

INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)

**RESPONSES TO QUESTIONS FROM JUDGES CLEVELAND AND
AURESCU**

**SUBMITTED BY THE INTERNATIONAL UNION FOR
CONSERVATION OF NATURE (IUCN)**

PREPARED BY THE IUCN WORLD COMMISSION ON
ENVIRONMENTAL LAW (WCEL)

20 DECEMBER 2024

1. RESPONSE TO THE QUESTION POSED BY JUDGE CLEVELAND:

“During these proceedings, a number of Participants have referred to the production of fossil fuels in the context of climate change, including with respect to subsidies. In your view, what are the specific obligations under international law of States within whose jurisdiction fossil fuels are produced to ensure protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases, if any?”

2. RESPONSE TO THE QUESTION POSED BY JUDGE AURESCU:

“Some participants have argued, during the written and/or oral stages of the proceedings, that there exists the right to a clean, healthy and sustainable environment in international law. Could you please develop what is, in your view, the legal content of this right and its relation with the other human rights which you consider relevant for this advisory opinion?”

RESPONSE TO THE QUESTION POSED BY JUDGE CLEVELAND

1. At the public hearings on 13 December 2013, Judge Cleveland posed the following question:

“During these proceedings, a number of Participants have referred to the production of fossil fuels in the context of climate change, including with respect to subsidies. In your view, what are the specific obligations under international law of States within whose jurisdiction fossil fuels are produced to ensure protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases, if any?”

I. Due diligence-based obligations

2. The following response is grounded in the key point made in the IUCN’s written statement and comments, and reiterated at the public hearings, that every State has the obligation under international law to do its utmost to limit global warming to 1.5°C, and to limit any overshoot as much as possible, and to reverse it. This is an obligation of stringent due diligence, and it varies according to States’ different responsibilities and capabilities.¹
3. IUCN submits that this stringent due diligence obligation, informed among others by the standard of “highest possible ambition” in the Paris Agreement,² gives rise to several specific obligations in relation to fossil fuel production, taking into account States’ different responsibilities and capabilities.
4. First, as indicated in IUCN’s written statement, States’ due diligence obligations require them “to take into account the extra-territorial consequences of their actions, including, for example, consequences for the marine environment beyond their national jurisdiction or the consequences of exported fossil fuels. For example, a State with significant fossil fuel exports would find it difficult to argue that it is demonstrating the ‘highest possible ambition’ in its climate policy, and that it is acting with due diligence, if emissions caused by these exports were to remain entirely unaddressed.”³ Accordingly, States within whose jurisdiction fossil fuels are produced must adopt measures to address greenhouse gas (GHG) emissions embedded in fossil fuel exports. Such measures may include but are not limited to monitoring, disclosing, and/or regulating such emissions.
5. Second, doing the utmost also means that States within whose jurisdiction fossil fuels are produced at a minimum should consider GHG emissions from fossil fuel combustion in

¹ IUCN’s Written Comments (15 August 2024), para. 37; CR 2024/54, Verbatim Record, Public sitting held on Friday 13 December 2024, at 3 p.m., at the Peace Palace, President Salam presiding, on the Obligations of States in respect of Climate Change (Request for advisory opinion submitted by the General Assembly of the United Nations), 31, paras. 3-4; see also IUCN’s Written Statement (19 March 2024), paras. 39 (i), 305 (d), 353-354 and 378.

² Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) 55 ILM 740, art 4.3.

³ IUCN’s Written Comments (15 August 2024), para. 37; CR 2024/54, Verbatim Record, Public sitting held on Friday 13 December 2024, at 3 p.m., at the Peace Palace, President Salam presiding, on the Obligations of States in respect of Climate Change (Request for advisory opinion submitted by the General Assembly of the United Nations), 31, paras. 3-4; see also IUCN’s Written Statement, paras. 39 (i), 305 (d), 353-354 and 378.

environmental impact assessments (EIAs) of fossil fuel projects, including when such emissions take place in another jurisdiction. As we submitted in our written statement, “States’ due diligence obligation to carry out EIAs, where activities may lead to significant harm, does not cease to apply when it comes to the extraction and combustion of fossil fuels, where it is reasonably foreseeable that the extracted fossil fuel will lead to emissions of GHGs within or outside the territory of that State.”⁴ After fossil fuels have been extracted, they will almost inevitably be burned, leading to additional GHG emissions.⁵ Preventing significant environmental harm from such GHG emissions therefore requires carrying out an EIA that considers cumulative emissions, including emissions from fossil fuel combustion by end users in other jurisdictions.⁶ As the United Kingdom Supreme Court held in its recent *Finch* judgment, the transboundary nature of such effects should not exclude them from assessment:

“The fact that an environmental impact will occur or have its immediate source at a location away from the project site is not a reason to exclude it from assessment. There is no principle that, if environmental harm is exported, it may be ignored.”⁷

6. This obligation to conduct an EIA that considers the cumulative effects of fossil fuel-producing projects is further underpinned by the ITLOS Advisory Opinion on Climate Change, in which the Tribunal held:

*“Any planned activity, either public or private, which may cause substantial pollution to the marine environment or significant and harmful changes thereto through anthropogenic GHG emissions, including cumulative effects, shall be subjected to an environmental impact assessment. Such assessment shall be conducted by the State Party under whose jurisdiction or control the planned activity will be undertaken with a view to mitigating and adapting to the adverse effects of those emissions on the marine environment.”*⁸ (emphasis added)

7. Third, as we submitted in our written statement, “States’ due diligence obligations to consult and notify where activities may lead to significant harm also apply to the extraction and combustion of fossil fuels, where it is reasonably foreseeable that the extracted fossil fuel will lead to emissions of GHGs within or outside the territory of that

⁴ IUCN’s Written Statement (19 March 2024), para. 424.

⁵ *R (on the application of Finch) v Surrey County Council* [2024] UKSC 20 (“*Finch*”), paras. 79-80: “It is known with certainty that the extraction of oil at the proposed well site in Surrey - which is the activity giving rise to the requirement to carry out an EIA - would initiate a causal chain that would lead to the combustion of the oil and release of greenhouse gases into the atmosphere. ... [A] situation where X is both necessary and sufficient to bring about Y is the strongest possible form of causal connection - much stronger than is required as a test of causation for most legal purposes.”

⁶ *Finch*, para. 174; Oslo District Court, *Greenpeace Nordic and Nature & Youth v. Energy Ministry (The North Sea Fields Case)*, case no. 23-099330TVI-TOSL/05, 18 January 2024, p. 26.

⁷ *Finch*, para. 93.

⁸ Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal) (ITLOS, Advisory Opinion of 21 May 2024) (“ITLOS Advisory Opinion on Climate Change”), para. 367.

State.”⁹ Given the global nature of the problem, such consultation and notification can take place through multilateral forums.¹⁰

8. Fourth, due diligence requires States within whose jurisdiction fossil fuels are produced to refrain from adopting legislative, administrative, or other measures that support the *new* production of fossil fuels.¹¹ Studies clearly point to the incompatibility of new fossil fuel production and the goal to keep warming below 1.5°C. Notably, the International Energy Agency (IEA) has found that no new fossil fuel extraction projects are permissible in its scenario to stay below 1.5°C: “Beyond projects already committed as of 2021, there are no new oil and gas fields approved for development in our pathway, and no new coal mines or mine extensions are required.”¹² Another assessment of Intergovernmental Panel on Climate Change (IPCC) scenarios confirms the IEA finding that keeping global warming below 1.5°C entails no new fossil fuel projects.¹³ Moreover, the United Nations Environment Programme’s 2023 *Emissions Gap Report* found that “committed emissions” from “[t]he coal, oil and gas extracted over the lifetime of producing and under-construction mines and fields as at 2018 would emit more than 3.5 times the carbon budget available to limit warming to 1.5°C with 50 per cent probability, and almost the size of the budget available for 2°C with 67 per cent probability”.¹⁴ Supporting new fossil fuel production therefore is clearly not aligned with the due diligence obligation to do the utmost to avoid the harmful effects of climate change. This means among others that States, and in particular developed States, need to refrain from subsidising new fossil fuel production, and from providing licenses for new fossil fuel production.
9. Fifth, the stringent due diligent obligation also requires States to redirect public financial flows within their control away from fossil fuels. Such public finance includes but is not limited to government subsidies for fossil fuel production and consumption. Fossil fuel subsidy estimates vary, but a conservative estimate by the Organisation for Economic Co-operation and Development (OECD) puts them at US\$ 1.4 trillion in 2023 for OECD members and 48 other countries.¹⁵ In addition, relevant public financial flows also include fossil fuel investments by state-owned enterprises and international public finance in support of fossil fuels. The provision of financial support through each of these channels is under the control of States, and therefore such activities are attributable to States.¹⁶ Redirecting such financial support will reduce the likelihood of significant harm. As the IPCC finds with regard to fossil fuel subsidies specifically, “removing fossil fuel subsidies would reduce emissions, improve public revenue and macroeconomic performance, and yield other environmental and sustainable development benefits”.

⁹ IUCN’s Written Statement (19 March 2024), para. 437.

¹⁰ As envisaged, for example, in the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (adopted 19 June 2023, not yet entered into force), UN Doc. A/CONF.232/2023/4 (BBNJ Agreement), art. 32.

¹¹ See also Written Statement by Burkina Faso (2 April 2024), para. 182; Written Comments by Mauritius (15 August 2024).

¹² International Energy Agency, *Net Zero by 2050. A Roadmap for the Global Energy Sector* (Summary for Policymakers) (2021), p. 11.

¹³ F. Green et al., “No New Fossil Fuel Projects: The Norm We Need” (2024) 384 *Science* 954.

¹⁴ United Nations Environment Programme (UNEP), *Emissions Gap Report 2023: Broken Record. Temperatures Hit New Highs, yet World Fails to Cut Emissions (again)* (2023), p. xxiii.

¹⁵ OECD, *OECD Inventory of Support Measures for Fossil Fuels 2023* (2023), p. 2.

¹⁶ See also Written Statement by Vanuatu (21 March 2024), para. 144.

Moreover, “fossil fuel subsidy removal is projected ... to reduce global CO₂ emissions by 1–4%, and GHG emissions by up to 10% by 2030, varying across regions”.¹⁷

10. Redirecting public financial flows away from fossil fuels would also directly contribute to achieving the goal of the Paris Agreement of “[m]aking finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development”.¹⁸ This goal can be understood as being also applicable to public finance for fossil fuels, particularly when read in conjunction with the subsequent call by Parties to the Paris Agreement to “[p]has[e] out inefficient fossil fuel subsidies that do not address energy poverty or just transitions, as soon as possible” contained in the outcome of the Global Stocktake.¹⁹ This call furthermore suggests that subsidising fossil fuels is only possible under certain, limited circumstances, i.e. to address energy poverty and for the purposes of ensuring just transitions.

II. Duty to prepare and communicate NDCs that are informed by the outcome of the Global Stocktake

11. Under the Paris Agreement, Parties have the obligation to prepare, communicate and maintain successive Nationally Determined Contributions (NDCs), according to art. 4.2 and 4.9. As a legal duty, Parties shall be informed by the outcome of the Global Stocktake (GST) when communicating their NDC.²⁰ Article 14(3) of the Paris Agreement provides that:

“The outcome of the global stocktake *shall* inform Parties in updating and enhancing, in a nationally determined manner, their actions and support in accordance with the relevant provisions of this Agreement, as well as in enhancing international cooperation for climate action.” (emphasis added)

and Article 4(9) states that:

“Each Party *shall* communicate a nationally determined contribution every five years in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement and *be informed by the outcomes of the global stocktake referred to in Article 14.*” (emphasis added)

12. The GST took place for the first time in 2023 and will take place every five years thereafter, always two years before the next NDCs are due. This “staggering” of the procedures has been carefully designed so as to enable Parties to be informed by the GST outcome in next round of NDCs, which are due in 2025 and every 5 years thereafter.
13. The 2023 CMA Decision on the ‘Outcome of the First Global Stocktake’ called on Parties to undertake global efforts, including in “[t]ransitioning away from fossil fuels in energy

¹⁷ IPCC, “Summary for Policymakers” in P.R. Shukla et al., *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2022), para. E.4.2.

¹⁸ Paris Agreement, art. 2.1(c).

¹⁹ Decision 1/CMA.5, *Outcome of the First Global Stocktake*, UN Doc. FCCC/PA/CMA/2023/16/Add.1 (15 March 2024), para. 28(h).

²⁰ Paris Agreement, arts. 4(9) and 14(3).

systems, in a just, orderly and equitable manner, accelerating action in this critical decade, so as to achieve net-zero by 2050 in keeping with the science.”²¹

14. The efforts outlined in the 2023 GST Decision are crucial for holding temperature increases to 1.5°C. Parties are legally obliged to take them into account and be informed by them when preparing their next NDC, which is to be communicated by 10 February 2025, at the latest. Moreover, in their next NDC, each Party must provide information on how the GST outcome informed the preparation of its NDC.²² This means that each Party, individually, must carefully consider the 2023 GST Decision and communicate in 2025 an NDC that contains a country-specific reflection of the global efforts, including on transitioning away from fossil fuels.
15. Following the same reasoning, each Party should contain country-specific reflection of the global efforts on “[p]hasing out inefficient fossil fuel subsidies that do not address energy poverty or just transitions, as soon as possible”.²³

III. Duty to cooperate

16. In addition to the specific obligations derived from States’ due diligence obligation, the international law duty to cooperate requires States to cooperate on transitioning away from fossil fuels. As IUCN posits in its written statement, “the obligation to cooperate to protect the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases is an obligation *erga omnes*, applying among all States, both as (i) an aspect of due diligence in the prevention of harm to the climate system and (ii) as a freestanding duty founded on recognition of the climate system as a matter of common concern”.²⁴
17. The duty to cooperate, as the Court found in *Pulp Mills*,²⁵ means that States should refrain from undertaking activities that could undermine cooperation. In the context of fossil fuel production, such activities include, *inter alia*, providing financial support for increasing fossil fuel production and approving new fossil fuel projects,²⁶ reinforcing the specific obligations based on due diligence outlined above. Given the clear evidence that such projects are incompatible with keeping global warming below 1.5°C,²⁷ supporting new fossil fuel projects would undermine simultaneous efforts to “transition away from fossil fuels”, as Parties to the Paris Agreement have called for.²⁸

IV. International human rights law

²¹ Decision 1/CMA.5, para. 28.

²² “Decision 4/CMA.1, *Further Guidance in Relation to the Mitigation Section of Decision 1/CP.21*, UN Doc. FCCC/PA/CMA/2018/3/Add.1 (19 March 2019), Annex I, para. 4(c).

²³ Decision 1/CMA.5, para. 28(h).

²⁴ Written Statement (19 March 2024), para. 447.

²⁵ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment [2010] ICJ Rep 14, para. 144.

²⁶ See also Written Statement by the African Union (22 March 2024), para. 129; Written Statement by Vanuatu (21 March 2024), para. 414.

²⁷ See International Energy Agency, *Net Zero by 2050* (2021); UNEP, *The Production Gap: Phasing Down or Phasing Up? Top Fossil Fuel Producers Plan even More Extraction Despite Climate Promises* (2023), p. 2: “Governments, in aggregate, still plan to produce more than double the amount of fossil fuels in 2030 than would be consistent with limiting warming to 1.5°C.”

²⁸ Decision 1/CMA.5, para. 28(d).

18. States also have an obligation to effectively contribute to phasing out fossil fuels under international human rights law. This general obligation was affirmed by a joint statement in 2019 by five human rights bodies (the Committee on the Elimination 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). In this statement, the five bodies among others suggests that “States parties should effectively contribute to phasing out fossils fuels”.²⁹ Similarly, in its General Comment No. 26, the Committee on the Rights of the Child furthermore recognised that “delaying rapid phase out of fossil fuels will result in higher cumulative emissions and thereby greater foreseeable harm to children’s rights”.³⁰
19. As we have submitted in our written comments, “[i]nternational human rights treaties impose positive obligations on States to take all necessary and appropriate measures aligned with the 1.5°C threshold and corresponding timelines for emission pathways and to protect relevant human rights in an inter-temporal manner”.³¹
20. Fossil fuel production, by driving climate change, contributes to violations of a wide array of human rights, including the right to life, the right to health, the right to property, children’s rights, and women’s rights. The contribution of fossil fuel production, and the need to address fossil fuel production was acknowledged, for example, by the Committee on Economic, Social and Cultural Rights in its consideration of the sixth periodic report by Norway, in which the Committee recommended that “the State party reconsider its decision to increase oil and natural gas exploitation and take its human rights obligations as a primary consideration in its natural resource exploitation and export policies”.³²
21. International human rights law also imposes a positive obligation upon States to provide for a just transition away from fossil fuels. As noted by the United Nations Office of the High Commissioner for Human Rights and the International Labour Organization, “[a] just transition is intrinsically grounded in human rights standards and obligations, including the rights to equality and non-discrimination, a clean, healthy and sustainable environment, decent work, social security, access to information, public participation and access to justice and remedies”.³³ The need for a just transition was emphasised by the Committee

²⁹ “Five UN Human Rights Treaty Bodies Issue a Joint Statement on Human Rights and Climate Change” (16 September 2019), para. 3, <https://www.ohchr.org/en/statements/2019/09/five-un-human-rights-treaty-bodies-issue-joint-statement-human-rights-and?LangID=E&NewsID=24998> (Joint Statement on Human Rights and Climate Change).

³⁰ Committee on the Rights of the Child, “General Comment No. 26 (2023) on Children’s Rights and the Environment, with a Special Focus on Climate Change”, UN Doc. CRC/C/GC/26 (22 August 2023), para. 98(d).

³¹ IUCN’s Written Comments (15 August 2024), para. 39 (General Comment No. 26).

³² Committee on Economic, Social and Cultural Rights (CESCR), “Concluding Observations on the Sixth Periodic Report of Norway”, UN Doc. E/C.12/NOR/CO/6 (2 April 2020), para. 11. See also Committee on the Elimination of Discrimination against Women, “Concluding Observations on the Tenth Periodic Report of Norway”, UN Doc. CEDAW/C/NOR/CO/10 (2 March 2023), para. 49(a), recommending the State to “[r]eview its climate change and energy policies, in particular its policy on the extraction and export of oil and gas, as well as the activities of related State-owned companies and private companies, taking into account the disproportionate negative impact on women and girls both within and outside its territory, with a view to radically reducing greenhouse emissions in line with the Paris Agreement on climate change”.

³³ United Nations Office of the High Commissioner for Human Rights and the International Labour Organization, *Key Messages on a Just Transition and Human Rights*, p. 1, <https://www.ohchr.org/sites/default/files/documents/issues/climatechange/information-materials/key-messages-hr-a-just-trans.pdf>.

on the Rights of the Child, which found that States should “[e]quitably phase out the use of coal, oil and natural gas, ensure a fair and just transition of energy sources and invest in renewable energy, energy storage and energy efficiency to address the climate crisis”.³⁴

22. Under human rights law States also are under a duty to reform fossil fuel subsidies. As the five aforementioned human rights bodies find, “States should also discontinue financial incentives or investments in activities and infrastructure which are not consistent with low greenhouse gas emissions pathways, whether undertaken by public or private actors as a mitigation measure to prevent further damage and risk”.³⁵ This statement is in line with the duty of States to use their “maximum available resources” for the progressive realisation of economic, social, and cultural rights.³⁶ States providing public financial support for fossil fuels are not dedicating the maximum available resources to combating climate change. Importantly, human rights law also suggests that fossil fuel subsidy reform efforts should address the impacts on poorer segments of society, including by providing for compensation if necessary.³⁷
23. Lastly, international human rights law provides for certain procedural rights, including on access to information.³⁸ This right is further elaborated in the context of environmental protection through Principle 10 of the Rio Declaration, which provides that “[a]t the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities.³⁹ In the context of climate change, information about fossil fuel production and fossil fuel subsidies is of crucial importance for individuals, as such information offers an indication on the extent to which States are contributing to harm to the climate system. However, relevant information, including for instance inventories of fossil fuel subsidies, fossil fuel production plans and projections, including underlying economic and technological assumptions, emissions embedded in fossil fuel exports, and plans for decommissioning fossil fuel infrastructure, is often unavailable.⁴⁰ For States, therefore, a corresponding duty is to disclose such information about fossil fuel production and financial support for fossil fuels.

³⁴ General Comment No. 26, para. 65(d).

³⁵ Joint Statement on Human Rights and Climate Change, para. 3.

³⁶ International Convention on Economic, Social and Cultural Rights (adopted 16 December 1996, entered into force 3 January 1976) 993 UNTS 3, art. 2.

³⁷ CESCR, “Draft General Comment on Economic, Social and Cultural Rights and the Environmental Dimension of Sustainable Development”, para. 22 <https://www.ohchr.org/en/calls-for-input/2025/cescr-calls-written-contributions-draft-general-comment-economic-social-and> (“Fiscal policies should be sustainable and promote a just and rapid energy transition through reduced dependence on fossil fuels and the adoption of compensation policies, where necessary”).

³⁸ UNGA, “Universal Declaration of Human Rights”, UN Doc. A/Res/217 (III) (10 December 1948), art. 19; and International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 art. 19

³⁹ “Declaration of the UN Conference on Environment and Development”, UN Doc. A/CONF.151/26 (Vol. I) (12 August 1992), Principle 10.

⁴⁰ UNEP, *The Production Gap: Governments’ Planned Fossil Fuel Production Remains Dangerously Out of Sync with Paris Agreement Limits* (2021), p. 56.

RESPONSE TO THE QUESTION POSED BY JUDGE AURESCU

24. At the public hearings on 13 December 2013, Judge Aurecu posed the following question:

“Some participants have argued, during the written and/or oral stages of the proceedings, that there exists the right to a clean, healthy and sustainable environment in international law. Could you please develop what is, in your view, the legal content of this right and its relation with the other human rights which you consider relevant for this advisory opinion?”

I. Existence of the right

25. Human rights and environmental rights are deeply and inherently interconnected. The conservation of natural resources can only be achieved if human rights are considered and respected. In turn, for human rights to be realized, maintaining a healthy planet is essential. Building on this recognition, the IUCN respectfully invites the Court to recognize that the right to a clean, healthy and sustainable environment (henceforth: right to a healthy environment) is a cornerstone of providing adequate human rights protection in the face of overlapping environmental crises, including especially climate change.

26. This right has been recognized in a large number of international and regional instruments, as well as by “national constitutions, laws and policies by a vast majority of States”.⁴¹ The present section non-exhaustively notes some of the key international and regional legal instruments in this regard.

27. First, the right to a healthy environment has been recognized repeatedly on the UN level. Already in 1972, in the Stockholm Declaration, States recognized “the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being”.⁴² The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁴³ and the International Labor Organization’s Indigenous and Tribal Peoples Convention (ILO Convention No. 169)⁴⁴ provide further important examples of the recognition of the relationship between human rights and environmental rights. An important milestone in the international recognition of a separate, universal (i.e. not group-specific) right to a healthy environment was the UN General Assembly Declaration to that effect,⁴⁵ which was accepted in 2022 by 161 votes in favour, no votes against, and eight abstentions. This declaration built on the prior recognition of the right by the Human Rights Council.⁴⁶ In addition, the UN Committee on the Rights of the Child, in its 2023 General Comment No. 26 on children’s rights and the environment, with a special focus on climate change, recognized that “[c]hildren have the right to a clean, healthy and

⁴¹ Committee on the Rights of the Child, ‘General Comment No. 26 (2023) on children’s rights and the environment, with a special focus on climate change’, UN Doc CRC/C/GC/26 (22 August 2023), para. 10.

⁴² Declaration of the United Nations Conference on the Human Environment, 16 June 1972.

⁴³ UNGA, UN Declaration on the Rights of Indigenous Peoples, UN Doc A/RES/61/295, 2 October 2007.

⁴⁴ International Labor Organization, Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries of 27 June 1989, 1650 UNTS 383.

⁴⁵ UNGA, ‘The Human Right to a Clean, Healthy and Sustainable Environment’, UN Doc A/RES/76/300 (1 August 2022).

⁴⁶ Human Rights Council, ‘The Human Right to a Clean, Healthy and Sustainable Environment’, Res. 48/13 (8 October 2021). See also Human Rights Council, ‘The Human Right to a Clean, Healthy and Sustainable Environment’, UN Doc A/HRC/RES/52/23 (13 April 2023).

sustainable environment”, as a right that is implicit within the UNCRC and linked to various rights therein.⁴⁷ Other international instruments also contain references to environmental rights, for example Article 29(1) of the UNDRIP, which states that “Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.”⁴⁸ Notably, after the UNGA’s recognition of the right to a healthy environment, successive UNFCCC COP outcome documents have included a reference to this right in their preambles.⁴⁹

28. These international recognitions of the right to a healthy environment complement numerous regional instruments recognizing this same right. The African Charter on Human and Peoples’ Rights,⁵⁰ the San Salvador Protocol,⁵¹ the Arab Charter on Human Rights,⁵² the ASEAN Human Rights Declaration,⁵³ and the Escazú Agreement⁵⁴ all unequivocally recognize the right to a healthy environment. In Europe, recognition of the right is less explicit, but it exists, nonetheless. For example, the Aarhus Convention recognizes this right,⁵⁵ and although discussions about its recognition within the Council of Europe through e.g. an additional protocol to the European Convention on Human Rights are still ongoing,⁵⁶ the Council of Europe’s European Committee of Social Rights has recognized this right in its case-law.⁵⁷
29. In addition, this right has been recognized in the vast majority of domestic legal systems. In 2023, a joint study by the UNEP, OHCHR and UNDP showed that even prior to the UNGA recognition of the right to a healthy environment, the right had already been recognized “in more than eighty percent of UN Member States (156 out of 193 States)” through either regional or domestic instruments, or both.⁵⁸ IUCN respectfully emphasizes the relevance of these developments as a form of State practice contributing to the emergence of customary law.⁵⁹ The IUCN notes that, as a result of this process of recognition and codification, various States have argued that the right to a healthy

⁴⁷ Committee on the Rights of the Child, ‘General Comment No. 26 (2023) on Children’s Rights and the Environment, with a Special Focus on Climate Change’, UN Doc CRC/C/GC/26 (22 August 2023), para. 63.

⁴⁸ UNGA, United Nations Declaration on the Rights of Indigenous Peoples, UN Doc A/RES/61/295 (2 October 2007), Art. 29(1).

⁴⁹ See Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, Decision 1/CMA.5, FCCC/PA/CMA/2023/16/Add.1 (13 December 2023), preamble, 7th recital; Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, Decision 1/CP.28, FCCC/CP/2023/11/Add.1 (15 March 2024), preamble, 4th recital, among others.

⁵⁰ African Charter on Human and Peoples’ Rights, adopted 27 June 1981, entered into force on 21 October 1986, 1520 UNTS 217 at Art. 24.

⁵¹ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol), adopted 17 November 1988, entered into force on 16 November 1999, at Article 11.

⁵² Arab Charter on Human Rights, adopted 22 May 2004, entered into force on 15 March 2008, at Article 38.

⁵³ ASEAN Human Rights Declaration, adopted on 18 November 2012, at Article 28 (f).

⁵⁴ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), adopted on 4 March 2018, entered into force on 22 April 2021, at Article 1.

⁵⁵ Aarhus Convention, adopted 25 June 1998, entered into force 30 October 2001, 2161 UNTS 447.

⁵⁶ See the report of the Council of Europe Steering Committee on Human Rights, CDDH(2024)R101 Addendum 2, 29 November 2024.

⁵⁷ European Committee of Social Rights, *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, complaint no. 30/2005, 6 December 2006, paras. 194-195 and 202.

⁵⁸ UNEP, OHCHR and UNDP, “What is the Right to a Healthy Environment? Information Note”, 3 January 2023, <https://wedocs.unep.org/bitstream/handle/20.500.11822/41599/WRHE.pdf?sequence=1&isAllowed=y%20,8>.

⁵⁹ As e.g. recognized by this Court (ICJ, *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, I.C.J. Reports 2002, p. 3, at para. 58).

environment has crystallized into a norm of customary international law.⁶⁰ While not all States agree with this position, with some contesting the bindingness of the right and the existence of sufficiently universal State practice and *opinio juris* both within the present proceedings⁶¹ and outside them,⁶² these discussions certainly underscore the importance accorded to this right.

II. Content of the Right

30. It is commonly argued that there is no agreed content of the right to a healthy environment. This finding is used to argue that the right has no content, or no binding content, at all. However, this is a misunderstanding. A more accurate understanding would be to clarify that various systems provide a common core level of protection of this right, but that some provide further-reaching protections than others. For example, the African Charter on Human and Peoples' Rights⁶³ recognizes "peoples" as holders of the right in question, and the Inter-American System protects rights of nature under this right,⁶⁴ whereas other regional and international systems recognize only an individual-oriented right to a healthy environment. Likewise, the adjectives used to describe the right can also vary, with descriptions including a right to a healthy environment, a safe environment, a clean environment, a favourable environment, a healthy environment, or an ecologically sound environment. However, "despite the variety of denominations, the core content of the right to a healthy environment is generally common to all these national, regional, or international texts. The fundamental interconnection between the protection of the environment and the effective preservation of human rights is at the centre of each of these formulations."⁶⁵
31. In a 2023 study, the UNEP, OHCHR and UNDP synthesized the various international and regional instruments concerning the right to a healthy environment in order to set out those aspects of the right to a healthy environment that represent a common core of the various systems' protection.⁶⁶ These were:
- Substantive rights,⁶⁷ namely entitlements to clean air, a safe and stable climate, healthy ecosystems and biodiversity, safe and sufficient water and adequate sanitation, healthy and sustainable food and a non-toxic environment in which to live, work, study and play; and

⁶⁰ See, within these proceedings, the written submissions of Costa Rica (82), Ecuador (3.108), El Salvador (43), Federated States of Micronesia (79), Namibia, and the Philippines (54). See also C. Rodríguez-Garavito, 'A Human Right to a Healthy Environment?: Moral, Legal, and Empirical Considerations' in J H Knox and R Pejan (eds), *The Human Right to a Healthy Environment* (CUP 2018) 160.

⁶¹ Written submissions of the United States of America, para. 4.39.

⁶² UNGA, Seventy-Sixth Session, 97th meeting, Press Release GA/12437 (28 July 2022) explanation by representative of New Zealand <<https://press.un.org/en/2022/ga12437.doc.htm>>.

⁶³ African Charter on Human and Peoples' Rights, adopted 27 June 1981, entered into force on 21 October 1986, 1520 UNTS 217 at Art. 24.

⁶⁴ For example, the IACtHR has noted that "States are obliged to protect nature not only because of its usefulness or effects on human beings, but also because of its importance for other living organisms with whom the planet is shared" (see IACtHR, *La Oroya v. Peru*, Judgment of 27 November 2023, Series C-511, para. 118).

⁶⁵ IUCN News/Yann Aguila, 'The Right to a Healthy Environment' (29 October 2021),

<https://iucn.org/news/world-commission-environmental-law/202110/right-a-healthy-environment>.

⁶⁶ UNEP, OHCHR and UNDP, 'What is the Right to a Healthy Environment? Information Note' (3 January 2023), <https://wedocs.unep.org/bitstream/handle/20.500.11822/41599/WRHE.pdf?sequence=1&isAllowed=y%20>.

⁶⁷ On this, see also e.g. Human Rights Council, 'Report of the Special Rapporteur on Human Rights and the Environment – Right to a Healthy Environment: Good Practices', UN Doc A/HRC/43/53 (30 December 2019).

- Procedural rights, namely rights of access to information, public participation and access to justice, as well as the exercise of these rights free from reprisals or retaliation. These are concretized especially in the Aarhus Convention and the Escazú Agreement, which protect rights to information, access to justice and public participation in environmental matters and support environmental human rights defenders.

32. In terms of substance, the right to a healthy environment covers a wide range of environmental impacts – e.g. impacts on the climate, ecosystems, biodiversity, water, food and the overall environment – because “[e]nvironmental degradation may cause irreparable harm to human beings; thus, a healthy environment is a fundamental right for the existence of humankind.”⁶⁸ Although some systems provide further-reaching protection, there seems to be agreement about the core content of the right on the international level in terms of the elements set out above. In this regard, like the UNEP, OHCHR and UNDP, the UN Special Rapporteur on the right to a healthy environment has recently synthesized the wide range of legal and practical developments relating to this right and clarified the substantive elements of the right, namely: a right to clean air; a right to a safe climate; a right to safe and sufficient water; a right to healthy and sustainable food; a right to non-toxic environments; and a right to healthy ecosystems and biodiversity.⁶⁹ Likewise, in its 2023 *La Oroya* judgment, the Inter-American Court of Human Rights (IACtHR) recognized that this right enshrined protections against both air and water pollution,⁷⁰ linking it to the due diligence obligation of States to use all available means to avoid significant environmental harm.⁷¹ Here the IACtHR considered it “difficult to imagine international obligations of greater significance than those that protect the environment against unlawful or arbitrary conduct that causes serious, extensive, lasting and irreversible damage to the environment in a scenario of climate crisis that threatens the survival of species”, arguing that “the international protection of the environment requires the progressive recognition of the prohibition of conducts of this type as a peremptory norm (*jus cogens*)”.⁷²
33. In terms of procedural rights, IUCN particularly stresses the importance of protecting environmental human rights defenders. These are individuals and communities who – by claiming their right to a clean, healthy and sustainable environment, as recognized by the UNGA – have put their lives at risk. The UN Declaration on Human Rights Defenders adopted by the UNGA in its Resolution 53/144 is fundamental when protecting these defenders, especially now, at a time when climate change impacts are more visible than ever and communities are demanding rapid action.⁷³ Similar protections can be found in the Escazú Agreement, also known as the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean of 2018.⁷⁴ This instrument explicitly mentions environmental human rights

⁶⁸ IACtHR, Advisory Opinion OC-23/17 of 15 November 2017, para. 59.

⁶⁹ UNGA, ‘Report of the Special Rapporteur on the Human Right to a Clean, Healthy and Sustainable Environment: Overview of the Implementation of the Human Right to a Clean, Healthy and Sustainable Environment’, UN Doc A/79/270 (2 August 2024), paras. 50-70.

⁷⁰ IACtHR, *La Oroya v. Peru*, Judgment of 27 November 2023, Series C-511, para. 125.

⁷¹ *Ibid.*, para. 126.

⁷² *Ibid.*, para. 129.

⁷³ UNGA, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN Doc A/RES/53/144 (8 March 1999).

⁷⁴ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), adopted on 4 March 2018, entered into force on 22 April 2021.

defenders. The agreement focuses on the implementation of the rights of access to environmental information, public participation and access to justice in environmental matters linked to the protection of the rights of present and future generations to live in a healthy environment. Furthermore, the UNGA's 2023 Resolution 78/216 on providing a safe and enabling environment for human rights defenders and ensuring their protection noted that environmental human rights defenders are "among the human rights defenders most exposed and at risk" of reprisals, repression and human rights violations.⁷⁵ It called for the protection of universally recognized human rights and noted the "positive, important and legitimate role played by human rights defenders in the promotion and protection of human rights as they relate to the enjoyment of a safe, clean, healthy and sustainable environment" including how human rights relate to sustainable development and climate change.⁷⁶

34. Like other rights, the right to a healthy environment continues to evolve over time.⁷⁷ For example, in addition to the substantive and procedural elements noted here, it has been suggested that the right to a healthy environment has an intertemporal element, in that it enshrines the principle of intergenerational equity.⁷⁸
35. These components of the right to a healthy environment overlap to some degree with other human rights enshrined in various international and regional human rights treaties, such as rights to life, food, health, water, education, private and family life, freedom from torture, culture, non-discrimination, freedom of expression, access to information, access to justice and a remedy, and fair trial. The relationship between these rights and the right to a healthy environment is discussed below.

III. Relationship with other Human Rights

36. As the IUCN noted in its written submission to the Court in these proceedings, existing human rights protections are increasingly being aligned, whether implicitly or explicitly, with the human right to a healthy environment. It is clear that this right is indivisible from the protection of other human rights. UN mandate holders, already in 2013, remarked on the "remarkably coherent" views of different human rights bodies and other authorities on the relationship between human rights law and the environment, which provide "strong evidence of converging trends towards greater uniformity and certainty in the human rights obligations relating to the environment."⁷⁹ Because climate change is a crisis of human rights protection, States' international obligations in this regard (e.g. States' obligations to protect the climate system and other parts of the environment) accordingly include due and

⁷⁵ UNGA, 'Implementing the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms through providing a safe and enabling environment for human rights defenders and ensuring their protection', UN Doc A/RES/78/216 (19 December 2023).

⁷⁶ *Ibid.*

⁷⁷ UNGA, 'Report of the Special Rapporteur on the Human Right to a Clean, Healthy and Sustainable Environment: Overview of the Implementation of the Human Right to a Clean, Healthy and Sustainable Environment', UN Doc A/79/270 (2 August 2024), para. 6.

⁷⁸ See IACtHR, *La Oroya v. Peru*, Judgment of 27 November 2023, Series C-511, para. 129. See also for example by the 2024 Maastricht Principles on the Human Rights of Future Generations (principle 5(b)). See also Brian J. Preston, "The Nature, Content and Realisation of the Right to a Clean, Healthy and Sustainable Environment", 36(2) *Journal of Environmental Law* (2024), 159-186.

⁷⁹ UN Human Rights Council 'Mapping report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' (30 December 2013) UN Doc A/HRC/25/53, para 27. ICJ Dossier No 304.

coherent regard for the international human rights framework as a whole. This approach is in line with this Court’s recognition that “the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn.”⁸⁰

37. IUCN respectfully submits that the right to a healthy environment applies in two ways. First, it is an independent right, such as that guaranteed under the various instruments discussed above. However, it is *also* an implicit part of those other rights, such as the rights to life, personal integrity, property, non-discrimination, health, food, water, progressive development, education, culture, and freedom from torture and inhuman and degrading treatment, freedom of expression, access to information, access to justice and a remedy, and fair trial. This is explained by the fact that these rights are impacted by environmental destruction – for example, the right to life is endangered in clear and unmistakable ways by climate-aggravated floods, storms, heatwaves, droughts, and other impacts. And other rights listed here – for example the right to freedom of expression – overlap with the procedural aspects of the right to a healthy environment, for example by guaranteeing access to information and protection of environmental human rights defenders.
38. The interdependence of the right to a healthy environment and other human rights has been prominently recognized by the UNGA. In its Resolution recognizing the right to a healthy environment, the UNGA clarified that “the right to a clean, healthy and sustainable environment is related to other rights and existing international law”.⁸¹ The same resolution also affirmed that “all human rights are universal, indivisible, interdependent and interrelated”⁸² – and that the right to a healthy environment and the right to sustainable development, in particular, are interlinked.⁸³ Existing human rights, in other words, cannot be adequately protected absent effective mitigation of greenhouse gas emissions and adaptation action.
39. Various human rights courts and bodies have recognized this interdependence. To name a few examples among many, the UN Committee on Economic, Social and Cultural Rights (CESCR) has noted that “[c]limate change already affects, in particular, the rights to health, food, water and sanitation; and it will do so at an increasing pace in the future.”⁸⁴ The CRC has likewise noted that the right to a healthy environment is “directly linked to” rights in the UNCRC, in particular the rights to life, survival and development, to the highest attainable standard of health, to an adequate standard of living, and to education, including the development of respect for the natural environment (Article 29 UNCRC).⁸⁵ Accordingly, it held that “[t]his right should be mainstreamed across all decisions and measures concerning children”.⁸⁶ Notably, with 196 States Parties, the Convention on the

⁸⁰ *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226, 242

⁸¹ UNGA, ‘The Human Right to a Clean, Healthy and Sustainable Environment’, UN Doc A/RES/76/300 (1 August 2022), preamble, 8th recital.

⁸² *Ibid.*, preamble.

⁸³ *Ibid.*, 2. See also the statement from Special Rapporteur on the right to development, Surya Deva, that these rights go “hand in hand” (Surya Deva, ‘Reinvigorating the Right to Development: A Vision for the Future’, UN Doc A/HRC/54/27 (4 August 2023) at 65).

⁸⁴ CESCR ‘Climate Change and the International Covenant on Economic, Social and Cultural Rights’, UN Doc E/C.12/2018/1 (31 October 2018), para 4. ICJ Dossier No 298.

⁸⁵ Committee on the Rights of the Child, ‘General Comment No. 26 (2023) on children’s rights and the environment, with a special focus on climate change’, UN Doc CRC/C/GC/26 (22 August 2023), para. 63.

⁸⁶ Committee on the Rights of the Child, ‘General Comment No. 26 (2023) on children’s rights and the environment, with a special focus on climate change’, UN Doc CRC/C/GC/26 (22 August 2023), para. 67.

Rights of the Child enjoys near-universal ratification – more even than the Paris Agreement. Although not explicitly mentioned in the question posed to the Court during the present proceedings, this Convention accordingly represents a key instrument for defining State obligations concerning climate change, and we respectfully submit that it should inform the Court’s opinion.

40. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁸⁷ and the International Labor Organization Indigenous and Tribal Peoples Convention (ILO Convention No. 169)⁸⁸ provide further important examples of the recognition of the relationship between human rights and environmental rights. According to the UNDRIP, Indigenous peoples have the right to the full enjoyment of all human rights (Art. 1) and to the conservation, restoration and protection of the total environment and the productive capacity of their lands, territories and resources (Art. 28). Similarly, Article 15 of ILO Convention No. 169 indicates the rights of Indigenous peoples in relation to the natural resources within their lands and the need to protect them. These include the rights of people to participate in the management and conservation of these resources. It is clearly recognized that climate change impacts are limiting the ability of Indigenous peoples to exercise their rights to life; health; food; water; culture; and housing. In other words, without a healthy and sustainable environment, it is not possible for indigenous peoples to achieve these rights. The already visible impacts of environmental degradation and climate change undermine the application of human rights under the Universal Declaration of Human Rights. Indigenous Peoples, including Indigenous women, children, and youth, are among the most vulnerable people that are fighting against the effects of climate change – and their rights, as clearly reiterated in existing UN conventions and declarations, must be protected.
41. Likewise, the UN General Assembly Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP)⁸⁹ also recognizes environment-related human rights. In particular, it recognizes the difficulties that Peasants and other people working in rural areas face when it comes to making their voices heard, defending their human rights and land tenure rights, and securing the sustainable use of the natural resources. Article 17(1) UNDROP indicates that Peasants have a right to land including the right to have access to, sustainably use and manage the land and the water bodies, coastal seas, fisheries, pastures and forests. Art. 18 establishes that “Peasants and other people working in rural areas have the right to the conservation and protection of the environment and the productive capacity of their lands, and of the resources that they use and manage” (para. 1) and establishes that “States shall take appropriate measures to ensure that peasants and other people working in rural areas enjoy, without discrimination, a safe, clean and healthy environment” (para. 2). These rights are clearly linked to the rights to life, culture and a clean and healthy environment.
42. The interdependence between the right to a clean and healthy environment and other human rights is also particularly clear when looking at the situation of environmental human rights defenders (as discussed above), whose rights to life, freedom from torture, freedom of expression, peaceful assembly and association, participation in the conduct of public affairs, and access to justice are all put at risk by restrictions on freedom of association or

⁸⁷ UNGA, UN Declaration on the Rights of Indigenous Peoples, UN Doc A/RES/61/295, 2 October 2007.

⁸⁸ International Labor Organization, Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries of 27 June 1989, 1650 UNTS 383.

⁸⁹ UNGA, UN Declaration on the Rights of Indigenous Peoples, UN Doc A/RES/61/295, 2 October 2007.

expression or the right to peaceful assembly, arbitrary arrests and detention, abuse of criminal or civil proceedings or what the UNGA calls “deplorable acts of intimidation and reprisal”.⁹⁰

43. In short, environmental human rights exist both in the form of an independent human right, i.e. a right to a healthy environment, and as an aspect of other human rights obligations, i.e. universal rights and rights specific to particular groups, including Indigenous peoples and Peasants. A passage from a 2018 report by the UN Special Rapporteur on human rights and the environment, John H. Knox, describes this interaction well. Noting that other human rights likewise apply to environmental issues, he noted that “[e]xplicit recognition of the human right to a healthy environment thus turned out to be unnecessary for the application of human rights norms to environmental issues.”⁹¹ However, this did not mean that the right lacked added value: he noted evidence that “recognition of the right has proved to have real advantages. It has raised the profile and importance of environmental protection and provided a basis for the enactment of stronger environmental laws. When applied by the judiciary, it has helped to provide a safety net to protect against gaps in statutory laws and created opportunities for better access to justice. Courts in many countries are increasingly applying the right (...).”⁹² In addition, he noted that explicit recognition of this right “raises awareness that human rights norms require protection of the environment and highlights that environmental protection is on the same level of importance as other human interests that are fundamental to human dignity, equality and freedom. It also helps to ensure that human rights norms relating to the environment continue to develop in a coherent and integrated manner”.⁹³
44. In short, aspects of the right to a healthy environment are guaranteed through other human rights. However, recognizing this right explicitly has important advantages, because it creates a coordinated framework of human rights protections. It not only consolidates the environment-related standards discussed above, drawing much-needed attention to the interdependence of human rights and the environment, but provides clear, comprehensive, coordinated protections for addressing the specific risks that arise in the context of environmental human rights impacts – including pollution, climate change, ecosystem loss and impacts on environmental human rights defenders.

⁹⁰ UNGA, ‘Implementing the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms through providing a safe and enabling environment for human rights defenders and ensuring their protection’, UN Doc A/RES/78/216, 19 December 2023.

⁹¹ Human Rights Council, ‘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/HRC/37/59 (24 January 2018), para. 13.

⁹² *Ibid.*

⁹³ *Ibid.*, para. 16.