence the decision-making process. Moreover, to enable informed public participation, freedom of expression and the right to associate must be safeguarded for all.¹⁶⁴ In some cases, as the Special Rapporteur on the right to housing has pointed out, it may be necessary to build the capacity of members of such groups in order to facilitate their informed participation.¹⁶⁵ This aligns with the UNFCCC and Paris Agreement’s emphasis that decisions on mitigation or adaptation projects must be made with the informed participation of the people who would be affected by the projects.¹⁶⁶

The IACtHR has further stated that the right to participation “allows the individual to become part of the decision-making process and have his or her opinion heard. In particular, public participation enables communities to *require accountability from public authorities* when taking decisions and, also, *improves the efficiency and credibility of government processes*”¹⁶⁷ and makes “governments *better able to respond promptly* to public concerns and demands, build consensus, and secure *increased* acceptance of and compliance with environmental

¹⁶¹ *Josefina Huffington Archbold v. Office of the President and Others*, *supra* note **Error! Bookmark not defined.**, at 85.

¹⁶² *Greenpeace Mexico v. Ministry of Energy and Others (on the National Electric System Policies)*, *supra* note 120, at 71.

¹⁶³ The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights recognize the baseline rights of everyone to take part in the government of their country and in the conduct of public affairs. UDHR art. 21; ICCPR art. 25. *See also* Key Message 10 of OHCHR, *supra* note 77, at 5.

¹⁶⁴ U.N. DOC. A/HRC/31/52, *supra* note 63, ¶¶ 56-60. *See also* Key Message 10 of OHCHR, *supra* note 77, at 5.

¹⁶⁵ U.N. SPECIAL RAPPORTEUR ON ADEQUATE HOUSING, THE RIGHT TO ADEQUATE HOUSING, U.N. DOC. A/64/255 (2009), ¶ 63.

¹⁶⁶ Article 6(a) of the UNFCCC requires its parties to promote and facilitate public participation. UNFCCC, art. 6. Similarly, Article 12 of the Paris Agreement requires its parties to cooperate in taking appropriate measures to enhance public participation. PARIS AGREEMENT art. 12. Moreover, the Report of the Conference of the Parties of the UNFCCC held in Cancun in 2010 states that “the need to engage a broad range of stakeholders at the global, regional, national and local levels, including national, subnational and local governments, private businesses and civil society, and including youth and persons with disabilities, and that gender equality and the effective participation of women and indigenous peoples are important for effective action on all aspects of climate change.” UNFCCC CONFERENCE OF THE PARTIES, ACTION TAKEN BY THE CONFERENCE OF THE PARTIES AT ITS SIXTEENTH SESSION, U.N. DOC. NO. FCCC/CP/2010/7/ADD.1 (2009), ¶ 7.

¹⁶⁷ *Advisory Opinion OC-23/17*, *supra* note 68, ¶ 226 (citing *Claude Reyes et al. v. Chile*, *supra* note 150, ¶ 86). *See also* OAS, INTER-AMERICAN STRATEGY FOR THE PROMOTION OF PUBLIC PARTICIPATION IN DECISION-MAKING ON SUSTAINABLE DEVELOPMENT, OEA/Ser.W/II.5, CIDI/doc. 25/00, at 19 (2000).

decisions.”¹⁶⁸ In short, “ensuring broad, inclusive and gender-sensitive public participation not only fulfils human rights obligations but also results in better outcomes.”¹⁶⁹

Accordingly, in *Ruling on the Modification to Ethanol Rule*, in invalidating an agency rule that allowed for higher ethanol content in gasoline and that was passed without public participation or a scientific evaluation, the court explained the way in which public participation heightens the quality of state action by better preventing human rights violations:

“The participation of the interested public ‘allows for a more complete analysis of the possible environmental impact that may be caused by the implementation of a given project or activity and allows for an analysis of whether or not it will affect human rights’, so it is important to allow, above all, that the people who could be affected have the opportunity to present their opinions or comments on the issue that concerns them at the beginning of the procedure, since this is when all the options and solutions are still possible and can exert a real influence.”¹⁷⁰

Similarly, in *the case C-048-18*, the Supreme Court of Colombia underscored the importance of public participation in implementing adaptation measures:

“Adaptation efforts may involve significant public interventions. Accordingly, the Paris Agreement argues that these should be undertaken ‘taking into consideration vulnerable groups, communities and ecosystems, and that such work should be based on and informed by the best available scientific information and, where appropriate, traditional knowledge, indigenous peoples’ knowledge and local knowledge systems.

The above is in accordance with the provisions of Article 1 of the Constitution, which defines the Colombian State as democratic, participatory and pluralistic. In turn, it is a development of Article 7 of the Constitution, which states that the State recognizes and protects the ethnic and cultural diversity of the Colombian Nation.”¹⁷¹

And in *ADPF 651*, in declaring unconstitutional the restriction on the participation of civil society and governors in environmental agencies making climate decisions, the Supreme Court of Brazil explained that the right to a healthy environment is “‘an asset for the common use of the people and essential to a healthy quality of life’, so that its defense and preservation must be carried out not only by the Public Power, but also by the community, and everyone must have the possibility to participate in the decision-making process in the formulation, execution and control of public environmental policies.”¹⁷²

States’ guarantee of the right to participation is essential not only in the design and implementation of climate action, but also in cases in which states are found to have violated human rights. For example, in cases where a state takes retrogressive steps in climate action, genuine participation by affected groups in the examination of remedies and new proposed measures is key to remedying and protecting human rights. This was indeed the

¹⁶⁸ *Advisory Opinion OC-23/17*, *supra* note 68, ¶ 228 (citing ECLAC, ACCESS TO INFORMATION, PARTICIPATION AND JUSTICE IN ENVIRONMENTAL MATTERS IN LATIN AMERICA AND THE CARIBBEAN, at 13 (2018), https://repositorio.cepal.org/bitstream/handle/11362/43302/1/S1701020_en.pdf).

¹⁶⁹ U.N. SPECIAL RAPporteur ON HUMAN RIGHTS AND THE ENVIRONMENT, GOOD PRACTICES ON THE RIGHT TO A SAFE, CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT, U.N. DOC. A/HRC/43/53, ¶ 22 (2019).

¹⁷⁰ *Ruling on Modification to Ethanol Fuel Rule*, *supra* note 120, at 34.

¹⁷¹ *Sentence C-048* (Constitutional Court of Colombia 2018), at 70.

¹⁷² *ADPF 651*, *supra* note 120, at 41. *See also, more generally*, *ADO 54*, *supra* note 120; *ADPF 651*, *supra* note 120; *Instituto Preservar et. al. v. Copelmi Mineração Ltda. and IBAMA*, *supra* note 155; *PSB et al. v. Brazil (on Climate Fund)*, *supra* note 21; *Ruling on Modification to Ethanol Fuel Rule*, *supra* note 120; *Greenpeace Mexico v. Ministry of Energy and Others (on the National Electric System Policies)*, *supra* note 120; *Josefina Huffington Archbold v. Office of the President and Others*, *supra* note **Error! Bookmark not defined.**; and *Atrato River Decision T-622/16*, *supra* note **Error! Bookmark not defined.**

case in *Josefina Huffington*, in which the Supreme Court of Colombia ordered the state to “convene the Raizal community to advance a consultation process on the comprehensive reconstruction process of the islands of Providencia and Santa Catalina [...]. The foregoing, in order that the reconstruction of their territory be the result of a participatory, informed and good faith intercultural dialogue.”¹⁷³

c. *Right to Access to Justice*

International human rights law has developed standards on the right of access to judicial and other remedies that serve as suitable and effective grievance mechanisms for victims of human rights violations.¹⁷⁴ This is encompassed by the rights to a fair trial and to judicial protection of the ACHR.¹⁷⁵ The IACHR has elaborated on this in the climate context and reached the conclusion that:

“States should adopt immediate measures to guarantee access to justice in environmental and climate matters of a judicial or administrative nature in accordance with the guarantees of due process, eliminate all barriers to its exercise and ensure free technical and legal assistance. This also includes the obligation to develop remediation measures to different relevant actors and especially to people directly affected by the climate crisis.”¹⁷⁶

As the IACHR points out, embedded within such duties is the guarantee to an effective remedy. Along these lines, the UN Special Rapporteur on the right to a healthy environment has held that:

“Every State should ensure that its legal system provides for effective remedies for all human rights violations, including those arising from climate-related actions. For example, States should provide for remedies, which might include monetary compensation and injunctive relief, for violations of the right of free expression in connection with climate-related projects. At the international level, States should work together to support the establishment and implementation of procedures to provide such remedies, particularly with respect to measures supported by international finance mechanisms.”¹⁷⁷

The domestic courts of the Inter-American system hold states to this standard. In *Herrera Carrion*, the Supreme Court of Ecuador justified judicial action pursuant to the IACHR’s right to judicial protection by emphasizing that “in accordance with constitutional principles, and those manifested in international treaties to which Ecuador is a party, the action for protection was established as a simple and quick recourse for protection of rights.”¹⁷⁸ The court proceeded to hold that the state violated the right to health and a healthy environment by promoting polluting activities and refusing to use clean and energy-efficient technologies. It ordered the state to update its plan for the gradual and progressive elimination of gas flares.¹⁷⁹

The right to access to justice thus reinforces the protection of *outcome*, since a remedy in this context may go beyond monetary compensation and entail adopting measures that are in practice consistent with averting dangerous scenarios and risks of climate change. What states actually achieve on this front – not simply what they promise – therefore matters when assessing compliance with human rights obligations. It is important to

¹⁷³ *Josefina Huffington Archbold v. Office of the President and Others*, *supra* note **Error! Bookmark not defined.**, at 90, Seventh Court Order.

¹⁷⁴ U.N. GENERAL ASSEMBLY, BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO A REMEDY AND REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW AND SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW, U.N. Doc. A/RES/60/147 (2005).

¹⁷⁵ ACHR, arts. 8, 25.

¹⁷⁶ RESOLUTION 3/21, at 12-20. *Atrato River Decision T-622/16*, *supra* note **Error! Bookmark not defined.**

¹⁷⁷ U.N. DOC. A/HRC/31/52, *supra* note 63, ¶ 63.

¹⁷⁸ *Herrera Carrion v. Ministry of the Environment*, *supra* note 119, at 50.

¹⁷⁹ *Id.* at 67.

note, however, that finding a human rights violation should not limit action on climate change, as addressing climate change and its ensuing harms can be achieved in a rights-protecting manner.¹⁸⁰

iv. Courts Find Heightened Human Rights Obligations towards Peoples in Vulnerable Situations and Violations thereof in Applying an Integrated Regime Approach

Climate change is not impartial; it does not affect the substantive and procedural rights of all equally. Indeed, climate change is a threat multiplier, disproportionately impacting countries and those segments of the population that are already at a disadvantage.¹⁸¹ Those groups that are already marginalized and living in vulnerable situations, as a result of pre-existing inequalities and inequities, are even more affected and have less favorable conditions or reduced capacities to mitigate and adapt to the consequences of climate change. Factors such as geography, poverty, gender, age, ethnicity or race, nationality of birth or social status, and disability may further aggravate those consequences.¹⁸² And multiple forms of discrimination, including racism, sexism and classism may combine, overlap, or intersect, especially in the experiences of people in vulnerable situations.¹⁸³ Moreover, vulnerability varies over space and time due to multiple factors. Factors such as new climate extremes and alterations in disease patterns, coupled with states' varying success in the implementing mitigation and adaptation measures, means that the vulnerability of a community or group is ever-changing.¹⁸⁴

The reality of such groups therefore amplifies the ambition and urgency with which states must act in order to prevent climate change from gravely infringing upon the rights of such groups. The international climate regime recognizes this and has produced science-based metrics to guide the implementation of mitigation and adaptation action that is attuned to the needs of groups in vulnerable situations.¹⁸⁵ In its work, the IPCC has unequivocally summarized that “people who are socially, economically, culturally, politically, institutionally, or otherwise marginalized are especially vulnerable to climate change and also to some adaptation and mitigation responses.”¹⁸⁶ Similarly, the exposure of groups in vulnerable situations, communities, and ecosystems to climate hazards are central in the decisions of the UNFCCC and provisions of the Paris Agreement.¹⁸⁷

¹⁸⁰ U.N. DOC. A/HRC/31/52, *supra* note 63, ¶ 64. This is reflected in the Paris Agreement and the debate on financial compensation for losses and damages incurred by vulnerable countries and communities due to global warming.

¹⁸¹ IPCC, CLIMATE CHANGE 2022: IMPACTS, ADAPTATION AND VULNERABILITY: IPCC WORKING GROUP II CONTRIBUTION TO THE SIXTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (2022), https://report.ipcc.ch/ar6/wg2/IPCC_AR6_WGII_FullReport.pdf.

¹⁸² ECLAC, *supra* note 32, at 11.

¹⁸³ U.N. OHCHR, THE IMPACTS OF CLIMATE CHANGE ON THE HUMAN RIGHTS OF PEOPLE IN VULNERABLE SITUATIONS, U.N. Doc. A/HRC/50/57, ¶ 4 (2022).

¹⁸⁴ UNFCCC, CONSIDERATIONS REGARDING VULNERABLE GROUPS, COMMUNITIES AND ECOSYSTEMS IN THE CONTEXT OF THE NATIONAL ADAPTATION PLANS, at 19 (2018), <https://unfccc.int/sites/default/files/resource/Considerations%20regarding%20vulnerable.pdf>.

¹⁸⁵ *See generally* IPCC, CLIMATE CHANGE 2022: IMPACTS, ADAPTATION AND VULNERABILITY (2022), <https://www.ipcc.ch/report/sixth-assessment-report-working-group-ii/>. IPCC, CLIMATE CHANGE 2022: MITIGATION OF CLIMATE CHANGE (2022), <https://www.ipcc.ch/report/sixth-assessment-report-working-group-3/>. IPCC, CLIMATE CHANGE 2021: THE PHYSICAL SCIENCE BASIS (2022), <https://www.ipcc.ch/report/sixth-assessment-report-working-group-i/>. Such metrics are indeed used by groups like the Climate Vulnerable Forum to measure state action in relation to vulnerability. *See, e.g.*, CLIMATE VULNERABLE FORUM, MAPPING REPORT ON CLIMATE CHANGE LAWS AND POLICIES IN CLIMATE VULNERABLE COUNTRIES (2022), <https://thecvf.org/resources/publications/mapping-report-on-climate-change-laws-and-policies-in-climate-vulnerable-countries> and CLIMATE VULNERABLE FORUM, PARIS TRAFFIC LIGHT ASSESSMENT REPORT, at 4 (2022) https://thecvf.org/wp-content/uploads/2022/11/CVF_PTLAReport_2022.pdf.

¹⁸⁶ IPCC, CLIMATE CHANGE 2014: IMPACT, ADAPTATIONS, AND VULNERABILITY, at 6 (2014), https://www.ipcc.ch/site/assets/uploads/2018/02/ar5_wgII_spm_en.pdf.

¹⁸⁷ *See* the different decisions of the Conference of the Parties such as UNFCCC, *Decision 1/CP.16* (2010) ¶ 12; UNFCCC, *Decision 6/CP.16* (2010) ¶ 2(c); and UNFCCC, *Decision 5/CP.17* (2011) ¶ 3. The Paris Agreement recognizes the importance of respecting the rights of the most vulnerable. Its preamble specifically refers to the rights of indigenous peoples, local

An integrated regime reading quickly reveals that, combined with such metrics, the human rights system provides the longstanding binding norms that courts can use to hold states accountable to appropriate ambition and urgency of climate action related to groups in vulnerable situations.¹⁸⁸ First, this is because the human rights system demands that the obligation to respect, protect, fulfill human rights be complied with in accordance with non-discrimination and equality. Second, the situation of groups who are particularly vulnerable to climate change triggers heightened state human rights obligations, with additional norms and principles to guide action.¹⁸⁹

a. Principles of Nondiscrimination and Equality

Climate change is “inherently discriminatory.”¹⁹⁰ It imposes the greatest impacts on already vulnerable and marginalized segments of society, who typically have contributed the least to the greenhouse gas emissions driving climate change. Indeed, a joint report issued in 2015 by five UN Special Rapporteurs observed that there is “widespread acknowledgment that climate change will have a particularly dramatic impact on the human rights of the poorest. No one will suffer more.”¹⁹¹ The Special Rapporteur on extreme poverty and human rights developed this further, stressing that business as usual on climate change could create a situation of “climate apartheid,” where “the wealthy pay to escape overheating, hunger and conflict, while the rest of the world is left to suffer.”¹⁹²

Nondiscrimination and equality are core principles of international and Inter-American human rights law.¹⁹³ Indeed, prohibitions against discrimination “run throughout human rights instruments.”¹⁹⁴ In the context of

communities, migrants, children, persons with disabilities and people in vulnerable situations, as well as gender equality, in calling on the parties to respect, promote and consider their respective obligations on human rights when taking action to address climate change. Article 7 of the Agreement emphasizes that, in addition to being country-driven, participatory and fully transparent, adaptation action should be gender-responsive and take into consideration vulnerable groups, communities and ecosystems.

¹⁸⁸ ECLAC, *supra* note 32, at 56.

¹⁸⁹ U.N. DOC. A/HRC/25/53, *supra* note 84, ¶ 69-78. U.N. DOC. A/HRC/31/52, *supra* note 63, ¶ 81.

¹⁹⁰ U.N. DOC. A/HRC/31/52, *supra* note 63, ¶ 81.

¹⁹¹ OHCHR, THE EFFECTS OF CLIMATE CHANGE ON THE FULL ENJOYMENT OF HUMAN RIGHTS, ¶ 63 (2015) https://unfccc.int/files/science/workstreams/the_2013-2015_review/application/pdf/cvf_submission_annex_1_humanrights.pdf.

¹⁹² U.N. SPECIAL RAPPORTEUR ON EXTREME POVERTY AND HUMAN RIGHTS, CLIMATE CHANGE AND POVERTY, U.N. DOC. A/HRC/41/39, ¶ 51 (2019).

¹⁹³ The right to equality is foreseen under the American Declaration of the Rights and Duties of Man (article 2 and article 12), the American Convention on Human Rights (article 8, article 17, article 23, and article 24), and the San Salvador Protocol (article 7 and article 13). The right to non-discrimination is foreseen under American Declaration of the Rights and Duties of Man (article 2), the American Convention on Human Rights (article 1 (1), article 17 (2), article 24, and article 27), and the San Salvador Protocol (article 3). Other sources for the right to equality and the right to non-discrimination within the Inter-American human rights system include: the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, the Inter-American Convention Against Racism, Racial Discrimination, and Related Forms of Intolerance, and the Inter-American Convention on Protecting the Human Rights of Older Persons. At the international level, Article 2(2) of the ICESCR provides, for example, that “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Similarly, article 2(1) of the ICCPR states that “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Many treaties set out more specific protections with respect to those in a particular status, including women, children, racial minorities, persons with disabilities, and indigenous peoples.

¹⁹⁴ U.N. OHCHR, *supra* note 191, ¶ 54.

the climate emergency, as in other situations that pose a serious risk to rights, “human rights norms place special emphasis on non-discrimination and the protection of the most vulnerable.”¹⁹⁵ Climate change engenders disparate impacts that contravene these fundamental human rights principles. States, pursuant to their human rights obligations, are therefore “legally bound to address such vulnerabilities in accordance with the principle of equality and non-discrimination.”¹⁹⁶ For those states that are part of the Inter-American system of human rights, failing to do so would constitute a violation of their obligations under the ACHR and San Salvador Protocol, among other treaties.

In practice, the application of the human rights principles of non-discrimination and equality alters what can be considered sufficiently ambitious and urgent climate action. More specifically, states must avoid any distinction, exclusion, or restriction of groups in vulnerable situations in the design or implementation of climate change action that undermines the recognition, enjoyment, or exercise of their substantive and procedural rights and fundamental freedoms. For this, special attention to the needs of such groups must be given when designing, implementing, and improving climate action. States must also ensure that their efforts to address climate change do not exacerbate inequalities within or between states¹⁹⁷ and further “must cooperate to facilitate the protection of communities in vulnerable situations wherever they are located.”¹⁹⁸

Procedurally, states ought to “assess the effects of climate change, and of actions taken to mitigate and to adapt to it, on communities in vulnerable situations. They should ensure that those who are in vulnerable situations and who are marginalized are fully informed of the effects of climate actions, that they are able to take part in decision-making processes, that their concerns are taken into account and that they have access to remedies for violations of their rights.”¹⁹⁹ To make this possible, states must further “develop and monitor relevant human rights indicators in the context of climate change, keeping disaggregated data to track the varied impacts of climate change across demographic groups and enabling effective, targeted and human rights compliant climate action.”²⁰⁰

b. Heightened Obligation to Adapt

Consideration of the most vulnerable alters the definition of ambition and urgency with which states must comport in other ways as well. First, the threat that climate change poses to the human rights of vulnerable groups affects the *nature* of state climate action that may qualify as sufficiently ambitious, placing additional weight on adaptation.

The Paris Agreement precisely defines adaptation as “enhancing adaptive capacity, strengthening *resilience* and reducing *vulnerability* to climate change.”²⁰¹ While states owe all within their jurisdiction a duty to adapt to climate change,²⁰² adaptation becomes especially relevant as a way to prevent, protect, and fulfill the human rights obligations owed to those who are most vulnerable to the effects of climate change. The OHRCHR encapsulated this when it said, “states have a human rights obligation to prevent the foreseeable adverse effects of climate change and ensure that those affected by it, particularly those in vulnerable situations, have access to effective remedies and means of adaptation to enjoy lives of human dignity.”²⁰³

¹⁹⁵ *Id.*

¹⁹⁶ U.N. OHCHR, REPORT OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS ON THE RELATIONSHIP BETWEEN CLIMATE CHANGE AND HUMAN RIGHTS, U.N. DOC. A/HRC/10/61, ¶ 42 (2009).

¹⁹⁷ See Key Message 9 and 10 at OHCHR, *supra* note 77, at 5.

¹⁹⁸ U.N. DOC. A/HRC/31/52, *supra* note 63, ¶ 83.

¹⁹⁹ *Id.*

²⁰⁰ See Key Message 10 at OHCHR, *supra* note 77, at 5.

²⁰¹ PARIS AGREEMENT art. 7.1.

²⁰² U.N. DOC. A/HRC/31/52, *supra* note 63, ¶ 62.

²⁰³ OHCHR, OHCHR AND CLIMATE CHANGE (2019) <https://www.ohchr.org/en/climate-change>.

This is because “even if mitigation targets are met, vulnerable communities may still suffer harm as a result of climate change. Indeed, many are already experiencing adverse effects.”²⁰⁴ And given the current state of mitigation commitments and implementation, the average global temperature is likely to exceed 1.5°C, exacerbating the effects of climate change and making effective adaptation all the more important. Indeed, the HRC has recognized that, to protect those particularly vulnerable to climate change, “dramatically scaled-up adaptation investments will be needed to keep pace with accelerating impacts.”²⁰⁵ In other words, states “have obligations at the national level to take adaptation actions to protect their vulnerable populations from the effects of climate change, and at the international level to cooperate in order to facilitate the protection of vulnerable communities wherever they are located.”²⁰⁶ A dearth of adaptation measures likely entails a violation of the fundamental human rights of a state’s vulnerable citizens.

This duty is especially salient for developing states, as the OHCHR once again put it:

“States, especially developing states where most vulnerable populations and geographic areas are located, must build adaptive capacities in vulnerable communities, including by recognizing the manner in which factors such as discrimination, and disparities in education and health affect climate vulnerability, and by devoting adequate resources to the realization of the economic, social and cultural rights of all persons, particularly those facing the greatest risks.”²⁰⁷

Moreover, the fact that the effects of climate change are a present reality, potentially entailing current human rights violations, places a temporal dimension on the duty to adapt – it is urgent. Indeed, with respect to adaptation, the Paris Agreement recognizes “the *urgent* and *immediate* needs of those developing country Parties that are *particularly vulnerable* to the adverse effects of climate change.”²⁰⁸ In addition, as explained above, adapting now would also prevent such measures from becoming overly burdensome – especially relevant for developing states – or impossible to implement in the future, therefore averting more severe human rights violations.

c. Heightened Duties to Particular Groups in Vulnerable Situations

As mentioned above, people who are already socially, economically, culturally, politically, institutionally, or otherwise marginalized are especially vulnerable to climate change. Indeed, those groups traditionally recognized by human right systems as relatively vulnerable to human rights violations and consequently requiring special protection are also those who are most vulnerable to climate change.²⁰⁹ The characterization and formal adoption of these groups by human rights systems fosters more ambitious state climate action by providing easily identifiable subjects with well-established special obligations attached to them.

Along these lines, through its treaties, jurisprudence, and pronouncements, the Inter-American system of human rights has developed a robust body of special obligations owed to vulnerable groups. In regard to climate change, the IACHR has further identified the following as vulnerable groups:²¹⁰

- A. Indigenous peoples;
- B. Afro-descendants;
- C. Tribal and peasant communities;
- D. Women;

²⁰⁴ U.N. DOC. A/HRC/31/52, *supra* note 63, ¶ 82.

²⁰⁵ U.N. DOC. A/HRC/50/57, *supra* note 183, ¶ 6.

²⁰⁶ U.N. DOC. A/HRC/31/52, *supra* note 63, ¶ 83.

²⁰⁷ Key Message 2 at OHCHR, *supra* note 77, at 2.

²⁰⁸ PARIS AGREEMENT art. 7.2.

²⁰⁹ U.N. DOC. A/HRC/50/57, *supra* note 183, ¶ 4.

²¹⁰ RESOLUTION 3/21, at 6, ¶ 16.

- E. Children;
- F. Older adults;
- G. Human rights defenders;
- H. Migrants; and
- I. Persons with disabilities.

Importantly, because these identities are not mutually exclusive, the detrimental effects of climate change are “felt most acutely by populations in developing countries and segments of the population that [are] affected by intersecting forms of discrimination, such as women, ethnic minorities, indigenous peoples, children and older persons.”²¹¹

In taking up the topic of groups in vulnerable situations in the climate context, the IACHR has made clear that “states have a *reinforced obligation* to guarantee and protect the rights of individuals or groups who are in *situations of vulnerability or who are particularly vulnerable* to the damage and adverse impacts of *climate change* because they have historically and systematically borne the greatest burden of structural inequality.”²¹² Growing jurisprudence focusing on these groups in the context climate change and environmental issues more broadly have shed light on the contours of state climate action with which states must comport.

1. *Indigenous Peoples*

The Inter-American system of human rights has been a pioneer in the establishment of special duties to protect Indigenous peoples.²¹³ More specifically, IACtHR jurisprudence has widely recognized the fact that Indigenous

²¹¹ U.N. OHCHR, PANEL DISCUSSION ON PROMOTING AND PROTECTING THE RIGHTS OF PERSONS WITH DISABILITIES IN THE CONTEXT OF CLIMATE CHANGE, U.N. DOC. A/HRC/46/46, ¶ 23 (2021). For specific examples of intersecting discrimination and resulting increased vulnerability to climate change, see U.N. HUMAN RIGHTS COUNCIL, REPORT OF THE WORKING GROUP ON THE UNIVERSAL PERIODIC REVIEW — SURINAME, U.N. DOC. A/HRC/49/6, ¶ 29 (2021); U.N. DOC. A/HRC/46/46, *supra* note 211, ¶ 19; U.N. DOC. A/HRC/50/57, *supra* note 183, ¶¶ 10, 14; U.N. OHCHR, PANEL DISCUSSION ON THE ADVERSE IMPACT OF CLIMATE CHANGE ON THE FULL AND EFFECTIVE ENJOYMENT OF HUMAN RIGHTS BY PEOPLE IN VULNERABLE SITUATIONS, U.N. DOC. A/HRC/52/48, ¶ 7 (2022); U.N. OHCHR, SUMMARY OF THE PANEL DISCUSSION ON THE ADVERSE IMPACT OF CLIMATE CHANGE ON STATES’ EFFORTS TO REALIZE THE RIGHTS OF THE CHILD AND RELATED POLICIES, LESSONS LEARNED AND GOOD PRACTICES, U.N. DOC. A/HRC/35/14, ¶ 22 (2017); and U.N. OHCHR, ADDRESSING HUMAN RIGHTS PROTECTION GAPS IN THE CONTEXT OF MIGRATION AND DISPLACEMENT OF PERSONS ACROSS INTERNATIONAL BORDERS RESULTING FROM THE ADVERSE EFFECTS OF CLIMATE CHANGE AND SUPPORTING THE ADAPTATION AND MITIGATION PLANS OF DEVELOPING COUNTRIES TO BRIDGE THE PROTECTION GAPS, U.N. DOC. A/HRC/38/21, ¶ 20 (2018).

²¹² RESOLUTION 3/21, at 15, ¶ 16.

²¹³ Primary sources of law include the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the ILO Convention no. 169, and the American Declaration on the Rights of Indigenous Peoples. The IACHR and the IACtHR have indicated the key State duties regarding indigenous rights, namely: (i) the duty to protect, respect and fulfill indigenous peoples’ rights, with special emphasis on their right to equal protection, non-discrimination, self-determination and their right to exercise their own model of development, as well as their economic, social, cultural and environmental rights; (ii) the duty to prevent and eradicate all forms of violence and discrimination against indigenous peoples, including discrimination based on ethnicity, racism, racial discrimination, xenophobia or related intolerance; (iii) the duty to ensure the recognition of the juridical personality of indigenous people, and respecting their forms of organization; (iv) the duty to refrain from carrying out, adopting, or supporting any policy of assimilation of indigenous peoples or of destruction of their cultures; (v) the duty to promote the right to exercise community property, and ensure land demarcation and titling to indigenous peoples; (vi) the duty to guarantee prompt access to justice and due diligence throughout investigations of violations of indigenous peoples’ rights; (vii) the duty to provide redress through effective mechanisms, including - but not limited to - restitution; (viii) the duty to ensure the right to participation of indigenous peoples’ in the State’s formulation and implementation of public policies; (ix) the duty to effectively guarantee and implement indigenous peoples’ prior, free, and informed consent on any State or third-party intervention/activities that will impact their communities way of life; and (x) the duty to protect the indigenous peoples’ right to promote and develop all their systems of communication, including the use of their own language.

people are particularly vulnerable to environmental threats because of their close relationship with and dependence on natural resources, as well as the fact that they often live in marginal lands and fragile ecosystems which are particularly sensitive to alterations in the physical environment.²¹⁴ In *Indigenous Communities of the Lhaka Honhat v. Argentina*, for example, the IACtHR stated that “environmental problems [...] may be felt with greater intensity by certain groups in vulnerable situations; these include indigenous peoples” and proceeded to hold that the state’s actions violated the community’s right to a healthy environment.²¹⁵

Along these lines, in the context of climate change, international human rights organs and organs of the Inter-American system of human rights have more recently stressed that “extreme weather events, drought, melting ice, sea level rise, ocean warming and acidification and degradation of land and ecosystems are seriously affecting indigenous territories, jeopardizing the food security, traditional livelihoods, cultural practices and self-determination of indigenous peoples.”²¹⁶ Therefore, such organs have concluded that states have an obligation to take action to avert climate change impacts which threaten the cultural and social identity of Indigenous peoples.²¹⁷

The IACHR has further pointed out that especially relevant duties include: the duty to (i) adopt measures to ensure that the climate crisis does not put at risk the protection of the human rights of Indigenous peoples; and (ii) guarantee effective participation and free, prior, and informed consultation of Indigenous peoples.²¹⁸ These duties are intertwined with other Indigenous rights that have long been developed by the IACtHR, such as the right to exercise of community property and the right to ensure land demarcation and titling to Indigenous peoples. Protecting such rights would move states closer to sufficiently ambitious climate action. For example, the recognition of Indigenous peoples’ right to self-determination can contribute to the reduction of vulnerabilities and increase their resilience and adaptive capacities, while enhancing the conservation of ecosystems.

Importantly, states must protect Indigenous peoples from the effects of climate change not only given the special duties owed to them, but also because protection of Indigenous peoples facilitates the protection of the rights of all peoples. For example, the IPCC observes that “incorporating indigenous knowledge into climate change policies can lead to the development of effective adaptation strategies that are cost-effective, participatory and sustainable.”²¹⁹ Similarly, the UNGA Secretary General has recognized that “indigenous peoples play an essential role in the conservation and sustainable management of biodiversity, ecosystems and natural resources that are key to keeping the 1.5°C goal within reach and enhancing resilience from climate impacts.”²²⁰ In this way, the protection of Indigenous peoples from the adverse impacts of climate change become central to achieving sufficiently ambitious climate action that protects everyone.

2. Afro-descendants

With numerous parallels to Indigenous peoples, afro-descendants are especially vulnerable to climate change due to their economic, political, and social marginalization, which limits their access to the resources needed to adapt to and ameliorate the negative impacts of climate change. In addition, the areas inhabited by afro-

²¹⁴ This was the understanding of the IACtHR on several rulings, including *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (IACtHR 2001); *Yatama v. Nicaragua* (IACtHR 2005); *Yakye Axa Indigenous Community v. Paraguay*, *supra* note 98; *Sawhoyamaya Indigenous Community v. Paraguay*, *supra* note 98; *Saramaka People v. Suriname*, *supra* note 98; *Xákmok Kásek Indigenous Community v. Paraguay* (IACtHR 2010); and *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina* (IACtHR 2020). *See also* U.N. DOC. A/HRC/10/61, *supra* note 196, ¶ 51.

²¹⁵ *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, *supra* note 214, ¶¶ 207, 209, 247.

²¹⁶ U.N. DOC. A/HRC/50/57, *supra* note 183, ¶ 8. *See also* U.N. DOC. A/HRC/52/48, *supra* note 211, ¶ 6.

²¹⁷ U.N. DOC. A/HRC/10/61, *supra* note 196, ¶ 41.

²¹⁸ RESOLUTION 3/21, at 17.

²¹⁹ IPCC, CLIMATE CHANGE 2007: IMPACT, ADAPTATIONS, AND VULNERABILITY, at 865 (2007), <https://www.ipcc.ch/report/ar4/wg2/>. *See also* U.N. DOC. A/HRC/52/48, *supra* note 211, ¶ 18.

²²⁰ U.N. DOC. A/HRC/50/57, *supra* note 183, ¶ 9. *See also* U.N. DOC. A/HRC/52/48, *supra* note 211, ¶¶ 8, 25.

descendants are known to be designated “sacrifice zones,” where activities that pollute the environment and exacerbate the climate crisis are carried out with little regard for the human rights of this group. The UN Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has explained that racial justice is intrinsically linked to environmental justice. It is not a coincidence – but rather a product of colonialism and structural racism – that racial sacrifice zones, i.e. areas where residents suffer from physical and mental health consequences and attendant human rights violations on account of living in pollution hotspots and heavily contaminated areas, predominantly affect non-white communities (especially afro-descendant and Indigenous communities).²²¹

The sacrifice of their environment coupled with substandard infrastructure and conditions also disproportionately exposes afro-descendants to climate-induced disasters such as hurricanes, floods, and extreme heat.²²² And, in turn, discrimination is often deeply entrenched in post-disaster responses.²²³

In the Inter-American system, afro-descendants are subject to a robust body of protections.²²⁴ In relation to climate, the IACHR has said that states must “adopt measures to ensure that the climate crisis does not affect or jeopardize the effective protection of human rights of [...] Afro-descendants.”²²⁵ The Inter-American system and various human right bodies have further emphasized the importance of guaranteeing afro-descendants’ procedural rights in the context of climate, pointing out that “the protection of the right to effective judicial protection and judicial guarantees of [...] Afro-descendants must include measures to repair material and immaterial damage, measures of satisfaction, guarantees of non-repetition, implementation of resources for the recovery of collective memory and preservation of culture.”²²⁶ This is partly due to the instrumental role that afro-descendants, similar to Indigenous peoples, have in documenting, protesting, and acting to address the adverse impacts of climate change and environmental degradation.²²⁷

These issues were at play in *Josefina Huffington Archbold v. Office of the President and others*, where the Supreme Court of Colombia understood that the state violated an afro-descendant community’s fundamental rights to housing; drinking water; basic sanitation; health; access to public information; cultural identity; and free, prior and informed consent due to their exclusion from the planning and execution of post-disaster recovery and adaptation plans.²²⁸ As this case expanded upon, effectively implementing states’ human rights obligations to

²²¹ U.N. SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE, ECOLOGICAL CRISIS, CLIMATE JUSTICE AND RACIAL JUSTICE, U.N. DOC. A/77/549, ¶ 19 (2022).

²²² U.N. DOC. A/HRC/50/57, *supra* note 183, ¶ 11.

²²³ *See generally* U.N. DOC. A/HRC/50/57, *supra* note 183.

²²⁴ The Inter-American human rights system, relying primarily on the American Convention on Human Rights, the San Salvador Protocol, the Inter-American Convention against Racial Discrimination and Related Forms of Intolerance, the Social Charter of the Americas, the Inter-American Democratic Charter, and the ILO Convention no. 169, includes the following as State Duties towards Afro-descendants: (i) the duty to protect, respect and fulfill African descendants peoples’ rights, with special emphasis on the duty to prevent, combat, and punish racial discrimination and to ensure the communities social, economic, cultural and environmental rights; (ii) the duty to adopt affirmative actions, to bolster and further protect afro-descendants peoples’ rights; (iii) the duty to respect and guarantee the right to intercultural education for persons of African descent, with an intersectional approach; (iv) the duty to implement intercultural policies of access to States’ infrastructure, including - but not limited to - to public health and disease prevention for persons with African descent, as well as access to decent and quality housing, and conditions of work, equality and non-discrimination; (v) the duty to protect, preserve and promote the cultural expressions and knowledge of persons of African descent; (vi) the duty to respect territorial rights and the right to collective property; and (vii) the duty to ensure the right to prompt access to justice, guaranteeing due diligence throughout the investigations.

²²⁵ RESOLUTION 3/21, at 17, ¶ 23.

²²⁶ RESOLUTION 3/21, at 17.

²²⁷ U.N. DOC. A/HRC/50/57, *supra* note 183, ¶¶ 22, 33-35.

²²⁸ *Josefina Huffington Archbold v. Office of the President and Others*, *supra* note **Error! Bookmark not defined.**, (Supreme Court of Colombia 2022) ¶¶ 4.3, 4.4.

afro-descendant communities would position states further along in the fight against racial discrimination and in the development of more appropriately ambitious and urgent climate actions.

3. *Tribal and peasant communities*

As their way of living shares similarities with Indigenous and afro-descendant communities, tribal and peasant communities are also severely affected by climate change. Living predominantly in rural areas and often facing insecure land tenure, climate change puts at particular risk their rights to food security and income and is a “direct threat to their enjoyment of other human rights, including the rights to health and life”²²⁹ – all of which are rights protected under the Inter-American system.²³⁰

In the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas, the UNGA expressed concern at the burden caused by environmental degradation and climate change on peasants and further stated that:

“[S]tates shall comply with their respective international obligations to combat climate change. Peasants and other people working in rural areas have the right to contribute to the design and implementation of national and local climate change adaptation and mitigation policies, including through the use of practices and traditional knowledge.”²³¹

Similarly, the IACHR has stressed that it is crucial for states to “respect and protect the rights of peasants and other persons working in rural areas,”²³² with a particular focus on the threat that climate change poses to food and land. The Commission elaborated that states must “protect their right to adequate food, the free use of seeds and traditional forms of food production, including agroecology, housing and work that are threatened by weather phenomena or significant temperature variations”²³³ as well as “ensure the availability of economic and financial support such as subsidies, loans, and grants when they lose their crops or houses due to floods or droughts, as well as all technical and legal assistance to access them.”²³⁴

And again, similar to Indigenous and afro-descendant communities, the UNHCHR has indicated that peasants are key contributors to “the design and implementation of national and local climate change adaptation and mitigation policies,” considering their ties to land and traditional knowledge.²³⁵ It further recognized as equally important the state duty to provide effective reparation mechanisms, including for climate-related human rights violations.²³⁶

²²⁹ U.N. DOC. A/HRC/50/57, *supra* note 183, ¶ 10.

²³⁰ Commonly, the Inter-American Human Rights System understands that the same state duties applied to the protection of indigenous peoples are also applicable to peasants and tribal communities. *See, e.g.*, INDIGENOUS AND TRIBAL PEOPLES’ RIGHTS OVER THEIR ANCESTRAL LANDS AND NATURAL RESOURCES, IACHR (2009), <https://www.oas.org/en/iachr/indigenous/docs/pdf/ancestrallands.pdf>.

²³¹ U.N. HUMAN RIGHTS COUNCIL, UNITED NATIONS DECLARATION ON THE RIGHTS OF PEASANTS AND OTHER PEOPLE WORKING IN RURAL AREAS, U.N. DOC. A/HRC/RES/39/12, art. 18.3 (2018).

²³² RESOLUTION 3/21, at 17.

²³³ *Id.*

²³⁴ *Id.*

²³⁵ U.N. DOC. A/HRC/50/57, *supra* note 183, ¶ 21.

²³⁶ *Id.* U.N. DOC. A/HRC/52/48, *supra* note 211, ¶ 37.

4. Women

The climate crisis is also not gender neutral. In line with the Inter-American system's advancement and protection of women's rights,²³⁷ and the OHCHR's remarks on the issue,²³⁸ the IACtHR has already underscored the disproportionate impacts of climate change on women's lives. Drawing upon international human rights bodies, it has emphasized:

“Women are especially exposed to climate change-related risks due to existing gender discrimination, inequality and inhibiting gender roles. [...] women, particularly elderly women and girls, are affected more severely and are more at risk during all phases of weather-related disasters [...]. The death rate of women is markedly higher than that of men during natural disasters (often linked to reasons such as: women are more likely to be looking after children, to be wearing clothes which inhibit movement and are less likely to be able to swim). [...] Vulnerability is exacerbated by factors such as unequal rights to property, exclusion from decision-making and difficulties in accessing information and financial services.”²³⁹

In response, the UNGA has generally held that “international human rights standards and principles underline the need to adequately assess and address the gender-differentiated impacts of climate change.”²⁴⁰ Building on this, the IACHR has more recently stated that states must pay special attention to women's rights and must “adopt differentiated measures to address all women in their various roles, to prevent and eradicate all forms of violence when exposed to natural disasters, such as floods, storms, avalanches, and landslides, caused by climate change”.²⁴¹ More specifically, the Commission established that states also must “guarantee the right to education and access to technological means [to women] to increase their resilience and adaptation to climate change”. The Commission further tied the capacity building of women and girls to their effective participation in decision-making on policies and measures to combat climate change.²⁴² This mirrors the recommendations of the Committee on the Elimination of Discrimination Against Women (CEDAW) and other human rights bodies, which have stressed the duty of states to adopt participatory and gender-responsive policies with regard to disaster risk reduction and post-disaster recovery needs, as well as in mitigation and adaptation plans and measures.²⁴³

²³⁷ Primarily relying on American Convention on Human Rights, the San Salvador Protocol and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the IACHR and IACtHR include among the key State Duties to protect women's rights the following: (i) the duty to prevent, punish and eradicate all forms of violence against women; (ii) the duty to ensure prompt access to justice and due diligence throughout investigations; (iii) the duty to adopt public policies and legal measures; (iv) the duty to establish protective mechanisms for women; (v) the duty to establish educational programs to promote awareness and observance of the rights of women; and (vi) the duty to ensure spaces for the full and active participation and representation of women in the formulation, planning and execution of initiatives aimed at the protection of their rights.

²³⁸ See generally U.N. OHCHR, SUMMARY OF THE PANEL DISCUSSION ON WOMEN'S RIGHTS AND CLIMATE CHANGE: CLIMATE ACTION, GOOD PRACTICES AND LESSONS LEARNED, U.N. DOC. A/HRC/42/26 (2019).

²³⁹ *Advisory Opinion OC-23/17*, *supra* note 68, ¶ 67 (citing U.N. DOC. A/HRC/10/61, *supra* note 196, ¶ 45).

²⁴⁰ U.N. DOC. A/HRC/10/61, *supra* note 196, ¶ 45.

²⁴¹ RESOLUTION 3/21, at 16.

²⁴² *Id.*

²⁴³ See U.N. DOC. A/HRC/42/26, *supra* note 238, ¶ 30 and U.N. COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, GENERAL RECOMMENDATION NO. 37 ON GENDER-RELATED DIMENSIONS OF DISASTER RISK REDUCTION IN A CHANGING CLIMATE, U.N. DOC. CEDAW/C/GC/37, sec. V (2018). See also U.N. DOC. A/HRC/10/61, *supra* note 196, ¶ 47; U.N. DOC. A/HRC/50/57, *supra* note 183, ¶ 13; and U.N. DOC. A/HRC/35/14, *supra* note 211, ¶¶ 5, 17, 32.

5. Children

The burdens of climate change disproportionately fall on the shoulders of children in the developing world, putting at risk children’s identities, relationship with the environment, and livelihoods.²⁴⁴ Climate-induced extreme weather events, for example, lead to an increase in vector-borne diseases, malnutrition, child mortality and morbidity, heat stress, and displacement, among other impacts.²⁴⁵ More generally, climate change affects the panoply of children’s rights – including education, identity, housing, water, and sanitation –²⁴⁶ of over one billion children around the globe and particularly threatens the rights to life and health.²⁴⁷ The United Nations Committee on the Rights of the Child (CRC) has specifically pointed out that “environmental interventions should, inter alia, address climate change, as this is one of the biggest threats to children’s health and exacerbates health disparities. States should, therefore, put children’s health concerns at the center of their climate change adaptation and mitigation strategies.”²⁴⁸

In analyzing climate change, the CRC has therefore found that “[d]ue to the particular impact on children, and the recognition by States parties to the Convention [on the Rights of the Child] that children are entitled to special safeguards, including appropriate legal protection states have heightened obligations to protect children from foreseeable harm.”²⁴⁹ Similarly, building upon the set of special duties²⁵⁰ and corresponding jurisprudence²⁵¹ that the IACtHR has developed throughout the decades, the IACHR considered vital that children exercise their right “to live on a planet equal to or in better conditions than their ancestors” and has elaborated on the duty of states to promote special measures, in accordance with the principle of the best interests of the child, in guaranteeing their human rights.²⁵²

With this in mind, it is essential for children to be at the center of mitigation and adaptation strategies.²⁵³ As with all other vulnerable groups that face procedural barriers, this entails providing space for children to express

²⁴⁴ U.N. DOC. A/HRC/10/61, *supra* note 196, ¶ 48. U.N. DOC. A/HRC/35/14, *supra* note 211, ¶ 6.

²⁴⁵ U.N. DOC. A/HRC/35/14, *supra* note 211, ¶¶ 6, 48.

²⁴⁶ RESOLUTION 3/21, ¶ 21. U.N. DOC. A/HRC/50/57, *supra* note 183, ¶ 13.

²⁴⁷ *One Billion Children at ‘Extremely High Risk’ of the Impacts of the Climate Crisis*, UNICEF (Aug. 20, 2021)

<https://www.unicef.org/turkiye/en/press-releases/one-billion-children-extremely-high-risk-impacts-climate-crisis-unicef>.

²⁴⁸ U.N. COMMITTEE ON THE RIGHTS OF THE CHILD, GENERAL COMMENT NO. 15 ON THE RIGHT OF THE CHILD TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF HEALTH (ART. 24), U.N. DOC. CRC/C/GC/15, ¶ 50 (2013).

²⁴⁹ *Sacchi et al. v. Argentina*, *supra* note 71, ¶ 10.13.

²⁵⁰ Primarily relying upon the American Declaration on the Rights and Duties of Man, the American Convention on Human Rights, as well as extracted key principles and norms from the United Nations Convention on the Rights of the Child, the key State Duties laid out by the IACTHR and the IACtHR on the rights of the children include: (i) the duty to adopt any positive measures that guarantee protection of rights of the children, including against mistreatment, and to ensure their rights to life, survival and development, and non-discrimination; (ii) the duty to identify groups of children and adolescents who are in a situation of vulnerability regarding their rights and who require interventions addressing their protection needs; (iii) the duty to promote special protection measures based on the principle of best interests of the child; (iv) the duty to provide access to education, health care, nutrition, and cultural life; (v) the duty to ensure prompt access to justice and due diligence throughout investigations; and (vi) the duty to provide space for children’s right to express their opinions and be heard. *See also* IACHR, *Chapter 1, in THE RIGHTS OF THE CHILD IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM* (2d ed. 2008) <http://www.cidh.org/countryrep/infancia2eng/Infancia2Cap1.eng.htm>.

²⁵¹ Key IACtHR rulings on the rights of the child include: *Vera Rojas et al. v. Chile* (IACtHR 2021); *Ramírez Escobar et al. v. Guatemala* (IACtHR 2018); “*Street Children*” (*Villagrán-Morales et al.*) *v. Guatemala* (IACtHR 1999); *Bulacio v. Argentina* (IACtHR 2003); *Gómez Paquiyauri Brothers v. Peru* (IACtHR 2004); *Girls Yean and Bosico v. Dominican Republic* (IACtHR 2005); *Servellón-García et al. v. Honduras* (IACtHR 2006); *Mapiripán Massacre v. Colombia* (IACtHR 2005); *Ituango Massacres v. Colombia* (IACtHR 2006); *Angulo Losada v. Bolivia* (IACtHR 2023); *Xákmok Kásek Indigenous Community v. Paraguay*, *supra* note 214; *Sawhoyamaxa Indigenous Community v. Paraguay*, *supra* note 98; and *Serrano Cruz Sisters v. El Salvador* (IACtHR 2005).

²⁵² RESOLUTION 3/21, at 16, 18.

²⁵³ U.N. DOC. A/HRC/35/14, *supra* note 211, ¶ 5.

their opinions and be heard, since “they should be regarded as leaders in the fight against climate change.”²⁵⁴ As various human rights bodies indicated, “today’s children and young persons will shape the world of tomorrow;”²⁵⁵ therefore a rights-based approach to climate action also required that children be empowered as agents of change and be ensured an education adequate for them to rise to future challenges.²⁵⁶

In sum, state climate action that does not include the voices and interests of children – and future generations – will necessarily fall short in ambition. In addition, sufficient urgency necessitates acting now, as “children in vulnerable situations, including poor children and those in low- and middle-income countries, will be disproportionately affected by worsening climate change impacts as temperatures rise during their lifetime.”²⁵⁷

5. *Environmental Human Rights Defenders*

All around the world, but especially in those countries that are States Parties to the ACHR and San Salvador Protocol, environmental defenders are targets of harassment, stigmatization, intimidation, discrimination, criminalization, and murder.²⁵⁸ This is especially true of environmental defenders who are women, Indigenous, and/or afro-descendants.²⁵⁹ And indeed, “many of the people in vulnerable situations that are working for climate justice are environmental human rights defenders, whose work is critical for protecting biological diversity, addressing environmental degradation and pollution and mitigating and adapting to climate change.”²⁶⁰

The abuse and killings of environmental defenders have been described as “intolerable” by various human rights bodies.²⁶¹ Further, the “undeniable link between the protection of the environment and the enjoyment of other human rights”²⁶² extends the special protections that human rights bodies and courts have traditionally developed for human rights defenders to environmental defenders.²⁶³ Regarding such duties, the IACtHR has held:

“[...] the Court has established that the States have the duty to provide the necessary means for human rights defenders to conduct their activities freely; to protect them when they are subject to threats in order to ward off any attempt on their life or safety; to refrain from placing restrictions that would hinder

²⁵⁴ RESOLUTION 3/21, at 16, 18. U.N. DOC. A/HRC/50/57, *supra* note 183, ¶ 34. U.N. DOC. A/HRC/52/48, *supra* note 211, ¶ 18. U.N. DOC. A/HRC/35/14, *supra* note 211, ¶¶ 7, 19-21, 42.

²⁵⁵ U.N. DOC. A/HRC/10/61, *supra* note 196, ¶ 49.

²⁵⁶ U.N. DOC. CRC/C/GC/26, at 1, ¶¶ 4-8. *See also* OHCHR, HUMAN RIGHTS COUNCIL HOLDS PANEL DISCUSSION ON CLIMATE CHANGE AND THE RIGHTS OF THE CHILDREN (2017), <https://www.ohchr.org/en/press-releases/2017/03/human-rights-council-holds-panel-discussion-climate-change-and-rights-child>.

²⁵⁷ U.N. DOC. A/HRC/50/57, *supra* note 183, ¶ 13. U.N. DOC. A/HRC/35/14, *supra* note 211, ¶ 18.

²⁵⁸ *See* RESOLUTION 3/21, at 18.

²⁵⁹ FRONT LINE DEFENDERS, GLOBAL ANALYSIS 2022 (2023), https://www.frontlinedefenders.org/sites/default/files/1535_fld_ga23_web.pdf.

²⁶⁰ U.N. DOC. A/HRC/50/57, *supra* note 183, ¶ 36.

²⁶¹ U.N. DOC. A/HRC/52/48, *supra* note 211, ¶ 47.

²⁶² *Kawas Fernández v. Honduras*, *supra* note 19, ¶ 148.

²⁶³ In the Inter-American System, the key State Duties on the Protection of Human Rights Defenders within the Inter-American human rights system includes: (i) the duty to respect the rights of human rights defenders; (ii) the duty to prevent violations of the rights of human rights defenders; (iii) the duty to employ all means at their disposal to protect and guarantee the rights to life and personal integrity to human rights defenders when they find themselves in a risky situation; and (iv) the duty to investigate, clarify, prosecute and punish attacks against human rights defenders. Some of the key IACtHR cases include: *Human Rights Defender et al. v. Guatemala* (IACtHR 2014); *Valle Jaramillo et al. v. Colombia* (IACtHR 2008); *Castillo González et al. v. Venezuela* (IACtHR 2012); *Velásquez Rodríguez v. Honduras* (IACtHR 1988); *Nogueira de Carvalho et al. v. Brazil* (IACtHR 2006); and *Luna López v. Honduras* (IACtHR 2013).

the performance of their work, and to conduct serious and effective investigations of any violations against them, thus preventing impunity.”²⁶⁴

In the context of climate change, the IACHR has stated that key state duties for the protection of environmental defenders include the duty to employ all means to protect and ensure environmental defenders’ rights to life and personal integrity and the duty to prevent attacks against them.²⁶⁵ Likewise, the UNHRC has said that states are obliged to guarantee that “environmental human rights defenders can operate safely and to protect them from intimidation, attacks and reprisals.”²⁶⁶ As is true regarding all peoples most vulnerable to climate change, state compliance with the substantive and procedural duties owed to environmental defenders are key for effective rights-consistent mitigation and adaptation measures.²⁶⁷

7. *Migrants*

Climate change has and will contribute to forced migration.²⁶⁸ Indeed, the Internal Displacement Monitoring Center estimates that 21.7 million people were forcefully displaced each year between 2008-2016 due to weather-related disasters, which will only worsen as climate change continues.²⁶⁹

The ability to migrate often depends on mobility and resources, so those who are most vulnerable are unlikely to migrate, instead remaining in locations that are subject to destructive climate change impacts.²⁷⁰ Those who do migrate may continue to grow increasingly vulnerable to climate change, as migrants often find themselves in informal settlements in hazardous areas that face acute vulnerability to extreme climate events.²⁷¹ The human rights of persons on the move due to climate change are therefore not only far from guaranteed – they are likely to be grow increasingly threatened. Also, migrants in irregular situations and processes face additional risks to their human rights. Indeed, migrants may experience difficulty in “exercising their rights throughout the entire migration process and be denied entry through punitive border control regimes. [...] and some of those most affected by climate change may also be trapped in place and unable to access migration pathways at all.”²⁷²

The IACHR and the IACtHR have articulated substantive general state duties regarding migration.²⁷³ This is key, as “in the context of climate change-related cross-border movement, international human rights law, norms

²⁶⁴ *Kawas Fernández v. Honduras*, *supra* note 19, ¶ 145.

²⁶⁵ RESOLUTION 3/21, at 18.

²⁶⁶ U.N. OHCHR, ANNUAL HIGH-LEVEL PANEL DISCUSSION ON HUMAN RIGHTS MAINSTREAMING: CONTRIBUTION OF UNIVERSAL PARTICIPATION TO THE MAINSTREAMING OF HUMAN RIGHTS THROUGHOUT THE UNITED NATIONS SYSTEM, ON THE OCCASION OF THE TENTH ANNIVERSARY OF THE ESTABLISHMENT OF THE VOLUNTARY TECHNICAL ASSISTANCE TRUST FUND TO SUPPORT THE PARTICIPATION OF LEAST DEVELOPED COUNTRIES AND SMALL ISLAND DEVELOPING STATES IN THE WORK OF THE HUMAN RIGHTS COUNCIL, U.N. DOC. A/HRC/50/67, ¶ 36 (2022).

²⁶⁷ U.N. DOC. A/HRC/52/48, *supra* note 211, ¶ 9.

²⁶⁸ U.N. DOC. A/HRC/38/21, *supra* note 211, ¶¶ 8, 31.

²⁶⁹ *Id.* ¶ 6.

²⁷⁰ See U.N. SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS, HUMAN RIGHTS OF MIGRANTS, U.N. DOC. A/67/299, ¶ 36 (2012).

²⁷¹ U.N. DOC. A/HRC/10/61, *supra* note 196, ¶ 37.

²⁷² U.N. DOC. A/HRC/38/21, *supra* note 211, ¶ 15. U.N. DOC. A/HRC/50/57, *supra* note 183, ¶ 12.

²⁷³ Generally, in the context of migration, the IACHR and the IACtHR relied on the American Declaration of Rights and Duties of Man and the American Convention of Human Rights (especially under its articles 1.1, 22, and 24), to indicate the following State duties: (i) that a State has the obligation to prevent, investigate, prosecute, and punish violations of human rights; (ii) that the State has to adopt domestic legal provisions; and (iii) that the State has to grant the right to equal protection and non-discrimination. In this scenario, the Court and the Inter-American Commission have also reinforced the application of the principle of non-refoulement, that is, persons or refugees in need of international protection cannot be turned back at the border without an adequate and individualized analysis of their request. More specific State duties also include the following: (i) refrain from using detention as a punitive measure for an immigration offense; (ii) seek

and standards offer the most comprehensive, people-centered and flexible framework for the protection of all migrants in vulnerable situations, including those affected by climate change.”²⁷⁴

Considering the specific threats imposed by climate change on climate migrants, the IACHR has pointed to the duty to protect and the duty to respect the rights of migrants – including their rights to adequate food, housing, and work – as key.²⁷⁵ The United Nations High Commissioner for Refugees (UNHCR) has more generally explained that, in order to be compliant with various international human rights obligations:

“[...] States should facilitate migration with dignity for all migrants, including those affected by climate change, and address their specific human rights protection needs. Protection needs include [...] the fundamental principle of non-refoulement and the prohibition of collective expulsion, as well as the rights to liberty, personal integrity and family unity. [...] States should put in place appropriate mechanisms to guarantee that all migrants who require human rights protection and are unable to return to their countries because of climate change are provided with an effective legal status.”²⁷⁶

Importantly, the UNHCR directed states to address the root causes of climate-induced migration through the implementation of effective mitigation and adaptation measures:

“[...] States should therefore address the underlying causes that force people to move by pursuing ambitious climate change mitigation in accordance with the objectives of the Paris Agreement. To further reduce the risk of climate change-related displacement, States should employ effective adaptation measures, including with respect to disasters, extreme weather events and slow-onset processes. Efforts to address the root causes of displacement in the context of climate change should seek to protect rights, strengthen social protection systems, reduce disaster risk and exposure and increase adaptive capacity.”²⁷⁷

The need to address the root causes of migration – and therefore remain compliant with norms of the Inter-American and international human rights systems – is especially relevant to developing states, as it is estimated that “climate change-related displacement will primarily [...] affect primarily poorer regions and countries”²⁷⁸ and “is most likely to involve movements between developing countries.”²⁷⁹

8. Older Adults

Physical, political, economic, and social factors often make older adults vulnerable. They are especially impacted by climate change, as heat, flooding, and other extreme weather events and diseases disproportionately increase their risks of suffering bodily injury and death. This imposes negative impacts on their rights to health, access

alternatives to immigration detention; (iii) grant prompt access to justice, judicial remedies and the right to defense in the events of arrest and detention due to migration; (iv) grant consular assistance; (v) refrain from placing detainees in a prison which hosts criminals and/or people on remand; (vi) grant the right to family life in immigration proceedings; (vi) prohibition of cruel, torture or degrading treatment; and (vii) guarantee of the rights to nationality and property. *See also* two key IACtHR cases, *Vélez Loor v. Panama* (IACtHR 2010) and *Nadege Dorzema et al. v. Dominican Republic* (IACtHR 2012).

²⁷⁴ U.N. DOC. A/HRC/38/21, *supra* note 211, ¶ 37.

²⁷⁵ RESOLUTION 3/21, at 9.

²⁷⁶ U.N. DOC. A/HRC/38/21, *supra* note 211, ¶ 41. *See also* U.N. OHCHR, PRINCIPLES AND PRACTICAL GUIDANCE ON THE PROTECTION OF THE HUMAN RIGHTS OF MIGRANTS IN VULNERABLE SITUATIONS (ADDENDUM), U.N. DOC. A/HRC/37/34/ADD.1 (2018).

²⁷⁷ U.N. DOC. A/HRC/38/21, *supra* note 211, ¶ 42.

²⁷⁸ U.N. DOC. A/HRC/10/61, *supra* note 196, ¶ 55.

²⁷⁹ U.N. DOC. A/HRC/38/21, *supra* note 211, ¶ 11.

to food, sanitation, water, land, and housing and affects their well-being – especially due to their “reduced mobility or lack of access to information about evacuation and services” in the event of climate disasters.²⁸⁰

The Inter-American system of human rights has been particularly groundbreaking in this area as it, among other actions, established the first regional instrument that specifically protects the rights of older people – the Inter-American Convention on the Rights of Older Persons.²⁸¹ The Convention particularly highlights the need to “foster the development of older persons to their full potential in harmony with nature” in order to be compliant with substantive human rights obligations.²⁸² The IACHR and IACtHR have further developed a substantial body of law that protects the rights of older adults²⁸³ and have identified special states duties in this area.²⁸⁴ In *Yakye Axa Indigenous Community v Paraguay*, for example, the Court recognized the need for special care of older persons and held that their functionality and autonomy are partly dependent on their access to a healthy environment.²⁸⁵

And in the context of climate change, the IACHR has emphasized the particular need for states to reduce the impacts of diseases associated with climate change on the health of older persons, develop public policies for preventive care on climate-related health risks, and implement training programs for caregivers or family members in case of emergencies or disasters caused by climate change.²⁸⁶ Accordingly, the Human Rights Council pointed to states’ obligations “including under international human rights law, to implement climate policies to stop future warming; promote effective adaptation; redress existing harms; and empower all people – including older people – to participate in climate action” and to support the “resilience and adaptive capacities of older people to respond to climate change”.²⁸⁷ Along the same lines, members of the Human Rights Council and UNHCHR identified an array of state duties for the protection of the elderly from climate change, including: ensuring the participation of older people in the development of public policies, given their knowledge, skills, and wisdom; adapting national legal frameworks to protect the rights of older people in the context of climate change, building from existing standards; gathering disaggregated data, to inform policies and develop evidence-based measures; guaranteeing the right to access to information of the elderly; and promoting effective adaptation and redressing existing harms, among others.²⁸⁸

9. *Persons with Disabilities*

Persons with disabilities – be them mental or physical disabilities –²⁸⁹ are especially affected by climate change, as they are likely to suffer disproportionately higher rates of risk and mortality, due to their particular healthcare

²⁸⁰ U.N. OHCHR, SUMMARY OF THE PANEL DISCUSSION ON THE HUMAN RIGHTS OF OLDER PERSONS IN THE CONTEXT OF CLIMATE CHANGE, U.N. DOC. A/HRC/49/61, ¶¶ 7, 23 (2021).

²⁸¹ *Id.* ¶ 9.

²⁸² INTER-AMERICAN CONVENTION ON THE PROTECTION OF THE HUMAN RIGHTS OF OLDER PERSONS (2017) art. 25.

²⁸³ *Id.* AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN (1948) art. 16. PROTOCOL OF SAN SALVADOR art. 17.

²⁸⁴ On their respective competences, the IACHR and the IACtHR have established the key State duties applicable to older persons' rights, namely: (i) the duty to ensure economic, social, cultural and environmental rights of older persons; (ii) the duty to adopt measures to prevent, punish and eradicate practices that result in the isolation, abandonment and other violation of rights of jeopardize the safety and integrity of older persons; and (iii) the duty to employ all available resources, to the extent possible, and adopt public policies to ensure differentiated and preferential people for older persons in all areas. Key case law developed by the IACtHR on the rights of older persons include: *Massacres of El Mozote and Nearby Places v. El Salvador* (IACtHR 2012); *Yakye Axa Indigenous Community v. Paraguay*, *supra* note 98; *Furlan and Family v. Argentina* (IACtHR 2012); and *Poblete Vilches et al v Chile* (IACtHR 2009).

²⁸⁵ *Yakye Axa Indigenous Community v. Paraguay*, *supra* note 98, ¶ 175.

²⁸⁶ *See* RESOLUTION 3/21, at 16.

²⁸⁷ U.N. DOC. A/HRC/49/61, *supra* note 280, ¶¶ 10, 11.

²⁸⁸ *Id.* ¶¶ 10, 11, 16, 24, 52, 53, 56, 58, 59.

²⁸⁹ In *Furlan and Family v. Argentina*, the IACtHR expanded its understanding on the concept of disabilities and recognized that “disability is not defined exclusively by the presence of a physical, mental, intellectual or sensory impairment, but it is

needs and often already reduced access to healthcare services, food, water, and accessible infrastructure.²⁹⁰ Indeed, the Convention on the Rights of Persons with Disabilities highlights that the majority of persons with disabilities live in conditions of poverty. And according to the IPCC, the poorest people are those who will continue to experience the worst effects of climate change.²⁹¹ Despite this, “responses to climate change and emergencies [have not been] neither accessible nor inclusive.”²⁹²

The Inter-American human rights system has again established its own mechanisms to protect the rights of persons with disabilities, primarily through the Inter-American Convention for the Elimination of All forms of Discrimination against Persons with Disabilities.²⁹³ And, in the context of climate change, the IACHR stressed the imperative nature of the state obligation to plan and create policies for the preventive care of people with disabilities, including training programs for caregivers and family members in case of emergencies or disasters caused by climate change.²⁹⁴ Importantly, the Human Rights Council has elaborated additional state duties to protect people with disabilities from the climate crisis, for instance: the obligations to ensure that that climate action fosters the dignity of persons with disabilities and addresses existing social inequities; to ensure the consultation, participation, and inclusion of people with disabilities throughout the development of public policies on adaptation and mitigation of climate change; to monitor, develop, and collect disaggregated data to inform disability-inclusive policies throughout project cycles; to strengthen education and training for persons with disabilities on issues related to climate change, among others.²⁹⁵

VI. Conclusion

In sum, to understand the full scope of state duties on climate change, the international human rights regime and the Inter-American system of human rights must be understood in conjunction with the international climate regime.

This leads to an important conclusion: while the international human rights regime and the international climate regime are mutually reinforcing in important ways – each helping to refine and specify the effective ambition and urgency of climate action – states nevertheless retain independent human rights obligations to act in a manner consistent with limiting the average global temperature increase to 1.5°C and with effectively reducing vulnerability to climate change through adaptation measures. In other words, participation in the international climate regime does not preempt these independently operative human rights obligations.

Application of an integrated reading approach therefore provides a tool for courts to guide states on the path to prevent catastrophic scenarios of climate change and, with this, guarantee the substantive, procedural and special human rights for generations to come.

interrelated with the barriers or limitations that exist socially so that people can effectively exercise their rights.” *Furlan and Family v. Argentina*, *supra* note 284, ¶ 133.

²⁹⁰ UNHCR ET AL., DISABILITY DISPLACEMENT AND CLIMATE CHANGE (2021), <https://www.unhcr.org/sites/default/files/legacy-pdf/60896a274.pdf>.

²⁹¹ U.N. DOC. A/HRC/50/57, *supra* note 183, ¶ 14. U.N. DOC. A/HRC/46/46, *supra* note 211, ¶ 6.

²⁹² U.N. DOC. A/HRC/46/46, *supra* note 211, ¶ 16.

²⁹³ It is important to stress that the IACHR and IACtHR, primarily relying on American Convention on Human Rights, the San Salvador Protocol (articles 6 (2), 9 (1), 13 (3) (e)), and the Inter-American Convention for the Elimination of all forms of Discrimination against Persons with Disabilities, have indicated some key State duties for the protection of people with disabilities, for instance: (i) the duty to take the legislative or other measures necessary to enable PWD to exercise their civil and political rights without discrimination; (ii) the duty to ensure special protection to PWD's economic, social, and cultural rights; (iii) the duty to guarantee access to monitoring and evaluation of PWD's health conditions; (iv) the duty to elaborate public policies to eliminate stereotypes and stigmas against PWD; (v) the duty to fully integrate PWD into society, and establish mechanisms to raise awareness, public education and actions to combat discrimination.

²⁹⁴ RESOLUTION 3/21, at 16.

²⁹⁵ U.N. DOC. A/HRC/46/46, *supra* note 211, ¶¶ 58-65.