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Reference: Written Opinion to the Request for an Advisory Opinion on the Climate Emergency and Human Rights

Inter-American Court of Human Rights

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Honorable Court:

The undersigned, members of the Health and Human Rights Initiative of the O'Neill Institute for National and Global Health Law ("O'Neill Institute") at Georgetown University Law Center, respectfully submit the following written opinion to the Request for an advisory opinion on the climate emergency and human rights, submitted to the Inter-American Court of Human Rights (the "IACtHR", or the "Court", or the "Honorable Court") by the Republic of Colombia and the Republic of Chile, for consideration by the Court.

The O'Neill Institute is a not-for-profit institution located at Georgetown University Law Center in Washington, D.C. Its mission is to conduct rigorous research to identify solutions to pressing national and international health concerns.

The Health and Human Rights Initiative, one of the areas of work within the O'Neill Institute, works to improve health through academic research that focuses on the nexus of health and national and international human rights law. A key facet of our work focuses on engagement in domestic and international litigation and standard-setting processes to advance health, justice, and equity in all of its dimensions through the strategic use of human rights legal frameworks. This includes directly representing individual and collective victims of human rights violations, as well as providing technical assistance to relevant actors involved in legislative drafting, policymaking, and judicial practice.

Given this background, and acknowledging the significance of the Court's advisory opinions in interpreting international human rights law, our opinion highlights specific topics that, we hope, will contribute to the IACtHR's efforts to draw attention to how the climate emergency can undermine the enjoyment of the rights protected by Inter-American instruments, including the American Convention on Human Rights and its Additional Protocol in the area of Economic, Social, and Cultural Rights.

Our submission is structured as follows. First, we analyze the impacts of climate change on health and food security, providing evidence-based information on these impacts and how they disproportionately affect specific groups. We then frame these impacts under international human rights law, providing an overview of how climate change affects a wide range of human rights. Finally, we explore the content and nature of States' human rights obligations in the context of climate change.

Table of Contents

1. Introduction	3
2. The Impacts of Climate Change on Health and on Food Security	4
2.1. Climate Change and Health	5
2.2. Climate Change and Food Security	8
3. Analyzing the Impacts of Climate Change through the Human Rights Framework	12
4. State Obligations in the Context of Climate Change	19
4.1. The specific content of the general environmental obligations in the context of climate change	19
4.1.1. Mitigation, adaptation, and response to loss and damages associated with climate change	20
4.1.2. Climate change and the duty of prevention	22
4.1.2.1. Mitigation and adaptation as main corollaries of the duty of prevention	23
4.1.2.2. Other measures	26
4.1.3. Climate change and the duty of precaution	28
4.1.4. Climate change and the duty of cooperation	29
4.1.5. Climate change and procedural obligations	31
4.2. The nature of these duties: progressive realization vs. obligations of immediate effect	33
4.3. Climate change and non-state actors	36
4.3.1. State's duty to respect and ensure human rights in the context of business operations in the climate emergency	37
4.3.2. Corporate responsibilities in the context of climate change	38
5. Conclusion	39
6. Bibliography	40

Written Opinion to the Request for an Advisory Opinion on the Climate Emergency and Human Rights

1. Introduction

Humanity is undergoing a threat to its very existence. This existential threat has been labeled the triple planetary crisis, whereby climate change, pollution, and the loss of biodiversity, are interlinked to cause devastating consequences for the health of the planet, and all life on earth.¹ While the three elements of the planetary crisis are closely related and require equal attention in order to holistically address the climate emergency, this submission will focus on climate change, as determined by the Request for an advisory opinion on the climate emergency and human rights (the “Request”).²

The scientific and political consensus around climate change is undeniable.³ It is unequivocally understood that climate change, which refers to long-term shifts in temperatures and weather patterns, is largely driven by human activity.⁴ Humans are responsible for burning fossil fuels such as coal, oil and gas, which produce greenhouse gas⁵ (“GHG”) emissions that have caused the world to warm drastically since the start of the industrial revolution. As the world warms, climate change is causing weather patterns to change leading to extreme events such as heatwaves, droughts, flooding, and tropical storms, all of which are having adverse impacts and causing loss and damage, with disproportionate impacts on some of the most vulnerable around the globe.⁶

As climate change gains momentum within the global political arena, the human rights framework serves as a critical tool to shepherd and accelerate responses to climate change. Whereas this Court has already issued an Advisory Opinion on the linkages between the environment and human rights,⁷ the current Request submitted by the Republic of Colombia and the Republic of Chile provides an opportunity to delve into the pivotal question about what international human rights law, and the regional treaties in particular, requires of States in order to address climate change specifically.

The purpose of this written opinion is to illustrate some of the impacts of climate change on human rights, and to provide the Inter-American Court of Human Rights (the “IACtHR”, or the “Court”, or the “Honorable Court”) with an analysis of the specific content of the obligations to respect and ensure human rights, along with the corresponding standards that should be considered in this context. Our analysis relies primarily on Inter-American instruments, including the American

¹ United Nations, “What Is the Triple Planetary Crisis?,” accessed August 30, 2023, <https://unfccc.int/blog/what-is-the-triple-planetary-crisis>.

² “Request for an Advisory Opinion on the Climate Emergency and Human Rights. Submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile,” January 9, 2023.

³ Hans-Otto Pörtner et al., eds., *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, 2022, 123.

⁴ United Nations, “What Is Climate Change?,” accessed November 29, 2023, <https://www.un.org/en/climatechange/what-is-climate-change>.

⁵ Greenhouse gasses means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation. See “United Nations Framework Convention on Climate Change” (1992), art. 1.

⁶ Katherine Calvin et al., “Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change,” First, July 25, 2023, 5–6, <https://doi.org/10.59327/IPCC/AR6-9789291691647>.

⁷ Advisory Opinion OC-23/17. The environment and human rights (Inter-American Court of Human Rights November 15, 2017).

Convention on Human Rights (ACHR) and its Additional Protocol in the area of Economic, Social, and Cultural Rights (the “San Salvador Protocol”), although we also refer to other instruments of international human rights law and international environmental law. We find this approach to be essential because, mirroring the Court’s previous Advisory Opinion, addressing climate change requires interpreting how the obligations derived from environmental law affect the human rights obligations established in the American Convention.⁸

While climate change impacts a wide range of human rights, this opinion will focus on the rights to health and to adequate food, notwithstanding the indivisibility and interdependence of all human rights impacted by climate change. This opinion should not be understood as an exhaustive response to all the questions posed by the Republic of Colombia and the Republic of Chile. Instead, it offers an analysis of certain cross-cutting issues that will be valuable for this Honorable Court in addressing the questions raised in the Request. Where relevant, we will specifically note whether we are answering an individual question posed by Chile and Colombia.

This opinion is structured in three main parts. Section 2 analyzes the impacts of climate change on health and on food security, providing evidence-based information about how this crisis impacts health and nutrition, and how specific groups are disproportionately affected. Section 3 then places these impacts within the human rights framework, providing insight into how climate change has been understood to affect a wide range of civil and political, as well as economic, social, cultural, and environmental rights (ESCERs). In turn, Section 4 seeks to specify States’ human rights obligations with respect to climate change, distilling concrete recommendations. Section 4 covers the specific content of State obligations with respect to climate change, the nature of these duties, and a discussion of States’ duties in the context of business operations that significantly contribute to climate change.

2. The Impacts of Climate Change on Health and on Food Security

This section provides an overview of the well-documented and evidence-based impacts of climate change on human health and on food security. We examine both the observed impacts and projected risks of climate change on health and on food security, covering slow onset events⁹ as well as extreme weather events.¹⁰ Our analysis follows the scientific literature and evidence on climate change, as interpreted by technical agencies such as the World Health Organization (WHO) and the Intergovernmental Panel on Climate Change (IPCC). By doing so, we seek to establish a factual baseline for discussing the comprehensive impacts of the climate emergency on a number of human rights, and the associated State obligations under the ACHR and other regional instruments.

Our analysis focuses on the specific areas of health and food. Accordingly, it is purposely non-exhaustive, and should not be interpreted as a comprehensive description of the adverse impacts of climate change. Rather, its multifaceted repercussions extend beyond health and food, affecting a variety of human rights, as we shall acknowledge in Section 3 of this written opinion.

⁸ Ibid., para. 44.

⁹ E.g., rising temperatures, desertification, forest degradation, decreasing precipitation, and loss of biodiversity.

¹⁰ E.g., floods, storms, and forest fires.

2.1. Climate Change and Health

The quality and state of the environment is an important determinant of health. As the primary factor that shapes the conditions in which people are born, grow, work, live, and age, the environment can significantly influence health at both the individual and population levels. In particular, changes in climate - including increasing global temperatures, rising sea levels, and changes in precipitation patterns - will likely not only worsen existing environmental risks but will also give rise to new health challenges.¹¹ While numerous ongoing studies are still examining the impacts of climate change on health, the purpose of this section is to shed light on various climate-sensitive risks and impacts that affect both physical and mental well-being.

These examples are non-exhaustive and should only be considered as illustrative of the multiple causal linkages between climate change and human health. It is relevant to note that these climate-related impacts on health may not only occur simultaneously, but can also have synergistic and cumulative effects when combined with the adverse effects of other environmental challenges, including air pollution and biodiversity loss.¹²

With respect to **physical health**, climate change is likely to lead to an increase in morbidity and mortality as a result of a surge of both communicable and non-communicable diseases (NCDs).¹³

With respect to communicable diseases, climate change has been associated with:

- i. An increase in vector-borne diseases (VBD) as a result of changes in pathogen replication rates and changing climate patterns that facilitate transmission. For instance, elevated proliferation and reproductive rates of mosquitoes can increase the vectoral capacity for dengue fever, malaria, and other mosquito-borne diseases; and changes in climate can also alter the temperature, relative humidity, and rainfall variables that are significantly and positively associated with the incidence and transmission rates of these diseases.¹⁴
- ii. An increase in water-borne diseases (WBD) like diarrheal diseases or cholera, as a result of increases in temperature, heavy rainfall, flooding, and drought. For example, intense or prolonged precipitation can flush pathogens in the environment from pastures and fields to groundwater, rivers, and lakes, consequently infiltrating water treatment and distribution systems; while drought can decrease the volume of non-contaminated water sources, which can result in poor hygiene and increased concentration of pathogens.¹⁵
- iii. An increase in food-borne diseases (FBD) resulting from ingesting food that is contaminated. The IPCC has identified a strong association between higher temperatures and increases in FBDs, like Salmonella infections.¹⁶
- iv. An increase in respiratory tract infections (RTIs) due to temperature and humidity extremes, dust storms, extreme precipitation events, and increased climate variability.

¹¹ Pörtner et al., *Climate Change 2022*, 1048.

¹² For a description of these cumulative effects, see, e.g., *ibid.*, chap. 7.

¹³ World Health Organization, "Climate Change and Noncommunicable Diseases in Small Island Developing States. SIDS Ministerial Conference on NCDs and Mental Health. Policy Brief," 2023, 3.

¹⁴ Pörtner et al., *Climate Change 2022*, 1062–63.

¹⁵ *Ibid.*, 1064–65.

¹⁶ *Ibid.*, 1066.

Some of the RTIs that will represent a significant disease burden include pneumonia and influenza.

While most of the aforementioned impacts are linked to known diseases, the causal pathways described can also affect the risk of new or emerging infectious diseases.¹⁷

While this literature continues to develop, there are also a number of observed impacts of climate change on NCDs.¹⁸ NCDs are the result of a combination of genetic, physiological, environmental, and behavioral factors; and those identified as being climate-sensitive include non-infectious respiratory disease, cardiovascular disease, and diabetes.¹⁹ In particular:

- i. Climate change increases the incidence of cardiovascular diseases through high temperatures and extreme heat that can exacerbate the impacts of air pollution, one of the main environmental risk factors for NCDs. Climate change is also projected to increase the number and severity of wildfires, leading to smoke-related cardiovascular diseases.²⁰
- ii. Climate change is similarly projected to alter exposure pathways for different carcinogens. For instance, changes in ultraviolet light exposure related to shifts in precipitation may increase the incidence of melanoma, particularly for outdoor workers; while floodings might mobilize sediments where carcinogens (like persistent organic pollutants or radioactive material) have accumulated.²¹
- iii. Finally, extreme weather events and rising temperatures have also been associated with increased morbidity and mortality in people living with diabetes.²²

Furthermore, changes in climate can also have a significant impact on some of the modifiable behavioral risk factors for NCDs. For instance, it has been argued that extreme hot weather can lead to a reduction in physical activity, dehydration, and sleep disturbance; while saline intrusion of groundwater related to sea level rise may lead to higher salt intake and thus increase the risk of hypertension.²³ Extreme weather events can also reduce access to adequate food, which can lead to an increase in diet-related NCDs and malnutrition.²⁴ Finally, notwithstanding concerns of access to treatment for the general population, people with NCDs are at particular risk during and after extreme weather events due to treatment interruptions and lack of access to health facilities, goods, and services.²⁵

Mental health²⁶ and climate change are also interrelated. The WHO has indicated that climate change also exacerbates different social and environmental risk factors for mental health and

¹⁷ Ibid., 1067.

¹⁸ See, e.g., World Health Organization, “Climate Change and Noncommunicable Diseases in Small Island Developing States. SIDS Ministerial Conference on NCDs and Mental Health. Policy Brief.”

¹⁹ Pörtner et al., *Climate Change 2022*, 1071; World Health Organization, “Non Communicable Diseases,” accessed October 9, 2023, <https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases>.

²⁰ Pörtner et al., *Climate Change 2022*, 1071.

²¹ Ibid., 1072.

²² Ibid.

²³ Ibid., 1071–75.

²⁴ Ibid., 1075.

²⁵ Ibid., 1072.

²⁶ The WHO defines mental health as “a state of well-being in which every individual realizes his or her own potential, can cope with the stresses of life, can work productively and fruitfully and is able to make a contribution to her or his community.” See World Health Organization, “Mental Health and Climate Change: Policy Brief,” 2022, <https://www.who.int/publications/i/item/9789240045125>.

psychosocial problems.²⁷ Broadly, climate change can lead to emotional distress, the development of new mental health conditions, and/or a worsening situation for people already living with these conditions. Examples of these impacts include: (i) stress reactions like intense emotional suffering; (ii) stress-related physical health problems, like the development of cardiovascular and autoimmune diseases; (iii) the development of depressive, anxiety, and stress-related conditions, particularly after extreme weather events; (iv) feelings of helplessness, fear, and grief, particularly with regards to the slow impacts of climate change; and (v) increased risk of suicidal behavior and substance abuse, especially among those who have experienced repetitive or severe climate-related hazards.²⁸

In particular, the IPCC has clarified the different pathways in which climate change can affect mental health. The exposure may be direct, such as experiencing an extreme weather event, or indirect, such as the mental health consequences of climate-related displacement or malnutrition.²⁹ Exposure may also be vicarious, that is, from observing the impact of climate change on others, or simply learning about climate change.³⁰

The aforementioned physical and mental health impacts of climate change are **disproportionately borne by certain populations**. Vulnerability to climate change differs across time, location, communities, and individuals within communities, which means that certain groups may have higher levels of vulnerability and exposure to climate-related health hazards.³¹

In particular, **women** experience more severe impacts on their health due to climate change.³² For instance, women have a higher probability of dying in extreme weather events and tend to experience greater mental health burdens.³³ Available evidence also suggests that heat is associated with higher rates of preterm birth, reduced access to prenatal care, and a higher number of unattended deliveries.³⁴

The IPCC has reported a projected increase of malnutrition and infectious diseases in **children** as a result of climate change, mostly for those in low-income countries.³⁵ It has been noted that the impacts of climate change on physical health will be disproportionately borne by children, including heightened exposure to heat and pollutants that can impair brain development and contribute to child mortality.³⁶ Additionally, there is international concern around the current and anticipated mental health impacts on children caused by climate change, such as depression and

²⁷ Ibid.

²⁸ Ibid.; See also Pörtner et al., *Climate Change 2022*, chap. 7.

²⁹ Pörtner et al., *Climate Change 2022*, 1074, 1076.

³⁰ Ibid., 1076.

³¹ Ibid.

³² Ibid., 1075.

³³ Ibid., 1053.

³⁴ Ibid., 1075.

³⁵ Ibid., 1053.

³⁶ Committee on the Rights of the Child, “General Comment No. 26 (2023) on Children’s Rights and the Environment with a Special Focus on Climate Change,” August 22, 2023, paras. 38–41; World Health Organization, “Climate Change and Health,” accessed August 30, 2023, <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>; Pörtner et al., *Climate Change 2022*, 1075.

eco-anxiety.³⁷ Extreme weather events also have pervasive effects on children's mental health since they are particularly vulnerable to post-traumatic stress.³⁸

Older persons are also disproportionately vulnerable to the health impacts associated with climate change and weather extremes.³⁹ This population has a greater sensitivity to dehydration and extreme heat, suffers changes in their immune system, and tends to have pre-existing NCDs.⁴⁰ Evacuations during extreme events also pose specific health risks to older adults, especially when they reside in nursing or assisted living facilities.⁴¹

Climate change also has differentiated health impacts on **indigenous peoples**. Climate change affects their health through (i) primary effects, like heatwaves and droughts, leading to immediate physical health problems and challenges in accessing healthcare facilities in remote areas during extreme events; (ii) secondary effects, which include ecosystem changes and the spread of infectious diseases; and (iii) tertiary effects which involve cultural changes, such as anxiety, mental health conditions, and suicidal thoughts resulting from the dispossession of land and culture due to climate change. Gender inequities can also exacerbate these health effects, with indigenous women reporting higher levels of stress related to climate change in some communities.⁴²

Finally, there are different linkages between climate change, migration, and health, although the number of studies that assess these connections is small. Climate change can act as direct and indirect drivers of migration and displacement. At the same time, **migrants** and **refugees** may experience different long-term health impacts compared to non-migrants, and will often face higher exposure to disease, malnutrition, mental health concerns, and various health-related challenges. In particular, they are more vulnerable to the interruption of healthcare during extreme events, climate-related injuries, and sleep deprivation.⁴³ Climate migration can also lead to bidirectional links with the spread of infectious diseases: on the one hand, migrants may be exposed to diseases in new areas and, at the same time, they may potentially introduce diseases to new host communities.⁴⁴

2.2. Climate Change and Food Security

Climate change affects **food security** with severe impacts on some of the most vulnerable populations around the globe.⁴⁵ Defined as “a situation that exists when all people, at all times, have physical, social, and economic access to sufficient, safe, and nutritious food that meets their dietary needs and food preferences for an active and healthy life”,⁴⁶ food security is put at risk by both slow onset events and extreme weather events.⁴⁷ These symptoms of climate change have

³⁷ Committee on the Rights of the Child, “General Comment No. 26,” para. 41.

³⁸ Pörtner et al., *Climate Change 2022*, 1053, 1076.

³⁹ Ibid., 1053.

⁴⁰ Ibid.

⁴¹ Ibid., 1072.

⁴² Ibid., 1054–58.

⁴³ Ibid., 1086.

⁴⁴ Ibid., 1079–85.

⁴⁵ Ibid., 792.

⁴⁶ Food and Agriculture Organization, “The State of Food Insecurity in the World” (Rome: FAO, 2001), 49.

⁴⁷ Intergovernmental Panel on Climate Change, ed., “Food Security,” in *Climate Change and Land: IPCC Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security, and Greenhouse Gas Fluxes in Terrestrial Ecosystems* (Cambridge: Cambridge University Press, 2022), 439,

repercussions for the entire food system, and ultimately on individuals' capacities to procure safe and nutritious food.⁴⁸

Climate change affects adequate and nutritious food through its significant **effects on both crop and livestock systems**, which are critical components for achieving food security.⁴⁹ Major crops like maize, soybeans, and wheat, as well as a range of vegetables, fruits, nuts, and fiber, are directly and indirectly impacted by climate change. The most pronounced and negative effects have been observed in regions such as Sub-Saharan Africa, South America, the Caribbean, Southern Asia, Western Europe, and Southern Europe.⁵⁰ For instance, the combination of drought and heat waves decreased global average yields of maize (by 11.6%), soybeans (by 12.4%) and wheat (by 9.2%) from 1961–2014.⁵¹

Climate change also disrupts crop yields and the productivity of livestock herds in various ways, including, for example: (i) destroying entire crops and land for future planting;⁵² (ii) requiring farmers to alter planting schedules and soil management strategies;⁵³ (iii) decreasing the availability of livestock rangelands; (iv) contributing to poor animal health;⁵⁴ and (v) disrupting the storage and transportation of food.⁵⁵ Additionally, changing weather patterns are impacting ecosystems of key pollinators such as insects, birds, and bats, while also increasing vulnerability to pests and diseases, both of which can have significant consequences for the global supply of key crops and livestock products.⁵⁶

As climate change disrupts the availability of crops and livestock products, it also compromises the **physical and economic accessibility of safe and nutritious food**.⁵⁷ Declines in key food commodities can weaken people's purchasing power, as farmers are forced to transition to alternative livelihoods, and price increases severely limit the capacity to buy nutritious food.⁵⁸

Critically, these impacts on the availability and accessibility of safe and nutritious food also have repercussions for food utilization because they are linked to micronutrient deficiencies. For example, to adapt to the effects of climate change, farmers have often resorted to substituting crops for more resilient but less nutritious ones.⁵⁹ Where crops are not substituted out, an increase in atmospheric CO₂ levels has also been linked to a decrease in crops' nutritional content, with

<https://doi.org/10.1017/9781009157988.007>; Intergovernmental Panel on Climate Change, "IPCC WGI Interactive Atlas," accessed November 22, 2023, <https://interactive-atlas.ipcc.ch/atlas>.

⁴⁸ Intergovernmental Panel on Climate Change, "Food Security," 442.

⁴⁹ There are a whole set of impacts on water systems that are important when thinking about food security. Due to space constraints, this written opinion will not focus on these. See, e.g., Intergovernmental Panel on Climate Change, *Climate Change and Land: IPCC Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security, and Greenhouse Gas Fluxes in Terrestrial Ecosystems*, 1st ed. (Cambridge University Press, 2022), <https://doi.org/10.1017/9781009157988>.

⁵⁰ Pörtner et al., *Climate Change 2022*, 728.

⁵¹ Ibid.

⁵² See, e.g., Shah Meer Baloch, "'We Have No Dry Land Left': Impact of Pakistan Floods to Be Felt for Years," *The Guardian*, October 12, 2022, sec. World news, <https://www.theguardian.com/world/2022/oct/12/pakistan-floods-impact-years-crops-farms>.

⁵³ Intergovernmental Panel on Climate Change, "Food Security," 451 (examples of Colombia and Bolivia).

⁵⁴ Ibid., 456.

⁵⁵ Ibid.

⁵⁶ Pörtner et al., *Climate Change 2022*, 730, 739.

⁵⁷ Intergovernmental Panel on Climate Change, "Food Security," 443.

⁵⁸ Ibid., 462.

⁵⁹ Pörtner et al., *Climate Change 2022*.

some products seeing reductions in nutrients such as protein, zinc, and iron.⁶⁰ Additionally, where traditional crop and livestock products have been affected, individuals have turned to ultra-processed products that are energy-dense but lack the essential dietary requirements necessary for food security.⁶¹ The impacts of climate change on the physical and economic access to nutritious foods are projected to continue to interfere with global efforts to tackle malnutrition in all its forms.⁶²

The impacts of climate change on water are complex, with severe implications for the supply and use of water and, in turn, for food security.⁶³ Both slow onset and extreme weather events jeopardize **access to safe and clean water**, with approximately half the world's population currently experiencing water scarcity for at least one month per year due to both climate change and other factors.⁶⁴ Climate change has a range of implications for water and food security, including (i) increased water pollution (sediments, pathogens, and pesticides); (ii) the aforementioned salinization of groundwater; (iii) the decrease in terrestrial water storage capacities; and (iv) the loss and degradation of freshwater ecosystems, among others.⁶⁵

As is the case with health, the impacts of climate change on food security are felt hardest by specific populations, including small-scale food producers, indigenous peoples, low-income households, and women and children.⁶⁶

Small and mid-sized food producers across the globe, particularly in Latin America, have been key contributors to the progress made in global food security in the 20th century. Paradoxically, they are now among the most vulnerable to the effects of climate change on food security.⁶⁷ Small-scale food producers are particularly sensitive to the impacts of changing weather on crop yields and animal productivity because of their limited resources for adaptation.⁶⁸ For instance, municipalities in Central America that are heavily reliant on subsistence crops lack the resources necessary for innovation and adaptation, making them more vulnerable to household food insecurity and livelihood disruptions.⁶⁹ Similarly, in Mexico, subsistence agriculture is projected to be “the most vulnerable to climate change, due to its intermittent production and reliance on maize and beans”.⁷⁰

Indigenous peoples face similar challenges and are vulnerable to food and nutritional insecurity due to climate change.⁷¹ This vulnerability stems from their close relationship with the

⁶⁰ Ibid., 465.

⁶¹ See, e.g., Lora Iannotti et al., “Food Prices and Poverty Negatively Affect Micronutrient Intakes in Guatemala,” *The Journal of Nutrition* 142 (June 13, 2012): 1568–76, <https://doi.org/10.3945/jn.111.157321>; Pörtner et al., *Climate Change 2022*, 462; Human Rights Watch, “My Fear Is Losing Everything,” October 21, 2020, <https://www.hrw.org/report/2020/10/21/my-fear-losing-everything/climate-crisis-and-first-nations-right-food-canada>.

⁶² Pörtner et al., *Climate Change 2022*, 462.

⁶³ Intergovernmental Panel on Climate Change, “Fact Sheet - Food and Water,” October 2022, https://www.ipcc.ch/report/ar6/wg2/downloads/outreach/IPCC_AR6_WGII_FactSheet_FoodAndWater.pdf.

⁶⁴ Pörtner et al., *Climate Change 2022*, 555.

⁶⁵ Ibid., chap. 4.

⁶⁶ Office of the High Commissioner for Human Rights, “The Impact of Climate Change on the Right to Food,” OHCHR, accessed September 21, 2023, <https://www.ohchr.org/en/climate-change/impact-climate-change-right-food>.

⁶⁷ Pörtner et al., *Climate Change 2022*, 792.

⁶⁸ Ibid., 734.

⁶⁹ Ibid., 760.

⁷⁰ Intergovernmental Panel on Climate Change, “Food Security,” 462.

⁷¹ Carol Zavaleta-Cortijo et al., “Climate Change and COVID-19: Reinforcing Indigenous Food Systems,” *The Lancet Planetary Health* 4, no. 9 (September 1, 2020): e381–82, [https://doi.org/10.1016/S2542-5196\(20\)30173-X](https://doi.org/10.1016/S2542-5196(20)30173-X).

environment and natural resources. In particular, most indigenous food systems rely on traditional knowledge about land, rivers, biodiversity, and hunting and fishing, all of which are being negatively impacted by climate change.⁷² Additionally, the impacts of climate change on these communities is exacerbated by existing marginalization from historical land dispossession, discrimination, and colonization.⁷³

When households and communities experience food insecurity, **women and children** are usually the first to suffer the consequences. Where women generally have less control over productive assets such as seeds, livestock, and land, and have less opportunity for agricultural employment, they are even more at risk of feeling the impacts of climate-induced food insecurity.⁷⁴ As shocks continue to disrupt the whole food system, men and women have unequal access to adaptation resources capabilities, making women, once again, more vulnerable to food insecurity.⁷⁵ Additionally, there is a connection between climate-induced food insecurity and increases in gender-based violence.⁷⁶ This stems from the fact that climate change may consolidate power dynamics as women become more economically dependent on male breadwinners and more vulnerable to abuses of men that are psychologically and socially stressed from climate change related food security.⁷⁷

In summary, the immediate and long-term impacts of climate change ripple through various facets of food security, as they impact food production, the prices of these commodities, the overall ability of individuals to access food, the nutritional quality and safety of such food, and the overall stability of communities.⁷⁸

While this section has separately examined the impacts of climate change on health and food security, it is crucial to recognize the intimate connection between the two, particularly in the context of this crisis. The negative effects of climate change on food security have a profound influence on diet and nutrition, inevitably leading to health consequences. For example, rising global temperatures have been associated with rising food insecurity which, in turn, are linked to both undernutrition and overweight and obesity.⁷⁹ In small island developing states, climate change's impacts on their capacity to produce healthy and nutritious foods have led to an increased reliance on ultra-processed foods and beverages. These items are often energy-dense and high in critical nutrients such as sugar, fat, and salt, contributing to an increased prevalence of NCDs.⁸⁰ Beyond NCDs, malnutrition from food insecurity is also linked to an increased susceptibility to infectious diseases which, in turn, compounds the health consequences of malnutrition by reducing capacities to absorb nutrients.⁸¹

⁷² Ibid.

⁷³ Pörtner et al., *Climate Change 2022*, 748.

⁷⁴ Ibid., 734, 748.

⁷⁵ Ibid., 748.

⁷⁶ See, e.g., Pooja Agrawal et al., "The Interrelationship between Food Security, Climate Change, and Gender-Based Violence: A Scoping Review with System Dynamics Modeling," *PLOS Global Public Health* 3, no. 2 (February 24, 2023): e0000300, <https://doi.org/10.1371/journal.pgph.0000300>.

⁷⁷ Ibid.

⁷⁸ Intergovernmental Panel on Climate Change, "Food Security," 443–47.

⁷⁹ Jessica C. Fanzo and Shauna M. Downs, "Climate Change and Nutrition-Associated Diseases," *Nature Reviews Disease Primers* 7, no. 1 (December 9, 2021): 1–2, <https://doi.org/10.1038/s41572-021-00329-3>.

⁸⁰ World Health Organization, "Climate Change and Noncommunicable Diseases in Small Island Developing States. SIDS Ministerial Conference on NCDs and Mental Health. Policy Brief," 3.

⁸¹ Fanzo and Downs, "Climate Change and Nutrition-Associated Diseases."

We have provided some examples that illustrate the tangible connections between climate change, food security, and health. Yet, the interconnections between them are many, underscoring the urgent need to understand the complex nature of how this crisis impacts individuals and communities around the globe.

3. Analyzing the Impacts of Climate Change through the Human Rights Framework

The climate emergency should also be understood as a human rights crisis. The previous section discussed various impacts of climate change on health and food that interferes with the enjoyment of several rights protected by the ACHR, the San Salvador Protocol, and other Inter-American instruments.⁸² This interference is projected to intensify over time unless States adopt and implement urgent and appropriate measures to substantially change their climate policies.⁸³ To assist States in this endeavor, and guided by the principles of indivisibility and interdependence of human rights, we argue that this Honorable Court has the opportunity to analyze the impacts of climate through both the lens of civil and political rights, as well as ESCERs.

With respect to the first set of rights, it is almost undisputed that severe climate impacts can have a detrimental effect on **the right to life** (Article 4 ACHR).⁸⁴ Environmental degradation, climate change, and unsustainable development constitute some of the most serious threats to life and to the ability of present and future generations to enjoy a dignified life.⁸⁵ This is especially true of food and water insecurity as a result of climate change, which can not only cause unnatural and premature death by malnutrition, starvation, and/or dehydration, but can also heighten competition for resources, escalate violence, and trigger conflict. For indigenous and tribal peoples, the impacts of climate change can represent a direct threat to their survival and continued development as groups.⁸⁶ In this sense, the content of the right to life must necessarily inform State obligations in the context of the climate crisis,⁸⁷ particularly with regard to the duties to protect against life-threatening impacts of climate change, and to provide information about environmental hazards that pose a direct threat to life.⁸⁸

This Honorable Court has also considered that environmental cases warrant a joint analysis of the rights to life and to **personal integrity** (Article 5.1 ACHR), insofar as the absence of conditions that are necessary to ensure a dignified life may also have adverse impacts on physical and

⁸² Whether that amounts to a violation of these instruments will depend on whether States have breached their legal obligations to prevent or respond to the impacts of climate change on human rights. This can take the form of a violation of the duty to respect or ensure, according to the circumstances of the case. See Cinnamon Piñon Carlarne, Kevin R. Gray, and Richard Tarasofsky, eds., *The Oxford Handbook of International Climate Change Law*, First edition, Oxford Handbooks (Oxford, United Kingdom: Oxford University Press, 2016), 215.

⁸³ Ibid. (mentioning agreement among human rights bodies, States and scholars on this issue).

⁸⁴ See, e.g., Inter-American Commission on Human Rights and Special Rapporteur for Economic, Social, Cultural and Environmental Rights (REDESCA), “Resolution No. 3/2021. Climate Emergency. Scope of Inter-American Human Rights Obligations,” December 31, 2021, preamble.

⁸⁵ Human Rights Committee, “General Comment No. 36 (2019) on the Right to Life,” September 3, 2019, paras. 26, 62; *Daniel Billy and others v. Australia*, No. CCPR/C/135/D/3624/2019 (Human Rights Committee September 18, 2023); *Advisory Opinion OC-23/17* paragraph 114.

⁸⁶ *Billy v. Australia* paragraph 8.13; Benito Oliveira Pereira and other members of the Campo Agua’ë indigenous community v. Paraguay, No. CCPR/C/132/D/2552/2015 (Human Rights Committee September 21, 2022).

⁸⁷ See Human Rights Committee, “General Comment No. 36 (2019) on the Right to Life,” para. 62 (arguing that the content of the right to life must inform State obligations under international environmental law).

⁸⁸ See, e.g., *Öneryildiz v. Turkey*, No. 27785/10 (European Court of Human Rights [GC] November 30, 2004) (explaining that the right to access to information can be relied upon for the protection of the right to life in this context).

mental integrity.⁸⁹ The Court has particularly underscored that polluting activities carried out by public or private actors that restrict access to, or the quality of, food and water may constitute a violation of this right, although its degree and range must be examined in each specific situation.⁹⁰

Some international tribunals have also examined the close link between environmental degradation and the rights to **private and family life** (Article 11.2 ACHR). The European Court of Human Rights (ECtHR) was the first to adopt this approach to the analysis of environmental damage. Since its decision in the *Case of López Ostra v. Spain* (1994), the ECtHR has consistently ruled that environmental degradation can deprive a person of the enjoyment of their home in such a way as to harm their private and family life.⁹¹ To assess whether an environmental damage is serious enough to adversely affect the family and private lives of an individual,⁹² the ECtHR has considered (i) the physical and psychological consequences on the health or quality of life of the individual or group concerned; and (ii) whether it is likely that environmental degradation will directly infringe on the individual's home (e.g. the complete destruction of biodiversity near the applicant's house).⁹³ These considerations can be applied to the context of climate change in light of the impacts examined above and the possibility of complete destruction of homes and infrastructure as a result of climate-related displacement from extreme weather events.⁹⁴ The ECtHR has also specially noted that an exposure to an environmental danger that can significantly affect an individual's ability to enjoy their home or family is sufficient for the right to private and family life to apply, especially if said risk has been determined in the context of an environmental impact assessment or similar study.⁹⁵ Within the United Nations system, the Human Rights Committee (HRC) has adopted a similar approach in its most recent decisions on individual communications concerning climate change. In that context, the HRC noted that the food and water resources located in the territory where indigenous communities “enjoy their privacy”, as well as the marine and coastal ecosystems in which they rely on, were “basic components of the members’ private life, family life and home” and thus fell within the scope of protection of this right.⁹⁶

Although not examined in depth in these written observations, there are other civil and political rights that have been considered by this Honorable Court and other international bodies as part of States’ “procedural obligations” in environmental matters.⁹⁷ The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (the “Escazú Agreement”) similarly protects civil and political rights in this

⁸⁹ *Advisory Opinion OC-23/17* paragraph 114.

⁹⁰ *Ibid.*, paras. 112, 117.

⁹¹ *López Ostra v. Spain*, No. 16798/90 (European Court of Human Rights December 9, 1994).

⁹² See *Çiçek and Others v. Turkey*, No. 44837/07 (European Court of Human Rights February 4, 2020) (indicating that, for responsibility to arise, an applicant must show, first, that there has been actual interference with his private sphere, and, secondly, that a minimum level of severity has been attained).

⁹³ See European Court of Human Rights, “Guide sur la jurisprudence de la Convention européenne des droits de l’homme. Environnement,” August 31, 2022, 25–39, https://www.echr.coe.int/documents/d/echr/Guide_Environment_FRA.

⁹⁴ See, e.g., Pörtner et al., *Climate Change 2022*, 1128.

⁹⁵ *Brândușe v. Romania*, No. 6586/03 (European Court of Human Rights July 7, 2009); *Taşkin and Others v. Turkey*, No. 46117/99 (European Court of Human Rights November 10, 2004).

⁹⁶ *Benito Oliveira Pereira and other members of the Campo Agua’ë indigenous community v. Paraguay* paragraph 8.3-8.4; *Billy v. Australia* paragraph 8.10-8.13.

⁹⁷ *Advisory Opinion OC-23/17* paragraph 211.

context.⁹⁸ Therefore, we argue that civil and political rights must also be considered when distilling the content and scope of State obligations to protect present and future generations from the adverse impacts of climate change. These rights include:

- i. the right to **freedom of expression** in matters related to the planetary crisis⁹⁹ and, most notably, to **seek and receive information** on climate change and its impacts (Article 13.1 ACHR);¹⁰⁰
- ii. the rights to **freedom of association and peaceful assembly** as applied to environmental demonstrations (Articles 15 and 16 ACHR);¹⁰¹
- iii. the right to **public participation** (Article 23.1.a ACHR);¹⁰² and
- iv. the right to **judicial protection** in climate-related matters (Article. 25 ACHR).¹⁰³

The global climate crisis can also have cumulative risks for the enjoyment of a wide range of ESCERs recognized in the San Salvador Protocol and Article 26 of the ACHR.¹⁰⁴ As noted by some international bodies and human rights mechanisms, climate change and environmental degradation particularly threaten different components of the rights to **work and to just, equitable, and satisfactory conditions of work**¹⁰⁵ (Articles 6 and 7 San Salvador Protocol); to **social security**¹⁰⁶ (Article 9 San Salvador Protocol); to **health**¹⁰⁷ (Article 10 San Salvador Protocol); to a **healthy environment**¹⁰⁸ (Article 11 San Salvador Protocol); to **adequate food**¹⁰⁹ (Article 12 San Salvador Protocol); to **education**¹¹⁰ (Article 13 San Salvador Protocol) and to

⁹⁸ “Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean” (2018), art. 1 This Agreement has been ratified by 15 States in the region. It is the first regional environmental agreement of Latin America and the Caribbean and the first in the world containing specific provisions on environmental human rights defenders. As such, it provides a valuable tool for this Honorable Court to expand on the content of the State obligations with respect to these rights in the context of climate change.

⁹⁹ Committee on the Rights of the Child, “General Comment No. 26,” paras. 29–31.

¹⁰⁰ *Advisory Opinion OC-23/17* paragraphs 213–225; Committee on the Rights of the Child, “General Comment No. 26,” paras. 32–34.

¹⁰¹ Committee on the Rights of the Child, “General Comment No. 26,” paras. 29–31.

¹⁰² *Advisory Opinion OC-23/17* paragraphs 226–232.

¹⁰³ *Ibid.*, paras. 233–240.

¹⁰⁴ See, e.g., *Case of the Miskito divers (Lemoth Morris et al.) v. Honduras* (Inter-American Court of Human Rights August 31, 2021) on the right to work and to just and equitable conditions of work; *Case of Vera Rojas et al. v. Chile* (Inter-American Court of Human Rights October 1, 2021) on the right to health; *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, Reparations and Costs* (Inter-American Court of Human Rights February 6, 2020) on the rights to adequate food and to participate in cultural life; *Advisory Opinion OC-23/17* on the right to a healthy environment; *Case of Guzmán Albarracín et al. v. Ecuador. Merits, reparations and costs* (Inter-American Court of Human Rights June 24, 2020) on the right to education.

¹⁰⁵ See, e.g., United Nations Environment Programme, “Climate Change and Labor: Impacts of Heat in the Workplace,” April 28, 2016, <https://www.undp.org/publications/climate-change-and-labor-impacts-heat-workplace> (exploring how climate change will affect safe and healthy working conditions, rest, leisure and reasonable limitation of working hours for certain sectors or workers).

¹⁰⁶ See, e.g., Committee on the Rights of the Child, “General Comment No. 26,” paras. 45–50 (indicating how social security systems should provide protection against environmental shocks and slow-onset harms that result from the climate emergency).

¹⁰⁷ See, e.g., *ibid.*, paras. 37–44; David R. Boyd, “Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment,” July 15, 2019, paras. 32–33.

¹⁰⁸ See, e.g., Committee on the Rights of the Child, “General Comment No. 26,” paras. 63–67.

¹⁰⁹ See, e.g., Boyd, “Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment,” paras. 33–36.

¹¹⁰ See, e.g., Committee on the Rights of the Child, “General Comment No. 26,” paras. 51–57.

cultural life¹¹¹ (Article 14 San Salvador Protocol). Climate change has also been analyzed through the lens of other ESCERs that should be considered implicitly protected by the Protocol, like the rights to **water and sanitation**¹¹² and **housing**.¹¹³

Finally, the adverse impacts of climate change have also been examined using the **equality and non-discrimination** framework (Articles 1.1 and 24 of the ACHR). As noted, climate change disproportionately affects certain populations, including migrants, indigenous peoples, and women and children. In this context, the concept of substantive equality, solidified in Inter-American case law, not only holds particular significance, but can also be informed by the work of the United Nations Committee on the Rights of the Child (CRC) and its use of the concept of 'indirect environmental discrimination' to articulate and comprehend these types of impacts.¹¹⁴ Substantive equality creates a positive obligation to adopt measures to reverse or change existing discriminatory situations.¹¹⁵ In the context of climate change, this implies a duty to immediately address the undeniable disparate impacts of climate change in specific groups through a set of strategies to mitigate, adapt, and respond to climate impacts (e.g., adaptation measures that are focused on the most vulnerable, and ensuring non-discrimination in climate policies, as will be explored in Section 4). Climate change has also been analyzed through the principle of intergenerational equity which could, in theory, be used to attribute responsibility to States for foreseeable climate-related threats that result of their acts or omissions now, the full implications of which may not manifest for years or decades.¹¹⁶

For the purposes of this written opinion, we will focus on analyzing climate impacts through the lenses of the rights to health and adequate food, briefly considering their interrelationship with the right to a healthy environment.

Relying on the framework adopted by the United Nations Committee on Economic, Social and Cultural Rights (CESCR), this Honorable Court has established that the **right to health** in all of its dimensions encompasses four essential and interrelated elements: availability, accessibility, acceptability, and quality.¹¹⁷ Given that climate change poses a significant threat to all four elements, we argue that this framework can serve as a valuable tool to analyze the various ways in which it can undermine the realization of the highest attainable standard of physical and mental health.

First, the element of **availability** requires health facilities, goods, and services to be available in sufficient quantity.¹¹⁸ This includes hospitals, clinics, and other health-related buildings, as well as trained medical and professional personnel. Climate change has the potential to disrupt these

¹¹¹ See, e.g., *Billy v. Australia*; Benito Oliveira Pereira and other members of the Campo Agua'ë indigenous community v. Paraguay.

¹¹² See, e.g., Boyd, "Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment," paras. 37–39.

¹¹³ See, e.g., Committee on the Rights of the Child, "General Comment No. 26," paras. 46, 48.

¹¹⁴ Term used by *ibid.*, para. 14.

¹¹⁵ Advisory Opinion OC-27/21. Right to freedom of association, right to collective bargaining, and right to strike, and their relation to other rights, with a gender perspective (Inter-American Court of Human Rights May 5, 2021).

¹¹⁶ Committee on the Rights of the Child, "General Comment No. 26," para. 11.

¹¹⁷ See, e.g., Case of Vera Rojas et al. v. Chile. Preliminary Objections, Merits, Reparations, and Costs (Inter-American Court of Human Rights October 1, 2021) (citing previous case law on the right to health).

¹¹⁸ Committee on Economic, Social and Cultural Rights, "General Comment No. 14 (2000) on the Right to the Highest Attainable Standard of Health," August 11, 2000, para. 12, <https://digitallibrary.un.org/record/425041>.

components in multiple ways. On the one hand, an increase in the frequency and intensity of extreme weather events can act as disruptive shocks to the *supply* of health facilities and services, as they can (i) damage health infrastructure, including pharmaceutical production facilities, even rendering them inoperable; and (ii) disrupt the supply chain of essential health services and goods, including essential drugs as defined by the WHO. Simultaneously, both slow onset and extreme weather events are likely to intensify the *demand* for health goods and services. As a result of the combined effect of shocks in supply and demand, climate change is likely to severely disrupt the element of availability.¹¹⁹

The notion of **accessibility** means that health facilities, goods, and services must be accessible to everyone without discrimination. This element has four overlapping dimensions: non-discrimination, physical accessibility, affordability, and information accessibility. Climate-related events and their consequences can particularly affect the affordability of care by straining healthcare systems and increasing healthcare costs, and disrupt the physical accessibility of health facilities.¹²⁰ Because of its disparate impacts on specific groups, including those that already face disadvantages in accessing healthcare,¹²¹ climate change can also hinder the element of accessibility without discrimination. Addressing climate change also requires distinct efforts to ensure information accessibility of both slow onset and extreme weather events, which will be analyzed in detail in Section 3 on State obligations.

With respect to **acceptability**, climate change can jeopardize the requirement that all health facilities, goods, and services be culturally appropriate, especially when it comes to indigenous peoples. As noted previously, climate change is likely to disrupt the environments and ecosystems upon which indigenous communities depend on for traditional healthcare. For instance, extreme heat or droughts can affect the availability of traditional foods and medicines and, at the same time, changes in ecosystems can lead to the erosion of cultural practices related to healthcare.¹²²

Climate-related health risks, such as the increase in the incidence of infectious diseases, may require indigenous peoples to resort to health facilities and services that rely solely on the Western model and do not integrate traditional knowledge. This becomes especially pertinent for certain indigenous peoples for whom, following their cultural beliefs, some diagnoses should be treated with traditional medicine (such as colds or diarrheal diseases) while other problems may only be treated by Western medicine (such as tuberculosis).¹²³ Failure to integrate both models may render facilities or services unacceptable or even harmful to indigenous communities. In the case of indigenous peoples in voluntary isolation, adverse climate impacts could compel them to break isolation and seek healthcare from culturally unfamiliar or inappropriate facilities. This can potentially lead to epidemics contracted after direct or indirect contact with non-indigenous

¹¹⁹ See, e.g., Pörtner et al., *Climate Change 2022*, 1618.

¹²⁰ See Section 2.1.

¹²¹ *Ibid.*

¹²² See, e.g., Pörtner et al., *Climate Change 2022*, 935, 1375, 2088.

¹²³ For an example of distinctions between traditional and Western medicine in the case of indigenous peoples, see República de Colombia, Gobernación de Boyacá, “Caracterización Sociocultural y Ambiental de La Nación U’wa Del Departamento de Boyacá Para La Implementación Del Enfoque Étnico y El Abordaje Intercultural En Salud” (Boyacá, 2019), 41, 68, 75, <https://hospitalcubara.gov.co/web/wp-content/uploads/2020/04/Caracterizacio%CC%81n-Sociocultural-y-Ambiental-Uwa.pdf>.

populations and/or contaminated foods, which could have tragic consequences for these groups.¹²⁴

Finally, the element of **quality** requires health facilities, goods, and services to be scientifically and medically appropriate and of good quality. This includes skilled medical personnel, scientifically approved hospital equipment, safe and potable water, and adequate sanitation. Climate change can adversely impact all these elements. As demonstrated above, it can disrupt access to safe water due to increased pollution and decreased freshwater availability, affecting sterilization and sanitation processes. Increasing temperatures, air pollution, and extreme events can similarly compromise healthcare quality and infrastructure.¹²⁵ Resulting shortages in hospital equipment and skilled healthcare workers are also likely to impact the quality of care.

This Honorable Court has similarly recognized that the **right to food** is vulnerable to environmental impacts and that States have relevant obligations under the ACHR in this regard.¹²⁶ In the *Case of Lhaka Honhat v. Argentina* (2020), this Court described that the core content of this right implies the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; as well as the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.¹²⁷ In this sense, and using the framework established by the CESCR, the Court identified four main elements of the right to food - **availability, accessibility, adequacy, and sustainability**¹²⁸ - that can serve as a framework to analyze how climate change hinders the enjoyment of this right.

In the case of the right to food, **availability** requires that people be able to feed themselves either “directly from productive land or other natural resources, or from well-functioning distribution, processing and market systems”.¹²⁹ As previously discussed, climate change impacts the availability of safe and nutritious food by causing decreased crop and livestock productivity, the deterioration of vital agricultural lands and ecosystems, and disruptions in storage and transportation, among others.

The right to food also encompasses **physical and economic accessibility**, both of which are compromised by climate change’s impacts on the food system.¹³⁰ Economic accessibility requires that food is affordable without needing to compromise other basic needs.¹³¹ However, as food availability is jeopardized, the price of the limited commodities skyrockets, leaving many financially vulnerable and unable to feed their families without putting other needs at risk. Increases in food prices have also been associated with civil unrest in urban areas among

¹²⁴ See Inter-American Commission on Human Rights, “Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of Their Human Rights,” December 30, 2013, paras. 116–117.

¹²⁵ See Section 2.1.

¹²⁶ *Advisory Opinion OC-23/17* paragraphs 66, 245.

¹²⁷ *Lhaka Honhat v. Argentina* paragraph 218; Committee on Economic, Social and Cultural Rights, “General Comment No. 12 (1999) on the Right to Adequate Food,” May 12, 1999, para. 8.

¹²⁸ *Lhaka Honhat v. Argentina* paragraphs 216–217; Committee on Economic, Social and Cultural Rights, “General Comment No. 12,” paras. 7–8.

¹²⁹ Committee on Economic, Social and Cultural Rights, “General Comment No. 12,” para. 12; *Lhaka Honhat v. Argentina* paragraph 219.

¹³⁰ Committee on Economic, Social and Cultural Rights, “General Comment No. 12,” para. 13; *Lhaka Honhat v. Argentina* paragraph 219.

¹³¹ Committee on Economic, Social and Cultural Rights, “General Comment No. 12,” 13; *Lhaka Honhat v. Argentina* paragraphs 218–219.

populations that are unable to afford or produce their own food.¹³² Additionally, physical accessibility requires that food is accessible to everyone, with a focus on some of the most vulnerable such as children, older persons, persons with disabilities, and victims of natural disasters or people living in disaster-prone areas.¹³³ As noted above, climate change significantly hampers physical accessibility of food, often with compounding or cascading impacts for vulnerable groups.

The concept of **adequacy** refers to the fact that not any type of food will satisfy this right, but that there are a number of factors that must be taken into account when determining the appropriateness of the foods or diets.¹³⁴ These factors include both the nutrient value of food, as well as the non-nutrient values like age, living conditions, health and occupation, among others.¹³⁵ The adequacy component of the right to food is intricately linked to cultural dimensions, with this Court recognizing that food “must be acceptable to a specific culture”.¹³⁶ Given the climate emergency’s link to food utilization and to increased micronutrient deficiencies, as described above, this crisis is projected to interfere with the adequacy of safe and nutritious food.¹³⁷

Finally, the element of **sustainability** requires that food is accessible for both current and future generations.¹³⁸ Climate change profoundly impacts the sustainability of food in various ways, as illustrated above. Examples of these impacts include: (i) extreme weather events like prolonged droughts or severe floods can disrupt food production systems; (ii) shifts in temperature and precipitation patterns can lead to changes in the types of crops that can be cultivated and the regions where they can be grown, and can also disrupt the habitat of species that support food production; and (iii) water scarcity affects both crop irrigation and livestock, which are key elements of food security for present and future generations. Cumulatively, these climate-related hazards threaten the sustainability of food systems, as well as comprehensive and integrated strategies to ensure the enjoyment of the right to adequate food.

Considering the indivisibility of human rights, the right to health and the right to food are, in part, contingent on the right to a healthy environment, in the sense that their full enjoyment depends on a suitable environment.¹³⁹ The degradation of the environment, including the impacts of the climate crisis, has dire consequences for the enjoyment of many rights, with the right to health and the right to adequate food being no exception.¹⁴⁰ As noted, these rights are highly susceptible to the damages associated with climate change, which can severely affect their essential and interrelated elements in different ways. As the right to a healthy environment takes center stage in discussions on climate change and the protection of the environment, benefits will inevitably flow towards fulfilling the rights to health and adequate food.

¹³² Pörtner et al., *Climate Change 2022*, 1087.

¹³³ Committee on Economic, Social and Cultural Rights, “General Comment No. 12,” para. 13.

¹³⁴ *Ibid.*, para. 7; *Lhaka Honhat v. Argentina* paragraph 220.

¹³⁵ Office of the High Commissioner for Human Rights, “OHCHR and the Right to Food,” accessed November 22, 2023, <https://www.ohchr.org/en/food>.

¹³⁶ *Lhaka Honhat v. Argentina* paragraphs 246, 274.

¹³⁷ See Section 2.2.

¹³⁸ Committee on Economic, Social and Cultural Rights, “General Comment No. 12,” para. 7; *Lhaka Honhat v. Argentina* paragraph 220.

¹³⁹ *Advisory Opinion OC-23/17* paragraph 64.

¹⁴⁰ Committee on the Rights of the Child, “General Comment No. 26,” para. 8.

4. State Obligations in the Context of Climate Change

The well-documented consequences of climate change pose a substantial threat to the enjoyment of numerous human rights, and notably affect the essential and interrelated elements of the rights to health and adequate food. In light of this situation, this Honorable Court has a unique opportunity to establish guidelines to bring clarity on a pivotal question: what does international human rights law, and the Inter-American treaties in particular, require of States in order to address climate change?

In its *Advisory Opinion OC-23/17* (2017), this Court delineated four general environmental obligations that States must fulfill in order to respect and ensure human rights under the ACHR.¹⁴¹ These obligations are (i) **prevention**, (ii) **precaution**, (iii) **cooperation**, and (iv) **procedure**. The Court considered them as cross-cutting environmental responsibilities, not only because they stem from the general obligations to respect and ensure rights established in Article 1.1 ACHR, but also because States must comply with them whatever the activity, source of the impact, geographical area, or component of the environment that is affected. The Court also acknowledged that, beyond these four overarching obligations, international environmental law contains numerous specific duties, for example, those that refer to climate change and GHGs.¹⁴²

Based on these interpretations, we argue that the four general duties established in this Court's previous Advisory Opinion can serve as a valuable framework for understanding the more specific obligations of States with respect to climate change. Therefore, and with the intention of assisting this Honorable Court in elucidating these duties, this section will examine the existing literature, international instruments, and case law pertaining to climate change through the prism of the duties of prevention, precaution, cooperation, and procedure.

4.1. The specific content of the general environmental obligations in the context of climate change

In line with the IPCC, States should address climate change through a combination of mitigation, adaptation, and response to loss and damage strategies, as well as financial and sustainable development efforts.¹⁴³ Additional concepts like vulnerability, exposure, and resilience also provide important framings for addressing this component of the climate emergency.¹⁴⁴ Some of these strategies are rooted in the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Agreement under the UNFCCC, and other principles of international environmental law. Their specific content can similarly be drawn from the 2030 Agenda for Sustainable Development (SDGs) and informed by the evolving nature of the evidence on climate change.

For the purposes of the protection of human rights, a special focus should be placed on mitigation, adaptation, and response to climate change. In this context, we argue that each of these strategies can be viewed as **specific duties** or components of the overarching responsibilities of prevention, precaution, cooperation, and procedure. As interpreted by this Court in its previous

¹⁴¹ *Advisory Opinion OC-23/17* paragraphs 106–107, 126.

¹⁴² *Ibid.*, para. 126.

¹⁴³ Pörtner et al., *Climate Change* 2022, 125.

¹⁴⁴ *Ibid.*, 131.

Advisory Opinion, these duties can be derived from the obligations to respect and ensure human rights in the context of environmental protection.¹⁴⁵

Therefore, this section will first establish clear definitions for mitigation, adaptation, and response to loss and damages associated with climate change, drawing upon existing literature and international standards. Subsequently, we will analyze how these strategies can be classified as specific obligations falling under the broader umbrella of the general environmental duties identified by this Court and, on their part, as the materialization of the general obligations under the ACHR and other relevant treaties.

4.1.1. *Mitigation, adaptation, and response to loss and damages associated with climate change*

The concept of **mitigation** refers to actions that limit or reduce GHG emissions and/or remove these gasses from the atmosphere. Both emission reductions and carbon removal can reduce climate-related risks, which means that the main objective of mitigation strategies is to anticipate or prevent the materialization of climate-related impacts.¹⁴⁶ Because GHGs can come from a range of sources, mitigation strategies can and should be applied across all sectors and activities (e.g., energy, transport, agriculture, and different industries, including the healthcare sector).

Current international environmental law indicates that States have an international obligation to pursue and enhance domestic mitigation measures on the basis of both equity and the principle of Common but Differentiated Responsibilities (the “CBDR principle”),¹⁴⁷ and within the context of the SDGs.¹⁴⁸ This is especially true of State Parties to the Paris Agreement, a legally binding treaty that includes explicit references to the mitigation as part of the global response to the threat of climate change.¹⁴⁹

On its part, **adaptation** is defined as the process of adjustment to actual or projected climate change and its effects, in order to moderate harm or exploit beneficial opportunities.¹⁵⁰ As shown above, the impacts of climate change affect people and communities in various ways, which means that different adaptation actions may be required to reduce vulnerability and increase resilience in health, water, or food security, to name a few.¹⁵¹ Some examples of adaptation measures include expanding use of traditional rainwater harvesting, using alternative crops, implementing heat health alerts and other early warning systems, and building capacity for local

¹⁴⁵ *Advisory Opinion OC-23/17* paragraph 125.

¹⁴⁶ Pörtner et al., *Climate Change 2022*, 127.

¹⁴⁷ This principle means that, in view of the different contributions to global environmental degradation, States have common but differentiated responsibilities with respect to environmental protection. For this reason, it ultimately pertains to the issue of climate justice. Certainly, the UNFCCC is based on the idea that the largest share of historical and current global emissions of GHGs has originated in developed countries, while global emissions originating in developing countries is expected to grow to meet their social and development needs. Accordingly, the CBDR principle implies that, while all State Parties are bound by UNFCCC obligations, developed country parties should take the lead in combating climate change and the adverse effects thereof. See United Nations Framework Convention on Climate Change, art. 3.1.

¹⁴⁸ For a description of this obligation under climate treaties, see Benoit Mayer, “Commitments,” in *International Law Obligations on Climate Change Mitigation*, ed. Benoit Mayer (Oxford University Press, 2022), <https://doi.org/10.1093/oso/9780192843661.003.0002>.

¹⁴⁹ “Paris Agreement under the United Nations Framework Convention on Climate Change” (2015), arts. 4, 6.

¹⁵⁰ Pörtner et al., *Climate Change 2022*, 134.

¹⁵¹ *Ibid.*, 177.

authorities, especially for frontline workers.¹⁵² As a matter of law, and pursuant to the UNFCCC and the Paris Agreement, there is also an existing international obligation to engage in adaptation planning processes and to implement adaptation actions.¹⁵³

It is important to note that the IPCC has identified different linkages between mitigation and adaptation. These include:

- *Complementarity*. Mitigation and adaptation are complementary strategies for reducing the risks of the climate emergency insofar as the outcome of one strategy supplements, or depends on, the outcome of the other one. Still, they play a slightly different role: while mitigation is more general and reduces *all* climate-related risks, adaptation is selective and reduces the exposure and vulnerability to the climate-related risk that is targeted by the measure.¹⁵⁴
- *Synergy*. The combined effect of adaptation and mitigation actions is greater than the sum of their effects if implemented separately.¹⁵⁵
- *Trade-off*. In some cases, it might not be possible to carry out both mitigation and adaptation efforts simultaneously. This can either be due to (i) resource or time constraints, or (ii) contexts in which the implications for adaptation can be negative for mitigation and *vice versa* (e.g., increased indoor cooling in healthcare facilities that requires energy use from carbon-emitting sources would have a negative impact on mitigation efforts).¹⁵⁶
- *Substitutability*. Mitigation and adaptation might also be seen as substitutes, but only at a highly aggregated, international scale, and within limits. At the global level, the more mitigation is undertaken, the less adaptation will be necessary and *vice versa*.¹⁵⁷

Still, these connections between mitigation and adaptation must consider the so-called “limits or constraints of adaptation”. A limit is reached when no plausible adaptation efforts can provide an acceptable level of security from a climate-related risk (e.g., increased irrigation might be necessary to protect crops from extreme heat, but this effort will be limited by reduced water availability, an increase in water demand from other sectors, and increasing economic costs).¹⁵⁸ Beyond this limit, only mitigation strategies will be suitable to address climate change. Whether an adaptation limit exists will depend on different factors, including the type of risk and the physiological capacity of species, individuals or communities to adapt to this risk. However, in its most recent report, the IPCC has noted that limits to adaptation have already been reached, or are being approached, in some sectors and communities.¹⁵⁹

¹⁵² Intergovernmental Panel on Climate Change, “AR4 WGII Chapter 17: Assessment of Adaptation Practices, Options, Constraints and Capacity - 17.2.2 Examples of Adaptation Practices,” accessed September 27, 2023, https://archive.ipcc.ch/publications_and_data/ar4/wg2/en/ch17s17-2-2.html.

¹⁵³ Paris Agreement under the United Nations Framework Convention on Climate Change, art. 7; United Nations Framework Convention on Climate Change, arts. 3–4.

¹⁵⁴ Pörtner et al., *Climate Change 2022*, 127; Intergovernmental Panel on Climate Change, *Climate Change 2007: Mitigation of Climate Change* (Cambridge: Cambridge University Press, 2007), 750.

¹⁵⁵ Intergovernmental Panel on Climate Change, *Climate Change 2007*, 749.

¹⁵⁶ *Ibid.*, 750.

¹⁵⁷ *Ibid.*, 753.

¹⁵⁸ Pörtner et al., *Climate Change 2022*, 919.

¹⁵⁹ See, e.g., *ibid.*, 2445.

Once we acknowledge that mitigation and adaptation strategies cannot allow for a complete avoidance of the impacts of climate change, the third set of strategies relates to the **response to loss and damages** associated with this component of the climate emergency. While they are not clearly defined in the UNFCCC, climate-related loss and damages are currently understood as the actual and/or potential manifestation of the risks and adverse impacts of climate change.¹⁶⁰ They can be both economic (e.g., loss of property due to flooding) and non-economic (e.g., loss of biodiversity or cultural heritage, values, and beliefs, especially for indigenous peoples).¹⁶¹ While the Paris Agreement only recognizes that States should address these losses and damages in a cooperative way,¹⁶² the IACHR has recently established that States are under an international obligation to make full reparation for these damages through, for example, the restoration of the environment when possible, and guarantees of non-repetition.¹⁶³

4.1.2. *Climate change and the duty of prevention*

In its *Advisory Opinion OC-23/17* (2017), the Court established that States have a general duty of prevention of environmental damage, and that the obligations that stem from it are similar to the general duty to prevent human rights violations.¹⁶⁴ The opinion noted that, pursuant to the UNFCCC and other instruments of international environmental law, States have an obligation to prevent significant damage, which should be understood as any harm to the environment that may involve a violation of human rights.¹⁶⁵ This damage must lead to a detrimental effect on matters such as human health or agriculture, be measured by factual and objective standards, and be foreseeable.¹⁶⁶

The Court similarly noted that, although it was not possible to enumerate all measures that States are required to adopt pursuant to the duty of prevention, there are five minimum obligations: (i) to regulate; (ii) to supervise and control; (iii) to require and approve environmental impact assessments (EIAs); (iv) to prepare a contingency plan; and (v) to mitigate if environmental damage occurs. It is important to note that the opinion used the term “mitigation” not in the sense of the climate change literature, but referencing the action of reducing the severity or seriousness of damage.¹⁶⁷

Building on this precedent, two of the main questions posed by Colombia and Chile to the Inter-American Court concern, first, the specific scope of the duty of prevention with regard to climate events and, second, other specific measures that States should take pursuant to this duty to minimize the impact of damages from climate change.¹⁶⁸ Each question will be analyzed in turn.

¹⁶⁰ Carlarne, Gray, and Tarasofsky, *The Oxford Handbook of International Climate Change Law*, 465 (citing background paper to UNFCCC expert meeting); Pörtner et al., *Climate Change 2022*, 7.

¹⁶¹ Pörtner et al., *Climate Change 2022*, 125.

¹⁶² Paris Agreement under the United Nations Framework Convention on Climate Change, art. 8.

¹⁶³ Inter-American Commission on Human Rights and Special Rapporteur for Economic, Social, Cultural and Environmental Rights (REDESCA), “Resolution No. 3/2021,” pt. C.

¹⁶⁴ *Advisory Opinion OC-23/17* paragraphs 127–133.

¹⁶⁵ *Ibid.*, paras. 134, 140.

¹⁶⁶ *Ibid.*, para. 136.

¹⁶⁷ *Ibid.*, paras. 141–174.

¹⁶⁸ “Request for an Advisory Opinion on the Climate Emergency and Human Rights,” pt. questions A.1 and A.2.

4.1.2.1. Mitigation and adaptation as main corollaries of the duty of prevention

Regarding the first question, we argue that this Court should find that **the duty of prevention in the context of climate change primarily requires States to adopt mitigation and adaptation measures**. As noted, both strategies seek to prevent both environmental damage and human rights violations by either (i) arresting the materialization of climate-related risks (mitigation); or (ii) increasing resilience and reducing vulnerability to these risks in order to reduce or moderate harm (adaptation). We argue that, following the UNFCCC and the recommendations of the IPCC, this Honorable Court should clarify that the duty of prevention in the climate emergency requires States to:

- i. Adopt measures on the mitigation of climate change by limiting their GHGs emissions and protecting and enhancing activities or mechanisms to remove GHGs from the atmosphere. Policies and measures should take into account different socio-economic contexts, be comprehensive, and cover all relevant sources, sinks, and reservoirs of GHGs.¹⁶⁹
- ii. Adopt measures to enhance adaptive capacity, strengthen resilience, and reduce vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response to climate change.¹⁷⁰ Both immediate and long-term adaptation strategies should be required. These measures will necessarily differ according to the climate impact or type of right in question, but they should always take into consideration vulnerable groups, communities, and ecosystems, and be based on the best available scientific evidence free from conflict of interest, and, where appropriate, traditional knowledge, knowledge of indigenous peoples, and local knowledge systems.¹⁷¹

The UNFCCC, the Kyoto Protocol, and the Paris Agreement follow the idea that the largest share of historical and current global emissions of GHGs has originated in developed countries, while per capita emissions in developing countries are still relatively low.¹⁷² This principle influences the extent to which States have committed to reduce national emissions.

Still, we consider it relevant for this Honorable Court to highlight that, even when GHGs emissions were minimal within a given State, it would be under an obligation to (i) move over time towards economy-wide emission reduction; and (ii) help individuals and groups adapt to the adverse effects of climate change, both actual and projected. This means that, for most States, the duty to take adaptation measures will usually be clearer or more pressing than their duty to mitigate harm by reducing GHGs, although both obligations will coexist.¹⁷³

¹⁶⁹ United Nations Framework Convention on Climate Change, arts. 3 and 4; See also Inter-American Commission on Human Rights and Special Rapporteur for Economic, Social, Cultural and Environmental Rights (REDESCA), “Resolution No. 3/2021”; Committee on the Rights of the Child, “General Comment No. 26,” paras. 95–100.

¹⁷⁰ Paris Agreement under the United Nations Framework Convention on Climate Change, art. 7.1; See also Inter-American Commission on Human Rights and Special Rapporteur for Economic, Social, Cultural and Environmental Rights (REDESCA), “Resolution No. 3/2021”; Committee on the Rights of the Child, “General Comment No. 26,” paras. 101–103.

¹⁷¹ Paris Agreement under the United Nations Framework Convention on Climate Change, art. 7.5.

¹⁷² See, e.g., *ibid.*, art. 4.4.

¹⁷³ Carlarne, Gray, and Tarasofsky, *The Oxford Handbook of International Climate Change Law*, 227.

Under the duty of prevention, there is no single or best combination of adaptation and mitigation strategies. Therefore, it would be important for this Court to underscore that, when implementing these preventive measures, States should:

- i. Consider the relations of complementarity, synergy, trade-off, and substitutability between mitigation and adaptation;
- ii. Consider the limits and constraints of adaptation;
- iii. Be informed by evidence, which includes not only the best available evidence free from conflict of interest (general scientific evidence), but also an in-depth understanding of local vulnerabilities and hazards (contextual evidence);¹⁷⁴ and
- iv. Follow rights-based considerations.

This last point implies that, when determining either the balance between both strategies or the specific design of a measure, States should be guided by the content and essential elements of the rights in question and their corresponding obligations. For instance, with regard to the right to health, States should ensure that their mitigation efforts in the health sector (e.g., switching from disposable to reusable equipment in health facilities) do not unreasonably restrict or negate the availability, acceptability, and quality of care. **Table 1** includes examples of mitigation and adaptation strategies aimed at the protection of the rights to health and adequate food in the context of climate change.

The design of mitigation and adaptation strategies should transparently and explicitly focus on respecting and ensuring human rights in this emergency,¹⁷⁵ with a special emphasis on those rights significantly affected by climate change. This means that States should ascribe special importance to protecting the rights to health and adequate food, among others, when preparing, communicating and updating climate policies, but also in their international cooperation efforts, ensuring that individuals are adequately informed about the measures being taken to address climate change and how these efforts align with the protection of human rights.

¹⁷⁴ Marina Romanello et al., “The 2023 Report of the Lancet Countdown on Health and Climate Change: The Imperative for a Health-Centred Response in a World Facing Irreversible Harms,” *The Lancet* 0, no. 0 (November 14, 2023): 19, [https://doi.org/10.1016/S0140-6736\(23\)01859-7](https://doi.org/10.1016/S0140-6736(23)01859-7).

¹⁷⁵ Committee on the Rights of the Child, “General Comment No. 26,” para. 98.a.

Table 1. Examples of mitigation and adaptation measures in the health and food systems.

Protected right	Mitigation options	Adaptation options
Health	<p><i>Decarbonization of health systems</i>¹⁷⁶ (e.g., switching to renewable energy, increased use of telemedicine, prioritizing reusable supplies when appropriate, etc.).</p> <p><i>Implementation of negative emissions technologies in the health sector</i> (e.g., bioenergy carbon capture and storage, or afforestation and reforestation strategies).</p>	<p><i>Strengthening public health programs related to climate-sensitive diseases</i>, both infectious and non-communicable.</p> <p><i>Investing in health systems resilience</i> (e.g. increased on-site cooling facilities in preparation for heat waves, investment in blue and green infrastructure, etc.).</p> <p><i>Reducing exposure of water and sanitation systems to flooding.</i></p> <p><i>Improving monitoring of mental health impacts of extreme weather events, and improving access to mental healthcare before and after disasters.</i></p> <p><i>Consider relocating health facilities to ensure continued physical accessibility during extreme events.</i></p>
Adequate food	<p><i>Promoting sustainable farming practices</i> (e.g., no-till farming, organic farming and agroforestry).</p> <p><i>Reducing food waste</i></p> <p><i>Improved livestock management through</i> (e.g., rotational grazing and better feed management to reduce methane emissions from livestock).</p> <p><i>Integrating trees and forests into agricultural landscapes</i></p> <p><i>Promoting plant-based diets or reducing meat consumption to decrease the environmental impact of livestock production</i></p>	<p><i>Encouraging crop diversification to enhance resilience.</i></p> <p><i>Improving irrigation techniques and water management practices</i> to cope with changing temperatures, precipitation patterns, and water scarcity</p> <p><i>Investing in resilient infrastructure for food storage and transportation</i> to minimize losses due to extreme weather events</p>

Source: Own work following the IPCC's Sixth Assessment Report, chapters 5 and 7.

¹⁷⁶ When considering the climate emergency, the health sector presents a paradox as it is meant to respond to individuals' and communities' health needs and yet itself exacerbates health issues by contributing to climate change, with approximately 4-5% of global GHG emissions attributable to this sector. National, and international agencies have shed light on the pressing need to both reduce emissions of this sector. See, e.g., Kyle Lakatos et al., "A Race to Net Zero—Early Lessons from Healthcare's Decarbonization Marathon," *Health Affairs Scholar* 1, no. 1 (July 1, 2023): qxad006, <https://doi.org/10.1093/haschl/qxad006>.

4.1.2.2. Other measures

Regarding the specific measures that States should be required to take within their general duty of prevention in the climate emergency, we consider it relevant that the Court emphasizes the obligation to regulate, supervise, and control public and private actors as a form of prevention in this context.¹⁷⁷

The obligation to **regulate** is paramount insofar as the law is an important enabler of climate action. In the climate emergency, this duty would require the creation of specific regulatory frameworks for activities that substantially contribute to climate change,¹⁷⁸ both at the national and subnational levels.

One of the most crucial steps involves the enactment of general laws that establish national mitigation and adaptation goals, introduce environmental protections, and strengthen climate governance.¹⁷⁹ It is important that these laws explicitly cover the links between climate change and human rights, not only as a way to justify legislation, but also to make room for measures that follow right-based considerations and effectively protect health and the environment.

Another step requires passing specific regulation, that is, frameworks adapted to the nature and characteristics of each activity. These regulations should encompass the actions of both public entities and private actors and could include, for example:

- i. Technical screening criteria for activities that can make a substantial contribution to climate change mitigation and adaptation.¹⁸⁰
- ii. Other criteria for concessions or permits for activities that substantially contribute to climate change, such as a duty to carry out Environmental Impact Assessments (EIAs) and Human Rights Due Diligence (HRDD) for the identification, prevention, and response to climate-related human rights violations; and/or a duty to take adaptation actions for both private and public benefit.
- iii. GHGs emission standards for certain activities (e.g., the energy, transportation, and health sectors), or mandates to reduce or eliminate GHGs from certain sources.
- iv. Mandatory GHG reporting for certain activities.
- v. Independent monitoring and accountability systems.¹⁸¹

Any form of regulation should adopt a human rights approach. Among other things, this implies that frameworks should clearly observe State obligations and establish the responsibility (administrative, civil, or criminal) of private actors under their jurisdiction that are involved in

¹⁷⁷ It should be noted that the components of supervision and control could also be considered part of the duty to investigate human rights violations under Article 1.1 of the American Convention.

¹⁷⁸ See Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil. Preliminary Objections, Merits, Reparations, and Costs (Inter-American Court of Human Rights July 15, 2020) (referring to risky activities).

¹⁷⁹ Romanello et al., “The 2023 Report of the Lancet Countdown on Health and Climate Change,” 37.

¹⁸⁰ See, e.g., European Commission, “Questions and Answers: Taxonomy Climate Delegated Act and Amendments to Delegated Acts on fiduciary duties, investment and insurance advice,” accessed November 21, 2023, https://ec.europa.eu/commission/presscorner/detail/pt/qanda_21_1805.

¹⁸¹ *Advisory Opinion OC-23/17* paragraph 154.

climate-related human rights violations.¹⁸² It is also essential that, during the regulatory process, States take adequate measures to prevent disinformation activities, the use of power, and other forms of undue influence by private actors that substantially contribute to climate change. This is especially important in the environmental context where the companies in charge of polluting activities often try to weaken the implementation of policies for the protection of the environment.¹⁸³

The obligations to **supervise** and **control** in the climate emergency should be aimed, on the one hand, at ensuring the effective application and enforcement of regulations and, on the other, at protecting individuals from the activities that substantially contribute to climate change. The notions of supervision and control are connected to States' duties to (i) surveil public and private actors that may substantially contribute to climate change or cause adverse human rights impacts in this context; and (ii) investigate, sanction, and redress climate-related human rights abuses in an impartial, objective, and diligent manner.¹⁸⁴ This Court has noted that supervision and control should be exerted through some form of administrative control, be continuous, and correspond to both national and subnational authorities.¹⁸⁵

EIAs, which this Court has identified as a distinct component of the duty of prevention in environmental matters, are also crucial in the context of climate change. Following the *Advisory Opinion OC-23/17* (2017), the State's duty to require and approve EIAs should extend to any activity that may significantly contribute to climate change, examine their cumulative damage and GHGs that enter the atmosphere, and be conducted by independent entities under the State's supervision.¹⁸⁶ This Court should underscore that EIAs should not only be conducted before the activity is carried out but also periodically revised. Moreover, while the content of the EIA will depend on the circumstances and level of risk of the proposed activity, these assessments should identify how the activity is likely to have significant effects on, or be significantly affected by, climate change and biodiversity issues. Given that vulnerabilities and risk levels are context specific,¹⁸⁷ it is particularly relevant that EIAs comprehensively assess local hazards related to climate change and extreme weather events.

Finally, this Honorable Court should similarly emphasize that the climate-specific obligations developed in this section complement, rather than replace, other components of the duty of prevention in environmental matters, as identified in the *Advisory Opinion OC-23/17* (2017).¹⁸⁸

¹⁸² Inter-American Commission on Human Rights and Special Rapporteur for Economic, Social, Cultural and Environmental Rights (REDESCA), "Business and Human Rights: Inter-American Standards," November 1, 2019, para. 112.

¹⁸³ On this and other recently compiled instances of undue influence, see Working Group on the issue of human rights and transnational corporations and other business enterprises, "Business Influence in the Policy and Regulatory Sphere: How to Make Sure Business Practices Conform to the Guiding Principles on Business and Human Rights," July 20, 2022, para. 12.

¹⁸⁴ *Advisory Opinion OC-23/17* paragraphs 153–154.

¹⁸⁵ See, e.g., *ibid.*, para. 153; *Workers of the Fireworks Factory v. Brazil* paragraphs 131–133.

¹⁸⁶ *Advisory Opinion OC-23/17* paragraphs 156–170; Inter-American Commission on Human Rights and Special Rapporteur for Economic, Social, Cultural and Environmental Rights (REDESCA), "Resolution No. 3/2021," 14.

¹⁸⁷ Pörtner et al., *Climate Change 2022*, 1075.

¹⁸⁸ For instance, the duties to prepare a contingency plan and to mitigate if environmental damage occurs, which were covered by this Honorable Court in its previous *Advisory Opinion* but will not be analyzed in detail in this submission.

4.1.3. *Climate change and the duty of precaution*

This Honorable Court has indicated that, pursuant to the obligations to respect and ensure human rights, States must act in keeping with the precautionary principle in cases where there are plausible indications that an activity “could result in severe and irreversible damage to the environment, even in the absence of scientific certainty”.¹⁸⁹ Accordingly, States are under a duty to take effective measures to prevent severe or irreversible damage to the environment and to the rights protected under the American Convention.

The precautionary principle has been applied in climate-related matters. As recognized by this Court, the UNFCCC indicates that, in the context of climate change, States shall be guided by the following principle:

“The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors”.¹⁹⁰

The present Request creates an opportunity for this Honorable Court to use the text of the UNFCCC to further develop the specific content and scope of the precautionary principle as applied to climate change.

A literal and good faith interpretation of the cited provision indicates that the precautionary principle requires States to take measures to address both the causes of climate change (i.e., human activity that alters the composition of the global atmosphere, particularly through GHG emissions¹⁹¹) as well as its adverse impacts (i.e., harmful effects on the natural and managed ecosystems, human health, and other human rights¹⁹²). These measures include both mitigation and adaptation strategies (“anticipate, prevent or minimize” the causes and adverse effects), which should be context-specific (“account different socio-economic contexts”) and comprehensive, covering all relevant activities and economic sectors.

Most importantly, this principle implies that States shall take mitigation and adaptation measures even when there might not be full scientific certainty on climate change, its causes, and its adverse impacts, provided that there are “threats of serious or irreversible damage”.¹⁹³ In keeping with this Honorable Court’s previous case law, this last condition should be interpreted as plausible indications of potential risks to the environment or the rights protected by the American Convention.¹⁹⁴

Section 2 of this written opinion outlined how the evidence points to threats of serious or irreversible damage to the rights to health and adequate food that are not only plausible but, in

¹⁸⁹ *Advisory Opinion OC-23/17* paragraph 180.

¹⁹⁰ United Nations Framework Convention on Climate Change, art. 3.3.

¹⁹¹ *Ibid.*, art. 1.2, 1.4 and 1.5.

¹⁹² *Ibid.*, art. 1.1.

¹⁹³ *Ibid.*, art. 3.3.

¹⁹⁴ *Advisory Opinion OC-23/17* paragraphs 140, 177.

some cases, are already being experienced by communities. There is also plenty of evidence on the impact of this emergency on other rights¹⁹⁵ which, as noted, exceeds the scope of these written submission.

In this sense, there is little doubt that **the precautionary principle should not only be considered one of the overarching principles that shall guide States in adopting measures to respond to climate change,¹⁹⁶ but also one of the sources of State's duty to take comprehensive mitigation and adaptation measures** in light with the best available scientific and contextual evidence free from conflicts of interest. This duty should be considered fully enforceable **even in the face of scientific uncertainty** on the causes or adverse impacts of climate change.

4.1.4. *Climate change and the duty of cooperation*

Another question posed by Chile and Colombia in the Request concerns the interpretation of the duty of international cooperation in the climate emergency, and the principles that should guide States in this context.¹⁹⁷ In its *Advisory Opinion OC-23/17* (2017), this Honorable Court indicated that such a duty can be derived from Article 26 of the ACHR, different articles of the San Salvador Protocol, customary international law, and the principle of good faith.¹⁹⁸ The decision noted that cooperation in environmental matters is an obligation between States that seeks to prevent environmental damage, and is particularly heightened in the case of shared resources.¹⁹⁹

Accordingly, a duty of international cooperation also exists concerning the protection of climate - the quintessential shared resource - and the prevention of climate change and its adverse impacts. Recognizing climate as a public good and acknowledging the challenge of establishing clear causal linkages between a country's specific GHGs and climate impacts, this Court should underscore that the global nature of climate change calls for the **widest possible cooperation** by all States.²⁰⁰

Existing international environmental law instruments, including the UNFCCC and the Paris Agreement, provide fertile ground for this Court to distill the specific content of this duty. In particular, these instruments indicate that the primary purpose of cooperation in this context is to achieve the **stabilization of GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system**, which has been understood as the need to hold the increase in the global average temperature to well below 2°C above pre-industrial levels and to limit the temperature increase to 1.5°C above pre-industrial levels.²⁰¹ It has been understood that this type of stabilization would significantly reduce the risks

¹⁹⁵ See generally Pörtner et al., *Climate Change 2022*; Romanello et al., "The 2023 Report of the Lancet Countdown on Health and Climate Change."

¹⁹⁶ "Request for an Advisory Opinion on the Climate Emergency and Human Rights," pt. question A.2.B.

¹⁹⁷ *Ibid.*, pt. F.

¹⁹⁸ *Advisory Opinion OC-23/17* paragraphs 181–184.

¹⁹⁹ *Ibid.*, para. 186.

²⁰⁰ United Nations Framework Convention on Climate Change, pt. preamble; See also Committee on the Rights of the Child, "General Comment No. 26," para. 91 (using UNFCCC language).

²⁰¹ United Nations Framework Convention on Climate Change, art. 1; Paris Agreement under the United Nations Framework Convention on Climate Change, art. 2.1.a.

and impacts of climate change,²⁰² meaning that it would also significantly protect the human rights that are most threatened by this emergency.

Additionally, both instruments clearly state that international cooperation in this context should be guided by three overarching considerations: the CBDR principle, the highest ambition in mitigation and adaptation actions, and the promotion of sustainable development.²⁰³ The IACHR has similarly noted that the principle of climate justice should serve as a guide in this context.²⁰⁴ This Honorable Court has the opportunity to explicitly clarify that human rights obligations should also advise States in their cooperation efforts. This entails ensuring that international negotiations, or any trade-offs made in this context, (i) are aimed at preventing or minimizing adverse human rights impacts, and (ii) do not violate minimum human rights standards including, for example, core obligations under the rights to health and adequate food, as well as the principle of non-retrogression.²⁰⁵

Following the UNFCCC and the Paris Agreement, it can be considered that the duty of cooperation in the context of climate change particularly extends to the following areas:

- i. The delivery of overall mitigation in global GHG emissions and the enhancement of adaptive capacity;²⁰⁶
- ii. The transfer of technologies, practices, and processes that control, reduce or prevent GHG emissions in all relevant sectors, including the energy, transport, food, and health sectors;²⁰⁷
- iii. Scientific, technological, technical, socio-economic, and other research on climate change and its impacts, with a view of eliminating or reducing remaining uncertainties.²⁰⁸ This includes the production of data and the exchange of relevant information between States;²⁰⁹
- iv. Education, training, and public awareness related to climate change, fostering the widest participation of non-state actors;²¹⁰ and
- v. The provision of financial resources on a grant or concessional basis for projects that address climate change. The flow of funds should be carried out in a predictable and identifiable manner, in accordance with the CBDR principle, and considering the importance of an appropriate burden-sharing among developed countries.²¹¹ There is a

²⁰² Paris Agreement under the United Nations Framework Convention on Climate Change, 2.1.a.

²⁰³ *Ibid.*, art. 6.1.

²⁰⁴ Inter-American Commission on Human Rights and Special Rapporteur for Economic, Social, Cultural and Environmental Rights (REDESCA), “Resolution No. 3/2021,” para. 11.

²⁰⁵ See, e.g., Carlarne, Gray, and Tarasofsky, *The Oxford Handbook of International Climate Change Law*, 231.

²⁰⁶ United Nations Framework Convention on Climate Change, art. 4.1.d; Paris Agreement under the United Nations Framework Convention on Climate Change, art. 6.8.a.

²⁰⁷ United Nations Framework Convention on Climate Change, art. 4.1.c; Paris Agreement under the United Nations Framework Convention on Climate Change, art. 6.8.

²⁰⁸ United Nations Framework Convention on Climate Change, art. 4.1.f, 5.

²⁰⁹ *Ibid.*, art. 4.1.h, 6.

²¹⁰ *Ibid.*, art. 4.1.i.

²¹¹ *Ibid.*, art. 4.3, 11.

need to strengthen efforts to increase adaptation finance and prioritize grant finance for those developing countries most vulnerable to the adverse impacts of climate change.²¹²

To reiterate, human rights obligations have great significance in this context. For instance, harmonizing the right to health with cooperation in climate finance would require States to ensure that finance flows allow a greater allocation of funds to support health-related adaptation and/or the transition to net-zero emission health systems.²¹³

This Honorable Court can also draw from the work of the CRC, which has recently interpreted the content of international cooperation in climate matters. The Committee similarly concluded that climate change is a global threat to children's rights that calls for the widest possible cooperation by all States, in accordance with the CBDR principle.²¹⁴ This cooperation requires the provision of assistance from developed States to developing countries, particularly through capacity-building, the transfer of green technology, and climate finance.²¹⁵ The CRC made it explicit that the rights of the child should be a core consideration in all global environmental decisions and that climate finance programs should consider allocating a substantive part of aid to child-focused programs addressing climate change.²¹⁶ Lastly, it noted that, without prejudice to the CBDR principle, mitigation measures should reflect each State's fair share of the global effort to address climate change, and that all States should work together to continuously strengthen climate commitments in line with the highest possible ambition.²¹⁷

Finally, the existing literature has also noted that cooperation in this context requires States to negotiate and implement international and regional climate agreements that meet human rights standards; use their bargaining or persuasive power to reduce GHG emissions; and jointly assess the effects of their mitigation and adaptation actions on the enjoyment of human rights in particular.²¹⁸

4.1.5. *Climate change and procedural obligations*

In its *Advisory Opinion OC-23/17* (2017), this Court explained that a series of procedural obligations exist with regard to environmental matters; so-called because they have an instrumental nature insofar as they support the elaboration of improved environmental policies and responses.²¹⁹ These duties include (i) access to information; (ii) public participation; and (iii) access to justice, all in relation to the State's environmental protection obligations.²²⁰ These procedural duties, which are now enshrined in the Escazú Agreement,²²¹ are fully applicable to climate-related matters. The specific content of each of these duties will be discussed in turn.

²¹² United Nations Conference on Trade and Development, "The Bridgetown Covenant. From Inequality and Vulnerability to Prosperity for All," November 10, 2021, para. 87; Committee on the Rights of the Child, "General Comment No. 26," para. 113.

²¹³ Romanello et al., "The 2023 Report of the Lancet Countdown on Health and Climate Change," 6.

²¹⁴ Committee on the Rights of the Child, "General Comment No. 26," para. 91.

²¹⁵ *Ibid.*, paras. 92, 100.

²¹⁶ *Ibid.*, paras. 92–93.

²¹⁷ *Ibid.*, para. 98.b.

²¹⁸ Carlarne, Gray, and Tarasofsky, *The Oxford Handbook of International Climate Change Law*, 231.

²¹⁹ *Advisory Opinion OC-23/17* paragraph 211.

²²⁰ *Ibid.*

²²¹ See, e.g., Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, art. 6.3.g.

Regarding **access to information** (Article 13.1 ACHR), it has been established that States have a positive obligation of active transparency in the climate emergency.²²² This means that they should generate and provide timely, complete, clear, accessible, and culturally appropriate information on climate change, its causes, as well as the actual and potential sources of climate and environmental harm.²²³ The CRC has noted that this duty also extends to information on adaptive responses, relevant climate and environmental legislation, regulations, and findings from EIAs.²²⁴ The ECtHR has also indicated, albeit in the context of general environmental harm, that States should establish an effective and accessible procedure enabling individuals to request the communication of all relevant and appropriate information on the health risks to which they might be exposed.²²⁵ Some ECtHR judgments pointed to an obligation to inform *motu proprio* or *ex officio*, and underscored the preventive role of information insofar as it allows individuals to assess the danger to which they are exposed.²²⁶

In this line, it would similarly be important for this Honorable Court to note that, as part as their duty to generate information, States should collect and disseminate disaggregated data to identify the differential effects of environment-related harm on certain groups and to better understand intersectionalities, paying special attention to those groups who are most at risk (e.g., children). This information should be reliable and regularly updated.²²⁷

Public participation (Article 23.1.a ACHR) in climate-related matters is of paramount importance. States should create sustained, effective, and trustworthy channels for dialogue on climate matters,²²⁸ and especially allow for the participation of those most vulnerable to climate change, such as children and adolescents, indigenous peoples, and others working in rural areas. States should similarly recognize these groups' leadership roles in the fight against climate change.²²⁹ Participation should be allowed in decision-making processes that could significantly contribute to climate change, without discrimination to all social actors and in a fair, significant, and transparent manner.²³⁰ This Court's case law on prior consultation and consent of indigenous peoples might also be extrapolated to projects and activities that could significantly contribute to climate change.

Finally, the **access to remedies** framework (Article 25 ACHR) is the most suitable for framing strategies related to the response to loss and damages associated with climate change, which, as noted above, constitutes the third pillar of climate action.²³¹ States should ensure access to effective judicial, quasi-judicial, and non-judicial mechanisms, as appropriate, for climate-related matters. These remedies should allow redress for, at a minimum:

²²² Inter-American Commission on Human Rights and Special Rapporteur for Economic, Social, Cultural and Environmental Rights (REDESCA), "Resolution No. 3/2021," 19.

²²³ Ibid.; Committee on the Rights of the Child, "General Comment No. 26," para. 33.

²²⁴ Committee on the Rights of the Child, "General Comment No. 26," para. 33.

²²⁵ See, e.g., *Guerra and Others v. Italy*, No. 116/1996/735/932 (European Court of Human Rights February 19, 1998).

²²⁶ European Court of Human Rights, "Guide sur la jurisprudence de la Convention européenne des droits de l'homme. Environnement," paras. 126–128.

²²⁷ Committee on the Rights of the Child, "General Comment No. 26," paras. 15, 44, 74.

²²⁸ See *Advisory Opinion OC-23/17* paragraph 227 (referring to channels for participation of indigenous groups).

²²⁹ Inter-American Commission on Human Rights and Special Rapporteur for Economic, Social, Cultural and Environmental Rights (REDESCA), "Resolution No. 3/2021," 18.

²³⁰ Ibid., 12; *Advisory Opinion OC-23/17* paragraph 231.

²³¹ See Committee on the Rights of the Child, "General Comment No. 26," para. 106.

- i. Violations of international environmental obligations (e.g., failure to take effective mitigation and adaptation measures);
- ii. Human rights violations resulting from the adverse impacts of climate change (e.g., health losses and damages resulting from extreme weather events); and
- iii. Violations of the procedural obligations covered in this section (e.g., remedies to control the content and quality of the information provided).²³²

The CRC has particularly noted that, to accommodate the complexity of climate-related claims, States should adjust the rules of standing and empower national human rights institutions with mandates to receive and formulate climate-related complaints; provide for collective complaints, such as class action suits and public interest litigation; and extend limitation periods regarding violations of rights due to environmental harm.²³³ The existing literature has also underscored the need to adapt the standards of causation and proof to the complexities of climate-related harms and losses.²³⁴

This Court has the opportunity to clarify what reparation should look like within the context of climate change. First, following existing literature, and as a corollary of their duty of prevention, States should prioritize injunctive relief in situations where public or private activities are contributing to climate change.²³⁵ For instance, this could be the case of a State or a private corporation carrying out an activity with significant GHG emissions without a plan for mitigation or adaptation. This type of relief would enable the cessation of the activity, thereby averting further climate-induced losses and damages. Second, it is equally crucial to underscore that, when damage occurs, States have an international obligation to make full reparation to the victims.²³⁶ Reparation in this context could take the form of adequate compensation, satisfaction, rehabilitation, and guarantees of non-repetition, where appropriate.²³⁷

4.2. The nature of these duties: progressive realization vs. obligations of immediate effect

A paramount question posed by Colombia and Chile concerns the nature of the duty to adopt timely and effective measures with regard to climate change. In other terms, both States are seeking clarification on whether this duty should be understood as a matter of progressive realization or immediate implementation. To date, the international bodies that have dealt with climate change have hesitated to engage with this discussion and/or provide a definitive answer to this question.²³⁸

²³² See, e.g., *Association Burestop 55 and Others v. France*, No. 56176/18, 56189/18, 56232/18, 56236/18, 56241/18, 56247/18 (European Court of Human Rights July 1, 2021).

²³³ Committee on the Rights of the Child, “General Comment No. 26,” paras. 83–86.

²³⁴ Carlarne, Gray, and Tarasofsky, *The Oxford Handbook of International Climate Change Law*, 483–89.

²³⁵ See generally Jaap Spier and Ulrich Magnus, *Climate Change Remedies: Injunctive Relief and Criminal Law Responses*, Legal Perspectives for Global Challenges 2 (The Hague, The Netherlands: Eleven International Publishing, 2014).

²³⁶ Inter-American Commission on Human Rights and Special Rapporteur for Economic, Social, Cultural and Environmental Rights (REDESCA), “Resolution No. 3/2021,” 14.

²³⁷ Committee on the Rights of the Child, “General Comment No. 26,” para. 89; Carlarne, Gray, and Tarasofsky, *The Oxford Handbook of International Climate Change Law*, 473–75.

²³⁸ See, e.g., *Billy v. Australia* paragraph 8.7 (arguing that it was not in a position to conclude if time frame for action and State allocation of funds for adaptation was sufficient or not).

Given this background, and in accordance with its established case law, the present Request poses a unique opportunity for this Honorable Court to clarify that, **while certain aspects of the duty to address climate change, its causes, and adverse impacts are to be realized progressively, States also have immediate obligations in this regard.**²³⁹ We contend that, in order to differentiate between these obligations, the Court could draw upon its existing lines of interpretation on ESCERs, as well as the work of other international bodies such as the IACHR, which have had the opportunity to address State obligations with respect to climate change.

Still, we argue that recognizing climate change as a human rights crisis requires an additional clarification or adjustment of the concept of progressive realization, as traditionally understood by the CESCER and this Honorable Court, for at least two compelling reasons. First, effective and urgent climate action is indispensable not only for ensuring the survival of humanity but also for the preservation of all forms of life on Earth.²⁴⁰ Second, despite the decades that have passed since the entry into force of the ACHR²⁴¹ and the International Covenant on Economic, Social and Cultural Rights (ICESCR), States continue to grapple with the full realization of ESCERs. More often than not, this struggle persists due to a reliance on the flexibilities inherent in the concept of progressive realization, a deficiency in mechanisms and guidelines for measuring progress, and ambiguity surrounding obligations of an immediate nature. This reality extends to the climate obligations enshrined in the UNFCCC, a legally binding instrument that has been in force since 1994 and has near-universal membership.

In this sense, greater clarity around immediate obligations and duties subject to progressive realization is necessary to prevent both State and non-state actors from stalling climate action which, as noted, is urgently needed to protect human rights.

In alignment with Inter-American case law, it could be argued that climate change imposes the following **immediate obligations**:

- i. to take steps to *mitigate* GHGs, *adapt* to climate change, and *respond* to damages; and
- ii. to ensure that mitigation, adaptation, and response measures are implemented without discrimination. As noted in Section 3 above, non-discrimination also requires the immediate adoption of positive measures to address the disproportionate impacts of climate change on certain groups.

It should be noted that, in its previous Advisory Opinion, this Court explicitly noted that measures to respond to significant environmental damage²⁴² are to be taken immediately, even if its origin is unknown.²⁴³

This Court could similarly conclude that other immediate obligations include (i) the regulation, supervision, and control of public and private actors that significantly contribute to climate

²³⁹ See *Advisory Opinion OC-23/17* paragraph 111 (indicating that the rights to health and food impose both immediate obligations and aspects subject to progressive realization)].

²⁴⁰ Inter-American Commission on Human Rights and Special Rapporteur for Economic, Social, Cultural and Environmental Rights (REDESCA), “Resolution No. 3/2021,” pt. Preamble.

²⁴¹ As expressly noted by this Court in 2018, States may not “postpone indefinitely the adoption of measures to give effect to the rights in question, especially nearly forty years after the entry into force of the inter-American treaty” *Case of Poblete Vilches et al v. Chile. Merits, reparations and costs* (Inter-American Court of Human Rights March 8, 2018).

²⁴² “Mitigate significant environmental damage”, in the language used by the Court at the time.

²⁴³ *Advisory Opinion OC-23/17* paragraph 172.

change;²⁴⁴ and (ii) measures aimed at addressing minimum core obligations of ESCERs in the context of climate change.²⁴⁵

Furthermore, existing interpretations by the IACHR and the CRC can serve as a foundation for discerning duties of **immediate nature** and those subject to **progressive realization** in the context of climate change. These international bodies have observed that:

- i. While mitigation and adaptation measures should represent the efforts of States in a progression over time, the time frame for preventing catastrophic climate change and harm to vulnerable populations (e.g. children) is shorter and requires urgent action.²⁴⁶
- ii. States should prioritize rapid and effective emissions reductions (mitigation) now in order to support the full enjoyment of rights in the shortest possible period of time, and to avoid irreversible damage.²⁴⁷ They should note that delaying mitigation measures will result in higher cumulative emissions and, thereby, greater foreseeable harm²⁴⁸ and adaptation gaps. As risks rise, so will the costs and challenges of adaptation.²⁴⁹
- iii. States should take deliberate, specific, and targeted steps towards gradual but effective mitigation, adaptation, and response to climate change, to the maximum of their available resources and within the framework of international cooperation.²⁵⁰
- iv. States shall refrain from taking retrogressive measures in this context, especially those that are less protective of vulnerable groups.²⁵¹
- v. States retain discretion in arriving at a reasonable balance between determining the appropriate levels of mitigation and adaptation and achieving other social goals in light of available resources; however, this leeway is limited by obligations under international environmental law and human rights treaties.²⁵²
- vi. States should undertake an active search for resources to respond to climate change, including mobilizing domestic resources (e.g., progressive taxation schemes for polluting activities) and resorting to multilateral banks or other institutions. Moreover, States that are part of multilateral financing agencies should intensify their efforts to ensure that these institutions provide accessible credits or immediate subsidies for climate mitigation and adaptation.²⁵³

Given the distinctive and urgent nature of climate change, it is crucial for this Honorable Court to seize the opportunity to clearly articulate that the concept of progressive realization does not grant

²⁴⁴ Following case law in *Workers of the Fireworks Factory v. Brazil*.

²⁴⁵ Following the standards set in Committee on Economic, Social and Cultural Rights, “General Comment No. 14.”

²⁴⁶ See Committee on the Rights of the Child, “General Comment No. 26,” para. 98.c (referring only to mitigation measures and updated pledges).

²⁴⁷ *Ibid.*, para. 98.e.

²⁴⁸ *Ibid.*, para. 98.d.

²⁴⁹ Romanello et al., “The 2023 Report of the Lancet Countdown on Health and Climate Change.”

²⁵⁰ See Committee on the Rights of the Child, “General Comment No. 26,” paras. 71, 72; Inter-American Commission on Human Rights and Special Rapporteur for Economic, Social, Cultural and Environmental Rights (REDESCA), “Resolution No. 3/2021,” 14–15.

²⁵¹ Committee on the Rights of the Child, “General Comment No. 26,” para. 71.

²⁵² *Ibid.*, para. 73.

²⁵³ Inter-American Commission on Human Rights and Special Rapporteur for Economic, Social, Cultural and Environmental Rights (REDESCA), “Resolution No. 3/2021,” 12.

unfettered discretion to States and cannot be used as an excuse to stall or impede climate action.²⁵⁴ Instead, we contend that this Court should affirm that, concerning climate change, progressive realization demands that States consistently implement and monitor mitigation, adaptation, and response strategies reflecting the highest possible climate ambition.

Progressive realization should have a more limited tolerance for stagnation or periods of inactivity in climate matters which, as noted, have persisted since the late nineties. In this context, States should be required to establish effective monitoring mechanism to oversee and measure progress on mitigation and adaptation, going beyond their nationally determined contributions under the UNFCCC and the Paris Agreement. The establishment of such a mechanism should be considered as part of States' immediate obligation to enact effective climate measures based on the best available evidence, free from conflicts of interest.

Table 2 summarizes the distinctions suggested in this section based on established case law and existing standards, considering the distinct and unique nature of the issue at hand. Such a clarification would help elevate the ambition of climate pledges, hold States accountable for their progress, keep global warming to safer levels, and ultimately safeguard the rights most threatened by this emergency.

Table 2. Analyzing the content and scope of progressive realization and immediate obligations in the context of climate change.

Progressive realization	Immediate obligations
<p><i>Move as expeditiously and effectively as possible</i> towards effective and comprehensive mitigation, adaptation, and response to climate change.</p> <p><i>Mobilize the maximum of available resources</i>, including climate finance programs within the framework of international cooperation.</p> <p>Correlate duty of <i>non-retrogression</i>.</p>	<p><i>Take steps</i> to mitigate GHGs, adapt to climate change, and respond to damages.</p> <p><i>Non-discrimination</i> with respect to mitigation, adaptation, and response strategies.</p> <p><i>Regulation, supervision, and control</i> of public and private actors that significantly contribute to climate change.</p> <p>Addressing <i>minimum core obligation</i> of ESCERs in the climate emergency.</p>

Source: Own work following cited bibliography.

4.3. Climate change and non-state actors

States alone will be unable to solve the climate emergency. Rather, reaching mitigation goals and closing many of the adaptation gaps will require action by governments, business, civil society,

²⁵⁴ Chuan-Feng Wu, “Challenges to Protecting the Right to Health under the Climate Change Regime,” *Health and Human Rights* 23, no. 2 (December 2021): 121–38.

and individuals at a scale and speed significantly greater than that seen in current trends.²⁵⁵ In this context, we emphasize the Advisory Opinion's crucial role in providing guidance not only for States, but for other actors involved in climate action.

This section will focus on the duties of States vis-à-vis businesses and other non-state actors in the private sector within the context of climate change.

4.3.1. *State's duty to respect and ensure human rights in the context of business operations in the climate emergency*

As noted previously, one of the main corollaries of the duty of prevention is the need for strict regulation, supervision, and control of non-state actors, including businesses, that may significantly contribute to environmental harm.²⁵⁶ The IACHR, the United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises (the "Working Group")²⁵⁷, and the CRC have suggested the specific content and scope of these duties in the context of climate change.²⁵⁸ In line with their interpretations, it could be argued that, pursuant to articles 1.1 and 2 of the ACHR,²⁵⁹ States should be required to:

- i. Consider the business-climate nexus in their national action plans on business and human rights;²⁶⁰
- ii. Set out clear expectations for all business enterprises domiciled or operating in their territory and jurisdiction to take effective measures to combat climate change.²⁶¹ This includes ensuring that businesses rapidly reduce their emissions and take appropriate adaptation measures;²⁶²
- iii. Require businesses to conduct EIAs and HRDD processes to ensure that they identify, prevent, and account for actual and potential adverse climate impacts on human rights;²⁶³
- iv. Ensure that businesses have mechanisms to redress climate-related human rights violations for which they are directly responsible;²⁶⁴

²⁵⁵ Pörtner et al., *Climate Change 2022*, 130.

²⁵⁶ See section 4.1.2.2.

²⁵⁷ Also referred to as the Working Group on Business and Human Rights.

²⁵⁸ Inter-American Commission on Human Rights and Special Rapporteur for Economic, Social, Cultural and Environmental Rights (REDESCA), "Resolution No. 3/2021"; Working Group on the issue of human rights and transnational corporations and other business enterprises, "Information Note on Climate Change and the Guiding Principles on Business and Human Rights," June 2023, <https://www.ohchr.org/sites/default/files/documents/issues/business/workinggroupbusiness/Information-Note-Climate-Change-and-UNGPs.pdf>; Committee on the Rights of the Child, "General Comment No. 26."

²⁵⁹ Inter-American Commission on Human Rights and Special Rapporteur for Economic, Social, Cultural and Environmental Rights (REDESCA), "Business and Human Rights: Inter-American Standards," 55, 65–66.

²⁶⁰ Inter-American Commission on Human Rights and Special Rapporteur for Economic, Social, Cultural and Environmental Rights (REDESCA), "Resolution No. 3/2021," para. 43.

²⁶¹ Working Group on the issue of human rights and transnational corporations and other business enterprises, "Information Note on Climate Change and the UNGPs," para. 8.c.

²⁶² Committee on the Rights of the Child, "General Comment No. 26," para. 107; Working Group on the issue of human rights and transnational corporations and other business enterprises, "Information Note on Climate Change and the UNGPs," para. 8.f.

²⁶³ Committee on the Rights of the Child, "General Comment No. 26," para. 107.

²⁶⁴ Inter-American Commission on Human Rights and Special Rapporteur for Economic, Social, Cultural and Environmental Rights (REDESCA), "Resolution No. 3/2021," para. 43.

- v. Implement fiscal policies that go beyond progressive taxation schemes and incorporate extra-fiscal policies to incentivize sustainable activities (e.g., levying taxes on fossil fuel-based energy sources and adopting policies that incentivize low-GHG activities). These comprehensive fiscal strategies can actively promote sustainability by discouraging environmentally harmful practices and encouraging the adoption of cleaner, renewable energy alternatives;²⁶⁵ and
- vi. Adopt strict sustainability requirements for procurement contracts.²⁶⁶

These bodies and the existing literature have pointed out other measures that States should take in this context. For instance, it has been argued that they should require businesses to disclose (i) their vulnerability to climate change (e.g., vulnerability of its facilities to extreme weather events); (ii) their compliance performance with mitigation and adaptation goals; and (iii) most importantly, their GHG emissions connected to their products and services.²⁶⁷ States should similarly adopt regulations to discourage greenwashing²⁶⁸ and undue corporate influence in climate-related regulation.²⁶⁹

4.3.2. *Corporate responsibilities in the context of climate change*

The Request presents an unprecedented opportunity for this Court to examine how existing Inter-American standards, as well as the United Nations Guiding Principles on Business and Human Rights (the “UNGPs”), can guide businesses in their corporate responsibility to respect human rights in this context. Certainly, with the exception of the Working Group, the international bodies that have dealt with climate change have not outlined comprehensive recommendations to businesses in this regard.

This Court can therefore clarify that the responsibilities of businesses to respect human rights include the responsibility to act in regard to the causes, as well as the actual and potential adverse impacts, of climate change.²⁷⁰ To this end, businesses should, for instance:

- i. Integrate climate change considerations into their human rights policies and HRDD processes, governance structures, and decisions to identify, prevent, and account for actual and potential human rights violations in this context;
- ii. Identify all their GHG emissions throughout their operations, in line with the best scientific evidence free from conflict of interest;
- iii. Take urgent remedial action, including ceasing any climate-related adverse impacts that their business causes or contributes to;

²⁶⁵ Committee on the Rights of the Child, “General Comment No. 26,” para. 109; Inter-American Commission on Human Rights and Special Rapporteur for Economic, Social, Cultural and Environmental Rights (REDESCA), “Resolution No. 3/2021,” paras. 48–57.

²⁶⁶ Committee on the Rights of the Child, “General Comment No. 26,” para. 109.

²⁶⁷ See, e.g., Expert Group on Global Climate Obligations on Enterprises, *Principles on Climate Obligations of Enterprises*, Legal Perspectives for Global Challenges 5 (The Hague: Eleven International Publishing, 2018), 7.

²⁶⁸ Defined as a practice that misleads the public to believe that a company or other entity is doing more to protect the environment than it actually is. See United Nations, “Greenwashing – the Deceptive Tactics behind Environmental Claims,” accessed November 29, 2023, <https://www.un.org/en/climatechange/science/climate-issues/greenwashing>.

²⁶⁹ Working Group on the issue of human rights and transnational corporations and other business enterprises, “Information Note on Climate Change and the UNGPs,” para. 8.h.

²⁷⁰ *Ibid.*, para. 16.

- iv. Use their leverage over their business relationships to address any climate change-related human rights impacts that their business contributed to or is directly linked to through its operations, products, or services;²⁷¹ and
- v. In general, act responsibly and not promote unsustainable consumption.²⁷²

Due to the gap in existing international standards and literature, the guidance offered by this Honorable Court in this matter can serve as a crucial framework for businesses to fulfill their responsibilities amid the pressing climate crisis.

5. Conclusion

The climate emergency is a serious threat to the realization of human rights, not least the rights to health and to adequate food. This written opinion has sought to provide insights into the impacts of climate change on almost every aspect of physical and mental health and food security, particularly for the most vulnerable, explaining how this threat is intimately linked to the international human rights agenda.

While human rights are increasingly understood as an important basis for climate litigation, climate change is likely to shift the entire human rights agenda of the future. As such, this Honorable Court is uniquely positioned to ensure that States, and other key stakeholders, are held accountable, and to lay the foundation for an environment that fosters human-centered climate action that safeguards human health and well-being above all else.

We express our sincerest gratitude for the opportunity to submit a written opinion on the important questions raised in the Request. We hope that the information provided in this submission will be helpful in guiding the Court's drafting of an ambitious Advisory Opinion on the linkages between human rights and the climate emergency, providing robust and concrete guidance on State obligations to address the most pressing global challenge of our time.

We remain available to answer any questions this Honorable Court may have with regards to this document. In the meantime, please accept our highest appreciation and regard,



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²⁷¹ See *ibid.*, para. 17.

²⁷² *Ibid.*, para. 18.



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