

Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile

I. Introduction

The Republic of Colombia and the Republic of Chile (hereinafter “Colombia” and “Chile” or “the applicants”) submit this request for an advisory opinion to the Inter-American Court of Human Rights (hereinafter, “the Court” or “IACtHR”) **to clarify the scope of State obligations, in their individual and collective dimension, in order to respond to the climate emergency within the framework of international human rights law, paying special attention to the differentiated impacts** of this emergency on individuals from diverse regions and population groups, as well as on nature and on human survival on our planet.

Our two countries are experiencing the daily challenge of dealing with the consequences of the climate emergency, including a proliferation of droughts, floods, landslides and fires. These events **reveal the need for an urgent response based on the principles of equity, justice, cooperation and sustainability, with a human rights-based approach.**

The aforementioned environmental problems also occur throughout the Americas and the rest of the world, with a significant impact on human rights, and are jeopardizing future generations. Nevertheless, the international community does not experience the effects of climate change uniformly. Unfortunately, the effects are now being felt by those communities that are the most vulnerable owing to their geography, socioeconomic and climate conditions, and infrastructure, as well as by several countries of the Americas. Moreover, it is significant that those communities and countries experience the said effects in a way that is disproportionate to their contribution to climate change.

The Republics of Colombia and Chile are conscious of the relevance of the human right to a healthy environment and its close relationship to a series of substantive and procedural rights that have an impact on the life, survival and development of present and future generations and that are protected by the American Convention on Human Rights (hereinafter, “the American Convention” or “ACHR”) and numerous inter-American and universal human rights and environmental treaties.¹ In this regard, human rights not only provide a necessary perspective from which to assess the consequences of the emergency, but also essential tools to seek solutions that are opportune, just,

¹ For example, IACtHR. *Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights)*. Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23 (hereinafter “OC- 23/17. Environment and Human Rights”).

equitable and sustainable.

This is why the States of Colombia and Chile consider it necessary to move forward with the process of defining the scope of the relevant obligations established in the American Convention and other inter-American treaties to confront the situations arising from the climate emergency,² their causes and consequences. In addition, the intention is to promote measures to guarantee human rights, and also the public policies required to respond to this phenomenon in an urgent, equitable, just and sustainable manner.

Consequently, in order to advance and accelerate the responses to the climate emergency by each State, collectively, regionally and globally, we are posing a series of questions to the Court that will allow it to provide guidance towards human rights-based solutions with an intersectional perspective.

II. The climate emergency and its consequences from a human rights perspective

We are facing a climate emergency with a devastating potential for life on earth.³ The political and scientific consensus described in the Intergovernmental Panel on Climate Change (IPCC) special report on *Global Warming of 1.5°C*, reveals that if global warming continues to increase at its actual rhythm, it could reach 1.5°C between 2030 and 2052⁴ and, according to some experts, this would constitute a serious threat to human survival.⁵

Moreover, according to the IPCC, climate change has already begun to cause adverse impacts around the world, including loss of ecosystems, reduced food security, increased migration and displacement, violations of human rights, and increased inequality.⁶ If we fail to limit global warming to a maximum increase of 1.5°C, as established in the Paris Agreement,⁷ these adverse effects will be exacerbated and humanity will approach a point of no return, the consequences of which will be irreversible harm, including losses and damage, especially in scenarios of insufficient

² United Nations (UN). [Framework Convention on Climate Change](#). UN. [The Paris Agreement](#), part of the Framework Convention on Climate Change; UN, Economic Commission for Latin America and the Caribbean (ECLAC). Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean ([Escazú Agreement](#)); Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ([Aarhus Convention](#)), among other instruments.

³ In 2019, more than 11,200 scientists from 153 countries declared that humanity faced a climate emergency. See, Ripple et al., [World's Scientists' Warning of a Climate Emergency](#), *BioScience*, Volume 70, Issue 1, January 2020, pp. 8-12.

⁴ IPCC, [Summary for policy makers, in IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels](#), 2018, p. 6.

⁵ Allen M., and Others (2018) [Summary for policy makers](#), in IPCC (2018) [Global Warming of 1.5 °C](#), p.4 “Human activities are estimated to have caused approximately 1.0°C of global warming above pre-industrial levels, with a likely range of 0.8°C to 1.2°C. Global warming is likely to reach 1.5°C between 2030 and 2052 if it continues to increase at the current rate (high confidence).”

⁶ IPCC, [Impact Adaptation, and Vulnerability, Working Group II contribution to the Sixth Assessment Report of the IPCC](#), February 2022, p. 123.

⁷ UN. [Paris Agreement](#), December 12, 2015.

climate action. The course of humanity's common history depends on the adoption of immediate measures to take up this challenge at the global level.

As Michelle Bachelet stressed in her final statement as United Nations High Commissioner for Human Rights: “As we speak, the world continues to be thrust even deeper into crisis – intensifying conflicts, profound inequalities and climate change as overhanging threats to our very existence.”⁸ While, in its February 2022 report, the IPCC considered that temperature increases and extreme weather events resulting from human activities were causing irreversible impacts more rapidly than our capacity to adapt to the changes.⁹

The adverse impacts of global warming are evident throughout the world.¹⁰ However, as already mentioned, certain communities and countries face particularly severe consequences. Thus, the climate emergency has a differentiated and devastating impact in certain geographical regions and on certain vulnerable groups, such as children, indigenous peoples and peasant farmer communities, and this may become more acute if emissions are not reduced significantly accompanied by urgent measures of adaptation.¹¹ The situation will get worse if we exceed the thresholds established by the scientific community.¹²

In the case of the Americas, the Fifth Assessment Report of the IPCC indicates that decreased water resources due to glacier retreat in the Andes and changes in regional rainfall cycles could have a significant impact on the population.¹³ Also, an increase in sea level and sea surface temperatures will have an impact on coastal communities, water supplies and economies throughout the region.¹⁴ Moreover, this may have a

⁸ UN, [Statement by Michelle Bachelet, UN High Commissioner for Human Rights, at the High-level event marking the 50th session of the Human Rights Council](#), June 15, 2022.

⁹ IPCC, “Summary for Policy Makers”, in [Impact Adaptation, and Vulnerability, Working Group II contribution to the Sixth Assessment Report of the IPCC](#), February 2022.

¹⁰ Xu Y., Ramanathan V., & Victor D. G. (2018) [Global warming will happen faster than we think](#), Comment, Nature 564(7734), 30–31. See also: Arias P. A., et al. (2021) [Technical Summary](#), in [Climate Change 2021: The Physical Science Basis](#).

¹¹ Inter-American Development Bank (IDB). Climate change poses a serious threat to all Caribbean nations despite their low contribution to global greenhouse gas (GHG) emissions.

¹² Intergovernmental Panel on Climate Change, [Summary for policy makers in IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels](#), 2018, p. 6.

¹³ Marengo J.A. and Others (2014) [Central and South America](#), In: *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B: Regional Aspects. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, pp. 1520 – 1521. “In early stages of glacier retreat, associated streamflow tends to increase due to an acceleration of glacier melt, but after a peak in streamflow as the glacierized water reservoir gradually empties, runoff tends to decrease ... Glacier retreat can exacerbate current water resources-related vulnerability, diminishing the mountains’ water regulation capacity, making the supply of water for diverse purposes, as well as for ecosystems integrity, more expensive and less reliable”; see also, p. 1543 “Current vulnerability in terms of water supply in the semi-arid zones and the tropical Andes is expected to increase even further due to climate change. This would be exacerbated by the expected glacier retreat, precipitation reduction, and increased evapotranspiration demands as expected in the semi-arid regions of CA and SA. These scenarios would affect water supply for large cities, small communities, food production, and hydropower generation.”

¹⁴ Marengo J.A. and Others (2014) [Central and South America](#), In: *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B: Regional Aspects. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, pp. 1524 – 1525. “Coastal states of LA and the Caribbean have a human population of more than 610 million, three-fourths of whom live within 200 km of the coast (Guarderas et al.,

disproportionate impact on the coastal and island nations of the Caribbean basin.¹⁵

The Andes are among the most sensitive regions to climatic-related migration and displacement.¹⁶ In Colombia, an increase of more than 1.5°C will result in an increase in the intensity and frequency of extreme temperatures, storms, floods, landslides and heatwaves.¹⁷ The Amazon forest, one of the world's largest biodiversity and carbon repositories is highly vulnerable.¹⁸ Indeed, the Amazon region is home to 40% of the remaining tropical forests in the world and 25% of terrestrial biodiversity.¹⁹ Furthermore, if the rate of deforestation of the Amazon continues and exceeds the tipping point permitted by the deforestation of the biome, this will have a devastating impact on rainfall regulation.²⁰ This would also have devastating effects not only for our region but also globally insofar as it could contribute to the "Hothouse Earth" pathway.²¹

Among other impacts, it is estimated that, in the Andean region, there would be an increase of 100-200% in the population affected by floods; an increased incidence of diseases such as malaria, dengue and chikungunya; a negative impact on up to 85% of the region's flora and fauna; a decrease in agricultural production owing to increasingly more frequent droughts; a reduction in agriculture owing to the increase in temperature,

2008). For instance, studying seven countries in the region (El Salvador, Nicaragua, Costa Rica, Panama, Colombia, Venezuela, Ecuador), Lacambra and Zahedi (2011) found that more than 30% of the population lives in coastal areas directly exposed to climatic events. ... Since flooding probability increases with increasing sea level, one may expect a higher probability of flooding in locations showing >40% of change over the last 60 years in the 100-years total sea level (excluding hurricanes). ... If extreme sea surface temperatures were to continue, the projections using SRES scenarios (A1FI, 3°C sensitivity, and A1B with 2°C and 4.5°C sensitivity) indicate that it is possible that the Mesoamerican coral reef will collapse by mid-century (between 2050 and 2070), causing major economic losses (Vergara, 2009)."

¹⁵ Marengo J.A. and Others (2014) [Central and South America](#), In: *Climate Change 2014: Impacts, Adaptation, and Vulnerability*. Part B: Regional Aspects. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, pp. 1524 – 1525; See also, United Nations, Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States in 6: "As recognized in the Programme of Action for the Sustainable Development of Small Island Developing States adopted in 1994, [Small Island Developing States (SIDS)] are particularly vulnerable to global climate change. Their climate is influenced by ocean-atmosphere interactions, such as the trade winds, El Niño, monsoons and tropical cyclones. As their population, agricultural land and infrastructure tend to be concentrated in the coastal zone, any rise in sea level will have significant and profound effects on their economies and living conditions. Those climate characteristics, combined with their particular socioeconomic situation, make SIDS, nine of which are LDCs, some of the most vulnerable countries in the world to climate change. In addition, the fact that SIDS, taken as a whole, have a population of around 65 million persons who contribute less than 1 percent to greenhouse gas emissions, indicates that they will suffer the harmful impacts of climate change disproportionately, and some will become uninhabitable").

¹⁶ IPCC, "Chapter 12. Central and South America", in [Impact Adaptation, and Vulnerability, Working Group II contribution to the Sixth Assessment Report of the IPCC](#), February 2022, p. 1691.

¹⁷ *Ibid.*, p. 1701.

¹⁸ *Ibid.*, p. 1691.

¹⁹ ECLAC. Bogota Office. Patrimonio Natural, Fondo para la Biodiversidad y Áreas Protegidas (Colombia), [Amazonía posible and sostenible](#), 2013.

²⁰ Lenton T. M., Rockstrom J., Gaffney O., Rahmstorf S., Richardson K., Steffen W., & Schellnhuber H. J. (2019) [Climate tipping points—too risky to bet against](#), Comment, *Nature* 575(7784): 592–595, 594. See also: Wunderling N., Donges J. F., Kurths J., & Winkelmann R. (2021) [Interacting tipping elements increase risk of climate domino effects under global warming](#), *Earth Syst. Dyn.* 12(2): 601–619, 614; Klose A. K., Wunderling N., Winkelmann R., & Donges J.F. (2021) [What do we mean, "tipping cascade"?](#), *Environ. Res. Lett.* 16(12): 125011, 1–12, 1; Rocha J. C., Peterson G., Bodin Ö., & Levin S. (2018) [Cascading regime shifts within and across scales](#), *Science* 362(6421): 1379–1383.

²¹ See: Steffen, Will, et al., [Trajectories of the Earth System in the Anthropocene](#), Harvard University, July 6, 2018.

and a reduction in fish stocks due to ocean acidification.²² According to the IPCC, this will doubtlessly result in an increase in human mobility and there is evidence that this is already occurring. This displacement will have differentiated impacts on populations in situations of vulnerability, including coastal populations, island inhabitants, indigenous peoples, Afro-descendant communities, and peasant farmers.²³

In addition, the adverse effects of climate change are felt more acutely by those segments of the population that are already in vulnerable situations²⁴ owing to factors such as geography – rural and coastal areas - poverty, gender, age, indigenous or minority status, national or social origin, birth or other status, and disability.²⁵ For example, in a report of July 2022, the UN Special Rapporteur on the rights of migrants underscored that 80 per cent of people currently displaced by climate-related events are women and girls.²⁶ Moreover, the adverse impacts of climate change are exacerbating migration with differentiated effects for members of indigenous peoples and Afro-descendant communities. This confirms the need to adopt an intersectional approach in this matter.

Consequently, there is a close relationship between the climate emergency and the violation of human rights.²⁷ At the same time, human rights laws and regulations can help accelerate the response to the climate emergency, promoting policies to ensure that key stakeholders comply with the obligation to respect and ensure human rights. Debate on this issue within the framework of a regional court will allow not only national or regional obligations to be addressed from a human rights perspective, but also those related to international cooperation, and the shared but differentiated obligations.

III. The need for inter-American standards to accelerate the response to the climate emergency

Given the climate emergency and its impacts, it is necessary to take urgent mitigation and adaptation measures that enable us to address the crisis. Even though the

²² IPCC, “Chapter 12. Central and South America”, in [Impact Adaptation, and Vulnerability, Working Group II contribution to the Sixth Assessment Report of the IPCC](#), February 2022, pp. 1693-1703.

²³ Inter-American Commission on Human Rights (IACHR). [Climate Emergency: Scope of Inter-American Human Rights Obligations](#), Resolution 3/2021, December 31, 2021.

²⁴ R. Burnett and Others “Global estimates of mortality associated with long-term exposure to outdoor fine particulate matter,” Proceedings of the National Academy of Sciences (PNAS), USA (2018), and World Health Organization (WHO), “[Evolution of WHO Air Quality Guidelines: Past, Present and Future](#)”, Copenhagen, Denmark: WHO Regional Office for Europe (2017), p. 2

²⁵ UN Human Rights Council, *Human Rights and Climate Change*, A/HRC/RES/41/21, Resolution adopted by the Human Rights Council on July 12, 2019, pp. 2-3.

²⁶ UN General Assembly. *Report of the Special Rapporteur on the human rights of migrants*. A/77/189, July 19, 2022, para. 47.

²⁷ See, for example, [Stockholm Declaration on the Human Environment](#), adopted at the United Nations Conference on the Human Environment, June 5 to 16, 1972, UN Doc. A/CONF.48/14/Rev.1, in which the States proclaimed: “1. Both aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights - even the right to life itself,” and UN General Assembly, [Resolution 45/94 of December 14, 1990](#), UN Doc. A/RES/45/94, para. 1: “... all individuals are entitled to live in an environment adequate for their health and well-being.”

measures that are required may be diverse, the human rights obligations can provide basic guidelines to expedite the response in a just, equitable and sustainable manner.

In 2017, at the request of the Republic of Colombia, the Inter-American Court issued an advisory opinion on the relationship between the environment and human rights. In this opinion, the Court recognized the right to a healthy environment as an individual and autonomous right, referring to the adverse effects of climate change²⁸ and mentioning the obligation of States to avoid transboundary environmental damage that could violate the human rights of persons outside their territory.²⁹ This opinion was fundamental for expanding the understanding of the interrelationship between the environment and human rights, and national and regional policies related to the guarantee of such rights.

However, it is necessary to further clarify the grounds for, and the scope of, the human rights affected by the climate emergency, and also the State obligations to address this, individually and collectively, addressing its causes and consequences urgently and taking into account considerations of equity, justice, prudence and sustainability.

Therefore, determining the scope of human rights obligations in relation to the climate emergency will help clarify the meaning, desirability, and scope of the obligations of the nation State, and of sub-national entities (cities, departments, or regions), and their responsibilities with regard to non-state actors, as well as the regional, transnational and global obligations in this regard.

Furthermore, for international human rights law, the protection of life, survival, and the rights of individuals, peoples and communities is an essential yardstick.³⁰ In this regard, it promotes the adoption of measures that take into account current generations in all their diversity, differentiated geographical impacts, and the rights of future generations.

In addition, international human rights treaties and environmental treaties have an important collective dimension as guarantors of rights. They also establish reference points in relation to human rights and environmental protection for interpreting the scope of the shared but differentiated responsibilities of every State in relation to the climate emergency.³¹ This requires differentiating the contribution that their emissions make to climate change, and the differentiated impacts of this on their subsistence, considering the protection of essential biomes in order to respond to the crisis (as in the case of the Amazonian biome). The shared but differentiated responsibilities should also be examined in relation to the need to reduce to a minimum, prevent, or deal with the damage and losses caused by global warming and the climate emergency, and the

²⁸ IACtHR. OC-23/17. The Environment and Human Rights, paras. 47, 96, 126.

²⁹ *Ibid.*, para. 101.

³⁰ *Ibid.*, paras. 109 and 114.

³¹ In this regard, the preamble to the Paris Agreement indicates: "Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity."

need to establish mechanisms and practices that permit restoration and adaptation at the national, subregional, regional and global level in a just, equitable and sustainable manner.

In this regard, the Inter-American Court's interpretation of the different instruments of the inter-American system can provide important standards that integrate the obligations derived from diverse international regulatory frameworks, including those on climate change. These can guide the measures that should be taken to guarantee human rights, including the rights to a healthy environment, to survival, to life, etc.

At the international level, litigation has been undertaken and relevant strategies developed to determine State obligations in relation to the climate emergency. For example, Vanuatu is building a coalition of Pacific and Caribbean countries seeking an advisory opinion from the International Court of Justice focused, principally, on the issue of damage and losses, and on State obligations under multilateral agreements relevant for the effects of climate change.³² In addition, the European Court of Human Rights is processing numerous cases related to climate change,³³ three of which have been declared admissible and will soon be heard by the Grand Chamber.³⁴ Similarly, the United Nations Human Rights Committee recently adopted views on an individual communication in which it found Australia responsible for failing to protect the human rights to the enjoyment of their own culture, and to privacy and family life of the indigenous communities of the Torres Strait Islands, because it had not taken adequate measures to protect them from the adverse impacts of climate change.³⁵

On our continent, over the almost fifty years of its existence, the advisory opinions of the Inter-American Court have provided the States with important parameters to ensure that human rights are guaranteed.³⁶ These opinions have examined issues such as states of emergency, freedom of expression, equality, and a healthy environment.³⁷ The resulting

³² Climate changes has resulted in extreme weather events in Vanuatu, such as the 2020 Cyclone Harold, which caused loss of lives, whole communities, and one-third of the country's gross domestic product in a single day. See, [Vanuatu ICJ Initiative](#).

³³ Universidad de Columbia, Law Faculty, Sabin Center for Climate Change, [Global Climate Change litigation database](#).

³⁴ European Court of Human Rights, [Cláudia Duarte Agostinho and Others v. Portugal and 32 Other States](#) Application No. 3937/20; [Carême v. France](#) Case No. 7189/21, and [Verein Klimasenioren Schweiz and Others v. Switzerland](#), Application No. 53600/20.

³⁵ UN, Human Rights Committee, [Daniel Billy et al. v. Australia](#), CCPR/C/135/D/3624/2019, September 22, 2022.

³⁶ IACtHR. [Rules of Procedure](#). Advisory Opinions. Article 70. Interpretation of the Convention 1. Requests for an advisory opinion under Article 64(1) of the Convention shall state with precision the specific questions on which the opinion of the Court is being sought. 2. Requests for an advisory opinion submitted by a Member State or by the Commission shall, in addition, identify the provisions to be interpreted, the considerations giving rise to the request, and the names and addresses of the Agent or the Delegates. 3. If the advisory opinion is sought by an OAS organ other than the Commission, the request shall also specify how it relates to the sphere of competence of the organ in question, in addition to the information listed in the preceding paragraph."

³⁷ IACtHR. *Judicial Guarantees in States of Emergency* (Arts. 27.2, 25 and 8 American Convention on Human Rights), Advisory Opinion OC-9/87, October 6, 1987. Series A No. 9; IACtHR. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights), Advisory Opinion OC-5/85, November 13, 1985. Series A No. 5; IACtHR. *Gender Identity, and Equality and Non-Discrimination with regard to Same-Sex Couples. State Obligations in relation to Change of Name, Gender Identity, and Rights*

guidelines have been relevant to clarify the scope of international human rights obligations in a context in which numerous constitutions and the case law of national high courts have accorded constitutional ranking to the human rights obligations resulting from the relevant treaties.

Therefore, a possible expert opinion of the Inter-American Court will provide both the requesting countries and the other countries of the region with guidelines for the development of local, national and international policies and programs – in keeping with the commitments made under the American Convention and other human rights and environmental treaties – that enable them to better address the climate crisis, taking into account the obligations of prevention, guarantee and protection.

IV. Questions for the Inter-American Court

A. Regarding State obligations derived from the duties of prevention and the guarantee of human rights in relation to the climate emergency

Bearing in mind the State duty of prevention and the obligation to guarantee the right to a healthy environment,³⁸ together with the scientific consensus reflected in the reports of the Intergovernmental Panel on Climate Change (IPCC)³⁹ concerning the severity of the climate emergency and the urgency and duty to respond adequately to its consequences, as well as to mitigate its pace and scale:

1. What is the scope of the State's duty of prevention with regard to climate events caused by global warming, including extreme events and slow onset events, based on the obligations under the American Convention, in light of the Paris Agreement and the scientific consensus which recommend that global temperatures should not increase beyond 1.5°C?⁴⁰
2. In particular, what measures should States take to minimize the impact of the damage due to the climate emergency in light of the obligations established in the American Convention? In this regard, what differentiated measures should be taken in relation to vulnerable populations or based on intersectional considerations?

deriving from a relationship between Same-Sex Couples (Interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights). Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24.

³⁸ According to the Court's case law and doctrine, protected by the American Convention, Article 11 of the Protocol of San Salvador and Article 1 of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).

³⁹ See, *inter alia*: Intergovernmental Panel on Climate Change (IPCC), [Impact Adaptation, and Vulnerability, Working Group II contribution to the Sixth Assessment Report of the IPCC](#), February 2022; Intergovernmental Panel on Climate Change, [Summary for policy makers in IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels](#), 2018.

⁴⁰ United Nations. [Paris Agreement](#), December 12, 2015; Intergovernmental Panel on Climate Change, [Summary for policy makers in IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels](#), 2018, p. 6.

2.A. What should a State take into consideration when implementing its obligations: (i) to regulate; (ii) to monitor and oversee; (iii) to request and to adopt social and environmental impact assessments; (iv) to establish a contingency plan, and (v) to mitigate any activities under its jurisdiction that exacerbate or could exacerbate the climate emergency?

2.B. What principles should inspire the actions of mitigation, adaptation and response to the losses and damage resulting from the climate emergency in the affected communities?

B. Regarding State obligations to preserve the right to life and survival in relation to the climate emergency in light of science and human rights

Taking into account the right of access to information and the obligations concerning the active production of information and transparency reflected in Article 13⁴¹ and derived from the obligations under Articles 4(1) and 5(1) of the American Convention,⁴² in light of articles 5 and 6 of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement):⁴³

1. What is the scope that States should give to their obligations under the Convention vis-à-vis the climate emergency, in relation to:
 - i) Environmental information for every individual and community, including such information related to the climate emergency;
 - ii) The climate adaptation and mitigation measures to be adopted to respond to the climate emergency and the impacts of such measures, including specific “just transition” policies for groups and individuals who are particularly vulnerable to the effects of global warming;
 - iii) Responses to prevent, minimize and address economic and non-economic damage and losses associated with the adverse effects of climate change;
 - iv) Production of information and access to information on greenhouse gas emissions, air pollution, deforestation, and short-lived climate forcers; analysis of activities and sectors that contribute to emissions, or other factors, and
 - v) Determination of human impacts, such as human mobility – migration and forced displacement – effects on health and on life,

⁴¹ IACtHR. OC-23/17. The Environment and Human Rights, para. 221 and ff.

⁴² See, *inter alia*: IACtHR. OC-23/17. The Environment and Human Rights, paras. 54 and 55.

⁴³ ECLAC, Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean ([Escazú Agreement](#)), 2018.

non-economic losses, etc.?

2. Pursuant to State obligations under the American Convention, to what extent does access to environmental information constitute a right the protection of which is necessary to guarantee the rights to life, property, health, participation, and access to justice, among other rights that are negatively affected by climate change?

C. Regarding the differentiated obligations of States in relation to the rights of children and the new generations in light of the climate emergency

Pursuant to Article 19 of the American Convention,⁴⁴ in light of the *corpus iuris* of international human rights law, including article 12 of the Convention on the Rights of the Child,⁴⁵ and recognizing the consensus of the scientific community which identifies children as the group that is most vulnerable in the long term to the imminent risks to life and well-being as a result of the climate emergency:⁴⁶

1. What is the nature and scope of the obligation of a State Party to adopt timely and effective measures with regard to the climate emergency in order to ensure the protection of the rights of children derived from its obligations under Articles 1, 4, 5, 11 and 19 of the American Convention?
2. What is the nature and scope of a State Party's obligation to provide children with significant and effective means to express their opinions freely and fully, including the opportunity to initiate or, in any other way, to participate in any administrative or judicial proceedings concerning prevention of the climate change that represents a threat to their lives?

⁴⁴ ACHR. "Article 19. Rights of the Child. Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the State."

⁴⁵ Convention on the Rights of the Child (CRC). Article 12. 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

⁴⁶ Smith K. and Woodward A. (2018), *Human health: impacts, adaptation, and co-benefits*, Intergovernmental Panel on Climate Change, p. 717: "Children, young people, and the elderly are at increased risk of climate related injury and illness (Perera, 2008). For example, adverse effects of malaria, diarrhea, and undernutrition are presently concentrated among children, for reasons of physiological susceptibility. ... Maternal antibodies acquired in utero provide some protection against dengue fever in the first year of life, but if infection does occur in infants, it is more likely to provoke the severe hemorrhagic form of illness. Children are generally at greater risk when food supplies are restricted: households with children tend to have lower than average incomes, and food insecurity is associated with a range of adverse health outcomes among young children" (citations omitted). See also, Canadian Ministry of Health (2008) *Human Health in A Changing Climate*, p. 20. "Infants and children are especially vulnerable to environmental degradation because of their inability to protect themselves, relatively high intake of water, air and certain foods, rapid growth and development, immature physiology and metabolism, and potential for high cumulative exposures over their lifetime."

D. Regarding State obligations arising from consultation procedures and judicial proceedings owing to the climate emergency

Based on Articles 8 and 25 of the American Convention,⁴⁷ and taking into account that scientific research has indicated that there is a limit to the amount of greenhouse gases that we can continue to emit before reaching dangerous and irreversible climate change, and that we could reach this limit within the current decade:⁴⁸

1. What is the nature and scope of a State Party's obligation in relation to the establishment of effective judicial remedies to provide adequate and timely protection and redress for the impact on human rights of the climate emergency?
2. To what extent should the consultation obligation take into account the consequences of an activity on the climate emergency or the emergency projections?

E. Regarding the Convention-based obligations of prevention and the protection of territorial and environmental defenders, as well as women, indigenous peoples, and Afro-descendant communities in the context of the climate emergency

Pursuant to the obligations arising from Articles 1(1) and 2 of the American Convention⁴⁹ and in light of article 9 of the Escazú Agreement:⁵⁰

⁴⁷ IACtHR. OC-23/17. The Environment and Human Rights paras. 233 to 241.

⁴⁸ Xu Y., Ramanathan V., & Victor D. G. (2018) [Global warming will happen faster than we think](#), Comment, Nature 564(7734): pp. 30 and 31. "But the latest IPCC special report underplays another alarming fact: global warming is accelerating. Three trends — rising emissions, declining air pollution and natural climate cycles — will combine over the next 20 years to make climate change faster and more furious than anticipated. In our view, there's a good chance that we could breach the 1.5°C level by 2030, not by 2040 as projected in the special report (see 'Accelerated warming'). The climate-modelling community has not grappled enough with the rapid changes that policymakers care most about, preferring to focus on longer-term trends and equilibria." Since publication of the Comment by Xu, Ramanathan and Victor, the IPCC has updated its estimate of when the 1.5°C level could be breached: see, Arias P. A., et al. (2021) [Technical Summary](#), in [Climate Change 2021: The Physical Science Basis](#), Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Masson-Delmotte V., et al. (eds.), TS-9. "Timing of crossing 1.5°C global warming: Slightly different approaches are used in SR1.5 and in this Report. SR1.5 assessed a likely range of 2030 to 2052 for reaching a global warming level of 1.5°C (for a 30-year period), assuming a continued, constant rate of warming. In AR6, combining the larger estimate of global warming to date and the assessed climate response to all considered scenarios, the central estimate of crossing 1.5°C of global warming (for a 20-year period) occurs in the early 2030s, in the early part of the likely range assessed in SR1.5, assuming no major volcanic eruption. (Section TS.1.3, Cross-Section Box TS.1.)"

⁴⁹ ACHR. Article 1. Obligation to Respect Rights. 1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. Article 2. Domestic Legal Effects. Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or

1. What measures and policies should States adopt to facilitate the work of environmental human rights defenders?
2. What specific considerations should be taken into account to guarantee the right of women human rights defenders to defend a healthy environment and the territory in the context of the climate emergency?
3. What specific considerations should be taken into account to guarantee the right to defend a healthy environment and the territory based on intersectional factors and differentiated impacts, *inter alia*, of indigenous peoples, peasant farmer communities, and Afro-descendant persons in the context of the climate emergency?
4. With regard to the climate emergency, what type of information should the State produce and publish in order to establish the capability to investigate different offenses committed against defenders, including, reports of threats, kidnappings, murders, forced displacements, gender-based violence, and discrimination?
5. What are the measures of due diligence that the States should take into account to ensure that attacks and threats against environmental defenders in the context of the climate emergency do not go unpunished?

F. Regarding the shared and differentiated human rights obligations and responsibilities of States in the context of the climate emergency

Taking into account that the climate emergency affects the entire world, and that obligations to cooperate and also to provide redress arise from the American Convention and other international treaties:⁵¹

freedoms.

⁵⁰ Escazú Agreement. Article 9. Human Rights defenders in environmental matters. 1. Each Party shall guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters, so that they are able to act free from threat, restriction and insecurity. 2. Each Party shall take adequate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters, including their right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement, as well as their ability to exercise their access rights, taking into account its international obligations in the field of human rights, its constitutional principles and the basic concepts of its legal system. 3. Each Party shall also take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidations that human rights defenders in environmental matters may suffer while exercising the rights set out in the present Agreement.

⁵¹ ACHR. Article 26. Progressive Development. The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means and subject to available resources, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards; Protocol of San Salvador, Articles 1, 12 and 14; Stockholm Declaration and action plan for the human environment, Principle 24; Rio Declaration on the Environment and Development, adopted at the United Nations Conference on Environment and Development, Río de Janeiro, June 14, 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. 1), Principles 7 and 19.

1. What considerations and principles should States and international organisations take into account, collectively and regionally, when analyzing shared but differentiated responsibilities in the context of climate change, from the perspective of human rights and intersectionality?
2. How should States act, both individually and collectively, to guarantee the right to redress for the damage caused by their acts and omissions in relation to the climate emergency, taking into account considerations of equity, justice and sustainability?

Bearing in mind that the climate crisis has a greater impact on some regions and populations, including the Caribbean countries and territories, as well as on the coastal areas and islands of our region and their inhabitants.⁵²

1. How should inter-State cooperation obligations be interpreted?
2. What obligations and principles should guide State actions in order to ensure the right to life and survival of the most affected regions and populations in the different countries and in the region?

Considering that one of the impacts of the climate emergency is to intensify the factors that lead to human mobility – migration and forced displacement:⁵³

3. What obligations and principles should guide the individual and coordinated measures that the States of the region should adopt to deal with involuntary human mobility, exacerbated by the climate emergency?

⁵² See, for example, Inter-American Development Bank (IDB). Climate change poses a serious threat to all Caribbean nations despite their low contribution to global greenhouse gas (GHG) emissions, and UN News: The Caribbean is 'ground zero' for the global climate emergency: UN Secretary-General, July 3, 2022.

⁵³ IACtHR. OC-23/17. The Environment and Human Rights para. 182.