

Before the
Inter-American Court of Human Rights

Request for Advisory Opinion submitted by Colombia and Chile
on “*Climate Emergency and Human Rights*”

Amicus curiae brief

Submitted by

Amnesty International

December 2023

Index: AMR 01/7332/2023



Amnesty International, represented by Ana Piquer, director at the Regional Office for the Americas, and Mandivavarira Mudarikwa, Deputy Programme Director – Head of Strategic Litigation, respectfully addresses the Honourable Inter-American Court of Human Rights (hereinafter the “Court” or the “Honourable Court” to submit a legal brief as an *amicus curiae*, pursuant to Article 44 of the Court’s Rules of Procedure, in the Request for an Advisory Opinion on “Climate Emergency and Human Rights” submitted by the States of Chile and Colombia on 9 January 2023, in accordance with Article 64. 1 of the American Convention on Human Rights (hereinafter the “American Convention” or “ACHR”).

I. AMNESTY INTERNATIONAL INTEREST IN THIS ADVISORY OPINION

1. Amnesty International is a global movement of more than ten million supporters, members and activists in over 150 countries and territories, including the Americas, who campaign to end human rights violations and abuses. The organization’s vision is of a world in which all people enjoy the human rights set out in the Universal Declaration of Human Rights. It is, moreover, an organization that is independent of any government, political ideology, financial interests or religion, and believes that by acting in solidarity and compassion with people everywhere we can change our societies for the better. As part of this human rights work, the organization approaches national and international courts, as a friend of the court, to present factual and legal arguments on issues relevant to human rights. Amnesty International is independent of any government, political ideology, financial interests or religion, and is financed largely by its members and through individual donations.
2. As part of this human rights work, Amnesty International uses strategic litigation at a national, regional and international levels as a tool to advance the realization and upholding of human rights. Amnesty International is no stranger to this Court, having filed numerous *amicus curiae* briefs in several cases before this Court including *Mariana Selva Gómez et al. v. México*,¹ *Alvarado Espinoza v. México*,² *Manuela v. El Salvador*,³ *Beatriz et al. v. El Salvador*.⁴
3. Amnesty International is unequivocal in highlighting that the climate emergency is a human rights crisis of unprecedented proportions.⁵ Climate change poses a threat to the enjoyment of the civil, political, economic, social and cultural rights of present and future generations and, ultimately, to the future of humanity. When climate change-related impacts hit a country or a community, their knock-on effects can seriously undermine the enjoyment of the right to a life lived in dignity, endanger a range of freedoms and, in many cases, even put at risk the cultural survival of entire peoples.⁶
4. Countries in the global South are those most affected by the climate emergency.⁷ Individuals and groups who

¹ Amnesty International, *Memorial en Derecho en calidad de Amicus Curiae en el caso Mariana Selvas Gómez y Otras vs. México*, [Amicus Curiae Brief in the case of Mariana Selvas Gómez et al. vs Mexico] (Index: AMR 41/7883/2017), 30 November 2017, <https://www.amnesty.org/es/documents/amr41/7883/2017/es/>

² Amnesty International, *México: Escrito de Amicus Curiae en el caso Alvarado Espinoza ante la Corte Interamericana de Derechos Humanos* [Mexico: Amicus Curiae brief in the Alvarado Espinoza case before the Inter-American Court of Human Rights] (Index: AMR 41/8371/2018), 11 May 2018, <https://www.amnesty.org/en/documents/amr41/8371/2018/en/>

³ Amnesty International, *El Salvador: Amicus Curiae sobre despenalización del aborto a partir del caso de Manuela y familia*, [El Salvador: Amicus Curiae on the decriminalization of abortion based on the case of Manuela and family] (Index: AMR 29/4089/2021), 6 May 2021, <https://www.amnesty.org/es/documents/amr29/4089/2021/es/>

⁴ Amnesty International, *El Salvador: Amicus Curiae sobre despenalización del aborto a partir del caso de Beatriz y familia*, [El Salvador: Amicus Curiae on the decriminalization of abortion based on the case of Beatriz and family], 22 May 2023, [Amnistía-Internacional-AMICUS-brief- -Beatriz-v-El-Salvador-FINAL-.pdf \(amnistia.org.ar\)](https://www.amnistia.org.ar/AMICUS-brief--Beatriz-v-El-Salvador-FINAL-.pdf)

⁵ Amnesty International, *Stop burning our rights! What governments and corporations must do to protect humanity from the climate crisis* (Index: POL 30/3476/2021), 7 June 2021, <https://www.amnesty.org/es/documents/pol30/3476/2021/en/>

⁶ Amnesty International, *Stop burning our rights!* (previously cited), p. 6.

⁷ IPCC, 2018: *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*

are already subject to multiple and interrelated forms of discrimination or who are marginalized as a result of structural inequalities, entrenched practices or public policies that inequitably distribute resources, power and privilege, have also suffered the burden of climate injustice in very specific ways. In the Americas, and particularly in Latin America and the Caribbean, millions of people face food insecurity⁸ and lack of access to water,⁹ aggravated by extreme weather events, ocean acidification and warming, biodiversity loss and disruption of ecosystem services that are compounded by the irreversible consequences of high-impact extractive projects.

5. Amnesty International has explained on numerous occasions that, despite the convergence of goodwill that led to the adoption of the Paris Agreement in 2015, States' efforts to tackle climate change remain far below what is required to avoid the most devastating impacts for ecosystems and humanity.¹⁰ In 2018, the Intergovernmental Panel on Climate Change (hereinafter IPCC) confirmed that it was still possible for States to collectively reduce greenhouse gasses (hereinafter GHG) to a level that would keep the increase in average global temperature to below 1.5 °C.¹¹ To achieve this, global GHG emissions must decline by 45% from 2010 levels by 2030, and reach net zero by 2050.¹² Although lockdown measures imposed in many countries in response to the COVID-19 pandemic temporarily reduced GHG emissions in 2020,¹³ they had no significant impact on the fight against climate change due to pressure from the fossil fuel industry to return to pre-pandemic levels of extraction and use.¹⁴
6. Given the urgency of the climate crisis, Amnesty International is working to help mobilize the human rights community, showing how climate change affects people's rights and highlighting how people are mobilizing to respond to the reality and threat of climate change. Amnesty also supports youth, Indigenous Peoples, Afro-descendants, trade unions and affected communities to demand a rapid and just transition to a zero-carbon economy that leaves no one behind.
7. Amnesty International has also been monitoring the situation of violence against human rights defenders in the Americas, including those defending land, territory, environment and climate. Over the years, it has documented cases of human rights violations, campaigned at regional and national levels to improve the situation and accompanied dozens of defenders in their demand for protection. If the ultimate goal is a world in which all people enjoy all human rights, it follows that those who defend such rights must have the space to do so, free from violence and discrimination.
8. In order to contribute to efforts to respond to the climate crisis, Amnesty International submits this *amicus curiae* brief for the purpose of providing this Honourable Court with legal considerations on human rights and climate change, addressing the following questions posed by the States to this illustrious Court:
 - *Regarding State obligations derived from the duties of prevention and the guarantee of human rights in relation to the climate emergency:*

What is the scope of the State's duty of prevention with regard to climate events caused by global warming, including extreme events and slow onset events, based on the obligations under the American

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, https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15_Full_Report_High_Res.pdf, p. 9.

⁸ Food and Agriculture Organization of the United Nations (FAO), *Latin America and the Caribbean: Regional Overview of Food Security and Nutrition: Statistics and Trends*, updated on November 2021, <https://www.fao.org/3/cb7497en/online/cb7497en.html>

⁹ FAO, *Latin America and the Caribbean: Regional Overview of Food Security and Nutrition* (previously cited).

¹⁰ Amnesty International, *Stop burning our rights!*, p. 8.

¹¹ IPCC, *Global Warming of 1.5°C*, 2018 (previously cited).

¹² IPCC, *Global Warming of 1.5°C*, 2018, p. 12.

¹³ Abhinandan Kumar et al., "Impact of COVID-19 on greenhouse gases emissions: A critical review", February 2022, *Science of The Total Environment*, Volume 806, Part 1, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8445775/>

¹⁴ Steven J. Davis et al., "Emissions rebound from the COVID-19 pandemic", March 2022, *Nature Climate Change*, 12, 412–414, <https://www.nature.com/articles/s41558-022-01332-6>

Convention, in light of the Paris Agreement and the scientific consensus which recommend that global temperatures should not increase beyond 1.5 °C?

In particular, what measures should States take to minimize the impact of the damage due to the climate emergency in light of the obligations established in the American Convention? In this regard, what differentiated measures should be taken in relation to vulnerable populations or based on intersectional considerations?

- *What principles should inspire the actions of mitigation, adaptation and response to the losses and damage resulting from the climate emergency in the affected communities?*
- *Regarding State obligations to preserve the right to life and survival in relation to the climate emergency in light of science and human rights.*

In particular, what is the scope that States should give to their obligations vis-à-vis the climate emergency, in relation to the determination of human impacts, such as human mobility (migration and forced displacement)?

- *Regarding the Convention-based obligations of protection and prevention for territorial and environmental defenders in the context of the climate emergency.*

In particular, what measures and policies should States adopt to facilitate the work of environmental human rights defenders?

9. Amnesty International presents in this brief – which is divided into four sections in response to the questions listed above – its contribution as a friend of the Court. In responding to some of the questions posed by the States, the aim is to provide elements of Amnesty International's own experience and analysis to assist this Honourable Court in its judgment.
10. In the first section, regarding State obligations derived from the duties of prevention and the guarantee of human rights in relation to the climate emergency, Amnesty International will develop the position that States must take appropriate measures to address the consequences of climate change, in order to fulfil the obligation to respect and guarantee the right to a life of dignity.
11. In support of this position, arguments are presented on the importance of developing.
12. The second section, which aims to answer the question of the principles that should inspire the actions of mitigation, adaptation and response to the losses and damage resulting from the climate emergency in the affected communities, outlines the position of the need to establish guiding principles for mitigation and adaptation that are consistent with the guarantee and protection of human rights, in particular those of marginalized communities and individuals. Amnesty International will also elaborate on each of the legal principles of protection that should structure the urgent process of a just energy transition, which is essential for the gradual replacement of fossil fuels by renewable energies and the construction of environmentally sustainable economies and societies that allow for social inclusion and the eradication of poverty.
13. The third section of this brief will focus on developing the question of State obligations to preserve the right to life and survival in relation to the climate emergency in light of science and human rights. Emphasis will be placed specifically on the extent to which States should fulfil their obligations vis-à-vis the climate emergency in terms of determining impacts on people on the move. To answer this question, Amnesty International will look in particular at the obligations of States and human rights standards towards people who are internationally displaced, or in need of international relocation for reasons related to climate change. In this section, the organization will develop the position that the international human rights legal framework already establishes important State obligations regarding the legal requirement and collective responsibility to provide protection to persons who are outside their country of origin or habitual residence and who are unable to return to those countries because of the adverse human rights impacts of environmental events. While the content and scope of these protection obligations need to be expanded, States must also put in

place a series of measures to implement the principles of shared responsibility and international solidarity and cooperation in order to provide assistance and protection to people on the move in the context of climate change and disasters.

14. In the fourth section, Amnesty International will seek to answer the question posed regarding the measures and policies that States should adopt to facilitate the work of environmental defenders. With regard to this issue, Amnesty International will present three positions for the consideration of this Honourable Court. First, that the right to defend human rights, including those related to land, territory, environment and climate, is an autonomous and independent human right and, as such, imposes obligations on States in the Americas. Second, that the right to defend human rights, like all human rights, is interdependent and therefore intimately linked to other human rights, such as the right to life, to personal integrity, to personal liberty, to freedom of opinion and expression, to peaceful assembly, to freedom of association, among others. Third, as part of their general obligation to guarantee the rights of human rights defenders, States must, where appropriate, adopt collective protection measures to identify, mitigate and eliminate the structural causes of the violence to which they are subjected.

II. AMNESTY INTERNATIONAL OBSERVATIONS ON SPECIFIC QUESTIONS

A. REGARDING STATE OBLIGATIONS DERIVED FROM THE DUTIES OF PREVENTION AND THE GUARANTEE OF HUMAN RIGHTS IN RELATION TO THE CLIMATE EMERGENCY

What is the scope of the state's duty of prevention with regard to climate events caused by global warming, including extreme events and slow onset events, based on the obligations under the American Convention, in light of the Paris Agreement and the scientific consensus which recommend that global temperatures should not increase beyond 1.5 °C?

15. In this first section, the organization wishes to submit to the consideration of this Honourable Court factual and legal arguments relating to state obligations deriving from the duties of prevention and the guarantee of human rights in relation to the climate emergency, focusing on the scope of the duty of prevention with regard to climate events caused by global warming, the current level of which is 1.1°C¹⁵ above pre-industrial levels.
16. There is scientific consensus that global warming brings devastating consequences, as it has led, and will increasingly lead, to an increase in the intensity and frequency of certain rapid-onset weather events, such as extreme heat, wildfires and tropical storms. At the same time, slow onset impacts, including dramatic changes in rainfall patterns, melting glaciers, sea level rise, saltwater intrusion and ocean acidification, will be amplified.¹⁶ These consequences contribute to the modification of natural systems and to the loss of biodiversity, and have a disproportionate impact on human populations.
17. The IPCC estimated – in 2018 – that limiting global warming to 1.5°C (compared to 2°C) could result in 420 million fewer people being frequently exposed to intense heat waves,¹⁷ reduce the number of people at risk of climate-induced water shortages by 50% and mitigate the risk of coastal flooding in small island developing states by up to 80%.¹⁸
18. Under international human rights law, states have an obligation to protect the enjoyment of human rights by taking urgent preventive measures against environmental damage caused by acts or omissions within their

¹⁵ IPCC, Summary for Policymakers, in *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, 2023, https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf, p. 4.

¹⁶ IPCC, *Global Warming of 1.5°C*, 2018.

¹⁷ IPCC, *Summary for Policymakers, Technical summary*. In: *Special Report on Global Warming of 1.5°C*, 2019, <https://www.ipcc.ch/sr15/resources/technicalsummary/>, p. 36.

¹⁸ IPCC, *Global Warming of 1.5°C*, 2018, p. 260.

territory or jurisdiction, whether committed by state or non-state actors, including corporations, and the consequences of human-induced climate change.

19. This has been asserted in a joint statement issued by five United Nations (hereinafter "UN") human rights treaty bodies, namely the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, wherein they stated that – pursuant to their respective conventions – State parties have obligations, including extra-territorial obligations, to take steps to prevent foreseeable human rights harm caused by climate change.¹⁹
20. The UN Human Rights Committee has stated 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.”²⁰ This context can lead to “direct threats to life or prevent individuals from enjoying their right to life with dignity”.²¹
21. In such scenarios, states must take appropriate measures to address the consequences of human impacts on the environment, based on the duty to protect life. The Committee has also stated that:

[T]he obligations of States parties under international environmental law should thus inform the content of article 6 of the Covenant [International Covenant on Civil and Political Rights], and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law. Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.²²
22. The UN Human Rights Committee reiterated these views in its decision adopted in response to Communication No. 3624/2019 against Australia,²³ in particular that “[t]he obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life.”²⁴
23. The extra-territorial nature of this obligation has been emphasized by the UN Committee on the Elimination of Discrimination against Women, when it noted that: “States parties have obligations both within and outside their territories to ensure the full implementation of the Convention, including in the areas of disaster risk reduction and climate change mitigation and adaptation.”²⁵
24. As stated by the UN human rights treaties bodies, namely the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, “[f]ailure to take measures to prevent foreseeable human rights harm caused by climate change, or to regulate activities contributing to such harm,

¹⁹ UN High Commissioner for Human Rights (OHCHR), “Five UN human rights treaty bodies issue a joint statement on human rights and climate change”, 16 September 2019, <https://www.ohchr.org/en/statements/2019/09/five-un-human-rights-treaty-bodies-issue-joint-statement-human-rights-and-climate-change>.

²⁰ UN Human Rights Committee (HRC), General comment No. 36: Right to life (Article 6), 3 September 2019, UN Doc. CCPR/C/GC/36, para. 62.

²¹ UN HRC, General comment No. 36: Right to life (Article 6), (previously cited), para. 26.

²² UN HRC, General comment No. 36: Right to life (Article 6), (previously cited), para. 62.

²³ UN Human Rights Committee (HRC), Views Adopted by the Committee Under Article 5 of the Optional Protocol, concerning Communication No. 3624/2019, on 21 July 2022, UN Doc. CCPR/C/135/D/3624/2019, Article 6.

²⁴ HRC, Views adopted under article 5 of the Optional Protocol, 2022 (previously cited), para 8.3.

²⁵ UN Committee on the Elimination of Discrimination against Women (CEDAW), General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, 13 March 2018, UN Doc. CEDAW/C/GC/37, para. 43.

could constitute a violation of States' human rights obligations."²⁶

25. The duty of prevention implies the adoption of appropriate national climate laws and policies and has been widely recognized in a number of international instruments, such as:

a. The statement of the UN Committee on Economic, Social and Cultural Rights on Climate change and the International Covenant on Economic, Social and Cultural Rights (2018), which affirms that states should:

[A]ct consistently with their human rights obligations, revising their nationally determined contributions (NDCs) to better reflect the "highest possible ambition" referred to in the Paris Agreement (article 4.3). The future implementation guidelines of the Agreement should require from States that they take into account their human rights duties in the design of the NDCs. This implies acting in accordance with the principles of gender sensitivity, participation, transparency and accountability; and building on local and traditional knowledge.²⁷

b. The 2019 joint statement by the UN treaty bodies states that:

[I]n order for States to comply with their human rights obligations, and to realize the objectives of the Paris Agreement, they must adopt and implement policies aimed at reducing emissions, which reflect the highest possible ambition... and ensure that public and private investments are consistent with a pathway towards low carbon emissions.²⁸

26. The 2019 2016 report of the UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment²⁹ included multiple recommendations reaffirming the obligations of states to protect human rights from environmental harm and fulfil their international commitments. On the duty of prevention, it indicates that "The foreseeable and potentially catastrophic adverse effects of climate change on the enjoyment of a wide range of human rights give rise to extensive duties of States to take immediate actions to prevent those harms."³⁰

27. On this issue, the Special Rapporteur has also stated that:

[S]tates have obligations to protect the enjoyment of human rights from environmental harm. These obligations encompass climate change. The foreseeable adverse effects of climate change on the enjoyment of human rights give rise to duties of States to take actions to protect against those effects. Human rights obligations apply not only to decisions about how much climate protection to pursue, but also to the mitigation and adaptation measures through which the protection is achieved.³¹

28. As has been recognized by this Honourable Court, states have undertaken to uphold the rights expressed in the American Convention on Human Rights (hereinafter "ACHR") and the American Declaration.³² States that have ratified the ACHR and other inter-American treaties have the obligation to respect and guarantee

²⁶ OHCHR, "Five UN human rights treaty bodies issue a joint statement on human rights and climate change" (previously cited).

²⁷ OHCHR, "Committee releases statement on climate change and the Covenant", 8 October 2018, <https://www.ohchr.org/en/statements/2018/10/committee-releases-statement-climate-change-and-covenant?LangID=E&NewsID=23691>.

²⁸ OHCHR, "Five UN human rights treaty bodies issue a joint statement on human rights and climate change".

²⁹ UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (UN Special Rapporteur on human rights and the environment), Report, 15 July 2019, UN doc. A/74/161, par. 62-70.

³⁰ UN Special Rapporteur on human rights and the environment, Report, 15 July 2019 (previously cited), para. 62.

³¹ UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (UN Special Rapporteur on human rights and the environment), Report, 1 February 2016, UN doc. A/HRC/31/52, para. 33.

³² IACHR, Interpretation of the American Declaration of the Rights and Duties of Man within the framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89, 14 July 1989, <https://biblioteca.corteidh.or.cr/documento/53985>, para. 45.

the free and full exercise of the rights and freedoms set forth therein,³³ and therefore have the duty to prevent any action that may violate such rights.³⁴

29. This Honourable Court has also found that states must “organize the governmental apparatus and, in general, all the structures through which public power is exercised, so they are capable of juridically ensuring the free and full enjoyment of human rights”.³⁵ In the context of climate change, this would imply the development of policies that are consistent with human rights and conducive to achieving the objectives of the Paris Agreement, including the adoption and implementation of measures that reflect the highest possible ambition to reduce GHG emissions.

30. Among the specific measures that the duty of prevention against the consequences of climate change would imply, those associated with the reduction of GHG emissions that also take into account the differentiated impact of the climate emergency are of special importance. In this regard, the UN Committee on the Elimination of Discrimination against Women states that:

Measures such as limiting fossil fuel use, reducing transboundary pollution and greenhouse gas emissions and promoting the transition to renewable energy sources are regarded as crucial steps in mitigating climate change and the negative human rights impacts of the adverse effects of climate change and disasters globally.³⁶

31. In its final observation on Armenia, the same Committee recommended that the state party “review its climate change and energy policies, taking into account the negative effects of climate change on the livelihoods of women, especially rural women, and ensuring that women are able to participate in decision-making on such policies and in projects on the green economy.”³⁷

32. For its part, and addressing the intergenerational consequences of climate change, in 2021 the Committee on the Rights of the Child recommended in its concluding observations that Switzerland “reduce greenhouse gas emissions in line with the State party’s international commitments and ensure that the Federal Council strategy of net zero emissions by 2050 is implemented in accordance with the principles of the Convention.”³⁸

33. The Inter-American Commission on Human Rights (hereinafter the “IACHR”) has also emphasized the importance of reducing GHG, affirming that:

States should adopt and implement policies aimed at reducing greenhouse gas emissions that reflect the greatest possible ambition, foster resilience to climate change and ensure that public and private investments are consistent with low-carbon and climate-resilient development.³⁹

The IACHR also points out that:

States should focus their efforts on all those strategies that rapidly promote investments in... the reduction of the use of fossil fuels...⁴⁰ [and] should consider minimizing all subsidies for fossil fuels, creating taxes on them and

³³ American Convention on Human Rights (ACHR), Article 1.1.

³⁴ ACHR, Article 1.1.

³⁵ Inter-American Court of Human Rights, Case of Velásquez-Rodríguez v. Honduras, Judgment of 29 July 1988. Series C No. 4, para. 166 (partial quote).

³⁶ CEDAW, General recommendation No. 37 (previously cited), para. 43.

³⁷ UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Concluding observations: Armenia, 1 November 2022, UN doc. CEDAW/C/ARM/CO/7, para. 52.

³⁸ Committee on the Rights of the Child (CRC), Concluding observations: Switzerland, 22 October 2021, UN doc. CRC/C/CHE/CO/5-6, para. 37. A.

³⁹ Inter-American Commission on Human Rights (IACHR), Resolution 3/2021: *Climate Emergency. Scope of Inter-American Human Rights Obligations*, adopted on 31 December 2021, p. 11.

⁴⁰ IACHR, Resolution 3/2021 (previously cited), p. 25.

redistributing revenues towards clean, renewable, and non-polluting energy systems, such as wind or solar, putting respect for human rights at the center for the development of these energy sources.⁴¹

34. In line with a number of international instruments, Amnesty International considers that the foreseeable adverse effects of climate change on the enjoyment of human rights give rise to obligations on States to prevent such harm by mitigating climate change and, in particular, by addressing its causes: GHG emissions and their accumulation in the atmosphere.⁴² The negative impact of climate change on human rights has been known to States for several decades, and they should therefore have been able to foresee that failure to limit emissions and take all other appropriate measures to mitigate and prevent the adverse effects of climate change could undermine the protection and full enjoyment of human rights.
35. As mentioned above, Amnesty International further considers that the obligation to protect human rights from harm caused by climate change requires that States take appropriate measures to reduce greenhouse gas emissions in the shortest possible timeframe, both at a national level and through international cooperation. The scope of the State's duty of prevention with regard to climate events caused by global warming based on the obligations under the American Convention, in light of the Paris Agreement and the scientific consensus which recommend that global temperatures should not increase beyond 1.5°C, requires the imperative adoption of appropriate national climate laws, policies and measures, the setting of ambitious targets for nationally determined contributions, and long-term decarbonization goals and strategies.
36. National climate laws, policies and measures must be consistent with human rights obligations and standards, reflect the level of responsibility and capacity of each State, and align with national emission reduction targets and related implementation plans. States must also develop policies and measures for a just energy transition aimed at keeping the increase in average global temperatures to the minimum possible and no higher than 1.5°C above pre-industrial levels.
37. In practice, States must take all appropriate and human rights-compatible measures within their means to reduce greenhouse gas emissions in the shortest possible timeframe through international cooperation. Countries that have contributed the least to the climate crisis must be supported to meet their climate change mitigation and adaptation goals,⁴³ and to address loss and damage.⁴⁴ In particular, as noted by the UN Independent Expert on human rights and international solidarity, cooperation and assistance from wealthy industrialized countries is especially crucial to ensure that “any transformation of the fossil fuel economy does not perpetuate asymmetries between richer and poorer States and peoples” and instead “prioritizes the achievement of justice for the most vulnerable peoples, especially in the global South”.⁴⁵
38. However, the absence of sufficient international assistance does not exempt any State from taking steps to fulfil its human rights obligations to the full extent of its capacity to do so and, in the case of economic, social and cultural rights, to realize these rights to the full extent of its available resources. Amnesty International believes that, as a minimum, States must achieve basic levels of each of these rights for all persons without discrimination, while giving priority to the specific needs of groups who are marginalized and discriminated against, in particular those facing multiple and intersecting forms of discrimination.⁴⁶
39. In the context of climate change, and notwithstanding the absence of sufficient international assistance, States are obliged to implement the most ambitious measures possible, to the extent of their ability, to reduce

⁴¹ IACHR, Resolution 3/2021, p. 26.

⁴² IACHR, Resolution 3/2021, p. 4.

⁴³ Amnesty International, *Stop burning our rights!*

⁴⁴ Stockholm Environment Institute, *Defining Loss and Damage: The Science and the Politics around one of the most contested issues within the UNFCCC*, 2016, <https://www.sei.org/publications/defining-loss-and-damage/> For a literature review of definitions, see International Center for Climate Change and Development, *Defining Loss and Damage: Key Challenges and Considerations for Developing an Operational Definition*, 2015, icccad.net/wp-content/uploads/2015/08/Defininglossanddamage-Final.pdf

⁴⁵ UN Independent Expert on human rights and international solidarity, Report, 1 April 2020, UN Doc. A/HRC/44/44, para. 54 c and 34.

⁴⁶ Amnesty International, *Stop burning our rights!*

GHG emissions in the shortest possible timeframe and to assist people under their jurisdiction to adapt to the effects of climate change.⁴⁷ Nevertheless, international cooperation and assistance are crucial for the fulfilment of human rights in the context of the climate crisis and to avoid imposing an undue burden on developing countries, given their limited contribution to climate change and their right to development. Any State that fails to take all feasible measures within its means to reduce GHG emissions in the shortest possible timeframe is therefore in breach of its human rights obligations and must ensure access to effective remedies for those whose rights have been violated.⁴⁸

40. Indeed, based on their duty of prevention, and given that the vast majority of greenhouse gas emissions result from the burning of coal, oil and gas, States should, as a key prevention measure, phase out and implement a just transition away from fossil fuel production and use as soon as possible, in accordance with their capacity and responsibility for emissions, and immediately stop the expansion of fossil fuels. This includes eliminating subsidies for fossil fuels (with the exception of clean cooking stove programmes as an interim measure for people who do not yet have access to affordable electricity).
41. Wealthy industrialized States must phase out fossil fuels and fossil fuel subsidies more quickly than other countries, well before 2050, in line with the latest scientific evidence⁴⁹ and based on their greater obligations. The Court should insist that States focus on rapidly eliminating fossil fuel dependency rather than on solutions such as bioenergy, carbon sequestration and carbon removal mechanisms.
42. With regard to bioenergy production in the region, in 2022 the UN Special Rapporteur on the promotion and protection of human rights in the context of climate change expressed concern about allegations of harm to the rights of Indigenous Peoples in relation to bioenergy production and recommended that “food security and the protection of the rights of Indigenous Peoples take precedent over land-based mitigation actions”.⁵⁰ In this regard, and in line with the Special Rapporteur, Amnesty International believes that this Advisory Opinion is an opportunity for the Honourable Court to recommend that States take full account of human rights and environmental risks, including extraterritorial impacts, when considering the use of bioenergy as a climate change mitigation measure.
43. In particular, X believes that this Honourable Court could emphasise that States should phase out and end subsidies and tax exemptions for the production and use of bioenergy from forest biomass and crop-derived biofuels. States should also ensure that human rights impact assessments and consultations with Indigenous Peoples and local communities are carried out prior to approving bioenergy projects in a manner that allows for their meaningful participation and respects Indigenous Peoples' right to free, prior and informed consent.

In particular, what measures should States take to minimize the impact of the damage due to the climate emergency in light of the obligations established in the American Convention? In this regard, what differentiated measures should be taken in relation to vulnerable populations or based on intersectional considerations?

44. States must adopt all measures necessary for ensuring that all people within their jurisdiction are able to adapt to the foreseeable and unavoidable effects of climate change, thus minimizing their impact on human rights.⁵¹ Several United Nations treaty bodies have highlighted this same issue. In this regard, the Committee on the Elimination of Discrimination against Women stated that:

In accordance with the Convention and other international human rights instruments, an adequate and effective allocation of financial and technical resources for gender-responsive disaster and climate change prevention,

⁴⁷ The Paris Agreement of the United Nations Framework Convention on Climate Change (Paris Agreement), Articles 4 and 7.

⁴⁸ Paris Agreement (previously cited), Article 9.

⁴⁹ United Nations Environment Programme (UNEP), *Production Gap Report 2023*, 8 November 2023, <https://productiongap.org/>

⁵⁰ UN Special Rapporteur on the promotion and protection of human rights in the context of climate change (UN Special Rapporteur on human rights and climate change), Report, 26 July 2022, UN doc. A/77/226, para. 91 b.

⁵¹ UN Special Rapporteur on the issue of human rights and the environment, Report, 1 February 2016, para. 68.

mitigation and adaptation must be ensured through both national budgets and international cooperation.⁵²

45. In a joint statement, five UN human rights treaty bodies declared: " In order for States to comply with their human rights obligations, and to realize the objectives of the Paris Agreement they must ... foster climate resilience and ensure that public and private investments are consistent with a pathway towards... climate resilient development".⁵³ As highlighted by these treaty bodies and various UN Special Rapporteurs, measures for increasing the resilience of the population in the face of disasters and supporting climate change adaptation that addresses both extreme weather disasters and slow-onset events⁵⁴ with dedicated budget allocations, at the international, regional, national and local levels, for specific adaptation measures."⁵⁵
46. Furthermore, Amnesty International believes that states must develop, suitably finance and apply strategies for disaster risk reduction and management,⁵⁶ early warning systems and emergency response plans, whilst ensuring that early warning information is provided in a way that is timely, culturally appropriate, accessible and inclusive, and that takes into account the needs of the most affected groups,⁵⁷ and conducting risk assessments in urban planning, rural development projects and the design of housing.⁵⁸
47. States must guarantee that essential infrastructures and services (such as water, sanitation, health and education facilities) are climate resistant and resilient.⁵⁹ This process must involve working continuously, in consultation and with the participation of affected people, to improve the climate resilience of housing ,⁶⁰ supporting the construction of high quality buildings, and assisting those who live in sites at risk from the impacts of climate change to move to safer sites in a manner that is consistent with their human rights, as well as facilitating access to affordable and well-located land for the urban poor, in order to avoid further unplanned settlement expansions that increase vulnerability to climate impacts.⁶¹
48. In the process of developing adaptation and resilience policies, actions and measures, states must support sustainable agricultural practices and other approaches that will allow for food systems and livelihoods that are more resilient to the impacts of climate change,⁶² identifying and supporting livelihoods that are resilient

⁵² CEDAW, General recommendation No. 37, para. 45.

⁵³ OHCHR, "Five UN human rights treaty bodies issue a joint statement on human rights and climate change".

⁵⁴ CEDAW, General recommendation No. 37, para. 46(g); UN Special Rapporteur on the right to adequate housing, Report, 23 December 2022, Doc. ONU A/HRC/52/28, para. 67(a).

⁵⁵ CEDAW, General recommendation No. 37, para. 46(b).

⁵⁶ States' obligations to protect human rights in the face of disasters have been highlighted in several judgments of the European Court of Human Rights. For a review of jurisprudence of the European Court of Human Rights, see *Questions of International Law, E. Sommaro and S. Venier, Human rights law and disaster risk reduction*, 30 April 2018. In 2008, for example, the Court established Russia's responsibility for the deaths of several people in mudslides in the Caucasus region and, in doing so, reaffirmed the obligation of states to adopt legal frameworks and preventive measures aimed at effectively reducing the risks to the right to life arising from natural disasters as well as from dangerous human activities. See: European Court of Human Rights, *Budayeva and others v. Russia*, application. No. 15339/02 (2008). <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-85436%22%5D>. In addition, in 2015 the Lahore High Court in Pakistan ruled that the national government had violated the fundamental rights of its citizens, including the right to life, by failing to implement the adaptation measures recommended in the 2012 National Climate Policy and Framework. See: Lahore High Court, <https://www.escri-net.org/caselaw/2023/leghari-vs-federation-pakistan>, *Leghari v. Federation of Pakistan*, W.P. no. 25501/2015, 4 September 2015.

⁵⁷ United Nations. Report of the Special Rapporteur on the right to adequate housing, 6 August 2009, A/64/255, para. 51; CEDAW, General recommendation 37, para 54(c); UN Committee on Economic, Social and Cultural Rights, [Concluding observations, Mauritius](#), 5 April 2019, E/C.12/MUS/CO/5, para. 10; UN Convention on the Rights of the Child, [Concluding observations: Mozambique](#), 27 November 2019, CRC/C/MOZ/CO/3-4, para. 37; United Nations. [UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment](#), 15 July 2019, A/74/161, para. 86(b).

⁵⁸ UN Special Rapporteur on the right to adequate housing (previously cited), 6 August 2009, A/64/255, para. 51.

⁵⁹ UN Special Rapporteur on the right to adequate housing, Report, 23 December 2022, para. 51; UN Special Rapporteur on human rights and the environment, Report, 15 July 2019, para. 86(b).

⁶⁰ UN Special Rapporteur on the right to adequate housing, Report, 23 December 2022, para. 64 (a).

⁶¹ UN Special Rapporteur on the right to adequate housing, Report, 6 August 2009, para. 74; UN Special Rapporteur on the right to adequate housing, Report, 23 December 2022, para. 64(e).

⁶² UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (previously cited), 15 July 2019, A/74/161, para. 86(e).

to disasters and climate change.⁶³ Based on scientific evidence pointing to the extreme climate vulnerability of certain food systems and livelihoods,⁶⁴ Amnesty International believes that states must provide the necessary technical and material support and protection to the livelihoods and ecosystems on which communities particularly exposed to the effects of climate change depend.

49. Adaptation measures should give priority to the needs of groups, communities and people facing different forms of overlapping discrimination.⁶⁵ States should therefore take into account the differentiated needs and requirements of different groups when designing climate change adaptation and disaster risk reduction strategies and measures.⁶⁶ They must also identify and address factors that increase the risks of harm from climate impacts, such as marginalization and discrimination, and allocate sufficient resources to supporting achievement of the economic, social and cultural rights of all people, prioritizing those facing the greatest risks. A specific measure arising from this analysis is investment in social protection and services to reduce vulnerability and mitigate the risks of climate change-induced disasters and shocks, ensuring that people have equal access to them and that the specific needs of gender and marginalized groups are taken into account.⁶⁷
50. The design of measures for adaptation and resilience must take gender issues into account from an intersectional perspective,⁶⁸ recognizing and respecting the traditional knowledge of Indigenous Peoples, Afro-descendants, rural and fishing communities.⁶⁹ More specifically, states must recognize and incorporate in their laws, policies and adaptation and resilience measures the Indigenous scientific knowledge that plays a vital role in ecosystem conservation. However, access to such knowledge must be subject to the free, prior and informed consent of Indigenous Peoples.⁷⁰
51. To achieve the above, and in compliance with their human rights obligations, it is Amnesty International's view that states should guarantee the meaningful participation of all stakeholders – in particular women and the communities and individuals most affected – in the design, planning, implementation and monitoring of adaptation strategies and measures, and seek the free, prior and informed consent of Indigenous Peoples. Where appropriate, special mechanisms should be established to facilitate the full participation of women, Indigenous Peoples, Afro-descendants, communities affected by various forms of racism, children, persons with disabilities, migrants and refugees, and other groups suffering from multiple forms of systemic discrimination.

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

52. In this section, Amnesty International seeks to contribute to the definition that could be made by the Honourable Court on the content and scope of the principles that should govern actions to mitigate, adapt and respond to the losses and damages caused by the climate emergency in the region. Likewise, the

⁶³ CEDAW, General recommendation No. 37, para. 46(c).

⁶⁴ Intergovernmental Panel on Climate Change (IPCC) (2022), Climate Change 2022: Impacts, Adaptation and Vulnerability Working Group II - Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change.

⁶⁵ UN Special Rapporteur on the right to adequate housing, Report, 6 August 2009, para. 74; UN Special Rapporteur on human rights and the environment, Report, 15 July 2019, para. 85.

⁶⁶ For example, in its Concluding observations on the initial report of Seychelles, the Committee on the Rights of Persons with Disabilities stressed that states should ensure that the requirements of persons with disabilities are included in the design and implementation of adaptation and disaster risk reduction measures. In: Committee on the Rights of Persons with Disabilities (CRPD), Concluding observations on the initial report of Seychelles, 16 April 2018, UN doc. CRPD/C/SYC/CO/1, para. 23.

⁶⁷ UN Special Rapporteur on the right to food, Report, 5 August 2015, A/70/287, para. 89(k); CEDAW, General recommendation No. 37, para. 64(a); UN Special Rapporteur on human rights and the environment, Report, 15 July 2019, A/74/161, para. 86(c).

⁶⁸ CEDAW, General recommendation No. 37.

⁶⁹ UN Special Rapporteur on human rights and the environment, Report, 15 July 2019, para. 86(a).

⁷⁰ UN Special Rapporteur on the rights of indigenous peoples, Report, 19 July 2022, A/77/238, para. 55; Decision adopted by the Conference of the Parties to the Convention on Biological Diversity, XII/12: Article 8 j) and related provisions (Annex: Plan of Action on Customary Sustainable Use of Biological Diversity, para. 5).

organization believes that this request for an Advisory Opinion is an opportunity for the Honourable Court to interpret the obligations and legal principles of protection in the face of the urgent process of energy transition, on the basis that the gradual phasing out of fossil fuels in favour of renewable energy is one of the pillars of climate action.⁷¹ This process, known as energy transition or transition to renewable energies, calls for the construction of environmentally sustainable economies and societies that will enable social inclusion and the eradication of poverty.

53. With regards to the transition to renewable energies, Amnesty International believes that states should:
- a. Use their regulatory power to ensure that renewable energy is produced in a way that is compatible with human rights.
 - b. Urgently develop concrete plans for a just transition, consistent with human rights and the protection of marginalized communities.
 - c. Design measures to ensure that affordable renewable energy generated in full compliance with human rights standards is available and accessible to all people.
54. In respect of this, the 2015 ILO *Guidelines for a just transition towards environmentally sustainable economies and societies for all* provide a comprehensive framework for the implementation of the transition,⁷² requiring states to opt for "just transition" plans consistent with human rights and supported by national and regional employment strategies that address the concerns of all working people, the communities affected by climate change and climate policies that do not have human rights safeguards.
55. The Guidelines emphasize that transition plans should be based on social dialogue and real participation of affected communities. They should promote significant public investment in low-carbon sectors and technologies and strengthen social protection systems and public investment in health, education and other essential services. This approach is consistent with governments' international and regional obligations to guarantee economic and social rights for all people without discrimination.⁷³
56. On the basis that response to the climate crisis should not result in the violation of human rights, states must guarantee and implement a just transition for workers and communities affected by climate change and the process of decarbonisation. As part of this process, states should leverage the opportunity to progressively realize the enjoyment of rights, reduce poverty and redress existing inequalities both within and between countries, including the promotion of gender, racial, ethnic, disability and intergenerational equality.⁷⁴ This requires that the transition, a concept recognised as a guiding principle in the Paris Agreement, be a central aspect of climate action consistent with human rights.⁷⁵ Human rights principles and standards, as set out in more detail below, may in turn help to define a rapid and just transition to decarbonised economies and resilient societies.

⁷¹ International Renewable Energy Agency (IRENA), *World Energy Transitions: Outlook: 1.5°C Pathway*, March 2022, <https://www.irena.org/publications/2022/Mar/World-Energy-Transitions-Outlook-2022>.

⁷² ILO, *Guidelines for a just transition towards environmentally sustainable economies and societies for all*, 2015, https://www.ilo.org/wcmsp5/groups/public/--ed_emp/--emp_ent/documents/publication/wcms_432859.pdf; United Nations Framework Convention on Climate Change (UNFCCC), *Just Transition of the Workforce, and the Creation of Decent Work and Quality Jobs*, 2016, <https://unfccc.int/sites/default/files/resource/Just%20transition.pdf>.

⁷³ The ILO defines social dialogue as including "all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy". ILO, "Social dialogue", <https://www.ilo.org/ifpdial/areas-of-work/social-dialogue/lang--en/index.htm>.

⁷⁴ ILO, *Guidelines for a just transition towards environmentally sustainable economies and societies for all* (previously cited).

⁷⁵ The concept of "just transition" was developed by the trade unions and was initially understood as a programme of support for workers who lost their jobs due to environmental protection policies. Over time, unions and their partners have used the term more broadly, referring to a "deliberate effort to plan for and invest in a transition to environmentally and socially sustainable jobs, sectors and economies. See: CSI Just Transition Centre, *Just Transition. A Report for the OECD*, 2017 in www.oecd.org/environment/cc/g20-climate/collapsecontents/Just-Transition-Centre-report-just-transition.pdf.

57. Amnesty International believes that this is an opportunity for the Honourable Court to outline the principles that should govern actions on energy transition. Amnesty International considers that these principles should be based on:

- a) **Legality:** Design of the transition should be based on legally enforceable rights set out in relevant national, regional and international legal frameworks. Relevant international law includes all human rights treaties⁷⁶ and various International Labour Organization (hereinafter ILO) conventions relating to workers' rights. Relevant international standards, including⁷⁷ general comments of UN treaty bodies, should also be taken into account to help define the content of the respective rights.⁷⁸

Furthermore, the implementation of a just transition must be based on legally enforceable rights and related obligations that are binding on the state, as set out in relevant national, regional and international law. With regard to the implementation of energy transition projects backed by states and corporate actors in traditional territories, the Honourable Court has already ruled that "the legality, need, proportionality and achievement of a legitimate objective in a democratic society (public utility and social interest) must be assessed on a case-by-case basis".⁷⁹

- b) **Participation:** Individuals should understand their rights and be involved in all decisions affecting these rights, while being fully supported to participate in the design of relevant policies and practices. This approach is based on the human right to seek, receive and disseminate information, including information on environmental issues,⁸⁰ as part of the right to freedom of expression.⁸¹ States therefore have an obligation to collect, update, communicate and facilitate access to environmental information.⁸²

When planning and designing national climate strategies, laws, plans and specific projects and initiatives for climate mitigation and adaptation, states must conduct adequate and meaningful public consultations, ensuring in particular the non-discriminatory participation of those most affected by climate change and the proposed decisions. More specifically, states must consult and cooperate with Indigenous Peoples and obtain their free, prior and informed consent before adopting measures that may affect them and provide reparation for violations of their territorial rights.⁸³

- c) **Responsibility:** To ensure a just transition process, states must respect the right to effective remedies for any

⁷⁶ OHCHR, *Human Rights Instruments*, <https://www.ohchr.org/en/instruments-listings#tab-1>.

⁷⁷ ILO, *Conventions and Recommendations*, <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>.

⁷⁸ OHCHR, *General Comments, Treaty Bodies*, <https://www.ohchr.org/en/treaty-bodies/general-comments>.

⁷⁹ Inter-American Court of Human Rights, *Cuadernillo de Jurisprudencia de la Corte Interamericana de Derechos Humanos N° 26* [Journals of Jurisprudence of the Inter-American Court of Human Rights, No. 26], 2020, <https://biblioteca.corteidh.or.cr/tablas/r39750.pdf>, para. 138. See also: *Yakye Axa Indigenous Community v. Paraguay*. Fund for Reparations and Costs. Judgment of 17 June 2005.

⁸⁰ UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, (UN Special Rapporteur on human rights and the environment), Report, 24 January 2018, UN Doc. A/HRC/37/59, para. 17.

⁸¹ The right to freedom of expression is guaranteed by, among others: Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights. See: <https://www.ohchr.org/en/topic/freedom-expression-and-opinion>.

⁸² These obligations are also recognized under environmental law, including the 1992 Rio Declaration on Environment and Development and the 1992 Convention on Biological Diversity. They are the subject of two regional treaties, the 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, commonly known as the Aarhus Convention, and the 2018 Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, also known as the Escazú Agreement. The Escazú Agreement derives from Principle 10 of the Rio Declaration on Access to Information and Public Participation and contains the world's first binding and specific provision on the protection of human rights in environmental matters. [ACCC/C/2012/68 European Union and United Kingdom](https://www.ohchr.org/en/indigenous-peoples/un-declaration-rights-indigenous-peoples) found that the United Kingdom and the EU had failed to comply with their obligations to guarantee appropriate public participation and access to information under the Aarhus Convention in relation to renewable energy programmes.

⁸³ OHCHR, *United Nations Declaration on the Rights of Indigenous Peoples*, <https://www.ohchr.org/en/indigenous-peoples/un-declaration-rights-indigenous-peoples>; ILO, *Convention 169 on Indigenous and Tribal Peoples in Independent Countries*, 1989, https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID.P12100_LANG_CODE:312314.es:NO; see also: European Center for Constitutional and Human Rights, *Wind farm in Mexico: French energy firm EDF disregards indigenous rights*, Case report, 2020, https://www.ecchr.eu/fileadmin/Fallbeschreibungen/20201013_Case_report_EDF_EN.pdf

harm suffered as a result of both the climate crisis and states' response to it. For victims of human rights violations to obtain effective reparation, states must ensure that remedies are full and effective and include measures of cessation, restitution and reparation, compensation, rehabilitation, satisfaction and guarantees of non-repetition, and that all affected persons have equal access to remedies.⁸⁴ The right to reparation has two components, one that is procedural (ensuring access to justice) and one that is substantive (ensuring that victims obtain effective reparation). States must provide affordable and timely access without discrimination.⁸⁵

This Honourable Court, based on the obligation of states to remedy human rights violations,⁸⁶ has upheld the concept of “integral reparation” (*restitutio in integrum*) which entails the “re-establishment of the previous situation and the elimination of the effects produced by the violation produced, as well as the payment of compensation for the damage caused”.⁸⁷ In cases in which various forms of structural discrimination intersect, the Court has held that:

[T]he reparations must be designed to change this situation, so that their effect is not only of restitution, but also of rectification. In this regard, reestablishment of the same structural context of violence and discrimination is not acceptable.⁸⁸

Likewise, effective remedies to address allegations of imminent and foreseeable human rights violations resulting from climate change and/or climate action, as well as past and ongoing violations, may include administrative, judicial, legislative or any other appropriate means. This should extend to a state, or the conduct by a non-state actor within its own jurisdiction, harming the rights of people outside its borders.⁸⁹ As part of guaranteeing the right to reparation, states should take appropriate measures to address barriers, including gender, age, poverty or disability-specific barriers, that prevent victims from accessing domestic remedies, including through the provision of accessible information and legal aid.⁹⁰

States must also ensure that courts have legal authority to adjudicate claims of climate change-related human rights violations, including those challenging the lack of ambition of national policies, without arguing that judicial review of laws, policies and/or decisions unduly infringes on the separation of powers. More generally, states should refrain from creating obstacles to reparation, including by taking positions before the courts in favour of a narrow interpretation of a court's jurisdiction or by taking other measures that unnecessarily delay proceedings and increase the costs for victims seeking remedy.⁹¹ To be effective, remedies must be available at both the national and international levels.⁹²

⁸⁴ OHCHR, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, 2005, <https://www.ohchr.org/es/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>

⁸⁵ CEDAW, General recommendation No. 37, para. 38.

⁸⁶ OAS. American Convention. Article 63.1.

⁸⁷ Inter-American Court of Human Rights. *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment, 16 November 2009. Series C No. 205, para. 450.

⁸⁸ Inter-American Court of Human Rights. *Case of González et al. (“Cotton Field”) v. Mexico* (previously cited).

⁸⁹ ETO Consortium, *The Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, <https://www.etoconsortium.org/en/the-maastricht-principles/>

⁹⁰ See M. Wawrinka-Singh, “Remedies for Human Rights Violations Caused by Climate Change”, 2019, *Climate Law*, Volume 9; Amnesty International, *The UN Committee on the Elimination of Discrimination against Women: General Recommendation on gendered dimensions of disaster risk reduction and climate change: Amnesty International’s preliminary observations* (Index: IOR 40/3468/2016), 22 February 2016, <https://www.amnesty.org/es/documents/ior40/3468/2016/en/>; CEDAW, General recommendation No. 37, para. 38; UN Special Rapporteur on human rights and the environment, Report, 24 January 2018, paras 52-53.

⁹¹ Practically all the courts that have addressed the justiciability of challenges to national climate change policies have found the issues appropriate for judicial review. See *Amicus Curiae* Brief of Amnesty International USA, CIEL and ELAW on the case *Juliana v. United States*, www.amnestyusa.org/wp-content/uploads/2020/03/final-brief-on-Juliana-justiciability.pdf.

⁹² Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health (Article 12)*, 11 August 2000, UN Doc E/C.12/2000/4, para. 59; Committee on Economic, Social and Cultural Rights, *General Comment No. 18: The Right to Work (Article 6)*, 6 February 2006, UN doc E/C.12/GC/18, para. 48.

- d) **Non-discrimination, equality and intersectionality:** Tackling the climate crisis requires not only reducing emissions, but also a willingness to address the inequalities and injustices faced by different groups, peoples and communities most at risk of harm from climate change. This requires attention to the intersectional forms of discrimination and inequality that exacerbate the impact of climate hazards. Any just transition measures must further reduce inequalities rather than exacerbate them, consistent with the duty to progressively realize rights for all people without discrimination.⁹³ This should include effectively addressing low wages and working conditions in different sectors due to entrenched intersectional discrimination, such as Indigenous women working in the informal and/or rural economy.⁹⁴

A just transition should be seen as an opportunity to progressively realize the rights of workers and communities that have been historically marginalized, especially those where various forms of ethnic and racial discrimination intersect. In turn, reducing inequality can bring tangible benefits to the just transition process itself, including more efficient use of resources and greater participation of all stakeholders driving transformational change.⁹⁵

For its part, this Honourable Court considers that the principle of equality and non-discrimination is “a basic and general principle of the protection of human rights, reaching the status of *ius cogens*”.⁹⁶

The Court has indicated that:

“[T]he principle of equality and non-discrimination is fundamental for the safeguarding of human rights in both international and domestic law. States are therefore obliged not to introduce discriminatory regulations into their legal system, to remove discriminatory regulations from their legal system, and to combat discriminatory practices.”⁹⁷

Amnesty International believes that the principle of equality and non-discrimination must be a cross-cutting concept in the development of transitional laws, policies and measures, to ensure that they are truly fair and conducive to the progressive realization of the rights of all people.

- e) **Dignity:** States must ensure that just transition processes enable all people affected by the climate crisis and adaptation and mitigation measures to achieve a decent standard of living.⁹⁸

In this regard, states must protect those working in the fossil fuel industry and their families, and those in other affected sectors who may lose their employment as a result of the transition, in order to secure alternative livelihoods that provide sustainable and decent work. In particular, states must prioritize job creation in affected areas and communities through appropriate investment, reskilling, training and other support for those seeking employment.⁹⁹ This should include promoting and supporting the creation of green jobs and other new jobs that provide sustainable and decent work that respects, protects and fulfils economic and social rights, is non-discriminatory and takes into account the needs of groups already discriminated

⁹³ UN Special Rapporteur on extreme poverty and human rights, Report, 7 October 2020, UN doc. A/75/181/Rev.1, para. 12.

⁹⁴ ILO, *Gender, labour and a just transition towards environmentally sustainable economies and societies for all*, 2016, https://www.ilo.org/wcmsp5/groups/public/--ed_protect/--protrav/--ilo_aids/documents/publication/wcms_592348.pdf

⁹⁵ UN Special Rapporteur on extreme poverty and human rights, Report, 7 October 2020 (previously cited), paras 47 and 48.

⁹⁶ Corte IDH, *Cuadernillo de Jurisprudencia de La Corte Interamericana de Derechos Humanos N° 14: Igualdad y No Discriminación* [Journals of Jurisprudence of the Inter-American Court of Human Rights No. 14: Equality and Non-discrimination], 2019, <https://corteidh.or.cr/sitios/libros/todos/docs/cuadernillo14.pdf>, p. 6. (in Spanish – translation provided by Amnesty International)

⁹⁷ IACHR, *Cuadernillo de Jurisprudencia de La Corte Interamericana de Derechos Humanos N° 14* [Journals of Jurisprudence of the Inter-American Court of Human Rights, No. 14] (previously cited), p. 7. (in Spanish – translation provided by Amnesty International)

⁹⁸ The right to an adequate standard of living is guaranteed by Article 11 of the International Covenant on Economic, Social and Cultural Rights.

⁹⁹ The UN Committee on Economic, Social and Cultural Rights has asserted that, with regard to the right to work, states have the duty to have “specialized services to assist and support individuals in order to enable them to identify and find available employment... The obligation to *fulfill (facilitate)* the right to work requires States parties, inter alia, to take positive measures to enable and assist individuals to enjoy the right to work and to implement technical and vocational education plans to facilitate access to employment”. See Committee on Economic, Social and Cultural Rights, General comment No. 18: The Right to Work (Article 6), 6 February 2006, UN Doc E/C.12/GC/18, paras 12 a) and 27 (previously cited).

against.¹⁰⁰

This Court has also referred to the concept of human dignity in cases related to non-pecuniary damage and the reparations stage, considering that the negative effects of events cannot be compensated in pecuniary terms, generating serious consequences for direct and indirect victims in terms of their living conditions and life projects.¹⁰¹

58. Amnesty International believes that this Honourable Court has the opportunity to establish the principles that guide states in the fulfilment of their international obligations in relation to just transition, which are derived from international human rights law and can be identified in the American Convention on Human Rights and in the jurisprudence of this High Court.

B. REGARDING STATE OBLIGATIONS TO PRESERVE THE RIGHT TO LIFE AND SURVIVAL IN RELATION TO THE CLIMATE EMERGENCY IN LIGHT OF SCIENCE AND HUMAN RIGHTS.

What is the scope that states should give to their obligations vis-à-vis the climate emergency, in relation to the determination of human impacts, such as human mobility (migration and forced displacement)?

59. In this section of the brief, Amnesty International focuses specifically on the obligations of states and human rights standards towards people who are internationally displaced or in need of international relocation for reasons associated with climate change. Environmental events associated with climate change are increasingly driving the displacement of people from their homes or places of habitual residence. The IPCC has recognized that there is increased evidence that climate change-related hazards act both as direct drivers of migration and involuntary displacement and as indirect drivers through deteriorating livelihoods.¹⁰²

60. According to some studies, countries in Latin America and the Caribbean show the strongest relationship between environmental hazards and migration worldwide.¹⁰³ Climate change-related migration takes different forms depending on the type of environmental hazard to which it is linked. According to the IPCC, the most common climatic drivers for migration and displacement are drought, tropical storms and hurricanes, heavy rains and floods,¹⁰⁴ although it is widely recognized that slow onset disasters such as sea level rise, salinization, drought and desertification also contribute to migration and displacement.¹⁰⁵

61. The impacts of climate change on migration are highly context-specific and interact with social, political, geopolitical and economic factors. The adverse effects of climate change interact with pre-existing social vulnerabilities and may affect different population groups differently, at times forcing some people to leave their homes.¹⁰⁶ Climate change is a "threat multiplier" in the sense that climate factors exacerbate existing social, economic

¹⁰⁰ See Committee on Economic, Social and Cultural Rights, General comment No. 18, para. 12 b): "Accessibility. The labour market must be open to everyone under the jurisdiction of States parties." Pursuant to Article 2 of ILO Convention No. 111, state parties must "declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof."

¹⁰¹ See: Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of 15 June 2005. Series C No. 124; Inter-American Court of Human Rights. Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of 17 June 2005. Series C No. 125; Case of López Álvarez v. Honduras. Preliminary Objections, Merits, Reparations and Costs. Judgment of 1 February 2006. Serie C No. 141, among others.

¹⁰² IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Working Group II - Contribution to the IPCC Sixth Assessment Report*, 2022, <https://www.ipcc.ch/report/ar6/wg2/>, p. 52.

¹⁰³ Roman Hoffmann and others, "A meta-analysis of country-level studies on environmental change and migration", 2020, *Nature Climate Change* 10, 1–9, <https://doi.org/10.1038/s41558-020-0898-6>.

¹⁰⁴ IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability* (previously cited), p. 52.

¹⁰⁵ OHCHR, *Slow onset effects of climate change and human rights protection for cross-border migrants*, 29 November 2018, www.ohchr.org/en/documents/tools-and-resources/slow-onset-effects-climate-change-and-human-rights-protection-cross.

¹⁰⁶ ACNUR, *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*, 1 October 2020, <https://www.refworld.org/docid/5f75f2734>.

and environmental factors that may increase the risk of conflict and the human rights violations associated with it.¹⁰⁷ Although most climate-related displacement and migration occurs within national borders, it is also recognized that international displacement is linked to climate change and occurs primarily between countries with contiguous borders.¹⁰⁸

62. In this scenario, the following sections of this brief seek to contribute to the Court's definition of the content and scope of the obligations to protect persons who are outside their country of origin as a result of the adverse effects of environmental events on their rights. It also examines state obligations associated with the international relocation of persons whose human rights, including the right to life, are threatened in their home country because of hazardous environmental events, and proposes a number of measures to enable states to comply with the principles of shared responsibility and international solidarity and cooperation in addressing the assistance and protection of persons on the move in the context of climate change and disasters.

Obligations of non-refoulement associated with the rights to life, to personal integrity and to other human rights in the context of climate change

63. In this section, Amnesty International analyses the interaction between the legal principle of non-refoulement and some of the human rights affected by climate change-related environmental hazards. In light of the Court's opinions, both in relation to the principle of non-refoulement¹⁰⁹ and to states' obligations with respect to the rights to life and personal integrity, the principle of non-refoulement should apply with respect to the risks of the most serious human rights violations in the context of climate change and environmental disasters.¹¹⁰

64. This Honourable Court has already had the opportunity to reiterate that this principle "constitutes a norm of customary international law and is, consequently, binding for all States, whether or not they are parties to the 1951 Convention or its 1967 Protocol".¹¹¹ The principle of non-refoulement is a principle of customary international law, international human rights law and refugee law¹¹² that prohibits the return, removal, or refoulement of any person to another country or jurisdiction, or to a third state of onward transfer where that person may be at real risk of suffering serious violations of their human rights, such as violations of the right to life, torture or cruel, inhuman or degrading treatment or punishment, persecution, or enforced disappearance.¹¹³

65. This Honourable Court has already set out the scope of the principle of non-refoulement in the inter-American system, noting that in said system "this principle is reinforced by the recognition of the right of everyone to seek and receive asylum, first in Article XXVII of the American Declaration and then in Article 22(7) of the American

¹⁰⁷ Amnesty International, *Stop burning our rights!*, p. 39.

¹⁰⁸ IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability*, p. 52.

¹⁰⁹ Inter-American Court of Human Rights. Advisory Opinion OC-21/14 of 19 August 2014. Rights and guarantees of children in the context of migration and/or in need of international protection, pp. 77-92 https://www.refworld.org/cases/IACRTHR_54129c854.html.

¹¹⁰ Inter-American Court of Human Rights. Advisory Opinion OC-23/17, "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) in relation to Articles 1(1) and 2 of the American Convention on Human Rights)", 15 November 2017, Series A No. 23, https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf.

¹¹¹ Inter-American Court of Human Rights. Advisory Opinion OC-21/14, 19 August 2014, para. 211.

¹¹² UNHCR, *The Principle of Non-Refoulement as a Norm of Customary International Law: Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93*, 31 January 1994, available at: www.refworld.org/docid/437b6db64.html. This principle stems from international refugee law, pursuant to which it is applied to refugees and asylum seeker (1951 Geneva Convention on the Status of Refugees, Article 33). This principle has been further developed in other areas of law, such as through Article 3 of the Convention against Torture and the International Covenant on Civil and Political Rights, as explained in the CCPR, General Comment No. 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*", para. 12, <https://www.refworld.org/docid/478b26ae2.html>.

¹¹³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Article 3; International Covenant on Civil and Political Rights (ICCPR), Article 7, which, while not explicitly mentioning non-refoulement, protects persons against torture or cruel, inhuman or degrading treatment. See CCPR, *General Comment no. 31 on the Nature of the General Legal Obligation Imposed on states parties to the Covenant*, para. 12; among others, the European Convention on Human Rights (ECHR) includes protection against return in Article 3, and the American Convention on Human Rights (ACHR) guarantees protection against non-refoulement in Article 22.

Convention”¹¹⁴ and that “Article 22(8) of the American Convention established the prohibition to deport or return any “alien”... to his or her country of nationality or, in the case of a stateless person, the country of habitual residence, or to a third State... in which “his right to life or personal freedom” are “in danger of being violated because of his race, nationality, religion, social status or political opinions”.¹¹⁵ This Honourable Court further interpreted the norm to conclude that “it may be considered that, under the inter-American system, the right of any alien, and not only refugees or asylees, to *non-refoulement* is recognized, when his life, integrity and/or freedom are in danger of being violated, whatsoever his legal status or migratory situation in the country where he is.”¹¹⁶

66. The principle of non-refoulement also applies – irrespective of whether or not the grounds for persecution set out in Article 22(8) arise – where the transfer of the person to another country or jurisdiction would expose them to the risk of serious violations of their rights, including the right to life, to personal integrity and to health. In particular, the Court has already ruled on the intrinsic link between the principle of non-refoulement and the right to personal integrity – enshrined, *inter alia*, in customary law and in Article 5 of the American Convention –, the protection of which requires the absolute and imperative prohibition of torture and cruel, inhuman or degrading treatment or punishment under customary international law.¹¹⁷ Thus, the principle of non-refoulement now has the status of an absolute and peremptory norm of customary international law (*ius cogens*) whenever there are substantial grounds for believing that a person, if expelled or transferred to another country or jurisdiction, would be at risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment.¹¹⁸

67. In the inter-American system, the Inter-American Convention to Prevent and Punish Torture provides an even broader definition of the principle of non-refoulement, considering that it is “also associated with the protection of the right to life and with certain judicial guarantees, so that it is not limited to protection against torture”.¹¹⁹ The Court has likewise already recognized that refoulement is prohibited with reference to the right to health, given the “direct and immediate connection that exists between the rights to life and to personal integrity... Thus, it could be considered that the expulsion or return of a person violates international obligations... in cases in which this measure would result in harm or a serious deterioration in the person's health, or, even, where it could lead to her or his death.”¹²⁰

68. In the specific case of children, this Honourable Court has agreed with the opinion of the Committee on the Rights of the Child that their return to another country may only be contemplated if it is in the best interest of the child. In this regard, the principle of non-refoulement is applied more broadly to include violations of other rights guaranteed by the Convention on the Rights of the Child, such that the prohibition of refoulement “receives additional protection in other human rights norms, a protection that extends to another type of gross human rights violations, understood and analysed from an age and gender perspective, as well as under the rationale established by the Convention on the Rights of the Child itself, which makes the determination of the best interest surrounded by the due guarantees a central aspect when adopting any decision that concerns the child and, especially, if the principle of *non-refoulement* is involved.”¹²¹

¹¹⁴ Inter-American Court of Human Rights. Advisory Opinion OC-21/14, 19 August 2014, para. 212.

¹¹⁵ Inter-American Court of Human Rights. Advisory Opinion OC-21/14, 19 August 2014, para. 214.

¹¹⁶ Inter-American Court of Human Rights. Advisory Opinion OC-21/14, 19 August 2014, para. 215, citing the “Case of the Pacheco Tineo Family v. Bolivia”, *supra*, para. 135.

¹¹⁷ Inter-American Court of Human Rights. Advisory Opinion OC-21/14, 19 August 2014, paras 223-226.

¹¹⁸ Inter-American Court of Human Rights. Advisory Opinion OC-21/14, 19 August 2014.

¹¹⁹ OAS, *Inter-American Convention to Prevent and Punish Torture, Article 13*: “Extradition shall not be granted nor shall the person sought be returned when there are grounds to believe that his life is in danger, that he will be subjected to torture or to cruel, inhuman or degrading treatment, or that he will be tried by special or ad hoc courts in the requesting State.”

¹²⁰ Inter-American Court of Human Rights. Advisory Opinion OC-21/14, 19 August 2014, para. 229. See also: *Case of Vera and other v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of 19 May 2011. Series C No. 226, para. 43.

¹²¹ Inter-American Court of Human Rights. Advisory Opinion OC-21/14, 19 August 2014, Rights and guarantees of children in the context of migration and/or in need of international protection, paras 231-233.

69. In its report *Stop Burning Our Rights!*,¹²² Amnesty International provides a comprehensive analysis of how the climate emergency affects human rights, including, among others, the right to life, to personal integrity and to health. Indeed, as the Court has already recognized, “damage to the environment may affect all human rights, in the sense that the full enjoyment of all human rights depends on a suitable environment.”¹²³ Commenting on the individual dimension of the right to a healthy environment, the Court also noted that “its violation may have direct and an indirect impact on the individual owing to its connectivity to other rights, such as the rights to health, personal integrity, and life. Environmental degradation may cause irreparable harm to human beings; thus, a healthy environment is a fundamental right for the existence of humankind.”¹²⁴

70. With reference to the rights mentioned above and subject to non-refoulement, the Court has previously held that the right to life, personal integrity and health are among “the rights that are particularly vulnerable to environmental impact”.¹²⁵ Other rights affected include the right to private life, water, food, housing, participation in cultural life, property and the right to not be forcibly displaced.¹²⁶ Similarly, citing this Honourable Court and comments by other regional courts,¹²⁷ the United Nations Human Rights Committee has also stated 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”.¹²⁸ In relation to children’s rights violations in the context of climate change, the Court has recognized, as stated by the Office of the United Nations High Commissioner for Human Rights, that “environmental degradation exacerbates health risks and undermines support structures that protect children from harm”.¹²⁹

71. It can therefore be concluded that, since the principle of non-refoulement prohibits the return of any person to a country where they would face a real risk of serious human rights violations, such as violations of the right to life and torture or cruel, inhuman or degrading treatment or punishment, such principle must be enforced in all cases where a person’s rights in the country of transfer, including the right to life, personal integrity or health, are threatened by environmental factors, such as environmental damage related to the climate emergency.

Indeed, such an interpretation is consistent with the important decision of the United Nations Human Rights Committee in 2020 in the case of “*Ioane Teitiota v. New Zealand*”¹³⁰ (hereinafter *Teitiota*), in which the Committee stated that “the effects of climate change in receiving States may expose individuals to a violation of their rights under articles 6 [the right to life] or 7 [prohibition of torture or other cruel, inhuman or degrading treatment or punishment] of the Covenant [International Covenant on Civil and Political Rights], thereby triggering the non-refoulement obligations of sending States”.¹³¹

¹²² Amnesty International, *Stop burning our rights!*

¹²³ Inter-American Court of Human Rights. Advisory Opinion OC-23/17, para. 64.

¹²⁴ Inter-American Court of Human Rights. Advisory Opinion OC-23/17, para. 59.

¹²⁵ Inter-American Court of Human Rights. Advisory Opinion OC-23/17, para. 66.

¹²⁶ The Court also recognized that “[w]ithout prejudice to the foregoing, according to Article 29 of the Convention, other rights are also vulnerable and their violation may affect the rights to life, liberty and security of the individual, and infringe on the obligation of all persons to conduct themselves fraternally, such as the right to peace, because displacements caused by environmental deterioration frequently unleash violent conflicts between the displaced population and the population settled on the territory to which it is displaced. Some of these conflicts are massive and thus extremely grave. Inter-American Court of Human Rights. Advisory Opinion OC-23/17, para. 66.

¹²⁷ UN Human Rights Committee (CCPR), *Ioane Teitiota v. New Zealand*: Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016, 23 September 2020, UN Doc. CCPR/C/127/D/2728/2016, footnote 22, citing “*Portillo Cáceres et al. v. Paraguay*, para. 7.4; Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of 15 November 2017 on the environment and human rights, series A, No. 23, para. 47, and *Kawas Fernández v. Honduras*, judgment of 3 April 2009, series C, No. 196. para. 148; African Commission on Human and Peoples’ Rights, general comment No. 3 on the African Charter on Human and People’s Rights on the right to life (article 4), para. 3; and European Court of Human Rights, *Cordella and others v. Italy* (application Nos. 54414/13 and 54264/15), judgment of 24 January 2019, para. 157.”

¹²⁸ CCPR, *Ioane Teitiota v. New Zealand* (previously cited), para. 9.4.

¹²⁹ Inter-American Court of Human Rights. Advisory Opinion OC-23/17, footnote 122 p. 32.

¹³⁰ CCPR, *Ioane Teitiota v. New Zealand* (previously cited), para. 9.4.

¹³¹ CCPR, *Ioane Teitiota v. New Zealand*, para. 9.11.

72. The risks that may trigger the principle of non-refoulement associated with the right to life should not be limited to cases where refoulement would result in the certain or probable death of the person being returned. The Court has established that “the fundamental right to life includes not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence”.¹³² In the Teitiota case, the Human Rights Committee also accepted that living conditions in a country affected by slow onset environmental events may become incompatible with the right to life with dignity before the life-threatening risk is realized.¹³³ This Honourable Court has referred to access to, and the quality of, water, food and health as a necessary “condition for a decent life” that has 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.¹³⁴

73. Amnesty International emphasizes that the application of the principle of non-refoulement does not require that the violation of a person's rights, if transferred to another country, be imminent. It points out that the risk of violations that trigger the principle of non-refoulement should be real and reasonably foreseeable, but that international law does not establish a requirement of temporal imminence that could deny protection to persons who qualify for it.¹³⁵ As a member of the Human Rights Committee stated in his dissenting opinion in the Teitiota case, “[i]t would indeed be counter-intuitive to the protection of life to wait for deaths to be very frequent and considerable in number in order to consider the threshold of risk as met.”¹³⁶ In this sense, and particularly in the context of climate change, with slow onset events that have serious implications for human rights such as the right to life and health, the standard must therefore be one of foreseeability and not imminence.

74. As can be seen above, the principle of non-refoulement must also be applied in relation to violations of the right to personal integrity, including physical and psychological integrity in their various connotations of degree and ranges.¹³⁷ This Honourable Court has recognized that impacts on “the environment in which people live can constitute a risk to their life and personal integrity”,¹³⁸ and has emphasized that “there is a close relationship between the right to life and the right to personal integrity. Thus, there are times the lack of access to conditions that ensure a dignified life may also constitute a violation of the right to personal integrity, for example, in cases involving human

¹³² Inter-American Court of Human Rights, Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Fondo, supra, para. 144, and Case of Ortiz Hernández and others v. Venezuela. Fund, Reparations and Cost. Judgment of 22 August 2017. Series C No. 338, para. 100. The UN Human Rights Committee stated that “the right to life also includes the right of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death (para. 3). The Committee further recalls that the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 of the Covenant even if such threats and situations do not result in the loss of life”; Human Rights Committee, *Ioane Teitiota v. New Zealand: Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No.2728/2016*. CCPR/C/127/D/2728/2016, 23 September 2020, https://www.refworld.org/cases_HRC_5e26f7134.html. para. 9.4.

¹³³ “Furthermore, given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized.” Human Rights Committee, *Ioane Teitiota v. New Zealand: Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016*. CCPR/C/127/D/2728/2016, 23 September 2020, para. 9.11. See also para. 9.4. where “*The Committee recalls that the right to life cannot be properly understood if it is interpreted in a restrictive manner, and that the protection of that right requires States parties to adopt positive measures... [T]he right to life also includes the right of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death... [T]he obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 of the Covenant even if such threats and situations do not result in the loss of life. Furthermore, the Committee recalls 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*”.

¹³⁴ Inter-American Court of Human Rights, Advisory Opinion OC-23/17, para. 109.

¹³⁵ Adrienne Anderson and others, “Imminence in Refugee and Human Rights Law: A Misplaced Notion for International Protection”, 1 November 2018, International and Comparative Law Quarterly 111, UNSW Research Paper 19-16, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3359338; Adrienne Anderson and others, “A Well-Founded Fear of Being Persecuted ... But When?”, 2020, Sydney Law Review, volume 42(2):155, <https://www.sydney.edu.au/content/dam/corporate/documents/sydney-law-school/research/publications/slr42n2jun2020Andersonetaladvance.pdf>; Jane McAdam, “Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of *Non-Refoulement*”, 2020, American Journal of International Law 114(4) p. 708-725, <http://classic.austlii.edu.au/au/journals/UNSWLRS/2021/23.pdf>

¹³⁶ CCPR, *Ioane Teitiota v. New Zealand*, Individual opinion (dissenting) of Duncan Laki Muhumuza, Committee member, para. 5.

¹³⁷ Inter-American Court of Human Rights, Advisory Opinion OC-23/17, para. 112.

¹³⁸ Inter-American Court of Human Rights, Advisory Opinion, OC-23/17, para. 114.

health.”¹³⁹

75. With regard to situations affecting the right to health, the application of the principle of non-refoulement is associated with the direct and immediate link between such right and the right to life and personal integrity. In relation to the environment, the Court has already recognized that “environmental pollution may affect and individual’s health” and that “health” must be understood as “a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity”.¹⁴⁰ The Court has also underlined that “health requires certain essential elements to ensure a healthy life [and] hence, it is directly related to access to food and water,” where “access to food and water may be affected if [environmental] pollution limits their availability in sufficient amounts or affects their quality”.¹⁴¹

76. At the same time, this Honourable Court has endorsed the view of the Committee on the Rights of the Child that the obligation of non-refoulement applies to various violations of children’s rights, such as, for example, “the insufficient provisions of food or health services”, “whether they originate from non-State actors or whether such violations are directly intended or are the indirect consequence of action or inaction”.¹⁴² Amnesty International also wishes to emphasize that the principle of non-refoulement “has a particular sphere of application *ratione personae* and *materia*”,¹⁴³ including vulnerability,¹⁴⁴ and how these interact with environmental events. In the case of children, this also requires that their best interests are determined as set out above.¹⁴⁵

77. In general, where it is clear that a disaster or environmental degradation has made a place incompatible with the upholding of human rights, states should suspend the return of people to places affected by disasters and climate change. In practice, as the Nansen Initiative has found, a significant number of states do not return people affected by climate change.¹⁴⁶ Suspending returns is not only a protective measure when the human rights of individuals and communities are at risk, but also a form of solidarity with affected countries whose institutions may be overwhelmed in responding to the disaster and unable to protect and assist their own nationals.

78. It has also been noted that national jurisprudence in several countries, particularly in the European region, has adopted interpretations of human rights obligations that recognize the need to protect against the refoulement of persons to places where their rights would be at risk due to climatic and environmental events.¹⁴⁷ For example, the Italian Court of Cassation used the argument in the Teitiota case, and concluded that the environmental disaster situation in the Niger Delta area should be duly taken into account to establish the right to international humanitarian protection of a national from Niger for whom, regrettably, return to his country was impossible due to the disaster.

¹³⁹ Inter-American Court of Human Rights, Advisory Opinion, OC-23/17, para. 114.

¹⁴⁰ Inter-American Court of Human Rights, Advisory Opinion, OC-23/17, para. 110.

¹⁴¹ The Court has also stressed that “access to water includes access ‘for personal and domestic use,’ and this includes ‘consumption, sanitation, laundry, food preparation, and personal and domestic hygiene,’ and for some individuals and groups it will also include ‘additional water resources based on health, climate and working conditions’. Access to water, food and health are obligations to be realized progressively; however, States have immediate obligations, such as ensuring these rights without discrimination and taking measures to achieve their full realization”. Inter-American Court of Human Rights, Advisory Opinion OC-23/17 https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf, paras 110-111.

¹⁴² Inter-American Court of Human Rights, Advisory Opinion OC-21/14, para. 232.

¹⁴³ Inter-American Court of Human Rights, Advisory Opinion OC-21/14, para. 234.

¹⁴⁴ Regarding the right to personal integrity: Inter-American Court of Human Rights, Advisory Opinion OC-23/17, para. 112. https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf.

¹⁴⁵ Corte IDH, Opinión Consultiva OC-21/14, Derechos y garantías de niñas y niños en el contexto de la migración y/o en necesidad de protección internacional, párr. 232.

¹⁴⁶ The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, Volume I, 2015, p. 50. <https://disasterdisplacement.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf>

¹⁴⁷ Chiara Scissa and others, “Legal and Judicial Responses to Disaster Displacement in Italy, Austria and Sweden”, 19 October 2022, Voelkerrechtsblog, <https://voelkerrechtsblog.org/legal-and-judicial-responses-to-disaster-displacement-in-italy-austria-and-sweden/>; Chiara Scissa, “Migrazioni ambientali tra immobilismo normativo e dinamismo giurisprudenziale: Un’analisi di tre recenti pronunce”, *Questione Giustizia*, https://www.questionegiustizia.it/data/doc/2886/articolo_scissa_final.pdf; Camilla Schloss, “Climate migrants – How German courts take the environment into account when considering non-refoulement”, 3 March 2021, Voelkerrechtsblog, <https://voelkerrechtsblog.org/climate-migrants/>

The Italian court ruled that:

[T]he threat to individual life taken into consideration for the recognition of protection need not necessarily arise from armed conflict, but may depend on socio-environmental conditions in some way related to human action, provided that the context created in a given area is serious enough to severely threaten the survival of the individual and his or her family. From this perspective, war or armed conflict in general is the most impactful manifestation of human self-destruction, but it does not represent the full range of behaviours that can undermine the conditions necessary for a decent life.¹⁴⁸

Similarly, the Higher Administrative Court of Baden-Württemberg in Germany, citing the European Convention on Human Rights, annulled a decision to return an Afghan citizen on the basis of the environmental and climate conditions in his country of origin.¹⁴⁹ With regard to the right to health, the Bordeaux Court of Appeal in France recognized the right of a Bangladeshi national suffering from a chronic respiratory disease to obtain a temporary residence permit, taking into account the high levels of environmental pollution in Bangladesh and the lack of adequate medicines in the country.¹⁵⁰

Procedural obligations arising from the principle of non-refoulement: Access to territory and temporary admission

79. The principle of non-refoulement has a procedural dimension that obliges states to respect a number of guarantees, that are also applicable in the context of climate change. For example, in the event of disasters or climate change-related events that force people to move, states must, at least, facilitate access and temporary admission to their territory. This is to ensure that people can be heard and submit their case, and that their request for protection is considered. This includes an obligation of states to interview any person who claims that their rights would be at risk if they were returned to another country or jurisdiction and to give them the opportunity to present their case.¹⁵¹

80. The guidelines developed by the South American Conference on Migration (SACM), comprising Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay and Venezuela, recognize admission to the territory as a measure of protection and assistance in the event of disasters:

When exercising discretion in migration issues based on humanitarian considerations, SACM member countries may provide protection to persons displaced across borders in the context of disasters by admitting them to the territory of the host country and allowing them to stay in it, at least temporarily.¹⁵²

81. States must refrain from refusing persons at the border, in practice and through legislation, as such measures violate international law and the right to due process and effective remedy against their transfer to another country or jurisdiction,¹⁵³ as well as the obligation of non-refoulement (see above).¹⁵⁴

The Inter-American Court of Human Rights has stated:

Faced with migrant workers and others who mobilize for reasons directly or indirectly associated with climate change, States must guarantee due process during the procedure leading to the recognition of their migratory status, and in any case

¹⁴⁸ Court of Cassation (Italy), second civil section, sentence no. 5022/2021 of 12 November 2020, (unofficial translation).

¹⁴⁹ VGH Baden-Wuerttemberg, Judgment of 17 December 2020 – A 11 S 2042/20. Schloss.

¹⁵⁰ “Cour administrative d’appel de Bordeaux, 2ème chambre” (France), 18 December 2020, Judgment no. 20BX02193-20BX02195, www.legifrance.gouv.fr/ceta/id/CETATEXT000042737615.

¹⁵¹ Inter-American Court of Human Rights, Advisory Opinion OC-21/14, of 19 August 2014, para. 232.

¹⁵² South American Conference on Migration, *Regional guidelines on the protection and assistance of cross-border displaced persons and migrants in countries affected by disasters*, https://disasterdisplacement.org/wp-content/uploads/2019/06/CSM-Lineamientos-regionales-personas-desplazadas-por-desastres_compressed.pdf p. 33

¹⁵³ CCPR, *Ioane Teitiota v. New Zealand*, para. 9.3.

¹⁵⁴ See also the Report of the Special Rapporteur on the human rights of migrants, *Report on means to address the human rights impact of pushbacks of migrants on land and at sea*, A/HRC/47/30, 12 May 2021, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/106/36/PDF/G2110636.pdf?OpenElement>

guarantee their human rights, such as the safeguard of non-refoulement while their status is determined.¹⁵⁵

International protection of cross-border displaced persons meeting the definition of "refugee" under the 1951 Geneva Convention

82. Under the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol (together the Geneva Convention or the 1951 Convention), a person is considered eligible for "refugee" status when, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, he is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or when, not having a nationality and being outside the country of his former habitual residence, he is unable or, owing to such fear, is unwilling to return to that country.¹⁵⁶

83. Amnesty International agrees with the view of the Office of the United Nations High Commissioner for Refugees (UNHCR) that persons who are fleeing in the context of the adverse effects of climate change and disasters may in many cases satisfy all of the criteria set out in the 1951 Convention and may qualify for refugee status.¹⁵⁷

In these cases, therefore, as for all refugees, the obligations and guarantees of international refugee law, including the principle of non-refoulement, should apply fully to persons who are "refugees" for reasons related to the adverse effects of climate change and disasters. In addition to the principle of non-refoulement, the Geneva Convention imposes other obligations on states with respect to refugees and asylum seekers that are also applicable in the context of climate change. These include the obligation not to criminalize the irregular entry of persons seeking international protection (Article 31), as well as the obligation to ensure that refugees are not discriminated against (Article 3), have access to the labour market (Articles 17 and 18) and enjoy other rights such as freedom of movement (Article 26), public education (Article 22), health care (Article 23) and freedom of religion (Article 4).

84. Indeed, as noted above, climate change can affect several human rights so that, as UNHCR has stated, "both in the short and longer term, affected populations may be exposed to a risk of human rights violations that amount to persecution within the meaning of the 1951 Convention".¹⁵⁸

85. It should be noted that, although the adverse effects of climate change may extend to entire populations, the same effects may be felt in different ways by different groups or individuals in society. Moreover, the Court has already recognized that in the context of environmental harm the effect on rights "may be felt with greater intensity by certain groups in vulnerable situations [and] ...that environmental damage will be experienced with greater force in the sectors of the population that are already in a vulnerable situation".¹⁵⁹ Referring to various human rights bodies and its own jurisprudence, the Court has recognized Indigenous Peoples, children, people living in extreme poverty, minorities, people with disabilities, women, and communities that are critically dependent on environmental resources or are at particular risk owing to their geographic location (such as coastal and small island communities) as examples of groups that are "especially vulnerable to environmental degradation" (and to "differentiated impacts").¹⁶⁰

86. This Honourable Court has already endorsed the view of the Office of the United Nations High Commissioner for

¹⁵⁵ IACHR, *Climate Emergency: Scope of Inter-American Human Rights Obligations*, RES 3/2021, adopted on 31 December 2021. https://www.oas.org/en/iachr/decisions/pdf/2021/resolucion_3-21_ENG.pdf.

¹⁵⁶ Article 1 of the 1951 Geneva Convention Relating to the Status of Refugees taken together with its 1967 Protocol.

¹⁵⁷ UNHCR, Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters, para. 6. <https://www.refworld.org/docid/5f75f2734.html>

¹⁵⁸ UNHCR, Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters, para. 7. <https://www.refworld.org/docid/5f75f2734.html>

¹⁵⁹ Inter-American Court of Human Rights, Advisory Opinion, OC-23/17, para. 67

¹⁶⁰ Inter-American Court of Human Rights, Advisory Opinion, OC-23/17, https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf; see also UNHCR guidelines page 5, citing the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of all Migrant Workers and Members of their Families, the Committee on the Rights of the Child, the Committee on the Rights of Persons with Disabilities, Joint Statement on "Human Rights and Climate Change", 16 September 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998>.

Human Rights that under “international human rights law, States are legally obliged to confront these vulnerabilities based on the principle of equality and non-discrimination”.¹⁶¹ Conversely, it can be inferred that, by failing to comply with these obligations, states would be in violation of the rights to equality and non-discrimination of the most vulnerable people in the context of climate change. Thus, where the harm is serious and discrimination occurs, these violations could constitute forms of persecution within the meaning of the 1951 Convention, given that the vulnerabilities mentioned are in many cases associated with race, religion, nationality, membership of a particular social group or political opinions.

87. In addition, climate change may create social, economic or political pressures that increase the likelihood of discrimination and thus the grounds for fear of persecution. In addition to exacerbating vulnerability, environmental degradation may also reduce the capacity or willingness of state authorities to prevent or adequately respond to the adverse effects of climate change. In resource-constrained situations, there is an increased risk that marginalized groups will be discriminated against or excluded from these responses.¹⁶²

In this scenario, UNHCR provides several examples of situations that could constitute persecution under the terms of the 1951 Convention, both at the risk reduction and preparedness stages and in the aftermath of an environmental disaster or other adverse effects of climate change, such as situations where access to resources is denied in a discriminatory manner; “where a government withholds or deprioritizes protection by denying relief aid to specific populations”; “where post-disaster relief is politicized”; or “where the environment, its natural resources or ancestral lands are deliberately destroyed to persecute particular populations, i.e. promoting or deliberately failing to prevent environmental degradation as a weapon of oppression.”¹⁶³

88. At the same time, social pressures caused by environmental degradation can lead to situations of violence against, or trafficking of, people in vulnerable situations, including cases where the adverse effects of climate change interact with situations of conflict and generalized violence,¹⁶⁴ which would provide many people with a valid claim for refugee status or other forms of international protection (see below).¹⁶⁵

89. Finally, and in line with the opinion of this Honourable Court which has considered the UNHCR guidelines and criteria as authoritative pronouncements when interpreting states’ obligations towards refugees and asylum seekers,¹⁶⁶ Amnesty International considers that the *Legal Considerations on Claims for International Protection in the Context of the Adverse Effects of Climate Change and Disasters*¹⁶⁷ issued by UNHCR should be seen as authoritative pronouncements when interpreting states’ obligations in their review of applications for refugee status.

¹⁶¹ https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf, para. 67, citing Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, 15 January 2009, UN Doc. A/HRC/10/61, para. 42, and 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, 1 February 2016, UN Doc. A/HRC/31/52, para. 81.

¹⁶² Indeed, “[i]nvoluntary migration occurs when adaptation alternatives are exhausted or not viable and reflects non-climatic factors that constrain adaptive capacity and create high levels of exposure and vulnerability... These outcomes are also shaped by policy and planning decisions at regional, national and local scales that relate to housing, infrastructure, water provisioning, schools and healthcare to support the integration of migrants into receiving communities.” https://report.ipcc.ch/ar6/wg2/IPCC_AR6_WGII_FullReport.pdf.

¹⁶³ UNHCR, Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters, 1 October 2020, para. 10. <https://www.refworld.org/docid/5f75f2734.html>

¹⁶⁴ Amnesty International, *Stop Burning our rights!*, p. 39. See also: S.M. Hsiang and M. Burke, “Climate, conflict, and social stability: What does the evidence say?”, 2014, *Climatic Change*, Volume 123, Issue 1; C.S. Hendrix and I. Salehyan, “Climate change, rainfall, and social conflict in Africa”, 2012, *Journal of Peace Research*, Volume 49, Issue 1.

¹⁶⁵ UNHCR, Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters, 1 October 2020, pp. 6-7.

¹⁶⁶ Inter-American Court of Human Rights, *Advisory Opinion OC-25/18 of 30 May 2018 requested by the Republic of Ecuador. The Institution of Asylum and its Recognition as a Human Right in the Inter-American System of Protection. (Interpretation and scope of articles 5, 22.7 y 22.8 in relation to Article 1(1) of the American Convention on Human Rights)*, 30 May 2018, para. 97.

¹⁶⁷ UNHCR, Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters, 1 October 2020, <https://www.refworld.org/docid/5f75f2734.html>

Protection obligations deriving from the Cartagena Declaration

90. The 1984 Cartagena Declaration¹⁶⁸ is a key instrument of the Inter-American system of international protection. Together with other conventions,¹⁶⁹ declarations and agreements,¹⁷⁰ and the jurisprudence of the Inter-American Court of Human Rights,¹⁷¹ it has helped to define and expand the obligations of states in the region towards refugees and asylum seekers.¹⁷²

91. The Cartagena Declaration incorporates an expanded definition of a refugee that includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by five situations: 1) generalized violence; 2) foreign aggression; 3) internal conflicts; 4) massive violation of human rights; or 5) other circumstances which have seriously disturbed public order.¹⁷³

The Declaration must be seen as an evolving instrument and interpreted in such a way as to accommodate and adapt to the changing realities of displacement. In this regard, the Honourable Court has considered that “the broadening of the definition of refugees is not only a response to the dynamics of forced displacement that gave rise to it, but also satisfies the protection challenges arising from other patterns of displacement that are occurring today.”¹⁷⁴ As stated by UNHCR:

Guided by the protection purpose of the Cartagena Declaration, the circumstances referred to in the Cartagena refugee definition are to be given their ordinary meaning, wherever possible, and interpreted in an evolutionary way so that they remain relevant to situations not foreseeable when the Cartagena Declaration was drafted.¹⁷⁵

92. Amnesty International believes that many of those who are displaced outside their country of origin or habitual place of residence due to the adverse effects of climate change may qualify as refugees under the expanded definition of a refugee in the Cartagena Declaration. This is also the position of UNHCR,¹⁷⁶ which has stated that “people

¹⁶⁸ *Cartagena Declaration on Refugees*, adopted by the “Colloquium on the International Protection of Refugees in Central America, Mexico and Panama: Legal and Humanitarian Problems”, 22 November 1984, <https://www.refworld.org/docid/3ae6b36ec.html>

¹⁶⁹ In particular Article 22.7 of the American Convention on Human Rights, and Article XVIII of the American Declaration of the Rights and Duties of Man. Organization of American States (OAS), the *American Convention on Human Rights “Pact of San Jose, Costa Rica”*, 22 November 1969. OAS, *American Declaration of the Rights and Duties of Man*, 2 May 1948.

¹⁷⁰ *San José Declaration on Refugees and displaced persons*, 7 December 1994, <https://www.refworld.org/docid/4a54bc3fd.html>; *Río de Janeiro Declaration on the Institution of Refuge*, 10 November 2000, <https://www.refworld.org/docid/3de4f8982.html>; *Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America*, 16 November 2004, <https://www.refworld.org/docid/424bf6914.html>; *Brazil Declaration: “A Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean”*, 3 December 2014, <https://www.refworld.org/pdfid/5487065b4.pdf>.

¹⁷¹ Inter-American Court of Human Rights, *Case of the Pacheco Tineo Family v. Plurinational State of Bolivia*, Preliminary objections, merits, reparations ad costs. Judgment of 25 November 2013. Series C No. 272. <https://www.refworld.org/cases,IACRTHR,53ce2cee4.html> and Inter-American Court of Human Rights, *Advisory Opinion OC-25/18 of 30 May 2018 requested by the Republic of Ecuador. The Institution of Asylum and its Recognition as a Human Right in the Inter-American System of Protection. (Interpretation and scope of articles 5, 22.7 y 22.8 in relation to Article 1(1) of the American Convention on Human Rights)*, 30 May 2018.

¹⁷² The extended definition has been incorporated into the national laws of Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru and Uruguay.

¹⁷³ *Cartagena Declaration on Refugees*, adopted by the “Colloquium on the International Protection of Refugees in Central America, Mexico and Panama: Legal and Humanitarian Problems”, Conclusion Three, 22 November 1984, <https://www.refworld.org/docid/3ae6b36ec.html>.

¹⁷⁴ Inter-American Court of Human Rights, *Advisory Opinion OC-25/18 of 30 May 2018 requested by the Republic of Ecuador. The Institution of Asylum and its Recognition as a Human Right in the Inter-American System of Protection. (Interpretation and scope of articles 5, 22.7 y 22.8 in relation to Article 1(1) of the American Convention on Human Rights)*, 30 May 2018, para. 96. Within the same advisory opinion, and with regard to Treaties, the Court observed, in para. 137 that “los tratados de derechos humanos son instrumentos vivos, cuya interpretación tiene que acompañar la evolución de los tiempos y las condiciones de vida actuales”.

¹⁷⁵ UNHCR, *Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 2 December 2016 HCR/GIP/16/12, para. 70, <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=58c654244>.

¹⁷⁶ UNHCR, *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*, 1 October 2020.

displaced by the adverse effects of climate change and disasters can be refugees under the regional refugee criteria".¹⁷⁷

93. The Cartagena Declaration protects individuals and groups from indiscriminate and collective risks, making it an appropriate instrument for responding to the international protection needs of individuals and groups affected by climate change and disasters. It can also protect against unpredictable climatic events, such as hurricanes or floods.¹⁷⁸ The Cartagena Declaration requires a review of the objective circumstances of the country of origin, and how individuals or groups face such risks to their lives, security or freedom, whether or not they are individually persecuted, and thus does not require a review of the circumstances in which the individuals find themselves. The risk need not have materialized or been consummated.¹⁷⁹ The mere possibility of harm is sufficient to satisfy the requirements of the definition, allowing it to be used to protect individuals and communities displaced by the adverse climatic effects of persistent adverse weather events, such as desertification and sea-level rise.

94. The Cartagena Declaration also covers the indirect effects of the circumstances listed in the definition, including poverty, economic decline, inflation, violence, disease, food insecurity and malnourishment and displacement.¹⁸⁰ There are precedents for applying the Cartagena Declaration to people affected by the adverse effects of climate change and disasters. Mexico, for example, applied the Cartagena Convention to a number of forcibly displaced Haitians following the 2010 earthquake.¹⁸¹

95. As noted above, climate change can exacerbate conflict or violence, circumstances recognised in the Cartagena Declaration. Amnesty International will now focus specifically on how the adverse effects of climate change can lead to "circumstances which have seriously disturbed public order" and, in some cases, result in "massive human rights violations".

96. The Cartagena Declaration expands the definition of a refugee to persons who have fled their country because their lives, safety or freedom have been threatened by "other circumstances that have seriously disturbed public order".¹⁸²

According to UNHCR, "[t]he notion of 'public order, while not having a universally accepted definition, can be interpreted in the context of the Cartagena refugee definition as referring to the peace and security/stability of the society and the normal functioning of the institutions of the state".¹⁸³ The Principles of Siracusa on the Limitation and Derogation of Provisions of the International Covenant on Civil and Political Rights clearly state that:

The expression "public order"... may be defined as the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order.¹⁸⁴

¹⁷⁷ UNHCR, *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*, 1 October 2020, para. 14.

¹⁷⁸ UNHCR, *UNHCR: Expert roundtable. Interpretation of the extended refugee definition contained in the 1984 Cartagena Declaration on Refugees. Montevideo, Uruguay, 15 and 16 October 2013. Summary Conclusions on the interpretation of the extended refugee definition in the 1984 Cartagena Declaration*, 7 July 2014, para. 8, <https://www.refworld.org/docid/53c52e7d4.html>.

¹⁷⁹ UNHCR, *UNHCR: Expert roundtable. Interpretation of the extended refugee definition contained in the 1984 Cartagena Declaration on Refugees. Montevideo, Uruguay, 15 and 16 October 2013. Summary Conclusions on the interpretation of the extended refugee definition in the 1984 Cartagena Declaration*, 7 July 2014, para. 28.

¹⁸⁰ UNHCR, *UNHCR: Expert roundtable. Interpretation of the extended refugee definition contained in the 1984 Cartagena Declaration on Refugees*. 7 July 2014, para. 9

¹⁸¹ Cleo Hansen-Lohrey, "Applying refugee law in Africa and Latin America: disasters, climate change and public order", *Forced Migration*, May 2022, <https://www.fmreview.org/climate-crisis/hansenlohrey>

¹⁸² *Cartagena Declaration on Refugees*, adopted by the "Colloquium on the International Protection of Refugees in Central America, Mexico and Panama: Legal and Humanitarian Problems", Conclusion Three, 22 November 1984.

¹⁸³ UNHCR, *UNHCR: Expert roundtable. Interpretation of the extended refugee definition contained in the 1984 Cartagena Declaration on Refugees*. 7 July 2014, para. 24.

¹⁸⁴ UN: Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 28 September 1984, E/CN.4/1985/4, para. 22, <https://www.refworld.org/docid/4672bc122.html>.

Meanwhile, UNHCR has stated in its *Legal Considerations on Claims for International Protection in the Context of the Adverse Effects of Climate Change and Disasters* that the concept “encompasses the prevailing level of the administrative, social, political and moral order as assessed according to the effective functioning of the State in relation to its population and based on respect for the rule of law and human dignity to such an extent that the life, security, and freedom of people are protected”.¹⁸⁵

97. Climate change and disasters can disrupt the normal functioning of institutions responsible for guaranteeing and protecting human rights, and cause the collapse, temporary suspension or destruction of public services responsible for ensuring access to water, food and sanitation, resulting in widespread violations of economic and social rights. Circumstances that seriously disrupt public order may, individually or cumulatively, pose a threat to life, security and freedom.

98. In summary, the definition of a refugee in the Cartagena Declaration covers situations in which people are forced to leave their country for reasons associated with the adverse effects of climate change, where these result in serious disturbances of public order – understood as the normal functioning of institutions – that pose a threat to life, security and freedom.

99. Additionally, the definition of a refugee in the Cartagena Declaration includes persons who have fled their country because their life, safety or freedom have been threatened by “massive violations of human rights”.

A situation may be classified as “massive violations of human rights” on the basis of the scale or magnitude of the violation or its effects.¹⁸⁶

The scale or magnitude of the violation is independent of its duration. Massive violations of human rights may be the result of a single event¹⁸⁷ or of several events occurring at different times and/or places. For example, in the context of climate, a sudden event such as a hurricane can result in massive human rights violations. Similarly, slow onset events such as environmental degradation or desertification can lead to massive violations of human rights.

Effects are considered when they go beyond the direct victims to affect other segments of the population, or society as a whole.¹⁸⁸ Some human rights violations resulting from climate change may affect all or large segments of the population or have a particular impact on individuals or groups who have historically suffered and continue to suffer discrimination, exacerbating pre-existing vulnerabilities. As noted above, climate change affects women, Indigenous Peoples, racialized people, or people living in poverty differently, either because they depend on the land for their livelihoods, because they are in a situation of discrimination and marginalization when dealing with the effects of climate change, or because they are unable to enjoy the protection of state institutions.

100. The concept of “massive violations of human rights” in the Cartagena Declaration does not contain an explicit reference to the specific rights that must be violated, providing only that such violations must affect the right to life, security and freedom.¹⁸⁹ This allows for a broad interpretation to encompass the variety of social, economic and cultural rights that may be undermined or violated by the adverse effects of climate change, such as the right to health, water, sanitation, an adequate standard of living or housing. The inability of the state to protect and guarantee

¹⁸⁵ UNHCR, *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*, 1 October 2020, para. 16.

¹⁸⁶ The elements of planning and organization on the side of the perpetrator, whether state or non-state, could also be considered an indication of the existence of massive violations of human rights. UNHCR, *UNHCR: Expert roundtable. Interpretation of the extended refugee definition contained in the 1984 Cartagena Declaration on Refugees*. 7 July 2014, para. 21.

¹⁸⁷ UNHCR, *Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 2 December 2016, HCR/GIP/16/12, <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opensslpdf.pdf?reldoc=y&docid=58c654244>.

¹⁸⁸ UNHCR, *UNHCR: Expert roundtable. Interpretation of the extended refugee definition contained in the 1984 Cartagena Declaration on Refugees*. 7 July 2014, para. 21.

¹⁸⁹ UNHCR: Expert roundtable. Interpretation of the extended refugee definition contained in the 1984 Cartagena Declaration on Refugees (previously cited).

any or all of these rights for large segments of the population due to the effects of climate change may constitute “massive violation of human rights”, giving rise to protection obligations on the part of other states towards affected individuals and communities.

An international protection obligation under the Cartagena Declaration would also arise where a given community is cumulatively affected by multiple human rights violations. This may be the case where the effects of climate change extend to different or multiple areas of community life, preventing the continuity of work, access to food, water, education and, ultimately, where livelihoods cannot be maintained because life itself has become impossible or the place of residence uninhabitable.

101. References to United Nations treaty bodies, or pronouncements by the courts, including the Inter-American Court of Human Rights, can help determine whether a human rights situation qualifies as one of “massive violations of human rights”. Such pronouncements are not required, but when they occur, they are an indication that the presumption of the Cartagena Declaration is met.¹⁹⁰

102. Ultimately, states that have adopted the broad definition of the Cartagena Declaration should recognize as refugees persons who have left their country for reasons related to the adverse effects of climate change, where their life, safety and freedom are threatened as a result of serious disturbances of public order brought about by the effects of climate change, or where climate change has resulted in massive violations of human rights.

It should be noted that the focus of the Cartagena Declaration on objective circumstances and risks in the country of origin or country of habitual residence makes it an appropriate instrument for *prima facie* recognition, that is, for states to recognize the collective protection needs of communities and individuals affected by climate change.¹⁹¹

103. Finally, Amnesty International reiterates the duty of states to ensure that persons affected by the adverse effects of climate change and recognized as refugees under the Cartagena Declaration have access to and enjoy, without discrimination, the same rights as persons recognized as refugees under the 1951 Geneva Convention. States also have an obligation to respect the principle of non-refoulement with respect to persons recognized as refugees under the Cartagena Declaration.

Complementary or humanitarian forms of protection for persons who cannot be returned for reasons related to climate change and disasters

104. Several countries in the Americas and elsewhere – recognizing that the principle of non-refoulement is a broader right in terms of content and scope than that which governs the application of international refugee law – have introduced at the national level forms of international protection that are defined as “complementary” (or “subsidiary” or “alternative”). These “complementary” forms are intended to offer protection and regular migratory status to persons who, while not recognized as refugees under the 1951 Convention, cannot be returned to their country of origin due to other circumstances where the principle of non-refoulement applies. In this sense, as stated by the Inter-American Commission on Human Rights, “the mechanism of complementary protection results in a broad expression of the content and scope of the right to *non-refoulement*, through which States ensure the rights of individuals who do not qualify as refugees or for another immigration status but cannot be returned”.¹⁹²

105. Similarly, this Honourable Court has considered that “complementary protection is a way in which the State acknowledges the person’s situation, identifies his risks and ascertains his needs”.¹⁹³ This Court has previously noted

¹⁹⁰ UNHCR: Expert roundtable. Interpretation of the extended refugee definition contained in the 1984 Cartagena Declaration on Refugees, para. 22.

¹⁹¹ UNHCR: Expert roundtable. Interpretation of the extended refugee definition contained in the 1984 Cartagena Declaration on Refugees, 7 July 2014, paras 8, 29 and 35. See also UNHCR, *Guidelines on International Protection No. 11. Prima Facie Recognition of Refugee Status*. HCR/GIP/15/11, 24 June 2015, paras 5 and 16. <https://www.refworld.org/docid/555c335a4.html>.

¹⁹² IACHR, Forced Migration of Nicaraguans to Costa Rica, 8 September 2019, para. 211. <http://www.oas.org/en/iachr/reports/pdfs/ForcedMigration-Nicaragua-CostaRica.pdf>.

¹⁹³ Inter-American Court of Human Rights, Advisory Opinion OC-21/14 of 19 August 2014. Rights and Guarantees of children in the Context of Migration and/or in Need of International Protection, para. 238. https://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf.

that “some type of standardized protection should exist for persons who have not been recognized as regular migrants nor qualifying under refugee status, but whose return would, however, be contrary to the general obligations of *non-refoulement* under international human rights law”.¹⁹⁴ In fact, the Court has held that “complementary protection constitutes a normative development that is consistent with the principle of *non-refoulement*” for persons who are not recognized as refugees and do not qualify for any other migratory status.¹⁹⁵

As explained above, the principle of non-refoulement must also be applied to persons fleeing human rights violations related to the adverse effects of climate change or other environmental disasters. As these persons are not always recognized as refugees or have no access to other regular forms of migration, it follows that they should be granted complementary protection status as a “normative development that is consistent with the principle of *non-refoulement*”.¹⁹⁶

106. The Honourable Court has also linked the need to grant complementary forms of protection to the analogy between the need for protection against violations (or continuing violations) of the human rights of refugees and those enjoying complementary protection, stating that “they should obtain similar protection”.¹⁹⁷ It follows that the complementary protection status should not only confirm the prohibition of refoulement, but also “recognize the basic rights of the persons protected.”¹⁹⁸ In this regard, UNHCR has reminded states that complementary forms of protection must be based on the principle of legality – they must be defined by law –, they must be accessible to all persons and they must guarantee the right to health care, work, family reunification, education, freedom of movement and access to adequate housing.¹⁹⁹

107. Some countries, both in the Americas and in other parts of the world, have already recognized this need in practice with regard to people displaced by natural disasters and by the adverse effects of climate change. In the United States of America, for example, “Temporary Protected Status” (TPS) was established as a form of humanitarian protection for people already in the United States from forced return to their countries of origin affected by environmental disasters for persons already in the United States. Successive administrations have continued to use TPS to provide shelter to people whose home countries have been affected by earthquakes, floods, droughts or other environmental disasters.²⁰⁰ Outside the Americas, the obligation to provide protection from risks arising from environmental disasters has been recognized since 2018, for example, in Italy, where legislation provides that if “the country to which the foreigner should return is in a situation of serious calamity that does not allow the return and stay in safe conditions, [the authority] shall issue a residence permit for calamity”.²⁰¹ As can be seen above, the need

¹⁹⁴ Inter-American Court of Human Rights, Advisory Opinion OC-21/14 of 19 August 2014. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, para. 237. https://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf. The Court also referred to similar judgments of the European Court of Human Rights, such as in the case of *M.S.S. v. Belgium and Greece*, where it considered that “the fact that an asylum seeker is left in a precarious situation, with no access to certain minimum living conditions, may constitute a violation of the prohibition of inhuman or degrading treatment” see para. 237 and footnote 470 (Cfr. TEDH, Case of *M.S.S. v. Belgium and Greece* [GS], No. 30696/09. Judgment of 21 January 2011, paras 249 to 264).

¹⁹⁵ Inter-American Court of Human Rights, Advisory Opinion OC-21/14 of 19 August 2014. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, para. 240, https://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf.

¹⁹⁶ Inter-American Court of Human Rights, Advisory Opinion OC-21/14.

¹⁹⁷ Inter-American Court of Human Rights, Advisory Opinion OC-21/14, 239.

¹⁹⁸ Inter-American Court of Human Rights, Advisory Opinion OC-21/14, 240.

¹⁹⁹ UNHCR, *Guidance Note on International Protection Considerations for Venezuelans. Update I*, May 2019, <https://www.refworld.org/docid/5cd1950f4.html>.

²⁰⁰ Amnesty International. Amnesty International USA policy recommendations on climate displacement, 28 May 2021. https://www.amnestyusa.org/updates/amnesty-climate-displacement-recommendations-may-2021/#_ftnref7; the United States has an additional form of humanitarian protection from forced return, namely “Deferred Enforced Departure” (DED), applicable in the case of natural disasters or conflict. DED derives from the president’s authority and could be expanded to include protection from forced return in the context of climate change.

²⁰¹ Article 20 bis of Legislative Decree 286/1998 (Italy). See also https://home-affairs.ec.europa.eu/system/files/2023-05/EMN_Inform_climate_related_migration_final_May2023_090523.pdf. Prior to 2023, an earlier version of the same article did not require the calamity to be “contingent and serious”, thus allowing the permit to be granted in all cases where the socio-environmental context was so degraded as to expose the person to the risk that his or her fundamental rights to life, liberty and self-determination would be nullified or at least diminished. Ministry of Labour and Social Policy (Italy). Work and Social Policies Ministry (Italy), “Permesso di soggiorno per calamita’ naturale. Cosa è cambiato dopo il Decreto Cutro?”, <https://integrazionemigranti.gov.it/it/>.

to provide protection and, consequently, residence permits, has also been recognized by a number of national courts, particularly in Europe.²⁰²

108. Similar considerations can be extended to other forms of protection on humanitarian protection, meaning a status that states reserve the right to grant to persons who, while not being recognized as refugees or benefiting from complementary forms of protection, find themselves in exceptional situations of particular vulnerability or risk (such as persons who are seriously ill), which make forced return unadvisable or impracticable. In general, in cases where return is not advisable or is temporarily impossible for practical reasons, such as lack of documentation or consular assistance, states must formalize the situation of individuals and grant some form of residence permit that ensures respect for and protection of human rights, and in particular the right to an adequate standard of living. Where it is expected that people will not be able to return because of the severe impacts of climate change, and that such effects will be permanent, those affected should have access to permanent regularization pathways.

109. In light of these considerations, Amnesty International believes that complementary forms of international protection providing protection against refoulement should be granted to persons who are in a country other than their own and who, in the event of refoulement, fear violations of their human rights in the context of climate change or other environmental disasters.

On shared responsibility, relocation and safe and regular pathways

110. The climate crisis also creates obligations for international solidarity and cooperation, and a shared responsibility to protect people affected by climate change-related displacement.

The concept of shared responsibility is rooted in refugee law.²⁰³ Together with the principle of non-refoulement, shared responsibility is a cornerstone of the refugee protection system that brings with it the obligation of states to support each other in hosting refugees. They must seek and provide aid and engage in international cooperation to ensure that refugees can reach a place of safety and access the assistance they need. Effective cooperation and shared responsibility are essential for upholding the right to asylum, protecting refugees and providing durable solutions such as relocation or other complementary protection pathways.

111. This principle has been reaffirmed in the 2018 Global Compact on Refugees, through which states have expressed their willingness to strengthen international solidarity and implement a predictable and equitable system of responsibility-sharing, with the aim of protecting and assisting refugees, and supporting host countries and communities.²⁰⁴

112. The principle of shared responsibility applies in the context of persons who cannot be returned to their country of origin or habitual residence because of climate change. The Global Compact on Refugees recognises that “climate, environmental degradation and natural disasters increasingly interact with the drivers of refugee movements.”²⁰⁵

113. With regard to climate change-related displacement, the principle of shared responsibility applicable to refugees must be complemented by the principle of common but differentiated responsibilities in environmental law. States that are most responsible for climate change and have contributed the most to the damage caused must accept their collective responsibility to provide remedy and reparation to those affected by climate change. In some cases, this

²⁰² Article 20 bis of Legislative Decree 286/1998 (previously cited).

²⁰³ The preamble to the Geneva Convention Relating to the Status of Refugees recognizes the role of cooperation and international solidarity in the protection of refugees, considering that “the grant of asylum may place unduly heavy burdens on certain countries, and that... a solution... cannot therefore be achieved without international co-operation”. The principle of shared responsibility has also been acknowledged in resolutions of the UNHCR Executive Committee. See Executive Committee of the High Commissioner’s Programme, *Conclusion on International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations No. 100 (LV) - 2004*, 8 October 2004, No. 100 (LV) <https://www.refworld.org/docid/41751fd82.html>.

²⁰⁴ The United Nations General Assembly (UNGA) adopted resolution (A RES/73/151) on 17 December 2018, on the Office of the United Nations High Commissioner for Refugees, affirming the Global Compact on Refugees (as provided in A/73/12 (Part II)). *Global Compact on Refugees*, paras 5, 14 and 15, 17 December 2018, https://digitallibrary.un.org/record/1660291/files/A_RES_73_151-EN.pdf.

²⁰⁵ UNGA, *Global Compact on Refugees*, para. 8.

could include admitting to their territory persons in need of relocation, temporary evacuation or admission as a result of disasters and climate change.

114. The Global Compact for Safe, Orderly and Regular Migration adopted in 2018 refers to the commitment of states to promote cooperation for “evacuation planning, reception and assistance arrangements”²⁰⁶ for people affected by climate change, disasters and environmental degradation. The Compact also commits states to “[h]armonize and develop approaches and mechanisms at the subregional and regional levels to address the vulnerabilities of persons affected by sudden-onset and slow-onset natural disasters, by ensuring that they have access to humanitarian assistance that meets their essential needs with full respect for their rights wherever they are”,²⁰⁷ and “[d]evelop coherent approaches to address the challenges of migration movements in the context of sudden-onset and slow-onset natural disasters”.²⁰⁸

115. Furthermore, the duty of international cooperation, based on Article 2(1) of the International Covenant on Economic, Social and Cultural Rights, constitutes an extraterritorial obligation which, in the context of the movement of people across international borders as a climate change adaptation strategy, translates into specific obligations for states: 1) obligation to cooperate to ensure adequate resources are available to respond to human mobility in the context of climate change. This includes ensuring that existing climate funding can be allocated to measures aimed at reducing the risk of forced displacement, as well as providing additional funding to assist communities that have been displaced or may need to be relocated as the result of loss and damage caused by the climate crisis;²⁰⁹ 2) obligation to cooperate to implement the recommendations of the Global Compacts and to strengthen regional cooperation and coordination with a view to facilitating admission and providing durable solutions to people who are displaced on account of the adverse effects of climate change;²¹⁰ 3) obligation to establish clear protection mechanisms to accept and integrate in their territory displaced persons who are unable to return to their country of origin due to the impacts of climate change.²¹¹

116. With regard to point 2) on regional cooperation and coordination, it should be noted that protection and admission practices vary across countries and that there is a need to standardize practices and regulations at the regional level and adopt national frameworks to respond to human mobility in the context of climate change. In this regard, standardization of protection, admission and stay frameworks and practices at the regional or subregional level should incorporate and take on board the recommendations of the Nansen Initiative's *Agenda for the Protection of Persons Displaced across Borders in the Context of Disasters and Climate Change*.²¹² At the subregional level, the South American Conference on Migration has adopted *Guidelines on the protection and assistance of cross-border displaced persons and migrants in countries affected by disasters*.²¹³

²⁰⁶ UNGA, Resolution adopted on 19 December 2018 on the *Global Compact for Safe, Orderly and Regular Migration*, A/RES/73/195, para. 18 j) https://digitallibrary.un.org/record/1660537/files/A_RES_73_195-EN.pdf.

²⁰⁷ UNGA, *Global Compact for Safe, Orderly and Regular Migration*, 19 December 2018, para. 18 (k).

²⁰⁸ UNGA, *Global Compact for Safe, Orderly and Regular Migration*, 19 December 2018, para. 18 (l).

²⁰⁹ Amnesty International, *Stop Burning our Rights* pp. 121-122; *Sendai Framework for Disaster Risk Reduction 2015-2030*, 18 March 2015 (UN Doc. A/CONF.224/CRP.1).

²¹⁰ Amnesty International, *Stop Burning our Rights*; HCHR, *Addressing Human Rights Protection Gaps in the Context of Migration and Displacement in Climate Change*, para. 66(l); UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Report, 15 July 2019, UN Doc. A/74/161, para. 68.

²¹¹ Amnesty International, *Stop Burning our Rights*; The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, Volume I, 2015.

²¹² The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, Volume I, 2015, paras 40 and 43. <https://disasterdisplacement.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf>

²¹³ South American Conference on Migration, *Regional guidelines on the protection and assistance of cross-border displaced persons and migrants in countries affected by disasters*, https://disasterdisplacement.org/wp-content/uploads/2019/06/CSM-Lineamientos-regionales-personas-desplazadas-por-desastres_compressed.pdf.

117. The recommendations provided include visa waivers for nationals or habitual residents of disaster-affected areas, expedited processing and renewal of visas, at least temporary admission to the territory, and suspension of returns to affected areas.²¹⁴

Relocation of refugees and community sponsorship

118. Relocation is an essential component of the principle of responsibility-sharing and provides a durable solution for refugees who qualify for relocation.²¹⁵ Given that asylum claims made in the context of climate change and disasters may constitute grounds for recognition of refugee status, relocation should benefit some of the persons displaced as a result of climate change.

119. In addition, community sponsorship would provide another pathway for sharing international responsibility for the protection of refugees affected by climate change and disasters.²¹⁶ Community sponsorship allows groups of people to take the lead in directly hosting refugees in communities and supporting their integration, helping to build welcoming communities and engaging people in promoting the relocation and hosting of other refugees.²¹⁷ People displaced by climate change and disasters who qualify for refugee status should be considered for relocation through community sponsorship.

Humanitarian visas

120. Although in some cases humanitarian visas overlap with complementary or humanitarian protection status (see the section on *Complementary or humanitarian forms of protection for persons who cannot be returned for reasons related to climate change and disasters*), Amnesty International believes that they are distinct from these and may provide a regular and secure means of admission to the territory for humanitarian or medical reasons, or potentially to apply for international protection in another state.

121. In the context of climate change, and as part of their shared responsibility towards refugees and international cooperation obligations, states should consider creating special environmental humanitarian visa programmes for persons on the move for reasons related to climate change and disasters or broadening the grounds for granting humanitarian visas in such cases. For example, in 2022 the government of Argentina approved a “Special Humanitarian Visa Programme for nationals and residents of the United Mexican States, Central America and the Caribbean displaced by socio-natural disasters”.²¹⁸

This programme allows nationals or residents of certain countries,²¹⁹ who have been displaced from government-declared disaster areas due to sudden onset hydro-meteorological and geophysical events, specifically hurricanes, tornadoes, extreme rainfall and flooding, earthquakes, tsunamis, landslides/rockfalls and volcanic emissions,²²⁰ to

²¹⁴ Amnesty International, *Principles for responsibility-sharing for refugees in Türkiye And for the international relocation of survivors of the 2023 Türkiye-Syria earthquakes*, 2023, <https://www.amnesty.org/en/wp-content/uploads/2023/06/EUR4468392023ENGLISH.pdf>

²¹⁵ Amnesty International, *Genuine Responsibility Sharing: Amnesty International's Five Proposals*. July 2016, IOR 40/4380/2016, <https://www.amnesty.org/en/documents/ior40/4380/2016/en/>.

²¹⁶ Community sponsorship allows organizations and communities to become sponsors and commit to hosting and helping to settle individuals and families. In many cases, sponsoring communities take on financial responsibilities and provide accompaniment for some time in order to enable refugees to become self-sufficient. This form of relocation began in Canada after the Vietnam War and has been considered a successful model of integration and the participation of individuals and communities in protecting and assisting refugees.

²¹⁷ For example, Argentina created the Syria Community Sponsorship Programme in 2014, which allowed for the hosting of Syrian refugees and served as a precedent for the creation of other sponsorship and visa programmes for environmental purposes. See the section on humanitarian visas.

²¹⁸ Argentina, National Directorate for Migration, Provision 891/2022, <https://www.argentina.gob.ar/normativa/nacional/disposici%C3%B3n-891-2022-364999/texto>.

²¹⁹ United Mexican States; Central American Republics of Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama; Antigua and Barbuda, Commonwealth of the Bahamas, Republic of Barbados, Belize, Commonwealth of Dominica, Grenada, Cooperative Republic of Guyana, Republic of Haiti, Jamaica, Saint Lucia, Federation of Saint Kitts and Nevis, Saint Vincent and the Grenadines, Republic of Suriname, Republic of Trinidad and Tobago; Republic of Cuba; Dominican Republic. Argentina, National Migration Directorate, Annex I to Provision 891/2022, 2022, Article 3. <https://www.argentina.gob.ar/sites/default/files/infoleg/disp891.pdf>.

²²⁰ Argentina, National Migration Directorate, Annex I to Provision 891/2022, 2022, Article 2.

apply for an entry permit and an environmental humanitarian visa. Individuals can be identified by UNHCR or IOM, and there is a period of 120 days for requesting the environmental humanitarian visa following the socio-natural disaster.²²¹ The programme entitles beneficiaries to a temporary visa and a three-year permit, after which they can apply for permanent residence.²²² In addition, accommodation and upkeep for a period of 12 months is provided by individuals, communities and organizations who undertake to support applicants in their process of integration in the country.²²³

Opening and expanding admission pathways and opportunities for safe and regular migration

122. Amnesty International believes that, as part of their shared responsibility towards refugees and obligations of international cooperation, states should open and expand migration pathways so that those who live in areas where climate change and disasters are negatively impacting their human rights have the option to migrate in a safe and regular manner. This would include the facilitation of family reunification and the granting of student and work visas. Such visas must respect, promote and guarantee human rights in accordance with international law, including labour rights, and provide a wide range of mobility opportunities. In addition, states must identify and address the specific barriers faced by disadvantaged and marginalized groups and incorporate a gender perspective in both the design and implementation of regular and legal migration pathways. Finally, they must ensure that visas are accessible, without discrimination, and that the granting of such visas does not perpetuate structural discrimination against women, persons living in poverty, LGTBIQ persons, Indigenous Peoples, racialized persons, and persons with disabilities or other marginalized groups.

Planned relocation in a third country

123. Relocation of individuals, families and communities has been recognized as a climate change adaptation measure and involves physical transfer and resettlement in another location in order to avoid damage that may be caused by events such as flooding or sea level rise. As such, it is a climate change adaptation measure of last resort.²²⁴

124. Although planned relocation mostly takes place within national borders and should therefore be incorporated in state strategies for avoiding predictable climate effects, there are examples of cross-border relocation of island communities from the Pacific.²²⁵

125. Planned relocation may be necessary to protect people from the inevitable impacts of climate change. To constitute a durable solution, states must respect, protect and fulfil the human rights of displaced persons and the host community throughout the relocation process. This imposes obligations on states to avoid forced evictions; respect cultural practices and traditions; provide access to information that is accessible and culturally appropriate; undertake thorough consultations, in particular on the manner, timing and place of relocation, and ensure meaningful participation of those affected in all phases of the process; ensure, in particular, the right to free, prior and informed consent of Indigenous Peoples,²²⁶ paying particular attention to the participation of women and marginalized groups; protect the right of the community to an adequate standard of living; respect the right to self-determination; and

²²¹ Argentina, National Migration Directorate, Annex I to Provision 891/2022, 2022, Article 4.

²²² Argentina, National Migration Directorate, Annex I to Provision 891/2022, articles 5 and 10.

²²³ Argentina, National Migration Directorate, Annex to Provision 891/2022.

²²⁴ Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010, para. 14, <https://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>; *Sendai Framework for Disaster Risk Reduction 2015-2030*, 18 March 2015, <http://www.undrr.org/publication/sendai-framework-disaster-risk-reduction-2015-2030>; The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, Volume I, 2015. <https://disasterdisplacement.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf>

²²⁵ Jane McAdam and Elizabeth Ferris, "Planned Relocations in the Context of Climate Change: Unpacking the Legal and Conceptual Issues", *Cambridge Journal of Comparative Law*, Vol. 4, Issue I 2015.

²²⁶ Article 10 of the United Nations Declaration on the Rights of Indigenous Peoples provides that: "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return." https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

guarantee the right to remedy in the event of human rights violations during the process.²²⁷

126. Relocated persons must have access to regular migration status in the new or receiving state which guarantees access to and enjoyment of human rights, without discrimination, including economic and social rights, and freedom of movement. Planned relocation must not, under any circumstances, result in statelessness.²²⁸

127. In line with their obligation to prevent discrimination,²²⁹ states must take measures to ensure that persons are not discriminated against during the relocation process, by adopting specific protection measures to facilitate the relocation of, for example, older persons, persons with disabilities, or children.²³⁰ This obligation extends to the settlement process in the third country, where proactive measures must be taken to prevent racism and xenophobia.

128. Planned relocation should not worsen the situation of those relocated. If relocated persons are not meaningfully consulted and if the relocation does not restore their rights, including their right to an adequate standard of living, it is unlikely to constitute a durable solution. On the contrary, it may expose people to additional risks, exacerbate existing vulnerabilities and lead to further displacement.²³¹

Temporary evacuation

129. Amnesty International considers temporary evacuation as the physical relocation of people to a safe place for a temporary period of time to avoid an immediate threat from sudden-onset events linked to climate change and disasters. Preventive evacuations must apply the same safeguards as planned relocations. In emergencies, when the threat of harm is imminent, authorities may order the temporary evacuation of individuals and communities. Those who do not wish to leave their place of residence should not be evacuated against their will, unless forced evacuation is provided for by law, is necessary to respond to a serious and imminent threat to their life or health, and less intrusive measures would be insufficient to avert that threat; and is, to the extent possible, carried out after the persons concerned have been informed and consulted.²³² In any case, evacuations, whether voluntary or forced, should be carried out in a manner that does not discriminate and respects the rights to life, dignity, liberty and security.²³³

130. While evacuations usually take place within national borders, temporary evacuation to a neighbouring country could be a temporary solution for border communities affected by climate change-related events such as floods,

²²⁷ Brookings Institution, Georgetown University & UNHCR, Guidance on Protecting People from Disasters and Environmental Change Through Planned Relocation, 2015, http://brookings.edu/wp-content/uploads/2016/06/GUIDANCE_PLANNED-RELOCATION_14-OCT-2015.pdf; UNHCR, Georgetown University & International Organization for Migration, A Toolbox: Planning Relocations to Protect People from Disasters and Environmental Change, 2017, <http://environmentalmigration.iom.int/toolbox-planning-relocations-protect-people-disasters-andenvironmental-change> See also UN Special Rapporteur on the human rights of internally displaced persons, 21 July 2020, UN Doc. A/75/207, para. 46. <https://www.ohchr.org/en/documents/thematic-reports/report-internal-displacement-context-slow-onset-adverse-effects-climate>.

²²⁸ The possibility that some states may disappear due to rising sea levels, particularly in the case of some islands in the Pacific, carries the risk that the citizenship of that state may disappear *de facto* or *de iure*. Statelessness could be the result, unless people are relocated to territories ceded by another state that will allow that states to continue to exist. Alternatively, persons relocated to a third state could be granted the nationality of the host state, acquire durable migration status or be allowed dual nationality. Susin Park, "Climate Change and the Risk of Statelessness: The Situation of Low-Lying Island States", *Legal and Protection Policy Research Series*, UNHCR, May 2011, <https://www.unhcr.org/media/no-20-climate-change-and-risk-statelessness-situation-low-lying-island-states-susin-park>.

²²⁹ International Covenant on Civil and Political Rights, Article 2.1 and Article 26; International Covenant on Economic, Social and Cultural Rights, Article 2.2; International Convention on the Elimination of All Forms of Racial Discrimination, Article 2.1; Convention on the Elimination of All Forms of Discrimination against Women, Article 2; Convention on the Rights of Persons with Disabilities, Article 5.

²³⁰ Saphia Fleury, *Protecting environmental migrants through human-rights based relocation schemes*, June 2023, University of Hull, <https://www.hull.ac.uk/research/institutes/wilberforce/docs/policy-briefing-climate-migration-relocation-saphia-fleury.pdf>.

²³¹ Jane McAdam and Elizabeth Ferris, "Planned Relocations in the Context of Climate Change: Unpacking the Legal and Conceptual Issues", *Cambridge Journal of Comparative Law*, Vol. 4, Issue 1 2015; Saphia Fleury, *Protecting environmental migrants through human-rights based relocation schemes*, June 2023, University of Hull, <https://www.hull.ac.uk/research/institutes/wilberforce/docs/policy-briefing-climate-migration-relocation-saphia-fleury.pdf>.

²³² IASC Operational Guidelines on the protection of persons in situations of natural disasters, 2011, A 1.4 <http://www.ohchr.org/Documents/Issues/IDPersons/OperationalGuidelines.pdf>.

²³³ IASC Operational Guidelines on the protection of persons in situations of natural disasters, 2011, A 1.5 <http://www.ohchr.org/Documents/Issues/IDPersons/OperationalGuidelines.pdf>.

landslides, cyclones and hurricanes (see the section on *Procedural obligations arising from the principle of non-refoulement, access to territory and temporary admission*).

Obligations to respect, protect and fulfil the rights of all migrants and refugees in the context of climate change, environmental degradation and disasters

131. Regardless of the reasons for leaving their homes, migrants and refugees may be particularly or more acutely affected by the adverse effects of climate change. Many of the emergencies that lead to displacement develop in border areas that are particularly vulnerable to the effects of climate change.²³⁴ According to UNHCR, the majority of the world's displaced people are located in “climate change hotspots”,²³⁵ and a growing number of refugee and IDP camps are exposed to or affected by extreme weather events.²³⁶ This exposes displaced persons to secondary displacement or frequent or repeated displacement. For example, Rohingya refugees fleeing violence and persecution in Myanmar have been hosted since 2017 in the border district of Cox's Bazar in Bangladesh, which the World Bank predicts will be the district most affected by climate change in Southeast Asia by 2050.²³⁷

132. Migration policies can put migrants and refugees at particular risk and undermine their right to life and integrity.²³⁸ For example, border militarization measures force migrants and those in need of international protection to seek dangerous routes, such as desert areas, with high temperatures, seas, or forested areas, where they are exposed to dangerous environmental conditions, without access to services or assistance. In August 2023, for example, the bodies of 19 people, believed to be migrants and undocumented asylum seekers, were found in the Greek region of Evros, on the border with Turkey, having died in the forest fires that ravaged the area, unable to seek or receive help.²³⁹ US-Mexico border control policies have forced people to cross desert areas, resulting in thousands of deaths.²⁴⁰ In addition, the increasing number of extreme heat events associated with climate change will further affect people stranded at the border, yet another reason for demanding a change in border control policies that expose people to the risk of death in the desert.²⁴¹

133. At the same time, certain measures for addressing migration and asylum at times put people directly at risk and expose them to the negative impacts of environmental degradation. In 2020, the government of Bangladesh began implementing its policy of relocating up to 100,000 refugees to Bhasan Char, a previously uninhabited low-lying island in the Bay of Bengal, putting the refugees at high risk of flooding and other extreme weather events.²⁴²

²³⁴ UNHCR, “Climate change and forced migration hotspots – From humanitarian response to area-wide adaptation”, 2009, <https://unhcr.org/uk/protection/environment/4a1e4e342/presentation-climate-change-forced-migration-hotspots-humanitarian-response.html>.

²³⁵ UNHCR, *The Environment and Climate Change*, October 2015, <https://unhcr.org/540854f49.pdf>.

²³⁶ BBC, “Refugees at ‘increased risk’ from extreme weather”, 10 December 2019, <https://bbc.co.uk/news/science-environment-50692857>.

²³⁷ World Bank Group, *South Asia's Hotspots – The Impact of Temperature and Precipitation Changes on Living Standards*, 2018, <https://openknowledge.worldbank.org/bitstream/handle/10986/28723/9781464811555.pdf>.

²³⁸ As noted by the former UN Special Rapporteur on extrajudicial, summary or arbitrary executions “countries around the world have designed policies based on deterrence, militarization and extraterritoriality which implicitly or explicitly may tolerate the risk of migrant deaths as part of an effective control of entry. Deterrence policies are punitive, including policies ranging from securing the more accessible border entry points – thereby purposefully funnelling the migration flows into more hazardous terrain – to the imposition of strict detention and return policies.”, AGNU, *Unlawful death of refugees and migrants*, 15 August 2017, A/72/335.

²³⁹ Amnesty International, Greece: Evros wildfire dead are victims of “two great injustices of our times”, 23 August 2023, <https://www.amnesty.org/en/latest/news/2023/08/greece-evros-wildfire-dead-are-victims-of-two-great-injustices-of-our-times/>.

²⁴⁰ Amnesty International, *In hostile terrain: Human rights violations in immigration enforcement in the US southwest*, 2012, <https://www.amnesty.org/es/wp-content/uploads/2021/06/amr510182012en.pdf>.

²⁴¹ Human Rights Watch, *Extreme Heat and US border policies letter to the Biden Administration*, 2021. https://www.hrw.org/sites/default/files/media_2021/09/Extreme%20Heat%20and%20US%20Border%20Policies%20Letter%20to%20the%20Biden%20Administration%2C%2009.15.21.pdf.

²⁴² Amnesty International UK, “Fears for a ‘lost generation’ of Rohingya children in Bangladesh – new briefing”, 29 August 2019, <https://amnesty.org.uk/press-releases/fears-lost-generation-rohingya-children-bangladesh-new-briefing>; Human Rights Watch, “Bangladesh: Protesting Rohingya refugee beaten”, 1 October 2020, <https://hrw.org/news/2020/10/01/bangladesh-protesting-rohingya-refugees-beaten>. Amnesty International, “Rohingya refugees’ safety must be ensured amid violent clashes in Cox’s Bazaar”, 9 October 2020,

134. States' migration and border control policies must respect, protect and guarantee the fundamental right to life, personal integrity and health of migrants and refugees. These basic obligations must apply in the context of climate change and environmental degradation and be interpreted as an obligation on states to never expose migrants and refugees, through their migration policies, to the adverse effects of climate change that may affect their lives or integrity. Rather, states should take positive measures to protect the life and health of migrants and refugees (whether in border areas, within their jurisdiction or elsewhere) in the face of hazardous environmental conditions.

135. This Honourable Court has recognized that the affectation of rights as a result of environmental damage may be felt with greater intensity by certain groups in situations of vulnerability, and that environmental damage will be experienced with greater force in sectors of the population that are already in a vulnerable situation.²⁴³ The IPCC and the Inter-American Commission on Human Rights, among others, recognize that migrant status and migratory situation are among the factors that aggravate vulnerability to the impacts of climate change, as much as gender, race, class, ethnicity, sexuality, Indigenous identity, disability, age or others.²⁴⁴ At the same time, this Court has noted the “need for States to evaluate and execute the obligations [arising from the duties to respect and guarantee the right to life and personal integrity in the context of environmental protection] taking into account the differentiated impact that such obligations could have on certain sectors of the population in order to respect and to ensure the enjoyment of the rights established in the Convention without any discrimination.”²⁴⁵

136. It is therefore important to recognize that climate change poses additional challenges for people in the context of human mobility. This may be due, among others, to existing vulnerabilities and social exclusion, or to their frequent location in areas prone to environmental degradation or disasters. For example, refugees and migrants face specific challenges in the aftermath of extreme weather events, such as barriers to accessing critical information and assistance that could save their lives in the event of a disaster, loss of identity documents to prove their regular status or support their asylum claim, and disruption of specific services.²⁴⁶ However, this risk situation can also be caused by punitive or discriminatory migration management or border control measures that expose them to greater risks, including to their lives, as discussed above.

137. States must therefore take positive and specific measures to ensure that the rights of migrants and refugees are respected in the context of environmental degradation or natural disasters. For example, while not caused by climate change, the 2023 earthquake that struck parts of Syria and Turkey affected millions of refugees living in southern Turkey, including 1.7 million Syrians. In such disasters in places or countries hosting refugees, there is a risk that states may not pay sufficient attention to the needs of refugees in their territory, or that some states may want to use disaster assistance to contain displaced populations in disaster-affected areas for migration control purposes. Amnesty International therefore urged states to ensure that all refugees could access humanitarian assistance without discrimination and that “commitments for humanitarian assistance adequately address the needs of refugees in Türkiye”.²⁴⁷ Amnesty also insisted specifically that “financial assistance... be directed toward addressing humanitarian needs rather than migration control”.²⁴⁸

138. In conclusion, this section has highlighted how refugees, displaced persons and migrants, despite being among

<https://www.amnesty.org/en/latest/press-release/2020/10/bangladesh-rohingya-refugees-safety-must-be-ensured-amid-violent-clashes-in-coxs-bazaar/>.

²⁴³ Inter-American Court of Human Rights, Advisory Opinion OC-23/17, para. 67.

²⁴⁴ IACHR, *Climate Emergency: Scope of Inter-American Human Rights Obligations*, RES 3/2021, p. 6, https://report.ipcc.ch/ar6/wg2/IPCC_AR6_WGII_FullReport.pdf p. 53.

²⁴⁵ Inter-American Court of Human Rights, Advisory Opinion OC-23/17, paras 67-68.

²⁴⁶ See, for example, Grantmakers Concerns with Immigrants and Refugees, “The impact of natural disasters on immigrants and refugees in the United States: What funders need to know in the immediate term”, 2017, <https://www.gcir.org/resources/impact-natural-disasters-immigrants-and-refugees-united-states-what-funders-need-know>; Migrants in Countries in Crisis (MICIC) Initiative, Migrants in Disaster Risk Reduction – Practices for Inclusion, 2017, <https://rm.coe.int/migrants-in-drr-web-final/1680716585>.

²⁴⁷ Amnesty International, *Principles for responsibility-sharing for refugees in Türkiye and for the international relocation of survivors of the 2023 Türkiye-Syria earthquakes* (previously cited).

²⁴⁸ Amnesty International, *Principles for responsibility-sharing for refugees in Türkiye and for the international relocation of survivors of the 2023 Türkiye-Syria earthquakes*.

the groups most affected by climate change and disasters, face significant barriers to their inclusion and participation in decision-making processes in general, and in particular those related to disaster risk reduction and climate change mitigation and adaptation. States should ensure the meaningful, effective and informed participation of all migrants and refugees, particularly women and those who experience intersectional forms of discrimination, in decision-making processes related to climate change and human mobility. Policy frameworks such as the Sendai Framework for Disaster Reduction or the Global Compact on Refugees have recognized this challenge and called for greater inclusion of refugees and migrants in disaster reduction strategies.²⁴⁹

C. REGARDING THE CONVENTION-BASED OBLIGATIONS OF PROTECTION AND PREVENTION FOR TERRITORIAL AND ENVIRONMENTAL DEFENDERS IN THE CONTEXT OF THE CLIMATE EMERGENCY

139. In this section of the brief, Amnesty International will provide elements drawn from the experience and analysis of the organization to respond to the question posed by the states regarding the measures and policies that states should adopt to facilitate the work of environmental defenders, for the pronouncement of this Honourable Court.

140. In the first part of this section, the organization aims to contribute to the general discussion on the importance of defending human rights in the Americas, focusing on the defence of land, territory, climate and the environment. The second part explains why the defence of human rights is a human right in itself and what the implications of this are in terms of the international obligations of states under the American Convention on Human Rights (hereinafter ACHR) and other instruments on which this Court can rule. The third part sets out how the right to defend human rights intersects with other human rights and what the international obligations of states are in this regard. The fourth part of the section looks in detail at one of the intersections described, namely that which arises when human rights defenders are attacked or threatened, triggering the obligation of states to adopt collective protection measures to identify, address, mitigate and eliminate the structural causes of such violence.

141. Amnesty International considers that a preliminary clarification is warranted here. While examples of cases documented by the organization in the past are presented throughout this brief, it is not the intention that the Court should make any pronouncement on them. The purpose of such references is to provide the Honourable Court with information on the historical and current situation of the defence of human rights on the continent, based on information gathered, processed and contrasted by Amnesty International over several decades. This may serve as a contribution to the dialogue that the Honourable Court will conduct on the best way to outline the obligations of states in the protection of human rights defenders and, ultimately, to assist them in complying with their international commitments.

142. In the Americas, as in the rest of the world, individuals, groups and communities dedicate their lives to defending their human rights and those of others. This activity is not only the exercise of a right in itself, as will be explained below, but also the assumption of a role that entails a series of special obligations for states: that of human rights defenders.

143. According to the jurisprudence of this Honourable Court, whoever carries out the activity of defending human rights is a human rights defender; a position similar to that of the IACHR.²⁵⁰ The definition of a human rights defender lies in the work carried out²⁵¹ and not in other personal qualities, such as having a law degree or being a public official.²⁵² The only thing relevant is to verify that a person is involved, among other activities, in “the promotion and

²⁴⁹ United Nations Office for Disaster Risk Reduction (UNISDR), *Sendai Framework for Disaster Risk Reduction 2015-2030*, 2015 <http://www.undrr.org/publication/sendai-framework-disaster-risk-reduction-2015-2030>; paras 7, 27(h) and 36(a)(vi). See also United Nations Refugee Agency (UNHCR), Report of the United Nations High Commissioner for Refugees, Part II: *Global Compact on Refugees*, UN Doc. A/73/12 (Part II), para. 79.

²⁵⁰ IACHR. Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.LV/II.124. 7 March 2006, paras 18-19.

²⁵¹ Inter-American Court of Human Rights, Case of Luna López v. Honduras. Merits, Reparations and Costs. Judgment of 10 October 2013. Series C No. 269, para. 122. Inter-American Court of Human Rights, Case of Human Rights Defender et al. v. Guatemala. Preliminary objections, Merits, Reparations and Costs. Judgment of 28 August 2014. Series C No. 283, para. 129.

²⁵² Inter-American Court of Human Rights, Case of Baraona Bray v. Chile. Preliminary objections, Merits, Reparations and Costs. Judgment of 24 November 2022. Series C No. 481, para. 70.

protection of human rights,”²⁵³ nothing more.

144. Nor does being a human rights defender depend on the category of the rights being defended. Amnesty International uses the term “human rights defender” in an inclusive sense and believes that even a person whose actions are not explicitly or obviously related to the defence of one or more human rights may also be considered a human rights defender. This would include, for example, health professionals, members of the judiciary and journalists when they make an “extra effort in the normal course of their work to ensure that human rights standards are effectively upheld”.²⁵⁴

145. This Honourable Court has been clear in that states have a general safeguarding obligation, which consists of the duty to create the conditions necessary for the effective exercise and enjoyment of the rights established in the ACHR and other international instruments. This obligation is intrinsically linked to the protection and recognition of the importance of the work of human rights defenders,²⁵⁵ since their role is complementary not only to that of the states, but also that of the inter-American system for the protection of human rights as a whole.²⁵⁶

146. Early in its jurisprudence, the Honourable Court recognized that defending the environment constitutes a human rights defence activity, given that “there is an undeniable link between the protection of the environment and the protection of other human rights”.²⁵⁷ It also noted the negative impact of environmental degradation and adverse effects of climate change on the rights of individuals and communities.²⁵⁸

Moreover, the Honourable Court has considered that the right to a healthy environment is part of the list of economic, social, cultural and environmental rights contained in the inter-American *corpus iuris*. First, because it is expressly established in Article 11 of the Protocol of San Salvador. Secondly, because it is covered by the provisions of Article 26 of the ACHR, which is based on the obligation of states to take measures to achieve integral development, as set out in the Charter of the Organisation of American States. Thirdly, because it is recognized in the national laws of several states of the region, as well as in some international instruments such as the American Declaration on the Rights of Indigenous Peoples, the Human Rights Declaration of the Association of Southeast Asian Nations and the Arab Charter on Human Rights.²⁵⁹

147. The Honourable Court has therefore understood, in accordance with the needs of the times and in response to the context of the Americas, that the work of environmental defenders is important and requires special protection. Moreover, it has considered that recognition of this work is urgent and necessary in the countries of the region, since “an increasing number of incidents have been reported involving threats and acts of violence against and murders of environmentalists owing to their work”.²⁶⁰ It has also explicitly recognised that the category of “human rights

²⁵³ Inter-American Court of Human Rights, Case of Human Rights Defender et al. v. Guatemala. Preliminary objections, Merits, Reparations and Costs. Judgment of 28 August 2014. Series C No. 283, para. 129.

²⁵⁴ Amnesty International, *Transforming pain into hope: Human rights defenders in the Americas* (Index: AMR 01/006/2012), 7 December 2012, <https://www.amnesty.org/en/documents/amr01/006/2012/en/>, p. 13.

²⁵⁵ Inter-American Court of Human Rights, Case of Nogueira de Carvalho et al. v. Brazil. Preliminary objections and Merits. Judgment of 28 November 2006. Series C No. 161, para. 74. Inter-American Court of Human Rights, Case of Digna Ochoa and family members v. Mexico. Preliminary objections, Merits, Reparations and Costs. Judgment of 25 November 2021. Series C No. 447, para. 100.

²⁵⁶ Inter-American Court of Human Rights, Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of 27 November 2008. Serie C No. 192, para. 87.

²⁵⁷ Inter-American Court of Human Rights, Case of Luna López v. Honduras. Merits, Reparations and Costs. Judgment of 10 October 2013. Series C No. 269, para. 123.

²⁵⁸ Inter-American Court of Human Rights, Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs. Judgment of 3 April 2009. Series C No. 196, para. 148.

²⁵⁹ Inter-American Court of Human Rights, 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) in relation to article 1(1) and 2 of the American Convention on Human Rights). Advisory Opinion OC-23/17, 15 November 2017, Series A No. 23, paras 56-58.

²⁶⁰ Inter-American Court of Human Rights, Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs. Judgment of 3 April 2009. Series C No. 196, para. 149.

defender” includes environmental defenders,²⁶¹ and that respecting and guaranteeing the rights of human rights defenders in environmental matters is a commitment acquired by the states parties to the ACHR.²⁶²

148. The category of “human rights defenders in environmental matters” has also recently been used by states in the region. Indeed, the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (hereinafter the Escazú Agreement), uses it to include “persons, groups and organizations that promote and defend human rights in environmental matters”.²⁶³ According to the UN Special Rapporteur on the situation of human rights defenders, the entry into force of this agreement is an important milestone, as it is the first binding international instrument that includes specific provisions for the protection of human rights defenders in environmental matters.²⁶⁴

149. With regard to the request for an advisory opinion submitted by the Republic of Chile and the Republic of Colombia, human rights defenders, including those defending land, territory, climate and the environment, contribute to actions that guarantee the human rights of all people in the context of climate change. Their work is therefore important both for its intrinsic value as human rights advocacy and for the positive impact it has on communities, societies and states. Indeed, the work of human rights defenders is particularly important for individuals and communities most affected by the negative impacts of global warming and the mitigation and adaptation measures taken by state and non-state actors.

150. Over the years, Amnesty International has documented the efforts of individuals, groups and organizations in the Americas defending the environment in the context of climate change. For example, it has highlighted the historic struggle for states to move away from reliance on energy sources based on the burning of fossil fuels²⁶⁵ and to maintain or restore the ecosystems that help mitigate climate change.²⁶⁶

151. Despite the valuable contribution made by these individuals, groups and organizations to safeguard human rights in the context of climate change, states in the Americas are still failing to recognize and protect them. Human rights defenders are constant targets of attacks and face obstacles in carrying out their work, yet states fail to take adequate and sufficient measures to guarantee a safe space for them.

152. For this reason, Amnesty International believes that the Honourable Court should urgently develop its jurisprudence in three ways. First, by reaffirming that the defence of human rights is a right in itself that must be respected and guaranteed by the states of the Americas, including in cases where the individual's work revolves around rights related to land, territory, climate and the environment. Second, by drawing on its extensive jurisprudence on the protection of human rights defenders to illustrate the different scenarios in which violence affects their rights and work, specifying how a violation of the right to defend human rights intersects with other human rights, and explaining the obligations of the state to prevent or remedy such violations. Third, to further develop its jurisprudence on the obligation to protect human rights defenders and to clearly define the state's obligation to address the structural causes of violence against defenders through the concept of collective protection, particularly in the case of individuals, groups or communities defending land, territory, climate and the environment.

153. Amnesty International will now elaborate on each of these issues and offers to the Honourable Court its extensive work of case documentation and legal analysis based on international human rights law as an input to the

²⁶¹ Inter-American Court of Human Rights, Case of Baraona Bray v. Chile. Preliminary objections, Merits, Reparations and Costs. Judgment of 24 November 2022. Series C No. 481, para. 71.

²⁶² Inter-American Court of Human Rights, Case of Baraona Bray v. Chile. Preliminary objections, Merits, Reparations and Costs. Judgment of 24 November 2022. Series C No. 481, para. 78.

²⁶³ Economic Commission for Latin America and the Caribbean, Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean. LC/PUB.2018/8/Rev.1. 2022, Article 9.1.

²⁶⁴ Special Rapporteur on the situation of human rights defenders, Report, 24 December 2020, UN Doc A/HRC/46/35, para. 33.

²⁶⁵ Amnesty International, *They will not stop us: Justice and protection for Amazonian Women, defenders of the land, territory and environment* (Index: AMR 28/0039/2019), 30 April 2019, <https://www.amnesty.org/en/documents/amr28/0039/2019/en/>

²⁶⁶ Amnesty International, *Why do they want to kill us? Lack of a safe space to defend human rights in Colombia* (Index: AMR 23/3009/2020), 18 October 2020, <https://www.amnesty.org/en/documents/amr23/3009/2020/en/>

decisions to be taken following the request for an advisory opinion submitted by the Republic of Chile and the Republic of Colombia.

The right to defend human rights

154. In their request for an advisory opinion, one of the questions submitted by the Republic of Chile and the Republic of Colombia for consideration by this Honourable Court was “What measures and policies should States adopt in order to facilitate the work of environmental human rights defenders?”²⁶⁷ Amnesty International believes that the answer to this question must begin with the recognition that the defence of human rights, environmental or otherwise, is a right in itself, since “States have the primary responsibility to respect, protect and fulfil human rights, including the right to defend human rights”.²⁶⁸ The Court can draw on its own jurisprudence, as well as on the pronouncements of other bodies that apply international human rights law and soft law instruments, to make a statement in this sense.

155. First, the Declaration of the United Nations General Assembly on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (hereinafter the Declaration on Human Rights Defenders) recognizes the right of everyone, individually and in association with others, to promote and seek the protection and realization of human rights.²⁶⁹

156. The General Assembly of the Organization of American States has also recognized and supported the work of human rights defenders and their contribution to the promotion, respect and protection of fundamental rights and freedoms in the Americas.²⁷⁰ Indeed, “during its regular sessions the General Assembly has taken up a specific agenda item on the situation of human rights defenders, [has] called on the states to provide them special protection, and has reiterated that the obligation to promote and protect human rights is first and foremost an obligation of the states”.²⁷¹

157. The IACHR has long maintained that there is a right to defend human rights. In its first report on the situation of human rights defenders in the Americas, it stated that “[t]he observance of human rights is a matter of universal concern, accordingly, the right to defend those rights may not be subject to geographical restrictions. The states must guarantee that the persons under their jurisdictions may exercise this right domestically and internationally”.²⁷² In its second report on the matter, the Commission went further, stating that it considers that the right to defend human rights has been recognized in the inter-American system for the protection of human rights.²⁷³

158. For its part, this Honourable Court has also explicitly used the term “right to defend human rights”. For example, in the case of *Valle Jaramillo v. Colombia*, it stated that the murder of a prominent defender can have an intimidating effect on other defenders and “directly reduce the possibility of human rights defenders exercising their right to perform their work by means of denunciations”.²⁷⁴

159. This Court has also used the Declaration on Human Rights Defenders to support its arguments on the rights of human rights defenders in the Americas. For example, in the case of *Human Rights Defender v. Guatemala*, this Honourable Court expressly cited Article 1 of the Declaration on Human Rights Defenders, which refers to the right

²⁶⁷ Case file: Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile, 9 January 2023, p. 12.

²⁶⁸ Amnesty International, *Transforming pain into hope* (previously cited), p. 10.

²⁶⁹ UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, 8 March 1999, UN Doc. A/RES/53/144, Article 1.

²⁷⁰ OAS General Assembly, *Human Rights Defenders in the Americas. Support for the individuals, groups, and organizations of civil society working to promote and protect human rights in the Americas*. AG/RES.1671. 7 June 1999.

²⁷¹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, 7 March 2006, OEA/Ser. LV/II.124, para. 22.

²⁷² IACHR, *Report on the Situation of Human Rights Defenders in the Americas* (previously cited), para. 36.

²⁷³ IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.LV/II.Doc.66. 31 December 2011, para. 16.

²⁷⁴ Inter-American Court of Human Rights, *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of 27 November 2008. Series C No. 192, para. 96.

to defend human rights.²⁷⁵ Similarly in the case of *Baraona Bray v. Chile*, where the Court also referred to the provisions of the Escazú Agreement in this regard.²⁷⁶

160. The situation of violence against environmental defenders in the Americas is critical. Amnesty International has documented attacks and closure of spaces for defenders in the region, including environmental defenders, in countries such as Brazil,²⁷⁷ Colombia,²⁷⁸ Ecuador,²⁷⁹ Guatemala,²⁸⁰ México,²⁸¹ Paraguay,²⁸² and Peru,²⁸³ among others. This Honourable Court has also recognized that the duty of states to create adequate legal and factual conditions for carrying out the work of defending human rights is particularly important given “the difficulties associated with the defense of the environment in the countries of the region, where there are a growing number of reports of threats, acts of violence and murders of environmentalists because of their work”.²⁸⁴

161. In this context, the request for an advisory opinion submitted by the Republic of Chile and the Republic of Colombia is an excellent opportunity for this Honourable Court to systematize its jurisprudence and clearly define the right to defend human rights and the obligations that this imposes on states of the Americas. The answer to the question “What measures and policies should States adopt to facilitate the work of environmental human rights defenders?”²⁸⁵ must begin with the recognition that the creation and maintenance of safe and enabling spaces for the defence of the environment is an obligation derived from the right to defend human rights, from the general obligation of guarantee contained in Article 1.1 of the ACHR and, for the states to which it is applicable, from Article 9 of the Escazú Agreement.

162. Recognition of the existence of the right to defend human rights must go together with the systematization of the obligations deriving therefrom for the states parties to the ACHR. In this regard, the Court has already indicated that states must, at a minimum, i) provide the resources necessary for human rights defenders to conduct their activities freely;²⁸⁶ ii) protect them from threats in order to avoid attacks on their life and integrity;²⁸⁷ iii) refrain from imposing obstacles that hinder their work;²⁸⁸ and iv) combat impunity by investigating any violations committed against them.²⁸⁹ Furthermore, this Honourable Court has also reaffirmed the provisions of Article 9 of the Escazú

²⁷⁵ Inter-American Court of Human Rights, *Case of Human Rights Defender et al. v. Guatemala*. Preliminary objections, Merits, Reparations and Costs. Judgment of 28 August 2014. Series C No. 283, para. 129.

²⁷⁶ Inter-American Court of Human Rights, *Case of Baraona Bray v. Chile*. Preliminary objections, Merits, Reparations and Costs. Judgment of 24 November 2022. Series C No. 481, paras 72-73, 77.

²⁷⁷ Amnesty International, *Transforming pain into hope*, p. 2.

²⁷⁸ Amnesty International, *Why do they want to kill us?* (previously cited).

²⁷⁹ Amnesty International, *They will not stop us* (previously cited).

²⁸⁰ Amnesty International, *We are defending the land with our blood: defenders of the land, territory and environment in Honduras and Guatemala* (Index: AMR 01/4562/2016), 1 September 2016, <https://www.amnesty.org/en/documents/amr01/4562/2016/en/>

²⁸¹ Amnesty International, *Mexico: Land and Freedom? Criminalization of Defenders of the Land, Territory and Environment* (Index: AMR 41/7076/2023), 13 September 2023, <https://www.amnesty.org/en/documents/amr41/7076/2023/en/>

²⁸² Amnesty International, *A recipe for criminalization: Defenders of the environment, territory and land in Peru and Paraguay* (Index: AMR 01/8158/2018), 26 April 2018, <https://www.amnesty.org/en/documents/amr01/8158/2018/en/>

²⁸³ Amnesty International, *A recipe for criminalization* (previously cited).

²⁸⁴ Inter-American Court of Human Rights, *Case of Baraona Bray v. Chile*. Preliminary objections, Merits, Reparations and Costs. Judgment of 24 November 2022. Series C No. 481, para. 79.

²⁸⁵ Case file: Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile, 9 January 2023, p. 12.

²⁸⁶ Inter-American Court of Human Rights, *Case of Digna Ochoa and family members v. Mexico* Preliminary objections, Merits, Reparations and Costs. Judgment of 25 November 2021. Series C No. 447, para. 100.

²⁸⁷ Inter-American Court of Human Rights, *Case of Digna Ochoa and family members v. Mexico* Preliminary objections, Merits, Reparations and Costs. Judgment of 25 November 2021. Series C No. 447, para. 100.

²⁸⁸ Inter-American Court of Human Rights, *Case of Nogueira de Carvalho et al. v. Brazil*. Preliminary objections and Merits. Judgment of 28 November 2006. Series C No. 161, para. 77.

²⁸⁹ Inter-American Court of Human Rights, *Case of Nogueira de Carvalho et al. v. Brazil*. Preliminary objections and Merits. Judgment of 28 November 2006. Series C No. 161, para. 77.

Agreement, in the sense of establishing the obligation of states “to guarantee ‘a safe and enabling environment’ so that human rights defenders working on environmental issues ‘can act free from threat, restrictions and insecurity’”.²⁹⁰ On these issues, the Honourable Court has largely followed the pronouncement made by the United Nations General Assembly when it adopted the Declaration on Human Rights Defenders.²⁹¹

163. Furthermore, by virtue of the principles of interdependence and indivisibility, state obligations with respect to the right to a healthy environment become relevant in the exercise of the right to defend human rights in environmental matters. This is all the more so when it is understood that the nature of the right to defend human rights is also procedural and instrumental, making it a means of demanding the respect and guarantee of other human rights. This implies, for example, taking into account the link between the right to a healthy environment and the obligations to respect and guarantee the right to life and personal integrity, as recently emphasized by this Honourable Court.²⁹²

164. In this respect, the request for an advisory opinion submitted by the Republic of Chile and the Republic of Colombia is also an opportunity for this Honourable Court to further examine the international obligations deriving from the recognition of the right to defend human rights. This involves, on the one hand, determining how the general obligations to respect and guarantee the right to defend human rights are materialised and, on the other hand, explaining the implications of the instrumental and procedural role of the right to defend human rights and how the obligations deriving from the rights that defenders seek to promote extend to the defenders themselves.

Relationship between the right to defend human rights and other human rights, with regard to violence against defenders

165. In exercising the right to defend human rights, individuals are also exercising a number of other human rights. When a human rights defender is attacked and their right to defend human rights is violated, this event is repeated because other human rights are also violated by the same act.

166. The tragic intersection between the right to defend rights and other human rights in scenarios of attacks and violence against defenders has been consistently pointed out. For example, in its first report on the situation of human rights defenders in the Americas in 2006, the IACHR stated that:

[H]uman rights defenders continue to be victims of extrajudicial executions and forced disappearances; assaults, threats, and harassment; smear campaigns, judicial actions; restriction of access to information in the hands of the state; abusive administrative and financial controls; and impunity in relation to those who perpetrate these violations.²⁹³

This worrying context evidences an extensive catalogue of attacks on the defence of human rights that extends to rights such as the right to life, personal integrity, personal liberty, judicial guarantees and judicial protection, among many others.

167. Given this scenario, the response of this Honourable Court to the question “What measures and policies should States adopt to facilitate the work of environmental human rights defenders?”²⁹⁴ must include consideration of the international obligations to respect and guarantee all other human rights of defenders, especially in the face of

²⁹⁰ Inter-American Court of Human Rights, Case of Baraona Bray v. Chile. Preliminary objections, Merits, Reparations and Costs. Judgment of 24 November 2022. Series C No. 481, para. 77.

²⁹¹ UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, (previously cited), Article 2.

²⁹² Inter-American Court of Human Rights, 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) in relation to article 1(1) and 2 of the American Convention on Human Rights). Advisory Opinion OC-23/17, 15 November 2017, Series A No. 23.

²⁹³ IACHR, Report on the situation of human rights defenders in the Americas. OEA/Ser.L/V/II.124. 7 March 2006, para. 3

²⁹⁴ Case file: Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile, 9 January 2023, p. 12.

attacks and threats against them.

168. Over the years, Amnesty International has documented attacks on human rights defenders ranging from extrajudicial executions to criminalization and censorship, in a catalogue as varied as it is disturbing. In this section, Amnesty International provides the Honourable Court with a non-exhaustive categorization of the violence experienced by human rights defenders in the Americas, including environmental and climate defenders. For each category, the manner in which the right to defend human rights operates interdependently with other rights is explained, as are the obligations of states to prevent such violations. In addition, each category includes examples of cases documented by Amnesty International, with the purpose of providing this Honourable Court with an insight into the current situation in the region. At the end of the section, Amnesty International reflects on how this violence affects Indigenous Peoples and women in particular, evidencing the intersection between violence against human rights defenders and structural violence related to exclusion and discrimination.

Physical violence against human rights defenders: the right to life and to personal integrity

169. The Americas are tragically at the top of the list for the number of recorded killings of human rights defenders in the world. Global Witness recently reported that the majority of land and environmental defenders killed worldwide in 2022 were from Latin America: 60 people in Colombia, 34 in Brazil, 31 in Mexico and 14 in Honduras were killed because of their work defending environmental human rights.²⁹⁵ Thus, as the Special Rapporteur on the situation of human rights defenders has noted, the violation of the human rights of defenders on account of their work can be multioffensive, in the sense that it also entails a violation of their right to defend human rights.²⁹⁶

170. Amnesty International has documented cases of assassinations, extrajudicial executions and attacks on the life and integrity of human rights defenders in various countries in the Americas. Examples include the murders of Jesús María Valle Jaramillo in Colombia,²⁹⁷ Julián Carrillo in Mexico²⁹⁸ and environmentalist Aldo Zamora, also in Mexico²⁹⁹, and threats and attacks against Patricia Gualinga in Ecuador.³⁰⁰

171. The killing of a human rights defender is not only a violation of their right to life, but also a violation of the right to defend human rights if it occurs in the context of the work they carry out. Similarly, an attack or the use of physical violence is a simultaneous violation of the right to personal integrity and the right to defend human rights. A threat of physical violence puts these same rights at risk.

172. This Honourable Court has been clear in its view that:

[T]he threats and attempts on the safety and life of human rights defenders and the impunity of those responsible for such actions are particularly grave because they have an impact that is not only individual, but also collective. When such things happen, society is prevented from learning the truth about whether the rights of persons are being respected or violated under the jurisdiction of a given State.³⁰¹

²⁹⁵ Global Witness. Almost 2,000 land and environmental defenders killed between 2012 and 2022 for protecting the planet. 13 September 2023. Available at: <https://www.globalwitness.org/en/press-releases/almost-2000-land-and-environmental-defenders-killed-between-2012-and-2022-protecting-planet/>.

²⁹⁶ Special Rapporteur on the situation of human rights defenders, Report, 10 January 2019, UN Doc. A/HRC/40/60, para. 28.

²⁹⁷ Amnesty International. Colombia. Protection of human rights defenders: One step forward, three steps back. 18 May 2000. <https://www.amnesty.org/en/documents/amr23/022/2000/en/>, p. 17.

²⁹⁸ Amnesty International. Mexico: Caught Between Bullets and Neglect: Lack of Protection for Defenders of the Territory in the Tarahumara Sierra. 24 January 2019. <https://www.amnesty.org/en/documents/amr41/9554/2019/en/>, p. 4.

²⁹⁹ Amnesty International. Mexico: Standing up for justice and dignity: Human rights defenders in Mexico. 31 December 2009. <https://www.amnesty.org/en/documents/amr41/032/2009/en/>, p. 5.

³⁰⁰ Amnesty International, *They will not stop us*, p. 10-11.

³⁰¹ Inter-American Court of Human Rights, Case of Nogueira de Carvalho et al. v. Brazil. Preliminary objections and Merits. Judgment of 28 November 2006. Series C No. 161, para. 76.

173. The Court has also ruled on the content and scope of the obligation to respect and guarantee life and personal integrity in cases of attacks against human rights defenders. For example, in the case of Human Rights Defender v. Guatemala, among others,³⁰² it clarified that states should not only refrain from attacking human rights defenders themselves but should also take steps to prevent attacks through legal, political, administrative and cultural measures aimed at safeguarding such rights,³⁰³ to bring those who violate them to justice³⁰⁴ and to protect defenders from attacks by third parties.³⁰⁵
174. The Special Rapporteur on the situation of human rights defenders has also made a similar statement, stressing that states must respect the right to life of human rights defenders, refrain from arbitrary deprivation of this right, protect them from harassment by third parties and establish adequate institutions and procedures to prevent such situations from materializing.³⁰⁶
175. Thus, the response to the question “What measures and policies should States adopt to facilitate the work of environmental human rights defenders?”³⁰⁷ must include making clear that states in the region have an obligation to respect and guarantee the right to life and personal integrity of human rights defenders working in defence of land, territory, climate and the environment. This means, on the one hand, that states must refrain from violating these rights, either directly or through state actors, and, on the other, that they must implement measures to prevent attacks.
176. Central to these obligations is the duty of states to protect defenders from attacks and threats. In the following section of this brief, Amnesty International outlines its approach to this issue, arguing that states have an obligation not only to provide individual protection measures to prevent attacks, but also, in many cases, to implement collective protection measures to identify and address the structural causes of such attacks. This is particularly important in the case of defenders of land, territory and the environment.

Criminalization of work in defence of human rights: the right to freedom of expression, personal freedom, judicial guarantee, judicial protection and peaceful assembly

177. Amnesty International has extensively documented the use of criminal and other laws to intimidate and silence human rights defenders, particularly those defending the environment. Many environmental defenders have been targeted for prosecution because the authorities perceived them as having a leadership role or because of their visibility in the community, with the clear intention of making an example of them. In such interventions, states have resorted to criminal prosecution without regard to the principles of legality, necessity and proportionality, and without taking into account the context in which the events took place or the right of individuals to defend human rights.
178. For example, Amnesty International recently documented four cases in which the criminal justice system was used against people protesting in defence of land, territory and the environment in different parts of Mexico:

³⁰² Inter-American Court of Human Rights, Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of 27 November 2008. Series C No. 192, para. 90. Inter-American Court of Human Rights, Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs. Judgment of 3 April 2009. Series C No. 196, paras 74-75. Inter-American Court of Human Rights, Case of Luna López v. Honduras. Merits, Reparations and Costs. Judgment of 10 October 2013. Series C No. 269, paras 117-120.

³⁰³ Inter-American Court of Human Rights, Case of Human Rights Defender et al. v. Guatemala. Preliminary objections, Merits, Reparations and Costs. Judgment of 28 August 2014. Series C No. 283, para. 138.

³⁰⁴ Inter-American Court of Human Rights, Case of Human Rights Defender et al. v. Guatemala. Preliminary objections, Merits, Reparations and Costs. Judgment of 28 August 2014. Series C No. 283, para. 139.

³⁰⁵ Inter-American Court of Human Rights, Case of Human Rights Defender et al. v. Guatemala. Preliminary objections, Merits, Reparations and Costs. Judgment of 28 August 2014. Series C No. 283, para. 140.

³⁰⁶ United Nations. Human Rights Council. Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor. A/HRC/46/35. 24 December 2020, paras 27-28.

³⁰⁷ Case file: Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile, 9 January 2023, p. 12.

San Cristóbal de las Casas (Chiapas), Zacatepec (Puebla), Chilón (Chiapas) and Sitalpech (Yucatán).³⁰⁸ Additionally, the cases of continued surveillance and criminalization faced by defenders of the Wet'suwet'en land opposing the construction of a gas pipeline on their ancestral lands;³⁰⁹ of Daniel Biral and Silvia Daskal in Brazil, who were arrested by the military police for confronting police officers who lacked appropriate identification at a public meeting – Daniel was beaten unconscious and later investigated for contempt –;³¹⁰ or the case of Máxima Acuña, who was wrongly accused of being a squatter in connection with her defence of the environment against a mining project in Peru,³¹¹ among others.

179. The Special Rapporteur on the situation of human rights defenders had in the past identified increasing recurrence in the use of legal action against human rights defenders denouncing human rights violations. The Special Rapporteur also verified instances of detention and prosecution of defenders on false charges, and detentions without charge, access to legal counsel or information on the reasons for their arrest.³¹²
180. Using the power of the state, and in particular criminal law, to deter the exercise of the right to defend human rights has an impact not only on this right but also on others, such as freedom of expression, legal guarantees, judicial protection and, in many cases, personal liberty and freedom of peaceful assembly. As Amnesty International has previously argued, "[C]riminalization as a way of harassing and intimidating human rights defenders can take a number of different forms... [with] the ultimate aim... to hinder their work"³¹³. Criminalization is of particular concern because it has not only an individual impact on those who are prosecuted, but also multiple family, social and collective impacts, including the deterrent or intimidatory effect it has on human rights defenders and others defending the same causes.
181. The use of the criminal justice system in cases involving the exercise of the right to defend human rights must be understood, in the first instance, as a restriction on freedom of expression. When the state asserts that a human rights defender is committing a crime for expressing a defence of human rights, or where the context of the case suggests that this is so, state performance must be measured in terms of guaranteeing the rights to freedom of expression and the judicial guarantees of the defenders. In such a scenario, this Honourable Court has ruled that freedom of expression on environmental issues, together with the right to participate in public decision-making, is particularly important.³¹⁴
182. Prior censorship is prohibited in the Americas under Article 13(2) of the ACHR. Obstructing a human rights defender's work before it has been carried out is therefore a violation of both their right to defend human rights and their right to freedom of expression. However, the ACHR does allow states to impose liability for abuses of freedom of expression after the event. And many of the cases of criminalization documented in the region are framed precisely in this scenario of abuse of freedom of expression.
183. In the past, this Honourable Court has been clear that any limitation or restriction on freedom of expression and information must be established by law, both formally and materially. However, "should the restrictions or limitations be of a criminal nature, it is also necessary to strictly meet the requirements of the criminal definition in order to adhere to... the principle [of legality]".³¹⁵ Thus, states are obliged to clearly and unambiguously define

³⁰⁸ Amnesty International, *Mexico: Land and Freedom?* (previously cited).

³⁰⁹ Amnesty International. Criminalization of Wet'suwet'en land defenders, 1 March 2023. <https://www.amnesty.org/en/latest/news/2023/03/criminalization-wetsuweten-land-defenders/>.

³¹⁰ Amnesty International. Americas. Defending human rights in the Americas: necessary, legitimate and dangerous. 9 December 2014. <https://www.amnesty.org/en/documents/amr01/0003/2014/en/>, p. 11.

³¹¹ Amnesty International, *A recipe for criminalization*, p. 30.

³¹² United Nations. Human Rights Council. Report of the Special Rapporteur on the situation of human rights defenders, Margaret Setagaya. A/HRC/13/22. 30 December 2009, para. 31.

³¹³ Amnesty International, *A recipe for criminalization*.

³¹⁴ Inter-American Court of Human Rights, Case of Baraona Bray v. Chile. Preliminary objections, Merits, Reparations and Costs. Judgment of 24 November 2022. Series C No. 481, paras 94-100.

³¹⁵ Inter-American Court of Human Rights, Case of Kimel v. Argentina. Merits, Reparations and Costs. Judgment of 2 May 2008. Series C No. 177, para. 63.

the possible offences that a person may commit by expressing their opinion, which undoubtedly includes human rights defenders. Moreover, in addition to formal and substantive legality, subsequent liability for the exercise of freedom of expression must meet two further requirements. First, it must respond to a purpose permitted by the ACHR,³¹⁶ and second, it must be “necessary in a democratic society (to which end, it must meet the requirements of suitability, necessity and proportionality)”.³¹⁷

184. All of the above clearly applies to the restrictive use of the criminal system to determine subsequent liability against human rights defenders who publicly express their views. The scrutiny must be even more rigorous when the use of the criminal system revolves around the protection of the honour and good name of persons who hold public office or have public relevance.³¹⁸ In such cases, the use of the criminal system is often problematic, in that it tends to discourage public debate, as this Honourable Court has observed in the past.³¹⁹

185. Furthermore, within the criminal process itself, states must uphold the judicial guarantees to which human rights defenders are entitled under Article 8 of the ACHR. In this regard, the Honourable Court has held that:

[T]he right to due process refers to the series of requirements that must be met in the procedural instances to ensure that individuals are able to adequately defend their rights vis-à-vis any act of the State adopted by any public authority, whether administrative, legislative or judicial, that could impair them.³²⁰

This extends to the right of every person, including women human rights defenders, to a fair hearing with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal. During the proceedings, the right to be assisted by a translator or interpreter, to be informed of the charges being brought, to have adequate time to prepare a defence, to legal aid and privilege, and not to be a witness against themselves or plead guilty, among others, must also be upheld.

186. Criminalization often occurs in the context or as a consequence of the exercise of the right to protest by human rights defenders, who may have participated in or even led the protest. The Office of the Special Rapporteur for Freedom of Expression of the IACHR has expressed its views on this type of criminalization and has defined it as:

[T]he use of the punitive power of the State to deter, punish, or prevent the exercise of the right to protest, and in some cases, to social and political participation more broadly, through the arbitrary, disproportionate, or repeated use of the criminal justice system against demonstrators, activists, and social or political leaders³²¹.

The Office of the Special Rapporteur has also observed that criminalization of human rights defenders is a common trend, often where there are conflicts of interest or social tensions, or when defenders exercise their right to protest.³²²

³¹⁶ Inter-American Court of Human Rights. Case of Moya Chacón et al. v. Costa Rica. Preliminary objections, merits, reparations and costs. Judgment of 23 May 2022. Series C No. 451, para. 71.

³¹⁷ Inter-American Court of Human Rights. Case of Moya Chacón et al. v. Costa Rica. Preliminary objections, merits, reparations and costs. Judgment of 23 May 2022. Series C No. 451, para. 71.

³¹⁸ Inter-American Court of Human Rights. Case of Palacio Urrutia et al. v. Ecuador. Merits, Reparations and Costs. Judgment of 24 November 2021. Series C No. 446, paras 116-119.

³¹⁹ Inter-American Court of Human Rights. Case of Palacio Urrutia et al. v. Ecuador. Merits, Reparations and Costs. Judgment of 24 November 2021. Series C No. 446, paras 116-119.

³²⁰ Inter-American Court of Human Rights. Case of Manuela et al. v. El Salvador. Preliminary objections, merits, reparations and costs. Judgment of 2 November 2021. Series C No. 441, para. 118.

³²¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. Protest and Human Rights. Standards on the rights involved in social protest and the obligations to guide the response of the State. OEA/Ser.LV/II. September 2019, para. 188.

³²² IACHR. Office of the Special Rapporteur for Freedom of Expression. Protest and Human Rights. Standards on the rights involved in social protest and the obligations to guide the response of the State. OEA/Ser.LV/II. September 2019, para. 189.

187. Moreover, criminalization of environmental defenders usually goes unpunished.³²³ In such cases, the IACHR considers that, where there is evidence of misuse of criminal law by state actors, states should initiate investigations or disciplinary, administrative or criminal proceedings as appropriate in respect of the wrongful prosecution of human rights defenders.³²⁴
188. Lastly, it is important to note that Latin America is one of the regions in the world most affected by the use of strategic lawsuits against public participation, or SLAPPs.³²⁵ Given that many of the criminal prosecutions of environmental defenders in the region are linked to private businesses, it is important to identify when businesses abuse the criminal justice system to thwart the work of human rights defenders. Indeed, in 2017, the Special Rapporteur on the situation of human rights defenders expressed concern over the recurrence of judicial harassment and criminalization of human rights defenders in the context of their opposition to business-related projects.³²⁶
189. Accordingly, the response to the question “What measures and policies should States adopt to facilitate the work of environmental defenders?”³²⁷ must include a call to states not to criminalize human rights defenders for carrying out their work, including those defending land, territory, climate and the environment. In this regard, the Honourable Court should clearly state, as it has done in the past, that criminal prosecution should be a last resort for states and that, where restrictions are placed on the freedom of expression of a human rights defender, any criminal prosecution must be subject to strict scrutiny. It must also reaffirm its jurisprudence on judicial guarantees to make it clear that states must refrain from violating due process in the context of criminal proceedings brought against human rights defenders. Lastly, this Honourable Court should reiterate that the right to protest is part of the legitimate range of action available to human rights defenders and that they should not be criminalized for exercising this right.

Lack of transparency and obstruction of the work of human rights defenders: right of access to public information

190. During its monitoring of the situation of violence against human rights defenders, especially those defending land, territory, climate and the environment, Amnesty International has found a number of cases in which communities were not informed of projects that could affect them or of the negative impacts they would have on the environment. A recently documented case is that of Colonia Maya in San Cristóbal de las Casas in Mexico, where no adequate information on change of land use on forest land, authorizations issued, or indeed the project that was to be built in the vicinity of their community, with its potential negative environmental impact, was received.³²⁸
191. This Honourable Court has indicated that access to information is one of the human rights protected by the ACHR. In the case of *Claude Reyes et al. v. Chile*, the Court has stated that Article 13 of the ACHR contains the right to seek and receive information and that this provision “protects the right of the individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention”.³²⁹ This means that states have a positive obligation to provide the information or, in the case of a

³²³ Amnesty International, *Mexico: Land and Freedom?*

³²⁴ IACHR. Criminalization of the Work of Human Rights Defenders. Easel/VI/II.Doc.49/15. 31 December 2015, para. 273.

³²⁵ Business & Human Rights Resource Centre. SLAPPs in Latin America: Strategic lawsuits against public participation in the context of business and human rights. February 2022, p. 7.

³²⁶ United Nations General Assembly. Report of the Special Rapporteur on the situation of human rights defenders. A/72/170. 19 July 2017, para. 17.

³²⁷ Case file: Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile, 9 January 2023, p. 12.

³²⁸ Amnesty International, *Mexico: Land and Freedom?*, p. 34.

³²⁹ Inter-American Court of Human Rights. Case of *Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of 19 September 2006. Series C No. 151, para. 77.

legitimate restriction on access, to provide the requestor with justification for refusal of access.³³⁰ Indeed, this Honourable Court is of the opinion that state actions should be governed by the principles of disclosure and transparency in public administration.³³¹

192. Access to public information is essential for the defence of human rights. In order to scrutinize public performance, human rights defenders must have access to information produced by the state. The Declaration on Human Rights Defenders is clear that all human rights defenders have the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms.³³² In this regard, the Court has stated that:

Access to State-held information of public interest can permit participation in public administration by means of the social control that can be exercised through such access. It also fosters transparency in the State's activities and promotes the accountability of its officials in the performance of their duties.³³³

193. This right is even stronger when it relates to environmental matters. The Escazú Agreement provides that persons have the right to access environmental information,³³⁴ and this Honourable Court has stated that activities that could affect the environment are of public interest and access to information in this regard is protected.³³⁵ Information must therefore be handed over without the need to prove direct interest or personal involvement in order to obtain it, except where a legitimate restriction applies.³³⁶ Indeed, Amnesty International has called on states to collect, update and disseminate information on climate change, and to guarantee everyone's right to access such information.³³⁷

194. The legitimate restrictions referred to above are limited. In the words of this Honourable Court, they are only those that have been previously established by law, respond to a purpose permitted by the provisions of the ACHR, are designed to meet an essential public interest, and are necessary and proportionate.³³⁸

195. The response to the question "What measures and policies should States adopt to facilitate the work of environmental defenders?"³³⁹ must therefore include an explicit reminder of states' obligations in guaranteeing

³³⁰ Inter-American Court of Human Rights. Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of 19 September 2006. Series C No. 151, para. 77.

³³¹ Inter-American Court of Human Rights, 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) in relation to article 1(1) and 2 of the American Convention on Human Rights). Advisory Opinion OC-23/17, 15 November 2017, Series A No. 23, para. 213.

³³² UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (previously cited), Article 6.

³³³ Inter-American Court of Human Rights, 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) in relation to article 1(1) and 2 of the American Convention on Human Rights). Advisory Opinion OC-23/17, 15 November 2017, Series A No. 23, para. 213.

³³⁴ Economic Commission for Latin America and the Caribbean. Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean. LC/PUB.2018/8/Rev.1. 2022, Article 5.

³³⁵ Inter-American Court of Human Rights, 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) in relation to article 1(1) and 2 of the American Convention on Human Rights). Advisory Opinion OC-23/17, 15 November 2017, Series A No. 23, para. 214.

³³⁶ Inter-American Court of Human Rights, 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) in relation to article 1(1) and 2 of the American Convention on Human Rights). Advisory Opinion OC-23/17, 15 November 2017, Series A No. 23, para. 219.

³³⁷ Amnesty International. Stop burning our rights! What governments and corporations must do to protect humanity from the climate crisis: executive summary. 7 June 2021. <https://www.amnesty.org/en/documents/pol30/4110/2021/en/>.

³³⁸ Inter-American Court of Human Rights. Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of 19 September 2006. Series C No. 151, paras 88-89. Inter-American Court of Human Rights, 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) in relation to article 1(1) and 2 of the American Convention on Human Rights). Advisory Opinion OC-23/17, 15 November 2017, Series A No. 23, para. 224.

³³⁹ Case file: Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile, 9 January 2023, p. 12.

access to public information on environmental matters for human rights defenders. This implies, on the one hand, broadening the scope previously attributed to this right in Advisory Opinion OC-23/17 to cover the full range of activities in the defence of environmental human rights and, on the other, reaffirming the limited grounds for applying restrictions on access to such information.

Stigmatization and discriminatory language against human rights defenders: the right to protection of honour and dignity and prohibition of discrimination

196. Over the years, Amnesty International has documented the stigmatization, discrimination and lack of recognition experienced by human rights defenders in the Americas. Indeed, “throughout the Americas, human rights defenders have been publicly condemned as ‘illegal’, ‘illegitimate’, ‘unscrupulous’ or even ‘immoral’. They have been accused of being criminals, corrupt, liars, troublemakers or subversives; of defending criminals; and of supporting guerrilla groups.”³⁴⁰

For example, the Colombian organization CREDHOS was publicly stigmatized in 1999 by the commander of the National Police in Barrancabermeja (department of Santander);³⁴¹ Miguel López and Alejandro Torres were called out as being experts in taking over roads, in defamation and extortion for exercising their work as Nahua communicators and defenders in the community of Santa María Zacatepec, in Mexico;³⁴² and Máxima Acuña was accused of being a squatter in the context of a dispute over property ownership of land in Perú.³⁴³

197. The Special Rapporteur on the situation of human rights defenders has also in the past identified the increasingly frequent characterization of human rights defenders as “terrorists”, “enemies of the State” or “political opponents” by state authorities and state-owned media.³⁴⁴

198. More generally, Article 11 of the ADHR establishes the right of all people to have their honour respected, and prohibits all unlawful attacks on honour or reputation, imposing on states the obligation to provide the protection of the law against such attacks.³⁴⁵ On this basis, this Honourable Court has held that states are internationally liable when they subject individuals or groups of individuals to hatred, stigmatization, public contempt, persecution or discrimination as a result of public statements made by state actors.³⁴⁶

199. In the case of human rights defenders, the Declaration on Human Rights Defenders recognizes in its preamble the “valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals”.³⁴⁷ Through this document, therefore, the international community highlighted the importance of recognizing human rights defenders in order to guarantee an enabling environment for their work. The Escazú Agreement recognizes, in relation to environmental defenders, “the important work of the public and of human rights defenders in environmental matters for strengthening democracy, access rights and sustainable development and their fundamental contributions in this regard”.³⁴⁸

³⁴⁰ Amnesty International, *Transforming pain into hope*, p. 25.

³⁴¹ Amnesty International. Colombia. Protection of human rights defenders: One step forward, three steps back. 18 May 2000. Disponible en: <https://www.amnesty.org/en/documents/amr23/022/2000/en/>, p. 9.

³⁴² Amnesty International, *Mexico: Land and freedom?*, p. 42.

³⁴³ Amnesty International, *A recipe for criminalization*, p. 26.

³⁴⁴ Special Rapporteur on the situation of human rights defenders, Report, 30 December 2009, UN Doc. A/HRC/13/22, para. 27.

³⁴⁵ Inter-American Court of Human Rights. Case of Members and Militants of the Patriotic Union v. Colombia. Preliminary objections, merits, reparations and costs. Judgment of 27 July 2022. Series C No. 455, para. 439.

³⁴⁶ Inter-American Court of Human Rights. Case of Members and Militants of the Patriotic Union v. Colombia. Preliminary objections, merits, reparations and costs. Judgment of 27 July 2022. Series C No. 455, para. 439.

³⁴⁷ UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (previously cited).

³⁴⁸ Economic Commission for Latin America and the Caribbean. Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean. LC/PUB.2018/8/Rev.1. 2022, preamble.

200. In this regard, this Honourable Court has stated:

The recognition of the work in defense of the environment and its link to human rights is becoming more prominent across the countries of the region, in which an increasing number of incidents have been reported involving threats and acts of violence against and murders of environmentalists owing to their work.³⁴⁹ It has further considered that the promotion of a culture of legitimization of the work of human rights defenders is a protection mechanism in itself.³⁵⁰

201. In this regard, the UN Special Rapporteur on the situation of human rights defenders stated that the “fulfilment of the international community’s commitment to the protection of the environment is premised on the empowerment of environmental human rights defenders”.³⁵¹

202. The need to recognize the contribution to climate action of specific groups of human rights defenders, some of them among the most vulnerable to climate change, such as girls, women, Indigenous Peoples and Afro-descendant communities, peasants and other historically marginalized groups, has also been pointed out in different forums.³⁵² This necessarily implies moving away from considering such groups solely as victims and instead viewing them as equal, indispensable leaders in the transition to a just and sustainable future.³⁵³

203. It follows that the recognition of human rights defenders is an essential first step for ensuring that they can carry out their work in a safe and favourable environment, without fear of reprisals.³⁵⁴ In a response to the question “What measures and policies should States adopt to facilitate the work of environmental defenders?”,³⁵⁵ this Honourable Court should therefore recognize, as it has done in the past, the work of individuals, groups and organizations defending human rights, including those defending land, territory, climate and the environment. This recognition should also highlight the importance of defenders belonging to groups that have historically been in a situation of particular vulnerability, such as children, young people, women, Indigenous Peoples, Afro-descendant and peasant communities, and migrants and refugees.

204. Furthermore, Amnesty International believes that this Honourable Court should reaffirm that states have a duty to publicly recognize the work of human rights defenders in the same terms as those described in the previous paragraph. This is an essential measure to guarantee the legitimacy and protection of individuals, groups and communities who risk their lives every day to defend their own human rights and those of their fellow human beings. This is particularly important for people defending land, territory, climate and the environment, who, as explained above, are often the target of stigmatization.

Impunity for human rights violations committed against human rights defenders and lack of access to justice for bringing their claims: rights to due process and judicial protection

205. The state response to attacks against human rights defenders in the Americas has been slow at best, if not acting in collusion with the perpetrators of attacks or protecting state actors. One of the areas where this

³⁴⁹ Inter-American Court of Human Rights, Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs. Judgment of 3 April 2009. Series C No. 196, para. 149.

³⁵¹ United Nations Organization. General Assembly. Report of the Special Rapporteur on the situation of human rights defenders. A/71/281. 3 August 2016, para. 58.

³⁵² United Nations Organization. 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. A/HRC/52/33. 5 January 2023, para. 54. IACHR. Climate Emergency. Scope of Inter-American Human Rights Obligations. Resolution 3/2021. 31 December 2021.

³⁵³ United Nations Organization. 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. A/HRC/52/33. 5 January 2023, para. 4.

³⁵⁴ Amnesty International. Mexico: Caught Between Bullets and Neglect. Lack of Protection for Defenders of the Territory in the Tarahumara Sierra. 24 January 2019. <https://www.amnesty.org/en/documents/amr41/9554/2019/en/>.

³⁵⁵ Case file: Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile, 9 January 2023, p. 12.

response is often lacking in mobilizing the justice system to prevent impunity and to investigate, prosecute and punish those responsible for the attacks. Amnesty International has for years been documenting the epidemic of impunity that has spread throughout the region, affecting human rights defenders in particular. A clear example is the documentation of the inadequate response of the Attorney General's Office to attacks on human rights defenders in Colombia.³⁵⁶

206. Amnesty International has also documented attacks on human rights defenders fighting against impunity. For example, Luis Uzcátegui was stopped, beaten and threatened by police officers in Venezuela, apparently in retaliation for seeking justice for the murder of his brother Néstor Uzcátegui.³⁵⁷ Silvia Vázquez has had to leave the region where she lives because of the threats and harassment she has received for supporting the fight for justice of relatives of 25 police officers detained and tortured in Mexico.³⁵⁸

207. This Honourable Court has held that states have an obligation to investigate, prosecute and punish human rights violations. Thus, from its very first decision, the Court has made it clear that:

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction.³⁵⁹

This duty stems both from the general obligation on due guarantees and from the right to judicial guarantees and judicial protection contained in articles 8 and 25 of the ACHR. The Human Rights Committee has made similar pronouncements.³⁶⁰

208. This Honourable Court has also held that states must provide effective remedies for victims of human rights violations to pursue their claims, and such remedies must be substantiated in accordance with the rules of due process.³⁶¹ This means that “once State authorities learn of an incident, they must initiate de officio and without delay a serious, impartial, and effective investigation that is undertaken with all legal means available and is directed to ascertain the truth”.³⁶²

209. Over the years, this Honourable Court has decided several cases in which attacks on human rights defenders have gone unpunished, leading it to determine the international liability of the states. Here, the Court has declared:

[I]n cases of attacks against human rights defenders, States have the obligation to ensure impartial, prompt and authoritative justice and this entails an exhaustive search for all the information in order to design and execute an investigation that involves the proper analysis of the different hypotheses of authorship, by act or omission, at different levels, exploring all the pertinent lines of investigation to identify those responsible.³⁶³

³⁵⁶ Amnesty International, *Why do they want to kill us?*, pp. 47-48.

³⁵⁷ Amnesty International. Americas. Defending human rights in the Americas: necessary, legitimate and dangerous. 9 December 2014. <https://www.amnesty.org/en/documents/amr01/0003/2014/en/>, pp. 23-24.

³⁵⁸ Amnesty International, *Transforming pain into hope*, p. 49.

³⁵⁹ Inter-American Court of Human Rights, Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of 29 July 1988. Series C No. 04, para. 176.

³⁶⁰ United Nations Organization. Human Rights Committee. The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, General Comment No. 31. CCPR/C/21/Rev.1/Add.13. 26 May 2004, para. 15.

³⁶¹ Inter-American Court of Human Rights, Case of Bedoya Lima et al. v. Colombia. Merits, reparations and costs. Judgment of 26 August 2021. Series C No. 431, para. 125.

³⁶² Inter-American Court of Human Rights, Case of Maidanek et al. v. Uruguay. Merits and Reparations. Judgment of 15 November 2021. Series C No. 444 para. 138.

³⁶³ Inter-American Court of Human Rights, Case of Digna Ochoa and Family Members v. México. Preliminary objections, Merits, Reparations and Costs. Judgment of 25 November 2021. Series C No. 447, para. 100.

Thus, when states are confronted with indications or allegations that an attack against a human rights defender is based on their work defending human rights, the investigating authorities should take into account the context of the facts and their activities to identify the interests that could have been considered affected by those activities, in order to establish and exhaust the lines of investigation that take into account their work, determine the reason for the crime, and identify the perpetrators".³⁶⁴

210. With respect to violations of the right to life of human rights defenders, the Special Rapporteur on the situation of human rights defenders has reaffirmed that states must carry out independent, impartial, prompt, thorough, effective, credible and transparent investigations.³⁶⁵ The principles of due diligence for the investigation of human rights violations had already been classified by the Special Rapporteur on the situation of human rights defenders as follows: own initiative, timelines and expeditiousness, competence, independence and impartiality, exhaustiveness, participation of victims and transparency.³⁶⁶

211. The prevalence of impunity in the region is a fact known to this Honourable Court and closing the gap has been one of the main demands of the inter-American system for the protection of human rights since its inception. Human rights defenders, including those defending land, territory, climate and the environment, have been particularly affected by impunity when they suffer attacks. For this reason, in answering the question "What measures and policies should States adopt to facilitate the work of environmental defenders?"³⁶⁷ this Honourable Court should reiterate to states, as it has done in different decisions over time, that they must investigate, prosecute and punish human rights violations suffered by environmental defenders, following the parameters of due process and treating this obligation as a genuine legal duty and not as a mere formality.

212. This must include bringing to the attention of states the various obstacles that restrict access to justice for human rights defenders and foster impunity, as identified by the Special Rapporteur on the situation of human rights defenders: lack of political will, lack of state recognition, lack of reporting, lack of differentiated records, limited and inadequate internal standards of protection, negligent and irregular practices, lack of a differentiated and intersectional approach, failure to investigate various types of responsibility, lack of access to extraterritorial procedures, limited resources and capacities, and influence of powerful groups.³⁶⁸

213. In addition, environmental defenders are often users of the justice system, filing complaints to protect the environment. For example, Amnesty International recently documented the efforts of Mayan villagers in Sitilpech, Mexico, to get the authorities to fulfil their duty to inspect, supervise, monitor and sanction the operations of a pig farm they believed was polluting the environment.³⁶⁹

214. In this regard, the Honourable Court has established that states have an obligation to guarantee access to justice so that individuals can claim protection for the environment. Accordingly, states must provide access to legal remedies that are:

conducted in accordance with due process of law to contest any provision, decision, act or omission of the public authorities that violates or could violate obligations under environmental law; to ensure the full realization of the other procedural rights (that is, the right of access to information and to public participation), and to redress any violation of their rights as a result of failure to comply with obligations under environmental law.³⁷⁰

³⁶⁴ Inter-American Court of Human Rights, *Case of Digna Ochoa and Family Members v. México*. Preliminary objections, Merits, Reparations and Costs. Judgment of 25 November 2021. Series C No. 447, para. 100.

³⁶⁵ United Nations Organization. Human Rights Council. Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor. A/HRC/46/35. 24 December 2020, para. 32.

³⁶⁶ United Nations Organization. General Assembly. Report of the Special Rapporteur on the situation of human rights defenders. A/74/159. 15 July 2019, para. 41.

³⁶⁷ Case file: Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile, 9 January 2023, p. 12.

³⁶⁸ Special Rapporteur on the situation of human rights defenders, Report, 15 July 2019, UN Doc. A/74/159, paras 44-86.

³⁶⁹ Amnesty International, *México: Land and Freedom?*, pp. 24-25.

³⁷⁰ Inter-American Court of Human Rights, *The environment and human rights (State obligations in relation to the environment in the context of*

This is in line with the position of the Human Rights Committee on the obligation of states to establish appropriate judicial and administrative mechanisms for addressing claims of individuals suffering human rights violations.³⁷¹

215. Thus, this Honourable Court should also remind states, when answering the question “What measures and policies should States adopt in order to facilitate the work of environmental defenders?”,³⁷² that they must guarantee the right of access to justice for environmental defenders. This will enable defenders to use institutional channels to pursue their claims for justice and protection of the environment, and of their rights and those of their communities, within a framework of guaranteed due process.

The particular impact of attacks and violence against Indigenous Peoples and women in the Americas

216. Specific groups of human rights defenders make substantial contributions to environmental defence and climate change mitigation and adaptation. Some of them are also among the most vulnerable to climate change.³⁷³ Children, youth, women, Indigenous Peoples and Afro-descendant, peasant and other communities have historically been disadvantaged, despite being central to the fight against environmental degradation and climate change.

217. In responding to the question “What measures and policies should States adopt to facilitate the work of environmental defenders?”,³⁷⁴ Amnesty International believes that this Honourable Court should be explicit in the obligation of adopting differentiated and intersectional approaches to uphold and guarantee the rights of human rights defenders. In this section, Amnesty International presents two examples of such an analysis, first for the case of Indigenous Peoples and secondly for that of women.

218. However, it is important to clarify that this is not an exhaustive list, and that Amnesty International respectfully suggests that the Honourable Court could address the situation of all groups facing particular vulnerability when defending the environment. This includes not only Indigenous Peoples and women, but also children, young people, Afro-descendant and peasant communities, LGBTIQ+ people, migrants and refugees, among others.

The defence of territory, climate and the environment by Indigenous Peoples in the Americas

219. Amnesty International has extensively documented cases of climate change and environmental defenders who are Indigenous Peoples, many of them related to the failure to uphold the right to free, prior and informed consent with respect to projects that negatively impact human rights in their territories. These include the cases of the Mayan villagers of Sitalpech in Mexico, who are fighting against the negative consequences of the installation of a mega pig farm near their territory;³⁷⁵ the Wet'suwet'en land defenders in Canada, who are opposing the construction of a gas pipeline that would cut their territory into two;³⁷⁶ and the Amazonian Women collective in Ecuador, which has been calling on the Ecuadorian state to stop oil and mining companies operating

the protection and guarantee of the rights to life and to personal integrity: Interpretation and scope of articles 4(1) and 5(1) in relation to article 1(1) and 2 of the American Convention on Human Rights). Advisory Opinion OC-23/17, 15 November 2017, Series A No. 23, para. 237.

³⁷¹ United Nations. Human Rights Committee. The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, General Comment No. 31. CCPR/C/21/Rev.1/Add.13. 26 May 2004, para. 15.

³⁷² Case file: Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile, 9 January 2023, p. 12.

³⁷³ United Nations Organization. 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. A/HRC/52/33. 5 January 2023, para. 54. IACHR. Climate Emergency. Scope of Inter-American Human Rights Obligations. Resolution 3/2021. 31 December 2021.

³⁷⁴ Case file: Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile, 9 January 2023, p. 12.

³⁷⁵ Amnesty International, *México: Land and Freedom?*, pp. 24-25.

³⁷⁶ Amnesty International, *Criminalization of Wet'suwet'en land defenders*, 1 March 2023, <https://www.amnesty.org/en/latest/news/2023/03/criminalization-wetsuweten-land-defenders/>.

in Indigenous Peoples' traditional territories since it was established.³⁷⁷

220. International human rights law contains explicit regulations for the special protection of the rights of Indigenous Peoples. For example, the United Nations Declaration on the Rights of Indigenous Peoples recognizes the close relationship of Indigenous Peoples with their territory and establishes that they have the right to the lands, territories and resources which they have traditionally owned and must be able to use, develop and control them.³⁷⁸
221. Similarly, on environmental issues, Article 7 of the Escazú Agreement establishes the obligation of states to ensure respect for the rights of Indigenous Peoples and local communities in environmental matters.³⁷⁹ With regard to climate change, the Paris Agreement recognizes in its preamble that, in taking measures to address climate change, states parties should respect, promote and consider their human rights obligations, including the rights of Indigenous Peoples.³⁸⁰ The Paris Agreement also promotes respect for Indigenous knowledge and the practices of local communities in addressing and adapting to climate change.³⁸¹
222. This Honourable Court has extensive jurisprudence on the protection of the collective rights of Indigenous Peoples in the Americas.³⁸² Firstly, it has repeatedly recognized that Indigenous communities are holders of rights not only through their individual members but also as a collective, and can therefore appear before the inter-American human rights protection system in defence of such rights.³⁸³ It has also referred to two rights that are particularly important in the context of the defence of the environment and against climate change. The first of these is the right to Indigenous community property and the implications that derive from such right, including the protection not only of the territories but also of the natural resources therein associated with their culture and the intangible components derived from them.³⁸⁴ Thus, the Court has understood that the right to use and enjoy their territory would be meaningless if said right were not connected to the natural resources therein.³⁸⁵ The second of these rights is the right to effective participation in decision-making processes that may affect Indigenous Peoples through free, prior and informed consultation, in good faith and through culturally appropriate procedures with the objective of reaching an agreement.³⁸⁶ This duty to ensure participation is transformed into a duty to obtain the free, prior and informed consent of Indigenous Peoples, according to the jurisprudence of this Court, when it refers to “large-scale development or investment projects that have a significant impact on the right of use and enjoyment of their ancestral territories”.³⁸⁷

³⁷⁷ Amnesty International, *They will not stop us*, p. 7.

³⁷⁸ United Nations. General Assembly. United Nations Declaration on the Rights of Indigenous Peoples. A/61/L.67. 13 September 2007, Article 26.

³⁷⁹ Economic Commission for Latin America and the Caribbean, Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean. LC/PUB.2018/8/Rev.1. 2022, Article 7(15)

³⁸⁰ United Nations. Paris Agreement, preamble.

³⁸¹ United Nations. Paris Agreement, Article 7.5.

³⁸² Inter-American Court of Human Rights, Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations and Costs. Sentence of 31 August 2001. Series C No. 79. Inter-American Court of Human Rights, Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations. Judgment of 27 June 2012. Series C No. 245. Inter-American Court of Human Rights, Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, Reparations and Costs. Judgment of 6 February 2020. Series C No. 400.

³⁸³ Inter-American Court of Human Rights. Entitlement of Legal Entities to Hold Rights Under the Inter-American Human Rights System (Interpretation and scope of Article 1(2) in relation to articles 1(1), 8, 11(2), 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62(3) of the American Convention on Human Rights, as well as of articles 8(1)(A) and (B) of the Protocol of San Salvador). Advisory Opinion OC-22/16 of 26 February 2016. Series A No. 22, para. 72.

³⁸⁴ Inter-American Court of Human Rights, Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of 17 June 2005. Series C No. 125, para. 137.

³⁸⁵ Inter-American Court of Human Rights, Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of 28 November 2007. Series C No. 172, para. 122.

³⁸⁶ Inter-American Court of Human Rights, Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of 28 November 2007. Series C No. 172, para. 133.

³⁸⁷ Inter-American Court of Human Rights, Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs.

223. Accordingly, in responding to the question “What measures and policies should States adopt to facilitate the work of environmental defenders?”,³⁸⁸ this Honourable Court should make explicit the obligation of states to recognize the essential role played by Indigenous Peoples and those who defend their rights in the protection of the environment. It should also reaffirm their duty to protect the rights of Indigenous Peoples, including collective ownership and the right to participate in the decisions that affect them.

Women’s defence of territory, climate and the environment in the Americas

224. Women also disproportionately bear the negative impact of attacks on human rights defenders. In the words of the Special Rapporteur on the situation of human rights defenders, “women are attacked for promoting and protecting human rights because of their identity and because of what they do”.³⁸⁹

225. Amnesty International has documented attacks on women human rights defenders in patriarchal and *machista* contexts in several countries in the Americas. Many of these attacks could be classified as gender-based violence. For example, human rights defender Marisela Escobedo was murdered outside the governor’s palace in Chihuahua City in Mexico while protesting at the state government’s failure to take the necessary steps to prosecute and convict her daughter’s killer;³⁹⁰ members of the *Organización Femenina Popular* received threats for their work to promote women’s human rights in Colombia,³⁹¹ and the *Agrupación Ciudadana por la Despenalización del Aborto* and the *Colectiva Feminista para el Desarrollo Local* were subjected to a smear campaign for accompanying a young woman seeking an abortion in El Salvador.³⁹² Several women human rights defenders have also faced similar situations for defending the environment. Amnesty International has documented cases such as that of Máxima Acuña in Peru³⁹³ and the Amazonian Women collective in Ecuador.³⁹⁴

226. The Special Rapporteur on the situation of human rights defenders has noted that women human rights defenders “are more likely to be subjected to certain forms of violence, especially since they frequently work on specific issues that challenge established customs or norms”.³⁹⁵ The violence experienced by women human rights defenders must be addressed in a differentiated manner. This has been the position of the Honourable Court when it held that in the case of attacks against women human rights defenders:

[A]ll the measures designed to mitigate the risks they run should be adopted with a gender perspective and with an intersectional approach, so that these women can be provided with comprehensive protection based on considering, understanding and highlighting the complexities of the different forms of violence that women defenders face due to their profession and their gender.³⁹⁶

227. The Special Rapporteur on the situation of human rights defenders has additionally noted that:

Judgment of 28 November 2007. Series C No. 172, para. 136.

³⁸⁸ Case file: Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile, 9 January 2023, p. 12.

³⁸⁹ United Nations. Human Rights Council. Report of the Special Rapporteur on the situation of human rights defenders. A/HRC/40/60. 10 January 2019, para. 11.

³⁹⁰ Amnesty International, *Transforming pain into hope*, p. 40.

³⁹¹ Amnesty International, *Transforming pain into hope*, p. 42.

³⁹² Amnesty International. Americas. Defending human rights in the Americas: necessary, legitimate and dangerous. 9 December 2014. <https://www.amnesty.org/en/documents/amr01/0003/2014/en/>, p. 21.

³⁹³ Amnesty International, *A recipe for criminalization*, p. 28.

³⁹⁴ Amnesty International, *They will not stop us*, p. 7.

³⁹⁵ Special Rapporteur on the situation of human rights defenders, Report, 30 December 2009, UN Doc. A/HRC/13/22, para. 47.

³⁹⁶ Inter-American Court of Human Rights, Case of Digna Ochoa and Family Members v. México. Preliminary objections, Merits, Reparations and Costs. Judgment of 25 November 2021. Series C No. 447, para. 101.

To enhance the security of women defenders, States should also ensure that those women's specific security needs are dealt with in a gender-sensitive manner and that their participation and collaboration is sought when protection mechanisms are designed.³⁹⁷

228. Similarly, in the context of investigations into attacks against women human rights defenders, this Honourable Court has pointed out that states have a twofold, enhanced duty of due diligence owing to their condition as women and human rights defenders,³⁹⁸ and the fact that they must refrain from relying on negative gender stereotyping – which is seen as both a cause and a consequence of gender-based violence against women – during investigations, as such stereotyping affects the objectivity of state officials in charge of investigations and influences, for example, their perception of whether or not an act of violence has occurred.³⁹⁹ In this regard, the Committee on the Elimination of Discrimination against Women has stated that gender stereotyping and gender bias in the justice system can hinder access to justice in all areas of law and “may have a particularly negative impact on women victims and survivors of violence”.⁴⁰⁰ Stereotyping also “distorts perceptions and leads to decisions based on preconceived beliefs and myths, rather than relevant facts”.⁴⁰¹

229. Moreover, women are also affected differently by stigmatization. For example, Amnesty International documented the case of defender Lolita Chávez, a member of the Kiché Peoples Council in Guatemala, who said that for years she was called “confrontational” and “rowdy”. These descriptions reflect discriminatory views of women and Indigenous Peoples as incapable of leading and acting based on impulse, rather than as a result of exercising their rights.⁴⁰² Here again, negative gender stereotyping plays an important role in perpetuating cycles of violence against women, including women human rights defenders.

230. In a bid to solve this problem, the Honourable Court has rejected:

[A]ny State practice that justifies violence against women and blames them for it, since assessments of this nature show a discretionary and discriminatory criterion based on the origin, condition and/or behavior of the victim simply because she is a woman. Consequently, the Court has considered that these harmful or prejudicial gender stereotypes are incompatible with international human rights law and that measures must be taken to eradicate them wherever they occur.⁴⁰³

231. In light of the above, Amnesty International believes that this Honourable Court should include in its response to the question “What measures and policies should States adopt to facilitate the work of women environmental defenders?”⁴⁰⁴ considerations relating to the special obligation of states to protect women human rights defenders, including those defending land, territory, climate and the environment. This requires, at a minimum,

³⁹⁷ Special Rapporteur on the situation of human rights defenders, Report, 30 December 2009, UN Doc. A/HRC/13/22, para. 48.

³⁹⁸ Inter-American Court of Human Rights, Case of Digna Ochoa and Family Members v. México. Preliminary objections, Merits, Reparations and Costs. Judgment of 25 November 2021. Series C No. 447, para. 104.

³⁹⁹ Inter-American Court of Human Rights, Case of Digna Ochoa and Family Members v. México. Preliminary objections, Merits, Reparations and Costs. Judgment of 25 November 2021. Series C No. 447, para. 124. 95. This caution against the use of negative gender stereotyping in criminal investigations has been reiterated by the Inter-American Court of Human Rights in other cases of violence against women, including: Inter-American Court of Human Rights, Case of Angulo Losada v. Bolivia. Preliminary objections, Merits, Reparations and Costs. Judgment of November 2022. Series C No. 475, para. 163. Inter-American Court of Human Rights, Case of Manuela et al. v. El Salvador. Preliminary objections, Merits, Reparations and Costs. Judgment of 2 November 2021. Series C No. 441, para. 151. Inter-American Court of Human Rights, Case of Women Victims of Sexual Torture in Atenco v. México. Preliminary objection, Merits, Reparations and Costs. Judgment of 28 November 2018. Series C No. 371, para. 213.

⁴⁰⁰ UN Committee on the Elimination of Discrimination against Women (CEDAW), General recommendation No. 33 on women's access to justice, 3 August 2015, UN Doc. CEDAW/C/GC/33, para. 26.

⁴⁰¹ CEDAW, General recommendation No. 33 (previously cited), para. 26.

⁴⁰² Amnesty International, *Americas. We are defending the land with our blood: defenders of the land, territory and environment in Honduras and Guatemala* (previously cited), p. 47.

⁴⁰³ Inter-American Court of Human Rights, Case of Barbosa de Souza et al. v. Brazil. Preliminary objections, Merits, Reparations and Costs. Judgment of 7 September 2021. Series C No. 435, para. 145.

⁴⁰⁴ Case file: Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile, 9 January 2023, p. 12.

reaffirming the importance of applying a gender perspective when adopting protection measures, reinforcing the idea that investigations into attacks against women defenders must be objective and take into account the status of women as an important element in the design of the investigation plan, and urging authorities in the Americas to take measures to eradicate negative gender stereotyping and prevent the stigmatization of women human rights defenders.

Collective protection as a mechanism for the protection of human rights defenders working on environmental issues

232. Amnesty International has observed how different countries in the Americas have established national protection mechanisms to guarantee the safety of human rights defenders. Efforts such as those of Brazil, Colombia, Honduras and Mexico are valuable, but must be accompanied by comprehensive public policies that address the structural causes that create a climate of risk for human rights defenders.⁴⁰⁵ The Special Rapporteur on the situation of human rights defenders expressed a similar view in 2009, stating that since the adoption of the Declaration on Human Rights, many national, intergovernmental and non-governmental mechanisms for the protection of human rights defenders have been created, yet defenders continue to pay a high price for their activities.⁴⁰⁶
233. Up to this point, this document has set out the obligations of states in the Americas with regard to the right to defend human rights and with regard to persons who, in exercising that right, are at risk of or have suffered human rights violations. In this section, Amnesty International presents to the Honourable Court the model of collective protection as an alternative to individual protection that may be relevant in designing models of protection for environmental defenders or to complement those that states may already have in place. To do this, the section is divided into two parts. The first is a general overview of the obligation of states to protect human rights defenders from risks of violations of their rights. The second part examines collective protection as an important element in fulfilling this obligation in various cases, in particular in relation to land, territory, climate and environmental defenders.

Obligation to protect human rights defenders through the adoption of protection mechanisms

234. The Declaration on Human Rights Defenders makes it clear that states have the primary responsibility to “protect, promote and implement all human rights and fundamental freedoms”.⁴⁰⁷ This necessarily implies ensuring “the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights”⁴⁰⁸ related to the defence of human rights. It follows that when states provide the required conditions and guarantees for the right to defend human rights to be enjoyed in practice, they also increase the likelihood that they will be able to fulfil their obligation to respect, protect, promote and realize all other human rights of individuals.⁴⁰⁹
235. In this respect, the IACHR has stated that “the work of human rights promotion and protection... gives rise to special obligations of the states to ensure the protection of those who are engaged in the promotion and protection of such rights”.⁴¹⁰ The Special Rapporteur on the situation of human rights defenders has also reaffirmed this obligation.⁴¹¹

⁴⁰⁵ Amnesty International, *Americas: The Situation of State Protection Mechanisms for Human Rights Defenders*. 3 October 2018, <https://www.amnesty.org/en/documents/amr01/8912/2018/en/>.

⁴⁰⁶ Special Rapporteur on the situation of human rights defenders, Report, 30 December 2009, UN Doc. A/HRC/13/22, para. 69.

⁴⁰⁷ UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, Article 2.1.

⁴⁰⁸ UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, Article 12.2.

⁴⁰⁹ Amnesty International, *Transforming pain into hope*, p. 55.

⁴¹⁰ IACHR, Report on the situation of human rights defenders in the Americas, 7 March 2006, OEA/Ser. LV/II.124, para. 30.

⁴¹¹ Special Rapporteur on the situation of human rights defenders, Report, 30 December 2009, UN Doc. A/HRC/13/22, para. 62

236. The general obligation of States with regard to the protection of human rights defenders, in the spirit of the Declaration on Human Rights Defenders, is to ensure that they enjoy a safe and enabling environment in which to carry out their work. The same language is used in the Escazú Agreement with regard to the situation of environmental defenders.⁴¹²
237. According to the Special Rapporteur on the situation of human rights defenders, an enabling environment for defenders is one “in which their work is rooted in the broad support of society and in which the institutions and processes of government are aligned with their safety and the aim of their activities”.⁴¹³ Thus, states fulfil their obligation when, on the one hand, they build support for the rights and work of defenders, such as by carrying out human rights awareness-raising and education, and, on the other, they develop and strengthen legislation, policies and practices for protection, including through the adoption of national protection mechanisms or the strengthening of other state institutions such as the justice system and national human rights institutions.⁴¹⁴
238. One of the central issues for the protection of human rights defenders in the face of recurrent violence against them is the implementation of national protection programmes. In this regard, the IACHR has stated that such programmes must translate into comprehensive and effective protection systems that “go beyond the mere operation of a protection program against acts of violence – although such protection is necessary and a priority”.⁴¹⁵ Thus, not only are mechanisms for responding to violence needed, but also prevention strategies backed up by a strong political commitment on the part of the state to prevent attacks.⁴¹⁶
239. With regard to prevention, this Honourable Court has further developed its jurisprudence in cases involving human rights defenders whose lives were at risk and where states failed to act with due diligence.⁴¹⁷ Indeed, it has urged states to adopt public policies for the protection of human rights defenders that include at least seven requirements: i) participation of the persons concerned in the elaboration of such policies; ii) a comprehensive and inter-institutional approach to the problem; iii) creation of risk analysis models; iv) creation of information management systems; v) design of protection plans that respond to the specific risk faced by each defender; vi) promotion of a culture that legitimates and protects defenders; and vii) allocation of human and financial resources for the implementation of these measures.⁴¹⁸

Collective protection in the context of the protection of human rights defenders, in particular those defending the environment

240. Amnesty International believes that collective protection is an essential part of the protection that human rights defenders should receive, in addition to and concurrent with the adoption of material and non-material measures of individual protection, particularly in the case of those defending land, territory, climate and the environment.⁴¹⁹ Collective protection revolves around the comprehensive mitigation of the root causes of the violence suffered by defenders and has the potential to offer protection not only to individuals defending rights related to land, territory, climate and the environment, but also to other individuals, groups and communities.

⁴¹² Economic Commission for Latin America and the Caribbean, Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean. LC/PUB.2018/8/Rev.1. 2022, articles 4.6 and 9.1.

⁴¹³ United Nations. Human Rights Council. Report of the Special Rapporteur on the situation of human rights defenders. A/HRC/31/55. 1 February 2016, para. 77.

⁴¹⁴ United Nations. Human Rights Council. Report of the Special Rapporteur on the situation of human rights defenders. A/HRC/31/55. 1 February 2016, paras 78-96.

⁴¹⁵ IACHR, Report on the situation of human rights defenders in the Americas. OEA/Ser.L/V/II.124. 7 March 2006, para. 131.

⁴¹⁶ IACHR, Report on the situation of human rights defenders in the Americas. OEA/Ser.L/V/II.124. 7 March 2006, para. 132-133.

⁴¹⁷ Inter-American Court of Human Rights, Case of Luna López v. Honduras. Merits, Reparations and Costs. Judgment of 10 October 2013. Series C No. 269, para. 123.

⁴¹⁸ Inter-American Court of Human Rights, Case of Luna López v. Honduras. Merits, Reparations and Costs. Judgment of 10 October 2013. Series C No. 269, para. 243. Inter-American Court of Human Rights, Case of Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs. Judgment of 28 August 2014. Series C No. 283, para. 263.

⁴¹⁹ Amnesty International, *Why do they want to kill us?*, p. 14.

This does not mean that individual protection is not relevant or necessary in these cases. The decision on the appropriate protection model to apply, as explained below, must be based on a thorough risk analysis to assess the need for individual or collective protection measures, or both.

241. In this regard, the United Nations Human Rights Council has urged states to ensure that protection measures for human rights defenders are holistic, including both individual and collective protection aspects, taking into account the intersectional dimensions of violations and the particular needs of women defenders, Indigenous Peoples, children, persons belonging to minorities and rural and marginalized communities. It has also recommended that measures function as early warning and rapid response mechanisms to facilitate immediate access to the relevant authorities when required.⁴²⁰

242. States must address the structural causes of risk, including those related to impunity for perpetrators of violence, often armed groups, criminal organizations and economic projects that exploit natural resources in the areas where the threatened communities live. States must also address structural poverty and unequal access to economic, social and cultural rights, as well as stigmatization and lack of recognition of human rights work.⁴²¹

243. In addition to addressing the structural causes of violence, collective protection is also based on an understanding of the defence of human rights as an activity that often has a community dimension. As Amnesty International has argued in the past:

[I]t is essential that the exclusively individual narrative of defender protection is decentralized in order to make the needs of collectives visible. Collective protection analyses the risk situation from a broad and comprehensive perspective that does not focus exclusively on the leaders of the group of defenders, but rather on the entire collective, thus facilitating an assessment of the different risk scenarios that they may face.⁴²²

244. Collective protection therefore facilitates the development of structural protection strategies with the potential to have an impact beyond individual cases. In this sense, collective protection comprises “all the measures that are available to be taken when the object of protection is not an individual but a group, organisation, community or entity whose members are at risk”.⁴²³ Thus, collective protection seeks, firstly, to reinforce interactions both internally between its members and externally with their environment, and, secondly, to radiate into the spaces and territories where human rights defenders carry out their work.⁴²⁴

245. Protection International and the Centre for Justice and International Law (hereinafter CEJIL) have previously proposed a non-exhaustive list of the types of measures that could be adopted as part of a collective protection strategy. These include: i) increasing connectivity between defenders; ii) prevention by deterring potential perpetrators and helping communities to remain in the territory; iii) individual protection measures applied collectively by allocating protection measures to specific roles rather than to individuals; iv) expressions of interest, contacts and visits by central authorities to the territories; v) criminal investigations that take into account the collective dimension of attacks; vi) ensure the provision of legal advice to communities; vii) resource preparedness to ensure an adequate response when required; and viii) regular monitoring of the risk situation.⁴²⁵

⁴²⁰ United Nations. Human Rights Council. Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development. A/HRC/40/L.22/Rev.1. 20 March 2019.

⁴²¹ Amnesty International, *Why do they want to kill us?*, p. 14.

⁴²² Amnesty International, *Hacia una Protección colectiva y comunitaria para personas defensoras de tierra y territorio en México* [Towards collective and community protection for land and territory defenders in Mexico], 21 September 2020, <https://amnistia.org.mx/contenido/index.php/hacia-una-proteccion-colectiva-y-comunitaria-para-personas-defensoras-de-tierra-y-territorio-en-mexico/>, p. 8.

⁴²³ Protection International and CEJIL, 2017. *The Time is NOW! – Effective public policies for the right to defend human rights*. Brussels and San José: PI & CEJIL, pp. 106-107.

⁴²⁴ Protection International and CEJIL, 2017. *The Time is NOW! – Effective public policies for the right to defend human rights*. Brussels and San José: PI & CEJIL, p. 107.

⁴²⁵ Protection International and CEJIL, 2017. *The Time is NOW! – Effective public policies for the right to defend human rights*. Brussels and San José: PI & CEJIL, pp. 108-109.

246. However, beyond the availability of a range of collective protection measures, the most important aspect is the analysis of the specific situation of a particular group of human rights defenders and their communities, as the effectiveness of any intervention will depend on this. A protection plan that addresses all aspects of the risk faced by the community, including the structural causes of violence, must be adopted and a regular monitoring and evaluation process put in place to ensure its validity and adequacy once it is implemented. This should be based on a thorough risk analysis and discussion of the proposal with defenders and communities.⁴²⁶

247. The response to the question “What measures and policies should States adopt to facilitate the work of women environmental defenders?”⁴²⁷ is a valuable opportunity for this Honourable Court, in line with its jurisprudence on the protection of human rights defenders, to remind states of the need to complement their individual protection programmes (where they exist) with collective protection programmes. This is even more important for those defending land, territory, climate and the environment, as they tend to have or build strong community ties with the land and territory they inhabit. Thus, the risks faced by a human rights defender may originate in collective risks resulting from structural factors of violence or may spread to the communities they work with in defence of their rights.

248. On the basis of this understanding, the Honourable Court should call upon states in the Americas to implement binding public policies on prevention and protection of human rights defenders that include both individual and collective dimensions, are developed in consultation with communities and civil society organizations and incorporate a comprehensive and collective perspective based on the application of a differentiated and intersectional approach.

III. CONCLUSIONS

249. In this brief, Amnesty International has submitted for the consideration of this Honourable Court a series of arguments that respond to some of the questions raised by the Republic of Chile and the Republic of Colombia, with a view to clarifying the scope of state obligations (in both the individual and collective dimensions) to respond to the climate emergency under international human rights law, focusing in particular on the differentiated impacts of the emergency on people from different regions and population groups, on nature and on human survival on the planet.

250. In the first instance, Amnesty International submits for the consideration of this Honourable Court a reminder to states that, in order to guarantee and protect the right to a life in dignity, they must move away from reliance on fossil fuels – the main drivers of global warming – and promote a just energy transition. This process can only be realized to the extent that states develop climate laws, policies and actions aimed at keeping the increase in average global temperatures to the minimum possible and no higher than 1.5°C above pre-industrial levels. The Court must consider that the development of appropriate national climate laws, policies and actions to protect people from the foreseeable and unavoidable impacts of the climate crisis is inherent in the obligations of states arising from the duty of prevention and guarantee of human rights in the face of the climate emergency.

Amnesty International calls on the Honourable Court to urge states to ensure that climate laws, policies and actions also aim to reduce greenhouse gas emissions and identify and address factors that increase the risk of harm from climate impacts, such as marginalization and discrimination, by allocating adequate resources for the realization of the economic, social and cultural rights of all people, and by prioritizing those facing the greatest risk from the climate emergency.

Furthermore, to ensure that climate action is consistent with the rights of all people, states must adopt and implement mitigation and adaptation measures that are consistent with human rights, taking into account the

⁴²⁶ Protection International and CEJIL, 2017. *The Time is NOW! – Effective public policies for the right to defend human rights*. Brussels and San José: PI & CEJIL, pp. 109-110.

⁴²⁷ Case file: Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile, 9 January 2023, p. 12.

needs and demands of different groups and ensuring their participation in the design and implementation of strategies for climate change adaptation and to reduce the risk of severe climate change impacts. Adaptation measures should prioritize the most marginalized groups, communities and individuals, addressing gender imbalances and incorporating the traditional knowledge of indigenous peoples and other local communities.

251. Similarly, Amnesty International requests that this Honourable Court remind states of their duty to respect, protect and fulfil human rights in all climate policies and initiatives. In particular, the organization believes that states must ensure that the transition to a decarbonized economy and resilient societies is just and equitable for all people, consistent with states' human rights obligations, and creates opportunities to address existing inequalities both within and between countries, including the promotion of gender, racial, ethnic, disability and intergenerational equality.

Amnesty International calls on this Honourable Court to urge states to use their regulatory power to ensure that all renewable energy projects are developed and implemented in a manner consistent with human rights. States must ensure that measures aimed at protecting people from their effects do not result in the violation of other human rights. In doing so, States must ensure and implement a just transition for working people and communities affected by climate change and the decarbonization process.

As part of this process, states should seize the opportunity to progressively fulfil the enjoyment of rights, reduce poverty and redress existing inequalities both within and between countries, including the promotion of gender, racial, ethnic, disability and intergenerational equality. This requires that transition, a concept recognized as a guiding principle in the Paris Agreement, is a central aspect of climate action consistent with human rights.

252. In this brief, Amnesty International also submits for consideration by this Honourable Court some legal principles of protection that Amnesty International believes should structure the pressing just energy transition. The organization considers that the request for an advisory opinion is an important opportunity for the Honourable Court to set out the principles through which the states of the region may guide the fulfilment of their international human rights obligations in the process of the energy transition, to ensure that it is just, that it contributes to reducing poverty, and that it addresses existing inequalities in the enjoyment of human rights.
253. With regard to the question of the scope of state obligations in the face of the climate emergency in terms of determining impacts on people on the move, Amnesty International believes that the international human rights legal framework already establishes state obligations in terms of the legal duty and collective responsibility to provide protection for people who are forced to move because of the adverse human rights effects of climate change and its impact on ecosystems. This brief also analyses state obligations in relation to international relocation of persons whose human rights, including the right to life, are threatened in their country of origin due to hazardous environmental events, and proposes a series of measures that would enable states to comply with the principles of shared responsibility, solidarity and international cooperation when addressing assistance to and protection of persons on the move in the context of climate change and disasters.

However, Amnesty International believes that states are generally unaware of, or fail to comply with, their obligations under international human rights law due to a lack of clarity regarding their scope, or restrictive interpretations. For this reason, the organization requests this Honourable Court to clarify and provide the necessary legal certainty on the obligations and legal principles of protection arising from the existing framework of the international and inter-American human rights systems with regard to the content and scope of the obligations to protect individuals who have had to leave their country of origin as a result of the adverse effects of environmental events on their rights. Amnesty International calls on the Court to remind states of their obligations under international human rights law towards people who are internationally displaced, or in need of international relocation, for reasons related to climate change.

254. In this document, Amnesty International has also set out, for consideration by the Honourable Court, three approaches to the adequate protection of environmental defenders in the context of responding to the following question submitted to this Honourable Court by the Republic of Chile and the Republic of Colombia in their request for an advisory opinion: "What measures and policies should States adopt to facilitate the work of environmental defenders?"

255. Firstly, Amnesty International requests this Honourable Court to reaffirm that the first step that states must take to protect environmental and climate defenders, as well as other human rights defenders, is to recognize that defending human rights is a right in itself. This involves upholding the international obligations that underpin the recognition of a human right: namely, to respect and guarantee such rights.
256. Second, Amnesty International submits to this Honourable Court a non-exhaustive categorization of the different types of violence suffered by human rights defenders in the Americas, including climate and environmental defenders: physical violence, criminalization, obstruction, stigmatization and impunity. This has two objectives. The first is to provide the Honourable Court with an insight into the situation of human rights defenders in the region in order to assist it in its decision when responding to the question referred; the second is to describe how each of these forms of violence, in addition to violating the very right to defend human rights, also violates other human rights, such as the right to life, to personal integrity and to judicial guarantees, among others. Amnesty International has also highlighted the differentiated nature of violence against defenders when it is perpetrated against individuals, groups and communities that have historically been marginalized or are in a situation of vulnerability. The two examples given in this document are Indigenous Peoples and women, although there are of course other groups that would also require the attention of this Court in answering the question posed and have not been elaborated upon: children, young people, Afro-descendant and peasant communities, LGBTIQ+ people, migrants and refugees, among others.
257. In accordance with the above, Amnesty International calls on this Honourable Court to explicitly state that the violation of the right to defend human rights results in the violation of other rights, depending on the nature of the attack or threat perpetrated against the individual. The organization also calls on the Court to clearly establish the obligation of states to adapt their protection practices to the specific ways in which certain individuals, groups and communities experience violence when defending human rights and the right to land, territory, climate and the environment, including Indigenous Peoples, women, children and LGBTIQ+ people, among others.

Amnesty International submits to the consideration of this Court the need to further examine and advance the application of a collective protection approach in cases of attacks against defenders of land, territory, climate and the environment, where relevant. The Honourable Court should consider the potential of collective protection, which derives from its ability to mitigate or eliminate the structural causes of violence, while clearly stating that individual protection can be concurrent with collective protection and bearing in mind that the appropriate model of protection to apply and the specific measures to be implemented must be based on carefully constructed protection plans based on a prior and thorough risk analysis that also takes into account the differentiated and intersectional violence to which defenders may be subjected.