

# Institutional policies and practices of the IACHR in the “human rights and climate change” agenda

ESCR-Net Discussion Paper



# Introduction

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The available scientific evidence indicates an increasingly distant likelihood of meeting the main goal of the Paris Agreement: to limit the increase in global average temperature to less than 1.5° Celsius, compared to the pre-industrial era (1850-1900).<sup>1</sup> Climate change poses a real and imminent threat to a wide range of human rights. Science shows that climate transformations are already causing widespread damage to natural systems around the globe and pose a direct threat to human health, life, livelihoods, culture, development, self-determination, ecosystems and natural resources on which humans depend.<sup>2</sup>

Latin America and the Caribbean are particularly vulnerable to the impacts of climate change. Extreme heat events are increasingly severe and frequent in the region, causing often irreparable damage to infrastructure, ecosystems and people.<sup>3</sup> The Office of the Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA, for its Spanish acronym) has already warned that "the climate impacts recorded in the region have led to various events that have affected the situation of people and communities, especially those on the front line."<sup>4</sup> At the same time, the Intergovernmental Panel on Climate Change (IPCC) has concluded that, at the moment, there is a rapidly closing window of opportunity for action that would ensure a livable and sustainable future for all people.<sup>5</sup>

The Paris agreement, adopted in 2015, sets out several climate change mitigation and adaptation commitments<sup>6</sup>, which are intertwined with human rights obligations<sup>7</sup>. At the same time, several human rights bodies at the national and international level have developed a comprehensive framework for responding to the climate emergency, integrating the content of human rights obligations into that response. In addition, many of the States in the region have committed to specific obligations in their Climate Action Plans.

It is imperative to recognize that climate change constitutes a serious and present threat that compromises the effective enjoyment of the human rights provided for in both the American Convention on Human Rights and other international instruments. Environmental degradation and the intensification of extreme events - such as droughts, floods and hurricanes - not only displace entire populations, but also exacerbate inequality and poverty. Addressing climate change is therefore not only an environmental issue outside the mandates of regional courts, but an indispensable prerequisite for the full and effective enjoyment of all human rights.

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<sup>1</sup> See, The Guardian, "World's top climate scientists expect global warming to blast past 1.5C target," May 8, 2024. Available at: <https://www.theguardian.com/environment/article/2024/may/08/world-scientists-climate-failure-survey-global-temperature>

<sup>2</sup> IPCC, Climate Change 2022: Impacts, Adaptation and Vulnerability, Working Group II Contribution to the Sixth Assessment Report of the IPCC (2022), p. 9. Available at: [https://report.ipcc.ch/ar6/wg2/IPCC\\_AR6\\_WGII\\_FullReport.pdf](https://report.ipcc.ch/ar6/wg2/IPCC_AR6_WGII_FullReport.pdf).

<sup>3</sup> IPCC AR6 WGII, Ch. 12, 15; World Meteorological Organization (WMO), State of the Climate in Latin America and the Caribbean 2021 (2022). Available at: <https://public.wmo.int/en/our-mandate/climate/wmo-statement-state-of-global-climate/LAC>

<sup>4</sup> REDESCA, VI Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA), Chapter IV Special Report: Climate Emergency and Human Rights in the Americas, OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 63.

<sup>5</sup> IPCC, 2023: Summary for Policymakers. In: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee, and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 1-34.

<sup>6</sup> UNFCCC, Paris Agreement (United Nations 2016), Report of the Conference of the Parties at its twenty-first session, held in Paris from 30 November to 13 December 2015 FCCC/CP/2015/10/Add.1.

<sup>7</sup> The preamble of the Paris Agreement states that "climate change is a problem of all humanity and that, in taking action to address it, Parties should respect, promote and take into account their respective obligations relating to human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and persons in vulnerable situations and the right to development, as well as gender equality, women's empowerment and intergenerational equity."

It is urgent that the Inter-American Commission on Human Rights (IACHR) strengthen and adapt its working tools to respond to one of the greatest challenges to the enjoyment of human rights in the hemisphere: climate change. For this reason, and aware of the role that the IACHR has been playing in integrating the spheres of state obligations in the face of climate change and human rights, the International Network for Economic, Social and Cultural Rights (ESCR-Net) and a group of civil society organizations, academics and experts have reflected on how the Commission could act in a more timely and efficient manner, taking into account the experiences that other supranational bodies with a similar mandate and comparative jurisprudence.

Without seeking to supplant the voices of other user organizations of the Inter-American Human Rights System (IAHRS), this document has been structured in four sections: 1) background on the approach to the climate emergency and its relationship with human rights in supranational systems; 2) climate legislation and litigation at the domestic level; 3) background of the IAHRS; and 4) recommendations for the improvement of some institutional policies and practices of the IACHR.

We hope that the reflections gathered here will serve as input for the climate emergency and human rights agenda to be prioritized in each of the IACHR's work pillars.

# 1. Background on the approach to the climate emergency and its relation to human rights in supranational systems

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Different bodies of the regional and universal systems have pronounced themselves on the impacts of the climate emergency on the enjoyment of human rights.

## Universal System

The intersection between climate emergency and human rights has been addressed in various pronouncements by the UN Human Rights Council<sup>8</sup>; the Office of the High Commissioner for Human Rights (OHCHR)<sup>9</sup>; Special Rapporteurs, Independent Experts and Working Groups that make up the special procedures<sup>10</sup>.

The human rights treaty bodies fully recognize that climate change is a pressing human rights issue and a key subject of their mandate. According to the Human Rights Obligations of States in the Context of Climate Change report, in 2023, one hundred and twelve references were made to climate change in the various pronouncements of the respective mandates of the Universal System<sup>11</sup>.

Since May 2022, the UN Human Rights Council has had a Special Rapporteurship on the promotion and protection of human rights in the context of climate change, in addition to two other rapporteurships whose mandate is linked to environmental issues. This reflects the priority given by the Universal System to the obligations of States in relation to environmental damage in general and climate damage in particular. Different UN treaty bodies have pronounced, through general observations<sup>12</sup> or decisions on individual communications<sup>13</sup>, on the obligations to respect, prevent and guarantee against the actions of public and private actors that contribute to climate change.

The United Nations Framework Convention on Climate Change (UNFCCC), through its Secretariat and subsidiary bodies, plays a crucial role in improving global legal standards. Through the Conference of the Parties (COP), these bodies facilitate international negotiations that result in

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<sup>8</sup> United Nations Human Rights Council, Resolution 7/23 (2008). Since this resolution, the Council has adopted a series of resolutions on human rights and climate change, several of which call on the OHCHR to prepare special studies and reports on the subject. In this regard, see: <https://www.ohchr.org/es/climate-change/human-rights-council-resolutions-human-rights-and-climate-change#:~:text=The%20Council%20has%20approved%20the%20resolutions%20on%20human%20rights%20and%20climate%20change>.

<sup>9</sup> Office of the United Nations High Commissioner for Human Rights, 'Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights' (United Nations Human Rights Council 2009) OHCHR Annual Report A/HRC/10/61.

<sup>10</sup> See, for example, Special Rapporteur on Extreme Poverty and Human Rights, 'Climate Change and Poverty' (United Nations 2019) A/HRC/41/39; John Knox, 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' (United Nations Human Rights Council 2016) A/HRC/31/52. See also A/64/255, A/70/287, A/66/285, A/67/299 and A/HRC/36/46. See also: <https://www.ohchr.org/en/press-releases/2023/11/fossils-fuels-heart-planetary-environmental-crisis-un-experts>; [https://www.ohchr.org/en/documents-listing?field\\_content\\_category\\_target\\_id%5B186%5D=186&field\\_entity\\_target\\_id%5B7493%5D=7493](https://www.ohchr.org/en/documents-listing?field_content_category_target_id%5B186%5D=186&field_entity_target_id%5B7493%5D=7493)

<sup>11</sup> CIEL, GI- ESCR (2023). Update of the Synthesis Note on States Human Rights Obligations in the Context of Climate Change. See <https://gi-escr.org/en/resources/publications/states-human-rights-obligations-in-the-context-of-climate-change-2024-update>

<sup>12</sup> See, for example, Human Rights Committee, General Comment 36: Right to life, [2018], CCPR/C/GC/36; paragraph 65; ESCR Committee, General Comment 26 on "Land rights and economic, social and cultural rights", [2023], E/C.12/GC/26, in particular its paragraphs 2, 41, 45, 56 and 58; and Committee on the Rights of the Child, General Comment No. 26 "on the rights of the child and the environment, with particular attention to climate change", [2023], CRC/C/GC/26.

<sup>13</sup> See, for example, UN Human Rights Committee, Billy et al v Australia (Torres Strait Islanders Case). [2022], CCPR/C/135/D/3624/2019; and Ioane Teitiota v New Zealand [2020], CCPR/C/127/D/2728/2016. See, also, Committee on the Rights of the Child, Case of Sacchi et al. v. Argentina, Brazil, France, Germany and Turkey, [2021], CRC/C/88/D/104/2019. Although the latter communication was declared inadmissible for non-exhaustion of domestic remedies, the Committee on the Rights of the Child developed some standards on the conceptualization of jurisdiction and on the extraterritorial obligation to prevent and redress climate damage

binding agreements and regulations that seek to mitigate the effects of climate change. This has a direct impact on the decisions of international and regional bodies and courts.

## African System

In 2009, the African Commission on Human and Peoples' Rights issued a resolution on Climate Change and Human Rights, expressing concern about the lack of a human rights approach in multilateral climate change negotiations and commitments and urging the Assembly of Heads of State and Government of the African Union to incorporate human rights safeguards into this framework, such as the principle of free, prior and informed consent<sup>14</sup>.

A group of civil society organizations, with the support of ESCR-Net, is preparing a request for an advisory opinion to the African Court on Human and Peoples' Rights, which seeks to clarify the human rights obligations of African States to respond to the climate crisis<sup>15</sup>.

## European System

Most of the cases on climate damages decided and pending before supranational human rights bodies have been heard by the European Court of Human Rights (ECtHR). According to the Sabin Center for Climate Change Law's climate litigation repository, as of June 2024, twelve contentious cases were pending before the ECtHR<sup>16</sup>. Most of them seek to have greenhouse gas (GHG) reduction commitments read in light of obligations under the European Convention on Human Rights.

In April 2024, the ECtHR ruled in three such cases. In *Klimaseniorinnen Schweiz and others v. Switzerland*, a group representing more than 2,500 elderly Swiss women alleged that their government's failure to adequately mitigate global warming violated their human rights to health and life and put them at risk of death during heat waves. The European Court found a violation of the right to respect for private and family life (Article 8) and access to the courts (Article 6 § 1). The Court considered that Article 8 of the Convention encompasses the right to effective protection by State authorities against the serious adverse effects of climate change on life, health, well-being and quality of life<sup>17</sup>. The ECtHR interpreted the scope of the aforementioned treaty provisions in light of Switzerland's commitments under the UN Framework Convention on Climate Change, underlining that these must be implemented in line with the best available scientific evidence, supported, inter alia, by the periodic reports of the IPCC.

The other two cases, *Duarte Agostinho et al. v. Portugal and 32 other States* and *Carême v. France* were dismissed on procedural grounds. The first, for failure to comply with the requirement of exhaustion of domestic remedies in the respondent countries and for lack of elements to assess extraterritorial jurisdiction in relation to the alleged climate damage. The second, on the grounds that, no longer being a resident of the northern coast of France, where floods and other extreme phenomena would occur as a result of climate change, the alleged victim had failed to prove, in the ECtHR's view, his status as a potential victim of the alleged damage.

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<sup>14</sup> ACHPR/Res. 153 (XLVI)09 Resolution on climate change and human rights and the need to study their impact on Africa.

<sup>15</sup> ESCR-Net, *Increased attention to climate crisis in international courts*, June 28, 2023. Available at: <https://new.escr-net.org/es/noticias/2023/mayor-atencion-crisis-climatica-en-tribunales-internacionales>

<sup>16</sup> Sabin Center for Climate Change Law, 'European Court of Human Rights Archive' (Climate Case Chart) <http://climatecasechart.com/non-us-jurisdiction/european-court-of-human-rights/>>

<sup>17</sup> See <https://climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-council-and-others/>

## Other international courts

On May 21, 2024, the International Tribunal for the Law of the Sea (ITLOS) issued an advisory opinion requested by the Commission of Small Island States. The opinion establishes that States Parties to the UN Convention on the Law of the Sea have an obligation to prevent, reduce and control marine pollution resulting from GHG emissions. It also stresses that this obligation is not limited to compliance with the commitments made under the Paris Agreement, and that States must exercise a stringent level of due diligence in relation to marine pollution from anthropogenic GHG emissions, taking into consideration the best available scientific evidence and the international obligation of cooperation between countries.

Among the most relevant jurisprudential advances are i) the obligation to prevent transboundary damage to the marine environment caused by GHG emissions, ii) the duty to rigorously enforce its laws and regulations, or adopt new rules or standards from international forums that seek to prevent, control or reduce GHG pollution of the marine environment, iii) the obligation for environmental impact assessments to take into account cumulative climate impacts, with a view to mitigating and adapting the adverse effects of this type of emissions; iv) the obligation to "preserve" the marine environment, emphasizing that this requires the restoration of affected marine ecosystems, noting in particular the role of these ecosystems in mitigating additional climate damage, including the obligation to effectively regulate non-state actors (companies) with a strict standard of due diligence; v) the obligations of States to conserve and manage marine resources that are under threat (including on the high seas), considering that marine conservation and fisheries rules should establish requirements taking into account the precautionary principle, an ecosystem approach, the best available scientific evidence, and relevant economic and environmental aspects<sup>18</sup>.

Finally, there are two requests for an advisory opinion pending from the International Court of Justice and the Inter-American Court of Human Rights (IACHR Court), with the purpose of clarifying State obligations, in the area of human rights and other areas of international law, in the context of the climate crisis. The advisory opinion on the climate emergency and human rights that will soon be issued by the IACHR Court will provide a broad catalog of standards and state obligations whose realization will depend, to a large extent, on the ability of the IACHR to strategically employ its promotion, monitoring and protection pillars.

In its intervention before the advisory opinion process before the IACHR Court, REDESCA and the IACHR highlighted the impacts of climate change on human rights, as well as the importance of incorporating a human rights approach to actions to address it, as well as the interpretative guidelines and principles that should inform the actions of States to combat climate change. The intervention also placed special emphasis on the importance of respecting access rights and differentiated approaches in the fulfillment of human rights obligations in the face of the climate emergency<sup>19</sup>.

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<sup>18</sup> ITLOS, Advisory Opinion of May 21, 2024, available online at: [https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory\\_Opinion/C31\\_Adv\\_Op\\_21.05.2024\\_orig.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf).

<sup>19</sup> Observations of the Inter-American Commission on Human Rights and the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights on the Request for an Advisory Opinion on Climate Emergency and Human Rights presented by the Republics of Chile and Colombia, (2023) [https://corteidh.or.cr/sitios/observaciones/OC-32/04\\_cidh.pdf](https://corteidh.or.cr/sitios/observaciones/OC-32/04_cidh.pdf)

## 2. Climate legislation and litigation in the domestic sphere

### 2.1 Constitutional frameworks

Specialized literature identifies a growing number of countries that have constitutional provisions dedicated to climate<sup>20</sup>. Most of them are open clauses that establish the commitment to achieve an aspirational climate scenario. In addition to being enshrined in numerous national constitutions, in October 2021, the human right to a healthy environment was recognized for the first time by the UN Human Rights Council, through Resolution 48/13<sup>21</sup>. In addition, this human right was recognized and adopted by the UN General Assembly, in July 2022, in its resolution 76/300, the human right to a clean, healthy and sustainable environment<sup>22</sup>.

### 2.2 Human rights-based climate litigation

It is widely known that climate change can affect the enjoyment of virtually all human rights<sup>23</sup>. In this context, individuals and communities around the world have turned to the courts in their countries, using the legal basis of human rights to "hold governments (and, to a lesser extent, corporations) accountable for climate damages<sup>24</sup>." According to the UN's Global Climate Litigation Report, there were 2,180 ongoing climate litigation cases worldwide in 2022<sup>25</sup>. Unsurprisingly, this type of litigation is spreading in the Global South<sup>26</sup>, where climate vulnerability - exacerbated by socioeconomic inequalities - and exposure to natural disasters are eroding the resilience of communities and their ecosystems<sup>27</sup>.

Although the standards developed by supranational human rights systems provide answers to a number of situations related to climate disputes, most of the new legal rules and principles applicable to these type of cases have been developed through domestic litigation<sup>28</sup>. Among them, the following stand out:

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<sup>20</sup> These countries include Algeria, Bolivia, Côte d'Ivoire, Cuba, Dominican Republic, Ecuador, Thailand, Tunisia, Venezuela, Vietnam and Zambia. See Navraj Singh Ghaleigh, Joana Setzer and Asanga Welikala, 'The Complexities of Comparative Climate Constitutionalism' [2022] *Journal of Environmental Law*.

<sup>21</sup> United Nations Human Rights Council, 'The Human Right to a Clean, Healthy and Sustainable Environment' (adopted 18 October 2021, UN Document A/HRC/RES/48/13).

<sup>22</sup> UN General Assembly. The human right to a clean, healthy and sustainable environment. 26 July 2022. A/76/L.75.

<sup>23</sup> IPCC, 'Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change' (Intergovernmental Panel on Climate Change 2014); IPCC, 'Global Warming of 1.5 °C: Summary for Policymakers' (Intergovernmental Panel on Climate Change 2018) IPCC SR1.5 [https://ipcc.ch/pdf/special-reports/sr15/sr15\\_spm\\_final.pdf](https://ipcc.ch/pdf/special-reports/sr15/sr15_spm_final.pdf); Office of the High Commissioner for Human Rights, 'Analytical Study on the Relationship between Climate Change and the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health' (United Nations 2016) Annual Report A/HRC/32/23; Office of the United Nations High Commissioner for Human Rights (n 6).

<sup>24</sup> Cesar Rodriguez-Garavito, 'Human Rights: The Global South's Route to Climate Litigation' (2020) 114 *AJIL Unbound* 40, 40.

<sup>25</sup> See, *World Climate Litigation Report: Global Review 2023*, July 2023, available at: <https://www.unep.org/es/resources/informe/informe-mundial-sobre-litigios-climaticos-revision-global-2023>.

<sup>26</sup> Jacqueline Peel and Jolene Lin, 'Transnational Climate Litigation: The Contribution of the Global South' (2019) 113 *American Journal of International Law* 679; Joana Setzer and Lisa Benjamin, 'Climate Litigation in the Global South: Limitations and Innovations' [2019] *Transnational Environmental Law* 1; Joana Setzer and Lisa Benjamin, 'Climate Change Litigation in the Global South: Filling Gaps' (2020) 114 *AJIL Unbound* 56; Rodriguez-Garavito (n 34); Hari M Osofsky, 'The Geography of Emerging Global South Climate Litigation' (2020) 114 *AJIL Unbound* 61; Juan Auz, 'Global South Climate Litigation versus Climate Justice: International Cooperation Duty as Remedy?' (*Völkerrechtsblog*, April 28, 2020) <https://voelkerrechtsblog.org/global-south-climate-litigation-versus-climate-justice-duty-of-international-cooperation-as-a-remedy/>.

<sup>27</sup> IPCC Special Report on the Impacts of Global Warming of 1.5 °C Above Preindustrial Levels and Related Greenhouse Gas Emission Trajectories in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development and Poverty Eradication Efforts' (Intergovernmental Panel on Climate Change 2019) Special Report SR15 181.

<sup>28</sup> See, in this regard, Setzer J and Higham C (2023) *Global Trends in Climate Change Litigation: 2023 Overview*. London: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science.

- 1) the judicial review of GHG emission reduction targets due to the absence of a clear progression and the absence of suitable measures to achieve them<sup>29</sup> ;
- 2) the establishment of climate damages in favor of present and future generations, when the consummation of such damages is irreversible, in light of the available scientific evidence<sup>30</sup>;
- 3) the integration of the Paris Agreement with the status of a human rights treaty into the domestic legal system<sup>31</sup>;
- 4) the judicial review of environmental impact studies for the omission of an analysis of the direct or indirect impact on climate change<sup>32</sup>;
- 5) the prohibition of misleading advertising in relation to the reduction and/or offsetting of GHG emissions by companies;
- 6) the relaxation of the burden of proof in climate litigation<sup>33</sup>;
- 7) The imposition on States to limit their GHG emissions in accordance with the State's fair contribution to the UN objective of keeping the global temperature increase within two degrees Celsius of pre-industrial conditions, due to a State's human rights obligations to do their part to prevent dangerous climate change <sup>34</sup> and,
- 8) the development of criteria for attributing climate damages to private actors<sup>35</sup> .

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<sup>29</sup> Greenpeace, *Germany's Federal Constitutional Court declares climate law partially unconstitutional and strengthens protection of fundamental rights of youth*. 29 April 2001. <<https://es.greenpeace.org/es/sala-de-prensa/comunicados/el-tribunal-constitucional-federal-de-alemania-declara-parcialmente-inconstitucional-la-ley-del-clima-y-refuerza-la-proteccion-de-los-derechos-fundamentales-de-la-juventud/>>.

<sup>30</sup> *Ibid.*

<sup>31</sup> See, Instituto Clima e Sociedade, *STF decides that the Paris Agreement is a human rights treaty in Brazil*. June 4, 2022 <<https://climaesociedade.org/stf-determina-que-governo-volte-a-liberar-recursos-para-o-fundo-clima/>>.

<sup>32</sup> See, e.g., U.S. court decisions, *WildEarth Guardians v. U.S.*, D. C. No. 2:13-CV-00042-ABJ (10th Cir. 2017), *San Juan Citizens Alliance v. Bureau of Land Management*, 326 F. Supp. 3d (D. N.M. 2018), *Wild Earth Guardians v. Zinke*, 368 F. Supp. 3d 41 (D.D.C. 2019); Australia, *Australian New South Wales Land and Environment Court, Gray v. The Minister for Planning*, [2006] NSWLEC 720; South Africa, *Supreme Court of South Africa, Earthlife Africa Johannesburg v. Minister of Environmental Affairs and others*, Case No. 65662/16 (2017); and Chile, *Supreme Court of Chile, Causa "Jara Alarcón, Luis con Servicio de Evaluación Ambiental"*, Rol N°8573-2019, January 13, 2021.

<sup>33</sup> See, Yash Mittal, *Adverse Effect Of Climate Change Will Be On Nation's Future: Supreme Court Stresses Importance Of Forest Protection*, April 19, 2024. Available at: <https://www.livelaw.in/supreme-court/adverse-effect-of-climate-change-will-be-on-nations-future-supreme-court-stresses-importance-of-forest-protection-255489#:~:text=Adverse%20Effect%20of%20Climate%20Change,Stresses%20Importance%20of%20Forest%20Protection>

<sup>34</sup> Supreme Court of the Netherlands, *Urgenda Foundation v. State of the Netherlands*, ECLI:NL:HR:2019:2007, January 13, 2020. See: <https://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/>

<sup>35</sup> For a mapping of the main domestic litigation on climate change and human rights in the region, see AIDA, *Plataforma de Litigio Climático para América Latina y el Caribe*. Available at: <https://litigioclimatico.com/es>



## 3. Inter-American System

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### 3.1 Background

The human rights and climate emergency agenda at the Organization of American States (OAS) dates back to 2008, when its General Assembly issued a resolution on "Human Rights and Climate Change in the Americas," and mandated the IACHR to "determine the possible existence of a link between the adverse effects of climate change and the full enjoyment of human rights<sup>36</sup>." This mandate was reiterated in subsequent resolutions and influenced, for example, the recommendations of the Inter-American Commission for the States of the region to protect the rights of Afro-descendants<sup>37</sup>, people living in poverty<sup>38</sup> and the indigenous peoples of the Panamazonia<sup>39</sup>.

### 3.2 Petition and case system

In 2005, the IACHR received its first climate-related petition. The petition argued that uncontrolled GHG emissions by the United States threaten the physical and cultural survival and violate a number of rights of Inuit communities located in the Alaskan and Canadian Arctic<sup>40</sup>. Despite its relevance, the petition was dismissed at the initial review stage. A very similar petition filed in 2013 by the Athabaskan Peoples against Canada<sup>41</sup>, and another in 2021 against Haiti<sup>42</sup>, alleging harm to children caused by toxic waste from an urban landfill in *Cité Soleil*, exacerbated by the impact of climate change on the quality of the water they consume<sup>43</sup>. Both cases are still pending. At the same time, several petitions currently pending before the IACHR address issues that, although they do not allege climate impacts, have cross-cutting components that may have relevant connotations for the analysis of the obligations of States in contexts of climate emergency.

It should be noted that "Resolution 4/23 - Policy on Prioritization of Petitions and Cases - of the IACHR"<sup>44</sup> does not include the climate emergency as a prioritized issue. In our opinion, petitions alleging climate damage are subsumed in the second paragraph, literal c), of the referred resolution, which considers as a priority "matters that allow the development of the inter-American public order in order to expand the inter-American standards on issues that may be relevant to the region". Eventually, those petitions that allege climate damage could also be framed in the second paragraph, subparagraph a): "urgent matters in which serious effects on

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<sup>36</sup> Organization of American States, Human Rights and Climate Change in the Americas 2008, Resolution 4.

<sup>37</sup> Inter-American Commission on Human Rights, 'Economic, Social, Cultural and Environmental Rights of Afro-descendants: Inter-American Standards to Prevent, Combat and Eradicate Structural Racial Discrimination' (IACHR 2021) Thematic Report OEA/Ser.L/V/II 89.

<sup>38</sup> Inter-American Commission on Human Rights, 'Poverty and Human Rights in the Americas' (IACHR 2017) Thematic Report OEA/Ser.L/V/II.164, para. 293.

<sup>39</sup> Inter-American Commission on Human Rights, 'Situación de Los Derechos Humanos de Los Pueblos Indígenas y Tribales de La Panamazonía' (IACHR 2019) Informe Temático OEA/Ser.L/V/II. Doc.176/19 para 419.

<sup>40</sup> Jessie Hohmann, 'The Igloo as Icon: A Human Rights Approach to Climate Change for the Inuit' (2009) 18 Transnational Law & Contemporary Problems 295.

<sup>41</sup> Veronica de la Rosa Jaimes, 'The Arctic Athabaskans' Petition: Where Accelerated Arctic Warming Meets Human Rights' (2015) 45 California Western International Law Journal 213.

<sup>42</sup> See, <http://climatecasechart.com/non-us-case/petition-to-the-inter-american-commission-on-human-rights-seeking-to-redress-violations-of-the-rights-of-children-in-cite-soleil-haiti/>

<sup>43</sup> The IACHR does not publish information on the facts of claims that have not passed the admissibility stage, so the number of climate claims in its portfolio of petitions could exceed the aforementioned precedents.

<sup>44</sup> IACHR, Resolution 4/23 - Doc. 329 Policy on Prioritization of Petitions and Cases, Doc 239, 20 December 2023.

rights are alleged and that, due to the particular circumstances of the alleged victim, there is an imminent danger that the passage of time will cause irreversible damage".

Regardless of the applicable provision of the aforesaid resolution, we believe it is essential that the IACHR prioritize the processing of claims that allow for the development of new standards on the intersection between climate change and human rights.

Finally, it is appropriate to recall the steps that other supranational human rights bodies have taken in adjudicating climate claims. The ECtHR has conducted hearings on climate disputes<sup>45</sup> and already has three judgments on the subject, one of them being a milestone in the integration between commitments under the Paris Agreement and obligations under the European Convention on Human Rights (*Case Klimaseniorinnen Schweiz et al. v. Switzerland*). In turn, the UN Human Rights Committee has already issued two final decisions on such disputes (*Cases Billy et al. v. Australia and Ioane Teitiota v. New Zealand*).

### 3.3 Precautionary measures

The IACHR has a significant number of precautionary measures seeking to protect life, integrity, health and other rights at risk as a result of environmental pollution<sup>46</sup>. However, there are still no precedents of precautionary measures granted with the purpose of preventing irreparable climate damage or where a specific analysis of the impacts of climate change in a situation of risk for the beneficiary of a measure is included. Precautionary measures granted in order to prevent irreparable climate damage or where a specific analysis of climate change impacts is included for the beneficiary, would be valuable tools, given the levels of warming and harm already occurring, since as noted by the IPCC "[...] every fraction of a degree matters to the people already on the frontlines of the climate emergency."<sup>47</sup>

In this regard, it is important for the IACHR to be able to address the criteria of seriousness and urgency, within the climate context, for the granting of precautionary measures.

### 3.4 Monitoring and promotion

#### 3.4.1 REDESCA

The Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) outlined its 2024-2026 work plan<sup>48</sup> recognizing climate emergency and environmental protection as one of its four main pillars of work. This prioritization follows the identification of climate change as one of the most critical challenges to the enjoyment of human rights in the region, particularly economic, social, cultural and environmental rights. The organizations that drafted

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<sup>45</sup> On March 29, 2023, the Grand Chamber of the ECtHR held hearings for the cases *Klimaseniorinnen Schweiz et al. v. Switzerland* and *Carême v. France*.

<sup>46</sup> See, for example, IACHR, Precautionary Measures granted on April 1, 2011 in favor of the indigenous communities of the Xingu River basin, impacted by the Belo Monte hydroelectric project in Brazil; MC 772/17, *Inhabitants consuming water from the Mezapa River, Honduras*, Resolution 12/18 of February 24, 2018; MC 1498/18, *Marcelino Diaz Sanchez et al, Mexico*, Resolution 24/19 of April 23, 2019; MC 113/16, *Native Community "Tres Islas" of Madre de Dios, Peru*, Resolution 38/17 of September 8, 2017; MC 120/16, *Community of Cuninico and another, Peru*, Resolution 52/17 of December 2, 2017; MC 199/09, *300 Inhabitants of Puerto Nuevo, Peru*, December 27, 2010; and MC 271/05, *Community of La Oroya, Peru*, August 31, 2007.

<sup>47</sup> IPCC, Sixth Assessment Report, 2021, *Climate Change 2021: The Physical Science Basis*: [https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC\\_AR6\\_WGI\\_FullReport\\_small.pdf](https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_FullReport_small.pdf)

<sup>48</sup> REDESCA, Plan de trabajo 2024-2026, una agenda hemisférica por los DESCAs, preparado por el Relator Especial Sr. Javier Palummo Lantes. Disponible en: [https://www.oas.org/es/CIDH/r/desca/plan/REDESCA\\_PlanTrabajo\\_2024-2026\\_SPA.pdf](https://www.oas.org/es/CIDH/r/desca/plan/REDESCA_PlanTrabajo_2024-2026_SPA.pdf)

this document welcome REDESCA's commitment to prioritize this issue and to promote a sustainable energy transition based on social justice and human rights.

### 3.4.2 Thematic hearings

As of June 2024, the IACHR had held the following public hearings on this issue:

- Human rights of people in human mobility due to the effects of climate change<sup>49</sup> ;
- Carbon market expansion in indigenous peoples and local communities in Colombia, Guyana, Peru and Brazil<sup>50</sup>;
- The situation of indigenous peoples and forced displacement in the context of climate change in the United States<sup>51</sup>;
- Impact of extractive industries on human rights and climate change in the Caribbean<sup>52</sup>;
- Effects of *fracking* on climate and the rights of environmental defenders<sup>53</sup>;
- Climate change and the rights of vulnerable populations<sup>54</sup>; and
- Climate change, access to water and human rights<sup>55</sup>.

This is a small number, but it tends to increase considerably, either due to the increase in requests on this subject or due to the increasingly constant violations and humanitarian crises resulting from environmental catastrophes throughout the continent.

### 3.4.3 Country and thematic reports

Some recent thematic reports, prepared mainly under the leadership of REDESCA, address certain state obligations in relation to groups that are particularly vulnerable to climate change<sup>56</sup>. The report "Business and Human Rights: Inter-American Standards" contains a brief section on the obligations to prevent and guarantee the actions of companies that generate significant climate damage<sup>57</sup>. More recently, REDESCA published a report on poverty, climate change and ESCR in Central America and Mexico, in the context of human mobility<sup>58</sup>. Despite the importance of these precedents, the analysis contained therein is formulated with a certain degree of generality, without specifying rules for state action in the face of a large number of situations related to climate change.

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<sup>49</sup> IACHR, Derechos humanos de personas en movilidad humana por efectos del cambio climático, available at: <https://www.youtube.com/watch?app=desktop&v=jsRZtk2ri0k&vq=hd1080>.

<sup>50</sup> IACHR, Expansion of the carbon market in indigenous peoples and local communities in Colombia, Guyana, Peru and Brazil, February 28, 2024, available at: <https://youtu.be/O9llonCcbfA?si=goRWR6S-5RTuQxF>.

<sup>51</sup> IACHR, The Situation of Indigenous Peoples and Forced Displacement in the Context of Climate Change in the United States, October 28, 2022, available at: <https://www.youtube.com/watch?v=hd1080&v=8VJemS6D7II&feature=youtu.be>.

<sup>52</sup> IACHR, Impact of Extractive Industries on Human Rights and Climate Change in the Caribbean, October 26, 2021, available at: <https://www.youtube.com/watch?v=t2ODm7aKULg&list=PL5QlapyOGhXuqJx3OkQeNy-yYH63qHlkW&index=10&vq=hd1080>.

<sup>53</sup> IACHR, Use of hydraulic fracturing (fracking) and violation of human rights of communities and environmental and territorial defenders in the countries of the Americas, October 3, 2018, available at: [https://www.youtube.com/watch?v=v4aGe\\_BumjQ&index=13&list=PL5QlapyOGhXttxcMOpg35GCa2M7dJo\\_QVh&t=0s&vq=hd1080](https://www.youtube.com/watch?v=v4aGe_BumjQ&index=13&list=PL5QlapyOGhXttxcMOpg35GCa2M7dJo_QVh&t=0s&vq=hd1080)

<sup>54</sup> IACHR, Climate Change and the Rights of Women, Indigenous Peoples and Rural Communities in the Americas, September 25, 2019, available at: <https://www.youtube.com/watch?v=THZYEPEytm0&vq=hd1080>

<sup>55</sup> IACHR, Climate change, access to water and human rights, March 28, 2011, available at: <https://www.oas.org/es/cidh/jsForm/?File=/es/CIDH/r/DESCA/audiencias.asp&Year=2000&Topic=0&searchText=cambio%20clim%E1tico>.

<sup>56</sup> See supra notes 26 to 28.

<sup>57</sup> IACHR, Report on Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147, September 7, 2017.

<sup>58</sup> IACHR, Poverty, climate change and ESCR in Central America and Mexico, in the context of human mobility. OEA/Ser.L/V/II. Doc. 158, July 28, 2023.

The IACHR does not have a regional report on the issue discussed here and, except in very exceptional situations, its country reports lack an analysis of climate obligations. This omission is observed even in the reports on the human rights situation in countries located in areas that, according to the IPCC<sup>59</sup>, are critically exposed to climate change, such as the Central American dry corridor<sup>60</sup> and the Amazonian countries<sup>61</sup>.

### 3.4.4 Annual Report of the IACHR and its REDESCA

A recent and positive practice of REDESCA is the inclusion of a section in its annual report on "Climate Emergency and the Human Right to Water." This section contains observations on topics as diverse as: reference to figures from the IPCC and other authoritative sources, on the carbon footprint of each of the 35 OAS member states; a description of extreme natural phenomena; setbacks in GHG reduction commitments; and, in general, policies for the protection and preservation of sensitive ecosystems. This is the only section of the annual report of the IACHR and its special rapporteurs with an analysis on "the effects of climate change and climate events in the region, especially on ESCR and the right to water<sup>62</sup>."

Without ignoring the importance of this section of REDESCA's annual report, the IACHR could carry out a broader and more detailed scrutiny, through Chapter IV.A of its annual report, on normative acts, public policies, government programs and jurisprudence that imply a setback or an advance in the fulfillment of human rights obligations related to climate change. Unlike the aforementioned section of REDESCA's annual report, which is limited to the right to water and some ESCR, the monitoring contained in Chapter IV.A of the IACHR's annual report covers all the rights enshrined in the Inter-American instruments, thus adjusting to the cross-cutting nature of climate change in human rights.

Therefore, the IACHR should follow in the footsteps of civil society organizations that have included in their annual reports on the human rights situation in the world<sup>63</sup> a section on climate change policies in several of the countries covered.

### 3.4.5 Resolutions

Entitled "Climate Emergency: Scope and International Human Rights Obligations"<sup>64</sup>, resolution 3/21 is the most important pronouncement of the IACHR under its promotion pillar to date. The resolution reinforces the centrality of the rights-based approach in the construction of instruments, policies, plans, programs and norms on climate change. Among its contributions, we highlight some guidelines on the obligation to prevent transboundary environmental damage through the implementation of GHG emissions mitigation targets in accordance with the thresholds of the Paris Agreement. It also emphasizes the rights of people in situations of historical discrimination and is aligned with the standards of the Escazú Agreement, in relation to

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<sup>59</sup> IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability, Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, pp.1701, 1704, 1705, 1710. Available at: [https://report.ipcc.ch/ar6/wg2/IPCC\\_AR6\\_WGII\\_FullReport.pdf](https://report.ipcc.ch/ar6/wg2/IPCC_AR6_WGII_FullReport.pdf)

<sup>60</sup> IACHR, *Situation of Human Rights in Guatemala*, 2017. Available at: <https://www.oas.org/es/cidh/informes/pdfs/Guatemala2017-es.pdf>; IACHR, *Situation of Human Rights in Honduras*, 2019. Available at: <https://www.oas.org/es/cidh/informes/pdfs/Honduras2019.pdf>; IACHR, *Situation of human rights in El Salvador*, 2021. Available at: [https://www.oas.org/es/cidh/informes/pdfs/2021\\_ElSalvador-ES.pdf](https://www.oas.org/es/cidh/informes/pdfs/2021_ElSalvador-ES.pdf); IACHR, *Honduras human rights situation*, 2024. Available at: <https://www.oas.org/es/cidh/informes/pdfs/2024/informe-honduras.pdf>.

<sup>61</sup> IACHR, *Situation of Human Rights in Brazil*, 2021. Available at: <https://www.oas.org/es/cidh/informes/pdfs/Brasil2021-es.pdf>;

<sup>62</sup> REDESCA, Annual Report 2023, OEA/SER.L/V/III Doc. 386, December 29, 2023, para. 43.

<sup>63</sup> See, for example, Human Rights Watch Annual Report 2024, which contains a chapter entitled "Climate Change Policy and Impacts" in several countries. Available at: <https://www.hrw.org/es/world-report/2024>

<sup>64</sup> IACHR, "Resolution 3/2021 - Climate Emergency: scope and international human rights obligations, 31 December 2021, available at: <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2022/045.asp>.

access to information, participation and transparency in decisions related to mitigation and adaptation to climate change, access to justice and protection of environmental defenders.

Resolution 3/21 is an important milestone, but it does not have the same degree of concreteness or operability as similar pronouncements of the IACHR that systematize state duties in certain areas of human rights<sup>65</sup>. For example, the 2001 Declaration of Principles on Freedom of Expression and the 2008 Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas establish, in each provision, clear rules for State action in the face of a given factual situation. While Resolution 3/21 contains calls for States to incorporate certain approaches in their climate change policies, descriptions of the conventional provisions potentially violated as a result of this phenomenon, references to general principles of environmental law, it could be sharpened by the same specification of rules for States as the other Declarations. The Commission should build on the guidance set out in Resolution 3/21 to further set out unequivocal parameters of action for States, essential to guide the design of public policies and the adjudication of climate disputes.

Although the purpose of resolution 3/21 is to “systematize the human rights obligations of States in the context of the climate crisis,”<sup>66</sup> most of its provisions are general statements that do not provide unequivocal parameters for State action. These are essential to guide legislative harmonization, the design of public policies and the resolution of climate disputes. In addition to the principles on freedom of expression and best practices regarding persons deprived of their liberty - mentioned above - the Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons<sup>67</sup> and, to a lesser extent, the Inter-American Principles on Academic Freedom and University Autonomy<sup>68</sup>, have provisions that are much more operative than those of resolution 3/21.

Of course, resolution 3/21 is an invaluable contribution to the search for legal solutions to the variety of human rights violations caused by climate change. However, the complexity and specificity of this phenomenon merit legal rules and principles developed on the basis of specific controversies that are difficult to exhaust through general pronouncements emanating from the monitoring and promotion powers. On the other hand, while the other exercises of systematization of standards by the IACHR took place after decades of jurisprudential evolution, international and comparative law standards on climate emergency and human rights are in a more incipient stage of development.

### 3.4.6 Press releases and other statements

In recent years, the IACHR has issued several press releases on climate change and human rights. These are the topics of the press releases issued from January 2016 to June 2024 on the subject:

- Brazil: IACHR and REDESCA express solidarity with the environmental tragedy in Rio Grande do Sul and reaffirm the importance of promoting more far-reaching actions in the face of the climate emergency<sup>69</sup>.

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<sup>65</sup> See, for example, IACHR, Office of the Special Rapporteur for Freedom of Expression, Declaration of Principles on Freedom of Expression, 2001 and Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, 2008.

<sup>66</sup> Ibid. page 7.

<sup>67</sup> IACHR, Resolution 4/19, Inter-American Principles on the Human Rights of All Migrant, Refugee, Stateless Persons and Victims of Trafficking in Persons, December 7, 2019. Available at: <https://www.oas.org/es/cidh/informes/pdfs/Principios%20DDHH%20migrantes%20-%20ES.pdf>

<sup>68</sup> IACHR, Inter-American Principles on Academic Freedom and University Autonomy, December 2021. Available at: [https://www.oas.org/es/cidh/informes/pdfs/principios\\_libertad\\_academica.pdf](https://www.oas.org/es/cidh/informes/pdfs/principios_libertad_academica.pdf)

<sup>69</sup> REDESCA, *Brazil: IACHR and REDESCA stand in solidarity with the environmental tragedy in Rio Grande do Sul and reaffirm the importance of promoting more far-reaching actions in the face of the climate emergency*, May 2024. Available at: <https://www.oas.org/es/cidh/jsForm/?File=/es/cidh/prensa/comunicados/2024/120.asp>.

- Earth Day: REDESCA calls for a just energy transition for a sustainable future<sup>70</sup>.
- Freedom of expression and the media are crucial to addressing the climate crisis: International Rapporteurs for Freedom of Expression<sup>71</sup>.
- REDESCA urges to guarantee the right to water and sanitation in the face of the climate emergency and the impact of certain business activities in the Americas<sup>72</sup>.
- REDESCA urges States to take concrete and equitable action to address climate change and its adverse effects<sup>73</sup>.
- REDESCA visit to Louisiana and Alaska, USA: Addressing the impact of the climate emergency on the human rights of indigenous peoples is urgent<sup>74</sup>.
- REDESCA publishes thematic report "Poverty, climate change and DESCA in Central America and Mexico, in the context of human mobility"<sup>75</sup>.
- In the framework of COP 26 of the Framework Convention on Climate Change, the IACHR and REDESCA call on OAS Member States to put the protection of human rights at the center of their climate policies and actions<sup>76</sup>.
- On Earth Day, IACHR and REDESCA welcome the entry into force of the Escazú Agreement and call on the States of the region to strengthen their environmental public policies in the face of the climate emergency<sup>77</sup>.
- REDESCA welcomes decisions taken in the region to address climate change<sup>78</sup>.

Recently, its Special Rapporteur on Freedom of Expression issued a joint statement with the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Climate Crisis and Freedom of Expression<sup>79</sup>. The declaration addresses five areas, with specific state obligations for each: access to information on environmental and climate issues; ensuring an enabling environment for public and civic participation to address the climate crisis; upholding environmental journalism to analyze climate change measures and encourage public debate; access to justice in climate and environmental matters; and protection for marginalized groups. It also contains more specific parameters for state action not included in specialized international instruments, such as the Escazú Agreement and the Aarhus Convention.

<sup>70</sup> REDESCA, *Earth Day: REDESCA calls for a just energy transition for a sustainable future*, April 2024. Available at: <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2024/076.asp>

<sup>71</sup> IACHR, *Freedom of expression and the media are crucial to addressing the climate crisis: International Rapporteurs for Freedom of Expression*, May 3, 2024. Available at: <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/expresion/prensa/comunicados/2024/088.asp>

<sup>72</sup> REDESCA, *REDESCA urges to guarantee the right to water and sanitation in the face of the climate emergency and the impact of certain business activities in the Americas*, March 22, 2024. Available at: <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2024/056.asp>

<sup>73</sup> REDESCA, *REDESCA urges States to take concrete and equitable action to address climate change and its adverse effects*, November 30, 2023. Available at: <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2023/278.asp>

<sup>74</sup> IACHR, *REDESCA visit to Louisiana and Alaska, USA: Urgent Need to Address Impact of Climate Emergency on Indigenous Peoples' Human Rights*, August 28, 2023. Available at: <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2023/196.asp>

<sup>75</sup> REDESCA, *REDESCA publishes thematic report "Pobreza, cambio climático y DESCA en Centro América y México, en el contexto de movilidad humana"*, August 28, 2023. Available at: <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2023/199.asp>

<sup>76</sup> IACHR and REDESCA, *In the framework of COP 26 of the Framework Convention on Climate Change, IACHR and REDESCA call on OAS Member States to put the protection of human rights at the center of their climate policies and actions*, November 4, 2021.

<sup>77</sup> IACHR and REDESCA, *On Earth Day, IACHR and REDESCA welcome the entry into force of the Escazú Agreement and call on the States of the region to strengthen their environmental public policies in the face of the climate emergency*, April 22, 2021. Available at: <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/098.asp>

<sup>78</sup> REDESCA, *REDESCA hails decisions taken in the region to address climate change*, April 17, 2018. Available at: <https://www.oas.org/es/cidh/prensa/comunicados/2018/083.asp>

<sup>79</sup> IACHR, RELE, *Joint Declaration on Climate Crisis and Freedom of Expression*, May 3, 2024. Available at: [https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/expresion/documentos\\_basicos/declaraciones/20241.asp](https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/expresion/documentos_basicos/declaraciones/20241.asp)

## 4. IACHR policies and practices could be refined

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Having gathered some elements of comparative jurisprudence and the main precedents of the Inter-American System and other supranational systems, we present the following recommendations to the IACHR, in order to contribute to the improvement of its policies, practices, working tools and institutional design, and to provide more effective responses to human rights violations arising from climate change.

### 4.1 Publicity and prioritization in the processing of petitions and cases, and legal assistance funds

- publish basic information on petitions at the admissibility stage and cases at the merits stage, whose alleged facts raise violations related to climate change;
- to include in the grounds set forth in the second paragraph, subparagraphs a) and c) of its resolution 4/23, on criteria for prioritization in the processing of cases, the claims alleging climatic damages.
- Make resources available from its Legal Assistance Fund for communities and organizations facing difficulties in meeting expenses related to litigating climate cases.

### 4.2 Monitoring and promotion activities

- incorporate an analysis of climate obligations in reports on the human rights situation in countries and in thematic reports in which the impact of climate change is a relevant element;
- include specific scrutiny of human rights obligations linked to climate change in Chapter IV.A of its annual report, as well as in the annual reports of the special rapporteurships on freedom of expression and ESCR. Such scrutiny could include the evaluation of jurisprudential developments, normative frameworks, policies and programs that imply advances or setbacks on climate change and human rights.
- Develop innovative regional standards for climate change adaptation and mitigation. These standards should be guided by principles of climate justice and equity.
- Conduct periodic evaluations of public policies and legislation of member states in relation to climate change and human rights. The IACHR can make pronouncements and issue recommendations to strengthen the regulatory framework and ensure its alignment with international standards.
- Develop specific indicators to assess how climate change affects human rights in different contexts and countries. These indicators can help measure the vulnerability, adaptive capacity and resilience of affected communities.

### 4.3 Institutional design

- in general terms, adopt measures to ensure that the climate emergency and human rights agenda is transversal to each of its thematic and special rapporteurships;

- in more specific terms, consider the relevance of creating a new institutional architecture dedicated exclusively to the monitoring, promotion and elaboration of expert and legal inputs for the evaluation of petitions, cases and requests for protection measures related to climate damages. Such a reflection could take the following elements as a starting point:
  - Although climate change has a particular impact on the enjoyment of ESCR, this phenomenon affects each of the rights protected under the ACHR and other inter-American instruments;
  - The adjudication and legal argumentation techniques of international human rights law do not reach the complexity and interdisciplinary nature of climate change, requiring specialized inputs in environmental law, climate litigation and areas of knowledge other than law;
  - the creation of interdisciplinary groups of independent experts (GIEIs) to investigate the socio-political crises in Bolivia (2019) and Nicaragua (2018), and to investigate the disappearance of 43 students from Ayotzinapa, in Mexico (2014), were a successful bet, based on an institutional structure equipped with specialized and interdisciplinary knowledge to address situations for which the organic structure of the IACHR and its Executive Secretariat would not have the same response capacity;
  - Other supranational human rights bodies with a mandate similar to that of the IACHR, such as the African Commission, have created working groups composed of both independent experts and commissioners. Among others, the creation of these groups has allowed the African Commission to: i) rely on the advice of independent experts on issues that make up the emerging human rights agenda; ii) increase the number and technical rigor of thematic reports and specialized studies; iii) concentrate resources and efforts on functions that, for political and institutional reasons, could not be shared with experts who are not members or officials of the regional body.
  - By relying on the work of independent experts, the IACHR could count on financial, technical and interdisciplinary support for each of its pillars of work on the climate emergency and human rights agenda. Such support would expand the IACHR's capacity to respond to this agenda without detracting from the political, legal and institutional control of the products produced by the independent experts.