

Institute for Governance & Sustainable Development (IGSD)

**MEMO: REMEDIES BEFORE THE INTER-AMERICAN COURT OF HUMAN RIGHTS
TO ADDRESS THE CLIMATE EMERGENCY**

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The Inter-American Court of Human Rights (IACtHR) will need to consider new orders, recommendations, and guidelines to ensure that States respond effectively to the climate emergency. This memo will consider the power of the IACtHR to issue such remedies, as well as provide suggestions regarding the most effective remedies that it can issue, using IACtHR and comparative jurisprudence. Further, it will highlight that the gravity of the climate emergency justifies the issuing of provisional measures by the IACtHR as well as putting States on notice that they may be subject to precautionary measures from the Inter-American Commission on Human Rights.

The memo will address the following:

1. The power of the IACtHR to make orders, recommendations, and set guidelines to prevent rights violations.
2. IACtHR and comparative jurisprudence on effective orders and recommendations to protect rights violated by climate impacts.
3. The power of the IACtHR to issue provisional measures.
4. The power of the Inter-American Commission to issue precautionary measures to address the climate emergency.

I. The Power of the IACtHR to Make Orders, Recommendations, and Set Guidelines to Prevent Rights Violations

Under international law, a violation of a human right entitles the right holder to an effective remedy.¹ In addition, victims of human rights violations have a right to receive adequate and full reparations. The IACtHR has considered that a comprehensive and adequate reparation cannot be reduced to the payment of compensation to the victims or their relatives, because depending on the case, measures of rehabilitation, satisfaction, and guarantees of non-repetition are also necessary.² Guarantees of non-repetition (of rights violations) normally include policy, normative and institutional reform measures.³

Within its jurisdiction, the Court issues orders that are binding on the parties to the proceeding. In advisory opinions, the Court's ordinary practice is not to make orders (given the nature of its jurisdiction described above) but to set guidelines for States to follow in order to comply with their obligations. These guidelines or recommendations form the basis for future petitions that individuals or groups may bring to the Inter-American Commission, or to the Court directly (through an application for provisional or precautionary measures), to hold States accountable for alleged violations of rights. The parameters developed by the Court in an advisory opinion also define the content and scope of the obligations derived from the American Convention, which, under the *doctrine of conventionality control*, must be incorporated in domestic legislation, judicial orders, and public policy.⁴

Despite this, there is still considerable scope for the Court to make recommendations and indications in the advisory opinion when it sets guidelines that will have a normative and practical effect on State and non-State action. The Court can, for example, also explain the ways in which the climate emergency is an urgent and grave threat to rights, especially the right to life. This explanation can pave the way for future litigation seeking provisional measures from the Court or precautionary measures from the Inter-American Commission to safeguard any rights at significant risk of irreparable harm.

Each of these types of IACtHR interventions (whether applied through binding orders or through the imposition of recommendations or guidelines) may be flexibly and practically adapted and applied by the Court to address the climate emergency, as has been done in other jurisdictions.

II. IACtHR and Comparative Jurisprudence on Effective Orders and Recommendations to Protect Rights Violated by Climate Impacts

An overview of the IACtHR jurisprudence on remedies and recommendations in both its contentious and advisory jurisdiction follows. This overview highlights types of orders or recommendations that might be applied by the IACtHR in an advisory opinion to most effectively ensure that States comply with their obligations, given the nature of the climate emergency. Where relevant, this overview draws connections between types of remedies and approaches taken by courts and tribunals in other jurisdictions.

The Court has utilised numerous different types of orders and recommendations to protect rights, including:

- Reforms to existing laws and policies to protect substantive and procedural rights (including the rights of human rights defenders)
- Requiring the protection and restoration of land subject to environmental damage
- Recommending legislation to monitor and supervise third parties
- Setting guidelines to prevent discrimination and to protect vulnerable communities
- Requiring the creation or updating of action plans
- Enabling funding, the use of best available technology and economic drivers

A. Reforming Existing Laws to Protect Substantive and Procedural Rights

i. Reforms Requiring States to Take Necessary Actions to Protect the Environment

In *Lhaka Honhat*, the IACtHR was asked to consider appropriate remedies in response to (among other rights) a violation of the right to a healthy environment, as a result of the failure of the State to appropriately handle and protect the land of an indigenous community.⁵ Among the remedies ordered was that the State had to take necessary actions, whether judicial, administrative, notarial, or any other kind of action, to delimit, demarcate, and grant a collective title that recognized the indigenous people's ownership of the territory.⁶ The Court then delineated a series of mandatory guidelines to achieve the required changes.⁷ A similar remedy was issued in *Mayagna (Sumo) Awas Tingni v. Nicaragua*.⁸ Here, the IACtHR ordered the State to implement legislative, administrative, and any other measures necessary to create an effective mechanism for delimitation, demarcation, and titling of the communal lands. Both remedies had to be implemented in accordance with the culture of the indigenous tribe.⁹

In advisory opinions, the Court has also ordered that laws and legislation be reformed to address human rights violations. In *Advisory Opinion OC-27/21*,¹⁰ the IACtHR confirmed that states are "under obligation to adapt their laws and practices to new conditions on the labour market, regardless of the kind of technological developments that produce these changes".¹¹ Similarly, in *Advisory Opinion OC-29/22*,¹² the IACtHR set guidelines that states adopt a differentiated approach to the special needs of distinct groups deprived of liberty.¹³

Other courts have set more specific positive obligations on States to mitigate and adapt to the impacts on climate change. The most prominent example is *Urgenda v. The Netherlands*, where the Dutch government was ordered to reduce its greenhouse gas emissions by 25% below 1990 levels by 2020.¹⁴ The Dutch Supreme Court, however, offered suggestions but did not mandate policies for achieving this reduction. *Neubauer, et al. v. Germany*,¹⁵ took a similar approach and saw the German Supreme Court order the legislature to set clear provisions for greenhouse gas reduction targets from 2031 onward by the end of 2022.¹⁶ This decision led the German legislature to revise its climate laws to meet these targets.

In *Leghari v. Pakistan*,¹⁷ although the government had formulated a climate change policy and implementation framework, the Supreme Court of Pakistan concluded there had been no real progress with its implementation. To oversee the effective execution of the policy, the Court (i) directed several government ministries to each nominate “a climate change focal person” to help ensure the implementation of the Framework, and to present a list of action points by December 31, 2015; and (ii) created a Climate Change Commission composed of representatives of key ministries, NGOs, and technical experts to monitor the government's progress.¹⁸ The Court later issued a supplemental decision naming 21 individuals to the Commission and vesting it with various powers.¹⁹

In *In Re Court on its own motion v. State of Himachal Pradesh and others*,²⁰ India's National Green Tribunal found that black carbon is a major causative factor for rapid melting of glaciers in the Himalayan region. It ordered the government of Himachal Pradesh to implement a variety of specific measures to reduce pollution in the region. These measures included limiting transport in certain areas, the provision of 30 eco-friendly toilets, and accompanying waste management measures, and the appointment of an oversight committee that would make quarterly reports to the court on the progress made in implementing the measures.²¹

ii. Recommendations and Orders to Change Policy to Protect Human Rights Defenders

The IACtHR has, in *Human Rights Defender v. Guatemala*,²² ordered the State to implement a public policy for the protection of human rights defenders taking into account the following requirements:

- the participation of human rights defenders, civil society organizations and experts in the formulation of standards for the regulation of a program for the protection of the group in question;
- the protection program should adopt a comprehensive and inter-institutional approach to this problem, based on the risk posed by each situation and adopt immediate measures to address complaints by defenders;
- the creation of a risk analysis model to adequately determine the risk and the protection needs of each defender or group;
- the creation of an information management system on the status of the prevention and protection of human rights defenders;
- the design of protection plans in response to specific risks faced by each defender and to the nature of his/her work;
- the promotion of a culture of legitimization and protection of the work of human rights defenders, and
- the provision of sufficient human and financial resources to respond to the real needs for protection of human rights defenders.²³

iii. Strengthening Procedural Rights

The IACtHR also routinely issues directives designed to protect and strengthen procedural rights that are essential for enabling all people and especially vulnerable persons and groups to preserve and protect substantive rights.

There are many examples of the IACtHR in contentious cases ordering States consult with vulnerable groups the subject of the litigation prior to creation of action plans or legislative reforms. The IACtHR has in both *Lhaka Honhat* and *Mayagna (Sumo) Awas Tingni* ordered that the relevant measures and action be taken in accordance with the culture and interests of the relevant indigenous tribe.²⁴ In *Saramaka v. Suriname*,²⁵ the IACtHR ordered that fully informed consultations be provided to the indigenous tribe whose land was being encroached upon by miners, and that no further mining could occur without the fully informed consent of the tribe.²⁶ The same approach was taken in *Rio Negro v Guatemala*, where the action plan to preserve the culture of the indigenous community had to be created in consultation with the community.²⁷

Other advisory opinions and rulings have required States consult with and ensure the needs of vulnerable groups are accounted for in pursuing specific obligations. In *Advisory Opinion OC-23/17*,²⁸ states were obligated to ensure (a) the right of access to information concerning potential environmental damage and (b) the right to public participation of persons subject to their jurisdiction in policies and decision-making.²⁹ Similarly, in *Advisory Opinion OC-27/21*,³⁰ states were ordered to foster the real participation of worker representatives and employer representatives in the design of employment policies and laws.³¹

The IACtHR has also in the past mandated training for public officials where they have identified a lack of understanding of human rights obligations. In *Fernández-Ortega v. Mexico*,³² and *Rosendo Cantú v. Mexico*,³³ the IACtHR ordered the State to provide permanent human rights training to relevant military officials in response to sexual violence committed against indigenous women and the subsequent failure of the State to conduct due diligence in investigating the violence. The training was mandated to include a gender and ethnicity perspective.³⁴ In *Case of González et al. ("Campo Algodonero") v. Mexico*,³⁵ the IACtHR ordered the State to continue implementing programs and permanent education and training courses on: i) human rights and gender; ii) a gender perspective for due diligence in conducting preliminary investigations and legal proceedings related to gender-based discrimination, violence, and homicides of women, and iii) overcoming stereotypes about the social role of women. The State was obligated to report to the Court annually for three years on the implementation of the training and courses.³⁶

B. Protecting and Restoring Land

The IACtHR has issued orders to protect or require the restoration of land subject to environmental damage. In *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*,³⁷ the IACtHR ordered that the State must neutralize, deactivate and, where appropriate, remove all of the pentolite on the surface, conducting a search of at least 500 meters on each side of the E16 seismic line as it passes through the territory of the plaintiffs.³⁸ In *Case of the Triunfo de la Cruz Garífuna Community v. Honduras*,³⁹ the State was ordered to refrain from carrying out acts that could lead the agents of the State itself to, or third parties who act with their

acquiescence or tolerance, affect the existence, value, use, or enjoyment of the lands that must be restored to the plaintiffs.⁴⁰

Other courts in the Americas have sought to specifically protect nature-based carbon sinks through the declaration of key areas as the subject of rights. This was the approach taken by the Supreme Court of Colombia in the landmark case of *Future Generations v. Ministry for the Environment*.⁴¹ Here, the Supreme Court deemed the Amazon to be a subject of rights, and as such the State was responsible for its protection, conservation, maintenance, and restoration. In *Atrato River Decision*, the Supreme Court of Colombia again took a similar approach and declared the Atrato River to be a subject of rights.⁴²

There is also international precedent of governments designating important natural resources as possessing rights. In New Zealand legislature used its authority to declare the Whanganui River as a living entity.⁴³ In Bangladesh, the case of *Writ Petition no 13989*, saw the country's Supreme Court deem all of the country's rivers to be legal persons.⁴⁴

C. Monitoring and Supervising Third Parties

The IACtHR has previously set up implementation committees to monitor and supervise relevant legislation or programs. In *Plan de Sanchez v Guatemala*, the court ordered the setting up of a survivor identification committee but left it to the discretion of the state as to what the composition of the committee would be.⁴⁵ In *Moiwana Community v. Suriname*,⁴⁶ the IACtHR established that the implementation committee must consist of one representative from the state, one from the affected indigenous community, and one representative that was mutually agreed upon by both sides.⁴⁷ The Court would further intervene in the event that the composition of the committee could not be agreed upon. These cases involved the supervision of state projects, but such committees may be appropriate for the supervision of third parties. In *Campesino Leaders of Bajo Aguán*,⁴⁸ the Inter-American Commission of Human Rights issued precautionary measures requesting the Government of Honduras to adopt the necessary measures to guarantee the life and physical integrity of said member in response to threats against a community from private security guards. In *Community of La Oroya v. Peru*,⁴⁹ the Inter-American Commission found that the State was responsible for violations of the right to a healthy environment among other rights, as a result of its failure to conduct due diligence and put adequate controls to address the pollution caused by a private metallurgical complex in the region. The Commission recommended that the State have “binding measures to ensure private companies require, promote and guide companies that carry out mining and metallurgical activities to carry out due diligence in the field of human rights within their processes or operations regarding the rights to a healthy environment and health”.⁵⁰ Further, it recommended that the State “establish mechanisms for requesting access to information that, for the purposes of business activities that have an impact on human rights, place private corporations as obligated subjects to receive, process and respond to requests for access to information, and establish state mechanisms monitoring of negative and/or evasive responses from both public entities and companies.”⁵¹

Courts and tribunals in several comparative jurisdictions have made orders or non-binding recommendations to control and restrain the activities of non-State parties that are significantly contributing to global warming.

In *Milieudefensie et al. v. Royal Dutch Shell plc*,⁵² the Hague District Court ordered Shell to reduce its emissions by 45% by 2030, relative to 2019, across all activities including both its

own emissions and end-use emissions. The Court gave Shell flexibility in allocating emissions cuts between Scope 1, 2, and 3 emissions, so long as in aggregate, the total emissions were reduced by 45%.⁵³

In the Philippines, the Commission on Human Rights made a series of non-binding recommendations directed at 47 major fossil fuel emitters ('Carbon Majors'). Requiring the Carbon Majors to publicly disclose the measures the companies have taken to assess and comply with their human rights obligations,⁵⁴ and to cease exploration for new oil fields and assist in the development of renewable energy systems and carbon sequestration.⁵⁵

D. Setting Guidelines to Enhance Just and Equitable Outcomes and Protect Vulnerable Groups

In *Advisory Opinion OC-24/17*,⁵⁶ the IACtHR ordered that States make available a procedure for changing one's public record to match a person's gender identity.⁵⁷ It then laid out a series of requirements to ensure that the procedure aligned with states human rights obligations. These guidelines were designed to ensure that LGBTQ people had their rights fully recognized and vindicated throughout the process. In *Advisory Opinion OC-29/22*,⁵⁸ the IACtHR issued guidelines for how States adopt a differentiated approach to the special needs of each vulnerable group identified in the opinion. This included for example a right for older persons to have physical spaces suitable to their mobility, and a right for pregnant women to have access to clothes and hygiene products suitable to their needs.⁵⁹ The Court did not establish particular measures to ensure compliance with the Advisory Opinion in this instance. However, in *Advisory Opinion OC-24/17*, the Court referenced its capacity to supervise its judgments.⁶⁰ The Inter-American Commission has also taken steps to criticize States that have not complied with the Advisory Opinion – with it most recently issuing a public statement condemning Panama for failing to recognize same-sex marriage.⁶¹

In *Case of Cuscul Pivaral et al. v. Guatemala*,⁶² the IACtHR ordered Guatemala to adopt specific measures to accommodate the needs of those living with HIV. These measures included the establishment of an information system on the scope of the HIV epidemic in the country with a breakdown by gender, age, ethnicity, language and socioeconomic status of the patients., the designing of a mechanism to mechanism to guarantee the accessibility, availability and quality of antiretrovirals, diagnostic tests and health benefits for the population with HIV, and a guarantee that all pregnant women would have access to an HIV test.⁶³

The European Court of Human Rights has also ordered that environmental impact assessments be carried out by governments keeping in mind particularly important social aspects. In *Cordella v. Italy*,⁶⁴ the Court ordered that the State, in conducting an environmental impact assessment must identify and ensure actions necessary to ensure that the environmental and health protection of the population and such actions should be implemented as soon as possible.⁶⁵

E. Creating and/or Updating Action Plans

The IACtHR has in the past ordered the development of and implementation of action plans to mitigate human rights violations. In *Lhaka Honhat*, the Court ordered Argentina to present a study in six months that identifies critical situations of lack of access to drinking water and food, and that it then formulate an action plan to address these situations.⁶⁶ In *Rio Negro v Guatemala*,⁶⁷ the IACtHR ordered that the state must consult with the victims and draw up a

timetable with short and medium term goals of how it would ensure the preservation of the cultural integrity of the community that had brought the case.⁶⁸

The most prescient climate case within Latin America to order the creation of climate action plans is the Colombian case of *Future Generations v. Minister for the Environment*.⁶⁹ Here, the Supreme Court of Colombia ordered the government to create and implement short, medium, and long term action plans to counteract the deforestation rate in the Amazon, with a focus on tackling climate change impacts.⁷⁰ The formulation of these plans was left to the discretion of the relevant governmental departments.

In *Friends of the Irish Environment v. Government of Ireland*,⁷¹ the Irish Supreme Court found that the Irish Climate Action Plan was not specific enough for the reasonable reader to understand how Ireland would meet its 2050 climate targets. It ordered that the existing plan be quashed, and a more specific plan be drawn up which must be sufficiently specific as to climate policy over the whole period to 2050.⁷²

Several cases in domestic Latin American jurisdictions are already seeking the creation and updating of climate action plans as a form of remedy. These include *Youth v. Mexico* (asking for a plan to implement the General Climate law),⁷³ *Alvarez v. Peru* (seeking a plan to reduce deforestation),⁷⁴ and *Asociación Civil por la Justicia Ambiental v. Province of Entre Ríos* (seeking a coordinated environmental management and land use plan that recognizes the vulnerability of the ecosystem and its relevance for future generations).⁷⁵ None of these cases have reached a point where the judiciary has ruled on their merits, but they highlight a common interest within Latin America in this remedy.⁷⁶

F. Orders Enabling Funding, Technology, and Economic Instruments

In contentious cases the IACtHR has previously ordered the pursuit of developmental programs and held that such programs must be enabled through appropriate state funds. Such an approach, however, has not yet been taken under the Court's advisory jurisdiction. In *Moiwana Community v. Suriname*, the Court ordered the State establish a \$1.2 million fund directed to health, housing, and educational programs for the Moiwana community members in response to the destruction of their community.⁷⁷ In *Plan de Sanchez v. Guatemala*,⁷⁸ the Court ordered that such programs be developed without setting out a particular budget, but set a deadline by which the program had to be implemented, regardless of the degree of funding that would be required from the State.

The IACtHR has also shown a willingness to enable the use of communication technology to provide innovative solutions to human rights violations. In *Vicky Hernandez et al v. Honduras*,⁷⁹ the Court ordered that the state produce and disseminate a documentary on the situation of trans people in the country, following its finding that the State was responsible for the unlawful killing of the applicant.⁸⁰ A number of other judgments have also ordered that the State disseminate and publish judgments on a number of media outlets,⁸¹ and to translate the judgement into relevant languages where needed.⁸²

In *Case of the Garifuna Community of Punta Piedra and its members v. Honduras*,⁸³ the IACtHR ordered the State create a public fund for: “i) developing projects aimed at increasing agricultural productivity or of another kind in the Community; ii) improving the Community's infrastructure according to its present and future needs; iii) restoring deforested areas, and iv) others they deem relevant for the benefit of the Punta Piedra Community.”⁸⁴

III. IACtHR Power to Issue Provisional Measures in Cases of Extreme Gravity and Urgency

In addition to the types of orders discussed above, the IACtHR may also order provisional measures. The Court has explained that in international human rights law, provisional measures have a character that is not only cautionary, in the sense that they preserve a legal situation, but fundamentally protective as they protect human rights to the extent that they may prevent irreparable harm to individuals. In this way, provisional measures can serve as a true jurisdictional guarantee of a preventive nature.

Provisional measures ordered by the Court are binding for States Parties to the American Convention.⁸⁵

A. Standing and Procedural Requirements

Pursuant to article 27 of the Court's Rules of Procedure, provisional measures may be requested by (a) presumptive victims, victims, and their representatives in a case before the Court, and (b) the Inter-American Commission.⁸⁶ Requests can also be presented during the procedural phase in which the Court monitors the enforcement of its judgements. The Court may also order such measures *ex officio*.

For a request to be admissible when it is presented during a case pending before the Court, the request must relate to the merits of the case.⁸⁷ When the measures are not related to a case pending before the Court, the Commission must analyze the effectiveness of the State's actions in response to the described situation, and the degree of vulnerability to which the individuals for whom measures are requested would be exposed, should these measures not be adopted.⁸⁸ Finally, if the request relates to a judgement of the Court, the facts must be related to the compliance of the reparations measures ordered by the tribunal.⁸⁹

B. Substantive Requirements and Scope of Provisional Measures

Article 63 of the American Convention on Human Rights establishes that provisional measures may be ordered by the Court "in cases of extreme gravity and urgency, and when necessary, to avoid irreparable damage to persons." With respect to the requirement of *extreme gravity*, the Court has clarified that the threat must be at its most intense or elevated degree.⁹⁰ The *urgency* for the adoption of measures implies that the risk or threat involved is imminent, and therefore requires an immediate response to remedy the threat.⁹¹ Regarding the *damage*, there must be a reasonable probability that it will materialize, and it should not affect goods or legal interests that can be repaired.⁹² All these requirements must be demonstrated *prima facie* by the application seeking the measures for the Court to order and maintain provisional measures.

The Court has not yet ordered provisional measures in the context of the climate emergency or to prevent environmental damage. However, the power to order provisional measures can be applied to protect any right so long as the measure is targeted at preventing "irreparable damage to persons." The Court has typically ordered provisional measures to protect the rights to life and personal integrity of beneficiaries. The Court has also ordered measures to protect the right to freedom of expression.⁹³ Additionally, the Court has ordered measures to protect the rights of environmental defenders.⁹⁴

The type of measures that can be ordered by the Court are not regulated by the American Convention, nor by the Court's Rules of Procedure, and therefore the IACtHR has ample discretion to define their scope in each case. They can range from measures to protect the physical integrity of victims, to ordering the suspension of a legislative proposal,⁹⁵ as well as ordering that domestic judicial orders not take effect.⁹⁶

For example, in *Luisiana Ríos & Others v. Venezuela*,⁹⁷ the Court ordered that the State adopt provisional measures to protect the life and right to humane treatment of journalists under threat, as well as ordering that the State refrain from actions that may intimidate journalists, while also carrying out an investigation into the facts of the allegations that had been made by the journalists in the case.⁹⁸ Similarly, in *Barrios Altos Case and La Cantuta Case v. Peru*,⁹⁹ the Court ordered the State to refrain from executing an order of its domestic court to release the former President of Peru who had been accused of human rights abuses. This decision has been complied with. In *El Mozote Massacres and Nearby Places v. El Salvador*,¹⁰⁰ the Court ordered that the State not continue with its legislative proposal that may have threatened access to justice for victims of human rights violations.¹⁰¹ In these cases the Court determined that the State report on its compliance with the provisional measures, and in *Luisiana Ríos & Others v. Venezuela*, it issued a subsequent decision condemning the State for not complying with its measures.¹⁰²

C. IACtHR Enforcement and Monitoring

The Court commonly sets a recurring deadline, every three or six months, for the State and the beneficiaries to present their observations on the enforcement of the measures.¹⁰³ In subsequent resolutions, the Court may extend the measures to other beneficiaries¹⁰⁴ or lift the measures based on lack of information or because it considers the State has effectively complied with the measures.¹⁰⁵

IV. Inter-American Commission Precautionary Measures to Address the Climate Emergency

A. Standing and Procedural Requirements

Any person or group of persons subject to the jurisdiction of an OAS member States may request precautionary measures from the Inter-American Commission. The measures may also be adopted *ex officio* by the Commission.

B. Substantive Requirements and Scope of Measures

The Commission's Rules of Procedure explain the content and scope of each requirement that must be *prima facie* demonstrated by the potential beneficiary. These include:

- a. "gravity of the situation": the serious impact that an action or omission may have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the Inter-American system;
- b. "urgency of the situation": determined by information indicating that the risk or threat is imminent and may materialize, thus requiring preventive or protective action; and
- c. "irreparable harm": the affectation of rights that, by their very nature, are not susceptible to reparation, restoration or adequate compensation.¹⁰⁶

The Commission has not yet ordered precautionary measures in relation to the climate emergency but has issued precautionary measures with respect to environmental damage. For example, in the *Oroya* case the Commission ordered Perú to provide a medical diagnosis of 65 people presumably affected by pollution from mining activities.¹⁰⁷ Most notably, in the *Sipakepense and Mam* measures, the Commission ordered Guatemala to suspend gold mining activities, carry out an environmental impact assessment, decontaminate water sources and provide medical treatment to the beneficiaries.¹⁰⁸

C. Inter-American Commission Monitoring and Compliance

As the Commission is a quasi-judicial body, precautionary measures are not formally binding but OAS member States should comply on the basis of the principle of good faith. In practice, therefore, they are regarded as lesser in their legal effects when compared with provisional measures ordered by the IACtHR. Nevertheless, the Commission commonly sets a recurring deadline for the State and the beneficiaries to present their observations on the enforcement of the measures.¹⁰⁹ In future resolutions, the Commission may extend these measures to other beneficiaries, or lift the measures based on lack of information if it considers the required measure has been effectively addressed.¹¹⁰

D. Analogous Measures in Other International Tribunals to Protect Rights Impacted by the Climate Emergency

The International Court of Justice,¹¹¹ the International Tribunal for the Law of the Sea,¹¹² the UN Human Rights Committee,¹¹³ the European Court of Human Rights,¹¹⁴ and the Court of Justice of the European Union¹¹⁵ each have broadly equivalent power to issue provisional measures (also called ‘interim measures’).

Several of these bodies (ICJ, ITLOS and the UN Human Rights Committee) have made provisional measures in exceptional cases to prevent serious and irreparable harm in proceedings involving environmental damage. While others (like the ECHR) have yet to apply provisional measures in an environmental or climate-related context. A high-level summary of each bodies’ use of provisional measures to date follows. Several themes emerge from this summary including that in order to make provisional measures Courts and tribunal must have a high level of satisfaction (to varying degrees) that (a) the risk of harm is imminent (b) and that harm is irreparable and (c) sufficiently serious or grave. Further, while human-rights bodies have granted provisional measures to protect numerous human rights they are more typically granted to protect certain fundamental rights especially the right to life and right to privacy and family life.

i. International Court of Justice

Provisional measures have been used primarily in two contexts in the ICJ. The first is where there is a threat to international peace and security. The second where there is a threat to human rights.¹¹⁶ The most recent provisional measures issued by the ICJ ordered Russia to immediately suspend all military operations in Ukraine.¹¹⁷ In the *Gambia v Myanmar*, the ICJ imposed provisional measures directing Myanmar to prevent all genocidal acts against the Rohingya, to ensure that the military and other security forces do not commit acts of genocide, and to take steps to preserve evidence related to the case.¹¹⁸ The court ordered Myanmar to report on its implementation and compliance of provisional measures within four months, and then every six months thereafter.¹¹⁹

General rights that have been upheld through the issuing of provisional measures include including the right to life, liberty, and security of person; the right not to be subjected to torture or other cruel, inhuman or degrading treatment; the right to equality before the law and non-discrimination; the right to a fair trial; the right to private life; the right to freedom of movement; the right to education; and the right to take part in government.¹²⁰ These rights are interconnected with the orders made by the ICJ (i.e cases involved some or all of these rights rather than focusing on a single one).

In the *Pulp Mills* case, the ICJ declined to issue provisional measures to halt construction of the mills as it was not convinced that the harm in question was irreversible.¹²¹

However, in the *Nuclear Test* case, the ICJ ordered as a provisional measure that France halted nuclear tests causing a radioactive fall-out on Australian or New Zealand territory. The ICJ noted that this was largely down to the risk of irreparable harm to Australian territory from the nuclear fallout. However, it should be noted that one of the concerns raised by Australia was that the “conduct of French nuclear tests in the atmosphere creates anxiety and concern among the Australian people; that any effects of the French nuclear tests upon the resources of the sea or the conditions of the environment can never be undone and would be irremediable by any payment of damages”.¹²² This has led some academics to conclude that it is likely the ICJ took into account the enormity of the possible consequences to the environment and population of the applicant States when issuing these measures.¹²³

ii. International Tribunal for the Law of the Sea

According to former President of ITLOS, Thomas Mensah,, “Where evidence is produced to show that serious harm to the marine environment might occur, and ITLOS is satisfied that it is appropriate under the circumstances that action should be taken (or measures of restraint must be imposed) to prevent such damage, it will be competent to prescribe provisional measures, even if there is no evidence that any specific right or rights of the party making the request for provisional measures are at risk”.¹²⁴ However, it should be noted that provisional measures in ITLOS only apply until the setting up of an arbitral tribunal, rather than until a final decision is made. The question is therefore whether serious harm to the marine environment is likely to occur prior to the setting up of an arbitral tribunal.¹²⁵

In *Southern Bluefin Tuna*, ITLOS issued provisional measures due to the historically low stock of southern bluefin tuna, which was a cause for biological concern.¹²⁶ Measures ordered were that the relevant States involved in the dispute needed to stay within their annual allocation of tuna catches and must refrain from conducting experimental fishing programs that may have further damaged the stock of the tuna.¹²⁷ These measures were designed to ensure the continued protection of the marine environment.

In *MOX Plant*, ITLOS ordered the parties to cooperate and exchange information with one another regarding the risks associated with the operation of a MOX plant on the UK coast that had environmental implications for the Irish Sea. One of the specific measures prescribed was that the parties should devise, as appropriate, measures to prevent pollution of the marine environment which resulted from the operation of the MOX Plant.¹²⁸ ITLOS noted that “the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under Part XII of the Convention and general international law and those rights arise therefrom.”¹²⁹

iii. UN Human Rights Committee

The HRC has, in several cases, adopted interim measures to protect the rights of indigenous peoples and the environment in which they live. In *Lubicon Lake Band v. Canada*,¹³⁰ interim relief was afforded to a group of indigenous people whose land was expropriated by the Canadian Government for the exploration of oil and gas. The author of the complaint alleged a violation of the right to self-determination and the right of members of the Lubicon Lake Band to dispose freely of their natural wealth and resources, as granted in Articles 1 and 27 of the ICCPR. “In view of the seriousness of the author’s allegations that the Lubicon Lake Band was at the verge of extinction,” the HRC requested the State party “to avoid irreparable damage to [the author of the communication] and other members of the Lubicon Lake Band”.¹³¹ It should be noted however, that the State did not agree with the claim of the HRC that it was at risk of causing irreparable damage and so continued with its actions.¹³² This led to a full communication from the HRC that confirmed that the State had violated Article 27 of the ICCPR. This in turn resulted in a more effective remedy as the State then proposed \$C45 million in benefits and programmes and a 95 square mile reserve for the community at risk.¹³³ While the interim measures were not effective, the eventual outcome was a more substantive remedy agreed to by the State and the HRC.

In another case involving an alleged violation of Article 27 ICCPR, the HRC even went a step further and adopted interim measures aiming at the protection of the environment itself. In *Länsman (Jouni E.) et al. v. Finland*,¹³⁴ logging of an area used by the Sami people for reindeer-breeding was at issue. The HRC requested Finland “to refrain from adopting measures which would cause irreparable harm to the environment which the authors claim is vital to their culture and livelihood.”¹³⁵ The State party complained that interim measures were not warranted in this case due to the small scale of the logging and the prior consultation of the indigenous population. Noting this complaint, the HRC decided to set aside its interim measures.¹³⁶ Further, in its final communication, the HRC found that there had been no violation of rights due to the prior consultation with the indigenous people in question and the relatively low scale of the logging.¹³⁷ It did however note that an increase in the scale of logging activities or a combination of other activities that could harm the environment could in the future lead to a violation of the ICCPR.¹³⁸ Regardless of the overall outcome, the initial communication highlights how interim measures may be utilized where there is an intersection between threats to the environment and threats to indigenous culture, particularly where the action of the State is of a significant scale.

iv. European Court of Human Rights

In practice, interim measures are applied by the ECHR only in a limited number of areas and most commonly concern expulsion and extradition.¹³⁹ The measures usually consist of a suspension of the applicant’s expulsion or extradition for as long as the application is being examined by the Court. These applications typically concern the potential risk to the applicants’ right to life and/or the potential to be subject to torture and/or degrading treatment.

There are no recorded instances of provisional measures being applied in an environmental case before the ECHR. Interim measures have not been sought in any of the current climate related cases before the Court, and, with the exception of one case, have not been sought in an environmental context.¹⁴⁰ The case that did seek the interim measure concerned attempts aimed at preventing a nuclear power plant from resuming its operation. This was rejected by the Court,

though it did not explain its reasoning for doing so.¹⁴¹ It has been suggested that this may be because the ECHR requires that the harm or risk thereof be imminent before it will issue interim measures.¹⁴² However, some examples of which rights have justified the Court issuing measures may be helpful to assess future applications in a climate context. For example, interim measures have been used where there is a serious threat to Article 8 of the European Convention—the right to privacy and family life. This is important as Article 8 was one of the Articles used in the *Urgenda* case and is also being used in current climate litigation before the ECHR.¹⁴³

v. Court of Justice of the European Union

In *Czech Republic v. Poland*,¹⁴⁴ the CJEU ordered Poland to immediately cease lignite extraction activities in the Turów mine. This was due to the potential for an action against a Member State which might have breached an EU directive – in this case by extending a lignite mining permit without carrying out an environmental impact assessment. The interest in this case was derived from Article 259 of the Treaty on the Functioning of the European Union, which states “a Member State which considers that another Member State has failed to fulfil an obligation under the Treaties may bring the matter before the Court of Justice of the European Union”.¹⁴⁵ The concern raised by the breach led to the interim measure.

In *Commission v. Malta*, the CJEU ordered interim measures to prevent Malta from adopting measures to allow the hunting of quails and turtle doves in the 2008 spring migration. This was to allow for a full assessment of a claim that it was not adequately enforcing a conservation Directive.¹⁴⁶ The interest in this case refers to the European Commission’s interest in ensuring effective compliance with an EU Directive as the executive branch of the EU.

V. Conclusion

The current efforts to control super climate pollutants and restore and protect sinks demonstrates the increasing recognition of the need for all member States of OAS to collectively and individually mitigate these pollutants. The urgency of the climate emergency and its escalating impacts on human rights requires all countries in the region to strengthen existing measures and to transform policy and strategy instruments into practical measures. Taking into regard to the extreme gravity and urgency of the climate emergency and the risk of irreversible harm to human rights, the Court can, and should, put States on notice that persistent failure to adopt immediate mitigation and adaptation measures to safeguard the right to life may warrant provisional and precautionary measures.

References

¹ Inter-Am. Ct. H.R. (ser. C) No. 4, (Jul. 29, 1988), *Velásquez Rodríguez Vs. Honduras*, ¶ 189.

² Inter-Am. Ct. H.R. (ser. C) No. 312, (Feb. 29, 2016), *Chinchilla Sandoval v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs*, ¶ 299.

³ For a detailed list of guarantees of non-repetition ordered in the Court's jurisprudence see: Inter-American Court of Human Rights. *Jurisprudence Booklet of the Inter-American Court of Human Rights No. 32: Measures of Reparation* / Inter-American Court of Human Rights. San José, C.R.: Inter-Am. Ct. H.R., 2021.

⁴ "This Court has indicated that all the authorities of a State Party to the Convention have the obligation to exercise a "control of conventionality" between the acts or omissions and the internal norms and the American Convention, in such a way that the interpretation and application of the national law is consistent with the State's international human rights obligations. This control of conventionality must be carried out within the framework of their respective competences and the corresponding procedural regulations and in this task, taking into account not only the treaty, but also the interpretation thereof made by the Inter-American Court, which is the ultimate interpreter of the American Convention." Inter-Am. Ct. H.R. (ser. C) No. 373, (Feb. 4, 2019), *Colindres Schonenberg v. El Salvador, Preliminary Objection, Merits, Reparations, and Costs*, ¶ 129.

⁵ *Indigenous Communities of the Lhaka Honhat (Our Land) Ass'n v. Argentina*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 400 (Feb. 6, 2020) and Tigre, MA. (2021) [INDIGENOUS COMMUNITIES OF THE LHAKA HONHAT \(OUR LAND\) ASSOCIATION V. ARGENTINA](#) 115 AJIL 4.

⁶ *Indigenous Communities of the Lhaka Honhat (Our Land) Ass'n v. Argentina*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 400 (Feb. 6, 2020) 327 ("Therefore, the Court orders that the State adopt and conclude the necessary actions, whether these be legislative, administrative, judicial, registration, notarial or of any other type, in order to *delimit, demarcate and grant a collective title* that recognizes the ownership of their territory to all the indigenous communities identified as victims").

⁷ *Indigenous Communities of the Lhaka Honhat (Our Land) Ass'n v. Argentina*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 400 (Feb. 6, 2020) 327 ("the following guidelines shall be following in order to comply with this measure:

1. A single title must be granted; that is, one for all the indigenous communities victims and for all the territory without subdivisions or fragmentation. Despite this, the Court finds it pertinent to clarify that the "single" nature of this title does not prevent any agreements that the communities victims may reach among themselves with regard to the use of their common territory.
2. This title must guarantee the collective or communal nature of the ownership of the said surface area, the administration of which must be autonomous, and this title cannot be taken away by proscription, seized or transferred, or subject to liens or attachments.
3. For compliance with this measure, the map submitted by Lhaka Honhat, mentioned in the considerations of Decree 1498/14 (*supra* para. 81) should be used as a reference.").

⁸ Inter-Am. C.H.R., *The Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of Aug. 31, 2001.

⁹ Inter-Am. C.H.R., *The Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of Aug. 31, 2001. 173. ("decides that the State must carry out the delimitation, demarcation, and titling of the corresponding lands of the members of the Mayagna (Sumo) Awas Tingni Community and, until that delimitation, demarcation and titling has been done, it must abstain from any acts that might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the property located in the geographic area where the members of the Mayagna (Sumo) Awas Tingni Community live and carry out their activities").

¹⁰ Inter-Am. C.H.R. Rights to freedom to organize, collective bargaining, and strike, and their relation to other rights, with a gender perspective (interpretation and scope of articles 13, 15, 16, 24, 25, and 26 in relation to articles 1(1) and 2 of the American Convention on Human Rights; articles 3, 6, 7, and 8 of the Protocol of San Salvador; articles 2, 3, 4, 5, and 6 of the Convention of Belém do Pará; articles 34, 44, and 45 of the Charter of the Organization of American States; and articles II, IV, XIV, XXI, and XXII of the American Declaration on the Rights and Duties of Man). Advisory Opinion OC-27/21 of May 5, 2021. Series A No. 27.

¹¹ Inter-Am. C.H.R. Rights to freedom to organize, collective bargaining, and strike, and their relation to other rights, with a gender perspective (interpretation and scope of articles 13, 15, 16, 24, 25, and 26 in relation to articles 1(1) and 2 of the American Convention on Human Rights; articles 3, 6, 7, and 8 of the Protocol of San Salvador; articles 2, 3, 4, 5, and 6 of the Convention of Belém do Pará; articles 34, 44, and 45 of the Charter of the Organization of American States; and articles II, IV, XIV, XXI, and XXII of the American Declaration on the Rights and Duties of Man). Advisory Opinion OC-27/21 of May 5, 2021. Series A No. 27. 74 (“ The states are under obligation to adapt their laws and practices to new conditions on the labor market, regardless of the kind of technological developments that produce these changes; and they must understand their obligations to protect worker rights under international human rights law, and for this purpose, foster the real participation of worker representatives and employer representatives in the design of employment policies and laws, as discussed in paragraphs 201 to 212.”).

¹² IACtHR., Differentiated approaches with respect to certain groups of persons in detention (Interpretation and scope of Articles 1(1), 4(1), 5, 11(2), 12, 13, 17(1), 19, 24 and 26 of the American Convention on Human Rights and other human rights instruments). Advisory Opinion OC-29/22 of May 30, 2022. Series A No 29.

¹³ IACtHR., Differentiated approaches with respect to certain groups of persons in detention (“Interpretation and scope of Articles 1(1), 4(1), 5, 11(2), 12, 13, 17(1), 19, 24 and 26 of the American Convention on Human Rights and other human rights instruments). Advisory Opinion OC-29/22 of May 30, 2022. Series A No 29. 125 (States should apply a differentiated approach in attending to the special needs of the distinct groups deprived of liberty to ensure that the oversight of their sentences respects their human dignity, in the terms of paragraphs 32 to 120 of this Advisory Opinion”).

¹⁴ *Urgenda v the Netherlands* [2015] HAZA C/09/00456689.

¹⁵ *Neubauer et al. v Germany*, Case No. BvR 2656/18/1.

¹⁶ Kotze, LJ. (2022) [NEUBAUER ET AL. VERSUS GERMANY: PLANETARY CLIMATE LITIGATION FOR THE ANTHROPOCENE?](#) 22 Ger Law J 8.

¹⁷ *Leghari v. Federation of Pakistan* (2015) W.P. No. 25501/2015.

¹⁸ *Leghari v. Federation of Pakistan* (2015) W.P. No. 25501/201. 6-7.

¹⁹ *Leghari v. Federation of Pakistan* (2015) W.P. No.25501/2015.

²⁰ *Re Court on its own motion v. State of Himachal Pradesh and others* 2013 (CWPIIL No. 15 of 2010).

²¹ *Re Court on its own motion v. State of Himachal Pradesh and others* 2013 (CWPIIL No. 15 of 2010) 9-18.

²² *Human Rights Defender et al v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. *Judgment of May 19, 2014*. Series C No. 277.

²³ *Human Rights Defender et al v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277 293 (“In relation to the adoption of measures to reduce the risks faced by human rights defenders, this Court has established that the State has planned and/or implemented various measures aimed at addressing those risks (*supra* note 74). However, Guatemala did not provide the Court with information about their effectiveness. Consequently, the State must implement, within a reasonable time, a public policy for the protection of human rights defenders, taking into account, at least, the following requirements:

- a) the participation of human rights defenders, civil society organizations and experts in the formulation of standards for the regulation of a program for the protection of the group in question;
- b) the protection program should adopt a comprehensive and inter-institutional approach to this problem, based on the risk posed by each situation and adopt immediate measures to address complaints by defenders;
- c) the creation of a risk analysis model to adequately determine the risk and the protection needs of each defender or group;
- d) the creation of an information management system on the status of the prevention and protection of human rights defenders;

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- e) the design of protection plans in response to specific risks faced by each defender and to the nature of his/her work;
 - f) the promotion of a culture of legitimization and protection of the work of human rights defenders, and
 - g) the provision of sufficient human and financial resources to respond to the real needs for protection of human rights defenders.”).

²⁴ *Indigenous Communities of the Lhaka Honhat (Our Land) Ass'n v. Argentina*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 400 (Feb. 6, 2020) and Inter-Am. C.H.R., *The Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of Aug. 31, 2001. 173.

²⁵ *Case of the Saramaka People v Suriname*, Saramaka People v Suriname, Preliminary objections, merits, reparations and costs, IACHR Series C no 172, IHRL 3046 (IACHR 2007).

²⁶ *Case of the Saramaka People v Suriname*, Saramaka People v Suriname, Preliminary objections, merits, reparations and costs, IACHR Series C no 172, IHRL 3046 (IACHR 2007) 7 (“The State shall remove or amend the legal provisions that impede protection of the right to property of the members of the Saramaka people and adopt, in its domestic legislation, and through prior, effective and fully informed consultations with the Saramaka people, legislative, administrative, and other measures as may be required to recognize, protect, guarantee and give legal effect to the right of the members of the Saramaka people to hold collective title of the territory they have traditionally used and occupied, which includes the lands and natural resources necessary for their social, cultural and economic survival, as well as manage, distribute, and effectively control such territory, in accordance with their customary laws and traditional collective land tenure system, and without prejudice to other tribal and indigenous communities, in the terms of paragraphs 97-116 and 194(c) of this Judgment.”).

²⁷ *Río Negro Massacres v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 56 (September 4, 2012).

²⁸ IACtHR., *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights)*. Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23.

²⁹ IACtHR., *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights)*. Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23. 94 (“To ensure the rights to life and to integrity of the persons subject to their jurisdiction in relation to environmental protection, States have the obligation to ensure the right of access to information concerning potential environmental damage, the right to public participation of persons subject to their jurisdiction in policies and decision-making that could affect the environment, and also the right of access to justice in relation to the State environmental obligations set out in this Opinion, in accordance with paragraphs 211 to 241 of this Opinion.”).

³⁰ Inter-Am. Court HR. *Rights to freedom to organize, collective bargaining, and strike, and their relation to other rights, with a gender perspective (interpretation and scope of articles 13, 15, 16, 24, 25, and 26 in relation to articles 1(1) and 2 of the American Convention on Human Rights; articles 3, 6, 7, and 8 of the Protocol of San Salvador; articles 2, 3, 4, 5, and 6 of the Convention of Belém do Pará; articles 34, 44, and 45 of the Charter of the Organization of American States; and articles II, IV, XIV, XXI, and XXII of the American Declaration on the Rights and Duties of Man)*. Advisory Opinion OC-27/21 of May 5, 2021. Series A No. 27.

³¹ Inter-Am. Court HR. *Rights to freedom to organize, collective bargaining, and strike, and their relation to other rights, with a gender perspective (interpretation and scope of articles 13, 15, 16, 24, 25, and 26 in relation to articles 1(1) and 2 of the American Convention on Human Rights; articles 3, 6, 7, and 8 of the Protocol of San Salvador; articles 2, 3, 4, 5, and 6 of the Convention of Belém do Pará; articles 34, 44, and 45 of the Charter of the Organization of American States; and articles II, IV, XIV, XXI, and XXII of the American Declaration on the Rights and Duties of Man)*. Advisory Opinion OC-27/21 of May 5, 2021. Series A No. 27. 74 (“The states are under obligation to adapt their laws and practices to new conditions on the labor market, regardless of the kind of technological developments that produce these changes; and they must understand their obligations to protect worker rights under international human rights law, and for this purpose, foster the real participation of worker representatives and employer representatives in the design of employment policies and laws, as discussed in paragraphs 201 to 212.”).

³² *Case of Fernández-Ortega et al. v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 30, 2010, Series C No. 21.

³³ *Case of Rosendo Cantú et al. v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216.

³⁴ *Case of Rosendo Cantú et al. v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216 308 (“The State must continue to implement programs and permanent trainings regarding diligent investigation in cases of violence against women, that include an ethnic and gender based perspective, which should be administered to federal employees and those of the state of Guerrero, in conformity with that established in paragraphs 259 and 260 of this Judgment”).

³⁵ Inter-Am. Court HR. *Case of González et al. (“Campo Algodonero”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205.

³⁶ Inter-Am. Court HR. *Case of González et al. (“Campo Algodonero”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205.

³⁷ Inter-Am. Court HR. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Background and Repairs. Judgment of June 27, 2012. Series C No. 245.

³⁸ Inter-Am. Court HR. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Background and Repairs. Judgment of June 27, 2012. Series C No. 245. 293 (“The Court establishes that the State must neutralize, deactivate and, where appropriate, remove all of the pentolite on the surface, conducting a search of at least 500 meters on each side of the E16 seismic line as it passes through Sarayaku territory. , in accordance with what was proposed by the representatives themselves. The means and methods that are implemented for such purposes must be chosen after a process of prior, free and informed consultation with the People so that they authorize the entry and permanence in their territory of the material and of the people that are necessary for that purpose. . Lastly, given that the State alleged the existence of a risk to the physical integrity of the persons who would be in charge of such extraction, it is up to the State, in consultation with the People, to opt for the extraction methods of the explosives that present the least Possible risk to the ecosystems of the area, in line with the Sarayaku worldview and for the safety of the human team in charge of the operation.”).

³⁹ IACtHR. *Case of the Triunfo de la Cruz Garifuna Community and its members v. Honduras*. Merits, Reparations and Costs. Judgment of October 8, 2015. Series C No. 305.

⁴⁰ IACtHR. *Case of the Triunfo de la Cruz Garifuna Community and its members v. Honduras*. Merits, Reparations and Costs. Judgment of October 8, 2015. Series C No. 305. 264 (“the Court recalls that, as long as the aforementioned lands have not been demarcated and, where appropriate, adequately titled in favor of the Triunfo de la Cruz Community, the State must refrain from carrying out acts that could lead the agents of the State itself to , or third parties who act with their acquiescence or tolerance, affect the existence, value, use or enjoyment of the lands that must be restored to them and those over which they currently hold property title.”).

⁴¹ *Future Generations v Minister for the Environment* Case No 11001 22 03 000 2018 00319 00 (2018).

⁴² *Atrato River Decision* T-622/16.

⁴³ New Zealand Te Awa Tupua (Whanganui River Claims Settlement) Bill (2017).

⁴⁴ *Writ Petition no 13989*.

⁴⁵ *Plan de Sánchez Massacre v. Guatemala*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 105, ¶ 1 (Apr. 29, 2004) 108 (“To this end, the State must set up a committee to evaluate the physical and mental condition of the victims, and also the treatment that each one requires. The non-governmental organization, Community Studies and Psychosocial Action Team, must play an active part in this committee and, should this organization not agree or be unable to assume the task, the State must identify another non-governmental organization, with experience in treating victims, to replace it. Guatemala must inform the Court about the constitution of this committee within six month.”).

⁴⁶ *Case of the Moiwana Community v. Suriname*, Serie C No. 124, Inter-American Court of Human Rights (IACtHR), 15 June 2005.

⁴⁷ *Case of the Moiwana Community v. Suriname*, Serie C No. 124, Inter-American Court of Human Rights (IACtHR), 15 June 2005 215 (“The abovementioned committee will be in charge of determining how the developmental fund is implemented and will be comprised of three members. The committee shall have a representative designated by the victims and another shall be chosen by the State; the third member shall be selected through an agreement between the representatives of the victims and the State. If the State and the representatives of the victims have not arrived at an agreement regarding the composition of the implementation committee within six months from the date of notification of the present judgment, the Court will convene them to a meeting in order to decide upon the matter.”).

⁴⁸ *Campesino Leaders of Bajo Aguán*, Honduras, Inter-Am. Comm’n H.R., Precautionary Measure No. 50/14 (2014).

⁴⁹ CIDH. Informe No. 330/20. Caso 12.718. Fondo. Comunidad de la Oroya. Perú. 19 de noviembre de 2020.

⁵⁰ IACHR. Report No. 330/20. Case 12,718. Background. Oroya Community. Peru. November 19, 2020. H.

⁵¹ IACHR. Report No. 330/20. Case 12,718. Background. Oroya Community. Peru. November 19, 2020. J.

⁵² *Milieudefensie et al. v Royal Dutch Shell PLC* (26 May 2021) C/09/571932/HA ZA 19-379.

⁵³ *Milieudefensie et al. v Royal Dutch Shell PLC* (26 May 2021) C/09/571932/HA ZA 19-379. 4.1.4 (“The assessment culminates in the conclusion that RDS is obliged to reduce the CO2 emissions of the Shell group’s activities by net 45% at end 2030 relative to 2019 through the Shell group’s corporate policy. This reduction obligation relates to the Shell group’s entire energy portfolio and to the aggregate volume of all emissions (Scope 1 through to 3). It is up to RDS to design the reduction obligation, taking account of its current obligations and other relevant circumstances. The reduction obligation is an obligation of result for the activities of the Shell group, with respect to which RDS may be expected to ensure that the CO2 emissions of the Shell group are reduced to this level. This is a significant best-efforts obligation with respect to the business relations of the Shell group, including the end-users, in which context RDS may be expected to take the necessary steps to remove or prevent the serious risks ensuing from the CO2 emissions generated by the business relations, and to use its influence to limit any lasting consequences as much as possible. This obligation is also designated hereinafter as RDS’ reduction obligation”).

⁵⁴ Republic of the Philippines, Commission on Human Rights, National Inquiry on Climate Change Report (‘Carbon Majors Report’) (2022) [hereinafter Carbon Majors Report] 118-19.

⁵⁵ *Id.*, 120.

⁵⁶ IACtHR, Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights). Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24.

⁵⁷ IACtHR, Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples (“interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights). Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24. 82 (“States must ensure that persons interested in rectifying the annotation of gender or, if applicable the mention of sex, in changing their name and changing their photograph in the records and/or on their identity documents to conform to their self-perceived gender identity may have recourse to a procedure that must: (a) be centered on the complete rectification of the self-perceived gender identity; (b) be based solely on the free and informed consent of the applicant without demanding requirements such as medical and/or psychological certifications and others that could be unreasonable and pathologizing; (c) be confidential, and the changes, corrections or amendments to the records and the identity documents should not reflect the changes to conform to the gender identity; (d) be prompt and, insofar as possible, cost-free, and (e) not require evidence of surgery and/or hormonal therapy”).

⁵⁸ IACtHR., Differentiated approaches with respect to certain groups of persons in detention (Interpretation and scope of Articles 1(1), 4(1), 5, 11(2), 12, 13, 17(1), 19, 24 and 26 of the American Convention on Human Rights and other human rights instruments). Advisory Opinion OC-29/22 of May 30, 2022. Series A No 29.

⁵⁹ IACtHR, Differentiated approaches with respect to certain groups of persons in detention (Interpretation and scope of Articles 1(1), 4(1), 5, 11(2), 12, 13, 17(1), 19, 24 and 26 of the American Convention on Human Rights and other human rights instruments). Advisory Opinion OC-29/22 of May 30, 2022. Series A No 29 163 and 354.

⁶⁰ IACtHR, Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights). Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24. 168 (“It should be pointed out, however, that even in this eventuality, and given that the Court, pursuant to its rules of procedure, monitors compliance with the respective judgment, compliance with the judgment could return to or continue in the domestic sphere.”).

⁶¹ IACHR (2023) [IACHR calls on Panama to guarantee marriage equality and the right to equality and non-discrimination](#) (“In this regard, the IACHR reminds the State that, in conformity with the advisory opinion 24-17 of the Inter-American Court, the rights guaranteed to opposite-sex couples must be extended and recognized also to same sex couples in the understanding that both family life and the right to marriage are rights linked to the principle of dignity and free autonomy of people, as well as the right to form their life project without interference from the State. Similarly, the concept of "family" must be understood in a broad sense that effectively encompasses its various forms and compositions in order to be recognized and protected by States.”).

⁶² IACtHR. *Case of Cuscul Pivaral et al. v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359.

⁶³ IACtHR. *Case of Cuscul Pivaral et al. v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359. 225-230.

⁶⁴ *Cordella et al. v. Italy* (joint applications n. 54414/13 and n. 54264/15).

⁶⁵ *Cordella et al. v. Italy* (joint applications n. 54414/13 and n. 54264/15) and Greco, R. (2020) [CORDELLA ET AL V ITALY AND THE EFFECTIVENESS OF HUMAN RIGHTS LAW REMEDIES IN CASES OF ENVIRONMENTAL POLLUTION](#) 20 RECIEL 3 491-497.

⁶⁶ *Indigenous Communities of the Lhaka Honhat (Our Land) Ass'n v. Argentina*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 400 (Feb. 6, 2020) 332 (“Notwithstanding any actions that the State may take to respond to urgent situations, the Court orders the State, within six months of notification of this judgment, to submit a report to the Court identifying, from among all the individuals who are members of the indigenous communities victims, critical situations of lack of access to drinking water or to food that could endanger their health or their life, and to draw up an action plan establishing the actions that the State will take, which must be appropriate to respond adequately to such critical situations, indicating the implementation timetable.”).

⁶⁷ *Río Negro Massacres v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 56 (September 4, 2012).

⁶⁸ *Río Negro Massacres v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 56 (September 4, 2012) 268 (“Present to the Court, within six months of notification of this Judgment, a timetable with specific short and medium-term goals, including an estimate of the required administrative and budgetary resources, and indicating the State authorities or instances that will intervene in the search, exhumation and identification of those who disappeared and those presumably executed, as appropriate, the competence of each of them, and which authorities or instances will coordinate activities”).

⁶⁹ *Future Generations v Minister for the Environment* Case No 11001 22 03 000 2018 00319 00 (2018).

⁷⁰ *Future Generations v Minister for the Environment* Case No 11001 22 03 000 2018 00319 00 (2018). 14 (“Consequently, we grant the relief, and order the Presidency of the Republic, the Ministry of Environment and Sustainable Development, and the Ministry of Agriculture and Rural Development, in coordination with the actors

of the National Environmental System and the participation of the plaintiffs, the affected communities, and the interested population in general, to formulate a short, medium, and long term action plan within the next four (4) months from today's notice, to counteract the rate of deforestation in the Amazon, tackling climate change impacts.”).

⁷¹ *Friends of the Irish Government v. Government of Ireland* [2020] IESC 49.

⁷² *Friends of the Irish Government v. Government of Ireland* [2020] IESC 49. 9.2 (“I also conclude that the 2015 Act, and in particular s.4, requires a sufficient level of specificity in the measures identified in a compliant plan that are required to meet the National Transitional Objective by 2050 so that a reasonable and interested person could make a judgement both as to whether the plan in question is realistic and as to whether they agree with the policy options for achieving the NTO which such a plan specifies. The 2015 Act as a whole involves both public participation in the process leading to the adoption of a plan but also transparency as to the formal government policy, adopted in accordance with a statutory regime, for achieving what is now the statutory policy of meeting the NTO by 2050. A compliant plan is not a five-year plan but rather a plan covering the full period remaining to 2050. While the detail of what is intended to happen in later years may understandably be less complete, a compliant plan must be sufficiently specific as to policy over the whole period to 2050.”).

⁷³ *Sentencia Relativa Al Juicio De Amparo Número 1854/2019*. Note that while a decision has been made, it is now under appeal.

⁷⁴ *Alvarez v Peru* (2019).

⁷⁵ CSJ 468/2020.

⁷⁶ Auz, J. (2022) [HUMAN RIGHTS BASED CLIMATE LITIGATION: A LATIN AMERICAN CARTOGRAPHY](#) GNHRE.

⁷⁷ *Case of the Moiwana Community v. Suriname*, Serie C No. 124, Inter-American Court of Human Rights (IACtHR), 15 June 2005 214 (“In that regard, this Court rules that Suriname shall establish a developmental fund, to consist of US \$1,200,000 one million, two hundred thousand dollars of the United States of America), which will be directed to health, housing and educational programs for the Moiwana community members. The specific aspects of said programs shall be determined by an implementation committee, which is described in the following paragraph, and shall be completed within a period of five years from the date of notification of the present judgment.”).

⁷⁸ *Plan de Sánchez Massacre v. Guatemala*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 105, ¶ 1 (Apr. 29, 2004).

⁷⁹ *Vicky Hernández et al. v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 422 (Mar. 26, 2021).

⁸⁰ *Vicky Hernández et al. v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 422 (Mar. 26, 2021) 12 (“The State shall make an audiovisual documentary on the situation of discrimination and violence experienced by trans women in Honduras, pursuant to paragraph 163 of this judgment.”).

⁸¹ *Case of Serrano Cruz Sisters v. El Salvador*. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120 and *Case of Kichwa Indigenous People of Sarayaku v. Ecuador*, Merits and reparations, Judgment of June 27, 2012, IACtHR., Series C No. 245 (2012).

⁸² *Río Negro Massacres v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 56 (September 4, 2012). 274 (“The Court assesses positively and accepts the offer made by the State. Thus, and as ordered on other occasions,³⁵¹ the State must publish once, in the Spanish and Maya Achí languages, in the official gazette and in another daily newspaper with national circulation, the official summary of this Judgment.”).

⁸³ *Case of the Garífuna Community Triunfo de la Cruz v. Honduras*, Judgment of 8 October 2015, Ser. C No. 305.

⁸⁴ *Case of the Garífuna Community Triunfo de la Cruz v. Honduras*, Judgment of 8 October 2015, Ser. C No. 305. 333 (“In view of the measures of reparation requested by the Commission and the representatives, the dispossession of its territory, the damage caused to the territory and the fact that “[i]ndigenous peoples have a

right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources,”³⁴⁶ the Court orders that the fund have the following objectives: (i) to develop projects aimed at increasing agricultural or any other kind of productivity in the community; (ii) to improve the community’s infrastructure based on its present and future needs; (iii) to restore the deforested areas, and (iv) others that are considered pertinent to benefit the Punta Piedra community”).

⁸⁵ These measures are analogous to “precautionary measures” which are ordered by the Inter-American Commission. As the Commission is a quasi-judicial body, precautionary measures are not formally binding but ought to be complied with by OAS member States on the basis of the principle of good faith. In practice, therefore, they are regarded as lesser in their legal effects when compared with provisional measures ordered by the IACtHR.

⁸⁶ IACtHR’s Rules of Procedure, Article 27.1.

⁸⁷ *Cuya Lavy & Others v. Peru*, Inter-Am. Ct. H.R., Request for Provisional Measures, Mar. 12, 2020, ¶ 7.

⁸⁸ *Members of the Nicaraguan Ctr. for Hum. Rts. (CENIDH-CPDH) v. Nicaragua*, Inter-Am. Ct. H.R., Provisional Measures, Oct. 14, 2019, ¶ 13.

⁸⁹ *Galindo Cardenas & Others v. Peru*, Inter-Am. Ct. H.R., Request for Provisional Measures and Compliance Monitoring, Sept. 3, 2020, ¶ 7.

⁹⁰ *Cuya Lavy & Others v. Peru*, Inter-Am. Ct. H.R., Request for Provisional Measures, Mar. 12, 2020, ¶ 5.

⁹¹ *Cuya Lavy & Others v. Peru*, 2020, ¶ 5.

⁹² *Cuya Lavy & Others v. Peru*, 2020, ¶ 5.

⁹³ *Luisiana Ríos & Others v. Venezuela*, Inter-Am. Ct. H.R., Request for Provisional Measures Oct. 2, 2003, ¶ 10.

⁹⁴ *Danilo Rueda v. Colombia*, Inter-Am. Ct. H.R., Request for Provisional Measures Nov. 14, 2017, ¶ 15; See also *Residents of the Indigenous Miskitu People of the North Caribbean Coast Region v. Nicaragua*, Extension of Provisional Measures, Aug. 23, 2018.

⁹⁵ *El Mozote Massacres and Nearby Places v. El Salvador*, Resolution of the President of the Inter-American Court of Human Rights, May 28, 2019, Urgent Measures and Compliance Monitoring.

⁹⁶ *Barrios Altos Case and La Cantuta Case v. Peru*, Inter-Am. Ct. H.R., Request for Provisional Measures and Compliance Monitoring, Mar. 20, 2022.

⁹⁷ *Luisiana Ríos & Others v. Venezuela*, Inter-Am. Ct. H.R., Request for Provisional Measures Oct. 2, 2003,

⁹⁸ *Luisiana Ríos & Others v. Venezuela*, Inter-Am. Ct. H.R., Request for Provisional Measures Oct. 2, 2003, 2 (“Adopt all necessary measures to protect the life and the right to humane treatment of Luisiana Ríos, Luis Augusto Contreras Alvarado, Armando Amaya, Eduardo Sapene Granier of Radio Caracas Televisión and Mayela León Rodríguez, Jorge Manuel Paz Paz and María Fernanda Flores of Globovisión as well as the protection required by representatives of Globovisión and Radio Caracas Televisión so as to ensure safety of the journalists, the property and facilities of said media.”).

⁹⁹ *Barrios Altos Case and La Cantuta Case v. Peru*, Inter-Am. Ct. H.R., Request for Provisional Measures and Compliance Monitoring, Mar. 20, 2022. 4 (“Require the State of Peru, in order to guarantee the right of access to justice for the victims of the Barrios Altos and La Cantuta cases, to refrain from executing the order of the Constitutional Court of Peru ordering the release of Alberto Fujimori Fujimori, until such time this international Tribunal can decide on the request for provisional measures in the 147th Regular Period of Sessions.”).

¹⁰⁰ *El Mozote Massacres and Nearby Places v. El Salvador*, Resolution of the President of the Inter-American Court of Human Rights, May 28, 2019, Urgent Measures and Compliance Monitoring

¹⁰¹ *El Mozote Massacres and Nearby Places v. El Salvador*, Resolution of the President of the Inter-American Court of Human Rights, May 28, 2019, Urgent Measures and Compliance Monitoring 20 (“Require the State of El Salvador, in accordance with the provisions of Considering 42 of this Resolution, that, in order to guarantee

the right of access to justice for the victims of the case of the Massacres of El Mozote and nearby places, immediately suspend the legislative process of the draft "Special Law of Transitional and Restorative Justice for National Reconciliation" that is currently in the Political Commission of the Legislative Assembly, until the Plenary of the Inter-American Court knows and pronounces on this request for provisional measures during its next session").

¹⁰² Order of the President of the Inter-American Court of Human Rights of June 14, 2007 Provisional Measures regarding Venezuela Case of Luisiana Ríos et al. 1. ("To declare that the State has not implemented effectively the provisional measures ordered by the Inter-American Court of Human Rights in its Order of November 27, 2002.").

¹⁰³ This deadline is not regulated expressly by the rules of procedure. Article 27.7 of the Court's Rules of Procedure states that the supervision of the compliance of provisional measures "shall be carried out through the submission of state reports and the corresponding comments on those reports by the beneficiaries of such measures or their representatives. The Commission shall provide comments on the state report and on the comments from the beneficiaries of the measures or their representatives." Inter-Am. Ct. H.R., Rules of Procedure, LXXXV Ordinary Session (Nov. 16-28, 2009), Art. 27.7.

¹⁰⁴ *Case of the Mendoza Penitentiaries v. Argentina*, Inter-Am. Ct. H.R. (ser. C) No. 219, (Nov. 26, 2010).

¹⁰⁵ *Case of García Prieto et al. v. El Salvador*, Inter-Am. Ct. H.R., (Jan. 27, 2007).

¹⁰⁶ IACHR's Rules of Procedure, Article 25.2.

¹⁰⁷ *Community of La Oroya v. Peru*, Inter-Am. Comm'n H.R., MC 271-05, Resolution 29/2016, Extension of Precautionary Measures, May 3, 2016.

¹⁰⁸ *Communities of the Maya People (Sipakepense and Mam) of the municipalities of Sipacapa and San Miguel Ixtahuacán in the Department of San Marcos, Guatemala*, Inter-Am. Comm'n H.R., MC 260-07, Precautionary Measures, May 20, 2010.

¹⁰⁹ This deadline is not regulated expressly by the rules of procedure. Article 25 of the Commission's Rules of Procedure states that "9. The Commission shall evaluate periodically, at its own initiative or at the request of either party, whether to maintain, modify or lift the precautionary measures in force. At any time, the State may file a duly grounded petition that the Commission lift the precautionary measures in force. Prior to taking a decision on such a request, the Commission shall request observations from the beneficiaries. The presentation of such a request shall not suspend the precautionary measures in force. 10. The Commission shall take appropriate follow-up measures, such as requesting relevant information from the interested parties on any matter related to the granting, observance and maintenance of precautionary measures. These measures may include, as appropriate, timetables for implementation, hearings, working meetings, and visits for follow-up and review. 11. In addition to the terms of subparagraph 9 above, the Commission may lift or review a precautionary measure when the beneficiaries or their representatives, without justification, fail to provide a satisfactory reply to the Commission on the requirements presented by the State for their implementation". Inter-Am. Comm. H.R., Rules of Procedure, art. 25, 137th Reg. Period of Sessions (Oct. 28-Nov. 13, 2009).

¹¹⁰ Inter-Am. Comm. H.R., Rules of Procedure, art. 25, 137th Reg. Period of Sessions (Oct. 28-Nov. 13, 2009).

¹¹¹ Article 41 of the Statute of the International Court of Justice states "The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

¹¹² UNCLOS Art. 290 (" 1. If a dispute has been duly submitted to a court or tribunal which considers that prima facie it has jurisdiction under this Part or Part XI, section 5, the court or tribunal may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending the final decision.

¹¹³ HRC, Rules of Procedure Rule 94. ("Rule 94 of the Rules of Procedure of the HRC provides that "the Committee may request that the State party concerned take on an urgent basis such interim measures as the Committee considers necessary to avoid possible actions which could have irreparable consequences for the rights invoked by the author").

¹¹⁴ Article 39 of the Rules of Court for the European Court of Human Rights. European Court of Human Rights Press Unit (2022) [Interim Measures](#) (“The European Court of Human Rights may, under Rule 39 of its Rules of Court, indicate interim measures to any State party to the European Convention on Human Rights. Interim measures are urgent measures which, according to the Court’s well-established practice, apply only where there is an imminent risk of irreparable harm. Such measures are decided in connection with proceedings before the Court without prejudging any subsequent decisions on the admissibility or merits of the case in question.”).

¹¹⁵ CJEU, [General Court Presentation](#). (“The CJEU has the capacity to issue interim measures to avoid serious and irreparable harm to the interests of the party applying for relief. As the CJEU is not a human rights court, serious interests refer to the interest of a party in terms of those granted via EU directives.”).

¹¹⁶ Michael Ramsden and Jiang Zixin (2023) "[THE DIALOGIC FUNCTION OF I.C.J. PROVISIONAL MEASURES DECISIONS IN THE U.N. POLITICAL ORGANS: ASSESSING THE EVIDENCE,](#)" American University International Law Review: Vol. 37: Iss. 4, Article 3.

¹¹⁷ Ukraine v. Russia 2022 [Request for Provisional Measures](#) (“(a)The Russian Federation shall immediately suspend the military operations commenced on 24 February 2022 that have as their stated purpose and objective the prevention and punishment of a claimed genocide in the Luhansk and Donetsk oblasts of Ukraine; (b) The Russian Federation shall immediately ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control, direction or influence, take no steps in furtherance of the military operations which have as their stated purpose and objective preventing or punishing Ukraine for committing genocide; (c) The Russian Federation shall refrain from any action and shall provide assurances that no action is taken that may aggravate or extend the dispute that is the subject of this Application, or render this dispute more difficult to resolve.”); (d) The Russian Federation shall provide a report to the Court on measures taken to implement the Court’s Order on Provisional Measures one week after such Order and then on a regular basis to be fixed by the Court.”).

¹¹⁸ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), [Provisional Measures](#), Order of 23 January 2020, (“ The Court, Indicates the following provisional measures: (1) Unanimously, The Republic of the Union of Myanmar shall, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to the members of the Rohingya group in its territory, take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention, in particular:(a) killing members of the group; (b) causing serious bodily or mental harm to the members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and (d) imposing measures intended to prevent birth within the group; (2) Unanimously, The Republic of the Union of Myanmar shall, in relation to the members of the Rohingya group in its territory, ensure that its military, as well as any irregular armed units which may be directed or supported by it and any organizations and persons which may be subject to its control, direction or influence, do not commit any acts described in point (1) above, or of conspiracy to commit genocide, of direct and public incitement to commit genocide, of attempt to commit genocide, or of complicity in genocide; (3) Unanimously, The Republic of the Union of Myanmar shall take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide”).

¹¹⁹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v. Myanmar*), [Provisional Measures](#), Order of 23 January 2020.

¹²⁰ See Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukr. v. Russ.), Provisional Measures, 2017 I.C.J. REP. 104 (Apr. 19). 38. Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Geor. v. Russ.), Provisional Measures, 2008 I.C.J. REP. 353 (Oct. 15); Ukr. v. Russ., 2017 I.C.J. REP. 104 (Apr. 19); Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, 2018 I.C.J. REP. 406 (July 23). and Michael Ramsden and Jiang Zixin (2023) "[THE DIALOGIC FUNCTION OF I.C.J. PROVISIONAL MEASURES DECISIONS IN THE U.N. POLITICAL ORGANS: ASSESSING THE EVIDENCE,](#)" American University International Law Review: Vol. 37: Iss. 4, Article 3. (“These cases involve a wide range of human rights, including the right to life, liberty and security of person;⁴⁰ the right not to be subjected to torture or other cruel, inhuman or degrading treatment;⁴¹ the right to equality before the law and non-discrimination;⁴² the right to a fair trial;⁴³

the right to private life;⁴⁴ the right to freedom of movement;⁴⁵ the right to education;⁴⁶ and the right to take part in government.”).

¹²¹ *Pulp Mills on the River Uruguay (Argentina v Uruguay) Provisional Measures, Order of 13 July 2006*, ICJ Reports 2006, p. 133, paras. 70-71, 73-74

¹²² *Nuclear Tests (Australia v. France), Interim Protection, Order of 22 June 1973*, I.C.J. Reports 1973, p. 99. 27 (“Whereas the Government of Australia also alleges that the atmospheric nuclear explosions carried out by France in the Pacific have caused wide-spread radio-active fall-out on Australian territory and elsewhere in the southern hemisphere, have given rise to measurable concentrations of radio-nuclides in foodstuffs and in man, and have resulted in additional radiation doses to persons living in that hemisphere and in Australia in particular; that any radio-active material deposited on Australian territory will be potentially dangerous to Australia and its people and any injury caused thereby would be irreparable; that the conduct of French nuclear tests in the atmosphere creates anxiety and concern among the Australian people; that any effects of the French nuclear tests upon the resources of the sea or the conditions of the environment can never be undone and would be irremediable by any payment of damages; and any infringement by France of the rights of Australia and her people to freedom of movement over the high seas and superjacent airspace cannot be undone;”).

¹²³ Rieter, Eva. (2010) [PROVISIONAL MEASURES IN INTERNATIONAL HUMAN RIGHTS ADJUDICATION](#) 99. (“On the other hand, without breaking with *Chorzów* factory, the ICJ did take provisional measures in the Nuclear Test cases (1973).⁶¹⁰ While it did not explain the difference, it is likely, especially in light of subsequent cases, that it took into account the enormity of the possible consequences to the environment and population of the Applicant States”).

¹²⁴ Mensah, T. (2002) [PROVISIONAL MEASURES IN THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA \(ITLOS\)](#) Max Plank Institute 46.

¹²⁵ Mensah, T. (2002) [PROVISIONAL MEASURES IN THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA \(ITLOS\)](#) Max Plank Institute.

¹²⁶ *Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan), Provisional Measures, Order of 27 August 1999*, ITLOS Reports 1999, p.280. 71. (“Considering that there is no disagreement between the parties that the stock of southern bluefin tuna is severely depleted and is at its historically lowest levels and that this is a cause for serious biological concern.”).

¹²⁷ *Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan), Provisional Measures, Order of 27 August 1999*, ITLOS Reports 1999, p.280 “Australia, Japan and New Zealand shall ensure, unless they agree otherwise, that their annual catches do not exceed the annual national allocations at the levels last agreed by the parties of 5,265 tonnes, 6,065 tonnes and 420 tonnes, respectively; in calculating the annual catches for 1999 and 2000, and without prejudice to any decision of the arbitral tribunal, account shall be taken of the catch during 1999 as part of an experimental fishing programme; and Australia, Japan and New Zealand shall each refrain from conducting an experimental fishing programme involving the taking of a catch of southern bluefin tuna, except with the agreement of the other parties or unless the experimental catch is counted against its annual national allocation as prescribed in Subparagraph”).

¹²⁸ *MOX Plant (Ireland v. United Kingdom)*, Order of 13 November 2001, ITLOS Reports 2001, p. 89.

¹²⁹ *MOX Plant (Ireland v. United Kingdom)*, Order of 13 November 2001, ITLOS Reports 2001, p. 89.

¹³⁰ HRC, *Lubicon Lake Band v. Canada*, Communication No. 167/1984, 26.3.1990.

¹³¹ HRC, *Lubicon Lake Band v. Canada*, Communication No. 167/1984, 26.3.1990 29.3.

¹³² HRC, *Lubicon Lake Band v. Canada*, Communication No. 167/1984, 26.3.1990.

¹³³ HRC, *Lubicon Lake Band v. Canada*, Communication No. 167/1984, 26.3.1990. 21.2 (“after reviewing the principal features of its formal offer (transfer to the Band of 95 square miles of reserve land: the acceptance of the Band's membership calculation; the setting aside of \$C 34 million for community development projects; the granting of \$C 2.5 million per year of federal support programmes; the proposal of a special development plan to assist the Band in establishing a viable economy on its new reserve; and the establishment of a \$C 500,000 trust

fund to assist Band elders wishing to pursue their traditional way of life), the State party observes that the Government's formal overall offer amounts to approximately \$C 45 million in benefits and programmes, in addition to a 95 square mile reserve. The Band has claimed additional compensation of between \$C 114 million and \$C 275 million for alleged lost revenues. The State party has denied the Band's entitlement to such sums but has advised it that it is prepared to proceed with every aspect of its offer without prejudice to the Band's right to sue the federal Government for additional compensation”).

¹³⁴ HRC, Jouni E. Länsman et al. v. Finland, Communication No. 671/1995, 30.10.1996.

¹³⁵ HRC, Jouni E. Länsman et al. v. Finland, Communication No. 671/1995, 30.10.1996.

¹³⁶ HRC, Jouni E. Länsman et al. v. Finland, Communication No. 671/1995, 30.10.1996. 5.1 (“5.1 During its 56th session, the Committee considered the admissibility of the communication. It noted the State party's argument that the request for interim measures of protection in the case should be set aside, and that the communication met all admissibility criteria. It nonetheless examined whether the communication met the admissibility criteria under articles 2, 3, and 5, paragraphs 2(a) and (b), of the Optional Protocol, concluded that it did, and that the authors' claim under article 27 should be examined on its merits. On 14 March 1996, therefore, the Committee declared the communication admissible and set aside the request for interim measures of protection.”).

¹³⁷ HRC, Jouni E. Länsman et al. v. Finland, Communication No. 671/1995, 30.10.1996. 10.5 (“After careful consideration of the material placed before it by the parties, and duly noting that the parties do not agree on the long-term impact of the logging activities already carried out and planned, the Committee is unable to conclude that the activities carried out as well as approved constitute a denial of the authors' right to enjoy their own culture. It is uncontested that the Muotkatunturi Herdsmen's Committee, to which the authors belong, was consulted in the process of drawing up the logging plans and in the consultation, the Muotkatunturi Herdsmen's Committee did not react negatively to the plans for logging. That this consultation process was unsatisfactory to the authors and was capable of greater interaction does not alter the Committee's assessment. It transpires that the State party's authorities did go through the process of weighing the authors' interests and the general economic interests in the area specified in the complaint when deciding on the most appropriate measures of forestry management, i.e. logging methods, choice of logging areas and construction of roads in these areas. The domestic courts considered specifically whether the proposed activities constituted a denial of article 27 rights. The Committee is not in a position to conclude, on the evidence before it, that the impact of logging plans would be such as to amount to a denial of the authors' rights under article 27 or that the finding of the Court of Appeal affirmed by the Supreme Court, misinterpreted and/or misapplied article 27 of the Covenant in the light of the facts before it.”).

¹³⁸ HRC, Jouni E. Länsman et al. v. Finland, Communication No. 671/1995, 30.10.1996. 10.7 (“The Committee considers that if logging plans were to be approved on a scale larger than that already agreed to for future years in the area in question or if it could be shown that the effects of logging already planned were more serious than can be foreseen at present, then it may have to be considered whether it would constitute a violation of the authors' right to enjoy their own culture within the meaning of article 27. The Committee is aware, on the basis of earlier communications, that other large scale exploitations touching upon the natural environment, such as quarrying, are being planned and implemented in the area where the Sami people live. Even though in the present communication the Committee has reached the conclusion that the facts of the case do not reveal a violation of the rights of the authors, the Committee deems it important to point out that the State party must bear in mind when taking steps affecting the rights under article 27, that though different activities in themselves may not constitute a violation of this article, such activities, taken together, may erode the rights of Sami people to enjoy their own culture.”).

¹³⁹ European Court of Human Rights Press Unit (2022) [INTERIM MEASURES](#) (“In practice, interim measures are applied only in a limited number of areas and most concern expulsion and extradition. They usually consist in a suspension of the applicant's expulsion or extradition for as long as the application is being examined. The most typical cases are those where, if the expulsion or extradition takes place, the applicants would fear for their lives (thus engaging Article 2 (right to life) of the European Convention on Human Rights) or would face ill-treatment prohibited by Article 3 (prohibition of torture or inhuman or degrading treatment) of the Convention. More exceptionally, such measures may be indicated in response to certain requests concerning the right to a fair trial (Article 6 of the Convention)⁷, the right to respect for private and family life (Article 8 of the Convention)⁸ and freedom of expression (Article 10 of the Convention”).

¹⁴⁰ Keller, H (2022) [SOMETHING VENTURE NOTHING GAINED? REMEDIES BEFORE THE ECtHR AND THEIR POTENTIAL FOR CLIMATE CHANGE CASES](#) 1 Human Rights Law Review 22 19. (“However, interim measures were

not indicated in any of the environmental cases under review in this article. In other words, provisional protection is exceedingly rare in the Court's environmental jurisprudence. In fact, only one of the cases under review even mentioned Rule 39 protection")

¹⁴¹ Athanassoglou and Others v Switzerland Application No 27644/95, Merits, 6 April 2000 7. ("On 27 August and 10 September 1999 the applicants submitted a request for an interim measure under Rule 39 of the Rules of Court preventing the Beznau II nuclear power plant, which at that time was not functioning because of maintenance and repair works, from resuming its operation until the Court had given its judgment. On 13 October 1999 the Grand Chamber decided (by sixteen votes with one abstention) not to apply Rule 39 in the present case.").

¹⁴² Keller, H (2022) [SOMETHING VENTURE NOTHING GAINED? REMEDIES BEFORE THE ECtHR AND THEIR POTENTIAL FOR CLIMATE CHANGE CASES](#) 1 Human Rights Law Review 22 19 ('... a key hurdle here is the need to prove the existence of an 'imminent risk of irreparable damage', which is a precondition for Rule 39 orders.179 The Court has recently noted that interim protection is granted based on a prima facie assessment of the risk at hand, and that this instrument serves to preserve the Court's ability to render a meaningful judgment later on.180 Elsewhere, Cedric Marti has shown that the Court predominantly applies interim protection in four types of situations, namely concerning immigration, detention, enforced disappearances and the beginning or end of life.181 In other words, Rule 39 orders largely concern Articles 2 and 3 ECHR, which are also at stake in the climate context. However, not every case that falls under these provisions receives provisional measures, and in fact Marti notes that most Rule 39 requests are denied").

¹⁴³ See for example, KlimaSeniorinnen v Switzerland (ECtHR) Application no. 53600/20/ and Duarte Agostinho and Others v. Portugal and 32 Other States reporter info 39371/20.

¹⁴⁴ Czech Republic v Poland (Mine de Turów) C-121/21.

¹⁴⁵ TFEU Art 259.

¹⁴⁶ Order of the President of the Court of 24 April 2008. [European Commission v Republic of Malta](#). Case C-76/08 R.