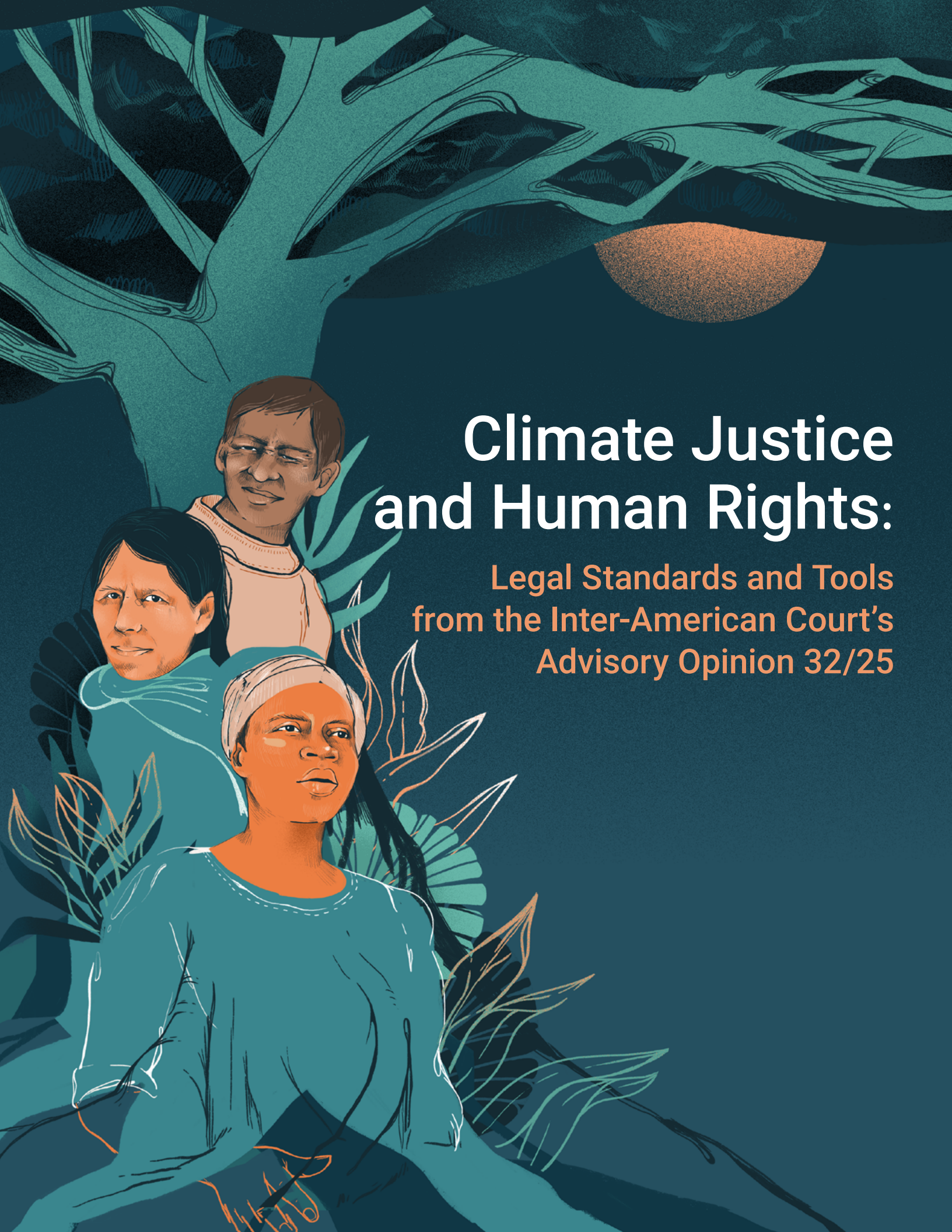


An illustration featuring three individuals—a man and two women—positioned in the lower-left quadrant. They are depicted in a warm, orange-toned style, contrasting with the cool teal and dark blue background. The man is in the back, looking slightly to the right. The woman in the middle is looking forward, and the woman in the foreground is looking slightly to the right. They are surrounded by stylized, dark teal foliage and a large, gnarled tree trunk on the left. In the upper right, a large, textured orange circle, resembling a full moon, is partially obscured by dark, swirling shapes that suggest mist or smoke. The overall mood is somber and contemplative.

Climate Justice and Human Rights:

Legal Standards and Tools
from the Inter-American Court's
Advisory Opinion 32/25

Climate Justice and Human Rights:

Legal Standards and Tools from the Inter-American Court's Advisory Opinion 32/25

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October, 2025

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Introduction

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On July 3, 2025, the Inter-American Court of Human Rights (IACtHR) delivered its Advisory Opinion OC-32/25 on Climate Emergency and Human Rights (Advisory Opinion),¹ marking a historic legal and political milestone in the global fight for climate justice. It is the first advisory opinion issued by an international court to find that both States and non-State actors, such as business enterprises, have obligations rooted in international human rights law to address the causes and consequences of the climate emergency.

The Court articulates clear and binding obligations to act urgently in protecting the global climate system, preventing human rights violations resulting from its alteration, and securing climate reparations. The Advisory Opinion will guide climate litigation in local, regional, and national courts, and provide a foundation for

climate policymaking, grounding local legislation and global negotiations not in voluntary commitments, but in legal duties. It will also serve as a testament to the lived experiences and expertise of those on the frontlines of climate harm and at the forefront of climate justice, affirming the peril that climate change represents for human rights and the promise of human rights-based climate action and remedy.

This Advisory Opinion is not an isolated development but rather part of an unprecedented global movement for climate justice. It stands alongside the recent climate advisory opinions of the International Tribunal for the Law of the Sea (ITLOS)² and the International Court of Justice (ICJ),³ and may be joined by one from the African Court on Human and Peoples' Rights (AfCHPR) in the near future.⁴ Together, these proceedings

- 1 Inter-American Court of Human Rights (IACtHR), *Climate Emergency and Human Rights*. Advisory Opinion AO-32/25 of May 29, 2025. Series A No. 32. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf.
- 2 International Tribunal for the Law of the Sea (ITLOS), *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*. Advisory Opinion, Case No. 31, May 21, 2024. Available at: https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf.
- 3 International Court of Justice (ICJ), *Obligations of States in Respect of Climate Change*. Advisory Opinion of 23 July, 2025. Available at: <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>.
- 4 Request for an advisory opinion on the human rights obligations of African States in addressing the climate crisis, submitted on May 2, 2025. Available at: https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2025/20250502_99025_petition.pdf.

mark a decisive moment in consolidating a more comprehensive and human rights-based legal framework to confront the climate emergency—what the IACtHR deems an exceptional threat that endangers life on the planet and severely undermines the enjoyment of human rights. Moreover, these advisory opinions may help cut through the political inertia that has long stalled progress in international climate negotiations and national climate policymaking.

The Advisory Opinion’s impact extends well beyond the States that have ratified the American Convention. The Court expressly holds that the decision’s interpretation of the American Convention and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador) must be considered in a comprehensive manner by the more than thirty countries that make up the Organization of American States (OAS). Additionally, the decision reinforces rights—including the rights to life, health, and a healthy environment—and legal principles—such as the duty to prevent transboundary harm and the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC)—enshrined in numerous other international and domestic legal frameworks. It will therefore serve as a blueprint for climate action, accountability, and justice for decades to come, not just in the Americas, but around the world.

Unprecedented Participation Shaped the Advisory Opinion

The process for the Advisory Opinion, which was initiated in 2023 by a joint request from the governments of Chile and Colombia, saw

a level of participation unprecedented in the history of this Court. Unlike the ITLOS and ICJ climate advisory proceedings, where rules of procedure narrowed participation to States and international and intergovernmental organizations, the IACtHR proceedings benefited from the participation of a wide array of actors. The Court received 263 submissions from 613 different actors, including States, international organizations, local communities, Indigenous Peoples and Afro-descendant groups, civil society organizations, academic institutions, and youth activists, who provided legal, scientific, and ethical arguments on the various issues addressed in this publication.⁵ Among the most significant contributions to the advisory proceedings is the *Manaus Declaration*, a collective initiative supported by hundreds of communities, Indigenous Peoples, and civil society organizations—including many of those presenting this series—which called on the Court to establish minimum standards for the protection of human rights in the context of the climate emergency.⁶

The inclusive, democratic, and intergenerational nature of the proceedings shaped both the Court’s reasoning and the content of the Advisory Opinion. For the first time in an advisory opinion, the Court repeatedly drew on written observations from civil society and Indigenous Peoples to ground its analyses, citing these submissions throughout its opinion. Public hearings in Barbados and Brazil, with 185 delegations representing diverse stakeholders, crystallized the principle of judicial immediacy. Judges heard directly from climate-impacted communities, defenders, and experts, receiving both firsthand accounts of the climate emergency in territories and proposals for solutions. This engagement reinforced the legitimacy of the Advisory Opinion and will help ensure its implementation.

5 All written submissions submitted to the Inter-American Court of Human Rights in the context of these proceedings can be found here: <https://corteidh.or.cr/tablas/OC-32-2025/>.

6 “Manaus Declaration on Human Rights in the Climate Emergency”, August, 2024. Available at: <https://aida-americas.org/es/declaracion-de-manaos-sobre-los-derechos-humanos-en-la-emergencia-climatica>.

Advisory Opinion's Key Conclusions Transform Human Rights and Climate Law

Recognizing climate change as a human rights emergency, the IACtHR clarifies in a sweeping interpretation of international law that human rights law creates binding obligations to prevent, reduce, and remedy the harms of climate change. The Court draws on fundamental principles of human rights and environmental law, such as the principles of non-discrimination, progressivity, precaution, intergenerational equity, and polluter pays, as well as interpretive approaches that read rules of law to favor people and Nature to the greatest extent possible (*pro persona* and *pro natura* principles). Together, these serve as the basis for enhanced duties of due diligence in prevention, mitigation, adaptation, and reparation in climate matters; obligations that are interdependent and require immediate enforcement.

As part of this groundbreaking decision, the Court recognizes the right to a healthy climate as an integral component of the right to a healthy environment. It establishes clear obligations for States to adopt ambitious climate targets grounded in science and equity, and to prevent irreversible harm to ecosystems and human life. Furthermore, the Court declares that advancing a legal paradigm recognizing the rights inherent in our planet's ecosystems is crucial to their long-term integrity and to the realization of a healthy environment, which in turn is essential for the exercise of fundamental human rights. The Advisory Opinion thus marks the first time the Court recognizes Nature as a subject of rights, supporting an interpretation that is being advanced by domestic courts in the region and around the world. Crucially, the Court affirms that the prohibition against causing irreversible environmental damage is a peremptory norm (*jus cogens*)—a rule that cannot be set aside

and that binds all States—placing it among the highest-ranking duties in international law.

In addressing obligations to mitigate and adapt to climate change, the Advisory Opinion affirms that States must: adopt ambitious, science-based climate targets; design mitigation and adaptation plans centered on human rights; and ensure accountability, transparency, international cooperation, and equity. The Court identifies fossil fuels as the root cause of the climate emergency and highlights that sectors such as oil and gas and agribusiness play a disproportionate role in generating emissions. Accordingly, States must regulate and hold those industries accountable—through enforceable environmental impact assessments (EIAs), climate due diligence, and by preventing undue corporate influence on climate policy and decision-making.

The Advisory Opinion also establishes a robust standard of protection for rightsholders, including those most affected by the climate crisis. It acknowledges the intersecting factors of discrimination and vulnerability that exposes different groups to greater harm, and affirms that States must adopt intersectional and differentiated measures to address these disproportionate climate impacts. Among such measures is ensuring that climate policies are accessible—in physical, informational, and procedural terms—to groups in situations of heightened vulnerability. These include Indigenous Peoples; persons with disabilities; people who identify as lesbian, gay, bisexual, transgender, intersex, queer, or hold other gender identities or sexual orientations (LGBTIQ+); people displaced by climate harm; and children and future generations.

More broadly, the Court reaffirms that access to information, public participation, and justice are all foundational for effective climate policy and human rights protection. Crucially, the Advisory Opinion declares that States must ensure rightsholders access to accurate climate information and combat disinformation while respecting freedom of expression. It also rec-

recognizes environmental human rights defenders as invaluable to the fight against climate change and to environmental democracy more broadly, holding that States owe them a special duty of protection through robust national frameworks, anti-criminalization measures, and guaranteed participation rights.

In addressing the right to remedy in cases of climate harm, the Advisory Opinion emphasizes that States must remove legal, institutional, financial, and evidentiary barriers that impede effective judicial access, particularly for communities in vulnerable situations. Finally, the Court underscores that climate reparations are mandatory, arising from an indisputable obligation under international law to provide remedies when harm or wrongful acts occur.

About this Publication

This publication compiles fourteen thematic documents developed through the collaborative efforts of a coalition of environmental, human rights, and academic organizations, alongside experts who have actively participated in the advisory

proceedings from the outset. The topics reflect the main thematic areas articulated by the Court in the Advisory Opinion and are organized into four sections: (i) Foundational Rights and Knowledge; (ii) State and Corporate Obligations; (iii) The Rights of Affected Peoples and Groups; and (iv) Environmental Democracy and Remedies.

Each brief was prepared by a lead organization and subjected to rigorous peer review to ensure accuracy and consistency. Together, they provide an in-depth analysis of the Advisory Opinion's key contributions, its legal and practical implications, and the gaps and opportunities this landmark decision presents across the selected thematic areas. They also present arguments, standards, and practical recommendations aimed at strengthening climate litigation and advocacy strategies.

This series serves as a resource for legal and advocacy networks, enhancing understanding of the scope of the Court's decision and encouraging legal and political action to advance the structural changes necessary for communities and ecosystems to achieve climate justice.

Note to readers: There is an ambiguity in some parts of the official English translation of the Advisory Opinion when referring to legal obligations. The original Spanish version uses the verb “deber,” which is sometimes translated as “should” in the English text. In legal Spanish, “deber” indicates a rule, obligation, or law that must be followed, and is better translated as “must.” Where the English version uses “should” as a translation of “deber,” we have interpreted this to signify that States have an obligation to undertake an action, rather than merely suggesting that they could do so. This interpretation is consistent with the original Spanish meaning of “deber” and the context of the word in the immediately surrounding text. We provide a footnote to remind readers of this interpretation whenever a direct quote to the English version uses the word “should” in this way.

SECTION I



Foundational Rights and Knowledge

01. The Right to a Healthy Climate

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Executive Summary

- For the first time, the IACtHR recognizes the right to a healthy climate. While derived from the right to a healthy environment (para. 271), this right is autonomous and directly enforceable (para. 297). Its collective dimension protects the common interest of present and future generations, of all species, and of Nature itself in maintaining a climate system that ensures well-being and balance (para. 302). The individual dimension guarantees each person the possibility of developing within a healthy climate system (para. 303).
- The Court develops the notion of climate damage as a distinct form of environmental harm that is, by definition, transboundary in nature (para. 295). A State of origin bears extraterritorial responsibility for human rights violations where a causal link exists (para. 277).
- The Court defines the specific obligations of States to guarantee the right to a healthy climate, thereby consolidating a robust standard of protection. It establishes the non-derogable, peremptory prohibition (*jus cogens*) against causing irreversible environmental damage (para. 287) and sets a heightened standard of due diligence to prevent significant climate harm (para. 353). The obligation to act to mitigate the causes of climate change includes the duty to regulate (paras. 322-351); to strictly supervise and monitor public and private activities that generate greenhouse gas (GHG) emissions (paras. 352-357); and to conduct EIAs that incorporate potential climate impacts (paras. 358-363). The obligation to progressively advance sustainable development comprises both an immediately enforceable core and a dimension of progressive realization, subject to the principle of non-regression (paras. 369-376).



Introduction and Context

The recognition of the right to a clean, healthy, and sustainable environment as an autonomous and justiciable right has been steadily consolidated within international human rights law in recent years.⁷

Building on this foundation, and given the global, transboundary, and technically complex nature of the climate crisis, environmental and human rights movements in the region requested that the IACtHR expressly and specifically recognize the right to a healthy climate and clarify the concrete obligations of States necessary to adequately protect the global climate system. Civil society also urged the Court to establish specific mitigation targets, strengthen standards of climate due diligence, and EIAs that incorporate a climate module. They called for clear criteria for liability for climate damage, including impacts on present and future generations, and emphasized the need to integrate both the best available science and Indigenous and local knowledge.

The Advisory Opinion takes up these demands and gives them substantive content, thereby advancing the regional framework for climate justice.



Legal Analysis

a. Content and Scope of the Right to a Healthy Climate

To determine the content and scope of the right to a healthy climate and the resulting obligations of States, the IACtHR briefly reviews its previous case law on the right to a healthy environment and the substantive and procedural elements that must be guaranteed.⁸ The Advisory Opinion recalls that this right protects both the environment as a whole and the various interdependent systems and elements that comprise it, whose protection ensures the balance that makes life possible (para. 298) and safeguards all other human rights protected under various international treaties (paras. 274, 300, 301).

The Court holds that the climate system—understood as “the series of components that interact to determine the planet’s climate” (paras. 295, 298, 299)—is the essential component of the environment directly affected by the climate emergency (para. 297). The obligation to protect it derives from the duty to protect the environment, but the specificity of its global functions, its constituent elements, and the dynamics required to maintain its balance mean that it must be understood as a distinct objective (para. 299). Thus, recognizing the complexity and specificity of climate issues and consistent with the progressive development of international environmental law, the Court recognizes the

-
- 7 See, *inter alia*, United Nations Human Rights Council, “The human right to a clean, healthy and sustainable environment,” A/HRC/RES/48/13, October 8, 2021. Available at: https://digitallibrary.un.org/record/3945636/files/A_HRC_RES_48_13-EN.pdf; United Nations General Assembly, “The human right to a clean, healthy and sustainable environment,” Resolution A/RES/76/300, July 28, 2022. Available at: <https://digitallibrary.un.org/record/3983329>; IACtHR, *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights)*, Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23; IACtHR, *Case of the Indigenous Communities Members of the Lhaka Honhat Association (Our Land) v. Argentina. Merits, Reparations, and Costs*. Judgment of February 6, 2020, Series C No. 400.
- 8 In this regard, see, *inter alia*, IACtHR, *Advisory Opinion OC-23/17, supra*; IACtHR, *Case of the Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina, supra*; IACtHR, *Case of the Inhabitants of La Oroya v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 27, 2023. Series C No. 511.

right to a healthy climate as an autonomous and justiciable right under Article 26 of the American Convention. It defines this right as that which “derives from a climate system free of anthropogenic interferences that are dangerous for human beings and Nature as a whole” (paras. 297, 300, 301).

Like the right to a healthy environment, the right to a healthy climate has both a collective and an individual dimension (para. 298). The collective dimension protects the common interest of all species in maintaining a climate system capable of ensuring well-being and balance in the face of existential threats posed by the climate crisis. The Court emphasizes that the ownership of this dimension rests “indivisibly and non-exclusively to the groups composed of those who share in this collective interest” (para. 302), which extends to both present and future generations (paras. 302, 311)⁹ as well as to Nature itself as the physical and biological basis of life (para. 304).¹⁰ This means that intra- and intergenerational equity are essential to interpreting the obligations derived from the collective dimension of this right (para. 313), and that the integrity of the ecosystems and the living and non-living components sustained by the climate system must be preserved (paras. 315, 316). Non-compliance with international obligations to protect the climate system necessarily undermines this dimension and gives rise to State responsibility. Accordingly, measures adopted to end the violation, prevent its recurrence, and fully remedy its consequences must benefit both humanity and Nature as a whole (paras. 302, 311, 557-560).

The individual dimension of this right protects the possibility for each person to develop in a climate system free from dangerous anthropogenic interference. Its violation occurs when a State’s failure to fulfill its obligations to protect the climate system results in direct harm to the individual rights of one or more persons (para. 303). Such violations give rise to State responsibility and the duty to fully repair the damage caused (para. 303).¹¹

Furthermore, the Court holds that impacts on the global climate system constitute a particular form of environmental damage known as climate damage, which is, by definition, transboundary in nature. Its causes and effects transcend national borders, affecting persons and communities in other States or even areas beyond national jurisdiction (paras. 210, 211, 295). When human rights protected under the American Convention are impaired by such transboundary harm, extraterritorial responsibility rests with the State of origin, provided there is a causal link between the act causing the damage and the rights violations beyond its territory (paras. 277, 578).

b. Obligations Arising from the Right to a Healthy Climate

The IACtHR recalls that States have a reinforced duty of due diligence to protect the environment and are obliged to: (i) refrain from causing or allowing significant environmental damage to other States (para. 275); (ii) adopt measures to prevent such damage, within or beyond their territories (paras. 276, 277); and (iii) take concrete measures to ensure the protection, restoration, and regeneration of ecosystems (paras. 283, 364-367, 559) in a manner consistent with the best available science and knowledge (paras. 283, 240, 468, 478, 480).¹²

⁹ For more details on the rights of future generations, see thematic brief No. 11.

¹⁰ For more details on the rights of Nature, see thematic brief No. 2.

¹¹ For more details on climate reparations, see thematic brief No. 14.

¹² For more details on the role of climate science, see thematic brief No. 3.

On this basis, the Court consolidates the standard of enhanced due diligence for the prevention of climate damage (paras. 231-237) and develops specific State obligations with respect to the right to a healthy climate: (i) refrain from causing or allowing climate damage to be caused to other States (para. 275); (ii) act to address the causes of climate change as a prerequisite for the enjoyment of other substantive rights (paras. 321-363, 377) by mitigating GHG emissions;¹³ (iii) protect Nature and its components in relation to climate change; and (iv) progressively advance toward sustainable development, which includes both an immediately enforceable core and a dimension of progressive realization (paras. 369-376).

First, the Court consolidates a robust standard of protection by establishing a non-derogable and peremptory obligation to preserve the vital equilibrium of ecosystems essential for sustaining life. This includes the explicit prohibition of all anthropogenic activities that cause irreversible environmental damage, such as projects that compromise critical carbon sinks or involve large-scale deforestation (paras. 288-291). Its recognition as a norm of *jus cogens* (which admits no agreement to the contrary) reflects the collective interest of humanity in the protection of this right (para. 293). This finding is grounded in the progressive development of the fundamental principles of international environmental law¹⁴ and on the principle of effectiveness (para. 294).¹⁵

Second, the Court requires action to address the causes of climate change, particularly the mitigation of GHG emissions (paras. 296, 321-363). This duty comprises three specific obligations: (i) to define and track mitigation targets and to regulate related corporate conduct (paras. 322-351);¹⁶ (ii) to strictly monitor and supervise public and private activities that generate GHGs (paras. 352-357); and, (iii) to require and approve EIAs that evaluate potential impacts on the climate system (paras. 358-363).¹⁷

Third, the Court highlights the obligation to protect Nature and its components in the context of climate change.¹⁸ It emphasizes that once the climate system is affected, containment or control measures akin to those applicable to other forms of pollution are not sufficient (para. 365). Accordingly, the Court specifies the obligations arising from States' general duties with respect to Nature and its components (para. 366) and the climate system in particular (para. 370).

Finally, the Court recalls the duty to progressively advance toward sustainable development (para. 369). It underscores that the existence of a sustainable development strategy enshrined in domestic law is an obligation of immediate enforceability, while the adoption of deliberate, concrete, and well-directed measures through appropriate means constitutes an obligation of progressive realization, subject to some flexibility in terms of timing and modalities of implementation (paras. 371-373). In relation to the duty of non-regression, the Court further holds that measures that openly contradict—or are

13 For more details on the obligation to mitigate GHG emissions, see thematic brief No. 4.

14 These include the precautionary principle and the polluter pays principle, as well as the obligation not to cause transboundary environmental harm.

15 This principle requires interpreting and applying the rights and obligations of the American Convention in a way that guarantees their full exercise and not in a formal or illusory manner. This implies that State obligations on climate must be fulfilled in a real and practical way, ensuring concrete results in the protection of human rights in the face of the climate crisis.

16 For more details on the obligation to regulate business enterprises, see thematic brief No. 7.

17 In the Advisory Opinion, the Court defines development as a "comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals." (para. 370).

18 For more details on State obligations regarding the protection of Nature and its components, see thematic brief No. 2.

unjustified in relation to—the objective of progressively advancing toward sustainable development violate the right to a healthy environment in connection with the obligation of respect (para. 376).



Legal and Practical Implications

The autonomous recognition of the right to a healthy climate constitutes a significant jurisprudential advance for climate justice, both at the normative level and in its practical application through climate litigation. It renders the global climate system a protected legal interest and a direct benchmark for monitoring compliance with international law, enabling affected individuals and communities to directly demand its protection from administrative and judicial authorities. It also opens the door to direct actions for violation of the right; requests for precautionary measures in situations of serious, urgent, and irreversible risk; and the determination of extraterritorial responsibility, since climate damage is recognized as inherently transboundary.

The articulation of specific State obligations to guarantee this right facilitates rigorous monitoring of compliance and accountability at both national and international levels. The standard of protection developed by the IACtHR is particularly robust, reflecting the urgency of coordinated measures to address the climate emergency. In an innovative step, the Court affirms the *jus cogens* nature of the prohibition against causing massive and irreversible environmental damage, elevating this principle to a non-derogable rule guiding both public and private decisions on environmental matters. It further establishes a reinforced duty of due diligence for the prevention of climate damage, which specifically includes the obligation to act on the causes of climate change and mitigate its effects. These requirements reduce discretion, enable intense judicial oversight, and standardize the technical scrutiny of decisions.

Failure to comply with these obligations gives rise to State liability and triggers the duty to provide full reparation to affected individuals, communities, and ecosystems, considering measures that benefit humanity and Nature as a whole.

This legal framework transforms climate commitments into substantive obligations that States in the region must embed within regulatory frameworks and public policies. It also strengthens corporate accountability and provides a more solid foundation for affected individuals, communities, and ecosystems to access structural remedies consistent with a climate justice approach, including access to information, participation, transparency, and the application of differentiated approaches.



Opportunities and Gaps in the Court's Approach

The recognition of the autonomous right to a healthy climate establishes a critical precedent for achieving climate justice. By functioning as a direct benchmark for monitoring compliance with the American Convention, it allows for the review of laws, policies, and licenses that impact the climate under a rigorous technical standard, leaving less room for discretionary interpretation.

The enhanced duty of due diligence enables the technification of public action, requiring the incorporation of climate modules in EIAs, the grounding of decisions in the best available science

and local and Indigenous knowledge, and the establishment of robust measurement, reporting, and verification systems. This fosters regulatory coherence and strengthens strategic litigation, including in the transboundary dimension of climate damage, as well as the possibility of structural remedies that integrate ecosystem restoration with social measures. Alongside a pro-persona and pro-natura approach, corporate accountability is reinforced through State duties of regulation and strict oversight across value chains.

The Advisory Opinion calls for the progressive reduction of emissions, including those from fossil fuels and short-lived climate pollutants (SLCPs), and recognizes that emissions both within and beyond national territory must be considered. However, it does not establish quantitative thresholds, timetables, or carbon budgets that would allow minimum levels of compliance to be tested in court. Nor does it provide for the distribution of mitigation efforts among States.

For the right to a healthy climate to be truly enforceable, it is therefore necessary to continue addressing operational gaps, most of which relate to establishing accurate quantitative thresholds and evidence-based methodologies for attribution and causality in a complex, diffuse, and transboundary phenomenon such as climate change.

02. The Rights of Nature

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Executive Summary

- The IACtHR, through this Advisory Opinion, became the first international human rights court to explicitly recognize rights of Nature.
- The IACtHR emphasized that the recognition of the rights of Nature represents a contemporary expression of the principle of the interdependence between human rights and the environment, outlining positive State obligations to protect, restore, and regenerate ecosystems.
- The Advisory Opinion builds upon the IACtHR's Advisory Opinion No. 23/17 and earlier rulings that expanded the right to a healthy environment beyond anthropocentric limits and incorporated Indigenous cosmologies.
- The Advisory Opinion is poised to influence regional and global normative development of the rights of Nature. The full extent of its impact, however, remains to be seen.



Introduction and Context

In recent decades, a growing movement has emerged across the globe to recognize the rights of Nature—an effort to reimagine the relationship between humans and the natural world by recognizing ecosystems, species, and natural entities as legal subjects with enforceable rights.¹⁹ At the heart of this movement is ecocentrism, a worldview that challenges the dominant cultural narrative which positions humans as separate from and inherently superior to Nature. This prevail-

¹⁹ Eco Jurisprudence Monitor, "Printable Charts." Available at: <https://ecojurisprudence.org/charts/>.

ing myth reduces all non-human beings of Nature to mere property, subject to human exploitation. In contrast, the recognition of the rights of Nature affirms the scientific understanding that Nature constitutes an interconnected community of which humans are an integral part. This is substantiated by the biological fact that humans share DNA—the fundamental building block of life—with all other species, underscoring their intrinsic interconnectedness.²⁰ This and related perspectives have long been promoted by Indigenous Peoples and traditional communities, and now form a conceptual foundation for efforts to incorporate rights of Nature into Western legal frameworks. Reflecting this, Indigenous Peoples and organizations advocating for the rights of Nature played a central role in the written submission and public hearing processes leading up to the Advisory Opinion.²¹

At the international level, the recognition of the rights of Nature has begun to gain meaningful traction, with progress slowly but steadily emerging. Some international instruments have begun laying the groundwork by promoting, to varying extents, ecocentric approaches.²² They, however, do not grant Nature legal rights.

Across domestic jurisdictions, a growing number of countries have begun to take concrete steps toward recognizing the rights of Nature through diverse legal mechanisms, including constitutional amendments, statutory reforms, and judicial decisions. In 2008, Ecuador became the first country to enshrine such rights in its constitution, recognizing *Pachamama* or Mother Earth's right to exist and to regenerate its life cycles and structure.²³ Since then, a number of countries have recognized the rights of Nature or the rights of specific ecosystems at the national and subnational level.²⁴

20 Eckersley, Robyn, "Environmentalism and Political Theory: Toward an Ecocentric Approach," State University of New York Press, 1992, p. 49. Available at https://api.pageplace.de/preview/DT0400.9781000620979_A46040774/preview-9781000620979_A46040774.pdf.

21 See, e.g., Written observations submitted by Communities belonging to the Lenca People, Communities belonging to the Tolupán People, Civic Council of Popular and Indigenous Organizations of Honduras (COPINH), Broad Movement for Dignity and Justice (MADJ), and Women's Link Worldwide (WLW). Available at: https://corteidh.or.cr/sitios/observaciones/OC-32/6_lenca_WLW.pdf; Written observations submitted by Confederación de Nacionalidades Indígenas del Ecuador (CONAIE), Fundación Pachamama, Centro de Derechos Humanos de la Pontificia Universidad Católica del Ecuador (CDH-PUCE), and Coordinadora Ecuatoriana de Organizaciones para la Defensa de la Naturaleza y el Medio Ambiente (CEDENMA). Available at: https://corteidh.or.cr/sitios/observaciones/OC-32/10_CONAIE_otros.pdf.

22 These include the UN World Charter for Nature, the Convention on Biological Diversity, the Kunming-Montreal Global Biodiversity Framework, and the Agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction. See, respectively, United Nations General Assembly, "World Charter for Nature," Resolution. 37/7, 1982, Preamble, paras. 1 to 3(a). Available at: <https://docs.un.org/en/A/Res/37/7>; Convention on Biological Diversity, 1992, Preamble, para 1. Available at: www.cbd.int/doc/legal/cbd-en.pdf; Conference of the Parties to the Convention on Biological Diversity, "Global Biodiversity Framework," CBD/COP/DEC/15/4, Decision 15/4, of December 19, 2022, Section C(b), Target 19(f). Available at: <https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf>; Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction, 2023, Preamble, Articles 7(f), 19(3), 26(5). Available at: <https://www.un.org/bbnjagreement/sites/default/files/2024-08/Text%20of%20the%20Agreement%20in%20English.pdf>. Efforts led by Bolivia to gain support for a Universal Declaration on the Rights of Mother Earth have not yet fully materialized.

23 Constitution of the Republic of Ecuador, arts. 71-73.

24 At the national level, these include Bolivia, New Zealand, Panama, and Uganda. At the subnational level, these include Brazil, Colombia, France, India, the Netherlands, Peru, and the United States. See United Nations "Harmony with Nature," *Rights of Nature Law and Policy*. Available at: <http://www.harmonywithnatureun.org/rightsOfNaturePolicies/>.

Likewise, courts in several countries have similarly recognized Nature and certain ecosystems as rights-holding entities, even in the absence of legislative enactments.²⁵

In line with Latin America's prominent role in the development of the rights of Nature, the Inter-American System has taken a series of key steps toward an ecocentric interpretation of human rights prior to the issuance of the Advisory Opinion. In its prior Advisory Opinion OC-23/17, the IACtHR articulated the scope and content of the right to a healthy environment in a manner that broadened its traditionally anthropocentric approach—wherein environmental harm was only justiciable if it directly affected humans. In a significant shift, the IACtHR recognized that “as an autonomous right, the right to a healthy environment, unlike other rights, protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals.”²⁶ In that groundbreaking opinion, the IACtHR affirmed that a State may violate the *human* right to a healthy environment through environmental degradation, even in the absence of direct harm to human beings. In addition, through judgments in contentious cases such as *Yakye Axa Indigenous Community v. Paraguay*;²⁷ *U'wa Nation v. Colombia*;²⁸ *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*;²⁹ and *Kichwa Indigenous People of Sarayaku v. Ecuador*;³⁰ the IACtHR had begun reiterating this perspective and incorporating Indigenous cosmologies that understand the environment in relational rather than utilitarian terms. This precedent laid crucial normative groundwork for the IACtHR's subsequent recognition of Nature's legal personality in this Advisory Opinion.



Legal Analysis

With the Advisory Opinion, the IACtHR became the first international human rights tribunal to explicitly affirm that Nature possesses legal rights. This marks a significant elaboration of the Court's engagement with the rights of Nature, which in its previous advisory opinion had been confined to a single paragraph.³¹ Section VI.B.1.2 also marks the culmination of a broader interpretive shift underlying the IACtHR's analysis throughout the Advisory Opinion: the adoption of an ecocentric lens to (re)interpret foundational environmental concepts, as well as the scope and content of State obligations in light of the triple planetary crisis. The IACtHR, for example, articulates an ecocentric conception of the environment as “complex and interdependent systems” (para. 279),

25 See, e.g., Supreme Court of Bangladesh High Court Division, *Human Rights and Peace for Bangladesh v. Government of Bangladesh and Others (Turag River Case)*, Judgment of 2016; Constitutional Court of Colombia, *Center for Social Justice Studies v. Presidency of the Republic et al. (Atrato River Case)*, Judgment of 2016; Uttarakhand High Court, *Narayan Dutt Bhatt v. Union of India & Others*, Judgment of 2018; Supreme Court of Colombia, *Future Generations v. Ministry of the Environment and Others*, Judgment of 2018; High Court of Punjab and Haryana at Chandigarh, *Karnail Singh and Others v. State of Haryana*, Judgment of 2019; Supreme Court of Ecuador, *Case No. 1149-19-JP/21 (Los Cedros Decision)*, Judgment of 2021. For more cases, see Eco Jurisprudence Monitor, “Toolkit.” Available at <https://ecojurisprudence.org/initiatives/>.

26 IACtHR, *Advisory Opinion OC-23/17, supra*, para. 62.

27 IACtHR, *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of June 17, 2005. Series C No. 125, para. 135.

28 IACtHR, *Case of U'wa Indigenous Peoples and their members v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 4, 2024. Series C No. 530, para. 123.

29 IACtHR, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Judgement of August 31, 2001. Series C No. 79, para. 149.

30 IACtHR, *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*. Judgment of June 27, 2012. Series C No. 245, para. 249.

31 IACtHR, *Advisory Opinion OC-23/17, supra*, para. 62.

and reasoned that recognizing Nature's rights—which includes protecting Nature independently of its utility to humans—"provides coherent and effective legal tools in relation to the triple planetary crisis to prevent existential harm before the latter becomes irreversible" (para. 279).

In support of this shift, the IACtHR situates the rights of Nature in dialogue with the existing framework of international and regional human rights law. Specifically, this discussion falls within an extensive section of the Advisory Opinion addressing the right to a healthy environment. The Court also affirms that the recognition of the rights of Nature is consistent with the obligations of Member States under the American Convention and the Protocol of San Salvador, including the progressive realization of economic, social, cultural, and environmental rights (para. 281). Furthermore, it recognizes Nature's right "to conserve its essential ecological processes" as a key step to achieving a "*truly* sustainable development model that respects planetary limits and ensures the availability of crucial resources for present and future generations" (para. 279, *emphasis added*), thus providing a foundation for constructing a sustainable development model as required by the United Nations Framework Convention on Climate Change (UNFCCC). The Court interprets this model as necessary to fulfilling human rights obligations derived from the American Convention and the Protocol of San Salvador (para. 262), and "essential to preserve the conditions that support life on our planet and to guarantee a decent and healthy environment, essential for the realization of human rights" (para. 281). In effect, the IACtHR finds that the rights of Nature and human rights not only coexist harmoniously, but also mutually reinforce one another.³² Accordingly, it concludes that recognition of the rights of Nature "does not introduce content that is alien to the Inter-American *corpus iuris* but rather represents a contemporary expression of the principle of the interdependence between human rights and the environment" (para. 282).

The recognition of Nature as a subject of rights is further justified by invoking the obligation that rights protected under the Inter-American System be interpreted through an evolutive lens, in line with the progressive development of international human rights law (para. 282). In this context, the Court points to parallel developments in international environmental law—such as the establishment of the intergenerational equity, precaution, and prevention principles (para. 283)—as well as a growing recognition of the rights of Nature in domestic, regional, and international practice (paras. 284-286).

As a result, the IACtHR concludes that the recognition of Nature as a subject of rights carries normative implications: it entails corresponding State obligations and provides grounds for legal violations. To that end, the Court reaffirms its conclusion in Advisory Opinion OC-23/17 that a State may breach the human right to a healthy environment through harm to Nature alone (para. 273). Going beyond this, the IACtHR articulates the positive obligations that flow directly from the recognition of the rights of Nature. Specifically, States must adopt measures "to guarantee the protection, restoration and regeneration of ecosystems," informed by the best available science and by traditional, local, and Indigenous knowledge (paras. 280 and 283), as well as by existing principles of human rights law (para. 283). More broadly, the IACtHR confirms that the recognition of the rights of Nature is compatible with a State's duty to adopt domestic legislation that guarantees the effective enjoyment of rights protected under the American Convention and the Protocol of San Salvador (para. 281).

32 César Rodríguez-Garavito, "Climate change on trial: The Inter-American Court of Human Rights' opinion on global warming," Open Global Rights, July 25, 2025. Available at: <https://www.openglobalrights.org/climate-change-on-trial/>.



Legal and Practical Implications

Although the recognition of the rights of Nature emerged from a narrow-split vote (4-3), with Judges Hernández, Pérez Goldberg, and Sierra Porto dissenting (section VII, para. 7),³³ the Advisory Opinion is nonetheless crucial to advancing the more widespread recognition of the rights of Nature. As the only international human rights court that has recognized the rights of Nature to date, the IACtHR is playing a central role in shaping the normative development of the rights of Nature at both the regional and global levels. In addition to encouraging member States to harmonize their domestic legal frameworks with the interpretative guidance provided in the Advisory Opinion, the Advisory Opinion's official character gives it an interpretive authority with legal effects that can facilitate future litigation on the rights of Nature before national courts. Furthermore, the IACtHR's support for the rights of Nature can serve as a catalyst for greater legislative and constitutional recognition of these rights, particularly in Latin America and the Caribbean.

The full extent of the Advisory Opinion's impact at the global level remains to be seen over time. Other judicial bodies have not yet demonstrated the same inclination to recognize the rights of Nature or follow the precedents set by the IACtHR. For instance, the ICJ did not reference the rights of Nature in its advisory opinion, issued after that of the IACtHR. The AfCHPR could expand this emerging area of law in its future advisory opinion on the climate crisis, although such a development may prove challenging given the limited recognition of the rights of Nature across the African continent.



Opportunities and Gaps in the Court's Approach

Critics are likely to challenge certain gaps in the legal reasoning that permitted the IACtHR to recognize the rights of Nature, particularly since the concept is not explicitly referenced in any of the region's human rights treaties. The Court's logic regarding the rights of Nature could have therefore benefited from being laid out more explicitly. In addition, the IACtHR leaves open the question of whether Nature, or particular elements of it, could directly claim a violation of their rights under the American Convention.

Nevertheless, the Advisory Opinion's elaboration of the rights of Nature will prove useful in dispelling persistent mischaracterizations of the rights of Nature as incompatible with or antagonistic to human rights, while clarifying ecocentric concepts of interdependence and interconnectedness. It may further prompt a reconsideration of human rights frameworks that predicate legal protection solely on individual human injury and adopt a backward-looking perspective. More broadly, the Advisory Opinion has called into question a prevailing juridical paradigm that views Nature merely as an object or resource for human exploitation—a paradigm underlying the planetary environmental crises the Court seeks to address. In doing so, the IACtHR has begun to open a critical space for ecocentric and Indigenous worldviews to inform and reshape dominant legal traditions.

³³ Nancy Hernández López, *Dissenting and Partially Dissenting Opinion*, IACtHR, Advisory Opinion OC-32/25, *supra*, paras. 3-27; Patricia Pérez Goldberg, *Concurring and Partially Dissenting Opinion*, IACtHR, Advisory Opinion OC-32/25, *supra*, Section II, pp. 9-21.

03. The Role of Climate Science

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Executive Summary

- Relying on the best available science from the Intergovernmental Panel on Climate Change (IPCC), the IACtHR acknowledges the climate emergency is an “existential threat,” a scientifically established, human-induced phenomenon caused by multiple GHGs, including SLCPs³⁴ (paras. 182-83, 45-50, 302).
- The Court affirms the centrality of the 1.5°C threshold, highlighting its importance to prevent irreversible harm to human rights and ecosystems (paras. 69, 79, 86, 198).
- The Court recognizes the importance of avoiding irreversible climate tipping points and the heightened risk of surpassing them without rapid mitigation measures (para. 197).
- The Court underscores the urgency of swift and ambitious mitigation strategies, including reducing emissions of SLCPs (paras. 45-50).
- States have an obligation to integrate scientific findings into their climate-related human rights obligations and to use the best available science and knowledge (paras. 204, 236, 240, 246, 283, 326-27, 331, 336, 343, 362-64, 367, 388, 478, 485, 525, 539, 542, 559, 599-600).
- The Court underscores the human right to science and the recognition of local, traditional, and Indigenous knowledge, holding that all persons have the right to access the benefits of measures that incorporate both (paras. 471-487).

³⁴ In the Advisory Opinion, the IACtHR itself defines SLCPs in para. 50. “[O]ther atmospheric agents known as “short-lived climate pollutants” (hereinafter “SLCP”) also contribute to climate change. Major SLCP include aerosols (sulphate, nitrate, ammonium, carbonaceous aerosols, mineral species and sea salt), also referred to as particulate matter (PM), and chemically reactive gases [long-lived GGs] (methane, ozone, certain halogenated compounds, nitrous oxide, carbon monoxide, non-methane volatile organic compounds, sulphur dioxide and ammonia).”



Introduction and Context

Science is the foundation for understanding and responding to the climate emergency, including for setting the relevant legal standards. From the Paris Agreement’s recognition of the 1.5°C threshold, to litigation strategies demanding science-based climate action, courts, policymakers, and advocates rely on scientific knowledge as the bedrock for climate accountability. By illuminating the connections between otherwise disparate phenomena—like gas flaring and extreme weather events—science provides the necessary link between the causes of the climate emergency and its impacts. Only through scientific knowledge are the future consequences of climate change foreseeable and attributable to specific activities. The reliability of these determinations is, moreover, continually improving as scientists refine their understandings of the complex natural processes that underpin the climate emergency, for example, through the established and growing field of attribution science and the periodic updates to the IPCC reports. Beyond explaining and predicting climate impacts, scientific knowledge is also necessary to identify effective solutions. These contributions make science indispensable to climate progress in law, policy, and advocacy.

On climate change, the law has generally advanced more slowly than science. Though the causes and consequences of climate change have been widely known for decades, most courts have only recently started to understand climate science as an appropriate basis for legal reasoning. It is noteworthy that in the Advisory Opinion, the Court explicitly anchors its legal reasoning in the best available science, relying on the findings of the IPCC through its reports, such as the Sixth Assessment Report (AR6), which are considered by the Court itself as “the most authoritative source of scientific guidance on climate change” (para. 33). Based on this, the Court recognizes the essential role of timely, science-informed responses to the climate emergency and makes access to science and knowledge a central component of States’ substantive and procedural obligations.

During the proceedings, both States and civil society emphasized the need to ground human rights obligations in the best available science, underscoring the urgency of acting within a rapidly narrowing window to prevent catastrophic consequences. Civil society further emphasized the importance of local, traditional, and Indigenous knowledge—a perspective the Court ultimately reflected in its ruling.



Legal Analysis

a. Best Available Science as a Foundation of Legal Reasoning

The Court explicitly bases its assessment on the IPCC’s findings, recognizing them as the best source of scientific guidance and emphasizing that these reports are methodologically rigorous and widely accepted by States (para. 33). The Court also aligns itself with other international bodies such as the ITLOS and the European Court of Human Rights (ECtHR) in using climate science as articulated in the IPCC reports as a standard of proof and normative guidance (para. 33, fn. 27).

b. Causation of Climate Impacts and Declaration of an Emergency

Section V of the Advisory Opinion refers to the IPCC to establish the causes and impacts of climate change, which provides the factual basis for the Court's reasoning. It identifies not just carbon dioxide (CO₂), but also methane (CH₄), nitrous oxide (N₂O), and other SLCPs as the main GHGs causing warming (paras. 45-50). These are emitted by specific economic activities, and more so in certain regions of the world than in others (paras. 51-63). The best available science indicates that the resulting human-induced climate change has caused and will continue to cause significant impacts on natural systems (paras. 65-88), with serious consequences for all aspects of human life (para. 89-118), also identified as "existential risks" (para. 288).

Notably, the Court sets out these causes and impacts as established facts. It does not discount their weight based on the future timeframe of projected impacts or the complexity of the causal chains, instead treating the best available science as reliable authority.

This leads the Court to declare that "the current situation may indeed be considered a climate emergency ... caused by various anthropogenic activities, which incrementally affect and severely threaten humanity" (para.183).

c. Recognition of the 1.5°C Temperature Threshold

The Court reaffirms the significance of the 1.5°C threshold, stating that surpassing this temperature would cause disproportionate and irreversible impacts on human rights (paras. 197-98) especially for groups in vulnerable situations (para. 195). It emphasizes that this temperature threshold is legally relevant, given its recognition under the Paris Agreement, and scientifically grounded, referring to concepts such as the carbon budget and the emissions gap (paras. 186-188). The Court highlights prior IPCC conclusions from the 2018 special report on 1.5°C that "the level of emissions reductions achieved during this decade and the next would largely determine the feasibility of limiting warming to below 1.5°C or 2°C relative to pre-industrial level" (para. 186).

The Court also notes that current policies are insufficient to stay within this limit, reinforcing the urgency of enhanced mitigation measures.³⁵ In addition, the Court states that "even if the targets are met, the limits to temperature increase established in the Paris Agreement are not sufficient to prevent the impact of climate change on human rights. The IPCC has warned that 'warming of 1.5°C is not considered 'safe' for most nations, communities, ecosystems and sectors, and poses significant risks to natural and human systems'" (para. 198).

d. Non-linear Climate Impacts

The Court recognizes the non-linear nature of climate impacts and the importance of acting now to prevent future harm that will be magnitudes greater than what has already occurred, and disproportionate to incremental temperature increases: "with each additional gigaton of GHG emitted, and each degree of increase in the global temperature, the number of people exposed to disease,

³⁵ For more details on the obligation to mitigate GHG emissions, see thematic brief No. 4.

displacement, cultural losses, hunger, water insecurity, unemployment, poverty and, in general, inhuman living conditions increases exponentially” (para. 195).

e. Climate Tipping Points and Irreversible Harm

The Court acknowledges climate tipping points such as the Amazon dieback and the collapse of polar ice sheets—and the increased risk of surpassing these beyond 1.5°C of warming—as scientific realities (para. 197). It emphasizes that “[t]he feedback between these crucial points could increase the risk of triggering a global cascade in which other tipping points are exceeded, including the uncontrolled release of carbon from permafrost and the devastation of coral reefs” (para. 197). It emphasizes that these non-linear events pose existential threats and require a risk-averse approach (para. 197). It states: “The increase in the global average temperature also increases the probability of exceeding the tipping points, understood as the critical thresholds that, when exceeded, produce ‘[a] level of change in the system properties beyond which a system reorganizes, often abruptly, and does not return to the initial state even if the drivers of the change are abated’” (para. 197).

f. Urgency of Mitigation of SLCPs

While most legal forums have focused on long-lived CO₂, the Court also recognizes the critical role of SLCPs such as hydrofluorocarbons (HFCs), methane, and black carbon and the near-term advantage of mitigating these emissions (paras. 45-50). It stresses that States must prioritize “measures that deliver prompt results that are sustainable over time,” including elimination of SLCP emissions “as quickly as possible” (paras. 336-337).³⁶ The Advisory Opinion also stresses the importance of dedicated commitments and agreements to reduce specific GHGs, pointing to the proven success of the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) and its Kigali Amendment as setting the “benchmark for international cooperation” (paras. 122, 338).

g. The Right to Science

Relying on Article 26 of the American Convention, Article 14(2) of the Protocol of San Salvador, Articles 38, 47, and 51 of the Charter of the OAS, Article XIII of the American Declaration of the Rights and Duties of Man (American Declaration), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Court concludes that all persons have both a substantive and procedural right to access the benefits of measures grounded in the best available science and in the recognition of local, traditional, and Indigenous knowledge (paras. 471-473, 478).³⁷

The Court affirms that States have positive obligations to adopt and apply the best available knowledge in climate decision-making (para. 478). This includes, first, the use of the best available science—science which meets criteria such as being up-to-date, peer-reviewed, transparent in its uncertainties and assumptions, verifiable, reproducible, and accurate (para. 486). The Court reaffirms that IPCC reports currently constitute the best available science on climate change (para. 487).

To develop the right to science, States also have obligations to provide public education and information, avoid disinformation, and foster a favorable environment for scientific development, create opportuni-

³⁶ For more details on the obligation to mitigate GHG emissions, see thematic brief No. 4.

³⁷ For more details on the recognition of Indigenous, traditional, and local knowledge, see thematic brief No. 8.

ties for participation, guarantee nondiscriminatory access to the benefits of science, and ensure that technological advances do not disproportionately harm groups in vulnerable situations (paras. 474, 525). They must also cooperate internationally on scientific exchange and technology transfer (para. 475).³⁸

The Court underscores the obligation to integrate local, traditional, and Indigenous knowledge into decision-making processes (paras. 476-478). This requires States to adopt measures to protect and support these knowledge systems and the rights of Indigenous Peoples (para. 484). To ensure the sustainability and effectiveness of climate decisions, States must promote the co-production of climate knowledge through fostering dialogue between scientists and custodians of local, traditional, and Indigenous knowledge (paras. 480-481).³⁹ The Court states that the right to science “constitutes an essential means for effective access to fundamental rights, including the capacity to meet ‘the needs common to all humanity’ and to address possible ‘adverse consequences for integrity, dignity and the human rights of the individual,’ as well as one of the objective bases for public decision-making” (para. 473).



Legal and Practical Implications

a. Informing Litigation Strategies

The Advisory Opinion opens the door for claimants to demand science-aligned climate action as a justiciable human rights obligation, and for courts to scrutinize States’ climate actions, such as their national mitigation plans or EIAs, against IPCC findings and the 1.5°C threshold.

The Advisory Opinion also creates procedural obligations such as the right to access reliable, up-to-date scientific data related to climate change. This may help litigants overcome evidentiary barriers to bringing successful climate litigation.

b. Informing Policy or Legislative Reforms

States must integrate the precautionary principle and science-based mitigation timelines into environmental laws and climate strategies, using the best available science, in the terms defined by the Court.

Laws must promote, or at the very least be compatible with, a wide range of measures based in the best available science, including but not limited to: mitigation policies, ecosystem protection and restoration, and educational and anti-disinformation measures.

c. Informing Climate Negotiations

The Advisory Opinion reinforces the legal status of the 1.5°C limit and tipping points as not just scientific markers, but human rights thresholds. It also creates an obligation for States to cooperate to share scientific knowledge and technologies, referencing in particular the Montreal Protocol and Kigali Amendment as the “benchmark for international cooperation” (para. 338).

³⁸ For more details on States’ obligation to cooperate, see thematic brief No. 6.

³⁹ For more details on the rights of Indigenous Peoples, see thematic brief No. 8.

d. Informing Civil Society Advocacy

The Advisory Opinion empowers advocates to call for urgent SLCP reductions and expose policy rollbacks that ignore the best available science. It also expands advocates' rights to access scientific information which can inform and bolster campaigns.⁴⁰

e. Informing Action by Affected and Grassroot Communities

The validation of climate science in human rights terms strengthens claims for stronger, faster local action and international support. Expanded access to and recognition of scientific, local, traditional, and Indigenous knowledge may boost community capacity for effectively understanding and responding to climate-related issues.



Opportunities and Gaps in the Court's Approach

The IACtHR's treatment of climate science in the Advisory Opinion is a watershed moment in international human rights jurisprudence. The Court places climate science at the heart of its legal reasoning, transforming well-established scientific principles into actionable human rights standards. By explicitly recognizing the 1.5°C threshold and highlighting the dangers of exceeding climate tipping points, the Court moves beyond rhetorical concern and anchors legal obligations in the best available scientific evidence and the "existential" threat of passing tipping points. This elevates the jurisprudential rigor of the opinion and sets a high standard for future climate-related adjudication.

Also groundbreaking is the Court's recognition of the urgency of fast mitigation, particularly through the reduction of SLCPs like methane and black carbon. Few courts—national or international—have addressed SLCPs with such clarity, and the Court's directive for rapid, science-aligned mitigation across all emitting sectors demonstrates an unprecedented level of ambition and technical sophistication.

Perhaps most notably, the Court establishes the right to science as an essential element of climate governance and human rights protection. It affirms that science is not the exclusive domain of experts but a public good that must be accessible to all, including communities in vulnerable situations.

While the Court could have done more to elaborate on the extraterritorial dimensions of climate obligations—especially concerning SLCPs—this omission is understandable given the detailed treatment of such issues in its earlier Advisory Opinion OC-23/17.⁴¹ Nonetheless, future jurisprudence should build upon this foundation to further clarify the global scope of States' science-based mitigation duties.

Overall, the Advisory Opinion represents the most significant leap forward in aligning human rights law with climate science, offering both a principled and practical framework for urgent action.

⁴⁰ For more information on environmental defenders, see thematic brief No. 12.

⁴¹ IACtHR, *Advisory Opinion OC-23/17, supra*.

SECTION II



State and Corporate Obligations

04. The Duty to Mitigate Greenhouse Gas Emissions

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Executive Summary

- To respect and guarantee the right to a healthy environment in the context of the climate emergency, States must mitigate—i.e. prevent and reduce—their GHG emissions, which comes with specific duties.
- Duty to regulate: States must set a binding mitigation target that aims to prevent climate damage, sets specific deadlines, progressively increases over time, and takes into account the best available science. Targets must also be based on each State’s current and historical GHG emissions and respective capabilities. States must also adopt a human rights-based strategy to achieve the mitigation target based on the use of maximum available resources.
- Duty to supervise and monitor: States must monitor and ensure compliance with mitigation targets.
- Duty to require and adopt EIAs: States must ensure that all projects or activities that may generate significant GHG emissions are subject to “meticulous” climate impact assessments that are based on the best available science.
- A key legal implication of the Advisory Opinion is that the failure to set a mitigation target—or setting one that does not comply with the standards the Court sets out—could amount to a violation of the State’s human rights obligations.



Introduction and Context

A principal question the Court addresses in the Advisory Opinion is whether the obligation to prevent significant environmental harm and protect and guarantee the right to a healthy environment⁴² requires States to mitigate their GHG emissions. This issue was a central focus of several civil society group interventions, many of which raised the need to rapidly phase out fossil fuels to reduce GHG emissions and prevent climate harm.

The Court responded in the affirmative, holding that “[t]o protect the global climate system and prevent human rights violations resulting from its alteration, *States are obliged to mitigate their GHG emissions*. This requires them not only to limit emissions from human activities within their jurisdiction, but also to protect the carbon sinks within it” (para. 321, emphasis added).



Legal Analysis

In its Advisory Opinion, the IACtHR identifies at least three sets of duties related to the obligation to mitigate GHG emissions and guarantee the right to a healthy environment.⁴³ These are the duties to “(a) regulate, (b) supervise and monitor, and (c) require and adopt environmental impact assessments” (para. 321), which are all related to the obligations to prevent significant environmental harm the Court has developed in prior jurisprudence.⁴⁴

a. Regulation of Climate Mitigation

Under the duty to regulate, States must take at least three specific actions.

First, States must define an appropriate mitigation target. The Court makes clear that States must set GHG emission reduction targets as part of their human rights obligations. Notably, the Court affirms that this obligation applies “to all OAS Member States without exception, and non-compliance with this and other international obligations by other States cannot be argued as exempting responsibility” (para. 325). The Court also lays out several requirements that mitigation targets must meet. Specifically, mitigation targets must: “be established with the objective of preventing climate damage as a condition for respecting and guaranteeing the right to a healthy environment” (para. 325); “be as ambitious as possible” (para. 331); “be established in a rule that is binding on the State” (para. 331); “determine specific compliance time frames” (para. 331); “be progressively increased,” which means that any “retrogressive measures with respect to the target must be carefully justified” (para. 331); “lead to the State’s carbon neutrality” (para. 328); “take[] into account the best available science” (para. 327); and consider “global mitigation requirements

42 In its *Advisory Opinion OC-23/17*, this IACtHR explained that the American Convention requires that “based on the obligation of prevention in environmental law, States are bound to use all the means at their disposal to avoid activities under their jurisdiction causing significant harm to the environment” (para. 142).

43 In the Advisory Opinion, the Court also found specific obligations related to “the protection of Nature and its components” (paras. 364-367) and the “gradual progress towards sustainable development” (paras 368-376). For more details on the rights of Nature, see thematic brief No. 2.

44 IACtHR, *Advisory Opinion OC-23/17, supra*, paras. 141-74.

calculated by the best available science based on a temperature increase of no more than 1.5°C” as “a minimum starting point, rather than the finishing line” (para. 326).

The Court also identifies three additional criteria that take into account the principles of CBDR-RC and intra- and intergenerational equity (para. 327).⁴⁵ Specifically, the target must be based on “the current and historical cumulative contribution to climate change of each State; that is, its GHG emissions,” which would require today’s largest emitters to “make a commitment that matches their emissions” (para 328). Meanwhile, “other States should weigh their historical emissions and their current emissions”⁴⁶ so that their mitigation targets adequately reflect “their contribution to the alteration of the global climate system” (para. 328). Additionally, the target must be based on “the capabilities of each State” to undertake mitigation, considering “the resources at its disposal” and factors such as the “cumulative and current GNP, of each country, costs assumed historically to preserve the global climate system, the government’s budget, public debt, tax collection capacity, and access to international financing and low-emission technologies” (para. 329), as well as “the circumstances of each State,” including factors such as “the size of the State’s population, income distribution inequality and unsatisfied basic necessities” (para. 330).

Second, States must adopt a human rights-based strategy to achieve the mitigation target. Each State must develop “its own strategy to achieve the mitigation target it has established ... and adopt binding measures to comply with it” (para. 335). These human rights-based strategies must: “deliver prompt results that are sustainable over time and remain compatible with the steps taken towards sustainable development” (para. 336); “reflect the maximum use of available resources” (para. 336); “establish measurable goals and specific time frames for compliance” (para. 336); “regulate in detail, the way in which the reduction process should be implemented by public and private stakeholders” (para. 336);⁴⁷ “include measures to advance in progressive reduction of GHG emissions from fossil fuels, agriculture, livestock, deforestation, and other land use” (para. 337); aim to “protect biodiversity and ecosystems, particularly those that have a crucial function in regulating the climate system and the planet’s natural cycles, including the oceans and the maritime and coastal environment, soils, forests, and mangroves” (para. 339);⁴⁸ and, both “integrate the knowledge of Indigenous Peoples ... ensuring a fair sharing of the benefits of their use and the effective exercise of procedural rights” (para. 340) and “listen to them and facilitate their continued participation in decision-making” (para. 339).⁴⁹

However, the Court also notes that States’ efforts to tackle climate change can themselves cause adverse impacts for human rights. To avoid the cure being worse than the disease, the Court calls for additional measures to “take into account the effects that mitigation measures may have on individuals and ecosystems in order to ensure a just transition” (para. 341). These include protecting human rights “from violations that may occur due to the extraction of the crucial rare-earth minerals needed for the energy transition” (para. 342); adopting “policies on decent

⁴⁵ For more details on intra- and intergenerational equity, see thematic brief No. 11.

⁴⁶ Although the English translation uses “should” here, the original Spanish version of the Advisory Opinion uses the verb “deber,” which in legal Spanish indicates a rule, obligation, or law that must be followed.

⁴⁷ Although the English translation uses “should” here, the original Spanish version of the Advisory Opinion uses the verb “deber,” which in legal Spanish indicates a rule, obligation, or law that must be followed.

⁴⁸ For more details on the rights of Nature, see thematic brief No. 2.

⁴⁹ For more details on the rights of Indigenous Peoples, see thematic brief No. 8, and for more details on the right to science, see thematic brief No. 3.

employment that include training possibilities, and hiring incentives or job placement services” (para. 342); adopting “policies on social protection, compensation and/or relocation for sectors affected by mitigation measures” (para. 342); enacting “measures to stimulate and attract investment in innovation in low-emission activities, as well as to develop new tools and standards for strengthening the green finance” (para. 342); and adopting “policies that favor green investment and that facilitate the transition of polluting sectors” (para. 342).

Third, States must regulate the activities of public and private companies to prevent human rights violations. In its opinion, the Court details specific obligations States must take to regulate the behavior of private companies to protect the climate (paras. 345-351).⁵⁰

b. Supervising and Monitoring

To prevent climate change harm, the IACtHR says that “States are obliged to strictly supervise and monitor public and private activities that generate GHG emissions,” including, “at the very least” the “exploration, extraction, transportation and processing of fossil fuels, cement manufacturing, agro-industrial activities, as well as other inputs used in such activities” (para. 353).⁵¹

c. Determining Climate Impact

The Court explains that “projects or activities that pose a risk of generating significant GHG emissions should be subject to a climate impact assessment,”⁵² regardless of whether they are undertaken by the State or private entities (para. 359).

Therefore, States “must conduct a meticulous assessment of activities that could result in significant harm to the climate system before granting approval” (para. 363). In addition to complying with the standards laid out in prior jurisprudence,⁵³ such assessments must take into account “the best available science and knowledge” (para. 363); “the mitigation strategy and target” (para. 363); and, “the irreversible nature of the climate impacts” (para. 363).

⁵⁰ For more details on States’ obligation to regulate business enterprises, see thematic brief No. 7.

⁵¹ For more details on States’ obligation to supervise and monitor corporate activities that generate GHG emissions, see thematic brief No. 7.

⁵² Although the English translation uses “should” here, the original Spanish version of the Advisory Opinion uses the verb “deber,” which in legal Spanish indicates a rule, obligation, or law that must be followed.

⁵³ These include the requirements that EIAs must be conducted before an activity is carried out, conducted by independent entities under State supervision, cover the project’s cumulative impacts, include the participation of interested persons, and respect the traditions and culture of Indigenous Peoples (para. 363). See also, IACtHR, *Advisory Opinion OC-23/17, supra*, paras. 162-170.



Legal and Practical Implications

There are several takeaways for lawyers and advocates looking to use the Advisory Opinion to promote climate justice. The first is perhaps the most obvious: the IACtHR was clear that every State has a human rights obligation to mitigate GHG emissions. This is aligned with an emerging consensus from distinct human rights bodies which have found a similar obligation.⁵⁴

Second, this obligation includes the duty to set binding mitigation targets that must meet specific requirements detailed by the Court. This means that the failure to set a target—or setting one that does not comply with the Court’s standards—could amount to a violation of the State’s human rights obligations. Therefore, these targets are not up to the full discretion of a State to determine. A State’s self-imposed Nationally Determined Contribution (NDC) under the Paris Agreement may fulfill this obligation, but only if it complies with the IACtHR’s requirements. Although mitigation targets must reflect CBDR-RC, civil society should work to ensure mitigation targets also comply with human rights standards, which require, among other things, achieving a temperature increase no greater than 1.5°C degrees.

Third, the duty to mitigate should be interpreted together with the introduction to the IACtHR’s opinion, which states that this obligation applies to all OAS Member States without exception.⁵⁵ Therefore, high-emitting Member States which have not ratified the American Convention—in particular the United States and Canada—can and must be held accountable through the Inter-American System if they fail to set and develop a human rights-based strategy to achieve appropriate mitigation targets.

Finally, the Court explicitly lays out that States must ensure a just transition, highlighting measures related to critical minerals, employment, social protections, green investment, and transition of polluting sectors. This obligation provides an additional human rights basis for advocacy in support of just transition measures.

⁵⁴ See, e.g., ICJ, *Obligations of States in Respect of Climate Change*, Advisory Opinion, *supra*, paras. 281-82; ECtHR, *Case Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GS] no. 53600/20 of April 9, 2024, para. 545 (“[T]he State’s primary duty is to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change”); Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, “Visit to Vanuatu,” A/HRC/59/42/Add.1, May 14, 2025, para. 87. Available at: <https://docs.un.org/en/A/HRC/59/42/Add.1> (“In accordance with their historical and current responsibilities and respective capabilities, States emitting the greatest quantities of greenhouse gases must prioritize and accelerate effective climate mitigation, notably the phasing-out of fossil fuel production and the related subsidies”).

⁵⁵ “Consequently, this Court considers that the interpretation of the American Convention and of the Protocol of San Salvador rendered in this advisory opinion must be considered integrally not only by the State Parties to those instruments, but also by all OAS Member States. Indeed, all OAS members are bound by the obligations set forth in the American Declaration, as well as those derived from the OAS Charter and the Inter-American Democratic Charter.” (para. 41).



Opportunities and Gaps in the Court's Approach

Although the Court's opinion is an important recognition of the need to reduce GHG emissions through the phasing out of fossil fuels, pending and future climate litigation at national and regional levels can and should go further in order to ensure a rapid and equitable energy transition.

a. Duties Regarding the Production and Extraction of Fossil Fuels

While the Court finds that States have a duty to regulate fossil fuels across the industry's value chain (para. 353), it does not explicitly call on States to phase out fossil fuel production, which the best available science shows is necessary to avoid a temperature rise of 1.5°C or above. However, the Court's emphasis on the need for policies that "facilitate the transition of polluting sectors" (para. 342) could be interpreted to support a transition away from the fossil fuel industry as the principal driver of GHG emissions.

Additionally, despite the lack of a clear mandate for States to refrain from approving or otherwise facilitating new fossil fuel extraction, civil society can still use the Advisory Opinion to argue that the obligation to mitigate GHG emissions also requires measures to phase out fossil fuel production as well as use. Given the significant GHG emissions from the fossil fuel sector, continuing to drill new oil and gas wells and open new coal mines clearly "results in a setback or delay or ... limits the results of measures required to protect human rights from the impacts of climate change" (para. 221), including achievement of an ambitious mitigation target. The timeline on which each State completes this phaseout would, of course, be based on their CBDR-RC.

Furthermore, the Court highlights that fossil fuel production and distribution is one of the main sources of methane emissions, a SLCP that is significantly more potent than CO₂ (paras. 48, 50). Therefore, the reduction of fossil fuel production is consistent with a State's obligation to progressively reduce GHG emissions, and specifically to "eliminate SLCP emissions as quickly as possible" (para. 337).

b. Elimination of Subsidies for Fossil Fuel Extraction and Consumption

In its Advisory Opinion, the Court also does not directly address the issue of subsidies, although they have been mentioned by other human rights mechanisms.⁵⁶ Nonetheless, civil society can argue

⁵⁶ See, e.g., Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement in its fifth session, held in the United Arab Emirates from November 30 - December 13, 2023, FCCC/PA/CMA/2023/16/Add.1, Decision 1/CMA.5, "Outcome of the First Global Stocktake," March 15, 2024, para. 28(h). Available at: https://unfccc.int/sites/default/files/resource/cma2023_L17_adv.pdf; Glasgow Climate Pact, March 8, 2022, Decision 1/CMA.3, FCCC/PA/CMA/2021/10/Add.1, para. 36. Available at: https://unfccc.int/sites/default/files/resource/cma2021_10_add1_adv.pdf; IACHR, Resolution No. 3/2021, "Climate Emergency: Scope of Inter-American Human Rights Obligations", December 21, 2021, para. 57. Available at: https://www.oas.org/en/iachr/decisions/pdf/2021/resolucion_3-21_ENG.pdf; OHCHR, "Human Rights, Climate Change and Business: Key Messages," p. 8. Available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/materials/KMBusiness.pdf>.

that the obligation for States to “avoid their acts or omissions becoming direct or indirect obstacles to effective compliance with mitigation targets” (para. 343), necessarily requires States to eliminate or reduce subsidies for fossil fuels. Subsidies prolong and expand climate harm by enabling fossil fuel projects that would otherwise be economically unviable and by diverting limited public funds away from other development needs.

In considering “the effects that mitigation measures may have on people and ecosystems in order to ensure a just transition” from a fossil fuel-heavy energy system (para. 341), States should take into account that removing fossil fuel subsidies can sometimes increase energy prices, which can threaten the lives and health of lower-income populations. States must therefore develop and apply “policies to prevent any potential increase in energy prices from affecting vulnerable populations.”⁵⁷

c. Avoiding “False Solutions” that Deepen Dependency on Fossil Fuels

Finally, the IACtHR does not mention the need to avoid “false solutions”—that is, practices promoted as climate solutions but that actually allow the continued burning of fossil fuels in lieu of clean energy.⁵⁸ For example, reliance on hydrogen or expensive and underperforming carbon capture and storage have both been criticized as “false solutions.”⁵⁹ However, the Court does note that “the State is obliged to take into account the best available science” when deciding on appropriate mitigation measures (para. 336). Additionally, the Court finds that “measures associated with technologies whose effects have not been fully verified,” which should include those that have not yet been proven feasible at scale and/or that pose new risks to human rights, would have difficulty “comply[ing] with the standard of enhanced due diligence” (para. 336). Therefore, relying on “false solutions” would likely be inconsistent with States’ human rights obligations.

57 Hartinger, Stella M., et al., “The 2022 South America report of The Lancet Countdown on health and climate change: trust the science. Now that we know, we must act,” *Lancet Regional Health – Americas*, 2023, 20:100470, p. 26. Available at: [https://www.thelancet.com/journals/lanam/article/PIIS2667-193X\(23\)00044-3/fulltext](https://www.thelancet.com/journals/lanam/article/PIIS2667-193X(23)00044-3/fulltext).

58 See written observations submitted by Earthjustice, December 18, 2024. Available at: https://corteidh.or.cr/sitios/observaciones/OC-32/14_earthjustice.pdf (arguing that “false solutions” are often used to justify extending the lifetimes of existing fossil fuel projects or investing in new ones, thereby deepening the dependency on fossil fuels and diverting much needed resources from the clean energy transition).

59 See, e.g., IPCC, *Climate Change 2022: Mitigation of Climate Change*, Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, R. Shukla, J. Skea, R. Slade, A., et. al. (eds.)). Cambridge University Press, Cambridge, UK and New York, NY, USA, p. 642. Available at: <https://www.ipcc.ch/report/ar6/wg3/> (“CO2 capture costs present a key challenge... The capital cost of a coal or gas electricity generation facility with CCS is almost double that of one without CCS.”); Howarth, Robert W., and Mark Z. Jacobson, “How green is blue hydrogen?,” *Energy Science & Engineering*, 2021, 9(10): 1676-1687, p. 1677. Available at: <https://onlinelibrary.wiley.com/doi/full/10.1002/ese3.956> (finding that the GHG emissions from producing electricity using fossil fuel-based hydrogen are actually greater than generating the same electricity by burning methane (“natural”) gas, diesel oil, or coal directly).

05. The Duty to Adapt to Climate Impacts

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Executive Summary

- The IACtHR explicitly affirms that States have a binding and immediately enforceable obligation to define, update, and implement national adaptation plans (NAPs).
- Adaptation plans must be based on the best available science and contemplate all necessary measures to prevent climate-induced human rights impacts to the greatest extent possible in accordance with the enhanced due diligence standard. The Advisory Opinion recognizes Indigenous, traditional, and local knowledge as valid sources for “best available science,” advancing the right to science for historically marginalized communities.
- Adaptation plans must become increasingly ambitious over time in accordance with the principle of progressivity.
- Adaptation measures must be adequately assessed for ecological and social risks to avoid potential human rights violations, in line with the precautionary principle and the duty of enhanced due diligence.
- The Court links adaptation strategies to poverty reduction and inclusion of communities in vulnerable situations, requiring States to design adaptation policies that are able to respond to their immediate needs but also contrast the structural causes of such vulnerability.
- The Court also refers to the duties of States in regards to the design and implementation of adaptation policies in order to prevent risks associated with specific rights.



Introduction and Context

As extreme weather events like droughts, typhoons, and heavy rains, along with gradual changes in climate systems such as rising temperatures and shifting precipitation patterns, increasingly affect countries worldwide, there is a growing need to implement measures to enhance communities' resilience to climate change. All measures that reduce vulnerability and increase resilience to climate change are defined as adaptation strategies.⁶⁰ Adaptation tools include both reactive measures, which increase preparedness in response to past and ongoing climate events, and anticipatory strategies, which proactively implement policies based on assessments of potential future climate risks.⁶¹

Although Article 4 of the UNFCCC affirms States' commitment to "facilitate adequate adaptation to climate change," there remains insufficient clarity on how human rights norms, particularly Inter-American human rights law, shape this obligation and how adaptation measures intersect with the protection and enjoyment of human rights.

The Advisory Opinion explicitly underscores "the essential nature of climate adaptation measures for the protection of human rights in the context of the climate emergency" (para. 384). It builds on the findings of the first global stocktake in 2023, where the Parties to the Paris Agreement cautioned that "most observed adaptation actions were fragmented, incremental, sector specific and unequally distributed across regions" (para. 190). Drawing on decisions of the UN Human Rights Committee (CCPR) and IPCC's reports, the Court emphasizes that "the failure of States to respond or to respond adequately in strengthening the adaptive capacity of populations affected by climate change entails a risk of persistent human rights violations" (para. 383), and underscores that "progress on adaptation is more urgent than ever because, with each temperature increase, the effectiveness of adaptation decreases" (para. 193). It highlights also that measures "that have the potential to transform different systems and that seek to counter structural inequities — tend to receive less funding than those that merely seek to prevent or react to isolated impacts" (para. 193).

The Advisory Opinion not only clarifies the conceptual connection between adaptation measures and human rights, but also delineates the scope of States' obligations under Inter-American human rights law for climate adaptation. It emphasizes that, despite States' duty to protect the right to a healthy climate by tackling the causes of climate change, scientific evidence shows unavoidable climate impacts on natural and human systems, which significantly threaten human rights and require preventive and responsive actions (paras. 377-379). The Advisory Opinion provides clear guidance in the area of climate adaptation by detailing both general obligations tied to all substantive rights (paras. 380-391) and specific measures needed to protect particular rights (paras. 392-457).

60 Cf. UNDP, "What Is Climate Change Adaptation—and Why Is It Crucial?," UNDP Climate Promise, February 22, 2023. Available at: <https://climatepromise.undp.org/news-and-stories/what-climate-change-adaptation-and-why-it-crucial>.

61 Cf. Adger, W. Neil, Nigel W. Arnell, and Emma L. Tompkins, "Successful adaptation to climate change across scales," *Global Environmental Change*, 2005, 15(2): 77-86. Available at: <https://doi.org/10.1016/j.gloenvcha.2004.12.005>.



Legal Analysis

The Advisory Opinion explores four primary lines of argument concerning adaptation obligations.

The first line of argument lies on the premise that States “have an obligation to define and keep their NAPs updated. This obligation to define and update is immediately enforceable” (para. 384). The Court highlights the need to enforce adaptation plans that are progressively more ambitious, in line with the principle of progressivity (para. 390).

The second line of argument relates to the suitability of the measures adopted. States must use their best available science for designing and defining the adaptation plan (para. 388). The plan must be crafted to meet the defined adaptation goal, incorporating all necessary measures to prevent and minimize climate-related impacts on human rights to the fullest extent possible, guided by an enhanced due diligence standard (para. 385). It must establish “short-, medium-, and long-term measures that adequately address immediate needs while also responding to the structural causes of vulnerability” (para. 386). The Court stresses “that these measures must be suitable to ... increase the resilience of people, communities and ecosystems to the effects of climate change” hence “these measures must be aligned with sustainable development as a progressive development of the right to a healthy environment” (para. 385). Furthermore, States have a duty to implement adaptation measures that not only increase the resilience and preparedness of people to extreme climatic conditions, but also draws them out from situations of poverty and vulnerability. To that end, States shall assess the nature and extent of climate risks that disproportionately affect groups in vulnerable situations so that the information gathered allows them to assess the impact of inequality and multidimensional poverty with respect to climate risks and inform the design and implementation of their adaptation plans (para. 389).

The legal basis for this normative development is grounded in the principle of non-discrimination; the Advisory Opinion devotes significant attention to emphasizing that climate change disproportionately affects communities in vulnerable situations, given their limited resources and capacity to recover from extreme weather events. In order to not leave these communities behind and thus, to not discriminate, the States have a duty to refine their adaptation plans so that they “significantly reduce the negative impacts of climate change on the eradication of poverty, mainly by promoting the implementation of social protection measures for the benefit of the entire population” (para. 386). When adaptation measures are insufficient, the Court also insists that States must guarantee and restore the human rights that have been violated (para. 387).

One of the Court’s most significant developments on the topic of adaptation is its formal recognition of Indigenous, traditional, and local knowledge as a relevant source for designing adaptation policies. The Court emphasizes the importance of initiating a dialogue that integrates “the best available science with traditional, local and Indigenous knowledge” (para. 480).⁶² This approach enables States to access solutions and gain a comprehensive understanding of their territories by combining scientific and ancestral knowledge—two sources that have long been considered opposites. Such a normative advancement promotes both the right to science and the right to public participation within Indigenous communities, which have historically been excluded from scientific dialogues.

⁶² For more details on the recognition of Indigenous, traditional, and local knowledge, see thematic brief No. 8.

As part of its third line of reasoning on adaptation, the Advisory Opinion emphasizes that, following the precautionary principle and the duty of enhanced due diligence, it is essential that States refrain from “adopting measures which, owing to their inadequacy or poor execution, could result in human rights violations” (para. 388).⁶³ This underscores that States must not implement strategies that could compromise ecosystem integrity without first assessing potential ecological and social impacts (para. 390). Moreover, adaptation plans must account for the possibility that measures to mitigate human rights risks from climate impacts may be insufficient, ensuring that States provide support to affected individuals or groups to safeguard and restore their violated rights in such cases (para. 387).

Finally, the IACtHR outlines States’ specific duties to protect substantive rights from climate-related risks in the context of adaptation measures, applying an enhanced due diligence standard (section VI.B.2.2).⁶⁴ The Court highlights obligations to safeguard the rights to life, health, and personal integrity from risks such as heat waves, droughts, floods, and climate-exacerbated diseases (paras. 393–402). It further emphasizes States’ responsibilities to protect the right to private and family life from climate-induced human mobility (paras. 403–405); property and housing rights from sea level rise and extreme weather events (paras. 406–413); freedom of movement and residence amid climate displacement (paras. 414–434); and rights to water, food, work, social security, culture, and education from threats including food and water insecurity, unemployment, cultural heritage damage, and disruptions caused by intensified extreme weather, pollution, and impacts on health and energy (paras. 435–457).⁶⁵



Legal and Practical Implications

The Advisory Opinion provides a robust framework for holding States accountable by urging them to ambitiously revise and update NAPs. It offers detailed guidance on the iterative cycle of adaptation policies—from impact and risk assessment to monitoring, evaluation, and learning—aligned with decisions of the UNFCCC’s Conference of the Parties (COP). It also upholds the Sendai Framework to enhance community resilience against climate disasters. By emphasizing the use of the best available science, the Court establishes strong normative foundations to ensure adaptation policies prioritize technical expertise over lobbying and political influences.

Furthermore, by defining local, traditional, and Indigenous knowledge as key sources for informing NAPs, the Advisory Opinion sets an important normative precedent against the trend to undervalue these knowledge systems. Contrary to earlier assumptions, ancestral Indigenous knowledge is often the most informed source of data for implementing policies at the local level, given communities’ deep expertise of their territories.⁶⁶ Taking traditional and Indigenous knowledge seriously in adaptation measures enables policymakers to design plans grounded in a renewed respect for Nature—a respect that these communities have long safeguarded, often serving as models of sustainable living.

⁶³ For more details on the standard of enhanced due diligence, see thematic brief No. 1.

⁶⁴ For more details on the standard of enhanced due diligence, see thematic brief No. 1.

⁶⁵ For more details on Human mobility in the context of the climate crisis, see thematic brief No. 10.

⁶⁶ Cf. Dejusticia, “Transición energética justa para La Guajira,” Dejusticia, 2025. Available at: <https://www.dejusticia.org/publication/transicion-energetica-justa-para-la-guajira/>.

The Advisory Opinion empowers Indigenous Peoples and other marginalized communities by providing legal tools to challenge unjust adaptation policies and hold States accountable for prioritizing support and compensation to these often-overlooked groups. It underscores the urgent need for adaptation plans specifically designed to protect their rights, pushing for reforms to address longstanding inequities in climate policies. It also establishes guidelines to address the gaps in current adaptation policies to protect specific rights, including in situations such as climate-induced mobility or life-threatening climate risks. Even if governments fail to implement equitable adaptation measures, the Opinion establishes a key reference point to clarify the scope of States' obligations, enabling individuals and groups whose rights have been violated to pursue climate litigation to demand fair and effective adaptation policies that protect them from bearing the brunt of the climate crisis.



Opportunities and Gaps in the Court's Approach

Adaptation has long been overlooked in climate action efforts. The IACtHR recognizes that addressing the climate emergency requires the urgent adoption of effective adaptation measures. Achieving this necessitates overcoming barriers such as financial constraints and a lack of political will to implement measures at the necessary scope and quality. The Advisory Opinion represents a significant step forward, clarifying that adopting robust adaptation policies is not discretionary but a binding human rights obligation, and providing clear guidance to steer State action.

The rationale for developing adaptation strategies tailored to marginalized communities is jurisprudentially sound, as the Court recognizes the disproportionate human rights violations these historically disadvantaged groups face following extreme weather events—such as food and water insecurity, destruction of private property, and threats to the rights to family and culture.

The recognition that poorly implemented adaptation measures can violate human rights echoes longstanding warnings from civil society regarding the risk that climate action—including adaptation measures and just transition policies—may fail to uphold human rights standards. It provides strong normative grounds to demand that climate action in general, and adaptation policies in particular, fully comply with States' human rights obligations.

While adaptation measures must respond to each State's specific needs, the Court clarifies that they must also address the structural causes of vulnerability. This dual focus ensures that adaptation policies not only mitigate immediate climate impacts but also tackle systemic inequalities, promoting equitable and effective protection for all.

The main challenge of the Advisory Opinion lies in its implementation. Structural factors—such as power imbalances between and within countries, limited resource mobilization, and the lack of alignment of interests needed to scale up and prioritize adaptation measures—have hindered its integration into climate policy frameworks. Domestic authorities and civil society organizations must strategically leverage the Advisory Opinion to overcome these structural barriers, bridging the gap between current realities and the standards set by the Court.

06. The Duty of International Cooperation

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Executive Summary

- The IACtHR establishes that “in order to guarantee the rights to life and personal integrity, States have the obligation to cooperate, in good faith, to protect against environmental harm” (para. 257).
- The Court affirms that the duty to cooperate in the context of climate change constitutes a legally binding obligation under several legal instruments, including the UNFCCC, the Protocol of San Salvador, the American Convention, and the OAS Charter.
- The Court clarifies that the duty to cooperate is not confined to transboundary environmental harm, but applies broadly to all situations requiring collective international responses.
- The principle of good faith is central to the execution of the duty to cooperate. States must engage not only in formal compliance, but in sincere, consistent, and effective action to achieve shared climate objectives.
- The Court outlines concrete measures for compliance, including technology transfer, financial assistance, and policy coordination. Thus, the Advisory Opinion provides a robust framework for holding States accountable for the obligation to cooperate on climate issues.



Introduction and Context

One of the greatest challenges in the fight against climate change is the transboundary nature of the threat it imposes. This interconnectedness among countries in the context of the climate emergency demands strong accountability mechanisms to enforce the duty to cooperate internationally on climate matters. The Preamble of the UNFCCC, for instance, acknowledges that “the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response.”⁶⁷ Additionally, the 2030 Agenda for Sustainable Development explicitly addresses the need to enhance cooperation among actors, a call to action also voiced by United Nations Secretary-General António Guterres, who has expressed his concern several times, following a similar path as his predecessor, Ban Ki-moon.⁶⁸

Overall, the duty to cooperate on climate matters is evident in a wide range of legal and international instruments, including the UNFCCC, the Kyoto Protocol,⁶⁹ and the Paris Agreement.⁷⁰ Controversies in the interpretation of these instruments—and, in some cases, the withdrawal of certain States—have limited compliance with this duty. Consequently, various actors in the process, particularly civil society organizations, raised the need for the IACtHR Advisory Opinion to clarify the scope of this obligation.

The Court did, in fact, do just that and the Advisory Opinion represents a historic milestone in international climate cooperation, as it is the first document to explicitly affirm the binding legal force of the duty to cooperate. Through thorough legal reasoning, the IACtHR presents a robust argument highlighting the fundamental role of climate cooperation in protecting human rights, establishing it as an undeniable obligation for member States of the OAS Charter. In the Court’s own terms: “this obligation, established by the UNFCCC, constitutes an essential and immediate component of the obligation to guarantee the rights derived from the American Convention and the Protocol of San Salvador that are threatened or violated in the context of the climate emergency” (para. 262).



Legal Analysis

In the Advisory Opinion, the Court explores the duty to cooperate in depth, providing robust legal reasoning on why cooperation is a binding obligation, which principles it should promote, and how it should be implemented in practice.

When addressing the legal basis of the duty to cooperate, the IACtHR notes that it is a duty that forms part of customary international law and derives from the principle of good faith in international relations (para. 247). The Court also builds on the UNFCCC, which establishes that, to promote

67 United Nations Framework Convention on Climate Change, 1992, Preamble. Available at: https://treaties.un.org/doc/Treaties/1994/03/19940321%2004-56%20AM/Ch_XXVII_07p.pdf.

68 Rudall, Jason, “The Obligation to Cooperate in the Fight against Climate Change,” *International Community Law Review*, 2021, 23(2-3): 184. Available at: https://brill.com/view/journals/iclr/23/2-3/article-p184_6.xml.

69 Kyoto Protocol, 1997. Available at: <https://unfccc.int/resource/docs/convkp/kpeng.pdf>.

70 Conference of the Parties to the United Nations Framework Convention on Climate Change, 2015 Paris Agreement. Available at: https://unfccc.int/sites/default/files/resource/parisagreement_publication.pdf.

the principle of equity, active sustainable development efforts and international cooperation are required (paras. 253-254). The Court further reinforces this obligation by citing additional legal sources. Among these, it references Article 1 of the Protocol of San Salvador and Articles 2 and 26 of the American Convention, both of which affirm that cooperation is essential to ensuring realization of economic, social, cultural, and environmental rights (para. 256). In particular, the Protocol stipulates that member States must “adopt the necessary measures, both domestically and through cooperation among states” to achieve progressive development (para. 238).

Furthermore, the IACtHR emphasizes that cooperation is a cardinal principle of the OAS Charter, reinforcing the binding force of this duty. In its preamble, the Charter acknowledges that the development of the Americas will “increasingly” require “intensive continental cooperation” (para. 248). The Court also highlights that the Rio Declaration on Environment and Development addresses the importance of cooperation in the context of climate change, emphasizing the need to develop additional international mechanisms to compensate for climate damage caused by activities under States’ jurisdiction (para. 250). Building on this robust legal reasoning, the Court concludes that “cooperation is an obligation established in binding legal instruments in both the regional and the universal sphere” (para. 251) and, therefore, that the duty to cooperate has binding legal force. Having established the enforceability of this duty, the Court proceeds to clarify the principles that should guide international cooperation.

First, the Court draws attention to the importance of making sure that cooperation is consistent and not strictly limited to situations of need—otherwise true sustainable development and the principles of equity would not be properly promoted. Therefore, “cooperation is not restricted solely to situations of transboundary threat or harm,” but it extends to “all contexts in which the international community pursues common objectives or faces problems that require collective solutions” (para. 253).

Second, the Court insists on the importance of respecting the principle of good faith when cooperating. The principle of good faith is a core principle for international law and it “constitutes an essential element for the interpretation of the obligation of cooperation [and] it requires not only formal compliance with undertakings, but also faithful, coherent and diligent action to achieve the common goals of the international community” (para. 252). Therefore, in the context of the climate emergency, international cooperation must be implemented consistently and beyond transboundary harm and exclusively in good faith, thus excluding any conduct that threatens the effective promotion of human rights.

Third, the Court mandates enhanced due diligence as the standard for States to prevent human rights violations amidst the climate emergency (para. 236). This standard specifically requires strengthened international cooperation, including technology transfer, financing, and capacity building, as a core component of States’ elevated obligation to act with greater diligence in addressing the causes of climate change and protect individuals from its impacts (para. 236).

Finally, the Court provides guidance on how cooperation measures should be applied in practice, linking them to specific rights and principles. For example, with sustainable development and the right to science in mind, States must cooperate by exchanging technology, sharing policy assessments, and disseminating innovations (paras. 263–264). To promote the procedural right of access to information, States must establish international forums to facilitate information exchange and ensure equal participation (para. 264). When the objective is to provide post-crisis

relief and restore human rights affected by climate events, States must mobilize and provide financial support proportional to their available resources (para. 411).

To ensure that cooperation is both implemented and conducted in good faith, the IACtHR recalls that “according to the OAS Charter, cooperation should preferably be channeled through multilateral agencies, without prejudice to bilateral cooperation between States, in order to ensure integral development” (para. 265).



Legal and Practical Implications

By reaffirming the binding force of the duty to cooperate, the Advisory Opinion positions itself as a tool to strengthen climate action through more effective and unified policy responses. The IACtHR “concurs with the position expressed by the United Nations General Assembly when it affirmed that ‘multilateralism is not an option, but a necessity in our task of building back better for a more equal, more resilient, and more sustainable world’” (para. 209).

Promoting cooperation enables States to draw on each other’s expertise and lessons learned, leading to more effective climate policymaking. Sharing technical knowledge and innovations can inform stronger legislative measures, while enhanced communication may help prevent the repetition of failed strategies. Financial and resource-based cooperation can also accelerate recovery and adaptation efforts in post-crisis contexts, thereby strengthening the protection of human rights. Moreover, in line with the principle of equity and CBDR-RC emphasized in the Advisory Opinion, support must be provided in proportion to each State’s resources. Respecting this principle fosters a fairer distribution of resources in the highly unequal context of climate change, helping to reduce the vulnerability of less-resourced States. Ultimately, cooperation under this framework drives meaningful legislative reforms and measures that advance human rights in the face of the climate emergency.

Furthermore, reinforcing the duty to cooperate creates an indirect system of checks and balances. As all States are now bound to allocate greater effort and resources toward cooperation under the IACtHR’s reasoning, they become more likely to call out those actors that fail to cooperate or even undermine this collective framework. The Court itself underlines that cooperation is essential to “guaranteeing compliance with the [climate] objectives established at the global level” (para. 251). Legally, the Advisory Opinion strengthens the rigor of the duty to cooperate, providing a solid basis to challenge government projects or policies that disregard this principle.

The reinvigorated duty to cooperate articulated in the Advisory Opinion is especially significant in contexts involving shared natural resources, where tensions and even malicious conduct can easily arise. Rather than pursuing conflict, States are reminded of their binding obligation to resolve such disputes through mutual cooperation, guided by good faith, in future climate-related negotiations.



Opportunities and Gaps in the Court's Approach

The Advisory Opinion represents a landmark in the climate change legal discourse, as it provides a solid basis for holding States accountable for the duty to cooperate on climate matters. While earlier jurisprudence of the IACtHR, such as Advisory Opinion OC-23/17,⁷¹ recognizes States' general obligation to cooperate in transboundary environmental matters, this Advisory Opinion elevates this duty to a binding obligation, rooted in solid legal reasoning. In doing so, it advances beyond previous case law and presents a particularly robust legal basis for why such duty must be fulfilled.

That said, the Advisory Opinion provides limited guidance on how to implement stronger international cooperation. Greater clarity is needed on how States might align domestic priorities with proper transnational cooperation, or how wealthier countries could support more vulnerable ones in a truly equitable distribution of resources. Future efforts might strive to integrate recommended cooperation measures in domestic legal frameworks.

Despite these limitations, the Advisory Opinion nonetheless provides valuable recommendations and practical illustrations on what cooperation in the climate context entails. Overall, it represents a significant step forward, offering both strong doctrinal statements and a compelling case for the enforceability of the duty to cooperate in addressing the climate crisis.

71 IACtHR, *Advisory Opinion OC-23/17*, *supra*.

07. Corporate Accountability and the Duty to Regulate Business Enterprises

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Executive Summary

- The IACtHR affirms that both States and business enterprises have human rights obligations in the context of climate change.
- The Court recognizes that States have an enhanced due diligence obligation to regulate and oversee the activities of State and private companies (especially GHG-intensive sectors) to prevent climate harm and the resulting human rights violations and to ensure accountability.
- The Court determines that high-emitting business enterprises have a greater legal responsibility to contribute to the mitigation efforts of the State and, in accordance with the polluter pays principle, that States must impose stricter obligations on these companies to reduce GHG emissions, as well to contribute to adaptation measures and reparations of climate harms.
- The Court provides a legal basis to hold parent companies headquartered abroad liable for the GHG emissions generated by their subsidiaries or by the companies they control, allowing climate-impacted individuals and communities in the Global South to initiate legal actions against business enterprises headquartered in the Global North.
- The Court obligates States to ensure that companies disclose climate-related information (including emissions disclosures across value chains) and combat greenwashing and corporate interference in climate policy.



Introduction and Context

Climate change is largely driven by the activities of a relatively small number of business enterprises, particularly in the fossil fuel and agro-industrial sectors (para. 54). In Latin America and the Caribbean, 58 percent of total emissions stem from agriculture, livestock, forestry, and other land use; at the same time, fossil fuel production in the region continues to rise. Several OAS Member States are among the world's largest CO₂ emitters between 1990 and 2024 (paras. 57-58). For more than seventy years, enterprises in these industries have not only contributed significantly to climate change, but also engaged in misinformation campaigns, policy obstruction, and greenwashing to deflect accountability and delay meaningful climate action.⁷² Regulating both the physical impacts and the socio-political conduct of these companies is therefore paramount to preventing catastrophic levels of warming and ensuring the effective protection of human rights.

In its Advisory Opinion, the IACTHR responds to the plea of dozens of civil society organizations by affirming that States must regulate business activities contributing to the climate crisis, while also holding that business enterprises themselves “are called on to play an essential role in addressing the climate emergency” (para. 345). For the first time, the Court recognizes that corporations have obligations “with respect to climate change and [their] impacts ... on human rights” (para. 346).



Legal Analysis

a. Regulation of State and Private Companies to Prevent Human Rights Violations

To comply with their obligation to protect the global climate system and prevent human rights violations resulting from its disruption, States must act with enhanced due diligence to regulate, supervise, and oversee the activities of business enterprises (paras. 226, 230, 352).⁷³ When a State has knowledge (or should have knowledge) that the activities of business enterprises under their jurisdiction are likely to create or contribute to serious and irreversible damage to human rights and the global climate system (within or beyond its borders), it is obligated to prevent the onset of new risks or the worsening of existing climate-related harms (para. 229).

While noting that activities monitored and controlled to prevent damage to the climate system will “vary from one State to another,” the Court emphasizes that certain high-emitting industries must

72 Frumhoff, Peter C., Richard Heede, and Naomi Oreskes, “The climate responsibilities of industrial carbon producers,” *Climatic Change*, 2015, 132(2): 157. Available at: <https://link.springer.com/article/10.1007/s10584-015-1472-5>; Hastings-Simon, Sara, “Opinion: Beware of climate delay, masquerading as climate action,” *CBC News*, September 10, 2020. Available at: <https://www.cbc.ca/news/canada/calgary/alberta-climate-delay-hyperloop-train-small-modular-reactors-1.5717438>; Lamb, William F., et al., “Discourses of climate delay,” *Global Sustainability*, 2020, 3:e17. Available at: <https://www.cambridge.org/core/journals/global-sustainability/article/discourses-of-climate-delay/7B11B722E3E3454BB6212378E32985A7>; Muffett, Carroll, and Steven Feit, *Smoke and Fumes: The Legal and Evidentiary Basis for Holding Big Oil Accountable for the Climate Crisis*, Center for International Environmental Law (CIEL), 2017. Available at: <https://www.ciel.org/wp-content/uploads/2017/11/Smoke-Fumes-FINAL.pdf>.

73 For more information on the enhanced due diligence standard, see thematic brief No. 1.

be strictly regulated by *all* States (para. 353). In line with the enhanced due diligence standard,⁷⁴ States are obligated to strictly monitor and control, “at the very least: exploration, extraction, transportation and processing of fossil fuels, cement manufacture, agro-industrial activities” that generate GHG emissions (para. 353). States must also establish robust and independent mechanisms, whether judicial, quasi-judicial, or administrative, with sufficient resources and capacity to carry out adequate monitoring of the activities subject to oversight, monitor progress towards the State’s national mitigation target, and make the necessary recommendations to ensure effective compliance (paras. 354-355). The duty to monitor also entails the possibility of investigating, prosecuting, and sanctioning business enterprises when their conduct poses high risks to the climate system and human rights (para. 356). Sanctions may include ordering a halt to the harmful activities and providing effective compensation for the harm caused to the climate system (para. 356).

b. Mitigation Strategies and Emissions Reduction in Business and High-Emitting Sectors

The obligation to regulate implies a duty on the State to define a mitigation strategy based on the best available science that establishes how business enterprises must contribute to the State’s emissions reduction efforts (paras. 331, 336).⁷⁵ Considering the urgency and seriousness of the climate emergency, the Court emphasizes that the mitigation strategy shall consider GHG-emitting activities and sectors both within and outside the State’s territory (para. 337). It shall also “necessarily include measures to advance in progressive reduction of GHG emissions from fossil fuels, agriculture, livestock, deforestation and other land use, as well as to eliminate [short-lived climate pollutants] emissions as quickly as possible” (para. 337). Notably, the Court casts doubt that “measures associated with technologies whose effects are not entirely proven” meet the standard of enhanced due diligence required of States in preventing climate harm (para. 336).⁷⁶

c. Human Rights Obligations of Business Enterprises

The Court affirms that business enterprises play a critical role in addressing the climate emergency, and, alongside States, bear human rights obligations in the context of climate change (paras. 345-346). Both public and private business enterprises must prevent their activities from causing or contributing to human rights violations, and adopt measures aimed at remedying such violations if they occur (paras. 345-346). States, in turn, are obligated to recognize and enforce these corporate obligations under their domestic regulatory frameworks, following the UN Guiding Principles on Business and Human Rights (UNGPs) and the most recent developments in international and comparative law (paras. 346, 348).

While all business enterprises have human rights responsibilities, regardless of their size and sector, the Court notes that their legal obligations may differ in light of the risk their activities pose to human rights (para. 350). Those who have contributed the most to the climate crisis have a greater responsibility to contribute to meeting the mitigation targets of States (para. 350). Therefore, in accordance with the polluter-pays principle and to ensure the effectiveness of national mitigation

⁷⁴ Ibid.

⁷⁵ For more details on adaptation obligations, see thematic brief No. 5.

⁷⁶ For more details on the obligation to mitigate GHG emissions, see thematic brief No. 4.

measures, States must impose stricter obligations on companies “whose activities are major sources of GHG emissions” (para. 350). Such obligations may include “tax burden, contributions to just transition plans and strategies, investment in education, and measures of adaptation or to measures to address loss and damage” (para. 350). States may also hold parent companies liable for the GHG emissions generated by their subsidiaries or by the companies they control (para. 350).

Additionally, States must adopt measures to discourage greenwashing, prevent undue corporate influence in the political and regulatory domains (para. 347), and ensure that existing trade and investment agreements do not limit or restrict efforts on climate change and human rights (para. 351). In line with the enhanced due diligence standard, States are required to adopt sanctions for non-compliance with national mitigation strategies, including penalties, cessation of harmful activities, and compensation for damages (para. 356). As part of their preventive duty, States must also address and punish corruption that undermines climate action (para. 357).⁷⁷

d. Business Contributions to the Production of Climate Information

To protect the right of access to information,⁷⁸ States must require business enterprises to publicly disclose the climate impacts of their activities, the measures they are taking to prevent human rights abuses, the carbon footprint of their products and services, and the “characteristics and effects of high-emission projects and available technologies” (para. 506). Companies must provide transparent information related to their ownership structures, internal mitigation and energy transition plans, and any contracts involving public resources (para. 516). Furthermore, the Court emphasizes the need for business enterprises to work alongside States to counter misinformation on the causes and impacts of climate change, promote media and information literacy, and ensure access to truthful and reliable climate information—upholding people’s fundamental right to receive accurate information (paras. 526, 529).



Legal and Practical Implications

The Advisory Opinion provides a normative foundation for courts and human rights bodies in the region to evaluate whether States and corporations have met their duties to prevent, mitigate, and remedy climate-related human rights violations. It also provides guidance to policymakers and legislators to regulate business conduct that drives climate change, and a roadmap for communities to demand stronger commitments from both States and non-state actors to reduce GHG emissions and advance climate justice.

The strengthening of State obligations to regulate, monitor, and oversee business enterprises establishes a clear mandate for governments to act against corporate practices that drive climate destruction. By affirming that high-emitting companies have a greater responsibility to contribute to States’ mitigation targets—and that States may order the cessation of harmful activities to meet

⁷⁷ The Court supports its findings with recommendations from the UN Working Group on the issue of human rights and transnational corporations and other business enterprises.

⁷⁸ For more details on the right to information, see thematic brief No. 12.

them (para. 356)—the Advisory Opinion reinforces global efforts to reduce fossil fuel production and accelerate the phase out of fossil fuels. The Court’s recognition of attributing GHG emissions of subsidiaries to their parent companies (para. 350) opens a new legal avenue for litigants from the Global South to initiate legal actions against business enterprises headquartered in the Global North, on the basis that their extraterritorial conduct violates human rights. Furthermore, the State’s obligation to require business enterprises to disclose their GHG emissions across their entire value chain strengthens transparency by revealing the full extent of those emissions and ensuring accountability in proportion to their responsibility. Such disclosures are particularly important for victims of climate-related harms seeking to claim loss and damage based on the degree of responsibility.

The Court’s explicit recognition that business enterprises bear human rights obligations in the context of climate change marks a notable development in international law. This recognition supports a consistent interpretation adopted by domestic courts in the region and affirms the IACtHR’s previous case law by recognizing human rights obligations of business enterprises.⁷⁹ In line with the UNGPs and the Inter-American Standards for Business and Human Rights, it can be inferred that the obligation of business enterprises to respect human rights in the context of the climate emergency is an independent one, that applies “regardless of States’ abilities and/or willingness to fulfil their own human rights obligations”⁸⁰ and “regardless of the existence of national laws that formalize it and of States’ international obligations on the subject.”⁸¹

Considering that businesses must not undermine the ability of States to fulfil their human rights obligations,⁸² a series of corresponding independent obligations on business enterprises can be derived from the findings of the Court. These include the obligation to reduce GHG emissions (including scope I, II and III emissions), to produce climate information, to avoid engaging in greenwashing or other forms of deception that harm the ability of the public to make informed decisions about climate change, and to refrain from exerting undue influence on climate policy. Collectively, these recognitions help broaden corporate responsibilities, ensure stronger corporate accountability, and advance climate justice by reinforcing the independent obligations of businesses in the face of the climate emergency.

Moreover, it is expected that the Advisory Opinion will inform international negotiations, in particular the Conference of the Parties to the UNFCCC, COP 30, to be held in Brazil in November 2025.

79 IACtHR, *Case of the Inhabitants of La Oroya v. Peru*, *supra*; IACtHR, *Case of the Miskito Divers (Lemeth Morris et al.) v. Honduras*. Judgment of August 31, 2021. Series C No. 432; *Kaliña and Lokono Peoples v. Suriname, Merits, Reparations and Costs*. Judgement of November 25, 2015, Series C No. 309.

80 OHCHR, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, 2011, p. 13. Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

81 IACHR and Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights of the Inter-American Commission on Human Rights (REDESCA), “Business and Human Rights: Inter-American Standards,” November 1, 2019, OAS/Ser.L/V/II, para. 177. Available at: https://www.oas.org/en/iachr/reports/pdfs/Business_Human_Rights_Inte_American_Standards.pdf; See also, UN OHCHR, *The Corporate Responsibility to respect Human Rights: An interpretive Guide*, 2012.

82 OHCHR, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework, *supra*, p. 13.



Opportunities and Gaps in the Court's Approach

The Advisory Opinion presents a crucial opportunity for Latin America and the Caribbean to confront the enduring colonial legacy embedded in the operations of foreign business enterprises, particularly those from the Global North, whose extractivist and exploitative practices have historically contributed to the climate crisis across the region. For centuries, business enterprises and Global North States have created deep structural vulnerabilities and disproportionately exposed communities in the region, especially Indigenous, Afro-descendant, and rural populations, to environmental harms. By affirming that business enterprises have human rights obligations in the context of climate change, the Court's opinion reinforces the need for corporate accountability and provides a powerful foundation for recognizing the historical injustices that have shaped the Americas' climate vulnerability. It also strengthens the legal basis for protecting the rights of present and future generations to a healthy, safe, and sustainable environment.

Moreover, the Advisory Opinion leaves the door open for further clarification and expansion of the scope of corporate obligations. In this regard, the pending Advisory Opinion process before the AfCHPR could play a crucial role in explicitly articulating these corporate duties, given the emphasis of the request on the regulation of third-party private conduct. This would offer an opportunity to close accountability gaps and ensure that businesses are held responsible not only through state regulation but also through independent, clearly defined human rights standards. Building on the IACtHR's Advisory Opinion, the AfCHPR could interpret further by recognizing that the right to a healthy climate entails an obligation to phase out fossil fuels to attain climate justice.

SECTION III



The Rights of Affected Peoples and Groups

08. The Rights of Indigenous Peoples

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Executive Summary

- IACtHR reaffirms the importance of Indigenous Peoples and their territories for environmental conservation in the face of the climate emergency (paras. 110, 339).
- The Court incorporates the *pro natura* principle, recognizing Nature as a subject of rights and defending the integration of human rights and Nature, seeking to overcome anthropocentric approaches (paras. 279-286, 298-316).
- The Court affirms that climate debt falls disproportionately on the most vulnerable countries, as a result of environmental costs imposed by developed countries on developing countries, which exacerbates inequalities directly affecting Indigenous Peoples and other climate-displaced persons. Furthermore, it emphasizes that international cooperation must be guided by the principle of CBDR-RC, enshrined in the Paris Agreement, as a condition for the effective protection of human rights in the context of the climate emergency (paras. 255, 258).
- By identifying the particular vulnerability of Indigenous Peoples to climate change, the Court establishes a high standard of climate due diligence, reinforcing procedural rights such as access to information, public participation, and consultation/consent (paras. 231-237, 501-503, 530-539, 606-608).



Introduction and Context

The recognition of the rights of Indigenous Peoples to territory, self-determination, consultation, and free, prior, and informed consent, among others, has been central to debates on climate justice. Since the IACtHR's Advisory Opinion OC-23/17, which addresses the relationship between the environment and human rights in general, the Court has affirmed that environmental protection is inseparable from the guarantee of a dignified life for these peoples, given that their way of life depends directly on the natural resources located in their ancestral territories. This approach is further developed in the latest Advisory Opinion.

During the hearings and in civil society submissions to the IACtHR for this Advisory Opinion, the need to recognize Indigenous territorial rights as a means of addressing the climate emergency was highlighted. Demands such as access to and demarcation of Indigenous lands, respect for consultation protocols, and financing for the representative institutions of Indigenous Peoples were presented as urgent State obligations. The Court was called upon to recognize that guaranteeing the rights of these Peoples is not only a matter of historical justice, particularly against colonialism, but also of effectiveness in climate action.



Legal Analysis

The Advisory Opinion incorporates interpretative principles into the human rights framework, such as the *pro natura* principle (paras. 216, 281, 315, 552), in addition to expressly recognizing Nature as a subject of rights (paras. 279-286), which must be protected for its intrinsic value. Following this, according to the Court, making the right to a healthy climate effective (paras. 298-304)—a concept derived from the right to a healthy environment—requires articulating it with the rights of Nature, thereby overcoming anthropocentrism (para. 316). This reinforces and expands the Court's ecocentric approach (focused on the environment), already evident in the earlier Advisory Opinion OC-23/17 and other subsequent decisions, and aligns with worldviews traditionally upheld by Latin American Indigenous Peoples.⁸³ The right to a healthy climate protects present and future human beings, as well as Nature itself. Climate stability and ecological balance are interdependent, requiring an integrated legal approach that combines the protection of human rights and the rights of Nature, in accordance with a harmonious interpretation of the *pro persona* and *pro natura* principles (para. 315).⁸⁴ In this sense, the protection of ecosystems must encompass all their components, including humans and their relationships. Therefore, the strategies adopted must ensure the adequate protection of the rights of Indigenous Peoples and communities that maintain close ties with these ecosystems (para. 367).

The Court determines that climate change poses extraordinary risks to certain groups whose vulnerability is exacerbated by the confluence of intersectional and structural factors of discrimination (para. 594). In this regard, the Court declared that the climate emergency disproportionately impacts Indigenous Peoples (para. 605), who are particularly vulnerable to its effects (para. 223).

⁸³ For more details on the human right to a healthy climate, see thematic brief No. 1.

⁸⁴ For more details on the rights of nature, see thematic brief No. 2.

For the same intersectional reasons, it is identified that within the group of environmental defenders, there are populations particularly vulnerable to more intense forms of violence (para. 517). This is the case of Indigenous Peoples and, more specifically, Indigenous women defenders, who face various additional obstacles to guarantee their integrity (para. 572).⁸⁵

The Court recognizes that the cultural damage caused by climate change particularly affects Indigenous Peoples, due to their deep spiritual and cultural connection to land and water. This compromises their right to participate in cultural life, which is essential to their identity (para. 450).

Further, the IACtHR notes that addressing climate change requires access to the best available knowledge – which in turn entails the establishment of the human right to science and the recognition of Indigenous, traditional, and local knowledge – emphasizing its use in climate strategies, and requiring States to integrate it into mitigation and adaptation policies (paras. 471-487, 539, 606).⁸⁶

The Court also establishes a standard for enhanced due diligence in climate matters (paras. 231-237), which requires, among other aspects, strict compliance with obligations arising from procedural rights, particularly access to information, participation, and access to justice, seeking to ensure the fair distribution of environmental and climate benefits and burdens.⁸⁷ In this regard, effectively guaranteeing access to climate information is essential to protecting rights such as life, integrity, health, the environment, and a healthy climate. The Court highlights the importance of data production to guide the protection of human rights, especially when historical discrimination increases the vulnerability of certain groups, such as Indigenous Peoples (paras. 501-503).⁸⁸

Likewise, one of the challenges identified by the Court is the lack of adequate information and significant data gaps on the differentiated impacts of climate change, especially concerning Indigenous Peoples. Therefore, it affirms that States have the obligation to collect and produce disaggregated data on the effects of climate change on persons and groups in vulnerable situations, including dimensions of gender, disability, age, and ethnicity, as well as the relevance of incorporating information produced by Indigenous Peoples themselves (paras. 717, 720, 721).

States also must guarantee active transparency and periodically publish information on climate change in Indigenous languages, in a way adapted to traditional knowledge, ensuring the effective participation of these peoples (para. 607). This is especially important when it comes to consultation and consent. The Court reaffirms that, in large-scale development or investment plans with significant impact on Indigenous or tribal territories, States must not only consult, but also obtain the free, prior, and informed consent of the affected communities, in accordance with their customs (para. 608). To this end, States must design and implement mechanisms to guarantee prior consultation, in line with the representative institutions and procedures of Indigenous Peoples, from the earliest stages of planning projects or measures affecting their territorial rights (para. 611).

⁸⁵ For more details on the rights of environmental human rights defenders, see thematic brief No.12.

⁸⁶ For more details on the right to science, see thematic brief No. 3.

⁸⁷ For more details on the standard of enhanced due diligence, see thematic brief No. 1.

⁸⁸ For more details on the right of access to information, see thematic brief No. 12.

The right to public participation is one of the fundamental pillars of procedural rights (para. 530).⁸⁹ To realize this right, adequate participation mechanisms must be established to ensure the broadest participation in decision-making related to climate change, without discrimination and giving preference to persons, communities, and Indigenous Peoples particularly affected by climate harm (para. 536). It also requires recognizing the importance of including traditional, local, and Indigenous knowledge in the decision-making processes necessary to respond to the climate emergency (para. 539). Further, the IACtHR noted that States have a duty to adopt progressive measures to strengthen the institutions representing Indigenous and Tribal Peoples, ensuring their autonomy and capacity for territorial and natural resource management, in addition to guaranteeing financial resources for their participation in decisions concerning the climate emergency (para. 606).

The Court recognizes that Indigenous territories present lower deforestation rates and are strategic to preventing the expansion of environmental destruction, even in the face of structural threats such as agribusiness, infrastructure, and extractive concessions (para. 110). Furthermore, it affirms that their inhabitants, due to their direct role in preserving and sustainably managing critical ecosystems, through their knowledge and ways of life, are essential (para. 339).

Finally, in its concluding provisions, the Court decides that States have an immediately enforceable obligation to adopt and/or update NAPs with the highest possible ambition, given the threats of climate change to rights such as life, personal integrity, health, water, food, property, housing, and others (para. 12), all of which are strongly linked to Indigenous territorial rights, as established in the Court's own jurisprudence.⁹⁰



Legal and Practical Implications

a. Implications for Litigation and Advocacy Strategies

The Advisory Opinion opens the path for the filing of claims and the development of public campaigns demanding that States incorporate the formal recognition (demarcation) and protection of Indigenous territories into NAPs and NDCs, recognizing the climate function of traditional territories as a conventional justification for their urgent protection.

The Court clearly establishes that the State has the obligation to obtain the free, prior, and informed consent of indigenous communities, in accordance with their customs and traditions, in the case of large-scale development or investment projects that have significant impacts on Indigenous territories. Therefore, the failure to properly comply with these processes may constitute grounds for dispute and arguments in potential litigation.

b. Implications for Policy and Legislative Reforms

It is expected that States will recognize that integrating policies of demarcation and territorial and environmental management of indigenous lands with strategies to address climate change and its

⁸⁹ For more details on the right to public participation, see thematic brief No. 12.

⁹⁰ For more details on adaptation obligations, see thematic brief No. 5.

impacts will significantly increase their capacity to fulfill international commitments and to realize the rights of Indigenous Peoples.

It is also essential to insist on the incorporation of Indigenous Peoples in the administration and governance of these territories. Therefore, legal and policy reforms must establish mechanisms of co-management or joint administration that enable them to effectively participate in decision-making regarding these spaces, making a decisive contribution to the conservation of fragile ecosystems and the function of carbon sinks, which are essential to mitigating climate change.

This Advisory Opinion reinforces standards against exploration projects with major impacts on Indigenous lands (consent obligation). By requiring States to adapt their laws, public policies, and actions to the most effective parameters for protecting the rights addressed in the Advisory Opinion (paras. 244-246), it also serves as a barrier to legislative initiatives aimed at weakening or dismantling environmental and Indigenous territorial protection regulations.



Opportunities and Gaps in the Court's Approach

Considering the above, the standards established in the Advisory Opinion seem to allow, through litigation and advocacy, the vindication and possible realization of various demands of civil society, such as Indigenous territorial rights. The recognition of the centrality of Indigenous Peoples in the development of climate mitigation and adaptation strategies demonstrates the great importance of the IACtHR's decision for the protection of these peoples' rights.

However, despite significant advances, there are some limitations and omissions in this Advisory Opinion. One limitation is its failure to specifically mention Indigenous Peoples in isolation or in initial contact, which prevents the recognition of their collective rights as a measure to reduce the impacts of the climate emergency.

Although the Court recalls that States must develop and implement mechanisms to guarantee prior consultation, in accordance with the institutions and procedures representing Indigenous Peoples (para. 611), by not expressly mentioning autonomous consultation and consent protocols, the Court again missed the opportunity to align its jurisprudence with advances adopted by other international bodies, such as the Inter-American Commission on Human Rights (IACHR), which considers these documents as instruments of autonomy and self-determination of Indigenous Peoples.⁹¹

The Court has positively reinforced its position on the obligation to obtain the consent of affected Indigenous and Tribal Peoples in cases of "major impacts" caused by projects. This standard was established in the *Case of the Saramaka People v. Surinam*⁹² and revitalized more recently in the *Case of the Rama and Kriol Peoples, and the Black Creole Indigenous Community of Bluefields et*

91 IACHR, "Derecho a la libre determinación de los Pueblos Indígenas y Tribales," December 28, 2021, paras. 297-302. Available at: <https://www.oas.org/es/cidh/informes/pdfs/LibreDeterminacionES.pdf>

92 IACtHR, *Case of the Saramaka People v. Suriname. Merits, reparations and costs*, Judgment of November 28, 2007, Series C No. 172, paras. 133-135

al. v. Nicaragua.⁹³ However, as in later precedents, objective parameters regarding consent are still lacking. That is, the IACtHR does not clarify what constitutes “major impacts,” under what circumstances prior consultation is sufficient, and in which cases consent is mandatory. Furthermore, in cases of small- and medium-scale impacts, the right to veto (the right to say no), widely claimed by Indigenous Peoples and organizations as an expression of their self-determination, continues to be ignored.

The Court specifically mentioned carbon credits and markets (para. 142), but missed the opportunity to align with the United Nations’ just transition parameters⁹⁴ and to develop protective standards in light of the reality of how these mechanisms and reducing emissions from deforestation and forest degradation (REDD+) projects affect Indigenous and Tribal Peoples. For example, during the advisory proceedings, Indigenous organizations denounced violations associated with their implementation, such as harassment by third parties to force the signing of contracts without free, prior, and informed consultation. Additionally, the expansion of so-called clean energy projects, such as wind and solar parks, are also associated with human rights violations as they have caused significant impacts on Indigenous territories, reproducing violations of exclusion and violence under the pretext of combating climate change. In northeastern Brazil, such projects have caused the loss of access to land, environmental degradation, local climate change, and harm to the health and livelihoods of communities.

Regarding conservation and protected areas, although the Court mentions the importance of Indigenous Peoples in conservation, it does not directly establish the relevance of incorporating them into the administration of protected areas, a situation that should not be seen as an exception but rather as a necessary standard to achieve more ambitious and effective conservation and climate justice goals.

93 IACtHR, *Case of the Rama and Kriol Peoples, and the Black Creole Indigenous Community of Bluefields et al. v. Nicaragua. Merits, reparations and costs*. Judgment of April 1, 2024. Series C No. 522, para. 240.

94 Cf. Report of the Special Rapporteur on the rights of Indigenous Peoples, “Green financing – a just transition to protect the rights of Indigenous Peoples,” A/HRC/54/31, July 21, 2023, para. 14. Available at: <https://docs.un.org/en/A/HRC/54/31>

09. The Rights of LGBTIQ+ Persons and Persons with Disabilities

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Executive Summary

- Due to structural inequalities and pre-existing conditions of discrimination or exclusion, persons with disabilities and LGBTIQ+ persons are among the sectors of the population that face the greatest vulnerability to the impacts of climate change.
- The IACtHR affirmed that, in accordance with the duty of respect and non-discrimination, States must ensure effective equality in the context of the climate emergency by adopting differentiated protection measures reflecting the distinct vulnerability these groups may face due to climate-related risk and humanitarian disasters.
- Among the differentiated measures States must undertake is ensuring physical, informational, and procedural accessibility to climate policies for those in situations of heightened vulnerability, including LGBTIQ+ persons and persons with disabilities, among others. Moreover, States must identify how exactly climate risks disproportionately affect these groups, taking into account the effects of inequality and multidimensional poverty, and drawing on analyses to guide effective climate action.



Introduction and Context

According to the best available science, climate change is a global emergency caused by human activities, whose consequences affect different sectors of the population unequally—the most severe impacts falling on people in situations of special vulnerability. The right to equality and non-discrimination requires States not only to prohibit discriminatory treatment toward these groups, but also to adopt positive measures to correct structural or contextual inequalities. Such measures include preventing third party practices that perpetuate discriminatory conditions.⁹⁵ Additionally, States must adopt public policies that guarantee enhanced protection for those who are exposed to greater risks due to dynamic factors derived from the climate crisis, and due to pre-existing conditions of discrimination and stigmatization. Any strategy to address the climate emergency must center on substantive equality, ensuring that no one is left behind, especially those facing conditions of exclusion or disadvantage that could be exacerbated by the mounting environmental crisis.

LGBTIQ+ persons and persons with disabilities are among those that face the greatest vulnerability and disproportionate risk from the impacts of climate change.⁹⁶ Long subjected to stigmatization and discrimination, safety risks to LGBTIQ+ persons often become more pronounced during climate-induced disasters.⁹⁷ For instance, LGBTIQ+ persons who become displaced by climate disasters can be subject to additional threats to their safety and wellbeing when the country of origin or host country does not recognize their rights, denying them safe conditions for mobility. Meanwhile, persons with disabilities are part of a historically discriminated group that has often been treated as expendable by society, and whose exclusion is intensifying in the face of the climate crisis. For instance, structural barriers—physical, legal, informational, and social—prevent persons with disabilities from accessing key climate information, participating in decision-making, and being included in climate response measures. More broadly, planning around climate adaptation and mitigation—including in relation to the energy transition, net zero economies, and sustainable transportation—do not adequately consider the needs of persons with disabilities. Indeed, systemic exclusion from climate policy limits the ability of both LGBTIQ+ persons and persons with disabilities to effectively exercise their rights and also places their physical integrity and lives at risk.

In addressing States' obligations to LGBTIQ+ persons and persons with disabilities in the context of the climate emergency, the Court builds upon existing Inter-American jurisprudence and the findings of international human rights legal bodies.⁹⁸ The Court's previous Advisory Opinion OC-

95 IACtHR, *Juridical Condition and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03 of September 17, 2003, Series A No.18, para. 104, and IACtHR, *Case of the Quilombolas Communities of Alcântara v. Brazil*. Preliminary objections, merits, reparations and costs. Judgment of November 21, 2024. Series C No. 548, para. 291.

96 This brief addresses States' duties both to persons with disabilities and to LGBTIQ+ persons because the Advisory Opinion addresses both sectors of the population when discussing the differentiated protection measures States owe to those at heightened risk to climate-related harm.

97 See IOM, Yemi Knight, Nastassia Rambarran, Ranako Bailey, and Makesi Francis, "The Caribbean environmental migration legislative landscape with regards to LGBTIQ+ inclusion in evacuation processes: gaps and recommendations," p. 3. Available at: https://environmentalmigration.iom.int/sites/g/files/tmzbd1411/files/2024-04-11-policy-papers_lgbtqiinclusion-in-evacuation-processes_web-single-pages.pdf

98 See generally IACHR, Resolution No. 3/2021, "Climate Emergency: Scope of Inter-American Human Rights Obligations", *supra*. Available at: https://www.oas.org/en/iachr/decisions/pdf/2021/resolucion_3-21_ENG.pdf; OHCHR, "The promotion and the protection of the rights of persons with disabilities in the context of climate change", A/HRC/44/30, April 22, 2020. Available at: <https://www.ohchr.org/en/disabilities/reports>

23/17 establishes that there are two types of rights related to the environment: substantive rights that are violated by environmental degradation (e.g., the rights to life and to personal integrity) and those whose exercise contributes to sound environmental governance (e.g., access to information, freedom of expression, etc.).⁹⁹ In Advisory Opinion OC-23/17, the Court recognizes that persons belonging to groups in situations of heightened vulnerability are disproportionately affected when environmental harm restricts the exercise of these rights.¹⁰⁰ In their request for a climate advisory opinion, Colombia and Chile affirmed that this remains as true as ever in the context of climate change, a point that was reiterated in oral hearings by numerous academic institutions and civil society organizations, including several focused on disability rights and LGBTIQ+ persons.¹⁰¹



Legal Analysis

The Advisory Opinion calls on States to adopt a comprehensive and differentiated approach to climate policy-making that recognizes and addresses the specific impacts faced by groups at heightened risk of climate harm. The Court “underscores that the intersection of diverse vulnerability factors increases the disadvantages faced, significantly limiting the capacity to adapt to the effects of climate change” (para. 625). Accordingly, it is critical that States design and implement measures that respond to the multiple dimensions of exclusion, ensuring that their climate policies are not only effective but also fair and inclusive.

a. LGBTIQ+ Persons

The Advisory Opinion recognizes that LGBTIQ+ persons are among the sectors of the population who are disproportionately impacted by climate change-related harms, and whose protection thus requires the implementation of differentiated measures by the State. The Court observes that during and after climate disasters, persons of “gender diverse persons” face increased threat of gender-based violence (para. 618). LGBTIQ+ persons may also lack access to adequate and equitable healthcare during disasters, and become exposed to harassment and discrimination while seeking safety in emergency shelters (para. 618).

The Court finds that to prevent and respond to such risks, States must guarantee LGBTIQ+ persons’ access to non-discriminatory, accessible, acceptable, and quality health care as well as safe spaces during emergencies (para. 618). To ensure access to health care that is inclusive and tailored to the needs of LGBTIQ+ persons, States must ensure that health care personnel have the necessary training on diversity and inclusion, and also promote the creation of safe spaces to effectively prevent and address any acts of discrimination and harassment against LGBTIQ+ individuals in temporary shelters (para. 618). In this context, the right to equality and non-discrimination entails not only prohibiting arbitrary distinctions but also adopting positive measures to address structural inequalities, ensuring that no one is left behind in climate response strategies, particularly those, such as LGBTIQ+ persons, who face compounded exclusion and vulnerability.

⁹⁹ IACtHR, *Advisory Opinion OC-23/17, supra*, para. 64.

¹⁰⁰ *Ibid*, para. 67.

¹⁰¹ See written observations submitted by Akahatá and Others. Available at: https://corteidh.or.cr/sitios/observaciones/OC-32/25_Akahata_otros.pdf; Written observations submitted by Tierra Viva, Women’s Link Worldwide, FRIDA, Colombia Diversa, AIDA, Instituto Cordilheira, Madre Selva Colectivo Ecologista, Liga Salud Trans, and Fundación Plurales. Available at: https://corteidh.or.cr/sitios/observaciones/OC-32/33_w_link_w.pdf.

b. Persons with Disabilities

The Court determines that the obligation to guarantee rights implies that all powers of the State must be capable of legally ensuring the free and full exercise of human rights (para. 225). With respect to persons with disabilities, this means that States have an obligation to implement all necessary legislative, administrative, and judicial measures to reduce the structural barriers that have historically limited their rights on an equal basis (para. 606). Such barriers include lack of recognition and inclusion in decision making-processes due to membership in a socially vulnerable group.

Furthermore, the Court emphasizes that the right to information related to both the impacts of climate change and its characteristics, as well as the measures that each government will implement, carries with it an obligation of accessibility. This means that information “must be provided in a clear and comprehensible format and language, including through audiovisual and electronic media, taking into account the specific needs of ... persons with disabilities” (para. 522).¹⁰²

Moreover, the Court finds that climate disasters, such as natural disasters or forced displacement, have a greater impact on persons with disabilities (para. 614), as they have less access to emergency support, face unsafe evacuations, and encounter temporary shelter infrastructure that is not accessible (para. 617). The Court concludes that States must comply with the general obligation to ensure the progressive realization of economic, social, cultural, and environmental rights, ensuring accessibility and protection for groups in vulnerable situations (para. 617).

Notably, the Court recognizes that there are situations where several factors of vulnerability may be present (para. 625), such as when a person with a disability living in poverty is exposed to climate change-related risks. In such circumstances, States, in compliance with international human rights instruments, must: (i) guarantee the access of persons with disabilities living in poverty to the goods and services necessary to achieve a dignified life, and (ii) progressively eradicate the causes that perpetuate and increase climate vulnerability (para. 626).



Legal and Practical Implications

The Court specifies that, by virtue of their obligation to ensure the progressive realization of economic, social, cultural, and environmental rights, States must allocate the maximum available resources to protect individuals and groups who, because of their vulnerability, are exposed to the most severe impacts of climate change (para. 242). For example, as discussed above, States must ensure that climate information is presented in clear and accessible formats and languages tailored to the needs of groups in situations of heightened vulnerability, including persons with disabilities (para. 489, 512). It is therefore important for States to hold public debates surrounding the allocation of resources aimed at fulfilling these obligations, with the principle of non-discrimination as one of their guiding pillars. However, this may prove a challenge in the face of the political instability, high levels of corruption and impunity, and/or fragility of State structures affecting certain countries in the region. Such factors may prevent these countries from executing national budgets with a human rights-based approach and complying with the obligation to protect and guarantee the rights of those at heightened risk of climate harm.

¹⁰² For more details on the right to access to information, see thematic brief No. 12.

To address these challenges, States must ensure that both persons with disabilities and LGBTIQ+ individuals are actively involved in climate policy discussions and decision-making. This can be achieved by implementing inclusive consultation processes that target both groups. Specifically, it is essential to provide reasonable accommodations and ensure accessibility for persons with disabilities so that their participation is meaningful and equitable.¹⁰³ In parallel, States could also be encouraged to strengthen cooperation and international assistance through regional agreements on technology transfer and climate finance—particularly for countries with fragile state structures—and by enhancing access to international climate funds (e.g., the Green Climate Fund, the Adaptation Fund) with explicit criteria of inclusion and equity.¹⁰⁴

With respect to potential impacts on climate accountability, the Advisory Opinion affirms that States and corporations have binding obligations under international law to address the climate crisis as a human rights emergency.¹⁰⁵ This ruling provides a strong foundation for climate litigation before local, regional, and national courts, and for the realization of the right to access to justice (para. 540). While the IACtHR does not propose concrete actions to ensure legal recourse for LGBTIQ+ persons and persons with disabilities whose rights have been violated in the context of climate change, a number of findings can be applied to strengthen the ability of these groups to access justice. For instance, the Court finds that, based on the *pro actione* principle and considering the serious nature of climate risk and its differentiated impacts on different sectors of the population (para. 543), courts must favor interpretations that enable, rather than restrict, judicial review in climate-related cases. Additionally, the Court affirms that rules concerning admissibility, credibility, and assessment of evidence should be applied flexibly so they do not create unnecessary procedural barriers for victims—especially those who are in situations of heightened vulnerability (para. 554).¹⁰⁶

Overall, civil society will play a crucial role in enforcing and elevating, within national debates, the obligations outlined by the Court in its Advisory Opinion. It is important that civil society continue to spotlight the discrimination and violations that LGBTIQ+ persons are subjected to daily, so that policymakers can take steps to address existing threats to the realization of basic rights, while implementing measures to prevent these threats from escalating in situations of climate risk and humanitarian emergency. Concerning persons with disabilities, advocacy efforts should focus on working alongside States to adopt measures that ensure access to information and the effective participation of persons with disabilities in climate-related matters. This includes the need for meaningful consultation, in line with the principle championed by the disability rights movement: “nothing about us without us.”

¹⁰³ For more details on the right to public participation, see thematic brief No. 12.

¹⁰⁴ For more details on States’ obligation to cooperate, see thematic brief No. 6.

¹⁰⁵ For more details on States’ obligation to mitigate GHG emissions, see thematic brief No. 4, and for more details on businesses and human rights, see thematic brief No. 7.

¹⁰⁶ For more details on access to justice, see thematic brief No. 13.



Opportunities and Gaps in the Court's Approach

The IACtHR's Advisory Opinion represents significant progress in recognizing the risks of climate change that most affect the human rights of certain population groups that are victims of discrimination and heightened vulnerability. More generally, it calls on the States that ratified the American Convention to not only comply with, but also guarantee the rights to a healthy climate, life, personal integrity, health, water, food, a healthy environment, and private and family life, among others, through urgent and effective mitigation and adaptation measures and progress toward sustainable development. Such steps, if implemented urgently and ambitiously, will be critical to averting irreversible climate harm and catastrophic consequences, whose effects would hit persons with disabilities, LGBTIQ+ persons, and other marginalized groups the hardest.

One key shortcoming of the Advisory Opinion is its lack of clarity regarding States' specific obligations to protect the rights of LGBTIQ+ persons and persons with disabilities from the impacts of climate change. This stems from the IACtHR's failure to distinguish in detail between groups facing heightened vulnerability. While both communities share certain challenges, their lived experiences and needs are distinct. The Advisory Opinion overlooks critical context—such as the health and autonomy risks climate change poses to persons with disabilities, and the structural barriers (poverty, unemployment, and social exclusion) that increase LGBTIQ+ persons' vulnerability and hinder their recovery from environmental disasters. These omissions underscore the urgent need for targeted research and data, and inclusion of the LGBTIQ+ persons and persons with disabilities to create inclusive climate policies and programs.

Concerning the protection of LGBTIQ+ rights from climate change-related harm, while the Court emphasizes that a differentiated approach is necessary, it does not comprehensively address the multiple dimensions of discrimination faced by this population nor offer many examples of specific measures that States should implement. Although the Advisory Opinion acknowledges the existence of differentiated risks arising from intersectional factors and mentions certain State duties, such as the obligation to guarantee discrimination-free health care and create safe spaces in temporary shelters, this assessment is limited and should be further developed.

Another matter that could be explored in greater depth in future legal opinions and analyses is the right of persons with disabilities to participate in climate decision-making. Although the Advisory Opinion recognizes an obligation to provide persons with disabilities with access to information on climate change, it does not emphasize the need to include them in the design and implementation of all measures that affect their lives. Historically, persons with disabilities have been marginalized and made invisible due to the mistaken belief that they do not have the capacity to participate actively in society. States thus must not merely recognize persons with disabilities as being in situations of special vulnerability; they must also take measures to ensure these rightsholders are not segregated from decisions aimed at combating climate change—an emergency that disproportionately impacts their wellbeing and dignity. Indeed, persons with disabilities have unique knowledge from lived experience that has been and could continue to be helpful in designing accessible climate adaptation and mitigation strategies, such as the implementation of universal design in such initiatives. Therefore, it is essential to recognize them as knowers, makers, and doers, and to actively foreground their agency in all aspects of climate action and decision-making.

10. The Rights of People Affected by Climate Mobility

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**FAST ACTION ON CLIMATE TO ENSURE
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Executive Summary

- The IACtHR addresses climate change-induced human mobility (climate mobility) as a cross-cutting issue, recognizing it as a form of interference with human rights protected under the Inter-American legal framework, such as the right to freedom of movement and the right to remain, return, and reside freely (para. 414).
- In its analysis, the Court identifies four scenarios in which climate change drives human mobility: (i) sudden-onset disasters; (ii) progressive environmental degradation; (iii) increased risk requiring planned relocation; and (iv) violence or conflict exacerbated by climate change (para. 415). These phenomena have direct impacts on the right to freedom of movement and residence and require comprehensive normative responses.
- The Court emphasizes that States are obligated to adopt reasonable measures to mitigate the factors that can lead to forced displacement, including both sudden-onset events and slow-onset processes (such as desertification or sea level rise) (paras. 416-417).
- In contexts of climate mobility, States must guarantee essential rights such as life, personal integrity, health, adequate housing, food, and access to safe drinking water (para. 423). This protection must be provided from the moment displacement occurs and also to those who are immobile or at risk of prolonged displacement (para. 418).
- The opinion highlights the need to establish humanitarian protection mechanisms, including adequate migration categories such as humanitarian visas, complementary protection, or refugee status, as well as to prevent returns incompatible with international law (para. 433).
- The Court affirms that international and regional cooperation is a key element in ensuring the rights of people affected by climate change-induced human mobility. It urges States to

treat the safe, orderly, and regular management of migration flows as a shared concern and responsibility of the international community, for which joint actions must be developed (para. 431). The Court also emphasizes the importance of international solidarity in addressing the dangerous effects of climate change (para. 408).



Introduction and Context

Human mobility in the context of the climate crisis refers to the various ways in which individuals or communities may be displaced or compelled to remain in a territory as a direct or indirect result of the impacts of climate change. Specialized academic literature has pointed out that climate change does not create new categories of mobility but rather intensifies existing patterns.¹⁰⁷ It is a multicausal phenomenon where different forms of vulnerability and risk converge.¹⁰⁸

Climate-related human mobility encompasses a spectrum of movements that differ in their causes, scale, duration, and degrees of voluntariness. These include displacement, migration, and immobility—categories that, while useful for analytical purposes, are fluid and often overlap in real-world contexts.¹⁰⁹

The Court identifies three principal factors driving these patterns of mobility. First, slow-onset processes—such as sea level rise, desertification, biodiversity loss, land degradation, water scarcity, and the loss of livelihoods—progressively undermine the minimum conditions for human habitability and security, often forcing communities to migrate for survival.¹¹⁰ Second, sudden-onset events, including floods, wildfires, hurricanes, and landslides, generate immediate and large-scale displacement.¹¹¹ Finally, compound factors, such as social vulnerability, poverty, environmental racism,¹¹² inequality, and lack of governance exacerbate the impact of climate events.

According to regional data, more than two million new internal displacements were caused by disasters in 2022.¹¹³ It is projected that by 2050, over 17 million people could be forced to move

107 Vélez-Echeverri, Juliana, Andrés Aristizábal, and Camila Bustos, “Literature Review: Climate Change and Human,” HIP Funds, December 2023. Available at: https://hipfunds.org/wp-content/uploads/2023/12/Literature-Review_Climate_Change_and_Human.pdf.

108 Ibid.

109 Nguyen, Quynh, Gabriele Spilker, Vally Koubi, and Tobias Böhmelt, “How sudden- versus slow-onset environmental events affect self-identification as an environmental migrant: Evidence from Vietnamese and Kenyan survey data,” PLOS ONE, 2024, 19(1): e0297079. Available at: <https://doi.org/10.1371/journal.pone.0297079>.

110 Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, “Providing legal options to protect the human rights of persons displaced across international borders due to climate change,” A/HRC/53/34, April 18, 2023. Available at: <https://docs.un.org/en/A/HRC/53/34>.

111 Ibid.

112 Environmental racism is defined as the disproportionate burden of ecological degradation borne by Indigenous communities, Afro-descendants, and other racialized populations compared to white populations and manifested through State decisions and omissions in the development and implementation of environmental policies, regulations, and laws. Observatorio de Racismo en México y Centroamérica, “¿Team Calor?: Racismo ambiental y migración,” RacismoMX, 2024, pp. 8-9. Available at: <https://cartografias.racismo.mx/wp-content/uploads/2024/10/TEAMCALOR-9707901.pdf>.

113 Internal Displacement Monitoring Centre (IDMC), “Global Report on Internal Displacement 2023: Internal displacement and food security,” 2023. Available at: <https://www.internal-displacement.org/publications/2023-global-report-on-internal-displacement-grid/>.

within their countries due to climate-related causes.¹¹⁴ Additionally, climate mobility affects women and girls differently due to pre-existing gender inequalities. On average, women tend to experience higher levels of poverty, lower access to education and health services, and limited control over land and natural resources, which exacerbates their vulnerability in the context of climate mobility.¹¹⁵

Most of these movements occur within national borders, and cross-border displacements mainly take place between neighboring countries. This presents significant legal challenges, as many people displaced by disasters and climate change do not typically fall within traditional protection frameworks, such as the refugee regime.¹¹⁶

Human mobility associated with climate change poses complex legal, social, and public policy challenges, with direct impacts on human rights. Extreme weather events and slow-onset climate impacts such as sea level rise, flooding, and changes in precipitation patterns are triggering mass displacements, particularly in Latin America, sub-Saharan Africa, and South Asia, where internal climate migration could exceed 143 million people by 2050.¹¹⁷ In Latin America and the Caribbean, hurricanes, floods, and landslides have already caused millions of displacements and billions in damages, with countries like Peru, Colombia, and Guatemala especially affected.¹¹⁸ Despite the growing magnitude of climate-related displacements, most governments lack legal frameworks to recognize or protect people in climate mobility situations, leaving them in highly vulnerable conditions.¹¹⁹ Current refugees and displaced populations face compounding risks such as exploitation, insecurity, intimidation, and xenophobia.¹²⁰ The absence of coherent legal recognition and coordinated regional policy responses hampers efforts to ensure justice and protection for affected individuals.

Among the rights frequently violated or at risk are: the right to life and personal integrity; the right to safe drinking water, food, and adequate housing; the right to health, work, and livelihoods; the right to property and housing; the right to freedom of movement and residence; rights of access to information, participation, and environmental justice; and the right to cultural identity and territorial rootedness.

114 World Bank, "Groundswell Part II: Acting on Internal Climate Migration," 2021. Available at: <https://documents1.worldbank.org/curated/en/837771631204427139/pdf/Groundswell-Part-II-Acting-on-Internal-Climate-Migration.pdf>.

115 McAuliffe, M. and L.A. Oucho (eds.), 2024. *World Migration Report 2024*. International Organization for Migration (IOM), Geneva. Available at: <https://publications.iom.int/books/world-migration-report-2024>.

116 Gil, Ana Martin, et al., "How Can We Protect 'Climate Refugees'?", Houston, TX, Rice University's Baker Institute for Public Policy, 2022. Available at: www.bakerinstitute.org/research/how-can-we-protect-climate-refugees.

117 Rigaud, Kanta Kumari, et al., "Groundswell: Preparing for Internal Climate Migration," Washington, DC, The World Bank, 2018, p. xxi. Available at: <https://documents1.worldbank.org/curated/en/931861522302821955/pdf/124719-v1-PUB-PUBLIC-pubdate-3-19-2018.pdf>.

118 World Meteorological Organization (WMO), "State of the Climate in Latin America and the Caribbean 2021," Geneva, WMO, 2022, WMO-No. 1295, p. 14. Available at: <https://library.wmo.int/records/item/58014>.

119 Gemenne, François, Caroline Zickgraf, Elodie Hut, and Tatiana Castillo Betancourt, "Forced displacement related to the impacts of climate change and disasters, Reference paper for the 70th Anniversary of the 1951 Refugee Convention," UNHCR, June 2021, p. 5. Available at: https://www.unhcr.org/people-forced-to-flee-book/wp-content/uploads/sites/137/2021/10/Franc%C3%A7ois-Gemenne-et-al_Forc-displacement-related-to-the-impacts-of-climate-change-and-disasters.pdf.

120 International Crisis Group, "Hard Times in a Safe Haven: Protecting Venezuelan Migrants in Colombia, Latin America Report N° 94," 9 August 2022. Available at: <https://www.crisisgroup.org/latin-america-caribbean/andes/colombia-venezuela/hard-times-safe-haven-protecting-venezuelan>.

During the consultative process, at least seventeen actors, including multilateral organizations, civil society organizations, international non-governmental organizations, and academic institutions presented legal arguments, empirical evidence, and intersectional analyses to highlight the complexity of climate mobility.¹²¹ These submissions urged the Court to recognize it as a specific form of human rights impact and to guide States in adopting measures for prevention, protection, durable solutions, and effective participation of affected communities.

Collectively, the contributions emphasized the urgency of closing legal gaps and advancing towards normative frameworks adapted to the Global South, which consider both slow-onset events and extreme phenomena, from a rights-based, equity, and resilience perspective.



Legal Analysis

The analysis of human mobility induced by climate change was addressed transversally across the three guiding questions of the advisory opinion. For the IACtHR, the right to freedom of movement not only refers to voluntary mobility, but also includes the right to remain, return, and freely choose one's place of residence. This right can be severely affected by extreme climate conditions, particularly when individuals are forced to abandon their territories without any real possibility of return (para. 414).

The Court acknowledges that human mobility induced by the climate crisis is a multi-causal phenomenon and adopts a structural and intersectional perspective on the causes of displacement. It emphasizes that the climate emergency does not operate in isolation but rather interacts with factors such as inequality, exclusion, poverty, discrimination, and prior environmental degradation that disproportionately affect certain groups (paras. 416-418).

In particular, women, children, adolescents, Afro-descendant communities, and Indigenous Peoples suffer heightened harm and require additional preventive and reparative measures to ensure justice for these communities.

The Court recognizes at least four ways in which climate change affects this right. First, direct displacement caused by disasters such as hurricanes or wildfires, or indirect displacement when climate impacts are compounded by preexisting vulnerabilities (conflict, poverty, food insecurity, etc.) (para. 416). Second, forced displacement due to the loss of fertile land, crops, water, or employment, as demonstrated by the case of *Lajas Blancas* (Honduras), where drought forced 80 percent of the community to migrate (para. 417). Third, worsening of the situation of already displaced persons, in contexts where climate impacts intensify risks or lead to continuous or prolonged displacement. According to the United Nations High Commissioner for Refugees (UNHCR), by the end of 2023, nearly three-quarters of displaced persons were living in countries with high or extreme climate risk exposure (para. 418). Fourth, climate immobility, that is, the

¹²¹ See written observations submitted by Commission of Small Island States on Climate Change and International Law. Available at: https://corteidh.or.cr/sitios/observaciones/OC-32/10_com_island_states.pdf; written observations submitted by the coalition of Caribbean civil society organizations and experts, supported by the Global Strategic Litigation Council for Refugee Rights. Available at: https://corteidh.or.cr/sitios/observaciones/OC-32/2_consejoglobal.pdf; see written observations submitted by Legal Clinic on Cross-Border Human Mobility (Universidad del Rosario) Available at: https://corteidh.or.cr/sitios/observaciones/OC-32/5_uni_Rosario.pdf

situation of individuals or communities who, despite facing climate risks, do not migrate either due to material impossibility (involuntary immobility) or for cultural, social, or economic reasons (voluntary immobility) (para. 419).

The Court addresses the complexity of all these types of human mobility and the application of human rights in this context. To this end, it develops a series of key principles related to the obligation to prevent displacement, to protect rights in contexts of climate mobility, and to adopt specific measures for groups in situations of vulnerability

A first point to highlight from the Advisory Opinion is the recognition of human mobility as a relevant legal phenomenon that imposes obligations on States regarding both internal and cross-border movements (para. 421). The IACtHR establishes that “States are obliged to adopt measures to prevent, in accordance with a heightened due diligence standard, migration and forced displacement caused directly or indirectly by disasters and other impacts of climate change” (para. 422).

This recognition implies that States are obligated to adapt their legal, public policy, institutional, and budgetary frameworks to adequately address the different forms and conditions in which people move or remain in the territory (para. 424).

In addition to the obligation to design and implement strategies to strengthen the resilience of groups in vulnerable situations, States must also refrain from adopting policies or measures that destroy or dispossess people of their homes or properties affected by climate-related disasters (para. 412).

The scope of this obligation imposes on States the duty to ensure that all instruments and mechanisms established to respond to persons in situations of involuntary mobility in the context of climate emergencies, including those related to disaster risk management, are adopted while fully upholding procedural rights; that is, the rights of access to information and participation in any decision-making processes (para. 425).¹²²

In this regard, the IACtHR places special emphasis on the importance that relocations only occur under exceptional circumstances and that States have adequate legal frameworks to govern such processes in accordance with international and regional human rights standards (paras. 428-429). Furthermore, they must establish appropriate migratory categories, such as humanitarian visas, temporary stay permits, or recognition under refugee status or equivalent figures, which provide safeguards against refoulement (para. 433).

A second point highlighted by the Court is that the effective protection of the human rights of displaced persons requires active cooperation among States (para. 430).¹²³ The Court highlights that instruments such as the Cancun Adaptation Framework promote international cooperation on displacement, migration, and planned relocation; the Sendai Framework for Disaster Risk Reduction urges cross-border cooperation to reduce risks and build resilience; and the Global Compact for Safe, Orderly, and Regular Migration underscores the need for inter-State coordination to implement early warning systems, evacuation plans, reception agreements, and assistance mechanisms.

¹²² For more details on access to justice and remedies in environmental matters, see thematic brief No. 13.

¹²³ For more details on States' obligation to cooperate, see thematic brief No. 6.

In this regard, the Court's pronouncement reminds the international community that the safe, orderly, and regular management of migratory flows is a shared concern and responsibility, requiring the adoption of common strategies at both international and regional levels (para. 431).

In line with the above, the Court affirms that in order to protect, respect, and guarantee the right to freedom of residence and movement, such cooperation should aim to: strengthen bilateral mechanisms and regional strategies to protect the human rights of people displaced by climate change; ensure consular protection and humanitarian assistance for displaced persons in crisis situations in transit and destination countries; establish contact points so that families of disappeared persons can access information, while protecting their privacy; recover, identify, and repatriate the remains of deceased displaced persons, respecting the wishes of their families; guarantee safety and facilitate secure and regular cross-border mobility; implement technical assistance agreements to improve border management—including search, rescue, and emergency response; and ensure that returns or readmissions are carried out with safety, dignity, and respect for international human rights law (para. 423).

A fourth relevant point developed by the Court concerns the enhanced protection of children in the context of climate-related mobility. The IACtHR reiterates the obligations established in its Advisory Opinion OC-21/14 on the rights and guarantees of children and adolescents in the context of migration, emphasizing that they are among the groups in the situations most vulnerable to the adverse effects of climate change, which can severely impact their physical and mental health as well as their access to education (para. 434).



Legal and Practical Implications

The scope of this obligation imposes on States the duty to ensure that all instruments and mechanisms established to address people in situations of involuntary mobility within the framework of the climate emergency including those related to disaster risk management are adopted in a manner that guarantees the full validity of procedural rights, namely, the rights of access to information and participation in whatever decisions are to be made (para. 425).

In this regard, the Court places particular emphasis on the importance of ensuring that relocations occur only under exceptional circumstances, and that States adopt adequate legal frameworks to govern such processes in accordance with international and regional human rights standards (paras. 428-429). The Court also stresses the need to establish adequate migratory categories, such as humanitarian visas, temporary residence permits, or recognition under refugee status or other equivalent figures, which provide safeguards against refoulement (para. 433).

The Court also underscores that protecting the rights of people on the move requires active interstate cooperation and alignment with existing international frameworks, such as the Cancun Adaptation Framework, the Sendai Framework for Disaster Risk Reduction, and the Global Compact for Migration (para. 430).



Opportunities and Gaps in the Court's Approach

The recognition of human mobility induced by climate change as a legally relevant issue within the Inter-American System opens the door to a more robust and evolutionary interpretation of the rights protected by the American Convention. This classification allows, in the future, for States to be held to a higher standard of protection in contexts of displacement, migration, or mobility caused by climatic factors, obligating them to act with the utmost diligence in the prevention, care, and reparation of the harms suffered by people in situations of climate mobility.

In particular, the Advisory Opinion reinforces the idea that relocation measures should only be adopted as a last resort, giving priority to participatory processes that are culturally sensitive and grounded in the free, prior, and informed consent of affected communities, particularly Indigenous Peoples, Afro-descendant groups, peasants, and other ethnic collectives. This generates a legitimate expectation that State decisions involving large-scale relocations will be subject to greater legal, social, and political scrutiny.

Additionally, by emphasizing the multilevel and regional nature of the phenomenon, the Court establishes a legal foundation for civil society, international organizations, and community actors to demand concrete mechanisms of interstate cooperation. These should go beyond information-sharing and include binding commitments on legal protection pathways, shared normative instruments, and financial resources that enable effective responses. Although the Court does not extensively develop the issue of financing, it is implied that effective cooperation will also require the allocation of economic, technical, and human resources to ensure the progressive implementation of durable and rights-based solutions.

This Advisory Opinion could henceforth be used as a binding interpretative framework in litigation, administrative proceedings, or political advocacy, strengthening the foundations for affected communities and human rights organizations to demand national measures aligned with the regional obligations established in the IACtHR's Advisory Opinion.

11. The Rights of Future Generations

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Executive Summary

- The IACtHR recognizes that the impacts of climate change intensify over time and fall more severely on children and youth alive today and future generations. This underpins new human rights standards and binding State obligations, strengthening youth-led litigation.
- The Court affirms the right to a healthy climate—derived from the right to a healthy environment—as a standalone binding human right to protect present and future generations and Nature. The scope of this right is largely shaped by the principle of intergenerational equity. The Court also emphasizes that intergenerational equity must guide the interpretation and fulfillment of these obligations; failing or delaying action places an unfair burden on future generations, constituting a breach of international human rights law and triggering State responsibility.
- Grounded in equality and non-discrimination, it establishes differentiated obligations towards children and adolescents, including access to health services, addressing risks such as malnutrition, respiratory illness, and eco-anxiety, and extending protections to marginalized groups.
- The Advisory Opinion protects young environmental defenders and develops strong procedural rights to ensure access to climate justice. It guarantees that children and youth can access reliable information about the causes and impacts of the climate emergency, as well as the measures States are taking in response, and ensures broad, flexible access to courts to protect their human rights. The IACtHR expressly recognizes the meaningful participation of children and youth in climate decision-making, obligating States to actively promote and facilitate their engagement in climate action.



Introduction and Context

Intergenerational equity refers to fairness between present and future generations, recognizing that current generations share the Earth with those yet to come and must preserve it for their benefit.¹²⁴ This principle is particularly relevant in the context of climate change, as its most severe impacts will fall disproportionately on children, youth, and future generations. It has been reflected in the UNFCCC, which obliges States to protect the climate system for present and future generations.¹²⁵ Under the UNFCCC, the Paris Agreement and other key decisions have reaffirmed this commitment, acknowledging the role of children and youth as agents of change.¹²⁶ Beyond climate treaties, this principle appears in major environmental and human rights instruments (para. 305).¹²⁷ Particularly, the 2023 Maastricht Principles on the Human Rights of Future Generations (Maastricht Principles) clarify States' duties to future generations under international law.¹²⁸

Several national courts¹²⁹ have relied on this principle to require States to consider the long-term impacts of environmental and climate decisions. At the international level, the ICJ has established that the environment represents the "very health of human beings, including generations unborn."¹³⁰ Similarly, the CCPR has also underscored that climate change poses a significant threat to future generations' enjoyment of their right to life.¹³¹ Moreover, the ECtHR has linked intergenerational equity to States' obligations under the UNFCCC, phrasing the intergenerational equity principle as "intergenerational burden-sharing."¹³²

124 Brown Weiss, Edith, "Intergenerational Equity," in Max Planck Encyclopedia of Public International Law (MPEPIL), April 2021, para. 1. Available at: <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1421>; United Nations System "Common Principles on Future Generations," Chief Executive Board of Coordination, CEB/2023/1/Add.1, May 4, 2023, para. 3.

125 Cf. United Nations Framework Convention on Climate Change, 1992, Article 3. Available at: https://treaties.un.org/doc/Treaties/1994/03/19940321%2004-56%20AM/Ch_XXVII_07p.pdf

126 Conference of the Parties to the United Nations Framework Convention on Climate Change, 2015 Paris Agreement. Available at: https://unfccc.int/sites/default/files/resource/parisagreement_publication.pdf; Cf. Glasgow Climate Pact, Preamble. Available at: https://unfccc.int/sites/default/files/resource/cop26_auv_2f_cover_decision.pdf; Cf. Conference of the Parties to the United Nations Framework Convention on Climate Change, Report of the Conference of the Parties Sharm el-Sheikh Implementation Plan, para. 55, https://unfccc.int/sites/default/files/resource/cop27_auv_2_cover%20decision.pdf; Report of the Conference of the Parties serving as the meeting of Parties to the Paris Agreement in its fifth session, held in the United Arab Emirates from November 30-December 13 2023, "United Arab Emirates Just Transition Work Programme," FCCC/PA/CMA/2023/16/Add.1, March 15, 2024, p. 30; "Outcome of the First Global Stocktake," FCCC/PA/CMA/2023/16/Add.1, Decision 1/CMA.5, March 15, 2024, p. 2.

127 Cf. Convention on Biological Diversity, 1992, Preamble, Article 2. Available at: www.cbd.int/doc/legal/cbd-en.pdf.

128 The Maastricht Principles on the Human Rights of Future Generations, adopted on February 3, 2023. Available at: <https://www.ohchr.org/sites/default/files/documents/new-york/events/hr75-future-generations/Maastricht-Principles-on-The-Human-Rights-of-Future-Generations.pdf>

129 Supreme Court of Justice of the Republic of Colombia, *Judgment No. STC4360-2018*, of April 5, 2018, para. 11.2, available at: https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2018/20180405_11001-22-03-000-2018-00319-00_decision-2.pdf; First Chamber of the German Constitutional Court, *Case 1*, BvR 2656/18, 78/20, 96/20 and 288/20, Order of March 24, 2021, paras. 146, available at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2021/03/rs20210324_1bvr265618en.html; Philippine Supreme Court, *Case of Oposa et al. v. Fulgencio S. Factoran, Jr. et al.* (G.R. No. 101083), available at: https://lawphil.net/judjuris/juri1993/jul1993/gr_101083_1993.html

130 ICJ, *Legality of the Threat or Use of Nuclear Weapons*. Advisory Opinion of July 8, 1996, para. 29.

131 CCPR, *Ioane Teitiota v. New Zealand*, Communication No. 2728/2016, Views of 24 October 2019, CCPR/C/127/D/2728/2016, para. 9.4. Available at: https://digitallibrary.un.org/record/3979204/files/CCPR_C_127_D_2728_2016-EN.pdf

132 ECtHR, *Case Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GS], *supra*, para. 420.

The IACtHR first addressed future generations in *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, when it highlighted the role of Indigenous land in transmitting cultural legacy.¹³³ More recently, in *Inhabitants of La Oroya v. Peru*, the Court underscored States' duty to preserve the environment for future generations and linked intergenerational equity to robust environmental policy.¹³⁴ Against this background, the Advisory Opinion clarifies how the principle of intergenerational equity shapes the content of substantive and procedural rights in the climate context, as well as States' specific and differentiated obligations to respect, guarantee, and promote progressive development of those rights.



Legal Analysis

a. Substantive Rights Grounded in Intergenerational Equity

1. Right to a healthy environment and a healthy climate

In this Advisory Opinion, the IACtHR reaffirms that the “right to a healthy environment” is indispensable for human existence.¹³⁵ The right has both an individual and collective dimension. The principle of intergenerational equity strongly informs the Court’s development of the collective dimension of the right and States’ obligations to protect the right (paras. 272, 313).

The Court states that the right to a healthy environment in its collective dimension “constitutes a universal value that is owed to both present and future generations” (para. 272). Building on this foundation, and taking into account that the climate system is a component of the environment (paras. 295, 299), the IACtHR recognizes “the right to a healthy climate” as an independent right (para. 300) that safeguards the shared interest of present and future humanity, as well as of Nature itself, in maintaining a climate system capable of sustaining life and well-being (paras. 302, 311). This recognition creates a justiciable legal standard, requiring States to align their laws and policies with these evolving norms.

Moreover, the Court clarifies that States must ensure that the burdens of climate action are distributed equitably, avoiding the postponement of necessary measures that would unfairly impose costs and harms on future generations (para. 310). This equitable approach challenges States to integrate intergenerational justice into their policy, shaping not only climate targets, but also social and economic strategies to prevent unfair burdens. Any failure to adopt or implement these measures incurs State responsibility under international law (para. 302).¹³⁶

2. Rights to health and education

The Court also links the disproportionate impacts of climate change on children and adolescents under other substantive rights. Regarding the right to health, it underscores that climate change

¹³³ IACtHR, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Merits, reparations and costs*. Judgment of August 31, 2001. Series C No. 79, para. 149.

¹³⁴ IACtHR, *Case of the Inhabitants of La Oroya v. Peru*, *supra*, para. 128.

¹³⁵ This was first stated by the IACtHR in the *Advisory Opinion OC-23/17*, *supra*, para. 59.

¹³⁶ For more details on access to justice and remedies in environmental matters, see thematic brief No. 13.

can generate new mental health conditions and worsen pre-existing ones, producing an aggravated impact on the mental health of children and adolescents (para. 398). As to the right to education, it emphasizes how climate change directly disrupts access to education and infrastructure, and indirectly compromises learning conditions through impacts on food, health, and livelihoods, requiring States to strengthen resilience and integrate climate education (paras. 454-457).

3. Nature as a rights-holder

The Court invokes the interests of future generations when recognizing Nature as a rights-holder, with the right to conserve its essential ecological processes. In practice, this right of Nature means that States must safeguard the long-term integrity and functionality of ecosystems, thus ensuring vital resources remain available for present and future generations (paras. 279, 283). Following this logic, the Advisory Opinion positions intergenerational equity as a “structural principle” of international environmental law that guides the IACtHR’s interpretation of States’ legal obligations (para. 282).¹³⁷

4. *Jus cogens*

Noting that legal concepts rooted in values essential for humanity have crystallized into fundamental, non-derogable principles of environmental law—particularly where irreversible harm to life-supporting ecosystems is at stake (para. 287)—the Court makes a landmark observation; it concludes that the prohibition of anthropogenic conduct that causes irreversible harm to the planetary ecosystem has acquired *jus cogens* status, meaning that this obligation is so fundamental that no country can ignore it (para. 291).

This peremptory norm is grounded in the existential interests of present and future generations and the vital role of ecological equilibrium for the enjoyment of fundamental rights, including life, integrity, health, and non-discrimination. In other words, a stable and healthy environment is the foundation for life itself (paras. 292-293). By classifying the prohibition of irreversible climate harm as a *jus cogens* norm, the IACtHR establishes it as a universal legal obligation that no State can ignore or opt out of. This obligation requires international cooperation to be fulfilled (para. 294).¹³⁸

5. Principle of equality and non-discrimination

The Court also applies the principle of equality and non-discrimination to the climate context, affirming that States have specific and differentiated obligations towards children and adolescents (paras. 589-604). Equality under Articles 1.1 and 24 of the American Convention requires not only prohibiting arbitrary distinctions, but also adopting positive measures to address structural discrimination and disproportionate risks (paras. 591-592).

The IACtHR highlights that virtually all children worldwide are exposed to at least one climate-related hazard with compounded impacts including malnutrition, respiratory and autoimmune diseases, impaired physical and cognitive development, and mental health conditions such as depression and eco-anxiety (para. 597).

¹³⁷ For more details on the rights of Nature, see thematic brief No. 2.

¹³⁸ For more details on States’ obligation to cooperate, see thematic brief No. 6.

In line with this, the Court stresses that, under Articles 19 of the American Convention, 16 of the Protocol of San Salvador, and VII of the American Declaration, States must progressively adopt measures to guarantee children's access to comprehensive health services that address climate-related impacts, including mental illnesses such as eco-anxiety; ensure that environmental health policies are aligned with the best available science; and extend these protections to socioeconomically excluded groups such as Indigenous children, children with disabilities, and those living in poverty (para. 599). Grounded in equality and non-discrimination, these differentiated obligations are binding and enforceable.

b. Procedural rights

The Court identifies five procedural rights and recognizes that children and youth are entitled to differentiated protection, requiring measures that are tailored, age-sensitive, and accessible (paras. 600-604).

1. Right to science and recognition of local, traditional, and Indigenous knowledge

The Court finds that the right to science, while substantive, also has a procedural dimension in the climate context (para. 473).¹³⁹ States must provide education, promote participation, and ensure access to the best available science, with special protections for children and adolescents (paras. 474, 595-597). This guarantees that both scientific and traditional knowledge are transmitted to future generations, empowering youth to engage meaningfully in climate action.¹⁴⁰

2. Right of access to information

States are required to proactively produce and disseminate information about the climate emergency, particularly its impact on children and related measures, making it accessible and understandable to children, adolescents, and their caregivers, in line with the principle of maximum disclosure (paras. 504, 512, 519, 522, 600).¹⁴¹ They must also actively combat disinformation, with special attention to youth (paras. 528-529).¹⁴² By reaffirming access to timely and accurate information as a procedural right, the Advisory Opinion ensures that children and youth receive information that is adapted to their needs, bringing them tools to defend their rights in the context of climate change.

3. Right to political participation

The Court requires States to guarantee meaningful, informed, and equitable participation in climate decision-making, using age-appropriate, safe, and accessible mechanisms for children and youth,

¹³⁹ For more details on the right to science, see thematic brief No. 3.

¹⁴⁰ These rights are based on the American Declaration, Article XIII; the Protocol of San Salvador, Article 14.2; the OAS Charter, Articles 38, 47 and 51, and the American Convention, Article 26.

¹⁴¹ American Convention, Article 26. Available at: https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights.pdf

¹⁴² The Court highlighted the particular importance that mechanisms such as fact-checking have on "vulnerable groups, who often face structural barriers to access reliable and culturally appropriate information." For more details on the right to access to information, see thematic brief No. 12.

especially those most affected by climate impacts (paras. 532, 536, 538, 601, 603).¹⁴³ Authorities must seek children’s direct involvement at all stages of climate policy and justify how their input is considered (para. 538). This standard sets a new benchmark for inclusive climate governance, enabling youth to directly shape policy and requiring States to show their participation meaningfully informs decisions.

4. Access to justice

The IACtHR affirms that States must allow broad forms of legal standing that enable collective claims on the climate emergency to be heard before courts (paras. 546-549). This is necessary to guarantee the right of access to justice, and in turn the collective dimension of the right to a healthy climate—encompassing the legal interest of future generations in environmental stability, State responsibility, and remedies for “future humanity” (para. 302).¹⁴⁴ In practice, this means States can be held accountable for climate harm to future generations, ensuring remedies extend beyond current victims to those yet to come.

For individual claims, States should adopt flexible standing rules that consider individuals’ vulnerability and exposure to climate impacts (para. 550). This is particularly relevant for children and youth, who will live their entire lives under increasingly adverse climatic conditions (para. 312). Consequently, States are obligated to facilitate access to justice for youth by eliminating procedural barriers; adopting measures to ensure that youth can promote effective judicial remedies; strengthening specialized mechanisms, such as *ombudspersons* for children; promoting access to effective and free legal assistance for youth; and eliminating court orders to pay adverse costs in proceedings brought by children. Judicial processes must also be prompt, given the urgency and risks of climate change for children and adolescents (paras. 600-604).

5. Environmental defenders

The Court affirmed that States have the obligation to not only refrain from adopting any decision that hinders the actions of youth who defend environmental human rights, but also to promote a safe environment for children’s climate action by ensuring their protection from intimidation, harassment, and violence (para. 602).¹⁴⁵



Legal and Practical Implications

a. Litigation

By applying the *pro actione* principle, which requires courts to interpret procedural rules in the manner most favorable to access to justice, and to consider vulnerability and structural inequalities, the IACtHR facilitates the ability of individuals and groups, including children, youth, and future generations, to bring climate cases before the courts (paras. 543, 546-555). This opens

¹⁴³ American Convention, Article 23(1)(a); Rio Declaration on Environment and Development, Principle 10; Escazú Agreement, Article 5. For more details on the right to public participation, see thematic brief No. 12.

¹⁴⁴ For more details on access to justice, see thematic brief No. 13.

¹⁴⁵ For more details on the rights of environmental human rights defenders, see thematic brief No. 12.

new paths for youth-led cases similar to *Juliana v. United States* and *Navahine F. v. Hawai'i Department of Transportation*¹⁴⁶ to ensure that governments fulfill their obligations to protect the climate.

The Court transforms intergenerational equity from a soft-law principle into a binding legal duty, making clear that future generations are collective rights-holders. This interpretation makes States' obligations to future generations enforceable in court, and, by simplifying procedures (paras. 540-541) and evidentiary standards (para. 554), turns the decision into a powerful tool for litigants in the Americas and around the world.

b. Policy and Legislative Reforms

States are required to act with "enhanced due diligence" to guarantee the rights of future generations, meaning they must anticipate and prevent foreseeable and cumulative climate harms to future persons (paras. 233-237). This higher standard entails stricter environmental and climate impact assessments (para. 358-360), setting ambitious and science-based targets to reduce emissions (including through their NDCs), and a precautionary approach to keep global warming below 1.5°C (paras. 323-339).¹⁴⁷

c. International Climate Negotiations

The Court underscores that current NDCs remain inadequate, calling for concrete near-term targets aligned with 1.5°C and reaffirming that the duty to cooperate internationally is a binding norm of customary international law (paras. 247, 251, 323). Drawing on *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, the IACtHR agrees that while each State may define its own pathway to carbon neutrality, immediate action and binding intermediate reduction goals are essential to avoid placing a disproportionate burden on future generations (paras. 333-334).¹⁴⁸

d. Civil Society Advocacy

The Advisory Opinion affirms that children and youth must be meaningfully involved in climate governance. States therefore have an obligation to ensure financing, education, and opportunities for youth representation in climate-related decision-making (paras. 599-604).

This decision, together with the evolving legal framework linking human rights and climate protection, provides clearer guidance for interpreting States' international obligations.¹⁴⁹

146 See Setzer, Joana, and Catherine Higham, "Global Trends in Climate Change Litigation: 2025 Snapshot," London, Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science, June 25, 2025, pp. 25-41. Available at: <https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2025/06/Global-Trends-in-Climate-Change-Litigation-2025-Snapshot.pdf>.

147 For more details on the standard of enhanced due diligence, see thematic brief No. 1.

148 For more details on the obligation to mitigate GHG emissions, see thematic brief No. 4.

149 See Tigre, Maria Antonia, and Armando Rocha (eds.), "The Role of Advisory Opinions in International Law in the Context of the Climate Crisis," Leiden/Boston, Brill Nijhoff, 2025, p. 328. Available at: <https://doi.org/10.1163/9789004730618>.



Opportunities and Gaps in the Court's Approach

The IACtHR's approach in the Advisory Opinion is both innovative and doctrinally robust, advancing an integrated, evolutionary interpretation of States' obligations by placing intergenerational equity and the rights of Nature at the core of the right to a healthy climate. The Court affirms that obligations arising from the right to a healthy climate are designed to protect the global climate system for the benefit of humanity as a whole, understood as a legal and moral community enduring over time (para. 311). By linking the protection of rights such as life, health, and equality to the preservation of ecological balance, the Court consolidates intergenerational equity as a binding standard to prevent irreversible harm.

However, the effectiveness of this development ultimately depends on how national courts interpret and apply these standards. Significant challenges persist, including the inadequacy of domestic remedies to address collective and long-term harms and the absence of defined procedural frameworks for the standing and representation of future generations. Although the Advisory Opinion offers valuable tools for addressing these issues, the extent to which domestic courts incorporate and operationalize intergenerational equity in concrete cases will determine their practical impact.

SECTION IV



Environmental Democracy and Remedies

12. The Rights of Access to Information, Participation, and to Defend the Environment

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Executive Summary

- In the context of the climate emergency, ensuring the right of access to information requires the production and dissemination of complete, accurate, useful, and timely information relevant for the identification and mitigation of threats to human rights, and the adoption of active measures against disinformation, which can obstruct effective climate action.
- Public participation in climate decision-making must be “meaningful:” it is not a mere formality, but must be capable of influencing decision-making. To achieve this, States must ensure that the public is involved early in the process, provide timely and understandable information, set reasonable deadlines for participation, and explain how public contributions were taken into account.
- The work of environmental human rights defenders is invaluable to the fight against climate change, and States have a duty, subject to an enhanced due diligence standard, to investigate, prosecute, and punish crimes committed against them. This obligation extends not just to lethal attacks but to any type of aggression or harassment, which the State must investigate on its own initiative, without relying on victims to drive the process.



Introduction and Context

The IACtHR's strong focus on what international law requires States and private actors to do in the context of the climate emergency—namely, to guarantee (i) procedural rights of access to information and public participation in environmental matters, and (ii) the right to defend environmental human rights¹⁵⁰—directly responds to the demands of a wide range of stakeholders. Indigenous and Afro-descendant Peoples, frontline communities, and civil society groups all raised concerns¹⁵¹ about the weakening of democracy,¹⁵² and the need to guarantee these procedural rights as accelerators of effective climate action.¹⁵³ Almost without exception, the intervenors invoked the standards of the Escazú Agreement,¹⁵⁴ calling on countries in the region to ratify and adhere to the Agreement and urging the Court to reference it as a vital complementary standard to existing global, regional, and national human rights frameworks. The Court did so in the Advisory Opinion, effectively compiling and harmonizing the best available protections for environmental defenders.



Legal Analysis

a. Right of Access to Information

The right to information, enshrined in Article 13 of the American Convention, confers on States an “obligation of active transparency” whereby individuals are guaranteed access to information necessary to exercise their rights (paras. 488-489). Access to relevant information enables effective public participation and ensures openness of, and accountability for, State conduct. In the context of the climate emergency, effective access to climate information is an essential condition for the protection and realization of other rights, including the rights to life, integrity, health, the environment, and a healthy climate (para. 500).

1. Obligation to produce climate information

States are obligated to produce complete, accurate, truthful, useful, and timely information to identify and mitigate threats to human rights both from the adverse impacts of climate change and from the measures adopted to address them (para. 504). Relevant State bodies must ensure the quality, veracity, independence, and impartiality of climate information (para. 506). This process should integrate diverse knowledge systems—including local, traditional, and Indigenous knowledge (paras. 473-485, 503)—and must involve communities, academic institutions, and local organizations’ participation through an intersectional approach (para. 506).¹⁵⁵

¹⁵⁰ For more details on access to justice, see thematic brief No. 13.

¹⁵¹ During the IACtHR’s advisory process, at least 47 individuals and organizations that submitted comments and participated in the hearings addressed access rights and environmental defenders.

¹⁵² Cf. Written observations submitted by the International Human Rights Practicum, Boston College Law School, pp. 26. Available at: https://corteidh.or.cr/sitios/observaciones/OC-32/5_boston_college.pdf.

¹⁵³ Cf. Written Observations submitted by ARTIGO 19, Brasil e América do Sul, p. 6. Available at: https://corteidh.or.cr/sitios/observaciones/OC-32/3_artigo_19.pdf.

¹⁵⁴ Escazú Agreement, March 4, 2018. Available at: <https://repositorio.cepal.org/server/api/core/bitstreams/7e888972-80c1-48ba-9d92-7712d6e6f1ab/content>.

¹⁵⁵ For more details on the role of climate science in protecting human rights, see thematic brief No. 3.

The Advisory Opinion outlines key categories of information States must generate to promote public participation in climate action. These include: (i) the causes and effects of climate change; (ii) States' measures to mitigate GHG emissions and adapt to climate impacts; (iii) climate impact assessments for proposed projects and activities; and (iv) mechanisms for access to information, public participation, and access to justice (para. 507). States must also produce information necessary to establish and track progress on mitigation targets (para. 509), including GHG inventories across sectors (para. 510).

As part of their duty to regulate business enterprises, States must ensure companies disclose accurate, accessible climate-related information.¹⁵⁶ This includes the climate footprints of companies' products and services (para. 506), as well as information relating to sustainability practices, environmental compliance, renewable energy investments, and efforts to prevent human rights abuses (paras. 506, 516). Companies involved in activities driving climate change must also disclose ownership structures, mitigation and just transition plans, and contracts, concessions, and agreements involving public resources (para. 516).

2. Obligation to disclose climate information

The Court affirms that States have a positive obligation to supply information on the causes, consequences, and responses to climate change, all of which are a matter of public interest and subject to the principle of maximum disclosure (para. 519). Accordingly, access must be affordable, effective, and timely (para. 519), and not conditioned on demonstrating any direct or personal interest, unless legitimate restrictions apply (para. 519). Among other measures, States must provide prompt responses to information requests (para. 523), and real-time alerts on threats like heat waves, floods, and other disasters (para. 523). Dissemination mechanisms must be broad and include early warning systems, public databases, information technology (IT) tools, audiovisual material, online portals, social networks and media, and awareness-raising and education campaigns (para. 521).

States must ensure that climate information is conveyed in clear, accessible formats (para. 522), including audiovisual or electronic means (para. 522), or other formats tailored to the needs of children, older persons, and persons with disabilities (para. 522). For Indigenous and tribal peoples, information must also be linguistically and culturally appropriate particularly to guarantee their free, prior, and informed consent when required (para. 522).¹⁵⁷

3. Obligation to adopt measures against disinformation

Disinformation undermines the right to information and hinders democratic decision-making by contributing to misperceptions about the scientific consensus, creating public confusion, and preventing effective climate action (para. 526). One of the IACtHR's most significant conclusions is that States must act to prevent disinformation by refraining from disseminating information that lacks support in best available science or relevant local, traditional, or Indigenous knowledge (para. 525),¹⁵⁸ and by adopting progressive measures to counteract disinformation (para. 527).

¹⁵⁶ For more details on States' obligation to regulate business enterprises, see thematic brief No. 7.

¹⁵⁷ For more details on the rights of Indigenous Peoples, see thematic brief No. 8.

¹⁵⁸ For more details on the right to science, see thematic brief No. 3.

Such measures must respect freedom of expression and avoid censorship or disproportionate restrictions (para. 527). States and private actors share responsibility to ensure access to truthful, reliable climate information (paras. 528-529). For instance, this duty requires States to collaborate with businesses, digital technology developers, technology platforms, social media networks, and the media to strengthen the public's media and information literacy given these actors' influence in the informational sphere (para. 529).

b. Right to Participation

The Court emphasizes the role of the right to participation in structural accountability (para. 530), "as a mechanism for integrating public concerns and knowledge into policymaking that affects the environment" (para. 531) and for exercising "democratic oversight of State actions" (para. 530). Allowing the public to "challenge, inquire into, and assess the fulfilment of public functions" (para. 530) enhances the efficiency and credibility of government processes.

States must ensure meaningful participation in decision-making and policymaking affecting the climate system, including those related to mitigation targets and strategies, adaptation and risk management plans, climate financing, international cooperation, and climate reparations (para. 535).

The State duty to guarantee meaningful participation, that is, participation with the real potential to effectively influence the decisions concerned, requires States to: (i) guarantee opportunities for participation from the earliest stages of the climate decision-making process (para. 532); (ii) provide the public with reasonable deadlines and clear and timely information on how to submit their views and actively participate in such processes (paras. 532-533); and (iii) disseminate the results and "explain how the inputs 'were taken into account ... when deciding on their environmental policy'" (para. 538). Beyond national forums, States have the obligation to cooperate to ensure public participation in regional and international forums (para. 536).

In order to ensure the broadest possible public involvement (para. 536), States must also guarantee that those individuals, communities, and Indigenous Peoples particularly affected by climate damage or measures in response have effective opportunities to be heard and meaningfully involved (para. 538). Accordingly, participation mechanisms must take into account the needs, diversity, and characteristics of these groups to ensure their equal participation, including through culturally and linguistically appropriate means (para. 538).

The Court specifies that prior consultation with Indigenous and Tribal Peoples remains an "essential mechanism" when projects or policies may affect their rights, territories, culture, and livelihoods (para. 539).¹⁵⁹ However, in addition to guaranteeing the right to prior consultation, States must encourage the participation of "indigenous and tribal peoples, as well as of Afro-descendant, peasant, and fishing communities" generally in climate decision-making, considering their particular vulnerability to the climate emergency" (para. 539), and the importance of their knowledge and experiences for solutions to the emergency.

¹⁵⁹ For more details on the rights of Indigenous Peoples, see thematic brief No. 8.

c. Right to Defend Environmental Human Rights

The IACtHR affirms the right to defend rights, including environmental rights, as an autonomous right (para. 561). It notes that environmental defenders are allies of democracy and that their work takes on greater importance in the climate emergency, due to “the urgency, gravity, and complexity of the measures required to address it” (para. 563). States have, therefore, a “special duty of protection” (para. 566) with respect to defenders, which entails: (i) recognizing, promoting, and guaranteeing their rights; (ii) guaranteeing a safe and enabling environment in which they can act freely, without threats, restrictions, or risks to their lives; and (iii) investigating and punishing attacks, threats, or intimidation that defenders may suffer in the exercise of their work and, eventually, redressing any damage that may have been caused (para. 566).

States have an obligation to apply enhanced due diligence to investigate, prosecute, and punish crimes committed against environmental defenders (para. 581). This entails guaranteeing impartial, timely, and effective justice; exploring all relevant lines of investigation; and investigating, *ex officio*, not only lethal attacks against environmental defenders, but also non-lethal conduct such as threats, defamation, and harassment (paras. 582-584). Investigations must take an intersectional perspective and consider the special risks faced by women, Indigenous, Afro-descendant, and peasant environmental defenders (para. 585). Furthermore, States must adopt the necessary measures to strengthen institutional capacity to combat patterns of impunity in cases of violence and harassment against environmental defenders (para. 586).

Environmental defenders face an “overall climate of criminalization” (para. 570) characterized by multiple forms of judicial harassment, arbitrary detentions, disproportionate sentences, and the misuse of the law to restrict their work (e.g., strategic lawsuits against public participation (SLAPPs)) (para. 568). In light of this phenomenon, the IACtHR highlights the State’s duty to adopt preventive measures ensuring that the legal, institutional, and policy frameworks do not enable or facilitate such criminalization (para. 587). The Court calls on States to urgently (i) identify those laws that are applied selectively and repeatedly to persecute and punish environmental defenders for the exercise of their work; (ii) revise the conventionality of these laws (*control de convencionalidad*), and adopt measures to repeal or amend those not compatible with the American Convention; (iii) establish procedures that allow for the rapid dismissal of judicial or administrative actions merely intended to intimidate or silence defenders; and (iv) train law enforcement and judicial authorities on Inter-American standards for protecting environmental defenders to prevent judicial harassment and rulings that undermine the right to defend human rights (para. 587).



Legal and Practical Implications

The findings articulated in the Advisory Opinion relating to the right to climate information could be leveraged to hold accountable companies and industries that are not transparent or truthful about their climate footprints, particularly fossil fuel companies. Requiring States to ensure that business enterprises assess and disclose the GHG emissions stemming from their products and activities across the value chain may strengthen legal challenges to fossil fuel production, particularly when decision-making processes and disclosures around such proposed activities fail to adequately assess the downstream (“scope 3”) or mid-stream emissions, in contravention of the Court’s pronouncements on corporate regulation (paras. 347-348). States’ duty to prevent climate

disinformation may also lay the legal groundwork to hold Carbon Majors, along with their government enablers, accountable for the climate damage caused not only by fossil fuel production and use, but also by the industry's obstruction and delay of effective climate action through decades of disinformation and deception.¹⁶⁰ Notably, the Court's conclusion that climate information is of public interest requiring maximum disclosure could bolster challenges to governments or corporations that withhold relevant information based on claims of business confidentiality, or that invoke national interest or national security reasons to shield their climate change-driving activities (including fossil fuel projects) from scrutiny.

The Advisory Opinion reinforces the need for States to ensure the effective participation of Indigenous and Tribal Peoples and Afro-descendant communities not only on specific projects affecting their rights and territories, but on climate policy and decision-making generally. The Court emphasizes that prior consultation and the right to public participation, while related, are separate, independent rights available to Indigenous and tribal peoples and Afro-descendant communities in the context of the climate emergency. This means that consulting with a community regarding a specific project does not absolve a State from guaranteeing the same community's rights to public participation *vis-a-vis* other decision-making and policymaking affecting the climate system. States must also ensure and promote their early, meaningful, and effective involvement, recognizing Indigenous and Tribal Peoples and Afro-descendant, peasant, and fisherfolk communities not merely as "climate victims," but as experts with ancestral knowledge that can inform State responses to the climate emergency.¹⁶¹

By referring to the standards of the Escazú Agreement as a supplementary source for interpreting the law, this Advisory Opinion reaffirms the Court's practice, since the *Case of Baraona Bray v. Chile*,¹⁶² of drawing on the provisions of the Escazú Agreement to interpret the scope of States' human rights obligations to protect environmental defenders and guarantee procedural rights in environmental matters. The Court's ongoing reference to the Escazú Agreement in its rulings as a source of interpretation has, at least, two effects. First, the Court is effectively incorporating the protections of the Escazú Agreement into the Inter-American jurisprudence, which might entail that the Escazú standards are applicable not only to parties to the Escazú Agreement, but also to all OAS Member States. Second, the Court's references to the Escazú Agreement in this Advisory Opinion, and in its jurisprudence generally, indicate that the treaty aligns with and strengthens Inter-American standards for the protection of human rights. This sends a message that may prompt countries in the region that have not already done so to consider ratifying the Escazú Agreement as a means of fulfilling their international human rights obligations.

160 Written observations submitted by the Center for International Environmental Law (CIEL), NYU Law's Climate Litigation Accelerator (CLX), Greenpeace International, Open Society Foundations, and Union of Concerned Scientists (UCS), pp. 62-87. Available at: https://corteidh.or.cr/sitios/observaciones/OC-32/4_CIEL_CLX_otros.pdf. The "Carbon Majors" are the 88 largest fossil fuel companies and cement manufacturers (previously 90 entities, now 88 companies due to mergers and acquisitions) responsible for nearly two-thirds of global industrial CO₂ and methane emissions since 1751.

161 For more details on the rights of Indigenous Peoples, see thematic brief No. 8.

162 IACtHR, *Case of Baraona Bray v. Chile, Preliminary Exceptions, Merits, Reparations, and Costs*. Judgement of November 24, 2022, Series C No. 481, paras. 73, 77, 99 and 126. Since this case, the Court has drawn on the Escazú Agreement's standards to interpret relevant provisions in the IACtHR, *Case of the Inhabitants of La Oroya v. Peru*, *supra*, paras. 148, 150, and the IACtHR, *Case of Members of the "José Alvear Restrepo" Lawyers' Collective v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of October 18, 2023. Series C No. 506, para. 474. Before this, it should be observed that the Court had made a note of the Escazú Agreement in its *Advisory Opinion OC-23/17*, *supra*, para. 218. However, the treaty was still under negotiation at that time, and the Court did not expressly use it to interpret any of the provisions in that advisory opinion.

Undoubtedly, by relying on the Escazú Agreement, alongside international and regional standards and practices on these matters, the Court continues to show its leadership in compiling and harmonizing the best available guarantees for environmental defenders, as well as strengthening the framework of the rights of access to information, participation, and justice in environmental matters.

The Court's novel rulings with respect to the rights of human rights defenders may help address the climate of impunity in many parts of the region that has allowed violence and injustice against defenders to be ignored or even tolerated. The Court addresses the criminalization of defenders and calls on authorities to review the conventionality (i.e., compliance) in light of the American Convention (*control de convencionalidad*) of laws repeatedly used to persecute and punish defenders. This will hopefully propel institutional reform that will foster a political and legal climate that is safer for defenders, including by eliminating their risk to arbitrary arrests, the weaponization of criminal prosecutions, and SLAPP suits. Additionally, as women, Indigenous, Afro-descendant, and rural defenders are particularly vulnerable to heightened forms of violence, the Court mandates an intersectional approach in State policies and strategies to protect defenders' rights, including when establishing national protection programs and investigating crimes committed against environmental defenders. The Advisory Opinion affirms that an intersectional approach when it comes to environmental defenders is not optional or a radical idea; it is a legal mandate and a minimum requirement.



Opportunities and Gaps in the Court's Approach

The Advisory Opinion establishes a fundamental truth: strengthening democracy is a necessary part of addressing the climate crisis. Indeed, pressures arising from the climate emergency will demand urgent and systemic actions from political leaders and institutions, and greater resources, to tackle a range of mounting problems, including food insecurity, migration, water scarcity, and extreme weather events. The Court understands that “the best way to solve environmental problems is through broad public participation, adequate access to environmental information, and effective access to [justice] (para. 463),”¹⁶³ and that, in this task, environmental defenders are fundamental allies, since their work “[strengthens] democracy and the rule of law” (para. 563).¹⁶⁴ Investing in democracy, access to information, the prevention of disinformation, and the protection of environmental defenders are foundational elements of this Advisory Opinion, not addressed in other climate advisory opinions. They are essential prerequisites for defending rights and engaging in climate decision-making, and a key reference for governments and courts reviewing policy decisions, regulating businesses, and holding corporate actors accountable—especially those involved in disinformation or repression of defenders.

¹⁶³ Cf. IACtHR, *Case of Baraona Bray v. Chile*, *supra*, para. 98.

¹⁶⁴ Cf. IACtHR, *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations, and Costs. Judgment of November 27, 2008, Series C No. 192, para. 87, and IACtHR, *Case of Baraona Bray v. Chile*, *supra*, para. 78.

13. The Right of Access to Justice

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Executive Summary

- The IACtHR's Advisory Opinion reaffirms access to justice as a core component of human rights, grounded in Articles 1(1), 8, and 25 of the American Convention and Article XVIII of the American Declaration.
- The Court emphasizes the need for States to eliminate legal, institutional, financial, and evidentiary barriers that prevent effective judicial access, especially for communities in vulnerable situations (paras. 540-541).
- The Court outlines seven essential components of access to climate justice: (i) legal training and resources, (ii) *pro actione* interpretation, (iii) timeliness, (iv) legal standing, (v) evidentiary standards, (vi) effective remedies and reparation, and (vii) alignment with Inter-American standards (paras. 541, 542-560).
- The Court places special emphasis on removing structural inequalities and ensuring climate-related reparation measures are appropriate, science-based, and designed to restore rights and ecosystems (paras. 557-559).
- Additionally, it affirms the Escazú Agreement as a key normative framework, reinforcing States' duties regarding environmental democracy.



Introduction and Context

Access to justice is a core fundamental right and one of the three procedural pillars of environmental democracy, alongside the rights to information and participation. These pillars were first internationally recognized in Principle 10 of the 1992 Rio Declaration and have since been

entrenched in different international legal instruments and Latin American law, most notably in the 2018 Escazú Agreement.

In the context of the climate emergency, access to justice is essential for empowering individuals and communities to hold governments and corporations accountable. However, despite over 3,000 climate litigation cases worldwide,¹⁶⁵ access to justice remains a key challenge in different jurisdictions. Civil society organizations and impacted communities explicitly raised issues of access to justice and procedural rights in the written submissions and oral hearings related to this Advisory Opinion, referencing barriers in litigation, judicial proceedings, and enforcement.¹⁶⁶ These barriers were often discussed in light of threats faced by environmental defenders and the limitations of existing domestic judicial systems.¹⁶⁷

In the Advisory Opinion, the IACtHR responds to the plea of dozens of civil society organizations and impacted communities by affirming the right of access to justice in the context of the climate emergency, in accordance with the international standards of the Escazú Agreement, thus confirming its relevance as a guiding regional instrument.



Legal Analysis

a. Obligation to Ensure Access to Justice

In line with its human rights jurisprudence, the IACtHR reiterates in the Advisory Opinion that States must provide effective judicial remedies to victims of human rights violations, consistent with Article 25 of the American Convention and Article 18 of the American Declaration. This includes both individual and collective redress mechanisms, pursued under due process rules and supported by State guarantees.

Given the magnitude and irreversible nature of the risks posed by climate change, as well as the dangers of maladaptation,¹⁶⁸ the Court establishes that States must act with enhanced due diligence to ensure effective access to justice to those affected by the climate emergency, including people or communities affected by climate adaptation measures (paras. 236, 447).¹⁶⁹ This entails not only access to courts, but also simplified and brief procedures to ensure the protection of fundamental rights (para. 540).

Furthermore, the Court uses the Escazú Agreement as a legal and operational guide, emphasizing its mandate for broad legal standing, public participation, and institutional support in environmental matters (paras. 547, 549, 960).

¹⁶⁵ Setzer, Joana, and Catherine Higham, “Global Trends in Climate Change Litigation: 2025 Snapshot,” London, Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science, June 25, 2025. Available at: <https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2025/06/Global-Trends-in-Climate-Change-Litigation-2025-Snapshot.pdf>.

¹⁶⁶ Written observations submitted by AIDA. Available at: https://corteidh.or.cr/sitios/observaciones/OC-32/23_AIDA.pdf.

¹⁶⁷ Written observations submitted by Alliance for Land, Indigenous and Environmental Defenders (ALLIED). Available at: https://corteidh.or.cr/sitios/observaciones/OC-32/10_ALLIED.pdf.

¹⁶⁸ IPCC’s definition of maladaptation: “any changes in natural or human systems that inadvertently increase vulnerability to climatic stimuli; an adaptation that does not succeed in reducing vulnerability but increases it instead.” See *IPCC Glossary of Terms*. Available at: <https://www.ipcc.ch/site/assets/uploads/2018/03/wg2TARannexB.pdf>.

¹⁶⁹ For more details on the standard of enhanced due diligence, see thematic brief No. 1.

b. Key Components of Access to Climate Justice

Compliance with the right of access to justice in the context of the climate emergency requires that States ensure a range of essential aspects (paras. 541–560).

Given the inherently technical and interdisciplinary nature of climate-related disputes, States must provide ongoing legal and scientific training to justice administrators, as well as timely and sufficient access to the best scientific climate knowledge on the causes of climate change and its impacts on human rights (para. 542). This is essential to effectively protect affected rights and ensure that judicial decisions are rooted in best available science and best practices (para. 542). The Court also invites States to consider establishing judicial and administrative court bodies that specialize in environmental and climate matters, and guarantee equal access to justice for people in vulnerable situations by, for instance, providing free legal assistance when needed (para. 542).

Given the severity and unequal impacts of the climate crisis on different sectors of the population, the Court affirms that the principle of *pro actione* must guide judicial proceedings. Courts must favor interpretations that enable, rather than restrict, judicial review and access to justice in climate-related cases. Procedural barriers, especially those rooted in technicalities, must be removed (para. 543).

Access to justice requires judicial proceedings and remedies to be delivered within a reasonable timeframe. In the context of the climate emergency, when assessing timeframes, courts must consider the imminent risks that motivate the legal action, the urgency of the required measures, the impact that potential delays could have on the human rights of petitioners, and the situation of vulnerability in which they may find themselves as a result of climate change (paras. 544–545).

Recognizing the “urgency, gravity, and complexity of the climate emergency,” the Court underscores that legal standing must be interpreted broadly to effectively protect human rights (paras. 546–547). In collective claims, States must allow access to justice even without proof of direct personal harm (para. 549), and in individual claims, remedies must be capable of restoring the affected rights (para. 550). In both collective and individual claims, State institutions must have technical, budgetary, and personnel resources to ensure communities or individuals seeking justice can have effective access to it (para. 548).

Acknowledging the transboundary nature of climate harm, IACtHR further clarifies that access to justice extends to individuals and States victims of transboundary harm, affirming their legal standing to seek reparations in the State of origin. The State of origin of climate-harming activities—carried out under its jurisdiction or control—bears responsibility for preventing and remedying environmental harm that impacts human rights beyond its borders (paras. 277, 278, 551).

Recognizing that traditional evidentiary rules may represent “an unjustified obstacle to effective access to justice” in the context of climate litigation (para. 552), the Court underscores the importance of adopting flexible evidentiary standards, allowing for presumptions of causality—informed by best available science—between GHG emissions, climate degradation, and resulting harm to human rights and ecosystems (para. 553). For instance, burden-shifting may be key in some cases to address asymmetries in the control and access to evidence between parties (para. 554). In particular, the Court highlights that satellite data should be recognized for its probative value (para. 555).

States must provide full, adequate, and effective remedies through judicial and administrative mechanisms. Remedies can include restitution, rehabilitation, compensation, and guarantees of non-repetition and must be tailored to the specific impacts on individuals, ecosystems, and the climate system, enhancing their capacity to adapt and recover sustainably. Measures must not be confined to monetary compensation, but must include broader structural actions, such as restoration initiatives and enhanced mitigation efforts, as well as mechanisms for monitoring the implementation of reparative actions (paras. 556-559).

When deciding climate-related legal issues, the Court highlights that national courts and authorities must apply the Inter-American standards established in this Advisory Opinion (para 560).

c. Access to Justice in Connection with Other Human Rights

The right of access to information goes hand in hand with the right of access to justice, as information “enable[s] the population to exercise their rights and to adequately oversee the State’s response to the climate emergency. For the general public, climate-related information fosters participation and facilitates access to justice” (para. 520).¹⁷⁰

States must enable the participation of children in environmental and climate litigation by (i) facilitating access to justice for children and adolescents through the development of effective judicial, quasi-judicial, and/or extrajudicial complaint mechanisms adapted to their needs; (ii) strengthening specialized mechanisms for the protection of children’s rights; (iii) promoting mechanisms so that children and adolescents have access to effective legal assistance at no cost in actions aimed at safeguarding their human rights in the face of environmental or climate damage; and, (iv) eliminating the condemnation of costs in proceedings brought by children and adolescents (para. 604).

States must (i) remove regulatory and operational barriers that hinder Indigenous Peoples’ direct access to justice; (ii) provide justice mechanisms that are culturally appropriate and aligned with Indigenous knowledge and ways of life; (iii) ensure access to free, adequate legal representation and necessary interpretation/translation services for Indigenous Peoples; (iv) strengthen independent and well-resourced institutions (like ombudspersons) to protect Indigenous rights, including authority to act in climate-related threats; and (v) eliminate cost burdens for Indigenous Peoples in legal actions intended to defend their rights against environmental or climate harm (para. 613).¹⁷¹



Legal and Practical Implications

The Advisory Opinion provides a robust foundation for advancing litigation, policy reform, civil society advocacy, and community empowerment and redress in the context of climate justice. Communities can push for legislative reform, amendments to procedural and evidentiary rules, and aligning domestic laws with the Escazú Agreement and the Advisory Opinion.

¹⁷⁰ For more details on the right of access to information, see thematic brief No. 12.

¹⁷¹ For more details on the rights of Indigenous Peoples, see thematic brief No. 8.

In the context of litigation, claimants can invoke the *pro actione* principle to demand flexibility in the evidentiary standards. They can also invoke the Court's findings regarding the recognition of transboundary standing to challenge procedural barriers that can often undermine access to justice in climate cases. Furthermore, legal practitioners can argue for remedies not only for climate harm and resulting human rights violations, but also for the violations of procedural rights.

In the context of policy and legislative reforms, the Advisory Opinion sets clear expectations for States. Institutional reforms are necessary to ensure the independence and technical expertise of the judiciary through investment in judicial capacity-building in climate science and climate law, and the creation of specialized climate courts and administrative bodies that can handle climate cases. States are also expected to ensure funding for legal aid to support victims of climate harm, and codify procedural rights such as access to satellite data and burden-shifting to address evidentiary asymmetries in climate cases.

In the context of civil advocacy, civil society organizations and impacted communities can use the Court's findings to strengthen their demands for institutional accountability. The Advisory Opinion reinforces advocacy for the full implementation of the Escazú Agreement, especially its provisions protecting environmental defenders and ensuring meaningful public engagement. It also bolsters calls for urgent reforms to dismantle structural barriers within national legal systems that hinder environmental justice, empowering affected communities and civil society organizations to take collective legal actions without needing to prove direct personal harm. Moreover, the Advisory Opinion findings and standards serve as a powerful tool for impacted communities to demand culturally appropriate remedies and inclusive participation in climate decision-making.



The Opportunities and Gaps in the Court's Approach

The IACtHR's articulation of access to justice in the Advisory Opinion marks an important evolution in Inter-American environmental jurisprudence. Its reasoning is consistent with prior opinions, such as Advisory Opinion 23/17, but goes further in identifying concrete procedural reforms and recognizing structural inequalities in access to justice. Notably, the Court echoed several civil society submissions regarding environmental defenders and grassroots barriers. By grounding its interpretation in the Escazú Agreement and emphasizing intersectionality, the Advisory Opinion builds a robust foundation for legal mobilization across Latin America.

While the Court highlighted the need for remedies and institutional innovation, it stopped short of offering detailed guidance on the enforcement or justiciability of these standards. Likewise, the suggested remedies are somewhat limited, with no innovation that addresses the structural causes of the climate crisis or the need for remedies that are fit for purpose. This leaves room for future advisory opinions and other sources of jurisprudence to elaborate on accountability mechanisms and provide more concrete guidance on judicial implementation and oversight.

14. The Right to Integral Reparation

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Executive Summary

- The IACtHR recognizes that there is an obligation to provide reparation for violations of the right to a healthy climate, derived from the right to a healthy environment (paras. 302-303). It notes that climate damage can constitute human rights violations, particularly when it disproportionately affects groups in vulnerable situations, giving rise to a State obligation to provide reparation (paras. 89-94, 118, 557-558). Furthermore, it emphasizes that measures and mechanisms aimed at “ending the violation, preventing [its repetition], and remedying its consequences must simultaneously benefit present and future generations of humanity, as well as Nature as a whole” (para. 302).
- The Court recognizes that comprehensive reparation is a fundamental pillar of global climate action, alongside mitigation and adaptation (paras. 125, 182, 199, 259). It affirms that States cannot adequately respond to the climate emergency without addressing the structural circumstances that generated it. Reparation measures must therefore have a transformative effect on the conditions that generated or aggravated climate vulnerability. This includes overcoming patterns of marginalization and extractivism that reproduce climate risk and new cycles of victimization, and strengthening systems of ecological and social resilience (paras. 205, 369, 557).
- Drawing on its robust jurisprudence on reparations, the Court defines types of climate reparations: ecological restitution, culturally sensitive rehabilitation, compensation based on appropriate methodologies, and guarantees of non-repetition that strengthen the resilience of human and natural systems (para. 558). Reparations must be participatory, intersectional, culturally relevant, and transformative; designed using the best available science; and incorporating affected communities as active subjects of law (paras. 535, 558, 559).

- The Court also warns that the Loss and Damage Fund does not seek to ensure full reparation for damage and loss that may be attributed to States, and therefore does not replace international obligations to provide reparation or ensure a fair distribution of historical climate debt (paras. 198-203).



Introduction and Context

Attempts by major polluters to evade or limit legal responsibility for remediation under the climate regime¹⁷² have undermined effective reparation for millions of people affected by climate-related loss and damage, especially in highly vulnerable contexts. In response, Indigenous Peoples, local communities, Afro-descendant communities, and organizations from the Global South submitted numerous written observations to the IACtHR, requesting clarification that the climate regime does not restrict the interpretation and application of other long-standing State obligations under international law, including human rights obligations to guarantee access to an effective remedy and comprehensive reparation.

In the Advisory Opinion, the Court accepts these arguments and adopts a human rights approach to the global climate regime, thereby reaffirming the existence of clear State obligations to provide reparation.



Legal Analysis

a. The Obligation to Provide Reparation

The Court establishes that States incur international responsibility, whether by action or omission, when they fail to fulfill their obligations to prevent, mitigate, and remedy the adverse effects of climate change, particularly in the face of foreseeable risks (paras. 227-229, 551). The obligation to prevent climate damage is subject to a standard of enhanced due diligence (paras. 231-235), requiring States to take effective measures to prevent climate impacts, protect human rights, and adequately regulate activities that generate such impacts (paras. 236, 353).¹⁷³

The Court emphasizes that States are responsible when they fail to adequately regulate, supervise, or sanction companies whose activities exacerbate the climate crisis, even if those activities occur outside the State's territory (paras. 345, 350).¹⁷⁴ This obligation is directly linked to the duty of comprehensive reparation: if the State fails to fulfill its obligation to prevent or mitigate the activities of third parties (through lack of regulation, supervision, or sanctioning) and harm occurs, the obligation to provide full reparation to the victims for such harm is triggered (paras. 227, 557-560).

¹⁷² See Conference of the Parties to the United Nations Framework Convention on Climate Change, Paris Agreement, 2015, Article 8. Available at: https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

¹⁷³ For more details on the standard of enhanced due diligence, see thematic brief No. 1 and for more details on the obligation to mitigate GHG emissions, see thematic brief No. 4.

¹⁷⁴ For more details on businesses and human rights, see thematic brief No. 7.

b. Substantive Content of Climate Reparation

The IACtHR affirms, for the first time, that reparation constitutes a structural pillar of climate action, on equal footing with mitigation and adaptation (paras. 125, 182, 205). It introduces a significant conceptual shift: States must not only act on impacts or reduce emissions, but also address the structural causes that exacerbate the climate emergency, including inequalities, extractive development models, and territorial exclusion (para. 205). The Court also observes that the temperature increase limits established by the Paris Agreement are insufficient to prevent negative impacts on human rights, and therefore effective mechanisms for climate reparations are necessary (para. 198).

The Court emphasizes that climate impacts can violate multiple human rights, and that reparation cannot be limited to economic compensation. Reparation measures must be tailored to the particular circumstances of the harm caused to both individuals and Nature (para. 557). With this parameter, the Court broadens the horizons of what is reparable, including the link between the *pro persona* and *pro natura* principles,¹⁷⁵ requiring measures to be differentiated, participatory, and transformative (para. 558). Measures must be based on the best available science and knowledge and guarantee the effective participation of affected persons and communities, respecting their rights and cultural diversity (para. 559). Reparation measures must not be limited to pecuniary forms and must include mechanisms for monitoring implementation (para. 559).

The Court affirms that climate reparation is part of the duty of international cooperation, including actions such as financing a just transition and supporting cross-border remediation for countries most vulnerable to the climate emergency (para. 264).¹⁷⁶ States must also impose differentiated obligations on the most polluting companies, including duties of reparation, in accordance with the polluter pays principle (para. 350).¹⁷⁷

Building on its robust jurisprudence on reparations, the IACtHR defines types of climate reparations: (i) ecological restoration of the climate system and ecosystems; (ii) rehabilitation, including with culturally appropriate medical care for diseases exacerbated by or linked to climate change; (iii) compensation based on methodologies sensitive to material and non-material losses; and, (iv) structural guarantees of non-repetition aimed at reducing vulnerabilities and strengthening resilience (para. 558).

The Court further notes that many losses are non-monetizable, such as those linked to sacred sites, landscapes, and cultural territories, and therefore reparation must include symbolic, patrimonial, and spiritual measures when ancestral ways of life or biocultural heritage are affected (paras. 94, 448-450, 559).

Finally, the Court underscores the need for monitoring mechanisms to accompany reparation measures, ensuring their ongoing evaluation, necessary adjustments, and effective community participation (para. 559). This reaffirms that reparation is not an isolated event, but rather a structural and permanent process.

¹⁷⁵ The *pro persona* principle requires that rules be interpreted in a manner most favorable to the protection of human rights. In its Advisory Opinion, the Court links this to a *pro natura* approach, which recognizes the intrinsic value of Nature (paras. 279, 281). It thus holds that measures to combat climate change must protect both the people and the ecosystems affected.

¹⁷⁶ For more details on States' obligation to cooperate, see thematic brief No. 6.

¹⁷⁷ For more details on businesses and human rights, see thematic brief No. 7.

c. Interdependence and Indivisibility of Human Rights

The IACtHR's treatment of reparations and the related relevant standards emphasizes the interdependence and indivisibility of human rights.

The Court recognizes that climate change has differentiated impacts on women, girls, Indigenous Peoples, persons with disabilities, and other historically discriminated groups, exacerbated by structural conditions such as poverty, inequality, or gender-based violence (paras. 593-595).¹⁷⁸ It notes that these impacts are often invisible if gender and intersectionality approaches are not incorporated into reparation policies. Accordingly, the Court establishes that States must mainstream a gender perspective in all mitigation, adaptation, and reparation measures in the context of the climate emergency (para. 614). This recognition has profound implications: it requires the design of differentiated reparation measures reflecting the multiple forms of discrimination faced by affected groups. It also legitimizes the demand for collective, cultural, and territorial reparations that go beyond the financial compensation, incorporating spiritual ties and collective rights.

Based on its established jurisprudence, the Court reiterates that the right to an effective remedy requires States to guarantee accessible, effective, and culturally relevant judicial and administrative channels that allow victims to obtain comprehensive reparation for damages resulting from climate change (para. 557).

In the context of reparation, information must be accessible, understandable, and culturally appropriate, enabling affected communities to comprehend the extent of the harm, demand accountability, and participate in designing appropriate reparation measures. The Court notes that the timely availability and quality of information can be decisive in determining the most appropriate form of reparation (para. 500).¹⁷⁹

Reparation measures must be designed with the effective participation of the affected persons and communities, respecting their cultural, social, and territorial contexts. This requires intersectional and collective rights-based approaches, particularly for historically excluded populations (para. 559).¹⁸⁰

The Court emphasizes that it is insufficient to adopt measures that merely restore or compensate for harm. Reparations must aim to transform the structural conditions that created or aggravated climate vulnerability, including strengthening ecological and social resilience and overcoming patterns of marginalization and extractivism that reproduce climate risk (para. 557).

The Court links the duty to repair with the obligation to modify structures that perpetuate exposure to risk. This entails transforming development models, public policies, and institutional frameworks that increase climate inequality (paras. 204-205). In this sense, reparation is conceived as a structural and forward-looking component of climate justice, to be implemented alongside mitigation and adaptation measures.

178 For more details on persons with disabilities and LGBTIQ+ persons and the climate crisis, see thematic brief No. 9, and for more details on the rights of Indigenous Peoples, see thematic brief No. 8.

179 For more details on the right to access to information, see thematic brief No. 12.

180 For more details on the right to public participation, see thematic brief No. 12.



Legal and Practical Implications

a. Reparation as Third Pillar of Climate Action

The Court establishes that States are obliged to integrate effective reparation mechanisms into their national and international commitments, including climate plans, public policies, and legal reforms (paras. 125, 205, 264).

b. Strengthening Arguments in Climate Litigation

The Court's normative development provides legal tools to hold States accountable for loss and damage and to demand comprehensive reparation through judicial and administrative channels (paras. 557-559). In terms of evidence, the Court clarifies that, given the complexity of environmental and climate damage, direct proof of a causal link between GHG emissions and climate system degradation is not required; such a link may be presumed, facilitating the establishment of State responsibilities and advancing reparatory measures where appropriate (paras. 552-554). The Court also establishes that there are duties of prevention regarding climate risks, and failure to comply is assessed under standards of enhanced due diligence.

c. Impulse for Action from Civil Society and Affected Communities

The Court reinforces the role of communities as subjects of law, providing a legal basis for grass-roots action, territorial defense, and political accountability. It also legitimizes the intersection of climate and social justice demands. Furthermore, the IACtHR mentions that "climate damage is, by its nature, transboundary and that States must provide prompt, adequate, and effective redress to individuals and States that are victims of transboundary harm resulting from activities carried out in their territories or under their jurisdiction" (para. 551). This enables individuals or groups to claim reparations from a State even if they do not reside within its territory (para. 551).

d. Expansion of the Subjects Entitled to Reparation

The Court articulates the *pro persona* principle with a *pro natura* perspective, broadening the scope of State obligations in relation to climate reparation (paras. 279-281). This approach clarifies that reparation measures must benefit both affected persons and damaged ecosystems, in line with intergenerational justice and sustainability standards. Within this framework, climate reparation may include actions such as ecological restoration, prevention of biodiversity loss, and protection of natural cycles essential to planetary life. This vision also justifies structural and collective measures that address the root causes of the climate emergency, including the transformation of development models and the strengthening of community initiatives for environmental protection.



Opportunities and Gaps in the Court's Approach

The Advisory Opinion represents a significant shift in the inter-American legal architecture by consolidating comprehensive reparation as the third structural pillar of global climate action, alongside mitigation and adaptation. However, the criteria for the equitable distribution of climate debt remain underdeveloped and require further clarification.

This Advisory Opinion provides an opportunity to continue expanding the scope of the obligation to provide reparation, particularly in contexts of extraterritorial responsibility and in relation to business actors operating through transnational structures.

Abbreviations

Protocol of San Salvador	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights
Advisory Opinion	Advisory Opinion A0-32/25
AfCHPR	African Court on Human and Peoples' Rights
American Convention	American Convention on Human Rights
American Declaration	American Declaration of the Rights and Duties of Man
CO ₂	Carbon dioxide
CBDR-RC	Common but differentiated responsibilities and respective capabilities
COP	Conference of the Parties
EIA	Environmental impact assessment
ECtHR	European Court of Human Rights
GHG	Greenhouse gas
HFCs	Hydrofluorocarbons
IT	Information technology
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
IPCC	Intergovernmental Panel on Climate Change
ICJ	International Court of Justice
ICESCR	International Covenant on Economic, Social and Cultural Rights

IOM	International Organization for Migration
ITLOS	International Tribunal for the Law of the Sea
AR6	IPCC Sixth Assessment Report
LGBTIQ+	Lesbian, gay, bisexual, transgender, intersex, queer, and other gender identities or sexual orientations
Maastricht Principles	Maastricht Principles on the Human Rights of Future Generations
CH ₄	Methane
Montreal Protocol	Montreal Protocol on Substances that Deplete the Ozone Layer
NAPs	National Adaptation Plans
NDC	Nationally Determined Contribution
N ₂ O	Nitrous oxide
OHCHR	Office of the United Nations High Commissioner for Human Rights
OAS	Organization of American States
REDD+	Reducing emissions from deforestation and forest degradation
Escazú Agreement	Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean
SLCPs	Short-lived climate pollutants
REDESCA	Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights of the Inter-American Commission on Human Rights
SLAPP	Strategic lawsuit against public participation
UNGPs	UN Guiding Principles on Business and Human Rights
CCPR	UN Human Rights Committee
UNFCCC	United Nations Framework Convention on Climate Change
UNHCR	United Nations High Commissioner for Refugees



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