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Geopolitical Strategy & International Law and ESG  
Update

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## Inter-American Court of Human Rights Issues Advisory Opinion on State Obligations Regarding Climate Change

*The ICtHR found that there exists an independent right to a healthy climate, derived from the right to a healthy environment, and discusses at length States' obligations in the context of the climate emergency.*

On 3 July 2025, the InterAmerican Court of Human Rights (**ICtHR** or **Court**) issued its advisory opinion regarding the obligations of States to take measures to mitigate and adapt to the effects of climate change (**Opinion**).<sup>[1]</sup> In the Opinion, the ICtHR found that there exists an independent right to a healthy climate, derived from the right to a healthy environment. It also recognized “Nature” and its components as subjects of rights and the prohibition arising from the obligation not to cause irreversible damage to the climate and the environment as a *jus cogens* norm—the first time an international court has done so. The Court further discussed at length States’ obligations to mitigate climate change, including through the regulation of corporate behaviour. The Opinion is also significant as it was issued after the most participatory proceeding for an advisory opinion in ICtHR history with more than 260 amicus briefs submitted and over 180 delegations taking part in the hearings.

The Opinion is one of a trio of advisory opinions on State obligations in the context of climate change. The International Tribunal on the Law of the Sea issued its advisory opinion considering State obligations under the UN Convention on the Law of the Sea last year (see our alert [here](#))

(**ITLOS Advisory Opinion**). The International Court of Justice's (**ICJ**) advisory opinion will be issued next week. The Opinion is also part of a growing body of international and domestic jurisprudence linking human rights and climate change.

The Court's advisory opinions are influential as regards the interpretation of the American Convention on Human Rights (**American Convention**) on the 23 States which have ratified the American Convention<sup>[2]</sup>—and upon which the American Convention is binding as a matter of international law.<sup>[3]</sup>

## Our Key Takeaways

Our **key takeaways** from the Opinion are as follows:

- In **domestic fora**, the finding of an autonomous right to a healthy climate will likely be relied on by claimants in domestic proceedings before the courts of States which have ratified the American Convention, and in other jurisdictions, particularly where there exists a right to a healthy environment.
- On the **international plane**, the Opinion has been issued just three weeks before the ICJ's advisory opinion, expected on 23 July 2025, which may take into account the Opinion's conclusions. The Opinion will no doubt be considered by the African Court on Human and People's Rights (**ACtHR**) in its advisory opinion too, the request for which was submitted in May 2025.
- As we reported with respect to the ITLOS Advisory Opinion, the Opinion **may prompt a regulatory response** from States subject to the Court's jurisdiction. This could include, for example, measures to mitigate greenhouse gas (**GHG**) emissions, including the regulation of corporate behaviour, which was emphasized by the Court. It could also prompt the enactment of procedural rules facilitating collective claims in the climate context. As such, private actors should monitor changes to the regulatory landscape that may impact their operations.
- The Opinion **may impact investment arbitration**. Indeed, the Court requested States to "*review their existing trade and investment agreements*" as well as "*investor-State dispute settlement mechanisms*" (**ISDS**) to "*ensure that they do not limit or restrict efforts on climate change and human rights*", referring to a 2023 UN Working Group Report.<sup>[4]</sup> Whether or not Member States to the American Convention follow that request remains to be seen, but the Court's findings may prove to be relevant in investment arbitration—for example, in cases where States consider an investor's claim to be inconsistent with their right to regulate to achieve their climate objectives.

## Background

On 9 January 2023, Colombia and Chile submitted a request to the Court—given the "*close relationship between human rights and a healthy environment*"—to "*defin[e] the scope of the relevant obligations established in the American Convention and other inter-American treaties to confront the situations arising from the climate emergency*" in a "*equitable, just and sustainable manner*" (**Request**).<sup>[5]</sup> While the ICtHR is primarily responsible for interpreting the rights and obligations guaranteed by the American Convention, the ICtHR is also competent to interpret

other regional and international human rights treaties insofar as they shape human rights norms within the region.

The Request posed six sets of questions concerning State obligations to mitigate and adapt to climate change, as imposed by the: (i) American Convention; (ii) American Convention and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean; (iii) Convention on the Rights of the Child; (iv) Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights (**San Salvador Protocol**); (v) Stockholm Declaration and Action Plan for the Human Environment (**Stockholm Declaration**); and (vi) Rio Declaration on Environment and Development, among other instruments.

The first five sets of questions<sup>[6]</sup> concerned State obligations, in light of the climate emergency, to:

1. prevent human rights violations caused by climate change and to guarantee human rights;
2. preserve the right to life and survival;
3. implement specific measures to protect the rights of children;
4. provide forums for public participation and judicial recourse; and
5. protect the rights of environmental activists, women, indigenous groups, and Afro-descendent communities.

The final set of questions requested clarity on collective and cross-border obligations—particularly when considering the principle of “*shared but differentiated responsibilities*”.<sup>[7]</sup>

For context, the ICtHR is one of three regional human rights tribunals that provides authoritative judgments and advisory opinions concerning the observance of human rights by States within their respective regional jurisdictions. The Grand Chamber of the European Court of Human Rights (**ECtHR**) delivered its judgment concerning State-obligations in the context of climate change under the European Convention on Human Rights last year in *KlimaSeniorinnen v. Switzerland* (**KlimaSeniorinnen**) (see our alert on the judgment [here](#)). The ACtHR is considering the obligations of African States under the African Charter on Human and People’s Rights (**African Charter**) in the climate change context, as well as other regional human rights instruments.

## **The Court’s Opinion On The Obligations Of States**

### **1. The Scope Of Human Rights Obligations In The Context Of Climate Change**

The Court first provided an overview of the scope of the five general obligations as derived from the American Convention and the Protocol of San Salvador placed in the context of the climate emergency, namely:

- **The obligation to respect rights:** States must refrain from adopting regressive measures, including “*preventing both formal and substantive discriminatory practices, that may arise in the design, implementation or assessment of public policies relating to climate mitigation and adaptation*”.<sup>[8]</sup>
- **The obligation to guarantee rights:** Applying the precautionary principle (which the Court recognized is now an established principle of environmental law), this obligation includes adopting all necessary measures to prevent serious or irreversible damage to the environment, and extends to the State’s duty to prevent “*in the private sphere, third parties from violating the protected rights*” (i.e., protected legal interests), including by regulating, supervising and overseeing the activities of private parties. This obligation is one of conduct and, in light of the extremity and urgency of the climate crisis, requires that States act with enhanced due diligence, including the “*adoption of proactive and ambitious preventive measures*” using the best available science, and “*strict compliance*” with procedural rights.<sup>[9]</sup>
- **The obligation to adopt measures to ensure the progressive development of economic, social and cultural rights (ESCR):** In line with the American Convention’s emphasis on ESCR, the Court noted that the climate emergency disproportionately affects the most vulnerable, who are those with an insufficient level of ESCR, including, *inter alia*, health, work, social security and housing. As such, there is a need to allocate the maximum available resources to people and groups in those vulnerable situations.
- **The obligation to adapt provisions of domestic law:** This extends to regulating in a manner that establishes legal obligations for individuals, including companies, “*whose activities may have significant effects on the environment, leading to legal consequences in cases of non-compliance*”.<sup>[10]</sup>
- **The obligation to cooperate in good faith:** The Court derived an obligation on States to cooperate in good faith for the protection against environmental damage (taking into account differentiated responsibilities in the face of historical contributions to GHG emissions, and States’ respective capacities and needs to achieve sustainable development). This obligation implies, for example, financing least developed countries to contribute to the just transition.

## 2. Obligations Arising From Substantive Rights

### A. The Right To A Healthy Environment

The Court discussed at length the right to a healthy environment, which is expressly recognized in the San Salvador Protocol. The Court explained that the right has “*individual and collective dimensions*”<sup>[11]</sup>: (i) the right constitutes a universal interest, owed to present and future generations (collective); and (ii) its violation can have direct or indirect repercussions on individuals due to its connection with other rights (including rights to life, health and personal integrity) (individual).

### B. “Nature” As A Subject Of Rights

The Court described “Nature” (such as forests, rivers, seas, etc.) as a subject of rights, which it explained is fully consistent with the progressive development of international human rights

laws. In the Court's view, moving towards a paradigm that recognizes the rights of ecosystems is "*fundamental for the protection of their long-term integrity and functionality*".<sup>[12]</sup> Indeed, the protection of Nature provides an "*appropriate framework for States – and other relevant stakeholders*" to "*advance towards building a global legal system for sustainable development*".<sup>[13]</sup> The Court opined that States must not only refrain from acting in ways that cause significant environmental harm but have a positive obligation to adopt measures to ensure the protection, restoration and regeneration of ecosystems.

### **C. *Jus Cogens Nature Of The Obligation Not To Create Irreversible Damage To The Climate And The Environment***

The Court recognized the obligation not to cause irreversible damage to the climate and the environment as a *jus cogens* norm—the first time any international court has made such a finding. The Court found (albeit with three judges dissenting) that: "*pursuant to the principle of effectiveness, the peremptory prohibition of anthropogenic conducts that could irreversibly harm the interdependence and vital equilibrium of the common ecosystem that makes the life of the species possible constitutes a norm of jus cogens*".<sup>[14]</sup> The implications of *jus cogens* norms are that any international agreement which conflicts with that norm are void. Further, States cannot disregard these obligations, and violations thereof are against the international community, which means that all States—not just the injured State—can require compliance. The legal basis of this part of the Opinion is likely to prove controversial.

### **D. *The Right To A Healthy Climate***

The Court relied on the right to a healthy environment to derive—as an independent right—the "*right to a healthy climate*", which the Court explained allows for the clear delimitation of specific State obligations in the face of the climate crisis. The right is one that "*derives from a climate system free from anthropogenic interferences that are dangerous for human beings and Nature as a whole*".<sup>[15]</sup> It has a collective dimension (protecting the interests of present and future generations (i.e., inter-generational equity) and Nature), and an individual dimension (protecting the possibility of each individual to develop in a climate system free from dangerous interference—in this sense, the right acts as a "*precondition*" for the exercise of other human rights).

### **E. *Obligations Arising From The Right To A Healthy Climate***

The Court considered that the "*right to a healthy climate*" places on States an obligation to: (i) address the causes of climate change and, in particular, the mitigation of GHG emissions; as well as (ii) protect Nature and its components; and (iii) progress towards sustainable development.

With regards to the obligation to mitigate, this entails different duties—to regulate and monitor:

#### **(i) *Climate Mitigation Regulation***

- **Define a mitigation target:** This must be set with the objective of preventing climate damage as a condition for respecting and guaranteeing the right to a healthy

environment, and “*applies to all OAS Member States without exception*”.<sup>[16]</sup> The target must be calculated by the best available science based on a temperature increase of no more than 1.5 degrees, through tools such as carbon budgets. States should have regard to considerations of justice, such as the principles of common but differentiated responsibility and intra- and inter-generational equity (indeed, States which have emitted the most GHGs historically should bear the greatest responsibility for mitigation).

- **Define and keep up to date a human rights-based strategy to achieve it:** In doing so, the Court noted its agreement with the position taken by the ECtHR in *KlimaSeniorinnen*, which emphasized the need to take immediate and intermediate measures while carbon neutrality is being achieved; and stated that measures should be set out in a “*binding regulatory framework*”.<sup>[17]</sup> The strategy must be conducted “*in accordance with a standard of enhanced due diligence*”.<sup>[18]</sup> Mitigation strategies must also contemplate measures to protect biodiversity and ecosystems—as well as ensure a “*just transition*”, for example, protecting against human rights violations in the extraction of rare and critical minerals required for energy transition.
- **Regulate the behavior of companies:** In the Court’s view “*business enterprises are called upon to play an essential role*”; therefore (flowing from the American Convention and Protocol of San Salvador) States must adopt legislative and other measures to “*prevent human rights violations by . . . private enterprises. . . , investigate them, punish them, and guarantee redress for their consequences*”.<sup>[19]</sup> There exists a duty on States to establish corporate obligations with regard to climate change in the domestic regulatory framework. Thus, States must:
  - call upon all companies domiciled or operating in their territory and jurisdiction to take effective measures to combat climate change and related human rights impacts;
  - enact legislation obliging companies to conduct human rights and climate change due diligence along the entire value chain;
  - require companies, state-owned and private, to disclose in an accessible manner the GHG emissions of their value chain;
  - require companies to take measures to reduce such emissions, and to address their contribution to climate change and climate mitigation goals, throughout their operations; and
  - adopt a set of standards to discourage greenwashing and undue influence by companies in the political and regulatory sphere in this area and support the actions of human rights defenders.

## **(ii) Climate Mitigation Monitoring**

- The obligation to prevent environmental harm also entails effective monitoring. Considering the enhanced due diligence standard, States are obliged to strictly monitor and control activities—both public and private—that generate GHG emissions, as foreseen in their mitigation strategy. While the activities monitored will vary from State to State, it is the State’s duty to monitor and control (at a minimum), the exploration, extraction, transport and processing of fossil fuels, cement manufacturing, agro-industrial activities, and any other inputs used in such activities.



- States must have in place robust and independent judicial (or quasi-judicial or administrative) mechanisms, that are well-resourced. These mechanisms should monitor progress towards the national mitigation target.
- Monitoring should include “*the possibility of investigating, prosecuting and sanctioning those who fail to comply. . . , including business enterprises*”. The State should further establish consequences, including the possibility of ordering the cessation of activities carried out, and effective compensation for the impacts caused to the climate system.

### **(iii) Determining Climate Impact**

- The Court explained that environmental impact assessments (**EIAs**) are mandatory whenever it is determined that a project carries risk of significant environmental damage, and such assessments must review the potential effects on the climate system. EIAs must be carried out where projects are undertaken by the State or by natural or legal persons. In compliance with the standard of enhanced due diligence, States must then carefully consider whether to approve a project.

### **F. Obligations Arising From Other Substantive Rights Affected By Climate Impacts**

The Court considered that climate impacts will “*generate[], and will increasingly continue to generate, an ever-greater threat to the full and effective enjoyment of various human rights enshrined in the American Convention and the Protocol of San Salvador*”, including the rights to life, human dignity, health, private and family life, private property and housing, freedom of residence and movement, water and food, labour and social security, culture and education.[\[20\]](#)

The Court noted an obligation on States to keep their UNFCCC National Adaptation Plans updated[\[21\]](#)—based on the best available science—and in a manner that is designed to mitigate human rights impacts generated by climate change to the extent possible (including implementing short, medium and long-term measures). In this respect, the Court found that the iterative cycle established by the Paris Agreement (assessment of impacts, planning, implementation, and monitoring, evaluation and learning) could be a “*useful guide*” for States in designing their adaptation plans.

The Court also addressed “*specific measures that must be adopted in order to protect each of the principal substantive rights violated as a consequence of climate impacts*” and noted extensive obligations on States specific to each right, such as the obligation to: (i) ensure an adequate water supply in times of drought; (ii) implement strategies to address phenomena such as heat waves, droughts and floods; and (iii) guarantee housing to those displaced by such events.[\[22\]](#)

### **3. Obligations Arising From Procedural Rights**

The Court further articulated a number of procedural guarantees and obligations arising in the context of climate change, including, by way of example:

- in the context of the right to science and the recognition of local, traditional and indigenous knowledge, an obligation, to provide education in science and to protect local, traditional and indigenous knowledge through appropriate mechanisms;
- in the context of the right to access of information, a guarantee of access to climate information;
- in the context of the right to political participation, an obligation to ensure meaningful participation of the people under their jurisdiction in decision-making and policies that may affect the climate system; and
- in the context of the right to defend human rights and the protection of environmental defenders, an obligation to investigate, prosecute and punish crimes committed against environmental defenders.

In light of the right to an effective remedy, States are also “*obliged to establish effective administrative and judicial mechanisms that allow victims access to comprehensive redress*”.<sup>[23]</sup>

On the right of access to justice, the Court declared that, in the climate change context, the conduct of judicial proceedings should be guided by the application of the *pro actione* principle (i.e., procedural rules should be interpreted in a way most favourable to access to justice). In line with that principle, States should adopt measures that facilitate collective claims with broad legal standing and should avoid the strict application of evidentiary provisions which could otherwise be an obstacle to justice (including by accounting for difficulties in proving the causal relationship between the damage and its origin specific to climate change cases).

#### **4. Obligations Arising From The Principle Of Equality And Non-Discrimination**

The Court noted the diversity of vulnerability of population groups to climate change-related effects, influenced by various structural and intersectional factors of discrimination, among them, most notably, poverty, but also the disproportionate impact of climate change on children, indigenous and Afro-descendant communities, fishermen, women, and the elderly. The Court emphasized States’ obligations to account for diverging levels of vulnerability in determining appropriate measures to guarantee their full enjoyment to rights in the context of climate change.

<sup>[1]</sup> The Opinion can be found here (in English):

[https://www.corteidh.or.cr/docs/opiniones/seriea\\_32\\_en.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf); and here (in Spanish:)

[https://www.corteidh.or.cr/docs/opiniones/seriea\\_32\\_esp.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_32_esp.pdf).

<sup>[2]</sup> Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, and Uruguay (Venezuela and Trinidad and Tobago having denouncing the American Convention). Only 20 of those States have recognised the jurisdiction of the ICtHR within the meaning of Article 62 of the American Convention (Dominica, Grenada and Jamaica being those States which have ratified the American Convention but have not recognised the jurisdiction of the ICtHR).



[3] Pursuant to Article 1 of the American Convention, “*The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition*”. Article 2 requires that “*Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms*”.

[4] UN Working Group on the issue of human rights and transnational corporations and other business enterprises, “Information Note on Climate Change and the Guiding Principles on Business and Human Rights”, *United Nations Human Rights Special Procedures*, 2023 (see paras. 9 to 15).

[5] “Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile”, 9 January 2023, p. 2, <[https://www.corteidh.or.cr/docs/opiniones/soc\\_1\\_2023\\_en.pdf](https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf)>, last accessed 18 July 2025.

[6] *Ibid.*, pp. 8-12.

[7] *Ibid.*, p. 13.

[8] *Supra* n. 1, p. 81.

[9] *Supra* n. 1, pp. 84-85.

[10] *Supra* n. 1, p. 88.

[11] *Supra* n. 1, p. 104.

[12] *Supra* n. 1, p. 97.

[13] *Supra* n. 1, p. 97.

[14] *Supra* n. 1, p. 215 (emphasis in the source).

[15] *Supra* n. 1, p. 104.

[16] *Supra* n. 1, p. 111.

[17] *Supra* n. 1, p. 113.

[18] *Supra* n. 1, p. 113.

[19] *Supra* n. 1, p. 116.

[20] *Supra* n. 1, p. 125.

[21] See the following link for more information on adaptation plans: <https://unfccc.int/national-adaptation-plans>.

[22] *Supra* n. 1, p. 125.

[23] *Supra* n. 1, p. 188.

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