



**Submission by Greenpeace International to the  
International Court of Justice’s  
Advisory Opinion on the  
“Obligations of States in respect of Climate Change”**

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From “Remember us” by Samoan youth environmental activist, Okalani Mariner

“My unborn children will never know the land and sea as I have  
The ocean I have been called to protect is poisoned  
The cord that tethers me home is tearing  
My roots to the land rotting  
The same spirits that breathed life into me  
Now cry out that our Earth is dying.  
I swear by the moana I have been called to protect  
And the fauna I am bound to  
I will fight for you  
Remember I fought for you  
That we fought for you  
Remember we fought those  
whose hands were stained with blood and oil  
Remember we fought those who asked us to stand by and grieve instead of rage  
When your roots flourish  
And the seas sing to you again  
Remember us.”



Picture 1: Kioa former island Chair Lotomau Fiafia and his grandson John stand roughly where the shoreline used to be when Lotomau was a child in the 1950s. Uncle Lotomau passed away in January 2024. @Eddie Jim / The Age

## I. EXECUTIVE SUMMARY

*“How could my voice be reached out to those great powers there? Please take control of what you are doing. I’m dying in my world. I’m too hot. It cannot be controlled. (...)”*<sup>1</sup>

- Lotomau Fiafia, Kioa, Fiji

1. With respect to Question (a) of the Request by the General Assembly for an Advisory Opinion on climate change, Greenpeace respectfully submits that:
  - a. All States are under an obligation to refrain from contributing to the extinction of other States, which arises from the customary prohibition of the use of force, the customary “no harm” principle, the principles of intra-generational and inter-generational equity, and the customary obligation not to allow their territory to be used against the rights of other States;
  - b. All States are under an obligation to respect, protect and fulfil the internationally recognised human rights of present and future generations, the rights of children, of women and persons living with disabilities and the rights to self-determination, to life, to live with dignity, to a clean, healthy and sustainable environment, to health, to work, to water, to food, to housing and to culture;
  - c. All States are under an obligation to not deprive other States of their ability to ensure that persons within their jurisdiction enjoy and exercise their internationally recognised human rights, which arises from the customary obligation not to allow their territory to be used against the rights of other States and the general obligation to act in good faith; and
  - d. All States are further obligated to regulate business enterprises in their territory to prevent their activities from infringing upon the rights of other States as well as the rights of present and future generations within their territory.
2. Greenpeace also makes three main submissions regarding Question (b):
  - a. First, under the Law on State Responsibility, States that commit internationally wrongful acts against the climate system must make full reparations to States that endure climate change-induced harm;
  - b. Second, due to the obligation to refrain from contributing to the extinction of Small Island States (“SIDS”) and the ongoing nature of the harm, States must cease all internationally wrongful acts that drive climate change and offer appropriate guarantees of non-repetition; and
  - c. Third, as a result of their obligations under customary international law and international human rights treaties, States that cause or allow their territories to be used for activities that cause significant climate harm must make full reparations to States, individuals and

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<sup>1</sup> Statement by Lotomau Fiafia, interviewed on 6 August 2023 in Kioa, Fiji, during the Rainbow Warrior Ship Tour.

communities of present and future generations who have been, or will be, harmed by their wrongful actions and omissions.

## **II. INTERESTS AND EXPERTISE OF GREENPEACE INTERNATIONAL**

3. The views expressed in this submission are exclusively those of Greenpeace. The Greenpeace network comprises 25 independent national and regional offices operating in over 55 countries around the globe. Greenpeace International (“GPI”) is the network’s coordinating body. Millions of Greenpeace supporters represent the concerns of present and future generations who the Court’s opinion will impact.
4. For over 50 years, Greenpeace has campaigned to prevent environmental harm, protect human rights and ensure the Earth's ability to nurture life in all its forms. Independence is at the heart of Greenpeace’s core values: Greenpeace does not accept donations from governments or corporate interests, and we do not promote or oppose political parties. In today’s context of the triple planetary threat of climate change, biodiversity and nature loss, and pollution, with devastating impacts on people and the planet, we promote solutions essential for a green, just and peaceful future.
5. GPI enjoys observer or similar status with intergovernmental organisations in human rights law, climate change and the environment. These include the United Nations Framework Convention on Climate Change (“UNFCCC”), the UN Environmental Programme (“UNEP”), the International Maritime Organization, the International Seabed Authority, the Commission for the Conservation of Antarctic Marine Living Resources and the Council of Europe. Greenpeace submissions on human rights in the context of climate change are received by international and regional tribunals and courts, including the International Tribunal for the Law of the Sea (“ITLOS”), International Criminal Court (“ICC”), Inter-American Court of Human Rights (“IACtHR”), Court of Justice of the European Union (“CJEU”) and the European Court of Human Rights (“ECtHR”). Greenpeace consistently advocates for Indigenous Peoples' rights and local and traditional communities.
6. The Greenpeace network has collected numerous testimonies from peoples in impacted communities from the Pacific, Philippines, Mexico, Norway, Switzerland, Southern Africa and the Caribbean. In their own words, they tell the stories governments are unlikely to cover in their submissions. They highlight the obligations of States to respect, protect and fulfil their rights to a clean, healthy and sustainable environment that supports the right to life and the right to live in dignity. Youths speak to how they experience threats to their rights and their fears for future generations. Women, older persons, and people with disabilities tell of the risks to their rights to health and life with dignity, along with survivors of extreme weather events. Indigenous People's testimonies show not only how they experience the threats to the rights to food, water, livelihood,

and housing in their communities, but reveal entire cultural traditions and ways of life facing eradication.

7. Greenpeace’s ships provide world-class facilities for research on marine life, exposing threats to our oceans and to the countless communities whose lives depend on them. They also serve as story-telling platforms, carrying the testimonies of those most impacted. In April 2023, the *Arctic Sunrise* provided a community organising base on the Caribbean island of Bonaire; and from August through November 2023, the flagship *Rainbow Warrior* and Greenpeace Australia Pacific collected personal testimonies from Pacific Islanders on the losses, damage and existential threats they are already experiencing from climate change. The ship journeyed on to the Philippines for the 10th anniversary of the devastating Super Typhoon Haiyan (locally known as Yolanda) to amplify the demands of those most impacted by climate change and their calls for justice and accountability against those most responsible for this climate crisis.
8. Greenpeace Philippines, together with a range of community-based organisations, petitioned the Commission on Human Rights of the Philippines (“CHRP”) in 2015 to conduct an inquiry on the impact of climate change on the human rights of the Filipino people and the role therein of the so-called “Carbon Majors.”<sup>2</sup> The claim was that climate change was adversely impacting human rights, and the world's biggest fossil fuel companies were contributing, and knowingly continuing to contribute, to this phenomenon. The CHRP reported in 2022<sup>3</sup>, and several of its findings are cited in this submission.
9. Greenpeace Mexico gathered testimonies from the El Bosque community in Centla, Tabasco, whose members have suffered from coastal erosion and recurrent flooding due to climate change. Since 2021, the community has seen the destruction of four complete rows of streets, over 45 homes, the school and the beach and the degradation of public services such as drinking water, drainage, telephone poles, etc, as a result of being washed away or completely covered by water. As recently as November 2023, the community of El Bosque had to be evacuated again due to the rising tide. Even more houses, as well as shelters they had built in recent years, were lost. The entire community has either already relocated or is currently being forcibly displaced by climate change.<sup>4</sup>
10. Switzerland and Norway are States generally perceived as having clean and healthy environments. Yet, this perception is very far from the reality for Switzerland’s elderly women<sup>5</sup> and for the

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<sup>2</sup> The 90 entities are composed of 50 leading investor-owned, 31 state-owned, and 9 nation-state producers of oil, natural gas, coal, and cement from as early as 1854 to 2010. See Richard Heede, ‘Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1854–2010’ (2014) 122 *Climatic Change* 229.

<sup>3</sup> Commission on Human Rights of the Philippines (CHRP), ‘National Inquiry on Climate Change Report’ (2022) <[https://chr2bucket.storage.googleapis.com/wp-content/uploads/2022/12/08152514/CHRP\\_National-Inquiry-on-Climate-Change-Report.pdf](https://chr2bucket.storage.googleapis.com/wp-content/uploads/2022/12/08152514/CHRP_National-Inquiry-on-Climate-Change-Report.pdf)>.

<sup>4</sup> Guadalupe Cobos Pacheco and others, ‘Amicus curiae de la Comunidad de El Bosque para la Opinion Consultiva 32 de la Corte Interamericana de Derechos Humanos’ (2023) <[https://www.corteidh.or.cr/sitios/observaciones/OC-32/12\\_nuestro\\_futuro.pdf](https://www.corteidh.or.cr/sitios/observaciones/OC-32/12_nuestro_futuro.pdf)> [henceforth, ‘El Bosque Amicus Brief to the IACtHR’].

<sup>5</sup> *Verein KlimaSeniorinnen Schweiz and Others v Switzerland (communiqué)* [2021] ECtHR 53600/20.



young and Indigenous People in Norway<sup>6</sup> whose applications are under consideration by the European Court of Human Rights.

11. Almost a decade ago, senior women in Switzerland formed an association that now comprises 2,038 women over sixty-four years of age, under the umbrella of the Verein KlimaSeniorinnen Schweiz (“Klimaseniorinnen”). For almost a decade, Greenpeace has supported the Klimaseniorinnen and four individual senior women, whose health is significantly affected by increasing temperatures caused by climate change, culminating in their application to the European Court of Human Rights, whose Grand Chamber heard the case in March 2023.
12. Young people and Indigenous youth in Norway experience climate change threats to their own generation, while fears for the rights of future generations raise concerns over whether to have children.<sup>7</sup> Together with Greenpeace Nordic, they assert that their government’s refusal to accept that further fossil fuel exploration is incompatible with human rights, with best available science, with International Energy Authority guidance<sup>8</sup> and with their country’s Paris Agreement pledges.
13. The small Caribbean island of Bonaire is a “special municipality” of the Netherlands. It has a special history and a unique culture and biodiversity. Climate change is already having a major impact on the lives and health of Bonaire's residents, their culture, the nature around them and Bonaire's economic position as a former colony. Every additional degree of global warming will magnify existing harms in the island and its inhabitants. However, in contrast to other Dutch municipalities, the Netherlands has failed to develop an adaptation plan for Bonaire and has not done enough to meet its mitigation obligations. In January 2024, eight residents of Bonaire and Greenpeace Netherlands launched a lawsuit against the Dutch state demanding effective climate action.<sup>9</sup>
14. In South Africa, in the coalfields of the Mpumalanga province, the eMbalenhle township was established in the 1970s while petrochemical giant Sasol was developing the neighbouring synthetic fuel plant Secunda.<sup>10</sup> The people there have always suffered the intergenerational

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<sup>6</sup> *Greenpeace Nordic and Others v Norway (communiquée)* [2021] ECtHR 34068/21.

<sup>7</sup> Statement by Ingrid Skjoldvær, extracted from *Greenpeace Nordic and Others v. Norway (communiquée)* (n 6) Annex 1.

<sup>8</sup> International Energy Agency (IEA), ‘Net Zero by 2050 - A Roadmap for the Global Energy Sector’ (2021) <[https://iea.blob.core.windows.net/assets/deebef5d-0c34-4539-9d0c-10b13d840027/NetZeroby2050-ARoadmapfortheGlobalEnergySector\\_CORR.pdf](https://iea.blob.core.windows.net/assets/deebef5d-0c34-4539-9d0c-10b13d840027/NetZeroby2050-ARoadmapfortheGlobalEnergySector_CORR.pdf)>.

<sup>9</sup> *8 Individuals and Greenpeace Netherlands v the Netherlands (communiquée)* [2024] The Hague District Court. Complaint available at <https://www.greenpeace.org/nl/klimaatzaak-bonaire-waarom-klagen-we-de-staat-aan/>.

<sup>10</sup> More specifically, Secunda was founded for Sasol’s white employees while the eMbalenhle township was established for the Black employees. Jörg Meyer-Stamer, ‘The Perverse Effects of Mixing Local Economic Development and Community Development: An Example from South Africa’ <[https://www.meso-nrw.de/toolkit/case\\_studies/case-studies-case-9.html](https://www.meso-nrw.de/toolkit/case_studies/case-studies-case-9.html)> accessed 13 March 2024.

impacts of having to live in the shadow of the world’s largest GHG point source emitter<sup>11</sup>, and the wind has always carried the plant’s fumes into the township, bringing a range of health impacts with them, including chronic asthma and premature death. The testimonies of brave local activists are part of this submission, showcasing the need for States to respect their obligations to regulate business enterprises. We will see further below how the people of eMbalenhle are no longer able to grow the medicinal plants on which their health depends, just as islanders, from Bonaire in the Caribbean to Tuvalu and Vanuatu in the Pacific, report similar disastrous impacts on their health and nutrition resulting from medicinal plants being destroyed by salt water encroachment.

### **III. PRELIMINARY CONSIDERATIONS ON INTERNATIONAL ENVIRONMENTAL LAW, HUMAN RIGHTS NORMS AND THE BEST AVAILABLE SCIENCE AND THE INTERSECTIONAL CONTEXT**

15. The international human rights and environmental obligations of States are rooted in treaties, general principles of law, and international custom, some of which predate the founding of the United Nations itself.<sup>12</sup> These obligations include, *inter alia*, the duty of due diligence, the duty to prevent significant harm to the environment, the precautionary principle, the polluter-pays principle, and the duty to protect and preserve the marine environment.
16. It is under this broader framework that the UNFCCC and the Paris Agreement should be interpreted: they do not limit the obligations of States under general international law and international human rights law, including in relation to climate change. Rather, the climate treaties inform and complement States’ concurrent obligations under other bodies of international law, such as the prevention of transboundary harm and the protection of human rights.<sup>13</sup> Therefore, simply finding that a State has discharged its duties under the UNFCCC or Paris Agreement does not correspond to States having fully discharged their duties to protect against the infringement of rights by climate change or to cease the wrongful acts contributing to the extinction of States, as will be elaborated below.

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<sup>11</sup> As acknowledged by Sasol itself in its 2021 Sustainability Report. See Sasol Limited, ‘Sustainability Report for the Year Ended 30 June 2021’ (2021) 8 <[https://www.sasol.com/sites/default/files/2022-04/Sasol%20Sustainability%20Report\\_2021\\_22Sep21\\_10h30\\_0\\_0.pdf](https://www.sasol.com/sites/default/files/2022-04/Sasol%20Sustainability%20Report_2021_22Sep21_10h30_0_0.pdf)> accessed 13 March 2024.

<sup>12</sup> See *Alabama Claims of the United States of America against Great Britain* 125 (Award of 14 September 1872); *Trail Smelter Arbitration (United States, Canada)* Awards of 16 April 1938 and 11 March 1941 III, UNRIAA, 1905-1982; and *Corfu Channel case, Judgement on Preliminary Objection: I.C. J. Reports 1949*, 4, 22.

<sup>13</sup> United Nations Framework Convention on Climate Change, 9 May 1992, 1771 U.N.T.S. 107 (entered into force on 21 March 1994) [hereinafter UNFCCC], Preamble. (“Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, ... the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”); Paris Agreement to the United Nations Framework Convention on Climate Change, 12 December 2015, 3156 U.N.T.S. (entered into force on 4 November 2016) [hereinafter Paris Agreement].

17. International law obliges States to apply the “best available science” to fulfil their duty to prevent, minimise, and remediate environmental harm.<sup>14</sup> States must ensure that they take measures based on the best available science. International climate agreements such as the UNFCCC and the Paris Agreement have established the principle that States must take measures to “prevent dangerous anthropogenic interference with the climate system” and that these measures should evolve with advancements in scientific understanding.<sup>15</sup> In the UNFCCC, States committed to “prevent dangerous anthropogenic interference with the climate system” and to review the adequacy of their commitments “in the light of the best available scientific information”.<sup>16</sup> By the Paris Agreement, States agreed on “the need for an effective and progressive response to the urgent threat of climate change *on the basis of the best available scientific knowledge*”<sup>17</sup> and that Parties should take mitigation actions to reduce anthropogenic greenhouse gases (“GHG”), “in accordance with best available science”.<sup>18</sup>
18. The main authoritative source on climate science is the Intergovernmental Panel on Climate Change (“IPCC”), a United Nations body established in 1989 and composed of scientists who peer-review, assess and synthesise the best available climate science. Those findings are then put before its more than 190 Member States, which negotiate line-by-line and adopt a Summary for Policymakers reflecting the scientific findings.
19. In 2018, the IPCC’s 1.5°C Special Report (“1.5SR”) explicitly stated that already at 1°C of global warming above pre-industrial levels, the world was already experiencing forms of extreme weather that threatened human rights (e.g. population displacement, disease and famine through increased frequencies and intensity of typhoons, floodings),<sup>19</sup> and that global warming of 1.5°C

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<sup>14</sup> See Cancun Agreements (FCCC/CP/2010/7/Add.1), Decision 1/CP.16, para. 4, recognising: “the need to consider (...) strengthening the long-term global goal on the basis of the best available scientific knowledge, including in relation to a global average temperature rise of 1.5°C.”; see also UN Convention on the Law of the Sea (“UNCLOS”), Arts. 61(2) and 119, which require States to be guided by the “best scientific evidence available” in formulating measures for conserving living marine resources; Convention for the Protection of the Marine Environment of the North-East Atlantic (“OSPAR”), Art. 2 and Annex I; Convention on Biological Diversity (“CBD”), Art. 12(c), requiring States to “promote and cooperate in the use of scientific advances in biological diversity research in developing methods for conservation and sustainable use of biological resources”; Convention on the Conservation of Migratory Species of Wild Animals (“CMS”), Art. III(2), providing that the “best scientific evidence available” should inform decisions on whether to list a migratory species as endangered and thus subject to special protections under the Convention.

<sup>15</sup> UNFCCC, Arts. 2 and 4(2)(c)-(d); Paris Agreement, Preamble.

<sup>16</sup> UNFCCC, Arts. 2 and 4(2)(d).

<sup>17</sup> Paris Agreement, Preamble (emphasis added).

<sup>18</sup> Paris Agreement, Articles 4(1), 7(5) and 14(1).

<sup>19</sup> See Intergovernmental Panel on Climate Change (IPCC), ‘IPCC 1.5SR - Summary for Policymakers’, *Global Warming of 1.5°C: IPCC Special Report on Impacts of Global Warming of 1.5°C above Pre-industrial Levels in Context of Strengthening Response to Climate Change, Sustainable Development, and Efforts to Eradicate Poverty* (Cambridge University Press 2018) <<https://www.cambridge.org/core/books/global-warming-of-15c/summary-for-policymakers/31C38E590392F74C7341928B681FF668>> accessed 14 March 2024 [IPCC, 1.5SR, SPM, A.1-A.3]; Intergovernmental Panel on Climate Change (IPCC), ‘IPCC WGII AR6 - Summary for Policymakers’, *Climate Change 2022 – Impacts, Adaptation and Vulnerability: Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2022)

was not safe “for most nations, communities, ecosystems and sectors”<sup>20</sup> and posed “significant risks to natural and human systems as compared to the current warming of 1°C (high confidence)”<sup>21</sup>, especially for people and communities in vulnerable situations.<sup>22</sup> Since the release of the 1.5SR in 2018, all 195 IPCC Member States, which approved by consensus the Summary for Policymakers of the 1.5SR, gained actual and constructive knowledge of the impacts of global warming of 1.5°C, the current impacts on human rights, on peoples and on ecosystems, and the need for rapid and deep reductions in GHG emissions to keep global warming below 1.5°C. The scientific consensus is that warming above 1.5°C runs the risk of triggering irreversible, catastrophic impacts<sup>23</sup> and that overshooting 1.5°C, even temporarily, could result in large risks to natural and human systems that are potentially irreversible.<sup>24</sup>

20. Not only is warming of 1.5°C catastrophic, even current levels of warming are causing “widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere”<sup>25</sup>, which in turn result in “widespread adverse impacts and related losses and damages to nature and people (high confidence)”<sup>26</sup> and disproportionately affecting communities in vulnerable situations “who have historically contributed the least to current climate change (high confidence)”<sup>27</sup>. Despite the clear risks of increased warming, the UNFCCC’s first-ever “global stocktake”, finalised in 2023 at COP 28, concluded that the world is not on track to limit global warming to 1.5 degrees Celsius.<sup>28</sup>

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<<https://www.cambridge.org/core/books/climate-change-2022-impacts-adaptation-and-vulnerability/summary-for-policy-makers/016527EADDEE2178406C4A7CE7DEAEACA>> accessed 14 March 2024 [IPCC AR6 WGII SPM B.1.6].

<sup>20</sup> Intergovernmental Panel on Climate Change (IPCC), ‘IPCC 1.5SR - Technical Summary’, *Global Warming of 1.5°C: IPCC Special Report on Impacts of Global Warming of 1.5°C above Pre-industrial Levels in Context of Strengthening Response to Climate Change, Sustainable Development, and Efforts to Eradicate Poverty* (2018) 44 <[https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15\\_TS\\_High\\_Res.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_TS_High_Res.pdf)> accessed 14 March 2024 [TS.5].

<sup>21</sup> *ibid* [TS.5].

<sup>22</sup> *ibid* [TS.5].

<sup>23</sup> Intergovernmental Panel on Climate Change (IPCC), ‘IPCC 1.5SR - Summary for Policymakers’ (n 19) [Table 3.5]; Intergovernmental Panel on Climate Change (IPCC), ‘IPCC WGI AR5 - Technical Summary’, *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (2013) <<https://www.ipcc.ch/report/ar5/wg1/technical-summary/>> accessed 14 March 2024 [Box. TFE.5].

<sup>24</sup> Intergovernmental Panel on Climate Change (IPCC), ‘IPCC 1.5SR - Summary for Policymakers’ (n 19) [Cross-Chapter Box 8, A.3.2]; Intergovernmental Panel on Climate Change (IPCC), ‘IPCC WGII AR6 - Summary for Policymakers’ (n 19) [B.6.1, TS, TS.C.2.5, TS.C.13.1].

<sup>25</sup> Intergovernmental Panel on Climate Change (IPCC), ‘IPCC AR6 Synthesis Report - Summary for Policymakers’, *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland.* (2023) <[https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_SPM.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf)> accessed 14 March 2024 [A.2].

<sup>26</sup> *ibid* [A.2].

<sup>27</sup> *ibid* [A.2].

<sup>28</sup> Conference of the Parties serving as the meeting and of the Parties to the Paris Agreement (COP28), ‘First Global Stocktake, Proposal by the President, Draft Decision -/CMA.5, Outcome of the First Global Stocktake’ <[https://unfccc.int/sites/default/files/resource/cma2023\\_L17\\_adv.pdf](https://unfccc.int/sites/default/files/resource/cma2023_L17_adv.pdf)> accessed 14 March 2024 [FCCC/PA/CMA/2023/L.17].

21. The latest IPCC report highlights an urgent call for immediate and significant actions to reduce greenhouse gas emissions, emphasising that “there is a rapidly closing window of opportunity to secure a liveable and sustainable future for all (*very high confidence*)”.<sup>29</sup> The IPCC's latest findings further underscore the accelerated impacts of climate change, including more frequent and severe weather events, and the critical necessity of limiting global warming to below 1.5°C to avoid even greater catastrophic environmental and human consequences.<sup>30</sup> These findings reinforce the need for enhanced commitment and cooperation at all levels of governance to mitigate climate impacts and safeguard the future of vulnerable ecosystems and communities and the importance of integrating the latest scientific insights into national policies and international agreements to effectively address climate change.
22. The 1948 Universal Declaration of Human Rights (“UDHR”) provides that “everyone has the right to [...] share in scientific advancement and its benefits,”<sup>31</sup> and the 1966 International Covenant on Economic, Social and Cultural Rights (“ICESCR”) recognises the right of everyone “to enjoy the benefits of scientific progress and its applications.”<sup>32</sup> This right requires States to “align [...] government policies and programmes with the best available, generally accepted scientific evidence”.<sup>33</sup> UN human rights treaty bodies have relied on the IPCC reports in setting out States’ duties to avert the threat of climate change.<sup>34</sup>
23. The highest national courts in several jurisdictions have interpreted “best available science” to consist of the latest research and observations from organisations such as the IPCC, the World Meteorological Organization (“WMO”), UNEP, expert independent research institutes, peer-reviewed academic research, and evidence from national scientific or specialist bodies, all of which accept that the obligation to protect the climate system can only be fulfilled by following the best available scientific evidence.<sup>35</sup>

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<sup>29</sup> Intergovernmental Panel on Climate Change (IPCC), ‘IPCC AR6 Synthesis Report - Summary for Policymakers’ (n 25) [C1].

<sup>30</sup> *ibid.*

<sup>31</sup> Art. 27

<sup>32</sup> Art.15(1)(b); Committee on Economic, Social and Cultural Rights, *General Comment No. 25 (2020) on article 15(1)(b),(2),(3)and(4)*, paras. 52, 83.

<sup>33</sup> CESCR GC No. 25, para. 52; *accord* Marcos Orellana (Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes), *Right to science in the context of toxic substances*, para. 97 UN Doc. No. A/HRC/48/61, 26 July 2021.

<sup>34</sup> *See Daniel Billy et al v. Australia*, Human Rights Committee, CCPR/C/135/D/3624/2019, Annex IV (Individual opinion of Committee Member Gentian Zyberi (concurring), para. 5 (finding States should act with due diligence based on the best science when taking mitigation and adaptation action); Committee on the Rights of the Child, Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 104/2019, CRC/C/88/D/104/2019 (8. Oct. 2021) para. 3.8; Committee on the Elimination of Discrimination Against Women and others (n 34).

<sup>35</sup> *State of the Netherlands v Urgenda*, Netherlands Supreme Court, paras. 5.6.2; *see also* para. 5.7.1, paras. 2.1, 4.1-4.8. Administrative Court of Berlin, 31 October 2019, *Backsen and Others (German Family Farmers) v. Federal Republic of Germany*, judgment, VG 10 K 412.18 (unofficial translation), pp. 19, 20; German Federal Constitutional Court of

24. Some of the key findings by the IPCC upon which this submission relies are:
- a. Global average temperatures are on the rise as a direct consequence of anthropogenic activities, especially GHG emissions.<sup>36</sup> (Currently, as per WMO data, the global average temperature is 1.15°C above pre-industrial levels).<sup>37</sup>
  - b. Emissions reductions have been less than GHG emissions increases from industrial processes, energy supply, transportation, agriculture and building sectors.<sup>38</sup>
  - c. Irreversible harm has already occurred due to human-caused climate change<sup>39</sup>, and every additional fraction of a °C will generate more irreversible harm.<sup>40</sup>
  - d. Risks increase significantly at warming of 1.5°C or higher above pre-industrial levels.<sup>41</sup>
  - e. Decisions in this present decade will dictate global temperature trajectories.<sup>42</sup>
  - f. Current and projected emissions from existing fossil fuel infrastructure will exceed the remaining carbon budget to limit warming to 1.5°C.<sup>43</sup>
  - g. Climate change disproportionately affects communities in vulnerable situations, whose historical contribution to climate change has been comparatively minimal.<sup>44</sup>
  - h. Sea levels are already rising and will rise even more due to higher global average temperatures.<sup>45</sup>
  - i. Extreme weather and sea-level events are projected to become significantly more frequent and intense.<sup>46</sup>
25. In addition to IPCC science, peer-reviewed research shows that the majority of GHG emissions since the industrial revolution were emitted by 90 oil, coal, gas and cement producers worldwide: the “Carbon Majors.”<sup>47</sup> Further peer-reviewed studies quantify the proportional increase in

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Germany, 24 March 2021, *Neubauer and Others v. Germany*, judgment, BvR 2656/18, 1 BvR 96/20, 1 BvR 78/20, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20 (official translation), pp. 18-24.

<sup>36</sup> Intergovernmental Panel on Climate Change (IPCC), ‘IPCC AR6 Synthesis Report - Summary for Policymakers’ (n 25) 4.

<sup>37</sup> World Meteorological Organization (WMO), ‘State of the Global Climate 2022’ (2022) ii <<https://library.wmo.int/records/item/66214-state-of-the-global-climate-2022>> accessed 14 March 2024 [Key Messages]; Intergovernmental Panel on Climate Change (IPCC), ‘IPCC AR6 Synthesis Report - Summary for Policymakers’ (n 25) [A.1.4].

<sup>38</sup> Intergovernmental Panel on Climate Change (IPCC), ‘IPCC AR6 Synthesis Report - Summary for Policymakers’ (n 25) [A.1.4].

<sup>39</sup> *ibid* [A.2.1].

<sup>40</sup> *ibid* [A.2.1].

<sup>41</sup> Intergovernmental Panel on Climate Change (IPCC), ‘IPCC 1.5SR - Summary for Policymakers’ (n 19) [B.5.6].

<sup>42</sup> Intergovernmental Panel on Climate Change (IPCC), ‘IPCC AR6 Synthesis Report - Summary for Policymakers’ (n 25) [B.6].

<sup>43</sup> *ibid* [B.5].

<sup>44</sup> *ibid* [B.5].

<sup>45</sup> *ibid* [B.1.3].

<sup>46</sup> *ibid* [B.1.4].

<sup>47</sup> The 90 entities are composed of 50 leading investor-owned, 31 state-owned, and 9 nation-state producers of oil, natural gas, coal, and cement from as early as 1854 to 2010. See Richard Heede (n 2).

atmospheric CO<sub>2</sub>, global mean surface temperature, and global sea level from emissions traced to these Carbon Majors. Specifically, these studies found that:

- a. Emissions traced to the 90 largest carbon producers contributed approximately 57% of the observed rise in atmospheric carbon dioxide, nearly 50% of the rise in global average temperature, and around 30% of global sea-level rise between 1880-2010;
- b. Emissions linked to 50 investor-owned carbon producers contributed to roughly 16% of the global average temperature increase from 1880 to 2010 and around 11% of the global sea-level rise during the same time frame; and
- c. Emissions tied to the same 50 companies from 1980 to 2010, a time when fossil fuel companies were well aware that their products were contributing to climate change, contributed approximately 10% of the global average temperature increase and about 4% of the sea-level rise.<sup>48</sup>

26. Finally, Greenpeace respectfully invites the Court to adopt an intersectional analysis in its advisory opinion.<sup>49</sup> As the IPCC noted, “(t)he intersection of gender with race, class, ethnicity, sexuality, Indigenous identity, age, disability, income, migrant status and geographical location often compounds vulnerability to climate change impacts (*very high confidence*), exacerbates inequity and creates further injustice (*high confidence*)”.<sup>50</sup> An intersectional analysis of the obligations of States in light of the impacts of climate change on people from these social locations is crucial to not only make visible those who are at the crossroads of multiple, interlocking forms of oppression but also to craft meaningful and suitable redress capable of meeting the gravity and magnitude of the crisis already at their doorsteps. The testimonies in this submission illuminate the diverse ways in which people around the world are experiencing their human rights in the climate crisis. One particular element that is often overlooked in the context of climate change is the historical and ongoing legacy of colonialism.

27. The IPCC has noted that the vulnerability of people and ecosystems differs substantially among and within regions, driven by many factors, including “historical and ongoing patterns of inequity such as colonialism.”<sup>51</sup> As Bhambra and Newell argue, “climate change has been brought about through the colonial processes implicated in the production and reproduction of those very inequalities: the colonial and racialised dispossessions that severed peoples’ access to land and resources to sustain their livelihoods and set them to work in the plantations and factories that

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<sup>48</sup> B Ekwurzel and others, ‘The Rise in Global Atmospheric CO<sub>2</sub>, Surface Temperature, and Sea Level from Emissions Traced to Major Carbon Producers’ (2017) 144 *Climatic Change* 579.

<sup>49</sup> The term was coined by Kimberle Crenshaw. See Kimberle Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ [1989] *University of Chicago Legal Forum*.

<sup>50</sup> Intergovernmental Panel on Climate Change (IPCC), ‘IPCC WGII AR6 - Summary for Policymakers’ (n 19) [TS.B.7.3].

<sup>51</sup> *ibid* [B.2].

went on to drive extraction through industrial development”.<sup>52</sup> As noted by the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, E. Tendayi Achiume: “racist colonial regimes that underpinned the extraction of coal, gas and oil, forged a global capitalist system dependent on the maintenance of racial hierarchies, and are thus at the heart of the global ecological crisis”.<sup>53</sup>

28. These processes create and perpetuate “sacrifice zones” around the world, and as Special Rapporteur on human rights and the environment, David Boyd noted, “The climate crisis is creating a new category of sacrifice zones as a result of unabated greenhouse gas emissions, as communities have become, and are becoming, uninhabitable because of extreme weather events or slow-onset disasters, including drought and rising sea levels.”<sup>54</sup> He also noted that the people in these places “are treated as disposable, their voices ignored, their presence excluded from decision-making processes and their dignity and human rights trampled upon.”<sup>55</sup> Some of these places and people are included in this submission: Bonaire in the Dutch Caribbean, eMbalenhle in South Africa, in the Pacific Islands, and Indigenous Peoples within the Global North and South.
29. eMbalenhle in Mpumalanga, South Africa provides a stark example of a “sacrifice zone”, where the entire community is exposed to extreme levels of pollution and toxic contamination.<sup>56</sup> Residents of such communities suffer “devastating physical and mental health consequences and human rights violations as a result of living in pollution hotspots and heavily contaminated areas.”<sup>57</sup> These communities are populated almost exclusively by people of colour whose quality of life is devastatingly compromised in the interests of “growth” or “progress” so that shareholders can benefit from higher profits. This is little more than latter-day colonialism.<sup>58</sup>

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<sup>52</sup> Gurminder K Bhambra and Peter Newell, ‘More than a Metaphor: “Climate Colonialism” in Perspective’ (2023) 2 *Global Social Challenges Journal* 179.

<sup>53</sup> E. Tendayi Achiume, ‘A/77/549: Ecological Crisis, Climate Justice and Racial Justice: Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance’ (2022) para 12 <<https://www.ohchr.org/en/documents/thematic-reports/a77549-report-special-rapporteur-contemporary-forms-racism-racial>> accessed 14 March 2024.

<sup>54</sup> David R. Boyd and Marcos Orellana, ‘A/HRC/49/53: The Right to a Clean, Healthy and Sustainable Environment: Non-Toxic Environment. Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment’ (UN, 2022) para 27 <<https://digitallibrary.un.org/record/3957797>> accessed 14 March 2024.

<sup>55</sup> *ibid* para 29.

<sup>56</sup> *ibid* para 2.

<sup>57</sup> *ibid* para 28. [“The most heavily polluting and hazardous facilities, including open-pit mines, smelters, petroleum refineries, chemical plants, coal-fired power stations, oil- and gas fields, steel plants, garbage dumps and hazardous waste incinerators, as well as clusters of these facilities, tend to be located in close proximity to poor and marginalized communities.”]

<sup>58</sup> *ibid* para 22. [“The disturbing phenomenon of poor and marginalized communities being more heavily affected by pollution is a form of environmental injustice. Environmental injustices related to pollution and the production, export, use and disposal of toxic substances are rooted in racism, discrimination, colonialism, patriarchy, impunity and political systems that systematically ignore human rights.”]



#### **IV. THE OBLIGATIONS OF STATES TO PREVENT THE ADVERSE IMPACTS OF CLIMATE CHANGE**

30. With respect to Question (a) of the Request by the General Assembly for an Advisory Opinion on climate change, Greenpeace respectfully submits that:
- a. All States are under an obligation to refrain from contributing to the extinction of other States. This arises from the customary prohibition of the use of force, the customary “no harm” principle, the intra-generational equity principle with special priority to the least developed and the most environmentally vulnerable States, the intergenerational equity principle, and the customary obligation of States not to allow their territory to be used against the rights of other States;
  - b. All States are under an obligation to respect, protect and fulfil the internationally recognised human rights of present and future generations, including the rights to self-determination, to life, to live with dignity, to a clean, healthy and sustainable environment, to health, to work, to water, to food, to housing and to culture, as well as the rights of children, of women and persons living with disabilities;
  - c. All States are under an obligation to not deprive other States of their ability to ensure that persons within their jurisdiction enjoy and exercise their internationally recognised human rights, which arises from the customary obligation not to allow their territory to be used against the rights of other States and the general obligation to act in good faith; and
  - d. All States are obligated to regulate businesses in their territory to the extent that their activities infringe upon the rights of other States.

##### **A. The Obligation of States to Refrain from Contributing to the Extinction of Other States**

31. In light of the ongoing rise in sea levels and the increase in frequency and severity of extreme weather events, and the threats that they pose to the territorial integrity of many states, particularly SIDS, the matter of extinction of states as a result of breaches of obligations regarding climate change should be addressed by the Court.
32. A State does not exist as a matter of fact in the same way that a chair exists as a matter of fact.<sup>59</sup> A State is a legal construct, a “legal status attaching to a certain state of affairs by virtue of certain rules or practices”.<sup>60</sup> Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States, which is held to be reflective of customary international law, sets out four basic criteria for a State to exist: permanent population, defined territory, government, and capacity to enter into relations with other States. While international practice has shown that, once created, a defect

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<sup>59</sup> James Crawford, *The Creation of States in International Law* (2. ed.; repr, Clarendon Press 2011) 5.

<sup>60</sup> *ibid.*

with the latter two criteria does not automatically cause a State to cease existing, the same cannot be said if the population or territory of a State completely disappears.<sup>61</sup>

33. The issue of complete disappearance of the territory of a State is unprecedented in international law. While there are rules and precedents relating to the illegal annexation of a State's territory by other States (including the duty of non-recognition of a State's claim to certain territory when this arises from an unlawful situation and the *jus cogens* and *erga omnes* prohibition on "use of force against the territorial integrity and political independence of any state")<sup>62</sup> it is not clear what happens under international law when the territory of a State disappears from the Earth due to breaches of obligations owed by other States.
34. It is uncontroversial that the sea-level is rising across the globe. It is also uncontroversial that this is caused by rising temperatures and the thawing of the cryosphere (glaciers, polar ice caps, permafrost) and that anthropogenic GHG emissions have caused the unprecedented temperatures recorded in recent years. The harms caused by GHG emissions have been known for decades and led to the adoption of the first international treaty on climate change in 1988.
35. In such circumstances, the harm is tantamount to the use of force against the territorial integrity of such States facing existential risk. Even if the global temperature rise is limited to 1.5°C, there is still only a 50% chance of limiting sea level rise to an additional half metre by 2100, and in the next century, that will expand to a metre.<sup>63</sup> For countries like Tuvalu and Kiribati, where the average height is 3-4 metres above sea level,<sup>64</sup> a rise in sea levels of this magnitude will threaten their physical existence. 70-90% of coral reefs will die at 1.5°C, leaving millions of people without their livelihood, food, and protection against sea level rise and storms (among other crucial services these ecosystems provide).<sup>65</sup> Notably, sea-level rise causes land to become uninhabitable long before it is completely inundated due to coastal flooding, causing water salinity and a lack of clean drinking water, as shown in the testimony of Eddie Huitarau at para 117 below.

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<sup>61</sup> Ineta Ziemle, 'Extinction of States' (*Max Planck Encyclopedia of Public International Law [MPEPIL]*, May 2007) <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1111?prd=MPIL>> accessed 14 March 2024.

<sup>62</sup> 1945 UN Charter, Article 2(4).

<sup>63</sup> Jonathan Watts, 'We could lose our status as a state': what happens to a people when their land disappears' (27 June 2023, *The Guardian*):

<<https://www.theguardian.com/environment/2023/jun/27/we-could-lose-our-status-as-a-state-what-happens-to-a-people-when-their-land-disappears>>.

<sup>64</sup> 'Tuvalu's National Adaptation Programme of Action: Under the Auspices of the United Nations Framework Convention on Climate Change' (Report, Ministry of Natural Resources, Environment, Agriculture and Lands, Department of Environment, Tuvalu, May 2007) 13 <<http://unfccc.int/resource/docs/napa/tuv01.pdf>>; 'Republic of Kiribati: National Adaptation Program of Action (NAPA)' (Report, Environment and Conservation Division, Ministry of Environment, Land and Agricultural Development, Government of Kiribati, January 2007) iii <<http://unfccc.int/resource/docs/napa/kir01.pdf>>.

<sup>65</sup> Hanny Rivera, Andrea Chan and Victoria Luu, 'Coral Reefs Are Critical for Our Food Supply, Tourism, and Ocean Health. We Can Protect Them from Climate Change' (2020) 1 MIT Science Policy Review 18.

36. The meaning of ‘force’ is not clearly defined in international law. In recent years, however, it has been found to encompass many uses that are not ordinarily associated with physical or bellicose force, such as economic coercion and cyber attacks.<sup>66</sup> This further evidences that the concept of use of force under the *jus ad bellum* is less concerned with the means through which force is used and more with its effects. In the case of sea-level rise extinction, the situation is aggravated in light of the other obligations of States regarding climate change that are being breached, especially the obligation to limit the global average temperature increase under the Paris Agreement.
37. Additionally, the obligation to refrain from contributing to the extinction of another State is a direct consequence of the “no harm” principle. In *Trail Smelter*, the arbitral tribunal famously held that “no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence, and the injury is established by clear and convincing evidence.”<sup>67</sup> All of the elements of the test (transboundary harm by harmful substances, serious consequences, and clear and convincing evidence) are established in the context of climate change. The ICJ in *Corfu Channel* confirmed the understanding in *Trail Smelter*, finding that “every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States” was a general and well-recognised principle of law.<sup>68</sup> At the very least, knowingly allowing GHG emissions at scientifically-determined dangerous levels by actors under their jurisdiction, in light of scientifically-confirmed sea-level rise and associated impacts that pose existential threats to SIDS, would be a breach of these well-established obligations. This understanding is further corroborated by Article 194(2) of UNCLOS, which clarifies that “States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment”.
38. In light of the above, it should be noted that the obligation to refrain from *contributing* to the extinction of other States is breached not only if the State is forced into extinction but also if any of the elements of statehood are seriously harmed or if there is virtual certainty based on the best available science that such elements will be seriously harmed if acts of other States persist. As will be further developed in Section V.B below, this, in turn, engages the international responsibility of States to cease ongoing harmful acts and to give full reparations for harm caused. As such, the partial submersion of a SIDS’s or other low-lying State’s territory due to anthropogenic GHG emissions and consequential sea-level rise would be sufficient to trigger this obligation and the international responsibility of States.

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<sup>66</sup> Christine Gray, ‘The Use of Force and the International Legal Order’ in Malcolm Evans (ed), *International Law* (Oxford University Press 2018) 604 <<http://www.oxfordlawtrove.com/view/10.1093/he/9780198791836.001.0001/he-9780198791836-chapter-20>> accessed 17 March 2024.

<sup>67</sup> *Trail Smelter Arbitration*, Decisions of 16 April 1938 & 11 March 1941, vol. III, UNRIAA, 1905-1982, 1965.

<sup>68</sup> *Corfu Channel (Merits)*, 22. See also *Advisory Opinion on Nuclear Weapons*.

39. It must also be highlighted that the specific measures that States must take in reducing their GHG emissions to comply with this obligation must be determined in light of the principle of common but differentiated responsibilities and respective capabilities (“CBDR-RC”), enshrined in Article 3(1) of the UNFCCC, in the preamble of the Paris Agreement, and in Principle 7 of the Rio Declaration. This principle requires that developed countries, who have historically contributed the most to climate change and have, as a consequence, “reaped immense economic benefits”,<sup>69</sup> should “take the lead in combating climate change and the adverse effects thereof”.<sup>70</sup> Interpreted holistically, this principle does not imply that developing countries need not take any measures to limit GHG emissions in order to comply with the obligation not to contribute to the extinction of other States. Rather, it takes into account that the contribution to the extinction of other States by virtue of GHG emissions is a process that started many decades ago, and as such major historic polluters must take on a larger share of the emissions reduction burden now to account for their historic emissions. Furthermore, as stated by the Inter-American Commission on Human Rights, “those States that have greater financial capacity must provide the guarantees to provide greater technical and logistical capacity to the States that have a greater degree of impact on climate change, as well as less financial and infrastructure capacity to face the climate emergency”.<sup>71</sup> All States must take measures to fulfil their obligation not to contribute to the extinction of other States, but the extent of such measures should be determined in light of the principle of CBDR-RC and the best available science.

### **B. The Obligations of States to Respect, Protect and Fulfil the Internationally Recognised Human Rights of Present and Future Generations**

40. The duties to respect and protect human rights impose on States the obligation to refrain from conduct that foreseeably causes or contributes to human rights harm and to take all necessary measures to prevent conduct by others that foreseeably threatens human rights.<sup>72</sup> The duty to respect and protect applies to all human rights protected in human rights treaties and under

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<sup>69</sup> David R. Boyd, ‘A/74/161: Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment’ (2019) para 26 <<https://documents.un.org/doc/undoc/gen/n19/216/42/pdf/n1921642.pdf?token=7micWMoISfTuQe7IGW&fe=true>> accessed 14 March 2024.

<sup>70</sup> UNFCCC, Art. 3(1).

<sup>71</sup> Inter-American Commission on Human Rights, ‘Resolution No. 3/2021: Climate Emergency: Scope of Inter-America Human Rights Obligations’ (2021) <[https://www.oas.org/en/iachr/decisions/pdf/2021/resolucion\\_3-21\\_ENG.pdf](https://www.oas.org/en/iachr/decisions/pdf/2021/resolucion_3-21_ENG.pdf)> accessed 14 March 2024 [C.I.7]. See also David R. Boyd (n 69) paras 26, 68.

<sup>72</sup> Human Rights Committee, ‘General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant’ (2004) para 7 [CCPR/C/21/Rev.1/Add. 13]; UN Environment, ‘Climate Change and Human Rights’ (14 March 2024) <<http://www.unep.org/resources/report/climate-change-and-human-rights>> accessed 21 November 2023; UN General Assembly, ‘Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms’ (UN, 1999) Art. 2 <<https://digitallibrary.un.org/record/265855>> accessed 14 March 2024 [A/RES/53/144].

customary international law.<sup>73</sup> States must address, alleviate, and mitigate foreseeable threats to human rights to fulfil their human rights obligations. States' obligations are not geographically limited to their own territories or citizens but include the duty to refrain from conduct that foreseeably breaches the human rights of persons in another territory or restricts the abilities of other States - for example, SIDS - to fulfil their human rights obligations to their own peoples.

41. Numerous human rights bodies, courts and tribunals have recognised that climate change impacts an array of fundamental rights.<sup>74</sup> Furthermore, climate change does not affect the rights of all people equally.<sup>75</sup> It is a threat multiplier that disproportionately impacts countries and segments of the population already in disadvantaged situations.<sup>76</sup> Climate change is “inherently discriminatory”<sup>77</sup> and disproportionately impacts the human rights of those in vulnerable situations<sup>78</sup> due to existing inequalities and deprivation of societal power and autonomous decision-making ability. People and communities may be in such situations due to factors such as poverty, race, ethnicity, culture, geographic location, age, sex and gender, disability, and social inequality.<sup>79</sup> Multiple forms of discrimination, including racism, sexism and classism, may combine, overlap, or intersect.<sup>80</sup> In this submission, we focus on the impacts on children and future

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<sup>73</sup> Human Rights Committee, ‘General Comment No. 36: Article 6 (Right to Life)’ paras 7, 18, 63 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/261/15/PDF/G1926115.pdf?OpenElement>> accessed 1 December 2023 [CCPR/C/GC/36]; Committee on Economic, Social and Cultural Rights, ‘General Comment No. 26 (2022) on Land and Economic, Social and Cultural Rights’ (2023) para 10 [E/C.12/GC/26]; UN Committee on the Elimination of Discrimination against Women, ‘General Recommendation No. 34 (2016) on the Rights of Rural Women’ (UN, 2016) section III <<https://digitallibrary.un.org/record/835897>> accessed 14 March 2024 [CEDAW/C/GC/34]; Committee on the Rights of the Child, ‘General Comment No. 16 (2013) on State Obligations Regarding the Impact of the Business Sector on Children’s Rights’ (2013) para 24 <<https://www2.ohchr.org/english/bodies/crc/docs/crc.c.gc.16.pdf>> accessed 14 March 2024 [CRC/C/GC/16].

<sup>74</sup> *Advisory Opinion OC-23/17: The Environment and Human Rights* [2017] IACtHR OC-23/17 paras 47, 49, 51 et seq.; Human Rights Council, ‘A/HRC/RES/50/9: Human Rights and Climate Change’ (2022) <<https://documents.un.org/doc/undoc/gen/g22/406/80/pdf/g2240680.pdf?token=rnyTB1RVt9DlxNvAU2&fe=true>> accessed 14 March 2024; UN General Assembly, ‘A/RES/76/300: The Human Right to a Clean, Healthy and Sustainable Environment’ (UN, 2022) <<https://digitallibrary.un.org/record/3983329>> accessed 14 March 2024; *Billy et al v Australia (Communication No 3624/2019)* [2022] Human Rights Committee CCPR/C/135/D/3624/2019; *Urgenda Foundation v the Netherlands* [2019] Supreme Court of the Netherlands ECLI:NL:HR:2019:2007; *Leghari v Pakistan* [2015] Lahore High Court W.P. No. 25501/201; *VZW Klimaatzaak v Kingdom of Belgium & Others* [2021] Brussels Court of First Instance 2015/4585/A; *PSB et al v Brazil (on Climate Fund)* [2022] Federal Supreme Court of Brazil ADPF 708; *Neubauer et al v Germany* [2021] Bundesverfassungsgericht [BVerfG] BvR 2656/18/1, BvR 78/20/1, BvR 96/20/1, BvR 288/20.

<sup>75</sup> Center for International Environmental Law and others, ‘Amicus Submission to the IACtHR Advisory Opinion OC-32’ 15 <[https://corteidh.or.cr/sitios/observaciones/OC-32/4\\_CIEL\\_CLX\\_otros.pdf](https://corteidh.or.cr/sitios/observaciones/OC-32/4_CIEL_CLX_otros.pdf)> accessed 14 March 2024.

<sup>76</sup> Intergovernmental Panel on Climate Change (IPCC), ‘IPCC WGII AR6 - Summary for Policymakers’ (n 19).

<sup>77</sup> John Knox, ‘A/HRC/31/52: Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment’ (2016) para 81 <<https://documents.un.org/doc/undoc/gen/g16/015/72/pdf/g1601572.pdf?token=rvZT7WhWryZDAcwZ6s&fe=true>> accessed 14 March 2024.

<sup>78</sup> Committee on the Elimination of Discrimination Against Women and others (n 34).

<sup>79</sup> Inter-American Commission on Human Rights (n 71) 6, 15–16.

<sup>80</sup> Human Rights Council, ‘A/HRC/50/57: The Impacts of Climate Change on the Human Rights of People in Vulnerable Situations’ (2022).

generations, women, and people with disabilities through the words of impacted communities themselves.

### ***1. The Right to Self-Determination***

42. The right to self-determination is a right that belongs to peoples, as distinct from States where they reside. One group of Indigenous Peoples may reside in several contiguous States, and their rights may be respected by one State but violated by another. Peoples cannot exercise sovereignty over their natural resources when the State where they live fails adequately, or at all, to protect those resources.<sup>81</sup>
43. The right to self-determination is fundamental to all other human rights and is codified both in the Purposes and Principles of the U.N. Charter<sup>82</sup> and in common article 1 of both International Human Rights Covenants.<sup>83</sup> It has recently had its *jus cogens* status recognized by the International Law Commission (ILC).<sup>84</sup>
44. Before that, for over 50 years, self-determination had been repeatedly recognised by the ICJ.<sup>85</sup> To attain the right to self-determination, States should also ensure the full enjoyment of subsidiary rights, including social, cultural, and economic rights.<sup>86</sup> These include the rights to life, adequate food, water, health and housing, productive use and enjoyment of property, cultural practices and traditions.
45. Peoples living in SIDS face additional risks since the integrity of their territory is threatened by rising sea levels.<sup>87</sup> Islander and Indigenous and local communities are at risk of forcible relocation, with resultant loss of personal and cultural identity, loss of physical connection with the ancestral territory, and loss of effective nationality.<sup>88</sup> Indeed, States' obligations to protect, respect and fulfil

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<sup>81</sup> See also UN General Assembly, 'Resolution 1803 (XVII) of 14 December 1962: Permanent Sovereignty over Natural Resources' (14 December 1962) <<https://www.ohchr.org/sites/default/files/resources.pdf>> accessed 14 March 2024 [establishing rights and restrictions for national sovereignty over natural resources].

<sup>82</sup> UN Charter, Art. 1.

<sup>83</sup> ICCPR and ICESCR, Art. 1, paras. 1–3.

<sup>84</sup> International Law Commission (ILC), 'Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens)' (2022) Conclusion 23.

<sup>85</sup> See, *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995 (30 June 1995), para. 29; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, p. 16.

<sup>86</sup> Tekau Frere, Clement Yow Mulalap and Tearinaki Tanielu, 'Climate Change and Challenges to Self-Determination: Case Studies from French Polynesia and the Republic of Kiribati'.

<sup>87</sup> *ibid.*

<sup>88</sup> UN Charter, Art. 15(2).

the rights of peoples to self-determination require them to protect peoples from environmental degradation caused by climate change.<sup>89</sup>

46. For those like Lucian Reiher, the climate impacts her family experiences today - such as disappearing fish stocks, lack of clean water, and cyclones - are part of an ongoing story of colonial-era displacement, which brought not only the loss of their home, but their culture, customs and language.
47. Lucian Reiher's family was from Banaba (also known as Ocean Island) in present-day Kiribati, but she now lives on Rabi Island, Fiji. In December 1945, in the middle of Hurricane season, the people of the island of Banaba were expropriated and forcibly moved to Rabi Island to make way for mining by the British Phosphate Commission, a British-Australian and New Zealand joint venture. The British authorities allegedly duped the community's elders. They showed the locals some photographs of Rabi as a town with two-story houses when these pictures were of Levuka, the former capital of Fiji. Upon arrival, the Banabans found no town and had to live in tents beside the beach.<sup>90</sup> Lucian Reiher's grandmother was amongst them. Now, in addition to living with the direct impacts of colonisation, her right to self-determination is at risk due to rising sea levels in Rabi:

*"Now we lost all our, something like our customs. We lost our language, and now we lost our roles and our responsibilities. It's going to disappear, but we don't want everything to disappear, we want everything to come back. So we can know who we are, our identity, what's our responsibilities in the place".<sup>91</sup>*

## **2. The Right to Life and to Live with Dignity**

48. The right to life is the supreme right from which no derogation is permitted, even in situations of armed conflict and other public emergencies that threaten the life of the nation.<sup>92</sup> It enjoys customary status, as stated in Article 3 of the UDHR and Article 6(1) of the International Covenant on Civil and Political Rights ("ICCPR"), which states that "Every human being has the

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<sup>89</sup> UN Human Rights Council, 'A/HRC/10/29: Report of the Human Rights Council on its 10th session' (UN, 2009) <<https://digitallibrary.un.org/record/680972>> accessed 14 March 2024 [recognizing that self-determination is one of the human rights most affected by climate change].

<sup>90</sup> Jane McAdam, 'Caught between Homelands' (*Inside Story*, 15 March 2013) <<https://insidestory.org.au/caught-between-homelands/>> accessed 27 November 2023.

<sup>91</sup> Statement by Lucian Reiher, interviewed on 10 August 2023 in Rabi Island, Fiji, during the Rainbow Warrior Ship Tour.

<sup>92</sup> ICCPR, Art .4; Human Rights Committee, 'General Comment No. 6: Article 6 (Right to Life)' (1982) para 1 <<https://www.refworld.org/legal/general/hrc/1982/en/32185>> accessed 14 March 2024; Human Rights Committee, 'General Comment No. 14: Article 6 (Right to Life) - Nuclear Weapons and the Right to Life' (1984) para 1; *Pedro Pablo Camargo v Colombia (Communication No 45/1979)* [2022] Human Rights Committee CCPR/C/OP/1 at 112 para 13.1; *Baboeram-Adhin et al v Suriname (Communication Nos 146/1983 and 148-154/1983)* [1985] Human Rights Committee CCPR/C/24/D/146/1983 para 14.3.

inherent right to life”. The Human Rights Committee’s General Comment No. 36 (“CCPR GC No. 36”) emphasises that:

“The right to life has crucial importance both for individuals and for society as a whole. It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right, the effective protection of which is the prerequisite for the enjoyment of all other human rights and the content of which can be informed by other human rights. This right shall be protected by law. No one shall be arbitrarily deprived of his life”.<sup>93</sup>

49. CCPR GC No. 36 stresses that this right should not be interpreted narrowly, and in fact, “concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity.”<sup>94</sup>

50. Lucian Reiher, of Rabi, Fiji, recounts the deadly impact that extreme weather events can have on the right to life:

*“That time it was heavy rain. Heavy rain for many days, nearly a week, and then we hear that the land was sliding. Some of the members lost their whole family, from Buakonikai. They lost their home, their children were killed. A couple were killed. Everything was pushed this way. They were hurt, an iron rod went inside the lady’s leg. The children were inside the room. The Aunty was hugging them, they were buried with the sand, all buried in soil. Everybody died inside that room. Because the soil covered their homes. Just happened after the heavy rain. After that happened, everybody came and helped. They did the funeral at Buakonikai. All the community and all the family came and helped. It’s a sad story. The mother and the father survived.”*<sup>95</sup>

51. Further concerning the right to a life with dignity, CCPR GC No.36 clarifies the obligations of States to present and future generations regarding environmental degradation, climate change and unsustainable development, which: “constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.” As CCPR GC No.36 states, “[i]mplementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, *inter alia*, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.”<sup>96</sup>

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<sup>93</sup> Human Rights Committee, ‘General Comment No. 36: Article 6 (Right to Life)’ (n 73) para 2.

<sup>94</sup> *ibid* para 3.

<sup>95</sup> Statement by Lucian Reiher, interviewed on 10 August 2023 in Rabi Island, Fiji, during the Rainbow Warrior Ship Tour.

<sup>96</sup> Human Rights Committee, ‘General Comment No. 36: Article 6 (Right to Life)’ (n 73) para 62.



52. The CHRP held a seven-year inquiry into the role of “Carbon Majors” in causing and contributing to climate change. Their 2022 findings<sup>97</sup> noted the most recent IPCC reports,<sup>98</sup> and how extreme weather events such as the 2013 Super Typhoon Haiyan can destroy peoples’ rights to life and life with dignity.<sup>99</sup> Such events, the CHRP found, “prevent an individual from living a dignified life”<sup>100</sup> and “Filipinos carry the brunt of anthropogenic climate change by paying with their lives.”<sup>101</sup>

53. Joanna Sustento, one of many first-hand witnesses who testified to the CHRP about 2013 Super Typhoon Haiyan (locally Yolanda), told how:

*“On November 8, 2013, my family and I were in an epic battle amidst the wind, the rain and 15 ft. high storm surge brought by super typhoon Haiyan. That day left me with no choice but to witness my father slip through my grasp as he was being swallowed by the deluge; it was the day I watched my mother die in my arms and I was forced to make the most difficult decision of letting her go so I may live. In a span of two hours, just like the thousands of people in my community, I lost everything I’ve ever loved and known- Haiyan took away my parents, my eldest brother, sister-in-law, and three-year old nephew, leaving only me and my older brother as survivors.”*<sup>102</sup>

54. Veronica (“Derek”) Cabe, a survivor of the 2009 Typhoon Ketsana (locally, Ondoy) testified to the CHRP about the impacts on the right to dignity for her family:

*“...The floods have changed our lives. I felt like parts of our dignity was lost because we felt displaced. We felt displaced, we didn’t have our own space. We were forced to live with friends who were willing to share their homes with us. We were separated from each other. My nephews lived in another relative’s house. We relied on relief goods and donations for months. I recall every day I had to queue in line and wait for hours, half a day every day waiting for possible relief. We did not know if relief would come and then line up again for another day. And then relief foods were thrown at us, and I saw my neighbors struggling against each other just to get their share. It was chaotic that time. The government was not ready*

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<sup>97</sup> Commission on Human Rights of the Philippines (CHRP) (n 3) 30.

<sup>98</sup> Intergovernmental Panel On Climate Change, ‘IPCC WGI AR6 - Summary for Policymakers’, *Climate Change 2021 – The Physical Science Basis: Working Group I Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2021) <<https://www.cambridge.org/core/product/identifier/9781009157896/type/book>> accessed 14 March 2024.

<sup>99</sup> Commission on Human Rights of the Philippines (CHRP) (n 3).

<sup>100</sup> *ibid* 30.

<sup>101</sup> *ibid* 35.

<sup>102</sup> Statement by Joanna Sustento, shared with the authors via email 14 December 2023.

*for an Ondoy flood that time. And one important thing is that we had to borrow money from everyone because we did not have money.*"<sup>103</sup>

55. Marinel Ubaldo, a young survivor of Super Typhoon Haiyan (locally, Yolanda) also told the CHRP:

*"I went back to our house even though the winds were still strong, as I wanted to see if we still have a home to go back to. Though it was still dangerous for me to go back, I also wanted to save a box that has a sentimental value to me. That box was very special to me because it was filled with my personal things, my literary works, the medals and certificates I earned in school. For me, that box symbolizes who I am. My achievements, my self-worth. Nothing was left of our home and losing that box also felt like losing my identity, my dreams, my significance as a person."*<sup>104</sup>

56. As Erin Daly, Professor of Law at Delaware Law School and Director of the Dignity Rights Clinic, stated in her expert witness testimony to the CHRP:

*"Focusing on human dignity helps us see the interdependence, the interrelatedness, the indivisibility of our human rights, which is in fact how deprivation of rights are experienced by people. When a typhoon hits, it is not just independently the loss of a house, the loss of a school, the loss of family, the loss of health care, the lack of water, food insecurity or the end of hope that needs to be vindicated, but all of these churning together in combination and in turmoil that makes the experience of climate impacts so devastating and so threatening to human dignity."*<sup>105</sup>

57. Switzerland saw its five hottest summers between 2003-2022, accompanied by many additional, heat-related deaths, especially in older women.<sup>106</sup> The senior women who are leading this case, known as 'Klimaseniorinnen', are made more vulnerable to heat-related illnesses and death, as older women's bodies are less able to regulate their temperatures due to impaired thermoregulation.<sup>107</sup> They shared the impacts of the 2022 climate-induced heatwaves on their health and their ability to live with dignity. Many experienced temperatures of 34-40 degrees Celsius, which not only exacerbated existing health conditions, such as lymphoedema and

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<sup>103</sup> Statement by Veronica ('Derek') Cabe before the Commission on Human Rights of the Philippines, Fifth Inquiry Hearing, in London, England, on 7 November 2018. Extracted from Commission on Human Rights of the Philippines (CHRP) (n 3) 31.

<sup>104</sup> Statement by Marinel Ubaldo, extracted from Commission on Human Rights of the Philippines (CHRP) (n 3) 32.

<sup>105</sup> *ibid* 31.

<sup>106</sup> *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (communiquée)* (n 5) [Observations on the facts, admissibility and the merits, para 9].

<sup>107</sup> *ibid*.

low/high blood pressure, but induced feelings of depression as a result of being “shut in” at home, isolated from friends and family, sleeplessness, and inhibition of the daily activities necessary to their overall well-being.<sup>108</sup>

58. Elisabeth Stern, a 76-year old member of the Klimaseniorinnen, shares the impact of the summer 2022 heatwave on her dignity during a train journey one afternoon:

*“I sweat, pant like a dog...I can hardly breathe, I'm close to a panic when the doors close, I can hardly breathe. Please, cool air, where are you? What is happening with me? Why do I sweat so much, the sweat sticks to my face, back, t-shirt, panties, bra, everything will be soaked before long. It feels even hotter here than in Glarus, am I going to keel over? It's ringing in my ears. I've never had circulation problems, is that something now?! What is happening to me!? I urinate in my hiking pants! That is enough to make one cry, degradingly embarrassing...”<sup>109</sup>*

59. IPCC reports demonstrate how slow-onset climate impacts, such as coastal erosion and rising sea levels threaten the right to live in dignity. Climate and weather extremes are increasingly driving human displacement in the Americas, Africa and Asia, “with small island states in the Caribbean and South Pacific being disproportionately affected relative to their small population size (high confidence).”<sup>110</sup> Additionally, “[u]rban infrastructure, including transportation, water, sanitation and energy systems have been compromised by extreme and slow-onset events, with resulting economic losses, disruptions of services and negative impacts to well-being,”<sup>111</sup> particularly impacting “economically and socially marginalised urban residents (high confidence).”<sup>112</sup>

### ***3. The Rights of Children and Future Generations***

60. Human rights law is not time-limited to present generations. A duty to protect future generations was expressed in the Preamble of the UN Charter.<sup>113</sup> This duty has since been referred to as the intergenerational equity principle, included in at least 44 international environmental

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<sup>108</sup> *ibid* [KlimaSeniorinnen Submissions, Doc 7].

<sup>109</sup> *ibid* [Elisabeth Stern, extract from an email to the Klimaseniorinnen Schweiz on 10 November 2022; submitted to the Grand Chamber] (translated from German).

<sup>110</sup> Intergovernmental Panel on Climate Change (IPCC), ‘IPCC AR6 Synthesis Report - Summary for Policymakers’ (n 25) [A.2.5].

<sup>111</sup> *ibid* [A.2.7].

<sup>112</sup> *ibid*.

<sup>113</sup> UN Charter, Preamble.

instruments,<sup>114</sup> and is widely recognised by international and domestic courts.<sup>115</sup> The principle of intergenerational equity is commonly understood and has been defined in the UNFCCC as the duty to protect the climate system for present and future generations.<sup>116</sup> The 1972 Stockholm Declaration goes in depth into what must be protected for present and future generations and includes “the natural resources of the earth, including the air, water, land, flora and fauna”.<sup>117</sup>

61. In line with the UNFCCC and Stockholm Declaration, the 2023 Maastricht Principles on the Human Rights of Future Generations<sup>118</sup> assert: “The human rights of future generations must be understood, interpreted, and integrated within the evolving legal context recognizing humanity’s relationships with the natural world, and the best available science.”<sup>119</sup>
62. Article 2 of the United Nations Convention on the Rights of the Child (“UNCRC”) recognises children’s right to freedom from discrimination. In the climate context, this requires that States identify individuals and groups of children who need special measures and recognise and realise their rights to a safe climate. As with adults, climate change affects children unevenly, with vulnerable groups like Indigenous children, displaced children, those in poverty, and those with disabilities being disproportionately impacted by its adverse effects.<sup>120</sup> The specific obligations of States to protect children from discrimination based on their status as children are currently being litigated before regional and domestic courts.<sup>121</sup>
63. The UN Committee on the Rights of the Child’s General Comment No. 26 (CRC GC No. 26) on Children’s Rights and the Environment, with a Special Focus on Climate Change, calls for

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<sup>114</sup> Center for International Environmental Law, ‘Submission to the UN Special Rapporteur on Human Rights and the Environment’ Annex 2, 3 <<https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/SREnvironment/Child/CIEL.pdf>> accessed 14 March 2024.

<sup>115</sup> Center for International Environmental Law and others (n 75) para 121.

<sup>116</sup> UNFCCC, Art. 3.

<sup>117</sup> 1972 Stockholm Declaration on the Human Environment, Principle 2.

<sup>118</sup> The Maastricht Principles were formulated by a broad group of international law experts in academic institutions and civil society organisations from 2017 until the adoption of the Maastricht Principles on the Human Rights of Future Generations at an Expert Seminar hosted by Maastricht Centre for Human Rights on 3 February 2023. See: <https://www.ohchr.org/sites/default/files/documents/new-york/events/hr75-future-generations/Maastricht-Principles-on-The-Human-Rights-of-Future-Generations.pdf>

<sup>119</sup> 2023 Maastricht Principles, Preamble IV and XIV.

<sup>120</sup> “The impact of environmental harm has a discriminatory effect on certain groups of children, especially Indigenous children, children belonging to minority groups, children with disabilities and children living in disaster-prone or climate-vulnerable environments.” (Committee on the Rights of the Child, ‘General Comment No. 26 on Children’s Rights and the Environment, with a Special Focus on Climate Change’ (2023) para 14 <<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsqkirKQZLK2M58RF%2F5F0vHrWghmhZPL092j0u3MJAYhyUPAX9o0tJ4tFwwX4frsfflPka9cgF%2FBur8eYD%2BEeDmuoVnVOpjkwB9eiDayjZA>> accessed 14 March 2024 [CRC/C/GC/26].)

<sup>121</sup> UN Environment Programme, ‘Global Climate Litigation Report: 2023 Status Review’ (2023) <<https://wedocs.unep.org/20.500.11822/43008>> accessed 20 March 2024.

“urgent collective action by all States to mitigate greenhouse gas emissions, in line with their human rights obligations. In particular, historical and current major emitters should take the lead in mitigation efforts ... (i)nsufficient progress in achieving international commitments to limit global warming exposes children to continuous and rapidly increasing harms associated with greater concentrations of greenhouse gas emissions and the resulting temperature increases.”<sup>122</sup>

Further to the CCPR’s General Comment No. 36, considered above,<sup>123</sup> the CRC’s GC No.26 states that “the climate crisis is a form of structural violence against children and can cause social collapse in communities and families”.<sup>124</sup> In meeting their obligations under the UNCRC, States must ensure that their “(m)itigation objectives and measures should be based on the best available science and be regularly reviewed to ensure a pathway to net zero carbon emissions at the latest by 2050 in a manner that prevents harm to children” and in a way which “should reflect each State party’s fair share of the global effort to mitigate climate change”.<sup>125</sup>

64. Yesenia del Socorro Albino Sánchez from El Bosque, Mexico, shared the impacts of forced relocation due to climate change on the rights of her children:

*“Climate change has impacted the lives of all the people who live in the community, because it is our home. Many of us were born there, grew up there. I am 23 years old, I was born and grew up, just like all my children were, in El Bosque. I went to school in El Bosque, and we had a dining hall and a school. Because of climate change and sea level rise, it was destroyed; I had the illusion that my children would go to that dining hall. I would have liked them to participate as I participated in the community's activities. (...)*

*“You can see the sad faces of the children and it's very tough to see your child downhearted, saying "mummy I want my house" or "I want my friends". It is very sad to see your son and daughter so sad because he or she wants a normal life, not this notion of coming and going. One minute we are in El Bosque and the next minute we leave because it is dangerous to be in the community. They get tired of coming and going, of not being able to play, and of not knowing where they are going to live". "The children are always asking 'mummy, are they going to give us a house?' Because, even if we say yes, they figure everything out. Our children are*

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<sup>122</sup> Committee on the Rights of the Child (n 120) para 96.

<sup>123</sup> *ibid* paras 45 et seq.

<sup>124</sup> *ibid* para 35.

<sup>125</sup> *ibid* para 97.

*waiting for that relocation, because they know they will have a school, with a playground and a dining room; that's their illusion.*"<sup>126</sup>

65. The ICJ itself has recognised the concept of intergenerational justice or equity and held that the environment “represents the living space, quality of life and the very health of human beings, including generations unborn.”<sup>127</sup> In his Dissenting Opinion, Judge Weeramantry referred to “the principle of intergenerational equity as an emerging principle of contemporary international law.”<sup>128</sup> In the *Pulp Mills case*, Judge Cançado Trindade found that “in 2010, it can hardly be doubted that the acknowledgement of intergenerational equity forms part of conventional wisdom in international environmental law.”<sup>129</sup> In the *Whaling in the Antarctic* case, Judge Cançado Trindade also held that “inter-generational equity marks presence nowadays in a wide range of instruments of international environmental law, and indeed of contemporary public international law.”<sup>130</sup> The UN Human Rights Committee further applied the concept of intergenerational equity in two cases concerning climate change and human rights protection. In *Billy et al.*, the Committee found that present generations have a duty to act responsibly and ensure that future generations can meet their developmental and environmental needs,<sup>131</sup> and in *Teitiota v. New Zealand*, the Committee further noted that climate change and unsustainable development pose significant threats to the right to life for present and future generations.

66. Ingrid Skjoldvær is a 30-year-old Norwegian and Sámi woman from a small community in northern Norway and has been a climate advocate since adolescence. She is one of the young people who lodged a complaint to the European Court of Human Rights against Norway.<sup>132</sup> She is already witnessing the impacts of climate change on local communities, and her worry over the threats that climate change poses to the rights of future generations already manifests in her thinking about having children:

*“I worry a lot about what the future looks like. I was a child when I became aware of the threat of climate change. Now I’m an adult and my partner and I are at an age where we are starting to think about having children. This thought process and*

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<sup>126</sup> Statement of El Bosque community member, Yesenia del Socorro Albino Sánchez, extracted from El Bosque Amicus Brief to the IACtHR (n 4).

<sup>127</sup> *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226 at 251.

<sup>128</sup> *Legality of the Threat or Use of Nuclear Weapons (Dissenting Opinion Of Judge Weeramantry)*, p. 280.

<sup>129</sup> *Pulp Mills on the River Uruguay (Argentina v Uruguay), Separate Opinion of Judge Cançado Trindade, I.C.J. Reports 2010*, p. 80 at para. 122.

<sup>130</sup> *Whaling in the Antarctic (Australia v Japan: New Zealand Intervening), Separate Opinion of Judge Cançado Trindade*, at para. 47.

<sup>131</sup> *Billy et al. v. Australia (Communication No. 3624/2019)* (n 74) para 5.8.

<sup>132</sup> *Greenpeace Nordic and Others v. Norway (communiqué)* (n 6) Annex 1.

*decision is impacted by the fact that I worry about how my future children's life will be affected by climate change.*"<sup>133</sup>

67. The binding principle of intergenerational equity is also recognised at the Inter-American Court of Human Rights, especially concerning the Indigenous concept of the environment as a vital component of cultural heritage to be safeguarded for future generations.<sup>134</sup>

68. Tevaogali Elisala, a primary school teacher in Funafuti, Tuvalu, shares her concern about the ability of future generations to keep their vibrant culture and traditions in the face of climate change:

*"To have all the things that I had when I grew up. It's ours, it's my identity, it's my language, it's my place. I want my child to have that. And for my kids in the classroom, I want them to have that too. Yah. We teach them things that will help them in their future, but what future do they have if there is no place for them to come back home to where they can use their knowledge and skills to develop our country? Where would they use all those if we don't have a Tuvalu anymore? The reality is climate change is affecting them in the biggest way because they are our future generation."*<sup>135</sup>

69. Ella Marie Hætta Isaksen is a 26-year-old Sámi artist and environmentalist and is among the young people who have complained against Norway to the European Court of Human Rights. She described how climate change is affecting her and her people, who can no longer sustain themselves on salmon from the Tana River—a source of sustenance and tradition:

*"I feel a huge sorrow for the loss of the diversity of nature and of its ecosystems. In particular, I feel it inside when the areas I know well and have grown up in are altered by climate change... As long as I can remember, my family and I have fished in the river but due to the effects of climate change on the Barents Sea, the conditions for the salmon have deteriorated. And for this reason, my family and I have to refrain from using the river, in order to spare the salmon. But doing so, we lose an important source of sustenance. Still, the most painful part is that the traditions tied to the fisheries cannot be continued as previously."*<sup>136</sup>

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<sup>133</sup> *ibid.*

<sup>134</sup> *Mayagna (Sumo) Awas Tingni Community v Nicaragua* [2001] IACtHR Series C No. 79.

<sup>135</sup> Statement by Tevaogali Elisala, interviewed on 20 March 2023 in Funafuti, Tuvalu.

<sup>136</sup> Statement by Ella Marie Hætta Isaksen, extracted from *Greenpeace Nordic and Others v. Norway (communiquée)* (n 6) Annex 1.

70. In relation to climate change impacts on children's right to life, Guadalupe Cobos Pacheco from El Bosque, Mexico, shared her community's experience of how a storm put her children's lives at risk:

*"How climate change impacts our children is something very complicated, because by not having a school, by not having anything, their rights have been violated, and their physical integrity has been put in danger.... they have been in danger. For example, the night they took us out [to evacuate on November 1, 2023], they did not take us out in a timely manner before the tidal surge. Because of that, with the rain, our children's integrity was in danger, their lives were in danger. It was very difficult."*<sup>137</sup>

71. Yesenia del Socorro Albino Sánchez, also from El Bosque in Mexico, shared about the mental health impacts on children and their right to education:

*"My children have also been affected psychologically. Being locked up and not talking to anyone, not being able to go out. Besides, it is also very complicated for the children not to go to school, they only go online. And, it is not the same for a teacher to explain to the children and teach them, than just sending them homework online and us trying to explain it to the children. The teaching that a professional gives to the children is not the same as the teaching that you as a parent can give them. They need their classrooms, they need their school. It is very tiring for the children not to learn directly from a professional, from a teacher, since we often do not understand or do not know how to teach them. The children's education stagnates and does not advance."*<sup>138</sup>

72. The rights of children are impacted by climate change in more subtle but important ways as well. Judmar Emerenciana, age 26 and one of the Bonerian plaintiffs in the case against the Dutch government. He spent much of his childhood in nature, playing outside, and observed these changes to children's day-to-day lives:

*"Now, I look back on my childhood and think that it must be very different for children living in the current climate. It has gotten a lot hotter on Bonaire and I can feel that every day...It's also noticeable that you do not see many children playing outside. On the playground, the equipment often cannot be used because it will simply get too hot to touch. Playing outside – whether playing soccer,*

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<sup>137</sup> Statement by Guadalupe Cobos Pacheco (translated from Spanish), extracted from El Bosque Amicus Brief to the IACtHR (n 4).

<sup>138</sup> Statement by Yesenia del Socorro Albino Sánchez (translated from Spanish), extracted from El Bosque Amicus Brief to the IACtHR (n 4).



*exploring nature or being a Boy Scout – has become much more difficult because of this heat.*”<sup>139</sup>

73. Children’s right to health is impacted by extreme heat as they enjoy their daily activities. Tshepiso Mstweni of eMbalenhle Township in South Africa described the impacts on her daughter and children in her community:

*“I remember one time it was hot and my daughter was playing with her friends and it was really hot and she fainted due to the heat and she ended up in hospital, only to find that there were a lot of other kids who suffered the same fate. This is sad because there was nothing we as parents could do but be there for our kids and ever since that day she’s terrified of heat like me.”*<sup>140</sup>

74. The risk of children fainting from the heat occurs in a context of already strained public health infrastructure and where medicinal plants on which the community relied no longer grow. Tshepiso Mstweni notes: “our hospitals sometimes run out of equipment, so if you can’t afford to go to a private hospital then you are doomed.” She continues, “now you find a lot of plants that don’t grow anymore and our ancestors were able to go in the garden and get herbs in case a child/elder was sick, but that no longer happens.”<sup>141</sup>

75. In the same township, 21-year-old community activist, Khaya Mahlangu recalls a shift in not being able to play outdoors because of the risk of sunburn, brought by the changing climate:

*“Growing up, my brothers and I used to go to crop farms and play the whole day without having skin irritations from the sun. We used to steal sugar canes or sometimes sit under the trees and eat peaches all day long. Our mother was not very much concerned about us getting burns from the sun because back then the temperature did not go as high as it does nowadays. As time went on and years passed the weather started becoming strange to the point when it was summer our mother would not let us go play outdoors the whole day because she was scared that her little boys would get burns.”*<sup>142</sup>

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<sup>139</sup> Statement by Judmar Emerenciana, claimant in *8 Individuals and Greenpeace Netherlands v the Netherlands (communiquée)* [2024] The Hague District Court. Statement extracted from Complaint, available (in Dutch) at <<https://www.greenpeace.org/nl/klimaatzaak-bonaire-waarom-klagen-we-de-staat-aan/>> accessed 18 March 2024.

<sup>140</sup> Statement by Tshepiso Mstweni, interviewed on 23 February in eMbalenhle Township.

<sup>141</sup> *ibid.*

<sup>142</sup> Statement by Khaya Mahlangu, interviewed on 23 February in eMbalenhle Township.

76. Climate impacts on children’s right to health may affect their family life as well. Sharon Mbonani lives apart from her son, as his respiratory illness meant he could no longer live with her in their community.

*“I love living with my family but due to factors around climate change my mother and son have difficulty being in eMbalenhle due to health problems, this places so much strain emotionally because I’m separated from my right to being a mother and a daughter, my son doesn’t get the love he should from his mother because of the fear I have from his respiratory illnesses which pose as a danger to his life, which made me move him to Kwa-Thema in order for him to recover and have good health...I only get a few days out of the entire year to spend with my son because I want to preserve his life and this breaks my heart and affects my mental and emotional health.”<sup>143</sup>*

#### **4. The Rights of Women**

77. Those who identify as women face increased impacts of the “existing gender discrimination, inequality and inhibiting gender roles” due to climate change.<sup>144</sup> Extreme weather events kill more women than men, often linked to reasons such as looking after children, wearing clothes which inhibit movement, and being likely to be able to swim.<sup>145</sup> As stated by the Committee on the Elimination of Discrimination against Women (“CEDAW”):

“Situations of crisis exacerbate pre-existing gender inequalities and compound the intersecting forms of discrimination against, among others, women living in poverty, indigenous women, women belonging to ethnic, racial, religious and sexual minority groups, women with disabilities, refugee and asylum-seeking women, internally displaced, stateless and migrant women, rural women, unmarried women, adolescents and older women, who are often disproportionately affected compared with men or other women.”<sup>146</sup>

78. Environmental degradation and disasters are known for triggering domestic violence, forced marriage, human trafficking, and forced prostitution.<sup>147</sup> As recalled by CEDAW “sexual violence

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<sup>143</sup> Statement by Sharon Mbonani, interviewed on 23 February in eMbalenhle Township.

<sup>144</sup> Human Rights Council, ‘A/HRC/10/61: Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights’ (2009) para 45 <<https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F10%2F61&Language=E&DeviceType=Desktop&LanguageRequested=False>> accessed 21 November 2023.

<sup>145</sup> *ibid.*

<sup>146</sup> Committee on the Elimination of Discrimination Against Women, ‘General Recommendation No. 37 on the Gender-Related Dimensions of Disaster Risk Reduction in the Context of Climate Change’ (2018) 2.

<sup>147</sup> UN Environment Programme, ‘Gender and the Environment: A Preliminary Analysis of Gaps and Opportunities in Latin America and the Caribbean’ (2021) 26 <<https://wedocs.unep.org/handle/20.500.11822/34929>>.

is common in humanitarian crises and may become acute in the wake of a national disaster. In a time of heightened stress, lawlessness and homelessness, women face an increased threat of violence”.<sup>148</sup>

79. Eddie Huitarau, a programme manager for the Solomon Islands Rangers and the United States Forest Service Project, noted that the destruction of coastal sanitation infrastructure due to climate change can impact women in the community by putting them in situations where they are more vulnerable to sexual assault. Without this sanitation facility, they may need to travel further away to meet their basic needs:

*“In terms of infrastructures, we are on the low coast line. So we used to build the septic for the toilets. The two houses that...were washed away, it is a classical example of it...In the village, they used to go into the mangrove for sanitation purposes like the toilet. But there were some who had the opportunity to build their own infrastructure in terms of toilet and sanitation. But due to this climate change, it's also affecting, it destroys...the structures that were built. And then for women, it really affects them because that particular location that they use for a sanitation area was also washed away, affected. So they were more vulnerable to, you know, other things like that is not favorable to women...issues like rape.”<sup>149</sup>*

80. The burden of caregiving and domestic work often increases for women following disasters. The destruction of food stocks, housing and infrastructure such as water and energy supplies, coupled with gendered inequalities, increases vulnerability and mortality levels among women and girls and results in them having less time to engage in economic activities.<sup>150</sup>
81. Vinzealhar Nen of Papua New Guinea described (below at para. 128) how food insecurity in rural areas impacts unmarried daughters, forcing them into potentially unsuitable marriages, so that families can obtain dowry funds to support themselves when forced into urban areas to find work.
82. Papua New Guinea has been particularly affected by drought due to the increasingly negative effect of the El Niño Southern Oscillation phenomenon on the country’s climate.<sup>151</sup> The drought has impacted rural women’s right to water in several ways. Cressida Kuala, a women’s rights advocate in Mt. Hagen, Papua New Guinea, offered one example. She observed that drought and vanishing underground water sources force pregnant women in rural areas to walk further distances to fetch water, putting their health, lives, and babies at risk.

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<sup>148</sup> Committee on the Elimination of Discrimination Against Women (n 146) 56.

<sup>149</sup> Statement by Eddie Huitarau, interviewed on 7 November 2023 in Malaita Province, Solomon Islands.

<sup>150</sup> Committee on the Elimination of Discrimination Against Women (n 146) 67.

<sup>151</sup> World Bank, ‘Papua New Guinea’ (*World Bank Climate Change Knowledge Portal*) <<https://climateknowledgeportal.worldbank.org/>> accessed 15 March 2024.

*“Once they used to be at the underground waters, we have to walk a mile and distance to go and fetch water and it causes backache and pregnant woman they face problems and they can give birth on the way, because they need water to freshen up and...Feel healthy so that they can give birth to a healthy child and they have to walk this distance... Sometimes they give birth to children near the waterways, water well and the baby sometimes passed away, because the mother passed away too. It's a distance we walk to fetch water, because there's no water anymore, the lands are dried out.”*<sup>152</sup>

83. In Switzerland, Klimaseniorinnen members experienced the impacts of the summer 2022 heatwave on their rights to health and to private and family life in several ways. For Ursula Steiner, age 70, the heat brought painful lymphoedema (swelling of the legs), preventing her from leaving the house and participating in daily activities.<sup>153</sup> Kristina Weiss-Gysi, age 72, with artificial joints in her legs, the heat threatened her ability to walk, bringing inflammation, and the threat of another operation.<sup>154</sup> Véronique Mermoud, 77 years old, described that summer as “the year of confinement for me,” as she had to close all the shutters “and live in the dark for at least two months to keep cool.”<sup>155</sup> Similarly, Esther Ammann, age 70, described being “a prisoner in my own four walls” and a resulting “veritable summer depression.”<sup>156</sup> Irene Täuber, age 68 and otherwise physically healthy, described the heatwave’s impact on her physical and mental health:

*“This summer of 2022 was a difficult, stressful summer for me in many ways. For the first time in my life, the heat has affected me enormously...the heat reached a level that was frightening and incredibly exhausting for me as well. As the summer went on, I felt more and more exhausted and strained. I could no longer enjoy the beautiful weather in any way, no, it became a curse to me. (...) But what bothered me more than my unusually poor physical condition was my mental state. I was increasingly suffering from oppressive fears about the future in relation to what awaits us in connection with the climate catastrophe. Feelings of fear, hopelessness and powerlessness in the face of the lack of political will to act, dominated my everyday life. It cost me an immense amount of strength not to let myself not to fall*

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<sup>152</sup> Statement by Cressida Kuala, interviewed on 17 November 2023 in Mt. Hagen, Papua New Guinea.

<sup>153</sup> Statement by Ursula Steiner, extracted from *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (communiquée)* (n 5) [Doc 7, p. 71].

<sup>154</sup> Statement by Kristina Weiss-Gysi, extracted from *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (communiquée)* (n 5) [Doc 7, p. 86].

<sup>155</sup> Statement by Véronique Mermoud, extracted from *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (communiquée)* (n 5) [Doc 7, p. 53].

<sup>156</sup> Statement by Esther Ammann, extracted from *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (communiquée)* (n 5) [Doc 7, p. 4].

*into this dark hole, but to gather myself again and again and to mobilise positive energy through my relationships and my actions.*”<sup>157</sup>

## **5. The Rights of Persons Living with Disabilities**

84. Although one billion people are estimated to be persons with disabilities<sup>158</sup>, understood to include “long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”<sup>159</sup> Persons with disabilities are some of the most impacted by the climate crisis. They experience disproportionate levels of poverty and unemployment, lack access to transportation, education, healthcare, and other basic services, and are underrepresented in social and political institutions and spaces.<sup>160</sup>
85. The Office of the High Commissioner for Human Rights (“OHCHR”) has found that persons with disabilities are among “those most adversely affected in an emergency, sustaining disproportionately higher rates of morbidity and mortality, and are among those least able to access emergency support. Sudden-onset natural disasters and slow-onset events can seriously affect the access of persons with disabilities to food and nutrition, safe drinking water and sanitation, health-care services and medicines, education and training, adequate housing and access to decent work”.<sup>161</sup>
86. Under the 2006 UN Convention on the Rights of Persons with Disabilities (“UNCRPD”), States commit to “adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention”; “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities”; “take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes”; and “take all appropriate measures to eliminate discrimination on the basis of disability by any person, organisation or private enterprise”.<sup>162</sup>

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<sup>157</sup> Statement by Irene Täuber, extracted from *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (*communiquée*) (n 5) [Doc 7, p. 78].

<sup>158</sup> World Health Organization and World Bank, ‘World Report on Disability’ (2011) 29 <[<sup>159</sup> UN Convention on the Rights of Persons with Disabilities \(UNCRPD\), Art. 1.](https://www.who.int/teams/noncommunicable-diseases/sensory-functions-disability-and-rehabilitation/world-report-on-disability#:~:text=About%2015%25%20of%20the%20world's,a%20figure%20of%20around%2010%25.></a>.</p></div><div data-bbox=)

<sup>160</sup> UN Department of Economic and Social Affairs, ‘Disability and Development Report’ (2018) <[.](https://social.un.org/publications/UN-flagship-report-disability-7June.pdf)

<sup>161</sup> Office of the High Commissioner for Human Rights, ‘Analytical Study on the Promotion and Protection of the Rights of Persons with Disabilities in the Context of Climate Change’ (2020) para 5 < [\[A/HRC/44/30\].](https://www.ohchr.org/en/documents/thematic-reports/analytical-study-promotion-and-protection-rights-persons-disabilities)

<sup>162</sup> UNCRPD, Arts. 4(a)-(c), (e).

87. As stated by the OHCHR, “because they are disproportionately affected by climate change, persons with disabilities must be included in climate action. Their participation would allow for tailored climate action that addresses the specific concerns of persons with disabilities related to the adverse impacts of climate change”.<sup>163</sup>

88. Ellen Tamata, from Port Vila, Vanuatu, shares her experience as a woman living with a disability who uses a wheelchair. She coordinates a network called “Women I TokTok Tugeta Sunshine” which provides a “safe space for women and girls with disabilities in their activities and leadership in climate change”. She shares how during cyclones, such as Cyclone Pam in 2015, people with disabilities face accessibility issues in evacuation centres:

*“We are scared to come out of our homes because the evacuation centre is not accessible. Especially for wheelchairs, to the washroom. So, at the time, plenty of women were complaining because they had to use the buckets, and that is very sad. It was very crowded because we used classrooms and church houses as evacuation centres.”*<sup>164</sup>

89. Ms Tamata recognises that “people with disabilities” encompass a diversity of complex needs and ensuring that they are not only fully informed but can fully participate in decisions that affect them is vital in finding suitable solutions. She continues:

*“When we’re talking about people with disabilities, we’re talking about different kinds of impairment - deaf, low vision, speech, physical, intellectual and psychosocial...When people work with people with disabilities, they have to understand the environment, because we can’t just call them and put them in the evacuation centers - we have to identify their needs before moving them, we have to ask what their thoughts are around moving, and if they’re willing. That was a big problem I saw in 2015.”*<sup>165</sup>

90. Guadalupe Cobos Pacheco from the El Bosque community shared the increased vulnerability of older residents and people with disabilities when faced with extreme weather events:

*“Older adults and people with disabilities, who are a vulnerable population, have been even more impacted. For example, in the community there are some people*

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<sup>163</sup> Office of the High Commissioner for Human Rights (n 161) para 7.

<sup>164</sup> Statement by Ellen Tamata, interviewed on 9 July 2023 in Port Vila, Vanuatu during the Rainbow Warrior Ship Tour.

<sup>165</sup> *ibid.*

*with limited mobility, and when they have to flee as in the case of this Norte [weather event]<sup>166</sup>, we need a lot of help to evacuate them in time.*<sup>167</sup>

91. Kristina Weiss-Gysi of the Klimaseniorinnen in Switzerland detailed the impacts of extreme heat events like the one in 2022 on her mobility:

*“In this hot summer I had complaints that I had never had before. I have been limping since I was 14 years old. After 12 operations on various joints in my legs (four quite complicated artificial joints), I have to wear closed shoes to walk. This summer, I twice suffered inflammation of the big toe due to the heat accumulation in the closed shoes. According to my orthopaedist, inflammation of the toe is a risk factor for the existing artificial joints. Fortunately, after a longer period of care and after it became cooler again, the inflammation calmed down. My orthopaedic surgeon said that if another recurrence occurred, I would have to have another operation. In order to continue walking, heat is a threatening factor for me.”<sup>168</sup>*

## **6. The Right to a Clean, Healthy and Sustainable Environment**

92. States must ensure the protection of the right to a clean, healthy and sustainable environment (hereafter “the right to a healthy environment”), as proposed by UN Special Rapporteurs David Boyd and John Knox in 2018,<sup>169</sup> recognised by the General Assembly and the Human Rights Council and recognised in 156 countries at the regional and national levels.<sup>170</sup> The right to a healthy environment includes substantive elements such as “clean air; a safe and stable climate; access to safe water and adequate sanitation; healthy and sustainably produced food; non-toxic environments in which to live, work, study and play; and healthy biodiversity and ecosystems”, whereas the procedural elements include “access to information, the right to participate in

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<sup>166</sup> “The “Nortes” are mainly associated with wind intensity of 11–17 m/s (citation omitted), which range from mid-latitudes to the tropics, mainly affecting coastal cities of the Gulf of Mexico and particularly maritime activities due to the generation of high waves, considering that its effects can last up to two days after the passage of the cold front”. Mauro Cortez-Huerta and others, ‘Influence of Particulate Matter on Air Quality Due to “Nortes” Events in the Gulf of Mexico’ (2023) 14 Atmospheric Pollution Research 101889.

<sup>167</sup> Statement by Guadalupe Cobos Pacheco (translated from Spanish), extracted from El Bosque Amicus Brief to the IACtHR (n 4).

<sup>168</sup> Email sent by Kristina Weiss-Gysi, extracted from *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (communiquée) (n 5) [Doc 7, p. 86].

<sup>169</sup> John Knox was the first UN Special Rapporteur on Human Rights and the Environment. He and his successor, David Boyd, collaborated in producing the final report of Mr. Knox’s mandate. See John Knox and David R. Boyd, ‘A/73/188: Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment’ (2018) <<https://documents.un.org/doc/undoc/gen/n18/231/04/pdf/n1823104.pdf?token=H9n7ktAYICCROhuSrA&fe=true>>.

<sup>170</sup> UN General Assembly, ‘The Human Right to a Clean, Healthy and Sustainable Environment’ (n 74); Human Rights Council, ‘A/HRC/RES/48/13: The Human Right to a Clean, Healthy and Sustainable Environment’ (2021) <<https://documents.un.org/doc/undoc/gen/g21/289/50/pdf/g2128950.pdf?token=hhENpLf9as264I4gj8&fe=true>> accessed 15 March 2024.

decision-making, and access to justice and effective remedies, including the secure exercise of these rights free from reprisals and retaliation”.<sup>171</sup> Addressing the triple planetary threat of climate change, biodiversity and nature loss and pollution is essential to uphold human rights, including the right to a healthy environment.<sup>172</sup>

93. The eMbalenhle Township in South Africa is a region already experiencing the devastating impacts of industrial mining pollution, biodiversity and nature loss, climate change, as well as widespread poverty. Khehla Mahlangu, a 54-year-old community and environmental activist provided insights on how the community’s right to a healthy environment is affected:

*“I strongly believe that our immediate environment has mainly been affected by air pollution in the eMbalenhle region and later impacted by climate change effects. Since the advent of Sasol we have seen how our air quality has deteriorated and the quality of the soil impacted to the point of producing less fruits, vegetables and traditional herbs that we have been using as medication. Added to that we see more areas that have cracks due to mining activities and the soil is sinking in some places - showing that the ground has been deeply mined and impacted for mineral extraction. We have also noticed that most of the tailings (coal ash) is piling up in the area, and these tailings are all dumped on the western side of the Sasol Secunda plant which happens to be on the side of eMbalenhle - hence I refer to the spatial displacement as environmental racism because my township is a black township and the easterly wind blows ash towards our area, mainly since the plant started operating. So I believe that these polluting activities are contributing to climate change because we have noticed that with the passing of time climate change is taking effect as we speak. We cannot separate the Sasol pollution from the climate change impacts in my area.”<sup>173</sup>*

94. Jocelyn Naupa of Erromango in Vanuatu describes how the landscape has changed over thirteen years due to more frequent cyclones, heavy rains, and flooding.

*The cyclone brings too much rain, and the rain brings... makes big flooding here and we’ve got landslides all over the place... We’ve got plenty of heavy rain this past year, we’ve got plenty of rain and we’ve got the cyclone, like two or three cyclones causing big damage, like flooding. Because, the cyclone, when it comes,*

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<sup>171</sup> Office of the High Commissioner for Human Rights, UN Environment Programme, and UN Development Programme, ‘What Is the Right to a Healthy Environment? - Information Note’ (2023) <<https://wedocs.unep.org/bitstream/handle/20.500.11822/41599/WRHE.pdf?sequence=1&isAllowed=y>> accessed 15 March 2024.

<sup>172</sup> UN General Assembly, ‘The Human Right to a Clean, Healthy and Sustainable Environment’ (n 74).

<sup>173</sup> Statement by Khehla Mahlangu, interviewed on 23 February in eMbalenhle Township.



*it comes with rain and flooding. And then blow down trees, and spoils our gardens. All the crops in the garden will be damaged.*"<sup>174</sup>

95. Jocelyn Naupa is also responsible for the Erromango branch of the Women Tok Tok Tugeta. She describes the impact of extreme weather on women and children:

*"Many old women, you watch them sitting here and crying because of all the flooding. All of us, we cry. We're frightened because in two or three weeks time... this house might come out because the flooding is too strong."*

96. Lotomau Fiafia, former community leader and advisor to the government of Fiji, from Kioa, shared the impacts of climate change on the island since his childhood, including the loss of at least a hundred coconut trees:

*"Okay, let me tell you... you walk from there, here, before that, that land was right there. But that piece of land is about 150m long, 75m wide... Oh, it's close to 100 coconut trees... They were right out there, and all of a sudden the erosion, sand, coconut falls.*

*"The late '60s, I've seen the land further out there... I saw coconuts fall down because the sand under their roots... I was thinking, oh, maybe the tide was too high already after a little cyclone. That is the only thing I knew. But after that, another line of coconut falls. And then all of a sudden I come to realise that the whole piece of land has been taken away, eroded. And now it's nothing, it's water."*

*A Japanese person came here. It was an engineer. I went diving with him. He wanted to build a jetty. A wharf where the coffee shop is... a better anchorage for the tourism. So I went with him with our goggles and then we started diving. And then he saw roots of a coconut down in the water. So he dived and he picked it up and he said 'what's this I saw?' I said 'that was a shore where people walk'. The tourists come. They [would] walk on the shore collecting shells. Right out there where the boat is anchored."*<sup>175</sup>

97. Daniela Simal is an ecologist who grew up in Bonaire and among the plaintiffs in the case against the Dutch government. Her observations on the threat climate change poses to biodiversity loss in Bonaire reveal how not only the right to healthy environment is impacted in this context, but the right to culture as well:

*"Nature has changed a lot on Bonaire, I see. There is much less live coral, a lot of it is dead. The heat is causing more coral bleaching events. Coral is an animal that*

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<sup>174</sup> Statement by Jocelyn Naupa, interviewed on 12 July 2023 in Erromango, Vanuatu, during the Rainbow Warrior Ship Tour.

<sup>175</sup> Statement by Lotomau Fiafia, interviewed on 6 August 2023 in Kioa, Fiji, during the Rainbow Warrior Ship Tour.

*lives in symbiosis with an algae, when it gets very hot corals expel those algae. If the heat doesn't last too long the algae return to the corals, but if it lasts too long they stay away and the corals die. So the longer the water is too warm, the sooner the corals are affected. It has already changed tremendously compared to 10 years ago.*

*“Furthermore, there also seem to be fewer fish. And in the warmer water, diseases and infections can spread more easily among everything living in the ocean.*

*“Things are also changing on the land. There are many extremes of drought, heat and rainfall. Plants are not specialised to these. Development has also caused a lot of deforestation and reduced biodiversity. Biodiversity is important on several levels. The more biodiversity, the more resilient a place is. A place is then more resilient to climate change or other changes in circumstance. For example: if there are more trees, the soil is better retained. Then there is less erosion. If you have many individuals of the same species and little diversity in species, the system is very fragile. If that particular species is susceptible to, say, a disease or prolonged drought, there will not be many trees left when such a situation occurs. When you have a high diversity of trees in such a case, you have a bigger buffer due to species that are not susceptible to the particular disease or prolonged drought.*

*“Another factor here is that Bonaire has been colonised and plundered. Old trees were taken for timber. Wayaca trees, watapana trees and Brazilwood. This already put Bonaire at a 1-0 disadvantage in adapting to the effects of climate change. The Netherlands, among others, is also responsible for that. We were already behind, so now we have to come from much further afield to be at the same level as the Netherlands....*

*“When nature declines, it also affects culture and parts of it may be lost. This is then impossible to restore. If the coral reefs die, there are fewer (species of) fish, and fishing is an important part of Bonaire's culture. People have been fishermen for generations.”<sup>176</sup>*

## **7. The Rights to Health and Work**

98. Another right that enjoys customary status is the right to health, which is encapsulated in Article 25(1) of the UDHR: “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and

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<sup>176</sup> Statement by Daniela Simal, claimant in *8 Individuals and Greenpeace Netherlands v the Netherlands (communiquée)* [2024] The Hague District Court. Statement extracted from Complaint, available (in Dutch) at <<https://www.greenpeace.org/nl/klimaatzaak-bonaire-waarom-klagen-we-de-staat-aan/>> accessed 18 March 2024.

necessary social services.”<sup>177</sup> Paragraph 2 of Article 25 further provides that mothers and children are “entitled to special care and assistance”.<sup>178</sup> Article 12 of the ICESCR confirms that the State parties “recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”, and explicitly mentions that the “improvement of all aspects of environmental and industrial hygiene” is one of the key steps to be taken by States to achieve the full realisation of this right.<sup>179</sup>

99. The impacts of climate change on the right to health are diverse and can be vividly seen in the lives of women in particular. Racheal Buka from Wabag, Enga Province in Papua New Guinea speaks to how the disappearance of traditional medicines due to climate change affects her community:

*“We have to go to the hospital whenever we are sick, as if all the medicines that are made by men in the factories, we rely on them now. We don't rely on the medicines from the bush as we used to, and the bushes are gone and the medicines are gone, and we are going to the hospitals all the time to get medicine, and it's very hard for me to have money to... If I don't have money, I just stay at home, and many people died without having enough money to go to the hospital.”*<sup>180</sup>

100. Similarly, in the eMbalenhle Township of South Africa, Khehla Mahlangu observed that a reduction in soil quality has meant a decline in traditional herbs the community relies on for medicine. He also notes that “traditional healers are no longer able to get their traditional healing plants in the surrounding Secunda area. They have to travel further out in search of their herbs so that they can provide medication, compared to as they used to do.”<sup>181</sup> Guadalupe Cobos Pacheco, from the El Bosque Community in Mexico, also shared the impacts of climate change on her access to insulin:

*“With regard to health, of course our health has been affected. For example, in my case, I need insulin. These days, sometimes I take insulin and sometimes I don't because I don't have a place to keep it, I don't have a place to refrigerate it. It has been very difficult, now I have to go to Frontera [the capital of the municipality where the community of El Bosque is located] every day in order to be able to take it, to find a refrigerator to keep it in, and with the intermittent light that comes and goes, it becomes very difficult, as it is not something we can control”.*<sup>182</sup>

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<sup>177</sup> UDHR, Art. 25(1).

<sup>178</sup> UDHR, Art. 25(2).

<sup>179</sup> ICESCR, Art. 12(2)(b).

<sup>180</sup> Statement by Racheal Buka, interviewed on 16 Nov 2023 in Mount Hagen, Papua New Guinea.

<sup>181</sup> Statement by Khehla Mahlangu, interviewed on 23 February in eMbalenhle Township.

<sup>182</sup> Statement by Guadalupe Cobos Pacheco (translated from Spanish), extracted from El Bosque Amicus Brief to the IACtHR (n 4).

101. Older adults, especially women such as the Klimaseniorinnen in Switzerland, face increased health issues due to climate-related heatwaves and their decreased ability to regulate heat. Ursula Steiner, age 70, recounts how heatwaves in the summer of 2022 impacted her blood circulation:

*“Last summer was a time of suffering for me and I fear that the next one will not be any better. With the unusually high temperatures, I suffer from lymphoedema, which has already led to very painful erysipelas [skin infection].”*<sup>183</sup>

102. Kjellid Masoud Kroon, age 27 and one of the plaintiffs from Bonaire in the case against the Dutch government, observed that Bonaire is much hotter now, and one fan can no longer provide adequate cooling on hot days. He described the impact on their mother, as well as others who cannot afford air conditioning or electricity for cooling:

*“My mother, who has health problems, now needs three fans from different angles to keep herself cool. She increasingly shares her frustrations about this with me. It is sometimes hard for her to have to sit at home in the heat. She does not have air conditioning, like many others on the island. People who are not very well off financially often cannot afford the air conditioning themselves, but neither can they afford the electricity to use it. My mother also experiences that electricity costs are very high when using the fans.”*<sup>184</sup>

103. Miralis Engelhart is a nurse in Bonaire, who sees the impact of extreme heat on her patients’ right to health:

*“I notice that patients at my work suffer a lot from the heat. I work with chronically ill patients and they are not allowed to drink much but because of the heat, they start drinking more than allowed anyway with all the consequences. They get more health problems with consequences of overfilling and heart problems.”*<sup>185</sup>

104. Furthermore, she sees a link between climate change, and structural issues such as public health, and poverty and how these intersect in people’s lives, narrowing the range of choices available to them:

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<sup>183</sup> Statement by Ursula Steiner (translated from German), extracted from *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (communiqué)* (n 5) [Doc 7, p. 71].

<sup>184</sup> Statement by Kjellid Masoud Kroon, claimant in *8 Individuals and Greenpeace Netherlands v the Netherlands (communiqué)* [2024] The Hague District Court. Statement extracted from Complaint, available (in Dutch) at <<https://www.greenpeace.org/nl/klimaatzaak-bonaire-waarom-klagen-we-de-staat-aan/>> accessed 18 March 2024.

<sup>185</sup> Statement by Miralis Engelhart, witness in *8 Individuals and Greenpeace Netherlands v the Netherlands (communiqué)* [2024] The Hague District Court. Statement extracted from Complaint, available (in Dutch) at <<https://www.greenpeace.org/nl/klimaatzaak-bonaire-waarom-klagen-we-de-staat-aan/>> accessed 18 March 2024.

*“I see a clear link between poverty, climate change and public health. People who are poor cannot do much. They can't use a fan or air conditioner and continue to suffer from the heat because of this. This affects their health. Some people don't have a fridge, but because of the heat, you need cold water to cool down the body. They don't have that then. Besides, their food products also spoil because of the heat and the fact that they cannot put the products in a fridge. The heat makes you have to shower more and thus use more water. You also have to use more electricity. So the water and electricity bills become more expensive. Because poor people cannot afford it, they face mental health problems such as stress. Crime also increases because if people can't pay their water and electricity bills, they commit robberies to get money so they can use it for their difficult home situation.”<sup>186</sup>*

105. Farmer Onnie Emerenciana from Bonaire describes how his rights to health and work are interconnected and impacted by hotter conditions:

*“It is much hotter these days than it used to be. The air is also very hot. Although we are surrounded by the sea and that brings fresh air, as soon as the sea air hits land, it becomes hot air. This has effects on humans, animals and plants. For instance, I have to start work very early because I cannot stay in the heat all day. Sometimes I start work at 5am and have to stop around 11am. From 3 or 4 in the afternoon, I can then only work again. If you do work during that time, it is not healthy for you because of the sun and heat. It used to be different, when I was outside between 11am and 3pm and could also work well. I also have to adapt to the dryness and heat: you have to wear a cap or hat outside against sunburn and you have to use a lot more cream to keep your skin a bit moist. Otherwise, your skin dries out completely and you get dry skin, fungi and other kinds of skin diseases.”<sup>187</sup>*

106. Helen Angela is a 51 year old medical laboratory worker, also from Bonaire. She demonstrates how unusually heavy rainfall not only compromises Bonaire's urban road infrastructure, but negatively impacts people's well-being as they try to access the hospital:

*“Besides the heat, water is also a big problem. In recent years, I feel it rains a lot more than it used to. Last weekend (the weekend of 5 and 6 November 2022), for example, it rained incredibly hard all the time. The hospital, Fundashon Mariadal, was no longer easily accessible because all the streets and pavements around the*

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<sup>186</sup> *ibid.*

<sup>187</sup> Statement by Onnie Emerenciana, claimant in *8 Individuals and Greenpeace Netherlands v the Netherlands (communiquée)* [2024] The Hague District Court. Statement extracted from Complaint, available (in Dutch) at <<https://www.greenpeace.org/nl/klimaatzaak-bonaire-waarom-klagen-we-de-staat-aan/>> accessed 18 March 2024.

*hospital were flooded. You had to take off your shoes and wade through the water to get inside. And that happens every time it rains a bit more.*<sup>188</sup>

107. In the course of her work, Helen Angela has also observed the impact of extreme heat on people's right to live with dignity when she provides in-home care:

*"I occasionally see harrowing situations. People who have everything they need in a very small room and stay at home all the time. It is often difficult to give these people proper help, and sometimes they don't want it themselves."*<sup>189</sup>

108. States must protect and promote the right to work, which is protected through various international agreements, including Article 6 of the ICESCR.<sup>190</sup> Climate change affects the right to work and livelihood both directly and indirectly. Direct impacts result from the degradation of natural resources that sustain livelihoods, such as decreased fish catch.<sup>191</sup> As stated by Willie Kenneth, from Pele Island in Vanuatu, many communities in the Pacific rely on the fish catch as their primary source of sustenance and income and have seen a big difference in the amount of fish over the years:

*"There is a big difference. Before, we could see many fish around here, but there are hardly any fish in the shallow area. You have to go far out now to catch the fish. Because our community is very small and we live on a small island, we depend entirely on marine resources. We don't do much gardening. We depend on marine resources. Our mamas go to the market on the weekend to sell. They sell fish, shells, octopus. But now it is hard."*<sup>192</sup>

109. The adverse effects of climate change on women's livelihoods, particularly of rural women like those on Pele Island, have been noted at the UN treaty body level. Indeed, climate-related disasters affect women, particularly those living in poverty, by directly impacting their livelihoods. As stated by CEDAW:

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<sup>188</sup> Statement by Helen Angela, claimant in *8 Individuals and Greenpeace Netherlands v the Netherlands (communiquée)* [2024] The Hague District Court. Statement extracted from Complaint, available (in Dutch) at <<https://www.greenpeace.org/nl/klimaatzaak-bonaire-waarom-klagen-we-de-staat-aan/>> accessed 18 March 2024.

<sup>189</sup> *ibid.*

<sup>190</sup> UDHR, Art. 23; ICESCR, Arts. 6-8; ICCPR, Art. 8(3)(a); ICERD, Art. 5(e)(i); CEDAW, Art. 11(1)(a); UNCRC, Art. 32; ICRMW, Arts. 11, 25, 26, 40, 52 and 54; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"), Arts. 6-7.

<sup>191</sup> Intergovernmental Panel On Climate Change, 'Chapter 3: Polar Regions', *Special Report on the Ocean and Cryosphere in a Changing Climate* (2019) Executive Summary. ["The projected effects of climate-induced stressors on polar marine ecosystems present risks for commercial and subsistence fisheries with implications for regional economies, cultures and the global supply of fish, shellfish, and Antarctic krill (high confidence)."]

<sup>192</sup> Statement by Willie Kenneth, interviewed on 7 July 2023 on Pele Island, Vanuatu, during the Rainbow Warrior Ship Tour.

“The burden of caretaking and domestic work often increases for women following disasters. The destruction of food stocks, housing and infrastructure such as water and energy supplies and an absence of social protection systems and health care services all have specific consequences for women and girls. The result of these gendered inequalities is that they increase the vulnerability and mortality of women and girls and frequently leave them with less time to engage in economic activities or to access the resources, including information and education, which are necessary for recovery and adaptation....”<sup>193</sup>

110. In the impoverished eMbalenhle Township and surrounding Secunda area of South Africa, communities already experience serious impacts on their right to health from industrial mining activities, which in turn, impacts their right to work, even when employment opportunities may be available. Community activist and mother of two, Sharon Mbonani, with a qualification in welding but unemployed, described the situation:

*“With the illnesses that go with the causes of climate change we can't find sustainable jobs because we fail medical tests that are done before employment - for example, Sasol is in our backyard for employment, however, locals usually fail medical employment test because they have been inhaling toxins throughout their childhood thus failing these tests.”*<sup>194</sup>

111. In addition to the loss of economic opportunities due to the immediate impacts of climate change on the availability of natural resources, climate-related hazards also indirectly affect livelihoods by exacerbating other stressors. As noted by UNEP, climate change may contribute to “(i) increases in the prices of food, energy, and other critical commodities; (ii) political instability and large scale conflict; and (iii) individual and household-level disturbances”.<sup>195</sup>

112. Slyney Tau, a farmer from Central Province in Papua New Guinea observed the unpredictability of rainfall patterns, the lack of water, and the hot climate directly impact not only what crops he can grow but the size and yield of perennial crops like cassava and yam have decreased. He also notes that if farmers want to grow new or introduced crops, like Chinese cabbage and eggplants, they do not grow well in the region and require costly fertilisers.<sup>196</sup>

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<sup>193</sup> Committee on the Elimination of Discrimination Against Women (n 146) paras 62-63.

<sup>194</sup> Statement by Sharon Mbonani, interviewed on 23 February in eMbalenhle Township.

<sup>195</sup> UN Environment Programme, ‘Climate Change and Human Rights’ (2015) <<https://www.unep.org/resources/report/climate-change-and-human-rights>>.

<sup>196</sup> Statement by Slyney Tau, interviewed on 15 November 2023 in Port Moresby, Papua New Guinea.

113. Meanwhile, in the eMbalenhle Township and surrounding Secunda area of South Africa, communities already experience the human rights impacts of environmental pollution on their soil and air quality, access to clean water and farming land from industrial coal mining activities, that are now compounded by climate impacts, including unpredictable rainfall patterns and extreme heat. Community and environmental activist, Khehla Mahlangu described how climate change impacts exacerbate existing stressors in his household and community:

*“I can confirm that climate change has and continues to impact my daily life. For example, food items have increased in a very dramatic way and that has driven the cost of living to be exceptionally high. So as poor people, we are the most affected people. Added to that is the burden of taking care of the household itself. If my house is affected by heavy rains, because of the high cost of living, I cannot afford to repair my house under those circumstances. Whereas previously we could forage in the fields for food so as to supplement our food, now that is no longer possible...*

*Currently it makes it difficult to grow food in my area, and or yard, because to get a better yield one needs to buy manure and I cannot afford that nor can most people. On the same note, our soil is seriously polluted because of the pollution in the area. Affordability is my biggest challenge to realise this.”<sup>197</sup>*

114. In Mexico, Yesenia del Socorro Albino Sánchez’s family was displaced from their community in El Bosque due to flooding and no longer have a home. She described the cascading stressors of bad weather on her household:

*“If the weather is bad, our husbands don't fish. Normally, when we were at home, you didn't have to worry so much, because you would throw the nets out and catch a little fish to eat with your family. But now, because we have to pay rent, if they can't fish, we don't have money for the rent. As mothers, we have tried to help our husbands by selling pork rinds, but it's not enough, it's not like a fixed salary. There are 11 of us in the family and only two salaries. There are a lot of expenses to pay, and having to get money for rent and food, is not enough, and this is very frustrating.”<sup>198</sup>*

115. Judmar Emerenciana, a 26-year-old artist, tour guide and taxi driver from Bonaire describes how flooding in the south of the island would impact his right to work:

*“I am particularly worried about the southern part of the island flooding because it will directly affect my livelihood. Apart from being an artist and graphic*

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<sup>197</sup> Statement by Khehla Mahlangu, interviewed on 23 February in eMbalenhle Township.

<sup>198</sup> Statement by Yesenia del Socorro Albino Sánchez (translated from Spanish), extracted from El Bosque Amicus Brief to the IACtHR (n 4).



*designer, I work as a taxi driver and tour guide. The tourists are very interested in the southern part of the island and I want to show them the place where our ancestors were (the slave huts and salt pans). If the southern part of Bonaire floods, this means I cannot bring tourists there any longer. I will have to start competing with taxi drivers who operate mostly in the north of the island. It is likely this will affect my income.*<sup>199</sup>

## **8. The Rights to Water and to Food**

116. There is no express mention of the right to water in the UDHR or the core UN human rights treaties. However, in 2010, the UN General Assembly recognised “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights”.<sup>200</sup> The right to water was subsequently the subject of General Comment 15 of the Committee on Economic, Social and Cultural Rights, which grounded the right on Articles 11 and 12 of the ICESCR.<sup>201</sup> Similarly to the General Assembly, the Committee also found that the right to water was implied in the right to life and to live with dignity (or, in the wording of Article 11 of the ICESCR, the right to an adequate standard of living) and in the right to health (right to the highest attainable standard of health, in the wording of Article 12 of the ICESCR).

117. Eddie Huitarau of Malaita Province in the Solomon Islands shared the impacts of climate change on access to water:

*“We live on the coast where the fresh water system comes from, but nowadays, a lot of this fresh water no longer tastes fresh like before. And the other thing is our swamp taro.<sup>202</sup> This sort of ecosystem is no longer there; the water is coming into it, and the salty water is affecting the swamp taro very much. And it really affects women who are doing most of the work, like cutting it.”<sup>203</sup>*

118. Jocelyn Naupa of Erromango in Vanuatu shared the impacts of a lack of water in the wake of cyclones:

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<sup>199</sup> Statement by Judmar Emerenciana, claimant in *8 Individuals and Greenpeace Netherlands v the Netherlands (communiquée)* [2024] The Hague District Court. Statement extracted from Complaint, available (in Dutch) at <<https://www.greenpeace.org/nl/klimaatzaak-bonaire-waarom-klagen-we-de-staat-aan/>> accessed 18 March 2024.

<sup>200</sup> UN General Assembly, ‘A/RES/64/292: The Human Right to Water and Sanitation’ (2010) <<https://documents.un.org/doc/undoc/gen/n09/479/35/pdf/n0947935.pdf?token=8GnGTbfvi0AlXgALEs&fe=true>> accessed 15 March 2024.

<sup>201</sup> Committee on Economic, Social and Cultural Rights, ‘General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)’ (2003) <<https://www.refworld.org/legal/general/cescr/2003/en/39347>> accessed 15 March 2024.

<sup>202</sup> Root vegetable cultivated in Africa, East Asia, South Asia, South East Asia and the Pacific Islands

<sup>203</sup> Statement by Eddie Huitarau, interviewed on 7 November 2023 in Malaita Province, Solomon Islands.

*"After the cyclone...We got plenty of diarrhoea. And no clean water. How is there no clean water? We need the water ... so we have to search for all the water tanks, but the water tanks are finished now because of the sun. It's dry season. Diarrhoea comes after that and there's a disease that people scratch their body."*<sup>204</sup>

119. In the eMbalenhle Township in the province of Mpumalanga, South Africa, the communities' rights to water and health are already at risk from the pollution of industrial mining activities. Community activist, Tshepiso Mstweni described how heavy rainfall exacerbates these risks and imposes further financial burdens on households:

*"Drinking from the tap is no longer safe because the water is dirty and it's a real tragedy because others can't afford to buy water [purified water] but they depend on the one the government [municipality] is providing them with and most people get sick (e.g., runny stomachs, tooth decay, etc.). It's worse when it rains because the rain destroys everything & then, that rain water [acid rain] goes to our dams that transfer water to our reservoirs and what is used to clean water is not making the water better but rather people still get sick."*<sup>205</sup>

120. In the same community, Fana Sibanyoni described how the rights to water and food are interconnected:

*"However, the impacts resulting from poor water quality to proper access to water has an added challenge of increasing food prices and other services in my region. For example, the Cape Provinces in South Africa are water scarce regions and producers of certain agricultural products that get marketed across the country. In this instance, those agricultural products come with a higher price tag due to the climate change impacts in those provinces."*<sup>206</sup>

121. Furthermore, she notes that "Food prices are escalating almost every month, this also affects the price of other services such as transport. This is bad for us as most people are living below the government proclaimed poverty line."<sup>207</sup>

122. The UDHR and the ICESCR protect the right to food as part of the right to a dignified standard of living.<sup>208</sup> The Committee on Economic, Social and Cultural Rights ("CESCR") states that this right is realised based on availability, accessibility and adequacy: "when every man, woman and

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<sup>204</sup> Statement by Jocelyn Naupa, interviewed on 12 July 2023 in Erromango, Vanuatu, during the Rainbow Warrior Ship Tour

<sup>205</sup> Statement by Tshepiso Mstweni, interviewed on 23 February in eMbalenhle Township.

<sup>206</sup> Statement by Fana Sibanyoni, interviewed on 23 February in eMbalenhle Township.

<sup>207</sup> *ibid.*

<sup>208</sup> UDHR, Art. 25(1); ICESCR, Art. 11(1).

child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement.”<sup>209</sup> As recognised by the Special Rapporteur on the right to food, climate change impacts all three elements of the right to food. Rising temperatures and increased frequency of extreme weather events show “the negative impact of climate change on crop, livestock, fisheries and aquaculture productivity on food availability will have significant global reach”.<sup>210</sup> Rising sea levels will inundate coastal agricultural lands and lead to increased groundwater salinization, affecting the quantity and quality of water available for agricultural production. Furthermore, there is “(a) consensus (...) that climate change will have a negative impact on fisheries’ production, especially in developing countries in tropical areas”.<sup>211</sup>

123. Winnie Batty, from Pele Island, Vanuatu, expressed how she relies mainly on fish and seafood as a source of food and the reason for the increased conservation of fish:

*“Yes there is not much fish like 20 to 30 years ago. I think we need to conserve. 20-30 years ago, there were more fish and 10 years ago, we decided on the conservation agreement.”*<sup>212</sup>

124. Ms Batty also shared how the loss of crops as a result of cyclones, including the loss of thousands of bananas, affected her and her family’s food security:

*“I think it’s three months, the food security. Maybe in October, November, we can see one banana again.(...) Before the cyclone, if you come we have bananas...thousands(...)The cyclone broke the tops, so they cut them in half, so it comes up a little and... but the fruits always come from here... They are just growing up again, but no fruits.”*<sup>213</sup>

125. Across the Pacific, individuals and communities relying on fishing have expressed the same impact of climate change on fisheries and food availability. Lucian Reiher of Rabi, Fiji shared the following:

*“Before when they go fishing, my father when they went fishing, there, they come back with plenty of fish, but now it’s hardly. Like when they go, sometimes they catch fish and sometimes no catch. Before plenty fish, when they went fishing - they*

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<sup>209</sup> Committee on Economic, Social and Cultural Rights, ‘General Comment No. 12 on the Right to Adequate Food (Art. 11)’ (1999) para 6 <<https://www.ohchr.org/en/documents/general-comments-and-recommendations/ec1219995-general-comment-no-12-right-adequate-food>> accessed 17 March 2024 [E/C.12/1999/5].

<sup>210</sup> Hilal Elver, ‘A/70/287: Right to Food’ (2015) para 7 <<https://documents.un.org/doc/undoc/gen/n15/245/75/pdf/n1524575.pdf?token=UBeUbEXQbk9zBKLLbY&fe=true>> accessed 17 March 2024.

<sup>211</sup> *ibid* para 11.

<sup>212</sup> Statement by Winnie Batty, interviewed on 7 July 2023 on Pele Island, Vanuatu, during the Rainbow Warrior Ship Tour.

<sup>213</sup> *ibid*.

*catch ..plenty to catch. But now when they go down to the sea, they get only a few with them.*”<sup>214</sup>

126. Similarly, Eddie Huitarau of Malaita Province in the Solomon Islands shared how the climate crisis is impacting the availability of mangrove beans, a key source of protein for many Pacific Islanders:

*“And we have mangrove ecosystem. Mangrove bean. Used as a food for our tribes and families in the past. And then, we continue to use it until today as a food, a protein. Normally women would go and pick up this mangrove bean...It's delicious food for family. In the past when the mangrove ecosystem was still intact, and there was no sea level rise and all this, at any time if the women wants to get down there to that mangrove ecosystem, they can pick up how many bags or baskets of mangrove beans, unlike now...The area was quite subject to that climate crisis - there's an erosion going on... Just a couple of years back, we had this experience that normally when women get down to that area to pick this mangrove, they hardly find any because these mangrove beans are normally washed away just because of the high seas there. And not only that, the mangrove trees itself are eroded.”*<sup>215</sup>

127. Eddie Huitarau further talks about the impacts of the climate crisis on the availability of shellfish and fish catch:

*“I think [there] are a lot of losses that relates to climate change that we experience over time here. One is where this reef just outside of the village where women normally go to pick the shells, men can go and do fishing quickly. It's no longer there because the water level is very high now. So women can no longer walk. Unlike in the 1980s, 1990s, women can just walk on the reef. Yeah. Access to food...”*<sup>216</sup>

128. The impacts on the rights to food and culture are also closely intertwined. Community worker Vinzealhar Nen of Port Moresby in Papua New Guinea describes the challenge of practising the custom of allowing the land and ocean to “rest” amid the need to put food on the table and other needs:

*“And what happens is that ecosystems are regenerated when you allow that part of the ocean to rest, so those are some of the things that we struggle to bring back*

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<sup>214</sup> Statement by Lucian Reiher, interviewed on 10 August 2023 in Rabi Island, Fiji, during the Rainbow Warrior Ship Tour.

<sup>215</sup> Statement by Eddie Huitarau, interviewed on 7 November 2023 in Malaita Province, Solomon Islands.

<sup>216</sup> *ibid.*

*because due to the economic demands of society itself, people have to go to school, people have to put food on the table, and because of the challenges that we face agriculturally with the climate crisis, it's hard for us to depend solely on our land and our oceans for food, so then they have to overfish, they have to overproduce on the land. The practice of three to seven years we no longer do it because of the demands in wanting to stay alive and wanting to survive against this crisis and also population increase.*"<sup>217</sup>

129. Similarly, in Bonaire, the rights to food and culture are inexorably linked. Kjellid Masoud Kroon shares that drier conditions on the island threaten the maize harvest, and the traditions of the maize harvest festival:

*"The harvest of maize, among other things, used to be linked to Bonaire's biggest harvest festival, the Dia de Rincon. Huts were then built from the corn stalks and leaves. The Dia de Rincon still exists, but there is almost no corn left to make the traditional huts for that day. Now there are plastic and metal tents. You do lose something of the tradition as a result: at some point, no one will remember how the huts used to be woven, because those skills have not been passed on.*"<sup>218</sup>

130. When communities that rely on the ocean can no longer remain there because of a lack of food sources, they are pushed into urban areas, which may bring new challenges. Vinzealhar Nen of Port Moresby in Papua New Guinea describes a scenario with domino effects:

*"So if there's no more food, what's the point of staying there? They have to move. So then they move out. And for these communities, they have to send people out into the cities to get jobs. And the problem with limited education and finding jobs is that the best you can do is either be a security guard or a shop assistant. And I would say that our pricing, our regulations are not that strong in protecting the rights of people. So then if, for example, someone comes and works in the city as the security guard, they're looking at three Kina 50 an hour, which is, if you look at it in US dollars, that's like 25 cents an hour, which is not enough. And they're expected to work 80 hours a week. So it's become a struggle for the people. If they cannot fish, they have to come out and look for jobs. If they cannot look for jobs, they have to sell their daughters into marriage...And sometimes it's a matter of desperation, where they don't care who that daughter marries. It's like, marry her,*

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<sup>217</sup> Statement by Vinzealhar Nen, interviewed on 15 November 2023 in Port Moresby, Papua New Guinea

<sup>218</sup> Statement by Kjellid Masoud Kroon, claimant in *8 Individuals and Greenpeace Netherlands v the Netherlands (communiquée)* [2024] The Hague District Court. Statement extracted from Complaint, available (in Dutch) at <<https://www.greenpeace.org/nl/klimaatzaak-bonaire-waarom-klagen-we-de-staat-aan/>> accessed 18 March 2024.

*I want my money. I want to be able to feed my family, feed my other children, all that. So it's hard for the people.*”<sup>219</sup>

131. In Bonaire, many plaintiffs in their case against the Dutch government describe the climate impacts such as drought and heat on their right to food. Jackie Bernabela observed the impact on household food security:

*“The heat also has an impact on growing vegetables, seeds no longer germinate or only germinate much later. People used to cultivate a garden and eat what grew: mango, tamarind, soursop. Now that is no longer there.”*<sup>220</sup>

132. Onnie Emerenciana, age 60, manages a farm that has been in his family since the nineteenth century, and he grows crops such as watermelon, spinach and beans for eating at home, and for sale at the market. Climate impacts of drought and unpredictable weather patterns affects both his rights to food and livelihood. He says:

*“Being a farmer today is very different from what it used to be, for many reasons. First, I always have problems getting enough water...now. In fact, in some periods it doesn't rain for a long time and the rainwater is important because you can collect it and use it. When the water runs out, it is a big problem because if you don't water the plants for one day, they die. Because of the bright sunlight and strong winds, evaporation is twice as fast. This is very different from how it used to be...*

*The climate also used to be a lot more predictable. For instance, the wind actually only turned during hurricane periods. Now the wind turns continuously. As soon as there is a high pressure area in Venezuela, we now also get water from the south, which we were not used to. We have to continuously monitor the weather forecasts. Before, you also had fixed periods to plant because you knew when the rainy periods were. Now you don't know when it rains. In hurricane periods, you can also expect all sorts of things. The other day a storm passed by but it didn't rain a drop. You can no longer rely on your gut feeling from before.”*<sup>221</sup>

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<sup>219</sup> Statement by Vinzealhar Nen, interviewed on 15 November 2023 in Port Moresby, Papua New Guinea.

<sup>220</sup> Statement by Jackie Bernabela, claimant in *8 Individuals and Greenpeace Netherlands v the Netherlands (communiquée)* [2024] The Hague District Court. Statement extracted from Complaint, available (in Dutch) at <<https://www.greenpeace.org/nl/klimaatzaak-bonaire-waarom-klagen-we-de-staat-aan/>> accessed 18 March 2024.

<sup>221</sup> Statement by Onnie Emerenciana, claimant in *8 Individuals and Greenpeace Netherlands v the Netherlands (communiquée)* [2024] The Hague District Court. Statement extracted from Complaint, available (in Dutch) at <<https://www.greenpeace.org/nl/klimaatzaak-bonaire-waarom-klagen-we-de-staat-aan/>> accessed 18 March 2024.

133. The drought and lack of food has domino effects, as there is less food available to animals, and they eat the crops he relies on:

*“A second problem that often arises is that animals eat the crops you have outside. This is also related to the lack of rain. If it rains enough, all sorts of things grow in the forest and there is therefore plenty of food for animals - for example, rats, salamanders, iguanas and birds like parrots and parakeets. With the changing climate, Bonaire has become increasingly dry and there is less and less food for the animals. The animals then look for food on the farm, and there are fewer and fewer farms on Bonaire.”*<sup>222</sup>

134. Danique Martis, from Bonaire, is interested in pursuing sustainable farming, and also notes that flooding on the island affects traditional farming:

*“As a result of the changing climate and the unpredictable weather we have these days, traditional farming on Bonaire has become much more difficult and risky. Crops may be flooded, for instance, and you would lose all your income for those crops.”*<sup>223</sup>

## **9. The Rights to Housing and to Culture**

135. States have international obligations to take steps towards the realisation of the right to adequate housing for all, as per the UDHR, Art 11 of the ICESCR, and Art 27(3) of the UNCRC.<sup>224</sup> The ICESCR clarifies that the right to housing “should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather, it should be seen as the right to live somewhere in security, peace and dignity.”<sup>225</sup> Thus, the right to adequate housing should include legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.<sup>226</sup>

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<sup>222</sup> *ibid.*

<sup>223</sup> Statement by Danique Martis, claimant in *8 Individuals and Greenpeace Netherlands v the Netherlands (communiquée)* [2024] The Hague District Court. Statement extracted from Complaint, available (in Dutch) at <<https://www.greenpeace.org/nl/klimaatzaak-bonaire-waarom-klagen-we-de-staat-aan/>> accessed 18 March 2024.

<sup>224</sup> See also: CEDAW, Art. 14(2)(h); ICERD, Art. 5(e); ICRMW, Art 43.1(d); CRPD, Art. 28; 1961 European Social Charter; 1948 American Declaration of the Rights and Duties of Man; 1969 American Convention on Human Rights; Protocol of San Salvador; and 1981 African Charter on Human and Peoples’ Rights.

<sup>225</sup> Committee on Economic, Social and Cultural Rights, ‘General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)’ (1991) <<https://www.refworld.org/legal/general/cescr/1991/en/53157>> accessed 17 March 2024 [E/1992/23].

<sup>226</sup> *ibid.*

136. As stated by the former UN Special Rapporteur on the Right to Adequate Housing, as long ago as 2009, climate change particularly impacts the right to housing of people in low-lying island States:

“Small islands, where almost half a million people live, are particularly vulnerable to rising seas, which threaten to erode coastal dwellings, destroy fisheries and exacerbate inundation and erosion. (...) The small islands of Tuvalu, Kiribati and Maldives are particular[ly] vulnerable to rising sea levels. Frequent saltwater flooding, accelerated coastal erosion and increasing difficulty growing vegetables and plants are day-to-day challenges. The people of Tuvalu have reluctantly accepted the idea of relocation and have started moving to New Zealand, under the terms of a negotiated migration scheme.”<sup>227</sup>

137. Similarly, Eddie Huitarau, of Malaita Province in the Solomon Islands, recounts the impacts of the climate crisis on the right to housing:

*“I think for someone like me, coming from a coastline, to see climate change as an issue is real...For those of us who are living along the coast, we see. Unlike before, maybe some years back, they used to call it climate change - or when the officers from the Ministry of Climate Change came around, they would all try to say that this is a climate change. But to us, it's not a climate change. It's a climate crisis because it's affecting our livelihood, our homes. Like the village I came from - two houses were already falling off, washed away by the rising sea”.*<sup>228</sup>

138. This is a reality shared by Lucian Reiher, of Rabi, Fiji, who lost her home to a cyclone:

*“We lost our first home. It was right in that place. During the hurricane... That time when the hurricane came, we shifted...we stayed in the other place, my mum's place, and some of my relatives stay here in this place, so when they hurricane announced, they announced the hurricane, there will be a hurricane coming to the island, and, we came and told them, move, come to the other side because the home is really old, getting old. And they told us no, I think we'll go and shelter in the school, so they went to the school. And as we stay in the other - my mum's place. The next day, when the hurricane struck the island, we came around looking, we can't see the place, no houses, all blown away...That was cyclone Ami [2003]”.*<sup>229</sup>

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<sup>227</sup> Raquel Rolnik, ‘A/64/25: Report of the Special Rapporteur on Adequate Housing’ (2009) paras 32-33.

<sup>228</sup> Statement by Eddie Huitarau, interviewed on 7 November 2023 in Malaita Province, Solomon Islands.

<sup>229</sup> Statement by Lucian Reiher, interviewed on 10 August 2023 during the Rainbow Warrior Ship Tour.



139. In the El Bosque community in Mexico, Yesenia del Socorro Albino Sánchez shared:

*"I've seen many families lose their homes, and I've had to help them carry their things, to evacuate. I have seen the sadness on their faces that everything they have built with a lot of effort has been washed away by the sea as if it was nothing had happened... as if it were a sand castle. It is very sad and horrible to see all the houses destroyed, the school as if it had never been there, the houses under water that you can't even see them anymore."*<sup>230</sup>

140. For many communities, their right to culture depends on the “continued existence and habitability of their islands and the ecological health of the surrounding seas”.<sup>231</sup> As the UN Human Rights Committee found in *Billy et al. v Australia* about the Indigenous Torres Straits Islanders petitioners, climate change compromises Pacific people’s “traditional way of life and threatens to displace them from their islands. Such displacement would result in egregious and irreparable harm to their ability to enjoy their culture”, and is already happening.<sup>232</sup> For Indigenous Peoples and traditional and local communities, their enjoyment of culture also relates to “a way of life which is closely associated with territory and the use of its resources, including such traditional activities as fishing or hunting. Thus, the protection of this right is directed towards ensuring the survival and continued development of the cultural identity.”<sup>233</sup>

141. As recalled by the UN Human Rights Committee in *Billy et al v Australia*, article 27 ICCPR must be interpreted in the light of the United Nations Declaration on the Rights of Indigenous Peoples, and enshrines the “inalienable right of indigenous peoples to enjoy the territories and natural resources that they have traditionally used for their subsistence and cultural identity. Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion.”<sup>234</sup>

142. Climate change and biodiversity loss reduce people’s ability to practise their traditional culture and pass it on to the next generation. Winnie Batty from Pele Island in Vanuatu shared the impact of climate change and biodiversity loss on local medicinal plants and her ability to pass on generational knowledge to her four children. She describes the loss of medicinal plants that existed 50 years ago:

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<sup>230</sup> Statement by Yesenia del Socorro Albino Sánchez (translated from Spanish), extracted from El Bosque Amicus Brief to the IACtHR (n 4).

<sup>231</sup> *Billy et al. v. Australia* (Communication No. 3624/2019) (n 74).

<sup>232</sup> *ibid.*

<sup>233</sup> *ibid* [para 8.13 citing *Benito Oliveira et al. v. Paraguay* (CCPR/C/132/D/2552/2015) paras 8.6 and 8.3].

<sup>234</sup> *ibid* [para 8.13 citing *Käkkäljärvi et al. v. Finland* (CCPR/C/124/D/2950/2017) para. 9.9].

*“We lost some types of leaves. Many that grew before – we lost them. Maybe sometimes it is here but it is difficult to find. We have to go somewhere, maybe around the island...maybe we have to go to the mainland to find them. There is a tree from when I was like 10-11 years old, it used to grow here by the shoreline. ... But it is not here anymore, so we have to go to the other village to find them.”*<sup>235</sup>

143. Coastal communities in Vanuatu are also experiencing the distress of their family members’ bones from their graves being washed into the sea by coastal erosion and cyclones. Lizzie Molli shared that the community of Pele Island, Vanuatu, had to create a new cemetery after the old one containing more than 100 graves was washed away without being able to attribute the bones to the right grave: *“No, we don’t know whose bones this is. We just gather them all and put them aside.”*<sup>236</sup>

144. In the same community, Winnie Batty describes how this prevents them from fulfilling their cultural obligations to visit and care for the graves of their family members.

*“Actually we just buried our grandma and grandfather recently. And when we go past, on our way to the garden, we have to go and say good morning. And when the sun sets, we come down. If we have done something wrong in the morning... and then we don’t apologise at the gravesite, when we come back, we just ignore, something might happen. Yeah, maybe we cut ourselves, or traditional signs like a bird scratching our corner side of the window, or our left ear keeps ringing, we know that we should have passed.”*<sup>237</sup>

Ms Batty lost her grandmother’s grave to the sea, but her parents were buried close to home so her children and grandchildren can visit them. For now.

145. For Eddie Huitarau of Malaita in the Solomon Islands, vanishing graves means the cultural evidence that he and his children have a claim to their traditional land is gone, opening the possibility of disputes:

*“On a personal level, it’s affecting me in a way that a lot of, like in Malaita, I mean the locality where I come from, to own the land, you have to have some sort of cultural evidences. So you have to have the shrines, the graves. So all this we call the taboo sites. Now that’s the way. So those are our evidence. And in an indigenous language or approach, we call it our mark on the land. So this mark is now moving*

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<sup>235</sup> Statement by Winnie Batty, interviewed on 7 July 2023 on Pele Island, Vanuatu during the Rainbow Warrior Ship Tour.

<sup>236</sup> Statement by Lizzie Moli, interviewed on 7 July 2023 on Pele Island, Vanuatu during the Rainbow Warrior Ship Tour.

<sup>237</sup> Statement by Winnie Batty, interviewed on 7 July 2023 on Pele Island, Vanuatu on the Rainbow Warrior Ship Tour.

*out, washed away by... It's really affecting my personality, especially if I want to tell my kids in the future, like in 20, I mean just my kids now, if I said this is your mark, they won't find it now. (...) I feel insecure in terms of, I mean to add on, in terms of owning the land in the locality that I am taking, I would be more vulnerable to dispute because my evidence has been there.*"<sup>238</sup>

146. Communities that have had to relocate internally within their countries also face challenges. More than 50,000 Pacific people are displaced every year due to climate and disaster-related events.<sup>239</sup> Community worker Vinzealhar Nen, of Port Moresby in Papua New Guinea, gives an example from East Sepik province, where a group of people from a small island had to relocate to the mainland. With the risk of conflict in their new home, they lost much of their language:

*"they had to modify the languages because the landowners of the land that they settled on didn't want them to speak in their own languages from the island because they said that, "You could be plotting against us. You could overtake our land, you could have more sons than us, and this could be what's happening...so then they had to adapt to the languages of the landowners because of the conflict that resulted from them speaking their own language."*<sup>240</sup>

147. In Bonaire, sea level rise threatens to permanently inundate the huts where formerly enslaved people lived ('slave huts' or 'slave houses') in the south of the island. They are a tangible piece of ancestral history and culture that is vital to many community members who trace their family lineages to the residents of these huts. Jackie Bernabela, age 66, works for the Bonaire Archaeological Institute, which focuses on preserving the island's cultural heritage. She shares what this loss would mean to her:

*"The sea is also 'digging' under the slave houses on the southern side of the island. As a result, there is increasing cracking of the cottages and they are increasingly falling into disrepair... I would be very sad if the slave houses were lost. It is concrete evidence of what happened in the past and gives us clues about where we came from. Yesterday, I saw that the roof of Notre-Dame in Paris was being restored. I remember well how sad everyone was when a large part of the cathedral*

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<sup>238</sup> Statement by Eddie Huitarau, interviewed on 7 November 2023 in Malaita Province, Solomon Islands.

<sup>239</sup> 52nd PIF Communique (6-10 Nov 2023) [https://www.forumsec.org/wp-content/uploads/2023/11/FINAL-52nd-PIF-Communique-9-November-2023.pdf?utm\\_source=miragenews&utm\\_medium=miragenews&utm\\_campaign=news](https://www.forumsec.org/wp-content/uploads/2023/11/FINAL-52nd-PIF-Communique-9-November-2023.pdf?utm_source=miragenews&utm_medium=miragenews&utm_campaign=news) para. 20

<sup>240</sup> Statement by Vinzealhar Nen, interviewed on 15 November 2023 in Port Moresby, Papua New Guinea.

*went up in flames. I would feel the same way if the slave houses were no longer there. A part of my past would be lost with it.*<sup>241</sup>

148. Similarly, Judmar Emerenciana, a young Bonairian plaintiff shares his view:

*“Our ancestors were present in the area where the slave huts are located and we can still feel their energy there. There is little physical evidence of the presence of our ancestors, which is why the presence of the slave huts is very important to me. They are a link to the culture established by my forefathers and -mothers. I feel it is up to us, and to me, to bring this culture into the future.”*<sup>242</sup>

149. Furthermore, Danique Martis shares how the disappearance of the slave huts would affect children and future generations’ right to culture:

*“On Bonaire, we generally do not learn a lot about our history in school. The slave huts are the one remaining physical remnant, that I am aware of, of this part of our history, where we can take our kids and educate them about this. Something you can physically see is more impactful than only stories or books. So I would not want the slave huts to be gone.”*<sup>243</sup>

150. In the Arctic, Indigenous Peoples also face the threat to their rights to culture. Ella Marie Hætta Isaksen, a 25-year-old climate advocate and artist from the Sámi indigenous group in Norway, is among the young people who have made a complaint to the European Court of Human Rights. Ella Marie is already witnessing the effects of climate change where she is from, in the Arctic region of Tana, in the Finmark region of Norway:

*“In the river Tana, which has been the literal source of life and sustenance for the people of my municipality since time immemorial, is now closed for salmon fishing. As long as I can remember, my family and I have fished in this river, but due to the effects of climate change on the Barents Sea, the conditions for the salmon have deteriorated. And for this reason, my family and I have to refrain from using the river, in order to spare the salmon. But in doing so, we lose an important source of*

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<sup>241</sup> Statement by Jackie Bernabela, claimant in *8 Individuals and Greenpeace Netherlands v the Netherlands (communiquée)* [2024] The Hague District Court. Statement extracted from Complaint, available (in Dutch) at <<https://www.greenpeace.org/nl/klimaatzaak-bonaire-waarom-klagen-we-de-staat-aan/>> accessed 18 March 2024.

<sup>242</sup> Statement by Judmar Emerenciana, claimant in *8 Individuals and Greenpeace Netherlands v the Netherlands (communiquée)* [2024] The Hague District Court. Statement extracted from Complaint, available (in Dutch) at <<https://www.greenpeace.org/nl/klimaatzaak-bonaire-waarom-klagen-we-de-staat-aan/>> accessed 18 March 2024.

<sup>243</sup> Statement by Danique Martis, claimant in *8 Individuals and Greenpeace Netherlands v the Netherlands (communiquée)* [2024] The Hague District Court. Statement extracted from Complaint, available (in Dutch) at <<https://www.greenpeace.org/nl/klimaatzaak-bonaire-waarom-klagen-we-de-staat-aan/>> accessed 18 March 2024.

*sustenance. Still, the most painful part is that the traditions tied to the fisheries cannot be continued as previously. Climate change introduces further damage to an area which is already under pressure. Land development has over several decades encroached on and restricted the use of the lands historically used for Sámi reindeer herding and traditional sustenance activities. Many are feeling that they have to end their traditional way of life, as it is no longer possible to make a livelihood from the land and its natural resources”.*<sup>244</sup>

**C. The obligation to not deprive another State of the ability to ensure that persons within its jurisdiction enjoy and exercise their internationally recognised human rights**

151. The ability of a State to respect, protect and fulfil the human rights of persons within its jurisdiction are already being hindered due to the climate crisis. If all or part of a SIDS’s territory disappears due to sea level rise, the consequences for, *inter alia*, the rights to life, livelihood and culture of individuals and communities are inevitable - as evidenced by the statements of impacted individuals in Section B above. However, this inability to protect, respect and/or fulfil rights will arise largely due to acts that are beyond the control of the SIDS but within the control of other States. As such, Greenpeace International respectfully submits to the Court that all States have an obligation to not deprive other States of the ability to ensure that persons within their jurisdiction enjoy and exercise their internationally recognised human rights.

152. This obligation is rooted in some of the most consolidated rules of international law:

- a. First, that States are responsible for the effects of activities within their jurisdiction or control when those acts infringe upon the rights of other States. This has been articulated by the Court in *Corfu Channel* (“every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States”)<sup>245</sup> and later confirmed in *Nuclear Weapons*, where the Court stated that “the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment”.<sup>246</sup>
- b. Second, that States must act in good faith in the performance of their international obligations pursuant to Article 26 of the Vienna Convention on the Law of Treaties (“VCLT”), and must refrain from acts which would defeat the object and purpose of a treaty that they have signed or consented to be bound by (VCLT, Art. 18). In

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<sup>244</sup> Statement by Ella Marie Hætta Isaksen, extracted from Greenpeace Nordic and Others v. Norway (communiquée) (n 6) Annex 1.

<sup>245</sup> *Corfu Channel (Merits)*, 20.

<sup>246</sup> *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)*, 241-2, para. 29.

*Gabcikovo-Nagymaros*, the Court further clarified that “[t]he principle of good faith obliges the Parties [of a treaty] to apply it in a reasonable way and in such a manner that its purpose can be realized.”<sup>247</sup> Knowingly acting in such a manner that would prevent another State from performing its obligations under a treaty would thus not only defeat the object and purpose of the treaty, but also be a breach of the principle of good faith.

153. The Court has noted that this duty extends to protection against the extraterritorial effects of activities conducted both by public and by private actors within a State’s jurisdiction or subject to its control.<sup>248</sup> Likewise, the Inter-American Court of Human Rights has held that States must refrain from and prevent acts that “deprive another State of the ability to ensure that the persons within its jurisdiction may enjoy and exercise their right.”<sup>249</sup> The UN Human Rights Committee has also underscored this obligation.<sup>250</sup>
154. In the context of anthropogenic climate change, this obligation cannot be set aside by a defence of *force majeure*. Here, it is also important to highlight that, in light of the best available science, the rise in sea level cannot be deemed to be *force majeure*. The causes therefor are well-known, anthropogenic, and avoidable if States act in accordance with their international obligations. They are not ‘acts of God’, they are acts of man in its most literal meaning. To be constituted, *force majeure* requires externality, unpredictability and irresistibility,<sup>251</sup> as per Article 23 of the ILC Articles on State Responsibility. In light of the best available science, these requirements (especially unpredictability) are not met due to the anthropogenic cause behind sea-level rise and the clear statements by the IPCC reports (which are endorsed by States) on the impacts at current levels of warming and increased warming. As such, the defence of *force majeure* is not available to States, and those acts can be attributed to States under international law and trigger their international responsibility.
155. It should nonetheless be noted that the availability of the defence of *force majeure* is more complex when it comes to extreme weather events, such as hurricanes, typhoons and floods. While it is true that these events may happen unrelatedly to anthropogenic action, the best available climate science recognizes that these events are becoming ever more frequent and intense due to anthropogenic climate change.<sup>252</sup> As such, whether a particular extreme weather event can be attributed to anthropogenic greenhouse gas emissions should be determined in light of the best available attribution science on a case-by-case basis. In relation to extreme weather

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<sup>247</sup> *Gabcikovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, 7, para. 142.

<sup>248</sup> *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)*, 241-2, para. 27.

<sup>249</sup> *Advisory Opinion OC-23/17: The Environment and Human Rights* (n 74) para 101.

<sup>250</sup> Human Rights Committee, ‘General Comment No. 36: Article 6 (Right to Life)’ (n 73) para 22.

<sup>251</sup> James Crawford and others, *The Law of International Responsibility* (Oxford University Press 2010) 447 <<http://opil.ouplaw.com/view/10.1093/law/9780199296972.001.0001/law-9780199296972>> accessed 17 March 2024.

<sup>252</sup> For an overview of the relevant science and IPCC reports, see Section III above.

events that can be traced back to a State's actions or inactions, the defence of *force majeure* will once again not be applicable.

#### **D. The obligation of States to regulate business enterprises**

156. States must take all necessary measures to keep warming below 1.5°C to meet their obligations under human rights law, general international law, and the climate regime. Specifically, under human rights law, States must protect individuals from human rights harms by private/non-state actors, including by business enterprises.<sup>253</sup> The Special Rapporteur on Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment emphasises that States are directly responsible for and “should take additional steps” to prevent human rights harms caused directly or indirectly by businesses that “are owned or controlled by the State, or that receive substantial support from State agencies”.<sup>254</sup> To fulfil this duty, States have to “regulate activities contributing to such harm,” both domestically and extraterritorially.<sup>255</sup> As stated by five UN Human Rights treaty bodies: “[f]ailure to take measures to prevent foreseeable harm caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States’ human rights obligations”.<sup>256</sup>
157. Corporate conduct has a demonstrable contribution to climate change impacts, and a small number of GHG-intensive business enterprises are responsible for a significant share of global temperature change and the subsequent effects that adversely impact human rights. Furthermore, business enterprises in the fossil fuel industry have been aware of the effects of their products on climate change for over sixty years. By the early 1960s, the fossil fuel industry had identified and accurately predicted global warming trends and was aware that its products drive the emissions that cause climate change.<sup>257</sup> By the 1970s and 1980s, the fossil fuel industry predicted current levels of global warming and internally acknowledged the fact that climate change poses a

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<sup>253</sup> *Advisory Opinion OC-23/17: The Environment and Human Rights* (n 74) para 244, points 5, 6, 7 and 8.. See also Commission on Human Rights of the Philippines (CHRP) (n 3) 64 et seq; David R. Boyd, ‘A/HRC/55/43: Business, Planetary Boundaries, and the Right to a Clean, Healthy and Sustainable Environment’ (2024) para 71(b) <<https://primarysources.brillonline.com/browse/human-rights-documents-online/promotion-and-protection-of-all-human-rights-civil-political-economic-social-and-cultural-rights-including-the-right-to-development;hrdhrd99702016149>> accessed 17 March 2024.

<sup>254</sup> David R. Boyd (n 253) paras 40, 48.

<sup>255</sup> Committee on the Elimination of Discrimination Against Women and others (n 34); David R. Boyd (n 253) para 40.

<sup>256</sup> Committee on the Elimination of Discrimination Against Women and others (n 34) para 10. This has been confirmed by numerous other bodies, including by the UN Human Rights Committee in *Portillo Cáceres and Others v Paraguay (Communication No2751/2016)* [2019] Human Rights Committee CCPR/C/126/D/2751/2016 paras 7.3-7.7; Committee on Economic, Social and Cultural Rights, ‘General Comment No. 24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities’ (2017) paras 14-23 <<https://digitallibrary.un.org/record/1304491>> accessed 17 March 2024 [E/C.12/GC/24].

<sup>257</sup> Commission on Human Rights of the Philippines (CHRP) (n 3) 91. See also Ben A. Franta, ‘Early Oil Industry Knowledge of CO2 and Global Warming’ (2018) 8 *Nature Climate Change* 1024–26 <<https://ora.ox.ac.uk/objects/uuid:fc28ebd8-61fb-4b4f-bd1e-0c819cd55e50>> accessed 1 February 2024.

“significant global threat.”<sup>258</sup> Yet, it is well documented that fossil fuel companies continued engaging in an industry-wide public relations campaign to foster scepticism about climate science, oppose climate legislation, promote climate disinformation, question the severity of climate impacts, raise doubts over the feasibility of reducing emissions and redirect responsibility to consumers.<sup>259</sup>

158. As stated by Veronica (“Derek”) Cabe, survivor of Typhoon Ondoy in the Philippines: “*I believe that governments and corporations have the choice to choose people over profit and businesses have a right to do business but us, we also have the right to live.*”<sup>260</sup>

159. In order to meet their climate obligations, States must regulate private and public conduct that contributes to GHG emissions or impedes climate action by enacting “stronger laws, comprehensive monitoring and rigorous enforcement”.<sup>261</sup> This requires States to compel business enterprises to align their business models with the best available science and refrain from investing in new fossil fuel supply while “shifting energy investments away from fossil fuels and towards low carbon technologies (*high confidence*)”.<sup>262</sup> This necessity was confirmed by both the IPCC<sup>263</sup> and the IEA, which declared that “there is no need for investment in new fossil fuel supply” in its scenario for achieving net zero emissions by 2050.<sup>264</sup> Moreover, in its Advisory Opinion OC-23/17 of 2017, the Inter-American Court of Human Rights held unanimously that:

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<sup>258</sup> Geoffrey Supran, S. Rahmstorf, and Naomi Oreskes, ‘Assessing ExxonMobil’s Global Warming Projections’ (2023) 379 *Science* <<https://www.science.org/doi/10.1126/science.abk0063>> accessed 17 March 2024.

<sup>259</sup> Ben A. Franta (n 254); Center for International Environmental Law, ‘Smoke and Fumes: The Legal and Evidentiary Basis for Holding Big Oil Accountable for the Climate Crisis’ (2017) <<https://www.ciel.org/wp-content/uploads/2017/11/Smoke-Fumes-FINAL.pdf>>; Neela Banerjee, ‘Exxon’s Oil Industry Peers Knew About Climate Dangers in the 1970s, Too’ (22 December 2015) <<https://insideclimatenews.org/news/22122015/exxon-mobil-oil-industry-peers-knew-about-climate-change-dangers1970s-american-petroleum-institute-api-shell-chevron-texaco>>; Robert J Brulle, ‘Advocating Inaction: A Historical Analysis of the Global Climate Coalition’ (2023) 32 *Environmental Politics* 185; Geoffrey Supran and Naomi Oreskes, ‘Rhetoric and Frame Analysis of ExxonMobil’s Climate Change Communications’ (2021) 4 *One Earth* 696; Peter C Frumhoff, Richard Heede and Naomi Oreskes, ‘The Climate Responsibilities of Industrial Carbon Producers’ (2015) 132 *Climatic Change* 157; William F Lamb and others, ‘Discourses of Climate Delay’ (2020) 3 *Global Sustainability* e17.

<sup>260</sup> Statement by Veronica (‘Derek’) Cabe before the Commission on Human Rights of the Philippines, Fifth Inquiry Hearing, in London, England, on 7 November 2018. Extracted from Commission on Human Rights of the Philippines (CHRP) (n 3) 31.

<sup>261</sup> David R. Boyd (n 253) paras 32-33; Office of the UN High Commissioner for Human Rights, ‘United Nations Guiding Principles on Business and Human Rights’ (2011) <[https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)> [Principles 1-10].

<sup>262</sup> Intergovernmental Panel on Climate Change (IPCC), ‘IPCC WGIII AR6 - Technical Summary’, *Climate Change 2022 – Mitigation of Climate Change: Working Group III contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2022) 85 <[https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC\\_AR6\\_WGIII\\_TechnicalSummary.pdf](https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_TechnicalSummary.pdf)> accessed 14 March 2024.

<sup>263</sup> *ibid* 89.

<sup>264</sup> International Energy Agency (IEA) (n 8) 21. *See also* International Energy Agency (IEA), ‘Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach - 2023 Update’ (2023) 16 <[https://iea.blob.core.windows.net/assets/4ad26550-05c4-4495-9891-98e588cd0be8/NetZeroRoadmap\\_AGlobalPathwaytoKeepthe1.5CGoalinReach-2023Update.pdf](https://iea.blob.core.windows.net/assets/4ad26550-05c4-4495-9891-98e588cd0be8/NetZeroRoadmap_AGlobalPathwaytoKeepthe1.5CGoalinReach-2023Update.pdf)>.



“To respect and to ensure the rights to life and to personal integrity of the persons subject to their jurisdiction, States have the obligation to prevent significant environmental damage within or outside their territory and, to this end, must regulate, supervise and monitor activities within their jurisdiction that could produce significant environmental damage; conduct environmental impact assessments when there is a risk of significant environmental damage; prepare a contingency plan to establish safety measures and procedures to minimize the possibility of major environmental accidents, and mitigate any significant environmental damage that may have occurred ...”<sup>265</sup>

160. States must also divest from, refrain from investing in, and deny subsidies or incentives to fossil fuel-related projects or activities, as well as cease from issuing new permits therefor.<sup>266</sup> States must also ensure the introduction of regulations to discourage greenwashing and undue corporate influence in the political and regulatory sphere and implement disclosure regulations requiring business enterprises to make relevant climate information public across their supply chains.<sup>267</sup>

161. In the case of *Milieudefensie et al. v. Shell plc*, for instance, the District Court of the Hague acknowledged the international obligations of the Netherlands and ordered that Shell reduce its emissions by 45% by 2030, also clarifying that Shell was responsible for its Scope 3 emissions (that is, indirect GHG emissions from sources not owned or under the direct operational control of the company - such as by consumers using a company’s product).<sup>268</sup>

162. Other measures that States should take to fulfil their climate obligations include:

- a. taking steps to avoid vested interests in climate policymaking;
- b. refraining from agreeing to clauses in investment or trade agreements that would hinder the State’s ability to pass climate regulation (such as investor-state dispute settlement (“ISDS”) and full protection and security clauses that allow businesses or investors to sue the State if supervening climate laws interfere with their investment);
- c. amending, renegotiating, severing and/or terminating agreements that include such clauses; and
- d. dissuading and/or preventing their corporate nationals from using such provisions to challenge climate action by other States.

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<sup>265</sup> *Advisory Opinion OC-23/17: The Environment and Human Rights* (n 74) [para 244, points 5, 6, 7 and 8].

<sup>266</sup> Commission on Human Rights of the Philippines (CHRP) (n 3) 112; Inter-American Commission on Human Rights (n 71) para 57; David R. Boyd (n 253) paras 34, 71(d).

<sup>267</sup> David R. Boyd (n 253) paras 42, 72(a), 73(a), 73(b), 73(d).

<sup>268</sup> For reference, English translations of the case are available at <<https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBDHA:2021:5337>> accessed 17 March 2024.

163. States must ensure that environmental impact assessments (“EIAs”) conducted by the State or by business enterprises include cumulative climate analyses, as clarified by Principle 17 of the 1992 Rio Declaration on Environment and Development (“Rio Declaration”) and confirmed by the ICJ in its decisions on the matter.<sup>269</sup> The scope of EIAs under international law is evolutionary by nature,<sup>270</sup> and it is impossible to dissociate it from climate change in the current day and age. In practice, this requires States to ensure that EIAs conducted by business enterprises shall consider impacts on GHG emissions across the entire supply or value chain (Scope 1, 2 and 3 emissions), regardless of where they occur.<sup>271</sup> Such climate analyses must be cumulative in scope, accounting for both the direct and indirect climate impacts of the proposed activity and how those impacts will aggravate and interact with the climate footprints of existing and future activity.
164. Khaya Mahlangu of eMbalenhle Township, South Africa, who lives in the highly polluted area nearby coal-to-fuel plant Secunda, shared his views on the responsibilities of States to regulate business enterprises:

*“I think my country will also face the challenges that other countries are facing if we continue allowing large industrial production companies to operate without restrictions or rehabilitation of the air. I hope people will realise that climate change is one of the deadliest global crises before it is too late. The state should reinforce more rules and regulations and shut down illegal mining operations that are polluting the air.”<sup>272</sup>*

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<sup>269</sup> See e.g. *Pulp Mills (Judgement)*.

<sup>270</sup> In *Pulp Mills*, the Court understood that States should determine on a case-by-case basis what is required for an EIA, “having regard to the nature and magnitude of the proposed development and its likely adverse impact.” (*Judgement*, para. 205).

<sup>271</sup> See Human Rights Committee, ‘General Comment No. 36: Article 6 (Right to Life)’ (n 73) para 62.

<sup>272</sup> Statement by Khaya Mahlangu, interviewed on 23 February in eMbalenhle Township.

## V. LEGAL CONSEQUENCES

*“Climate change is one of the biggest threats in human life, many people avoid it thinking it’s just the change in weather patterns but they are not informed that it is way more than that. People act surprised when there are floods, cyclones and tsunamis. Many people have lost their lives and many are still going to suffer if people don’t get alerted as soon as possible about air pollution and climate change. What are our governments doing to keep people aware of climate change? What is being done to the major contributors to climate change? We need those answers so we can know where we are headed!”<sup>273</sup>*

- Khaya Mahlangu of eMbalenhle Township, South Africa

165. Having tackled elements of the General Assembly’s Question (a), we now submit Greenpeace International’s views concerning its second question, encompassing the legal consequences arising from breaching the primary obligations identified above.

166. We make three main submissions regarding Question (b):

- a. First, under the Law on State Responsibility, States that commit internationally wrongful acts against the climate system must make full reparations to States that endure climate change-induced harm;
- b. Second, due to the obligation to refrain from contributing to the extinction of Small Island States and the ongoing nature of the harm, States must cease all internationally wrongful acts that drive climate change and offer appropriate guarantees of non-repetition; and
- c. Third, as a result of their obligations under customary international law and international human rights treaties, States that cause or allow their territories to be used for activities that cause significant climate harm must make full reparations to States, individuals and communities of present and future generations who have been, or will be, harmed by their wrongful actions and omissions.

### **A. The obligation of full reparation for the injuries caused by internationally wrongful acts against the climate system**

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<sup>273</sup> Statement by Khaya Mahlangu, interviewed on 23 February in eMbalenhle Township.

## 1. *The ILC Articles on State Responsibility in light of climate change*

167. A failure to fulfil the international law obligations identified in this submission results in the international responsibility of the State. State responsibility extends beyond treaty obligations owed by one State to another, and includes *erga omnes* obligations owed to the international community as a whole,<sup>274</sup> obligations arising under customary international law,<sup>275</sup> and obligations arising under general principles of law. As addressed in Section IV above, State responsibility for the anthropogenic emissions driving climate change must be interpreted in light of equity under international law and the UNFCCC principle of CBDR-RC to determine the fair share range of emissions reductions and also the financial obligation of some States to support climate action (adaptation and mitigation) and loss and damage compensation for States and peoples who have contributed the least but need the most assistance to collectively remain below the 1.5°C long-term temperature rise.<sup>276</sup> Furthermore, the precautionary principle supports the position that any ambiguity as to the necessary emissions reductions to prevent a global temperature increase of 1.5°C or more should be resolved in favour of the States least responsible for the climate crisis, such as SIDS and LDCs.

168. The ILC Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) codify the rules determining which conduct is attributable to a State, namely where a particular person or organ is acting under State authority.<sup>277</sup> A State is legally responsible for a breach of international law when it:

- a. engages in an act or omission that is not in conformity with an international obligation,<sup>278</sup> and/or
- b. when it assists or aids another State in committing a wrongful act or omission.<sup>279</sup>

169. Once State responsibility is established, the State is required to immediately cease any breach of international law, provide assurance that such actions will not be repeated, and ‘make full reparation for the injury caused’ by the breach,<sup>280</sup> including reparations for ‘any damage, whether material or moral’.<sup>281</sup>

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<sup>274</sup> James Crawford, ‘State Responsibility’ (*Max Planck Encyclopedia of Public International Law [MPEPIL]*, September 2006) para 12 <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1093?prd=EPIL>> accessed 17 March 2024.

<sup>275</sup> International Law Commission (ILC), ‘Draft Articles on the Responsibility of States for Internationally Wrongful Acts’ (2001) Art. 12 [henceforth, ‘ARSIWA’].

<sup>276</sup> Lavanya Rajamani and others, ‘National “Fair Shares” in Reducing Greenhouse Gas Emissions within the Principled Framework of International Environmental Law’ (2021) 21 *Climate Policy* 983, 985.

<sup>277</sup> ARSIWA, Arts. 4-6, 8-11.

<sup>278</sup> ARSIWA, Art. 12.

<sup>279</sup> ARSIWA, Arts. 16-19.

<sup>280</sup> ARSIWA, Art. 31(1).

<sup>281</sup> ARSIWA, Art. 31(2).

170. In the environmental context, the ICJ has held that “damage to the environment, and the consequent impairment or loss of the ability of the environment to provide goods and services, is compensable under international law”.<sup>282</sup> The UN Committee on the Rights of the Child further clarified in *Sacchi et al vs. Argentina* that ‘the collective nature of the causation of climate change does not absolve the State party of its individual responsibility that may derive from the harm that the emissions originating within its territory may cause to children, whatever their location’.<sup>283</sup>

171. States may not escape liability for emissions originating outside their own territory when they have ‘assisted or aided’ another State in producing the emissions if the resulting emissions are considered to be an internationally wrongful act because, for instance, they exceed their fair share of the carbon budget - that is, in certain circumstances, State A may be held responsible alongside State B where coal is extracted in State A and burnt in State B.

## ***2. Forms of reparation available to injured States***

172. States have a legal duty to make full reparations to address the harm caused as a result of their wrongful act/s or omission/s.<sup>284</sup> This may be in the form of restitution, compensation or satisfaction (or a combination of these forms).<sup>285</sup> The Permanent Court of International Justice (“PCIJ”) noted almost a century ago that it has been established by international practice ‘that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed’.<sup>286</sup>

173. However, climate change results in a myriad of harms for which financial reparations are wholly inadequate. Non-economic loss and damage (“NELD”) refers to the existential threat that goes beyond the loss of physical homeland to encompass the eradication of peoples’ cultures and social structures.<sup>287</sup> NELD has major implications for societal and ecological welfare. It may include harm to individuals (life, health, mobility); to societies (lost territory, cultural heritage,

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<sup>282</sup> *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, *I.C.J. Reports 2018*, 15, para. 42.

<sup>283</sup> *Sacchi et al v Argentina (Communication No 104/2019)* [2021] CRC CRC/C/88/D/104/2019 para 10.10.

<sup>284</sup> ARSIWA, Art. 31(1).

<sup>285</sup> ARSIWA, Art. 34.

<sup>286</sup> *Case Concerning the Factory at Chorzow (Germany v. Poland)*, 1928 PCIJ, Judgment on Merits (Claim For Indemnity), 47.

<sup>287</sup> See e.g. Alejandra Padin-Dujon, ‘What Is “Non-Economic” Loss and Damage (NELD)?’ (*Grantham Research Institute on climate change and the environment*, 20 June 2023) <<https://www.lse.ac.uk/granthaminstitute/explainers/what-is-non-economic-loss-and-damage-neld/>> accessed 17 March 2024; Alexa Zellentin, ‘Climate Justice, Small Island Developing States & Cultural Loss’ (2015) 133 *Climatic Change* 491; Sam Fankhauser, Simon Dietz and Phillip Gradwell, ‘Non-Economic Losses in the Context of the UNFCCC Work Programme on Loss and Damage: Policy Paper’ (2014) <<https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2014/02/Fankhauser-Dietz-Gradwell-Loss-Damage-final.pdf>>.

Indigenous and local knowledge, ecosystem services); and to the natural environment (loss of and damage to biodiversity and habitats).

174. As stated by Joanna Sustento, one of survivors of Super Typhoon Haiyan, the losses and damages suffered go beyond an economic assessment:

*“When faced with an unprecedented tragedy, human instinct forces us to search for a sense of normalcy- something familiar that brings us comfort so that we can grieve, deal with our losses and come to terms with our emotions. And that safe haven can be found at home- in the warm embrace of our families. But where do you go when your home has been washed away? What do you do when your strongest support system - your family, whom you loved the most - is gone? Who do you hold on to? How do you move forward when the future seems to be a blur? As is the case of the millions of people who were displaced and who lost their families. My brother and I needed to seek refuge on our own and to find the remains of our loved ones- we lost our parents, our eldest brother, sister-in-law and three-year old nephew to the storm. Could you imagine going through something so tragic but you seem to not have the time to show weakness, to show how shattered you are because surviving the aftermath is much more crucial? Could you imagine what goes on in the mind of a survivor who lost everything he has ever loved and known?”<sup>288</sup>*

175. Financial measures can never truly compensate a community whose spiritual connection has been severed because their ancestral graves have been lost to sea level rise, or a young child whose mother was killed in a climate fuelled extreme weather event. But insofar as possible, States must ensure effective remediation of the harm they have contributed to through their failure to comply with international law obligations. In the context of climate change, this includes ensuring that the victims of climate-related harm effectively and meaningfully participate in defining reparations based on their needs and priorities, including when those harms result from destructive corporate conduct. For a remedy to be adequate and effective, those directly harmed must participate in the design, implementation, and monitoring of reparation measures or remedial action plans.

### *Restitution*

176. In the case of climate change, restitution is the legal obligation to provide redress for harm caused to the environment by re-establishing the environment to its original state, if materially

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<sup>288</sup> Statement by Joanna Sustento, shared with the authors via email 14 December 2023

possible.<sup>289</sup> It may involve rehabilitation, replacement, or acquiring the equivalent of injured natural resources and services.<sup>290</sup> Not only must States return ecosystems to their baseline conditions, they must also compensate for the interim losses of natural resources and services. In the context of climate change, restitution is the preferred option for reparation, unless the re-establishment of the environment to its original state (or an acceptable similar state) is materially impossible, or involves a burden out of all proportion to the benefit deriving from restitution instead of compensation.<sup>291</sup> The latter is a difficult barrier to overcome, as the benefits of environmental restitution are immense and have the ability to guarantee human rights for future generations living in the environment indefinitely (including the right to life, food, water, health, self-determination, private and family life) in a way that financial compensation (even if paid in perpetuity) can never account for.

177. Obeth Singol, a young community advocate from Papua New Guinea shares this view:

*“I want my kids to have access to that sort of environment that I grew up in, the natural forest background, pristine rivers that are still there... I want my kids to have that same experience. So from the way I'm seeing it now, I fear that my kids won't be able to have that same experience that I have... We shouldn't accept this [climate change] is our reality is now we have to accept it. We have to come and speak up. Put pressure on our government, our local leaders. Put pressure on our government leaders to do something about it. We shouldn't be accepting it and then leaving it as that.”*<sup>292</sup>

178. While full restitution cannot be achieved in cases where the territory of a State is inundated, one reasonable and important form of partial restitution would be to support the call for maritime zones, as established and notified to the Secretary-General of the United Nations in accordance with the UNCLOS, and the rights and entitlements that flow from them, to continue to apply, without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise.<sup>293</sup> Where applicable, this would include retaining the right to be a member of the United Nations.

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<sup>289</sup> ARSIWA, Art. 35.

<sup>290</sup> K. Kindji and M. Faure, ‘Assessing Reparation of Environmental Damage by the ICJ: A Lost Opportunity?’ (*QIL QDI*, 31 March 2019) <<http://www.qil-qdi.org/assessing-reparation-of-environmental-damage-by-the-icj-a-lost-opportunity/>> accessed 17 March 2024.

<sup>291</sup> *Pulp Mills (Judgement)*, para. 273; ARSIWA, Art. 35(b).

<sup>292</sup> Statement by Obeth Singol, interviewed on 15 November 2023 in Port Moresby, Papua New Guinea.

<sup>293</sup> See Pacific Island Forum, ‘Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-Related Sea Level Rise’ (2023) <<https://www.forumsec.org/wp-content/uploads/2023/11/Annex-D-2023-PIF-Declaration-on-Statehood-and-Protections-of-Persons.pdf>> accessed 17 March 2024.

## *Compensation*

179. ‘The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution’.<sup>294</sup> Compensation involves the payment of a sum which corresponds to the value of the restitution in kind (had it been available). Compensation also includes the payment of damages for loss sustained which would not be covered by restitution in kind or payment in lieu of it.<sup>295</sup>
180. The ICJ has found in *Certain Activities Carried Out by Nicaragua* that “damage to the environment, and the consequent impairment or loss of the ability of the environment to provide goods and services, is compensable under international law”.<sup>296</sup> When restitution is impossible, as is often the case with irreversible climate-induced damage, compensation should be made for both pecuniary and non-pecuniary harm. This includes harm suffered by the State, or its personnel, or harm suffered by its nationals (including personal injury). Compensable pecuniary harm can include damage to goods and trade, loss of profits,<sup>297</sup> homes destroyed or other damages as a result of an extreme weather event. Compensable personal injury includes tangible losses (such as income lost and medical bills) and intangible losses (such as emotional pain and suffering and intrusion on privacy). This was evident in the *Corfu Channel* case where the State who had committed the internationally wrongful act was required to compensate individuals from the injured State by paying the cost of pensions and other grants made to the victims or their dependents, and for the costs of administration and medical treatments.<sup>298</sup>
181. The ICJ has held that compensation may be an appropriate form of reparation ‘where restitution is materially impossible or unduly burdensome’.<sup>299</sup> Compensation is a necessary form of reparation where climate change impacts are irreversible or will take a very long time to reverse.

## *Satisfaction*

182. In addition to restitution and compensation, the State responsible for the international wrongful act or omission must give satisfaction for the injury caused ‘by the act insofar as it cannot be made good by restitution or compensation’.<sup>300</sup> This may involve a public acknowledgement of the breach, an expression of regret, a formal apology, the State taking action against officials whose actions resulted in the breach or another appropriate modality, provided

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<sup>294</sup> ARSIWA, Art 36.

<sup>295</sup> *Case Concerning the Factory at Chorzow (Merits)*, 47.

<sup>296</sup> *Certain Activities Carried Out by Nicaragua in the Border Area (Compensation)*, para. 42.

<sup>297</sup> ARSIWA, Art. 36.2.

<sup>298</sup> *Corfu Channel case (Compensation)*, 249.

<sup>299</sup> *Certain Activities Carried Out by Nicaragua in the Border Area (Compensation)*, para. 31.

<sup>300</sup> ARSIWA, Art 37.



that this is not out of proportion to the injury and does not take a form humiliating to the responsible State.<sup>301</sup> Satisfaction is particularly important in respecting the dignity and human rights of those impacted by climate change.

183. For many, like Super Typhoon Haiyan survivor Marinel Ubaldo, acknowledgement of the breach is important:

*"We want an acknowledgement from these corporations that, 'Yes, it is us that fuelled the climate crisis, and that's the reason your people are dead'. And we want to them to change their business practices."*<sup>302</sup>

**B. The obligation to cease all internationally wrongful acts that contribute to the extinction of other States and offer guarantees of non-repetition**

184. As noted in Section III above, the best available science confirms that, due to sea-level rise, certain States are facing existential threat. All States are also bound by an obligation, derived from customary international law and general principles of law, to refrain from contributing to the extinction of other States. Customary international law also requires that States should not knowingly allow their territories to be used “for acts contrary to the rights of other States”, in the words of the Court in *Corfu Channel*.<sup>303</sup> As such, the international responsibility of States that breach these obligations is engaged, and the rules on State responsibility apply.

185. The key point that should be borne in mind is that the impending extinction of certain SIDS is still preventable due to the continuing nature of GHG emissions at dangerous levels and the slow destruction they bring. State failure to comply with international legal obligations to protect the climate system from anthropogenic emissions is an ongoing violation of international law that shall continue to cause harm until appropriate remediation action is taken.

186. As Kjellid Masoud Kroon of Bonaire states:

*"It is unjust that small islands like Bonaire are now the first to get into trouble due to the effects of climate change and also have hardly any protection."*<sup>304</sup>

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<sup>301</sup> ARSIWA, Art. 37(3).

<sup>302</sup> Statement by Marinel Ubaldo, extracted from Commission on Human Rights of the Philippines (CHRP) (n 3) 32

<sup>303</sup> *Corfu Channel (Merits)*, 22.

<sup>304</sup> Statement by Kjellid Masoud Kroon, claimant in *8 Individuals and Greenpeace Netherlands v the Netherlands (communiquée)* [2024] The Hague District Court. Statement extracted from Complaint, available (in Dutch) at <<https://www.greenpeace.org/nl/klimaatzaak-bonaire-waarom-klagen-we-de-staat-aan/>> accessed 18 March 2024.

187. From another Small Island Developing State, Lotomau Fiafia of the Tuvaluan community in Kioa, Fiji outlines in stark terms the existential risk that climate change poses to his country and people:

*“If Tuvalu submerges, goes underwater, what will happen to that nation? All the Tuvaluans will be wiped away.”*<sup>305</sup>

188. Article 30 of the ILC’s Articles on State Responsibility holds that States that are responsible for an internationally wrongful act are obliged “(a) to cease that act, if it is continuing; [and] (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require”. This means that States must take all necessary measures, in line with the best available science, to prevent the global average temperature from rising to a level that would mean the extinction of SIDS. Such measures will necessarily include the progressive halting of GHG emissions from the sources that most pollute the planet (including industrial cattle farming and fossil fuels) and adopting and enforcing effective fossil fuel phase-out plans in a timely manner.

189. To have a chance of limiting warming to 1.5°C—which is not safe for SIDS— global CO<sub>2</sub> emissions must decrease by at least 48% from 2019 levels by 2030 and reach net zero around 2050.<sup>306</sup> On this latter point, multiple pathways outlined in the latest IPCC report show the possibilities of achieving net-zero CO<sub>2</sub> emissions by 2050, without relying on unproven technologies, to give the world a reasonable chance of limiting the global average temperature rise to 1.5°C. Furthermore, even the IEA’s net-zero by 2050 pathway, which relies on a more conservative assessment of greenhouse gas emissions reduction, agrees on a narrow but achievable pathway which requires States to:

- a. Cease and desist from licensing new oil, gas, and coal exploration and production;<sup>307</sup>
- b. Phase out all subcritical coal-fired power plants and large oil-fired power plants by 2030,<sup>308</sup> and all unabated coal-fired plants by 2040;<sup>309</sup>
- c. Cease and desist from building or financing new infrastructure for transporting, processing, and burning extracted fossil fuels;
- d. Refrain from supporting or approving any new large-scale land clearing for agro-industrial development or infrastructure that facilitates such expansion;
- e. Divest from, refrain from investing in, and deny subsidies or incentives to fossil fuel-related activity or large-scale agro-industrial development;

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<sup>305</sup> Statement by Lotomau Fiafia, interviewed on 6 August 2023, in Kioa, Fiji, as part of the Rainbow Warrior ship tour.

<sup>306</sup> Intergovernmental Panel on Climate Change (IPCC), ‘IPCC WGIII AR6 - Technical Summary’ (n 259) [Ch. 3, 3.3].

<sup>307</sup> International Energy Agency (IEA) (n 8) 21.

<sup>308</sup> *ibid* 117.

<sup>309</sup> *ibid*.

- f. Fully transition their power sectors to non-fossil fuel sources - this means shifting to carbon-free energy sources such as solar and wind by no later than 2050 and for advanced economies to decarbonise their electricity sector by 2035<sup>310</sup> and emerging markets and developing economies by 2040;<sup>311</sup> and
- g. Rely on proven measures capable of averting the risk of foreseeable harm in the near term instead of speculative technologies and geoengineering.

190. To have a 67% chance of meeting the 1.5°C limit, which in itself is an inadequate objective, the remaining global carbon budget, or emissions that may still be emitted is 400 GtCO<sub>2</sub>.<sup>312</sup> However, simply dividing the remaining carbon budget amongst States on an equal per capita basis and applying the same requirements of decarbonisation for all States without considering their roles in creating the climate crisis or their ability to reduce is contrary to the principles of international law such as “harm prevention, precaution, sustainable development, special circumstances, equity (inter- and intra-generational), common but differentiated responsibilities, public participation, international cooperation and good faith”.<sup>313</sup> As recognised by the IPCC, multiple methodologies exist in determining the appropriate *fair level of contribution* of States considering these principles, but the essential element to retain is that States have obligations to reduce GHG emissions at different speeds, based on international law principles such as CBDR-RC and equity.<sup>314</sup>

191. It is worth highlighting that the extinction of the State by sea-level rise, in turn, involves myriad other legal consequences. Coastal lines, including a State’s Exclusive Economic Zone, are fundamental for marine delineation and delimitation. Traditional cultural sites will also be permanently lost, and issues of statelessness might ensue unless additional safeguards are in place. The Court should duly consider these and other consequences in answering the question on the legal consequences to especially affected States.

**C. Legal consequences of significant harm to the climate system and other parts of the environment, with respect to peoples and individuals of the present and future generations**

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<sup>310</sup> *ibid.*

<sup>311</sup> *ibid.*

<sup>312</sup> Intergovernmental Panel On Climate Change (n 98) Table SPM.2.

<sup>313</sup> Lavanya Rajamani and others (n 276).

<sup>314</sup> Intergovernmental Panel on Climate Change (IPCC), ‘IPCC WGIII AR5 - Summary for Policymakers’, *Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (2014) 13 (table SPM.1), 459 and 560 (figure 6.28) <<https://www.ipcc.ch/report/ar5/wg1/technical-summary/>> accessed 14 March 2024. It goes beyond the scope of this submission to elaborate further on the selection of appropriate fair share methodologies. However, this issue is central in the cases in front of the European Court of Human Rights, such as *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (communiquée)* (n 5); *Agostinho et al v Portugal and 32 other states (communiquée)* [2020] ECtHR 39371/20; *Carême v France (communiquée)* [2021] ECtHR 7189/21.

192. States have a responsibility to ensure that persons who are impacted by human rights violations within their own jurisdiction have access to effective redress mechanisms.<sup>315</sup> This obligation may be fulfilled by ensuring that business enterprises are held accountable for such violations through domestic laws and processes. This duty is explicitly outlined in several international instruments, including the UNCLOS which notes that:

“States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction.”<sup>316</sup>

193. Article 2.1 of the ICESCR similarly states that:

“[e]ach State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

194. Many economic, social and cultural rights cannot exist unless the human right to a clean, healthy, and sustainable environment is protected. This deep connection between the environment and economic, social and cultural rights is explained in the recent Pacific Regional Framework on Climate Mobility:

“For Pacific people, loss of land is not just about loss of place; it impacts the foundations of our individual and collective identities and well-being, and may threaten our customary practices and traditions, and complicate our ability to respond to climate change and related hazards and disasters.”<sup>317</sup>

195. The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights clarify that a State is in violation of the ICESCR if it fails to allocate the maximum of its available resources

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<sup>315</sup> ICCPR, Art. 2(3); Human Rights Committee, ‘General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant’ (n 72) paras 16, 18; Committee on the Rights of the Child (n 73) paras 30, 44; Committee on the Elimination of Discrimination Against Women, ‘General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women’ (2010) para 31 <<https://www.refworld.org/legal/general/cescr/1991/en/53157>> accessed 17 March 2024 [CEDAW/C/GC/28].

<sup>316</sup> UNCLOS, Art. 235(2).

<sup>317</sup> Pacific Islands Forum, ‘Communiqué of the 52nd Pacific Islands Leaders Forum. Annex C - Pacific Regional Framework on Climate Mobility’ (2023) para 18 <<https://forumsec.org/wp-content/uploads/2023/11/Annex-C-Pacific-Regional-Framework-on-Climate-Mobility-1.pdf>> accessed 17 March 2024.

to realising human rights.<sup>318</sup> The Framework Principles on Human Rights and Environment espouse that ‘States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment’.<sup>319</sup> We concur with the observations of the UN Special Rapporteurs in their amicus brief to ITLOS, that:

“States should ensure that individuals and communities whose rights have been violated as a result of greenhouse gas marine pollution have access to tribunals that are impartial, independent, affordable, transparent and fair; review claims in a timely manner; are adequately resourced; incorporate a right of appeal; and are able to issue binding decisions on interim measures, compensation, restitution, and reparation. Standing requirements before such tribunals should be construed broadly. As part of this obligation, States should also ensure that victims of marine pollution have access to remedies against private actors.”<sup>320</sup>

196. Peoples and individuals can compel their State through domestic legal actions against the State for failing to uphold international law obligations. They can seek reparations from the State for damages caused by the State's failure to uphold its international legal obligations. Peoples and individuals can also seek redress through international human rights courts and tribunals. Where the injury resulting from the internationally wrongful act or omission is suffered by a State's population (rather than the State itself), and the necessary conditions are met, States may invoke responsibility on behalf of their nationals through diplomatic protection (more specifically, through espousal of claim).<sup>321</sup>

197. A State's failure to prevent significant harm may result in a breach of human rights, and subsequent losses and damages.<sup>322</sup> The international community has long recognised ‘the

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<sup>318</sup> International Commission of Jurists, ‘Maastricht Guidelines on Violations of Economic, Social and Cultural Rights’ (1997) <<https://www.refworld.org/policy/legalguidance/icjurists/1997/en/63964>> accessed 17 March 2024.

<sup>319</sup> John Knox, ‘A/HRC/37/59: Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment’ (2018) Framework Principle 10 <<https://documents.un.org/doc/undoc/gen/g18/017/42/pdf/g1801742.pdf?token=hjj5Q8hTTAuH3YhFAF&fe=true>> accessed 17 March 2024 [Framework principles on human rights and the environment].

<sup>320</sup> Ian Fry, Marcos Orellana, and David R. Boyd, ‘Amicus Brief Submitted to the International Tribunal for the Law of the Sea by the UN Special Rapporteurs on Human Rights & Climate Change (Ian Fry), Toxics & Human Rights (Marcos Orellana), and Human Rights & the Environment (David Boyd). Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law (Case No. 31)’ (2023) para 93 <[https://www.itlos.org/fileadmin/itlos/documents/cases/31/written\\_statements/4/C31-WS-4-1\\_Amicus\\_Brief\\_UN\\_Special\\_Rapporteurs.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/31/written_statements/4/C31-WS-4-1_Amicus_Brief_UN_Special_Rapporteurs.pdf)>.

<sup>321</sup> *Corfu Channel (Merits)*, 35; ARSIWA, Arts. 44(b) and 45.

<sup>322</sup> The IPCC AR6 Glossary defines the difference between Loss and Damage and loss and damages as such: “Research has taken Loss and Damage (capitalised letters) to refer to political debate under the United Nations Framework Convention on Climate Change (UNFCCC) following the establishment of the Warsaw Mechanism on Loss and Damage in 2013, which is to ‘address loss and damage associated with impacts of climate change, including extreme events and slow onset events, in developing countries that are particularly vulnerable to the adverse effects of climate change.’ Lowercase letters (losses and damages) have been taken to refer broadly to harm from (observed) impacts and (projected) risks and can be economic or non-economic.”

importance of averting, minimising and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage’, as enshrined in Article 8 of the Paris Agreement.<sup>323</sup> While States are ultimately responsible for the protection of human rights within their borders and reparations for failure to comply, they may choose to operationalise financial mechanism(s) that force corporate carbon producers to pay for loss and damage which the State’s historic emissions have contributed to.

## VI. FINAL SUBMISSIONS

198. In our respectful submission, international law requires each State to apply the best available science in determining the extent of all States’ obligations related to the climate system, including those arising out of customary international law, general principles of law, the Paris Agreement, UNFCCC, UNCLOS and the core human rights treaties.
199. States are required to take all necessary measures to keep global temperature rise below 1.5°C, implement adaptation measures and ensure effective remediation for the mutual protection of all States, Peoples and present and future generations and to:
- a. **Refrain from contributing to the extinction of other States**, which arises from the customary prohibition of the use of force, the customary “no harm” principle, the principles of intra-generational and inter-generational equity, and the customary obligation not to allow their territory to be used against the rights of other States;
  - b. **To respect, protect and fulfil the internationally recognised human rights** of present and future generations, the rights of children, of women and persons living with disabilities and the rights to self-determination, to life, to live with dignity, to a clean, healthy and sustainable environment, to health, to work, to water, to food, to housing and to culture;
  - c. **To not deprive other States of their ability to ensure that persons within their jurisdiction enjoy and exercise their internationally recognised human rights**, which duty arises from the customary obligation to not allow their territory to be used against the rights of other States and the general obligation to act in good faith; and
  - d. **To regulate business enterprises** in their territory to prevent their activities from infringing upon the rights of other States as well as the rights of present and future generations within their territory.

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<sup>323</sup> Paris Agreement, Article 8.

200. Greenpeace also makes three main submissions regarding Question (b):

- a. First, under the Law on State Responsibility, States that commit internationally wrongful acts against the climate system must make full reparations to States that endure climate change-induced harm;
- b. Second, due to the obligation to refrain from contributing to the extinction of Small Island States (“SIDS”), or the partial or total inundation of any other low-lying State’s territory, and the ongoing nature of the harm, States must cease all internationally wrongful acts that drive climate change and offer assurances and guarantees of non-repetition; and
- c. Third, as a result of their obligations under customary international law and international human rights treaties, States that cause or allow their territories to be used for activities that cause significant climate harm must make full reparations to States, individuals and communities of present and future generations who have been, or will be, harmed by their wrongful actions and omissions.

From poem, "Tell Them" by Marshallese poet, Kathy Jetenil-Kijiner

*"and after all this  
tell them about the water  
how we have seen it rising  
flooding across our cemeteries  
gushing over the sea walls  
and crashing against our homes  
tell them what it's like  
to see the entire ocean \_\_level\_\_ with the land  
tell them  
we are afraid  
tell them we don't know  
of the politics  
or the science  
but tell them we see  
what is in our own backyard"*