

## Several Steps Forward, One Backward: Climate Change, Latin America, and Human Rights Resilience

Rosa Celorio

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# Several Steps Forward, One Backward: Climate Change, Latin America, and Human Rights Resilience

ROSA CELORIO<sup>†</sup>

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## I. INTRODUCTION

Climate change has been identified by many leading experts and well-known international institutions as a formidable threat to human security, dignity, and sustainable development.<sup>1</sup> This includes the United Nations Intergovernmental Panel on Climate Change (IPCC), which released in October of 2018 its latest report on the effects and impacts of climate change.<sup>2</sup> The report carefully documents how

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<sup>†</sup> Associate Dean for International and Comparative Legal Studies and Burnett Family Professorial Lecturer in International and Comparative Law and Policy, George Washington University Law School. Former Senior Attorney at Inter-American Commission on Human Rights, Organization of American States.

1. See, e.g., U.N. Secretary-General, *Secretary-General's Remarks at the Opening of COP 24*, U.N. (Dec. 3, 2018), <https://www.un.org/sg/en/content/sg/statement/2018-12-03/secretary-generals-remarks-opening-cop-24>; *Joint Statement of the United Nations Special Procedures Mandate Holders on the Occasion of the 24th Conference of the Parties to the UNFCCC: Climate Change and Human Rights*, U.N. HUMAN RTS. OFF. OF THE HIGH COMM'R (Dec. 6, 2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23982&LangID=E>; INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE [IPCC], *Global Warming of 1.5°C – Summary for Policymakers*, 9–12 (2018), [https://report.ipcc.ch/sr15/pdf/sr15\\_spm\\_final.pdf](https://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf) [hereinafter *Global Warming of 1.5°C*]; Press Release, World Resources Institute [WRI], *Global Leaders Call for Urgent Acceleration of Climate Adaptation Solutions* (Oct. 16, 2018), <https://www.wri.org/news/2018/10/release-global-leaders-call-urgent-acceleration-climate-adaptation-solutions>; H.R.C., Rep. of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, and Sustainable Environment, ¶¶ 23–32, U.N. Doc. A/HRC/31/52 (Feb. 1, 2016), <https://undocs.org/A/HRC/31/52> [hereinafter U.N. Rapporteur on the Environment]; WORLD BANK GROUP [WBG], *WORLD DEVELOPMENT REPORT: DEVELOPMENT AND CLIMATE CHANGE* 1–35 (2010).

2. See *GLOBAL WARMING OF 1.5°C*, *supra* note 1, at 6, 11.

global warming is likely to reach 1.5°C between 2030 and 2052, with devastating impacts for global health, livelihoods, food security, water supply, and economic growth.<sup>3</sup>

It has been extensively documented in the last decade how climate change is largely the product of human-driven greenhouse gas emissions, contributing to extreme weather events, natural disasters, rising sea levels, floods, heatwaves, droughts, and the spread of tropical and vector-borne diseases.<sup>4</sup> Among those most affected are populations in a situation of vulnerability and disadvantage motivated by different factors, including indigenous peoples, women, children, the elderly, and persons affected by poverty.<sup>5</sup> Latin America is not isolated from this grim reality, already facing well-documented trends in climate variability, reflected in increases in temperatures, rainfall patterns, unusual and extreme weather events, and fluctuations in water supply, and quality.<sup>6</sup>

Therefore, the adoption of the Paris Climate Change Agreement offered an important glimpse of hope for many in what can be construed as a significant step towards global cooperation and national efforts geared towards climate action, ambition, adaptation, mitigation, and redress.<sup>7</sup> The agreement was adopted on December 12, 2015 by 195 countries, calling for a global effort to offer a sustained and coordinated response to the threat of climate change, seeking to contain the temperature rise well below 2 degrees Celsius above pre-

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3. *Id.* at 6–12.

4. See IPCC, *Climate Change 2014: Impacts, Adaption, and Vulnerability – Technical Summary*, 37–54 (2015), [https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-PartA\\_FINAL.pdf](https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-PartA_FINAL.pdf) [hereinafter *Climate Change 2014*]; see also H.R.C., Rep. of the Off. of the U.N. High Comm’r for Human Rights, ¶¶ 4–5, U.N. Doc. A/HRC/32/23 (May 6, 2016), <https://undocs.org/A/HRC/32/23> [hereinafter Rep. of the UNCHR]; WORLD BANK GROUP, *supra* note 1, at 1–35. By 2007, the IPCC had established with 90% certainty that human activity is responsible for global warming. See IPCC, *Report of the Working Group I of the Intergovernmental Panel on Climate Change—Summary for Policymakers* (2007), <https://www.ipcc.ch/site/assets/uploads/2018/02/ar4-wg1-spm-1.pdf> [hereinafter *Summary for Policymakers*]; see also ORG. OF AM. STATES [OAS], *Climate Change: A Comparative Overview of the Rights Based Approach in the Americas* 1, 8 (2017) [hereinafter OAS, CLIMATE CHANGE].

5. See *Global Warming of 1.5°C*, *supra* note 1, at 11; *Climate Change 2014*, *supra* note 4, at 50; Rep. of the UNCHR, *supra* note 4, ¶ 5.

6. *Summary for Policymakers*, *supra* note 4, Executive Summary; WORLD BANK GROUP, *Turn Down the Heat: Confronting the New Climate Normal* 13–18 (2014).

7. *Historic Paris Agreement on Climate Change: 195 Nations Set Path to Keep Temperature Rise Well Below 2 Degrees Celsius*, U.N. CLIMATE CHANGE [UNCC] (Dec. 13, 2015), <https://unfccc.int/news/finale-cop21>; *Historic Paris Agreement Signals New Global Course*, THE NATURE CONSERVANCY (Dec. 12, 2015), [https://global.nature.org/content/paris-agreement-signals-historic-new-course-for-the-world?intc=glob\\_sol.sp](https://global.nature.org/content/paris-agreement-signals-historic-new-course-for-the-world?intc=glob_sol.sp).

industrial levels, and limiting the increase to 1.5 degrees.<sup>8</sup> Among its most important provisions, the Agreement commits states to undertake efforts to limit global peaking of greenhouse gas emissions, strengthen national adaptation and mitigation efforts, and addressing loss and damage associated with adverse effects of climate change.<sup>9</sup> The Agreement also establishes commitments for State parties to maintain a nationally determined contribution (NDC) and to implement national steps to make these a reality.<sup>10</sup> One of the most significant components of the Paris Climate Change Agreement was the number of governments that committed to following its dispositions, including major global powers such as the United States and China.<sup>11</sup>

Therefore, the global effort to address climate change was dealt a significant blow when the United States declared its intention to withdraw from the Paris Agreement on June 1, 2017, when President Donald Trump announced that the United States would withdraw from the Paris Climate Accord and begin negotiations to either re-enter or negotiate an entirely new agreement with more advantageous terms for the United States.<sup>12</sup> World leaders expressed their rejection of the U.S. decision and confirmed their determination to continue working towards compliance with the goals of the agreement.<sup>13</sup> Thereafter, representatives from approximately 200 countries met in Katowice, Poland between December 3-14, 2018, and reached agreement on a rulebook to guide the execution of the Paris Agreement, despite the U.S. declaration to withdraw.<sup>14</sup>

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8. G.A. Res. 1/CP.21, Paris Agreement, art. 2(1)(a)–(b) (Dec. 12, 2015), [https://unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/english_paris_agreement.pdf) [hereinafter Paris Agreement].

9. *Id.* arts. 4, 6, 7, 8 & 9.

10. *Id.* arts. 4(2), 8, 9 & 11–14.

11. As of December 21, 2018, the Paris Agreement has 185 State parties and 195 signatories. See *Status of Treaties: 7.d Paris Agreement*, U.N. TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=XXVII-7-d&chapter=27&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XXVII-7-d&chapter=27&clang=en) (last visited Mar. 9, 2019).

12. *President Trump Announces U.S. Withdrawal From the Paris Climate Accord*, WHITE HOUSE (June 1, 2017), <https://www.whitehouse.gov/articles/president-trump-announces-u-s-withdrawal-paris-climate-accord/>.

13. See, e.g., Laura Smith-Spark, *World Leaders Condemn Trump's Decision to Quit Paris Climate Deal*, CNN (June 3, 2017), <https://www.cnn.com/2017/06/02/world/us-climate-world-reacts/index.html>; Jonathan Watts & Kate Connolly, *World Leaders React After Trump Rejects Paris Climate Deal*, THE GUARDIAN (June 1, 2017), <https://www.theguardian.com/environment/2017/jun/01/trump-withdraw-paris-climate-deal-world-leaders-react>.

14. This meeting took place under the rubric of the 24th Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC). See *New Era of Global Climate Action To Begin Under Paris Climate Change Agreement*, UNCC (Dec. 15, 2018), <https://unfccc.int/news/new-era-of-global-climate-action-to-begin-under-paris-climate>

Latin American countries have been very active in the international movement to address climate change.<sup>15</sup> They were steadfast proponents of the Paris Agreement and collectively denounced the U.S. withdrawal.<sup>16</sup> Latin American governments continue to implement a range of efforts to address the adverse effects of climate change, ranging from legislation, policies, action plans, programs, and centers, and ambitious targets to reduce greenhouse gas emissions.<sup>17</sup>

The United States and Latin America have a long and intricate history and relationship when it comes to international policy issues.<sup>18</sup> Therefore, it is important to reflect on whether the U.S. withdrawal of the Paris Climate Change Agreement could derail or seriously impact the trend in Latin America to advance climate action and ambition.

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-change-agreement-0; *What is COP24?*, COP24-KATOWICE 2018, <https://cop24.gov.pl/presidency/what-is-cop24/> (last visited Mar. 9, 2019); *COP24: Green, Gender Focus, as U.N.'s Crucial Climate Change Conference Gets Underway*, U.N. NEWS (Dec. 2, 2018), <https://news.un.org/en/story/2018/12/1027261>.

15. *Countries in Latin American and the Caribbean Region Leading Climate Action*, UNCC (Sept. 29, 2016), <https://unfccc.int/news/countries-in-latin-american-and-the-caribbean-region-leading-climate-action>.

16. Several Latin American governments issued statements expressing concern over the U.S. withdrawal of the Paris Climate Change Agreement. *See, e.g., Perú Expresa Preocupación por Salida de Estados Unidos de América del Acuerdo de París*, PERÚ MINISTERIO DE RELACIONES EXTERIORES (June 1, 2017), [http://www.rree.gob.pe/SitePages/comunicado\\_oficial.aspx?id=CO-019-17](http://www.rree.gob.pe/SitePages/comunicado_oficial.aspx?id=CO-019-17) (Peru); *Statement on United States Withdrawal from Paris Agreement*, MINISTRY OF FOREIGN AFFAIRS OF CHILE (June 1, 2017), <https://minrel.gob.cl/state-ment-on-united-states-withdrawal-from-paris-agreement/minrel/2017-06-01/165453.html>; *see also Países de América Latina Reaccionan al Retiro de EEUU del Tratado de París [Latin American Countries React to Withdrawal of United States from Paris Agreement]*, TRT (June 2, 2017), <http://www.trt.net.tr/espanol/espana-y-america-latina/2017/06/02/paises-de-america-latina-reaccionan-al-retiro-de-eeuu-del-tratado-de-paris-744401>; *Reacciones en América Latina a Anuncio del Retiro de Estados Unidos del Acuerdo de París sobre Cambio Climático [Reactions in Latin America to Announcement of Withdrawal of United States from Paris Agreement on Climate Change]*, DERECHO INTERNACIONALE PÚBLICO COSTA RICA (June 2, 2017), <http://derechointernacionalcr.blogspot.com/2017/06/reacciones-en-america-latina-retiro-de.html>.

17. David L. Goldwyn & Andrea Clabough, *Latin America: On Target For COP 24?*, ATLANTIC COUNCIL, 5–9 (2018), <https://www.atlanticcouncil.org/publications/reports/latin-america-on-target-for-cop24>; Amanda Maxwell, *Latin America Continues Climate Action Despite Trump*, NAT. RESOURCES DEF. COUNCIL (June 1, 2017), <https://www.nrdc.org/experts/latin-america-continues-climate-action-despite-trump>.

18. *See* Gregory Weeks, *The Future of U.S. Policy Towards Latin America*, GEO. J. OF INT'L AFF. (Aug. 10, 2017), <https://www.georgetownjournalofinternationalaffairs.org/online-edition/2017/8/16/the-future-of-us-policy-toward-latin-america>; Charlene Barshefsky et al., *U.S.-Latin America Relations: A New Direction for a New Reality*, COUNCIL ON FOREIGN RELATIONS (2008), [https://cfrd8-files.cfr.org/sites/default/files/report\\_pdf/LatinAmerica\\_TF%20final.pdf](https://cfrd8-files.cfr.org/sites/default/files/report_pdf/LatinAmerica_TF%20final.pdf).

The author contends in this article that due to the gravity and global nature of climate change and its adverse effects, it is imperative that Latin American governments continue adopting immediate and long-term steps to achieve the goals of the Paris Climate Change Agreement. International human rights law and the work of the regional human rights protection system for the Americas can be a key ingredient for Latin American states in the design of legislation, policy, and regulation measures to address, adapt, and mitigate the adverse effects of climate change. They can also be useful in the prevention and supervision of public and private sector activity which contributes to global warming.

Multilateralism has been paramount in Latin America to address major social, civil, economic, and political problems.<sup>19</sup> Regional and universal institutions and their precedent have been instrumental in Latin America in providing a roadmap to address repressive regimes, transitional justice, citizen security, corruption, impunity, ongoing discrimination, and violence, among other issues, which is a marked difference with the United States.<sup>20</sup> Human Rights discourse supported by international law and standards has been and still is a key guideline in the region in the wave to achieve rule of law and strong democracies, despite existing challenges. In human rights law, Latin American governments have found a definition of obligations, standards, and benchmarks which are comprehensive and useful, and this is possible to achieve in the area of climate change.<sup>21</sup> The Paris Agreement contains important references to human rights that already provide a platform for Latin American governments to build on.<sup>22</sup>

This article discusses four areas in which the author considers how international human rights law can help Latin American governments address climate change issues, including: (a) providing language on key state obligations relevant to respond to all pieces of the climate change puzzle; (b) offering an international avenue and forum to discuss, document, and identify instances of international re-

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19. See THOMAS LEGLER, *MULTILATERALISM AND REGIONAL GOVERNANCE IN THE AMERICAS*, Latin Am. Multilateralism: New Directions 12, 12–17 (2010).

20. See *id.*, at 12-17; see also Monica Pinto, *The Role of the Inter-American Commission and the Court of Human Rights in the Protection of Human Rights: Achievements and Contemporary Challenges*, HUM. RTS. BRIEF 20, No. 2, 35-38 (2013).

21. See Kathryn Sikkink, *Latin America's Protagonist Role in Human Rights*, SUR: INT'L. J. OF HUM. RTS., at 1-4 (Dec. 2015), <https://sur.conectas.org/en/latin-americas-protagonist-role-human-rights/>; Sonia Picado, *The Evolution of Democracy and Human Rights in Latin America: A Ten Year Perspective*, HUM. RTS. BRIEF 11, No. 3, at 28-31 (2004).

22. See Paris Agreement, *supra* note 8, pmbl., at 21.

sponsibility for climate change concerns; (c) addressing the situation of vulnerable groups and persons at enhanced risk of adverse climate change events; and (d) identifying the contours of an adequate gender perspective in the design and implementation of actions to address climate change.

This article first provides background on the issue of climate change in the Latin America region and efforts to address its adverse effects and human-made causes. Then the article proceeds to discuss four ways in which international human rights law can be useful to Latin American governments in addressing climate change. Lastly, the article offers some concluding thoughts and ways to forge ahead in the design of legal strategies in Latin America to address climate change.

## II. LATIN AMERICA AND CLIMATE CHANGE: ACTION, AMBITION, AND RESPONSE

Latin America is one of the most vulnerable regions in the world to climate change and a range of environmental events.<sup>23</sup> In this article, the author considers Latin America all countries comprising South America, the Andean Region, Central America, and Mexico. At times, the author will refer to the Caribbean since the international affairs and human rights history of both sub regions has been very intertwined and related. A number of well-known international organizations have documented the dynamics and effects of climate change in Latin America.<sup>24</sup> Some of the most important tendencies documented are described below.<sup>25</sup>

The U.N. Intergovernmental Panel on Climate Change (hereinafter IPCC) reported back in 2014 noteworthy trends in climate variability in Central America and South America reflected in temperature increases, rainfall patterns, fluctuations in water availability, and unusual weather events.<sup>26</sup> Land use and degradation were identified in the report as significant contributors to negative climate change ef-

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23. See generally WORLD BANK GROUP, *supra* note 6, at 13–17.

24. See, e.g., *Climate Change* 2014, *supra* note 4, Executive Summary at 1502-1503; WORLD BANK GROUP, *supra* note 6, at 13–17; OAS, *Climate Change*, *supra* note 4, at 19–21. See generally Alicia Bárcena et al., Econ. Comm’n for Latin Am. & the Caribbean [ECLAC], *Economics in Climate Change in Latin America and the Caribbean: A Graphic View*, 11-27, U.N. Doc. LC/TS.2017/84/REV.1 (2018) [hereinafter ECLAC Report].

25. *Climate Change* 2014, *supra* note 4, Executive Summary; Goldwyn & Clabough, *supra* note 17, at 5–9.

26. See *Climate Change* 2014, *supra* note 4, at 1502–03.

fects in the region, facing increasing pressures from human uses such as intensive agriculture, cattle ranching, food production, bioenergy, increased urbanization, and high levels of deforestation.<sup>27</sup> The report also refers to how vulnerable groups are particularly impacted by climate change effects due to unequal income distribution, persistent high levels of poverty and disparities in access to water, sanitation, and adequate housing.<sup>28</sup> Among the groups identified as particularly vulnerable to climate change in Latin America are indigenous peoples, Afro-descendants, children, and women living in poverty.<sup>29</sup>

The World Bank has also reported how, in Latin America and the Caribbean, temperature and precipitation changes, heat extremes, and melting glaciers have a pernicious effect on agricultural productivity, hydrological regimes, and biodiversity.<sup>30</sup> Latin America is a region highly susceptible to tropical cyclones, strong El Niño events, rising sea levels, melting Andean glaciers, rising temperatures, and changing rainfall patterns.<sup>31</sup> The World Bank also refers to the impact of climate change patterns on those affected by poverty and living in rural areas, due to their dependence on a natural resource base.<sup>32</sup>

The United Nations Economic Commission for Latin America and the Caribbean (hereinafter “ECLAC”) has also reported on the economic and human-driven contributions to climate change events in the region.<sup>33</sup> It has recently documented how economic activity as a whole contributes to the release of greenhouse gases into the atmosphere, but the parties responsible for those emissions are not called upon to bear any economic cost for them.<sup>34</sup> According to ECLAC, production, energy consumption, and land use patterns will all have to be modified to address climate change, and adaptive measures will be needed to curb its harmful impact.<sup>35</sup> Coherent government policies are key not only to address the negative impacts of climate change, but also to change the way economic activities are conducted.<sup>36</sup> New production processes are needed to both generate a

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27. *See id.* at 1504, 1506 & 1513.

28. *Id.* at 1515–16.

29. *Id.*

30. WORLD BANK GROUP, *supra* note 6, at 31.

31. *Id.*

32. *Id.* at 13–17.

33. *See generally* ECLAC Report, *supra* note 24.

34. *Id.* at 11.

35. *Id.* at 11, 18–19.

36. *Id.*



## 2019]CLIMATE CHANGE, LATIN AMER. &amp; HUMAN RIGHTS RESILIENCE 103

smaller volume of greenhouse gases and better investments and development.<sup>37</sup> This is crucial for economic development in the region that is less harmful to ecosystems, biodiversity, and natural resources.

Latin American governments are aware of the above-described devastating impacts of climate change and have engaged actively in climate change action.<sup>38</sup> Countries have assumed ambitious emission reduction targets, the noteworthy procurement of renewable energy generation, and the modernization of systems.<sup>39</sup> Various Latin American states have also recognized a right to a healthy environment and adopted legal, policy, and action plan steps to respect and guarantee its enjoyment.<sup>40</sup> Important challenges are ahead for Latin American states, including transitioning from national government-led investment to private sector involvement in energy modernization, and the need for prompt technological progress.<sup>41</sup> Central America and Caribbean countries are very challenged in having small economies, limited economic growth prospects, dependency on conventional fossil fuels, and high-power costs.<sup>42</sup> International, regional, and national cooperation will be key for these efforts.

Taking into consideration this background and the elements, this article reviews the benefits of international human rights law and multilateralism for Latin American states in the next frontier of climate change, ambition, and action.

### III. STRATEGIES TO ADDRESS CLIMATE CHANGE IN LATIN AMERICA: INTERNATIONAL HUMAN RIGHTS LAW AS A KEY INGREDIENT

As indicated in the previous section, there are many well-documented effects to climate change and global warming in Latin America.<sup>43</sup> These include rising temperatures, heat waves, droughts,

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37. *Id.* at 11.

38. See Goldwyn & Clabough, *supra* note 17, at 5–9; OAS, *Climate Change*, *supra* note 4, at 43–60.

39. See Goldwyn & Clabough, *supra* note 17, at 5–9; see also Climatescope, *Clean Energy and the Paris Promises*, MEDIUM (Nov. 1, 2018), <http://global-climatescope.org/en/insights/climate-policy/>.

40. Inter-Am. Comm'n on Human Rights [IACHR], *SRESCER Welcomes Decisions Taken in the Region to Face Climate Change*, ORG. OF AM. STATES (Apr. 17, 2018), [http://www.oas.org/en/iachr/media\\_center/PReleases/2018/083.asp](http://www.oas.org/en/iachr/media_center/PReleases/2018/083.asp); OAS, *Climate Change*, *supra* note 4, at 43–60.

41. Goldwyn & Clabough, *supra* note 17, at 9–10.

42. *Id.* at 17.

43. See *Climate Change 2014*, *supra* note 4, Executive Summary; WORLD BANK GROUP, *supra* note 6, at 13–18.

melting glaciers, hurricanes and other extreme natural disasters, changes in water supply, and food scarcity, among others.<sup>44</sup> There are many ways in which human rights can be impacted by these problems, threatening the life and integrity of many persons, and the health and sustainability of the environment.<sup>45</sup> The General Assembly of the Organization of American States and the Inter-American Commission on Human Rights—major regional inter-governmental institutions in the Americas—have both recognized that climate change produces negative effects on human rights in Latin America and urged continued governmental action in this area.<sup>46</sup> The newly appointed UN High Commissioner for Human Rights, Michelle Bachelet, who is also the former President of Chile, has advocated for the use of the existing international human rights framework to counter the effects of climate change on our planet and its inhabitants.<sup>47</sup>

When examining a problem like climate change from a human rights lens, it is important to recognize a number of challenges. Climate change is transnational in nature, extending beyond the territory of a single state, affecting all countries in the world in various ways.<sup>48</sup> Both state and non-state actors contribute to global warming and greenhouse gas emissions.<sup>49</sup> Establishing a direct connection between environmental harm and perpetrators can often be challenging.<sup>50</sup>

Climate change is also a complex and intricate issue, demanding multi-layered strategies at the national level.<sup>51</sup> Adopting national legislation and policies is often insufficient to address the panoply of consequences of climate change.<sup>52</sup> The adequate supervision and

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44. *Id.*

45. OAS, *Climate Change*, *supra* note 4, at 5, 8; U.N. ENV'T PROGRAMME [UNEP], CLIMATE CHANGE AND HUMAN RIGHTS 2–8 (2015) [hereinafter UNEP Report].

46. See, e.g., IACHR, *ACHR Expresses Concern Regarding Effects of Climate Change on Human Rights*, ORG. OF AM. STATES (Dec. 2, 2015), [http://www.oas.org/en/iachr/media\\_center/PReleases/2015/140.asp](http://www.oas.org/en/iachr/media_center/PReleases/2015/140.asp); Org. Of Am. States [OAS], AG/RES. 2429 (XXXVIII-O/08), *Human Rights and Climate Change in the Americas* (June 3, 2008); Org. of Am. States [OAS], Inter-American Democratic Charter art. 15, 40 I.L.M. 1289 (Sept. 11, 2001).

47. *Statement by UN High Commissioner for Human Rights Michelle Bachelet*, U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMM'R (Dec. 6, 2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23983&LangID=E>.

48. See generally Paris Agreement, *supra* note 8, pmb., at 21; GLOBAL WARMING OF 1.5°C, *supra* note 1.

49. See *Climate Change 2014*, *supra* note 4; *Summary for Policymakers*, *supra* note 4, at 11–14, 25–28; U.N. RAPPEUR ON THE ENVIRONMENT, *supra* note 1, ¶¶ 9–11.

50. U.N. RAPPEUR ON THE ENV'T., *supra* note 1, ¶ 36.

51. UNEP Report, *supra* note 45, at 11–29.

52. U.N. RAPPEUR ON THE ENVIRONMENT, *supra* note 1, ¶¶ 33–84.

regulation of the activity of government and private actors contributing to greenhouse gas emissions is also necessary.<sup>53</sup> Additionally, accountability and access to justice mechanisms must be in place for failures to adequately comply with existing legislation and regulations, and for human rights violations taking place in this realm.<sup>54</sup> Many of those affected by the adverse effects of climate change are persons in a situation of vulnerability due to their race, ethnic background, sex, age, and income status; individuals who tend to be marginalized from the main decision-making in their countries.<sup>55</sup>

Despite the challenges mentioned, the section below discusses four ways in which Latin American governments can greatly benefit from international human rights in developing their strategies and action plans to address climate change. By international human rights, the author refers to the body of treaties, instruments, and forms of soft law adopted by the international community furthering a range of civil, political, economic, social, and cultural rights, along with the mechanisms created to interpret and enforce these laws.

References in the following section will be made foremost to the work of the Inter-American System of Human Rights, which covers all of Latin America, the work of the United Nations Rapporteur on Human Rights and the Environment, and General Comments and Recommendations issued by the United Nations treaty-based organs. These universal and regional mechanisms have issued a number of pronouncements and statements which are relevant to the development of a body of legal standards regulating human rights protection, the environment, and the problem of climate change.

#### *A. State Obligations Under International Human Rights Law and Climate Change*

Probably one of the most important and useful ways in which international human rights has contributed to the world is in offering a framework of legal obligations that can guide the actions of states in their treatment of persons under their jurisdiction and in addressing complex social problems. International human rights law now has coverage of many areas which are pertinent to addressing a problem as intricate as climate change.<sup>56</sup> UN experts, agencies, academics, as

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53. *Id.*

54. *Id.*

55. *Statement by UN High Commissioner for Human Rights Michelle Bachelet, supra* note 47.

56. *See Joint Statement of the United Nations Special Procedures, supra* note 1; U.N. Rapporteur on the Environment, *supra* note 1, ¶¶ 33–84; Rep. of the UNCHR, *supra* note 4,

well as a diversity of civil society organizations have identified a number of individual human rights which may be impacted by the issue of climate change, including the rights to a healthy environment, life, personal integrity, health, food, housing, water, and freedom of movement.<sup>57</sup> The regional human rights protection system for the Americas, and the universal system of human rights, have begun giving content to these rights.<sup>58</sup> Some of the analysis has occurred in the environmental context, but most in other economic, social, and cultural realms.<sup>59</sup>

There are aspects of climate change that are particularly pertinent to human rights and a framework of legal obligations. Even though there are many drivers to climate change that reach beyond state contribution and regulation, there are multiple aspects in which states can have a role in their prevention, supervision, regulation, adaptation, mitigation, and redress efforts.<sup>60</sup> This is particularly relevant in the case of the human-driven causes of climate change in the form of activity which propels greenhouse gas emissions, led by governments, corporations, and business entities.<sup>61</sup> This can be considered foreseeable harm that states have a duty to prevent, supervise, and regulate.<sup>62</sup> States have also committed in the framework of the Paris Agreement to undertake prompt action to reduce greenhouse

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¶¶ 4–30; Dinah L. Shelton, *Litigating a Rights-Based Approach to Climate Change* 214–21 (Geo. Wash. Legal Studies, Research Paper No. 2013-57, 2013), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2235179](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2235179); John H. Knox, *Climate Change and Human Rights Law*, 50 VA. J. OF INT'L L. 163, 168–90 (2009).

57. John H. Knox, *supra* note 56.

58. See *The Environment and Human Rights* (Arts. 4(1) and 5(1) American Convention on Human Rights), Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶¶ 47–55 (Nov. 15, 2017), [http://www.corteidh.or.cr/docs/opiniones/seriea\\_23\\_esp.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf) [hereinafter *Advisory Opinion on the Environment and Human Rights*]; U.N. Rapporteur on the Environment, *supra* note 1, ¶¶ 33–84; Rep. of the UNCHR, *supra* note 4, ¶¶ 4–30.

59. See, e.g., *Cases related to indigenous peoples in the inter-American system of human rights giving content to their rights to their ancestral territories and to the elements of a dignified life: Kaliña and Lokono Peoples v. Suriname, Merits, Reparations, and Costs, Judgment*, Inter-Am. Ct. H.R. (ser. C) No. 309, ¶¶ 161–230 (Nov. 25, 2015); *Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, Judgment*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶¶ 121–122 (Nov. 28, 2007); *Sawhoyamaya Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment*, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 118 (Mar. 29, 2006); *Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment*, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶¶ 137, 181 (June 17, 2005).

60. See *Summary for Policymakers, supra* note 4; *Climate Change 2014, supra* note 4, at 11–14, 25–28.

61. See *GLOBAL WARMING OF 1.5°C, supra* note 1, *Summary for Policy Makers 2018*, at 6–7, 20–25; UNEP Report, *supra* note 45, at 11–29; Rep. of the UNCHR, *supra* note 4, ¶¶ 5–91; U.N. Rapporteur on the Environment, *supra* note 1, ¶¶ 65–67.

62. *Id.*

gas emissions, and to take adaptation and mitigation measures to address these well-known adverse effects of climate change.<sup>63</sup> States may also have a role in creating systems to alert and warn of natural disasters and addressing the impact these may have in the lives and personal integrity of millions of men, women, children, and elderly persons.<sup>64</sup> States can also adopt measures to prevent forced migrations and displacements and in curbing the challenges to access adequate and quality health services, food, water, and housing.<sup>65</sup>

International human rights law and its mechanisms have already begun identifying the different components of a legal strategy at the national level to address the adverse effects of climate change through a human rights lens.<sup>66</sup> This includes an overall recognition of the connection between environmental harm and the violation of civil, political, economic, social, and cultural rights already codified in treaties; the respect and guarantee of an independent right to a healthy environment; the prevention, supervision, and regulation of public and private actor activities which may be harmful to the environment; the protection that should be afforded to persons from environmental degradation and its effects; and the safeguards that should be in place to protect the environment in general, independent of their effects on persons.<sup>67</sup>

Some of the legal analysis already provided by the regional human rights protection system for the Americas as well as universal bodies can be very useful for Latin American states in designing interventions to address climate change and comply with the Paris Agreement.<sup>68</sup> The author considers that when analyzed as a whole, the work of both regional and universal bodies alludes to a set of minimum obligations that states should be aiming to respect, protect, and fulfill to address climate change.<sup>69</sup> Some of the analysis already

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63. See Paris Agreement, *supra* note 8, arts. 4, 6, 7, 8, & 9.

64. UNEP Report, *supra* note 45, at 19–25.

65. *Joint Statement of the United Nations Special Procedures Mandate Holders on the Occasion of the 24th Conference of the Parties to the UNFCCC: Climate Change and Human Rights* (Dec. 6, 2018), *supra* note 1.

66. See, e.g., Rep. of the UNCHR, *supra* note 4, ¶¶ 5-91; U.N. Rapporteur on the Environment, *supra* note 1, ¶¶ 33-84.

67. *Id.*

68. The Environment and Human Rights (Arts. 4(1) and 5(1) American Convention on Human Rights), Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶¶ 46-241 (Nov. 15, 2017), [http://www.corteidh.or.cr/docs/opiniones/seriea\\_23\\_esp.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf) [hereinafter Advisory Opinion on the Environment and Human Rights]; Rep. of the UNCHR, *supra* note 4, ¶¶ 5-91; U.N. Rapporteur on the Environment, *supra* note 1, ¶¶ 33-84.

69. See Dinah L. Shelton, *supra* note 56, at 214–21; John H. Knox, *supra* note 56, at 168–90.

advanced by these bodies can serve as an important benchmark or a set of minimum obligations that states should undertake to address climate change in the areas of legislation, policy, regulatory, and institutional interventions, related to the actions of state and non-state actors.<sup>70</sup>

As the author has indicated in her previous scholarship, a great deal of the work of the universal and regional human rights protection systems is devoted to producing legal standards with important implications for states.<sup>71</sup> A human rights standard constitutes a legal obligation for the state involved and sheds light on the content of this obligation.<sup>72</sup> A human rights standard issued by the universal and regional protection systems can also offer an important guideline for the state implicated on how to adequately and effectively implement, at the national level, the individual rights contained in the governing instruments of these systems.<sup>73</sup> These standards can be issued in the context of individual case decisions, but also in non-case work.<sup>74</sup> The ability to produce legal standards and pronouncements which are well-researched, relevant, timely, and informed, that lead States to adopt measures at the ground level to comply with their internationally-assumed obligations, is an important variable in measuring the effectiveness of human rights protection systems.<sup>75</sup> This is key to achieving full protection from human rights violations and their short- and long-term prevention. Some of the work already done by the universal and regional protection systems in the area of the environment illustrates the potential of international human rights law to really carve a structure and roadmap for states of how to tackle the intricate issues surrounding climate change.<sup>76</sup>

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70. Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶¶ 46-241; Rep. of the UNCHR, *supra* note 4, ¶¶ 5-91; U.N. Rapporteur on the Environment, *supra* note 1, ¶¶ 33-84.

71. Rosa Celorio, *The Rights of Women in the Inter-American System of Human Rights: Current Opportunities and Challenges in Standard Setting*, 65 U. MIAMI L. REV. 819, 822-23 (2011); Rosa Celorio, *Discrimination and the Regional Human Rights Protection Systems: The Enigma of Effectiveness*, 40 U. PENN. J. INT'L L. (forthcoming 2019).

72. Rosa Celorio, *supra* note 71.

73. *Id.*

74. *Id.*

75. Rosa Celorio, *Discrimination and the Regional Human Rights Protection Systems: The Enigma of Effectiveness*, 40 U. PENN. J. INT'L L. (forthcoming 2019).

76. See Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶¶ 47-55; U.N. Rapporteur on the Environment, *supra* note 1, ¶¶ 33-84; Rep. of the UNHCR, *supra* note 4, ¶¶ 4-38; see also IACHR, *ACHR Expresses Concern Regarding Effects of Climate Change on Human Rights*, *supra* note 46.

In this sense, the author considers that there are already important basic benchmarks for states in Latin America to follow in the area of climate change and human rights. Some of these are the obligation to respect, protect, and fulfill the right to a healthy environment; the duty to prevent, supervise, and regulate activity from state and non-state actors which may impact human rights and cause irreparable harm; the need to safeguard adequate access to information, meaningful participation, and access to justice in environmental-related causes; and the duty to guarantee the accessibility, affordability, and quality of services.<sup>77</sup> The author shares some observations and considerations below related to these four evolving state obligations in the area of climate change.

### 1. Developing the Contours of the Right to a Healthy Environment

Human rights and its conception entails state responsibility for harm and steps to prevent and protect human dignity.<sup>78</sup> Since its origins, what we understand as international human rights law includes a set of individual, interdependent, and indivisible rights.<sup>79</sup> Some of the most important rights that are upheld today in constitutions and other forms of national legislation, such as the rights to life, non-discrimination, free speech, and political participation have been recognized since the origins of international human rights law.<sup>80</sup> Other rights have been recognized as history and living conditions evolve and as we develop a greater understanding of social needs and circumstances.<sup>81</sup>

77. See, e.g., Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶¶ 46-241; Rep. of the UNCHR, *supra* note 4, ¶¶ 5-91; U.N. Rapporteur on the Environment, *supra* note 1, ¶¶ 33-84.

78. HURST HANNUM ET AL., INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY, AND PRACTICE, ch. 5, 336-38 (2017).

79. See G.A. Res. 217A (III), pmbl., Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR]; International Covenant on Civil and Political Rights pmbl., *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 [hereinafter ICCPR]; International Covenant on Economic, Social, and Cultural Rights pmbl., *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3, 6 I.L.M. 368 [hereinafter CESCR].

80. See, e.g., ICCPR, *supra* note 79, arts. 2, 6, 18 & 25.

81. Both the U.N. Committee on Economic, Social and Cultural Rights and the IACHR have recognized the existence of an independent right to water, even though it is not explicitly stated by the International Covenant on Economic, Social, and Cultural Rights, the American Convention on Human Rights, and other regional treaties. See, e.g., U.N. ESCOR, 29th Sess., General Comment No. 15 at ¶¶ 1-3, U.N. Doc. EC/C.12/2002/11 (Jan. 20, 2003); INTER-AM. COMM'N ON HUMAN RIGHTS, *Chapter IV.A. Access to Water in the Americas: An Introduction to the Human Right to Water in the Inter-American System*, in ANNUAL REPORT 2015, ¶¶ 15-16 (2016), <http://oas.org/en/iachr/docs/annual/2015/doc-en/Informe>

International human rights law and bodies have gradually begun identifying a right to a healthy environment.<sup>82</sup> This is particularly evident at the regional level and in places like Latin America, where it has been codified at the national and constitutional levels.<sup>83</sup> The Inter-American Court of Human Rights—the leading human rights Court in Latin America—just recently issued an advisory opinion recognizing for the first time the right to a healthy environment as independent and autonomous.<sup>84</sup> It is important to note though that at the global level, this right is still pending codification, even though the UN Rapporteur on the Environment has long advocated for its formal recognition.<sup>85</sup> Despite this lack of global recognition, significant jurisprudence has been developed addressing violations of general human rights in the environmental context without referring explicitly to a right to environmental protection.<sup>86</sup>

The author considers that this evolving recognition of the right to a healthy environment is a positive step towards the conceptualization of a set of obligations requiring states to address climate change. Addressing an intricate problem such as climate change demands from states a multi-dimensional strategy, including a significant number of components such as prevention, supervision, adaptation, mitigation, recovery, and redress efforts.<sup>87</sup> Tackling the problem of

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Anual2015-cap4A-agua-EN.pdf [hereinafter *Report on the Right to Water*].

82. Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶¶ 56–57; H.R.C., Rep. of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, ¶¶ 11–16, U.N. Doc. A/HRC/37/59 (Jan. 24, 2018), <https://undocs.org/A/HRC/37/59> [hereinafter U.N. Rapporteur on the Environment, Framework Principles].

83. See CONSTITUTION OF THE ARGENTINE NATION, Aug. 22, 1994, § 41 (Arg.); CONSTITUCIÓN POLÍTICA DEL ESTADO, Feb. 7, 2009, art. 33 (Bol.); CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL, Oct. 5, 1988, art. 225 (Braz.); POLITICAL CONSTITUTION OF THE REPUBLIC OF CHILE, Oct. 21, 1980, art. 19, § 8; CONSTITUCIÓN POLÍTICA DE COLOMBIA, July 4, 1991, art. 79; CONSTITUTION OF COSTA RICA, Nov. 7, 1949, art. 50; CONSTITUTION OF THE REPUBLIC OF ECUADOR, Oct. 20, 2008, art. 14; CONSTITUTION OF THE REPUBLIC OF EL SALVADOR, Dec. 20, 1983, art. 117; CONSTITUTION OF GUATEMALA, Jan. 14, 1986, art. 97; CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS, Feb. 5, 1917, art. 4 (Mex.); CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE NICARAGUA, Jan. 8, 1987, art. 60; CONSTITUTION OF PANAMA, Oct. 11, 1972, arts. 118–119; CONSTITUTION OF THE REPUBLIC OF PARAGUAY, June 20, 1992, art. 7; CONSTITUTION OF PERU, Dec. 31, 1993, arts. 66–69; CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA, June 13, 2015, arts. 66–67 (Dom. Rep.); CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA, Dec. 30, 1999, art. 127 (Venez.); see also OAS, *Climate Change*, *supra* note 4, at 43–60 (providing an overview of relevant legislation).

84. Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶¶ 56–57.

85. U.N. Rapporteur on the Environment, *supra* note 82, ¶ 14.

86. *Id.* ¶¶ 11–16.

87. U.N. Rapporteur on the Environment, *supra* note 1, ¶¶ 33–84; Rep. of the UNCHR, *supra* note 4, ¶¶ 5–91; UNEP Report, *supra* note 45, at 11–29.



climate change effectively entails a general duty to protect from harm and to safeguard the right of those most vulnerable and at risk populations to environmental degradation to have information, to participate, and to be consulted.<sup>88</sup> The danger of just adding content to human rights in the context of the environment, instead of having an overarching framework right, is the danger of fragmentation in state action and reference.<sup>89</sup> The cognizable tendency in Latin America to recognize a right to a healthy environment in constitutions, legislation, and action plans can be illustrative of these advantages.<sup>90</sup>

International bodies, such as the Inter-American Commission and the Court, are well-positioned to identify a number of connected and intertwined obligations to address climate change in the context of the right to a healthy environment. In the Latin American context, the Organization of American States has adopted a leading role in codifying a general right to a healthy environment.<sup>91</sup> The right to a healthy environment is included in Article 11 of the Protocol of San Salvador in the following terms:

1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.
2. The States Parties shall promote the protection, preservation, and improvement of the environment.<sup>92</sup>

The challenge with this provision is that it is not justiciable under the treaty, which means that individual case petitions cannot be brought forth before the Inter-American Commission alleging violations to a right to a healthy environment.<sup>93</sup> This is why it is key when the Inter-American Court, in its advisory opinion, also recognizes this right as comprehended under Article 26 of the American Conven-

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88. U.N. Rapporteur on the Environment, *supra* note 1, ¶¶ 81-84; Rep. of the UNCHR, *supra* note 4, ¶¶ 69-91; UNEP Report, *supra* note 45, at 27-28; *see also*, IACHR, *supra* note 46; IACHR, *IACHR Expresses Deep Concern about the Human Rights Situation in Puerto Rico*, ORG. OF AM. STATES (Jan. 18, 2018), [http://www.oas.org/en/iachr/media\\_center/PReleases/2018/004.asp](http://www.oas.org/en/iachr/media_center/PReleases/2018/004.asp).

89. For an interesting discussion of this issue, *see* U.N. RAPPOREUR ON THE ENVIRONMENT, *supra* note 82, ¶¶ 11-16.

90. OAS, *Climate Change*, *supra* note 4, at 43-60.

91. *See* Protocol of San Salvador to the American Convention on Human Rights art. 19(6), *opened for signature* Nov. 17, 1988, O.A.S.T.S. No. 69, Art. 11 [hereinafter Protocol of San Salvador].

92. *Id.*

93. *See* Protocol of San Salvador, *supra* note 91, arts. 8(a), 13 (limiting the possibility of submitting individual petitions before the Inter-American Commission on Human Rights to article 8(a) trade union rights and article 13 the right to education).

tion—a general disposition establishing the obligation to adopt measures to achieve the realization of economic, social, and cultural rights.<sup>94</sup> Article 26 is actionable before the Inter-American Commission and Court.<sup>95</sup>

In this advisory opinion, the Court alludes to the important content of the right to a healthy environment that can be paramount to the design of an effective legal strategy to address climate change.<sup>96</sup> The Court refers to five legal obligations in particular, including the respect and guarantee of the right to a healthy environment free from any form of discrimination, the safeguard of basic public services, and steps to protect, preserve, and improve the environment.<sup>97</sup> The Court also refers to the right to a healthy environment as one with individual and collective dimensions.<sup>98</sup> In its collective dimensions, it is a key right of universal interest for present and future generations.<sup>99</sup> In its individual reach, its violation has direct repercussions over persons due to its link to other rights, such as the rights to health, personal integrity, and life.<sup>100</sup> Environmental degradation can cause irreparable harm over both individual human beings and humanity as a whole.<sup>101</sup> The Inter-American Court also underscores that the right to a healthy environment may entail protection beyond the individual person.<sup>102</sup> Therefore, different elements of nature may benefit from human rights protection, including forests, rivers, the ocean and others.<sup>103</sup>

The Court establishes a difference between a specific right to the environment, and human rights in general that may be impacted by environmental degradation.<sup>104</sup> There are substantive rights that can really be harmed, including the rights to life, personal integrity, health, property, and procedural rights, such as freedom of expression and association, information, participation and access to effective

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94. Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶¶ 56–57.

95. See American Convention on Human Rights arts. 44–45, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter American Convention].

96. Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶¶ 46–241.

97. *Id.* ¶ 60.

98. *Id.* ¶ 59

99. *Id.*

100. *Id.*

101. *Id.* ¶ 59.

102. *Id.* ¶¶ 62–63.

103. *Id.*

104. *Id.* ¶ 64.

remedies.<sup>105</sup> In the author's view, it is very important that the Inter-American Court has established a difference between an independent right to a healthy environment, with autonomous content, and the potential "environmental" content that other general human rights may have. The fulfillment of states of positive and negative obligations to protect the environment and prevent harm, and the relationship of this to human persons, can form the basis for prevention, supervision, adaptation, and mitigation efforts in the context of climate change. This may also entail protection of nature and its elements irrespective of its relationship with human beings, which is important progress in international human rights law and key to prevention efforts.<sup>106</sup>

The Court also in the advisory opinion connects the duty to act with due diligence with the guarantee of human rights in the realm of the environment.<sup>107</sup> In particular, it refers in detail to the comprehensive scope of the duties of prevention, the principle of precaution, and the need for international cooperation.<sup>108</sup> The duty to act with due diligence, as will be discussed in the following section, has been an important historical legal standard for the Court to address general human rights violations occurring in the context of repressive regimes, such as enforced disappearances.<sup>109</sup> However, it has also opened the door to develop detailed content of what it means to act with due diligence in response to specialized issues, such as gender-based violence.<sup>110</sup> Every day the Court offers more detail of the content of the duties to prevent, sanction, and grant reparations, and it is a welcome development to see the Court extending the overarching due diligence obligation to environmental degradation.<sup>111</sup>

The Inter-American Court also alludes in the advisory opinion to the issue of extraterritoriality and the content of state obligations in this regard.<sup>112</sup> The Court indicates that the scope of article 1.1 of the

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105. *See id.*

106. *Id.* ¶ 62.

107. *Id.* ¶ 124.

108. *Id.* ¶ 125.

109. *See, e.g., Velásquez Rodríguez v. Honduras, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 166 (July 29, 1988).*

110. *See generally* González et al. ("Cotton Field") v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶¶ 232-440 (Nov. 16, 2009); Women Victims of Sexual Torture in Atenco v. Mexico, Merits, Reparations and Costs, Inter-Am. Ct. H.R., Series C, No. 371, ¶¶ 177-305 (Nov. 6, 2018); López Soto et al. v. Venezuela, Merits, Reparations and Costs, Inter-Am. Ct. H.R., Series C, No. 372, ¶¶ 124-200 (Sept. 26, 2018).

111. Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶¶ 123-210.

112. *Id.* ¶ 82.

American Convention can cover conduct which happens in an extra-territorial fashion, beyond the rubric of a territory of a state, and that this type of responsibility should be analyzed on a case-by case basis.<sup>113</sup> This is key since climate change is a problem of global scope, with a transnational and cross-country impact.

At the universal level, the UN Rapporteur on the Environment has long been actively calling for the formal recognition of a human right to a healthy environment, and for formal steps to address climate change as a human rights issue.<sup>114</sup> The UN Rapporteur has identified key content to the right to a healthy environment that could be reflected in legislation, policies, and action plans at the national level in Latin America.<sup>115</sup>

In terms of substantive obligations, the UN Rapporteur refers to the obligation to protect those within its jurisdiction from the harmful effects of climate change.<sup>116</sup> This goal is being achieved through the use of adaptation, legal, and institutional measures.<sup>117</sup> Adaptation measures should be developed and implemented by taking into account major human rights standards providing for informed public participation, the obligation not to discriminate, and the principle of non-regression.<sup>118</sup> UNEP has already identified a series of adaptation measures that may be necessary to protect the rights to life and health from imminent threats, including: the establishment of early warning systems and risk notifications; improving physical infrastructure to reduce the risk of floods and other hazards; adopting plans geared to emergency response; and offering disaster relief and humanitarian assistance in emergencies.<sup>119</sup> Some documented adaptation measures already pursued by Latin American countries are in the form of decarbonization and the production of electricity from renewal energy, geothermal, and hydropower sources.<sup>120</sup>

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113. *Id.*

114. See, e.g., *Environmental Hazards Kill 8 million a Year: UN Expert Urges Global Recognition of the Human Right to a Healthy Environment*, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R (Oct. 25, 2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23782&LangID=E>; U.N. Rapporteur on the Environment, Framework Principles, *supra* note 82, ¶¶ 14, 16.

115. U.N. RAPPORTEUR ON THE ENVIRONMENT, *supra* note 1, ¶¶ 50–84.

116. *Id.* ¶ 68.

117. *Id.*

118. *Id.*

119. UNEP Report, *supra* note 45, at 22.

120. U.N. RAPPORTEUR ON THE ENVIRONMENT, *supra* note 1, ¶ 78.

The UN Rapporteur on the Environment has also referred concretely and in particular to environmental harm caused by corporations.<sup>121</sup> According to the UN Rapporteur, states are obligated to take steps to protect persons against corporate abuse, to regulate these activities, and offer remedies and redress for these human rights abuses.<sup>122</sup> The UN Rapporteur also echoes the Ruggie Guiding Principles in Business and Human Rights in underscoring that corporations have an obligation to respect human rights and prevent environmental abuse.<sup>123</sup>

The UN Rapporteurship has also consistently referred to a general obligation to take into consideration the needs of vulnerable groups,<sup>124</sup> to refrain from discriminating against them in the application of environmental laws and policies, and to protect them from harm, including women, children, and indigenous peoples.<sup>125</sup> An important component of this protection obligation is to ensure that these groups are fully informed of the effects of climate actions, that they can participate in decision-making processes, that their concerns are taken into account, and that they have access to remedies for human rights violations.<sup>126</sup> The implementation of any adaptation measures—for example, renewable energy projects and efforts to protect forests—need to be implemented in accordance with human rights norms and taking into account the needs of vulnerable groups.<sup>127</sup> The UN Rapporteur has also referred to a broad duty to adopt steps to ensure persons potentially affected by environmental-related harm have adequate information to exercise their rights and participate in decision-making processes concerning climate policy.<sup>128</sup> Remedies should also be in place for violations of protected rights in the realm of climate change, including monetary compensation and injunctive relief.<sup>129</sup>

In Latin America, a great deal of legislation, constitutions, and actions plans have already been adopted alluding to the right to a healthy environment.<sup>130</sup> Latin America has been one of the world

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121. *Id.* ¶ 66.

122. *Id.*

123. *Id.*

124. *Id.* ¶¶ 81–84.

125. U.N. RAPPORTEUR ON THE ENVIRONMENT, *supra* note 1, ¶¶ 81–84.

126. *Id.* ¶ 82.

127. *Id.* ¶ 83.

128. *Id.* ¶ 56–60.

129. *Id.* ¶ 62.

130. OAS, *Climate Change*, *supra* note 4, at 43–60.

leaders in this regard.<sup>131</sup> In the author's view, it illustrates the important position of environmental issues in the national agenda.<sup>132</sup> Human rights law can provide detailed content for this adoption efforts, as well as guide their implementation. It can connect the right to a healthy environment with other well-recognized and immediate human rights obligations including due diligence, access to justice, the obligation not-to discriminate, the duty to be free from violence, and the rights to participate, information, and consultation, which will be discussed in the following sections.

## 2. Obligation to Act with Due Diligence: Prevent, Supervise, and Regulate

There is a very well developed international and regional consensus pointing to the use of the due diligence standard as a benchmark for states to measure and assess whether they are complying with their human rights obligations.<sup>133</sup> This has been particularly useful when it comes to the regulation of the activity of private and non-state actors.<sup>134</sup> There are several features of what the international

131. GOLDWYN, *supra* note 17, at 5–9.

132. *Id.*; see OAS, *Climate Change*, *supra* note 4, at 43–60; see also, IACHR, *supra* note 40.

133. For important references to the due diligence standard, see Velásquez Rodríguez v. Honduras, Merits, Judgment, Inter-Am. Ct. H.R., *supra* note 109, ¶ 166; Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶¶ 123–124; Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women art. 7(b), June 9, 1994, 27 U.S.T. 3301, 1438 U.N.T.S. 63 [hereinafter Convention of Belém do Pará]; Human Rights Council Res. 14, Accelerating Efforts to Eliminate All Forms of Violence Against Women: Ensuring Due Diligence in Prevention, U.N. Doc A/HRC/14/L.9/Rev.1 (June 16, 2010).

For an overview of general state obligations under international human rights law, see Human Rights Committee, 80th Sess., 2187th mtg., General Comment No. 3, U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (May 26, 2004); ESCOR, 5th Sess. at 88, UN Doc. No. E/1991/23 (1990).

For a history of the due diligence standard in international law, see Jan Arno Hessbruegge, *The Historical Development of the Doctrines of Attribution and Due Diligence in International Law*, 36 N.Y.U. J. INT'L L. & POL. 265 (2004). For a more contemporary interpretation of the content of the due diligence standard and its application to corporate responsibility for human rights violations, see Jonathan Bonnitcha and Robert McCorquodale, *The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights*, EJIL, Vol. 28, No. 3, ¶¶ 901-915 (2017).

134. IACHR, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, ¶¶ 46–54, 65–148, OEA/Ser.L/V/II, doc. 47/15 (Dec. 31, 2015), <http://www.oas.org/en/iachr/reports/pdfs/extractiveindustries2016.pdf> [hereinafter *Report on Extractive Industries*]; see also generally González et al. (“Cotton Field”) v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205 (Nov. 16, 2009); Jessica Lenahan (Gonzales) et al., Case 12.626, Inter-Am. Comm'n H.R., Report No. 81/11, OEA/Ser.L/V/II., doc. 69 (2011).

community understands today as the due diligence standard that can be considered to apply to issues concerning climate change.

Due diligence entails a comprehensive duty of prevention.<sup>135</sup> Prevention may include active steps to adopt legislation, public policies, and forms of regulation to prevent harm to the environment.<sup>136</sup> The duty to prevent harm is also of broad scope when it pertains to groups which may be considered vulnerable or at risk to climate change, including women, children, and older persons.<sup>137</sup> The duty to prevent is particularly key to any analysis concerning climate change, since many private actors are responsible for the greenhouse gas emissions that are producing the rising temperatures.<sup>138</sup> In the realm of corporations, the UN Ruggie principles already highlight an overarching set of obligations states have to appropriately supervise the activity of corporations, which includes preventing harm.<sup>139</sup> The IACHR has also indicated that prevention is insufficient when it comes to corporations, which may entail supervision and regulation in the execution of investment, extraction, and tourism projects.<sup>140</sup>

This is very connected with the requirement of knowledge and how states can be held in violation of international human rights when they could have foreseen or knew of harm and did not properly intervene.<sup>141</sup> Even though there are components of climate change that cannot be controlled or predicted, the activity of corporations can

135. Velásquez Rodríguez v. Honduras, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 175 (July 29, 1988); González et al. (“Cotton Field”) v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶¶ 242–258 (Nov. 16, 2009).

136. Advisory Opinion on the Environment and Human Rights, *supra* note 51, ¶¶ 127–174; U.N. Rapporteur on the Environment, Framework Principles, *supra* note 61, ¶ 5; González et al. (“Cotton Field”) v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶¶ 242–258 (Nov. 16, 2009); Convention of Belém do Pará, *supra* note 133, art. 7(b).

137. Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶ 67; U.N. Rapporteur on the Environment, Framework Principles, *supra* note 82, principle 14.

138. See GLOBAL WARMING OF 1.5°C, *supra* note 1, Summary for Policy Makers 2018, at 6–7, 20–25; U.N. RAPPOURTEUR ON THE ENVIRONMENT, *supra* note 1, ¶¶ 65–67; UNEP Report, *supra* note 45, at 29.

139. H.R.C., Rep. of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, at 6, UN Doc. A/HRC/17/31 (2011) [hereinafter Ruggie Principles].

140. *Report on Extractive Industries*, *supra* note 134, ¶¶ 82–105.

141. González et al. (“Cotton Field”) v. Mexico, Inter-Am. Ct. H.R., *supra* note 110, ¶ 280; Pueblo Bello Massacre v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 140, ¶¶ 105–148 (Jan. 31, 2006); Sawhoyamaya Indigenous Community v. Paraguay, Inter-Am. Ct. H.R., *supra* note 59, ¶ 155; Valle Jaramillo et al v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 192, ¶ 78 (Nov. 27, 2008).

be adequately supervised and regulated.<sup>142</sup> There is also an overall recognition by governments in the Paris Agreement that greenhouse gas emissions are harmful in their countries, including an acknowledgement of the need to reduce them. Additionally, the activities of states to adapt and mitigate can be appropriately supervised and analyzed by taking into account a human rights framework.<sup>143</sup> According to contemporary human rights standards, it is well accepted that any state interventions designed to address any form of harm should conform to human rights obligations, and these include government-led mitigation and adaptation measures to address climate change and recover from natural disasters.<sup>144</sup>

These duties and their content in the author's view acquire special connotations when the rights to life and personal integrity are involved or could be potentially violated.<sup>145</sup> There is an overarching recognition of this by the Inter-American Court of Human Rights in its recent advisory opinion on the environment and human rights.<sup>146</sup> The Court refers to this obligation of states to ensure that all activities undertaken under their jurisdiction or under their control do not cause harm to persons or to the environment of other states.<sup>147</sup> The court refers to the customary nature of the principle of prevention in international law, which expands to protection of land, water, atmosphere, flora, and wildlife.<sup>148</sup>

IPCC and ECLAC have reported on the wide scope of the ongoing damage and dangers of climate change to the health and life of many persons in Latin America.<sup>149</sup> In the author's view, this entails an obligation to adopt prevention measures to prevent foreseeable harm derived from climate change, and mitigate, adapt, and respond

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142. See GLOBAL WARMING OF 1.5°C, *supra* note 1, Summary for Policy Makers 2018, at 6-7, 20-25; U.N. Rapporteur on the Environment, *supra* note 1, ¶¶ 65-67; UNEP Report, *supra* note 45, at 29.

143. U.N. Rapporteur on the Environment, *supra* note 1, ¶¶ 33-84.

144. *Joint Statement of the United Nations Special Procedures Mandate Holders on the Occasion of the 24th Conference of the Parties to the UNFCCC: Climate Change and Human Rights*, *supra* note 1; Rep. of the UNCHR, *supra* note 4, ¶¶ 69-91.

145. Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶¶ 105-243. For a good overview of contemporary human rights obligations related to the protection of the right to life, see United Nations Human Rights Committee, General Comment 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, ¶¶ 18-31 (Oct. 30, 2018).

146. *Id.*

147. Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶ 127.

148. *Id.* ¶ 129.

149. *Climate Change 2014*, *supra* note 4, Executive Summary, at 1502-1503; ECLAC Report, *supra* note 24, at 11.



with due diligence. This is in the understanding that the obligation of prevention is of means, and not of results.<sup>150</sup> The advisory opinion of the Inter-American Court does enumerate a number of prevention measures that can be adopted by states to prevent environmental harm driven by human activity, including the duty to regulate projects which cause pollution and to undertake thorough environmental impact assessments.<sup>151</sup>

In regards to environmental impact assessments, the Inter-American Court has delved extensively on these in its cases related to the right to consultation and projects which are harmful to indigenous peoples, their territories, and natural resources.<sup>152</sup> The Court has underscored criteria that should govern environmental impact assessments, including the need for these to: take place before the activity in question; address the cumulative impact of a given project; have the participation of the persons interested; and respect their tradition and culture.<sup>153</sup> Environmental impact assessments should also contain contingency and mitigation plans, even when prevention measures were already in place.<sup>154</sup>

There is also very interesting analysis advanced by the Inter-American system and its organs on the duty to supervise and regulate projects, and activities which may harm the environment.<sup>155</sup> This duty goes beyond the sole prevention of harm and entails a continuous monitoring of the effects of a project or intervention.<sup>156</sup> This monitoring should also be combined with adequate accountability measures and access to legal avenues when abuses occur.<sup>157</sup>

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150. Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶ 143; González et al. (“Cotton Field”) v. Mexico, Inter-Am. Ct. H.R., *supra* note 110, ¶¶ 242–58.

151. Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶¶ 147–150.

152. Saramaka People v. Suriname, Inter-Am. Ct. H.R., *supra* note 59, ¶ 41; Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and Reparations, Judgment Inter-Am. Ct. H.R. (ser. C) No. 245, ¶¶ 205–206 (June 27, 2012).

153. *Id.*; Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶¶ 162–169.

154. Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶¶ 171–172.

155. For an overview, see IACHR, *Indigenous and Tribal Peoples’ Rights over Their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights*, ¶¶ 190–193, OAS/Ser.L/V/II, doc. 56/09 (Dec. 30, 2009).

156. Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶ 153.

157. *Id.* ¶ 154.

Latin American states could also greatly benefit from all the legal standards available from the regional protection system for the Americas, as well as the universal system of protection measures that need to be adopted to protect the life and integrity of human rights defenders advancing environmental causes.<sup>158</sup> It has been well documented how the activity of human rights defense has become increasingly dangerous in the Americas, with many human rights defenders killed per year.<sup>159</sup> Many of these defenders are working on behalf of the environment and opposing investment and development projects with potential irreparable harm on the environment.<sup>160</sup> The Inter-American system has issued a number of precautionary measures, court judgments, and thematic reports outlining important obligations states should adopt to protect the life and integrity of defenders with due diligence.<sup>161</sup> Some states in the Americas have already adopted national protection systems, legislation, urgent measures, and other programs to protect defenders and should continue doing so.<sup>162</sup> Addressing the urgent and precarious situation of human rights defenders should be part of climate action and ambition policies in Latin America.

### 3. Transparency and Accountability: Information, Participation, and Access to Justice

International human rights law is also helpful for Latin American states in providing a framework for procedural obligations which are key to address climate change. Some of these are already very well-established obligations in international law and need more definition and exploration when it comes to issues concerning the environment.<sup>163</sup>

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158. See, e.g., IACHR, *Towards Effective Integral Protection Policies for Human Rights Defenders*, ¶¶ 1–11, OEA/Ser.L/V/II, doc. 207 (Dec. 29, 2017) [hereinafter *Report on Human Rights Defenders*]; Rep. of the Special Rapporteur on Human Rights Defenders, *Situation of Human Rights Defenders*, ¶¶ 8–40, U.N. Doc. A/71/281 (Aug. 3, 2016).

159. IACHR, *supra* note 158, ¶¶ 1–11.

160. IACHR, *IACHR Issues Call for OAS States to Protect Defenders of the Land and Environment*, ORG. OF AM. STATES (June 15, 2017), [http://www.oas.org/en/iachr/media\\_center/PReleases/2017/072.asp](http://www.oas.org/en/iachr/media_center/PReleases/2017/072.asp); Rep. of the Special Rapporteur on Human Rights Defenders, *supra* note 158, ¶¶ 8–40.

161. IACHR, *supra* note 158, ¶¶ 48–108.

162. *Id.* ¶¶ 152–242.

163. Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶¶ 211–241.

A first set of obligations is the duty to guarantee access to information which may be relevant for the enjoyment of human rights.<sup>164</sup> An adequate access to information can be considered a facilitating right and an important precondition to the exercise of many human rights.<sup>165</sup> This is a very key and important obligation in the realm of environmental law and in the context of climate change.<sup>166</sup> As indicated by the Inter-American Court, access to information should be guaranteed in a manner that is accessible, effective, and prompt, without a specific individual having to show a concrete interest in obtaining this information.<sup>167</sup> Mechanisms should also be in place for individuals to request information from the state.<sup>168</sup> The information should be provided in a culturally appropriate way and respecting local languages.<sup>169</sup> This right may solely be restricted when necessary in a democratic society and when the limitation is proportional to the objective pursued.<sup>170</sup>

The right to participation is also paramount in the area of climate change.<sup>171</sup> This is a right protected by international law and different instruments, and has been fundamental to advance the rights of those most at risk to human rights violations in society, including women, children, indigenous peoples, afro-descendent communities,

164. In the framework of the Inter-American System, see, for example, *Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 151, ¶¶ 73–92 (Sept. 19, 2006); IACHR, *The Inter-American Legal Framework Regarding the Right to Access to Information*, ¶ 4, OEA/Ser.L/V/II CIDH/RELE/INF.9/12 (2d ed., Mar. 7, 2011); IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, ¶¶ 1, 26, 31, OEA/Ser.L/V/II, doc. 61 (Nov. 22, 2011). In the framework of the United Nations System, see, for example, Rep. of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, ¶ 19, U.N. Doc. A/68/362 (Sept. 4, 2013).

165. *Id.*

166. U.N. RAPPOREUR ON THE ENVIRONMENT, *supra* note 1, ¶¶ 51–55.

167. Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶¶ 213–25; U.N. RAPPOREUR ON THE ENVIRONMENT, *supra* note 1, ¶¶ 51–55.

168. Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶¶ 213–25.

169. *Report on Extractive Industries*, *supra* note 134, ¶¶ 106–118.

170. Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶ 224.

171. See, e.g., U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, Principle 10, U.N. Doc. A/CONF.151/26 (Vol. I), annex I (Aug. 12, 1992) [hereinafter *Rio Declaration*] (stating that “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”).

those living in rural and low-income communities, older persons, and persons affected by disabilities.<sup>172</sup> The right to participation entails, in the author's view, the creation of government spaces to influence climate change policy, to discuss these issues, and to shape interventions which are intended to benefit specific groups of the population. This is particularly key in the identification of mitigation and adaptation efforts, which may be implemented with good intentions, but have effects that are harmful to the communities at risk. The right to participation should also reflect the diversity of races, cultures, and languages in different societies and be granted with a gender perspective. This is particularly important when responding to a global and regional challenge such as climate change. The right to consultation is also intimately related to the right to participation, which will be discussed more in the following sections.

Lastly, access to justice is key in any human rights protection and effort.<sup>173</sup> It is paramount for social change and it is an indispensable minimum where there are instances of harm that is human driven.<sup>174</sup> There should be adequate legal avenues to report, investigate, and sanction activities from corporations, government actors, and other individuals which may result in harm to the environment and to important human rights.<sup>175</sup> Investigations should be prompt, exhaustive, aiming to identify those responsible.<sup>176</sup> Justice should also be conducted free from any form of discrimination and guided by the

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172. See generally Human Rights Committee, 57th Sess., 1510th mtg., General Comment No. 25 at ¶ 3, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (July 12, 1996); Committee on the Elimination of Discrimination Against Women, 16th Sess., General Recommendation No. 23 at 260, U.N. Doc. HRI/GEN/1/Rev.6 (1997); IACHR, *The Road to Substantive Democracy: Women's Political Participation in the Americas*, ¶¶ 20–27, OEA/Ser.L/V/II, doc. 79 (Apr. 18, 2011); *Castañeda Gutman v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 184, ¶¶ 146–147 (Aug. 6, 2008); IACHR, *Report on the Situation of Human Rights in Ecuador*, ch. VIII, OAS/Ser.L/V/II.96, doc. 10 rev. 1 (Apr. 24, 1997); see also *Statehood Solidarity Committee v. United States*, Case 11.204, Inter-Am. Comm'n H.R., Report No. 98/03, OEA/Ser.L/V/II.114, doc. 70 rev. 1 ¶ 87 (2003); *Yatama v. Nicaragua*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 127, ¶¶ 195–207 (June 23, 2005); *Susana Higuashi Miyagawa v. Peru*, Case 11.428, Inter-Am. Comm'n H.R., Report No. 119/99, OEA/Ser.L/V/II.106, doc. 3 rev. ¶ 54 (1999).

173. U.N. Rapporteur on the Environment, *supra* note 1, ¶¶ 62–64; Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶¶ 233–240; *Report on Extractive Industries*, *supra* note 134, ¶¶ 128–140.

174. UNEP Report, *supra* note 45, at 18–19; U.N. RAPPEUR ON THE ENVIRONMENT, *supra* note 82, ¶¶ 27–30.

175. Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶¶ 233–241; U.N. RAPPEUR ON THE ENVIRONMENT, *supra* note 1, ¶¶ 62–64.

176. *Id.*

principle of equality.<sup>177</sup> Reparations are also a fundamental component of any access to justice and should be granted in cases of environmental harm.<sup>178</sup> Reparations can be in the form of rectification, restitution, indemnification rehabilitation, and other measures.<sup>179</sup>

#### 4. The Guarantee of Accessibility, Affordability, and Quality

The criteria of accessibility, affordability, and quality are key to fulfill the right to a healthy environment in Latin America and to address climate change. Climate-change related disasters and effects threaten the standard of living of persons, resulting in water and food shortages, and deficient access to needed health services, among other issues.<sup>180</sup> The United Nations Committee on Economic, Social, and Cultural Rights has been a leading voice in a call to states to take into account the effects of climate change in the enjoyment of the rights to “health, food, water and sanitation.”<sup>181</sup> This echoes the recognition of the Universal Declaration of Human Rights of the right to a standard of living adequate to the health and well-being of each person.<sup>182</sup> The Advisory Opinion of the Inter-American Court of Human Rights on the environment and human rights has already alluded to how measures adopted to achieve a healthy environment must be guided by the criteria of affordability and quality.<sup>183</sup>

177. UN Hum. Rts. Comm., General Comment 32, *Article 14: Right to equality before courts and tribunals and to a fair trial*, CCPR/C/GC/32, ¶¶ 1-29 (Aug. 23, 2007); Inter-Am. Comm’n H.R., *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II, doc. 68, ¶¶ 23-122 (Jan. 20, 2007).

178. For reading on remedies for human rights violations related to the environment, see generally Rio Declaration, *supra* note 171, Principle 10; DONALD K. ANTON & DINAH L. SHELTON, ENVIRONMENTAL PROTECTION AND HUMAN RIGHTS, at 383-84 (2011); see also as reference, UN International Law Commission, *Articles on the Responsibility of States for International Wrongful Acts*, Art. 30-31 (Aug. 10, 2001); International Court of Justice, *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, ¶¶ 29-43 (Feb. 2, 2018).

179. DINAH SHELTON, REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW, Chapter 1, at 7-21 (2d ed. 2005); Thomas M. Antkowiak, *A Dark Side of Virtue: The Inter-American Court and Reparations for Indigenous Peoples*, 25 DUKE J. COMP. & INT’L L. 1, 5-10 (2014).

180. *Climate Change 2014*, *supra* note 4, Executive Summary; WORLD BANK GROUP, TURN DOWN THE HEAT, *supra* note 6, 13-18; see also IACHR, *supra* note 46; IACHR, *supra* note 88.

181. *Climate Change and the International Covenant on Economic, Social, and Cultural Rights: Statement of the Committee on Economic, Social and Cultural Rights*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R (Oct. 8, 2018), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23691&LangID=E>.

182. G.A. Res. 217 (III) A, art. 25(1), Universal Declaration of Human Rights (Dec. 10, 1948).

183. Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶ 60.

The UN Committee on Economic, Social, and Cultural Rights has shed light on important content concerning the criteria of accessibility, affordability, and quality in the respect, protection and fulfillment of a variety of economic, social, and cultural rights.<sup>184</sup> In its General Comment 14, it discussed interrelated and essential elements, which are key to the effective enjoyment of the right to health, including having available functioning and sufficient public health and health-care facilities, and granting access to all persons free from all forms of discrimination.<sup>185</sup> The Committee underscores the need for both physical and economic accessibility, and acceptability that is governed by medical ethics as well as cultural appropriateness.<sup>186</sup> Quality must also govern the provision of health services, including the requirement of skilled personnel, scientifically approved and unexpired drugs, and adequate sanitation.<sup>187</sup>

The Committee on Economic, Social, and Cultural Rights also recognized in its General Comment 15 the need for the same criteria when it comes to the right to water.<sup>188</sup> In particular, the Committee stated that every person is entitled to “sufficient, safe, acceptable, physically accessible and affordable water...”<sup>189</sup> In this sense, water should be sufficient for personal and domestic use and must be safe from chemical substances and other threats to a person’s health.<sup>190</sup> Water facilities must be accessible to everyone without discrimination, within safe physical reach, and be affordable.<sup>191</sup> The Committee has also indicated that the right to food must be governed by the concepts of adequacy, sufficiency, and sustainability.<sup>192</sup>

One of the most important threats of climate change in Latin America are the disruptions in water supply.<sup>193</sup> The dangers of water shortages and other scarcities resulting from climate change are very alarming. In Latin America, it has already been reported before in-

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184. See, e.g., U.N. ESCOR, 22d Sess., General Comment No. 14, ¶¶ 12-13, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000); U.N. ESCOR, 29th Sess., General Comment No. 15, ¶¶ 3, 10-12, U.N. Doc. EC/C.12/2002/11 (Jan. 20, 2003).

185. U.N. ESCOR, General Comment No. 14, *supra* note 184, ¶ 12; see also Rep. of the UNCHR, *supra* note 4, ¶¶ 31-34.

186. *Id.* ¶ 12.

187. U.N. ESCOR, General Comment No. 15, *supra* note 184, ¶¶ 10-12.

188. *Id.* ¶ 12.

189. *Id.* ¶ 3.

190. *Id.* ¶ 12.

191. *Id.* ¶ 12.

192. *Id.* ¶¶ 6-13.

193. *Climate Change 2014*, *supra* note 4, Executive Summary at 1502; *Report on the Right to Water*, *supra* note 60, ¶ 5-7.

ternational bodies that more than 100 million persons live in areas that suffer water shortages.<sup>194</sup> These water shortages have a specific impact and effect on women, children, adolescents, indigenous peoples and communities, people of African descent, rural populations, among other groups at risk.<sup>195</sup>

Globally, the World Bank has estimated that climate change may result in 1 billion to 2 billion people lacking an adequate water supply.<sup>196</sup> On September 25, 2015, world leaders also met at the United Nations headquarters in New York to adopt the new Agenda for Sustainable Development and identified universal access to water and sanitation as one of the seventeen Global Development goals.<sup>197</sup>

Latin American states can use the obligations of accessibility, affordability, and quality as important benchmarks for the fulfillment of the right to water, food, and health in an era of climate change and fluctuations.

*B. Universal and Regional Human Rights Mechanisms:  
Discussion, Documentation, and Resolution of Climate  
Change Issues and Individual Claims*

The author considers that one of the strengths of international human rights law is the mechanisms and systems that have been created to monitor and advance the protection of human rights. In Latin America, the Inter-American System of Human Rights is particularly relevant in this regard and can be an important forum to discuss and review issues concerning climate change.<sup>198</sup>

The Inter-American System of Human Rights is well-known in Latin America and has been an important reference to state and non-state actors in the transitions to democratic regimes.<sup>199</sup> The system is composed of two main organs—the Inter-American Commission on Human Rights and the Inter-American Court—created under the ru-

194. *Report on the Right to Water*, *supra* note 81, ¶ 5.

195. *Id.* ¶ 7.

196. WORLD BANK GROUP, *supra* note 1, at 5.

197. G.A. Res. 70/1, at 14, 18–19, Transforming Our World: The 2030 Agenda for Sustainable Development (Sept. 25, 2015) (Sustainable Development Goals 6, 6.1–6.b).

198. See, e.g., IACHR Hearing, *Human Rights and Global Warming*, COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS (Mar. 1, 2007), <http://www.cidh.oas.org/Audiencias/127/Global%20warming%20and%20human%20rights.mp3>; IACHR, *supra* note 46; IACHR, *supra* note 48.

199. See *The Inter-American Human Rights System: Changing Times, Ongoing Challenges*, DUE PROCESS L. FOUND., 175–80 (Aug. 25, 2016), <http://www.dplf.org/en/resources/inter-american-human-rights-system-changing-times-ongoing-challenges>.

bric of the Organization of American States.<sup>200</sup> It has been created within the framework of the Organization of American States, which includes thirty-five Member States, including Latin America, the Caribbean, the United States, and Canada.<sup>201</sup> The Inter-American Commission is a quasi-judicial body with competency to review individual case petitions alleging human rights violations under a range of regional instruments and treaties, and urgent measures in cases of urgency, gravity, and irreparable harm.<sup>202</sup> It can also convoke hearings on issues of human rights relevant in the Western hemisphere, conduct on-site visits, and produce country reports.<sup>203</sup> It can furthermore adopt thematic reports on priority issues in a diversity of human rights areas.<sup>204</sup>

The Inter-American system has distinguished itself for addressing important human rights issues during testing times in Latin America, including repressive regimes, political instability, and transitional justice.<sup>205</sup> The system has adopted a broad range of statements concerning amnesty laws, impunity, forced disappearances, torture, and massacres.<sup>206</sup> The system has also been actively addressing contemporary problems in Latin America such as the strength of democratic institutions, corruption, forms of violence, discrimination, weak administration of justice systems, and the challenges faced by migrants and asylum seekers.<sup>207</sup> The system has developed well-known lines of jurisprudence concerning: the duty act with due diligence; the factors which make access to justice prompt, adequate, and effective; the

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200. American Convention, *supra* note 95, arts. 33–51; RULES OF PROCEDURE OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, arts. 23–50, 53–70 (2013) [hereinafter IACHR Rules of Procedure]; RULES OF PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS, arts. 11–75 [hereinafter IA Court Rules of Procedure].

201. For more information on the functioning of the Organization of American States, see *Who We Are*, ORG. OF AM. STATES, [http://www.oas.org/en/about/who\\_we\\_are.asp](http://www.oas.org/en/about/who_we_are.asp) (last visited Mar. 11, 2019).

202. American Convention on Human Rights, *supra* note 95, arts. 33–51; IACHR Rules of Procedure, *supra* note 200, arts. 23–50, 53–70 (2013).

203. See, IACHR, *supra* note 200, arts. 53–57; 60–70.

204. For examples of regional thematic reports published by the IACHR, see <http://www.oas.org/en/iachr/reports/thematic.asp>.

205. See Pinto, *supra* note 20, at 35–38.

206. See generally IACHR, *Report on the Situation of Human Rights in Argentina*, OEA/Ser.L/V/II/49, doc. 19 (Apr. 11, 1980); IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/II.106, doc. 59 rev. (June 2, 2000); see also *La Cantuta v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 162 (Nov. 29, 2006); *Barrios Altos v. Peru*, Merits, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 75 (Mar. 14, 2001); Cases 10.147, 10.181, 10.240, 10.262, 10.309 & 10.311 (Argentina), Inter-Am. Comm’n H.R., Report No. 28/92, OEA/Ser.L/V/II.83, doc. 14 (Oct. 2, 1992).

207. See HURST HANNUM, S. JAMES ANAYA, DINAH L. SHELTON & ROSA CELORIO, *supra* note 78, ch. 10, 860–953; Pinto, *supra* note 20, at 34–38.



situation of groups in the population who are at risk or could be considered to be in a vulnerable position; and the circumstances and contexts in which women and girls face human rights violations.<sup>208</sup> These legal standards have been developed by applying the main regional instruments of the Inter-American system—the American Convention and the American Declaration—as well as those specialized.<sup>209</sup>

The Inter-American system has already started offering signs that it may have a larger role in the future development of legal standards concerning climate change and the environment.<sup>210</sup> For example, the Inter-American system expressed its concern regarding the effects of climate change on human rights in December 2, 2015.<sup>211</sup> In a press release, the Commission referred to several climate change effects on human rights, including deaths, injuries, and the displacement of individuals and communities because of disasters and events such as tropical cyclones, tornadoes, heat waves, and droughts.<sup>212</sup> The Commission addresses how climate change negatively impacts the availability of water resources, aggravates the problem of access to healthy drinking water, and jeopardizes food security.<sup>213</sup> The Commission additionally refers to how climate change has an enhanced effect on those who are already more vulnerable, including indigenous peoples, women, children, rural communities, the elderly, and people living in poverty.<sup>214</sup> The Commission in sum calls on states to comply with their human rights obligation of ensuring the environment does not suffer from further damage related to climate change.<sup>215</sup>

The Commission has also referred to the effects of climate change in other more recent press releases.<sup>216</sup> For example, in a groundbreaking press release on the situation of Puerto Rico and the

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208. See, e.g., *Velásquez Rodríguez v. Honduras*, Inter-Am. Ct. H.R., *supra* note 109, ¶ 175 (July 29, 1988); *González et al. (“Cotton Field”) v. Mexico*, Inter-Am. Ct. H.R., *supra* note 110, ¶¶ 242–258; *I.V. v. Bolivia*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 32, ¶¶ 118–270 (Nov. 30, 2016); *Gonzales Lluy et al. v. Ecuador*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 298, ¶¶ 64–154 (Sept. 1, 2015).

209. *Id.*

210. See, e.g., IACHR, *supra* note 88.

211. *ACHR Expresses Concern Regarding Effects of Climate Change on Human Rights*, *supra* note 46.

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*

216. IACHR, *supra* note 88.

aftermath of Hurricane Maria, the Commission called the United States to adopt programs focused on mitigation, adaptation, and resilience to support communities in the reduction of the risks and damage associated with climate change and natural disasters.<sup>217</sup>

There has been much discussed and reported about a petition presented before the Inter-American Commission alleging that the United States had committed a number of human rights violations against the Inuit by failing to act to limit the country's greenhouse gas emissions.<sup>218</sup> The petition was submitted in December 2005 by the Inuit Circumpolar Council ("ICC"), which encompasses 150,000 people in Northern Alaska, Canada, Greenland, and Russia and the non-profits Earth justice and Center for International Environmental Law.<sup>219</sup> The petitioners claimed that climate change in the Arctic region had a disproportionate effect on the Inuit and posed a threat to their lives, health, land rights, personal property, and livelihoods.<sup>220</sup> The United States is one of the world's largest greenhouse gas producers.<sup>221</sup> The petition was not opened for processing by the Inter-American Commission, considering it did not raise actionable claims under the American Declaration.<sup>222</sup>

Afterwards, the Inter-American Commission on Human Rights did hold a hearing to discuss human global warming and human rights on March 1, 2007.<sup>223</sup> The hearing focused on the effect of global warming on the rights of indigenous peoples to their ancestral lands and natural resources, and the rights to life, physical integrity, and security.<sup>224</sup> The petitioners also referred to the scope of state obligations to address global warming, including the state responsibility to address greenhouse gas emissions caused by the government and private actors.<sup>225</sup> This hearing has been followed by a number of

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217. *Id.*

218. See generally Sheila Watt-Cloutier et al., *Petition to the Inter American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Act and Omissions of the United States*, COLUMBIA (Dec. 7, 2005), [http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2005/20051208\\_na\\_petition.pdf](http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2005/20051208_na_petition.pdf) [hereinafter "Inuit IACHR Petition"].

219. *Id.* at 1-9.

220. *Id.* at 13-67, 70-111.

221. *Id.* at 68-69.

222. For more discussion of the process followed by the Inuit Petition before the IACHR, see Christopher Campbell-Durufle & Sumudu Anopama Atapattu, *The Inter-American Court's Environment and Human Rights Advisory Opinion: Implications for International Climate Law*, 8 CLIMATE L. 321, 324-28 (2018).

223. IACHR Hearing, *supra* note 198.

224. *Id.*

225. *Id.*

hearings at the Inter-American Commission addressing a range of issues related to climate change, access to water, and the environment.<sup>226</sup> The Commission has also convoked a number of hearings related to the alarming situation of human rights defenders advancing environmental causes and opposing extractive industries.<sup>227</sup>

It is important to note that the Inuit petition was presented in December 2005, fourteen years ago.<sup>228</sup> The Inuit petition predates the adoption and ratification of the Paris Climate Change agreement.<sup>229</sup> It also predates the landmark advisory opinion of the Inter-American Court of Human Rights on the environment and human rights.<sup>230</sup> The IACHR now also has a specialized and full-time Rapporteurship solely devoted to economic, social, cultural and environmental rights.<sup>231</sup> In the history of the Commission, having Rapporteurships has propelled the development of groundbreaking lines of jurisprudence.<sup>232</sup> There is also in the present a greater understanding and documentation of the extent and scope of the features of climate change.<sup>233</sup> All these factors will likely be taken into consideration by the Inter-American Commission in its future review of individual case petitions concerning climate change.

The author also considers that the Inter-American system has a history of innovation and boldness in its jurisprudence that could likely be replicated in the area of the environment and climate

226. See, e.g., IACHR Hearing, *Climate Change, Access to Water and Human Rights*, 141<sup>o</sup> Period of Sessions, (Mar. 28, 2011), <http://www.cidh.org/audiencias/141/15.mp3>; *The Right to Property and the Right to a Healthy Environment of Indigenous Peoples in Bocas del Toro, Panama*, 154<sup>o</sup> Period of Sessions (Mar. 20, 2015), <https://www.youtube.com/watch?v=CBJDVEwhOhY>.

227. IACHR Hearing, *Situation of Environmental Rights Defenders in the Americas*, 161<sup>o</sup> Period of Sessions (Mar. 22, 2017), <https://www.youtube.com/watch?v=-u9KOAPI-k0>; *Human Rights Situation of Defenders of the Environment in the Context of Extractive Industries in America*, 156<sup>o</sup> Period of Sessions (Oct. 19, 2015), [https://www.youtube.com/watch?v=k5qQwQj\\_R4E](https://www.youtube.com/watch?v=k5qQwQj_R4E).

228. Inuit IACHR Petition, *supra* note 218, at 1-8.

229. See Paris Agreement, *supra* note 8, art. 29.

230. Advisory Opinion on the Environment and Human Rights, *supra* note 68, ¶¶ 1-12, 244.

231. IACHR, *supra* note 40.

232. See, e.g., IACHR, *Legal Standards Related to Gender Equality in Women's Rights in the Inter-American Human Rights System: Development and Application*, OEA/Ser.L/V/II.143, doc. 60 (Nov. 3, 2011), <http://www.oas.org/en/iachr/reports/pdfs/LegalStandards.pdf>.

233. Brandon Miller, *Unparalleled Warmth is Changing the Arctic and Affecting Weather in US, Europe*, CNN (Dec. 11, 2018), <https://www.cnn.com/2018/12/11/world/climate-change-arctic-report-card-2018-wxc/index.html>.

change.<sup>234</sup> Its rulings in given realms is evidence of this tendency, creating new standards in issues such as due diligence; consultation; access to information; participation; right to health; right to water; vulnerable groups; and a gender perspective.<sup>235</sup> Given this legal precedent, the Commission and the Court can make very significant contributions to substantive and procedural rights in the area of climate change. The inter-American system organs have already taken the lead internationally in developing legal standards concerning the rights to consultation and participation of persons and human rights defenders in processes concerning the environment, which will be discussed more in the following sections.

*C. Climate Change and its Impact on Vulnerable Groups:  
Indigenous Peoples and Beyond*

Latin America is one of the most diverse regions in the world.<sup>236</sup> It is composed of many races, ethnicities, and languages.<sup>237</sup> It has heavy presence of indigenous peoples throughout South America, Central America, and the Andean Region.<sup>238</sup> Countries such as Colombia and Brazil have significant afro-descendent populations.<sup>239</sup>

Indigenous peoples are one of the main groups affected by climate change and environmental damage in Latin America.<sup>240</sup> Environmental degradation often threatens their lands, natural resources, and sources of food and water, among other pernicious effects.<sup>241</sup>

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234. See Pinto, *supra* note 20.

235. See, e.g., González et al. (“Cotton Field”) v. Mexico, Inter-Am. Ct. H.R., *supra* note 110, ¶¶ 242–258; I.V. v. Bolivia, Inter-Am. Ct. H.R., *supra* note 208, ¶¶ 118–270; Gonzales Lluy et al. v. Ecuador, Inter-Am. Ct. H.R., *supra* note 208, ¶¶ 64–154 (Sept. 1, 2015); Xák-mok Kásek Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 214, ¶¶ 183–234 (Aug. 24, 2010).

236. See UNDP, *Latin America and the Caribbean: Multidimensional Progress: Well-Being Beyond Income*, 164–171 (2016).

237. Judith A Morrison, *Behind the Numbers: Race and Ethnicity in Latin America*, AMERICAS QUARTERLY (2015), <https://www.americasquarterly.org/content/behind-numbers-race-and-ethnicity-latin-america>; Deborah Yashar, *Does Race Matter in Latin America?*, FOREIGN AFFAIRS, March/April 15, <https://www.foreignaffairs.com/articles/south-america/2015-02-16/does-race-matter-latin-america>.

238. INT’L WORK GROUP FOR INDIGENOUS AFFAIRS, INDIGENOUS WORLD POPULATION 2016, at 206–15 (Diana Vinding & Cécilie Mikkelsen eds., 2016).

239. Minority Rights Group, *Brazil: Afro-Brazilians, Profile*, MINORITY RIGHTS, <https://minorityrights.org/minorities/afro-brazilians/> (last viewed Apr. 12, 2019); *Colombia: Afro-Colombians, Profile*, MINORITY RIGHTS, <https://minorityrights.org/minorities/afro-colombians/> (last viewed Apr. 12, 2019).

240. WORLD BANK GROUP, INDIGENOUS PEOPLES AND CLIMATE CHANGE IN LATIN AMERICA AND THE CARIBBEAN 97–117 (2010).

241. *Id.*; see also Kaliña and Lokono Peoples v. Suriname, Inter-Am. Ct. H.R., *supra* note 59, ¶¶ 161–230.

Very solid instruments have been developed universally and regionally to advance the human rights of indigenous peoples, with important pertinence to addressing issues surrounding climate change.<sup>242</sup> There is a well-developed line of jurisprudence related to indigenous peoples which provides an important guide for states in Latin America on how to address important procedural and substantive rights.<sup>243</sup>

Most of what we understand today as the rights of indigenous peoples is based on the principle of self-determination.<sup>244</sup> It has also been based greatly on this understanding of the connection between indigenous peoples, nature, and their territories; a link to their physical and spiritual lives.<sup>245</sup> Therefore, climate change and its adverse effects threaten their physical subsistence, but also their world view and spiritual integrity and survival.

From that principle, the inter-American system has issued key case decisions and reports regarding the right to consultation in the context of the implementation of development, investment, and tourism projects which can be paramount and useful in the context of climate change.<sup>246</sup> There are a number of principles advanced in these rulings and statements.<sup>247</sup> Consultations must be undertaken before the implementation of a project.<sup>248</sup> They should be respectful of the leadership and decision-making structures of indigenous peoples.<sup>249</sup> They should be undertaken in good faith, including an adequate participation of authorities and other community leaders in the

242. See, e.g., United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007); Indigenous and Tribal Peoples Convention, June 7, 1989, 1650 U.N.T.S. 383; see also Org. of Am. States, AG/RES. 2888 (XLVI-O/16), *American Declaration on the Rights of Indigenous Peoples* (Jun. 15, 2016).

243. See, e.g., Kichwa Indigenous People of Sarayaku v. Ecuador, Inter-Am. Ct. H.R., *supra* note 152, ¶¶ 145–232; Saramaka People v. Suriname, Inter-Am. Ct. H.R., *supra* note 59, ¶¶ 133–158.

244. See, e.g., Maya Indigenous Community of the Toledo District v. Belize, Case 12.053, Inter-Am. Comm'n H.R., Report No. 40/04, OEA/Ser.L/V/II.122, doc. 5 rev. ¶¶ 45–156 (2004).

245. Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 79, ¶ 149 (Aug. 31, 2001).

246. See, e.g., Kichwa Indigenous People of Sarayaku v. Ecuador, Inter-Am. Ct. H.R., *supra* note 152, ¶¶ 159–184; Saramaka People v. Suriname, Inter-Am. Ct. H.R., *supra* note 59, ¶¶ 133–158; see also *Report on Extractive Industries*, *supra* note 134, ¶¶ 85–106; *Rights of Indigenous and Tribal Peoples to Their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*, *supra* note 155, ¶¶ 273–334.

247. *Id.*

248. Kichwa Indigenous People of Sarayaku v. Ecuador, Inter-Am. Ct. H.R., *supra* note 152, ¶¶ 159–184.

249. Saramaka People v. Suriname, Inter-Am. Ct. H.R., *supra* note 59, ¶¶ 133–137.

negotiations.<sup>250</sup> Adequate information should be available in all phases of project negotiations and implementations. Indigenous peoples should be able to consent or not consent when large-scale projects are executed.<sup>251</sup> Environmental impact assessments should be undertaken and supervised by governments. Governments have an obligation to supervise and prevent harm, especially foreseeable and preventable harm by corporations and its own government-led initiatives.<sup>252</sup>

Based on the jurisprudence advanced by the Inter-American Court and Commission, it can be interpreted that the right of indigenous peoples to have a dignified life can include a right to a healthy environment.<sup>253</sup> This is vital to protect the integrity of their connection to their lands and nature.<sup>254</sup> This is also key for their health, access to water and food, and to basic forms of livelihood.<sup>255</sup> Many representatives from indigenous communities and peoples are working as human rights defenders and advancing environmental-related causes.<sup>256</sup> Numerous statements have been issued by different international bodies on the need to enhance the protection of their lives and integrity while performing human rights defense work.<sup>257</sup>

The legal developments concerning indigenous peoples are part of a tendency from regional protection systems and the universal system to recognize the situation of vulnerability that certain persons and groups face.<sup>258</sup> This increased risk can be based on their race, ethnici-

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250. Kichwa Indigenous People of Sarayaku v. Ecuador, Inter-Am. Ct. H.R., *supra* note 152, ¶¶ 185-200.

251. Saramaka People v. Suriname, Inter-Am. Ct. H.R., *supra* note 59, ¶¶ 133-137.

252. *See, e.g.*, Kichwa Indigenous People of Sarayaku v. Ecuador, Inter-Am. Ct. H.R., *supra* note 152, ¶¶ 159-176; 204-207; IACHR, *Report on Extractive Industries*, *supra* note 134, ¶¶ 98-105.

253. *See* Kaliña and Lokono Peoples v. Suriname, *supra* note 59, ¶¶ 161-230; Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 214, ¶¶ 183-234 (Aug. 24, 2010); Sawhoyamaya Indigenous Community v. Paraguay, *supra* note 59, ¶¶ 113-194; Yakye Axa Indigenous Community v. Paraguay, *supra* note 59, ¶¶ 120-178.

254. *Id.*

255. *Id.*

256. *See Global Analysis 2018*, FRONT LINE DEFENDERS, 6-9; 16-18 (Jan. 7, 2019), <https://www.frontlinedefenders.org/en/resource-publication/global-analysis-2018>.

257. *See, e.g.*, IACHR, *IACHR Condemns Murders of Human Rights Defenders Linked to Environmental and Land Rights and to Rural Laborers in Brazil*, ORG. OF AM. STATES (July 27, 2018), [https://www.oas.org/en/iachr/media\\_center/PReleases/2018/168.asp](https://www.oas.org/en/iachr/media_center/PReleases/2018/168.asp).

258. *See, e.g.*, González et al. (Cotton Field) v. Mexico, *supra* note 110, ¶¶ 242-258; I.V. v. Bolivia, *supra* note 208, ¶¶ 118-270; Gonzales Lluay et al. v. Ecuador, *supra* note 208, ¶¶ 64-154; Xákmok Kásek Indigenous Community v. Paraguay, *supra* note 253, ¶¶ 183-234.

ty, language, sex, gender, age, situation of disability, and income status, among other factors.<sup>259</sup> The Inter-American Commission and the Court have also begun incorporating important approaches in their discrimination jurisprudence, which could be very useful to apply in cases of environmental degradation and climate change.<sup>260</sup> These include a tendency to refer and give content to concepts such as “vulnerability,” “intersectionality,” and “stereotypes.”<sup>261</sup> The OAS also has a range of new conventions addressing different components of the overarching obligation not to discriminate which can be pertinent to the problem of climate change and the development of legislation, policies, and programs.<sup>262</sup> The approach pursued by states should be guided by the goal of enhancing the participation and leadership of persons and groups highly affected by climate change in the development of legislation, policy, and plans.

#### *D. Gender Perspective and Climate Change*

Strategies from Latin American countries to address climate change should take into consideration all of the gender equality legal standards developed by the regional and universal system of human rights. This is key as women compose more than half of the population in the Americas.

It is well accepted internationally at this stage that women have and still suffer forms of discrimination in all social sectors and the family.<sup>263</sup> Several well-known international organizations have also

259. See, e.g., Gonzales Lluy et al. v. Ecuador, *supra* note 208, ¶¶ 64-154; 290-291; Expelled Dominicans and Haitians v. Dominican Republic, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 282 at 139 (Aug. 28, 2014); González et al. (Cotton Field) v. Mexico, Inter-Am. Ct. H.R., *supra* note 110, ¶¶ 249-286; Jessica Lenahan (Gonzales) et al. v. United States, Case 12.626, Inter-Am. Comm’n H.R., Report No. 0818180/11, OEA/Ser.L/V/II. Doc. At 32 ¶¶ 101-170 (2011); Girls Yean and Bosico v. Dominican Republic, Preliminary Objections, Merits, Reparations and Costs, Inter-Am Ct. H.R., (Ser. C.) No. 130 ¶¶ 175-187 (2005).

260. *Id.*

261. Celorio, *supra* note 71.

262. Inter-American Convention against all Forms of Discrimination and Intolerance, June 5, 2013 [Hereinafter “OAS Convention on Discrimination and Intolerance”]; Inter-American Convention Against Racism, Racial Discrimination, and Related Forms of Intolerance, June 5, 2013 [Hereinafter “OAS Racial Intolerance Convention”].

263. For a general global overview, see Committee on the Elimination of Discrimination Against Women, General Recommendation No. 28, U.N. Doc. CEDAW/C/GC/28 (Dec. 16, 2010); Committee on the Elimination of Discrimination Against Women, General Recommendation No. 35, U.N. Doc. CEDAW/C/GC/35 (July 26, 2017); see also IACHR, *International Day on the Elimination of Violence Against Women - 25 November 2018*, ORG. OF AM. STATES (Nov. 24, 2018), [http://www.oas.org/en/iachr/media\\_center/PReleases/2018/250.asp](http://www.oas.org/en/iachr/media_center/PReleases/2018/250.asp).

documented how one in three women around the world are and will be victims of gender-based violence and Latin America is no exception.<sup>264</sup> Women are also highly vulnerable to poverty and to live in rural areas.<sup>265</sup> Extreme weather events and natural disasters exacerbate and tap into this history of discrimination and gender-based violence, making women more vulnerable to the adverse effects of climate change.<sup>266</sup> There is already an international recognition that gender equality and a gender perspective are key in climate change efforts.<sup>267</sup> It is important however that the international community and bodies define in more detail what a gender perspective is to climate change efforts.

For the author, a gender perspective includes several factors. One is considering the historical discrimination that women have faced and still suffer socially. Another is taking into consideration the social drivers of this discrimination, including stereotypes and general tolerance of disadvantaged treatment. The third is understanding how intimately connected the problems of gender-based violence and discrimination are, and how one fuels the other. The fourth is understanding how state institutional failures and a culture of silence promotes the recurrence of gender-based violence and discrimination. Fifth, a gender perspective also comprehends understanding the specific social burdens and inequalities women are subjected to and the ongoing challenges to develop their life plans and to access decision-making roles in the family, education, employment, health, and economic development of their countries. Sixth, it is important to understand that the experience of every woman is different and that important variables can aggravate the gender-based discrimination and violence experience women can be exposed to, including race, ethnicity, age, and income.

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264. WORLD HEALTH ORG. [WHO], GLOBAL AND REGIONAL ESTIMATES OF VIOLENCE AGAINST WOMEN: PREVALENCE AND HEALTH EFFECTS OF INTIMATE PARTNER VIOLENCE AND NON-PARTNER SEXUAL VIOLENCE (2013), <https://www.who.int/reproductivehealth/publications/violence/9789241564625/en/>.

265. *Statement for International Rural Women Day*, U.N. WOMEN (Oct. 11, 2018), <http://www.unwomen.org/en/news/stories/2018/10/statement-un-women-international-day-of-rural-women>.

266. GEO. INST. FOR WOMEN, PEACE, AND SEC., *Women and Climate Change, Impact and Agency in Human Rights, Security, and Economic Development*, 7-44 (2015); *Climate Change 'Impacts Women More than Men'*, BBC NEWS (Mar. 8, 2018), <https://www.bbc.com/news/science-environment-43294221>.

267. See Paris Agreement, *supra* note 8, pmbl.



## 2019]CLIMATE CHANGE, LATIN AMER. &amp; HUMAN RIGHTS RESILIENCE 135

Problems such as gender-based violence and discrimination against women tend to worsen in times of crisis and unrest.<sup>268</sup> Climate-change related events such as extreme natural disasters and shortages can be particularly challenging for women due to this pre-existing history of discrimination, violence, inequality, and social tolerance of disadvantage.<sup>269</sup> They can also pose formidable barriers for women to participate in key decisions concerning adaptation, mitigation, and recovery efforts related to the adverse effects of climate change.<sup>270</sup>

There is a great deal that has already been stated by the inter-American human rights system on violence and discrimination against women that is very applicable to defining the content of a gender perspective and gender-sensitive approach to climate change.<sup>271</sup> One of the virtues of the inter-American system is also the range of regional and specialized treaties that it has available.<sup>272</sup> Every day the definition of violence against women under the leading regional treaty of the Inter-American system is expanded.<sup>273</sup> The author hopes that bodies such as the Inter-American Commission and Court begin processing individual case petitions related to women who experience harm, discrimination, and gender-based violence in contexts affected by environmental degradation and climate change effects and develop important legal standards in this realm.

According to contemporary standards related to gender-based violence and discrimination, states have a comprehensive set of obligations mandating the organization of the entire structure to act with due diligence to prevent and respond to these problems.<sup>274</sup> Due diligence mandates preventing foreseeable harm and granting reparations

268. INT'L FED'N OF THE RED CROSS AND RED CRESCENT SOC'YS., UNSEEN, UNHEARD: GENDER-BASED VIOLENCE IN DISASTERS: GLOBAL STUDY 7-9, 20-25, 30, 35-36, 41-42 (2015).

269. GEO. INST. FOR WOMEN, PEACE, AND SEC., WOMEN AND CLIMATE CHANGE, IMPACT AND AGENCY IN HUMAN RIGHTS, SECURITY, AND ECONOMIC DEVELOPMENT 7-44 (2015).

270. Committee on the Elimination of Discrimination Against Women, General Recommendation No. 37, U.N. Doc. CEDAW/C/GC/37, ¶¶ 1-9; 32-39 (Mar. 13, 2018).

271. See, e.g., IACHR, *supra* note 232.

272. The OAS has adopted a range of Conventions on violence against women, discrimination, disabilities, and older persons. For more information, see *Basic Documents in the Inter-American System*, ORG. OF AM. STATES, [http://www.oas.org/en/iachr/mandate/basic\\_documents.asp](http://www.oas.org/en/iachr/mandate/basic_documents.asp) (last visited Mar. 9, 2019).

273. See Convention of Belém do Pará, *supra* note 133, arts. 1-2.

274. See generally González et al. (Cotton Field) v. Mexico, *supra* note 110; Jessica Lenahan (Gonzales) et al., Case 12.626, Inter-Am. Comm'n H.R., Report No. 81/11, OEA/Ser.L/V/II., doc. 69 (2011).

when it occurs.<sup>275</sup> It also entails from states the adoption of legislation, policies, programs, and services.<sup>276</sup> The responsibilities of states also permeate the supervision and regulation of private and non-state actor activity.<sup>277</sup> States are also obligated to consider the particular risk to human rights violations that some women may experience due to their race, ethnic background, age, and income status.<sup>278</sup>

The CEDAW Committee has made a very important contribution to international understanding of what a gender-specific approach to climate change should look like.<sup>279</sup> The CEDAW Committee on its General Recommendation 37 indicated how climate change and its adverse effects have an enhanced effect on pre-existing gender inequalities and aggravate forms of discrimination faced by women living in poverty, indigenous women, women belonging to ethnic, racial, religious and sexual minority groups, women with disabilities, refugee and asylum-seeking women; those internally displaced, stateless, and migrants, unmarried women, and adolescents and older women.<sup>280</sup> The CEDAW Committee also expressed how gender inequalities generally limit the control and access women and girls have to resources such as food, water, agricultural input, land, credit, energy, technology, education, health services, adequate housing, social protection and employment.<sup>281</sup> This in turn exposes them to disaster-induced risks and changes in climatic conditions.<sup>282</sup> The CEDAW Committee concedes that climate mitigation and adaptation programs in sectors such as agricultural production, sustainable urban development, and clean energy can provide jobs for women, but failure to address the structural barriers women face in general to enjoy their rights can increase gender-based inequalities and intersecting forms of discrimination.<sup>283</sup>

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275. González et al. (“Cotton Field”) v. Mexico, Inter-Am. Ct. H.R., *supra* note 110, ¶¶ 249-286; Jessica Lenahan (Gonzales) et al., Case 12.626, Inter-Am. Comm’n H.R., *supra* note 259, ¶¶ 101-170.

276. Committee on the Elimination of Discrimination Against Women, General Recommendation No. 35, U.N. Doc. CEDAW/C/GC/35 ¶¶ 21-26 (July 26, 2017).

277. *Id.* ¶ 24; IACHR, *Report on Extractive Industries*, *supra* note 134, ¶¶ 46-54; 98-105.

278. I.V. v. Bolivia, *supra* note 208, ¶¶ 118-270; Gonzales Lluy et al. v. Ecuador, Inter-Am. Ct. H.R., *supra* note 208, ¶¶ 64-154; 290-291.

279. Committee on the Elimination of Discrimination Against Women, *supra* note 270.

280. *Id.* ¶ 2.

281. *Id.* ¶ 3.

282. *Id.*

283. *Id.*

According to the CEDAW Committee, state interventions designed to curb fossil fuel use, greenhouse gas emissions, and the harmful environmental effects of extractive industries, should incorporate a human rights and gender approach.<sup>284</sup> This includes respecting and advancing the principles of equality, non-discrimination, participation, empowerment, access to justice, transparency, and the rule of law.<sup>285</sup>

Very prominent in both the work of the Inter-American system and the universal mechanisms are a range of principles mandating the full participation of women in consultation processes and adequate access to information to exercise their human rights.<sup>286</sup> There should also be government spaces open for women to participate and have a real incidence in policy-making, and this extends to climate-related concerns. Issues such as access to health services, water, and food all have an important link to the sexual and reproductive rights of women, and it is important for governments to take this into account in their climate change actions and ambition. Women should be active participants in climate policy negotiations at the international and national levels.

It is virtually impossible to address the negative impacts of climate change without women fully incorporated in initiatives geared towards adaptation, mitigation, recovery, and response.

#### IV. CONCLUSION

Challenging and demanding human rights problems require coherent strategies from states. Latin America is part of the global movement to address climate change and has been a propeller of legislation, action plans, and energy-related activities that are moving the region closer to the goals of the Paris Agreement. States in Latin America have at their disposal an important tool to advance their climate ambition goals in accepted international human rights law obligations, principles, and standards. Latin American governments are already active participants in multi-lateral institutions, which have

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284. Committee on the Elimination of Discrimination Against Women, *supra* note 270, ¶ 14.

285. *Id.* ¶¶ 14, 26.

286. *See, e.g.*, Committee on the Elimination of Discrimination Against Women, 16th Sess., General Recommendation No. 23 at 260, U.N. Doc. HRI/GEN/1/Rev.6 (1997); *The Road to Substantive Democracy: Women's Political Participation in the Americas*, *supra* note 172, ¶¶ 20–27.

proven useful historically to discuss priority human rights issues with a range of state and non-state actors, to define common strategies, and to find solutions.

Latin America should also continue engaging in international cooperation efforts, despite the U.S. withdrawal of the Paris Agreement. Diplomatic channels beyond the Paris Agreement can also prove useful and complementary to find a common agenda with all states at the global level. The Paris Agreement and Rulebook provide a basis for this dialogue, sharing of experiences, and the identification of forms of support.

In any future action related to climate change, it is key that Latin American governments consider those most impacted by its adverse effects. An ethno-racial and gender perspective to finding ways to address climate change is paramount. Understanding the specific effects of these problems on indigenous peoples, women, children, older persons, those living in poverty, and other disadvantaged groups is an important piece of the puzzle. Additionally, they should be included in the design of climate policy at the national level and in consultation processes. Human rights defenders are also key actors to advance climate-related causes. Their lives and integrity should be urgently legitimized and protected by Latin American states.

The promise of Paris is still latent and necessary, and Latin American states can be leaders in advancing climate action, ambition, and innovation. In the 70<sup>th</sup> Anniversary of both the Universal and American Declarations of Human Rights, it is essential that the principles of dignified life, integrity, equality, and non-discrimination guide Latin American states to the next frontier of these efforts.