

INTERNATIONAL COURT OF JUSTICE

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**OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE**

**WRITTEN STATEMENT OF THE REPUBLIC OF SIERRA LEONE**



**15 MARCH 2024**

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## CHAPTER I. INTRODUCTION

1.1 On 29 March 2023, the United Nations General Assembly adopted Resolution 77/276, by which it decided, pursuant to Article 65 of the Statute of the Court, to request the International Court of Justice (“**ICJ**” or “**Court**”) to render an advisory opinion (“**Request**”) on the following legal questions:

“(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;

(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to: (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change? (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?”

1.2 In its Orders of 20 April 2023, 4 August 2023, and 15 December 2023, the Court invited States to submit written statements on the above questions. The present Written Statement by the Republic of Sierra Leone (“**Sierra Leone**”) is submitted pursuant to those orders.

1.3 The level of anthropogenic greenhouse gas (“**GHG**”) emissions has increased rapidly over recent decades. Global net anthropogenic GHG emissions in 2019 were about 54% higher than in 1990. The average annual GHG emissions in 2010-2019 were higher than in any previous decade on record.<sup>1</sup>

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<sup>1</sup> IPCC, *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2023) (“**IPCC, 2023**”), available at [https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_FullVolume.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_FullVolume.pdf), p. 4, para. A.1.4. See also J. E. Hansen, “Global warming in the pipeline” (2023) 3(1) *Oxford Open Climate Change*, available at <https://doi.org/10.1093/oxfclm/kgad008>.

1.4 There is overwhelming scientific consensus that such human-induced emissions have permanently altered the Earth’s climate system and other parts of the environment.<sup>2</sup> The IPCC, which is the United Nations body tasked with assessing the science related to climate change, has prepared comprehensive scientific assessments on the state of knowledge about climate change based on research by thousands of experts worldwide. In its Sixth Assessment Report, the IPCC concluded that “[h]uman activities, principally through emissions of greenhouse gases, have *unequivocally* caused global warming.”<sup>3</sup> Elsewhere, it found that climate change has caused “*substantial* damages, and increasingly *irreversible* losses, in terrestrial, freshwater, cryospheric, and coastal and open ocean ecosystems.”<sup>4</sup>

1.5 Sierra Leone is located on the West Coast of the African continent. Its ecological features, including coastal and marine environments, mountainous landscape, and savanna grasslands make it particularly vulnerable to the adverse effects of climate change. As a region, Africa has the lowest per capita GHG emissions in the world,<sup>5</sup> having contributed a mere 3% of total CO<sub>2</sub> emissions from 1751 to 2017.<sup>6</sup> Like other African States, Sierra Leone is among the lowest

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<sup>2</sup> See IPCC, 2023, pp. 46, 77; IPCC, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (CUP 2021), available at [https://report.ipcc.ch/ar6/wg1/IPCC\\_AR6\\_WGI\\_FullReport.pdf](https://report.ipcc.ch/ar6/wg1/IPCC_AR6_WGI_FullReport.pdf), p. 21, para. B.5.1; *ibid.*, p. 161; IPCC, *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* (CUP 2018) (“**IPCC, 2018**”), available at [https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SR15\\_Full\\_Report\\_LR.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SR15_Full_Report_LR.pdf), p. 341 (“CO<sub>2</sub> emissions result in a virtually permanent warming”); IPCC, *Climate Change 2023: Synthesis Report – Summary for Policymakers* (2023) (Dossier No. 78), p. 4, para. A.1; D.W. Fahey *et al.*, “Physical drivers of climate change” in D.J. Wuebbles *et al.* (eds.), *Climate Science Special Report: Fourth National Climate Assessment, Volume I* (U.S. Global Change Research Program 2017), available at [https://science2017.globalchange.gov/downloads/CSSR\\_Ch2\\_Physical\\_Drivers.pdf](https://science2017.globalchange.gov/downloads/CSSR_Ch2_Physical_Drivers.pdf). Article 1(3) of the United Nations Framework Convention on Climate Change defines “climate system” as “the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions.” United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994), 1771 UNTS 107 (Dossier No. 4) (“**UNFCCC**”), Art. 1(3).

<sup>3</sup> IPCC, 2023, p. 42 (emphasis added).

<sup>4</sup> *Ibid.*, p. 5, para. A.2.3 (emphasis added).

<sup>5</sup> IPCC, *Climate Change 2022: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (CUP 2022) (“**IPCC, 2022**”), available at [https://report.ipcc.ch/ar6/wg2/IPCC\\_AR6\\_WGII\\_FullReport.pdf](https://report.ipcc.ch/ar6/wg2/IPCC_AR6_WGII_FullReport.pdf), p. 1294, para. 9.1.1.

<sup>6</sup> H. Ritchie, “Who has contributed most to global CO<sub>2</sub> emissions?,” *Our World in Data* (1 October 2019), available at <https://ourworldindata.org/contributed-most-global-co2>, Figure 1: “Who has contributed most to global CO<sub>2</sub> emissions?”

contributors of GHG emissions responsible for human-induced climate change. Sierra Leone's territorial carbon dioxide emissions in the past decade have been 1-1.3 million tons per year, in contrast to the emissions of developed countries, which are in the billions. In its highest emitting years, Sierra Leone's share of global carbon dioxide emissions was negligible (less than 0.01%).<sup>7</sup> The trivial contribution of Sierra Leone and Africa as a whole to global GHG emissions is depicted in the chart below.<sup>8</sup>

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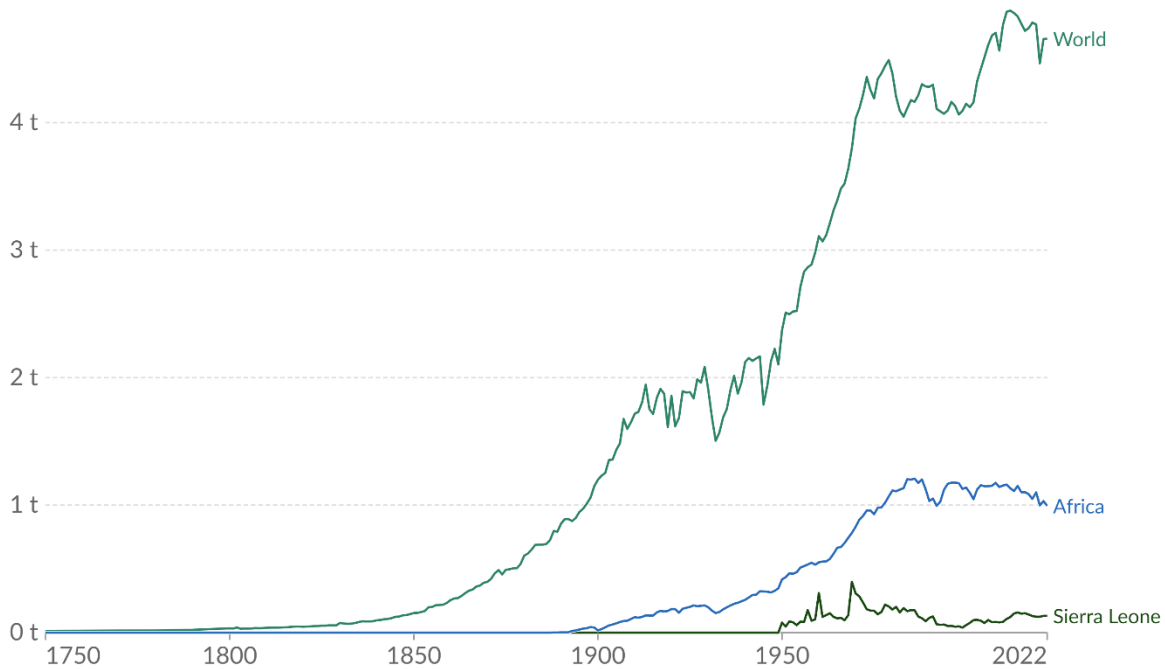
<sup>7</sup> H. Ritchie & M. Roser, "Sierra Leone: CO<sub>2</sub> Country Profile," *Our World In Data* (last accessed: 26 February 2024), available at <https://ourworldindata.org/co2/country/sierra-leone>, Figure 6: "Share of global CO<sub>2</sub> emissions." See also Global Carbon Project, Global Carbon Atlas, "Sierra Leone" (last accessed: 26 February 2024), available at <https://globalcarbonatlas.org/emissions/carbon-emissions/> (In 2022, Sierra Leone ranked 165<sup>th</sup> with total territorial emissions of 1.1 MtCO<sub>2</sub>, or million tons of carbon dioxide.) (citing P. Friedlingstein *et al.*, "Global Carbon Budget 2023" (2023) 15(12) *Earth System Science Data* 5301, available at <https://doi.org/10.5194/essd-15-5301-2023>, National Fossil Carbon Emissions Data Supplement).

<sup>8</sup> H. Ritchie & M. Roser, "Sierra Leone: CO<sub>2</sub> Country Profile," *Our World In Data* (last accessed: 26 February 2024), available at <https://ourworldindata.org/co2/country/sierra-leone>, Figure 1: "Per capita CO<sub>2</sub> emissions."

## Per capita CO<sub>2</sub> emissions



Carbon dioxide (CO<sub>2</sub>) emissions from fossil fuels and industry<sup>1</sup>. Land-use change is not included.



Data source: Global Carbon Budget (2023); Population based on various sources (2023)

[OurWorldInData.org/co2-and-greenhouse-gas-emissions](https://ourworldindata.org/co2-and-greenhouse-gas-emissions) | CC BY

1. **Fossil emissions:** Fossil emissions measure the quantity of carbon dioxide (CO<sub>2</sub>) emitted from the burning of fossil fuels, and directly from industrial processes such as cement and steel production. Fossil CO<sub>2</sub> includes emissions from coal, oil, gas, flaring, cement, steel, and other industrial processes. Fossil emissions do not include land use change, deforestation, soils, or vegetation.

1.6 Despite its minimal contribution to climate change, Sierra Leone is among the 10 percent of countries in the world that are most vulnerable to its adverse consequences and least able to cope with the effects.<sup>9</sup> The same is true for the majority of the African continent, as demonstrated by recent studies concluding that Africa accounts for 17 of the 20 countries that are most at risk from climate change.<sup>10</sup> The Nairobi Declaration on Climate Change and Call to Action, adopted by the African Heads of State and Government at the conclusion of the 2023 Africa Climate

<sup>9</sup> B. Ahonsi, “Why COP27 matters to Sierra Leone,” *Africa Renewal* (4 November 2022), <https://www.un.org/africarenewal/magazine/november-2022/why-cop27-matters-sierra-leone>.

<sup>10</sup> United Nations Economic Commission for Africa, *Transition to renewable resources for energy and food security in North and West Africa* (1 November 2023), available at [https://www.uneca.org/eca-events/sites/default/files/resources/documents/sro-na/egm-na-wa-energy-food-security-2023/e2301133\\_eng.pdf](https://www.uneca.org/eca-events/sites/default/files/resources/documents/sro-na/egm-na-wa-energy-food-security-2023/e2301133_eng.pdf), p. 1 (citing Notre Dame Global Vulnerability Index).

Summit and endorsed by Sierra Leone as a reflection of the common African position, underscored that “Africa is warming faster than the rest of the world and if unabated, climate change will continue to have adverse impacts on African economies and societies, and hamper economic growth and wellbeing.”<sup>11</sup>

1.7 For Sierra Leone, climate change does not just mean hotter days and nights. It means increased heat-related mortality and heat-related loss of labor productivity.<sup>12</sup> It means erratic precipitation patterns and more frequent dry spells, with huge spillover effects on water-dependent sectors such as agriculture.<sup>13</sup> It means extensive floods, heavy storms, and landslides throughout parts of the country, which will take away lives, destroy homes, and strain critical social infrastructure and healthcare services. It means drought and famine, with serious implications for food systems and water availability. It means that Sierra Leone’s coastlines will be permanently altered, people will be forced to leave their homes, and the most vulnerable communities will be exposed to acute food insecurity. This harm will only exacerbate the existing economic, social and environmental conditions, which further challenge the political stability of Sierra Leone.

1.8 For Sierra Leone, which is not unique in this regard, the risks and consequences of climate-related disasters are multiplied due to its heavy reliance on climate-sensitive sectors such as rain-dependent agriculture, natural resources, and fisheries for critical food security, employment opportunities, and export earnings. Increasingly intense and frequent coastal flooding and heavy rainfall pose a significant threat to the most vulnerable communities and aggravate existing challenges like food security. As a country that continues to recover from recent experience with

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<sup>11</sup> African Union, *Nairobi Declaration on Climate Change and Call to Action* (8 September 2023) (“**Nairobi Declaration**”), available at <https://media.africaclimatesummit.org/Final+declaration+1709-English.pdf?request-content-type=%22application/force-download>, para. 7 (emphasis added).

<sup>12</sup> According to one study, the number of work hours lost to extreme heat across the globe increased to 295 billion in 2020, with the worst effects on those in lower-income areas and agricultural workers. M. Romanello *et al.*, “The 2021 report of the Lancet Countdown on health and climate change: code red for a healthy future” (2021) 398 *Lancet* 1619, available at [https://doi.org/10.1016/S0140-6736\(21\)01787-6](https://doi.org/10.1016/S0140-6736(21)01787-6), p. 1626.

<sup>13</sup> See Government of Sierra Leone, *National Adaptation Plan* (2021) (“**Sierra Leone National Adaptation Plan**”), available at [https://unfccc.int/sites/default/files/resource/SierraLeone\\_iNAP\\_Final.pdf](https://unfccc.int/sites/default/files/resource/SierraLeone_iNAP_Final.pdf), pp. 19-34. See also C.H. Trisos *et al.*, “Chapter 9: Africa” in IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability* (CUP 2022) (“**IPCC, 2022, Chapter 9: Africa**”), available at [https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC\\_AR6\\_WGII\\_Chapter09.pdf](https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_Chapter09.pdf), pp. 1290-1291.

violent conflict, Sierra Leone is particularly susceptible to the effects of worsened livelihood security, disrupted infrastructure, and resource scarcity accelerated by climate change.<sup>14</sup>

1.9 Sierra Leone therefore wholeheartedly welcomes the decision by the General Assembly to request from the Court judicial guidance on the obligations of States under international law regarding climate change. There is a rapidly closing window of opportunity to secure a habitable planet for all. Sierra Leone is proud to be part of the core group of States that led the initiative to seek the present Advisory Opinion and considers it an historic opportunity—one that is vital not only for the current generation, but also for many generations to come.

1.10 The present submission is divided into four parts. First, Sierra Leone addresses the predicate issue of jurisdiction and discretion. This is followed by a discussion, in successive parts, of the two questions posed to the Court and a conclusion.

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<sup>14</sup> IPCC, 2022, Chapter 9: Africa, p. 1394 (noting the impact of climate variability on human security across Africa).



## CHAPTER II. JURISDICTION AND DISCRETION

### 1. THE COURT HAS JURISDICTION TO GIVE THE ADVISORY OPINION

2.1 The Court’s jurisdiction to give an advisory opinion is based on Article 65, paragraph 1, of its Statute, which provides that “[t]he Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.” Applying this provision, the Court has stated that it is “a precondition of the Court’s competence that the advisory opinion be requested by an organ duly authorized to seek it under the Charter, that it be requested on a legal question, and that, except in the case of the General Assembly or the Security Council, that question should be one arising within the scope of the activities of the requesting organ.”<sup>15</sup>

2.2 The General Assembly is duly authorized to seek an advisory opinion under Article 96, paragraph 1, of the Charter, which provides that “[t]he General Assembly ... may request the International Court of Justice to give an advisory opinion on any legal question.” The General Assembly requested the present Advisory Opinion through adopting Resolution 77/276 by consensus pursuant to its established rules.<sup>16</sup> When the Assembly adopts a resolution passed in accordance with its established rules of procedure, the “resolution ... must be presumed to have been validly adopted.”<sup>17</sup>

2.3 Unlike other UN organs and specialized agencies, the General Assembly’s power to request advisory opinions under Article 96 is not restricted to legal questions “arising within the scope of

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<sup>15</sup> *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982*, p. 325, at pp. 333-334, para. 21. See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136 (“**Wall Advisory Opinion**”), at p. 144, para. 14.

<sup>16</sup> See UN General Assembly, Resolution 77/276, *Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change*, UN Doc. A/RES/77/276 (4 April 2023) (Dossier No. 2); UN General Assembly, 77<sup>th</sup> Session, 64<sup>th</sup> Plenary Meeting, *Draft Resolution (A/77/L.58)*, UN Doc. A/77/PV.64 (29 March 2023) (Dossier No. 3), p. 4.

<sup>17</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, at p. 22, para. 20.

[its] activities.”<sup>18</sup> Nonetheless, it is clear that climate change and its impacts are directly relevant to many aspects of the activities and concerns of the General Assembly,<sup>19</sup> including but not limited to, the codification and progressive development of international law, international co-operation in the economic, social, cultural, educational and health fields, the maintenance of international peace and security, and the realization of human rights and fundamental freedoms.<sup>20</sup> The General Assembly’s long-standing interest in the protection of the global climate for present and future generations is further evidenced by its adoption of a multitude of related resolutions.<sup>21</sup>

2.4 The requirement that the Advisory Opinion must be on a “legal question” is satisfied. The questions raised in Resolution 77/276 possess a legal character. The first question put to the Court concerns States’ obligations under international law to protect the climate system and other parts of the environment from anthropogenic GHG emissions. The second question relates to the legal consequences when such obligations have not been met. Both questions invite the Court to identify existing principles and rules under different bodies of international law, interpreting and applying them in regard to the problem of climate change.<sup>22</sup> The questions are both “framed in terms of law and rais[ing] problems of international law ... [which] are by their very nature susceptible of a reply based on law.”<sup>23</sup> The questions thus must be considered legal questions for purposes of establishing the Court’s jurisdiction.<sup>24</sup>

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<sup>18</sup> See *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion*, I.C.J. Reports 1982, p. 325, at pp. 333-334, para. 21. See also P. d’Argent, “Article 65” in A. Zimmermann *et al.* (eds.), *The Statute of the International Court of Justice: A Commentary* (3<sup>rd</sup> Ed., OUP 2019), para. 21.

<sup>19</sup> *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996 (I), p. 226 (“**Nuclear Weapons Advisory Opinion**”), at pp. 232-233, paras. 11-12.

<sup>20</sup> See UN Charter, Arts. 10, 11, 13. See also *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, I.C.J. Reports 2010, p. 403 (“**Kosovo Advisory Opinion**”), at p. 420, para. 40 (“Articles 10 and 11 of the Charter ... confer upon the General Assembly a very broad power to discuss matters within the scope of the activities of the United Nations ...”).

<sup>21</sup> See Dossier Part V(A), Nos. 104-135 (General Assembly resolutions on protection of global climate for present and future generations).

<sup>22</sup> *Nuclear Weapons Advisory Opinion*, p. 234, para. 13.

<sup>23</sup> *Ibid.*, p. 233, para. 13.

<sup>24</sup> *Kosovo Advisory Opinion*, pp. 414-415, para. 25.

2.5 As the Court has repeatedly affirmed, the fact that a question put before the Court may have “political” aspects does not divest the question of its legal character.<sup>25</sup> Since the Court’s opinion is directed not to States but to the organ which requested it, neither the motives of individual States inspiring the Request nor the political implications of the opinion are relevant when determining jurisdiction.<sup>26</sup> As such, the broader political context in which the present Request arose, including the global climate change negotiations taking place in other fora, does not detract from the fact that the Court is invited to discharge a judicial task, namely, to assess the obligations of States under international law in respect of climate change.<sup>27</sup> From the standpoint of the establishment of its jurisdiction, and the subsequent provision of an advisory opinion on the legal questions that the General Assembly has presented, it is immaterial that States are pursuing other important and current activities relating to climate change elsewhere in other settings.<sup>28</sup>

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<sup>25</sup> *Kosovo Advisory Opinion*, p. 415, para. 27; *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion*, *I.C.J. Reports 1973*, p. 166, at p. 172, para. 14.

<sup>26</sup> *Admission of a State to the United Nations (Charter, Art. 4), Advisory Opinion*, *I.C.J. Reports 1948*, p. 57, at p. 61; *Nuclear Weapons Advisory Opinion*, p. 234, para. 13; *Kosovo Advisory Opinion*, p. 415, para. 27.

<sup>27</sup> *Kosovo Advisory Opinion*, p. 415, para. 27.

<sup>28</sup> *Nuclear Weapons Advisory Opinion*, p. 233, para. 12.

## 2. NO COMPELLING REASONS PREVENT THE COURT FROM GIVING THE ADVISORY OPINION

2.6 Even when the jurisdictional conditions are met, the Court has discretion to decline to respond to a request for an advisory opinion under Article 65, paragraph 1, of its Statute.<sup>29</sup> This discretion serves to protect the integrity of the Court’s judicial function and its role as the principal judicial organ of the United Nations.<sup>30</sup> However, as this Court has consistently expressed, a request for an advisory opinion “in principle, should not be refused”<sup>31</sup> and only “compelling reasons” can justify such a refusal.<sup>32</sup>

2.7 In the present case, there are no compelling reasons militating against the Court’s exercise of its judicial function to deliver the Advisory Opinion. This case does not raise concerns of “circumventing” an interested State’s consent before submitting a dispute to judicial settlement.<sup>33</sup> The questions are situated in a much broader frame of reference than bilateral matters, and the object of the request is not to resolve a bilateral dispute, but to obtain an opinion to aid the General Assembly’s functions on issues that are of acute interest to it.<sup>34</sup> Indeed, the questions address critical matters concerning the existential threat posed to planet Earth by climate change and therefore implicate the community interests of all States. There are therefore many compelling reasons why the Court should exercise its judicial function to provide the requested opinion on probably the most challenging contemporary issue facing the international community as a whole.

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<sup>29</sup> *Wall Advisory Opinion*, p. 156, para. 44.

<sup>30</sup> *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, p. 166, at p. 175, para. 24; *Wall Advisory Opinion*, pp. 156-157, paras. 44-45.

<sup>31</sup> *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 65, at p. 71; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, p. 62, at pp. 78-79, para. 29; *Wall Advisory Opinion*, p. 156, para. 44.

<sup>32</sup> *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against the UNESCO, Advisory Opinion, I.C.J. Reports 1956*, p. 77, at p. 86; *Wall Advisory Opinion*, p. 156, para. 44; *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, p. 166, at p. 183, para. 40; *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at p. 21, para. 23.

<sup>33</sup> *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at pp. 24-25, paras. 32-33.

<sup>34</sup> *Wall Advisory Opinion*, p. 159, para. 50.

2.8 There are no concerns that the Court lacks sufficient information and evidence to enable it to deliver the requested Advisory Opinion.<sup>35</sup> The Court has at its disposal a voluminous dossier with comprehensive documentation available from relevant intergovernmental processes of the United Nations and several reports from, among others, the Intergovernmental Panel on Climate Change (“**IPCC**”), UN Working Groups related to climate change, and UN Special Rapporteurs with mandates bearing directly on climate change-related matters.

2.9 Any suggestion that the Advisory Opinion could complicate diplomatic efforts to address the climate crisis does not constitute a compelling reason for the Court not to give the Advisory Opinion.<sup>36</sup> Putative “political” aspects of the questions are irrelevant to whether the Court should exercise its discretionary authority.<sup>37</sup> This position is well settled in its advisory jurisprudence. When faced with similar arguments in *Unilateral Declaration of Independence*, the Court explained that it “cannot—in particular where there is no basis on which to make such an assessment—substitute its own view as to whether an opinion would be likely to have an adverse [political] effect.”<sup>38</sup> In *Legality of the Threat or Use of Nuclear Weapons*, the Court similarly dismissed a submission expressing concerns that the Court’s opinion might adversely affect disarmament negotiations.<sup>39</sup>

2.10 In a similar vein, doubts expressed by a State as to whether the Advisory Opinion is “the best means” by which to combat climate change has no bearing on whether the Court should respond to the General Assembly’s Request.<sup>40</sup> As the Court noted in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, “[t]he Court cannot substitute its assessment of the usefulness of the opinion requested for that of the organ that seeks such opinion,

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<sup>35</sup> *Ibid.*, pp. 161-162, paras. 57-58; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95 (“**Chagos Advisory Opinion**”), at pp. 114-115, paras. 73-74.

<sup>36</sup> UN General Assembly, 77<sup>th</sup> Session, 64<sup>th</sup> Plenary Meeting, *Draft Resolution (A/77/L.58)*, UN Doc. A/77/PV.64 (29 March 2023) (Dossier No. 3), p. 28 (United States of America).

<sup>37</sup> *Kosovo Advisory Opinion*, p. 417, para. 33; *Nuclear Weapons Advisory Opinion*, p. 237, para. 16.

<sup>38</sup> *Kosovo Advisory Opinion*, p. 418, para. 35.

<sup>39</sup> *Nuclear Weapons Advisory Opinion*, p. 237, para. 17. See also *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at p. 37, para. 73; *Wall Advisory Opinion*, pp. 159-160, paras. 51-54.

<sup>40</sup> UN General Assembly, 77<sup>th</sup> Session, 64<sup>th</sup> Plenary Meeting, *Draft Resolution (A/77/L.58)*, UN Doc. A/77/PV.64 (29 March 2023) (Dossier No. 3), p. 28 (United States of America).

namely the General Assembly.”<sup>41</sup> In fact, the Court previously recognized that “in situations in which political considerations are prominent it may be particularly necessary for an international organization to obtain an advisory opinion from the Court as to the legal principles applicable with respect to the matter under debate.”<sup>42</sup>

2.11 The contention that the questions are framed in “broad” terms is also not an obstacle to the exercise of the Court’s jurisdiction.<sup>43</sup> The longstanding and clear position of the Court is that it “may give an advisory opinion on any legal question, abstract or otherwise.”<sup>44</sup> Even if there were a degree of ambiguity as to the questions put to the Court (there is not), this would simply require their interpretation; it would not raise issues of jurisdiction or discretion.<sup>45</sup> Moreover, insofar as the questions posed are broad, this is simply reflective of the broad and cross-cutting nature of climate change itself.<sup>46</sup>

2.12 Finally, the fact that there are pending requests for advisory opinions relating to climate change before the International Tribunal for the Law of the Sea (“**ITLOS**”) and the Inter-American Court of Human Rights (“**IACtHR**”) does not preclude the Court from rendering an opinion here.<sup>47</sup> If anything, the proceedings in those tribunals, one universal and the other regional in character, confirm the consensus among States and intergovernmental organizations that the problems of

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<sup>41</sup> *Wall Advisory Opinion*, p. 163, para. 62.

<sup>42</sup> *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion*, *I.C.J. Reports* 1980, p. 73, at p. 87, para. 33.

<sup>43</sup> UN General Assembly, 77<sup>th</sup> Session, 64<sup>th</sup> Plenary Meeting, *Draft Resolution (A/77/L.58)*, UN Doc. A/77/PV.64 (29 March 2023) (Dossier No. 3), p. 28 (United States of America).

<sup>44</sup> *Admission of a State to the United Nations (Charter, Art. 4), Advisory Opinion*, *I.C.J. Reports* 1948, p. 57, at p. 61. See also *Effect of Awards of Compensation Made by the UN Administrative Tribunal, Advisory Opinion*, *I.C.J. Reports* 1954, p. 47, at p. 51.

<sup>45</sup> *Wall Advisory Opinion*, pp. 153-154, para. 38.

<sup>46</sup> UN General Assembly, 77<sup>th</sup> Session, 64<sup>th</sup> Plenary Meeting, *Draft Resolution (A/77/L.58)*, UN Doc. A/77/PV.64 (29 March 2023) (Dossier No. 3), p. 14 (New Zealand); *ibid.*, p. 15 (Australia).

<sup>47</sup> ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (12 December 2023), available at [https://www.itlos.org/fileadmin/itlos/documents/cases/31/Request\\_for\\_Advisory\\_Opinion\\_COSIS\\_12.12.22.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/31/Request_for_Advisory_Opinion_COSIS_12.12.22.pdf). IACtHR, *Request for an Advisory Opinion on Climate Emergency and Human Rights to the Inter-American Court of Human Rights from the Republic of Colombia and the Republic of Chile* (9 January 2023), available at [https://www.corteidh.or.cr/docs/opiniones/soc\\_1\\_2023\\_en.pdf](https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf).

climate change are universal, multifaceted, far-reaching, and benefit from judicial advice from global, regional, and even national judicial bodies. Even if the proceedings were to involve overlapping issues, this would not preclude the Court from delivering an advisory opinion. The resulting opinions would simply be “relevant judicial or arbitral decision[s]” that the Court can take into consideration when answering the questions before it.<sup>48</sup> This would be consistent with its functions when settling inter-State disputes or providing advisory opinions under Article 38, paragraph 1, of the Statute to examine, in addition to the sources of law found in treaties (a), customary international law (b) and general principles of law (c), “judicial decisions” and “teachings” (d) as “subsidiary means” for the determination of rules of international law.<sup>49</sup>

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<sup>48</sup> *Cf. Chagos Advisory Opinion*, p. 116, para. 81.

<sup>49</sup> See, in this regard, Draft conclusions 1-3 and commentaries thereto as provisionally adopted by the International Law Commission on “subsidiary means for the determination of rules of international law” in the Report of the International Law Commission on the work of its seventy-fourth session, A/78/10 (2023), p. 61. See also the First report of the Special Rapporteur Charles Chernor Jalloh on subsidiary means for the determination of rules of international law, A/CN.4/760 (2023).

## CHAPTER III. LEGAL ARGUMENTS

### 1. APPLICABLE LAW

3.1 Resolution 77/276 invites the Court to identify and address the obligations of States in respect of climate change. In doing so, the Court is requested to consider not only the principles of international law in the field of climate change, such as those enshrined in the United Nations Framework Convention on Climate Change (“UNFCCC”) and the Paris Agreement, but also the obligations of States—whether in relation to positive acts or negative acts or omissions—under international environmental law, international human rights law, and the law of the sea, reflected in a range of international treaties and instruments, including but not limited to, the Charter of the United Nations (“UN Charter”), the International Covenant on Civil and Political Rights (“ICCPR”), the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), the United Nations Convention on the Law of the Sea (“UNCLOS”), the Convention on the Rights of the Child (“CRC”), and the Universal Declaration of Human Rights (“UDHR”), and other regional treaties such as the African Charter on Human and People’s Rights. This is consistent with the principle of systemic integration set out in Article 31(3)(c) of the Vienna Convention on the Law of Treaties, which reflects customary international law,<sup>50</sup> and requires that treaty interpretation take into account “any relevant rules of international law applicable in the relations between the parties.”<sup>51</sup>

3.2 Contrary to suggestions by certain States that the preambular part of the Assembly’s Request refers to matters that are “not related to legal obligations” and should not “have any bearing on the Court’s Advisory Opinion,”<sup>52</sup> there is no need for the Court to adopt such a

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<sup>50</sup> See *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14 (“*Pulp Mills*”), at p. 46, para. 65; *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgment, I.C.J. Reports 2009, p. 213, at p. 237, para. 47; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, at pp. 109-110, para. 160; *Territorial Dispute (Libyan Arab Jamahiriya/ Chad)*, Judgment, I.C.J. Reports 1994, p. 6, at pp. 21-22, para. 41.

<sup>51</sup> Vienna Convention on the Law of Treaties (signed 23 May 1969, entered into force 27 January 1980), 1155 UNTS 331, Art. 31(3)(c).

<sup>52</sup> UN General Assembly, 77<sup>th</sup> Session, 64<sup>th</sup> Plenary Meeting, *Draft Resolution (A/77/L.58)*, UN Doc. A/77/PV.64 (29 March 2023) (Dossier No. 3), p. 24 (Iceland); *ibid.*, p. 28 (United States).



restrictive interpretation. While the most directly relevant applicable law governing the questions put to the Court is that relating to international environmental law and the international treaties and instruments expressly addressing climate change, the Court's analysis should not be limited to those bodies of law, but rather be guided by the broader corpus of international law rules available to it.

3.3 In particular, the absence of an explicit reference to climate change in the text of certain treaties and instruments does not render them inapplicable or irrelevant. For instance, in *Legality of the Threat or Use of Nuclear Weapons*, the Court recognized that while existing environmental law treaties and instruments did not specifically and expressly prohibit the use of nuclear weapons, they nevertheless embodied “important environmental factors that are properly to be taken into account in the context of the implementation of the principles and rules of the law applicable in armed conflict.”<sup>53</sup> In reaching this conclusion, the Court noted that Principle 24 of the Rio Declaration and General Assembly resolution 47/37 of 25 November 1992 highlighted the broader interplay between environmental protection and principles of the law applicable in armed conflict.<sup>54</sup>

3.4 The Court's Advisory Opinion in *Legal Consequences of the Separation of the Chagos Archipelago* adopted a similar approach in determining the applicable legal principles and rules. In its analysis of the right to self-determination in the context of decolonization, the Court noted that its focus on the period from 1965 to 1968 “will not prevent it, particularly when customary rules are at issue, from considering” the evolution of the applicable law as consolidated over time, and added that “[t]he Court may also rely on legal instruments which postdate the period in question, when those instruments confirm or interpret preexisting rules or principles.”<sup>55</sup>

3.5 As will be demonstrated further below, the characteristics of global climate change are such that it is an inherently complex and multifaceted phenomenon that impacts both the

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<sup>53</sup> *Nuclear Weapons Advisory Opinion*, p. 243, para. 33.

<sup>54</sup> See *Nuclear Weapons Advisory Opinion*, p. 242, paras. 30-32.

<sup>55</sup> *Chagos Advisory Opinion*, p. 130, paras. 142-143.

environment and human life.<sup>56</sup> In light of the breadth of climate change's causes and effects, it is an issue that inevitably intersects with different areas of international law, including those referenced in the preambular paragraphs of the General Assembly's Request. Sierra Leone submits that precisely due to this cross-cutting nature of climate change, it poses complicated questions of international law that would greatly benefit from an advisory opinion by the UN's principal judicial organ.

3.6 In this submission, Sierra Leone focuses on three bodies of law that have been highlighted and articulated in various treaties, instruments and General Assembly resolutions: international environmental law, international human rights law, and the law of the sea. The Court has made long-standing and important contributions to the development of these areas of law, and Sierra Leone trusts that the present case will also lead to much-needed clarification and judicial guidance in relation to the obligations of all States and their legal consequences in respect of climate change.

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<sup>56</sup> *Cf. Nuclear Weapons Advisory Opinion*, p. 244, para. 36 (“In consequence, in order correctly to apply to the present case the Charter law on the use of force and the law applicable in armed conflict, in particular humanitarian law, it is imperative for the Court to take account of the unique characteristics of nuclear weapons, and in particular their destructive capacity, their capacity to cause untold human suffering, and their ability to cause damage to generations to come.”).

**2. RESPONSE TO QUESTION (A): OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE UNDER INTERNATIONAL LAW**

3.7 The General Assembly, in its Request to the Court for an Advisory Opinion, posed two specific questions. The first question states as follows:

“(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;”

3.8 In the ensuing paragraphs, Sierra Leone demonstrates how under international environmental law, international human rights law, and the law of the sea, States have a positive obligation to minimize anthropogenic GHG emissions to protect the climate system and other parts of the environment. In concrete terms, this means that States must take both individual and collective measures to ensure that the increase in global average temperatures is limited to 1.5°C above pre-industrial levels. This obligation stems from well-established general principles of international law and treaty-specific obligations informed by the best available science.

3.9 Sierra Leone further demonstrates why the content of this obligation, as well as the assessment of whether it has been discharged, must be informed by principles of both law and equity, including the common but differentiated responsibilities principle and respect for intergenerational equity. This requires, among other things, that developed States take the lead by undertaking economy-wide absolute emission reduction targets and support particularly vulnerable States in connection with their efforts to mitigate and adapt to climate change. All States must also fully take into account the rights and interests of children and future generations when developing and undertaking measures to minimize anthropogenic GHG emissions.

## I. Obligations Under International Environmental Law

### A. PREVENTION AND PRECAUTION

3.10 Under international environmental law, States are obliged to ensure that they do not cause significant environmental harm to other States and the global commons. This stems from the “general and well-recognized” principle under international law that every State bears an “obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States.”<sup>57</sup> As the tribunal held in the *Trail Smelter* arbitration, “under the principles of international law ... no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.”<sup>58</sup>

3.11 In the *Pulp Mills* case, the Court confirmed that this was a duty under customary international law. According to the Court, a State is required to “use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State.”<sup>59</sup> This means that the State is, in the first place, responsible for ensuring its own activities, and in the second place, those of others are compliant with this obligation. The latter regulation of activities by non-State actors such as private individuals and entities apply so long as they are within the State’s control and jurisdiction.<sup>60</sup> The Court explained that this “principle of prevention” is “a customary rule” and an obligation of due diligence, which “is now part of the corpus of international law relating to the environment.”<sup>61</sup> The tribunal in the *Iron Rhine Arbitration (Belgium/Netherlands)* similarly

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<sup>57</sup> *Corfu Channel (United Kingdom v. Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 4, at p. 22.

<sup>58</sup> *Trail Smelter Arbitration (United States v. Canada), Award (16 April 1938 and 11 March 1941)*, 3 RIAA, p. 1905, at p. 1965.

<sup>59</sup> *Pulp Mills*, p. 56, para. 101.

<sup>60</sup> *Ibid.*, p. 79, para. 197.

<sup>61</sup> *Ibid.*, p. 56, para. 101 (citing and quoting *Nuclear Weapons Advisory Opinion*, p. 242, para. 29).

concluded that the “duty to prevent, or at least mitigate, [significant] harm [to the environment] ... has now become a principle of general international law.”<sup>62</sup>

3.12 The Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities (“**ILC Articles on Prevention**”) adopted by the ILC in 2001 likewise provides that “[t]he State of origin shall take all appropriate measures to *prevent* significant transboundary harm or at any event to *minimize* the risk thereof,” explaining that this duty is “one of due diligence.”<sup>63</sup>

3.13 Due diligence encompasses not only the substantive obligation to prevent harm or minimize the risk thereof, but also specific procedural obligations, such as the duty to conduct environmental impact assessments before embarking on activities that pose the risk of significant transboundary harm.<sup>64</sup> The Court explained in *Pulp Mills* that, to be considered as sufficiently diligent, the origin State must also monitor the actual effects on the environment after the operations have begun.<sup>65</sup> In other words, due diligence cannot be fulfilled by simply prescribing appropriate rules and measures. It entails “a certain level of vigilance in their enforcement and the exercise of administrative control.”<sup>66</sup> Such proactive vigilance is “all the more important” when the human activity in question has spillover effects on various components of the environment.<sup>67</sup>

3.14 As the Court’s findings illustrate, due diligence entails a *positive* obligation on States to undertake concrete measures. Where it has become clear that specific measures are indispensable

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<sup>62</sup> *Award in the Arbitration regarding the Iron Rhine (“Ijzeren Rijn”) Railway between the Kingdom of Belgium and the Kingdom of the Netherlands, Decision (24 May 2005)*, 27 RIAA, p. 35, at pp. 66-67, para. 59.

<sup>63</sup> ILC, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, reproduced in *Yearbook of the International Law Commission 2001*, Vol. II (2) (“**ILC Draft Articles on Prevention**”), Commentary (7) to Art. 3, pp. 153-154 (emphasis added). See also J. Crawford, *Brownlie’s Principles of Public International Law* (9th Ed., OUP 2019), p. 340 (“Despite the uncertainty surrounding their future status, the Draft Articles provide an authoritative statement on the scope of a state’s international legal obligation to prevent a risk of transboundary harm.”).

<sup>64</sup> *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, *I.C.J. Reports 2015*, p. 665, at pp. 706-707, para. 104. See also ILC Draft Articles on Prevention, Art. 7.

<sup>65</sup> *Pulp Mills*, pp. 83-84, para. 205.

<sup>66</sup> *Ibid.*, p. 79, para. 197.

<sup>67</sup> *Ibid.*, p. 77, para. 188.

to avoiding harm, such as carrying out *ex-ante* environmental impact assessments or monitoring the effective implementation of prescribed rules and measures, States can be expressly required to commit to those under international law and held accountable for their failure to comply. Due diligence also implies a certain continuing obligation to ensure that the harm is indeed avoided, or at least minimized.

3.15 Difficulties in defining the precise contours of due diligence do not imply that it lacks content or should be left to each State's discretion.<sup>68</sup> Rather, the jurisprudence makes clear that the material content of the obligation to prevent significant harm to the environment is informed by the best available science.<sup>69</sup> As ITLOS has recognized, this means that the standard of due diligence is not static: "measures considered sufficiently diligent at a certain moment may become not diligent enough in light, for instance, of new scientific or technological knowledge."<sup>70</sup> In practice, international courts and tribunals have recognized the importance of incorporating science in their decisions, and are fully equipped with the resources to assess the relevant evidence.<sup>71</sup>

3.16 Where the best available science is unclear, the precautionary principle, which forms "an integral part of the general obligation of due diligence," applies.<sup>72</sup> As the Seabed Disputes

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<sup>68</sup> International Law Association, *Study Group on Due Diligence in International Law: Second Report, Duncan French (Chair) and Tim Stephens (Rapporteur)* (12 July 2016), available at [https://www.ila-hq.org/en\\_GB/documents/draft-study-group-report-johannesburg-2016](https://www.ila-hq.org/en_GB/documents/draft-study-group-report-johannesburg-2016), p. 7.

<sup>69</sup> *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4 ("**SRFC Advisory Opinion**"), at p. 59, para. 208(ii); *Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999*, p. 280 ("**Southern Bluefin Tuna Cases**"), at p. 296, paras 77-80; *MOX Plant (Ireland v. United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001*, p. 95 ("**MOX Plant Order**"), at p. 110, para. 84.

<sup>70</sup> *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011*, p. 10 ("**Area Advisory Opinion**"), at p. 43, para. 117; *SRFC Advisory Opinion*, para. 132.

<sup>71</sup> Under article 50 of the Court's Statute, for instance, the Court can appoint experts to fully appreciate the scientific issues raised. See *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua) and Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*, Orders of 31 May 2016 and of 16 June 2016; B. Simma, "The International Court of Justice and Scientific Expertise" (2012) 106(1) *American Society of International Law Proceedings* 230; G Gaja, "Assessing Expert Evidence in the ICJ" (2016) 15(3) *Law & Practice of International Courts and Tribunals* 409, pp. 411-412.

<sup>72</sup> *Area Advisory Opinion*, para. 131. See also UN General Assembly, Report of the UN Conference on Environment and Development (Rio de Janeiro, 3-14 June 1992), UN Doc. A/CONF.151/26 (Vol. 1) (Dossier No. 137), Annex I: Rio Declaration on Environment and Development ("**Rio Declaration**"), Principle 15 ("In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there

Chamber of ITLOS held in its Advisory Opinion on *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, under the precautionary principle, States are obliged to “take all appropriate measures to prevent damage” even in “situations where scientific evidence concerning the scope and potential negative impact of the activity in question is insufficient but where there are plausible indications of potential risks.”<sup>73</sup>

3.17 As noted above, there is now incontrovertible evidence that human-induced climate change directly causes significant harm to the environment and affects the enjoyment of human rights and fundamental freedoms. The IPCC observed in its Sixth Assessment Report that “[i]t is *unequivocal* that human influence has warmed the atmosphere, ocean and land. Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred.”<sup>74</sup>

3.18 These changes include, *inter alia*, hotter temperatures, more severe storms and droughts, and permanent losses of species and biodiversity. This past decade marks the hottest period in the last 125,000 years,<sup>75</sup> with global surface temperature reaching 1.1°C above 1850-1900 levels in 2011-2020.<sup>76</sup> Across many regions, extreme weather events such as heavy precipitation, droughts, wildfires, terrestrial and marine heatwaves, cyclones, floods, hurricanes, and typhoons have intensified and become more frequent.<sup>77</sup> The world has seen the loss of hundreds of species and a marked increase in mass mortality events on land and in the ocean.<sup>78</sup> In addition, the impacts of slow onset processes such as ocean acidification, sea level rise, salinization, desertification, land and forest degradation, and regional decreases in precipitation have greatly affected biodiversity

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are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”).

<sup>73</sup> *Area Advisory Opinion*, para. 131 (“the precautionary approach is also an integral part of the general obligation of due diligence of sponsoring States, which is applicable even outside the scope of the Regulations”). See also International Law Association, *Study Group on Due Diligence in International Law: First Report*, Duncan French (Chair) and Tim Stephens (Rapporteur) (7 March 2014), available at [https://olympereaseauinternational.files.wordpress.com/2015/07/due\\_diligence\\_-\\_first\\_report\\_2014.pdf](https://olympereaseauinternational.files.wordpress.com/2015/07/due_diligence_-_first_report_2014.pdf), p. 26.

<sup>74</sup> IPCC, 2023, p. 46 (emphasis added).

<sup>75</sup> *Ibid.*, p. 43.

<sup>76</sup> *Ibid.*, p. 4, para. A.1.

<sup>77</sup> *Ibid.*, pp. 5, 46. IPCC, 2022, p. 47.

<sup>78</sup> IPCC, 2023, p. 5, para. A.2.3.

and food production.<sup>79</sup> The IPCC notes that it is “*virtually certain*” that upper ocean acidification and the increase in hot extremes are driven by human-caused climate change.<sup>80</sup>

3.19 There is thus little, if any, room to contest the application of the general principle of due diligence to climate change. The Court should declare, and States must accept, that international law requires States to act with due diligence to take all appropriate measures to prevent climate change, or at any event, minimize the risks thereof. The material content of this obligation and the standard of due diligence must be informed by the best available science as well as the corpus of international climate change law, reflected in multilateral treaties including the UNFCCC,<sup>81</sup> the Kyoto Protocol,<sup>82</sup> and the Paris Agreement.<sup>83</sup> In particular, the Paris Agreement, which marks the most comprehensive and latest agreement on climate change with near global participation, is highly pertinent in that it translates the general principles of international environmental law into objective and measurable standards.

3.20 The express objective of the Paris Agreement is to “strengthen the global response to the threat of climate change” by “[h]olding the increase in the global average temperature to *well below* 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.”<sup>84</sup> To this end, each State is required to “undertake and communicate ambitious efforts,”<sup>85</sup> “prepare, communicate and maintain successive nationally determined contributions that it intends to achieve,”<sup>86</sup> and “pursue domestic mitigation measures,

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<sup>79</sup> IPCC, 2022, p. 9; UN General Assembly, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc. A/74/161 (15 July 2019) (Dossier No. 312) (“**Special Rapporteur on the Environment, Climate Report No. 2**”), para. 34.

<sup>80</sup> IPCC, 2023, p. 7, Figure SPM.1(b); *ibid.*, p. 46.

<sup>81</sup> UNFCCC.

<sup>82</sup> Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005), 2303 UNTS 162 (Dossier No. 11) (“**Kyoto Protocol**”).

<sup>83</sup> Paris Agreement to the United Nations Framework Convention on Climate Change (adopted 12 December 2015, entered into force 4 November 2016), 3156 UNTS 79 (Dossier No. 16) (“**Paris Agreement**”).

<sup>84</sup> *Ibid.*, Art. 2(1) (emphasis added).

<sup>85</sup> *Ibid.*, Art. 3.

<sup>86</sup> *Ibid.*, Art. 4(2). *See also ibid.*, Arts. 4(9), 4(13).



with the aim of achieving the objectives of such contributions.”<sup>87</sup> In other words, already in 2015, that is 8 years ago, nearly 200 States expressly agreed that taking measures to limit the global average temperature to “*well below 2°C*,” and preferably below 1.5°C, is necessary to minimize the significant and foreseeable risk of harm from climate change and its effects.

3.21 Importantly, States agreed that the specific content of their obligations can be adjusted based on updated scientific evidence. The UNFCCC provides that “steps required to understand and address climate change will be environmentally, socially and economically most effective if they are based on relevant *scientific*, technical and economic considerations and *continually re-evaluated* in the light of new findings in these areas.”<sup>88</sup> The Paris Agreement similarly affirms that measures to combat climate change should be adopted and re-evaluated “in accordance with best available science.”<sup>89</sup>

3.22 As explained above, the IPCC’s assessment reports have played a central role in determining the best available scientific, technical, and socio-economic knowledge on climate change.<sup>90</sup> The reports that have been published since the adoption of the Paris Agreement in 2015 are therefore highly relevant to re-evaluating our current state of scientific knowledge on the risks and best responses to climate change. Among other findings, the IPCC concluded that, since its Fifth Assessment Report was published in 2014:

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<sup>87</sup> *Ibid.*, Art. 4(2).

<sup>88</sup> UNFCCC, Preamble (emphasis added).

<sup>89</sup> Paris Agreement, Art. 4(1). *See also* Kyoto Protocol, Art. 9.

<sup>90</sup> *See* IPCC, *Principles Governing IPCC Work* (approved at the Fourteenth Session in October 1998, last amended at the Thirty-Seventh Session in October 2013), available at <https://www.ipcc.ch/site/assets/uploads/2018/09/ipcc-principles.pdf>; IPCC, *Appendix A to the Principles Governing IPCC Work* (adopted at the Fifteenth Session in April 1999, last amended at the Thirty-Seventh Session in October 2013), available at <https://www.ipcc.ch/site/assets/uploads/2018/09/ipcc-principles-appendix-a-final.pdf>, p. 6 (“[T]he best possible scientific and technical advice should be included so that the IPCC Reports represent the latest scientific, technical and socio-economic findings and are as comprehensive as possible.”).

- “For any given future warming level, many climate-related risks are higher than assessed in [the Fifth Assessment Report], and projected long-term impacts are up to multiple times higher than currently observed.”<sup>91</sup>
- “Evidence of observed changes in extremes such as heatwaves, heavy precipitation, droughts, and tropical cyclones, and, in particular, their attribution to human influence, has further strengthened since [the Fifth Assessment Report].”<sup>92</sup>
- “Evidence of observed adverse impacts and related losses and damages, projected risks, levels and trends in vulnerability and adaptation limits, demonstrate that worldwide climate resilient development action is more urgent than previously assessed in [the Fifth Assessment Report].”<sup>93</sup>

3.23 In its *Special Report: Global Warming of 1.5°C*, released in 2018, the IPCC warned that even a 0.5°C increment of global warming (*i.e.*, 2°C as opposed to 1.5°C) is projected to intensify multiple and concurrent hazards.<sup>94</sup> According to the IPCC, climate-related risks to health, livelihoods, food security, water supply, human security, economic growth, and biodiversity are projected to increase further with 2°C.<sup>95</sup> Most adaptation needs will also be lower for global warming of 1.5°C compared to 2°C.<sup>96</sup> This 0.5°C difference could be particularly consequential for States that are especially vulnerable to climate change, such as low-lying States, small island

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<sup>91</sup> IPCC, 2023, p. 14, para. B.2.

<sup>92</sup> *Ibid.*, p. 5, para. A.2.1.

<sup>93</sup> *Ibid.*, p. 24, para. C.1.1; IPCC, 2022, p. 29, para. D.1.

<sup>94</sup> IPCC, 2018, p. 7; IPCC, 2023, p. 12, para. B.1.

<sup>95</sup> IPCC, 2018, pp. 8-9. For instance, with about 2°C warming, climate-related changes are estimated to increase nutrition-related diseases and the number of undernourished people by 2050, affecting tens to hundreds of millions of people, particularly among low-income households. IPCC, 2022, p. 60. *See also ibid.*, p. 14. Limiting global warming to 1.5°C is also projected to reduce increases in ocean temperature and ocean acidity, which leads to reduced risks to marine biodiversity, fisheries, and ecosystems. IPCC, 2018, pp. 8-9, paras. B.4-B.4.4.

<sup>96</sup> IPCC, 2018, p. 10, para. B.6; IPCC, 2022, p. 128 (citing IPCC, 2018). In the food and water sectors, for instance, adaptation responses reduce future climate risks at 1.5°C warming, but effectiveness decreases above 2°C. *Ibid.*, pp. 87, 90. Delaying adaptation to climate risks can result in higher overall costs in future when adaptation is more urgent and impacts more extreme. IPCC, 2022, p. 1634.

developing States, or least developed countries (“LDCs”).<sup>97</sup> The IPCC also observes that, based on the global GHG emissions in 2030 implied by nationally determined contributions (“NDCs”) announced by 2021, it is likely that warming will exceed 1.5°C during the 21st century, confirming the inadequacy of current efforts.<sup>98</sup>

3.24 The import of these findings by the IPCC is that measures aimed at holding the increase in global temperature to 2°C cannot be considered as sufficiently diligent.<sup>99</sup> More generally, the fact that climate-related risks are observably higher than previously considered in 2015 indicates that the commitments reflected in the Paris Agreement cannot be considered ambitious or aspirational. Rather, they represent the *minimum* standard that all States—not just States Parties—must adhere to in order to comply with their general obligation under international law to prevent significant harm to the environment and minimize the risks thereof.<sup>100</sup>

3.25 This approach is consistent with the precautionary principle, which has been recognized as particularly relevant in cases of “irreparable damage to the rights of [a nation]” or in cases of serious harm to the environment, both of which are implicated by excessive emissions of GHG.<sup>101</sup> Article 3 of the UNFCCC likewise notes that “Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures.”

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<sup>97</sup> IPCC, 2018, pp. 7-9.

<sup>98</sup> IPCC, 2023, p. 10.

<sup>99</sup> *Area Advisory Opinion*, para. 117; *SRFC Advisory Opinion*, para. 132.

<sup>100</sup> See Statement delivered by the Minister of Transport and Aviation, Honorable Kabineh Moinama Kallon during COP 24 in Katowice, Poland from 2-14<sup>th</sup> December 2018, available at [https://unfccc.int/sites/default/files/resource/SIERRALEONE\\_cop24cmp14cma1-3.pdf](https://unfccc.int/sites/default/files/resource/SIERRALEONE_cop24cmp14cma1-3.pdf), p. 4 (“The writing is on the wall as the Global Warming of 1.5°C Special report, by the Intergovernmental Panel on Climate Change (IPCC) has warned of a warmer planet and demanded unprecedented efforts to reduce greenhouse gas emissions. ... In short, it calls for collective efforts and collective action. Mr. President, Ladies and Gentlemen, in light of this report, there is need to take decision at this Conference of Parties (COP24) to enhance the level of ambition committed under the Nationally Determined Contributions (NDCs) by countries.”).

<sup>101</sup> *MOX Plant Order*, para 75.

## B. COOPERATION

3.26 Another general principle of international law directly relevant to climate change is the duty to cooperate. The duty to cooperate has been recognized as a fundamental principle in the prevention of harm to the environment,<sup>102</sup> justified by the principle of good faith and the need to jointly manage and prevent the risks of damage to the environment.<sup>103</sup> The ILC Articles on Prevention, for instance, provide that “States concerned *shall cooperate* in good faith ... in preventing significant transboundary harm or at any event in minimizing the risk thereof.”<sup>104</sup>

3.27 The duty to cooperate has been enshrined in multilateral agreements relating to the global commons and/or environmental protection. The regime governing the deep seabed set forth in Part XI of UNCLOS foregrounds the general and legally binding obligation to cooperate, which in turn requires States to share financial benefits and participate in the transfer of technology. Likewise, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and other Celestial Bodies, obliges States not only to cooperate with each other to exchange information but also to develop the knowledge and research capabilities of all States.<sup>105</sup> Other examples include the Convention on Long-Range Transboundary Air Pollution,<sup>106</sup> the Vienna Convention for the Protection of the Ozone Layer,<sup>107</sup> and the Convention on Biological Diversity,<sup>108</sup> which all refer to States’ responsibilities to cooperate and establish

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<sup>102</sup> *Ibid.*, para. 82.

<sup>103</sup> *Pulp Mills*, p. 49, para. 77; *ibid.*, p. 67, para. 145; *Corfu Channel (United Kingdom v. Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 4, at p. 22.

<sup>104</sup> ILC Draft Articles on Prevention, Art. 4.

<sup>105</sup> *See, e.g.*, Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and other Celestial Bodies (signed 27 January 1967, entered into force 10 October 1967), 610 UNTS 205, Arts. I, V, IX, X.

<sup>106</sup> Convention on Long-Range Transboundary Air Pollution (adopted 13 November 1979, entered into force 16 March 1983), 1302 UNTS 217, Art. 9.

<sup>107</sup> Vienna Convention for the Protection of the Ozone Layer (adopted 22 March 1985, entered into force 22 September 1988) (Dossier No. 25), 1513 UNTS 293, Arts. 2, 3, 4, 6.

<sup>108</sup> Convention on Biological Diversity (5 June 1992, entered into force 29 December 1993), 1760 UNTS 79 (Dossier No. 19) (“**Convention on Biological Diversity**”), Arts. 5, 8, 9, 12, 13, 16, 20, 21.

concrete mechanisms for States to comply with that obligation.<sup>109</sup> As these agreements demonstrate, the duty of cooperation is not just an abstract norm, but provides the foundation for concrete measures such as those relating to financial support, technology transfer, training, information-sharing, and capacity building.

3.28 The duty of cooperation is enshrined in all three of the principal governing treaties on climate change, reflecting the shared understanding that climate change is a “problem without passports”—*i.e.*, one that can only be addressed through enhanced international cooperation.<sup>110</sup> The UNFCCC acknowledges that climate change is a “common concern of humankind” and one that necessitates an international response with the “widest possible cooperation” and participation by “all countries.”<sup>111</sup> The Kyoto Protocol includes multiple provisions that expressly require States Parties to cooperate to take all practicable steps to promote, facilitate and finance the transfer of, or access to, technologies and know-how pertinent to climate change, in particular to developing countries.<sup>112</sup>

3.29 The Paris Agreement also makes clear that “[s]upport *shall* be provided to developing country Parties for the implementation of this Article, in accordance with Articles 9, 10 and 11, recognizing that enhanced support for developing country Parties will allow for higher ambition in their actions.”<sup>113</sup> Articles 9, 10 and 11, in turn, provide, among other provisions, that:

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<sup>109</sup> See also Rio Declaration, Principles 19, 27; UN, Report of the UN Conference on the Human Environment, (Stockholm, 5-16 June 1972), UN Doc. A/CONF.48/14/Rev.1, Chapter I: Declaration of the UN Conference on the Human Environment (Dossier No. 136) (“**Stockholm Declaration**”), Principle 24.

<sup>110</sup> N. Salam, “Reflections on International Law in Changing Times” (2019) 60(2) *Harvard International Law Journal* 201, pp. 204-205 (citing K.A. Annan, “Problems Without Passports,” *Foreign Policy* (9 November 2009)).

<sup>111</sup> UNFCCC, Preamble. See also *ibid.*, Arts. 3(5), 4(1), 5, 6(b), 7(2), 9(2).

<sup>112</sup> See, e.g., Kyoto Protocol, Art. 10.

<sup>113</sup> Paris Agreement, Art. 4(5) (emphasis added). See also *ibid.*, Arts. 7, 8, 9, 10, 11, 12, 14.

- Developed country Parties *shall* provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.<sup>114</sup>
- Parties, noting the importance of technology for the implementation of mitigation and adaptation actions under this Agreement and recognizing existing technology deployment and dissemination efforts, *shall* strengthen cooperative action on technology development and transfer.<sup>115</sup>
- Support, including financial support, *shall* be provided to developing country Parties, including for strengthening cooperative action on technology development and transfer at different stages of the technology cycle, with a view to achieving a balance between support for mitigation and adaptation.<sup>116</sup>

3.30 These obligations reflect the common understanding that, to ensure the widest possible international cooperation, the gap must be bridged between the States that have more resources to take the necessary measures to mitigate or adapt to the impacts of climate change and those that lack such capacity. As the IPCC has explained: “Without effective mitigation and adaptation, losses and damages will continue to disproportionately affect the poorest and most vulnerable populations. Accelerated financial support for developing countries from developed countries and other sources is a critical enabler to enhance mitigation action.”<sup>117</sup>

3.31 Despite ongoing efforts to meet the collective goal in the Paris Agreement, gaps and disparities persist. According to the Sixth Assessment Report, insufficient financing remains as a

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<sup>114</sup> *Ibid.*, Art. 9(1) (emphasis added). *See also ibid.*, Art. 9(7) (“Developed country Parties shall provide transparent and consistent information on support for developing country Parties provided and mobilized through public interventions biennially in accordance with the modalities, procedures and guidelines to be adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement, at its first session, as stipulated in Article 13, paragraph 13. Other Parties are encouraged to do so.”).

<sup>115</sup> *Ibid.*, Art. 10(2) (emphasis added).

<sup>116</sup> *See ibid.*, Art. 10(6) (emphasis added).

<sup>117</sup> IPCC, 2023, p. 62.

key cause of the implementation gaps for both mitigation and adaptation.<sup>118</sup> Current global financial flows for adaptation are insufficient for, and limit the implementation of adaptation options, particularly for developing and least developed countries.<sup>119</sup> For instance, the yearly finance flows targeting adaptation for Africa are billions of dollars short of the lowest adaptation cost estimates for near-term climate change.<sup>120</sup> Public and private finance flows for fossil fuels continue to exceed those for climate mitigation and adaptation.<sup>121</sup>

3.32 The failures of today demonstrate that international cooperation to combat climate change cannot remain voluntary and left to each State’s discretion. Sierra Leone submits that the duty of cooperation under international law requires that developed States must, at the very least, comply with their obligations under the Paris Agreement to support countries that lack the resources to meet their mitigation and adaptation responsibilities. Such support should promote an open international economic system that would lead to sustainable economic growth and development in all Parties, particularly in developing countries to capacitate and prepare them better to address the impacts of climate change as envisaged in Article 3(5) of the UNFCCC.<sup>122</sup>

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<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.*, pp. 8-9. The UNEP reports that the current adaptation finance gap is estimated at US\$194-366 billion per year, with adaptation costs/finance needs 10-18 times as much as current international public finance flows. See UNEP, *Adaptation Gap Report: Underfinanced. Underprepared – Inadequate investment and planning on climate adaptation leaves world exposed (2023)*, available at <https://www.unep.org/resources/adaptation-gap-report-2023>, p. 49.

<sup>120</sup> IPCC, 2023, p. 62.

<sup>121</sup> *Ibid.*

<sup>122</sup> See UNFCCC, Art. 3(5) (“The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.”).

## C. EQUITY

3.33 As discussed above, the standard of due diligence is neither static nor one-size-fits-all. What is required under due diligence may change over time based on best available science, as well as “in relation to the risks involved in the activity.”<sup>123</sup> Activities that are particularly risky to the environment, such as anthropogenic GHG emissions by the largest emitting sectors and States, require a higher degree of care.

3.34 Due diligence may also differ based on the capacity of each State to prevent or minimize environmental damage.<sup>124</sup> As the ILC explains in its commentaries on the Articles on Prevention, “[t]he economic level of States is one of the factors to be taken into account in determining whether a State has complied with its obligation of due diligence” given that “the degree of care expected of a State with a well-developed economy and human and material resources and with highly evolved systems and structures of government is different from States which are not so well-placed.”<sup>125</sup> This context-specific nature of due diligence is reflected in multiple international environmental law instruments. For instance, Principle 11 of the Rio Declaration provides that States must enact effective environmental legislation but adds that the environmental “[s]tandards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.”

3.35 In other words, the standard of due diligence must reflect what can be fairly and reasonably expected from each State, given its national circumstances. This notion of considering what is fair and reasonable in the administration of justice is also known as the principle of equity under international law.<sup>126</sup> As this Court explained, “[w]hatever the legal reasoning of a court of justice,

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<sup>123</sup> *Area Advisory Opinion*, para. 117.

<sup>124</sup> International Law Association, *Study Group on Due Diligence in International Law: First Report, Duncan French (Chair) and Tim Stephens (Rapporteur)* (7 March 2014), available at [https://olympereaseauinternational.files.wordpress.com/2015/07/due\\_diligence\\_-\\_first\\_report\\_2014.pdf](https://olympereaseauinternational.files.wordpress.com/2015/07/due_diligence_-_first_report_2014.pdf), pp. 26-27; T. Stephens, *International Courts and Environmental Protection* (CUP 2009), p. 158.

<sup>125</sup> ILC Draft Articles on Prevention, Commentaries (13) and (17) to Art. 3, p. 155.

<sup>126</sup> F. Francioni, “Equity in International Law” in *Max Planck Encyclopedia of Public International Law* (2020).



its decisions must by definition be just, and therefore in that sense equitable.”<sup>127</sup> Importantly, the Court stressed that equity must be understood “not ... simply as a matter of abstract justice, but of applying a rule of law which itself requires the application of equitable principles, in accordance with the ideas which have always underlain the development of the [particular] legal regime” in question.<sup>128</sup> In the *North Sea Continental Shelf* cases, for instance, the Court held that in certain geographical circumstances, the equidistance method “leads unquestionably to inequity” and should be excluded as the sole method of delimitation.<sup>129</sup> In doing so, the Court observed that equitable considerations have always been part of the development of the international law of continental shelf delimitation.<sup>130</sup>

3.36 Sierra Leone submits that, much like the field of continental shelf delimitation, climate change is also a field that calls for the application of equitable principles, and one in which the rule of equity can create concrete legal obligations for States. As discussed below, the development of the climate change regime reflects a shared understanding that climate change is a global crisis that involves fundamental inequities.

1. *Common but differentiated responsibilities and respective capacities*

3.37 The UNFCCC starts with the express recognition that certain groups of States, including “low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, drought and desertification, and developing countries with fragile mountainous ecosystems” are particularly vulnerable to the adverse effects of climate change, despite the fact that “the largest share of historical and current global emissions of greenhouse gases has originated in developed countries.”<sup>131</sup>

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<sup>127</sup> *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 3, at p. 48, para. 88.

<sup>128</sup> *Ibid.*, p. 47, para. 85.

<sup>129</sup> *Ibid.*, 49, para. 89.

<sup>130</sup> *Ibid.*, p. 47, para. 85. *See also ibid.*, p. 35, para. 55.

<sup>131</sup> UNFCCC, Preamble.

3.38 Indeed, abundant evidence confirms that the impacts of climate change are not felt equally across States and peoples. Nearly 70% of the deaths caused by climate-related disasters over the last five decades have been experienced in LDCs. Disasters impact their economies around 10 times worse than those of the richest countries.<sup>132</sup> The inequities are further exacerbated by the fact that, within those States, the most marginalized and vulnerable groups of people such as low-income households, people living in informal settlements, Indigenous Peoples, ethnic minorities, children, and women face the highest risks. The IPCC observes that “[w]ithout rapid, deep and sustained mitigation and accelerated adaptation actions, losses and damages will continue to increase, including projected adverse impacts in Africa, LDCs, SIDS [Small Island Developing States], Central and South America, Asia and the Arctic, and will disproportionately affect the most vulnerable populations.”<sup>133</sup>

3.39 The UNFCCC, Kyoto Protocol, and Paris Agreement all confirm that the implementation of the treaties must be guided by the principle of equity and the common but differentiated responsibilities (“**CBDR**”) and respective capacities principle.<sup>134</sup> The CBDR principle under international environmental law recognizes that States are to take on different obligations depending on their situation determined by, *inter alia*, their developmental needs, historical contribution to environmental degradation, present contribution to the problem, and access to technological and financial resources.<sup>135</sup> It is an increasingly important principle that is reflected in many other multilateral environmental agreements and instruments, including the Stockholm

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<sup>132</sup> UNDRR, “Disaster Risk Reduction in Least Developed Countries” (last accessed: 5 March 2024), *available at* <https://www.undrr.org/disaster-risk-reduction-least-developed-countries>.

<sup>133</sup> IPCC, 2023, p. 93.

<sup>134</sup> UNFCCC, Preamble, Arts. 3, 4; Kyoto Protocol, Art. 10; Paris Agreement, Preamble, Arts. 2, 4.

<sup>135</sup> E. Hey & S. Paulini, “Common but Differentiated Responsibilities” in *Max Planck Encyclopedia of International Law* (2021).

Declaration,<sup>136</sup> the Rio Declaration,<sup>137</sup> the Montreal Protocol on Substances that Deplete the Ozone Layer,<sup>138</sup> and the Convention on Biological Diversity.<sup>139</sup>

3.40 Under the climate change treaties, which are particularly relevant to the issue at hand, the CBDR principle plays a critical role by establishing legally binding obligations.<sup>140</sup> For example, Article 2(2) of the Paris Agreement provides that the Agreement “will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.” Articles 3 and 4 of the Paris Agreement translate this principle into concrete obligations of States Parties in their differentiated mitigation efforts:

- Each Party’s successive nationally determined contribution will represent a progression beyond the Party’s then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.<sup>141</sup>
- Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets.<sup>142</sup>

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<sup>136</sup> Stockholm Declaration, Principle 12.

<sup>137</sup> Rio Declaration, Principles 6, 7.

<sup>138</sup> Montreal Protocol on Substances that Deplete the Ozone Layer (adopted 16 September 1987, entered into force 1 January 1989), 1522 UNTS 3 (Dossier No. 26), Art. 5(1) (allowing developing States a period of 10 years before they must comply with the general substantive rules of the Protocol).

<sup>139</sup> Convention on Biological Diversity, Arts. 20, 21.

<sup>140</sup> E. Hey & S. Paulini, “Common but Differentiated Responsibilities” in *Max Planck Encyclopedia of International Law* (2021), para. 19. See also D. Shapovalova, “In Defence of the Principle of Common but Differentiated Responsibilities and Respective Capabilities” in B. Mayer & A. Zahar (eds.), *Debating Climate Law* (CUP 2021), p. 63 (noting that this is the “cornerstone principle of the international climate change regime” providing guidance for the development of climate change law in general).

<sup>141</sup> Paris Agreement, Art. 4(3).

<sup>142</sup> *Ibid.*, Art. 4(4).

- Developing country Parties should continue enhancing their mitigation efforts and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances.<sup>143</sup>
- The least developed countries and small island developing States may prepare and communicate strategies, plans and actions for low greenhouse gas emissions development reflecting their special circumstances.<sup>144</sup>

3.41 By endorsing the principle of “highest possible ambition,” the Paris Agreement makes clear that developing countries cannot use the CBDR principle as an excuse for not doing more. That said, the Agreement recognizes that what constitutes such highest possible ambition may vary between States,<sup>145</sup> and demonstrates that it is indeed possible for States to bear a differentiated and fair share of the mitigation burden, based on dynamic, flexible, and nuanced differentiation parameters taking into account equitable considerations.<sup>146</sup> The express provisions further demonstrate that equitable considerations and the CBDR principle have always underlain the development of the climate change regime, and should continue to play an integral role in defining the contours of States’ overall due diligence obligation, as well as the assessment of whether it has been satisfied.

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<sup>143</sup> *Ibid.*

<sup>144</sup> *Ibid.*, Art. 4(6).

<sup>145</sup> Inter-American Court of Human Rights, Advisory Opinion on Climate Emergency and Human Rights, *Amicus brief submitted by the UN Special Rapporteurs on Toxics and Human Rights (Marcos Orellana), Human Rights and the Environment (David Boyd), and the Right to Development (Surya Deva)* (22 November 2023) (“**UN Special Rapporteurs Amicus Brief, IACtHR Advisory Opinion**”), available at [https://www.ohchr.org/sites/default/files/documents/issues/toxicwastes/activities/IACtHR-advisory-opinion-amicus-curiae-boyd-orellana-deva\\_EN.pdf](https://www.ohchr.org/sites/default/files/documents/issues/toxicwastes/activities/IACtHR-advisory-opinion-amicus-curiae-boyd-orellana-deva_EN.pdf), para. 140.

<sup>146</sup> See M.A. Tigre, “Cooperation for Climate Mitigation in Amazonia: Brazil’s Emerging Role as a Regional Leader” (2016) 5(2) *Transnational Environmental Law* 401, available at <https://doi.org/10.1017/S2047102516000297>; S. Jolly & A. Trivedi, “Principle of CBDR-RC: Its Interpretation and Implementation Through NDCS in the Context of Sustainable Development” (2021) 11(3) *Washington Journal of Environmental Law & Policy* 309, available at <https://digitalcommons.law.uw.edu/wjelp/vol11/iss3/3>, pp. 321-322; Inter-American Court of Human Rights, Advisory Opinion on Climate Emergency and Human Rights, *Amicus Brief submitted by the Sabin Center for Climate Change Law on Climate Science and Human Rights Obligations* (2 November 2023), available at [https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2023/20231103\\_18528\\_na.pdf](https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2023/20231103_18528_na.pdf), pp. 50-52.

3.42 In addition to this tiered approach to mitigation, the Paris Agreement provides that developed countries “should continue to take the lead in mobilizing climate finance” and “shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation.”<sup>147</sup> These provisions reflect the recognition that, in the context of climate change, the general duty of cooperation must be interpreted progressively in light of the CBDR principle. That is, ensuring equitable and timely access to climate finance, adaptation and mitigation technologies, and shared knowledge is critical to complying with the duty of cooperation and upholding both concrete legal principles such as CBDR and equitable principles under international law.

3.43 In the domestic context, courts have applied the CBDR principle to guide their legal reasoning and interpretation of rules. In *Urgenda Foundation v. The State of the Netherlands*, for instance, the Hague District Court held that the Dutch government’s existing pledge to reduce GHG emissions by 17% was insufficient to meet the country’s fair share towards meeting required target. The Hague District Court found significant that “the Netherlands, like the other Annex I countries, has taken the lead in taking mitigation measures and has therefore committed to a more than proportionate contribution to reduction” as well as the fact that “the Dutch per capita emissions are one of the highest in the world.”<sup>148</sup> In a similar vein, the Norwegian Court of Appeals held in *Greenpeace v. Norway* that Norway’s responsibility to reduce anthropogenic GHG emissions under the Paris Agreement must be strengthened, in light of the CBDR principle.<sup>149</sup> Not only do such decisions form part of State practice, they constitute subsidiary means for determining the rules of law to apply under Article 38(1)(d) of the Court’s Statute. The Court may therefore, in accordance with its own practice, take into account such decisions to help clarify the scope of the obligations under the CBDR principle in international law.

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<sup>147</sup> Paris Agreement, Art. 9.

<sup>148</sup> *Urgenda v. Netherlands*, Hague District Court, Judgment (24 June 2015) (English translation), Case No. C/09/456689 / HA ZA 13-1396, available at <https://tinyurl.com/5n8kpcka>, para. 4.79.

<sup>149</sup> *Natur og Ungdom v. Norway*, Borgarting Court of Appeal, Judgment (23 January 2020), Case No. 18-060499ASD-BORG/03, available at [https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20200123\\_HR-2020-846-J\\_judgment.pdf](https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20200123_HR-2020-846-J_judgment.pdf), p. 27. See also *ibid.*, pp. 24-25.

## 2. *Intergenerational equity*

3.44 The impacts of climate change are not limited to the current generation. The scientific evidence confirms that, despite having contributed nothing to climate change, future generations are fully exposed to its catastrophic effects. The long-term impacts of climate change are projected to be multiple times higher than currently observed.<sup>150</sup> Regional changes in mean climate and extremes become more pronounced and widespread with every increment of global warming.<sup>151</sup> For instance, currently “1-in-100-year extreme sea level events are projected to occur at least annually in more than half of all tide gauge locations by 2100.”<sup>152</sup>

3.45 For this reason, climate change is described as a “common concern of *humankind*,”<sup>153</sup> recognizing that “every generation holds the Earth in common with members of the present generation and with other generations, past and future.”<sup>154</sup> The climate change treaties make it manifestly clear that, in addition to the inequities among developed and developing *States*, it is necessary to take into account the inequities across *generations*. The UNFCCC provides that “[t]he Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity.”<sup>155</sup> The Paris Agreement expressly refers to “intergenerational equity,” which has been recognized as an important principle of international law.<sup>156</sup>

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<sup>150</sup> IPCC, 2023, pp. 68-78.

<sup>151</sup> *Ibid.*, p. 70.

<sup>152</sup> *Ibid.*, p. 13, para. B.1.4.

<sup>153</sup> UNFCCC, Preamble (emphasis added).

<sup>154</sup> E.B. Weiss, “Intergenerational Equity” in *Max Planck Encyclopedia of Public International Law* (2021), para. 1. See also C. McKinnon, *Climate Change and Future Justice: Precaution, Compensation and Triage* (1<sup>st</sup> Ed., Routledge 2012), p. 72 (“[C]limate change presents problems of justice in global and intergenerational arenas that are unprecedented.”); E.D. Gibbons, “Climate Change, Children’s Rights, and the Pursuit of Intergenerational Climate Justice” (2014) 16(1) *Health and Human Rights Journal* 19, available at <https://www.hhrjournal.org/2014/07/climate-change-childrens-rights-and-the-pursuit-of-intergenerational-climate-justice/>; A.V. Sanson & S.E.L. Burke, “Climate Change and Children: An Issue of Intergenerational Justice” in N. Balvin & D.J. Christie (eds.), *CHILDREN AND PEACE* (2020).

<sup>155</sup> UNFCCC, Art. 3(1). See also *ibid.*, Preamble.

<sup>156</sup> Paris Agreement, Preamble. See also UN General Assembly, *Report of the Secretary-General on intergenerational solidarity and the needs of future generations*, UN Doc. A/68/322 (15 August 2013), para. 24; *Pulp Mills*, Separate Opinion of Judge Cañado Trindade, p. 181, para. 122 (“Nowadays, in 2010, it can hardly be doubted that the acknowledgement of inter-generational equity forms part of conventional wisdom in International Environmental Law.”); *Whaling in the Antarctic (Australia v. Japan: New Zealand Intervening)*, Judgment, *I.C.J Reports* 2014,

3.46 The General Assembly has repeatedly underscored the need to protect the global climate for the well-being of both present and future generations of humankind.<sup>157</sup> As Judge Palmer highlighted, in *New Zealand v. France*, “each generation is both a custodian or trustee of the planet for future generations and a beneficiary of its fruits” and “[t]his imposes obligations upon us to care for the planet and gives us certain rights to use it.”<sup>158</sup> Judge Weeramantry similarly emphasized that this Court “must, in its jurisprudence, pay due recognition to the rights of future generations ... [which have] woven themselves into international law through major treaties, through juristic opinion and through general principles of law recognized by civilized nations.”<sup>159</sup>

3.47 In its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the Court stated that “it is imperative for the Court to take account of the unique characteristics of nuclear weapons, and in particular ... their ability to cause damage *to generations to come*.”<sup>160</sup> The Court stressed that “the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn,” confirming the broad scope of rights and interests which are to be protected under international environmental law.<sup>161</sup> In the subsequent *Gabčíkovo-Nagymaros* case, the Court reiterated that it attaches “great significance ... to respect for the environment, not only for States but also for the whole

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Separate Opinion of Judge Cançado Trindade, p. 366, para. 47 (“In effect, inter-generational equity marks presence nowadays in a wide range of instruments of international environmental law, and indeed of contemporary public international law.”). In the context of international human rights law, see *Maastricht Principles on the Human Rights of Future Generations* (adopted on 3 February 2023).

<sup>157</sup> See, e.g., UN General Assembly, Resolutions 43/53 (6 December 1988) (Dossier No. 104), 54/222 (22 December 1999) (Dossier No. 113), 62/86 (10 December 2007) (Dossier No. 120), 63/32 (26 November 2008) (Dossier No. 121), 64/73 (7 December 2009) (Dossier No. 122), 65/159 (20 December 2010) (Dossier No. 123), 66/200 (22 December 2011) (Dossier No. 124), 67/210 (21 December 2012) (Dossier No. 125), 68/212 (20 December 2013) (Dossier No. 126), 69/220 (19 December 2014) (Dossier No. 127), 70/205 (22 December 2015) (Dossier No. 128), 71/228 (21 December 2016) (Dossier No. 129), 72/219 (20 December 2017) (Dossier No. 130), 73/232 (20 December 2018) (Dossier No. 131), 74/219 (19 December 2019) (Dossier No. 132), 75/217 (21 December 2020) (Dossier No. 133) and 76/205 (17 December 2021) (Dossier No. 134).

<sup>158</sup> *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case, I.C.J. Reports 1995*, Dissenting Opinion of Judge Sir Geoffrey Palmer, pp. 419-420, para. 114 (citing and quoting E.B. Weiss, *In Fairness to Future Generations* (1989), p. 17).

<sup>159</sup> *Nuclear Weapons Advisory Opinion*, Dissenting Opinion of Judge Weeramantry, p. 455.

<sup>160</sup> *Ibid.*, p. 244, para. 36 (emphasis added).

<sup>161</sup> *Ibid.*, p. 241, para. 29 (emphasis added).

mankind,”<sup>162</sup> and took into full account the risks to future generations from the dam on the Danube River as part of its analysis.<sup>163</sup>

3.48 International environmental law does not limit the due diligence obligation to a particular temporal scope. The respect for the rights and interests of future generations is enshrined in several multilateral agreements and instruments, including the Convention on Biological Diversity,<sup>164</sup> the United Nations Convention to Combat Desertification,<sup>165</sup> the Stockholm Declaration,<sup>166</sup> and the Rio Declaration.<sup>167</sup> The Convention Concerning the Protection of the World Cultural and Natural Heritage, for instance, expressly recognizes each State’s binding “duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage.”<sup>168</sup> And the UNESCO Declaration on the Responsibilities of the Present Generations towards Future Generations proclaims that “[t]he present generations have the responsibility to bequeath to future generations an Earth which will not one day be irreversibly damaged by human activity.”<sup>169</sup>

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<sup>162</sup> *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 7, at p. 41, para. 53.

<sup>163</sup> *Ibid.*, pp. 77-78, para. 140.

<sup>164</sup> Convention on Biological Diversity, Preamble (“Determined to conserve and sustainably use biological diversity for the benefit of present and future generations”).

<sup>165</sup> United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (signed 14 October 1994, entered into force 26 December 1996), 1954 UNTS 3 (Dossier No. 17), Preamble (“Determined to take appropriate action in combating desertification and mitigating the effects of drought for the benefit of present and future generations”).

<sup>166</sup> Stockholm Declaration, Principle 1 (“Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.”); *ibid.*, Principle 2 (“The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.”).

<sup>167</sup> Rio Declaration, Principle 3 (“The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.”).

<sup>168</sup> Convention concerning the Protection of the World Cultural and Natural Heritage (adopted 16 October 1972, entered into force 17 December 1975), 1037 UNTS 151, Art. 4. *Cf. Nuclear Weapons Advisory Opinion*, Dissenting Opinion of Judge Weeramantry, p. 455 (“All of these expressly incorporate the principle of protecting the natural environment for future generations, and elevate the concept to the level of binding State obligation.”).

<sup>169</sup> UNESCO Declaration on the Responsibilities of the Present Generations towards Future Generations (12 November 1997), Art. 4.



3.49 Respect for future generations also underlies the strong commitment under international environmental law to promote sustainable development,<sup>170</sup> which by definition, requires respect for the ability of future generations to meet their own needs.<sup>171</sup> In this sense, the General Assembly’s resolution 70/1 stressed that the 17 Sustainable Development Goals and the 2030 Agenda for Sustainable Development would be implemented “for the full benefit of all, for today’s generation and for future generations.”<sup>172</sup> It has thus been observed: “Sustainable development and intergenerational equity are deeply interlinked. If States are to protect the environment to guarantee the rights of generations to come, then their development model cannot be one based on the exploitation of finite natural resources beyond planetary boundaries.”<sup>173</sup>

3.50 The precautionary principle, by ensuring that States cannot use lack of certainty about future risks as an excuse for inaction, also confirms that States’ due diligence obligations are not limited to contemporaneous and immediate threats. The ILC Draft Articles on Prevention also explain that, when speaking of the “risk” of causing significant transboundary harm, the very notion of risk is “by definition concerned with *future* possibilities, and thus implies some element of assessment or appreciation of risk.”<sup>174</sup>

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<sup>170</sup> See, e.g., Paris Agreement, Art. 2(1) (“This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty”); UNFCCC, Art. 3(4) (“The Parties have a right to, and should, promote sustainable development.”).

<sup>171</sup> World Commission on Environment and Development, “Our Common Future, Chapter 2: Towards Sustainable Development” in *Report of the World Commission on Environment and Development: Our Common Future* (1987), available at <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>, [PDF] pp. 41-43.

<sup>172</sup> UN General Assembly, Resolution 70/1, *Transforming our world: the 2030 Agenda for Sustainable Development*, UN Doc. A/RES/70/1 (21 October 2015) (Dossier No. 219) (“**2030 Agenda for Sustainable Development**”), para. 18. See also UN General Assembly, *Report of the Secretary-General on intergenerational solidarity and the needs of future generations*, UN Doc. A/68/322 (15 August 2013).

<sup>173</sup> K. Horne et al., *Status Report on Principles of International and Human Rights Law Relevant to Climate Change* (2023), available at [https://scholarship.law.columbia.edu/faculty\\_scholarship/3924](https://scholarship.law.columbia.edu/faculty_scholarship/3924), para. 145. See also Statement by His Excellency Dr Julius Maada Bio, President of the Republic of Sierra Leone, Africa Climate Summit (5 September 2023) (“**President of Sierra Leone’s Statement at the 2023 Africa Climate Summit**”), available at <https://statehouse.gov.sl/wp-content/uploads/2023/09/National-Statement-by-H.E-Dr-Julius-Maada-Bio-President-of-the-Republic-of-Sierra-Leone-at-the-High-Level-Segment-for-Heads-of-State-and-Government-Africa-Climate-Summit-in-Nairobi-Tue-5th-Sep-2023.pdf>, para. 19 (“Meaningful inclusion and inter-generational dialogue are crucial to achieving SDG 13: ‘to take urgent action to combat Climate Change and its impacts’.”).

<sup>174</sup> ILC Draft Articles on Prevention, Commentary (14) to Art. 1, p. 151 (emphasis added).

3.51 Domestic courts have recognized that States are under a duty to protect future generations. In *Neubauer et al. v. Germany*, for instance, the Federal Constitutional Court of Germany held that Germany's climate law was unconstitutional as its failure to adequately specify emission reductions in the near-term disproportionately and unduly burdened the young and future generations with drastic emissions reductions in the future.<sup>175</sup> In *Future Generations v. Ministry of Environment and Others*, the Supreme Court of Colombia similarly agreed that deforestation of the Amazon caused damage to the environment and the climate, which in turn violated the principle of intergenerational equity and the fundamental rights to water, air, dignified life and health, among others.<sup>176</sup>

3.52 Sierra Leone therefore submits that there is both a compelling scientific and legal basis for the clear expression that, under international environmental law, States' obligation to protect the climate system and other parts of the environment from anthropogenic GHG emissions extend to future generations. In concrete terms, this means that one of the objective factors that may be taken into account in determining whether States have met this obligation in any particular case is whether they sufficiently considered the long-term impacts of their actions or inactions on future generations.<sup>177</sup>

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<sup>175</sup> *Neubauer et al. v. Germany*, BVerfG, Order of the First Senate (24 March 2021), 1 BvR 2656/18, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20, available at [https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20210324\\_11817\\_order-1.pdf](https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20210324_11817_order-1.pdf), pp. 72-77.

<sup>176</sup> *Future Generations v. Ministry of the Environment and Others*, Colombia Supreme Court, Decision STC 4360-2018 (5 April 2018) (excerpts, selected and translated by Dejusticia), No. 11001-22-03-000-2018-00319-01, available at [https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2018/20180405\\_11001-22-03-000-2018-00319-00\\_decision.pdf](https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2018/20180405_11001-22-03-000-2018-00319-00_decision.pdf). See also *Budayeva and Others v. Russia*, ECtHR, Judgment (20 March 2008), App. Nos. 15339/02, 21155/02, 20058/02, 11673/02 and 1543/02, paras. 158-160 (holding that the State violated its obligation to protect the right to life by failing to protect against the foreseeable risk that mudslides would devastate the town of Tyrnauz); *Öneryıldız and others v. Turkey*, ECtHR, Judgment (30 November 2004), App. No. 48939/99, paras. 109-110 (holding that the State had violated its obligation to protect the right to life by not taking steps to safeguard against the foreseeable harm posed by a municipal landfill).

<sup>177</sup> Cf. UNESCO Declaration on the Responsibilities of the Present Generations towards Future Generations (12 November 1997), Art. 5(4).

## II. Obligations Under International Human Rights Law

3.53 There is irrefutable evidence of climate change’s devastating human impacts. Severe climate and weather extremes have led to increased human mortality and morbidity, damages to settlements and infrastructure, loss of property and income, displacement and involuntary migration, and loss of livelihoods and culture.<sup>178</sup> Disruptions to food production have particularly significant impacts on Indigenous Peoples, small-scale food producers, low-income households, children, elderly people, and pregnant women.<sup>179</sup> Millions of people have been exposed to risks of food and water insecurity, with the largest impacts observed in Africa, Asia, Central and South America, Small Islands and the Arctic.<sup>180</sup> Harms to coastal ecosystems due to ocean acidification, sea level rise, and salinization directly impact fishing communities that depend on such ecosystems to meet their basic needs.<sup>181</sup>

3.54 Since 2008, the UN Human Rights Council has adopted a series of resolutions underscoring that the current climate crisis directly threatens the enjoyment of human rights.<sup>182</sup> In its resolution 41/21, the Human Rights Council recognized that climate change imperils the full and effective enjoyment of a range of human rights including the rights to life, water and sanitation, food, health, housing, self-determination, culture and development.<sup>183</sup> The Council stressed that States must, in

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<sup>178</sup> IPCC, 2022, pp. 9-11.

<sup>179</sup> *Ibid.*, p. 9, para. B.1.3.

<sup>180</sup> *Ibid.*

<sup>181</sup> See *ibid.*, pp. 9-13; IPCC 2023, p. 98; UN General Assembly, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc. A/74/161 (15 July 2019) (Dossier No. 312), para. 34; International Tribunal for the Law of the Sea, Case No. 31, *Amicus brief submitted to the International Tribunal for the Law of the Sea by the UN Special Rapporteurs on Human Rights & Climate Change (Ian Fry), Toxics & Human Rights (Marcos Orellana), and Human Rights & the Environment (David Boyd)* (30 May 2023), paras. 57-59.

<sup>182</sup> The full list of resolutions are available at <https://www.ohchr.org/en/climate-change/reports-human-rights-and-climate-change>.

<sup>183</sup> UN Human Rights Council, Resolution 41/21, *Human rights and climate change*, UN Doc. A/HRC/RES/41/21 (23 July 2019) (Dossier No. 272).

all climate change-related actions, fully “respect, promote and consider their respective obligations on human rights.”<sup>184</sup>

3.55 In its Advisory Opinion on the Environment and Human Rights (OC-23/17), the IACtHR reaffirmed the “undeniable relationship between the protection of the environment and the realization of other human rights, in that environmental degradation and the adverse effects of climate change affect the real enjoyment of human rights.”<sup>185</sup> In 2021, the Inter-American Commission on Human Rights and the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights adopted Resolution No. 3/21, which expressly recognized that States “must incorporate a human rights approach” in their legislation on climate change and “for the effective protection of human rights, ... must take appropriate measures to mitigate greenhouse gases, implement adaptation measures and remedy the resulting damages.”<sup>186</sup>

3.56 The human rights impacts of climate change are felt most acutely by the youngest part of the population and future generations. The General Assembly recognized that climate change is one of the “most pressing and serious threats to the ability of present *and future generations* to effectively enjoy all human rights.”<sup>187</sup> In *Sacchi et al. v. Argentina*, the UN Committee on the Rights of the Child determined that a State can be held responsible for the negative impact of its carbon emissions on the rights of children both within and outside its territory. In its General Comment No. 26, the Committee highlighted the urgent need to address the adverse effects of climate change on the enjoyment of children’s rights and clarified that children’s rights under the

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<sup>184</sup> *Ibid.*, Preamble. UN Special Rapporteurs have since expanded upon the specific and concrete impacts of climate change on these various human rights. See UN Special Rapporteurs Amicus Brief, IACtHR Advisory Opinion, para. 43 and reports identified at footnote 68.

<sup>185</sup> IACtHR, *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights)*, Advisory Opinion OC-23/17 (15 November 2017), Series A No. 23 (“**IACtHR, Advisory Opinion OC-23/17**”), para. 47 (citing *Case of Kawas Fernández v. Honduras*, Merits, Reparations and Costs, Judgment (3 April 2009), Series C No. 196. Para. 148).

<sup>186</sup> Inter-American Commission on Human Rights (IACHR), Resolution No. 3/21, *Climate Emergency: Scope of Inter-American Human Rights Obligations* (31 December 2021) (“**IACHR, Resolution 3/21**”), available at [https://www.oas.org/en/iachr/decisions/pdf/2021/resolucion\\_3-21\\_ENG.pdf](https://www.oas.org/en/iachr/decisions/pdf/2021/resolucion_3-21_ENG.pdf), Arts. 2, 15.

<sup>187</sup> UN General Assembly, Resolution 76/300, *The human right to a clean, healthy and sustainable environment*, UN Doc. A/RES/76/300 (1 August 2022) (Dossier No. 260) (“**UNGA Resolution 76/300**”), pp. 2-3.

Convention on the Rights of the Child are directly applicable to environmental protection.<sup>188</sup> The Committee emphasized that States owe a “heightened duty of care” toward children who “are far more likely than adults to suffer serious harm.”<sup>189</sup>

3.57 UNICEF has similarly stressed that “the climate crisis is a child rights crisis,” concluding that approximately 1 billion children are at “extremely high risk” of the impacts of climate change and warning that “unless we invest heavily in adaptation and resilience of social services for the 4.2 billion children born over the next 30 years, they will face increasingly high risks to their survival and well-being.”<sup>190</sup>

3.58 The Paris Agreement likewise recognizes the nexus between climate change and international human rights obligations, calling upon States Parties to “respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, persons with disabilities, and people in vulnerable situations.”<sup>191</sup> States therefore must both (1) consider human rights as a reason to act (on mitigation, adaptation, and loss and damage) in response to the climate emergency and (2) ensure that all actions are consistent with their human rights obligations, especially in relation to populations put in situations of vulnerability or marginalization.<sup>192</sup> The UNFCCC’s governing body, the Conference of the Parties (“COP”), has also made direct reference to human rights, including in Decision 1/CP.16 (2010), which underscored that Parties should fully respect human rights in all climate related actions.<sup>193</sup>

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<sup>188</sup> Committee on the Rights of the Child, *General comment No. 26 (2023) on children’s rights and the environment, with a special focus on climate change*, UN Doc. CRC/C/GC/26 (22 August 2023).

<sup>189</sup> *Ibid.*, para. 73.

<sup>190</sup> UNICEF, *The Climate Crisis Is a Child Rights Crisis: Introducing the Children’s Climate Risk Index* (2021), available at <https://www.unicef.org/media/105376/file/UNICEF-climate-crisis-child-rights-crisis.pdf>, p. 13. See also UN OHCHR, *Analytical Study on the Relationship Between Climate Change and the Full and Effective Enjoyment of the Rights of the Child*, UN Doc. A/HRC/35/13 (4 May 2017) (Dossier No. 286), para. 35.

<sup>191</sup> Paris Agreement, Preamble.

<sup>192</sup> UN Special Rapporteurs Amicus Brief, IACtHR Advisory Opinion, para. 48.

<sup>193</sup> UNFCCC, *Report of the Conference of the Parties on its sixteenth session, Decision 1/CP.16, The Cancun Agreements* (2010), UN Doc. FCCC/CP/2010/7/Add.1 (15 March 2011), available at <https://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>, p. 2.

3.59 In short, climate change is without doubt a human rights issue. Indeed, climate change may well be one of the greatest threats to human rights that the world has ever experienced.<sup>194</sup>

3.60 Given the human implications of climate change, it is essential for the Court to clarify the obligations that States owe to all human beings, both to this generation and generations to come. The questions posed to the Court in resolution 77/276 reflect the broad consensus that, in addressing those obligations of States in relation to climate change, it is important to look beyond their obligations *vis-à-vis* other States. Both questions expressly request the Court to clarify the “obligations of States under international law ... for States *and for present and future generations*” and “the legal consequences under these obligations for States ... with respect to ... States ... [and] *[p]eoples and individuals of the present and future generations* affected by the adverse effects of climate change.”<sup>195</sup> A recent statement by UN human rights experts likewise urges that “States must place human rights at the *heart* of all climate action, including mitigation, adaptation and loss and damage. This is an *obligation* for States, not an option.”<sup>196</sup>

3.61 Climate change threatens the enjoyment of a broad range of human rights. These include, but are not limited to, the right to life,<sup>197</sup> the right to health,<sup>198</sup> the right to home, privacy, and

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<sup>194</sup> See, e.g., UNEP, *Climate Change and Human Rights* (December 2015), available at [https://wedocs.unep.org/bitstream/handle/20.500.11822/9530/-Climate\\_Change\\_and\\_Human\\_Rightshuman-rights-climate-change.pdf.pdf?sequence=2&isAllowed=](https://wedocs.unep.org/bitstream/handle/20.500.11822/9530/-Climate_Change_and_Human_Rightshuman-rights-climate-change.pdf.pdf?sequence=2&isAllowed=).

<sup>195</sup> UN General Assembly, Resolution 77/276, *Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change*, UN Doc. A/RES/77/276 (4 April 2023) (Dossier No. 2) (emphasis added).

<sup>196</sup> UN OHCHR, *Press Release: Fossil fuels at the heart of the planetary environmental crisis: UN experts* (30 November 2023), available at <https://www.ohchr.org/en/press-releases/2023/11/fossils-fuels-heart-planetary-environmental-crisis-un-experts> (emphasis added).

<sup>197</sup> UN General Assembly, Resolution 217 A, *International Bill of Human Rights*, UN Doc. A/RES/217(III) (10 December 1948) (Dossier No. 257) (“**UDHR**”), Art. 3 (“everyone has the right to life, liberty and security of person”); International Covenant on Civil and Political Rights (16 December 1966, entered into force 23 March 1976), 999 UNTS 171 (Dossier No. 49) (“**ICCPR**”), Art. 6 (“every human being has the inherent right to life”).

<sup>198</sup> International Covenant on Economic, Social and Cultural Rights (16 December 1966, entered into force 3 January 1976), 993 UNTS 3 (Dossier No. 52) (“**ICESCR**”), Art. 12 (providing that all persons have a right “to the enjoyment of the highest attainable standard of physical and mental health”).

family life,<sup>199</sup> the right to food,<sup>200</sup> the right to water,<sup>201</sup> the right to participate in cultural life,<sup>202</sup> the right to education,<sup>203</sup> the right to an adequate standard of living, including housing,<sup>204</sup> the right to a clean, healthy and sustainable environment,<sup>205</sup> the right to development,<sup>206</sup> and the right to self-determination.<sup>207</sup> The following paragraphs address certain of those rights in light of their particular importance to Sierra Leone, and explain why States are obligated under international human rights law to prevent the harmful effects of human-induced climate change and minimize the risks thereof.

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<sup>199</sup> UDHR, Art. 12; ICCPR, Art. 17; Convention on the Rights of the Child (20 November 1989, entered into force 2 September 1990), 1577 UNTS 3 (Dossier No. 57) (“**CRC**”), Art. 16; Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950, entered into force 3 September 1953), 213 UNTS 221 (“**ECHR**”), Art. 8.

<sup>200</sup> ICESCR, Art. 11 (noting the “fundamental right of everyone to be free from hunger” and calling upon States’ commitment “to ensure an equitable distribution of world food supplies in relation to need”).

<sup>201</sup> UN CESCR, *General Comment 15: The right to water*, UN Doc. E/C.12/2002/11 (2002) (Dossier No. 294); UN General Assembly, Resolution 64/292, *The human right to water and sanitation*, UN Doc. A/RES/64/292 (3 August 2010).

<sup>202</sup> UDHR, Art. 27; ICESCR, Art. 15; UN CESCR, *General Comment No. 21: Right of everyone to take part in cultural life*, UN Doc. E/C.12/GC/21 (21 December 2009).

<sup>203</sup> UDHR, Art. 26; ICESCR, Art. 13.

<sup>204</sup> ICESCR, Art. 11 (all persons are entitled to an adequate standard of living for themselves and their families including adequate housing). *See also* UN CESCR, *General Comment No. 4: The Right to Adequate Housing* (13 December 1991), Art. 1 (noting that “the human right to adequate housing ... is of central importance for the enjoyment of all economic, social and cultural rights”).

<sup>205</sup> *See* UN Human Rights Council, Resolution 48/13, *The human right to a clean, healthy and sustainable environment*, UN Doc. A/HRC/RES/48/13 (18 October 2021) (Dossier No. 279); UNGA Resolution 76/300.

<sup>206</sup> ICESCR and ICCPR, Common Article 1(1) (people should “freely pursue their economic, social and cultural development”).

<sup>207</sup> UN Charter, Art. 1(2); ICCPR and ICESCR, Common Article 1(1) (“[a]ll peoples have the right of self-determination” and by virtue of that right, “they freely determine their political status and freely pursue their economic, social and cultural development”).

## A. RIGHT TO LIFE

3.62 The right to life is enshrined in several treaties and instruments, including the UDHR, the ICCPR, the African Charter on Human and People’s Rights,<sup>208</sup> the European Convention of Human Rights and Fundamental Freedoms (“**ECHR**”),<sup>209</sup> and the American Convention on Human Rights.<sup>210</sup> In particular, Article 6(1) of ICCPR provides that “[e]very human being has the inherent right to life.”

3.63 Pursuant to Article 2(1) of the ICCPR, State Parties are under a positive obligation to protect individuals against the violation of the rights under the Covenant and ensure them to all individuals in their territory and subject to their jurisdiction.<sup>211</sup> Under Article 26 of the Vienna Convention on the Law of Treaties, States are required to give effect to the obligations under ICCPR in good faith.

3.64 The UN Human Rights Committee (“**CCPR**”) General Comment No. 6 stresses that the right to life under the ICCPR “should not be interpreted narrowly” and protection of this right requires States to adopt positive measures, including “all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition

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<sup>208</sup> African Charter on Human and People’s Rights (27 June 1981, entered into force 21 October 1986), 1520 UNTS 217 (“**African Charter on Human and Peoples’ Rights**”), Art. 4.

<sup>209</sup> ECHR, Art. 2.

<sup>210</sup> American Convention on Human Rights (22 November 1969, entered into force 18 July 1978), 1144 UNTS 123, Art. 4.

<sup>211</sup> Article 2(1) of the ICCPR provides that “[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant” and Article 2(2) provides that “[w]here not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps ... to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.” *See also* UN Human Rights Committee, *General comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13 (26 May 2004), paras. 8-10; UN General Assembly, *Resolution 53/144, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, UN Doc. A/RES/53/144 (8 March 1999), Art. 1(1) (“Each state has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political, and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.”).



and epidemics.”<sup>212</sup> The Office of the High Commissioner for Human Rights has similarly indicated that the right to life cannot properly be understood in a restrictive manner, noting: “All States have committed to respect, protect, promote, and fulfil the right to life. This entails, at the very least, that States should take effective measures against foreseeable and preventable loss of life.”<sup>213</sup> The European Court of Human Rights has also interpreted the “right to life” in Article 2 of the ECHR as imposing “a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction.”<sup>214</sup> The IACtHR likewise has made clear that “States must act in keeping with the precautionary principle in order to protect the rights to life and to personal integrity in cases where there are plausible indications that an activity could result in severe and irreversible damage to the environment, even in the absence of scientific certainty.”<sup>215</sup>

3.65 In regard to climate change, this obligation entails, among other things, a duty to take measures to mitigate and adapt to climate change impacts. The mitigation aspect of the obligation requires States to reduce anthropogenic GHG emissions with the aim to limit the increase in global average temperatures to 1.5°C above pre-industrial levels. This is because those emissions exacerbate climate change, which in turn significantly increase the number of premature deaths in the near- to long-term and directly threaten the right to life.

3.66 As stated in the UN Special Rapporteur on the Environment’s report to the UN Human Rights Council, “[c]limate change has many direct and indirect effects on the full enjoyment of the right to life.”<sup>216</sup> With every increment of global warming, there is an increase in human

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<sup>212</sup> UN Human Rights Committee, *CCPR General Comment No. 6: Article 6 (Right to Life)* (30 April 1982), paras. 1, 5.

<sup>213</sup> Submission of the Office of the High Commissioner for Human Rights to the 21<sup>st</sup> Conference of the Parties to the United Nations Framework Convention on Climate Change, *Understanding Human Rights and Climate Change* (2015), available at <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/COP21.pdf>, p. 13.

<sup>214</sup> *Case of Budayeva and others v. Russia*, EctHR (20 March 2018), Applications Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, paras. 128-131. See also *Case of Önerildiz v. Turkey*, EctHR (30 November 2004), Application No. 48939/99, para. 71.

<sup>215</sup> IACtHR, *Advisory Opinion OC-23/17*, para. 180.

<sup>216</sup> UN General Assembly, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc. A/74/161 (15 July 2019) (Dossier No. 312) (“**Special Rapporteur on the Environment, Climate Report No. 2**”), para. 29.

mortality.<sup>217</sup> The IPCC predicts that under a high emissions scenario, over nine million climate-related deaths per year will occur by the end of the century.<sup>218</sup> According to the WHO, there will be approximately 250,000 additional deaths per year between 2030 and 2050 due to the effects of climate change.<sup>219</sup> These deaths are foreseeable loss of lives, which can be significantly reduced and minimized with effective mitigation and adaptation measures.<sup>220</sup>

3.67 Individuals living in poverty are more vulnerable to climate-related deaths, given the compound risks that arise from living in less-robust structures without the necessary infrastructural and institutional protections.<sup>221</sup> Between 2010 and 2020, human mortality from floods, droughts, and storms was 15 times higher in highly vulnerable regions, compared to regions with very low vulnerability.<sup>222</sup> In Sierra Leone, floods induced by extreme weather events accounted for 90% of people affected by natural disasters. From 2008 to 2011, floods affected 221,204 people and killed 145 people.<sup>223</sup> In 2017, flooding and landslides caused by intense rain in Freetown killed more than 1,000 people and caused millions of dollars of destruction and damage to buildings and infrastructure, with a devastating economic impact of over US\$ 30 million.<sup>224</sup>

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<sup>217</sup> See IPCC, 2023, pp. 14-15; IPCC, 2022, p. 51.

<sup>218</sup> See IPCC, 2022, p. 63.

<sup>219</sup> WHO, *Quantitative risk assessment of the effects of climate change on selected causes of death, 2030s and 2050s* (2014), available at [https://iris.who.int/bitstream/handle/10665/134014/9789241507691\\_eng.pdf;jsessionid=0530818A659FB208F48709AE321838B8?sequence=1](https://iris.who.int/bitstream/handle/10665/134014/9789241507691_eng.pdf;jsessionid=0530818A659FB208F48709AE321838B8?sequence=1), p. 13.

<sup>220</sup> IPCC, 2023, p. 25.

<sup>221</sup> World Bank, *Social Dimensions of Climate Change: Equity and Vulnerability in a Warming World* (2010), available at <https://openknowledge.worldbank.org/server/api/core/bitstreams/57ef7f5d-df55-552f-91b8-843eb7b286a3/content>, p. 16.

<sup>222</sup> IPCC, 2022, p. 12, para. B.2.4.

<sup>223</sup> Government of the Republic of Sierra Leone, *Third National Communication of Sierra Leone to the United Nations Framework Convention on Climate Change* (2018) (“**Third National Communication of Sierra Leone to the UNFCCC**”), available at <https://unfccc.int/documents/64690>, Chapter 5.1.8, p. 337.

<sup>224</sup> I. Bruce, “A preventable disaster: Landslides and flooding disaster in Freetown, Sierra Leone,” *World Bank Blogs* (2 May 2019), available at <https://blogs.worldbank.org/sustainablecities/preventable-disaster-landslides-and-flooding-disaster-freetown-sierra-leone>; World Bank, *Sierra Leone: Rapid Damage and Loss Assessment of August 14<sup>th</sup>, 2017 Landslides and Floods in the Western Area* (2017), available at <https://documents1.worldbank.org/curated/en/523671510297364577/pdf/Sierra-Leone-Rapid-damage-and-loss-assessment-of-August-14th-2017-landslides-and-floods-in-the-western-area.pdf>, p. iii; World Bank, *Freetown: Options for Growth and Resilience* (2020), available at

3.68 Domestic and regional courts have recognized that the obligation to protect and fulfil human rights includes a duty to adopt appropriate measures, including legal and institutional frameworks, to combat the effects of foreseeable environmental harm.<sup>225</sup> In *Urgenda Foundation v. The State of the Netherlands*, for instance, the Dutch government’s failure to reduce GHG emissions by at least 25% by the end of 2020 violated its duty of care under Articles 2 (right to life) and 8 (right to respect for private and family life) of the ECHR.<sup>226</sup> The Supreme Court of Netherlands found that “no other conclusion can be drawn but that the State is required pursuant to Articles 2 and 8 ECHR to take measures to counter the genuine threat of dangerous climate change” and that “[c]limate change threatens human rights.”<sup>227</sup> The IACtHR in its *Advisory Opinion OC-23/17* expressed that the right to life is “particularly vulnerable to environmental impact.”<sup>228</sup> The UN Human Rights Committee similarly stressed that climate change is one of the “most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”<sup>229</sup>

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<https://documents1.worldbank.org/curated/en/994221549486063300/pdf/127039-REVISED-PUBLIC2-14-19-Freetown-Report-Final-web2.pdf>, p. 14.

<sup>225</sup> See, e.g., IACtHR, *Advisory Opinion OC-23/17*, para. 125 (“To comply with the obligations to respect and ensure the rights to life and personal integrity, in the context of environmental protection, States must fulfill a series of obligations with regard to both damage that has occurred within their territory and transboundary damage.”); *Neubauer et al. v. Germany*, BVerfG, Order of the First Senate (24 March 2021), 1 BvR 2656/18 (ordering the legislature to enact clear reduction targets, consistent with UNFCCC and EU targets, to protect rights to life, health, property, freedom, and intergenerational equity); *Future Generations v. Ministry of the Environment and Others*, Colombia Supreme Court, Decision STC 4360-2018 (5 April 2018) (excerpts, selected and translated by Dejusticia), No. 11001-22-03-000-2018-00319-01 (ordering the Colombian government to reduce deforestation in the Amazon, consistent with its obligations under the Paris Agreement); *Partido Socialista Brasileiro (PSB) et al. v. União Federal*, Federal Supreme Court of Brazil, ADPF 708 (1 July 2022), available at [https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2022/20220701\\_ADPF-708\\_decision-1.pdf](https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2022/20220701_ADPF-708_decision-1.pdf) (holding that the Brazilian government must execute and allocate its Climate Fund to protect the right to a healthy environment, mitigate GHG emissions, and ensure that domestic laws are consistent with Brazil’s obligations under the Paris Agreement).

<sup>226</sup> *Urgenda Foundation v. The State of the Netherlands*, Hague Court of Appeal (9 October 2018), C/09/456689/ HA ZA 13-1396 (unofficial English translation from the court), available at [https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2018/20181009\\_2015-HAZA-C0900456689\\_decision-4.pdf](https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2018/20181009_2015-HAZA-C0900456689_decision-4.pdf).

<sup>227</sup> *Urgenda Foundation v. The State of the Netherlands*, Supreme Court Judgment (20 December 2019) (English), Number 19/00135, available at [https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20200113\\_2015-HAZA-C0900456689\\_judgment.pdf](https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20200113_2015-HAZA-C0900456689_judgment.pdf), paras. 5.6.2, 5.7.9.

<sup>228</sup> IACtHR, *Advisory Opinion OC-23/17*, para. 64.

<sup>229</sup> UN Human Rights Committee, *General Comment No. 36: right to life*, UN Doc. CCPR/C/GC/36 (3 September 2019) (Dossier No. 299), para. 62.

## B. RIGHT TO HEALTH

3.69 The right to health is recognized, *inter alia*, in the ICESCR, the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>230</sup> the Convention on the Elimination of All Forms of Discrimination against Women,<sup>231</sup> the CRC,<sup>232</sup> the African Charter on Human and People’s Rights,<sup>233</sup> and the UDHR.<sup>234</sup>

3.70 Article 12 of ICESCR recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” and sets forth “steps to be taken by the States Parties ... to achieve the full realization of this right.” These steps are non-exhaustive and broadly worded, including “[t]he improvement of *all aspects* of environmental and industrial hygiene” and “[t]he prevention, treatment and control of epidemic, endemic, occupational and other diseases.”<sup>235</sup> The UN Committee on Economic, Social and Cultural Rights (“CESCR”) explains that the right to health under Article 12 “embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health ... [including] a healthy environment.”<sup>236</sup>

3.71 Under Article 2(1) of the ICESCR, States Parties have the general obligation “to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including

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<sup>230</sup> International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969), 660 UNTS 195 (Dossier No. 68), Art. 5(e)(iv).

<sup>231</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981), 1249 UNTS 13 (Dossier No. 65), Arts. 11(1)(f), 12.

<sup>232</sup> CRC, Art. 24. *See also* European Social Charter (18 October 1961), 529 UNTS 89, Art. 11; African Charter on Human and Peoples’ Rights, Art. 16; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador” (1988) (“**Additional Protocol to the American Convention on Human Rights**”), Art. 10.

<sup>233</sup> African Charter on Human and People’s Rights, Art. 16.

<sup>234</sup> UDHR, Art. 25.

<sup>235</sup> ICESCR, Art. 12(2) (emphasis added).

<sup>236</sup> UN CESCR, *General Comment No. 14: The right to the highest attainable standard of health*, UN Doc. E/C.12/2000/4 (11 August 2000), para. 4.

particularly the adoption of legislative measures.” This makes clear that States currently lacking resources to realize certain rights should still use the maximum of the resources available to them, and work towards the progressive realization of those rights. Here, those maximum available resources include not only the resources existing within a State, but also those available from the international community through cooperation and assistance.<sup>237</sup> In this sense, the principle of maximum available resources is closely related to the broader obligation of cooperation.<sup>238</sup>

3.72 As the CESCR has observed, the principle of “progressive” realization under Article 2(1) recognizes the need to consider the special circumstances and constraints of States due to the limits of available resources, in a similar manner to the CBDR principle under international environmental law. That said, Article 2(1) nonetheless establishes “clear obligations for States parties ... to move as expeditiously and effectively as possible towards” the full realization of the rights thereunder.<sup>239</sup> The CESCR likewise emphasized in its General Comment No. 3 that there exists “a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party.”<sup>240</sup>

3.73 Under Article 2(1), State Parties are therefore under the positive obligation to take individual and collective steps towards the full realization of the right to health to the maximum extent in light of their available resources.<sup>241</sup> The CESCR explains that this may include, *inter alia*, adopting national policies aimed at reducing and eliminating environmental hazards.<sup>242</sup>

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<sup>237</sup> UN CESCR, *An Evaluation of The Obligation to Take Steps to the “Maximum of Available Resources” Under an Optional Protocol to the Covenant*, UN Doc. E/C.12/2007/1 (21 September 2007), para. 5.

<sup>238</sup> UN Special Rapporteurs Amicus Brief, IACtHR Advisory Opinion, para. 141.

<sup>239</sup> UN CESCR, *General Comment No. 3: The Nature of States Parties’ Obligations*, UN Doc. E/1991/23 (14 December 1990), para. 9. *See also ibid.*, para. 11.

<sup>240</sup> *Ibid.*, para. 10.

<sup>241</sup> UN CESCR, *General Comment No. 14: The right to the highest attainable standard of health*, UN Doc. E/C.12/2000/4 (11 August 2000), para. 30. *Cf.* UN CESCR, *General Comment No. 13: The right to education*, UN Doc. E/C.12/1999/10 (8 December 1999), para. 43.

<sup>242</sup> UN CESCR, *General Comment No. 14: The right to the highest attainable standard of health*, UN Doc. E/C.12/2000/4 (11 August 2000), para. 36.

3.74 In the climate change context, the obligation to take steps to achieve the full realization of the right to health entails, among other things, a duty to undertake rapid reductions of GHG emissions to achieve the 1.5°C standard and to implement effective adaptation measures, taking into consideration the different national circumstances, and respective capacities of States. This is because the devastating human impacts of climate change directly threatens the full realization and enjoyment of the right to health, especially in Least Developed Countries and Small Island Developing States.<sup>243</sup>

3.75 Climate change directly and indirectly implicates the right to health. Human and ecosystem vulnerability are highly interdependent.<sup>244</sup> The realization of the right to health counts on an enabling natural environment and a safe climate system.<sup>245</sup> The IPCC concludes with “very high confidence” that climate change has adversely affected the physical health of people around the world, whether that be directly through extreme weather events, or indirectly through changes in natural systems resulting in the spread of diseases, resource scarcity, and the displacement of persons.<sup>246</sup> As the Special Rapporteur on the Environment reported to the UN Human Rights Council, climate change not only leads to premature deaths and increased incidences of diseases, it erodes many of the key social and environmental determinants of health, such as access to adequate food and water, clean air, culture and livelihoods.<sup>247</sup>

3.76 For instance, climate change increases the risk of undernutrition due to decreased food availability and accessibility.<sup>248</sup> This has disproportionately negative impacts on vulnerable groups

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<sup>243</sup> Cf. IACHR, Resolution 3/21, Art. 16 (“Climate change affects all people, but it generates differentiated impacts with respect to the effective enjoyment of their rights. States have a reinforced obligation to guarantee and protect the rights of individuals or groups who are in situations of vulnerability or who are particularly vulnerable to the damage and adverse impacts of climate change because they have historically and systematically borne the greatest burden of structural inequality.”).

<sup>244</sup> IPCC, 2022, pp. 12-13.

<sup>245</sup> UN Special Rapporteurs Amicus Brief, IACtHR Advisory Opinion, para. 65 (citing *Advisory Opinion OC-23/17*, para. 66).

<sup>246</sup> IPCC, 2022, p. 11. See also UN Human Rights Council, Resolution 29/15, *Human rights and climate change*, UN Doc. A/HRC/RES/29/15 (22 July 2015) (Dossier No. 268).

<sup>247</sup> Special Rapporteur on the Environment, Climate Report No. 2, paras. 31-32.

<sup>248</sup> IPCC, 2022, pp. 9, 48, 51.

such as children and pregnant women.<sup>249</sup> The climate extremes induced by the 2015-2016 El Niño resulted in an additional 5.9 million children in 51 countries becoming underweight.<sup>250</sup> Climate change also contributed to the 2008 food crisis, when prices for staples rose between 20% and 50% in some countries, and led to an increase between one-third and one-half in rates of severe malnutrition of young children.<sup>251</sup> According to the International Food Policy Research Institute, by 2050, there will be 20% more malnourished children than would be the case without climate change.<sup>252</sup>

3.77 In addition to impacts on physical health, there is growing evidence that climate change results in severe mental health challenges due to trauma associated with extreme weather events and loss of livelihoods and culture.<sup>253</sup> As a demographically young country with close to 40 percent of its people between 0-14 years, Sierra Leone’s youngest generation will be particularly susceptible to such disproportionate health risks.<sup>254</sup>

3.78 For Sierra Leone, climate-induced flooding leads to increased exposure to water-borne diseases such as cholera, diarrhea, and dysentery.<sup>255</sup> Extreme heat, which reaches the high 40s (°C)

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<sup>249</sup> *Ibid.*, pp. 9, 49-51. See also J. Currie & O. Deschênes, “Children and Climate Change: Introducing the Issue” (2016) 26(1) *Children and Climate Change* 3, available at [https://futureofchildren.princeton.edu/sites/g/files/toruqf2411/files/media/children\\_and\\_climate\\_change\\_26\\_1\\_full\\_journal.pdf](https://futureofchildren.princeton.edu/sites/g/files/toruqf2411/files/media/children_and_climate_change_26_1_full_journal.pdf), pp. 3-9.

<sup>250</sup> IPCC, 2022, p. 51.

<sup>251</sup> E.D. Gibbons, “Climate Change, Children’s Rights, and the Pursuit of Intergenerational Climate Justice,” (2014) 16(1) *Health and Human Rights*, available at <https://tinyurl.com/amsj5by7> (citing J. Compton *et al.*, *Impact of the Global Food Crisis on the Poor: What is the Evidence?* (2010), available at <https://odi.cdn.ngo/media/documents/6371.pdf>).

<sup>252</sup> G.C. Nelson *et al.*, *Climate change: Impact on Agriculture and Costs of Adaptation* (2009), available at [https://www.unisdr.org/files/11292\\_IFPRIfood.pdf](https://www.unisdr.org/files/11292_IFPRIfood.pdf), p. vii.

<sup>253</sup> IPCC, 2023, pp. 15, 50-51.

<sup>254</sup> United Nations Population Fund, “World Population Dashboard Sierra Leone” (last accessed: 1 March 2024), available at <https://www.unfpa.org/data/world-population/SL>; Third National Communication of Sierra Leone to the UNFCCC, p. 49 (“Demographically, it is a very young country with 75 percent of the population below the age of 35.”).

<sup>255</sup> See International Monetary Fund African Department, *Climate Change: Mainstreaming Adaption in Sierra Leone* (2022), available at <https://www.elibrary.imf.org/view/journals/002/2022/260/article-A001-en.xml>, para. 2; Irish Aid, *Sierra Leone Climate Action Report* (November 2015), available at <https://www.irishaid.ie/media/irishaid/allwebsitemedia/20newsandpublications/publicationpdfsenglish/Country-Climate-Action-Reports-Sierra-Leone-FINAL.pdf>, p. 3.

in certain areas, creates dangerous living conditions and public health problems.<sup>256</sup> Sierra Leone's health facilities are also exposed to natural hazards and thus at significant risk.<sup>257</sup> For instance, several health facilities were damaged or destroyed during the 2017 landslide and flooding disaster in Freetown.<sup>258</sup> Having to address these direct and indirect impacts of climate change burdens the country's social infrastructure, which has already been strained due to competing needs to address health disasters such as the Ebola Virus (2014) and the ongoing Covid-19 pandemic.<sup>259</sup>

3.79 The close relationship between climate change and human health is recognized in Article 4(f) of the UNFCCC, which provides that States should undertake climate change adaptation and mitigation actions “with a view to minimizing adverse effects ... on public health.” The Paris Agreement reaffirmed that “parties should, when taking action to address climate change, respect, promote and consider their respective obligations on ... *the right to health*.”<sup>260</sup> The IPCC confirms that “[d]eep, rapid, and sustained mitigation and accelerated implementation of adaptation actions in this decade would reduce projected losses and damages for humans ... and deliver many co-benefits, especially for ... health.”<sup>261</sup>

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<sup>256</sup> World Bank Group, *Sustainable Cities: Urban Areas and Climate Change in Sierra Leone* (June 2023), available at <https://tinyurl.com/23v8v7r6>, p. 15.

<sup>257</sup> *Ibid.*, pp. VIII, 24.

<sup>258</sup> *Ibid.*, p. 24.

<sup>259</sup> *Ibid.*, p. IX.

<sup>260</sup> Paris Agreement, Preamble (emphasis added). In 2016, the OHCHR conducted an analytical study on the relationship between climate change and the right to health pursuant to HRC resolution 29/15. The UNFCCC's input to this analytical study confirmed that the Convention reflects the need to consider the human and social dimensions of climate change, including in the context of the substantive obligations of Parties under Article 4. See UN OHCHR, *Inputs for OHCHR's Analytical Study on the Impacts of Climate Change on the Enjoyment of the Right to Health (Human Rights Council Resolution 29/15): Contribution by UNFCCC* (2016), available at <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/Impact/UNFCCC.pdf>, pp. 1-2.

<sup>261</sup> IPCC, 2023, p. 25, para. C.2.



### C. RIGHT TO ADEQUATE FOOD

3.80 Pursuant to Article 11(1) of the ICESCR, States Parties recognize “the right of everyone to an adequate standard of living for himself and his family, including *adequate food*, clothing and housing, and to the continuous improvement of living conditions” and commit to undertake steps to ensure the realization of this right. Pursuant to Article 11(2), States Parties are obliged to take more immediate and specific steps to ensure the “fundamental right of everyone to be free from hunger.”<sup>262</sup>

3.81 Article 11(1) emphasizes the “essential importance of international co-operation” in the full realization of the right to adequate food. The UN Special Rapporteur on the Right to Food noted that this right under the ICESCR “contains the most important and clearest commitment of member States to cooperate.”<sup>263</sup> Indeed, the duty to cooperate—discussed above in the context of international environmental law—plays a critical role in international human rights law as well, especially in facilitating the full realization of economic, social, and cultural rights.<sup>264</sup> Article 23 of the ICESCR expressly identifies “the furnishing of technical assistance” among the means of “international action for the achievement of the rights recognized.” The CESCR has emphasized that “in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States.”<sup>265</sup>

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<sup>262</sup> UN CESCR, *General Comment No. 12: The right to adequate food*, UN Doc. E/C.12/1999/5 (12 May 1999), para. 1.

<sup>263</sup> UN Commission on Human Rights, *Report of the Special Rapporteur on the Right to Food, Jean Ziegler*, UN Doc. E/CN.4/2006/44 (16 March 2006), para. 32 (noting that the right to food under the ICESCR “contains the most important and clearest commitment of member States to cooperate”).

<sup>264</sup> ICESCR, Arts. 11, 15, 22, 23. UN CESCR, *General Comment No. 3: The Nature of States Parties' Obligations*, UN Doc. E/1991/23 (14 December 1990), para. 13.

<sup>265</sup> UN CESCR, *General Comment No. 3: The Nature of States Parties' Obligations*, UN Doc. E/1991/23 (14 December 1990), para. 14.

3.82 States Parties to the ICESCR have a duty to respect, protect, and fulfil the right to food.<sup>266</sup> Pursuant to Article 2(1) of the ICESCR, this includes the positive obligation to take measures to achieve progressively the full realization of the right, and move expeditiously as possible towards that goal.<sup>267</sup>

3.83 In the context of climate change, this means that States must take steps to mitigate and adapt to climate change, including by reducing GHG emissions to meet the 1.5°C standard in the Paris Agreement. Developed States must also cooperate with, and provide support to, particularly vulnerable States in connection with their efforts to mitigate and adapt to climate change. This is because climate change poses direct and significant threats to the right to adequate food, with disproportionate effects on particularly vulnerable countries such as Sierra Leone.<sup>268</sup>

3.84 Food production and food security are affected by shifting precipitation patterns, higher temperatures, extreme weather events, changing sea ice conditions, droughts, floods, algal blooms and salinization.<sup>269</sup> According to the IPCC, climate change has already affected the productivity of agricultural, forestry and fishery sectors. Extreme weather events and natural hazards hamper crop, livestock, and aquaculture productivity.<sup>270</sup> In the oceans, temperature changes, bleaching of coral reefs and ocean acidification are directly affecting fisheries.<sup>271</sup> Floods, droughts, wildfires, and marine heatwaves have contributed to increased food prices and reduced food availability, threatening the food security of millions of people across regions.<sup>272</sup> According to the FAO, in

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<sup>266</sup> UN Commission on Human Rights, *Report of the Special Rapporteur on the Right to Food, Jean Ziegler*, UN Doc. E/CN.4/2006/44 (16 March 2006), paras. 17-38.

<sup>267</sup> UN CESCR, *General Comment No. 12: The Right to Adequate Food*, UN Doc. E/C.12/1999/5 (12 May 1999), paras. 14-15.

<sup>268</sup> UN Human Rights Council, *Report of the Secretary-General on the adverse impact of climate change on the full realization of the right to food*, UN Doc. A/HRC/53/47 (19 June 2023) (Dossier No. 293), para. 3 (citing A/64/170, A/67/268, A/69/275, A/70/287, A/71/282, A/72/188, A/HRC/7/5, A/HRC/9/23, A/HRC/16/49, A/HRC/25/57, A/HRC/31/51, A/HRC/31/51/Add.1, A/HRC/31/51/Add.2, A/HRC/34/48, A/HRC/34/48/Add.1, A/HRC/37/61 and IPCC 2022, p. 14).

<sup>269</sup> Special Rapporteur on the Environment, *Climate Report No. 2*, paras. 33-36.

<sup>270</sup> UN Human Rights Council, *Report of the Special Rapporteur on the right to food*, UN Doc. A/HRC/37/61 (25 January 2018) (Dossier No. 324), para. 11.

<sup>271</sup> Special Rapporteur on the Environment, *Climate Report No. 2*, para. 34.

<sup>272</sup> UN Human Rights Council, *Report of the Secretary-General on the adverse impact of climate change on the full realization of the right to food*, UN Doc. A/HRC/53/47 (19 June 2023) (Dossier No. 293), paras. 4, 8; IPCC, 2022,

Africa alone, between 2008 and 2018, agricultural production loss caused by climate change amounted to \$30 billion.<sup>273</sup>

3.85 Sierra Leone is particularly vulnerable to these adverse impacts, as it already struggles from high levels of food insecurity and its economy relies heavily on the climate-sensitive agricultural sector. Due to changed rainfall patterns, strong winds, thunderstorms, landslides, heatwaves, floods, and droughts, the country has experienced drops in crop yields and difficulties in transporting agricultural produce.<sup>274</sup> The World Food Programme's 2023 Global Report on Food Crises projected unprecedented levels of acute food insecurity in West Africa and the Sahel,<sup>275</sup> and noted that for Sierra Leone, extreme weather events and rainfall deficits led to localized crop losses, while floods in the northwest, west and southern areas destroyed an estimated 6,000 hectares of rice farms and other crops.<sup>276</sup>

3.86 Climate change exacerbates drivers of malnutrition and food insecurity, such as poverty and conflict.<sup>277</sup> As Sierra Leone emphasized in a recent UN Security Council Open Debate, the nexus between food insecurity, climate change, and conflict is evident in various regions across the globe.<sup>278</sup> Climate-related disruptions render agricultural systems increasingly susceptible to failure, which in turn leads to competition for dwindling natural resources and a heightened risk

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pp. 48-49; FAO, *Climate Change and Food Security: Risks and Responses* (2015), available at <https://www.fao.org/3/i5188e/I5188E.pdf>, pp. 8-9.

<sup>273</sup> UN Human Rights Council, *Report of the Secretary-General on the adverse impact of climate change on the full realization of the right to food*, UN Doc. A/HRC/53/47 (19 June 2023) (Dossier No. 293), para. 4.

<sup>274</sup> Third National Communication of Sierra Leone to the UNFCCC, p. 17.

<sup>275</sup> Food Security Information Network & Global Network Against Food Crises, *2023 Global Report on Food Crises* (2 May 2023), available at <https://www.wfp.org/publications/global-report-food-crises-2023>, pp. 10, 43.

<sup>276</sup> *Ibid.*, p. 130.

<sup>277</sup> Special Rapporteur on the Environment, Climate Report No. 2, paras. 33-36.

<sup>278</sup> Sky News, "UN Security Council meet for high-level debate on the impact of climate change," *YouTube* (13 February 2024), available at <https://www.youtube.com/watch?v=WFhscHMVM0E>, at 1:49:30-1:57:30. See also UN, *Press Release: Climate Action Can Help Fight Hunger, Avoid Conflicts, Official Tells Security Council, Urging Greater Investment in Adaptation, Resilience, Clean Energy* (13 February 2024), available at <https://press.un.org/en/2024/sc15589.doc.htm>.

of conflict within and between nations.<sup>279</sup> The most common risk of conflict linked to livelihood insecurity is over access to resources, including grazing areas, agricultural land, and water.<sup>280</sup>

3.87 The consequences of declining fish harvests due to rising ocean temperatures and ocean acidification are felt particularly hard in countries like Sierra Leone where the population depends heavily on fisheries and aquaculture. Per capita fish consumption in Sierra Leone is approximately 17 kg per annum and provides about 80% of animal protein intake by all Sierra Leoneans.<sup>281</sup> In one study assessing the nutritional vulnerabilities of African countries to climate change and overfishing, Sierra Leone was noted as one of the four most vulnerable countries (alongside Mozambique, Madagascar, and Tanzania).<sup>282</sup> Like other West African nations, Sierra Leone is particularly vulnerable to a decreased seafood supply from international imports, meaning that the country's climate risks of seafood insecurity will be increased by impacts on fisheries elsewhere.<sup>283</sup>

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<sup>279</sup> UN, *Press Release: Climate Action Can Help Fight Hunger, Avoid Conflicts, Official Tells Security Council, Urging Greater Investment in Adaptation, Resilience, Clean Energy* (13 February 2024), available at <https://press.un.org/en/2024/sc15589.doc.htm>.

<sup>280</sup> *Ibid.*

<sup>281</sup> K. Dabo & L. Sesay, *Migration of small-scale fishermen in Sierra Leone: current status* (Union Internationale pour la Conservation de la Nature 2012), available at [http://spsr.org/sites/default/files/csrp/projets/recargao/comp4/natRep/Migrant\\_fisheries\\_Sierra\\_Leone\\_final\\_sc.pdf](http://spsr.org/sites/default/files/csrp/projets/recargao/comp4/natRep/Migrant_fisheries_Sierra_Leone_final_sc.pdf), p. 4. See also IPCC, 2022, p. 760 (“Globally, fish provide more than 3.3 billion people with 20% of their average per capita intake of animal proteins, reaching 50% or more in countries such as Bangladesh, Cambodia, The Gambia, Ghana, Indonesia, Sierra Leone, Sri Lanka and several Small Island Developing States (FAO, 2020c).”).

<sup>282</sup> IPCC, 2022, p. 1358.

<sup>283</sup> See J.A. Gephart *et al.*, “Shocks to fish production: Identification, trends, and consequences” (2017) 42 *Global Environmental Change* 24, available at <https://doi.org/10.1016/j.gloenvcha.2016.11.003>.

#### D. RIGHT TO SELF-DETERMINATION

3.88 The right to self-determination is a foundational principle of international human rights law. The UN Charter includes “respect for the principle of ... self-determination of peoples” as one of the purposes of the United Nations.<sup>284</sup> The Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations again affirms that “[e]very State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter.”<sup>285</sup>

3.89 The right to self-determination is codified as well in the ICCPR and the ICESCR. Both provide in common Article 1(1) that “[a]ll peoples have the right of self-determination” and by virtue of that right, “they freely determine their political status and freely pursue their economic, social and cultural development.”<sup>286</sup> The right of self-determination is particularly important because its realization forms a necessary condition for the effective observance and promotion of other human rights.<sup>287</sup> Both Covenants provide in Article 1(3) that States Parties “shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.” This article imposes specific obligations on

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<sup>284</sup> UN Charter, Art. 1(2). *See also* R. Wolfrum, “Purposes and Principles, Article 1” in B. Simma *et al.* (eds.), *The Charter of the United Nations: A Commentary* (3rd Ed., OUP 2012), para. 4 (noting that while “the wording of Art. 1 is more appropriate for political objectives rather than for legally binding obligations[,] ... certain elements of Art. 1 (1) and (2) are considered principles binding under customary international law (such as ... respect for equal rights, and self-determination of peoples.)”; S. Oeter, “Self-Determination” in B. Simma *et al.* (eds.), *The Charter of the United Nations: A Commentary* (3rd Ed., OUP 2012), para. 1 (“Subsequent development in the UN, in particular the practice of decolonization, transformed the old (political) principle of self-determination into a collective right—a trend which became more or less irrefutable with the codification of the right of self-determination in the two UN Human Rights Covenants of 1966.”).

<sup>285</sup> UN General Assembly, Resolution 2625 (XXV), *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, UN Doc. A/RES/2625(XXV) (24 October 1970), pp. 123-124.

<sup>286</sup> ICCPR and ICESCR, Common Article 1. *See also* Africa Charter on Human and People’s Rights, Art. 20.

<sup>287</sup> UN Human Rights Committee, *General Comment No. 12: Article 1 (Right to Self-determination)*, *The Right to Self-determination of Peoples* (13 March 1984), para. 1.

States Parties to “take positive action to facilitate realization of and respect for the right of peoples to self-determination.”<sup>288</sup>

3.90 In the context of climate change, the obligation entails, among other things, the duty to adopt, implement, and enforce measures to mitigate and adapt to climate change. States must reduce anthropogenic GHG emissions with the aim to limit the increase in global average temperatures to 1.5°C above pre-industrial levels. This is because those emissions exacerbate climate change, which in turn threaten the right to self-determination.<sup>289</sup>

3.91 Over the past decades, excessive levels of anthropogenic GHG emissions have led to an increase in ocean temperature, ocean acidification affecting marine ecosystems, and rising sea levels.<sup>290</sup> According to the World Meteorological Organization, global mean sea level (“GMSL”) rise is *accelerating*; while the 2001-2010 rate of GMSL rise was 2.9mm/yr, the rate for 2011-2020 jumped to 4.5mm/yr.<sup>291</sup> As examined at length by the ILC Study Group on sea-level rise in relation to international law, rising sea levels pose multiple threats, including forced relocation, loss of property, housing, agricultural land, and physical and emotional loss.<sup>292</sup> For island States and States with low-lying coastal areas, such as Sierra Leone, these effects of climate change can pose an existential crisis. Sea-level rise can lead to their territories being partially or fully submerged,

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<sup>288</sup> *Ibid.*, para. 6.

<sup>289</sup> UN Human Rights Council, *Report of the Human Rights Council on its tenth session*, Resolution 10/4, UN Doc. A/HRC/10/29 (9 November 2009) (Dossier No. 265), Preamble, p. 12.

<sup>290</sup> See IPCC, 2022, pp. 387-388, 392-396. See also UN General Assembly, Resolution 61/222, *Oceans and the law of the sea*, UN Doc. A/RES/61/222 (20 December 2006), Preamble, p. 2, in which the General Assembly “[e]xpress[ed] its concern over the projected adverse effects of anthropogenic and natural climate change and ocean acidification on the marine environment and marine biodiversity.”

<sup>291</sup> World Meteorological Organization, *The Global Climate 2011-2020: A decade of accelerating climate change* (2023), available at [https://library.wmo.int/viewer/68585/download?file=1338\\_Decadal\\_State\\_Climate-HG\\_en.pdf&type=pdf&navigator=1](https://library.wmo.int/viewer/68585/download?file=1338_Decadal_State_Climate-HG_en.pdf&type=pdf&navigator=1), pp. 2, 15.

<sup>292</sup> See ILC, 73<sup>rd</sup> Session, *Sea-level rise in relation to international law: Second issues paper by Patrícia Galvão Teles and Juan José Ruda Santolaria*, UN Doc. A/CN.4/752 (19 April 2022) (Dossier No. 102), paras. 159-174; ILC, 73<sup>rd</sup> Session, *Report of the International Law Commission*, Chapter IX: Sea-level rise in relation to international law, UN Doc. A/77/10 (2022) (Dossier No. 101), paras. 150–237. See also UN General Assembly Resolution 72/217, *Follow-up to and implementation of the SIDS Accelerated Modalities of Action (SAMOA) Pathway and the Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States*, UN Doc. A/RES/72/217 (25 January 2018), Preamble (noting that sea-level rise poses a serious and real threat for the survival of small island developing States); UN General Assembly, *Draft Resolution on ‘Security and Climate Change’*, UN Doc. A/63/L.8 (27 October 2008), para. 14.

or otherwise uninhabitable. This directly impacts the right of self-determination, including for Sierra Leone.<sup>293</sup> There are additional sea level rise implications, including in relation to the baselines for coastal states and questions of statehood and recognition stemming from territorial loss.

3.92 For indigenous peoples, the loss of territory could mean the permanent loss of access to traditional social and cultural spaces that are integral to their identity. The United Nations Declaration on the Rights of Indigenous People (“**UNDRIP**”) emphasizes the “inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources.”<sup>294</sup> In the *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* case, which concerned the rights of indigenous communities, the IACtHR referred to the communities’ relations to the land as necessary to “preserve their cultural legacy and transmit it to future generations.”<sup>295</sup>

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<sup>293</sup> ILC, 73<sup>rd</sup> session, *Report of the ILC Study Group on sea-level rise in relation to international law*, UN Doc. A/CN.4/L.972 (15 July 2022), p. 8 (“any reflection on statehood and sea-level rise should include the principle of common but differentiated responsibilities, insofar as the cost of addressing such a severe global environmental problem should be distributed among different States according to their historical responsibility and to their capabilities”); ILC, 73<sup>rd</sup> Session, *Sea-level rise in relation to international law: Second issues paper by Patrícia Galvão Teles and Juan José Ruda Santolaria*, UN Doc. A/CN.4/752 (19 April 2022) (Dossier No. 102), para. 30; UN Special Rapporteurs Amicus Brief, IACtHR Advisory Opinion, para. 86 (“Rising sea levels create novel concerns about these States’ right to self-determination, particularly low-lying and Small Island Developing States, to whom sea-level rise poses an existential threat. Sea-level rise and the inundation of coastal areas and islands will have consequences to those States’ sovereignty and statehood, the law of the sea based on maritime zones extending from their territories, and the protection of persons affected by sea-level rise.”); Amicus brief submitted to ITLOS by the UN Special Rapporteurs on Human Rights & Climate Change (Ian Fry), Toxics & Human Rights (Marcos Orellana), and Human Rights & the Environment (David Boyd) (30 May 2023), para. 47 (“The right to self-determination is dramatically affected by rising sea levels, as well as other impacts of climate change-related pollution of the marine environment.”).

<sup>294</sup> UN General Assembly, Resolution 61/295, *United Nations Declaration on the Rights of Indigenous People*, UN Doc. A/RES/61/295 (2 October 2007), Preamble. *See also ibid.*, Art. 3 (“Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”).

<sup>295</sup> *See Mayagna (Sumo) Awas Tingni Community v. Nicaragua Case*, IACtHR, Judgment (31 August 2001), para. 149. The Joint Separate Opinion of three of the judges addressed the intertemporal dimension more fully and explicitly, noting that “we relate ourselves ... in time, with other generations (past and future), in respect of which we have obligations.” *Ibid.*, Joint Separate Opinion of Judges Cançado Trindade, Pacheco-Gómez, and Abreu-Burelli, para. 10.

3.93 Sierra Leone has extensive low-lying deltas, and a densely populated coastal zone.<sup>296</sup> Sierra Leone’s Third National Communication to the UNFCCC in 2018 noted that “[t]he coastal zone of Sierra Leone is very susceptible to sea level rise” and warned of “[p]ermanent inundation” in some areas.<sup>297</sup> If action is not taken, at least 26.4 km sq. of Sierra Leone’s coastline is projected to be lost to the sea.<sup>298</sup> By 2050, rising sea levels are projected to lead to \$46.8 million in building losses, with 1,881 buildings affected.<sup>299</sup> This is an urgent problem across Africa. The 2023 Moroni Declaration for Ocean and Climate Action in Africa recognized that the “coastal nations of the African continent are on the extreme frontlines of the impact of interconnected crises of biodiversity loss, climate change, and coastal zones degradation including impacts on the ocean and socioeconomic vulnerability.”<sup>300</sup>

3.94 Over 2 million Sierra Leoneans are at risk from accelerating rates of coastal recession.<sup>301</sup> In some areas, coastal erosion has already caused significant disruption to the livelihoods of coastal inhabitants, resulting in a shifting of the coastline by about four to six meters per year.<sup>302</sup> Many of those people, including the inhabitants of Yelibuya, Turtle Island and Plantain Island, have already been forced to uproot their lives and relocate due to flooding and inundation.<sup>303</sup>

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<sup>296</sup> UNDP Sierra Leone, *Action Plan for Coastal Protection Measures* (10 August 2022), available at <https://www.undp.org/sites/g/files/zskgke326/files/2023-03/undp-sle-action-plan-coastal-protection-measures-2022-2023.pdf>, pp. 4, 14.

<sup>297</sup> Third National Communication of Sierra Leone to the UNFCCC, p. 354.

<sup>298</sup> *Ibid.*, p. 22.

<sup>299</sup> Sierra Leone National Adaptation Plan, p. 29.

<sup>300</sup> Moroni Declaration for Ocean and Climate Action in Africa (14 June 2023), available at <https://www.uneca.org/eca-events/sites/default/files/resources/documents/sro-ea/blue-future-conference-2023/Declaration%20English.pdf>, p. 1.

<sup>301</sup> See UNDP Sierra Leone, *Statement by UNDP Resident Representative – Dr. Samuel Doe* (3 April 2019), available at <https://www.undp.org/sierra-leone/speeches/statement-undp-resident-representative-%E2%80%93-dr-samuel-doe>. See also Third National Communication of Sierra Leone to the UNFCCC, p. 354.

<sup>302</sup> Sierra Leone National Adaptation Plan, p. 29.

<sup>303</sup> M. Kardas-Nelson, “Yelibuya: Why is this town in Sierra Leone sinking?,” *Al Jazeera* (24 August 2018), available at <https://www.aljazeera.com/features/2018/8/24/yelibuya-why-is-this-town-in-sierra-leone-sinking>; A. Brima, “Sierra Leone’s sinking islands,” *China Dialogue Ocean* (6 October 2021), available at <https://chinadialogueocean.net/en/governance/19162-sea-level-rise-sierra-leone-sinking-islands/> (“On Plantain Island, home to one of Sierra Leone’s most historic sites, sea-level rise is causing devastation.”); S. Bah & A. Prager, “Sierra Leone’s turtle islands are under threat,” *DW* (18 December 2020), available at <https://www.dw.com/en/sierra->



3.95 Indeed, Freetown, the national capital and the most populous city in the country, is itself at serious risk from intensified storm surges as a result of sea level rise.<sup>304</sup> Sierra Leone is hardly alone in that regard. The IPCC highlighted in its recent report that “Populations at risk from storm surge and/or sea level rise coincide with areas of high coastal EbA [ecosystem-based adaptation] potential from Mozambique to Somalia, and coastlines of the Gulf of Guinea, Gambia, Guinea-Bissau and Sierra Leone.”<sup>305</sup>

3.96 Coastal communities in Sierra Leone are already experiencing considerable repercussions on their livelihoods with “reduced fishing productivity, ecosystem degradation and low farming outputs.”<sup>306</sup> The fisheries sector is the primary livelihood for half a million people in Sierra Leone.<sup>307</sup> It provides food security and employment opportunities and contributes approximately 10 percent to the country’s GDP.<sup>308</sup> Additionally, similar to agriculture, fish processing and marketing is a primarily women-led sector, rendering women’s work more climate sensitive.<sup>309</sup>

3.97 In the Guinea Current Large Marine Ecosystem (“GCLME”) that flows along Sierra Leone’s coast, for instance, ocean warming has contributed to changes in species composition, and is projected to reduce catch potential and fisheries jobs. Continued warming is expected, by 2050, to reduce fisheries jobs with GCLME by 30% and reduce catch potential by up to 42%.<sup>310</sup> Studies

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leones-turtle-islands-are-under-threat/video-55981516 (reporting that on the Turtle Islands, around 500 inhabitants have already relocated further inland after floods repeatedly washed away their homes).

<sup>304</sup> S. Dasgupta *et al.*, *Sea-Level Rise and Storm Surges: A Comparative Analysis of Impacts in Developing Countries*, World Bank Policy Research Working Paper No. 4901 (1 April 2009), available at <https://research.fit.edu/media/site-specific/researchfitedu/coast-climate-adaptation-library/global/world-bank-reports/World-Bank.-2009.-Global-SLR--Storm-Surges--Developing-Countries.pdf>, p. 16, Figure 2 and p. 33, Table 4. See also S. El-Shahat *et al.*, “Vulnerability assessment of African coasts to sea level rise using GIS and remote sensing” (2021) 23 *Environment, Development and Sustainability* 2827, available at <https://doi.org/10.1007/s10668-020-00639-8>, pp. 2839-2843.

<sup>305</sup> IPCC, 2022, p. 1342.

<sup>306</sup> UNDP, “Adapting to Climate Change Induced Coastal Risks Management in Sierra Leone” (last accessed: 1 March 2024), available at <https://www.adaptation-undp.org/projects/adapting-climate-change-induced-coastal-risks-management-sierra-leone>.

<sup>307</sup> Sierra Leone National Adaptation Plan, p. 17. See also IPCC, 2022, p. 760.

<sup>308</sup> Sierra Leone National Adaptation Plan, p. 17.

<sup>309</sup> *Ibid.*

<sup>310</sup> D. Belhabib *et al.*, “Overview of West African fisheries under climate change: Impacts, vulnerabilities and adaptive responses of the artisanal and industrial sectors” (2016) 71 *Marine Policy* 15, available at <https://doi.org/10.1016/j.marpol.2016.05.009>, pp. 21-22.

show that warmer seas have already contributed to a toxic algae bloom and increased cases of food poisoning from consumption of shellfish and reef fish in Freetown.<sup>311</sup> At an increase in water temperature of >4°C, Sierra Leone will suffer a 51-60% decrease in maximum catch potential of marine fisheries.

3.98 These changes severely impact peoples' livelihood security, which directly implicates the right to self-determination. As the Office of the High Commissioner for Human Rights has observed, “[c]limate change not only poses a threat to the lives of individuals but also to their ways of life and livelihoods, and to the survival of entire peoples.”<sup>312</sup> Common Article 1 of the ICCPR and the ICESCR likewise stresses that “in no case may a people be deprived of its own means of subsistence” and all people must be able to “freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law.”<sup>313</sup>

3.99 The Court reaffirmed in its Advisory Opinion on *Separation of the Chagos Archipelago* that “respect for the right to self-determination is an obligation *erga omnes*” and thus “all States have a legal interest in protecting that right.”<sup>314</sup> In its earlier decision in *East Timor (Portugal v. Australia)*, the Court described as “irreproachable” the fact that self-determination has an *erga omnes* character.<sup>315</sup> The right to self-determination is also considered a peremptory norm (*jus cogens*) under the ILC's Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*).<sup>316</sup> And the Human Rights Council resolution

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<sup>311</sup> Sierra Leone National Adaptation Plan, p. 30 (“In Freetown, from July-August 2011 and in August 2012, warmer seas contributed to a toxic algae bloom and increased cases of food poisoning from consumption of shellfish and reef fish.”).

<sup>312</sup> UN OHCHR, *Frequently Asked Questions on Human Rights and Climate Change: Fact Sheet No. 38* (2021), available at [https://www.ohchr.org/sites/default/files/Documents/Publications/FSheet38\\_FAQ\\_HR\\_CC\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/FSheet38_FAQ_HR_CC_EN.pdf), p. 5.

<sup>313</sup> ICCPR and ICESCR, Common Article 1(2).

<sup>314</sup> *Chagos Advisory Opinion*, p. 139, para. 180.

<sup>315</sup> *East Timor (Portugal v. Australia)*, *Judgment*, *I.C.J. Reports 1995*, p. 90, at p. 102, para. 29.

<sup>316</sup> ILC, Draft conclusion on identification and legal consequences of peremptory norms of general international law (*jus cogens*), with commentaries, A/77/10 (2021), reproduced in *Yearbook of the International Law Commission 2022*, Vol. II(2), p. 16.

49/28 of 11 April 2022 similarly “emphasiz[ed]” that the right to self-determination is a “*jus cogens* norm of international law.”<sup>317</sup> As such, respect for the right to self-determination is a non-derogable obligation that imposes on States heightened duties.<sup>318</sup> The heightened duties, in the view of Sierra Leone, must necessarily include their obligations to take all measures within their disposal to address the deleterious impacts of climate change.

#### E. RIGHT TO DEVELOPMENT

3.100 In 1986, the UN General Assembly adopted the Declaration on the Right to Development by its resolution 41/128.<sup>319</sup> Article 1 of the Declaration provides that the right to development “is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”

3.101 The right to development is enshrined in regional human rights instruments, including the African Charter on Human and Peoples’ Rights, which provides that “States shall have the duty, individually or collectively, to ensure the exercise of the right to development.”<sup>320</sup> The Arab Charter on Human Rights and the ASEAN Human Rights Declaration also describe the right to development as a “fundamental”<sup>321</sup> and “inalienable”<sup>322</sup> human right. The CESCR recognized “the close relationship and the complementarity” between the ICESCR and the Declaration on the Right to Development and explained that, by monitoring the implementation of the rights under

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<sup>317</sup> UN Human Rights Council, Resolution 49/28, *Right of the Palestinian people to self-determination*, UN Doc. A/HRC/RES/49/28 (11 April 2022), Preamble, p. 2.

<sup>318</sup> See ILC, Draft conclusion on identification and legal consequences of peremptory norms of general international law (*jus cogens*), with commentaries, A/77/10 (2021), reproduced in *Yearbook of the International Law Commission 2022*, Vol. II(2), pp. 27, 70, 89.

<sup>319</sup> UN General Assembly, Resolution 41/128, *Declaration on the right to development*, UN Doc. A/RES/41/128 (4 December 1986) (“**Declaration on the Right to Development**”).

<sup>320</sup> African Charter on Human and Peoples’ Rights, Art. 22(2).

<sup>321</sup> Arab Charter on Human Rights (22 May 2004), Art. 37.

<sup>322</sup> ASEAN Human Rights Declaration (19 November 2012), Art. 35.

ICESCR, the Committee contributes “simultaneously to the full realization of the relevant elements of the right to development.”<sup>323</sup>

3.102 The right to development is closely linked to norms and principles relevant to climate change, including equity,<sup>324</sup> the self-determination of peoples,<sup>325</sup> and sustainable development. The 2030 Agenda for Sustainable Development notes that it is informed by, among other instruments, the Declaration on the Right to Development,<sup>326</sup> and expressly refers to respect for the right to development as a prerequisite for sustainable development.<sup>327</sup> The Rio Declaration and the Vienna Declaration and Programme of Action both provide that “[t]he right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.”<sup>328</sup> In particular, by stressing that “*environmental protection* shall constitute an *integral part of the development process* and cannot be considered in isolation from it,” the Rio Declaration and other international instruments make clear that the right to development remains vital for developing States such as Sierra Leone but at the same time that it cannot be invoked by States as a justification for ignoring their obligations under international environmental law.<sup>329</sup>

3.103 The Paris Agreement expressly states that “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights ... [including] *the right to development*.”<sup>330</sup> Article 3 of the UNFCCC likewise recognizes that “Parties have a right to, and should, promote *sustainable development*” and emphasizes that

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<sup>323</sup> See UN CESCR, *Statement on the Importance and Relevance of the Right to Development, adopted on the occasion of the 25<sup>th</sup> anniversary of the Declaration on the Right to Development*, UN Doc. E/C.12/2011/2 (20 May 2011), paras. 1 and 7.

<sup>324</sup> Declaration on the Right to Development, Art. 2 (“fair distribution of the benefits” of development); *ibid.*, Art. 8. See also UN OHCHR, *Frequently Asked Questions on the Right to Development: Fact Sheet No. 37*, [https://www.ohchr.org/sites/default/files/Documents/Publications/FSheet37\\_RtD\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/FSheet37_RtD_EN.pdf), p. 2.

<sup>325</sup> Declaration on the Right to Development, Art. 1; ICESCR, Art. 1(1).

<sup>326</sup> 2030 Agenda for Sustainable Development, para. 10.

<sup>327</sup> *Ibid.*, para. 35.

<sup>328</sup> Rio Declaration, Principle 3; Vienna Declaration and Programme of Action (adopted on 25 June 1993), para. 11 (“The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations.”).

<sup>329</sup> Rio Declaration, Principle 4 (emphasis added).

<sup>330</sup> Paris Agreement, Preamble (emphasis added).

“economic development is essential for adopting measures to address climate change.”<sup>331</sup> The Convention also affirms that responses to climate change should take “into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty.”<sup>332</sup> As President Julius Maada Bio recently stated: “Our stance is unequivocal: We are here to collaborate, not capitulate. We seek cooperation, not charity.”<sup>333</sup>

3.104 The OHCHR has explained that the right to development imposes duties on States and the international community, whose actions and omissions impact human rights and the environment in which these rights are to be fulfilled.<sup>334</sup> Article 3(1) of the Declaration on the Right to Development stipulates that “States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.” Article 3(3) adds that “States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development.” Article 2(3) provides that “States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.” The Declaration simultaneously stresses that the right to development cannot be used as an excuse by States to diminish the import of other human rights.<sup>335</sup>

3.105 Climate change interferes with the right to development.<sup>336</sup> The United Nations, IPCC, and other organizations have warned that climate change has the potential to undo the development

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<sup>331</sup> UNFCCC, Art. 3 (emphasis added).

<sup>332</sup> *Ibid.*, Preamble (emphasis added).

<sup>333</sup> President of Sierra Leone’s Statement at the 2023 Africa Climate Summit, para. 25.

<sup>334</sup> UN OHCHR, *Frequently Asked Questions on the Right to Development: Fact Sheet No. 37*, available at [https://www.ohchr.org/sites/default/files/Documents/Publications/FSheet37\\_RtD\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/FSheet37_RtD_EN.pdf), pp. 3-4.

<sup>335</sup> *See* Declaration on the Right to Development, Art. 6.

<sup>336</sup> UN Human Rights Council, *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox*, UN Doc. A/HRC/22/43 (24 December 2012) (Dossier No. 303), para. 9.

progress achieved over the past years.<sup>337</sup> Direct shocks to livelihood assets and extreme weather events can force low-income groups into persistent poverty traps.<sup>338</sup> Increased costs of food, housing, and healthcare worsens poverty.<sup>339</sup> The IPCC concluded with high confidence that the “[a]dverse impacts of climate change, development deficits, and inequality exacerbate each other.”<sup>340</sup> By investing in mitigation and adaptation measures to climate change, developing countries are forced to divert scarce resources away from other development priorities such as tackling poverty and gender inequalities or providing access to basic services, education, institutions, and governance capacities. This leads to a vicious cycle, given that the most vulnerable countries have the most urgent need for adaptation and the poorest communities are least resilient to the impacts of climate change.<sup>341</sup>

3.106 While Sierra Leone continues to make important strides in advancing development, its economy is highly vulnerable to external and domestic shocks, and poverty and food insecurity remain major challenges.<sup>342</sup> Income poverty remains high, especially in rural areas. More than half (57 percent) of inhabitants live below the poverty line, nearly 1 million (10.8 percent) of whom are extremely poor. Food insecurity affects almost half (49.8 percent) of households across the

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<sup>337</sup> See UN, Sustainable Development Goals, “Goal 13: Take urgent action to combat climate change and its impacts” (last accessed: 1 March 2024), available at <https://www.un.org/sustainabledevelopment/climate-change/>. See also Sixth IPCC Report, pp. 1186-1187; S. Alfarargi, *Climate action and the right to development: a participatory approach* (October 2021), available at [https://www.ohchr.org/sites/default/files/2021-12/Policy\\_Brief\\_RTDC\\_Climate\\_Action.pdf](https://www.ohchr.org/sites/default/files/2021-12/Policy_Brief_RTDC_Climate_Action.pdf).

<sup>338</sup> IPCC, 2022, p. 1187. See also UNEP et al., *Poverty and Climate Change: Reducing the Vulnerability of the Poor – A Contribution to the Eighth Conference of the Parties to the United Nations Framework Convention on Climate Change* (October 2002), available at <https://wedocs.unep.org/handle/20.500.11822/30473>.

<sup>339</sup> IPCC, 2022, p. 1178.

<sup>340</sup> *Ibid.*, p. 1174.

<sup>341</sup> World Bank, *Social Dimensions of Climate Change: Equity and Vulnerability in a Warming World* (2010), available at <https://openknowledge.worldbank.org/server/api/core/bitstreams/57ef7f5d-df55-552f-91b8-843eb7b286a3/content>, p. 16 (noting that those living in poverty are more vulnerable to injury, death, and destitution as a result of extreme weather events, given that they live in less-robust structures, tend to be unprotected by heavy infrastructural defenses, may be invisible to municipal authorities, and lack access to information).

<sup>342</sup> See Government of Sierra Leone, *Sierra Leone’s Medium-Term National Development Plan 2019-2023* (2019) (“**Sierra Leone Medium-Term National Development Plan**”), available at [https://www.slurc.org/uploads/1/0/9/7/109761391/sierra\\_leone\\_national\\_development\\_plan.pdf](https://www.slurc.org/uploads/1/0/9/7/109761391/sierra_leone_national_development_plan.pdf), p. vii-viii.

country.<sup>343</sup> Sierra Leone is at high risk of debt distress, with the public debt estimated at US\$2 billion in 2017, of which external debt is \$1.5 billion (high relative to the size of the economy).<sup>344</sup>

3.107 Like other developing countries, Sierra Leone is committed to enhancing climate action by reducing its GHG emissions and building a climate-resilient and low-carbon economy. One of the country’s five “national goals,” as stated in its Medium-Term National Development Plan, is “a society that is resilient to climate change and natural disasters.”<sup>345</sup> Sierra Leone’s updated NDC estimates climate-related spending needs at US\$2.8 billion (66 percent of GDP in 2020) between 2021 and 2030,<sup>346</sup> in line with the Paris Agreement’s requirement that each Party’s successive NDC should reflect its “highest possible ambition.”<sup>347</sup>

3.108 Specifically, Sierra Leone has set as an adaptation goal the reduction of its vulnerability by half by 2030 and envisions reducing carbon dioxide emissions by 5 percent by 2025, 10 percent by 2030, and 25 percent by 2050.<sup>348</sup> In parallel, Sierra Leone has also expanded its adaptation targets and sought alignment with the Sustainable Development Goals.<sup>349</sup> As President Julius Maada Bio reaffirmed at the 2023 Africa Climate Summit, Sierra Leone is “unyieldingly devoted to climate change resilience and adaptation,” including through support for community-based adaptation in agriculture and energy sectors, integrated water resource management, and meteorological services for early warning systems.<sup>350</sup> The country has made extensive

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<sup>343</sup> Sierra Leone Medium-Term National Development Plan, p. 59. *See also* World Bank, *Poverty & Equity Brief: Sierra Leone* (October 2020), available at [https://databankfiles.worldbank.org/public/ddpext\\_download/poverty/987B9C90-CB9F-4D93-AE8C-750588BF00QA/SM2020/Global\\_POVEQ\\_SLE.pdf](https://databankfiles.worldbank.org/public/ddpext_download/poverty/987B9C90-CB9F-4D93-AE8C-750588BF00QA/SM2020/Global_POVEQ_SLE.pdf).

<sup>344</sup> Sierra Leone Medium-Term National Development Plan, p. 26.

<sup>345</sup> *Ibid.*, p. 5, Figure 1.2.

<sup>346</sup> International Monetary Fund African Department, “Climate Change: Mainstreaming Adaptation in Sierra Leone” in *Sierra Leone: Selected Issues* (29 July 2022), available at <https://www.elibrary.imf.org/view/journals/002/2022/260/article-A001-en.xml>, para. 12.

<sup>347</sup> Paris Agreement, Art. 4(3).

<sup>348</sup> International Monetary Fund African Department, “Climate Change: Mainstreaming Adaptation in Sierra Leone” in *Sierra Leone: Selected Issues* (29 July 2022), available at <https://www.elibrary.imf.org/view/journals/002/2022/260/article-A001-en.xml>, para. 6.

<sup>349</sup> UNDP, “Sierra Leone” (last accessed: 1 March 2024), available at <https://climatepromise.undp.org/what-we-do/where-we-work/sierra-leone>.

<sup>350</sup> President of Sierra Leone’s Statement at the 2023 Africa Climate Summit, para. 13.

reforestation efforts on at least 960,000 hectares of land and continues its commitment to enhance and protect conservation, natural habitats and ecosystems.<sup>351</sup> To address the effects of climate change on food insecurity, Sierra Leone has implemented programs aimed at promoting climate-smart agricultural technologies that diversify crop production, fuel inclusive growth and increase access to food,<sup>352</sup> and is committed to “achieve food and nutrition security by 2030 through climate-smart practices bolstered by renewable energy throughout the agricultural value chain.”<sup>353</sup>

3.109 That said, the country has limited domestic resources to fulfill these ambitious climate commitments.<sup>354</sup> The large contingent spending dedicated to climate change mitigation and adaptation significantly limits the capacity for risk transfer, post-disaster relief, and reconstruction expenditure.<sup>355</sup> Under its updated NDC, Sierra Leone is set to allocate 10 percent of its annual national budget to combat climate change and secure 40 percent of international development funding for adaptation priorities; however, progress for such financing remains a challenge.<sup>356</sup>

3.110 For developing countries to fully realize their adaptation and mitigation goals while simultaneously complying with their duty to protect the right to development, access to and mobilization of sufficient financial, technical, and capacity-building support is essential.<sup>357</sup> States must be provided the proper resources that enable them to make inclusive development choices that prioritize risk reduction, equity, and justice. As the UN Special Rapporteur on the Right to

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<sup>351</sup> *Ibid.*, para. 14.

<sup>352</sup> A.R. Thomas, “President Bio launches Presidential Council on Feed Salone, Says agriculture is a must-win for all,” *Sierra Leone Telegraph* (10 October 2023), available at <https://www.thesierraleonetelegraph.com/president-bio-launches-presidential-council-on-feed-salome-says-agriculture-is-a-must-win-for-all/>.

<sup>353</sup> President of Sierra Leone’s Statement at the 2023 Africa Climate Summit, para. 18.

<sup>354</sup> *Cf.* Sierra Leone Medium-Term National Development Plan, p. xi (listing climate-change-related environmental challenges as one of the key foreseen risks to the implementation of the plan).

<sup>355</sup> International Monetary Fund African Department, “Climate Change: Mainstreaming Adaptation in Sierra Leone” in *Sierra Leone: Selected Issues* (29 July 2022), available at <https://www.elibrary.imf.org/view/journals/002/2022/260/article-A001-en.xml?ArticleTabs=fulltext>, para. 4.

<sup>356</sup> The Republic of Sierra Leone, *Updated Nationally Determined Contribution (NDC)* (July 2021), available at <https://faolex.fao.org/docs/pdf/sie212615.pdf>, p. 18; International Monetary Fund African Department, “Climate Change: Mainstreaming Adaptation in Sierra Leone” in *Sierra Leone: Selected Issues* (29 July 2022), available at <https://www.elibrary.imf.org/view/journals/002/2022/260/article-A001-en.xml>, para. 13.

<sup>357</sup> African Development Bank Group, “Climate Change” (last accessed: 1 March 2024), available at <https://www.afdb.org/en/topics-and-sectors/sectors/climate-change>; IPCC, 2022, p. 98.



Development stressed in a report to the UN General Assembly, States' duty to cooperate to realize the right to development is pivotal, particularly when addressing the common challenges facing humanity, including climate change.<sup>358</sup>

3.111 As the IPCC has noted: “Climate resilient development integrates adaptation and mitigation to advance sustainable development for all, and is *enabled by increased international cooperation including improved access to adequate financial resources*, particularly for vulnerable regions, sectors and groups, and inclusive governance and coordinated policies.”<sup>359</sup> As also stated in Article 7 of IACHR Resolution No. 3/21: “Based on the principle of common but differentiated responsibility, those States that have greater financial capacity must provide the guarantees to provide greater technical and logistical capacity to the States that have a greater degree of impact on climate change, as well as less financial and infrastructure capacity to face the climate emergency.”<sup>360</sup> It is thus important that Article 2 of the Paris Agreement, which sets forth the State parties' obligation to pursue limiting the increase in global average temperature to 1.5° Celsius above pre-industrial levels, includes the clear recognition that the objective is “to strengthen the global response to the threat of climate change, *in the context of sustainable development and efforts to eradicate poverty*.”<sup>361</sup>

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<sup>358</sup> UN Human Rights Council, *Reinvigorating the right to development: A vision for the future – Report of the Special Rapporteur on the right to development, Surya Deva*, UN Doc. A/HRC/54/27 (4 August 2023), para. 21.

<sup>359</sup> IPCC, 2023, p. 24, para. C.1 (emphasis added). *See also* International Monetary Fund, “Chapter 2: Adapting to Climate Change in Sub-Saharan Africa” in *Regional Economic Outlook: Sub-Saharan Africa* (April 2020), available at <https://www.imf.org/en/Publications/REO/SSA/Issues/2020/04/01/sreo0420#Chapter2>, p. 2 (Noting that “[s]tepped up financial support from development partners, beyond disaster relief, targeting resilience building and bolstering coping mechanisms will be critical.”).

<sup>360</sup> IACHR, Resolution 3/21, Art. 7.

<sup>361</sup> Paris Agreement, Art. 2(1) (emphasis added). *See also ibid.*, Preamble (“Emphasizing the intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty”); *ibid.*, Art. 6(8); Statement of Dr. Julius Maada Bio, President of Sierra Leone during the General Debate of the 78<sup>th</sup> Session of the United Nations General Assembly High-Level Week (20 September 2023), available at [https://gadebate.un.org/sites/default/files/gastatements/78/sl\\_en.pdf](https://gadebate.un.org/sites/default/files/gastatements/78/sl_en.pdf), paras. 16, 21 (noting that “the 2030 Agenda for Sustainable Development isn’t merely an outline; it is a solemn pact we’ve entered” and “[o]ur duty is clear: we must lift our people from poverty”).

## F. RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT

3.112 It is firmly settled that human rights and environmental protection are intrinsically interdependent. As repeatedly confirmed by human rights bodies such as the United Nations Human Rights Council and the UN Office of the High Commissioner for Human Rights, a safe, clean, healthy, and sustainable environment is essential for the realization and enjoyment of a vast range of human rights.<sup>362</sup>

3.113 The close relationship between human rights and the environment is codified in national constitutions and regional human rights agreements.<sup>363</sup> For instance, the African Charter on Human and Peoples' Rights states that "[a]ll peoples shall have the right to a general satisfactory environment favorable to their development."<sup>364</sup> The 1988 Additional Protocol to the American Convention on Human Rights similarly provides that "everyone shall have the right to live in a healthy environment,"<sup>365</sup> and the 2004 Arab Charter on Human Rights contains a "right to a healthy environment" as part of peoples' "right to an adequate standard of living ... which ensures their well-being and a decent life."<sup>366</sup> The 2012 ASEAN Human Rights Declaration similarly includes the "right to a safe, clean and sustainable environment" as part of the right to an adequate standard of living.<sup>367</sup>

3.114 In *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, the African Commission on Human and Peoples' Rights stressed that "[t]he right to a general satisfactory environment, as guaranteed under Article 24 of the African

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<sup>362</sup> UN Human Rights Council, *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox*, UN Doc. A/HRC/22/43 (24 December 2012) (Dossier No. 303), para. 10.

<sup>363</sup> *Ibid.*, paras. 11-13.

<sup>364</sup> African Charter on Human and Peoples' Rights, Art. 24. *See also* Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005), Art. XVIII(1) (stating that women "shall have the right to live in a healthy and sustainable environment") and Art. XIX ("the right to fully enjoy their right to sustainable development").

<sup>365</sup> Additional Protocol to the American Convention on Human Rights, Art. 11(1).

<sup>366</sup> Arab Charter on Human Rights, Art. 38.

<sup>367</sup> ASEAN Human Rights Declaration, Art. 28(f).

Charter or the right to a healthy environment, as it is widely known ... imposes clear obligations upon a government. It requires the state to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources.”<sup>368</sup>

3.115 Similarly, the IACtHR has held that “the right to a healthy environment constitutes a universal value that is owed to both present and future generations.”<sup>369</sup> And, in *The Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, it reaffirmed that “States are bound to use all the means at their disposal to avoid activities under its jurisdiction causing significant harm to the environment” when it concluded that Argentina had violated the indigenous communities’ “right[] ... to a healthy environment” under Article 26 of the American Convention on Human Rights.<sup>370</sup>

3.116 At the international level, it was recognized decades ago in the 1972 Stockholm Declaration that human beings have a “fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being.”<sup>371</sup> In 2022, the General Assembly reaffirmed this principle in its resolution 76/300, which expressly recognized that everyone, everywhere, has the human right to live in a “clean, healthy and sustainable environment” and “affirm[ed] that the promotion of the human right to a clean, healthy

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<sup>368</sup> *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, 155/96 (2001), available at [https://leap.unep.org/sites/default/files/court-case/achpr30\\_155\\_96\\_eng.pdf](https://leap.unep.org/sites/default/files/court-case/achpr30_155_96_eng.pdf), para. 52. See also IACHR, *Indigenous Peoples Communities of African Descent Extractive Industries: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II, Doc. 47/15 (31 December 2015), available at <http://www.oas.org/en/iachr/reports/pdfs/extractiveindustries2016.pdf>, para. 58 (“The link between the effective enjoyment of the human rights most affected by development and extractive activities and the preservation of the environment is very clear. ... [S]everal fundamental rights require, as a necessary precondition for their exercise, a minimum environmental quality, and they are deeply affected by the degradation of natural resources.”).

<sup>369</sup> IACtHR, *Advisory Opinion OC-23/17*, para. 59.

<sup>370</sup> IACtHR, *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Judgment on Merits, reparation and costs (6 February 2020), available at [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_400\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_400_ing.pdf), paras. 208, 289.

<sup>371</sup> Stockholm Declaration, Principle 1.

and sustainable environment *requires the full implementation* of the multilateral environmental agreements under the principles of international environmental law.”<sup>372</sup>

3.117 In doing so, the General Assembly highlighted that “the impact of climate change ... interfere[s] with the enjoyment of a clean, healthy and sustainable environment and that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights.”<sup>373</sup> In other words, climate change poses a direct threat to the realization and enjoyment of the right to a clean, healthy and sustainable environment. This is recognized as a fundamental human right that imposes obligations on all States—not just States Parties to existing multilateral environmental agreements—to respect, protect and fulfil this right, as well as the duty to cooperate internationally to ensure its full realization and enjoyment.

3.118 In sum, as demonstrated in this chapter, climate change threatens the enjoyment of a broad range of human rights. These *include* the right to life, the right to health, the right to food, the right to an adequate standard of living, the right to a clean, healthy and sustainable environment, the right to development and the right to self-determination. Sierra Leone has addressed some of these rights. Sierra Leone further invites the Court to clarify that all States are obligated under international human rights law, as articulated in various universal and regional treaties and instruments and customary international law, to undertake all measures to prevent the deleterious effects of human-induced climate change on the enjoyment by their populations of at least certain core human rights irrespective whether classified as civil and political rights or economic, social and cultural rights.

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<sup>372</sup> UNGA Resolution 76/300, paras. 1, 3. *See also* UN Human Rights Council, Resolution 48/13, *The human right to a clean, healthy and sustainable environment*, UN Doc. A/HRC/RES/48/13 (18 October 2021) (Dossier No. 279).

<sup>373</sup> UNGA Resolution 76/300, Preamble, p. 2.

### III. Obligations Under the Law of the Sea

3.119 As noted above, there is a pending request for an advisory opinion relating to climate change before ITLOS. As a State Party to UNCLOS, Sierra Leone submitted a written statement to the Tribunal on 16 June 2023,<sup>374</sup> and participated in the oral proceedings on 19 September 2023.<sup>375</sup> Sierra Leone incorporates the positions expressed in those written and oral statements and, given the importance of the law of the sea issues for Sierra Leone and the need for greater coherence and unity of international law and the role of the jurisprudence of this Court in that regard, further develops them in the paragraphs that follow.

3.120 There is a scientifically established causal nexus between anthropogenic GHG emissions into the atmosphere and deleterious effects on the marine environment. Over 90% of the heat generated by excessive levels of anthropogenic GHG emissions is absorbed by the world's oceans.<sup>376</sup> Heat and carbon dioxide absorbed by the ocean directly affect marine systems by leading to the increase of ocean temperature, marine heatwaves, sea levels, and ocean acidification, as well as decreases in dissolved oxygen levels. These changes harm ocean and coastal systems, as well as the human activities that depend on them, such as fishing.<sup>377</sup> As the IPCC confirms, each is directly caused by GHG emissions from human activities.<sup>378</sup> Global mean sea surface temperature has increased since the beginning of the 20th century by 0.88°C,<sup>379</sup> and global mean sea level increased by 0.20m between 1901 and 2018.<sup>380</sup> For Sierra Leone, the sea surface

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<sup>374</sup> ITLOS, *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Case No. 31, Written Statement of the Republic of Sierra Leone (16 June 2023), available at [https://www.itlos.org/fileadmin/itlos/documents/cases/31/written\\_statements/1/C31-WS-1-29-Sierra\\_Leone.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/31/written_statements/1/C31-WS-1-29-Sierra_Leone.pdf).

<sup>375</sup> ITLOS, *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Verbatim Record, ITLOS/PV.23/C31/12 (19 September 2023 a.m.), available at [https://www.itlos.org/fileadmin/itlos/documents/cases/31/Oral\\_proceedings/ITLOS\\_PV23\\_C31\\_12\\_E.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/31/Oral_proceedings/ITLOS_PV23_C31_12_E.pdf).

<sup>376</sup> IPCC, 2022, p. 128; US Global Change Research Program, *Climate Science Special Report: Fourth National Climate Assessment, Vol. 1* (2017), available at <https://www.nrc.gov/docs/ML1900/ML19008A410.pdf>, p. 37.

<sup>377</sup> IPCC, 2022, pp. 381-383.

<sup>378</sup> *Ibid.*, pp. 387-388, 392. The IPCC concluded that it is “virtually certain” that the global upper ocean (0-700 metres) has warmed since the 1970s and that it is “extremely likely” that human influence is the main driver. IPCC, 2023, p. 46; *ibid.*, p. 47, Table 2.1.

<sup>379</sup> IPCC, 2022, p. 392.

<sup>380</sup> IPCC, 2023, p. 5, para. A.2.1.

temperature of the country’s marine environment increased by 0.91°C, at an average rate of 0.14°C per decade between 1957 and 2020.<sup>381</sup>

3.121 Ocean acidification leads to drastic changes in marine food webs<sup>382</sup> and affects the functioning, habitat area and biodiversity of coastal ecosystems.<sup>383</sup> Marine biodiversity is also affected by ocean warming, loss of sea ice, sea level rise, coral bleaching, marine heatwaves, and upwelling changes.<sup>384</sup> Warming ocean temperature reduces dissolved oxygen in the ocean, which has significant effects on sea life, particularly on temperature- and chemistry-sensitive organisms.<sup>385</sup>

3.122 For Sierra Leone, this means that the high levels of biodiversity currently present in its freshwater swamps, coastal ecosystems and marine ecosystems are at risk. For instance, the coverage of mangrove forests—a critical source of livelihoods and ecological support along coastal plains and riverine areas across the country—is estimated to have decreased by approximately 25% since 1990.<sup>386</sup> An assessment of marine species in the Eastern Central Atlantic Ocean, which includes West and Central Africa, showed that 8% or 125 species are considered threatened using IUCN Red List Guidelines.<sup>387</sup>

3.123 Part XII of UNCLOS concerns the protection and preservation of the marine environment. Article 192 provides in clear and unmistakable terms that “States have the obligation to protect and preserve the marine environment.” As the arbitral tribunal held in the *South China Sea*

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<sup>381</sup> A. Kessler *et al.*, “Observation-based Sea surface temperature trends in Atlantic large marine ecosystems” (2022) 208 *Progress in Oceanography* 1, available at <https://doi.org/10.1016/j.pocean.2022.102902>, p. 3, Table 2.

<sup>382</sup> IPCC, 2022, p. 2148.

<sup>383</sup> C. Turley & J.-P. Gattuso, “Future biological and ecosystem impacts of ocean acidification and their socioeconomic-policy implications” (2012) 4(3) *Current Opinion in Environmental Sustainability* 278, available at <https://doi.org/10.1016/j.cosust.2012.05.007>, pp. 281- 282.

<sup>384</sup> IPCC, 2022, p. 456.

<sup>385</sup> IPCC, *IPCC Special Report on the Ocean and Cryosphere in a Changing Climate* (CUP 2019), available at [https://www.ipcc.ch/site/assets/uploads/sites/3/2022/03/SROCC\\_FullReport\\_FINAL.pdf](https://www.ipcc.ch/site/assets/uploads/sites/3/2022/03/SROCC_FullReport_FINAL.pdf), p. 512, Figure 5.20.

<sup>386</sup> Sierra Leone National Adaptation Plan, pp. 14-15, 18.

<sup>387</sup> B. Polidoro *et al.*, “The status of marine biodiversity in the Eastern Central Atlantic (West and Central Africa)” (2017) 27(5) *Aquatic Conservation: Marine and Freshwater Ecosystems* 1021, available at <https://doi.org/10.1002/aqc.2744>, p. 5.

*Arbitration*, this obligation “extends both to ‘protection’ of the marine environment from future damage and ‘preservation’ in the sense of maintaining or improving its present condition.”<sup>388</sup> It thus “entails the positive obligation to take active measures to protect and preserve the marine environment, and by logical implication, entails the negative obligation not to degrade the marine environment.”<sup>389</sup>

3.124 Article 194 of UNCLOS provides that States shall “take, individually or jointly as appropriate, all measures ... that are necessary to prevent, reduce, and control pollution of the marine environment from any source.” States must also “take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.” Anthropogenic GHG emissions can be considered as “the introduction ... of substances or energy into the marine environment,” which qualifies as “pollution” under Article 1(4).<sup>390</sup> This is confirmed by the repeated emphasis in Article 194 that it covers pollution from “any” and “all” sources of pollution of the marine environment,<sup>391</sup> and is consistent with the object and purpose of the Convention, which includes the preservation and protection of the marine environment.<sup>392</sup>

3.125 While UNCLOS itself does not directly mention climate change, the scientific evidence obtained since the Convention was adopted in 1982 demonstrates that climate change falls squarely within its scope. This is consistent with the principle of systemic integration set forth in Article

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<sup>388</sup> *The South China Sea Arbitration (The Republic of Philippines v. The People’s Republic of China)*, PCA Case No. 2013-19, Award (12 July 2016) (“*South China Sea Arbitration*”), para. 941.

<sup>389</sup> *Ibid.*

<sup>390</sup> United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994), 1833 UNTS 3 (Dossier No. 45) (“**UNCLOS**”), Art. 1(4) (defining pollution as “the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities”).

<sup>391</sup> *Ibid.*, Arts. 194(1), 194(3).

<sup>392</sup> *Ibid.*, Preamble; *ibid.*, Arts. 61-68, 116-120, 145, 240, 263.

31(3)(c) of the Vienna Convention on the Law of Treaties, requiring that treaty interpretation take into account any relevant rules of international law applicable in the relations between the parties, which includes the law on climate change.

3.126 A good faith interpretation of Articles 192, 194, and related provisions in Part XII of UNCLOS<sup>393</sup> makes clear that States Parties to the Convention are under an obligation to protect and preserve the marine environment from climate change-related deleterious effects. This obligation is one of due diligence.<sup>394</sup> States must ensure that activities within their jurisdiction and control, including activities by persons or entities, do not harm the marine environment.<sup>395</sup> To this end, States must adopt appropriate laws to prohibit practices that have the potential to harm the marine environment, and take steps to enforce such rules and measures against persons or entities engaged in these harmful practices.<sup>396</sup>

3.127 While Article 194 is specific to protecting the marine environment from pollution, Article 192 more broadly encompasses the protection and preservation of the marine environment generally. In the context of climate change, this involves protecting and preserving the marine environment from the impacts of climate change in a broader sense, including from loss of biodiversity and habitat and impacts on fisheries. It also includes measures to address ocean warming and sea level rise as well as ocean acidification.

3.128 The specific content of the due diligence obligations under Part XII is informed by international environmental law<sup>397</sup> and the best available science.<sup>398</sup> In the context of climate change, the Paris Agreement is particularly relevant to identifying the specific measures that must

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<sup>393</sup> Under Articles 194, 207, 211 and 212, States are obliged to adopt laws and regulations, as well as other measures as may be necessary to prevent, reduce and control such pollution, which “shall include, *inter alia*, those designed to minimize to the fullest possible extent the release of toxic, harmful or noxious substances, especially those which are persistent.” *Ibid.*, Art. 3(a).

<sup>394</sup> *South China Sea Arbitration*, para. 944; *SRFC Advisory Opinion*, paras. 120, 136; *Area Advisory Opinion*, para. 117.

<sup>395</sup> *South China Sea Arbitration*, para. 944.

<sup>396</sup> *SRFC Advisory Opinion*, paras. 131, 136, 138; *Pulp Mills*, p. 79, para. 197.

<sup>397</sup> *South China Sea Arbitration*, para. 941.

<sup>398</sup> *SRFC Advisory Opinion*, para. 208(ii); *Southern Bluefin Tuna Cases*, paras. 77-80; *MOX Plant Order*, para. 84.



be adopted to give effect to States' obligations under UNCLOS. As discussed above, the scientific consensus on the specific mitigation and adaptation techniques to be taken are found in the IPCC reports.

3.129 Article 2(1)(a) of the Paris Agreement sets forth its principal objective as being “to strengthen the global response to the threat of climate change” including by “[h]olding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.” As described above, the best available science indicates that to be considered sufficiently diligent, States must adhere to the higher standard of care set at 1.5°C.<sup>399</sup> Not only is this approach consistent with the precautionary principle,<sup>400</sup> it is in line with the determinations by the Seabed Disputes Chamber of ITLOS that “measures considered sufficiently diligent at a certain moment may become not diligent enough in light, for instance, of new scientific or technological knowledge” and that “[t]he standard of due diligence has to be more severe for the riskier activities.”<sup>401</sup>

3.130 Discharging this due diligence obligation requires both individual and joint action by States. Individual measures include each State's obligation to: (i) establish and ensure the proper functioning of a regulatory framework for NDCs pursuant to the UNFCCC; (ii) determine and maintain successive NDCs that they intend to achieve;<sup>402</sup> (iii) pursue domestic mitigation measures with the aim of achieving such NDCs;<sup>403</sup> and (iv) ensuring that entities and/or individuals under their jurisdiction or control act consistently with the measures adopted, for instance, through conducting environmental impact assessments. Joint measures include States: (i) taking measures, collectively, to limit the increase in global average temperature to 1.5° Celsius above pre-industrial

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<sup>399</sup> See *supra* para. 3.23.

<sup>400</sup> *Southern Bluefin Tuna Cases*, paras 77-80; *MOX Plant Order*, para. 84; *Area Advisory Opinion*, para. 135.

<sup>401</sup> *Area Advisory Opinion*, para. 117. See also International Law Association, *Study Group on Due Diligence in International Law: First Report, Duncan French (Chair) and Tim Stephens (Rapporteur)* (7 March 2014), available at [https://olympereaseauinternational.files.wordpress.com/2015/07/due\\_diligence\\_-\\_first\\_report\\_2014.pdf](https://olympereaseauinternational.files.wordpress.com/2015/07/due_diligence_-_first_report_2014.pdf), pp. 26-27.

<sup>402</sup> Paris Agreement, Art. 4(2).

<sup>403</sup> *Ibid.*

levels and (ii) providing scientific, educational, technical or other assistance and funding to developing States.

3.131 These obligations also arise from the duty to cooperate, which is recognized as a “fundamental principle in the prevention of pollution to the marine environment under Part XII of the Convention.”<sup>404</sup> They stem as well from Articles 197, 198, 199,<sup>405</sup> and provisions of Part XIV concerning the transfer of marine technology to developing States. The obligations are consistent with the common but differentiated responsibilities principle, as well as the object and purpose of UNCLOS<sup>406</sup> and other provisions thereunder, including Articles 203 and 207.<sup>407</sup>

3.132 In sum, the scientific evidence confirms the urgency of addressing the negative impacts of climate change on the marine environment. The impacts are multiplied for low-lying coastal States such as Sierra Leone, economies that rely heavily on the fisheries sector, and developing countries that lack the capacity to adapt to these impacts. Continued sea-level rise and more frequent extreme sea-level events encroach on coastal human settlements and damage coastal infrastructure, with cascading risks to livelihoods, health, well-being, food and water security. Articles 192, 194, and related provisions in Part XII of UNCLOS provide the clear basis for the Court to clarify that States Parties are obligated to protect and preserve the marine environment from climate change-related deleterious effects. States must ensure that activities within their jurisdiction and control do not harm the marine environment. To this end, States must take both individual and joint action to adopt and enforce appropriate measures to prohibit harmful practices, as well as those that address

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<sup>404</sup> *MOX Plant Order*, para. 82.

<sup>405</sup> Article 197 of the Convention contains the obligation of States to cooperate, both globally and regionally, in formulating and elaborating rules, standards, practices and procedures for the protection and preservation of the marine environment. Articles 198 and 199 requires States “to cooperate, to the extent possible, in eliminating the effects of pollution and preventing or minimizing the damage” when “the marine environment is in imminent danger of being damaged or has been damaged by pollution.”

<sup>406</sup> For instance, the preamble of the Convention notes the need to take into account “the special interests and needs of developing countries, whether coastal or land-locked.”

<sup>407</sup> Article 207(4) provides that measures to prevent, reduce and control land-based pollution shall “tak[e] into account characteristic regional features, the economic capacity of developing States and their need for economic development.” Article 203 on “Preferential treatment for developing States” provides that “[d]eveloping States shall, for the purposes of prevention, reduction and control of pollution of the marine environment or minimization of its effects, be granted preference by international organizations in: (a) the allocation of appropriate funds and technical assistance; and (b) the utilization of their specialized services.”

the impacts of climate change, such as the loss of biodiversity, ocean warming, sea level rise, and ocean acidification.

### 3. RESPONSE TO QUESTION (B): LEGAL CONSEQUENCES FOR STATES

3.133 The second question posed by the General Assembly states as follows:

(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to: (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change? (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?

3.134 The question requests the Court to clarify the “legal consequences under [the] obligations for States” put forth in the answer to Question (a). The question therefore centers on the secondary rules of international law, particularly those codified in the Articles on State Responsibility for Internationally Wrongful Acts of the International Law Commission (“**ILC Articles on State Responsibility**” or “**ARSIWA**”) adopted in 2001.<sup>408</sup> The question also makes clear that the legal consequences arise from both “acts and omissions.” It thus extends to failures by States to prevent significant harm to the climate system and other parts of the environment through inaction or failing to take mitigation measures to reduce GHG emissions.

3.135 Breaches of the obligations described in the preceding chapter entail State responsibility including where the requisite threshold of harm to the climate system and other parts of the environment is met. These legal consequences of the internationally wrongful acts of States are set out in general terms in Chapter I of Part Two of the ILC Articles on State Responsibility. This would be the case whether the obligations are owed to other States or the international community as a whole. Under Articles 30 and 31 of ARSIWA, the core consequences of a breach of an international legal obligation are the obligations of the responsible State “to cease that act, if it is

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<sup>408</sup> UN General Assembly, Resolution 56/83, *Responsibility of States for internationally wrongful acts*, UN Doc. A/RES/56/83 (28 January 2002), Annex (“**ARSIWA**”). When the UNFCCC was open for signature, several small island States made declarations to the effect that their ratification of the Convention “shall in no way constitute a renunciation of any rights under International Law concerning State responsibility for the adverse effects of climate change as derogating from the general principles of general international law.” *See, e.g.*, UNFCCC, Declaration of Nauru upon signature; Declaration of Papua New Guinea upon signature; Declaration of Kiribati upon signature.

continuing”<sup>409</sup> and “to make full reparation for the injury caused by the internationally wrongful act.”<sup>410</sup> Reparation, in turn, must take the form of restitution, compensation, and satisfaction, either singly or in combination.<sup>411</sup> If the circumstances so require, the State must offer appropriate assurances and guarantees of non-repetition.<sup>412</sup> State responsibility extends to breaches of international law where the primary beneficiary of the obligation breached is not a State, such as violations of international human rights.<sup>413</sup>

3.136 In the context of climate change, this means that a State’s failure to take steps to minimize GHG emissions to prevent significant harm to the environment triggers the obligation of cessation. This obligation applies “regardless of whether the conduct of a State is an action or an omission” since “there may be cessation consisting in abstaining from certain actions.”<sup>414</sup> States that continue to take insufficient action to reduce GHG emissions, for instance, may be required to bring an end to the illegal situation by taking positive steps towards climate change mitigation.

3.137 In terms of the temporal scope of this responsibility, Article 14(3) of ARSIWA provides that the breach of an international obligation requiring a State to prevent the occurrence of a given event takes place when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.<sup>415</sup> In the *Trail Smelter* arbitration, for instance, the obligation to prevent transboundary damage by air pollution was deemed a breach for as long as the pollution continued.<sup>416</sup> The same applies in respect to climate change; the

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<sup>409</sup> ARSIWA, Art. 30(a).

<sup>410</sup> *Ibid.*, Art. 31.

<sup>411</sup> *Ibid.*, Art. 34.

<sup>412</sup> *Ibid.*, Art. 30(b).

<sup>413</sup> See ILC, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, reproduced in *Yearbook of the International Law Commission, 2001*, Vol. II(2) (“**ILC Draft Articles on State Responsibility**”), Commentary (3) to Art. 28, pp. 87-88.

<sup>414</sup> *Ibid.*, Commentary (2) to Art. 30, pp. 88-89 (citing *Rainbow Warrior*, p. 270, para. 113).

<sup>415</sup> ARSIWA, Art. 14(3).

<sup>416</sup> ILC Draft Articles on State Responsibility, Commentary (14) to Art. 14(3), p. 62 (citing *Trail Smelter Arbitration (United States v. Canada), Award (16 April 1938 and 11 March 1941)*, 3 RIAA, p. 1905, at p. 1965).

obligation to prevent significant harm to the environment is breached for as long as a State continues to resist taking sufficiently diligent steps to mitigate and adapt to climate change.

3.138 Where the internationally wrongful act constitutes a serious breach by the State of an obligation arising under a peremptory norm of general international law, it may entail further consequences for both the responsible State and other States. In these cases, all States must cooperate to bring the breach to an end, not to recognize as lawful the situation created by the breach, and not to render aid or assistance to the responsible State in maintaining the situation so created.<sup>417</sup> In the context of climate change, this means that a violation of the right to self-determination, which is a peremptory norm and obligation *erga omnes*,<sup>418</sup> triggers these heightened collective obligations.

3.139 For instance, in its Advisory Opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court determined that the breach of the obligation to respect the right to self-determination triggers an obligation on other States “while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from” the breaches are “brought to an end.”<sup>419</sup> Similarly, in its Advisory Opinion on *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, the Court determined that all States “must co-operate with the United Nations” to bring to an end the breach of obligations arising from the right to self-determination.<sup>420</sup>

3.140 In addition to cessation of continued breaches and assurances of non-repetition if the circumstances so require, States must make full reparation for the loss and damage caused to the injured State and its people, in the form of restitution, compensation, and/or satisfaction. The obligation to make full reparation is a well-established and essential principle under international

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<sup>417</sup> ARSIWA, Arts. 40-41.

<sup>418</sup> See *supra* Chapter III.2.II.D.

<sup>419</sup> *Wall Advisory Opinion*, p. 200, para. 159.

<sup>420</sup> *Chagos Advisory Opinion*, p. 139, para. 180.

law.<sup>421</sup> The PCIJ explained, as far back as 1928 in the *Factory at Chorzów* case, that the responsible State must endeavor to “as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed.”<sup>422</sup>

3.141 As the commentary to Article 31 of ARSIWA explains, the duty of reparation is an obligation of the responsible State arising automatically from the breach, rather than as a right or upon the demand of an injured State or States.<sup>423</sup> This avoids difficulties that may arise where the same obligation is simultaneously owed to several States, only some of which are specially affected by the breach.<sup>424</sup>

3.142 Article 31(2) of ARSIWA clarifies that the “injury” for which States owe a duty of full reparation must be interpreted broadly to encompass both material and moral damage.<sup>425</sup> In the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, the Court found that “it is consistent with the principles of international law governing the consequences of internationally wrongful acts, including the principle of full reparation, to hold that compensation is due for damage caused to the environment, in and of itself, in addition to expenses incurred by an injured State as a consequence of such damage.”<sup>426</sup> From this, it held that “damage to the environment, and the consequent impairment or loss of the ability of the environment to provide goods and services, is compensable under international law.”<sup>427</sup> The

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<sup>421</sup> *Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9*, p. 2; *Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 47.

<sup>422</sup> *Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 47.

<sup>423</sup> ILC Draft Articles on State Responsibility, Commentary (4) to Art. 31, p. 91.

<sup>424</sup> *Ibid.*

<sup>425</sup> *Ibid.*, Commentary (5) to Art. 31, pp. 91-92. “Material” damage may refer to damage to property or other interests of the State and its nationals which is assessable in financial terms. “Moral” damage includes items such as individual pain and suffering, or the harm associated with an intrusion on one’s home or private life. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *Judgement, I.C.J. Reports 2002*, p. 13, at p. 48, para. 93.

<sup>426</sup> *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, *Compensation, Judgment, I.C.J. Reports 2018*, p. 15 (“**Certain Activities, Judgment on Compensation**”), at p. 28, para. 41.

<sup>427</sup> *Ibid.*, p. 28, para. 42. See also J. Rudall, *Compensation for Environmental Damage Under International Law* (1<sup>st</sup> Ed., Routledge 2020), p. 57.

United Nations Compensation Commission likewise rewarded compensation to States for environmental damage arising from the first Gulf War.<sup>428</sup>

3.143 The Paris Agreement expressly recognizes the importance of “addressing loss and damage associated with the adverse effects of climate change.”<sup>429</sup> In concrete terms, the loss and damage subject to reparation may include, but are not limited to, lives lost, monetary costs from the destruction and damage to property, crops, and infrastructure due to weather and climate extremes, and the loss of territory or livelihoods.

3.144 Advances in attribution science and valuation methodologies have made it possible to derive a scientifically based approximation of an amount that would make the injured parties whole for the damages that they have and will suffer from climate change.<sup>430</sup> That said, uncertainties remain, given the inherent complexity of the climate system. However, as the Court affirmed in *Costa Rica v. Nicaragua*, lack of certainty or evidence as to the extent of material damage is no obstacle to ordering compensation for environmental harm. This is particularly so where there are equitable considerations that must be taken into account. As the Court explained, quoting the *Trail Smelter* arbitral award, “where the [wrongful act] is of such a nature as to preclude the

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<sup>428</sup> See UNCC, *Report and Recommendations made by the Panel of Commissioners concerning the First Instalment of “F2” Claims*, UN Doc. S/AC.26/1999/23 (9 December 1999); UNCC, *Report and Recommendations made by the Panel of Commissioners concerning the Second Instalment of “F2” Claims*, UN Doc. S/AC.26/2000/26 (7 December 2000); UNCC, *Report and Recommendations made by the Panel of Commissioners concerning the Third Instalment of “F2” Claims*, UN Doc. S/AC.26/2002/7 (13 March 2002).

<sup>429</sup> Paris Agreement, Art. 8(1). While Article 8 does not provide a basis for liability or compensation, it does not preclude application of the rules of State responsibility concerning reparation. See COP, *Adoption of the Paris Agreement*, UN Doc. FCCC/CP/2015/L.9/Rev.1 (12 December 2015), para. 52. When the UNFCCC was open for signature, several small island States made declarations to the effect that their ratification of the Convention “shall in no way constitute a renunciation of any rights under International Law concerning State responsibility for the adverse effects of climate change as derogating from the general principles of general international law.” See, e.g., UNFCCC, Declaration of Nauru upon signature; Declaration of Papua New Guinea upon signature; Declaration of Kiribati upon signature.

<sup>430</sup> See, e.g., M. Burke *et al.*, *Quantifying Climate Change Loss and Damage Consistent with a Social Cost of Greenhouse Gases*, NBER Working Paper Series (September 2023), available at [https://www.nber.org/system/files/working\\_papers/w31658/w31658.pdf](https://www.nber.org/system/files/working_papers/w31658/w31658.pdf); M. Auffhammer, “Quantifying Economic Damages from Climate Change” (2018) 32(4) *Journal of Economic Perspectives* 33, available at <http://dx.doi.org/10.1257/jep.32.4.33>; A. Bento *et al.*, *A Unifying Approach to Measuring Climate Change Impacts and Adaptation*, NBER Working Paper Series (May 2020, revised March 2023), available at <http://dx.doi.org/10.3386/w27247>; T. Carleton *et al.*, *Valuing the Global Mortality Consequences of Climate Change Accounting for Adaptation Costs and Benefits*, NBER Working Paper Series (July 2020, revised April 2022), available at <http://dx.doi.org/10.3386/w27599>.



ascertainment of the amount of damages with certainty, it would be *a perversion of fundamental principles of justice* to deny all relief to the injured person, and thereby relieve the wrongdoer from making any amend for his acts.”<sup>431</sup> From this, the Court ruled that “it will be enough if the evidence show the extent of damages as a matter of just and reasonable inference, although the result be only approximate.”<sup>432</sup>

3.145 The difficulties in establishing a precise causal link between a particular climate change event and a particular State’s GHG emissions do not eliminate the consequences of the State’s breach and obligation to make full reparation. As the Court has observed, “the causal nexus required may vary depending on the primary rule violated and the nature and extent of the injury.”<sup>433</sup> Nor does the existence of concurrent causes of climate change, such as multiple internationally wrongful acts of several States, preclude an award of compensation for the damage from the responsible State.<sup>434</sup> As expressed by the Court previously: “These are difficulties that must be addressed as and when they arise in light of the facts of the case at hand and the evidence presented to the Court. Ultimately, it is for the Court to decide whether there is a sufficient causal nexus between the wrongful act and the injury suffered.”<sup>435</sup> Finally, the same equitable considerations that have allowed this Court to determine the amount of compensation in the absence of adequate evidence as to the precise extent of damage<sup>436</sup> apply when assessing whether a sufficient causal nexus has been established.

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<sup>431</sup> *Certain Activities, Judgment on Compensation*, p. 27, para. 35 (emphasis added) (citing and quoting *Trail Smelter Arbitration (United States v. Canada), Award (16 April 1938 and 11 March 1941)*, 3 RIAA, p. 1905, at p. 1920).

<sup>432</sup> *Ibid.*, pp. 26-27, para. 35 (citing and quoting *Trail Smelter Arbitration (United States v. Canada), Award (16 April 1938 and 11 March 1941)*, 3 RIAA, p. 1905, at p. 1920). The Court similarly indicated that “non-material injury can be established even without specific evidence” where it is an inevitable consequence of the wrongful acts in question. *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012*, p. 324, at p. 334, para. 21.

<sup>433</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Reparations, Judgment, I.C.J. Reports 2022*, p. 13 (“**Armed Activities, Judgment on Reparations**”), at p. 48, para. 93.

<sup>434</sup> ILC Draft Articles on State Responsibility, Commentaries (12) and (13) to Art. 31, p. 93; ARSIWA, Art. 47.

<sup>435</sup> *Certain Activities, Judgment on Compensation*, p. 26, para. 34.

<sup>436</sup> *Ibid.*, pp. 26-27.

3.146 In the context of climate change, those equitable considerations include, *inter alia*: (i) small island developing States or other States that have historically contributed to the least to its occurrence and which, due to their geographical circumstances and level of development, are specially affected by or are particularly vulnerable to climate change's adverse effects; (ii) individuals of future generations, who have played no part in climate change but bear the brunt of its consequences; and (iii) incontrovertible data showing the highest and lowest emitters of GHGs.

3.147 Equitable considerations must also take into account the inadequacies of existing mechanisms to address loss and damage. For instance, the joint commitment of developed countries to mobilize USD 100 billion a year by 2020 to address the needs of developing countries in relation to climate change has yet to be realized.<sup>437</sup> Moreover, highly-indebted countries are being pressured to assume more debt to finance measures to adapt to climate change-induced disasters.<sup>438</sup> As noted in the Nairobi Declaration, “the scale of financing required to unlock Africa’s climate-positive growth is beyond the borrowing capacity of national balance sheets, or at the risk premium that Africa is currently paying for private capital.”<sup>439</sup> The use of macroeconomic insurance products such as climate funds and issuing state-contingent bonds, has also been difficult due to large risk premiums.<sup>440</sup> Under these circumstances, it would be inequitable to exempt States, especially the industrialized polluters, from their responsibility to repair the loss and damage caused by climate change based on the notion that such injured States

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<sup>437</sup> UNFCCC, *Background note on the USD 100 billion goal in the context of UNFCCC process, in relation to advancing on SDG indicator 13.a.1*, available at [https://unstats.un.org/sdgs/tierIII-indicators/files/13.a.1\\_Background.pdf](https://unstats.un.org/sdgs/tierIII-indicators/files/13.a.1_Background.pdf). See also OECD, “Climate Finance and the USD 100 Billion Goal” (last accessed: 1 March 2024), available at <https://www.oecd.org/climate-change/finance-usd-100-billion-goal/>.

<sup>438</sup> According to the World Bank, the present value of external debt (current US\$) for Sierra Leone amounted to over 1 billion in 2022. See World Bank, “Present value of external debt (current US\$) – Sierra Leone” (last accessed: 1 March 2024), available at <https://data.worldbank.org/indicator/DT.DOD.PVLX.CD?locations=SL>. Sierra Leone’s outstanding purchases and loans from the International Monetary Fund amounted to 357.77 million (SDR) on 30 December 2023. See International Monetary Fund, “Sierra Leone” (last accessed: 1 March 2024), available at <https://www.imf.org/en/Countries/SLE>.

<sup>439</sup> Nairobi Declaration, p. 54.

<sup>440</sup> International Monetary Fund, “Chapter 2: Adapting to Climate Change in Sub-Saharan Africa” in *Regional Economic Outlook: Sub-Saharan Africa* (April 2020), available at <https://www.imf.org/en/Publications/REO/SSA/Issues/2020/04/01/sreo0420#Chapter2>, p. 2.

cannot surmount an impossible burden of specifically apportioning *which* contribution caused *which* damage.<sup>441</sup>

3.148 Determining the proper method of valuation also must take into account equitable considerations. In *Costa Rica v. Nicaragua*, the Court recognized that “international law does not prescribe any specific method of valuation for the purposes of compensation for environmental damage” and it is “necessary ... to take into account the specific circumstances and characteristics of each case.”<sup>442</sup> In this context, it is notable that the Court cited to the UNEP’s *Guidance Manual on Valuation and Accounting of Ecosystem Services for Small Island Developing States*,<sup>443</sup> which explores different valuation techniques that take into consideration the unique environmental, socio-economic and capacity issues relevant to SIDS.

3.149 The commentary to Article 31 of ARSIWA indicates that “the form which reparation should take in the circumstances may depend on the response of the injured State or States.”<sup>444</sup> Depending on the particular situation of the injured State, the Court may consider other forms of reparation including restitution and satisfaction. In particular, in light of the Court’s finding that satisfaction “can take an entirely different form depending on the circumstances of the case,”<sup>445</sup> various means can be explored and considered, including the provision of debt-free finance to support mitigation and adaptation measures. In this sense, ongoing initiatives to reform the multilateral financial system and global financial architecture, including the Bridgetown Initiative, the Accra-Marrakech Agenda, the UN Secretary General’s SDG Stimulus Proposal, and the Paris Summit for a New Global Financing Pact, should be accelerated.<sup>446</sup> There could be country-specific situations, for instance, depending on the type of debt portfolio, where debt relief or debt-for-climate swaps may be considered. The Court may also consider reparation in the form of

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<sup>441</sup> R. Verheyen, *Climate Change Damage and International Law: Prevention Duties and State Responsibility* (Martinus Nijhoff 2005), pp. 256-257.

<sup>442</sup> *Certain Activities, Judgment on Compensation*, p. 31, para. 52.

<sup>443</sup> UNEP, *Guidance Manual on Valuation and Accounting of Ecosystem Services for Small Island Developing States* (December 2014), available at <https://www.cbd.int/financial/monterreytradetech/unep-valuation-sids.pdf>.

<sup>444</sup> ILC Draft Articles on State Responsibility, Commentary (4) to Art. 31, p. 91.

<sup>445</sup> *Armed Activities, Judgment on Reparations*, p. 132, para. 387.

<sup>446</sup> Nairobi Declaration, para. 58.

contributing funds through existing institutional efforts to mobilize climate finance, such as the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts.<sup>447</sup> There have been successful treaty regimes in the area of international environmental law, specifically in relation to the protection of the Ozone layer, which provided for the establishment of a fund which could also serve as inspiration for a viable mechanism to address the need for the provision of funds as well as scientific and technical assistance to address the climate challenge more broadly.

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<sup>447</sup> Paris Agreement, Art. 8.

## CHAPTER IV. CONCLUSION

4.1 In conclusion, for the reasons set out above, the Court has jurisdiction to give an advisory opinion under Article 65, paragraph 1 of the Statute. The questions raised in General Assembly Resolution 77/276 possess a legal character, and there are no compelling reasons preventing the Court from giving the requested Advisory Opinion.

4.2 On the substance of the first question raised by the General Assembly, States have a positive obligation to minimize anthropogenic GHG emissions and ensure that the increase in global average temperatures is limited to 1.5°C above pre-industrial levels to protect the climate system and other parts of the environment. This obligation stems from well-established general principles of international law and treaty-specific obligations informed by the best available science under international environmental law, international human rights law, and the law of the sea.

4.3 Under international environmental law, States are obligated in all instances to act with due diligence to take all appropriate measures to prevent climate change, or at any event, minimize the risks thereof. At *minimum*, all States must adhere to the commitments reflected in the Paris Agreement. This includes not only the commitment to hold “the increase in the global average temperature to *well below* 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels” but also the duty to cooperate and provide additional assistance for developing States. International cooperation is particularly important given the undeniable reality in which many developing countries, despite having national climate change strategies, lack the necessary funding, technology, and capacity to carry them out.

4.4 Under international human rights law, States have a duty to take active measures to mitigate and adapt to the impacts of climate change, which directly threaten the enjoyment of a broad range of human rights obligations including the right to life, the right to health, the right to adequate food, the right to self-determination, the right to development, and the right to a clean, healthy and sustainable environment. Under the law of the sea, States are likewise under a due diligence

obligation to protect and preserve the marine environment from the deleterious effects of climate change through both individual and joint action.

4.5 The content of these obligations, as well as the assessment of whether they have been complied with, must be informed by principles of both law and equity, including the common but differentiated responsibilities principle and respect for intergenerational equity, which are expressly recognized in numerous international treaties and instruments. As detailed above, abundant evidence has long confirmed that States and populations which have historically contributed the least to climate change are disproportionately vulnerable to its adverse effects. The climate change regime is thus built upon a common understanding that the climate emergency involves fundamental inequities. Several provisions of the UNFCCC, Kyoto Protocol, and Paris Agreement demonstrate that the common but differentiated responsibilities principle is the cornerstone of global governance, and make crystal clear the expectation that developed countries should bear greater responsibility for combating climate change, including by assisting developing countries in their mitigation and adaptation efforts.

4.6 Despite this, for too long, there has been no equity when it comes to managing the effects of climate change, and developing countries are essentially being asked to subsidize the largest polluters by being left to deal with a climate crisis not of their making. For the rule of equity to mean more than simply a matter of abstract justice, it is pivotal to clarify that the discharge of legal obligations must give due regard to the reality of differential capabilities and responsibilities of States. It must also recognize that the climate crisis, which the world faces today, is not the making of the developing States but the product of industrialization and development that has benefited developed States. The developed States, as recognized by many treaties and instruments, must therefore step up to their responsibilities given the causal link between the benefits that they today enjoy and the climate crisis. It is through their provision of the requisite resources that they have committed to providing that meaningful adaptation and mitigation measures can be taken to address the existential threats facing all States and the international community as a whole.

4.7 On the substance of the second question asked by the General Assembly, breaches of such obligations entail State responsibility. States that continue to resist taking steps to minimize GHG emissions must bring an end to the illegal situation by taking positive steps towards climate change

mitigation. Where the wrongful act constitutes a serious breach of peremptory norms, such as the right to self-determination, all States must cooperate to bring the situation to the end and not to aid or assist the responsible State in maintaining the situation so created. Responsible States can also be required to make reparation for the injury caused by their wrongful conduct. As the Court's jurisprudence confirms, to the extent that inherent uncertainties exist, whether that be in quantifying the amount of compensation or establishing the precise causal nexus, they are not obstacles to ordering compensation, especially where there are unmistakable equitable considerations that must be taken into account.

4.8 In summary, Sierra Leone respectfully requests that the Court:

- Declare that all States are under the obligation to minimize their anthropogenic GHG emissions;
- Declare that all States are under the obligation to take both individual and collective measures to ensure that the increase in global average temperatures is limited to 1.5°C above pre-industrial levels to protect the climate system and other parts of the environment;
- Declare that the aforementioned obligations and rights arise under international environmental law, international human rights law, and the law of the sea;
- Declare that the content of such obligations, as well as the assessment of whether they have been complied with, must be informed by equitable principles and consideration of the rights and interests of both the present and future generations; and
- Declare that States that fail to comply with the aforementioned obligations are under the obligations to cease the breach and make full reparation for the injury caused, in particular through compensation.

Respectfully submitted,

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Hon. Mohamed Lamin Tarawalley  
Attorney-General and Minister of Justice

Republic of Sierra Leone

Freetown, Sierra Leone

15 March 2024