

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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Greenpeace Australia Pacific is celebrating a 'week of action' to stand in solidarity with other Youth and Civil Society Organisations from the Pacific, and around the world, that are taking the world's biggest problem to the world's highest court. Community members from Tanna, Vanuatu, asking Member States of the United Nations to Vote Yes for an ICJ Advisory Opinion Request.

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EXECUTIVE SUMMARY

Greenpeace respectfully submits that, in relation to the obligations of States to prevent the adverse impacts of Climate Change for States and present and future generations:

All States have the obligation to refrain from contributing to the extinction of other States. This obligation 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;

All States have the 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;

All States have the 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

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.

“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. (...)”¹

*Lotomau Fiafia, Kioa, Fiji
community elder*

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Greenpeace also submits that the legal consequences for States that violate these obligations include the following:

- 1 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**;
- 2 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
- 3 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**.

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

2 INTERESTS AND EXPERTISE OF GREENPEACE INTERNATIONAL

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. Greenpeace International (“GPI”) is the network’s coordinating body. Millions of our supporters represent the concerns of present and future generations whom the Court’s opinion will impact.

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 our core values: we do not accept donations from governments or corporate interests, nor do we promote or oppose political parties.

Our 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 many governments have overlooked in their submissions. Reflecting on intersecting vulnerabilities and their personal circumstances, 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.



A powerful and diverse assembly of voices from around the globe gather in front of the Peace Palace in the Netherlands to demand climate justice. As the International Court of Justice prepares to begin its hearings on climate change and its impacts on human rights for current and future generations, this peaceful demonstration sets the stage for these historic discussions.

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PRELIMINARY CONSIDERATIONS

States’ international human rights and environmental obligations are rooted in treaties, general principles of law, and international custom, some of which predate the founding of the United Nations itself.² 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. Under this framework the UNFCCC and the Paris Agreement inform and complement States’ concurrent obligations under other bodies of international law, such as the prevention of transboundary harm and human rights protection.³ Simply finding that a State has discharged its duties under the UNFCCC or Paris Agreement does not correspond to it having fully discharged its 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.

International law obliges States to apply the “best available science” to fulfil their

duty to prevent, minimise, and remediate environmental harm.⁴ With regards to climate change in particular, States must ensure that they take measures to address this “urgent threat” and take mitigation actions to reduce anthropogenic greenhouse gases (“GHG”) on the basis of best available science, as confirmed -inter alia- by the UNFCCC and the Paris Agreement.⁵

The main authoritative source on climate science is the Intergovernmental Panel on Climate Change (“IPCC”).⁶ 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, extreme weather threatened human rights (e.g. due to population displacement, disease and famine).⁷ It also noted that global warming of 1.5°C was not safe “for most nations, communities, ecosystems and sectors”⁸ and posed “significant risks to natural and human systems as compared to the current warming of 1°C (high confidence)”,⁹ especially for people and communities in vulnerable situations.¹⁰

The release of the 1.5SR in 2018, provided all 195 IPCC Member States with 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 impacts¹¹ and that overshooting 1.5°C, even temporarily, could result in large, and potentially irreversible, risks to natural and human systems.¹²

Some of the key findings by the IPCC upon which this submission relies are:

- 1 Global average temperatures are on the rise as a direct consequence of anthropogenic activities, especially GHG emissions.
- 2 GHG emissions have not reduced, but have continued to increase since the Paris Agreement, due to industrial processes, energy supply, transportation, agriculture and building sectors.
- 3 Irreversible harm has already occurred due to human-caused climate change, and every additional fraction of a °C will generate more irreversible harm.
- 4 Risks increase significantly at warming of 1.5°C or higher above pre-industrial levels.
- 5 Decisions in this present decade will dictate global temperature trajectories.
- 6 Current and projected emissions from existing fossil fuel infrastructure will very soon exceed the remaining carbon budget to limit warming to 1.5°C.
- 7 Climate change disproportionately affects communities in vulnerable situations, whose historical contribution to climate change has been comparatively minimal.
- 8 Sea levels are rising and will rise even more due to higher global average temperatures.
- 9 Extreme weather and sea-level events will become significantly more frequent and intense.

² 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, UNRIIAA, 1905-1982; and Corfu Channel case, Judgement on Preliminary Objection: I.C. J. Reports 1949, 4, 22.

³ UNFCCC, 9 May 1992, 1771 U.N.T.S. 107 (entered into force on 21 March 1994), Preamble; 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].

⁴ See Cancun Agreements (FCCC/CP/2010/7/Add.1), Decision 1/CP.16, para. 4; see also UNCLOS, Arts. 61(2) and 119; 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); Convention on the Conservation of Migratory Species of Wild Animals (“CMS”), Art. III(2).

⁵ UNFCCC, Arts. 2, 4(2)(c)-(d); Paris Agreement, Preamble, 4(1), 7(5), 14(1).

⁶ UN body established in 1989 and composed of scientists who peer-review, assess and synthesise the best available climate science. IPCC findings are put before its more than 190 Member States, which negotiate line-by-line and adopt a Summary for Policymakers reflecting the scientific findings.

⁷ See 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 (CUP 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]; 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 (CUP 2022) <<https://www.cambridge.org/core/books/climate-change-2022-impacts-adaptation-and-vulnerability/summary-for-policymakers/016527EADDE2178406C4A7CE7DEAEACA>> accessed 14 March 2024 [IPCC AR6 WGII SPM B.1.6].

⁸ 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> accessed 14 March 2024 [TS.5].

⁹ *ibid* [TS.5].

¹⁰ *ibid* [TS.5].

¹¹ IPCC, ‘IPCC 1.5SR - Summary for Policymakers’ (n 9) [Table 3.5]; 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].

¹² IPCC, ‘IPCC 1.5SR - Summary for Policymakers’ (n 9) [Cross-Chapter Box 8, A.3.2]; Intergovernmental Panel on Climate Change (IPCC), ‘IPCC WGII AR6 - Summary for Policymakers’ (n 9) [B.6.1, TS, TS.C.2.5, TS.C.13.1].

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 (“Carbon Majors”).¹³ Further peer-reviewed studies quantify the proportional increase in atmospheric CO₂, global mean surface temperature, and global sea level from emissions traced to these Carbon Majors. Specifically, these studies found that:

- 1 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;
- 2 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
- 3 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.¹⁴

Finally, Greenpeace respectfully invites the Court to adopt an intersectional analysis in its Advisory Opinion.¹⁵ 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).”¹⁶ Such an analysis 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 legacy of colonialism. 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.”¹⁷ These processes create and perpetuate “sacrifice zones” around the world, whose residents suffer “devastating physical and mental health consequences and human rights violations as a result of living in pollution hotspots and heavily contaminated areas.”¹⁸ These communities are populated almost exclusively by people of colour whose quality of life is devastatingly compromised. This is little more than latter-day colonialism.¹⁹

¹³ The 90 entities comprise 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.

¹⁴ B Ekwurzel and others, ‘The Rise in Global Atmospheric CO₂, Surface Temperature, and Sea Level from Emissions Traced to Major Carbon Producers’ (2017) 144 Climatic Change 579.

¹⁵ 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.

¹⁶ IPCC, ‘IPCC WGII AR6 – Summary for Policymakers’ (n 9) [TS.B.7.3].

¹⁷ Ibid [B.2].

¹⁸ 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) paras 27-28 <<https://digitallibrary.un.org/record/3957797>> accessed 14 March 2024.

¹⁹ Ibid para 22.

4

THE OBLIGATIONS OF STATES TO PREVENT THE ADVERSE IMPACTS OF CLIMATE CHANGE

With respect to Question (a) of the Request by the General Assembly for an Advisory Opinion on climate change, Greenpeace respectfully submits that:

- 1 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;
- 2 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;
- 3 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
- 4 All States are obligated to regulate businesses in their territory to the extent that their activities infringe upon the rights of other States.

4.1

THE OBLIGATION TO REFRAIN FROM CONTRIBUTING TO THE EXTINCTION OF OTHER STATES

The ongoing sea levels rise and the increase in frequency and severity of extreme weather events threaten the territorial integrity of many states, particularly SIDS. 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.²⁰ For countries like Tuvalu and Kiribati, where the average height is 3-4 metres above sea level,²¹ a rise in sea levels of this magnitude will threaten their physical existence. 70-90% of coral reefs

²⁰ 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>>.

²¹ ‘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/ki01.pdf>>.

will die at 1.5°C, leaving millions without their livelihood, food, and protection against sea level rise and storms (among other crucial services these ecosystems provide).²²

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, 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.

In such circumstances, the harm is tantamount to the use of force against the territorial integrity of States. In recent years, “force” has been found to encompass many uses not ordinarily associated with physical or bellicose force, such as economic coercion and cyber attacks.²³ 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 extinction by means of sea-level rise, 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 and the “no harm” principle.²⁴

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.”²⁵ 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 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.²⁶ 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”.

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.²⁷ 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.

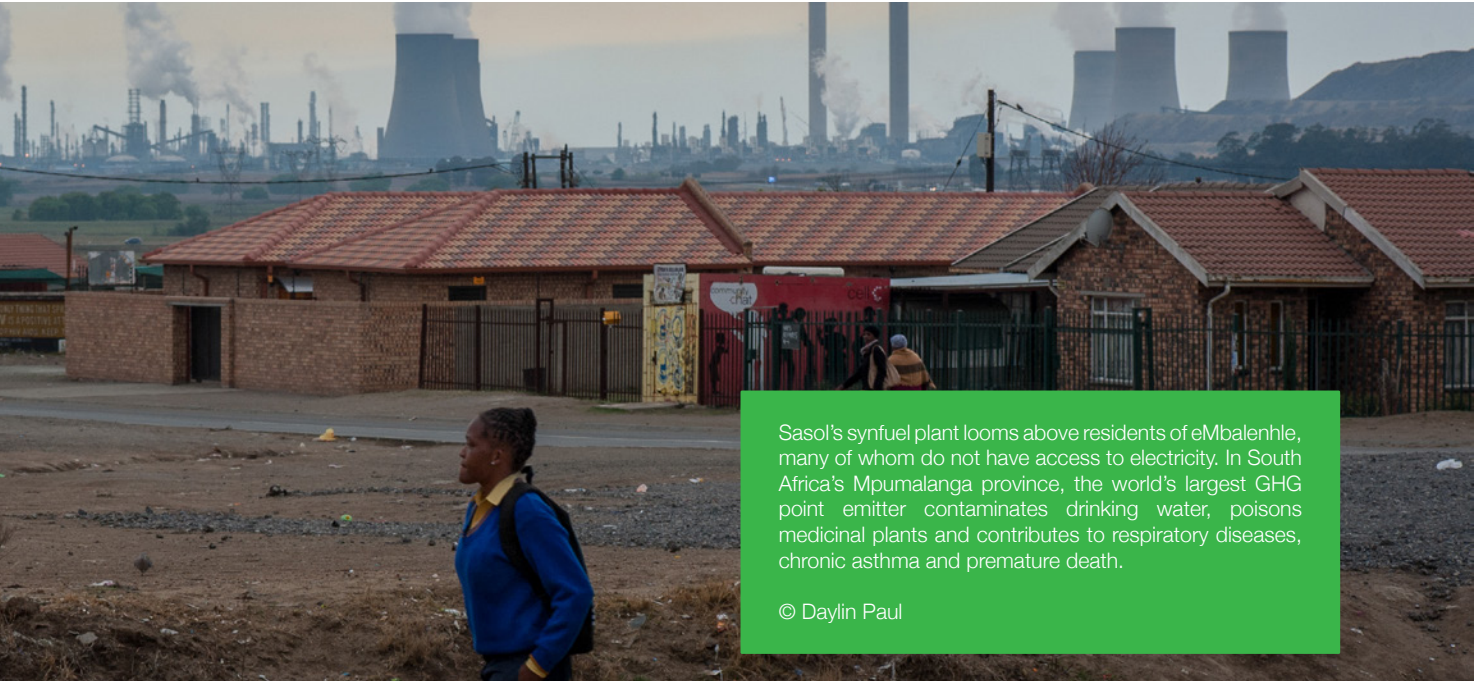
The specific measures that States must take in reducing their GHG emissions to comply with this obligation must be determined in light of the principle of common but differentiated responsibilities and respective capabilities (“CBDR-RC”).²⁸ This principle requires that developed countries, who have historically contributed the most to climate change and have,

as a consequence, “reaped immense economic benefits”,²⁹ should “take the lead in combating climate change and the adverse effects thereof”.³⁰ This principle, interpreted holistically, underlines that 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.

4.2

THE OBLIGATIONS TO RESPECT, PROTECT AND FULFIL THE INTERNATIONALLY RECOGNISED HUMAN RIGHTS OF PRESENT AND FUTURE GENERATIONS

Numerous human rights bodies, courts and tribunals have recognised that climate change impacts an array of fundamental rights.³¹ 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.³² These obligations extend beyond their own territories or citizens, including the duty to refrain from conduct that foreseeably breaches the human rights of persons in another territory or restricts the abilities of other States to fulfil their human rights obligations to their own peoples. It must be noted that climate change does not affect the rights of all people equally, disproportionately impacting countries and segments of the population already in disadvantaged situations.³³ Multiple forms of discrimination, including racism, sexism and classism, may combine, overlap, or intersect.³⁴



²² 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.

²³ Christine Gray, 'The Use of Force and the International Legal Order' in Malcolm Evans (ed), International Law (OUP 2018) 604.

²⁴ The latter has been invoked inter alia by the PCIL in the Trail Smelter Arbitration, Decisions of 16 April 1938 & 11 March 1941, vol. III, UNRIAA, 1905-1982, 1965 as well as by the ICJ in Corfu Channel (Merits), 22. See also Advisory Opinion on Nuclear Weapons. See also Article 194(2) of UNCLOS.

²⁵ Trail Smelter Arbitration, Decisions of 16 April 1938 & 11 March 1941, vol. III, UNRIAA, 1905-1982, 1965

²⁶ Corfu Channel (Merits), 22. See also Advisory Opinion on Nuclear Weapons.

²⁷ See Article 1 of the 1933 Montevideo Convention where it is stated that the criteria of statehood include a permanent population, a defined territory, a government, and the capacity to conduct international relations.

²⁸ Enshrined in UNFCCC Article 3(1), the preamble of the Paris Agreement, and Principle 7 of the Rio Declaration.

²⁹ 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=7micWMolSfTuQe7IGW&fe=true>> accessed 14 March 2024.

³⁰ UNFCCC, Art. 3(1).

³¹ Advisory Opinion OC-23/17: The Environment and Human Rights [2017] IACtHR OC-23/17 paras 47, 49, 51 et seq.; UN HRC, '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; UNGA, '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.

³² CCPR, '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]; UNEP, 'Climate Change and Human Rights' (14 March 2024) <<http://www.unep.org/resources/report/climate-change-and-human-rights>> accessed 21 November 2023; UNGA, '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].

³³ CIEL 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> accessed 14 March 2024; IPCC, 'IPCC WGII AR6 - Summary for Policymakers' (n 9).

³⁴ Human Rights Council, 'A/HRC/50/57: The Impacts of Climate Change on the Human Rights of People in Vulnerable Situations' (2022).

4.2.1 THE RIGHT TO SELF-DETERMINATION

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” and in common article 1 of both International Human Rights Covenants.³⁵ For over 50 years, the right to self-determination has been repeatedly recognised by the ICJ while the International Law Commission recognized in 2022 its jus cogens status.³⁶ To attain the right to self-determination, States should also ensure the full enjoyment of subsidiary rights, including social, cultural, and economic rights.³⁷

Those living in SIDS face additional risks since the integrity of their territory is threatened by rising sea levels, rendering them at risk of losing their personal and cultural identity, their physical connection with the ancestral territory, and their effective nationality.³⁸ Indeed, States’ obligations to protect, respect and fulfil the rights of peoples to self-determination require them to protect peoples from environmental degradation caused by climate change.³⁹

For those like Lucian Reiher, the climate impacts her family experiences today 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. 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 Banaba were expropriated and forcibly moved to Rabi Island to make way for mining by the British Phosphate Commission. The Banabans say they were shown photos of “Rabi” with two-story houses. In fact these pictures were of Levuka, former capital of Fiji. On arrival, the Banabans found no town and had to live in tents beside the beach.⁴⁰ Now, in addition to living with the direct impacts of colonisation, Lucian’s right to self-determination is at risk due to rising sea levels in Rabi Island, Fiji:

“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”.

Lucian Reiher,
interviewed on 10 August 2023 in Rabi Island, Fiji,
during the Rainbow Warrior Ship Tour.⁴¹

4.2.2 THE RIGHT TO LIFE AND TO LIVE WITH DIGNITY

The right to life is the supreme right from which no derogation is permitted.⁴² This right should not be interpreted narrowly, and “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.”⁴³ Towards that, CCPR GC No.36 clarifies the obligations of States to present and future generations regarding environmental degradation, climate change and unsustainable development, stating, that the “[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.”⁴⁴

In the Philippines, the Commission on Human Rights (CHRP) held a seven-year inquiry into the role of “Carbon Majors” in causing and contributing to climate change. Their 2022 findings⁴⁵ noted the most recent IPCC reports,⁴⁶ and how extreme weather events such as the 2013 Super Typhoon Haiyan can destroy peoples’ rights to life and life with dignity.⁴⁷ Such events, the CHRP found, “prevent an individual from living a dignified life”⁴⁸ and “Filipinos carry the brunt of anthropogenic climate change by paying with their lives.”⁴⁹ Joanna Sustento, one of many first-hand witnesses who testified to the CHRP about 2013 Super Typhoon Haiyan (locally Yolanda), described 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 [...].”

Joanna Sustento,
shared with the authors via email 14 December 2023.⁵⁰

³⁵ UN Charter, Art. 1; ICCPR and ICESCR, Art. 1, paras. 1–3.

³⁶ ILC, ‘Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens)’ (2022) Conclusion 23; 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.

³⁷ These include the rights to life, adequate food, water, health and housing, productive use and enjoyment of property, cultural practices and traditions; 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’.

³⁸ *ibid*; UN Charter, Art. 15(2).

³⁹ UN HRC, ‘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].

⁴⁰ Jane McAdam, ‘Caught between Homelands’ (Inside Story, 15 March 2013) <<https://insidestory.org.au/caught-between-homelands/>> accessed 27 November 2023.

⁴¹ Lucian Reiher, interviewed on 10 August 2023 in Rabi Island, Fiji, during the Rainbow Warrior Ship Tour.

⁴² ICCPR, Art .4; CCPR, ‘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; CCPR, ‘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] CCPR, CCPR/C/OP/1 at 112 para 13.1; Baboeram-Adhin et al v Suriname (Communication Nos 146/1983 and 148-154/1983) [1985] CCPR, CCPR/C/24/D/146/1983 para 14.3.

⁴³ ICCPR, Art .4; CCPR, ‘General Comment No. 6: Article 6 (Right to Life)’ (1982) para 3.

⁴⁴ CCPR, ‘General Comment No. 36: Article 6 (Right to Life)’ <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/261/15/PDF/G1926115.pdf?OpenElement>> accessed 1 December 2023 [CCPR/C/GC/36], para 62.

⁴⁵ 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>, 30.

⁴⁶ IPCC, ‘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.

⁴⁷ CHRP (n 48).

⁴⁸ *ibid* 30.

⁴⁹ *ibid* 35.

⁵⁰ Statement by Joanna Sustento, shared with the authors via email 14 December 2023.



On the eve of Typhoon Haiyan 3rd year anniversary, people from Tacloban light candles that spell out “Climate Justice”, to commemorate the devastating landfall. The fossil fuel companies - a.k.a. the Big Polluters - are being investigated in the Philippines for allegations of human rights abuses resulting from climate change.

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IPCC reports demonstrate how slow-onset climate impacts, like coastal erosion and rising sea levels also threaten the right to live in dignity. Climate and weather extremes are increasingly driving human displacement across the globe “with small island states in the Caribbean and South Pacific being disproportionately affected relative to their small population size (high confidence).”⁵¹ 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,”⁵² particularly impacting “economically and socially marginalised urban residents (high confidence).”⁵³

4.2.3 THE RIGHTS OF CHILDREN AND FUTURE GENERATIONS

Human rights law is not time-limited to present generations. The duty to protect future generations, also referred to as the intergenerational equity principle, is included in at least 44 international environmental instruments,⁵⁴ and is widely recognised by international and domestic courts.⁵⁵ 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.⁵⁶ 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”.⁵⁷ In line with the UNFCCC and Stockholm Declaration, the 2023 Maastricht Principles on the Human Rights of Future Generations⁵⁸ 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.”⁵⁹

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, States must identify individuals and groups of children who need special measures and recognise and realise their rights to a safe climate. Towards that, the UN Committee on the Rights of the Child General Comment No. 26 (CRC GC No. 26) on Children’s Rights and the Environment, with a Special Focus on Climate Change, calls for “urgent collective action by all States to mitigate greenhouse gas emissions, in line with their human rights obligations”, particularly historical and current major emitters.⁶⁰ CRC’s GC No.26 also states that “the climate crisis is a form of structural violence against children and can cause social collapse in communities and families”.⁶¹ 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”.⁶²



Day 2 of Climate Change and Human Rights inquiry held in Quezon City, Manila.

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⁵¹ 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> accessed 14 March 2024, [A.2.5].

⁵² *ibid* [A.2.7].

⁵³ *ibid*.

⁵⁴ Center for International Environment Law (CIEL), ‘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.

⁵⁵ Center for International Environment Law and others (n 36) para 121. 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 (See Mayagna (Sumo) Awas Tingni Community v Nicaragua [2001] IACtHR Series C No. 79.) The CCPR further applied the concept of intergenerational equity in two cases concerning climate change and human rights protection (See Billy et al. v. Australia (Communication No. 3624/2019) (n 6) para 5.8. See also Teitiota v. New Zealand).

⁵⁶ UNFCCC, Art. 3.

⁵⁷ 1972 Stockholm Declaration on the Human Environment, Principle 2.

⁵⁸ The Maastricht Principles on Human Rights of Future Generations, adopted 3 February 2023: <https://www.ohchr.org/sites/default/files/documents/new-york/events/hr75-future-generations/Maastricht-Principles-on-The-Human-Rights-of-Future-Generations.pdf>

⁵⁹ 2023 Maastricht Principles, Preamble IV and XIV.

⁶⁰ 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%2F5F0vHrWghmhzPL092J0u3MJAYnyUPAX-9o0tJ4tFwwX4frsffIPka9cgF%2FBur8eYD%2BEeDmuoVnVOpjkwB9eiDayZA>> accessed 14 March 2024 [CRC/C/GC/26] para 96.

⁶¹ *ibid* para 35.

⁶² *ibid* para 97.

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.”⁶³ In his Dissenting Opinion, Judge Weeramantry referred to “the principle of intergenerational equity as an emerging principle of contemporary international law.”⁶⁴ 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.”⁶⁵ 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.”⁶⁶

Ella Marie Hætta Isaksen, a 26-year-old Sámi artist and environmentalist in Norway, describes 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 [...].”

Ella Marie Hætta Isaksen,
extracted from *Greenpeace Nordic and Others v. Norway (communiquée)*,
[2021] ECtHR 34068/21, Annex 1.⁶⁷

Concerning climate change impacts on children’s right to life, Guadalupe Cobos Pacheco from El Bosque, Mexico, shared 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 [...] our children’s integrity was in danger, their lives were in danger [...].”

Guadalupe Cobos Pacheco and others,
*El Bosque*⁶⁸

Yesenia del Socorro Albino Sánchez, also from El Bosque, described 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. [...] 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.”

Yesenia del Socorro Albino Sánchez (translated from Spanish),
extracted from *El Bosque Amicus Brief to the IACtHR (n 73)*.⁶⁹

Climate impacts on children’s right to health may also affect their family life as well. Sharon Mbonani in eMbalenhle, Mpumalanga, South Africa 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, [...].”

Sharon Mbonani,
interviewed on 23 February in eMbalenhle Township.⁷⁰

⁶³ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, p. 226 at 251.

⁶⁴ Legality of the Threat or Use of Nuclear Weapons (Dissenting Opinion Of Judge Weeramantry), p. 280.

⁶⁵ 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.

⁶⁶ Whaling in the Antarctic (Australia v Japan: New Zealand Intervening), Separate Opinion of Judge Cançado Trindade, at para. 47.

⁶⁷ Statement by Ella Marie Hætta Isaksen, extracted from Greenpeace Nordic and Others v. Norway (communiquée), [2021] ECtHR 34068/21, Annex 1.

⁶⁸ 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> [henceforth, ‘El Bosque Amicus Brief to the IACtHR’].

⁶⁹ Statement by Yesenia del Socorro Albino Sánchez (translated from Spanish), extracted from El Bosque Amicus Brief to the IACtHR (n 73).

⁷⁰ Statement by Sharon Mbonani, interviewed on 23 February in eMbalenhle Township.



On 15 June 2021, Greenpeace Nordic and Young Friends of the Earth, along with six young climate activist file an application with the European Court of Human Rights (ECtHR).

The applicants claim that the decision to issue licences for oil and gas extraction in the Norwegian Arctic violates their fundamental human rights and increases the risk of harm due to climate change.

The individual applicants include six young activists: Ingrid Skjoldvær (27), Gaute Eiterjord (25), Ella Marie Hætta Isaksen (23), Mia Cathryn Chamberlain (22), Lasse Bjørn (24), and Gina Gylver (20).

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4.2.4 THE RIGHTS OF WOMEN

Those who identify as women face increased impacts of the “existing gender discrimination, inequality and inhibiting gender roles” due to climate change.⁷¹ Extreme weather events kill more women than men, often linked to reasons such as looking after children, wearing clothes which inhibit movement, and being less likely to be able to swim.⁷²



The Rainbow Warrior is in Vanuatu to help deliver relief to outlying islands. After Cyclone Pam devastated Vanuatu in the Pacific in March, 75,000 people have been left in dire need of emergency shelter and other goods to restore their lives and homes. There are ongoing tireless efforts from many different organizations, through the National Disaster Management Office, who have been working hard to provide relief to Vanuatu and its people. One of the major logistical hurdles that the aid agencies are facing, is the collection and distribution of goods throughout the islands. Extreme weather events, such as Cyclone Pam, threaten to become the new normal for Pacific island states as the global climate changes, underscoring the urgency to cut global emissions to avert a climate crisis.

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Environmental degradation and disasters are known for triggering domestic violence, forced marriage, human trafficking, and forced prostitution.⁷³ Eddie Huitarau, a programme manager for the Solomon Islands Rangers and the US 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.⁷⁴

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.⁷⁵

⁷¹ 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&LangRequested=-False>> accessed 21 November 2023.

⁷² *ibid.*

⁷³ UNEP, ‘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>>.

⁷⁴ Statement by Eddie Huitarau, interviewed on 7 November 2023 in Malaita Province, Solomon Islands.

⁷⁵ 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), 67.

Cressida Kuala, a women’s rights advocate in Mt. Hagen, Papua New Guinea, noted how pregnant women and their babies die from drought and vanishing underground water sources:

“...we have to walk a...distance to go and fetch water and it causes backache and pregnant woman...they can give birth on the way, because they need water to... feel healthy so that they can give birth to a healthy child... Sometimes they give birth to children near the waterways ... and the baby sometimes passed away, because the mother passed away too.”

Cressida Kuala,
interviewed on 17 November 2023 in Mt. Hagen, Papua New Guinea.⁷⁶

Vinzealhar Nen, community worker in Port Moresby, Papua New Guinea, also described how food insecurity impacts unmarried daughters, forcing them into marriages, so families can obtain dowry funds to support themselves.

“[...] 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, 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.”

Vinzealhar Nen,
interviewed on 15 November 2023 in Port Moresby, Papua New Guinea.⁷⁷

Women 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. In Switzerland, Klimaseniorinnen members experienced the impacts of summer heatwave on their rights to health and to private and family life in several ways. Elisabeth Stern shares the impact of the summer 2022 heatwave on her dignity during a train journey one afternoon:

“I sweat, pant like a dog...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...”

Verein KlimaSeniorinnen Schweiz and Others v. Switzerland⁷⁸

⁷⁶ Statement by Cressida Kuala, interviewed on 17 November 2023 in Mt. Hagen, Papua New Guinea.

⁷⁷ Statement by Vinzealhar Nen, interviewed on 15 November 2023 in Port Moresby, Papua New Guinea.

⁷⁸ Verein KlimaSeniorinnen Schweiz and Others v. Switzerland. [Elisabeth Stern, extract from an email to the Klimaseniorinnen Schweiz on 10 November 2022; submitted to the Grand Chamber] (translated from German).

4.2.5 THE RIGHTS OF PERSONS LIVING WITH DISABILITIES

One billion people are estimated to be persons with disabilities,⁷⁹ 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.”⁸⁰ 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.”⁸¹ 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”.⁸²

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”.⁸³

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”.⁸⁴ Ellen Tamata, from Port Vila, Vanuatu, shares her experience as a woman living with a disability. She shares how during cyclones, 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.”

Ellen Tamata,
*interviewed on 9 July 2023 in Port Vila, Vanuatu during the Rainbow Warrior Ship Tour.*⁸⁵

⁷⁹ World Health Organization and World Bank, ‘World Report on Disability’ (2011) 29 <<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.>>.

⁸⁰ UN Convention on the Rights of Persons with Disabilities (UNCRPD), Art. 1.

⁸¹ OHCHR, ‘The impact of climate change on the rights of persons with disabilities’ (2024), <<https://www.ohchr.org/en/climate-change/impact-climate-change-rights-persons-disabilities>

⁸² OHCHR, ‘Analytical Study on the Promotion and Protection of the Rights of Persons with Disabilities in the Context of Climate Change’ (2020) para 5 <<https://www.ohchr.org/en/documents/thematic-reports/analytical-study-promotion-and-protection-rights-persons-disabilities>> [A/HRC/44/30].

⁸³ UNCRPD, Arts. 4(a)-(c), (e).

⁸⁴ Office of the High Commissioner for Human Rights (n 86) para 7.

⁸⁵ Statement by Ellen Tamata, interviewed on 9 July 2023 in Port Vila, Vanuatu during the Rainbow Warrior Ship Tour.

4.2.6 THE RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT

States must ensure the protection of the right to a clean, healthy and sustainable environment (hereafter “the right to a healthy environment”), as recognised by the UNGA and the UNHRC and recognised in 156 countries at the regional and national levels.⁸⁶ 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 decision-making, and access to justice and effective remedies, including the secure exercise of these rights free from reprisals and retaliation”.⁸⁷ 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.⁸⁸

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... before that, that land was right there... 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.”⁸⁹

Daniela Simal is an ecologist who grew up in the Netherlands Caribbean municipality of 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:

“[...] 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. [...] 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.”

⁸⁶ UNGA, ‘The Human Right to a Clean, Healthy and Sustainable Environment’ (n 74); UN HRC, ‘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=hhENpL9as264l4gj8&fe=true>> accessed 15 March 2024.

⁸⁷ OHCHR, UNEP, and UNDP, ‘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.

⁸⁸ UNGA, ‘The Human Right to a Clean, Healthy and Sustainable Environment’ (n 34).

⁸⁹ Statement by Lotomau Fiafia, interviewed on 6 August 2023 in Kioa, Fiji, during the Rainbow Warrior Ship Tour.

“Another factor here is that Bonaire has been colonised and plundered. Old trees were taken for timber. [...] 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. [...]”

Daniela Simal ⁹⁰

4.2.7 THE RIGHTS TO HEALTH AND WORK

Another right that enjoys customary status is the right to health, which is encapsulated in Article 25(1) of the UDHR and Article 12(2)(b) of the ICESCR.⁹¹ The impacts of climate change on the right to health are diverse and can be vividly seen in the lives of women in particular.

In Bonaire, Miralis Engelhart, a nurse, underscores the negative impact of extreme heat on her patients’ right to health:

“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. [...] 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 [...].” ⁹²

Miralis Engelhart

Helen Angela, a 51 year old medical laboratory worker, also from Bonaire, underlined that unusually heavy rainfall not only compromises Bonaire’s urban road infrastructure, but impacts on people’s right to live in dignity as they waded through floods to get to hospital.⁹³

States must protect and promote the right to work, which is protected through various international agreements, including Article 6 of the ICESCR.⁹⁴ Climate change affects the right to work and livelihood both directly and indirectly, e.g., from the degradation of natural resources that sustain livelihoods, e.g., decreased fish catch, as in Vanuatu:

“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... Our mamas go to the market on the weekend to sell. They sell fish, shells, octopus. But now it is hard.”

Willie Kenneth,
interviewed on 7 July 2023 on Pele Island, Vanuatu, during the Rainbow Warrior Ship Tour.⁹⁵

In the impoverished eMbalenhle Township and surrounding Secunda area of South Africa, communities experience serious impacts on their right to health from industrial activities, which in turn, impacts their right to work: Sharon Mbonani, activist and mother of two, says:

“Sasol is in our backyard for employment, however, locals usually fail medical employment test because they have been inhaling toxins throughout their childhood.”

Sharon Mbonani,
interviewed on 23 February in eMbalenhle Township.⁹⁶

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”.⁹⁷ The adverse effects of climate change on women’s livelihoods, particularly of rural women, have been noted at the UN treaty body level. Indeed, climate-related disasters increase the vulnerability and mortality of women and girls, particularly those living in poverty, by directly impacting their livelihoods, as stated by CEDAW.⁹⁸

⁹⁰ Statement by Daniela Simal, 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.

⁹¹ UDHR, Art. 25(1); ICESCR, Art. 12(2)(b).

⁹² 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.

⁹³ Statement by Helen Angela, 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.

⁹⁴ 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.

⁹⁵ Statement by Sharon Mbonani, interviewed on 23 February in eMbalenhle Township.

⁹⁶ Statement by Sharon Mbonani, interviewed on 23 February in eMbalenhle Township.

⁹⁷ UNEP, ‘Climate Change and Human Rights’ (2015) <<https://www.unep.org/resources/report/climate-change-and-human-rights>>.

⁹⁸ CEDAW (n 146) paras 62-63.

4.2.8 THE RIGHTS TO WATER AND TO FOOD

In 2010, the UNGA 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”.⁹⁹ The right to water was subsequently the subject of General Comment 15 of the CESCR, which grounded the right on Articles 11 and 12 of the ICESCR.¹⁰⁰ The CESCR also found that the right to water was implied in the right to life and to live with dignity and in the right to health.

Eddie Huitarau of Malaita Province in the Solomon Islands makes the important point:

“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.¹⁰¹ 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.”

Eddie Huitarau,
interviewed on 7 November 2023 in Malaita Province, Solomon Islands.¹⁰²

In the eMbalenhle Township in 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 [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.”*¹⁰³

Tshepiso Mstweni,
interviewed on 23 February in eMbalenhle Township.

The UDHR and the ICESCR protect the right to food as part of the right to a dignified standard of living.¹⁰⁴ The CESCR states that this right’s realisation is based on availability, accessibility and adequacy: “when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement.”¹⁰⁵

Onnie Emerenciana from Bonaire, 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 affect both his rights to food and livelihood:

*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. 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.”*¹⁰⁶

Onnie Emerenciana

4.2.9 THE RIGHTS TO HOUSING AND TO CULTURE

States have international obligations to take steps towards the realisation of the right to adequate housing for all.¹⁰⁷ 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.”¹⁰⁸ 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.¹⁰⁹

Climate change particularly impacts the right to housing of people in low-lying island States, rendering them vulnerable to sea level rise and saltwater flooding, which in turn accelerates coastal erosion and hinders the production of food.

As has been confirmed by the CCPR in *Billy et al v. Australia*, 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”.¹¹⁰ As recalled by the CCPR, article 27 ICCPR must be interpreted in the light of the UN 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.”¹¹¹ Climate change and biodiversity loss reduce people’s ability to practise their traditional culture and pass it on to the next generation.¹¹²

⁹⁹ UNGA, ‘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?to-ken=8GnGTbfvIOAIxGALEs&fe=true>> accessed 15 March 2024.

¹⁰⁰ CESCR, ‘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.

¹⁰¹ Root vegetable cultivated in Africa, East Asia, South Asia, South East Asia and the Pacific Islands

¹⁰² Statement by Eddie Huitarau, interviewed on 7 November 2023 in Malaita Province, Solomon Islands.

¹⁰³ Statement by Tshepiso Mstweni, interviewed on 23 February in eMbalenhle Township.

¹⁰⁴ UDHR, Art. 25(1); ICESCR, Art. 11(1).

¹⁰⁵ CESCR, ‘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].

¹⁰⁶ 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.

¹⁰⁷ See UDHR, Art 11 of the ICESCR, and Art 27(3) of the UNCRC; 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.

¹⁰⁸ 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].

¹⁰⁹ *ibid.*

¹¹⁰ Billy et al. v. Australia (Communication No. 3624/2019) (n 6).

¹¹¹ *ibid* [para 8.13 citing Käkkäläjärvi et al. v. Finland (CCPR/C/124/D/2950/2017) para. 9.9].

¹¹² Statement by Winnie Batty, interviewed on 7 July 2023 on Pele Island, Vanuatu during the Rainbow Warrior Ship Tour.



View of the ochre yellow slave huts along the southwest coast of Bonaire, showing their proximity to the sea. The huts served in the 19th century as shelter for the enslaved people who were put to work on salt panning. The Bonaire slave huts are unique since in many places the history of enslavement has been erased. Bonaire is a Special Municipality of the Netherlands, located in the south Caribbean in the Lesser Antilles near Venezuela.

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Communities in Vanuatu are experiencing the distress of their family members' bones from their graves being washed into the sea by coastal erosion and cyclones. The community of Pele Island, Vanuatu, shared how they 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.¹¹³ 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 [...]”*¹¹⁴

Winnie Batty,
interviewed on 7 July 2023 on Pele Island, Vanuatu on the Rainbow Warrior Ship Tour.

More than 50,000 Pacific people are displaced every year due to climate and disaster-related events.¹¹⁵ Community worker Vinzealhar Nen, of Port Moresby in Papua New Guinea, gives an

example from East Sepik province, where a group 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.”*¹¹⁶

Vinzealhar Nen,
interviewed on 15 November 2023 in Port Moresby, Papua New Guinea.

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 both current and future generations who trace their family lineages to the residents of these huts. Jackie Bernabela, working for the Bonaire Archaeological Institute, shares what this loss would mean to her:

¹¹³ Statement by Lizzie Moli, interviewed on 7 July 2023 on Pele Island, Vanuatu during the Rainbow Warrior Ship Tour.

¹¹⁴ Statement by Winnie Batty, interviewed on 7 July 2023 on Pele Island, Vanuatu on the Rainbow Warrior Ship Tour.

¹¹⁵ 52nd Pacific Island Forum (PIF) Communiqué (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 para. 20

¹¹⁶ Statement by Vinzealhar Nen, interviewed on 15 November 2023 in Port Moresby, Papua New Guinea.

“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 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.”¹¹⁷

Jackie Bernabela

4.3

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

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, largely due to acts beyond their control but within the control of other States, the consequences for, i.a., the rights to life, livelihood and culture of individuals and communities are inevitable. As such, GPI respectfully submits 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.

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

- 1 First, as confirmed by the Court’s jurisprudence, that States are responsible for the effects of activities within their jurisdiction or control when those acts infringe upon the rights of other States.¹¹⁸
- 2 Second, that States must act in good faith in the performance of their international obligations 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.¹¹⁹ Knowingly acting in 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.

¹¹⁷ 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.

¹¹⁸ Corfu Channel (Merits), 20; Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion), 241-2, para.

¹¹⁹ Pursuant to Article 26 and 18 of the Vienna Convention on the Law of Treaties (“VCLT”) respectively. See also Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997, 7, para. 142.

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.¹²⁰ Likewise, the IACtHR 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.”¹²¹ The CCPR has also underscored this obligation.¹²²

In the context of anthropogenic climate change, this obligation cannot be set aside by a defence of force majeure, since in light of the best available science, the rise in sea level cannot be deemed to be force majeure. Its causes 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,¹²³ 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.¹²⁴

4.4

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

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. States must protect individuals from such human rights harm.¹²⁵ The UNSR 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”.¹²⁶ To fulfil this duty, States have to “regulate activities contributing to such harm,” both domestically and extraterritorially.¹²⁷ 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”.¹²⁸

¹²⁰ Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion), 241-2, para. 27.

¹²¹ Advisory Opinion OC-23/17: The Environment and Human Rights (n 34) para 101.

¹²² CCPR, ‘General Comment No. 36: Article 6 (Right to Life)’ (n 47) para 22.

¹²³ 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.

¹²⁴ Nonetheless the availability of the defence of force majeure is more complex when it comes to extreme weather events. As such, whether a particular event can be attributed to anthropogenic GHG emissions should be determined in light of the best available attribution science on a case-by-case basis. In relation to extreme weather events that can be traced back to a State’s actions or inactions, the defence of force majeure will once again not be applicable.

¹²⁵ Advisory Opinion OC-23/17: The Environment and Human Rights (n 34) para 244, points 5, 6, 7 and 8.. See also CHRP (n 48) 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.

¹²⁶ David R. Boyd (n 125) paras 40, 48.

¹²⁷ CEDAW and others (n 34); David R. Boyd (n 125) para 40.

¹²⁸ CEDAW and others (n 34) para 10. This has been confirmed by numerous other bodies, including by the CCPR in Portillo Cáceres and Others v Paraguay (Communication No2751/2016) [2019] CCPR CCPR/C/126/D/2751/2016 paras 7.3-7.7; CESCR, ‘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].



Multitudinous marches took place in Buenos Aires, Mar del Plata and other cities on the Atlantic Coast in rejection of offshore oil exploration in the Argentine Sea. On December 30, the Ministry of Environment and Sustainable Development of Argentina approved the request of Equinor to carry out seismic exploration in its blocks CAN 100, 108 and 114 of the Argentine North basin, off the southern coast of the province of Buenos Aires. According to the Greenpeace, seismic exploration is the first step for oil exploitation in the Argentine Sea.

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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”¹²⁹. This requires compelling 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*).”¹³⁰ This necessity was confirmed by the IPCC,¹³¹ the IEA,¹³² and the IACtHR in its Advisory Opinion OC-23/17 of 2017.¹³³

Towards that, 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.¹³⁴ 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.¹³⁵

¹²⁹ David R. Boyd (n 125) paras 32-33; OHCHR, ‘United Nations Guiding Principles on Business and Human Rights’ (2011) <https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf> [Principles 1-10].

¹³⁰ 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> accessed 14 March 2024.

¹³¹ *ibid* 89.

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

- 1 taking steps to avoid vested interests in climate policymaking;
- 2 refraining from agreeing to clauses in investment or trade agreements that would hinder their ability to pass climate regulation (e.g., 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);
- 3 amending, renegotiating, severing and/or terminating agreements that include such clauses; and
- 4 dissuading and/or preventing their corporate nationals from using such provisions to challenge climate action by other States
- 5 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 Rio Declaration and confirmed by the ICJ in its decisions on the matter.¹³⁶

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.”¹³⁷

Veronica (‘Derek’) Cabe

¹³² 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>, 21. See also 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>.

¹³³ Advisory Opinion OC-23/17: The Environment and Human Rights (n. 34), [para 244, points 5, 6, 7 and 8].

¹³⁴ CHRP (n 48) 112; 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> accessed 14 March 2024 [C.I.7], para 57; David R. Boyd (n. 125), paras 34, 71(d).

¹³⁵ David R. Boyd (n 125) paras 42, 72(a), 73(a), 73(b), 73(d).

¹³⁶ See e.g. Pulp Mills (Judgement) - particularly in para 205, where 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. In practice, 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 - See CCPR, ‘General Comment No. 36: Article 6 (Right to Life)’ (n 42), para 62.

¹³⁷ Statement by Veronica (‘Derek’) Cabe before the CHRP, Fifth Inquiry Hearing, in London, England, on 7 November 2018. Extracted from CHRP (n 48) 31.

5

LEGAL CONSEQUENCES

“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!”¹³⁸

*Khaya Mahlangu
of eMbalenhle Township, South Africa*

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.

We make three main submissions regarding Question (b):

- 1 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;
- 2 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
- 3 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.

¹³⁸ Statement by Khaya Mahlangu, interviewed on 23 February 2024 in eMbalenhle Township.

5.1

THE OBLIGATION OF FULL REPARATION FOR THE INJURIES CAUSED BY INTERNATIONALLY WRONGFUL ACTS AGAINST THE CLIMATE SYSTEM

5.1.1 THE ILC ARTICLES ON STATE RESPONSIBILITY IN LIGHT OF CLIMATE CHANGE

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,¹³⁹ obligations arising under customary international law,¹⁴⁰ and obligations arising under general principles of law. As addressed in Section 4 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 a 1.5°C temperature increase.¹⁴¹ 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.

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.¹⁴² A State is legally responsible for a breach of international law when it:

- 1 engages in an act or omission that is not in conformity with an international obligation,¹⁴³ and/or
- 2 when it assists or aids another State in committing a wrongful act or omission.¹⁴⁴

Once State responsibility is established, the State is required to immediately cease any breach of international law, provide assurances that such actions will not be repeated, and “make full reparation for the injury caused” by the breach,¹⁴⁵ including reparations for ‘any damage, whether material or moral’.¹⁴⁶

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,

¹³⁹ James Crawford, ‘State Responsibility’ (MPEPIL, September 2006) para 12 <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1093?prd=EPIL>> accessed 17 March 2024.

¹⁴⁰ ILC, ‘Draft Articles on the Responsibility of States for Internationally Wrongful Acts’ (2001) Art. 12 [henceforth, ‘ARSIWA’].

¹⁴¹ 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.

¹⁴² ARSIWA, Arts. 4-6, 8-11.

¹⁴³ ARSIWA, Art. 12.

¹⁴⁴ ARSIWA, Arts. 16-19.

¹⁴⁵ ARSIWA, Art. 31(1).

¹⁴⁶ ARSIWA, Art. 31(2).

is compensable under international law”.¹⁴⁷ The CRC 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”.¹⁴⁸

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.

5.1.2 FORMS OF REPARATION AVAILABLE TO INJURED STATES

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.¹⁴⁹ This may be in the form of restitution, compensation or satisfaction (or a combination thereof).¹⁵⁰ The Permanent Court of International Justice (“PCIJ”) noted almost a century ago that per 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”.¹⁵¹

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.¹⁵² NELD has major implications for societal and ecological welfare. It may include harm to individuals (life, health, mobility); to societies (lost territory, cultural heritage, Indigenous and local knowledge,); and to the natural environment (loss of and damage to biodiversity and habitats). States must effectively remediate the harm to which they have contributed, such as by 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 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

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 possible.¹⁵³ The benefits of environmental restitution are immense and have the ability to guarantee human rights for future generations living in the environment indefinitely in a way that financial compensation (even if paid in perpetuity) can never account for.

¹⁴⁷ *Certain Activities Carried Out by Nicaragua in the Border Area* (Costa Rica v. Nicaragua), Compensation, Judgment, I.C.J. Reports 2018, 15, para. 42.

¹⁴⁸ *Sacchi et al v Argentina* (Communication No 104/2019) [2021] CRC CRC/C/88/D/104/2019 para 10.10.

¹⁴⁹ *ARSIWA*, Art. 31(1).

¹⁵⁰ *ARSIWA*, Art. 34.

¹⁵¹ *Case Concerning the Factory at Chorzow* (Germany v. Poland), 1928 PCIJ, Judgment on Merits (Claim For Indemnity), 47.

¹⁵² 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>>.

¹⁵³ *ARSIWA*, Art. 35.

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.”¹⁵⁴

*Obeth Singol,
interviewed on 15 November 2023 in Port Moresby, Papua New Guinea.*

Compensation



Climate impacted communities, civil society representatives, environmental activists, and Greenpeace thrust their black-tainted palms as they stand in protest outside the DENR (Department of Environment and Natural Resources) office in Quezon City, Philippines. The groups call for the government to make climate polluters accountable for extreme weather events like the southwest monsoon rain enhanced by Super Typhoon Carina, and the oil spill off Manila Bay following the recent sinking of two cargo ships in Limay, Bataan west of Manila. The protesters are demanding that the Marcos Jr. administration hold climate polluters accountable and make them pay for damages to ecosystems, community livelihoods, and health.

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Compensation involves the payment of a sum which corresponds to the value of the restitution in kind, had it been available.¹⁵⁵ 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.¹⁵⁶ 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”.¹⁵⁷ When restitution is impossible, compensation should be made for both pecuniary and non-pecuniary harm. compensation may be an appropriate form of reparation “where restitution is materially impossible or unduly burdensome”.¹⁵⁸ Compensation is a necessary form of reparation where climate change impacts are irreversible or will take a very long time to reverse.

¹⁵⁴ Statement by Obeth Singol, interviewed on 15 November 2023 in Port Moresby, Papua New Guinea.

¹⁵⁵ *ARSIWA*, Art 36.

¹⁵⁶ *Case Concerning the Factory at Chorzow* (Merits), 47.

¹⁵⁷ *Certain Activities Carried Out by Nicaragua in the Border Area* (Compensation), para. 42.

¹⁵⁸ *Certain Activities Carried Out by Nicaragua in the Border Area* (Compensation), para. 31.

Satisfaction

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”.¹⁵⁹ 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 that this is not out of proportion to the injury and does not take a form humiliating to the responsible State.¹⁶⁰ 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 them to change their business practices.”*¹⁶¹

Marinel Ubaldo,
extracted from *CHRP* (n 48) 32

5.2

THE OBLIGATION TO CEASE ALL INTERNATIONALLY WRONGFUL ACTS THAT CONTRIBUTE TO THE EXTINCTION OF OTHER STATES AND OFFER GUARANTEES OF NON-REPETITION

Due to sea-level rise, certain States are facing existential threat. Yet, the key point is that the impending extinction of certain SIDS is still preventable. State failure to comply with international legal obligations to protect the climate system from anthropogenic emissions is an ongoing violation of international law that will continue to cause harm until appropriate remediation action is taken.

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.”*¹⁶²

Kjellid Masoud Kroon

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 in breach of primary obligations 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.

To have a chance of limiting warming to 1.5°C—which is not safe for SIDS— global CO₂ emissions must decrease by at least 48% from 2019 levels by 2030 and reach net zero around 2050.¹⁶³ On this latter point, multiple pathways outlined in the latest IPCC report show the possibilities of achieving net-zero CO₂ 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:

- 1 Cease and desist from licensing new oil, gas, and coal exploration and production;¹⁶⁴
- 2 Phase out all subcritical coal-fired power plants and large oil-fired power plants by 2030,¹⁶⁵ and all unabated coal-fired plants by 2040;¹⁶⁶
- 3 Cease and desist from building or financing new infrastructure for transporting, processing, and burning extracted fossil fuels;
- 4 Refrain from supporting or approving any new large-scale land clearing for agro-industrial development or infrastructure that facilitates such expansion;
- 5 Divest from, refrain from investing in, and deny subsidies or incentives to fossil fuel-related activity or large-scale agro-industrial development;
- 6 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 2035¹⁶⁷ and emerging markets and developing economies by 2040;¹⁶⁸ and
- 7 Rely on proven measures capable of averting the risk of foreseeable harm in the near term instead of speculative technologies and geoengineering.

To have a 67% chance of keeping below the 1.5°C limit - itself an inadequate objective - the remaining global carbon budget is 400 GtCO₂.¹⁶⁹ However, simply dividing the remaining carbon budget amongst States on 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 principles of international law such as “harm prevention, precaution, sustainable development, special circumstances, equity (inter- and intra-

¹⁵⁹ ARSIWA, Art 37.

¹⁶⁰ ARSIWA, Art. 37(3).

¹⁶¹ Statement by Marinel Ubaldo, extracted from CHRP (n 48) 32

¹⁶² 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.

¹⁶³ IPCC, ‘IPCC WGIII AR6 - Technical Summary’ (n 133) [Ch. 3, 3.3].

¹⁶⁴ 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>. 21.

¹⁶⁵ Ibid 117

¹⁶⁶ / 167 / 168 Ibid

¹⁶⁹ Intergovernmental Panel On Climate Change (n 49) Table SPM.2.

generational), common but differentiated responsibilities, public participation, international cooperation and good faith”.¹⁷⁰ Multiple methodologies exist to determine 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.¹⁷¹

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.

5.3

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

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.¹⁷² This obligation may be fulfilled by ensuring that business enterprises are held accountable for such violations through domestic laws and processes, as explicitly outlined in several international instruments, including the UNCLOS,¹⁷³ Article 2.1. of the ICESCR.

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.” ¹⁷⁴

Pacific Islands Forum

¹⁷⁰ Lavanya Rajamani and others (n 144).

¹⁷¹ See: 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.

¹⁷² ICCPR, Art. 2(3); CCPR, ‘General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant’ (2004) paras 16, 18 [CCPR/C/21/Rev.1/Add. 13]; 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) paras 30, 44 <<https://www2.ohchr.org/english/bodies/crc/docs/crc.c.gc.16.pdf>> accessed 14 March 2024, [CRC/C/GC/16]; CEDAW, ‘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].

¹⁷³ UNCLOS, Art. 235(2).

¹⁷⁴ 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.



The Swiss KlimaSeniorinnen and four individual plaintiffs took Switzerland to the European Court of Human Rights (ECtHR) for violating their human rights by pursuing an inadequate climate policy. On 9 April 2024, the Court’s Grand Chamber affirmed that climate change poses a direct and substantial threat to human rights and ruled on States’ obligations to undertake effective climate action. The decision has been hailed by legal scholars as a landmark judgment, one that may transform climate litigation in Europe and beyond.

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Additionally, a State’s failure to prevent significant harm may result in a breach of human rights, and subsequent losses and damages.¹⁷⁵ The international community has long recognised “the 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.¹⁷⁶ While States are ultimately responsible for protecting 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 to which the State’s historic emissions have contributed.

¹⁷⁵ 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 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.”

¹⁷⁶ Paris Agreement, Article 8.

6 FINAL SUBMISSIONS

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.

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:

- 1 **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;
- 2 **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;
- 3 **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
- 4 **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.

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

- 1 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;
- 2 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
- 3 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.

***"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"***

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

*"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."*

*From poem "Remember us"
by Samoan youth environmental activist, Okalani Mariner*

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