

**THE RECOGNITION OF THE HUMAN RIGHT TO RESILIENCE IN TIMES OF
CLIMATE EMERGENCY**

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A SUMMARY AND RECOMMENDATIONS

- 1 Based on questions arising from the hearings and recent judicial decisions, this supplementary brief further addresses the legal obligations of States to establish and maintain climate resilience in response to the climate emergency to protect and ensure human rights.
- 2 Resilience is the capacity “to prevent, resist, absorb, adapt, respond and recover positively, efficiently and effectively when faced with a wide range of risks, while maintaining an acceptable level of functioning without compromising long-term prospects for sustainable development, peace and security, human rights and well-being for all.”¹ The Intergovernmental Panel on Climate Change (IPCC) defines resilience in similar terms.² It states that “climate resilient development” is the process of implementing mitigation and adaptation measures to support sustainable development for all.³ This brief submits that the best way to effectively clarify States’ obligations in the context of the climate emergency is through the evolutive interpretation of the right to life in Article 4 of the American Convention to recognize the human right to resilience. This right to resilience is critical to ensure States do not violate the right to life as well as the general duty to respect and ensure the rights and freedoms enshrined under Article 1(1) of the American Convention.⁴ The right to resilience and its corresponding obligations are appropriately tailored to the realities of the climate emergency and align with existing legal principles of non-discrimination, equality, prevention, precaution and *pro personae* as well as the best available scientific evidence on the climate emergency which must guide the advisory opinion.
- 3 In 2024, international and regional courts and tribunals have continued clarifying States’ obligations to urgently address the climate emergency and protect human rights. This includes this Court’s decision in *La Oroya v Peru*, the European Court of Human Rights (ECtHR) in *Klimaseniorinnen Schweiz et*

¹ U.N. SUSTAINABLE DEV. GROUP, [UN COMMON GUIDANCE ON HELPING BUILD RESILIENT SOCIETIES](#) 3 (2021).

² INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, [CLIMATE CHANGE 2022: MITIGATION OF CLIMATE CHANGE. CONTRIBUTION OF WORKING GROUP III TO THE SIXTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE](#) 7 [fn 12] (Priyadarshi R. Shukla et al. eds., 2022) (hereinafter “IPCC AR6 WGIII Report”).

³ INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, [CLIMATE CHANGE 2023: SYNTHESIS REPORT. CONTRIBUTION OF WORKING GROUPS I, II AND III TO THE SIXTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE](#) 25 [fig. SPM.6] (Hoesung Lee & José Romero eds., 2023) (hereinafter “IPCC AR6 Synthesis Report”). *See also* INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, [CLIMATE CHANGE 2022: IMPACTS, ADAPTATION AND VULNERABILITY. CONTRIBUTION OF WORKING GROUP II TO THE SIXTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE](#) 125 (Hans-Otto Pörtner et al. eds., 2022) (hereinafter “IPCC AR6 WGII Report”).

⁴ Velásquez Rodríguez v. Honduras, Merits, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶¶ 174–175 (July 29, 1988).

al v. Switzerland, and the advisory opinion on Climate Change and International Law by the International Tribunal on the Law of the Sea (ITLOS). These developments reinforce the need for an evolving interpretation of the American Convention to recognize the human right to resilience as a manifestation of the right to life in the context of climate change. This jurisprudence also underscores the need to objectively assess the best available climate science and the unique risks of irreversible harm from climate change to clarify the scope of human rights obligations, including the standard of due diligence (**Section B**).

- 4 The best available scientific evidence makes it clear that if States fail to take urgent actions to mitigate and adapt to climate change, as well as to restore ecosystems—collectively to take positive actions to build and maintain climate resilience and to refrain from actions that weaken climate resilience—there will be catastrophic and wide-scale human rights violations of present and future generations (**Section C**).
- 5 Having regard to the scientific evidence, the right to resilience is critical to ensure States do not violate the right to life in Article 4 of the American Convention as well as the general duty to respect and ensure the rights and freedoms enshrined in the Inter-American system under Article 1(1) of the American Convention.⁵ The human right to resilience provides the necessary legal framework to guide and limit the actions of State and non-State actors to prevent serious and irreversible harm to the climate system and to humanity. To ensure States’ actions are grounded in climate science and conform with principles of *pro personae*, non-discrimination, precaution, prevention, and duty of care, the right to resilience imposes the following obligations on States (**Section D**):⁶
 - 5.1 The obligation of **effective mitigation** to slow the rate of warming in the near term, aiming to keep temperature increases below the critical 1.5°C guardrail (or at least limit the magnitude and duration of overshooting this guardrail) to prevent irreversible climate tipping points.
 - 5.2 The obligation of **effective adaptation**, particularly for individuals and communities most vulnerable to climate impacts.

⁵ *Id.*

⁶ *Id.*, ¶ 64.

5.3 The obligation of **effective restoration**, to preserve and restore vulnerable and critical ecosystems, including the Amazon and other land and ocean-based carbon sinks that play a critical role in removing carbon dioxide from the atmosphere and otherwise stabilizing the climate.

These obligations have stringent due diligence standards having regard to various factors including: (a) scientific and technological information; (b) relevant international rules and standards; and (c) an objective assessment of the risk of harm and urgency (**Section E**). In addition, the objective gravity and urgency of the climate emergency and States' control over key evidence, require a shift in the burden of proof in human rights claims related to climate change so that the *onus* is on States to show their conduct complies with these obligations (**Section F**).

B RECENT JURISPRUDENCE ON CLIMATE CHANGE, HUMAN RIGHTS, AND STATES' OBLIGATIONS

6 Several recent 2024 climate decisions bear directly on the core issues before this Court in the advisory opinion request.

7 One of the most significant is the Court's decision in *La Oroya v Peru* published in March 2024. This decision is a significant development of the Inter-American jurisprudence to interpret the interrelationship between essential components of the environment and States' obligations to protect human rights. The Court recognized that serious, extensive, and irreversible damage to the environment by climate change threatens the survival of species.⁷

8 In *La Oroya* the Court addressed the right to a healthy environment,⁸ and the right to clean air and water,⁹ along with the rights to life, personal integrity, health, and rights of children.¹⁰ Moreover, the Court's reasoning in *La Oroya* strengthens the critical relationship between the precautionary principle

⁷ *Inhabitants of La Oroya v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C), ¶ 129 (Nov. 27, 2023).

⁸ *Id.*, ¶¶ 115–121, 124–125.

⁹ *Id.*, ¶¶ 120–125.

¹⁰ *Id.*, ¶¶ 120–121, 133, 135–136, 138–139, 141.

and the duty of States to preserve the environment to allow future generations to realize their human rights, including their right to life.¹¹

- 9 Beyond the Inter-American system, the ECtHR in the recent decision of *Klimaseniorinnen Schweiz et al v. Switzerland* recognized that climate change raises “unprecedented issues”¹² and requires Courts to develop a “more appropriate and tailored approach”¹³ in climate change cases.¹⁴ The ECtHR stated that the special features of climate change required it to adapt its usual approach to issues of (a) proof;¹⁵ (b) causation;¹⁶ (c) victim status and the applicability of the relevant Convention provisions;¹⁷ and (d) States’ positive obligations.¹⁸ The Court acknowledged that under article 3 of the UN Framework Convention on Climate Change (UNFCCC), “States Parties have undertaken the obligation to protect the climate system for the benefit of present and future generations of humankind (...). This obligation must be viewed in the light of the already existing harmful impacts of climate change, as well as the urgency of the situation and the risk of irreversible harm posed by climate change.”¹⁹ The importance of resilience is referred to by the Court, quoting from the IPCC’s 6th Assessment Report (AR6),²⁰ UNFCCC,²¹ the Paris Agreement,²² the synthesis report on the technical dialogue of the first global stocktake under the Paris Agreement,²³ and the UN Treaty Bodies’ Joint Statement on Human Rights and Climate Change.²⁴

¹¹ *Id.*, ¶ 128.

¹² *Id.*, ¶ 414.

¹³ *Klimaseniorinnen Schweiz et al v. Switzerland*, App. No. 53600/20, Eur. Ct. H.R., ¶ 422 (Apr. 9, 2024).

¹⁴ *Id.*, ¶¶ 417–422.

¹⁵ *Id.*, ¶¶ 427–430.

¹⁶ *Id.*, ¶¶ 439–440.

¹⁷ *Id.*, ¶¶ 435–440, 478–488, 507–520, 608.

¹⁸ *Id.*, ¶¶ 420, 544–554.

¹⁹ *Id.*, ¶ 420.

²⁰ *Id.*, ¶ 120.

²¹ *Id.*, ¶ 133.

²² *Id.*, ¶ 136.

²³ *Id.*, ¶ 139.

²⁴ *Id.*, ¶ 186.

10 Additionally, ITLOS published its advisory opinion on Climate Change and International Law in May 2024 describing climate change as “an existential threat”²⁵ raising “human rights concerns.”²⁶ The Tribunal highlighted the severity and magnitude of climate harm, relying on the broad scientific consensus that exceeding a global temperature increase of 1.5°C will lead to severe and irreversible consequences.²⁷ The Tribunal—guided by these scientific findings—observed that States’ due diligence obligations to prevent marine pollution from greenhouse gas (GHG) emissions under the UN Convention on the Law of the Sea are “stringent,” but vary according to States’ capabilities and available resources.²⁸

11 In sum, this recent jurisprudence strengthens the legal foundation for the Court to follow the best available climate science and to take another important and principled step in this advisory opinion to ensure climate resilience is at the center of States’ stringent human rights obligations with respect to climate change under the Convention and associated protocols.

C THE NEED TO MAINTAIN RESILIENCE TO PREVENT CLIMATE TIPPING POINTS

12 Recent scientific assessments underscore the criticality of staying below a 1.5°C temperature increase (or at least limit the magnitude and duration of overshooting this temperature guardrail) both to prevent further exacerbating current climate impacts and, critically, to avoid triggering irreversible climate tipping points. This scientific evidence is pivotal to understanding the scope of the human right to resilience and its corresponding obligations.

13 To supplement the scientific evidence contained in the *amicus curiae* submitted by IGSD, the following scientific findings illustrate the vulnerability of several key elements of the climate system, their importance to humanity’s collective resilience, and the need to ensure their restoration.

13.1 Many planetary vital signs—including global daily mean temperatures, ocean surface temperatures, sea level rise, and global tree cover loss from wildfires—are already at record

²⁵ Advisory Opinion on Climate Change and International Law, Case No. 31, Order of May 21, 2024, Int’l Tribunal L. Sea, ¶ 66 (hereinafter “ITLOS Advisory Opinion”).

²⁶ *Id.*

²⁷ *Id.*, ¶ 213; *see also* ¶¶ 62–65, 241.

²⁸ *Id.*, ¶ 239.

levels.²⁹ At 1.5°C, at least six climate tipping elements will likely cross their tipping points,³⁰ with the Amazon rainforest, Greenland Ice Sheet, and Atlantic Meridional Overturning Circulation approaching tipping.³¹ Without further action, self-amplifying climate feedback loops will push the Planet past irreversible tipping points and increase the likelihood of societal collapse.³²

- 13.2 The Amazon rainforest is currently shifting from a critical carbon “sink” that absorbs carbon dioxide into a “source” that emits carbon dioxide.³³ Preservation and restoration of carbon sinks such as the Amazon is critical to climate mitigation, given its role in regulating regional and global temperatures as an ecosystem with high biomass forests that sequesters more carbon than drier regions.³⁴ Furthermore, the precarious state of the Amazon rainforest due to human activity means the rainforest is at serious and increasing risk of exceeding a tipping point. There is a risk that when 20–25% of the Amazon is destroyed, the forest will be committed to turning into a savanna, which would have devastating impacts for resilience efforts worldwide and the resilience of the people that live and depend on the Amazon.³⁵ Current deforestation across the whole Amazon Basin is at around 17%, and the forest is already showing increasing signs of nearing a tipping point.³⁶

²⁹ William J. Ripple et al., [The 2024 state of the climate report: Perilous times on planet Earth](#), *BIOSCI.* 1, 9 (2024).

³⁰ *Id.*; see also David I. Armstrong McKay et al., [Exceeding 1.5°C global warming could trigger multiple climate tipping points](#), 377(6611) *SCIENCE* 7, 7 (2022).

³¹ UNIVERSITY OF EXETER, [GLOBAL TIPPING POINTS REPORT 2023](#) 13 (Timothy M. Lenton et al. eds., 2023).

³² Ripple, *supra* note 29, at 9–10.

³³ Luciana V. Gatti et al., [Amazonia as a carbon source linked to deforestation and climate change](#), 595(7867) *NATURE* 388, 388 (2021).

³⁴ Simon L. Lewis et al., [Restoring natural forests is the best way to remove atmospheric carbon](#), 568(7750) *NATURE* 25, 28 (2019).

³⁵ Thomas E. Lovejoy & Carlos Nobre (2018) [Amazon’s Tipping Point](#), 4(2) *SCI. ADV.* 1, 1 (2018). See also INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, [GLOBAL WARMING OF 1.5°C. AN IPCC SPECIAL REPORT ON THE IMPACTS OF GLOBAL WARMING OF 1.5°C ABOVE PRE-INDUSTRIAL LEVELS AND RELATED GLOBAL GREENHOUSE GAS EMISSION PATHWAYS, IN THE CONTEXT OF STRENGTHENING THE GLOBAL RESPONSE TO THE THREAT OF CLIMATE CHANGE](#) 262–263 (Valérie Masson-Delmotte et al. eds., 2018) (hereinafter “IPCC AR6 1.5°C Report”).

³⁶ Seaver Wang et al., [Mechanisms and Impacts of Earth System Tipping Elements](#), 61 *REV. GEOPHYS.* 1, 1 (2023). See also Ripple, *supra* note 29, at 3; Lovejoy & Nobre, *supra* note 35, at 1; Timothy M. Lenton et al., [Climate tipping points—too risky to bet against](#), Comment, 575(7784) *NATURE* 592, 593 (2019).

- 13.3 At 1.5°C, coral reefs are projected to decline by a further 70–90%.³⁷ As coral reefs support around 25% of our ocean’s marine life, and an estimated 1 billion people benefit from coral reef ecosystems, mass die-offs of coral reefs would result in widescale food insecurity.³⁸ This is critical to the Latin American and Caribbean region because eight Caribbean countries have their entire populations living within five kilometers of coral reefs, while an additional nine Caribbean countries have their entire populations living within ten kilometers of these vital ecosystems.³⁹
- 13.4 Arctic ice sheets and sea ice form a “great white shield” reflecting solar radiation safely back into space. Half of the Arctic’s September sea ice is already gone,⁴⁰ and the rest could disappear within 10 to 15 years.⁴¹ If all the Arctic sea ice were lost for the sunlit months, it would add the equivalent of 25 years of emissions at the current amount of warming.⁴² If current warming trends continue, the Arctic summer sea ice will disappear in September by mid-century or sooner.⁴³ Once global warming surpasses the Greenland Ice Sheet’s tipping point (estimated at 1.5°C) for sustained periods, irreversible melting and disintegration of the ice sheet is inevitable.⁴⁴ The loss of Arctic summer sea ice would exacerbate this risk.⁴⁵

³⁷ IPCC AR6 Synthesis Report, at 26, 71.

³⁸ U.S. Environmental Protection Agency, [Basic Information about Coral Reefs](#) (updated Feb. 28, 2024). See also Ripple, *supra* note 29, at 6.

³⁹ Amy Sing Wong, Spyridon Vrontos, & Michelle L. Taylor, [An Assessment of People Living by Coral Reefs over Space and Time](#), 28 GLOB. CHANGE BIOL. 7139, Supporting Information, Table S7 (2022).

⁴⁰ ARCTIC MONITORING & ASSESSMENT PROGRAMME, [ARCTIC CLIMATE CHANGE UPDATE 2021: KEY TRENDS AND IMPACTS](#) 6 (2021).

⁴¹ Yeon-Hee Kim et al., [Observationally-constrained projections of an ice-free Arctic even under a low emission scenario](#), 14(3139) NAT. COMMUN. 5, 5 (2023). See also David B. Bonan et al., [Constraining the Date of a Seasonally Ice-Free Arctic Using a Simple Model](#), 48(18) GEOPHYS. RES. LETT. 1, 1 (2021); Ge Peng et al., [What Do Global Climate Models Tell Us about Future Arctic Sea Ice Coverage Changes?](#), 8(15) CLIMATE 17 (2020). Noting that there is a difference between the first occurrence of a sea ice-free Arctic and a consistently sea-ice free Arctic and different studies use different thresholds to define a sea ice-free month. For a review, see Alexandra Jahn, Marika M. Holland, & Jennifer E. Kay, [Projections of an ice-free Arctic Ocean](#), 5(3) NAT. REV. EARTH ENVIRON. 164, 164 (2024).

⁴² Kristina Pistone, Ian Eisenman, & Veerabhadran Ramanathan, [Radiative Heating of an Ice-Free Arctic Ocean](#), 46 GEOPHYS. RES. LETT. 7474, 7477 (2019).

⁴³ IPCC AR6 WGII Report, at 2324; Kim, *supra* note 41, at 5.

⁴⁴ Armstrong McKay, *supra* note 30, at 7. See also Lenton, *supra* note 31, at 12; Uta Kloenne et al., [Only halving emissions by 2030 can minimize risks of crossing cryosphere thresholds](#), 13 NAT. CLIM. CHANG. 9, 10 (2023).

⁴⁵ Lenton, *supra* note 31, at 101.

- 13.5 The Antarctic is quickly losing sea ice, with the past three summer seasons in 2022, 2023, and 2024 setting records for the three lowest sea ice extents on record.⁴⁶ This recent trend suggests that the Antarctic sea may already be undergoing a major “regime shift.”⁴⁷
- 13.6 The complete Greenland melting would add up to 7 meters of sea level rise, likely over the course of centuries.⁴⁸ The consequences of that sea level rise would be detrimental and significant on communities globally. The IPCC projects that an end-of-century sea level rise of just under one meter would put an additional 1.5 million people in the Latin America and Caribbean region within the reach of extreme 1-in-100 year flooding because of greater storm surge and higher tidelines.⁴⁹ For comparison, the 2024 floods in Brazil’s Rio Grande do Sul, which displaced over 80,000 people, are categorized as 1-in-100 year event floods (due to extreme rainfall).⁵⁰
- 13.7 A recent scientific finding shows that tropical glaciers in the Andes have retreated significantly in recent decades, surpassing the natural fluctuations observed during the Holocene (the geological period that followed the ice age when these glaciers formed).⁵¹ This means that tropical Andean glaciers appear to be at their smallest in 11,700 years.⁵²
- 13.8 The Atlantic Meridional Overturning Circulation (AMOC)—the ocean’s “global conveyor belt”⁵³ that circulates critical water, energy, and nutrients throughout the North Atlantic ocean—has weakened by 13–15% since the 1950s and may be at risk of collapse in the

⁴⁶ Martin J. Siebert et al., [Antarctic extreme events](#), 11 FRONT. ENVIRON. Sci. 1, 2–3 (2023).

⁴⁷ National Snow & Ice Data Center, [Leaping toward spring](#) (Mar. 4, 2024). See also National Snow & Ice Data Center, [The Sun sets on the Arctic melt season](#) (Oct. 4, 2024); Will Hobbs et al., [Observational Evidence for a Regime Shift in Summer Antarctic Sea Ice](#), 37(7) J. CLIM. 2263, 2272 (2024).

⁴⁸ Wang, *supra* note 36, at 18.

⁴⁹ INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, [IPCC SPECIAL REPORT ON THE OCEAN AND CRYOSPHERE IN A CHANGING CLIMATE](#) 376 (Hans-Otto Pörtner et al. eds., 2019) (hereinafter “IPCC Special Report on the Ocean & Cryosphere”).

⁵⁰ World Weather Attribution, [Climate Change, El Nino and infrastructure failures behind massive floods in southern Brazil](#) (June 3, 2024).

⁵¹ Andrew L. Gorin et al., [Recent Tropical Andean Glacier Retreat Is Unprecedented in the Holocene](#), 385 SCIENCE 517, 517 (2024).

⁵² *Id.*

⁵³ National Oceanic & Atmospheric Administration, [What is the Atlantic Meridional Overturning Circulation \(AMOC\)?](#), National Ocean Service (June 16, 2024).

longer-term.⁵⁴ The collapse of AMOC would shift weather patterns worldwide,⁵⁵ from extreme cooling across parts of Europe to irreversible shifts in the monsoon season in the Amazon, West Africa, India, and East Asia that would imperil food and water security for over half the world's population.⁵⁶

- 14 This list is not exhaustive but is illustrative of the extreme precarity of many elements of our climate system. Guided by the best available science, States and institutions must acknowledge and address these (and other) climate risks urgently to prevent reaching a point where they become unmanageable and adaptation to many of the impacts is impossible. Failure to mitigate these risks will result in irreversible damage to the climate system beyond the effective control of both political and judicial authorities. States' obligations to respect, protect, and ensure the right to resilience are tailored to manage these risks (see [Section D](#)).
- 15 Moreover, it is crucial to recognize that not all mitigation actions enhance resilience, not all adaptation measures effectively protect the most vulnerable from climate impacts, and not all restoration efforts preserve and build resilience in a timely manner. Establishing climate resilience as a guiding framework is essential for States to prioritize urgent measures that build and maintain the specific resilience needed in each context. The human right to resilience mandates that States incorporate climate resilience into their current governance frameworks, supported by the best available climate science. This approach not only enhances the ability of communities to adapt and thrive amidst climate challenges but also aligns with the global commitment to safeguard human rights.
- 16 An example of ineffective mitigation would be to solely focus on mitigating CO₂ emissions (as opposed to simultaneously mitigating methane and other non-CO₂ emissions). While zeroing out CO₂ emissions is essential for limiting warming and long-term stabilization of the climate system, it is

⁵⁴ Stefan Rahmstorf, [Is the Atlantic Overturning Circulation Approaching a Tipping Point?](#), 37(3) OCEANOGRAPHY 16, 23 (2024). Climatologist Michael Mann and 43 other leading scientists published an [open letter](#) on October 21, 2024 warning that the risks of weakening ocean circulation in the Atlantic have been greatly underestimated and warrant urgent action. See also Christopher G. Piecuch & Lisa M. Beal, [Robust Weakening of the Gulf Stream During the Past Four Decades Observed in the Florida Straits](#), 50(18) GEOPHYS. RES. LETT. (2023); René M. van Westen, Michael Kliphuis, & Henk A. Dijkstra, [Physics-based early warning signal shows that AMOC is on tipping course](#), 10(6) SCI. ADV. (2024).

⁵⁵ Bryam Orihuela-Pinto, Matthew H. England, & Andréa S. Taschetto, [Interbasin and interhemispheric impacts of a collapsed Atlantic Overturning Circulation](#), 12(6) NAT. CLIM. CHANG. 558, 558 (2022). See also IPCC AR6 WGIII Report, at 43; Wang, *supra* note 36, at 32–33.

⁵⁶ Lenton, *supra* note 31, at 33.

critical to understand its limited potential to slow near-term warming and build communities' resilience. The IPCC's AR6 findings emphasize that rapidly decarbonizing the energy system by stopping the use of fossil fuels (i.e. CO₂ mitigation), in isolation, *accelerates* warming in the near term due to the removal of cooling sulfate aerosols that are co-emitted with CO₂ from sulfur-containing fossil fuels like coal and diesel.⁵⁷ Consequently, focusing solely on mitigating CO₂ contributes to warming in the near term and further diminishes the resilience of frontline communities and critical ecosystems. Thus, while rapid, immediate, and deep decarbonization is critical, it is equally crucial to achieving rapid, immediate, and deep reductions in methane and other non-CO₂ emissions at the same time. Mitigating short-lived climate pollutants (SLCPs) is the only way to reduce near-term warming because of their comparatively short lifespans in the atmosphere.

- 17 By observing the right to resilience and taking steps to adopt a resilience framework in policymaking, States can, and must, consistent with their human rights obligations *and the principle por personae*, implement policies that reduce both CO₂ emissions and SLCPs to protect and ensure the right to life by protecting vulnerable communities and the stability of the climate system in both the short and long term.

D THE SOURCE AND SCOPE OF THE RIGHT TO RESILIENCE

- 18 “Resilience”, as defined by the UN Sustainable Development Group, refers to the capacity of individuals, communities, societies, and systems “to prevent, resist, absorb, adapt, respond and recover positively, efficiently and effectively when faced with a wide range of risks, while maintaining an acceptable level of functioning without compromising long-term prospects for sustainable development, peace and security, human rights and well-being for all.”⁵⁸
- 19 The IPCC defines resilience in similar terms.⁵⁹ It states that “climate resilient development” is the process of implementing mitigation and adaptation measures to support sustainable development for all.⁶⁰

⁵⁷ IPCC AR6 WGIII Report, at 23–24.

⁵⁸ U.N. Sustainable Development Group, *supra* note 1.

⁵⁹ IPCC AR6 WGIII Report, at 7.

⁶⁰ IPCC AR6 Synthesis Report, at 125.

- 20 In December 2015, the Parties to the UNFCCC recognized in the Paris Agreement that “to limit the temperature increase to 1.5°C above pre-industrial levels,” would “significantly reduce the risks and impacts of climate change.”⁶¹ The Parties agreed to enhance implementation of the UNFCCC, to strengthen the global response to the threat of climate change, including by “increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development”⁶² and to make “finance flows consistent with a pathway” towards such development.⁶³
- 21 This is the era of resilience and States require guidance on how to develop it. Indeed, more than 80 submissions presented to this Court already mention resilience. It is important for the Court to take the opportunity to clarify the scope of “resilience” and its obligations in a human rights context, noting that it addresses both mitigation, including the need to restore ecosystems, and adaptation.
- 22 Other institutions regionally and globally are recognizing the need for resilience in the context of climate change.

22.1 The Inter-American Commission highlighted the need for States to adopt policies consistent with “climate-resilient development.”⁶⁴ This recognition builds upon earlier commitments by members of the Organization of American States to strengthen resilience from risks including climate variability.⁶⁵ Indeed, States’ climate action plans under the Paris Agreement, through their Nationally Determined Contributions (NDCs), are increasingly framing their mitigation, adaptation, and restoration commitments around the need to build climate resilience.⁶⁶

⁶¹ Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104, Art. 2(1)(a) (hereinafter “Paris Agreement”).

⁶² *Id.*, Art. 2(1)(b).

⁶³ *Id.*, Art. 2(1)(c).

⁶⁴ Inter-American Court of Human Rights, Climate Emergency: Scope of Inter-American Human Rights Obligations (Resolution 3/2021), ¶ 1.

⁶⁵ Social Charter of the Americas (adopted at the second plenary session on Jun. 4, 2012), Art. 22. E.g., The U.S. has worked extensively on increasing awareness around resilience, by releasing the [National Climate Resilience Framework](#) in September 2023, or the [Climate Resilience Game Changers Assessment](#) in July 2024. These policies aim to increase the U.S.’ climate resilience, correcting socioeconomical disparities and advancing environmental justice.

⁶⁶ See e.g., ARGENTINA, [UPDATE OF THE NET EMISSIONS GOAL TO 2030 OF THE ARGENTINA’S SECOND NDC](#), 3 (2021); BRAZIL, [NATIONALLY DETERMINED CONTRIBUTION \(NDC\)](#), 4 (2022); CANADA, [CANADA’S ADAPTATION](#)

- 22.2 Additionally, international finance institutions are beginning to recognize resilience as a core component of their mandate. One of the most important recent developments in climate finance is the creation of the Resilience and Sustainability Trust by the International Monetary Fund.⁶⁷ This financing instrument aims to support “countries facing structural challenges from climate change and pandemic preparedness.”⁶⁸
- 22.3 The Asian Development Bank formed the Community Resilience Partnership with additional funding from the Green Climate Fund (GCF), seeking to directly invest in vulnerable communities to strengthen climate resilience.⁶⁹ GCF’s framework and strategic plan also guides investment decisions to meet a 50/50 balance between climate change mitigation and adaptation investments. Their 2024–2027 Strategic Plan identifies climate adaptation and resilience investments as a priority.⁷⁰
- 23 His Holiness Pope Francis and The Vatican Pontifical Academy of Sciences and the Pontifical Academy of Social Sciences in May 2024 issued a Planetary Call to Action for Climate Change Resilience.⁷¹ This Call to Action recognized that it is “imperative to acknowledge the fundamental right of every individual to climate change resilience.”⁷² This call follows the statement of His Holiness Pope Francis to the Conference of Parties to the UNFCCC in December 2023 that specifically calls for

[COMMUNICATION TO THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE](#), 4 (2021); CHILE, [CHILE’S NATIONALLY DETERMINED CONTRIBUTION: UPDATE 2020](#), 13, 25, 32, 39–40, 49 (2020); COLOMBIA, [ACTUALIZACIÓN DE LA CONTRIBUCIÓN DETERMINADA A NIVEL NACIONAL DE COLOMBIA \(NDC\)](#) [UPDATE OF THE NATIONALLY DETERMINED CONTRIBUTION FOR COLOMBIA (NDC)], 1–2, 11, XXI–XXII (2020); COSTA RICA, [CONTRIBUCIÓN NACIONALMENTE DETERMINADA 2020](#) [NATIONALLY DETERMINED CONTRIBUTION 2020], 15, 8–9, 14, 83, 110 (2020); MÉXICO, [CONTRIBUCIÓN DETERMINADA A NIVEL NACIONAL ACTUALIZACIÓN 2022](#) [NATIONALLY DETERMINED CONTRIBUTION 2022 NATIONAL UPDATE], 10, 35–40, 43 (2022); EUROPEAN UNION, [SUBMISSION BY SLOVENIA AND THE EUROPEAN COMMISSION ON BEHALF OF THE EUROPEAN UNION: ADAPTATION COMMUNICATION OF THE EUROPEAN UNION](#), 6–7 (2021).

⁶⁷ Press Release, International Monetary Fund, [IMF Executive Board Approves Establishment of the Resilience and Sustainability Trust](#), IMF Press Release No. 22119 (Apr. 18, 2022).

⁶⁸ INTERNATIONAL MONETARY FUND, [2023 REVIEW OF RESOURCE ADEQUACY OF THE POVERTY REDUCTION AND GROWTH TRUST, RESILIENCE AND SUSTAINABILITY TRUST, AND DEBT RELIEF TRUSTS](#) 26 (2023).

⁶⁹ ASIAN DEVELOPMENT BANK, [CLIMATE CHANGE ACTION PLAN 2023–2030](#) 5 (2023).

⁷⁰ GREEN CLIMATE FUND, [STRATEGIC PLAN FOR THE GREEN CLIMATE FUND 2024-2027](#) 4–5 (2023); GREEN CLIMATE FUND, [INVESTMENT FRAMEWORK](#) 2 (2023).

⁷¹ Pontifical Academy of Sciences and the Pontifical Academy of Social Sciences, [Planetary Call to Action for Climate Change Resilience](#) (2024).

⁷² *Id.*

a Resilience Protocol.⁷³ His Holiness’ Planetary Call to Action for Climate Resilience is part of the current proceedings before this Court.

- 24 These examples from diverse fields, including ethics, science, finance, and policy, illustrate the development of an emerging norm recognizing the necessity of climate resilience as a fundamental response to the climate emergency. This Court stands at a pivotal moment to affirm and clarify these efforts within the framework of human rights law, acknowledging the right to resilience and the corresponding obligations of mitigation, restoration, and adaptation. Clear and authoritative guidance from this Court, grounded in established climate science, is essential. Without such clarification, the ambiguity surrounding the obligations inherent in resilience could result in adverse consequences for peace and democracy.
- 25 The essence of the human right to resilience, derived from the right to life, lies in its function of enabling States to fulfill their obligations to protect and prevent human rights violations in the context of the climate emergency. This is in line with Article 1(1) of the American Convention, as resilience is fundamental to the existence of humankind.⁷⁴
- 26 This Court has stated that under Articles 1(1) and 2 of the Convention, States are liable if they violate the general obligation to respect, protect, and ensure the effectiveness of the human rights contained in the Convention under any circumstance and involving any person under their jurisdiction.⁷⁵ Article 1(1) is also critical in attributing a human right violation, since “any impairment of the human rights enshrined in the Convention which, pursuant to International Law, may be attributable to the act or omission of any State authority, irrespective of hierarchy, constitutes an act attributable to the State, which compromises its international liability.”⁷⁶ In this sense, not adopting timely and effective adaptation, mitigation, and restoration measures to face the climate emergency could constitute a

⁷³ His Holiness Pope Francis, [*Address of His Holiness Pope Francis to the Conference of Parties to the United Nations Framework Convention on Climate Change \(COP28\)*](#) (Dec. 2, 2023), quoting [*Apostolic Exhortation “Laudate Deum” of the Holy Father Francis to All People of Good Will on the Climate Crisis*](#), ¶ 3 (Oct. 4, 2023).

⁷⁴ *La Oroya v Peru*, ¶ 118.

⁷⁵ *Baldeón-García v. Peru*, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C), ¶ 80 (Apr. 6, 2006). See also *Pueblo Bello Massacre v. Colombia*, Inter-Am. Ct. H.R. (ser. C) No. 140, ¶ 111 (Jan. 31, 2006); *Mapiripán Massacre v. Colombia*, Inter-Am. Ct. H.R. (ser. C) No. 134, ¶ 111 (Sep. 15, 2005); *Juridical Condition and Rights of the Undocumented Migrants*, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A), No. 18, ¶ 140 (Sep. 17, 2003).

⁷⁶ *Baldeón-García v Perú*, ¶ 81. See also *Pueblo Bello Massacre v Colombia*, ¶¶ 111–112; *Mapiripán Massacre v Colombia*, ¶¶ 108, 110; *Gómez-Paquiyaui Brothers v. Peru*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 71 (July 8, 2004).

violation of the obligation to respect and ensure the exercise of the rights contained in the Convention, which could be attributable to a State under international liability rules and Article 1(1) of the Convention.

- 27 The right to resilience is part of the substantive content of the right to life in Article 4 of the Convention. Indeed, this Court has stated that the “full exercise [of the right to life] is a prerequisite for the enjoyment of all other human rights. If this right is violated, all other rights become meaningless. Because of its inherent nature, any restrictive approach to this right is inadmissible.”⁷⁷ This also relates to the right to resilience as a substantive component of the right to life. Indeed, as the IPCC stresses, effective climate action not only enhances resilience but also facilitates the transformative changes needed to safeguard human health, well-being, and socio-economic outcomes.
- 28 Hence, this Court has acknowledged, based on Article 1(1) and Article 4 of the Convention, that “States must adopt all necessary measures to create a legal framework that deters any possible threat to the right to life; to establish an effective legal system to investigate, punish, and redress deprivation of life by State officials or private individuals; and guarantee the right to unimpeded access to conditions for a dignified life.”⁷⁸ Since the right to resilience is a key component of the right to life in the context of the climate emergency, it follows that States must similarly adopt all necessary measures to ensure the conditions for a dignified life.
- 29 In sum, the human right to resilience is a substantive component of the right to life under Article 4, which, in the context of the climate emergency, refers to the right of every individual and group to access, develop, and maintain the capacity to withstand, adapt to, and recover from the adverse impacts of climate change. States’ obligations to protect and prevent human rights violations in accordance with Article 1(1) and Article 4 of the Convention would impose three obligations: effective mitigation, effective adaptation, and effective restoration. Through the advisory opinion, the Court has a unique opportunity to provide guidance to States on what the right to resilience entails. The following section addresses the full scope of this right and its corresponding obligations.

⁷⁷ Baldeón-García v Peru, ¶ 82; “Street Children” (Villagrán-Morales et al.) v. Guatemala, Merits, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 144 (Nov. 19, 1999).

⁷⁸ Baldeón-García v Peru, ¶ 85.

D.1 States' Obligations

D.1.1 The Obligation of Effective Mitigation

- 30 The effective mitigation obligation requires implementing urgent and targeted measures to reduce the rate of warming in the short term and keep long-term average temperatures below 1.5°C or at least limit the magnitude and duration of any temperature overshoot. This mitigation is critical to preserve the ability of future generations—and children alive today—to adapt to climate impacts. This also implies that States must demonstrate that their actions or inactions do not compromise the key components of pivotal ecosystems like the Arctic and the Amazon and are consistent with staying below 1.5°C in the near- and long-term.⁷⁹
- 31 To fulfill this obligation means to limit climate impacts to manageable levels by adopting all effective measures necessary to slow the rate of warming as quickly as possible consistent with a path to remain under 1.5°C (or to at least limit the magnitude and duration of any temperature overshoot of that guardrail). The best available science shows this requires positive actions to rapidly reduce the non-CO₂ SLCPs over the next 10 to 15 years and urgently decarbonizing energy systems to achieve net-zero emissions by 2050 or sooner.
- 32 Science indicates that only actions aimed at mitigating SLCPs, especially methane, have a significant impact on temperature in the short-term. However, for these measures to be effective, it is imperative that they be implemented on a large scale over the next few years. Specifically, the science identifies the following targets to keep 1.5°C within reach or with limited overshoot: (i) reducing global methane emissions by 40–45% by 2030 relative to 2030 projected levels;⁸⁰ (ii) reducing fluorinated gas (including hydrofluorocarbons (HFCs)) emissions by 85% by 2050 relative to 2019 levels;⁸¹ (iii)

⁷⁹ See *infra* [Section F.3](#) on the burden of proof.

⁸⁰ U.N. ENVIRONMENT PROGRAMME & CLIMATE & CLEAN AIR COALITION, [GLOBAL METHANE ASSESSMENT: BENEFITS AND COSTS OF MITIGATING METHANE EMISSIONS](#) 11 (2021). *See also* U.N. ENVIRONMENT PROGRAMME & CLIMATE & CLEAN AIR COALITION, [GLOBAL METHANE ASSESSMENT: 2030 BASELINE REPORT](#) 6 (2022); IPCC AR6 WGIII Report, at 17. The methane reduction percentage is broadly equivalent to the target in UNEP's Global Methane Assessment.

⁸¹ IPCC AR6 WGIII Report, at 17.

reducing nitrous oxide (N₂O) emissions by 20% by 2050 relative to 2019 levels;⁸² and (iv) reducing black carbon emissions by 35% by 2050 relative to 2010 levels.⁸³

33 The proposed mitigation measures aim to limit climate impacts and future risks to manageable levels, striving to stay below the 1.5°C guardrail.⁸⁴ Consequently, States must adopt proactive policies based on the latest scientific and technological research. These include rapid reduction of SLCPs, immediate protection and restoration of natural carbon sinks like forests, and rapid decarbonization efforts. Additionally, States are obligated to regulate non-state activities contributing to emissions, deforestation, and other destruction of sinks, monitor these activities closely, and integrate updated scientific data into environmental impact assessments to prevent irreversible harm. These actions are crucial for respecting and ensuring the human right to resilience amidst the escalating climate crisis.

34 Based on this scientifically defined framework for a timely and appropriate mitigation response under the right to resilience, the criteria for assessing compliance with this mitigation obligation would be:

Is the State's action (or inaction) appropriate, science-based, effective, equitable, and timely for reducing the rate of warming in the near term and keeping global temperatures below 1.5°C?

35 Some examples of State action or inaction that would fail to meet the climate mitigation obligation under the right to resilience include:

35.1 State plans that only propose CO₂ mitigation measures and do not address methane reductions by 2030.

35.2 States that do not develop and implement concrete action plans to mitigate methane emissions.

35.3 States that do not establish or enforce robust regulatory frameworks to monitor and reduce emissions of fluorinated gases (such as HFCs), methane, black carbon, and N₂O.

⁸² *Id.*

⁸³ IPCC AR6 1.5°C Report, at 12. Note that the black carbon reductions rely on the IPCC's findings published in its 2018 Special Report, but this is an evolving area of research.

⁸⁴ Institute for Governance & Sustainable Development, Amicus Brief submitted to the Inter-American Court of Human Rights on the Request For An Advisory Opinion On The Climate Emergency And Human Rights Submitted To The Inter-American Court Of Human Rights By The Republic Of Colombia And The Republic Of Chile, ¶¶ 65–68 (Apr. 4, 2024).

- 35.4 States that delay the implementation of necessary policies or enact measures that are not effective in achieving significant reductions in both CO₂ and the non-CO₂ SLCPs within the specified timeframes established by science would also fail to meet the standards of the obligation effective mitigation derived from the human right to resilience.
- 35.5 A failure to incorporate updated scientific information into State policymaking processes, both regarding the impact of SLCPs and CO₂ on achieving temperature goals for both near and long-term targets.

D.1.2 The Obligation of Effective Adaptation

- 36 The second obligation of the right to resilience is effective adaptation, which requires taking positive actions to strengthen the resilience of the most climate-vulnerable individuals and groups and refraining from actions that undermine resilience, to preserve the capacity of present and future generations to adapt.
- 37 It remains essential to understand, as the IPCC has noted, that adaptation has limits. The more the world warms and the more damaging the impacts become, the lower the effectiveness of adaptation measures, which underlines the importance of acting urgently and effectively on mitigation and adaptation at the same time.⁸⁵
- 38 Given the undeniable fact that climate impacts are already affecting frontline communities, as evidenced by testimonies from climate victims during the hearings of this advisory opinion process, it is crucial to emphasize that the human right to resilience encompasses immediate obligations to build effective adaptation for vulnerable groups and medium as well as long-term obligations. Immediate obligations are grounded in the longstanding jurisprudence of this Court,⁸⁶ which requires stringent due diligence and differentiate obligations to protect vulnerable populations.⁸⁷ According to the IPCC, these vulnerable groups are context-dependent but often include Indigenous peoples, island dwellers, people living in poverty and in informal settlements, urban ethnic minorities, migrants and people

⁸⁵ IPCC AR6 Synthesis Report, at 26.

⁸⁶ The Environment and Human Rights, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) ¶¶ 67, 47–55, 127–174, 180 (Nov. 15, 2017); *La Oroya v Peru*, ¶ 141–142.

⁸⁷ Advisory Opinion OC-23/17, ¶¶ 111, 120–126, 142, 172.

displaced by conflict, the elderly, children, women and non-binary people, small-scale farmers, and persons with disabilities.⁸⁸

39 For longer-term obligations to provide effective adaptation, States must effectively manage climate impacts and risks to ensure that the resilience of both current and future generations is not compromised. This entails implementing proactive measures that anticipate and mitigate potential impacts, reducing human exposure to future climate impacts and enabling future impacts to be managed effectively with available resources. The IPCC highlights the importance of integrating climate adaptation and mitigation strategies to effectively address climate change impacts and build resilience. The IPCC observes, that for example the building of seawalls can be a poor adaptation measure as they could reduce short-term impacts from sea level rise but can result in lock-ins and increased exposure to long-term impacts unless they are well-integrated into a longer-term adaptation plan.⁸⁹

40 Based on the framework for a timely and appropriate adaptation response under the right to resilience, the criteria for assessing compliance with this adaptation obligation would be:

Does the State's action (or inaction) strengthen resilience by building individuals and groups capacity to face near term and long-term climate impacts and risks? Is this action appropriate, science-based, equitable, effective, and timely?

41 Examples of actions or inactions by States that would fail to meet the obligation of the effective adaptation related to the right to resilience include the following:

41.1 Insufficient allocation of financial resources to targeted reduction of climate-related impacts among vulnerable groups.

41.2 Implementing generic and poorly tailored climate adaptation strategies without considering or adequately consulting the vulnerabilities of different groups affected and the best available science.

⁸⁸ IPCC AR6 WGII Report, at 1198.

⁸⁹ IPCC AR6 Synthesis Report, at 79.

41.3 Failing to remove obstacles preventing vulnerable groups from accessing climate justice during a reasonable time.

42 In other words, States must refrain from actions that undermine resilience and must engage in positive actions that preserve and build individual and collective resilience. Addressing adaptation gaps requires proactive measures that not only mitigate climate impacts but also strengthen the resilience of those most affected, ensuring their rights to resilience are upheld under the effective adaptation obligations outlined in this brief.

D.1.3 The Obligation of Effective Restoration

43 Given the existing damage to the climate system, restoration of ecosystems is crucial both for effective long-term mitigation and adaptation efforts. As the IPCC recognizes, ecosystem stewardship is a critical part of near-term climate action that builds resilience.⁹⁰ As already noted (*supra* [Section C](#), ¶ 12), key elements of the climate system are in a highly vulnerable state.⁹¹ To manage risks and build effective resilience States must focus particularly on urgent measures to avoid breaching critical thresholds and irreversibly altering key elements of the climate system.

44 In the recent advisory opinion on climate change and international law, ITLOS relied on the scientific evidence from the IPCC concerning the importance of the ocean and marine ecosystems in the climate system, the vulnerability of blue carbon ecosystems from climate impacts, and the lives and livelihoods these ecosystems support and enrich.⁹² ITLOS stated that where the marine environment has been degraded by climate impacts Parties to the UN Convention on the Law of the Sea have obligations not only to preserve but also to *restore* these ecosystems where necessary to regain ecological balance.⁹³ As ITLOS observed, restoring blue carbon ecosystems is of “dual significance” as it serves both mitigation and adaptation functions described in climate change treaties.⁹⁴ This is because this restoration both mitigates climate pollution by strengthening carbon removal and sequestration while also promoting ecosystem-based adaptation. We submit that the scientific evidence, coupled with a harmonious interpretation of human rights law with States’ other international obligations, requires

⁹⁰ *Id.*, 97, 114.

⁹¹ Such as the Arctic and Antarctic ice sheets, the Amazon, and the Atlantic branch of global ocean circulation.

⁹² ITLOS Advisory Opinion, ¶¶ 55–61, 66.

⁹³ *Id.*, ¶ 386.

⁹⁴ *Id.*, ¶¶ 390–391.

imposing on States a similar obligation of effective restoration to protect the human right to resilience as a manifestation of the human right to life.

- 45 In the context of Article 4 of the American Convention, this obligation requires States to urgently and effectively preserve and restore ecosystems, with a focus on ecosystems critical to the functioning of the climate system, to protect individual and community resilience. Compliance with the obligation of restoration from a human rights law perspective should be measured by whether actions are timely, effective, science-based, equitable, and aimed at maintaining the resilience of critical elements of the climate system. At the time of the presentation of this brief, however, many measures regarded as climate restoration measures (including the various methods of carbon dioxide removal (CDR)) are novel and have different levels of readiness, potential, and durability.⁹⁵ While some restoration technologies are conventional and well-established, the risks and impacts that novel technologies, especially at a large scale of deployment, could pose to ecosystems and human rights are varied and uncertain.⁹⁶ For example:

- 45.1 Restoration methods such as afforestation, reforestation, and forest and coastal wetland management are conventional, well-established, widely deployed, and supported by a large amount of scientific research and analysis.⁹⁷
- 45.2 By contrast, many countries currently classify bioenergy with the potential for carbon capture and storage (BECCS) as a CDR measure despite BECCS not being carbon-neutral for several decades (if ever), as the carbon emissions from cutting and burning trees will not be offset for decades to centuries,⁹⁸ especially for tropical forests that already store significant amounts

⁹⁵ STEPHEN M. SMITH ET AL. (EDS.), [THE STATE OF CARBON DIOXIDE REMOVAL 2024](#) 28 (2d ed. 2024).

⁹⁶ *Id.*, 24–25. Durability in the State of CDR Report is defined by the ability for the carbon to be stored for decades or more, but there is currently no clearly agreed definition of durable carbon storage.

⁹⁷ *Id.*, 28.

⁹⁸ Mary S. Booth, [Not Carbon Neutral: Assessing the Net Emissions Impact of Residues Burned for Bioenergy](#), 13(3) ENVIRON. RES. LETT. 8, 8 (2018). *See also* Anna B. Harper et al., [Land-use emissions play a critical role in land-based mitigation for Paris climate targets](#), 9(2938) NAT. COMM. 7, 7 (2024).

of carbon.⁹⁹ Large-scale bioenergy would also reduce biodiversity,¹⁰⁰ harm human health,¹⁰¹ and threaten water and food security.¹⁰²

- 46 For these reasons, it is critical that all proposed restoration measures be assessed for scientific and technological feasibility and through a human rights assessment framework, with due regard to the risks posed to human rights of all, including risks from extraterritorial impacts.
- 47 Restoration measures focused on the Amazon and other land and ocean sinks in the region, should focus on preservation of the ecosystem as well as restoration measures to reverse the degradation. Such restoration measures include assisted regrowth of degraded natural forests and partly wooded areas, avoiding monoculture plantations¹⁰³ (which negatively impact biodiversity) and instead promoting mixed-species forests to enhance biodiversity, resilience, and ecosystem services such as water security.¹⁰⁴ As reiterated during the proceedings, States should empower and provide resources for local and Indigenous communities to lead restoration efforts, as their knowledge and stewardship are critical for effective climate adaptation and mitigation while protecting biodiversity.¹⁰⁵

⁹⁹ Harper, *supra* note 98, at 7, 9.

¹⁰⁰ M. J. Swift & James M. Anderson, *Biodiversity and Ecosystem Function in Agricultural Systems*, in 99 PRAKTISCHE ZAHNMEDIZIN ODONTO-STOMATOLOGIE PRATIQUE PRACTICAL DENTAL MEDICINE, 15–41 (Ernst-Detlef Schulze & Harold A. Mooney eds. 1994).

¹⁰¹ Burning biomass for energy produces air pollutants, including particulate matter as well as the short-lived climate pollutants black carbon and tropospheric ozone. Alison S. Tomlin, *Air Quality and Climate Impacts of Biomass Use as an Energy Source: A Review*, 35(18) ENERGY FUELS 14213, 14213 (2021).

¹⁰² Globally, large-scale deployment of BECCS would decrease food and water security and could intensify social conflicts, especially in low- and middle-income countries. See INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *CLIMATE CHANGE 2021: THE PHYSICAL SCIENCE BASIS. CONTRIBUTION OF WORKING GROUP I TO THE SIXTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE* 763 (Valérie Masson-Delmotte et al. eds., 2021). High implementation of BECCS could increase the population at risk of hunger by up to 150 million people. See INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *CLIMATE CHANGE AND LAND: AN IPCC SPECIAL REPORT ON CLIMATE CHANGE, DESERTIFICATION, LAND DEGRADATION, SUSTAINABLE LAND MANAGEMENT, FOOD SECURITY, AND GREENHOUSE GAS FLUXES IN TERRESTRIAL ECOSYSTEMS* 27 (Priyadarshi R. Shukla et al. eds., 2019).

¹⁰³ Hans-Otto Pörtner et al., *IPBES-IPCC Co-Sponsored Workshop Report on Biodiversity and Climate Change*, Workshop Report, Intergovernmental Panel on Climate Change & Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, 18–19 (2021).

¹⁰⁴ *Id.*, 17, 19. See also KATE DOOLEY ET AL., *THE LAND GAP REPORT 2022* 3 (2022); Natalia Hasler et al., *Accounting for albedo change to identify climate-positive tree cover restoration*, 15(2275) NAT. COMMUN. 1, 7 (2024).

¹⁰⁵ Eduardo Assad, Julia Arieira, Diego Oliveira Brandão, & Carlos A. Nobre, *Amicus Brief* submitted to the Inter-American Court of Human Rights on the Request For An Advisory Opinion On The Climate Emergency And Human Rights Submitted To The Inter-American Court Of Human Rights By The Republic Of Colombia And

48 Based on these considerations, the criteria for assessing compliance with the obligation of restoration would be:

Is the State's action (or inaction) timely, effective, equitable, science-based, and focused on preserving and restoring critical elements of the climate system?

49 Examples of actions or inactions by States that would fail to meet the standards outlined include the following.

49.1 A State delaying or refraining from initiating essential ecosystem restoration projects despite urgent scientific evidence of their need.

49.2 Inadequate funding for crucial and readily available and non-speculative ecosystem restoration efforts, such as targeted reforestation or wetland protection which support human resilience.

49.3 Actions or inaction that ignore or fail to acknowledge established scientific recommendations or fail to consider risks to, or impacts on, vulnerable communities for failing to take positive actions to restore (or to refrain from taking actions which further degrade) vulnerable ecosystems like the Amazon.

49.4 Implementing actions classified as restoration measures without sufficient regard to the best available science that are not aligned with maintaining a 1.5°C temperature pathway in the near-term.

D.2 The Legal Significance of the Right to Resilience

50 The human right to resilience harmonizes and combines the obligations of effective mitigation, adaptation, and restoration. These three obligations must be considered together in a balanced way to create effective and enforceable obligations on States to address the climate emergency. Recognizing these obligations will not only offer States clear directives on fulfilling their human rights duties in addressing the climate crisis but also impose necessary constraints on the expansive discretion currently held by the executive and legislative branches in designing and implementing climate policies. This oversight is crucial, as unchecked powers are exposing humanity to existential risks and

The Republic Of Chile, 5, 38–39 (Nov. 20, 2023). *See also* [oral observations](#) by Professor Carlos A. Nobre (Manaus Day 3, Session 4) (May 28, 2024).

imperiling fundamental human rights enshrined in international, regional, and domestic law. The human right to resilience and its tailored obligations requires decisionmakers to follow the science, act consistently with the principles of precaution, prevention, *pro personae*, non-discrimination, and equality, and do what is necessary to protect the right to life in the context of this unique emergency.

51 Moreover, recognizing a human right to resilience could enhance the human rights system in the following ways:

51.1 **Robust Legal Framework:** Recognizing resilience as a human right could provide a robust legal framework for States and international bodies to mandate and enforce effective mitigation, adaptation, and restoration measures. This would ensure that States take proactive steps to protect individuals and groups’ rights to access and maintain resilience in the face of climate impacts. Certainly, the human right to resilience would increase the legal enforceability of effective mitigation, restoration, and adaptation measures, mandating their integration beyond voluntary commitments.

51.2 **Focus on Vulnerable Populations:** A human right to resilience would prioritize the protection and empowerment of vulnerable populations, including those disproportionately affected by climate change. This could include marginalized communities, indigenous peoples, and low-income groups who often bear the brunt of climate impacts. This responds to what this Court already recognized in the prior advisory opinion on the environment, declaring that States’ obligations must always take into consideration the “differentiated impact that these measures may have on certain sectors of the population, in order to respect and guarantee the enjoyment and exercise of the rights enshrined in the Convention without discrimination.”¹⁰⁶ This consideration directly relates to the questions raised by Chile and Colombia before this Court.¹⁰⁷

51.3 **Identify All Groups Vulnerable to Human Rights Violations from Climate Impacts:** Furthermore, recognizing a human right to resilience could help identify vulnerable groups

¹⁰⁶ Advisory Opinion OC-23/17, ¶ 68.

¹⁰⁷ Request For An Advisory Opinion On The Climate Emergency And Human Rights Submitted To The Inter-American Court Of Human Rights By The Republic Of Colombia And The Republic Of Chile, January 9, 2023. For instance, question A.2 when asking what measures States should take to minimize the impact of damage caused by the climate emergency in light of the obligations established in the American Convention, the States also ask this Court to clarify what differentiated measures should be taken concerning vulnerable populations. See also questions B.1.ii, C, E.1, E.2, E.3, F.

specifically at risk from climate change impacts—groups that may not be classified as vulnerable under a traditional interpretation of human rights law. For instance, outdoor workers, who are exposed to excessive heat and face heat stress as a result, could be classified as a vulnerable group under this framework.¹⁰⁸ Climate change exacerbates these workers' working conditions, significantly increasing their risk of heat-related illnesses such as heat stroke.¹⁰⁹

51.4 **Increase State Accountability:** Just as other human rights are monitored and reported on, a right to resilience could justify the establishment of new accountability mechanisms. Governments would be held accountable for implementing and upholding effective climate policies aimed at enhancing resilience against climate-related impacts. This would involve setting clear goals, benchmarks, and reporting requirements to track progress and ensure that necessary actions are taken.

51.5 **Increase Monitoring and Oversight Mechanisms:** International human rights bodies could be tasked with monitoring and evaluating how well countries are addressing the right to resilience. These bodies would have the mandate to assess compliance with resilience standards, provide technical assistance, and offer guidance on best practices. They could also facilitate the sharing of knowledge and resources between nations, helping to build global capacity for resilience.

52 In summary, recognizing a human right to resilience can strengthen the human rights framework by transforming voluntary climate commitments into binding obligations aimed at protecting fundamental rights. This recognition would provide a clear mandate for States to prioritize mitigation, adaptation, and restoration measures based on scientific evidence, which can tangibly enhance the resilience of present generations while safeguarding the ability of future generations to build and maintain their own resilience.

53 The human right to resilience requires States to act consistently to stay below 1.5°C (or at least limit the magnitude and duration of overshooting that guardrail), facilitating a targeted application of established principles of precaution, prevention and *pro personae* in the climate emergency. This approach is crucial to safeguarding the resilience of key components of the climate system that

¹⁰⁸ U.N. Secretary-General, [United Nations Secretary-General's Call to Action on Extreme Heat](#), 9 (July 25, 2024).

¹⁰⁹ *Id.*

scientific evidence tells us must be preserved to maintain the long-term stability of the climate system, such as Arctic and Antarctic ice sheets, the Amazon, and the Atlantic branch of global ocean circulation.¹¹⁰ The right to resilience implies the recognition of the determinant role that these key components of the climate system have on the resilience of all humanity, and, in particular, vulnerable communities and the rights of future generations. Failure to protect these elements through both action and inaction would also contravene the principle of intergenerational equity.¹¹¹

- 54 The right to resilience is closely aligned with the precautionary principle and the principle *pro personae* by advocating for proactive measures that protect individuals and communities, to anticipate and mitigate the impacts of climate change. Indeed, both concepts emphasize taking anticipatory action to prevent harm, even in the face of scientific uncertainty.¹¹² In tandem, the prevention obligation aligns with efforts under a right to resilience by focusing on addressing root causes of environmental harm, such as reducing climate pollution. By recognizing resilience as a human right, decision-makers are obliged to prioritize policies and actions that enhance adaptive capacity, protect vulnerable populations, restore critical ecosystems, and mitigate climate change in a timely and effective manner. This approach not only fosters preparedness against climate impacts but also aligns with the precautionary and *pro personae* principles' goals of safeguarding ecosystems and human well-being from potential serious or irreversible damage as well as the obligation to prevent human rights violations under the Convention.

E THE DUE DILIGENCE OBLIGATION UNDER THE RIGHT TO RESILIENCE

- 55 Due diligence in the context of climate change requires that States utilize the best available science to objectively assess their climate actions. States do not meet the standard of due diligence if, upon objective evaluation, their climate actions fail to adequately consider the best available scientific evidence. This is because the measures that States must adopt should correspond to what is generally recognized as appropriate and proportionate to the potential risks involved. Once the risks, as outlined by scientific evidence, are objectively assessed, the due diligence standard imposes a stringent

¹¹⁰ Armstrong McKay, *supra* note 30, at 7. *See also* Lenton, *supra* note 31, at 13; IPCC AR6 Synthesis Report, at 36.

¹¹¹ La Oroya v Peru, ¶ 128.

¹¹² Advisory Opinion OC-23/17, ¶¶ 127–129, 175–180. *See also* La Oroya v Peru, ¶¶ 126–128.

obligation on States to employ all necessary and available measures to protect the right to resilience, as a component of the right to life.¹¹³

56 The best available science has already defined the risks that we face. At today’s 1.2°C of warming,¹¹⁴ we are already experiencing significant human and economic impacts of climate change. The risk of triggering non-linear, abrupt, and potentially irreversible tipping points increases dramatically as we approach 1.5°C to 2°C of warming.¹¹⁵ Earth system models project six abrupt shifts between 1°C and 1.5°C warming and another eleven shifts between 1.5°C and 2°C,¹¹⁶ consistent with two IPCC Special Reports.¹¹⁷ A more recent scientific analysis from October 2024 reports 28 self-amplifying climate feedback loops and five tipping points at 1.5°C.¹¹⁸ This science is pivotal to understand the magnitude of the risk the world faces and the actions States must take to reduce this risk and protect individuals and communities from human rights violations.

57 This Court has already recognized that a stringent due diligence standard applies to environmental matters.¹¹⁹ Recently in *La Oroya v Peru* the Court reiterated that according to the principle of prevention “States must undertake measures *ex ante* to prevent environmental damage, considering that, due to its particularities, it frequently will not be possible to restore the previous situation after such damage has occurred.”¹²⁰ Accordingly, under this Court’s interpretation, “States are obligated to use all means at their disposal to prevent activities carried out under their jurisdiction from causing significant harm to the environment.”¹²¹

58 This obligation of States to use all available means to prevent significant environmental harm must be carried under a due diligence standard, which according to this Court “should be appropriate and

¹¹³ ITLOS Advisory Opinion, ¶ 239.

¹¹⁴ WORLD METEOROLOGICAL ORGANIZATION, [STATE OF THE GLOBAL CLIMATE 2023](#) 3 (2024).

¹¹⁵ Armstrong McKay, *supra* note 30, at 7–8. *See also* Lenton, *supra* note 31, at 12.

¹¹⁶ Sybren Drijfhout et al., [Catalogue of Abrupt Shifts in Intergovernmental Panel on Climate Change Climate Models](#), 112(43) PROC. NAT’L ACAD. SCI. E5777 (2015).

¹¹⁷ IPCC AR6 1.5°C Report, at 262. *See also* IPCC Special Report on the Ocean & Cryosphere, at 75.

¹¹⁸ Ripple, *supra* note 29, at 9.

¹¹⁹ *La Oroya v Peru*, ¶ 126. *See also* Advisory Opinion OC-23/17, ¶ 142; *Indigenous Communities Members of the Lhaka Honhat Association (Nuestra Tierra) v, Argentina*, Inter-Am. Ct. H.R. (ser. C), ¶ 208 (Jan. 6, 2020) (personal translation).

¹²⁰ *La Oroya v Peru*, ¶ 126 (personal translation).

¹²¹ *Id.* *See also* Advisory Opinion OC-23/17 ¶ 142; *Lhaka Honhat Association v Argentina*, ¶ 208 (personal translation).

proportionate to the degree of environmental risk.”¹²² Consequently, in the face of more hazardous activities, such as the use of highly polluting substances,¹²³ or conservation of fragile ecosystems,¹²⁴ “the obligation is held to a higher standard.”¹²⁵

- 59 This Court has not yet clarified what constitutes a higher standard of due diligence in preventing harm of the magnitude and nature of climate change but has recognized that the due diligence standard may vary with time, based on scientific discoveries or new technologies.¹²⁶
- 60 The recent advisory opinion by the ITLOS on Climate Change and International Law complements the Court’s approach and harmoniously develops the content of the due diligence obligation in the context of climate change. The Tribunal clearly established that States must observe a stringent due diligence standard in addressing marine pollution from GHG emissions.¹²⁷ The Tribunal also recognized that the standard of due diligence depends on numerous factors which evolve over time, including: (a) scientific and technological information; (b) relevant international rules and standards; and (c) an objective assessment of the risk of harm and urgency involved.¹²⁸
- 61 Significantly, the Tribunal observed that the implementation of the due diligence standard in the context of the climate emergency may vary according to States’ capabilities and available resources. A State with “greater capabilities and sufficient resources” must do more than a State “not so well placed.”¹²⁹ Still, the Tribunal’s view aligned with the science is that *all* States must take mitigation measures, and the obligation of due diligence requires a State with less capabilities and resources to “do whatever it can in accordance with its capabilities and available resources.”¹³⁰ This reasoning is equally applicable to the obligations grounded in the human right to resilience, where the standard must also be one of stringent due diligence.

¹²² La Oroya v Peru, ¶ 126 (personal translation).

¹²³ *Id.*

¹²⁴ Advisory Opinion OC-23/17, ¶ 142 (personal translation).

¹²⁵ La Oroya v Peru, ¶ 126 (personal translation).

¹²⁶ Advisory Opinion OC-23/17, ¶ 142 (personal translation).

¹²⁷ ITLOS Advisory Opinion, ¶ 241.

¹²⁸ *Id.*, ¶ 239.

¹²⁹ *Id.*, ¶ 241.

¹³⁰ *Id.*

- 62 In consequence, the largest emitters of climate pollution, historically and presently, must do more for the planet to stay under 1.5°C (or at least to limit the magnitude and duration of overshooting that temperature guardrail). This is because activities generating emissions under their jurisdiction and control have disproportionately contributed to and continue to exacerbate the climate emergency. The science is clear: the more we emit, the more the planet warms. This assessment is based on the well-established factual foundation that some countries—the biggest emitters—contribute more to the causes and impacts of climate change. This scientific reality is part of the rationale for the principle of common but differentiated responsibilities in the context of the UNFCCC. While the precise content of the principle of Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) has remained opaque in the context of that treaty regime, the principle has long acknowledged States contribute to climate change to varying degrees.¹³¹
- 63 Accordingly, States that emit fewer climate pollutants with limited capabilities and resources could be less likely to be found to have breached their human rights obligations in future cases applying a stringent due diligence standard. Still, as a matter of objective assessment, given the magnitude and foreseeability of the harm, some State actions or inactions would fail the stringent due diligence standard, regardless of the State’s respective capabilities and resources. At the time of presentation of this brief, examples include:
- 63.1 Failing to design and implement a domestic climate action plan (accounted for in States’ Nationally Determined Contributions) that is consistent with the global temperature staying below 1.5°C in the near term (2030)—and the long term—by setting clear targets to mitigate climate pollution.
 - 63.2 Failing to include in a domestic climate action plan clear targets and measures to substantially reduce emissions of both non-CO₂ climate pollutants (especially methane) and CO₂ emissions.
 - 63.3 Failing to implement and enforce measures to prevent the deforestation and destruction of forest and other land carbon sinks, and to protect and preserve ocean carbon sinks.

¹³¹ Paris Agreement, Arts. 2(2), 4(3).

F STATES BEAR THE BURDEN OF PROOF IN CLIMATE CASES

- 64 To observe the human right to resilience, States must demonstrate that their actions or inactions do not compromise the key components of critical ecosystems like the Arctic and the Amazon and are consistent with staying below 1.5°C in the near- and long-term period. Therefore, the *onus probandi* or burden of proof in cases related to inadequate—or the lack of—action to address the climate emergency under the human right to resilience should rest on the State emitter and not on the alleged victims of human rights violations caused by climate harm.
- 65 This Court may shift the burden of proof from the accuser to the accused State in certain situations, since there is no rigid rule on the matter.¹³² As this Court has stated multiple times, when the nature of the human rights violation makes it difficult for the complaining party to obtain evidence, and the evidence is likely within the control of the State, the burden of proof may be shifted.¹³³ The rationale for this is that the State has a greater ability to investigate and explain its actions. Therefore, this Court has already offered some factors to consider when inverting the burden of proof, such as the severity of the allegation or access to evidence that might be primarily in the State’s hands.¹³⁴
- 66 In *Velásquez Rodríguez v Honduras*, as well as in *Godínez Cruz v Honduras*, the Court established the principle that, in human rights violations, States cannot simply rely on the lack of evidence presented by the complainant.¹³⁵ The Court held that the State has control over much of the necessary evidence and thus bears the burden of proof in disproving allegations when it is within its ability to provide such evidence.¹³⁶ The Court noted that if the State does not provide sufficient evidence or explanations, adverse inferences can be drawn against it.¹³⁷ Moreover, since States can hold most of the relevant information, the Court has even placed the burden on them to demonstrate sufficient investigative efforts.¹³⁸

¹³² *Velásquez Rodríguez v Honduras*, ¶¶ 127–128. *See also* *Godínez Cruz v. Honduras*, Merits, Inter-Am. Ct. H.R. (ser. C), ¶ 133 (Jan. 20, 1989).

¹³³ *Velásquez Rodríguez v Honduras*, ¶¶ 127–128. *See also* *Godínez Cruz v Honduras*, ¶ 134.

¹³⁴ *Godínez Cruz v Honduras*, ¶ 134.

¹³⁵ *Velásquez Rodríguez v Honduras*, ¶ 135. *See also* *Godínez Cruz v Honduras*, ¶ 141.

¹³⁶ *Velásquez Rodríguez v Honduras*, ¶¶ 135–138. *See also* *Godínez Cruz v Honduras*, ¶¶ 142–144; *Aloeboetoe et al. v. Surinam, Reparations and Costs*, Inter-Am. Ct. H.R. (ser. C), ¶ 64 (Sep. 10, 1993).

¹³⁷ *Velásquez Rodríguez v Honduras*, ¶ 138. *See also* *Godínez Cruz v Honduras*, ¶ 144.

¹³⁸ *Gelman v. Uruguay, Merits and Reparations*, Inter-Am. Ct. H.R. (ser. C), ¶¶ 252–256 (Feb. 24, 2011).

- 67 These cases collectively highlight the Court's approach in shifting the burden of proof to the State, particularly in contexts where the State's actions or inactions are central to the case, and where the State has greater access to the evidence necessary to establish the facts. Accordingly, in potential cases brought against climate polluters for the failure to comply with human rights obligations, and specifically, failure to protect the human right of resilience, it is appropriate that the burden of proof is reversed to the accused State:
- 67.1 First, because the harm caused by the accused in violating human rights can be both significant in magnitude and, in some cases, irreversible.¹³⁹
- 67.2 Second, because the bulk of the relevant evidence needed to prove or discredit the facts may be under the State's control.¹⁴⁰
- 68 Furthermore, in line with the scientific findings that emissions anywhere contribute to global warming everywhere, every reduction in emissions is critical for resilience.¹⁴¹ Given that the stringent due diligence standard varies, including according to the science objectively assessed and States' capabilities and available resources, major emitters will need to do more to discharge this burden of proof. For instance, if major methane emitters fail to prove that they are reducing emissions under their jurisdiction to levels required by scientific recommendations to mitigate near-term warming, they are infringing the human right to resilience.
- 69 As noted above, all States including middle and minor State emitters have primary duties under human rights law to mitigate climate pollutants, especially SLCPs, to ensure collective efforts make a tangible impact on global temperatures in the short and longer term. However, given the differentiated nature of the due diligence standard middle and minor State emitters will need to prove they are implementing appropriate measures to mitigate warming promptly in line with their respective capabilities and resources.
- 70 Furthermore, the principle of non-regression applies to all States, requiring major, middle, and minor emitters not to implement measures that regress the enjoyment of human rights.

¹³⁹ Velásquez Rodríguez v Honduras, ¶ 129.

¹⁴⁰ *Id.*, ¶¶ 136–138. *See also* Godínez Cruz v Honduras, ¶¶ 142–144.

¹⁴¹ IPCC AR6 Synthesis Report, at 4, 12.

G CONCLUSION

- 71 Acknowledging the human right to resilience and States' obligations to respect and guarantee this right through tailored obligations offers a robust framework for tackling the climate crisis. The focus on resilience ensures a balanced approach on mitigating climate change, adapting to its impacts, and restoring critical ecosystems like the Amazon, while safeguarding vulnerable individuals and communities and ecosystems from escalating risks. Preserving and strengthening the resilience of the climate system is the only way to effectively ensure the protection of the human rights of present and future generations.
- 72 The human right to resilience is integral to the right to life, as defined under Article 4 of the Convention, especially in the context of a climate emergency. This right encompasses individuals and communities' ability to withstand, adapt to, and recover from climate change impacts. Consequently, States are obligated under Article 1(1) and Article 4 of the Convention to implement effective measures for climate mitigation, adaptation, and restoration to protect this right. Failure to do so would lead to State responsibility for human rights violations.
- 73 The human right to resilience demands that States prioritize actions aimed at limiting near-term warming while also setting medium and long-term goals aligned with staying below the 1.5°C guardrail and protecting and restoring critical components of the climate system in a manner that prioritizes equity and human rights. These actions are essential to slow self-amplifying feedback loops, prevent triggering irreversible tipping points, and prevent further dangerous anthropogenic interference with the climate system, as mandated by the UNFCCC.¹⁴²
- 74 Furthermore, the human right to resilience reinforces the principles of *pro personae*, non-discrimination and equality to ensure equitable access to adaptation measures and to build and maintain resilience for vulnerable groups on the frontlines of climate impacts. This right underscores the need to address systemic inequalities and prioritize the most marginalized communities in adaptation efforts.
- 75 Lastly, the human right to resilience imposes a stringent due diligence obligation on all States but recognizes the different capabilities and resources of each State on a case-by-case basis. It also requires a shift in the burden of proof in such cases from alleged victims to emitters. These principles accord with the jurisprudence of the Court and recognize the robust scientific evidence: dangerous climate

¹⁴² Paris Agreement, Art 2.

impacts are here, every further increment of warming poses a significant threat to the resilience of human life, and we are running out of time to address this emergency and prevent widescale human rights violations for many generations to come.

H RECOMMENDATIONS

76 In clarifying the obligations of States to address the climate emergency in response to the request for an advisory opinion, this Honorable Court should acknowledge the following:

76.1 Having regard to the scientific evidence, the right to resilience is critical to ensure States' do not violate the right to life in Article 4 of the American Convention as well as the general duty to respect and ensure the rights and freedoms enshrined in the Inter-American system under Article 1(1) of the American Convention.

76.2 The human right to resilience, as a manifestation of the right to life, provides the necessary legal framework to guide and limit the actions of State and non-State actors to prevent serious and irreversible harm to the climate system and to humanity.

76.3 The right to resilience imposes the following obligations on States:

(a) The obligation of **effective mitigation** to slow the rate of warming in the near term, aiming to keep temperature increases below the critical 1.5°C guardrail and to prevent irreversible climate tipping points.

(b) The obligation of **effective adaptation**, particularly for communities and individuals most vulnerable to climate impacts.

(c) The obligation of **effective restoration**, to preserve and restore vulnerable and critical ecosystems, including the Amazon and other land and ocean-based carbon sinks.

76.4 These obligations have stringent due diligence standards having regard to various factors including: (a) scientific and technological information; (b) relevant international rules and standards; and (c) an objective assessment of the risk of harm and urgency.

76.5 The objective gravity and urgency of the climate emergency and States' control over key evidence, require a shift in the burden of proof in human rights claims related to climate change so that the *onus* is on States to show their conduct complies with these obligations.



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