

**Supremo Tribunal Federal**  
**Fundo Clima Case ADPF 708**  
**60 DISTRITO FEDERAL**

**AÇÃO DIRETA DE INCONSTITUCIONALIDADE POR OMISSÃO**

RELATOR: MIN. LUIS ROBERTO BARROSO  
REQTE.(S): PARTIDO SOCIALISTA BRASILEIRO - PSB  
ADV.(A/S): RAFAEL DE ALENCAR ARARIPE CARNEIRO  
REQTE.(S): PARTIDO SOCIALISMO E LIBERDADE (P-SOL)  
ADV.(A/S): ANDRE BRANDAO HENRIQUES MAIMONI  
REQTE.(S): PARTIDO DOS TRABALHADORES  
ADV.(A/S): EUGENIO JOSE GUILHERME DE ARAGAO  
REQTE.(S): REDE SUSTENTABILIDADE  
ADV.(A/S): RAFAEL ECHEVERRIA LOPES

INTDO.(A/S): UNIÃO  
PROC.(A/S)(ES): ADVOGADO-GERAL DA UNIÃO

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The Right to a Healthy Environment in Brazil:  
Amicus curiae brief from  
the United Nations Special Rapporteur on Human Rights and the Environment

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## I. Statement of Interest

1. I submit this amicus curiae brief in my capacity as the United Nations Special Rapporteur on issues relating to the enjoyment of a safe, clean, healthy and sustainable environment, appointed by the Human Rights Council to begin serving on 1 August 2018, pursuant to HRC Resolution 37/8.<sup>1</sup>

2. I am also a professor at the University of British Columbia in Canada, jointly appointed in the Institute for Resources, Environment and Sustainability and the School of Public Policy and Global Affairs. I have worked as an environmental lawyer for 25+ years, served as an advisor to many governments on environmental policy, constitutions and human rights, and published nine books and more than 100 articles, reports, and book chapters. I have extensive expertise in comparative constitutional law, including books (e.g. *The Environmental Rights Revolution*, 2012), articles (e.g. *The Constitutional Right to a Healthy Environment*, 2012), and book chapters (e.g. *Catalyst for Change: Evaluating Forty Years of Experience in Implementing the Right to a Healthy Environment*, 2019).

3. In brief, my mandate as Special Rapporteur is to:

- Study human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment;
- Promote best practices relating to the use of human rights in environmental policy making;
- Identify challenges and obstacles to the full realisation of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; and
- Provide reports annually to both the UN Human Rights Council and the UN General Assembly on the results of the foregoing work.

4. In October 2019, I presented a detailed report to the Human Rights Council on the impacts of climate change on human rights and the associated State obligations, with a particular focus on the right to a safe climate as a component of the right to a healthy environment.<sup>2</sup> The report describes the negative impact of climate change on the enjoyment of many human rights, including the right to life, the right to health, the rights of the child and the right to a healthy environment.

5. In my work as Special Rapporteur, I have heard powerful first-hand testimony from those who are already experiencing the effects of climate change, including children in Fiji fearful of the changing oceans, Indigenous people in Fiji forced to relocate because of rising sea levels and saltwater contamination of their food and water, and Indigenous people in Norway whose livelihoods and culture based on reindeer herding are jeopardized by shifting weather patterns.<sup>3</sup>

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<sup>1</sup> Authorization for the positions expressed by the UN Special Rapporteur, in full accordance with his independence, was neither sought nor given by the United Nations, including the Human Rights Council or the Office of the High Commissioner for Human Rights, or any of the officials associated with those bodies. This third-party intervention is made by the United Nations Special Rapporteur on a voluntary basis without prejudice to, and should not be considered as a waiver, express or implied of the privileges and immunities of the United Nations, its officials and experts on missions, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations.

<sup>2</sup> David R. Boyd, 2019, *The Right to a Safe Climate*, Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, UN Doc. A/74/161.

<sup>3</sup> See A/HRC/43/53/Add.1 (Fiji); A/HRC/43/53/Add.2 (Norway).

6. I am participating in this Brazilian litigation because of its global importance. Brazil is one of the world's largest, most populous nations, and is the seventh highest emitter of greenhouse gases.<sup>4</sup> As well, Brazil is home to some of the most remarkable forests on Earth, from the Amazon to the Atlantic, and these forests are vital for human rights that depend on healthy biodiversity and a safe climate. Finally, Brazil's Constitution contains a clear and powerful articulation of the right to a healthy environment (Article 225). This case offers a valuable opportunity to clarify that a safe climate and healthy ecosystems are essential elements of the right to a healthy environment and therefore the Government of Brazil has extensive obligations to address climate change and prevent deforestation. These obligations are reinforced by international human rights law, international environmental law and comparative constitutional law.

## **II. The Global Climate and Nature Crises**

7. The world faces interconnected climate and nature crises, which are exacerbating each other and interfering with the enjoyment of a wide range of human rights. The current level of warming is unprecedented in the last ten thousand years, an interglacial period with a stable climate that coincided with, and indeed made possible, the rise of human civilization. Today's levels of carbon dioxide in the atmosphere last occurred three million years ago, during the Pliocene epoch before *Homo sapiens* evolved. Our species is in uncharted, dangerous waters.

8. The climate crisis is already causing severe effects on human lives and well-being, and therefore human rights. As the Intergovernmental Panel on Climate Change (IPCC) has described, the effects of the changing climate already include increased precipitation and flooding in some areas, and heat waves, drought and wildfires in others.<sup>5</sup> Sea level rise is accelerating, endangering small island states and low-lying coastal communities. Coral reefs are being severely damaged by warmer oceans and acidification. Glacier and snow melt threaten the water supply for billions of people.<sup>6</sup> Climate change undermines production of major crops, such as wheat and maize, threatening widespread hunger and famine.<sup>7</sup> Climate change is also one of the main drivers of loss of biological diversity and natural ecosystems, which make irreplaceable and invaluable contributions to the material, cultural and spiritual wellbeing of people worldwide.<sup>8</sup> Most dramatic is the increase in the severity of extreme weather events such as hurricanes, typhoons and monsoons, which have killed thousands of people and displaced millions more. According to the latest scientific evidence, "a clear fingerprint of human-induced climate change has been identified on many of these extreme events."<sup>9</sup>

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<sup>4</sup> See p. 7 in [http://www.observatoriodoclima.eco.br/wp-content/uploads/2019/11/OC\\_SEEG\\_Relatorio\\_2019.pdf](http://www.observatoriodoclima.eco.br/wp-content/uploads/2019/11/OC_SEEG_Relatorio_2019.pdf)  
See also World Resources Institute, 2020, Climate Watch, <https://www.climatewatchdata.org/ghg-emissions>

<sup>5</sup> IPCC, *Global Warming of 1.5°C. An IPCC Special Report* (2018), p. 53.

<sup>6</sup> World Meteorological Organization, 2020. United in Science 2020: A multi-organization high-level compilation of the latest climate science information. See [https://library.wmo.int/doc\\_num.php?explnum\\_id=10361](https://library.wmo.int/doc_num.php?explnum_id=10361)

<sup>7</sup> IPCC, p. 236; FAO et al., *The State of Food Security and Nutrition in the World 2018*, p. 39.

<sup>8</sup> Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), *Global Assessment Report on Biodiversity and Ecosystem Services: Summary for Policymakers* (2019), p. 5.

<sup>9</sup> World Meteorological Organization, 2020. United in Science 2020: A multi-organization high-level compilation of the latest climate science information. See [https://library.wmo.int/doc\\_num.php?explnum\\_id=10361](https://library.wmo.int/doc_num.php?explnum_id=10361)

9. The World Health Organization estimates that by 2030, the effects of climate change on nutrition will result in an additional 7.5 million children who are moderately or severely stunted, as well as approximately 100,000 additional deaths.<sup>10</sup> By 2040, almost 600 million children will live in regions with extremely limited water resources.<sup>11</sup> Extreme weather events pose unique threats to the health and well-being of young bodies and minds. Globally, over 500 million children live in extremely high-risk flood zones; 160 million live in high or extremely high drought severity zones; and 115 million are at high risk from tropical cyclones.<sup>12</sup> The United Nations Children’s Fund warns that “climate change will harm the poorest and most vulnerable children first, hardest and longest”.<sup>13</sup>

10. The average global temperature has already increased to 1.1°C above pre-industrial levels.<sup>14</sup> Even a seemingly modest increase in average global temperatures, to 1.5°C above pre-industrial levels, will substantially increase the number of people subjected to poverty, disasters, food insecurity, illness and death.<sup>15</sup> A larger increase in temperature, such as the current 3.0°C trajectory (assuming States fulfil existing pledges under the Paris Agreement on climate change), would worsen these adverse impacts.<sup>16</sup> The UN Environment Programme has determined that full implementation of the Nationally Determined Contributions<sup>17</sup> (NDCs) of States under the Paris Agreement, including Brazil, would lead to emission levels in 2030 that will likely cause a global average temperature increase of over 3.0°C.<sup>18</sup> Therefore, even if States meet their current commitments under their NDCs, they will not achieve the objective of the Paris Agreement to limit global warming to 1.5°C or at the very least to well below 2°C.

11. Globally, the primary contributors to climate change are the burning of fossil fuels, deforestation, and industrial agriculture. In Brazil, 44 percent of emissions are caused by land use changes, especially deforestation in the Amazon and Cerrado, 25 percent of emissions come from agriculture and cattle raising, and 23 percent are produced by the energy sector, which includes all activities using fossil fuels.<sup>19</sup>

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<sup>10</sup> WHO, *Quantitative risk assessment of the effects of climate change on selected causes of death, 2030s and 2050s* (2014), pp. 80 and 89.

<sup>11</sup> UNICEF, *Thirsting for a Future: Water and Children in a Changing Climate* (2017).

<sup>12</sup> UNICEF, *Unless we act now: the impact of climate change on children* (2015).

<sup>13</sup> UNICEF, *Unless we act now*, p. 8.

<sup>14</sup> World Meteorological Organization, 2020. United in Science 2020: A multi-organization high-level compilation of the latest climate science information. See [https://library.wmo.int/doc\\_num.php?explnum\\_id=10361](https://library.wmo.int/doc_num.php?explnum_id=10361)

<sup>15</sup> Among other threats to human health, ground-level ozone air pollution and vector-borne illnesses will increase with rising temperatures. IPCC, *Global Warming of 1.5°C*, pp. 240-41.

<sup>16</sup> UN Environment Programme. *Emissions Gap Report 2019*.

<sup>17</sup> The Paris Agreement (Art 4, para. 2) requires each Party to prepare, communicate and maintain successive NDCs. NDCs are a statement of a State’s plans to reduce national emissions and adapt to the impacts of climate change. Most States submitted their Intended Nationally Determined Contribution (INDC) prior to the adoption of the Paris Agreement. Once a State submits its instrument of ratification, acceptance, approval or accession to the Paris Agreement, their INDC is converted to an NDC. For more information, see the UNFCCC’s webpage on NDCs, at: <https://unfccc.int/process/the-paris-agreement/nationally-determined-contributions/ndc-registry#eq-2>

For information about each State’s NDC, see the UNFCCC’s NDC Registry (interim), available at: <http://www4.unfccc.int/ndcregistry/Pages/Home.aspx>

<sup>18</sup> UN Environment Programme (UNEP), “The Emissions Gap Report 2017”, available at: [https://wedocs.unep.org/bitstream/handle/20.500.11822/22070/EGR\\_2017.pdf](https://wedocs.unep.org/bitstream/handle/20.500.11822/22070/EGR_2017.pdf)

<sup>19</sup> See p. 5 in [http://www.observatoriodoclima.eco.br/wp-content/uploads/2019/11/OC\\_SEEG\\_Relatorio\\_2019.pdf](http://www.observatoriodoclima.eco.br/wp-content/uploads/2019/11/OC_SEEG_Relatorio_2019.pdf)

12. Despite the United Nations Framework Convention on Climate Change, global carbon dioxide emissions rose 62 percent between 1990 and 2019.<sup>20</sup> In 2018, the IPCC called for urgent and substantial emissions reductions, 45% below 2010 levels by 2030, to avoid crossing the 1.5°C threshold.<sup>21</sup>

13. As long ago as 2012, the International Energy Agency estimated that two-thirds of proven fossil fuel reserves (oil, gas and coal) must not be burned if we are to limit warming to 2°C.<sup>22</sup> A similar study published in 2015 concluded that 82 per cent of known coal reserves, 49 per cent of gas reserves and 33 per cent of oil reserves cannot be burned if we are to avoid dangerous climate change of more than 2°C.<sup>23</sup> In 2016, the International Energy Agency wrote “The unavoidable conclusion is that there is an urgent need for immediate radical reductions in energy sector CO<sub>2</sub> emissions if there is to be any chance of achieving the 1.5°C goal.”<sup>24</sup>

14. Scientists are increasingly concerned about tipping points in the Earth’s climate system, which, if crossed, could cause catastrophic disruption to ecosystems, economies and society.<sup>25</sup> There is a risk that self-reinforcing feedbacks could cause long-term destabilization of the climate, with continued disruption even if anthropogenic greenhouse gas emissions are reduced in the future. For example, scientists have warned that deforestation is pushing the Amazon towards potentially irreversible change from forest to savannah.<sup>26</sup> The uncertainties and dangers associated with tipping points highlight the importance of the precautionary principle and the urgency of immediate steps to decarbonize the global economy, stop deforestation and transform agriculture.

15. The world also faces a nature crisis. Instead of treating the Earth – our unique, life-supporting and irreplaceable home – with care, respect and reverence, humans are inflicting catastrophic damage on ecosystems and biodiversity, undermining nature’s extraordinary contributions to human well-being and prosperity and jeopardizing the human rights of billions of people.

16. In 2019, in the most comprehensive assessment of the state of nature undertaken, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) summarized the destruction of nature by human activities as follows:<sup>27</sup>

- (a) Wildlife populations (including amphibians, birds, fish and mammals) have plummeted an average of 60 per cent since 1970;
- (b) The rate of extinction is hundreds of times higher than the average over the past 10 million years and is accelerating, with 1 million species at risk;
- (c) Nearly three quarters of the Earth’s land surface has been altered significantly;

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<sup>20</sup> World Meteorological Organization, 2020. United in Science 2020: A multi-organization high-level compilation of the latest climate science information. See [https://library.wmo.int/doc\\_num.php?explnum\\_id=10361](https://library.wmo.int/doc_num.php?explnum_id=10361)

<sup>21</sup> IPCC, *Global Warming of 1.5°C. An IPCC Special Report* (2018), p. 53.

<sup>22</sup> International Energy Agency, *World Energy Outlook 2012*.

<sup>23</sup> Christophe McGlade and Paul Ekins, “The geographical distribution of fossil fuels unused when limiting global warming to 2°C”, *Nature*, vol. 517 (January 2015).

<sup>24</sup> International Energy Agency, *World Energy Outlook 2016*, p. 76.

<sup>25</sup> Will Steffen et. al., *Trajectories of the Earth System in the Anthropocene*, (August 2018).

<sup>26</sup> T.E. Lovejoy and C. Nobre, “Amazon Tipping Point: Last Chance for Action,” *Science Advances*, Vol. 5, no. 12, eaba2949. See <https://advances.sciencemag.org/content/5/12/eaba2949/tab-pdf>

<sup>27</sup> See IPBES/7/10/Add.1.

- (d) Two thirds of the Earth's ocean realm is experiencing adverse impacts, including acidification, deoxygenation and a loss of sea ice;
- (e) More than half of the world's accessible freshwater flows is appropriated for human use;
- (f) More than 85 per cent of the planet's wetlands has been destroyed;
- (g) The global biomass of large predatory fish targeted by fisheries has fallen by two thirds over the past hundred years; and
- (h) At least 420 million hectares of forest have been lost since 1990 through conversion to other land uses.

17. Despite conservation efforts, the decline in nature's diversity and abundance during the past 50 years is unprecedented in human history. Scientists believe that humans are causing the sixth mass extinction in the history of life on Earth.<sup>28</sup>

18. Brazil is not immune to these problems. For a period of time, Brazil made encouraging progress in strengthening environmental laws, policies, institutions and most importantly performance. For example, deforestation was reduced by 80 percent between 2004 and 2014.<sup>29</sup> In recent years that progress has stopped and unfortunately reversed. Deforestation in the Brazilian Amazon in 2019 reached the highest level since 2008, clearing over 1 million hectares, and appears to be even higher this year.<sup>30</sup> The number of forest fires has also spiked. In 2019, more than 70 professors of environmental law (members of the Associação dos Professores de Direito Ambiental do Brasil) wrote an open letter criticizing the current administration for weakening environmental laws, policies, procedures and institutions.<sup>31</sup> The problematic federal government actions relevant to this legal action include:

- drastic reduction of environmental inspection actions and enforcement, resulting in an exponential growth of environmental devastation, especially deforestation of the Amazon;
- mismanagement of the Amazon Fund, established to prevent deforestation and promote sustainable use in the Brazilian Amazon rainforest
- authorizing oil exploration near the Arolhos ecological sanctuary
- large budget cuts to environmental agencies including IBAMA (Brazilian Institute of Environment and Renewable Natural Resources) and CONAMA
- transfer of the Brazilian Forestry Service (SFB) from the Ministry of the Environment (MMA) to the Ministry of Agriculture, Livestock and Supply (MAPA).<sup>32</sup>

<sup>28</sup> Gerardo Ceballos, Paul R. Ehrlich and Peter H. Raven, "Vertebrates on the brink as indicators of biological annihilation and the sixth mass extinction", *Proceedings of the National Academy of Sciences*, vol. 17, No. 24 (16 June 2020).

<sup>29</sup> L. Viscidi and N. Graham, 2019, "Brazil was a global leader on climate change, now it's a threat", *Foreign Policy*. See <https://foreignpolicy.com/2019/01/04/brazil-was-a-global-leader-on-climate-change-now-its-a-threat/>

<sup>30</sup> Secretariat of the Convention on Biological Diversity (2020) *Global Biodiversity Outlook 5*, p. 55. See also W.D. Carvalho, K. Mustin, R.R. Hilario et al., "Deforestation control in the Brazilian Amazon: A conservation struggle being lost as agreements and regulations are subverted and bypassed", *Perspectives in Ecology and Conservation* 17(3): 122-130.

<sup>31</sup> Letter from 77 Brazilian Professors of Environmental Law, 2019, <https://www.oeco.org.br/blogs/salada-verde/professores-de-direito-ambiental-divulgam-carta-em-defesa-do-meio-ambiente/>

<sup>32</sup> See D. Abessa, A. Famá, and L. Buruaem, 2019, "The systematic dismantling of Brazilian environmental laws risks losses on all fronts", *Nature Ecology & Evolution* 3(4): 510-11. See also J.H. Ellwanger, B. Kulmann-Leal,

19. In 2020, more than 1,200 Brazilian scientists signed a letter published in a respected science journal urging the Brazilian government to reverse its destructive environmental agenda.<sup>33</sup> The Institute of Socioeconomic Studies, an independent organization, confirmed the substantial reduction in spending on forest inspections and added that there have been large budget cuts and mismanagement of the Climate Fund, a vital mechanism for implementing the national climate change plan.<sup>34</sup>

20. The human activities directly responsible for the rapid decline in ecosystem health and biological diversity are, in order of global importance, changes in land and sea use (e.g., conversion of forests to agriculture), direct exploitation of species (e.g., fishing, hunting, poaching, illegal wildlife and the timber trade), climate change, pollution and invasive species.

21. The climate change and nature crises cannot be addressed in isolation. Climate change is a risk multiplier that exacerbates the impact of the other drivers, with potentially devastating short-term impacts on coral reefs, tropical forests and Arctic ecosystems.<sup>35</sup> Agriculture is the largest single factor in the destruction of ecosystems and the decline in biological diversity. Deforestation is driven by the demand for beef, soy (mostly for livestock feed) and palm oil, as well as the expansion of subsistence agriculture.<sup>36</sup> Nature-based solutions are a vital element of addressing the climate crisis while also protecting and restoring healthy ecosystems and biodiversity. In a Brazilian context, protecting and preventing deforestation and shifting to more sustainable forms of agriculture would substantially reduce Brazil's greenhouse gas emissions while at the same time contributing to the preservation of Brazil's extraordinary biological diversity.

### **III. The Relationship Between Human Rights, Climate Change and Biodiversity**

22. Climate change is having a major impact on a wide range of human rights today, and could have a cataclysmic impact in the future unless ambitious actions are undertaken immediately. Among the human rights being threatened and violated are the rights to life, health, food, water and sanitation, a healthy environment, an adequate standard of living, housing, property, self-determination, development and culture. Addressing climate change raises issues of justice and equity, both between and within nations and generations. The main contributors to the problem have reaped immense economic benefits and thus have the greatest responsibility to solve the problem, pursuant to the principle of common but differentiated responsibilities. The adverse impacts of climate change disproportionately affect people living in poverty, whose contribution to the problem is minimal and who lack the resources to protect themselves or to adapt to the changes.

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V.L. Kaminski et al. 2020, "Beyond biodiversity loss and climate change: Impacts of Amazon deforestation on infectious diseases and public health", *Annals of the Brazilian Academy of Sciences*, 92(1): e20191375.

<sup>33</sup> C. Levis, B.M. Flores et al. "Help restore Brazil's governance of globally important ecosystem services", *Nature Ecology & Evolution* 4(2): 172-73.

<sup>34</sup> See <https://www.inesc.org.br/maior-desmatamento-na-amazonia-em-11-anos-atingidos-pelo-desmonte-ambiental-de-bolsonaro-se-reunem-em-brasilia/>

<sup>35</sup> See IPBES/7/10/Add.1

<sup>36</sup> Navin Ramankutty and others, "Trends in global agricultural land use: implications for environmental health and food security", *Annual Review of Plant Biology*, vol. 69 (2018).

23. Climate change has many direct and indirect effects on the full enjoyment of the right to life. Climate-related deaths are caused by extreme weather events, heat waves, floods, droughts, wildfires, water-borne and vector-borne diseases, malnutrition and air pollution. Globally, at least 150,000 premature deaths annually have been linked to climate change.<sup>37</sup> The adverse health impacts of climate change include not only premature deaths but also increased incidences of respiratory disease, cardiovascular disease, malnutrition, stunting, wasting, allergies, heat stroke, injuries, water-borne and vector-borne diseases and mental illness.<sup>38</sup> Climate change also erodes many of the key social and environmental determinants of health, including access to adequate food and water, clean air, culture and livelihoods.<sup>39</sup> Health is also affected by climate-related displacement, migration and reduced access to health-care services.

24. According to the Food and Agriculture Organization of the United Nations, “climate variability and extremes are among the key drivers behind the recent uptick in global hunger and one of the leading causes of severe food crises. The cumulative effect of changes in climate is undermining all dimensions of food security – food availability, access, utilization and stability”.<sup>40</sup> The World Bank estimates that a 2°C increase in the average global temperature would put between 100 million and 400 million more people at risk of hunger and could result in over 3 million additional deaths from malnutrition each year.<sup>41</sup>

25. Climate change is affecting precipitation patterns across the world, with some dry areas receiving less precipitation and wet areas receiving more frequent and intense precipitation. The Intergovernmental Panel on Climate Change warned of particularly high vulnerability to water stress in small island developing States and parts of Africa, Asia and Latin America.

26. Children are particularly vulnerable to health problems exacerbated by climate change, including vector-borne diseases, malnutrition, acute respiratory infections, diarrhoea and other water-borne illnesses.<sup>42</sup> Extreme weather events pose unique threats to the health and well-being of young bodies and minds. Globally, over 500 million children live in extremely high-risk flood zones; 160 million live in high or extremely high drought severity zones; and 115 million are at high risk from tropical cyclones. By 2040, almost 600 million children will live in regions with extremely limited water resources. The United Nations Children’s Fund warns that “climate change will harm the poorest and most vulnerable children first, hardest and longest”.<sup>43</sup>

27. The Intergovernmental Panel on Climate Change observed that “people who are socially, economically, culturally, politically, institutionally, or otherwise marginalized are especially

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<sup>37</sup>DARA and the Climate Vulnerable Forum, *Climate Vulnerability Monitor 2<sup>nd</sup> Edition: A Guide to the Cold Calculus of a Hot Planet* (DARA, 2012).

<sup>38</sup>IPCC, *Climate Change 2014: Impacts, Adaptation, and Vulnerability* (IPCC, 2014).

<sup>39</sup>[A/HRC/32/23](#).

<sup>40</sup>FAO, IFAD, UNICEF, WFP and WHO, *The State of Food Security and Nutrition in the World 2018. Building climate resilience for food security and nutrition* (Rome, FAO, 2018).

<sup>41</sup>World Bank, *World Development Report 2010: Development and Climate Change* (World Bank, 2010).

<sup>42</sup>[A/HRC/35/13](#).

<sup>43</sup>UNICEF, *Unless we act now: The impact of climate change on children* (UNICEF, 2015).

vulnerable to climate change”.<sup>44</sup> This includes people or communities whose vulnerabilities are caused by poverty, gender, age, disability, geography and cultural or ethnic background. Although at risk, these people often have the potential to contribute to climate solutions when empowered to do so.

28. Despite contributing little to the problem, roughly 400 million indigenous peoples around the world are especially vulnerable to climate change because of their close connection to nature and dependence on wildlife, plants and healthy ecosystems for food, medicine and cultural needs. On the other hand, indigenous people can make important contributions to solutions, through traditional knowledge, legal systems and cultures that have proven effective at conserving land, water, biodiversity and ecosystems, including forests.<sup>45</sup>

29. Over the past decade, States, scholars, human rights bodies and courts have increasingly recognized the linkages between human rights and climate change.<sup>46</sup> In 2008, the Human Rights Council adopted its first resolution on climate change and human rights.<sup>47</sup> The Council expressed its concern that climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights. Since then, the Human Rights Council has adopted a series of resolutions on climate change and human rights, emphasizing that the adverse effects will be felt most acutely by those who already live in vulnerable situations.<sup>48</sup> The resolutions resulted in a series of reports on climate change and human rights prepared by the Office of the United Nations High Commissioner for Human Rights, addressing general linkages,<sup>49</sup> health,<sup>50</sup> children’s rights,<sup>51</sup> migration,<sup>52</sup> gender,<sup>53</sup> and persons with disabilities.<sup>54</sup> In 2008, the Organization of American States first recognized that the adverse effects of climate change negatively impact the enjoyment of human rights.<sup>55</sup>

30. In 2010, the Conference of the Parties to the UNFCCC adopted a decision acknowledging for the first time that the adverse effects of climate change have implications for the effective enjoyment of human rights, and that the effects will be felt most acutely by those segments of the

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<sup>44</sup>IPCC, “Summary for policymakers”, *Climate Change 2014: Impacts, Adaptation, and Vulnerability* (IPCC, 2014).

<sup>45</sup>Permanent Forum on Indigenous Issues, “Climate change and indigenous peoples” (Permanent Forum on Indigenous Issues, 2008).

<sup>46</sup> Among the many books, articles and reports published on this topic in recent years are B.J. Preston, 2018, “The Evolving Role of Environmental Rights in Climate Litigation” *Chinese Journal of Environmental Law* 2:131-164; J. Peel and H Osofsky, ‘A Rights Turn in Climate Change Litigation?’ (2018) 7(1) *Transnational Environmental Law* 37. JH Knox, ‘Human Rights Principles and Climate Change’ in KR Gray, R Tarasofsky and C Carlarne (eds), *The Oxford Handbook of International Climate Change Law* (OUP 2016); and International Bar Association, *Achieving Justice and Human Rights in an Era of Climate Disruption* (2014).

<sup>47</sup> Human Rights Council resolution 7/23.

<sup>48</sup>Human Rights Council resolutions 7/23, 10/4, [18/22](#), [26/27](#), [29/15](#), [32/33](#), [35/20](#) and [38/4](#).

<sup>49</sup> [A/HRC/10/61](#).

<sup>50</sup> [A/HRC/32/23](#).

<sup>51</sup> [A/HRC/35/13](#).

<sup>52</sup> [A/HRC/38/21](#).

<sup>53</sup> [A/HRC/41/26](#).

<sup>54</sup> [A/HRC/44/30](#).

<sup>55</sup> Resolution on Human Rights and Climate Change adopted at the fourth plenary session held on June 3, 2008, AG/RES. 2429 (XXXVIII/O/08).

population that are already vulnerable. The decision stated that “Parties should, in all climate change related actions, fully respect human rights.”<sup>56</sup>

31. In 2014, 27 special rapporteurs and other independent experts issued a joint letter on the implications of climate change for human rights, which stated in part:

The most recent report of the Intergovernmental Panel on Climate Change (IPCC) brings into sharp focus the grave harm that climate change is already causing, and will continue to cause, to the environment on which we all depend. There can no longer be any doubt that climate change interferes with the enjoyment of human rights recognised and protected by international law.<sup>57</sup>

32. The 2015 Paris Agreement represents a major milestone in the evolving relationship between human rights and climate change, as it is the first multilateral environmental agreement to explicitly make this link. The preamble provides that all States “should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations.”

33. In its 2017 Advisory Opinion, the Inter-American Court of Human Rights confirmed that the adverse effects of climate change affect human rights, giving rise to State obligations to effectively address climate change.<sup>58</sup> In 2018, the UN Human Rights Committee stated that climate change constitutes one of “the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”<sup>59</sup>

34. United Nations treaty bodies are already addressing, through the State Reporting Procedure, States’ obligations related to protecting human rights from climate change.<sup>60</sup> The number of references to climate change in the concluding observations of treaty bodies increased from just 1 in 2008 to more than 30 in 2018.<sup>61</sup> The Committee on the Elimination of Discrimination Against Women has demonstrated leadership in this area, making climate-related recommendations to three quarters of the States it reviewed.

35. In its Concluding Observations in 2019, the Committee on the Rights of the Child (CRC) expressed its concern that Australia “has made insufficient progress on the goals and targets set out in the Paris Agreement and about its continuing investment in extractive industries, in

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<sup>56</sup> Decision 1/CP.16, para. 8, FCCC/CP/2010/7/Add.1.

<sup>57</sup> *A new climate change agreement must include human rights protections for all* (27 October 2014), <http://srenvironment.org/wp-content/uploads/2014/10/Letter-to-UNFCCC-FINAL.pdf>

<sup>58</sup> Inter-American Court of Human Rights, Environment and Human Rights, Advisory Opinion OC-23/17 of 15 November 2017, requested by the Republic of Colombia.

<sup>59</sup> Human Rights Committee, General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life, para. 62.

<sup>60</sup> See Center for International Environmental Law and the Global Initiative for Economic, Social and Cultural Rights, *States’ Human Rights Obligations in the Context of Climate Change: 2020 Update* (describing the Committee’s concluding observations that refer to climate change: Australia, Belgium, Guinea, Japan, Malta (all 2019); Niger, Spain (2018); Norway (2017); Haiti, United Kingdom (2016)).

<sup>61</sup> Center for International Environmental Law and Global Initiative for Economic, Social and Cultural Rights, *States’ Human Rights Obligations in the Context of Climate Change: 2019 Update* (Center for International Environmental Law and Global Initiative for Economic, Social and Cultural Rights, 2019).

particular coal”.<sup>62</sup> The CRC urged Austria to “ensure that its climate mitigation policies, in particular those concerning the reduction of greenhouse gas emissions in line with the State party’s international commitments, are compatible with the principles of the Convention”,<sup>63</sup> and recommended that Japan “ensure that climate mitigation policies are compatible with the Convention, including by reducing its emissions of greenhouse gas emissions in line with its international commitments to avoid a level of climate change threatening the enjoyment of children’s rights.”<sup>64</sup> In its concluding observations on Norway, the CRC recommended that in light of Norway’s continuing exploitation of fossil fuels, “it increase its focus on alternative energy and establish safeguards to protect children, both in the State party as well as abroad, from the negative impacts of fossil fuels.”<sup>65</sup>

36. Similarly, the Committee on Economic, Social and Cultural Rights expressed concerns about the extraterritorial effects of Argentina’s plan to engage in hydraulic fracking because those plans ran “counter to the State party’s commitments under the Paris Agreement and would have a negative impact on global warming and on the enjoyment of economic and social rights by the world’s population and future generations”.<sup>66</sup> The Committee expressed similar concerns about gas extraction in the Netherlands and expressed regret that Germany was not on course to meet its reduction targets for 2020.<sup>67</sup> The Committee also criticized Belgium and Switzerland for not being on track to meet reduction targets consistent with international standards, and urged them to “raise the target for 2030 so that it is consistent with the commitment to limit temperature rise to 1.5°C.”<sup>68</sup>

37. In 2019, five human rights treaty bodies issued a Joint Statement on Human Rights and Climate Change, observing that “adverse impacts on human rights are already occurring at 1°C of warming and every additional increase in temperatures will further undermine the realization of rights.”<sup>69</sup> The treaty bodies further observed that “Failure to take measures to prevent foreseeable human rights harm caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States’ human rights obligations.” To comply with those obligations, States “must adopt and implement policies aimed at reducing emissions, which reflect the highest possible ambition, foster climate resilience and ensure that public and private investments are consistent with a pathway towards low carbon emissions and climate resilient development.”<sup>70</sup> Also in 2019, the UN High Commissioner for Human Rights, Michelle Bachelet, warned that “The world has never seen a human rights threat of this scope.”<sup>71</sup>

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<sup>62</sup> CRC/C/AUS/CO/5-6\* (1 November 2019), para. 40.

<sup>63</sup> CRC/C/AUT/CO/5-6 (6 March 2020), para. 35(a).

<sup>64</sup> CRC/C/JPN/CO/4-5 (5 March 2019), para. 37(d).

<sup>65</sup> CRC/C/NOR/CO/5-6 (4 July 2018), para. 27 (emphasis added).

<sup>66</sup> E/C.12/ARG/CO/4 (1 November 2018), para. 13.

<sup>67</sup> E/C.12/DEU/CO/6 (27 November 2018), para. 19.

<sup>68</sup> E/C.12/BEL/CO/5 (26 March 2020), para. 10; E/C.12/CHE/CO/4 (18 November 2019), para. 19.

<sup>69</sup> *Joint Statement on Climate Change and Human Rights*, The Committee on the Elimination of all Forms of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, the Committee on the Rights of the Child, and the Committee on the Rights of Persons with Disabilities, September 2019, para. 5.

<sup>70</sup> *Joint Statement*, para. 11.

<sup>71</sup> The Guardian. 9 September 2019. “Climate change is greatest ever threat to human rights, UN warns,” <https://www.theguardian.com/law/2019/sep/09/climate-crisis-human-rights-un-michelle-bachelet-united-nations>

38. There is also growing recognition of the linkages between human rights and healthy ecosystems and biodiversity.<sup>72</sup> The former Special Rapporteur on human rights and the environment, John Knox, dedicated a thematic report to the issue of biodiversity and human rights, concluding “the degradation and loss of biodiversity undermine the ability of human beings to enjoy their human rights.”<sup>73</sup> Recent United Nations declarations acknowledged that Indigenous peoples and peasants have rights “to the conservation and protection of the environment and the productive capacity of their lands”.<sup>74</sup> In the Human Rights Council’s universal periodic review process, damage to ecosystems and biodiversity is receiving greater attention. Recommendations were made to Brazil to reduce deforestation, respect the rights of indigenous peoples and protect the environment and biodiversity when authorizing economic activities.<sup>75</sup> The review of Argentina included a recommendation to “strengthen measures to combat the negative effect of the economic activities on the environment and biodiversity”.<sup>76</sup> It was highlighted in reviews of Indonesia, Madagascar, Malaysia and Solomon Islands that protecting rainforests was essential to realizing economic, social and cultural rights.<sup>77</sup>

39. Treaty bodies are also increasingly highlighting the human rights impacts of damage to ecosystems and biodiversity. The adverse impacts of deforestation on human rights were mentioned in concluding observations by the Committee on Economic, Social and Cultural Rights (Argentina, Brazil and Colombia),<sup>78</sup> the Committee on the Elimination of All Forms of Discrimination against Women (Côte d’Ivoire and Guyana),<sup>79</sup> the Committee on the Rights of the Child (Gabon, Guinea and Haiti),<sup>80</sup> and the Committee on the Elimination of Racial Discrimination (Paraguay).<sup>81</sup> The Committee on the Rights of the Child expressed concern that the oil and gas industry of the Russian Federation is having negative impacts on indigenous peoples, including children, through deforestation and pollution and “by endangering the species that are crucial to their livelihoods”.<sup>82</sup> The Committee on the Elimination of Racial Discrimination urged Suriname to respect indigenous peoples’ human rights by completing adequate social, cultural and environmental impact assessments for developments proposed in their ancestral territories.<sup>83</sup>

40. Damage to ecosystems and declining biodiversity jeopardize the right to life. For example, the removal of coastal mangroves increases the risk of death from storms. When a major cyclone hit India in 1999, deaths were significantly higher in coastal villages where mangroves had been

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<sup>72</sup> Elise Morgera, “Biodiversity as a Human Right and its Implications for the EU’s External Action,” European Parliament, Directorate General for External Policies, 2020.

<sup>73</sup> [A/HRC/34/49](#).

<sup>74</sup> See United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, art. 18; and United Nations Declaration on the Rights of Indigenous Peoples, art. 29.

<sup>75</sup> [A/HRC/36/11](#).

<sup>76</sup> [A/HRC/37/5](#).

<sup>77</sup> [A/HRC/21/7](#) (Indonesia), [A/HRC/28/13](#) (Madagascar), [A/HRC/25/10](#) (Malaysia) and [A/HRC/32/14](#) (Solomon Islands).

<sup>78</sup> [E/C.12/ARG/CO/3](#) (Argentina), [E/C.12/BRA/CO/2](#) (Brazil) and [E/C.12/COL/CO/6](#) (Colombia).

<sup>79</sup> [CEDAW/C/CIV/4](#) (Côte d’Ivoire) and [CEDAW/C/GUY/CO/9](#) (Guyana).

<sup>80</sup> [CRC/C/GAB/CO/2](#) (Gabon), [CRC/C/GIN/CO/3-6](#) (Guinea) and [CRC/C/HTI/CO/2-3](#) (Haiti).

<sup>81</sup> [CERD/C/PRY/CO/4-6](#) (2016).

<sup>82</sup> [CRC/C/RUS/CO/4-5](#) (2014).

<sup>83</sup> [CERD/C/SUR/CO/13-15](#).

removed than in villages protected by healthy mangrove forests.<sup>84</sup> Deforestation increases the frequency and severity of flood-related disasters, negatively affecting millions of persons globally, causing large numbers of deaths and inflicting trillions of dollars of damage.<sup>85</sup>

41. The World Health Organization recognizes that biodiversity is “a key environmental determinant of human health”.<sup>86</sup> Healthy ecosystems provide a buffer against emerging infectious diseases. Changes to the landscape, such as deforestation, contribute to emergence of disease in wildlife, domestic animals and people. Forest fragmentation in North America has increased the risk of Lyme disease. Nipah virus has been linked to the intensification of pig farming in Malaysia. Deforestation contributed to the Ebola outbreak in West Africa.

42. Healthy ecosystems are a vital source of medicines and medical insights. The loss of biodiversity means lost opportunities for life-saving and life-changing medical breakthroughs. Only a small fraction of the world’s plant and animal species have been studied thoroughly for their pharmacological or medical benefits. Researchers studying obscure species, including the southern gastric-brooding frog, the cone snail, the Pacific yew tree and the rosy periwinkle of Madagascar, have produced prescription drugs and other health benefits for humanity.<sup>87</sup>

43. Indigenous peoples and local communities often rely on traditional medicine, which depends on a wide range of wild plant and animal species. Illegal harvesting, trade in many of those species, and the loss of habitat is affecting health-care systems negatively for millions of persons and thus jeopardizing their right to health.

44. The failure of States to prevent the degradation of an ecosystem or the extinction of a species could violate children’s rights to life, health, culture and a healthy environment. The United Nations High Commissioner for Human Rights stated that “all children should enjoy (...) the certainty that the biodiversity of the natural world will remain for future generations”.<sup>88</sup> The Committee on the Rights of the Child is concerned about the decline of nature. In concluding observations about the Lao People’s Democratic Republic, the Committee warned of “deforestation and the unrestrained construction of dams, which leads to forced displacement, degradation of biodiversity and erosion of riverbanks, severely affecting the life and subsistence possibilities of people in the area”.<sup>89</sup> The Committee also expressed concerns about the impacts of biodiversity loss on children and their rights in Seychelles.<sup>90</sup>

45. Healthy ecosystems and biodiversity are substantive elements of the right to a healthy environment, as recognized by regional human rights treaties and tribunals. The 1988 Additional

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<sup>84</sup> Saudamini Das and Jeffrey R. Vincent, “Mangroves protected villages and reduced death toll during Indian super cyclone”, *Proceedings of the National Academy of Sciences*, vol. 106, No. 18 (5 May 2009).

<sup>85</sup> Corey J.A. Bradshaw and others, “Global evidence that deforestation amplifies flood risk and severity in the developing world”, *Global Change Biology*, vol. 13, No. 11 (November 2007).

<sup>86</sup> WHO and Secretariat of the Convention on Biological Diversity, *Connecting Global Priorities: Biodiversity and Human Health – A State of Knowledge Review* (2015), p. 1.

<sup>87</sup> Eric Chivian and Aaron Bernstein, eds., *Sustaining Life: How Human Health Depends on Biodiversity* (New York, Oxford University Press, 2008).

<sup>88</sup> [A/HRC/43/30](#), 2020, paras. 2 and 48.

<sup>89</sup> [CRC/C/LAO/CO/3-6](#), para. 36.

<sup>90</sup> [CRC/C/SYC/CO/2-4](#).

Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol) states that “Everyone shall have the right to live in a healthy environment and to have access to basic public services” (Article 11). Brazil is a party to the Convention (ratified in 1992) and the Protocol (ratified in 1996).

46. In its 2017 advisory opinion on human rights and the environment, the Inter-American Court of Human Rights emphasized that “the right to a healthy environment, unlike other rights, protects the components of the environment, such as forests, rivers and seas”.<sup>91</sup> In 2020, the Inter-American Court issued a decision applying the right to a healthy environment for the first time, ruling that Argentina’s failure to stop activities, such as illegal logging, that damaged the forests and biodiversity in the territory of Indigenous peoples violated the right to a healthy environment.<sup>92</sup>

47. The African Commission on Human and Peoples’ Rights produced a ground-breaking decision in 2001, concluding that pollution caused by the oil industry violated the Ogoni people’s right to a healthy environment under the African Charter (Article 24). The Commission determined that Governments have clear obligations under Article 24 “to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources”.<sup>93</sup>

48. It is worth noting that the African, European, and Inter-American human rights systems have not yet decided any cases focusing on claims that climate change violated human rights, although such cases are underway. For example, six Portuguese youths recently filed a case against 33 European States at the European Court of Human Rights, asserting violations of their rights to life (Article 2 of the European Convention on Human Rights) and their right to family and private life (Art. 8).<sup>94</sup>

#### **IV. Comparative Constitutional Law**

49. Article 225 of the Constitution of Brazil states that “Everyone has the right to an ecologically balanced environment, which is a public good for the people's use and is essential for a healthy life. The Government and the community have a duty to defend and to preserve the environment for present and future generations.” Additional responsibilities articulated in Article 225 include, inter alia, preserving and restoring essential ecological processes, designating and preserving special protected areas, prohibiting all activities that cause extinction, and protecting the national patrimony—the Brazilian Amazonian Forest, the Atlantic Forest, the Serra do Mar, the Pantanal of Mato Grosso, and the Coastal Zone.

50. Article 225 of the Constitution of Brazil is part of a global trend that has resulted in the right to a healthy environment gaining constitutional recognition in 110 nations, beginning with

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<sup>91</sup> Inter-American Court of Human Rights, Advisory Opinion OC-23/17, 15 November 2017, para. 62.

<sup>92</sup> Inter-American Court of Human Rights, *Indigenous Communities of the Lhaka Honhat Association v Argentina*, Judgment, February 6, 2020, para 289.

<sup>93</sup> African Commission on Human and Peoples’ Rights, *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v. Nigeria*, Comm. No. 155/96, para. 52.

<sup>94</sup> *Portuguese children v Austria, Belgium, Bulgaria et al.*, Application to the European Court of Human Rights, 02 September, 2020.

Portugal in 1976, Spain in 1978, and most recently Cuba in 2019.<sup>95</sup> As a result, there are 40-plus years of constitutional jurisprudence defining the procedural and substantive elements of the right to a healthy environment as well as the corresponding State obligations. The procedural elements include access to information, participation in decision-making, and access to justice. The substantive elements include clean air, a safe climate, access to clean water and adequate sanitation, healthy and sustainably produced food, healthy ecosystems and biodiversity, and non-toxic environments in which to live, work, study and play.

51. The vital importance of a safe climate, as part of the right to a healthy environment, reflects the 1992 United Nations Framework Convention on Climate Change, wherein States pledged to “prevent dangerous anthropogenic interference with the climate system.”<sup>96</sup> Brazil ratified the Framework Convention on Climate Change in 1994 and the Paris Agreement on climate change in 2016, which commits States to limiting the global average temperature increase to 1.5°C or at most 2.0°C.

52. Courts across the world routinely enforce the right to a healthy environment.<sup>97</sup> A growing number of national courts have recently recognized the failure of States to take adequate steps to address climate change or to protect healthy ecosystems and biodiversity constitute a violation of the right to a healthy environment. and other human rights, from the right to life and physical integrity to the rights to health, water and housing.

53. Prominent court decisions that have found violations of the right to a healthy environment include cases involving: damage to the habitat of an endangered species (Costa Rica, Greece and India); water pollution caused by mining (Chile, Colombia and the state of Montana, United States of America); deforestation (Colombia, Mexico and Philippines); extensive air, water and soil pollution (Argentina, India and Philippines); cyanide use in gold mining (Turkey); shrimp farming in coastal wetlands (Peru); tourism development in mangrove forests (Mexico); hydroelectric projects in sensitive ecosystems (Ecuador and Finland); real estate development in biodiversity-rich areas (Hungary, Macedonia, Slovenia and South Africa); and an agricultural project in a protected forest (Uganda).<sup>98</sup> As explained by the Supreme Court of Justice of Colombia in 2020, the right to a healthy environment obliges States to adopt regular and effective measures that contribute to the proper functioning, maintenance and conservation of the fauna and flora that make up ecosystems.<sup>99</sup>

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<sup>95</sup> Report of the Special Rapporteur on human rights and the environment, 2020, Good Practices in the Recognition and Implementation of the Right to a Safe, Clean, Healthy and Sustainable Environment, UN Doc. A/HRC/43/53.

<sup>96</sup> United Nations Framework Convention on Climate Change, Article 2, Objective.

<sup>97</sup> For hundreds of examples from more than forty nations, see D.R. Boyd, 2012, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights and the Environment* (University of British Columbia Press). See also *Francisco Chahuan Chahuan v. Empresa Nacional de Petróleos, ENAP S.A.*, Case No. 5888-2019, Supreme Court of Chile, May 28, 2019.

<sup>98</sup> For example, Supreme Court of Colombia, *Generaciones Futuras v. Minambiente*, STC No. 4360-2018, decision of 5 April 2018; Supreme Court of Mexico, First Chamber, *Amparo en Revisión*, No. 307/2016, decision of 14 November 2018. Other cases are discussed in David R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (Vancouver, UBC Press, 2012).

<sup>99</sup> Supreme Court of Justice, Colombia, STC No. 3872-2020, 18 June 2020 (Parque Isla Salamanca).

54. A growing number of national courts have recently recognized the failure of States to take adequate steps to address climate change can constitute a violation of the right to a healthy environment and other human rights.<sup>100</sup> Between 2015 and September 2020, litigants brought at least fifty-one cases for human rights violations related to climate change in twenty-six national courts and in four international forums.<sup>101</sup> Supreme Courts and other tribunals in jurisdictions as diverse as Colombia, Ireland, Mexico, the Netherlands, Pakistan, South Africa and the United Kingdom have ruled for the plaintiffs in climate change cases, relying on domestic constitutional law, international human rights law, and international environmental law to do so.

55. The four most important national court decisions thus far involving climate change and human rights come from Colombia, the Netherlands, Pakistan and the United States. Among these four cases, it is worth noting that only Colombia has a constitution that explicitly recognizes the right to a healthy environment. Lawsuits alleging violations of human rights connected to inadequate government responses to climate change have also been filed in other States including Belgium, Canada, France, Germany, India, Ireland, Norway, the Philippines, and Switzerland but many of these cases are still in progress.<sup>102</sup>

#### *The Future Generations Decision of the Supreme Court of Colombia*

56. In 2018, a group of 25 plaintiffs between the ages of 7 and 26, filed a *tutela*, a special type of legal action under the Colombian Constitution that is used to protect fundamental rights. The plaintiffs claimed that climate change and deforestation in the Colombian Amazon threatened their right to a healthy environment as well as their rights to life, food and water. The plaintiffs, concerned about being harmed by climate change for the rest of their lives, sought an order requiring the government to honor its international commitment to address climate change, with a particular focus on stopping the country's worsening deforestation. The Colombian Amazon has experienced high deforestation rates, contributing to climate change by releasing carbon dioxide into the atmosphere.

57. The plaintiffs' claim was denied by the Superior Tribunal of Bogota. They appealed to the Supreme Court of Justice.<sup>103</sup> In granting their appeal, the Supreme Court held that deforestation in the Amazon poses an 'imminent and serious' threat to present and future generations due to its impact on climate change. The Court found violations of the constitutional right to a healthy environment, the right to life, and the right to water as well as the rights of future generations. In addition, the Court held that the Amazon rainforest itself is a rightsholder, with corresponding obligations for the government to protect, conserve, maintain and restore the Amazon.

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<sup>100</sup> Supreme Court of Colombia, *Generaciones Futuras v. Minambiente*, 5 April 2018. Lahore High Court, *Leghari v. Federation of Pakistan*, W.P. No. 25501/201, April 2015. Second Chamber of the Supreme Court of Mexico, Amparo 610/2019, 22 January 2020.

<sup>101</sup> See C. Rodríguez-Garavito, "International Human Rights and Climate Governance: Understanding the 'Rights Turn' in Climate Litigation," (forthcoming in C. Rodríguez-Garavito, *Litigating the Climate Crisis*); C. Rodríguez-Garavito, "[Climate Litigation and Human Rights](#)," *Open Global Rights* (26 June, 2020). See generally J. Setzer and R. Byrnes, *Global Trends in Climate Litigation: 2020 Snapshot* (20 July 2020).

<sup>102</sup> For example, see *Pandey v India* (National Green Tribunal of India, Original Application No 187 of 2017, Petition filed 25 March 2017); *Segovia v Climate Change Commission* (GR No. 211010, 7 March 2017, Supreme Court of the Philippines); *Asghar Leghari v Federation of Pakistan* (Lahore High Court, WP No 25501/2015, 14 September 2015, 18 January 2016); For further details of all rights-based climate lawsuits see Columbia University's [climatecasechart.com](#)

<sup>103</sup> *Generaciones Futuras v. Minambiente*, Supreme Court of Justice of Colombia, Decision of 5 April 2018.

58. The Supreme Court imposed orders on three levels of government. First, the federal government was ordered to develop a plan to eliminate deforestation in the Colombian Amazon, in part through the creation of an “inter-generational pact for the life of the Colombian Amazon” The pact was to be developed in cooperation with the youth plaintiffs, leading scientists and communities. Second, municipal governments were ordered to update their Land Management Plans and to propose detailed plans for eliminating deforestation. Third, regional environmental authorities were also ordered to develop plans to eliminate deforestation.

*The Urgenda Decision of the Supreme Court of the Netherlands*

59. In the Netherlands, the Urgenda Foundation and 886 Dutch citizens sued the Dutch government for failing to take adequate action to address climate change. Urgenda was successful at trial, on appeal, and at the Supreme Court of the Netherlands.<sup>104</sup> After surveying the science on climate change, including the danger of tipping points that may change the climate abruptly, the Court noted that “The need to reduce greenhouse gas emissions is becoming ever more urgent. Every emission of greenhouse gases leads to an increase in the concentration of greenhouse gases in the atmosphere, and thus contributes to reaching the critical limits of 450 ppm [to keep at 2°C] and 430 ppm [to keep at 1.5°C].”<sup>105</sup>

60. Drawing on the jurisprudence of the European Court of Human Rights interpreting the rights to life (Art. 2) and to family and private life (Art. 8) under the European Convention on Human Rights, the Dutch Court held that a State is obliged to take preventive measures against the foreseeable risks of climate change. The Court used the precautionary principle to buttress the duty of the state to take preventive measures, even if the materialization of the danger is uncertain.<sup>106</sup> The application of these principles resulted in the Court’s conclusion that climate change triggered State obligations to reduce greenhouse gas emissions more deeply and quickly in order to protect human rights.

61. The Supreme Court concluded that the Netherlands had an obligation “to do ‘its part’ in order to prevent dangerous climate change, even if it is a global problem.”<sup>107</sup> The Court rejected the arguments that a State does not have to take any responsibility if other States do not comply with their responsibilities or if its contribution to emissions is very small on a global scale.<sup>108</sup> The Court also rejected the government’s argument that it would be improper for the judiciary to interfere in a political question, concluding that courts have a legitimate role in constraining the government’s ability to violate human rights. The Urgenda decision contributes to understanding how the legal principles on human rights and the environment apply to the existential risks posed by climate change.

62. The Government of Netherlands’ subsequent efforts to comply with the Dutch Supreme Court’s judgment illuminate the tangible impacts of protecting human rights from climate impacts. The Dutch government is closing down coal-fired power plants, including at least one large facility

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<sup>104</sup> *Netherlands v Urgenda*, no. 19/00135, Supreme Court of the Netherlands, (2019) (hereinafter *Urgenda*).

<sup>105</sup> *Urgenda*, para. 4.6.

<sup>106</sup> *Urgenda*, para. 5.3.2.

<sup>107</sup> *Urgenda*, para. 5.7.1.

<sup>108</sup> *Urgenda*, para. 5.7.7.

built just five years ago, illustrating the urgent imperative of reducing emissions and the concomitant risk of stranded assets resulting from continued investment in fossil fuels given foreseeable impacts on human rights.<sup>109</sup>

#### *The Leghari Decision of Pakistan's Lahore High Court*

63. In a case filed with the Lahore High Court, a Pakistani farmer challenged the government's failure to implement the National Climate Change Policy of 2012 and the Framework for Implementation of Climate Change Policy (2014-2030). The petitioner and his family were suffering the consequences of an extended drought, and alleged that the government's inaction violated their constitutional rights to life (which the Supreme Court of Pakistan has ruled includes an implicit right to a healthy environment), dignity, property and information. The Court upheld the petitioner's claim that fundamental rights had been violated, and ordered the government to create a Climate Change Commission tasked with overseeing the effective implementation of the national climate change policy and framework.<sup>110</sup> According to the Court, "For Pakistan, climate change is no longer a distant threat—we are already feeling and experiencing its impacts across the country and the region."

64. Pursuant to the Court's order, the Climate Change Commission was created and produced a report in 2016 with 16 recommendations. The Lahore High Court monitored the Commission's work and provided it with additional tasks, resulting in a second report in 2017 with additional priority recommendations and a third report in 2018 that evaluated the implementation of the actions that it had recommended. According to the Commission, 60 percent of the priority actions it had recommended were completed and the government could be relied upon to carry on with implementing the remaining actions. The Court concurred, dissolved the Commission and replaced it with a Standing Committee on Climate Change to continue monitoring implementation of Pakistan's climate policy and framework.

#### *The Juliana Case in the United States*

65. In the United States, a group of youth plaintiffs filed a lawsuit challenged federal government action to approve fossil fuel exploration, development and infrastructure, arguing that these actions violated their constitutional right to life and implicit right to a safe climate. There is no right to a healthy environment in the American Constitution. In a ruling that rejected a preliminary motion by the government to dismiss the case, a Federal District Court judge wrote "I have no doubt that the right to a climate system capable of sustaining human life is fundamental to a free and ordered society."<sup>111</sup>

66. The Court wrote:

In framing the fundamental right at issue as the right to a climate system capable of sustaining human life, I intend to strike a balance and to provide some protection against the constitutionalization of all environmental claims. On the one hand, the phrase 'capable of sustaining human life' should not be read to require a plaintiff to allege that governmental action will result in the extinction of humans as a species. On the other hand,

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<sup>109</sup> The Guardian, *Dutch officials reveal measures to cut emissions after court ruling*, April 24, 2020.

<sup>110</sup> *Asghar Leghari v. Federation of Pakistan*, W.P. No. 25501/2015, Lahore High Court, 4 September 2015, 18 January 2016.

<sup>111</sup> *Juliana v. United States*, (2016), 217 F Supp 3d 1224 (D Or, 2016). Case No. 6:15-cv-01517-TC.

acknowledgment of this fundamental right does not transform any minor or even moderate act that contributes to the warming of the planet into a constitutional violation. In this opinion, this Court simply holds that where a complaint alleges governmental action is affirmatively and substantially damaging the climate system in a way that will cause human deaths, shorten human lifespans, result in widespread damage to property, threaten human food sources, and dramatically alter the planet's ecosystem, it states a claim for a due process violation. To hold otherwise would be to say that the Constitution affords no protection against a government's knowing decision to poison the air its citizens breathe or the water its citizens drink. Plaintiffs have adequately alleged infringement of a fundamental right.

67. On appeal, the case was subsequently dismissed on the grounds that the remedies sought by the plaintiffs were not “substantially likely to redress their injuries” or “within the district court’s power to award.” In the words of the majority opinion of the Court of Appeal:

There is much to recommend the adoption of a comprehensive scheme to decrease fossil fuel emissions and combat climate change, both as a policy matter in general and a matter of national survival in particular. But it is beyond the power of an Article III court to order, design, supervise, or implement the plaintiffs’ requested remedial plan. (p.25)

68. It is important to note that the jurisdiction of an Article III court in the United States is limited compared to the Supremo Tribunal Federal in Brazil and that the American Constitution includes neither a right to a healthy environment nor any mention of government obligations to protect the environment.<sup>112</sup>

#### *The Appropriate Role of Courts*

69. While governments have discretion regarding how to address environmental problems, their exercise of that discretion is constrained by human rights, which courts have a clear duty to protect. As the Supreme Court of Mexico stated in a 2020 decision, courts are obligated “to ensure that the authorities comply with human rights, such as the right to a healthy environment, so that these fundamental rights have a real impact on our country and are not reduced to mere ideals or good intentions.”<sup>113</sup>

70. As referenced in the Brazilian Supremo Tribunal Federal’s decision convening the public hearing in this case, a related judicial doctrine—that of the “unconstitutional state of affairs”—may be directly relevant to the Court’s analysis of the situation of the *Fundo Clima* and Brazilian environmental policy. The most relevant precedents are the decisions of the Brazilian Supremo Tribunal Federal and the Colombian Constitutional Court declaring the dire human rights impacts of prison overcrowding as unconstitutional states of affairs.<sup>114</sup> According to this doctrine, a court can declare the existence of an unconstitutional state of affairs when three conditions are met: (1) widespread human rights violations, (2) stemming from persistent actions or omissions (3) by a

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<sup>112</sup> *Juliana v. United States*, (2020), United States Court of Appeal, Ninth Circuit. 17 January 2020, Case No. 6:15-cv-01517-TC.

<sup>113</sup> Second Chamber of the Supreme Court of Mexico, Amparo 610/2019, 22 January 2020.

<sup>114</sup> For Brazil, see ADPF 347, rel. Min. Marco Aurélio, j. 09.09.2015; RE 580.252, rel.Min. Alexandre de Moraes, j. 18.12.2017. For Colombia, see T-153/1998 (rel. Eduardo Cifuentes).

wide range of governmental agencies.<sup>115</sup> In Latin American comparative constitutionalism, the doctrine has been developed most actively by the Colombian Constitutional Court in cases ranging from the right to health to the rights of internally displaced populations.<sup>116</sup> Courts have used structural injunctions and continuing mandamus in order to address the scale, urgency and root causes of the widespread violation of human rights and to monitor implementation of their rulings. Such remedies include orders to cease actions or omissions underlying the unconstitutional state of affairs; systematically collect data, build indicators and publish reliable information about the evolution of the situation; and periodically report progress to the court and citizens through public hearings and other mechanisms.<sup>117</sup>

71. Similarly, a number of Supreme Courts around the world have used the remedy of continuing mandamus to ensure that their orders in major environmental cases involving human rights are in fact implemented. In effect, a court retains jurisdiction over the case, enabling the court to require governments to submit regular progress reports on implementation of the judgments. In Argentina, the Supreme Court of Argentina used this approach in the famous Beatriz Mendoza case about violation of the constitutional right to a healthy environment caused by chronic pollution of the Riachuelo River and watershed in Buenos Aires.<sup>118</sup> The Court issued an order requiring the federal, provincial and local governments to clean up the river, enforce laws against industrial polluters, build infrastructure for safe drinking water and wastewater treatment, and appear before the Court on a quarterly basis to provide reports on implementation. Argentine governments have spent billions of dollars in complying with the Supreme Court's order, improving environmental conditions for millions of people in Buenos Aires.

72. The Supreme Court of India has used continuing mandamus in longstanding cases seeking to improve forest management and reduce motor vehicle pollution.<sup>119</sup> The Supreme Court of the Philippines also used this remedy in a major decision that found pollution and degradation of Manila Bay violated the constitutional right to a healthy environment.<sup>120</sup> The Court ordered multiple government agencies to take extensive actions to clean up and restore the damaged ecosystems of Manila Bay, and to provide the Court with regular progress reports.

73. Key factors in the success of these cases addressing structural environmental problems are specific deadlines for action by identified government agencies, mandatory progress reports to the Court, and participatory follow-up mechanisms, such as public hearings or court-appointed monitoring commissions.

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<sup>115</sup> See C. Rodríguez-Garavito, 2011, "Beyond the Courtroom: The impact of judicial activism on socioeconomic rights in Latin America," *Texas Law Review*, n. 89, p. 1.669-1.698.

<sup>116</sup> See T-025/2004 (rel. Manuel Cepeda); T-760/2008 (rel. Manuel Cepeda).

<sup>117</sup> See C. Rodríguez-Garavito and D. Rodríguez-Franco, 2015, *Radical Deprivation on Trial: The Impact of Judicial Activism on Socioeconomic Rights in the Global South* (Cambridge University Press).

<sup>118</sup> *Beatriz Silvia Mendoza and others v. National Government and Others*, 2008, M. 1569, 8 July 2008 (Supreme Court).

<sup>119</sup> Forest Management: *T.N. Godavarman Thirumulpad v. Union of India*, Writ Petition 202 of 1995. AIR 1999 SC 43; (1998) 6 SCC 190; (1998) 9 SCC 632; 2000 (7) SCALE 380. Air Pollution: *M.C. Mehta v. Union of India* (1997) 11 SCC 327; *M.C. Mehta v. Union of India* 2002 (4) SCC 356; *MC Mehta v Union of India* (2016) 4 SCC 269.

<sup>120</sup> *Concerned Residents of Manila Bay et al. v. Metropolitan Manila Development Authority, Department of Environment and Natural Resources and others* (2008) G.R. Nos. 171947-48 Supreme Court of the Philippines.

## **V. Human rights obligations relating to climate change and biodiversity**

74. The current and foreseeable adverse effects of the global climate and nature crises on the enjoyment of a wide range of rights give rise to extensive duties on Brazil to take immediate actions to prevent those harms.<sup>121</sup> These are legally enforceable obligations, not policy options or mere aspirations, reflecting commitments pursuant to international human rights law, international environmental law and domestic constitutional law.

75. The UN Human Rights Committee stated that “obligations of States under international environmental law should inform their human rights obligations”.<sup>122</sup> This is increasingly recognized by courts at the national level, as demonstrated by the Supreme Court of Mexico in a recent decision relying on the Ramsar Convention on Wetlands of International Importance to influence its conclusion that the destruction of a mangrove forest violated the constitutional right to a healthy environment.<sup>123</sup> Similarly, an Australian court rejected a proposed coal mine in 2019, relying on the Paris Agreement and an analysis of the remaining global carbon budget to conclude that the proposed mine was in “the wrong place at the wrong time ... Wrong time because the GHG emissions of the coal mine and its coal product will increase total global concentrations of GHGs at a time when what is now urgently needed, in order to meet generally agreed climate targets, is a rapid and deep decrease in GHG emissions.”<sup>124</sup>

76. To comply with its human rights obligations, Brazil should apply a rights-based approach to all aspects of climate change mitigation and adaptation as well as conserving, protecting, restoring, using and benefitting from healthy ecosystems and biodiversity. Applying a rights-based approach clarifies the obligations of governments and businesses; catalyses ambitious action; highlights the plight of the poorest and most vulnerable; and empowers people to become involved in designing and implementing solutions.

77. Four legal principles, drawn from international human rights law and international environmental law, provide further guidance as to whether the Government of Brazil is complying with its obligations to respect, protect and fulfill the right to a healthy environment in Article 225 of the Constitution. These principles include prevention, the precautionary principle, highest possible ambition, and non-regression.

78. An undisputed element of international law is that States have an obligation to protect against reasonably foreseeable harms to human rights, including from environmental degradation.<sup>125</sup> States must not only refrain from violating human rights through their own actions, but must prevent third parties from causing human rights violations. The UN Convention on Biological Diversity states that “it is vital to anticipate, prevent and attack the causes of significant

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<sup>121</sup> [A/HRC/25/53](#).

<sup>122</sup> Human Rights Committee, general comment, No. 36, para. 62.

<sup>123</sup> First Chamber of the Supreme Court of Mexico, Amparo 610/2019, 22 January 2020.

<sup>124</sup> Gloucester Resources Limited v Minister of Planning, New South Wales Land and Environment Court, [2019] NSWLEC 7, 8 Feb. 2019, para 698.

<sup>125</sup> See, e.g., Human Rights Committee, General Comment No. 36, para. 18; European Court of Human Rights, *Öneryıldız v. Turkey*, no. 48939/99 (2004), *Budayeva v. Russia*, no. 15339/02 (2008).

reduction or loss of biological diversity at source.”<sup>126</sup> The obligation of prevention arises when there is a risk of “significant damage.”<sup>127</sup> Given the severity of the global climate and nature crises, and the associated existential risks to human society and human rights, it is clear that the principle of prevention applies to Brazil’s climate policies and actions.

79. The UN Framework Convention on Climate Change provides that “The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects.”<sup>128</sup> The UN Convention on Biological Diversity includes the precautionary principle and prevention. The precautionary principle is defined in the Rio Declaration on Environment and Development, which says “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”<sup>129</sup>

80. The UN Human Rights Committee has urged States to “pay due regard to the precautionary approach” when addressing threats like climate change.<sup>130</sup> Similarly, the Inter-American Court of Human Rights noted that “the precautionary approach is an integral part of the general obligation of due diligence.”<sup>131</sup> The Inter-American Court continued:

States must act in keeping with the precautionary principle in order to protect the rights to life and to personal integrity in cases where there are plausible indications that an activity could result in severe and irreversible damage to the environment, even in the absence of scientific certainty. Consequently, States must act with due caution to prevent possible damage.<sup>132</sup>

81. The precautionary principle is particularly important in relation to climate change, given the IPCC warning that “pathways that overshoot 1.5°C run a greater risk of passing through ‘tipping points’, thresholds beyond which certain impacts can no longer be avoided even if temperatures are brought back down later.”<sup>133</sup> In light of the climate emergency that humanity is facing, every molecule of greenhouse gas counts. There are no marginal or insignificant emissions. As the IPCC has stated, “Every bit of warming matters, every year matters, every choice matters.”<sup>134</sup>

82. The Paris Agreement on climate change commits each Party to reflect its “highest possible ambition” in its nationally determined contribution to the Agreement’s long-term temperature goal.<sup>135</sup> The principle of highest possible ambition closely aligns with the duty of the state to exercise due diligence in both human rights and environmental contexts. In the face of existential

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<sup>126</sup> Convention on Biological Diversity, 1992, Preambular paragraph 8.

<sup>127</sup> International Court of Justice, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay)*. Judgment of April 20, 2010, para. 101; *Certain Activities and Construction of a Road (Costa Rica v. Nicaragua)*, I.C.J Rep. 2015, para. 104.

<sup>128</sup> UNFCCC Article 3.3.

<sup>129</sup> Rio Declaration on Environment and Development, 1992, Principle 15.

<sup>130</sup> Human Rights Committee, General Comment No. 36, para. 62.

<sup>131</sup> Advisory Opinion 23/17, para. 177.

<sup>132</sup> Advisory Opinion 23/17, para. 180.

<sup>133</sup> IPCC, *Global Warming of 1.5°C*, p. 283.

<sup>134</sup> IPCC, *Global Warming of 1.5°C*, Foreword at (vi).

<sup>135</sup> Paris Agreement, Article 4.3.

risk, governments must take measures commensurate with that risk. While the judiciary may defer to the executive regarding the appropriate measures to reduce emissions, courts have a constitutional duty ensure respect for human rights, including the right to a healthy environment.

83. There is a strong presumption against regressive measures in relation to the progressive realization of economic, social and cultural rights, including the right to a healthy environment.<sup>136</sup> A Brazilian court applied this principle for the first time earlier this year, to overturn a recent decision of the federal government to allow sugarcane plantations in the Amazon, contrary to a rule enacted in 2009.<sup>137</sup> This principle is clearly articulated in the Constitution of Ecuador: “Any deed or omission of a regressive nature that diminishes, undermines or annuls without justification the exercise of rights shall be deemed unconstitutional” (Article 11(8)). The non-regression principle also has been applied to prevent weakening of environmental laws by courts in nations ranging from Belgium and France to Mexico and Colombia.<sup>138</sup>

84. The comprehensive UN Framework Principles on Human Rights and the Environment clarify three categories of State obligations: procedural, substantive, and special obligations towards those in vulnerable situations.<sup>139</sup> The framework principles can be operationalized in the context of the climate and nature crises in order to respect, protect and fulfil human rights.

85. Brazil has procedural obligations to:

- (a) Provide the public with accessible, affordable and understandable information regarding the causes and consequences of the global climate and nature crises, including incorporating climate change and biodiversity into the educational curriculum at all levels;
- (b) Ensure an inclusive, equitable and gender-based approach to public participation in all climate-related actions and all actions related to the conservation, protection, restoration and sustainable use of nature, with a particular emphasis on empowering the most affected populations, namely women, children, young people, indigenous peoples and local communities, persons living in poverty, persons with disabilities, older persons, migrants, displaced people, and other potentially at-risk communities;
- (c) Enable affordable and timely access to justice and effective remedies for all, to hold governments accountable for fulfilling their climate and nature obligations;
- (d) Assess the potential environmental, social, cultural and human rights impacts of all plans, policies and proposals that could exacerbate climate change and/or damage, destroy or diminish healthy ecosystems and biodiversity;
- (e) Implement human rights safeguards in the design and use of climate and biodiversity financing mechanisms (e.g., payments for ecosystem services and debt for nature swaps);
- (f) Integrate gender equality into all climate actions (including the preparation of Nationally Determined Contributions under the Paris Agreement) and all actions to

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<sup>136</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 3 (1990) on the nature of States parties’ obligations, para. 9.

<sup>137</sup> Seventh Federal Court, Amazonas, suspending the effects of Decree 10.084/2019, Case No. 1016202-09.2019.4.01.3200.

<sup>138</sup> Belgium: *Inter-Environnement Wallonie v. Walloon Region*, Constitutional Court of Belgium, No. 137/2006, 14 September 2006; Mexico: *Cutting of the Mangrove of the Laguna del Carpintero for Construction of Ecological Park*, Supreme Court of Justice of the Nation, 2018. See also Prieur M, “Non-Regression in Environmental Law” (2012) 5.2 *Sapiens* 53.

<sup>139</sup> [A/HRC/37/59](#), see annex.

conserve, protect, restore, use and equitably share the benefits of nature (including the development and implementation of National Biodiversity Strategic Action Plans), enabling women to play leadership roles;

(g) Respect the rights of Indigenous peoples, local communities and peasants in all climate actions and in all actions to conserve, protect, restore, sustainably use and equitably share the benefits of healthy ecosystems and biodiversity, including respect for traditional knowledge, customary practices and Indigenous peoples' right to free, prior and informed consent;

(h) Provide strong protection for environmental and human rights defenders working on all climate- and nature related issues. Brazil must vigilantly protect defenders from harassment, intimidation and violence, diligently investigate, prosecute and punish the perpetrators of those crimes; and address the root causes of social-environmental conflict.<sup>140</sup>

86. With respect to substantive obligations, Brazil must not violate the right to a healthy environment or other human rights jeopardized by climate change, damage to ecosystems or the loss of biodiversity through its own actions; must protect these rights from being violated by third parties, especially businesses; and must establish, implement and enforce laws, policies and programmes to fulfil these rights.<sup>141</sup> Brazil also must avoid discrimination and retrogressive measures. These principles govern all climate actions, including obligations related to mitigation, adaptation, finance, and loss and damage and all biodiversity related actions, including conservation, preservation and sustainable use.

87. To address the climate crisis, Brazil must urgently pursue a low-carbon, climate resilient future by employing a rights-based approach to: replacing fossil fuels with renewable energy; implementing zero-carbon, low-carbon and high-efficiency technologies; eliminating deforestation and investing in reforestation; implementing the finance mechanisms needed for the economic transition, such as the Climate Fund; transforming its agricultural system; honouring international commitments; and ensuring fair, legal and durable solutions for vulnerable and marginalized communities. A number of these actions are included in Brazil's Nationally Determined Contribution under the Paris Agreement, but are not being implemented.<sup>142</sup> Indeed the Government of Brazil committed to implement its NDC "with full respect to human rights, in particular rights of vulnerable communities, indigenous populations, traditional communities and workers in sectors affected by relevant policies and plans, while promoting gender-responsive

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<sup>140</sup>Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms ([A/RES/53/144](#)) and Human Rights Council resolution [40/11](#) on recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development ([A/HRC/RES/40/11](#)).

<sup>141</sup> Committee on Economic, Social and Cultural Rights, general comment No. 3 on the nature of States parties' obligations ([E/1991/23](#)).

<sup>142</sup> Climate Action Tracker 2020. See <https://climateactiontracker.org/countries/brazil/>

measures.”<sup>143</sup> Despite Article 4, paragraph 19 of the Paris Agreement, Brazil has not submitted a long-term low greenhouse gas emission development strategy.<sup>144</sup>

88. In 2018, the Committee on Economic, Social and Cultural Rights warned States that a failure to prevent foreseeable human rights harm caused by climate change, or a failure to mobilize the maximum available resources in an effort to do so, could constitute a breach of their obligation to respect, protect and fulfil all human rights for all.<sup>145</sup> Brazil must, therefore, dedicate the maximum available financial and material resources to shift to renewable energy, clean transport and agroecological farming; halt and reverse deforestation and soil deterioration; and increase adaptive capacity, especially in vulnerable and marginalized communities.

89. To address the nature crisis, Brazil must: monitor and report on state of biodiversity and threats to biodiversity; adopt and implement a rights-based national biodiversity plan; mainstream biodiversity into other policy areas (e.g., health and finance); recognize the title and land rights of Indigenous peoples; continue to create protected areas and establish other effective conservation measures; establish rules to ensure the sustainable use of biodiversity; enact legislation to protect threatened species; restore degraded ecosystems; prevent the spread of invasive species; and provide incentives for conservation and sustainable use.<sup>146</sup>

90. Brazil has particular obligations to Indigenous peoples, local communities and peasants. The top priority involves recognizing their land titles, tenures and rights, acknowledging the existence of different customs and systems, including collective ownership and governance models. As the Inter-American Court confirmed, States must ensure the effective participation of Indigenous peoples in the creation of protected areas, continued access to and use of traditional territories, including those within the protected areas, and a fair share of the benefits arising from conservation initiatives.<sup>147</sup> Brazil must “take appropriate measures to promote and protect the traditional knowledge, innovation and practices of peasants and other people working in rural areas, including traditional agrarian, pastoral, forestry, fisheries, livestock and agroecological systems relevant to the conservation and sustainable use of biological diversity”.<sup>148</sup>

## **VI. Conclusion**

91. To summarize, the world faces dire and unprecedented climate and nature crises that are already inflicting grievous impacts on human rights, disproportionately affecting poor, vulnerable

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<sup>143</sup> See Brazil’s Nationally Determined Contribution at:

<https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Brazil%20First/BRAZIL%20iNDC%20english%20FINAL.pdf>

<sup>144</sup> For a list of countries that have submitted their long-term low greenhouse gas emission development strategies, see <https://unfccc.int/process/the-paris-agreement/long-term-strategies>

<sup>145</sup> Committee on Economic, Social, and Cultural Rights, “Climate change and the International Covenant on Economic, Social, and Cultural Rights”, 8 October 2018. Available at [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23691&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23691&LangID=E).

<sup>146</sup> Convention on Biological Diversity, arts. 5–14.

<sup>147</sup> Inter-American Court of Human Rights, *Kaliña and Lokono Peoples v. Suriname*, Judgment, 25 November 2015, para. 181.

<sup>148</sup> United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, art. 20.

and marginalized people.<sup>149</sup> The constitutional right to a healthy environment, including the right to a safe climate and the right to healthy ecosystems and biodiversity, could be a critical catalyst in spurring the urgent, systemic and transformative changes required to achieve a sustainable future. This right empowers the public and promotes accountability by imposing enforceable obligations on government to implement effective and equitable actions to address the global climate and nature crises.

92. This litigation has the potential to produce one of the most significant judicial decisions on climate change and human rights to date, setting a precedent not only in Brazil but for Latin America and the whole world. This Court's decision could provide vital and timely guidance to other courts (both national and international), human rights bodies, States, international organizations, communities, and individuals all over the world.

93. In light of its obligations pursuant to constitutional law, international human rights law and international environmental law, I respectfully submit that the Government of Brazil is violating the right to a healthy environment through its actions and omissions in addressing the global climate and nature crises. I encourage this Court to reach a decision as expeditiously as possible, as the plaintiffs, and the world, are rapidly running out of time. Climate justice delayed is climate justice denied.

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<sup>149</sup> International Bar Association, *Achieving Justice and Human Rights in an Era of Climate Disruption* (2014).