

2022 INTER-AMERICAN HUMAN RIGHTS MOOT COURT  
COMPETITION

BENCH MEMORANDUM

Theme: Climate Change and Human Rights: Impacts, Responsibilities, and  
Opportunities

*Inhabitants of Murujuy, Colibrítón, et al. v. State of Iraca and the United States of Chaco (USC)*

Prepared by Astrid Puentes Riaño  
marzo de 2022

## Table of Contents

A. CONTEXT OF THE HYPOTHETICAL CASE.....	3
1. Overview .....	3
a. Definition of climate change and the current situation .....	3
b. Summary of international climate change commitments .....	5
c. Impact of climate change on human rights .....	6
d. Human rights affected by climate change .....	8
i. Right to a healthy environment .....	8
ii. Right to life, a dignified life, and integrity .....	9
iii. Right to water.....	9
iv. Right to adequate food.....	10
v. Right to health .....	10
vi. Right to adequate housing and to be free from forced displacement.....	11
vii. Right to individual and community property .....	11
viii. Special protection for vulnerable groups .....	12
e. State obligations with respect to climate change .....	12
B. MAIN ISSUES AND STANDARDS FOR DECIDING THE CASE .....	15
1. Procedural considerations .....	15
2. Context .....	15
3. Application of standards to the case.....	16
a. Impacts and their relationship to human rights.....	16
i. Human rights violated.....	17
b. Exceptionality and expansion of jurisdiction for the United States of Chaco.....	20
c. Responsibility of the States .....	23
i. Duty to respect and ensure human rights and prevent human rights violations arising from climate change .....	23
i.i. Effective legal framework and implementation as part of the obligation to actively protect human rights and prevent harm.....	23
ii. Obligation to mitigate and adapt to climate change.....	25
iii. Application of the precautionary principle .....	26
iv. Duty of the State to inform and collaborate: the USC to Iraca.....	27
v. Common but differentiated responsibilities in the face of climate change.....	28

## **A. CONTEXT OF THE HYPOTHETICAL CASE**

The climate crisis is affecting everyone in the world and is now the greatest threat to human rights. The degree and magnitude to which people and communities are affected by climate change differs, with impacts being magnified for those in vulnerable situations. This case describes the above and invites reflection on the obligations of States and how the inter-American human rights system (IAHRS) can address these circumstances.

There is no question that climate change has been caused by human actions, specifically by fossil fuel use and global land degradation. Multiple actions are required in response, including emissions abatement, adaptation, and addressing loss and damage. Despite this, climate change emissions continue to increase significantly and the gap between the existing level of emissions and the level to be achieved to prevent further collapse and impacts continues to widen. Latin America and the Caribbean is one of the most vulnerable regions. It is already experiencing major impacts, including hurricanes of unprecedented number and intensity, droughts, floods, fires, and extreme temperatures with intense heat and cold waves. This is triggering many of the large migrations in the hemisphere today.

However, States are still not implementing the serious and systemic transitions that are needed. It is essential to analyze this from the standpoint of human rights and the obligations of States, given the role of the law in bringing about the necessary solutions—especially considering the mounting impacts in the region that affect all areas of life and human rights. Climate change is not an issue for the future. We are already experiencing severe impacts that affect people and communities, particularly those in vulnerable circumstances, increasing poverty levels and risking the loss of important gains in the protection of human rights.

The case addresses fundamental elements of the human rights implications of climate change, including State responsibility, scope of jurisdiction, and whether, how, and when exceptional circumstances may give rise to the application of extraterritorial jurisdiction. Given that the climate crisis and State actions have impacts beyond national borders, the law must analyze and respond to those impacts. Since Latin America is the most unequal region on the planet, where millions of people are already affected by climate change and where the rights of millions more will be gravely affected, this problem must be understood and addressed from a rights-based perspective.

This document discusses general conceptual elements, and then examines the different perspectives to be developed in this case. It examines the central legal issue, i.e., whether the damages and harm reported by individuals, sustained for over twenty years, including flood and storm losses, constitute human rights violations, and whether the acts and omissions of the States of Iraca and the United States of Chaco (USC) give rise to international responsibility under the American Convention on Human Rights (ACHR). It also considers whether and to what extent States must be held accountable for impacts derived from climate change, including those that have already occurred, as well as the risk created and the possible future effects on human life and health.

### **1. Overview**

#### **a. Definition of climate change and the current situation**

Climate change is “a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability

observed over comparable time periods.”<sup>1</sup> “It is unequivocal that human influence has warmed the atmosphere, ocean and land.”<sup>2</sup> Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have also occurred.<sup>3</sup>

For decades, the scientific community has identified the variations in climate attributable to human activities, concluding that they are derived from the burning of fossil fuels: oil, gas, and coal. According to the Intergovernmental Panel on Climate Change (IPCC), “emissions of greenhouse gases from human activities are responsible for approximately 1.1°C of warming since 1850-1900, and finds that averaged over the next 20 years, global temperature is expected to reach or exceed 1.5°C of warming.”<sup>4</sup> They also warned about the need to mitigate and prevent further warming, to delay it as long as possible to avoid further serious impacts on human rights and the planet, and to urgently implement adaptation actions.

The maximum recommended warming increase is 1.5°C by 2100. This figure is not a target, but an upper limit to avoid further severe impacts, including millions more people affected by sea level rise.<sup>5</sup> Yet, current projections, taking into account commitments and plans, conclude that global warming will be above 3°C before the end of the century. It is therefore urgent to implement corrective measures.

Despite the clarity and seriousness of the situation, the results are still far from what is required. The United Nations 2021 Gap Report, which assesses emission reduction commitments, concluded that State targets “have only limited impact on global emissions and the emissions gap in 2030.”<sup>6</sup> In other words, reducing and controlling emissions at their source is not enough. Seventy percent of global emissions come from the energy sector, while in Latin America and the Caribbean the energy sector accounts for 45 percent of emissions; 23 percent come from agriculture and livestock, and 19 percent of total emissions in the region are related to changes in land use.<sup>7</sup> Energy is the sector that has been experiencing the greatest increase. One of the biggest problems is that “the 2030 commitments do

---

<sup>1</sup> United Nations Framework Convention on Climate Change (UNFCCC), Art. 1.2.

[https://unfccc.int/files/essential\\_background/background\\_publications\\_htmlpdf/application/pdf/conveng.pdf](https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf)

<sup>2</sup> IPCC, Sixth Assessment Report of the Intergovernmental Panel on Climate Change (AR6), Working Group I, Summary for Policymakers, August 9, 2021, p. 4 (underlining added for emphasis).

[https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC\\_AR6\\_WGI\\_SPM\\_final.pdf](https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM_final.pdf)

<sup>3</sup> *Id.*

<sup>4</sup> IPCC, AR6, Working Group I, Press Release, August 9, 2021,

[https://www.ipcc.ch/site/assets/uploads/2021/08/IPCC\\_WGI-AR6-Press-Release\\_en.pdf](https://www.ipcc.ch/site/assets/uploads/2021/08/IPCC_WGI-AR6-Press-Release_en.pdf)

<sup>5</sup> IPCC, 2018: Summary for Policymakers. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]. [https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15\\_SPM\\_version\\_report\\_LR.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_SPM_version_report_LR.pdf)

<sup>6</sup> United Nations Environment Programme (2021). Emissions Gap Report 2021. The Heat Is On: A world of climate promises not yet delivered. Executive summary. Nairobi.

[https://wedocs.unep.org/bitstream/handle/20.500.11822/36991/EGR21\\_ESEN.pdf](https://wedocs.unep.org/bitstream/handle/20.500.11822/36991/EGR21_ESEN.pdf)

<sup>7</sup> A. Bárcena et al., The climate emergency in Latin America and the Caribbean: The path ahead – resignation or action? ECLAC Books, No. 160 (LC/PUB.2019/23-P), Santiago, Economic Commission for Latin America and the Caribbean (ECLAC), 2020, available at:

[https://repositorio.cepal.org/bitstream/handle/11362/45678/10/S1900710\\_en.pdf](https://repositorio.cepal.org/bitstream/handle/11362/45678/10/S1900710_en.pdf), p. 47.

not yet set G20 members (accounting for close to 80 per cent of GHG emissions) on a clear path towards net zero.”<sup>8</sup> In other words, the States with the greatest responsibility are not doing their part.

## **b. Summary of international climate change commitments**

Since the United Nations Framework Convention on Climate Change (UNFCCC), States have recognized that climate change exists; that it is linked to the emission of greenhouse gases; that the most developed States have contributed the most and should therefore reduce these emissions the most; and that low-latitude countries and areas, island, coastal, and high mountain ecosystem countries are more vulnerable to climate change. Therefore, they agreed “to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.”<sup>9</sup> The UNFCCC is universal, as it has been ratified by 197 States.<sup>10</sup> It is one of the Rio conventions that was opened for signature at the Earth Summit in Rio de Janeiro in 1992, and it entered into force in 1994.

The Kyoto Protocol, adopted on December 11, 1997, during the Third Conference of the Parties to the UNFCCC, was negotiated and agreed upon to implement the Convention.<sup>11</sup> This Protocol, with 192 States Parties, established a binding commitment for 36 industrialized countries and the European Union to reduce emissions of the six most important greenhouse gases. Due to the complexity of negotiation and ratification, the Kyoto Protocol entered into force on February 16, 2005, eight years after signature. In 2012, the Doha Amendment to the Kyoto Protocol was adopted, including new commitments for the Parties and a second commitment period between 2013 and 2020. This amendment was ratified by 147 of the 147 Parties required, right before it expired in 2020, in what turned out to be a symbolic ratification.<sup>12</sup>

The need to establish binding obligations to achieve results prompted the negotiation and signing of the Paris Agreement during the Conference of the Parties (COP) to the Convention in December 2015 (COP21).<sup>13</sup> This agreement entered into force on November 4, 2016 and has been ratified by 196 States.

Some of the most important commitments of the Paris Agreement include:

a. *Preventing warming above a certain temperature.* It recognized the need to reduce emissions to ensure climate protection by limiting greenhouse gases in the atmosphere and global warming “to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C.”<sup>14</sup> At

---

<sup>8</sup> United Nations Environment Programme (2021). Emissions Gap Report 2021. The Heat Is On: A world of climate promises not yet delivered. Executive summary. Nairobi.

<sup>9</sup> UNFCCC, art. 2.

<sup>10</sup> UNFCCC, Information about the Convention. <https://unfccc.int/process-and-meetings/the-convention/what-is-the-united-nations-framework-convention-on-climate-change>.

<sup>11</sup> United Nations, Kyoto Protocol, 1998, <https://unfccc.int/sites/default/files/resource/docs/cop3/107a01.pdf>.

<sup>12</sup> For information and documents on the Convention, the Kyoto Protocol, the Paris Agreement and other instruments, see [https://unfccc.int/kyoto\\_protocol](https://unfccc.int/kyoto_protocol).

<sup>13</sup> United Nations, Paris Agreement, 2015. [https://unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/english_paris_agreement.pdf).

<sup>14</sup> Paris Agreement, art. 2.

the time, island countries and others insisted on limiting maximum global warming to 1.5°C, but consensus could not be reached.

b. *Consider and respect human rights in the adoption of climate change measures.* The preamble states:

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

c. *Reduction of emissions by all States, considering the principle of common but differentiated responsibilities, reflecting equity and the capabilities of each State.* This is an important step forward because there are countries that were not on the list of the most developed countries whose emissions are significant, and sometimes even higher than those of industrialized countries, but they had no binding obligation to reduce them. A correlative problem was to weaken the particular obligation of further emission reductions by industrialized States.

To achieve the reductions, it was agreed that each Party would establish nationally determined contributions (NDCs), for which deadlines and methodologies were put in place.<sup>15</sup> The first NDCs were submitted to the UNFCCC Secretariat in 2015, were endorsed during the COP that year, and are updated every five years. These NDCs were reviewed and updated in 2020.

The Paris Agreement also included emissions mitigation measures (Article 6), the definition and conditions of which are still under negotiation and were partly advanced at the last COP26 in Glasgow. The agreement also included commitments to move forward on adaptation measures, sufficient financial contributions, and cooperation and technology transfer, as well as on preventing and addressing loss and damage caused by climate change.

### **c. Impact of climate change on human rights<sup>16</sup>**

The human rights and economic impacts for Latin America and the Caribbean are enormous, and it is estimated that by 2050 the costs will represent between 1.5 and 5 percent of the Regional Gross Domestic Product.<sup>17</sup> According to the World Meteorological Organization, in 2021<sup>18</sup> impacts in the region include higher temperatures; shrinking glaciers in the Andes of Chile and Argentina; intense drought in the southern Amazon and in the Pantanal<sup>19</sup> that was the worst in 60 years; droughts that affect food security, due to crop losses, with the Caribbean being particularly vulnerable; Category 4 hurricanes like Eta and Iota, which affected Nicaragua and Honduras; ocean acidification; and sea level rise.

The climate crisis has already affected the global hydrological cycle.<sup>20</sup> Some rivers have seen decreased flows, such as the Magdalena and the Cauca in Colombia and several in Central America, and some

---

<sup>15</sup> Paris Agreement, art. 4.

<sup>16</sup> This section used input from previous research by the author contained in several articles, including PUENTES, Astrid, “*Litigio Climático e Direitos Humanos*,” *Litigância climática, novas fronteiras para o direito ambiental no Brasil*, 2019.

<sup>17</sup> A. Bárcena et al., (ECLAC), 2020, p. 63.

<sup>18</sup> World Meteorological Organization (WMO), “State of the Climate in Latin America and the Caribbean 2020, 2021” [https://library.wmo.int/doc\\_num.php?explnum\\_id=10876](https://library.wmo.int/doc_num.php?explnum_id=10876).

<sup>19</sup> *Revista Semana*, “¿Qué es Pantanal y cuál es su importancia para el planeta?” [What is the Pantanal and how important is it for the planet?] September 14, 2020, <https://www.semana.com/actualidad/articulo/que-es-pantanal-y-cual-es-su-importancia-para-el-planeta--mundo-hoy/55304/>.

<sup>20</sup> IPCC, Report AR6, Working Group I, 2021.

Andean glaciers have disappeared. In Ecuador, for example, the Cotacachi glacier disappeared over ten years ago, affecting agriculture, tourism, and the availability of fresh water.<sup>21</sup> Between 1980 and 2016, 110 storms have struck the Caribbean, causing major human and economic losses. In 2020 alone there were 30 storms in the Atlantic region, reaching an all-time record number and affecting all of Central America and Mexico; also in the Caribbean, several hurricanes affected Puerto Rico and the Dominican Republic, hitting the region after a major drought.<sup>22</sup>

As for sea level rise, the IPCC estimates that if global temperatures increase by 1.5°C instead of 2°C, sea level rise could be reduced by 0.1m, which would prevent approximately 10 million people from experiencing the associated risks.<sup>23</sup> Sea level rise poses high risks to small islands, coastal areas, and deltas due to saltwater intrusion, flooding, infrastructure damage, and the destruction of ecosystems. The lower the temperature increase, and the longer the time period over which it occurs, the greater the chance of adapting to avoid these harms.<sup>24</sup>

The region has experienced extreme temperature waves, especially heat waves, which have also caused severe wildfires. For example, heat waves hit South America in early 2020, with regions in Argentina and Paraguay recording temperatures of up to 43°C.<sup>25</sup> These waves also affected Brazil, Peru, Bolivia, and Chile and were associated with the worst fire season in the Pantanal, which affected 26 percent of the area.<sup>26</sup> There have also been severe cold waves, for example in August 2020 in Brazil and Paraguay. A cold wave also affected northern and central Mexico, breaking historical records and causing a power outage, leaving millions of people without electricity.<sup>27</sup>

The climate crisis also has an impact on air quality, affecting people and nature. Forest fires and the burning of fossil fuels worsen air quality—the main public health problem in the Americas—which is being exacerbated by climate change.<sup>28</sup> Measures to control greenhouse gas emissions and short-lived climate pollutants, such as methane and ozone, are therefore essential to address the climate crisis and help improve air quality, which will benefit people’s health.<sup>29</sup>

The impacts of climate change are already affecting agricultural production and therefore the lives and living conditions of communities that depend on it. For 2018, for example, the government of Honduras declared that 82 percent of its crops would be lost<sup>30</sup>—a situation that affects food sovereignty and the country’s economy. According to the International Organization for Migration

---

<sup>21</sup> A. Bárcena et al., (ECLAC), 2020, p. 85.

<sup>22</sup> WMO, p. 15.

<sup>23</sup> IPCC, 2018: Global Warming of 1.5°C.

<sup>24</sup> *Id.*

<sup>25</sup> WMO, p. 18.

<sup>26</sup> WMO, p. 19.

<sup>27</sup> *BBC Mundo*, February 17, 2021, “*Apagones en México: la histórica tormenta invernal en Texas que ha causado cortes eléctricos en la mitad del país latinoamericano*” [Blackouts in Mexico: the historic winter storm in Texas that has caused power outages in half of the Latin American country], <https://www.bbc.com/mundo/noticias-internacional-56078326>.

<sup>28</sup> WHO, Ambient (outdoor) air pollution, key facts, September 2021, [https://www.who.int/news-room/fact-sheets/detail/ambient-\(outdoor\)-air-quality-and-health](https://www.who.int/news-room/fact-sheets/detail/ambient-(outdoor)-air-quality-and-health).

<sup>29</sup> IPCC, AR6, 2021, Summary for Policymakers, p. 27.

<sup>30</sup> Sînziana Puscas, Ileana, Escribano, Pablo, “The Environment Is Changing: Is the Migrant Caravan a Consequence?” Blog, Migration Data Portal, December 18, 2018, <https://www.migrationdataportal.org/blog/environment-changing-migrant-caravan-consequence>.

(IOM), crop failure is related to increased northward migration from Central America, where thousands of people joined the migrant caravan to the U.S. in late 2018.<sup>31</sup>

The negative impact on human rights, including the rights to a healthy environment, a dignified life, health, food, adequate housing, water, individual and collective property, access to culture, and self-determination has been felt by millions of people.<sup>32</sup>

#### **d. Human rights affected by climate change**

##### ***i. Right to a healthy environment***

This fundamental right is recognized in the IAHRS in Article 11 of the Protocol of San Salvador: “Everyone shall have the right to live in a healthy environment and to have access to basic public services.”<sup>33</sup> According to the Inter-American Court of Human Rights (Inter-American Court), this right should also be considered to be “included among the economic, social and cultural rights protected by Article 26 of the American Convention.”<sup>34</sup>

In addition, the American Declaration on the Rights of Indigenous Peoples<sup>35</sup> and the Inter-American Convention on Protecting the Human Rights of Older Persons expressly protect the right to a healthy environment.<sup>36</sup>

According to the Inter-American Court, “Environmental degradation may cause irreparable harm to human beings; thus, a healthy environment is a fundamental right for the existence of humankind.”<sup>37</sup> The Inter-American Court considers it an autonomous right, with individual and collective connotations, the collective connotation being “a universal value that is owed to both present and future generations.”<sup>38</sup> The right to a healthy environment is also recognized in the Escazú Agreement.<sup>39</sup>

---

<sup>31</sup> *Ibid.*

<sup>32</sup> Inter-American Commission on Human Rights (IACHR), Office of the Special Rapporteur for Economic, Social, Cultural, and Environmental Rights (REDESCA), Resolution 3/2021, Climate Emergency: Scope of Inter-American Human Rights Obligations, December 31, 2021, [https://www.oas.org/en/iachr/decisions/pdf/2021/resolucion\\_3-21\\_ENG.pdf](https://www.oas.org/en/iachr/decisions/pdf/2021/resolucion_3-21_ENG.pdf).

<sup>33</sup> Additional Protocol to the ACHR in the Area of Economic, Social and Cultural Rights, art. 11. 28 I.L.M. 156. November 17, 1988 [Protocol of San Salvador].

<sup>34</sup> I/A Court H.R., The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, (hereinafter OC-23), para. 57.

<sup>35</sup> OAS, American Declaration on the Rights of Indigenous Peoples, art. XIX. Adopted in June 2016.

<sup>36</sup> OAS, Inter-American Convention on Protecting the Human Rights of Older Persons, art. 25; CIDH, Office of the Special Rapporteur for Economic, Social, Cultural, and Environmental Rights, Report on Economic, Social, Cultural, and Environmental Rights of Persons of African Descent, 2021.

<sup>37</sup> I/A Court H.R., OC-23, para. 59.

<sup>38</sup> I/A Court H.R., OC-23, para. 59.

<sup>39</sup> Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), signed on March 4, 2018; entered into force on April 22, 2021. [https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428\\_en.pdf](https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428_en.pdf).



In his final report at the end of his term, the first Rapporteur on human rights and the environment, John Knox, recommended that the United Nations General Assembly recognize the human right to a safe, clean, healthy, and sustainable environment.<sup>40</sup> In a historic decision, the UN Human Rights Council recognized the human right to a clean, healthy and sustainable environment for all people on October 8, 2021.<sup>41</sup>

### *ii. Right to life, a dignified life, and integrity*

The right to life is affected by the climate crisis. Situations such as wildfires, droughts, hurricanes, and floods may even result in the direct loss of human life. In other situations, impacts may be felt due to the loss of access to food or drinking water or to the emergence of diseases that seriously or irreparably affect people's lives.<sup>42</sup>

### *iii. Right to water*

Access to water, recognized as a human right by the universal system since 2010, is essential for the enjoyment of the right to a dignified life.<sup>43</sup> Some 1.1 billion people lack adequate access to safe drinking water, a figure that could worsen due to the impacts of climate change. With 1°C of global warming “about 8 per cent of the global population will see a severe reduction in water resources with a 1°C rise in the global mean temperature, rising to 14 per cent at 2°C.”<sup>44</sup>

The diminishing availability of water from glaciers, melting snow, rainwater, and groundwater sources affects thousands of communities' traditional sources of water for drinking, cooking, farming, and other needs, as has occurred in the hemisphere, including in Bolivia and Ecuador. Climate impacts will also reduce water quality. For example, flooding impacts sanitation systems and spreads disease, while rising seawater and storm surges can lead to the salinization of coastal freshwater aquifers.<sup>45</sup>

---

<sup>40</sup> UN Document A/73/188, Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. Report prepared jointly by outgoing Rapporteur John Knox and incoming Rapporteur David Boyd, 19 July 2019. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/231/04/PDF/N1823104.pdf?OpenElement>.

<sup>41</sup> Human Rights Council, A/HRC/RES/48/13, 8 October 2021, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/289/50/PDF/G2128950.pdf?OpenElement>.

<sup>42</sup> Human Rights Council, A/HRC/RES/41/21, 23 July 2019, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/223/65/PDF/G1922365.pdf?OpenElement>; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/31/52, 1 February 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/015/72/PDF/G1601572.pdf?OpenElement>.

<sup>43</sup> The right to safe drinking water and sanitation has been recognized as a human right by the United Nations General Assembly: The human right to water and sanitation. G.A. Res. 64/292. U.N. Doc. A/RES/64/292. 3 August 2010. It also includes access to “sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.” CESCR. General Comment No. 15: The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), paras. 2, 12. U.N. Doc. E/C.12/2002/11. 20 January 2003.

<sup>44</sup> Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, February 2016, A/HRC/31/52, para. 25, citing the Report of the Intergovernmental Panel on Climate Change, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/015/72/PDF/G1601572.pdf?OpenElement>.

<sup>45</sup> Frequently asked questions on Human Rights and Climate Change, Fact Sheet No. 38, 2021. [https://www.ohchr.org/Documents/Publications/FSheet38\\_FAQ\\_HR\\_CC\\_EN.pdf](https://www.ohchr.org/Documents/Publications/FSheet38_FAQ_HR_CC_EN.pdf); KOPAS, Jacob, Cushing Lara, A

#### *iv. Right to adequate food*

The right to food is recognized by the United Nations and by the IAHRS.<sup>46</sup> The impacts of the climate crisis on this right are so great that in 2015 the Special Rapporteur on the right to food, Hilal Elver, prepared a special report on this subject. According to the rapporteur, “in order to eradicate hunger and ensure the full realization of the right to food, more must be done to develop relevant, effective mitigation and adaptation policies and a human rights approach must be adopted as a means of achieving climate justice.”<sup>47</sup> The report concludes that climate change “is already having a significant impact on approximately one billion of the world’s poor,” and that, if the necessary actions are not taken by 2050, the number of people experiencing hunger—which today stands at 795 million people—could increase by 20 percent.<sup>48</sup>

The impact on the right to food arises both from the unavailability of food and from crop losses due to droughts, floods, hurricanes, and other extreme climatic situations, and from the destruction of ecosystems. Another factor affecting this right is the lack of access to food because of physical and economic factors related to the increase in the cost of food. The rapporteur highlights the role of women in food production, given that they produce 50 percent of the world’s food; nevertheless, women and girls “continue to be disproportionately affected by climate change, poverty and malnutrition.”<sup>49</sup>

The impact on the right to food particularly affects indigenous and peasant communities, whose livelihoods are linked to food production. According to the rapporteur, violations stemming from the direct impacts of the climate crisis may be aggravated by inequality and by the use of land for biofuel production or infrastructure projects, such as hydroelectric dams, which may further compound the impairment of this right.

The Special Rapporteur on environment and human rights also underscores the violation of the right to food in his report on climate change and human rights, noting that serious impacts are already occurring and will increase as climate change worsens.<sup>50</sup>

#### *v. Right to health*

Climate change will inevitably exacerbate health problems and thus negatively affect the enjoyment of the right to a dignified life and the right to health. Chronic flooding can overwhelm sanitation systems and cause waterborne diseases; rising temperatures can spread vector-borne diseases such as malaria,

---

*Human Crisis: Climate Change and Human Rights in Latin America*, Interamerican Association for Environmental Defense, AIDA, December 2011, p. 51.

<sup>46</sup> Protocol of San Salvador, art. 12; International Covenant on Economic, Social, and Cultural Rights (ICESCR), art. 11.1; The right to food is realized when “every man, woman and child, alone or in community with others, [has] physical and economic access at all times to adequate food or means for its procurement.” CESCR. General Comment No. 12: The right to adequate food (art. 11 of the Covenant). U.N. Doc. E/C.12/1999/5 (1999).

<sup>47</sup> Special Rapporteur Hilal Elver, to the United Nations General Assembly, Report on the Right to Food, 5 August 2015. U.N. Doc. A/70/287, <https://www.ohchr.org/Documents/Issues/Food/A-70-287.pdf>.

<sup>48</sup> *Ibid.*, para. 2.

<sup>49</sup> *Ibid.*, para. 35.

<sup>50</sup> Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, February 2016, A/HRC/31/52, para. 26, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/015/72/PDF/G1601572.pdf?OpenElement>.

worsen air pollution, and increase mortality from heat waves. These consequences are already being seen in large cities such as Mexico City, Lima, Bogotá, and Santiago de Chile.

Air pollution and forest fires can cause respiratory problems, posing the greatest threat to public health in Latin America. The destruction of subsistence crops and the lack of access to water can affect the right to health, particularly for communities in vulnerable situations, such as children and adolescents, rural communities, and indigenous peoples, whose nutrition is affected by the lack of other food sources.<sup>51</sup>

The right to health as it relates to climate change is also affected by the mental and emotional traumas caused by extreme events, as well as by the anxiety and distress people feel in the face of uncertainty and possible future impacts.

#### ***vi. Right to adequate housing and to be free from forced displacement***

The most serious and direct risks that climate change poses to these rights include extreme situations such as heavy rains and hurricanes, which affect populations living in at-risk areas to a greater extent.<sup>52</sup> The Special Rapporteur on adequate housing drew attention to the risks for populations in cities of the Global South, due to the existence of informal settlements in risk or risk-prone areas, such as Recife (Brazil), Bogotá (Colombia), and Buenos Aires (Argentina).<sup>53</sup> Twelve years after that report, the impacts have been felt to a greater extent than expected, especially by those individuals and communities in the most vulnerable situations, such as people living in poverty, children and adolescents, women, indigenous peoples, and local communities, among others.

Climate change is also causing significant internal displacement of populations—something that the IPCC foresaw as early as 1990, when it identified migration as one of the main consequences of climate change.<sup>54</sup> The Special Rapporteur on internal displacement found that “in 2010 alone, at least 42.3 million people were newly displaced by sudden-onset natural disasters, 90 per cent of which were climate change-related.”<sup>55</sup> Considering the risks, the rapporteur recommended actions including adopting a human rights-based approach to strengthen actions to address internal displacement, comprehensive climate adaptation and mitigation measures to address different aspects of the problem, and information and guidance, among others.<sup>56</sup>

#### ***vii. Right to individual and community property***

Extreme weather impacts are already affecting land and natural resources to an extent that also touches on the right to property. Extreme weather events, such as storms, floods, fires, and hurricanes, as well

---

<sup>51</sup> Report of the United Nations Rapporteur on human rights and the environment, on the right to breathe clean air, A/HRC/40/55, 8 January 2019.

<sup>52</sup> United Nations, Report of the Special Rapporteur on adequate housing, Raquel Rolnik, *The Right to Adequate Housing*, 6 August 2009, A/64/255, paras. 13 et seq., <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N09/446/64/PDF/N0944664.pdf?OpenElement>.

<sup>53</sup> *Ibid.*, para. 18.

<sup>54</sup> United Nations, Protection of and assistance to internally displaced persons, 9 August 2011, A/66/285, para. 19, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/448/35/PDF/N1144835.pdf?OpenElement>.

<sup>55</sup> *Ibid.*, para. 18.

<sup>56</sup> *Ibid.*, para. 87 et seq.; Guidelines for the Implementation of the Right to Adequate Housing, A/HRC/43/43.

as prolonged droughts and rising sea levels, also affect the enjoyment of this right. The climate crisis can also undermine the right to property through the inadequate implementation of infrastructure projects intended to address the climate emergency, as in the case of energy projects. Insufficient adaptation or maladaptation to climate change may also make the situation worse.<sup>57</sup> In these situations, the proper planning and implementation of projects, with a human rights approach, is essential to guarantee the right to property.

### *viii. Special protection for vulnerable groups*

The climate crisis is already affecting people in vulnerable situations to a greater extent, and inequality, poverty and this situation of vulnerability compound the impacts on human rights, in particular on women, indigenous peoples, peasants, coastal communities, children, migrants, and people with disabilities.<sup>58</sup> Therefore, States should consider this obligation and the situation of those who bear the brunt of these impacts in order to guarantee their rights. This approach should be implemented at the domestic and international levels, given that “climate change will exacerbate existing poverty and inequality. It will have the most severe impact in poor countries and regions, [which] will bear an estimated 75–80 per cent of the cost of climate change.”<sup>59</sup>

### **e. State obligations with respect to climate change**

Under international human rights law, States have the obligation to protect, respect, and guarantee these rights. For OAS member states, these obligations are enshrined in the Declaration and the ACHR,<sup>60</sup> and in the case law of the inter-American system.

Specifically in terms of climate change and human rights, the 2007 Malé Declaration was the first in which States recognized that “climate change has clear and immediate implications for the full enjoyment of human rights.”<sup>61</sup> In 2009, Resolution 10/4 of the Human Rights Council acknowledged the link between climate change and human rights, and the resolution was noted in 2010 in the Cancun Agreements at the sixteenth Conference of the Parties (COP16) to the Framework Convention on Climate Change in recognition of this connection.<sup>62</sup> In 2015, the Paris Agreement expressly recognized the importance of respecting human rights in all actions to address climate change.

In the IAHRs, the Inter-American Court’s advisory opinion No. 23 was a landmark opinion in developing the obligations of States in relation to environmental issues affecting human rights. The Inter-American Court held that, as part of their obligations to protect, respect, and guarantee rights,

---

<sup>57</sup> IPCC, Working Group II contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Summary for Policy Makers.

[https://report.ipcc.ch/ar6wg2/pdf/IPCC\\_AR6\\_WGII\\_SummaryForPolicymakers.pdf](https://report.ipcc.ch/ar6wg2/pdf/IPCC_AR6_WGII_SummaryForPolicymakers.pdf)

<sup>58</sup> IPCC SR1.5 SPM11.

<sup>59</sup> Report of the Special Rapporteur on extreme poverty, A/HRC/41/39, 17 July 2019, para. 11.

<sup>60</sup> American Declaration of the Rights and Duties of Man,

<https://www.oas.org/en/iachr/mandate/Basics/declaration.asp>, American Convention on Human Rights, art. 1,

[https://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm).

<sup>61</sup> Malé Declaration on the Human Dimension of Global Climate Change, adopted by representatives of Small Island Developing States, November 2007.

<sup>62</sup> Decision 1/CP.16 Cancun Agreements, 2010, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/605/50/PDF/G1160550.pdf?OpenElement>.

States must take measures to protect the environment. These measures include developing effective legal frameworks, implementing control, monitoring, and oversight actions, applying the precautionary principle, and requiring and following up on environmental impact studies, among others.<sup>63</sup>

The Inter-American Commission on Human Rights (IACHR) recently published the resolution “Climate Emergency, Scope of Inter-American Human Rights Obligations” which develops this issue.<sup>64</sup>

- **Procedural obligations**

As a complement to their obligations to protect the environment, States also have procedural obligations that are instrumental in guaranteeing the substantive ones. These are related to the rights to information, participation, and access to justice in environmental matters. In the IAHRs these rights are enshrined in Articles 13 and 23 of the ACHR on information and participation, and Articles 8 and 25 on access to justice. In relation to environmental issues, they are also contained in Principle 10 of the Rio Declaration of 1992,<sup>65</sup> and have been expressly developed in the Aarhus Convention<sup>66</sup> for the European Union and in the Escazú Agreement for Latin America and the Caribbean.<sup>67</sup> Procedural obligations in environmental matters were also extensively developed by the UN Rapporteur on human rights and the environment, in his report to the Human Rights Council in 2016, in which he addressed the link to climate change.<sup>68</sup>

- **Obligation to other States**

A basic principle of public international law is that of not causing environmental harm in the jurisdiction of other States. This obligation was enshrined in Principle 21 of the Stockholm Declaration (1972) and subsequently in Principle 2 of the Rio Declaration (1992):

*States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.*

---

<sup>63</sup> Regarding the obligations of the State in relation to human rights and the right to a healthy environment, see PUENTES Riaño, Astrid, “Protección judicial del derecho al ambiente sano en México: avances y desafíos para el Poder Judicial,” in *Manual de Justiciabilidad de los Derechos Económicos, Sociales, Culturales y Ambientales* (DESCA), Supreme Court of Justice of the Nation, Mexico, 2022, Vol. II.

<sup>64</sup> IACHR, REDESCA, Resolution 3/2021.

<sup>65</sup> Declaration of Rio de Janeiro, 1992, Principle 10, Doc. ONU NCONPI.51/26/Rev.1 (Vol. 1), [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_CONF.15\\_1\\_26\\_Vol.I\\_Declaration.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.15_1_26_Vol.I_Declaration.pdf).

<sup>66</sup> Decision 2005/370/CE Convention on access to information, public participation in decision-making and access to justice in environmental matters (Aarhus Convention), <https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=LEGISSUM%3A128056>.

<sup>67</sup> Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, signed on March 4, 2018; entered into force on April 22, 2021.

<sup>68</sup> A/HRC/31/52, Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, February 2016, paras. 5 et seq., <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/015/72/PDF/G1601572.pdf?OpenElement>.

Thus, while States are sovereign in their territories, they must also ensure that activities in their jurisdiction do not affect the territory of another State.<sup>69</sup> To complement this obligation and ensure compliance, States should cooperate in good faith with other States to protect and prevent damage to the environment.<sup>70</sup> This obligation between States is especially important in relation to shared resources, the effective protection of which depends on joint actions.

The obligation to cooperate includes the obligation to notify other potentially affected States when they know that a planned activity under their jurisdiction could create a risk of significant transboundary harm and in environmental emergencies, “consult and negotiate with States potentially affected by significant transboundary harm, in a timely manner and in good faith.”<sup>71</sup>

- **Jurisdiction and exceptional cases of extraterritoriality**

The planet, ecosystems, and biodiversity are interconnected, so actions taken in one place can and do have impacts on others, beyond the borders established by humans. The climate crisis is evidence of this and, as the IPCC has recognized, the current impacts are affecting all regions of the world. Given the human rights violations, this requires analyzing and developing the concept of extraterritorial responsibility, particularly in order to find solutions to the inaction of States that are largely responsible for the climate crisis.

The concept of jurisdiction and the exceptional nature of extraterritoriality has been widely discussed in public international law. The IAHRs has addressed the subject on multiple occasions regarding the American hemisphere. Most recently, the IACHR referred to the extraterritorial obligations of States, maintaining that a State is responsible not only for actions and omissions in its territory, “but also for those within its territory that could have effects on the territory or inhabitants of another State.”<sup>72</sup>

For environmental issues related to human rights, the Inter-American Court has determined that an exceptional circumstance giving rise to extraterritorial jurisdiction requires:

- a transboundary harm
- the infringement of treaty-based human rights
- that the persons are under the jurisdiction of the State of origin, as determined by:
  - the existence of authority or effective control by the State, and
  - causal link between the event in its territory and the harm caused
- significant harm

This interpretation of the Inter-American Court, supported by decisions of the European Court of Human Rights, the Commission, and the Court’s own precedents, was adopted by the UN Committee on the Rights of the Child in a recent decision related to climate change and human rights.<sup>73</sup> In September 2019, sixteen children and adolescents from several countries brought a complaint against Argentina, Brazil, France, Germany, and Turkey before the Committee on the Rights of the Child

---

<sup>69</sup> See also IACHR, REDESCA, Res. 3/2021.

<sup>70</sup> I/A Court H.R., OC-23, para. 185.

<sup>71</sup> *Id.*, para. 210.

<sup>72</sup> IACHR, REDESCA, Res. 3/2021, para. 40.

<sup>73</sup> Committee on the Rights of the Child, decision adopted in respect of communication No. 104/19, 8 October 2021, CRC/C/88/D/104/2019.

over existing impacts on their human rights, arguing that they violate rights enshrined in the Convention on the Rights of the Child. The Committee considered the complaint and last October concluded that it was inadmissible for lack of exhaustion of domestic remedies.

The Committee did find, however, that the States could be held internationally responsible for the infringement of their human rights. It found that the appropriate test for jurisdiction in the case was the Inter-American Court's extraterritoriality standard outlined in OC-23, because there was a real and scientifically proven transboundary harm that could affect human rights if measures are not adopted; the rights concerned are treaty rights protected by the Convention on the Rights of the Child; the States have effective control and "through its ability to regulate activities that are the source of these emissions and to enforce such regulations, the State party has effective control over the emissions"; the damage was foreseeable to the States; and, finally, based on the information provided, the damage was sufficient to be considered "significant."<sup>74</sup>

One of the interesting advances made by the Committee was the recognition that "the collective nature of the causation of climate change does not absolve the State party of its individual responsibility that may derive from the harm that the emissions originating within its territory may cause to children, whatever their location."<sup>75</sup>

## **B. MAIN ISSUES AND STANDARDS FOR DECIDING THE CASE**

### **1. Procedural considerations**

Human rights litigation includes both substantive and procedural aspects. For the Competition, the intention is to concentrate on substantive issues rather than procedural ones. This is to focus attention on how climate change is already affecting human rights, the responsibility of States, and how the IAHRs could address these issues. Therefore, teams should not spend too much time on procedural matters.

Because this is an unusual case involving two States, the suggestion is to focus on the Commission's and the Court's recognition that the facts are linked in time and space and involve the acts and omissions of two States, which is why they admitted the case. The jurisdiction of the States and the extent of the concept of jurisdiction with respect to the USC and the persons located in Iraca is a substantive issue that will be discussed below.

### **2. Context**

The case provides an opportunity to analyze the situation of two States, showing different perspectives and approaches related to climate change, especially with respect to developed and developing States. A key element is the difference between each State's degree of responsibility and the relevance of climate change in international law in connection with the human rights implications.

States have also boosted the oil industry for decades, as it is a key sector of their economies; therefore, they must figure out how to promote development and guarantee human rights while also protecting

---

<sup>74</sup> *Ibid.*, para. 10.6–10.12.

<sup>75</sup> *Ibid.*, para. 10.10.

the environment and the climate. From a human rights and climate justice perspective, given that global warming demands ending dependence on fossil fuels, both States should already be implementing substantive actions to advance an energy transition, seeking viable alternatives that promote economic development without affecting human rights, the climate, or the environment. This should be done by considering both the rights of persons within the jurisdiction of each State and the rights of persons outside its territory.

Here, several factors lead to the conclusion that although the USC and Iraca considered human rights, they did not do so to the extent needed to effectively protect those rights. This demonstrates an inconsistency between the ratification of international treaties and the actual decision to comply with them. For example, both States refer to the Murujuy region as a sacrificial community, which may be a tacit admission of the gravity of the situation and the impact on human rights.

Another important contextual element is the differential treatment of people on either side of the border, in view of the degree of action taken by each State. This could even give rise to a situation of discrimination if the standards are met. Although both populations were similarly exposed to the same sources of pollution, the difference in the control and monitoring of the companies and the attention received meant that rights were better served on the USC side than on the Iraca side. Even the fact that Murujuy in Iraca is known as a sacrifice zone where the harmful activities continued with no actions to address or remedy the impacts—while Colibritón is not—makes a significant difference in the experience of the people who lived there, which is a relevant consideration.

The conduct of the companies and their relationship with the States is another important element for the Competition. Although there are individuals who run companies and then hold public office and make public policy decisions, steps should be taken to prevent conflicts of interest and to ensure that the public interest is prioritized. What is happening in this case may involve a situation of corporate capture because company officials like John Wills were aware of the scientific information about the impact of oil companies on climate change. Instead of sharing it with the State and helping to implement actions, he used the information and allegedly his contacts to manipulate data and delay international action on climate change (paras. 20 and 25 of the hypothetical case). This, among other things, worsened the impact on people in both Iraca and the USC.

The assessment of the situation in the border area evidencing the human health impacts caused by oil and coal-fired power plants was duly supported by scientific information (paras. 26-36 of the hypothetical and the clarification Q&A). This is a critical element. Analyzing and assigning corporate responsibility is beyond the scope of this Competition; however, it is important to consider this information, which is now widely known, in order to assess the responsibility of the States.

### **3. Application of standards to the case**

#### **a. Impacts and their relationship to human rights**

According to the UN Human Rights Council:

*The adverse effects of climate change have a range of implications, which can increase with greater global warming, both direct and indirect, for the effective enjoyment of human rights, including, inter alia, the right to life, the right to adequate food, the right to the enjoyment of highest attainable standard of physical and mental health, the right to adequate housing, the right to self-determination, the rights to safe drinking water and sanitation, the right to*



*work and the right to development, and recalling that in no case may a people be deprived of its own means of subsistence.*<sup>76</sup>

The Inter-American Court “has recognized the existence of an undeniable relationship between the protection of the environment and the realization of other human rights, in that environmental degradation and the adverse effects of climate change affect the real enjoyment of human rights.”<sup>77</sup> Furthermore, the Court considers that “the rights that are particularly vulnerable to environmental impact include the rights to life, personal integrity, private life, health, water, food, housing, participation in cultural life, property, and the right to not be forcibly displaced.”<sup>78</sup> The IACHR and REDESCA emphasize that climate change “is one of the greatest threats to the full enjoyment and exercise of human rights of present and future generations.”<sup>79</sup>

### *i. Human rights violated*

- **States**

The States could argue that they have done everything possible to guarantee, protect, and respect human rights. They could highlight programs and efforts to improve people’s lives, with an emphasis on vulnerable people and communities, mentioning their active participation in international treaty negotiations and their ratification of and compliance with treaties and protocols.

They can also mention that their populations enjoy a standard of living and health that meets international standards (para. 30 of the hypothetical case), and that the environment is of the highest possible quality, considering the activities carried out in the area. In relation to the rights to health and a healthy environment, they could emphasize that these are “programmatic” rights, which is why they have been working to progressively and significantly ensure their enjoyment. The States could assert that their policies and programs comply with the IACHR-REDESCA climate emergency recommendations.

Finally, they could argue that there is no evidence to conclude that the allegations made in the proceeding are in fact linked to oil and coal activities, as they involve normal ailments that any person might experience, even those who do not live in the border area. They can assert that, absent a causal link between the harm and the activities, the States cannot be held responsible for the harm. To strengthen this argument, they could point to the number of people in Murujuy and Colibritón who are in good health, showing that there is no connection between the reported pollution and the human rights impacts mentioned above.

- **Petitioners**

The petitioners can draw on the scientific evidence outlined in the case and at the international level regarding the human rights impact of oil and coal-fired power activities, arguing that the situation of

---

<sup>76</sup> Human Rights Council, A/HRC/RES/41/21, 23 July 2019, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/223/65/PDF/G1922365.pdf?OpenElement>.

<sup>77</sup> I/A Court H.R., OC-23/17. [https://www.I/A Court H.R..or.cr/docs/opiniones/seriea\\_23\\_esp.pdf](https://www.I/A Court H.R..or.cr/docs/opiniones/seriea_23_esp.pdf), para. 47.

<sup>78</sup> I/A Court H.R., OC-23/17, para. 66.

<sup>79</sup> IACHR, REDESCA, Resolution 3/2021 on Climate Emergency.

the affected persons leads to the clear understanding that the effects on life and health are related to the activities carried out in the area and not an isolated event that can be disregarded.

*Right to life* – The Inter-American Court has recognized on several occasions that the right to life enshrined in Article 4 of the ACHR also protects the right to a dignified life or decent existence.<sup>80</sup> According to the Court, “this right includes not only the right of every human being not to be arbitrarily deprived of his life, but also the right that conditions that impede or obstruct access to a decent existence should not be generated.”<sup>81</sup> The Court “requires States to take all appropriate measures to protect and preserve the right to life (positive obligation).”<sup>82</sup>

The Inter-American Court also found that the conditions people require to enjoy their right to a dignified life include those necessary to lead a healthy life. In the words of the Court, “Among the conditions required for a decent life, the Court has referred to access to, and the quality of, water, food and health, and the content has been defined in the Court’s case law, indicating that these conditions have a significant impact on the right to a decent existence and the basic conditions for the exercise of other human rights. The Court has also included environmental protection as a condition for a decent life.”<sup>83</sup>

General Comment 36 of the Human Rights Committee on the content of the right to life, considers that “environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life,” which is why States must guarantee this right, in particular by protecting against harm caused by private and public actors.<sup>84</sup> The right to life of present and future generations is an urgent element to be addressed in the IAHRs that has yet to be developed and could be discussed by the teams.

The Court has also recognized the close relationship between the right to life and the right to personal integrity, finding that cases related to human health may also involve violations of personal integrity. In addition, “certain projects and interventions in the environment in which people live can constitute a risk to their life and personal integrity.”<sup>85</sup> This right also entails, in the case of indigenous and tribal communities, the obligation to protect their ancestral territories because of the connection with their cultural identity.<sup>86</sup>

The petitioners can point to the lack of specific plans and programs with a human rights perspective, in particular to protect children from the situation of risk and actual harm they have faced for decades.

Since 2009, the Office of the United Nations High Commissioner for Human Rights has documented the human rights impacts of climate change.<sup>87</sup> Multiple UN bodies have done so, including the

---

<sup>80</sup> I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*. June 2005. para. 161; *see also* International Covenant on Economic, Social and Cultural Rights (ICESCR), art. 11.1. 16 December 1966. 993 U.N.T.S. 3.

<sup>81</sup> I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*. para. 161.

<sup>82</sup> I/A Court H.R., OC-23, para. 108.

<sup>83</sup> I/A Court H.R., OC-23, 109.

<sup>84</sup> Report of the Special Rapporteur on human rights and the environment regarding air pollution, citing Human Rights Committee, General Comment 36 (2018), A/HRC/40/55, 8 Jan. 2019, paras. 44, 51-52.

<sup>85</sup> I/A Court H.R., OC-23/17, para. 114.

<sup>86</sup> I/A Court H.R., OC-23, 113.

<sup>87</sup> Office of the High Commissioner on Human Rights, Climate Change and Human Rights, <https://www.ohchr.org/en/issues/hrandclimatechange/pages/hrclimatechangeindex.aspx>.

international treaty bodies and individual Special Procedures mandate-holders.<sup>88</sup> The IACHR first expressed concern in 2015 about the impacts of climate change on human rights, urging “the Member States of the Organization of American States (OAS) to work to ensure that any climate agreement reached there incorporates human rights in a holistic manner.”<sup>89</sup>

*Right to a healthy environment* – the Court and the Commission “have already recognized that this is an autonomous right protected by Article 26 of the ACHR.”<sup>90</sup> There is an obligation to respect and ensure the right to a healthy environment.<sup>91</sup>

*Special protection for children* – Article 19 of the ACHR establishes the particular right of children to enjoy special protection measures on the part of their family, society, and the State. The Inter-American Court has found that groups in vulnerable situations related to human rights and the environment may include “indigenous peoples, children, people living in extreme poverty, minorities, and people with disabilities, among others,” and has also recognized the need to consider the differential impact on women.<sup>92</sup>

There is broad acknowledgment of the current and future impact of climate change on children’s rights.<sup>93</sup> The Committee on the Rights of the Child has recognized that children and young people are facing human rights violations due to the direct impacts and the impact on their mental health, as some are even experiencing climate anxiety.<sup>94</sup>

*Special protection for people in vulnerable situations* – in developing the principle of equality and nondiscrimination, the States have the obligation to implement actions to ensure the rights of groups of people who are particularly vulnerable.<sup>95</sup> This gives rise to the special obligation of the States to protect and provide measures to address these situations of vulnerability and to guarantee rights, preventing discriminatory impacts.<sup>96</sup> In this case, air and water pollution affected people’s health, which increased their vulnerability, compounding the impacts of climate change.

---

<sup>88</sup> Non-exhaustive List of Special Procedures Reports Relevant to Climate Change:

[https://www.ohchr.org/Documents/HRBodies/SP/List\\_SP\\_Reports\\_Climate\\_Change.pdf](https://www.ohchr.org/Documents/HRBodies/SP/List_SP_Reports_Climate_Change.pdf). Some of the reports include the report on climate change and poverty of the Special Rapporteur on extreme poverty and human rights, Professor Philip Alston, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/218/66/PDF/G1921866.pdf?OpenElement>, the report on climate change and human rights of the Special Rapporteur on human rights and the environment, Professor John Knox [A/HRC/31/52](https://www.ohchr.org/Documents/HRBodies/SP/John_Knox_Report.pdf), and the report on a safe environment of the Special Rapporteur on human rights and the environment, Professor David Boyd <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/216/42/PDF/N1921642.pdf?OpenElement>.

<sup>89</sup> IACHR, Press Release 140/15, December 2, 2015,

[https://www.oas.org/en/iachr/media\\_center/PReleases/2015/140.asp](https://www.oas.org/en/iachr/media_center/PReleases/2015/140.asp).

<sup>90</sup> IACHR, Report No. 330/20, *Community of La Oroya v. Peru*, Case 12.718, November 2020, para. 131.

<sup>91</sup> I/A Court H.R., *Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina*. Merits, Reparations and Costs. Judgment of February 6, 2020. Series C No. 400.

<sup>92</sup> I/A Court H.R. OC-23, para. 67.

<sup>93</sup> Report of the Special Rapporteur A/HRC/40/55, para. 55, citing the WHO and the UN Convention on the Rights of the Child.

<sup>94</sup> Committee on the Rights of the Child, decision adopted in relation to communication No. 104/19, 8 October 2021, CRC/C/88/D/104/2019, Para. 10.13.

<sup>95</sup> See, e.g., Special Rapporteur on Human Rights and the Environment, Framework Principles: Principle 14 “States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.”

<sup>96</sup> I/A Court H.R., OC-23, para. 67.

In addition, the lack of scientific documentation could point to the absence of adequate measures—particularly to protect children and adolescents, who require special protection in the face of the climate crisis, with the States having a special obligation to provide such protection.

*Right to health* – According to the Inter-American Court, the right to health requires preconditions to ensure a healthy life. It also highlights that “health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. Thus, environmental pollution may affect an individual’s health”<sup>97</sup>

*Right to property* – The right to private property is enshrined in Article 21 of the ACHR:

1. *Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.*
2. *No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.*

The Inter-American Court has construed this right to be either individual or communal, particularly with respect to indigenous peoples, where there is a collective cultural tradition of ownership. For these peoples, “the right to property protects not only the connection of the indigenous communities to their territories, but also ‘the natural resources these territories contain that are connected to their culture, as well as the intangible elements derived from them,’” this right being connected to the natural resources in their territory.<sup>98</sup> Impacts on the territories of peoples have been interpreted as affecting both their property and their cultural rights. Particularly for indigenous and Afro-descendant peoples with strong ties to their territories, the degradation of natural resources is closely linked to their survival.<sup>99</sup>

## **b. Exceptionality and expansion of jurisdiction for the USC**

Article 1.1 of the ACHR establishes the general obligation of all States to respect and ensure the human rights of persons under their jurisdiction:

### *ARTICLE 1. Obligation to Respect Rights*

1. *The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any*

---

<sup>97</sup> I/A Court H.R., OC-23, para. 110.

<sup>98</sup> I/A Court H.R., *Case of the Indigenous Communities of the Lhaka Honbat Association (Our Land) v. Argentina*. Merits, Reparations and Costs. Judgment of February 6, 2020. Series C No. 400, para. 94, citing *Case of the Yakeye Axa Indigenous Community v. Paraguay*, para. 137. See also *Case of Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, para. 145; *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 14, 2014. Series C No. 284, paras. 111–112; *Case of the Garífuna Punta Piedra Community and its members v. Honduras*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 8, 2015. Series C No. 304, para. 165; *Case of the Community Garífuna Triunfo de la Cruz and its members v. Honduras*. Merits, Reparations and Costs. Judgment of October 8, 2015. Series C No. 305, para. 100; *Case of the Kaliña and Lokono Peoples v. Suriname*. Merits, Reparations and Costs. Judgment of November 25, 2015. Series C No. 309, para. 129; *Case of the Xucuru Indigenous People and its members v. Brazil*, para. 115.

<sup>99</sup> Office of the Special Rapporteur for Economic, Social, Cultural and Environmental Rights (REDESCA), Report on the Economic, Social, Cultural and Environmental Rights of Persons of African Descent, OEA/Ser.L/V/II., March 16, 2021, para. 216.

*discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.*

Jurisdiction is defined as when a person “is within the State’s territory or [...] is in any way subject to its authority, responsibility or control.”<sup>100</sup> The Inter-American Court has recognized that sometimes there are persons who, despite not being physically within the territory of a State, are under its jurisdiction due to the effective control the State may have over them; these are exceptional cases of extraterritorial conduct that may give rise to the international responsibility of a State when it exercises authority over a person or when that person is under its control.<sup>101</sup> The Inter-American Court has also ruled that the obligation to respect and guarantee the rights of individuals “is not limited to its territorial space,” and that this obligation could extend outside its territory, in exceptional circumstances to be analyzed case-by-case.<sup>102</sup>

The exceptional situation of extraterritoriality may occur, for example, in cases of transboundary harm, when it is considered that “a person is under the jurisdiction of the State of origin if there is a causal link between the action that occurred within its territory and the negative impact on the human rights of persons outside its territory.”<sup>103</sup> The State of origin could be held responsible if significant harm is caused to “persons outside their borders by activities originating in their territory or under their effective control or authority.”<sup>104</sup> This responsibility arises from the obligation to prevent harm and the ability to do so by exercising effective control.

- **States**

The States could argue that there is no exceptional situation that merits the application of extraterritoriality for several reasons, including that in the disputed area there is a clear delineation of Iraca’s and the USC’s territory. In addition, each State exercises authority and control over its territory and over the persons located therein. The States have historically been characterized by mutual support, which is why it is impossible to speak of a relationship of authority or control by one State over areas or persons living in the territory of the other State.

Regarding the application of the Inter-American Court’s standard for exceptional situations of extraterritoriality, they could argue, first, that there is no transboundary damage, which is a *sine qua non* requirement for the application of extraterritoriality. The States may contend that the damages alleged actually pertain to a shared global situation that is neither exceptional nor specific to the Murujuy-Colibrítón border region.

Second, they can disprove the violation of rights under the Convention because the harm alleged by the individuals is not connected or related to the specific activities carried out in the border zone.

Third, the States could argue that this case involves a clear exercise of sovereignty by both States, which have developed necessary and appropriate economic activities for their populations. Activities on each side of the border have been duly controlled and monitored by the States, each one exercising

---

<sup>100</sup> I/A Court H.R., OC-23, para. 73.

<sup>101</sup> I/A Court H.R., OC-23, para. 78.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*, para. 104.

<sup>104</sup> *Id.*, para. 103.

oversight and authority over persons within its territory at all times. This is evidenced by each State's legal and regulatory framework governing the companies and other actors operating in its territory.

Both Iraca and the USC can stress that it is beyond their sovereignty to control activities carried out in the jurisdiction of other States. In the case of the USC, it should be noted that it exercises its obligation to appropriately control the companies operating under its jurisdiction and cannot interfere in Iraca's internal affairs to control NOXXE or any other company operating there.

They can also argue that the damages are not significant, as required by the Inter-American Court. On the contrary, they are impacts that many people in their countries and in the world are experiencing due to climate change. Since this is a global issue, it is up to the international community as a whole to resolve it, and it is impossible for each State to do so individually—even if they wanted to—as this would not solve the problem.

Finally, in relation to the evidence of compliance with obligations to be developed below, States could argue that they are doing everything possible to address climate change, as demonstrated by the plans, programs, and reports submitted under the respective international agreements.

- **Petitioners**

Applying the standard of the Inter-American Court, which has also been adopted by the Committee on the Rights of the Child, the petitioners could argue that in this case all the requirements for an exceptional situation warranting the application of extraterritoriality have been met, to wit:

- **Transboundary harm:** the case information shows that the harm caused in the Murujuy region is directly related to the climate crisis; absent such climatic impact, the harm would not have occurred. The petitioners should note that the harm is not exclusive to Murujuy, as many other regions of the world are experiencing similar harms, which reinforces and highlights the situation.
- **Violation of treaty-based human rights:** the information is clear with respect to the alleged violation of rights, as acknowledged by the Commission. Much like the group of children and adolescents who turned to the Committee on the Rights of the Child, the minors in this case are also experiencing serious repercussions on their human rights. Adults have also faced violations of the rights afforded to them under the ACHR, including violations of their rights to life, quality of life, a healthy environment, health, and property.
- **For the exceptional purposes of extraterritoriality,** the petitioners in Iraca are in effect under the jurisdiction of the USC, as it had—but did not exercise—effective control over public and private actors, including NOXXE. The USC could have acted for decades on climate change-causing activities and their emissions but chose not to. This situation was under its control and, while it was under the obligation to prevent and guarantee rights, it failed to do so. As a State Party to the UNFCCC and Annex 1, the USC had particular knowledge and a heightened obligation to exercise adequate control over these activities. Failure to do so gives rise to the international responsibility of the State.
- **Significant damage:** the serious human rights violations evidenced in the case involve significant damage. The fact that situations such as sea level rise in areas of Murujuy are ongoing and intensifying underscores the seriousness of the situation.

Therefore, the petitioners could argue that in the case of the USC, the Court should find that the exceptional circumstances warrant the application of extraterritoriality. Because Iraca is also responsible for the damages caused under its jurisdiction, the case should proceed based on the joint responsibility of both States.

### **c. Responsibility of the States**

#### ***i. Duty to respect and ensure human rights and prevent human rights violations arising from climate change***

States have a fundamental obligation “to respect and to ensure the rights recognized in this instrument to all persons subject to their jurisdiction.”<sup>105</sup> Regarding the environment, the Inter-American Court has held that, as part of the obligation to respect rights, States must refrain from practices or activities that deny or restrict the right to a dignified life in conditions of equality and must refrain from polluting the environment. To this end, the States have “the obligation to prevent significant environmental damage within and outside their territory.”<sup>106</sup>

In relation to the obligation of prevention, the Court found that:

*States must regulate, supervise and monitor the activities within their jurisdiction that could produce significant environmental damage; conduct environmental impact assessments when there is a risk of significant environmental damage; prepare a contingency plan to establish safety measures and procedures to minimize the possibility of major environmental accidents, and mitigate any significant environmental damage that may have occurred, even when it has happened despite the State’s preventive actions.*<sup>107</sup>

#### ***i.i. Effective legal framework and implementation as part of the obligation to actively protect human rights and prevent harm***

The State’s obligation of prevention requires the adoption of an adequate legal framework to prevent human rights impacts. According to the Inter-American Court:

*States must take the necessary measures to create an appropriate legal framework to deter any threat to the right to life; establish an effective system of justice capable of investigating, punishing and providing redress for any deprivation of life by State agents or private individuals, and safeguard the right of access to the conditions that ensure a decent life, which includes adopting positive measure to prevent the violation of this right. Based on the foregoing, exceptional circumstances have arisen that allowed the Court to establish and examine the violation of Article 4 of the Convention in relation to individuals who did not die as a result of the actions that violated this instrument.*<sup>108</sup>

States have a duty to “take the necessary measures to establish an adequate legal framework to dissuade any threat to the right to life.”<sup>109</sup> The adoption by States of a legal framework and effective measures

---

<sup>105</sup> I/A Court H.R., OC-23, para. 104.

<sup>106</sup> *Id.*, para. 174.

<sup>107</sup> *Id.*, para. 242.

<sup>108</sup> *Id.*, para. 109.

<sup>109</sup> IACHR, Report No. 330/20, *Community of La Oroya v. Peru*, Case 12.718, November 2020, para. 127, citing I/A Court H.R., *Case of Gonzales Lluy et al. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of

to protect human rights, in particular life and dignity in relation to environmental issues, is also part of the universal system.<sup>110</sup>

- **States**

The States can argue that they have the requisite legal frameworks for the protection of human rights. They could say that these legal frameworks and their level of international commitment is an example for the international community, given the extent to which standards have been ratified and incorporated at the domestic level. Furthermore, they can argue that this framework has been complied with, as evidenced in the case of the USC by the fines and measures to improve NOXXE's operations.

Regarding Iraca, it could be asserted that the State has done everything possible, considering its capabilities and level of responsibility, to guarantee human rights. The USC can argue that it has effectively protected the people under its jurisdiction through exceptional mitigation and adaptation plans, including insurance programs that have provided compensation for damages caused by climate change. They also have effective adaptation plans that have prevented serious disasters that could have been devastating for Colibrítón and Murujuy.

Both have acted according to the timeframes, information, and existing and necessary possibilities. They have even been among the first States to submit reports and updates on climate change mitigation and adaptation plans. Within the international community, their actions, commitments, and outcomes are exemplary of responsible State leadership.

- **Petitioners**

Both States have failed to comply with their obligations to establish appropriate and necessary legal frameworks. They have waited for human rights impacts to occur before implementing protection actions, which in the case of the USC were for its own population only. In the case of Iraca, despite the evidence of the risks that climate change poses to human rights, the State has yet to take the effective actions needed. The petitioners could demonstrate that it is an example of an insufficient legal framework that is not effectively enforced.

Complying with the Paris Agreement reports does not entail protecting human rights and, therefore, fulfilling the obligation to respect and ensure human rights and to prevent their violation. No State, including the USC and Iraca, has undertaken the level of commitment and action that the climate crisis warrants.<sup>111</sup>

Both States consider the Murujuy region to be a sacrifice zone, which is evidence of the tacit acknowledgement of their responsibility, given their knowledge of the problem, the scale of the impact on human rights, and their failure to give it the attention it requires. An effective legal

---

September 1, 2015. Series C No. 298, para. 169. *See also Case of Ximenes Lopes v. Brazil*. Merits, Reparations and Costs. Judgment of July 4, 2006. Series C No. 149, paras. 99, 125.

<sup>110</sup> Report of the Special Rapporteur on human rights and the environment regarding air pollution, A/HRC/40/55, 8 Jan. 2019, paras. 44, 51-52, citing Human Rights Committee, General Comment 36 (2018), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/261/15/PDF/G1926115.pdf?OpenElement>.

<sup>111</sup> IPCC reports, including AR6 Working Group I and II, UN Environment, Gap Report 2021.



framework in each State should ensure that oil and coal activities are carried out in a manner that ensures human rights and meets the international obligation to “do no harm.”<sup>112</sup>

With respect to Iraca, the State was fully aware of the situation, including the inadequacy of the legal framework to effectively protect the human rights affected. Despite this, the State failed to take action to improve the situation. For example, it could have and should have implemented better control and oversight of the harmful activities.

## *ii. Obligation to mitigate and adapt to climate change*

According to international climate change law and based on the exercise of State sovereignty, by signing and ratifying the UNFCCC,<sup>113</sup> the Protocols, and the Paris Agreement, States are obligated to:

- enhance the implementation of the Convention, including “strengthen[ing] the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty,” (art 2, Paris Agreement), which requires:
  - Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;
  - Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and
  - Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.
- cooperate among States, including sharing information and technology to implement effective actions,
- take actions based on common but differentiated responsibilities (i.e., because some States have contributed to a greater extent to climate change emissions, they have greater reduction, mitigation, and adaptation obligations) and finance the activities required by other States.

Considering the difference in emissions, the UNFCCC establishes specific commitments for developed countries in Annex I. Additional commitments include adopting national policies and taking “corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs.”<sup>114</sup> In addition, developed States and other States included in Annex II to the Convention “shall provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in complying with their obligations.”<sup>115</sup>

- **States**

Both the USC and Iraca are in compliance with the obligations of the Convention, the Protocols, and the Paris Agreement, as evidenced by their attention to all COPs and the timely submission of reports

---

<sup>112</sup> IACHR, REDESCA Res. 3/2021, para. 39.

<sup>113</sup> UNFCCC, arts. 12, 4.

<sup>114</sup> UNFCCC, art. 4.2.

<sup>115</sup> UNFCCC, art. 4.3.

and the respective NDCs. This is in line with the UNFCCC and the Paris Agreement, considering the principle of common but differentiated responsibilities and the fact that the USC, having contributed more to the climate crisis, has implemented more plans and programs than Iraca.

- **Petitioners**

Neither State has made meaningful progress in addressing the climate crisis and its effects on human rights. The commitments of the States are insufficient to meet the objective of the Paris Agreement, as evidenced by the scientific reports. None of the NDCs are close to what they should be, including those of Iraca and the USC, which leads to the conclusion that the States are not contributing their fair share in terms of climate responsibility.

Instead of decreasing climate impacts, the States are taking minimal actions to address the climate crisis. Their actions fall short of the recommendations and requests of the scientific community and the IPCC; they also fail to adequately protect the human rights affected.

### *iii. Application of the precautionary principle*

To prevent serious and irreversible damage to both health and the environment, States must act in accordance with the precautionary principle. This principle, enshrined in the Rio Declaration of 1992, has also been incorporated into various international environmental treaties. The UNFCCC adopts it in Article 4, establishing that States must:

*g) Promote and cooperate in scientific, technological, technical, socio-economic and other research, systematic observation and development of data archives related to the climate system and intended to further the understanding and to reduce or eliminate the remaining uncertainties regarding the causes, effects, magnitude and timing of climate change and the economic and social consequences of various response strategies.*

The Inter-American Court has held that States must act with due care to protect human rights, in particular the rights to life and integrity, which may be affected by environmental activities, and must therefore apply the precautionary principle to prevent serious or irreversible damage.<sup>116</sup>

- **States**

The USC and Iraca have acted based on the information that existed at the time of the events. Demanding stronger measures would be extreme since there was no information or scientific certainty about impacts or links to climate change at the time. Acting in good faith, they had no way of knowing with scientific certainty about the level and location of climate change impacts, in order to have been able to better protect their populations.

Existing scientific information was contradictory and much information at the time stated that the impacts resulted from normal changes in nature. Therefore, it is unfeasible to insist that the States should have done more than they did, given the available evidence.

The damage was natural and manageable through the actions in place at the time. States are now seeing the magnitude of climate change impacts, and are implementing all possible actions, including through development banks and support from the international community.

---

<sup>116</sup> I/A Court H.R., OC-23, para. 180.

- **Petitioners**

The precautionary principle requires that, faced with scientific uncertainty, States should take protective actions and measures to prevent serious and irreversible damage to human rights. Since the 1990s, States have agreed on this principle and its application in relation to climate change under the UNFCCC. Therefore, they should have implemented more effective climate change actions, including and especially with respect to all fossil fuel-related activities.

For several years now, the IPCC and the scientific community have been warning about the need for far-reaching systemic changes involving energy transition and the decarbonization of the economy. Neither the USC nor Iraca have shown signs of such changes and, on the contrary, they continue to promote the fossil fuel industry. In other words, such changes are far from being implemented to the extent required to effectively protect human rights.

Conversely, science is increasingly certain of the link between the fossil fuel industry and the climate crisis. Therefore, both States should take the appropriate measures. Climate attribution brought much greater scientific certainty to the evidence that climate change exists, that it is unquestionably linked to human activities, and that it is affecting people.<sup>117</sup>

#### **iv. Duty of the State to inform and collaborate: the USC to Iraca**

- **States**

The USC kept the State of Iraca constantly informed of the impacts and the need for actions required to control and protect the border zone. It even intervened on Iraca's behalf with development banks to help it gain access to more support and thus better protect all the people under its jurisdiction. The States have historically had a great relationship and act in constant cooperation and collaboration.

- **Petitioners**

The USC had important and relevant information that it did not effectively share with Iraca, particularly with respect to evidence of the link between fossil fuels and climate change, and including about the existence of climate change and its connection to human activities. Had Iraca had this information decades ago, it could have implemented various plans that were more effective and offered greater protection to people and communities, particularly those in the most vulnerable situations.

The USC contributed in large measure to Iraca's disinformation and, consequently, to the delay of climate actions in its own territory and in Iraca, whose inaction helped to compound the damage. In this regard, the USC prioritized protecting the interests of private companies operating in other countries, such as Iraca, with the subsequent impact on human rights. This is evidenced by the actions of the USC's ambassador to Brazil in the 1990s. Actions like these, which included disinformation campaigns and lobbying against climate change measures, have been used by the fossil fuel sector to hide the impact of climate change from the public, preventing and delaying effective action.<sup>118</sup>

---

<sup>117</sup> IPCC, AR6 Reports of Working Group I and II.

<sup>118</sup> BANERJEE, Neela, CUSMAN, John H., HASEMYER, David, SONG, Lisa, "Exxon: the Road not taken", Insider News, 2015, <https://insideclimatenews.org/book/exxon-the-road-not-taken/>; MULVEY, Kathy, SCHULMAN, Seth, Union of Concerned Scientists, "The Climate Deception Dossiers", July 2015. <https://www.ucsusa.org/sites/default/files/attach/2015/07/The-Climate-Deception-Dossiers.pdf>.

Campaigns to keep developed countries from signing the Kyoto Protocol, and thus prevent the implementation of the obligations established therein, have even been documented.<sup>119</sup>

#### **v. Common but differentiated responsibilities in the face of climate change**

- **States**

Under international environmental law, States have common but differentiated responsibilities in environmental matters and specifically in the area of climate change. This is included in the UNFCCC, the Kyoto Protocol, and the Paris Agreement. In this particular case, both States have a responsibility to act on climate change, including implementing mitigation, adaptation, and loss and damage actions. However, given the difference in historical contributions to climate change, the USC should bear more responsibility. The USC's actions, plans, and programs are in line with this obligation. In the same way, Iraca has met its share of the responsibility for climate change.

- **Petitioners**

Neither State acted at the required level of responsibility. Even since the Paris Agreement, when the NDCs should have reflected ambitious targets in line with the reduction and adaptation that the climate crisis warrants, both States have done the minimum needed to comply. In terms of human rights implications, compliance with a procedure, such as the submission of an NDC, cannot be viewed as compliance with a substantive obligation; that would require significantly reducing emissions and providing and implementing effective adaptation plans.

---

<sup>119</sup> HALL, Shannon, "Exxon Knew about Climate Change almost 40 years ago," October 26, 2015, Scientific American <https://www.scientificamerican.com/article/exxon-knew-about-climate-change-almost-40-years-ago/>.