

December 18, 2023

Mr. PABLO A. SAAVEDRA ALESSANDRI
Executive Secretary
Inter-American Court of Human Rights
San José, Costa Rica

Regarding: Advisory Opinion Process on the Climate Emergency and Human Rights

Dear Mr. Secretary Saavedra,

EarthRights International, together with indigenous communities, indigenous organizations, farmers, and Afro-descendants that have signed the enclosed document, hereby submit this Amicus Curiae brief to the honorable Inter-American Court, as a contribution to the Advisory Opinion on Climate Emergency and Human Rights requested by the Republic of Colombia and the Republic of Chile on January 9, 2023. This advisory opinion is in reference to *“The individual and collective scope of the State’s obligations to respond to climate change within the framework of international human rights law, taking into account the different implications that such emergencies may have on individuals from different regions and communities, on nature, and on the survival of human beings on our planet.”*

This Amicus Brief is presented by EarthRights International (ERI), together with the following allied indigenous communities, indigenous organizations, farmers, and Afro-descendants: Akubadaura - Comunidad de Juristas (Colombia); Asociación de Autoridades Tradicionales y Cabildos U’wa - ASOU’WA (Colombia); Asociación de Cabildos y Autoridades Tradicionales Indígenas del departamento de Arauca - Ascatar (Colombia); Bay Mills Indian Community (United States); Comuna Morete Cocha (Ecuador); Comunidad Ancestral Indígena Piwiri (Ecuador); Consejo Comunitario de Comunidades Negras de la Cuenca del Río Tolo y Zona Costera Sur - COCOMASUR (Colombia); Consejo de Mujeres Indígenas y Biodiversidad - CMIB (Guatemala); Coordinadora de Organizaciones Populares del Aguán Copa – COPA (Honduras); Federación Nativa del Río Madre de Dios y Afluentes - FENAMAD (Peru); Grand Calliou/Dulac Band of Biloxi-Chitimacha-Choctaw (United States); Grand Bayou Indian Village, Atakapa Ishak Chawasha Tribe (United States); Gobierno Territorial Autónomo de la Nación Wampis (Peru); Jean Charles Choctaw Nation (United States); Movimento dos Atingidos pela Base Espacial de Alcântara - MABE (Brazil); Nacionalidad Kichwa del Pastaza - PAKKIRU (Ecuador); Nacionalidad Shiwiar del Ecuador (Ecuador); Native Village of Kivalina (United States); Native Village of Nunapitchuk (United States); Newtok Traditional Council (United States); Organización de Jóvenes y Estudiantes Indígenas de Madre de Dios - OJEIMAD (Peru); Plataforma Agraria (Honduras); Pointe-au-Chien Indian Tribe (United States); Resguardo Indígena Chidima Tolo (Colombia); y, Resguardo Indígena Pescadito (Colombia).

EarthRights International is a nongovernmental, nonprofit organization that combines the power of law and the power of people in defense of human rights and the environment, which we define as “earth rights.” We specialize in fact-finding, legal actions against perpetrators of earth rights abuses, training grassroots and indigenous community leaders, and public advocacy campaigns. Through these strategies, EarthRights International seeks to promote and protect human rights and the environment, end land rights abuses, and bring real solutions to real people in the communities where we work. Our website is: www.earthrights.org. This text is titled **“Protection of the Rights of Indigenous and Tribal Peoples Facing the Impacts of Climate Change.”** It gathers the contributions of organizations, communities, and individuals that belong to various indigenous and tribal communities in the Americas. The undersigned are already living with the impacts of climate change, which threatens their rights, their territories, and the survival of their traditional ways of life.

We thank the Court for the opportunity to present this opinion. We trust that this is an opportunity for peoples' voices and testimonies to be heard, and we hope that the advisory opinion will effectively broaden the scope of protection for indigenous and tribal peoples' rights against the great challenges posed by climate change.

For notification purposes, the undersigned institutions of this Amicus Curiae may be contacted at the following e-mail addresses: juliana@earthrights.org; natalia@earthrights.org; itzel@earthrights.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Juliana Bravo Valencia". The signature is written in a cursive, flowing style.

Juliana Bravo Valencia
Director of the Amazon Program
EarthRights International

Amicus Curiae Brief

Protection of the Rights of Indigenous and Tribal Peoples Facing the Impacts of Climate Change.

Submitted to the Honorable Inter-American Court of Human Rights

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**Advisory Opinion Request on the Climate Emergency and Human Rights to
the Inter-American Court of Human Rights from the Republic of Colombia
and the Republic of Chile.**

December 18, 2023

Table of Contents

Protection of the rights of Indigenous and tribal communities facing the impacts of climate change

1. Impacts of climate change in Indigenous and tribal peoples' territories in the Americas.
 - 1.1. The loss of the Amazon: A threat to both global climate patterns and the rights of Amazonian Indigenous peoples.
 - 1.2. Indigenous and tribal peoples of Mesoamerica and South America are already living with the consequences of this climate crisis.
 - 1.3. Impacts of climate change on native peoples of North America.
 - 1.3.1. The communities of Kivalina, Newtok, Nunapitchuk, and other Alaskan Native communities.
 - 1.3.2. Climate change impacts on Indigenous communities in southern Louisiana.
 - 1.3.3. Threats posed by climate change in the Great Lakes region.
2. What measures should States take to minimize the harm caused by climate change considering the obligations established in the American Convention?
 - 2.1. States must take measures to protect the Amazon as a strategic ecosystem within the framework of a climate crisis.
 - 2.2. States must monitor, mitigate, and prevent environmental threats caused by activities that destroy and degrade ecosystems and exacerbate climate change.
 - 2.3. States must recognize and adequately protect the collective rights of Indigenous and tribal peoples.
 - 2.4. States must adopt a human rights approach to energy transition policies and legislation in order to prevent the transition to clean energy from causing new human rights violations.
3. What differentiated measures must be taken regarding populations in situations of vulnerability or other intersectional considerations?
 - 3.1. Guarantee and promote the right to free, prior, informed consultation and consent as an exercise of self-determination for Indigenous and tribal peoples.
 - 3.2. The need to advance guaranteeing the right to consent to address the climate crisis and the opportunity for this Court to guarantee this right.
4. Conclusions

Signatories

Protection of the rights of Indigenous and tribal communities facing the impacts of climate change

The world is experiencing an accelerating climate crisis. The adverse effects of climate change are endangering communities around the world and are projected to worsen with each fraction of a degree that the average global temperature increases¹.

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 rights².” As expressed in a rare joint statement by five Treaty Bodies from the United Nations in 2019, the adverse effects of climate change “threaten, among others, the rights to life, to adequate food, to adequate housing, to health, and to water, and cultural rights³.”

Despite having contributed the least to this crisis, Indigenous and tribal peoples are amongst the groups most affected by the impacts of climate change. Indigenous and tribal peoples’ rights to life, food, health, and water are “disproportionately vulnerable to climate change” because they “often live on marginal lands and fragile ecosystems that are particularly sensitive to alterations in the physical environment⁴.” By fundamentally changing ecosystems, undermining traditional agricultural practices, and causing climate-forced displacement, climate change makes it difficult for Indigenous and tribal communities to

¹ See INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (IPCC), SPECIAL REPORT: GLOBAL WARMING OF 1.5°C, SUMMARY FOR POLICYMAKERS 3-24, § B (2018).

² G.A. Res. 76/300, U.N. Doc. A/RES/76/300 (July 28, 2022); see also Human Rights Council Res. 7/23, U.N. Doc. A/HRC/RES/7/23 (Mar. 28, 2008) (stating in its opening line, “Concerned that climate change poses an immediate and far-reaching threat to individuals and communities around the world and has implications for the full enjoyment of human rights”); Human Rights Council Res. 10/4, U.N. Doc. A/HRC/RES/10/4 (Mar. 25, 2009); Human Rights Council Res. 18/22, U.N. Doc. A/HRC/RES/18/22 (Oct. 17, 2011); Human Rights Council, Res. 26/27, U.N. Doc. A/HRC/RES/26/27 (July 15, 2014); Human Rights Council Res. 29/15, U.N. Doc. A/HRC/RES/29/15 (July 22, 2015) (“Emphasizing that the adverse effects of climate change have a range of implications, both direct and indirect, for the effective enjoyment of human rights . . .” and “[e]xpressing concern that . . . the adverse effects of climate change are felt most acutely by segments of the population already in vulnerable situations due to factors such as geography, poverty, gender, age . . .”); Human Rights Council Res. 31/8, U.N. Doc. A/HRC/RES/31/8, pmb. ¶ 4(a) (Apr. 22, 2016); Human Rights Council Res. 32/33, U.N. Doc. A/HRC/RES/32/33 (July 18, 2016), pmb. (affirming that climate change has “an adverse impact on the full and effective enjoyment of human rights”); Human Rights Council Res. 35/20, U.N. Doc. A/HRC/35/20 (July 7, 2017); Human Rights Council Res. 38/4, U.N. Doc. A/HRC/RES/38/4, pmb. (July 16, 2018) (recognizing that “climate change has already harmed the full and effective enjoyment of the human rights enshrined in the Universal Declaration of Human Rights”); Human Rights Council Res. 41/21, U.N. Doc. A/HRC/RES/41/21 (July 23, 2019); Human Rights Council Res. 44/7, U.N. Doc. A/HRC/Res/44/7 (July 23, 2020); Human Rights Committee Gen. Comm. No. 36, U.N. Doc. CCPR/C/GC/36 (Sept. 3, 2019).

³ Joint Statement by 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 Their Families, the Committee on the Rights of the Child, & the Committee on the Rights of People with Disabilities, *Statement on human rights and climate change*, U.N. Doc. HRI/2019/1 (Sept. 16, 2019).

⁴ Office of the High Comm’r for Human Rights, *Report on the relationship between climate change and human rights*, U.N. Doc. A/HRC/10/61, ¶ 51 (Jan. 15, 2009); see also John H. Knox (Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), *Preliminary report*, U.N. Doc. A/HRC/22/43, ¶ 45 (Dec. 24, 2012); John H. Knox (Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), *Mapping report*, U.N. Doc. A/HRC/25/53, ¶¶ 76-78 (Dec. 30, 2013).

continue those practices that define and sustain their traditional ways of life. Therefore, climate change poses a threat to their right to self-determination and their cultural identity. This situation is amplified by the various forms of discrimination and systematic violations, stemming from a range of other factors.

The purpose of this Amicus Curiae is to present first-hand information, including testimonies, regarding the impacts and rights violations that are being experienced by various Indigenous and tribal peoples in the Americas as a result of climate change to the Inter-American Court of Human Rights. Through this information, this amicus brief offers arguments regarding the measures that States must take to minimize the impact of the climate change crisis, particularly concerning vulnerable communities such as Indigenous and tribal peoples.

In this document, we use the terms “Indigenous peoples” and “tribal peoples” in accordance with the standards established in international human rights law. Convention No. 169 of the International Labor Organization (ILO) sets out two standards for identifying Indigenous or tribal people: the subjective and the objective criteria.

As for the subjective criteria, the Convention stipulates that the determination of an Indigenous community does not depend on official recognition by the State, but on the self-identification of the people itself (Article 1.1.2).

In relation to the objective criteria, a distinction is made between Indigenous peoples and tribal peoples. For the former, this applies to descendants of those who inhabited the country during the colonization of their respective lands, or before the establishment of national borders, and continue to preserve their own institutions fully or partly (Article 1.1.b). In the case of tribal peoples, this definition refers to groups that maintain social, cultural, and economic standards that distinguish them from other populations, and whose status is regulated in whole or in part by distinct customs, traditions, or special laws or regulations (Article 1.1.a).

In this framework, and following the standards set by the Inter-American Commission on Human Rights (IACHR), Article 1.a of ILO Convention 169 will be applied when referring to tribal peoples – communities or individuals that are not Indigenous or native to the region they inhabit, but who share the same distinctive conditions of Indigenous peoples⁵. Therefore, for the purposes of this brief, the *quilombola* communities and Afro-descendant communities of the American continent are considered tribal peoples, and, in the case of the Peruvian *rondas campesinas*, they are Indigenous peoples based on Peruvian regulations⁶.

In the first part of this brief, we present information related to the impacts of climate change in the Amazon – the strategic ecosystem where several of the signatory communities of this brief reside, and information about the ancestral territories of Indigenous communities in Mesoamerica and North America. In the second part of the Amicus Brief, we define four specific obligations for States to minimize the harmful impact of climate change: **1.** Implement measures to protect the Amazon; **2.** Control, mitigate, and prevent environmental risks resulting from activities that destroy and degrade

⁵ IACHR, *Situation of Human Rights of the Indigenous and Tribal Peoples of the Pan-Amazonian Region*, OAS/Ser.L/V/II, ¶ 7 (Sept. 29, 2019); IACHR, *Right to self-determination of Indigenous and Tribal Peoples*, OEA/Ser.L/V/II, ¶ 22 (Dec. 28, 2021).

⁶ Congress of the Republic of Peru, Law N° 27908.

ecosystems; **3.** Recognize and adequately protect the collective rights of Indigenous and tribal peoples, including isolated Indigenous peoples; and **4.** Adopt a human rights approach to energy transition policies and legislation, to prevent the transition to clean energy from further causing human rights violations.

In the final section, we will present specific considerations regarding the obligation of States to adopt specific measures for Indigenous and tribal peoples as communities facing particular vulnerabilities. Moreover, these measures must be based on guaranteeing and respecting the communities' right to be consulted in advance, ensuring their consent as an exercise to uphold their right to self-determination. Finally, we will present our conclusions and recommendations.

For the undersigned organizations, communities, and Indigenous and tribal peoples, climate change is a reality that seriously threatens the survival of their traditional ways of life. Governments still need to take the necessary actions to respond to the climate crisis and protect the rights and territories of the undersigned. We hope this request for an advisory opinion will establish clear guidelines to promote practical climate actions and protect human rights from the impacts of the climate crisis.

1. Impacts of climate change in Indigenous and tribal peoples' territories in the Americas.

1.1. The loss of the Amazon: A threat to both global climate patterns and the rights of Amazonian Indigenous peoples.

The Amazon is the world's largest tropical rainforest – a vital ecosystem that benefits the world globally. The Amazon biome covers approximately 6.7 million km² and extends across Brazil, Colombia, Peru, Ecuador, and other South American countries. With thousands of mammals, amphibians, reptiles, and birds living in this region of the world, the biodiversity of the Amazon is unparalleled.

The Amazon rainforest is a fundamental part of our planet's climate system. The rainfall there produces the largest river flow on Earth and constitutes approximately 20 percent of the water inflow into the world's oceans⁷. Rivers that originate in the Amazon region are an important source of water for South America. The flora and fauna that grow and live in the Amazon not only provide food and medicine to the local Indigenous communities but also to people in other regions of the world. The Amazon rainforest has also been recognized as an important carbon sink, absorbing approximately 200 billion tons of carbon per year helping to mitigate the adverse effects of climate change⁸.

Culturally, the Amazon is also a very diverse region made up of more than 350 Indigenous communities. Of these, more than 60 communities live in isolation, with minimal or no contact with the outside world.

In addition to Indigenous communities, there are riverside communities, *extractivist seringueiros*⁹, artisanal fishermen, and *quilombolas* (Afro-descendants). Communities in the Amazon are vitally

⁷ Press Release, Science Panel for the Amazon & Sustainable Development Solutions Network, Leading Amazonian scientists release an urgent call for action on the Amazon basin (July 14, 2021), <https://irp.cdn-website.com/6f2c9f57/files/uploaded/SPA%20July%202021%20PressRelease%20English.docx.pdf>

⁸ *Id.*

⁹ The *seringueiros* are rural workers who extract latex from rubber trees. The word "seringueiro" comes from the Portuguese word "seringa," which means "syringe" in Spanish, the tool with which latex was traditionally extracted from rubber trees.

dependent on the supply and productivity of natural resources. The continuity of their cultures and overall well-being depends heavily on the Amazonian ecosystem and are therefore vulnerable to the adverse impacts of climate change in the region¹⁰.

As a significant driver of climate change in the Amazon and other strategic ecosystems inhabited by Indigenous and tribal peoples, ongoing deforestation places these communities in a situation where their rights are particularly vulnerable amid the climate crisis.

Climate change particularly affects Indigenous and tribal peoples because of their unique relationship with the land they have ancestrally occupied, as well as their physical, cultural, and spiritual dependence on their territory. Climate change exacerbates the difficulties that Indigenous and tribal communities already face, such as political and economic marginalization, loss of land and resources, human rights violations, discrimination, and unemployment¹¹. In Peru, Amazonian Indigenous youth have spoken about the impacts of climate change in their territories: “*Climate change affects harvests, as rainfalls are delayed. The ancestors predicted the weather, we can no longer do that, this affects our food security, causing malnutrition*”¹².

Oil, mining, timber exploitation, and agricultural businesses are among the main causes of deforestation in the Amazon. This situation has not only affected the ecosystem there but has also violated the rights of the Indigenous and tribal peoples that inhabit those territories as increasing deforestation endangers their food security, access to water, and health rights.

1.2. Indigenous and tribal peoples of Mesoamerica and South America are already living with the consequences of the climate crisis.

In other regions of Latin America, Indigenous peoples are identifying impacts similar to those in the Amazon as a result of the climate crisis. In Guatemala, Indigenous communities have seen that “*the land is dry, there is no more harvest, crops are lost, [...] then there is flooding [and] if we harvest in rainy weather, we get ill*”¹³. In Honduras, the impacts of climate change have deepened the poverty conditions of the communities living in mountain areas: “*The climate is bad, it rains, there are floods, landslides*”¹⁴.

As a result of the delay in rains, Indigenous and tribal peoples of Peru, Ecuador, Colombia, and Brazil have identified impacts associated with the increase in temperatures: “*Before, we didn’t feel the sun, but now we feel its heat a lot. As it doesn’t rain, the temperatures are very high*”¹⁵. In Brazil, representatives of quilombola communities have tied climate change to “*high temperatures, with thermal temperatures of*

¹⁰ EarthRights International, *Impacts of Climate Change on the Indigenous peoples of Madre de Dios* (2023).

¹¹ See *Climate Change: The effects of climate change on Indigenous peoples*, U.N. DEP’T OF ECONOMIC AND SOCIAL AFFAIRS, <https://www.un.org/development/desa/Indigenouspeoples/climate-change.html>.

¹² Representative of the Organization of Indigenous Youth and Students of Madre de Dios (OJEIMAD), Statement during the VII Latin American Seminar on Indigenous Legal Defense held in Lima, Peru by EarthRights International (Oct. 16-25, 2023) [hereinafter Seminario VII].

¹³ Representative of an indigenous Maya q’eqchi community, Guatemala, Statement during Seminario VII.

¹⁴ Representative of the Cooperativa Agropecuaria la Chile/Plataforma Agraria, Honduras, Statement during Seminario VII.

¹⁵ Representative of the Shiwiar Nationality, Ecuador, Statement during Seminario VII.

50 degrees Celsius¹⁶.” Along the same lines, representatives of Indigenous communities in Peru have pointed out that “*extreme sun exposure has evidently caused forest fires in our territory*¹⁷,” pointing out other concrete implications of the rise in global temperatures. Other examples are the “withering trees” and the thawing of sacred sites, such as Zizuma in the case of the U’wa Nation (Colombia)¹⁸.

At the same time, the presence of pests and associated diseases, the migration of native species and even their death (as in the case of freshwater dolphins), and coastal erosion are serious environmental impacts that Indigenous and tribal peoples associate with the advancement of the climate crisis. Regarding coastal erosion, Afro-descendant communities in Colombia pointed out that in their territory “*the sea has entered the municipality, it has taken three streets*¹⁹.” But this has not been the only impact of coastal marine erosion. In Acandí, Colombia, the land shared by the organized Black communities in the COCOMASUR Community Council is also the habitat for nesting Caná turtles (*Dermochelys coriacea*), a species currently at critical risk of extinction because its reproductive habitat is increasingly affected by the loss of coastline and natural beaches²⁰.

The advancement of the climate crisis has also seriously compromised Afro-descendant Colombians’ spiritual relationship with natural elements and access to water. Indigenous peoples in Peru have highlighted the drying of important bodies of water, such as Lake Titicaca, as another serious impact. Indigenous representatives from Brazil have identified another adverse impact by pointing out that their territory “*now has about 2 kilometers of beach because of the drought*²¹.”

Similarly, Indigenous leaders in Colombia stated that they “*really do not have the capacity to get water supplies*²².” Furthermore, they identified that in the department of Arauca, the drying of the Lipa Lagoon represents a severe threat arising from oil exploitation and is associated with the climate crisis, as this lagoon was the primary food source for the Sikuaní, Makaguán, Beto, Hitnu, and U’wa Indigenous peoples, and at the same time represented a crucial sacred site. The intervention of oil companies in the area implied, in practice, a privatization of the area, preventing free access to the Indigenous peoples. Later, oil exploitation in the area brought the clogging of water bodies where fish (such as poporo, catfish, and palometa) spawned, drastically impacting the area’s biodiversity²³.

1.3. Impacts of climate change on native peoples of North America.

¹⁶ Quilombola representative of the Movimento dos Atingidos pela Base Espacial de Alcântara-MABE, Brazil, Statement during Seminario VII.

¹⁷ Aymara Indigenous representative of the Aymara Indigenous Women’s Organization of Collao Ilave, Peru, Statement during Seminario VII.

¹⁸ Indigenous representative of the Association of Councils and Indigenous Traditional Authorities of the Department of Arauca (ASCATIDAR), Colombia, Statement during Seminario VII.

¹⁹ Representative of the Consejo Comunitario de Comunidades Negras de la Cuenca del Río Tolo y Zona Costera Sur (COCOMASUR), Colombia, Statement during Seminario VII.

²⁰ Council of Black Communities of the Tolo River Basin and Southern Coastal Zone (COCOMASUR), Colombia, Statement during the drafting of this amicus brief (Dec. 11, 2023).

²¹ Representative of the Terra Indígena Alter do Chão, Borari Tribe, Brazil, Statement during Seminario VII.

²² *Id.*

²³ Association of Cabildos and Traditional Indigenous Authorities of the Department of Arauca (ASCATIDAR), Colombia, Statement during the drafting of this amicus brief (Dec. 11, 2023).

1.3.1. The communities of Kivalina, Newtok, Nunapitchuk, and other Alaskan Native communities.

The Arctic region is warming at an unprecedented and accelerating rate, resulting in warmer waters, decreased seasonal ice, and permafrost thaw²⁴. Temperatures along the northern Alaskan coast, for example, have increased by an average of 3.5 degrees Celsius since the beginning of the 20th century, 2 degrees Celsius higher than the global aspirational target established by the United Nations Framework Convention on Climate Change Paris Agreement. The loss of ice on marine lands is magnifying the impacts of storms and threatens Alaskan communities²⁵.

The ice in the Arctic Sea serves as a natural storm barrier for Alaskan coastal communities, and its loss has caused severe flooding during extreme meteorological conditions. Coastal storms also result in hurricane-strength winds, damaged infrastructure, and loss of subsistence land use areas and transportation corridors that are vital to health and socioeconomic well-being²⁶. In addition, warmer winter temperatures and more erratic weather patterns are causing torrential rains, snowmelts, and extreme weather conditions, resulting in significant flooding.

The Native Village of Kivalina is located about 160 km north of the Arctic Circle²⁷. The Village of Kivalina sits on permafrost, and when the permafrost melts, the riverbank is washed into the Wulik River²⁸. The only available year-round access to the community is an airplane landing strip that is not protected by the boardwalk, leaving it exposed to erosion and flooding during storms in the community. Historically, the Inupiaq used the island where Kivalina sits for seasonal hunting and fishing, not as a permanent settlement²⁹. The U.S. Congress required people to move to Kivalina to send their children to school after 1905 or face imprisonment³⁰. Kivalina residents noted in the early years of settlement that the island was not safe. As early as 1910, residents voiced their desire to relocate due to the risks of soil erosion³¹. The government ignored this environmental awareness and knowledge.

The climate crisis has aggravated the erosion of the island where the Native Village of Kivalina is located and has made Kivalina a dangerous place to live. In 1953, Kivalina Island was 55 acres³². In 2003, a U.S. National Oceanographic and Atmospheric Administration study showed that the island had shrunk to 27

²⁴ See IPCC, CLIMATE CHANGE 2014: IMPACTS, ADAPTATION, AND VULNERABILITY (2014); Benjamin M. Jones et al., *A decade of remotely sensed observations highlight complex processes linked to coastal permafrost bluff erosion in the Arctic*, 13 115001 ENV'T RSCH. LETTERS 1-13 (2018).

²⁵ Zhanpei Fang et al., *Reduced sea ice protection period increases storm exposure in Kivalina, Alaska*, 4 ARCTIC SCIENCE 525-37 (2018); Jesse C. Vermaire et al., *Arctic climate warming and sea ice declines lead to increased storm surge activity*, 40(1-5) GEOPHYSICAL RSCH. LETTERS 1386-90 (2013).

²⁶ Declaration of Tribal Administrator Millie Hawley, Written Submission in Support of Thematic Hearing Addressing Forcible Climate Displacement of Indigenous Communities in the United States (Oct. 25, 2022) [hereinafter Hawley Decl.].

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² CHRISTINE SHEARER, KIVALINA: A CLIMATE CHANGE STORY 50 (Haymarket Books, 2011); Hawley Decl. ¶ 4.

acres of living space³³. Erosion effectively reduced their living space by 50 percent in 50 years, the lifetime of some of the island's residents.

The Native Villages of Nunapitchuk and Newtok are located in the Yukón-Kuskokwim Delta. Nunapitchuk is located on the shores of the Johnson River³⁴. This area faces various environmental threats, such as permafrost thaw, erosion, and marine storm swells³⁵. Due to rising temperatures, permafrost thaw threatens various infrastructures in Nunapitchuk. As noted by the Special Rapporteur for Economic, Social, Cultural and Environmental Rights of the Inter-American Commission on Human Rights, “*most houses and infrastructure are very much in peril due to the permafrost thawing, representing an imminent and existential threat to the safety and wellbeing of the community and to their rights to life, health, water and sanitation, food, education, among others*”³⁶. Houses and other buildings are in danger of collapsing because of the lack of soil stability due to the permafrost thaw³⁷. The community's only source of running water, the Washeteria, is sinking into the ground because permafrost is thawing under its foundation³⁸. Transportation in the community is in danger because the ground is fragile and unstable³⁹. Lack of proper sanitation and flash flooding have also caused human waste to flow into the community⁴⁰.

Like Nunapitchuk, Newtok also faces existential threats due to the permafrost thaw and soil erosion. Community members have been without solid waste service since 2012⁴¹. As a result, residents face a severe health and environmental emergency and are exposed to human and solid waste because they have no access to sanitation⁴². The community must dump waste directly into a dried riverbed⁴³.

Alaska's Indigenous peoples are disproportionately vulnerable to climate change impacts. In part, this is because most Alaska natives live in remote Alaska Native Villages (ANVs) located in often vulnerable and unsustainable locations due to the history of colonization. ANVs' colonial relationship with the U.S. government centered around the Bureau of Indian Affairs (BIA) school programming⁴⁴. In the early

³³ Hawley Decl.

³⁴ *Climate Crisis in Nunapitchuk*, ALASKA INSTITUTE FOR JUSTICE (May 24, 2023), <https://www.akijp.org/climate-crisis-in-nunapitchuk/>.

³⁵ *Id.*

³⁶ Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights (REDESCA), Concluding Observations and Recommendations from REDESCA After its Visit to Louisiana and Alaska: Climate Induced Displacement of Indigenous Communities ¶ 57 (Aug. 2023) [hereinafter REDESCA Observations on Climate Induced Displacement of Indigenous Communities].

³⁷ *Id.*

³⁸ *Climate Crisis in Nunapitchuk*, ALASKA INSTITUTE FOR JUSTICE (May 24, 2023), <https://www.akijp.org/climate-crisis-in-nunapitchuk/>.

³⁹ REDESCA Observations on Climate Induced Displacement of Indigenous Communities ¶ 58.

⁴⁰ *Id.* ¶ 60.

⁴¹ *Id.* ¶ 64.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Under the Nelson Act of 1905, Alaska's governor and the BIA established a dual system of segregated regional schools outside communities too small to be integrated. The BIA ran schools for Native children, while the Alaska Territory ran schools for white children and “children of mixed blood leading a civilized life.” By 1931, the BIA's responsibility for Native education extended to Alaska's more rural communities. Carol Barnhardt, *A History of Schooling for Alaska Native People*, 40(1) J. OF AM. INDIAN EDUCATION 1 (2001) (citing the Nelson Act).

1900s, the BIA established regional schools for Alaska Natives throughout the state, choosing rural sites without Native communities' input and requiring attendance upon threat of imprisonment⁴⁵.

1.3.2. Climate change impacts on Indigenous communities in Southern Louisiana.

At the most fundamental level, native communities in Southeast Louisiana lack basic services such as adequate septic systems, drainage, internet, and accessible grocery stores. The neglect native communities face regarding infrastructure interferes with their right to life, health, food, work, culture, water, and sanitation⁴⁶. It also makes them more vulnerable to the present devastation caused by natural disasters and inequitable disaster relief.

Coastal Louisiana is losing ground to climate change faster than any other region in the United States, with an estimated loss of a soccer field every 100 minutes⁴⁷. Since 1932, about 20 percent of the surrounding wetlands in the Terrebonne Basin, which includes the native territories of the Jean Charles Choctaw Nation, the Pointe-au-Chien Indian Tribe, and the Grand Caillou/Dulac Band of Biloxi-Chitimacha-Choctaw, have disappeared, and one-third of the remaining wetlands will likely have eroded by 2040.

The Jean Charles Choctaw Nation was originally located on Isle de Jean Charles, and areas of southern Terrebonne Parish, Louisiana. Today, the area has lost most of its land mass. In 1955, the Island consisted of 22,000 acres, but in 2020, the Island's habitable space was only 110 acres. Furthermore, Hurricane Ida ravaged the island and destroyed the remaining homes in 2021. Today, only about ten families of the total 700 tribal citizens remain on the Island, while others form a diaspora in nearby communities⁴⁸.

The Pointe-au-Chien Indian Tribe has inhabited its traditional territory in the southern tip of Louisiana, along and around Pointe-au-Chien Bayou since time immemorial⁴⁹. Today, this area is known as Louisiana's Terrebonne and Lafourche Parishes⁵⁰. The Tribe has approximately 850 tribal citizens⁵¹. Land loss and saltwater intrusion have rendered several locations where tribal citizens used to live uninhabitable, including some locations that are now completely submerged under water⁵². Some of the tribe's sacred mounds are also surrounded by water and are in danger of destruction⁵³. As a result, many

⁴⁵ *Id.*; Rights of Indigenous People in Addressing Climate-Forced Displacement, Complaint submitted by Alaska Institute for Justice to U.N. Special Rapporteur on the Human Rights of Internally Displaced Persons et. al. (Jan. 15, 2020), at 8, <https://s3.documentcloud.org/documents/6656724/Louisiana-Tribes-Complaint-to-UN.pdf>.

⁴⁶ U.S. GOV'T ACCOUNTABILITY OFF., GAO-04-142, ALASKA NATIVE VILLAGES: MOST ARE AFFECTED BY FLOODING AND EROSION, BUT FEW QUALIFY FOR FEDERAL ASSISTANCE 9, 17 (2003).

⁴⁷ Dan Swenson, *These Six Factors Explain Why Louisiana is Rapidly Losing Land*, NOLA (May 31, 2021), https://www.nola.com/news/article_59675b8c-bfbc-11eb-9602-47cf4c0429dc.html.

⁴⁸ Interview with Chief Albert Naquin, Jean Charles Choctaw Nation (July 25, 2022).

⁴⁹ Declaration of Second Chairman Donald Dardar, Written Submission in Support of Thematic Hearing Addressing Forcible Climate Displacement of Indigenous Communities in the United States (Oct. 26, 2022) [hereinafter Donald Dardar Decl.]

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Morning Edition, *Climate change threatens Pointe-au-Chien Indian Tribe's cultural sites*, NAT'L PUBLIC RADIO (Oct. 20, 2022), <https://www.npr.org/2022/10/20/1130134466/climate-change-threatens-pointe-au-chien-indian-tribes-cultural-sites>.

tribal peoples have been forced to relocate to family properties further north in Pointe-au-Chien village, nearby communities, or beyond.

The citizens of the Grand Caillou/Dulac Band of Biloxi-Chitimacha-Choctaw Tribe live 17 miles off the Louisiana coast but have been losing land due to subsidence and sea level rise⁵⁴. Between 1974 and 1990, Dulac lost approximately 1 percent of its land per year due to subsidence⁵⁵. Additionally, recent studies have shown a rate of 12.5 mm of land loss per year in the area. The estimated population of the community dropped from 2,458 in 2000 to 1,463 in 2010, largely due to damage from consecutive hurricanes and the alarmingly expensive costs of flood insurance that would in other circumstances allow tribal peoples to protect themselves from the economic impacts of future storms⁵⁶. Every major storm forces community members to migrate.

The village of the Grand Bayou Atakapa-Ishak Chawasha Tribe in the southernmost part of Plaquemines Parish, Louisiana, is accessible only by boat. Spoken stories recall Grand Bayou as a “paradise” with upland forests and plenty of wildlife for hunting⁵⁷. The tribe’s sacred burial sites and fishing waters are in the region. Now, 14 families live in Grand Bayou in homes built on 12- to 14-foot platforms. The community is routinely at risk from coastal land loss, flooding, and storms⁵⁸.

In the aftermath of each disaster, native communities have been largely left to fend for themselves and are forced to rely on impermanent sources of assistance, such as mutual aid, donations, and volunteers. Although federal law prohibits state and local governments that receive federal assistance from discriminating based on race, color, or national origin (including limited English proficiency) during disasters and emergencies⁵⁹, the State of Louisiana and the governments of Plaquemines, Terrebonne, and Lafourche Parishes, where native communities live, have consistently impeded equitable disaster relief. Examples of these inequities can be found in the aftermath of Hurricanes Katrina and Rita in 2005, Hurricanes Gustav and Ike in 2008, the Deepwater Horizon oil spill in 2010, and more recently Hurricane Ida in 2021⁶⁰.

1.3.3. Threats posed by climate change in the Great Lakes region.

⁵⁴ Geological Society of America, *Rising Sea Levels Creating First Native American Climate Refugees*, PHYS.ORG (Oct. 25, 2017), <https://phys.org/news/2017-10-sea-native-american-climate-refugees.html>; *see also* Donald Dardar Decl.

⁵⁵ Declaration of Elder Chief Shirell Parfait-Dardar, Written Submission in Support of Thematic Hearing Addressing Forcible Climate Displacement of Indigenous Communities in the United States (Oct. 24, 2022).

⁵⁶ *Id.*; JULIA MALDONADO, *SEEKING JUSTICE IN AN ENERGY SACRIFICE ZONE: STANDING ON VANISHING LAND IN COASTAL LOUISIANA* 32 (Routledge, 2019).

⁵⁷ Declaration of Elder Rosina Philippe, Written Submission in Support of Thematic Hearing Addressing Forcible Climate Displacement of Indigenous Communities in the United States (Oct. 2022) [hereinafter Philippe Decl.]

⁵⁸ *Id.*

⁵⁹ *See* Title VI of Civil Rights Law of 1964, 42 U.S.C. § 2000d *et seq.*; Press Release, Dep’t of Justice, Federal Agencies Issue Joint Guidance to Help Emergency Preparedness, Response, and Recovery Providers Comply with Title VI of the Civil Rights Act (Aug. 16, 2016), <https://www.justice.gov/opa/pr/federal-agencies-issue-joint-guidance-help-emergency-preparedness-response-and-recovery>.

⁶⁰ For example, in the aftermath of Hurricane Katrina, Grand Bayou suffered such neglect that when Elder Rosina Philippe asked in a public forum why no parish official had visited Grand Bayou months after the storm, she was told, “Oh, I forgot anyone lives there.” Philippe Decl.

The Tribal and First Nations communities of the Anishinaabe People, whose traditional lands span the upper Great Lakes in regions that are now part of the United States and Canada, are also experiencing the impacts of climate change on their rights and territories. The Anishinaabe People maintain a reciprocal relationship with the environment they live in, as the waters, trees, animals, plants, and air are an extension of their community. The Anishinaabe (also known as Anishinabek) are responsible for preserving their homeland, environment, culture, resources, and way of life for future generations.

The Anishinaabe, including the Bay Mills Indian Community, are also threatened by the Line 5 pipeline, owned and operated by the Canadian company Enbridge⁶¹. The Anishinaabe people feel the effects of climate change more directly because of their direct connection and dependence on their land. For example, the Anishinaabe nation relies heavily on harvesting wild rice for its livelihoods and economic security. Climate change poses a danger to its ecosystem because of the existent risks of increased temperatures and volatile storms that may destroy the wild rice ecosystem. Rising temperatures in the Great Lakes threaten other culturally vital natural resources accessed by the Anishinaabe communities, such as miin (blueberries), ziinzibaakwadwaatig (sugar from maple), and adikamegwag (whitefish)⁶².

The climate crisis Indigenous and tribal communities in the Americas experience continues to be severe and threatens their survival. Communities across the continent already live with these diverse impacts of climate change and suffer numerous violations of their human rights. In the next section of this amicus brief, we offer the Court some arguments about the measures that the Indigenous and tribal peoples of the Americas need States to take to minimize the consequences of climate change and protect the rights of Indigenous and tribal peoples.

2. What measures should States take to minimize the harm caused by climate change considering the obligations established in the American Convention?

States must promptly and firmly commit to their climate obligations and Indigenous and tribal peoples. Particularly, they must **(i)** protect the Amazon as a strategic ecosystem for climate stability, **(ii)** control and reverse the harm caused by activities that destroy and degrade ecosystems, **(iii)** recognize and adequately protect the collective rights of Indigenous peoples, and **(iv)** adopt a human rights approach to policies and legislation on the renewable energy transition to prevent the transition to clean energy from causing new human rights violations.

2.1. States must take measures to protect the Amazon as a strategic ecosystem within the framework of a climate crisis.

“Extractive activities cause deforestation and the degradation of forests and impoverish them in such a way that they are unable to perform as an ecosystem should, reducing their resilience to the effects of

⁶¹ See *Indigenous Leaders Urge Canada to Pull Support of Line 5 Pipeline*, EARTHRIGHTS INT’L (Aug. 29, 2023), https://earthrights.org/media_release/Indigenous-leaders-urge-canada-to-pull-support-of-line-5-pipeline/

⁶² GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION CLIMATE CHANGE TEAM, AANJI-BIMAADIZIIMAGAK O’OW AKI: CLIMATE CHANGE VULNERABILITY ASSESSMENT 39-40 (2nd ed., Jan. 2023), http://data.glifwc.org/download/archive.bio/Aanji-bimaadiziimagak_o_ow_aki_digital_02212023.pdf.

*climate change. This degradation and loss of forests directly affects the livelihoods and quality of life of Indigenous people*⁶³.” – Segundo Reynado Laureano, former Vice-President of FENAMAD

The Science Panel for the Amazon, an initiative sponsored by the United Nations Sustainable Development Solutions Network (UNSDSN), estimated in its latest report that 18 percent of the forest area of the Amazon basin has been deforested, and an additional 17 percent has been degraded⁶⁴. In 2020, the Brazilian State revealed new data regarding the deforestation of the Brazilian Amazon region⁶⁵. According to information collected through satellites between August 2019 and July 2020, approximately 11,000 km² of the Brazilian Amazon Forest had been cut down.

Due to increasing deforestation, the Amazon rainforest is slowly shifting from being a carbon sink to a source of carbon emissions. In 2021, a new study revealed that, for the first time in history, the Amazon rainforest produced more carbon than the amount it absorbed⁶⁶. Most of these emissions are caused by fires set to clear land for agribusiness. However, scientists also found that even without fires, parts of the Amazon rainforest emit carbon, most likely due to increased deforestation rates, causing changes in natural climate cycles and droughts and making trees more susceptible to fire.

In a report published in August 2021, the Intergovernmental Panel on Climate Change stated that current global carbon emissions are too high to be absorbed by rainforests⁶⁷. Deforestation in the Amazon is advancing rapidly. When trees are cut down, burned, or allowed to rot, their naturally stored carbon is released into the air in the form of carbon dioxide. Deforestation produces approximately 10 percent of the world’s current carbon emissions⁶⁸.

Considering the serious climate crisis we are experiencing and the importance of the Amazon rainforest as a strategic ecosystem that impacts the global climatic balance, it is necessary for States to take specific measures to recover and preserve the Amazon rainforest to avoid the most damaging effects of climate change.

2.2. States must monitor, mitigate, and prevent environmental threats caused by activities that destroy and degrade ecosystems, and exacerbate climate change.

⁶³ *Indigenous Environmental Defenders under Risk for Protecting the Amazon Rainforest: The Cases of the Wampis Nation and FENAMAD*, EARTHRIGHTS INT’L (Apr. 18 2022), <https://earthrights.org/publication/Indigenous-environmental-defenders-under-risk-for-protecting-the-amazon-rainforest-the-cases-of-the-wampis-nation-and-fenamad/>.

⁶⁴ Press Release, Science Panel for the Amazon & Sustainable Development Solutions Network, Leading Amazonian scientists release an urgent call for action on the Amazon basin (July 14, 2021), <https://irp.cdn-website.com/6f2c9f57/files/uploaded/SPA%20July%202021%20PressRelease%20English.docx.pdf>.

⁶⁵ *Chart in focus: New data shows deforestation in the Brazilian Amazon at 12 Year High*, GLOBAL WITNESS (Feb. 17, 2021), <https://www.globalwitness.org/en/blog/chartfocus-new-data-shows-deforestation-brazilian-amazon-12-year-high/>.

⁶⁶ Damian Carrington, *Amazon rainforest now emitting more CO2 than it absorbs*, THE GUARDIAN (July 14, 2021), <https://www.theguardian.com/environment/2021/jul/14/amazon-rainforest-now-emitting-more-co2-than-it-absorbs>.

⁶⁷ IPCC, CLIMATE CHANGE 2021: SUMMARY FOR POLICYMAKERS (2021).

⁶⁸ *Tropical Deforestation and Global Warming*, UNION OF CONCERNED SCIENTISTS (updated Nov. 10, 2021), <https://www.ucsusa.org/resources/tropical-deforestation-and-global-warming>.

According to the American Convention of Human Rights, and pursuant to obligations to respect and guarantee human rights, States must monitor, mitigate, and adopt a preventive approach to activities that degrade ecosystems and exacerbate climate change. According to the information gathered by the Indigenous and tribal communities that signed this amicus brief, the main activities causing the crisis include logging (legal and illegal), infrastructure construction in strategic ecosystems, mining, and fossil fuel exploitation.

- **Logging (legal and illegal):** Logging is one of the main causes of deforestation in the Amazon. In Peru, Indigenous peoples have denounced that, despite the existence of norms and conservation plans developed by the Ministry of the Environment, forest logging companies tend to cut down three or four trees to only extract one tree to sell.

In the territory of the Wampis Nation, in the northern Peruvian Amazon between the provinces of Loreto and Amazonas, several Indigenous communities have logging permits from the government to harvest timber. This has resulted in communities and other actors illegally receiving authorization to cut more trees than permitted. The communities have asked the Peruvian state to act but have received no response. Indigenous leaders have resorted to territorial control of their communities to prevent illegal loggers from entering their territories by confiscating both the illegal timber shipments and the machinery for extraction.

Since October 2020, the Wampis Nation has denounced the presence of loggers working illegally in its territories. The communities have asked the Peruvian government to act but have received no response. Indigenous leaders have resorted to territorial control of their territories to prevent loggers from illegally entering their lands and impounding both unpermitted timber shipments and machinery they use to extract wood.

The Indigenous communities of Madre de Dios, also in the Peruvian Amazon, face similar situations. In that area, illegal logging increased during the COVID-19 pandemic due to the decreased presence of authorities, leading to increased deforestation which exacerbated the adverse effects of the climate crisis on the ecosystem. Opposing illegal logging has also exposed Indigenous defenders and their families to security risks.

According to information from the local government of Madre de Dios, timber extraction in the Department has increased since 1992, and areas of high potential for timber extraction have been identified in the Manu, Tahuamanu, Los Amigos, and Chandless river basins⁶⁹. There are many forest concessions in the eastern part of the Department, especially in the Tambopata and Tahuamanu provinces. In addition to the multiple forest concessions, the environmental authority has also reported a high rate of illegal timber extraction. Between 2019 and 2021, approximately 15,623 m³ of illegally mobilized timber was extracted. Since 2009, the figure has increased to 342,956 m³ of illegally mobilized timber⁷⁰.

⁶⁹ Regional Government of Madre de Dios, Institute of Research of the Amazonian region of Peru (ii), “Proposal for the Ecological and Economic Zoning of the Department of Madre de Dios,” <https://sinia.minam.gob.pe/documentos/propuesta-zonificacion-ecologica-economica-departamento-madre-dios>.

⁷⁰ Forestry and Wildlife Resources Oversight Agency (OSINFOR), SIGO System, <https://observatorio.osinfor.gob.pe/Estadisticas/Home/Reportes/9>.

The unregulated development of forestry operations in Madre de Dios has even more critical consequences for Indigenous peoples in isolation, such as the Mashco Piro people, who lack immunological support against common infectious diseases (influenza, chickenpox, tuberculosis, and others)⁷¹. Contact with outsiders can generate epidemic outbreaks with high mortality rates, and unpredictable and devastating results for the region's population. The isolated Mashco Piro people have historically inhabited a territory that spans 8 million hectares on the border between Peru and Brazil. According to the Peruvian government, they are one of the largest isolated groups in the Amazon, comprising approximately 750 members in Peru. The Mashco Piro people have been threatened by the spread of deforestation in their territory. In their case, and due to their particular vulnerability as isolated Indigenous peoples, deforestation caused by logging (both legal and illegal) and other industries that threaten the environment have placed their survival at risk, to the point that they have been granted precautionary measures by the IACHR since 2007 (in effect to date)⁷².

In the Darién region of Colombia, the Embera people have experienced severe deforestation-related damages. The destruction of sacred places as a result of illegal logging affects their unique relationship with immaterial beings (spirits), directly impacting the likelihood of their people's survival. According to traditional doctors, *“As the sacred spiritual places that have been there have dried up, [the spirits] have come out to destruct, our young people are committing suicide today, boys and girls as young as 12 and 14 years old. Many families have been suffering for more than a decade and have lost their children because of this, so this is a consequence of the conflictive nature of deforestation”*⁷³.

- **Gold mining:**

Illegal gold mining is another major contributor to deforestation in the Amazon. Illegal gold mining has transformed areas of the Peruvian Amazon rainforest into deserts. The use of mercury to mine gold has contaminated water sources. Camps and towns built by miners in the Peruvian Amazon continue to expand and are sites of reported cases of child exploitation and human trafficking.

For the Wampis Nation, illegal mining has significantly exacerbated deforestation and become a source of conflict between Indigenous communities and employees of the mines in Wampis territory⁷⁴. Pamuk Ayatke⁷⁵ of the Territorial Government of the Wampis Nation pointed out that the efforts of the Wampis Nation to protect its territory have not been successful in recent years because State officials are colluding with actors involved in illegal mining and logging.

⁷¹ IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas*, OEA/Ser.L/V/II. Doc. 47/13, ¶ 116 (Dec. 30, 2013).

⁷² Precautionary Measures 262-05 granted by the Inter-American Commission on Human Rights in favor of the Mashco Piro, Yora and Amahuaca Indigenous Peoples on March 16, 2007, currently in force.

⁷³ Testimony of Embera Traditional Authorities of the Pescadito Indigenous Reservation, Acandí, Chocó, Colombia.

⁷⁴ *The Wampis Nation Faces Conflict over Illegal Mining in Pastacillo*, AUTONOMOUS TERRITORIAL GOVERNMENT OF THE WAMPIS NATION (Aug. 10, 2017), <https://nacionwampis.com/la-nacion-wampis-frente-al-conflicto-por-mineria-ilegal-en-pastacillo/>.

⁷⁵ According to the Statute for the Autonomous Territorial Government of the Wampis Nation, the Pamuka Ayatke is the Vice-President of the Autonomous Government. They are elected every 5 years by popular vote and cannot be immediately re-elected, as they can only be elected again in a later electoral period.

“The efforts and actions that we have made [by] the Wampis Nation to eradicate illegal activities have not had many results; this is because, after the actions of territorial control and community intervention of illegal mining and logging vessels, we have realized that there are Peruvian State officials who are colluding with the actors engaged in illegal activities and that every time we denounce the illegal actors the Peruvian State authorities do nothing to investigate and/or protect us. On the contrary, we are exposed to more risk and threat to our physical and emotional integrity.”

The Peruvian government has attempted to crack down on illegal mining in the Amazon region. However, when the authorities close one site, illegal operations quickly move to a new one⁷⁶. These failed measures also respond to public policies that were not agreed upon with Indigenous peoples.

The situation is especially critical in Madre de Dios. In 2018, this region of the Peruvian Amazon had the third highest level of forest loss among Peru’s provinces and is one of six areas in the country classified as having very high levels of deforestation⁷⁷. Mining, agriculture, and road construction are some of the main causes of deforestation in Madre de Dios⁷⁸. For example, according to the latest report of the Monitoring the Andean Amazon Project (MAAP), an online portal that uses satellite imagery to measure deforestation in the Amazon in real time⁷⁹, these deforestation activities destroy a critical part of the ecosystem on which Indigenous peoples depend and thus violate territorial integrity, causing very serious social, cultural, and economic impacts.

- **Exploitation of fossil fuels:**

The exploitation and consumption of fossil fuels is the primary cause of greenhouse emissions, the root cause of the climate crisis. When the exploitation of fossil fuels is carried out in strategic ecosystems where Indigenous and tribal peoples live, there are severe environmental impacts due to the degradation of the ecosystem and risk of contamination, causing additional violations of the rights of the communities living there. To limit global warming and avoid the worst effects of the crisis, States must rapidly phase out the burning of fossil fuels, including coal, oil, and gas, and replace them with renewable forms of energy. Without addressing the causes of the climate crisis, States cannot fulfill their obligations to protect and respect human rights.

The history of oil exploitation in the Wampis territory of the Peruvian Amazon dates back to the 1970s. Since then, communities have suffered harm from the petroleum industry, including several oil spills that

⁷⁶ Enrique Vera, *In Peru, officials play a losing game of whack-a-mole with illegal miners*, MONGABAY (June 3, 2021), <https://news.mongabay.com/2021/06/in-peru-officials-play-a-losing-game-of-whack-a-mole-with-illegal-miners/>.

⁷⁷ Ministry of Environment, “Coverage and deforestation in the Amazon rainforests 2018,” National Forest Conservation Program for Climate Change Mitigation, 2018, 22-29; *see also Forest and Forest Loss*, GEOSBOSQUES, <http://geobosques.minam.gob.pe/geobosque/view/perdida.php>.

⁷⁸ *The Wampis Nation Faces Conflict over Illegal Mining in Pastacillo*, AUTONOMOUS TERRITORIAL GOVERNMENT OF THE WAMPIS NATION (Aug. 10, 2017), <https://nacionwampis.com/la-nacion-wampis-frente-al-conflicto-por-mineria-ilegal-en-pastacillo/>.

⁷⁹ Enrique Vera, *Madre de Dios: New Focus of Illegal Mining Threatens Indigenous People of Pariamanu*, MONGABAY (Aug. 8, 2020), <https://es.mongabay.com/2020/08/madre-de-dios-mineria-ilegal-boca-pariamanu-indigenas-peru/>.

have contaminated land and water sources and affected the health of community members. In January 2016, an oil spill occurred in the province of Datem del Marañón, affecting the Mayuriaga Indigenous community in the Wampis territory. Petroperu, a Peruvian state-owned company, was in charge of the oil concession lot where the spill occurred⁸⁰.

In September 2018, another spill of approximately 8,000 barrels occurred in the territory of the Mayuriaga Indigenous community. This was the second time in three years that the community had to deal with a spill. Oil spills affect the flora and fauna of the region, as well as the community's water sources. At the time, the head of the community denounced the water contamination that his village had faced due to oil exploitation.

“We have the crude oil issue . . . We drank that water. That’s how our workers died and how we will die. [...] We are killing each other for oil”⁸¹.

However, neither the State nor the company responsible for the spill, Petroperu, has effectively repaired the damage. In 2019, the Environmental Evaluation and Oversight Agency (OEFA), the Peruvian environmental authority, determined that Petroperu was responsible for the harm caused by the 2016 spill. However, no solutions have been provided for the community or for the environment to remediate the damaging effects of the spill. Petroperu is currently pursuing a lawsuit against OEFA, requesting that it overturn its determination of responsibility.

The Wampis Nation committed to protecting its territory and preventing the development of new oil projects harmful to the Amazon. Since 2018, the Wampis Nation and the Achuar Indigenous Nation of Pastaza have been demanding the closure of the Situche Central project, which covers approximately one million hectares of the territory of both nations. The project will extract oil from Block 64, which was developed as a joint venture between Petroperu and Geopark, a Chilean company with assets in several Latin American countries.

The Block 64 project included the construction of a pipeline and a waterway to transport the petroleum. Both infrastructure projects would cross the territory of the Wampis and Achuar Nations, increasing the risk of further oil spills and further damage to the regional ecosystems and livelihoods of the Indigenous communities inhabiting the region.

The Territorial Governments of the Wampis Nation met in August 2018, and through a press release, demanded that Block 64 be shut down. With the support of civil society organizations, the communities denounced the inconsistencies and flaws found in the environmental impact assessment produced by Geopark. Subsequently, Peru's National Environmental Certification Service (SENACE) issued an unfavorable report including more than 173 observations against the environmental impact assessment. Months later, in mid-2019, Geopark withdrew its impact assessment and tacitly accepted that the assessment was flawed. A few months later, the United States Agency for International Development

⁸⁰ AUTONOMOUS TERRITORIAL GOVERNMENT OF THE WAMPÍS NATION, CLIMATE STRATEGY AND AMBITION OF THE WAMPIS GOVERNMENT 18 (1st ed., Oct. 2020).

⁸¹ *Indigenous Environmental Defenders at Risk for Protecting the Amazon: The Cases of the Wampis Nation and FENAMAD*, EARTHRIGHTS INT’L (Apr. 18, 2022), <https://earthrights.org/publication/Indigenous-environmental-defenders-under-risk-for-protecting-the-amazon-rainforest-the-cases-of-the-wampis-nation-and-fenamad/>.

(USAID), which had announced support for a new study on social parameters for Block 64, reported that it had decided not to withdraw its support.

However, despite not having the proper permits to operate and the country being under national quarantine due to the COVID-19 pandemic, the company continued to send personnel to Block 64. The communities filed a lawsuit against the company in May 2020, with the support of EarthRights International. Finally, in July 2020, Geopark notified Petroperu that it would no longer be working on Block 64. Although the company stopped its activities due to pressure from the communities, the exploitation caused by Block 64 continues to pose a threat to the lives and livelihoods of the Wampis people. The communities continue their efforts to prevent new companies from coming to their territory and demand that the Peruvian government permanently cancel Block 64 to end exploitation of oil in the Amazon region.

A similar situation is experienced by other Indigenous communities in the United States, who face various harmful impacts to their rights caused by oil and gas extractions on their lands. The U.S. government allows unrestricted oil and gas extractions, knowing that the industry is one of the causes of climate change. For state and federal governments, the impacts of climate change are offset by the economic revenues brought in by the fossil fuel industry, as part of a cost-benefit analysis between environmental damage and financial profit⁸². Although the Biden Administration has acknowledged that federal land grants contribute to the current “alarming climate crisis⁸³,” the U.S. government continues to award these grants to oil and gas companies⁸⁴. Approximately 25 percent of greenhouse gas emissions in the United States come from fossil fuel extraction on public lands⁸⁵.

However, the costs of the impacts of climate change and the profits from oil and gas exploitation are not being shared equitably. Indigenous communities in Alaska, Louisiana, and Michigan are among those most affected by climate change, but they have never been consulted regarding the appropriate balance between environmental damage and economic benefits. Despite huge federal and state royalties and tax payments from energy development, Indigenous communities have not received adequate resources to protect their lands, livelihoods, and cultures. Rapid land loss due to oil and gas exploitation, subsidence, rising sea levels, erosion, flooding, and the repercussions of increasingly severe storms have severely threatened the living conditions of these communities, their ways of life, and their cultural sites. This effect of climate change, among others, has resulted in the displacement of Indigenous peoples from their ancestral lands.

In the Great Lakes region of Canada and the United States, Anishinaabe Indigenous peoples are also facing the impacts of fossil fuel extraction and transportation. The Line 5 pipeline, which crosses Anishinaabe territory, transports up to 23 million gallons of crude oil and natural gas across Canada,

⁸² See Oliver A. Houck, *The Reckoning: Oil and Gas Development in the Louisiana Coastal Zone*, 28 TUL. ENV'T L. J. 185, 191-93 (2015).

⁸³ Exec. Order No. 14008, 86 Fed. Reg. 7619 (2021).

⁸⁴ *About the BLM Oil and Gas Program*, Bureau of Land Management, <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/about>.

⁸⁵ Press Release, Dep't of Interior, Interior Department Outlines Next Steps in Fossil Fuels Program Review (Mar. 9, 2021), <https://www.doi.gov/pressreleases/interior-department-outlines-next-steps-fossil-fuels-program-review>.

Wisconsin, and Michigan⁸⁶. Line 5 is still operating twenty years after its scheduled expiration date and poses a threat to human rights. This pipeline risks causing a catastrophic oil spill and exacerbates climate change at a time when phasing out fossil fuels is crucial. It also endangers vital natural and cultural resources, disproportionately and discriminatorily threatening the culture, health, and homes of dozens of Indigenous communities and First Nations in the United States and Canada.

The operation of Line 5 has the predictable effect of increasing greenhouse gas emissions and worsening the impacts of climate change. Line 5 exacerbates significant climate-induced damage in the Great Lakes region and to natural resources that are vital to Indigenous communities residing in the affected areas⁸⁷. Experts expect climate change to increase precipitation and flooding around the Great Lakes⁸⁸. Flooding causes soil runoff and erosion, contributing to nutrient contamination responsible for toxic algae proliferation and “dead zones⁸⁹.” Lake Erie has already experienced multiple blooms of toxic algae that resulted in drinking water emergencies⁹⁰.

Indigenous peoples in Canada and the United States publicly expressed their opposition to the pipeline and called for its decommissioning. The United Nations Permanent Forum on Indigenous Issues also called on Canada and the United States to dismantle Line 5 because the pipeline “poses a real and credible threat to the treaty-protected fishing rights of Indigenous peoples in the United States and Canada⁹¹.” However, Canada continues to publicly support the operation of the pipeline.

2.3. States must recognize and adequately protect the collective rights of Indigenous and tribal peoples.

“To end the climate crisis, it is necessary to save the Amazon forests in Indigenous territories. To achieve this, these territories must be protected, which includes deeding them to their inhabitants, recognizing Indigenous rights, strengthening governance, supporting a sustainable economy, implementing community monitoring, and identifying and valuing traditional and present

⁸⁶ *Line 5 in Michigan: Overview*, MICHIGAN DEP’T OF ENV’T, GREAT LAKES, AND ENERGY, <https://www.michigan.gov/egle/about/featured/line5/overview>; *Infrastructure Map*, ENBRIDGE INC., <https://www.enbridge.com/map#map:infrastructure>.

⁸⁷ See generally GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION CLIMATE CHANGE TEAM, AANJI-BIMAADIZIIMAGAK O’OW AKI: CLIMATE CHANGE VULNERABILITY ASSESSMENT 39-40 (2nd ed., Jan. 2023), http://data.glifwc.org/download/archive.bio/Aanji-bimaadiziimagak_o_ow_aki_digital_02212023.pdf; Bay Mills Indian Community, *Bay Mills Indian Community’s Comments On The Scope Of The Environmental Impact Statement For The Enbridge Line 5 Tunnel Project, Submitted to U.S. Army Corps of Engineers*, pages 35-42 (Oct. 14, 2022), https://earthjustice.org/wp-content/uploads/bmic_scoping_comments_on_line_5_eis.pdf.

⁸⁸ ENV’T LAW & POLICY CENTER, AN ASSESSMENT OF THE IMPACTS OF CLIMATE CHANGE ON THE GREAT LAKES (2019) <https://elpc.org/wp-content/uploads/2020/04/2019-ELPCPublication-Great-Lakes-Climate-Change-Report.pdf>.

⁸⁹ *Id.*

⁹⁰ Press Release, Nat’l Centers for Coastal Ocean Science, Study Identifies Causes of Toledo’s Unprecedented 2017 Maumee River Algal Bloom (Aug. 26, 2020), <https://coastalscience.noaa.gov/news/study-identifies-causes-of-toledos-unprecedented-2017-maumee-river-bloom/>.

⁹¹ U.N. Permanent Forum on Indigenous Issues, *Report on the Twenty-Second Session*, U.N. Doc. E/2023/43-E/C.19/2023/7, ¶ 65 (Apr. 17-28, 2023).

knowledge⁹².” – Julio Ricardo Cusurichi Palacios, 2007 Goldman Environmental Prize winner and former president of FENAMAD

Indigenous and tribal peoples play an important role in the protection of forests, our main carbon sinks. In the case of the Amazon rainforest, there is a network of 7,000 Indigenous territories and protected areas in eight countries, covering approximately 50 percent of the Amazon rainforest. This network has been fundamental for the conservation of the Amazon biome and both Indigenous lands and protected areas have been shown to lower deforestation rates more than territories without any type of protection⁹³. However, these territories are constantly threatened by the expansion of agriculture, the development of infrastructure, extractive industries, and even changes in conservation laws. By resisting deforestation, these people suffer increasing pressure, threats, and violence. Recognizing and protecting the rights of Indigenous and tribal peoples is essential to halt the advance of deforestation and respond effectively to the climate crisis.

Statistics from countries in the Amazon region demonstrates how the protection of Indigenous and tribal territories reduces deforestation. For example, between 2003 and 2016, in Indigenous territories in Brazil, Colombia, Ecuador, and Peru, above-ground carbon stocks were maintained or increased in areas with forest conservation protection. In Bolivia, Brazil, and Colombia, Indigenous peoples’ management reduced both deforestation and carbon emissions⁹⁴. Between 2000 and 2012, deforestation rates in Indigenous communities in the Brazilian Amazon were seven times lower than areas outside of these communities, and in the Colombian Amazon, they were three times lower⁹⁵. Between 1975 and 2016, the Peruvian Amazon had higher forest regeneration rates in Indigenous territories. Some communities achieved zero or even negative net deforestation rates, indicating an increase in forest coverage⁹⁶.

Colonialism and the web of historical and contemporary oppression have created the economic and social conditions and the various political and legal frameworks that limit Indigenous resilience⁹⁷. In the United States, the continued failure of the federal government to ensure respect for the sovereignty of many Indigenous groups over their lands poses a substantial barrier to climate resilience. Although tribal sovereignty is inherent in and long predates the country’s constitution⁹⁸, the federal government only interacts with Indigenous groups that are “federally recognized,” a legal and political status that is

⁹² Interview with Julio Ricardo Cusurichi Palacios, 2017 Goldman Prize winner and president of FENAMAD (Sept. 2021).

⁹³ Press Release, Science Panel for the Amazon & Sustainable Development Solutions Network, Leading Amazonian scientists release an urgent call for action on the Amazon basin (July 14, 2021), <https://irp.cdn-website.com/6f2c9f57/files/uploaded/SPA%20July%202021%20PressRelease%20English.docx.pdf>.

⁹⁴ Allen Blackman & Peter Veit, *Titled Amazon Indigenous Communities Cut Forest Carbon Emissions*, 153 *ECOLOGICAL ECONOMICS* 56-67.

⁹⁵ Caleb Stevens et al., *Securing Rights, Combating Climate Change*, WORLD RESOURCES INSTITUTE 16 (July 23, 2014).

⁹⁶ Aoife Bennett et al., *Forests regenerate on titled Indigenous territories: A multiscale interdisciplinary analysis of 25 Indigenous communities over 40 years in the Peruvian Amazon*, CENTER FOR INTERNATIONAL FORESTRY RESEARCH (2021).

⁹⁷ REDESCA Observations on Climate Induced Displacement of Indigenous Communities ¶ 7.

⁹⁸ *Talton v. Mayes*, 163 U.S. 376, 385 (1896).

available primarily through the administrative process for federal recognition⁹⁹. Access to federal aid, grants, and other governmental assistance to Indigenous communities often requires federal recognition¹⁰⁰ – leaving to their own fate approximately 400 Indigenous communities in the United States that are recognized only by their state or are not recognized at all¹⁰¹. As a result, tribes without federal recognition are among the most vulnerable to climate change in the country¹⁰².

Restrictions on federal governmental assistance to Indigenous peoples are especially troubling given the widespread knowledge that the federal recognition process does not properly function, due to high costs and burdensome procedures¹⁰³. Climate-induced displacement is further exacerbating existing roadblocks toward federal recognition, as Indigenous peoples must demonstrate continued existence, political authority, and community as part of the recognition process¹⁰⁴. In May 2023 following a visit to these communities, the IACHR's DESCA Rapporteur recommended that the United States “*review provisions within its legal framework that could infringe on the fulfillment of the self-determination rights of Indigenous tribes in the country*” to increase Indigenous resilience to the climate crisis¹⁰⁵.

The lack of recognition of their collective rights, exacerbated by climate change, also affects Alaska Native communities such as those residing in the Villages of Kivalina, Nunapitchuk, and Newtok. In the United States, state and federal governments repeatedly fail to protect these Indigenous communities and their essential human rights. In the Alaska Native Claims Settlement Act of 1971, Congress ended Indigenous claims to traditional Alaskan lands and granted control of 45.5 million acres of land to regional for-profit Alaska Native Corporations. Alaska’s total land area is 365.5 million acres, which historically included the lands of Alaska Native peoples. Federal agencies now control 222 million acres of Alaskan land, four times the acreage owned by Alaska Native Villages themselves.

Indigenous territories have effectively prevented the advancement of deforestation caused by agricultural and extractive industries in many parts of the world. However, Indigenous communities continue to live in an unprotected situation where their collective rights over their territories are not recognized, allowing deforestation to advance, and further aggravating the climate crisis. To prevent further damage from the impacts of this crisis, States must recognize and protect the collective rights of Indigenous and tribal peoples as an effective way to fulfill their commitments to the environment. For example, states should recognize the forms of territorial management and governance proposed by Indigenous peoples such as the Kichwa nationality of Pastaza who, through their declaration of Kawsak Sacha – Selva Viviente (the Living Forest), present an alternative way to live in the territory in harmony, recognizing the rights of

⁹⁹ James Anaya (Special Rapporteur on the Rights of Indigenous Peoples), *Report on the Situation of Indigenous Peoples in the United States of America*, U.N. Doc. A/HRC/21/47/Add.1, ¶ 56 (2012).

¹⁰⁰ REDESCA Observations on Climate Induced Displacement of Indigenous Communities ¶ 8.

¹⁰¹ U.S. GOV’T ACCOUNTABILITY OFF., GAO-12-1348, INDIAN ISSUES: FEDERAL FUNDING FOR NON-FEDERALLY RECOGNIZED TRIBES (2012).

¹⁰² REDESCA Observations on Climate Induced Displacement of Indigenous Communities ¶ 24.

¹⁰³ James Anaya (Special Rapporteur on the Rights of Indigenous Peoples), *Report on the Situation of Indigenous Peoples in the United States of America*, U.N. Doc. A/HRC/21/47/Add.1, ¶ 56 (2012); REDESCA Observations on Climate Induced Displacement of Indigenous Communities ¶ 9.

¹⁰⁴ 25 C.F.R. § 83.11.

¹⁰⁵ REDESCA Observations on Climate Induced Displacement of Indigenous Communities ¶ 26.

nature and respect for all living and spiritual beings. Self-determination and the exercise of territorial governance according to the worldviews of each person should not be denied or ignored¹⁰⁶.

States must recognize and protect the collective rights of Indigenous peoples in isolation as a measure to address the climate crisis: As previously mentioned, Indigenous peoples in voluntary isolation are highly vulnerable to physical extermination as a consequence of the advancement of deforestation and climate-threatening industries. To protect a community with one of the highest numbers of Indigenous people in voluntary isolation in the Amazon, the Mashco Piro People, the Native Federation of the Madre de Dios River and its tributaries (FENAMAD) initiated a process in the 1990s to document the existence of the Mashco Piro and demand recognition of their rights. In response, the Peruvian State created three reserves to protect the life and health of these people: the Madre de Dios Territorial Reserve (established in 2002 with 829,941 hectares, in the region of Madre de Dios), the Murunahua Territorial Reserve (established in 1997 with 481,560 hectares, in the region of Ucayali) and the Mashco Piro Territorial Reserve (established in 1997 with 816,000 hectares, in the region of Ucayali, inside the Alto Purús National Park).

Within the legal framework of protecting isolated Indigenous or native peoples in the situation of initial contact¹⁰⁷, the Peruvian Government began the process of reclassifying the Madre de Dios Territorial Reserve as an Indigenous reserve. During this process in 2016, technical studies demonstrated that the boundaries of the reserve should be expanded because the presence of isolated Mashco Piro outside the previously recognized boundaries was verified. However, the process of categorizing the Madre de Dios Territorial Reserve as an Indigenous reserve, along with its expansion, has not yet been completed. Therefore, the integrity of the area occupied by the Mashco Piro has not been guaranteed and their ancestral territory continues to be vulnerable to the risks associated with the advancement of deforestation.

The IACHR understands that Indigenous communities in voluntary isolation “*are peoples or sectors of Indigenous peoples who do not maintain sustained contact with the majority of the non-Indigenous population and who tend to avoid all contact with those outside their communities*”¹⁰⁸. Their choice to remain isolated is part of their right to self-determination. States should guarantee the principle of no contact for isolated Indigenous peoples. This is fundamental to avoid the loss of their cultures.

The decision of Indigenous peoples to remain isolated is often one to protect themselves to survive, given the violent external pressures they have endured in the past. This is why several experts¹⁰⁹ and the IACHR¹¹⁰ itself have recognized that ensuring the intangibility of the territories inhabited by these communities and compliance with the no-contact principle are the most effective measures to guarantee

¹⁰⁶ Kichwa Indigenous Nationality of Pastaza (PAKKIRU), Ecuador, Statement during the drafting of this amicus brief (Dec. 11, 2023).

¹⁰⁷ Congreso de la República del Perú, Ley N° 28763 (enacted on May 18, 2006).

¹⁰⁸ IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for Full Respect for Their Human Rights*, OEA/Ser.L/V/II Doc. 47/13, ¶ 11 (Dec. 30, 2013).

¹⁰⁹ Office of the High Comm’r for Human Rights, *Protection guidelines for indigenous peoples in isolation and in initial contact in the Amazon Region, the Gran Chaco and the Eastern Region of Paraguay* (MC 54/13).

¹¹⁰ IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for Full Respect for Their Human Rights*, OEA/Ser.L/V/II Doc. 47/13, ¶ 11 (Dec. 30, 2013); *see also* IACHR, *Indigenous and Tribal Peoples of the Pan-Amazon Region*, OAS/Ser.L/V/II, Doc. 176 (Sept. 29, 2019).

their rights and their physical and cultural survival. It should not be forgotten that isolated communities “share, as a common characteristic, a high vulnerability to external diseases due to their lack of immunological defenses.”

In the case of the Mashco Piro people, the lack of recognition and intangibility of their territory has allowed the state to grant concessions for logging, mining, hydrocarbon exploitation, and infrastructure projects on parcels overlapping with the community’s territory. The lack of recognition of the rights of isolated peoples has allowed the perpetuation of deforestation caused by logging (legal and illegal), mining, and hydrocarbon exploitation. States must recognize and protect the collective rights of Indigenous peoples in isolation as a means to reduce the impacts of this climate crisis.

2.4. States must adopt a human rights approach to energy transition policies and legislation in order to prevent the transition to clean energy from causing new human rights violations.

The increase of renewable energies as part of the world’s energy production is vital to curb global emissions from burning fossil fuels. Green energy seeks to replace the use of fossil fuels and initiate an energy transition based on new renewable sources. However, if a human rights framework is not adopted, the transition to these new energy sources may trigger numerous human rights violations for the communities that inhabit the territories where these new energy sources are located. This risk primarily applies to Indigenous peoples, tribal communities, and land workers, who are already in a vulnerable situation because of the climate crisis.

These new sources of energy include minerals such as lithium and uranium, which are very important for producing solar batteries, among other products. In Latin America, the main lithium brine deposits are found in Argentina, Bolivia, and Chile. Bolivia stores the largest amount of lithium with 21 million tons¹¹¹; Argentina has 19.3 million tons of lithium resources¹¹²; and Chile has 9.6¹¹³. Recently, in 2018, the press reported the discovery of 2.5 million tons of high-grade lithium resources and 124 million pounds of uranium in the Puno region of Peru¹¹⁴.

- **The case of lithium in Peru:** Since the discovery of lithium reserves in Puno, available lithium resources are estimated to be 60.92 million tons and the inferred lithium resource is estimated to be 260.07 million tons, based on a preliminary technical-economic report completed in 2020¹¹⁵. The most recent preliminary technical-economic report on the amount of uranium in the area estimates 130 million tons of the inferred resource and 95.2 million tons of the indicated resource¹¹⁶. This

¹¹¹ *Mineral Commodity Summaries: Lithium*, U.S. GEOLOGICAL SURVEY (Jan. 2022), <https://pubs.usgs.gov/periodicals/mcs2022/mcs2022-lithium.pdf>.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ EarthRights International & Human Rights and Environment, *The face of lithium and uranium in Puno: Culture, health, community rights and environment at risk*, EARTHRIGHTS INT’L (July 11, 2023), <https://earthrights.org/publication/the-face-of-lithium-and-uranium-in-puno-culture-health-community-rights-and-the-environment-at-risk/>.

¹¹⁵ DRA PACIFIC & PLATEAU ENERGY METALS INC., FALCHANI LITHIUM PROJECT NI 43-101 TECHNICAL REPORT-PRELIMINARY ECONOMIC ASSESSMENT 4 (2020), https://minedocs.com/20/Falchani_PEA_03192020.pdf.

¹¹⁶ GBM & PLATEAU URANIUM INC., MACUSANI PROJECT NI 43-101 REPORT-PRELIMINARY ECONOMIC ASSESSMENT 31 (Jan. 12, 2016) https://www.miningnewsfeed.com/reports/Macusani_PEA_01122016.pdf.

finding suggests that a mining project in the area could be one of the largest lithium mines in the world to date¹¹⁷.

In the case of Peru, unlike other countries in the region, lithium was identified in rock, not brine¹¹⁸. The presence of uranium in Peru's lithium deposits also makes a critical difference compared to the lithium resources in the Atacama-Chile and Salar de Uyuni-Bolivia salt flats, whose extraction process is unrelated to radioactive minerals. While the companies involved in lithium mining claim that there is clean uranium lithium in Puno, the Peruvian Ministry of Energy and Mines has expressed doubts, indicating that the extraction could be complex due to the presence of uranium, which requires special treatment to avoid any health and environmental harms¹¹⁹.

The proposed Falchani (lithium) and Macusani (uranium) mining projects in Puno are owned by the Canadian company American Lithium through two subsidiaries: Plateau Energy (Canada), and Macusani Yellowcake S.A.C. (Peru). The projects, both open pits, are enormous and have a net present value of US\$1,550 million and US\$603 million, respectively. Mining activities are planned for the next three decades.

Considering global pressure for “critical minerals,” the Peruvian government has rushed to promote lithium mining in Puno, declaring that the extraction and industrialization of lithium is of national interest. However, the government has failed to establish appropriate regulatory safeguards to protect the rights and health of local communities, local cultural heritage, and the environment. It has also failed to address the presence of uranium, a radioactive substance that presents additional health and environmental risks.

Communities in the Puno region of Peru are on alert for what this new chapter of mining could mean for their territories. If governments fail to adopt a human rights approach to protect people and their territories, “green minerals” could become the subject of yet another chapter in the long and damaging history of mining. In Puno, the Falchani and Macusani projects are located on the Macusani plateau, in the province of Carabaya, a geographic area more than 4,500 meters above sea level that is difficult to access. Although the number of affected communities could increase as more information becomes available, the following communities have been identified as potentially affected to date: Isivilla, Tantamaco, Corani, Chimboya, Paquaje, Chacaconiza, and Quelccaya. These rural communities speak Quechua and rely on breeding alpacas, producing and processing artisanal alpaca yarn and meat, and farming activities.

¹¹⁷ Victoria Dannemann, *Peru's vast lithium discovery. A risky economic boom?*, DEUTSCHE WELLE (Feb. 18, 2018), <https://www.dw.com/en/perus-vast-lithium-discovery-a-risky-economic-boon/a-44936017>; Victoria Dannemann, *Lithium discovery in Peru: challenges of white gold wealth*, DEUTSCHE WELLE (Jan. 8, 2018); *Falchani Lithium Project, Peru*, AMERICAN LITHIUM CORP., <https://americanlithiumcorp.com/falchani-lithium-project>.

¹¹⁸ Victoria Dannemann, *Lithium discovery in Peru: challenges of white gold wealth*, DEUTSCHE WELLE (Jan. 8, 2018).

¹¹⁹ Juan Saldarriaga, *Lithium: Minem and Canadian mining company disagree on the need for a standard for radioactive minerals*, EL COMERCIO (Mar. 16, 2021), <https://elcomercio.pe/economia/dia-1/litio-minem-y-minera-canadiense-discrepan-sobre-necesidad-de-norma-para-minerales-radioactivos-carbonato-de-litio-noticia/?ref=ecr>.

In the past, insufficient oversight and protection of the region's and nation's environment, as well as a lack of attention to heavy metal exposure caused by small- and large-scale mining in Puno, have resulted in a lack of mitigation and remedies for harms caused by these activities. This situation could worsen if lithium and uranium mining are allowed in the region without an adequate regulatory framework and oversight of the projects by the local and national governments.

Based on the preliminary technical-economic studies prepared for the companies involved in uranium and lithium mining in Puno, and the typical impacts of these mining activities, it is clear that the Falchani and Macusani projects could generate significant environmental and health impacts. These include impacts on the biodiversity of the high Andean ecosystem, local water sources, and human health. One of the project's most concerning elements is uranium, which causes excessive levels of radioactivity when exploited and can expose workers and the local population to high levels of radiation. Given the presence of uranium throughout the Macusani plateau, any lithium mining operation is likely to generate uranium as a by-product.

Mining projects and the eventual exploitation of additional areas in the region by the companies involved pose risks to the watersheds of the Inambari, Urubamba, and Azángaro, threatening to violate their inhabitants' rights to water and continue the concerning pattern of mining in basin headwaters in Peru and the region.

The Macusani and Falchani mining projects and other activities, generate a potential threat to the largest tropical glacier in the world, an important Apu¹²⁰ for the communities in the area and a source of water for the lagoons, streams, and rivers that supply fresh water for the entire region. An example is the Quelccaya exploration project which, although initially rejected, included part of the Quelccaya ice cap. The nearby regions, owned by American Lithium, overlap directly with the center of the snow-capped mountain.

The companies involved in the projects have already violated environmental regulations. Macusani Yellowcake was sanctioned for conducting exploration without obtaining ecological certification. In addition, in Canada, the Ontario Securities Commission, responsible for enforcing Ontario's securities laws, has initiated proceedings against Plateau Energy and its officers, alleging that they violated the law by misleading investors regarding their mining rights in Peru.

In this context, the Peruvian State did not guarantee the right to free, prior, and informed consultation with the Indigenous peoples that could be directly affected by lithium and uranium mining projects in Puno or regarding the related legislation. The minimum participation requirements established by the State and mentioned in the companies' technical-economic reports and the ongoing efforts to obtain access to land do not comply with international law, nor do they appear to comply with American Lithium's human rights policies.

- **The obligation to adopt a human rights framework in the transition towards renewable energy:**

¹²⁰ In the Peruvian Amazon, "Apu" is the name given to the leader and/or representatives of an Indigenous community or Indigenous peoples.

Under a human rights framework that prioritizes people and a healthy environment in the context of the exploitation of transition minerals such as lithium, States must establish adequate environmental monitoring and protection systems at the regional and national level to mitigate and remediate the damage caused by mining activities. They must also provide care for people exposed to the heavy metals generated by mining. This legal framework should directly address uranium and lithium mining.

In addition, States must ensure that capable and independent technical entities conduct Environmental and Social Impact Assessments (ESIAs) on projects intended to be authorized and implemented in Indigenous peoples' territories¹²¹, and that the environmental, health and social impacts of proposed projects, including impacts on ecosystems, biodiversity, and local communities, are analyzed in an adequate, rigorous and transparent manner. Communities and society in general should be guaranteed access to this environmental information.

Likewise, before approving any project and moving forward with the implementation of administrative or legislative measures that could affect the ethno-territorial rights of Indigenous and tribal peoples, States must obtain the consent of Indigenous and tribal peoples by guaranteeing processes of free, prior, fully informed, and culturally appropriate consultation, in accordance with their international obligations. Through the consultative processes and after obtaining (or not) consent, States must guarantee the right of Indigenous and tribal peoples to self-determination, including the establishment of reasonable benefits for the communities if their consent has been obtained for implementing administrative or legislative measures. In this process, companies and states must guarantee people's right to access information and participation. This means disseminating and disclosing information in a transparent and culturally sensitive manner to all affected communities.

States must also monitor these projects and ensure that the companies involved comply with their legal obligations. States must facilitate access to reparations for those who suffer damages caused by the actions of the companies.

It is also critical that the States in which companies are incorporated supervise said companies and ensure they comply with their legal obligations in connection with their projects in Latin America.

3. What differentiated measures must be taken regarding populations in situations of vulnerability or other intersectional considerations?

As we have seen in the first part of this brief, the Indigenous and tribal peoples of the Americas, including those living in the Amazon, are suffering severe impacts caused by climate change, affecting their rights and their territories. Because their livelihood depends on their lands and natural resources, Indigenous and tribal peoples are the first victims of the climate crisis, even though they have contributed the least to creating it.

Political and economic marginalization and the loss of territorial resources place Indigenous and tribal peoples in a situation of special vulnerability, as recognized by the Inter-American Court in its jurisprudence¹²². For this reason, the Court has said that when dealing with Indigenous and tribal peoples,

¹²¹ *Saramaka People v. Suriname*, Inter-Am Ct. H.R., Ser. C no. 172 (Nov. 28, 2007).

¹²² *See Yakye Axa Indigenous Community v. Paraguay*, Inter-Am Ct. H.R., Ser. C no. 125 (June 17, 2005).

States have the obligation to consider their unique characteristics, land uses, and customs to ensure the effective protection of their rights. Thus, the impacts of the climate crisis on Indigenous and tribal peoples' rights make it imperative to respect the consent and self-determination of Indigenous and tribal peoples in the implementation of any program or project that may affect them.

3.1. Guarantee and promote the right to free, prior, informed consultation and consent as an exercise of self-determination for Indigenous and tribal peoples.

Indigenous and tribal peoples of the Americas have highlighted their concerns regarding the impacts that public policies to address the climate crisis could have on their territories. In this regard, a representative of the Kichwa Indigenous Nationality of Pastaza (Ecuador) points out that “*beyond its repercussions, climate change affects our territories in some direct way. The simple fact that we have the most conserved forests means that we are more drastically affected. Big industries are looking at the Amazon. Now they are coming out with conservation programs for our forests. They are bringing out public policies to manage our territory*”¹²³.

Currently, many climate change measures, such as the Nationally Determined Contributions (NDCs), promote the establishment of conservation entities in Indigenous and tribal peoples' territories to meet climate goals, but do so without guaranteeing their right to consent. Also, mitigation and adaptation measures are being planned without obtaining such free, prior, and informed consent from the Indigenous and tribal peoples living in the affected areas. Furthermore, some projects derived from climate funds do not guarantee the free, prior, and informed consent of Indigenous and tribal peoples, both in the technical evaluation stages and in the implementation of the approved projects.

In light of the above, within the framework of the Latin American and Caribbean Climate Week 2023, Indigenous peoples of the region adopted the *Declaration of Indigenous Peoples of Latin America and the Caribbean*, in which they request that States respect the right to free, prior, and informed consultation and consent of Indigenous Peoples in development processes and national policies related to climate change that have impacts on their territories¹²⁴.

- **The right to free, prior, and informed consultation and consent and its interdependence with the exercise of self-determination:**

In light of the international normative framework, the indissoluble link between the right to consultation and the right to consent of Indigenous and tribal peoples is evident, to such an extent that the United Nations Rapporteurship on the Rights of Indigenous Peoples stated that “they should not be considered independent rights, as they are closely linked to others, such as the right to self-determination, to lands, territories, and access to resources”¹²⁵.

¹²³ Representative of the Kichwa Indigenous Nationality of Pastaza (PAKKIRU), Ecuador, Statement during Seminario VII.

¹²⁴ *Declaration of the Indigenous Peoples of Latin America and the Caribbean at the Latin American and Caribbean Climate Week 2023*, FUND FOR THE DEVELOPMENT OF THE INDIGENOUS PEOPLES OF LATIN AMERICA AND THE CARIBBEAN (FILAC) (Oct. 26, 2023), <https://www.filac.org/declaracion-de-los-pueblos-indigenas-de-america-latina-y-el-caribe-en-la-semana-climatica-de-latinoamerica-y-el-caribe-2023/>.

¹²⁵ Victoria Tauli-Corpuz (Special Rapporteur of the Human Rights Council on the rights of indigenous peoples), *Report on the Rights of Indigenous Peoples*, U.N. Doc A/72/186, ¶ 62 (July 21, 2017).

Furthermore, the right to self-determination, as a coordinating axis for consultation and giving consent, has been interpreted by international jurisprudence as the right of Indigenous peoples “to make decisions regarding their economic, social, and cultural development and to dispose of their natural wealth and resources in their territories, by their customs and traditions, within constitutional limits and with respect for the territorial integrity of the States (internal self-determination)¹²⁶.”

Free, prior, and informed consultation is a fundamental right of ethnic groups regarding legislative measures that may directly affect them, which guarantees the protection of their cultural, social, and economic integrity and their overall right to participation¹²⁷. This fundamental principle is closely tied to other rights that could be affected, such as life, health, land, and the environment¹²⁸. This right arises under international human rights law and is linked to the right of ethnic groups to self-determine their priorities in the development process, insofar “as it affects their lives, beliefs, institutions, spiritual well-being, and the lands they inhabit or use¹²⁹.” In addition, it is understood that ethnic groups have the right to “participate in the development, implementation, and evaluation of national and regional policies and projects that may affect them directly¹³⁰.”

The international obligation of States to guarantee the right to consultation and consent of Indigenous peoples is supported by various international instruments. Within the Universal System for the Protection of Human Rights framework, we highlight the ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)¹³¹. In addition, the UN treaty bodies have affirmed on various occasions that human rights treaties guarantee the right of Indigenous peoples to be consulted and that this right is the corollary of many universally recognized human rights. Among these treaties are: (i) the International Convention on the Elimination of all Forms of Racial Discrimination¹³², (ii) the International Covenant on Civil and Political Rights¹³³, and (iii) the International Covenant on Economic, Social, and Cultural Rights¹³⁴.

Given the importance of these rights, the Inter-American jurisprudence has adopted a standard of protection that determines specific characteristics or essential elements necessary to comply with the

¹²⁶ Constitutional Court of Colombia, Judgment SU-123, section 5.6 (Nov. 15, 2018).

¹²⁷ GLORIA AMPARO RODRIGUEZ, FROM PRIOR CONSULTATION TO FREE, PRIOR, AND INFORMED CONSENT FOR INDIGENOUS PEOPLES IN COLOMBIA 33-49 (2014), <https://repository.urosario.edu.co/bitstream/handle/10336/8716/24867399-2014.pdf>.

¹²⁸ IACHR, *Indigenous Peoples, Afro-Descendant Communities and Natural Resources: Protection of Human Rights in the Context of Extraction, Exploitation and Development Activities*, OEA/Ser.L/V/II. Doc.47/15, ¶ 176 (Dec. 31, 2015).

¹²⁹ International Labour Organization (ILO) Convention on Indigenous and Tribal Peoples, June 27, 1989, C169, art. 7 [hereinafter ILO Convention No. 169].

¹³⁰ *Id.*

¹³¹ U.N. Declaration on the Rights of Indigenous Peoples, Sept. 13, 2007, G.A. Res. 61/295 [hereinafter UNDRIP].

¹³² U.N. International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Dec. 21, 1965, 660 U.N.T.S. 195 (ratified by Colombia and incorporated into its national legislation through Law 22 of 1981).

¹³³ U.N. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (ratified by Colombia and incorporated into its national legislation through Law 74 of 1968).

¹³⁴ U.N. International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 (ratified by Colombia and incorporated into its national legislation through Law 74 of 1968).

international State obligation to consult Indigenous and tribal peoples to obtain their consent, considering that the “[f]ailure to comply with this obligation, or engaging in consultations without observing their essential characteristics, entails the State’s international responsibility¹³⁵.” The key factors identified by the Inter-American Court of Human Rights are as follows:

a) The prior nature of consultation: This refers to the fact that, before the approval of a plan, project, or legislative measure that has an impact on Indigenous peoples, Indigenous peoples must be previously consulted on aspects that may directly affect their interests and, in some cases, it is required to obtain their consent¹³⁶ before moving forward¹³⁷. The preliminary nature of the consultation must observe the Indigenous peoples’ traditions and ways of life¹³⁸, and consultation should not be carried out only when there is a pressing need for approval of the initiative¹³⁹.

b) Good faith and the objective of reaching an agreement: This implies that prior consultation should not be carried out merely as a formal procedure, but as a “genuine instrument for participation¹⁴⁰,” in which work is done in view of reaching an agreement through a genuine dialogue between the Indigenous peoples and States¹⁴¹, basing their actions on a dialogue where the principles of trust, mutual respect, legitimacy, and transparency in the information shared are paramount¹⁴².

Good faith requires that all forms of coercion and corruption of Indigenous leaders that States or third parties, including national or transnational companies may use to reach an agreement must be rejected¹⁴³. Furthermore, consultations should not be subject to time restrictions imposed by the State, and instead must respect the Indigenous peoples’ own timelines¹⁴⁴. Finally, the process of planning and carrying out the consultation is not a duty that can be delegated to private companies¹⁴⁵, but rather corresponds to the State.

¹³⁵ *Kichwa Indigenous People of Sarayaku v. Ecuador*, Inter-Am Ct H.R., Ser. C no. 245 (June 27, 2012).

¹³⁶ ILO Convention No. 169, art. 15.2.

¹³⁷ According to the U.N. Declaration on the Rights of Indigenous Peoples (UNDRIP), it is mandatory to obtain the consent of Indigenous peoples for: relocation of Indigenous peoples; storage and/or disposal of hazardous waste in their territories; military activities; and before approving decisions affecting the water, land or other resources of Indigenous peoples. UNDRIP, art. 19, 26, 28, 29.2, 30.1, 32.2. In turn, the American Declaration on the Rights of Indigenous Peoples also includes the obligation to obtain consent when: Indigenous peoples are deprived of cultural, intellectual, religious or spiritual property; research, sterilization or biological or medical experimentation programs are carried out. Organization of American States, American Declaration on the Rights of Indigenous Peoples, June 15, 2016, AG/RES. 2888 (XLVI-O/16), art. XXIII.2, XVIII.3. For its part, the Inter-American Court of Human Rights, in the case of the *Saramaka Peoples v. Suriname*, determined that consent must be obtained in the case of large-scale development or investment plans that would have a major impact within the territory. Inter-Am Ct. H.R., Ser. C no. 172, ¶ 134 (Nov. 28, 2007).

¹³⁸ *Kichwa Indigenous People of Sarayaku v. Ecuador*, Inter-Am Ct H.R., Ser. C no. 245, ¶ (June 27, 2012).

¹³⁹ *Id.* ¶¶ 177, 180.

¹⁴⁰ Union of Engineers of the Federal District (SENGE/DF), *Report of the Committee set up to examine the representation alleging non-observance by Brazil of the Indigenous and Tribal Peoples Convention 1989 (No. 169)*, GB. 295/17; GB. 304/14/7, ¶ 42 (2009).

¹⁴¹ *Kichwa Indigenous People of Sarayaku v. Ecuador*, Inter-Am Ct H.R., Ser. C no. 245, ¶ 200 (June 27, 2012).

¹⁴² *Id.*, ¶ 186; ILO, *Individual Observation on Convention No. 169 submitted by Bolivia* (2005).

¹⁴³ *Kichwa Indigenous People of Sarayaku v. Ecuador*, Inter-Am Ct H.R., Ser. C no. 245 (June 27, 2012), ¶ 186.

¹⁴⁴ UN Human Rights Council, Report of the Special Rapporteur on the Rights of Indigenous Peoples, Res. A/HRC/24/41/ (2013), ¶ 69.

¹⁴⁵ *Kichwa Indigenous People of Sarayaku v. Ecuador*, Inter-Am Ct H.R., Ser. C no. 245 (June 27, 2012).

c) Adequate and accessible consultation: Prior consultation processes must be carried out in accordance with the customs, institutions, and worldview of the Indigenous peoples¹⁴⁶, ensuring that State institutions do not replace the Indigenous peoples' own institutions¹⁴⁷. Adequacy and accessibility imply that Indigenous peoples understand the scope of the legislative or administrative measure being consulted and their various stages, making it imperative to provide interpreters or the necessary resources for the process to be effective¹⁴⁸. In addition, this process must take into account the circumstances of the Indigenous peoples, the national context, as well as the nature of the measures consulted¹⁴⁹.

d) Social and environmental impact studies: This characteristic implies that States, in conjunction with Indigenous peoples, must carry out assessments to measure the social, spiritual, cultural, and environmental impacts that measures, plans, and projects may have on the rights of Indigenous peoples¹⁵⁰. Therefore, the studies must: (i) be conducted under the guidance and supervision of the Indigenous peoples (based on their worldview and cosmovision), using the assessing entities only to provide scientific support¹⁵¹; (ii) go beyond the environmental component and identify the direct and indirect impacts that the projects may have on the ways of life of Indigenous peoples; (iii) be conducted in advance, and (iv) be carried out by independent, technically capable evaluating entities under the supervision of the States¹⁵².

e) The informed nature of the consultation: This implies providing Indigenous and tribal peoples with all the information necessary to express their opinions regarding the measure at issue, meaning that States must guarantee that they have access to the information regarding the benefits and risks that may come from the consulted measure¹⁵³.

3.2. The need to advance guaranteeing the right to consent to address the climate crisis and the opportunity for this Court to guarantee this right.

Despite the clarity in the corpus juris of international law on the rights to free, prior, and informed consultation, consent, and self-determination, Indigenous and tribal peoples experience the opposite. Good faith falls by the wayside as leaders and authorities are co-opted; prior consultation is done

¹⁴⁶ ILO Convention No. 169, art. 6.1 (“[G]overnments shall . . . consult the peoples concerned, through appropriate procedures and in particular through their representative institutions”).

¹⁴⁷ James Anaya (Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people), *Report on Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development* A/HRC/12/34, ¶ 42 (July 15, 2009).

¹⁴⁸ ILO Convention No. 169, art. 6.1.

¹⁴⁹ Union of Engineers of the Federal District (SENGE/DF), *Report of the Committee set up to examine the representation alleging non-observance by Brazil of the Indigenous and Tribal Peoples Convention 1989 (No. 169)*, GB. 295/17; GB. 304/14/7, ¶ 42 (2009).

¹⁵⁰ ILO Convention No. 169, art. 7.3 (“Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.”).

¹⁵¹ IACHR, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II. Doc.47/15, ¶¶ 215-16 (Dec. 31, 2015).

¹⁵² *Kichwa Indigenous People of Sarayaku v. Ecuador*, Inter-Am Ct H.R., Ser. C no. 245, ¶ 205 (June 27, 2012).

¹⁵³ *Id.* ¶ 177.

afterwards and not before; instead of being free, consultation is coercive; and instead of being informed, the communities are deprived of basic information. In practice, prior consultation has lost its essence, and is frequently reduced to a mere formal procedure used to legitimize the implementation of extractive projects in the territories of Indigenous and tribal peoples, without the guarantee of due process or the objective of reaching an agreement.

In general, consultations for the implementation of measures affecting Indigenous and tribal peoples are governed from the outset by the asymmetry of power between the parties engaging in dialogue, which is exacerbated by the fact that Indigenous peoples do not have the opportunity to state their position in a binding manner. When the decision-making space is more symmetrical, any agreement is more likely to reflect the interests of both parties.

This honorable Court has a unique opportunity to counteract this critical state of affairs, safeguard the essence of the right to free, prior, informed consultation and consent, and ensure the right to self-determination. It can do so through the establishment of strong standards that prevent consultation from being reduced to a checklist for States in the region. It is crucial that this Advisory Opinion make clear that States have a concrete duty to obtain the consent of Indigenous and tribal peoples with respect to all measures, of whatever nature, that directly affect them, including those adopted in the context of the climate crisis. Addressing the climate crisis is a new challenge for both society and States. Consequently, the construction of clear guidelines to guarantee the rights of Indigenous and tribal peoples when implementing actions aimed at counteracting and confronting climate change is a fundamental step to prevent the violation of rights that have been described throughout this brief.

Obtaining consent for the implementation of measures that directly affect Indigenous and tribal peoples is strongly supported in international law, including by international human rights instruments adopted by the United Nations¹⁵⁴ and the African Commission on Human and Peoples' Rights¹⁵⁵. The policies and

¹⁵⁴ See *Ángela Poma Poma v. Peru*, U.N. Human Rights Committee, U.N. Doc. CCPR/C/95/D/1457/2006, ¶ 7.6 (Mar. 27, 2009) (holding that the admissibility of measures which substantially compromise or interfere with the culturally significant economic activities of a minority or Indigenous community depends on whether the members of the community in question have had the opportunity to participate in the decision-making process in relation to these measures and whether they will continue to benefit from their traditional economy. The Committee considers that participation in the decision-making process must be effective, which requires not mere consultation but the free, prior and informed consent of the members of the community); see also Committee on the Elimination of Racial Discrimination Gen. Recommendation XXIII, Indigenous Peoples, U.N. Doc A/52/18, ¶ 4d (1997).

¹⁵⁵ See African Comm'n on Human and Peoples' Rights Res. 224 on a Human Rights-Based Approach to Natural Resources Governance (Apr. 18-May 2, 2012) (“[A]ll necessary measures must be taken by the State to ensure participation, including the free, prior and informed consent of communities, in decision making related to natural resources governance.”); *Ctr. for Minority Rights Dev. (Kenya) and Minority Rights Grp. Int'l on behalf of Endorois Welfare Council v. Kenya*, African Comm'n on Human and Peoples' Rights, 276/2003, ¶ 291 (Feb. 4, 2010) (holding that, with respect to “any development or investment projects that would have a major impact within the Endorois territory, the State has a duty not only to consult with the community, but also to obtain their free, prior, and informed consent, according to their customs and traditions”).

frameworks of international financial institutions¹⁵⁶ and industry associations¹⁵⁷ also support the duty to obtain consent.

In light of the importance that international law has given to the right to consultation, as a guarantee of a series of fundamental rights, consent should not only be understood as an aspiration in the consultation process, but rather as an unavoidable requirement for authorizing any measure directly affecting Indigenous and tribal peoples. In this sense, the IACHR has recognized that the substantive dimension of this right refers to the requirement to obtain consent based on self-determination¹⁵⁸.

4. Conclusions

Although they have contributed the least to the crisis, Indigenous and tribal peoples are the first victims of the present climate crisis, as they live in fragile ecosystems and territories that are highly susceptible to climate impacts. The special relationship of Indigenous and tribal peoples with their territories and the natural resources on which their livelihoods depend makes them particularly susceptible to climate impacts, which threaten their traditional ways of life and their rights to self-determination and cultural identity.

In the face of the climate crisis we are living in, there is a high risk of violating fundamental rights that are vital to the survival of life in all its forms, particularly regarding the collective rights of Indigenous and tribal peoples. States must acknowledge the role of Indigenous and tribal peoples and work jointly with Indigenous authorities. In order to do this, States must carry out actions that generate the minimal material conditions necessary to guarantee their collective rights, self-determination, and autonomy. States must adopt measures with a dual purpose: preventing possible harm to human rights arising from climate risks; and strengthening Indigenous and tribal communities by taking actions for the protection, conservation, and restoration of the life cycles and spaces within Indigenous territories.

States must adopt measures to protect the Amazon rainforest, the world's largest rainforest and a fundamental part of the global climate system, which is one of the strategic ecosystems most threatened by the climate crisis in the Americas. The Amazon rainforest is a source of water resources for South America and a significant global carbon sink. Deforestation of the Amazon rainforest threatens the climate balance and the forest's ability to absorb carbon dioxide. The loss of the Amazon also implies severe violations of the rights of the Indigenous peoples that inhabit it, including Indigenous peoples in voluntary isolation. Because of its strategic importance to the global climate system, States must take urgent measures to protect the Amazon and its Indigenous peoples' rights.

¹⁵⁶ See, e.g., INT'L FIN. CORP., PROGRESS REPORT ON IFC'S POLICY AND PERFORMANCE STANDARDS ON SOCIAL AND ENVIRONMENTAL SUSTAINABILITY AND ACCESS TO INFORMATION POLICY 25 (2010) (noting that banks such as the European Bank for Reconstruction and Development, Inter-American Development Bank, Asian Development Bank, and International Fund for Agricultural Development have incorporated the principle of consent).

¹⁵⁷ INT'L PETROLEUM INDUSTRY ENV'T CONSERVATION ASSOC. & THE INT'L ASSOC. OF OIL AND GAS PRODUCERS, KEY QUESTIONS IN MANAGING SOCIAL ISSUES IN OIL AND GAS PROJECTS § 3.4 (2002) (indicating that projects will have a greater chance of success if the consent of the Indigenous communities involved has been obtained.); WORLD COMMISSION ON DAMS, DAMS AND DEVELOPMENT: A NEW FRAMEWORK FOR DECISION-MAKING (2000) (recognizing the need to obtain the free, prior and informed consent of Indigenous and tribal peoples affected by the construction of large-scale dams).

¹⁵⁸ IACHR, *Right to Self-Determination of Indigenous and Tribal Peoples*, OEA/Ser.L/V/II. Doc. 413, ¶ 187 (Dec. 28, 2021).

States must control, reverse, and prevent the damage caused by activities that destroy and degrade ecosystems and cause the climate crisis. The Indigenous and tribal peoples and communities that undersign this amicus brief are living daily with the impacts of the climate crisis on their territories and their peoples. Logging, mining, and exploiting fossil fuels produce significant greenhouse gas emissions and increase deforestation. When these activities occur in territories inhabited by Indigenous and tribal peoples, there are severe consequences due to the degradation of the ecosystem and the risk of contamination, among other factors, which cause additional violations of the rights of the communities living there. To fulfill their obligations to respect and guarantee human rights, States must address the causes of the climate crisis and eliminate the exploitation of fossil fuels.

States must recognize and adequately protect the collective rights of Indigenous and tribal peoples. Statistics from various countries in the Amazon region show how Indigenous peoples' management of territories reduces deforestation and carbon emissions. However, in the Americas, Indigenous and tribal peoples continue to lack adequate protections for their collective rights, which are frequently violated or go unrecognized. To minimize the impacts of the climate crisis, States must recognize and protect the rights of Indigenous and tribal peoples.

States should adopt a human rights approach to energy transition policies and legislation to prevent the shift to clean energy from causing new human rights violations. States are currently prioritizing and approving legislative and administrative measures to implement projects that exploit the so-called "green" minerals necessary to carry out this transition and progressively eliminate fossil fuel use. To prevent irreparable damage and new human rights violations caused by "green" mining, States must adopt a human rights-based approach that puts people and their rights at the center of the conversation and prevents and avoids possible damages that these projects could generate, fulfilling their obligations under the wide range of international treaties and conventions related to environmental issues, Indigenous peoples, and human rights.

In the case of Indigenous and tribal peoples, as groups with unique vulnerability to the climate crisis, States must adopt differentiated measures founded on respecting and guaranteeing the right to prior, free, and informed consultation and consent as an exercise of self-determination. States must obtain the consent of Indigenous and tribal peoples with respect to all measures, of whatever nature, that directly affect them, including those adopted in the context of the climate crisis.

Signed by:

[INSERT SIGNATURES]

