

INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)

Written Statement of the
MELANESIAN SPEARHEAD GROUP (MSG)

22 March 2024

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Melanesians have had a civilisation with its customs, values, knowledge, and wisdoms which have guided them through the ages. These are their revealed truths. Our history did not begin with contact with the Western explorers. Our civilisation did not start with the coming of the Christian mission: Because we have an ancient civilisation, it is important for us to give proper dignity and place to our history - Bernard Narakobi, The Melanesian Way.¹

I. INTRODUCTION

1. Resolution 77/276 (“Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change”) (**Resolution 77/276**) was adopted by the UN General Assembly (**UNGA**) on 29 March 2023. Resolution 77/276 sets forth the legal questions that the UNGA has asked this Court to answer:

“Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,

- (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 Bernard Narakobi, *The Melanesian Way*, (Boroko; Institute of Papua New Guinea Studies, 1980), p. 3.

2. On 6 September 2023, the Melanesian Spearhead Group (**MSG**) asked this Court's permission to submit a written statement in these advisory proceedings and to provide comments on the written statements submitted by other participants to the same.
3. On 15 September 2023, the Registrar confirmed that MSG is likely to be able to furnish information on the question before the Court and granted it permission to participate in these proceedings pursuant to Article 66 of the Statute of the Court.
4. This written statement is submitted within the deadline fixed by the Order dated 15 December 2023, which extended the time limits for the filing of both written statements and written comments.
5. MSG is an intergovernmental organisation whose members consist of the Independent State of Papua New Guinea (**Papua New Guinea**), Solomon Islands, the Republic of Vanuatu (**Vanuatu**), the Republic of Fiji (**Fiji**), as well as the Front de Liberation National Kanak et Socialiste (in English, the Kanak Socialist National Liberation Front) of New Caledonia (**'FLNKS'**). New Caledonia is a non-self-governing territory administered by France (collectively, **MSG Members**).
6. Based on common interests including the promotion of regional cooperation and the respect for self-determination, MSG was formed as a subregional group among the many peoples of Melanesia. The presence of FLNKS reflects the unique historical roots of MSG, wherein "newly independent Melanesian countries came together in a spirit of ethnic and cultural solidarity with an express commitment to working to ensure the liberation of their kanaky brethren." This sentiment guided the signing of The Agreed Principles of Co-operation Among Independent States of Melanesia in 1988, MSG Trade Agreement in 1993, and the Agreement Establishing the Melanesian Spearhead Group in 2007.
7. Another primary objective of MSG is to promote economic development, social progress, and cultural preservation among its members. To achieve this goal, MSG has focused on enhancing trade and investment, improving transportation and infrastructure, and preserving Melanesian culture and traditions. The organisation also works to address regional security concerns and threats to the environment.
8. MSG Members are located in the subregion of the Pacific known as Melanesia, which is a unique area due to its immense biodiversity (including a significant proportion of global biodiversity) and linguistic diversity, with around 1,500 distinct language groups.
9. MSG hopes to contribute to the work of this Court in clarifying international legal obligations through advisory proceedings, and urgently asks the Court to do so with respect to the legal questions contained in Resolution 77/276. While these questions are categorically of global import, the answers to them arrive with greatest urgency for those that are injured by, specially affected by, or particularly vulnerable to the adverse effects of climate change. It is a core contention of MSG that all its members, and all the peoples and individuals therein, including present and future generations, are among the intended beneficiaries envisaged by Resolution 77/276.

10. This written statement aims to supplement, not supplant, those written statements that have been submitted by MSG Members.
11. This written statement is limited in scope and will focus on the following issues of common interest across MSG membership:
 - a. impacts of climate change on culture and traditions;
 - b. impacts of climate change on biodiversity; and
 - c. impacts of climate change on rural communities, with a special emphasis on youth and children.
12. In this written statement, MSG aims to provide unique, first-hand documentation of the impacts of climate change in the Melanesian subregion. We have travelled across the MSG membership, gathering testimony about climate change impacts at the local level. We have also retained experts to provide reports, testimonies, and statements relevant to these three focus areas. These materials are annexed to this written statement and referred to throughout.
13. MSG recognizes the incontrovertible science, as summarized in Intergovernmental Panel on Climate Change (IPCC) reports, establishing the devastating and in some cases irreversible effects of anthropogenic climate change on all areas of human life. MSG further recognizes the impact of climate change on protected human rights, including, but not limited to, the right to self-determination, the right to life, health, property, private and family life, cultural life, and an adequate standard of living, including access to food, water, clothing, housing, medical care, and necessary social services.
14. The adverse effects of climate change generally include but are not limited to increased frequency and intensity of extreme weather events (such as cyclones, floods, and landslides), increased precipitation and rainfall, widespread deterioration of ecosystems and loss of species, destabilisation of weather and seasonal patterns, ocean acidification and warming, coral bleaching, melting glacier and sea ice, and sea level rise. These impacts have led to food insecurity and hunger, water scarcity, forced displacement, loss of life and quality of life, economic loss and impediment to development, and loss of culture, impacting human well-being across the globe.
15. Climate change has already caused immense harm to the unique and precious environment, ecology, and biodiversity of Melanesia. Our peoples have experienced devastating environmental changes, including increasing frequency of extreme weather, more intensive cyclones, unpredictable and unstable weather and seasons, extreme heat, extreme rain and flooding, coastal erosion, landslides, coral bleaching and degradation, loss of land to rising seas, and the proliferation of invasive species. All of these impacts are scientifically attributable to anthropogenic climate change.
16. With respect to culture and tradition, communities who have been forced to relocate because of climate change have in many cases left their ancestral homes, burial grounds, and other sacred and indigenous sites, not to mention their property and livelihoods.

Peoples across the region have lost sacred crops, species, and resources that are essential to Melanesian life and belief systems. Traditional languages, cultural practices, and sacred knowledge have been lost forever. These losses in many ways defy quantification in their significance and gravity. Entire Melanesian cosmologies and ways of being have collapsed.

17. With respect to biodiversity, the entire subregion of Melanesia is a biodiversity hotspot, among the most biodiverse areas on the planet. This wealth of biodiversity extends to both Melanesia's land (which includes the world's third largest rainforest) and oceans, with unparalleled richness of biodiversity in their reef systems. Now, Melanesian peoples are experiencing their reefs bleach, their mangrove forests die as a result of saltwater inundation and increasingly severe storm damage, and their traditional medicinal plants and marine species disappear as a result of changing weather patterns and conditions. Fishing – both communal and commercial – is increasingly at risk due to coral reef bleaching, severe storms, and unpredictable seasons.
18. Melanesian rural communities, and particularly their youth and children, are disproportionately vulnerable to the aforementioned climate change impacts. Already, rural communities are experiencing forced displacement as a result of shocks to their surrounding natural environments. Cyclones, landslides, and other natural disasters increasingly threaten the lives of individuals in rural communities, both in coastal and inland areas. Youth and children – who make up around 44% of Melanesia's total population, as one of the demographically youngest regions in the world – experience heightened effects as a result of disruptions to their health, standards of living, livelihood prospects, and education. Further, because climate change has already resulted in the loss of numerous Melanesian cultural practices, the young people of the subregion have lost the ability to learn and to live their culture; they have been ruptured from their cultural heritage.
19. Climate change strikes at the very heart of Melanesia and its many indigenous and ancient civilisations, which are founded on special, site-based, and highly localised relationships with ancestral lands, territories and resources, including all flora and fauna and the full range of other-than-human species. Accordingly, the very foundation of our societies rests on the indivisibility between culture and nature, or what might be called the total environment.
20. MSG submits that this indivisibility must be taken into account as this Court considers the nature and degree of the harm that climate change has induced for MSG Members and their peoples, as well as the appropriateness of the remedies available under the law of state responsibility to repair that harm. The generalised and localised effects of climate change on those living in Melanesia cannot be understated, and call for remedy.
21. This statement is divided into six sections, including this Introduction (**Section I**). **Section II** establishes that the Court has jurisdiction to answer the legal questions before it and that there is no compelling reason for the Court not to render the requested opinion. **Section III** provides background and contextual information on the Melanesian subregion. **Section IV** provides information about the myriad ways in which climate

change has already significantly harmed MSG Members and their peoples—specifically as concerns culture and tradition, biodiversity, and rural communities (with special emphasis on youth and children). This informs our arguments both as to state obligations and legal consequences resulting from the breach of those obligations. **Section V** address the specific components of the legal questions that this Court has been asked to answer, both Question (a) and Question (b). **Section VI** concludes.

II. JURISDICTION

22. MSG submits that this Court has jurisdiction to render the advisory opinion requested of it by the UNGA in Resolution 77/276, and that there is no compelling reason for the Court not to do so. Article 65 of the Statute of the Court 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.” Article 96 of the UN Charter in turn provides that, “[t]he General Assembly (...) may request the International Court of Justice to give an advisory opinion on any legal question.” Thus, the Court has broad competency to answer any legal question put to it by the UNGA. Moreover, the Court should not refuse this request for the additional reason that never before has the UNGA referred a request for an advisory opinion to the Court by consensus. This signals the unprecedented importance of the legal question being asked of this Court, and the correlating need for the Court to issue the requested opinion.
23. MSG further submits that there are no compelling reasons to warrant the exercise by this Court of its discretionary power not to render the requested advisory opinion. Cognizant of the fact that this Court has stressed that this power (to refuse a request properly made of it) should be exercised only in exceptional circumstances, MSG maintains that the request now before this Court “should not be refused”.²

III. MELANESIA

24. MSG Members are located in a subregion of the Pacific commonly called Melanesia,³ which is a larger geographical region than the area represented by MSG Members (for example, the Melanesian region also includes the Torres Strait Islands and West Papua).

² *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase*, Advisory Opinion, I.C.J. Reports 1950, p. 71.

³ Melanesia is a subregion of the Indigenous Pacific, which also includes the subregions of Polynesia and Micronesia. These are geographical and other designations originating with early European explorers; Melanesia meaning “black islands”, Polynesia meaning “many islands” and Micronesia meaning “small islands”. These terms are now used as convenient reference points for regional groupings, while at the same time eliding connections between the subregions and the diversity within these regions. While the majority of the population in the subregion identify as Melanesian, there are also other Pacific peoples, such as Polynesians who are also indigenous to this subregion. For reference work on the region closer to its own cultural terms (and critiquing the European taxonomy), see Damon Salesa, *An Indigenous Ocean: Pacific Essays* (Bridget Williams Books; Wellington, 2023).

25. Melanesia has an antiquity and diversity that stretches back, starting in New Guinea 40,000-50,000 years ago, but there are also diverse and various cosmological and genealogical accounts of peoples' origins which operate on an entirely different timeframe and historical practice.
26. Melanesia includes large tracts of ocean. Among the most precious ecosystems in the Pacific region and in Melanesia are its coral reefs. These reefs are found all around the islands and are a focal point of coastal life in Melanesia. Papua New Guinea, Solomon Islands, Fiji, and New Caledonia also house significant reef sites of the Great Coral Sea, the Coral Triangle, New Caledonia Barrier Reef and Fiji's Barrier Reef (also known as the Great Sea Reef). Each of these reef ecosystems are recognised biodiversity hotspots, meaning they contain an exceptionally high richness of species, including rare and endemic species.⁴ The New Caledonia Barrier Reef is home to the highest coral diversity in the world and is World Heritage listed.
27. New Guinea Island, which includes Papua New Guinea, is home to the third largest rainforest in the world and includes an estimated 7-10% of the world's terrestrial biodiversity. Many of the species in Melanesia are endemic, found nowhere else on the planet.
28. Our region is a hotspot of not only biodiversity but cultural diversity. Melanesia is the most linguistically diverse region in the world, home to an astonishing 1,500 distinct language groups.⁵ The biodiversity and linguistic diversity of the region are interlinked.
29. MSG began as an informal grouping by Papua New Guinea, Solomon Islands and Vanuatu in 1988 through the *Agreed Principles of Cooperation Among Independent States*, not long after these States had achieved formal decolonisation. FLNKS was an original member and Fiji later joined the organisation in 1996.⁶
30. MSG was founded with the desire to express solidarity for Melanesian peoples who continued to struggle for self-determination and independence, such as the Kanak of New Caledonia, who are the indigenous peoples of New Caledonia. Indeed, MSG originated "from a vision backed by strong political desire to strive for the entire decolonization and freedom of the Melanesian countries and territories still under the colonial rule in the South Pacific."⁷ From the beginning, MSG has been guided by principles of self-determination, solidarity, and communal welfare over individualism, including a

⁴ Costello, M.J., M.M. Vale, W. Kiessling, S. Maharaj, J. Price, and G.H. Talukdar, 2022: Cross-Chapter Paper 1: Biodiversity Hotspots. In: *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Lösschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 2123–2161, doi:10.1017/9781009325844.018, p. 2126. See also, Table CCPI.1.1, p. 2130.

⁵ Antoinette Schapper. Linguistic Melanesia. Routledge Handbook of Language Contact, 2020.

⁶ Although MSG membership is restricted to these Members, the people of the Torres Strait and West Papua also are of Melanesian origin and share the same cultures and traditions. For this reason, though not formal Members, the people of Torres Strait and West Papua also participate in MSG cultural events.

⁷ Melanesian Spearhead Group, "About Us", at <https://msgsec.info/about-us/> (last accessed 7 Feb. 2024).

recognition of social, cultural, human and indigenous rights and sustainable development. These principles continue to guide MSG today.

31. MSG guiding principles (each starting with a letter to form, by way of acronym, the term ‘Melanesia’) are:

“**M**elanesian cultures, traditions and values as well as those of other indigenous communities within the three countries”.

“**E**xchange and other traditional ties which may cross international boundaries”.

“**L**inks of friendship and co-operation with members of the United Nations and the South Pacific Forum, both individually and collectively”.

“**A**rrangements which facilitate regular, high-level, and wide-ranging consultations, exchanges, and co-operation among independent [S]tates in Melanesia”.

“**N**ational independence, and the sovereign equality, territorial integrity, and the right of non-interference in internal affairs of independent states”.

“**E**conomic and technical co-operation between states, as well as exchanges between individuals and groups with common interests”.

“**S**olidarity and co-operation in accordance with shared national interests – working, where possible, through and with the objective of strengthening wider institutions of regional and international co-operation”.

“**I**ndependence as the inalienable right of colonial countries and peoples”.

“**A**rms control and disarmament, as well as efforts to reduce international tensions, to limit great-power rivalry, to secure human rights, and to ensure the peaceful resolution of disputes”.⁸ (emphasis added, to demonstrate acronym)

32. MSG was officially established as an intergovernmental organisation on 23 March 2007 in Vanuatu, pursuant to the multilateral *Agreement Establishing the Melanesian Spearhead Group*, which entered into force on 12 March 2010 (**MSG Agreement**). The MSG Agreement was registered with the Secretariat of the United Nations on 10 March 2010. Attached as **Exhibit 1** of this written statement is a copy of the aforementioned agreement and UN depository instruments.

33. In 2015, the MSG Agreement was revised. A copy of the revised agreement is attached as **Exhibit 2** of this written statement. Article 3 of the revised agreement defines the mandate of MSG as follows:

“To promote, coordinate and strengthen inter-membership trade, exchange of Melanesian cultures, traditions and values, sovereign equality, economic and

⁸See Melanesian Spearhead Group, “Agreed Principles of Co-operation among Independent States in Melanesia” (14 March 1988), available at <https://www.msgsec.info/wp-content/uploads/msghistoricaldocuments/1988-14-Mar-Agreed-Principles-of-Co-operation-among-Independent-States-in-Melanesia.pdf> (last accessed 7 Feb 2024).

technical cooperation between [S]tates and the alignment of policies in order to further MSG members' shared goals of economic growth, sustainable development, good governance, peace, and security.”

34. The international legal obligations of States in respect of climate change, and the legal consequences arising from the breach of those obligations are of great concern to MSG Members. Not only are our Members acutely and disproportionately vulnerable to the adverse effects of climate change, but the climate crisis implicates issues of deep inequity, the need for global societal shift toward communal welfare, and solidarity amongst the international community as well as true sustainable development—in other words, the core values and priorities of MSG.
35. By focusing on three priority areas—culture and tradition, biodiversity, and rural communities (specifically youth and children)—MSG seeks to complement written statements by MSG Members. These areas represent the collective interests of MSG membership and bear directly on our intergovernmental organisation, as reflected in the following MSG instruments.
36. Article 5 of the MSG Agreement requires cooperation in promoting sustainable development centred on the human person, mandating respect for and promotion of human rights, including communal rights and the rights of indigenous peoples and communities. It is recognised that democratisation, development and the protection of fundamental freedoms and human rights are mutually reinforcing and interrelated.
37. Pursuant to the broad objectives under the MSG Agreement, MSG Leaders adopted the *Melanesian Spearhead Group Leaders' Declaration on Environment and Climate Change (DECC)* in 2012. The DECC recognises “the critical importance of a healthy environment for the long-term livelihoods of our people” and the need to take steps to manage and conserve our unique ecosystems and biodiversity. The DECC notes that climate change exacerbates the challenge of sustainable development. The DECC also notes the threat of climate change to the “viability of some of our island communities”. Finally, it sets out MSG initiatives for conservation, sustainable management and restoration of marine and terrestrial environments and ecosystems.
38. In 2023, MSG Leaders adopted the *Udaune Declaration on Climate Change (Declaration)*, which includes statements expressing concern that the current low global ambition under the Paris Agreement is further accelerating the vulnerability of the Pacific and, in particular, the Melanesian subregion. The Declaration reiterated that climate change is the single greatest existential threat facing the Pacific, and that the Pacific region as a whole is in a state of climate emergency. The Declaration is attached to this written statement as **Exhibit 4**.
39. In recognition of the importance of the diversity and richness of Melanesian cultures and traditions, MSG Leaders signed a landmark sub-regional treaty called the *Framework Treaty on the Protection of Traditional Knowledge and Expressions of Culture* in 2011 (**TK and Culture Treaty**), which recognises and accords legal protection to traditional knowledge and expressions of culture, while also recognising the proprietary nature of

traditional knowledge and expressions of culture. The TK and Culture Treaty is attached to this written statement as **Exhibit 3**.

40. While the TK and Culture Treaty is not part of the suite of international obligations directly applicable to the legal questions before this Court, it is important that the Court understands the concept of traditional knowledge and that, in this written statement, MSG seeks to provide information on how climate change has caused and contributed to the loss and damage of traditional knowledge and cultural expressions. It is a core contention of MSG that such loss is an international human rights issue. The TK and Culture Treaty recognises and protects traditional knowledge, which is defined as:

“[A]ny knowledge originating from a local, indigenous and traditional community that is the result of intellectual activity and insight in a traditional context, including know-how, skills, innovations, practices and learning, where the knowledge is embodied in the traditional lifestyle of a community, or contained in the codified knowledge systems passed on from one generation to another. The term shall not be limited to a specific technical field, and may include agricultural, environmental or medical knowledge, and knowledge associated with genetic resources”.⁹

41. Expressions of culture “mean any way in which traditional knowledge appears or is manifested, irrespective of content, quality or purpose, whether tangible or intangible”.¹⁰ It includes, for example, names, stories, chants, productions of art, cuisines, medicines, shell work, rugs, costumes, musical and architectural forms. Protection extends to traditional knowledge not in material form, that have been transmitted from generation to generation and that are collectively originated and held.
42. MSG notes that the concept of traditional knowledge has been recognised in international environmental law instruments such as the 2010 *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity (Nagoya Protocol)* and the *Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ)*, which opened for signature on 20 July 2023, but is not yet in force.

⁹ See, Framework Treaty on the Protection of Traditional Knowledge and Expressions of Culture (**Exhibit 3**), article 3.1.

¹⁰ Secretariat of the Pacific Community (SPC), *Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture*, available at <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/spc/spc002en.html> (last accessed 7 Feb 2024).

IV. CLIMATE CHANGE IMPACTS

43. In this Section, MSG will detail the ways in which climate change is impacting the MSG Members and their people. The Section discusses impacts of climate change on (1) culture and traditions; (2) biodiversity; and (3) rural communities, with a particular focus on youth and children.
44. This Section shares first-hand testimonies of individuals and communities across the MSG membership, so that the Court may understand the depth and significance of the loss that these individuals and communities are experiencing. Many of the individuals whose voices are shared in this Subsection implored MSG lawyers and agents to ensure that their voices be heard by the Court. They shared intimate aspects of their culture, custom and lives including taking MSG lawyers and agents to see sacred and secret places. Some of these places were so sacred that the community understood that they were risking individual and collective wellbeing and fortune, but they felt compelled to ensure that MSG convey the significance of their testimony and of the harm they are experiencing. With respect, we ask that the Court devote special care and attention when reading this Section and the referenced Exhibits.
45. MSG is not attempting to prove losses and damage in this Section. Instead, these stories are illustrative, providing insight into local manifestations of climate change and its adverse effects.

1. CULTURE AND TRADITION

Melanesian Culture

46. The Melanesian subregion is home to varied and rich cultures. While the diverse peoples of the region hold their own unique and precious customs, traditions, and beliefs, Melanesian peoples are also united by a core cultural touchstone: the inseparability of peoples and their environments.
47. The deep connection between Melanesian peoples and their environments is reflected in the approximately 1,500 distinct languages spoken across the region. Each of these languages is linked to the unique and precious biodiversity of the particular place where they are spoken. Ara Kouwo, the headman of Veraibari village, which is situated on the mouth of the Kikori River in PNG, expresses his relationship to his place when he says that he “speak[s] the language of this land”.¹¹ In many languages, terms that are used to describe elements of nature are simultaneously used to describe elements of human beings. For example, in Bau, Fiji, *dra* means both human blood and the sap of a plant.¹²
48. For many communities in the subregion, their place is their identity. The term “placeperson” has been used to describe communities in Melanesia. This term represents the depth of connection between person and place, such that it is “hard to distinguish

¹¹ Statement of Ara Kouwo, para. 56 (**Exhibit 14**).

¹² Expert Report of Fabrice Wacalie, para. 19 (**Exhibit 30**).

persons from places and vice versa”.¹³ In many Melanesian belief systems, all elements of nature – of which humans are just one – are interconnected through the cosmos.

49. Melanesian cultures are best understood as “biocultural”: “The biological and the cultural are inextricably linked. They are tied to each other, and they modify each other and they preferably live in harmony”.¹⁴
50. Jean-Yves Poedi is a member of the Kanak Customary Senate of New Caledonia, a quasi-governmental body that advises Kanak communities on all matters related to Kanak identity and culture. Senators are chosen based on their Kanak values and traditional knowledge. He explains the relationship between humans and the environment in the Kanak world:

“In the West, they see a separation between man and the environment. In the Kanak world, there is no space. We are all of these things. We are them. We are one of the elements that make up the environment. We are the Sharks, we are the trees, we are the stones, we are all that. There is no space, so when we disturb or hurt the environment, we hurt ourselves. That’s how it is”.¹⁵

51. This relationship is similar for Sailosi Ramatu, the former headman of Vunidogoloa, Fiji, who explains that, for his people, *Vanua*, or the land,¹⁶ is everything:

“I was created from the *Vanua* and am part of the *Vanua*. In this way we are strongly connected. The *Vanua* is our identity because we are registered under it. It is like our mother. It gives us everything. When we die, we become one with the *Vanua* again. Our ancestors who have passed away are already part of the *Vanua*”.¹⁷

The people of Vunidogoloa were forced to leave their land in 2014, because it was rendered uninhabitable by rising seas.¹⁸

52. The Gimi people of Eastern Highlands, PNG bury their dead in their traditional hunting grounds because “the thing that was a living human and what we would call a ‘soul’ in English, goes back into that land and it infuses that land”.¹⁹ In some communities, the ancestral presence in the land is the basis for customary entitlement to land, which across all MSG States is protected under the constitution as “property”.
53. The Biangai people of Papua New Guinea commonly refer to their land as “their ‘bone,’ something that is core to being a person in this world”.²⁰ The Biangai also use the term

¹³ Expert Statement of Jamon Halvaksz, para. 8 (**Exhibit 33**).

¹⁴ Statement of Francis Hickey, para. 16 (**Exhibit 18**).

¹⁵ Statement of Jean-Yves Poedi, para. 52 (**Exhibit 9**).

¹⁶ Land in this context refers not only to the physical terrain, but also the species, resources, weather climate conditions, and ancestral and spiritual connections that comprise the place to which a people belong.

¹⁷ Statement of Sailosi Ramatu, para. 20 (**Exhibit 8**).

¹⁸ See Statement of Sailosi Ramatu, para. 11 (**Exhibit 8**).

¹⁹ Expert Statement of Paige West, para. 17 (**Exhibit 36**).

²⁰ Expert Statement of Jamon Halvaksz, para. 8 (**Exhibit 33**).

ngaibilak to refer to their land, which translates to “cared for” or “caring land”.²¹ The term reflects a mutual relationship—the land caring for the people and the people caring for the land.²²

54. The concept of caretaking reflected in the Biangai’s concept of *ngaibilak* is present in many other places across Melanesia. Francois Neudjen is the special advisor to the Kanak Customary Senate, due to his deep traditional knowledge. Francois explains that Kanak, too, share a mutual relationship of caretaking with the land:

“The land fashions us into who we are. And so in life, in practice, in responsibility, we are just guardians of the land. We are not here to stay. We are just passing through this life. During our lives it is our responsibility to care for the lands, which gave us everything that we have and everything that we are”.²³

55. Individual, family and community relationships are developed through their interconnectedness with place. For example, Jeanette Bolenga, a member of the Tapi Tribe in North Pentecost, Vanuatu, talks about the *agamali*, which is “the central place in the village where everyone gathers. There is a big feeling of love there. You gather and you share and you eat”.²⁴ She further explains that this is a site of care and generosity for all who visit: “You should never go hungry on Pentecost and you should never sleep outside because every village has an *agamali* and you are always welcome there. That is the practice that has been going on for centuries on Pentecost”.²⁵
56. Ceremonial exchanges of culturally significant crops between families and communities help to strengthen bonds. For example, Mangau Iokai, a spiritual leader of Yakel village on Tanna Island, Vanuatu, explains the *Niel* ceremony. This is “a ceremony of giving. We have the *Niel* when we have an abundant harvest with lots of surplus crops. During the *Niel* we give any leftover crops from our garden that we don’t need as a gift to someone else, maybe another family or another village. It is an important way that we maintain and strengthen relationships. When the harvest is not good, there is no *Niel*”.²⁶
57. Communal practices centred on natural resources, including communal fishing,²⁷ weaving and crafting,²⁸ and dancing²⁹ are also crucial to maintaining peace, unity, and fellowship.
58. In short, Melanesian communities are wholly dependent on the health and well-being of the environment. As set out in detail below, climate change has had devastating impacts

²¹ Expert Statement of Jamon Halvaksz, para. 8 (**Exhibit 33**).

²² Expert Statement of Jamon Halvaksz, para. 8 (**Exhibit 33**).

²³ Statement of Francois Neudjen, para. 17 (**Exhibit 11**).

²⁴ Statement of Jeanette Bolenga, para. 63 (**Exhibit 19**).

²⁵ Statement of Jeanette Bolenga, para. 67 (**Exhibit 19**).

²⁶ Statement of Mangau Iokai, para. 51 (**Exhibit 21**).

²⁷ See, e.g., Statement of Hilary Fioru, paras. 21-29 (**Exhibit 16**).

²⁸ See e.g., Statement of Jeanette Bolenga, paras. 6-11 (**Exhibit 19**); Statement of Faye Mercy, paras. 38-45 (**Exhibit 17**); Statement of Cynthia Rosah Bareagihaka Houniuihi, paras. 20-23 (**Exhibit 15**).

²⁹ See, e.g., Statement of Mangau Iokai, paras. 51-55 (**Exhibit 21**); Statement of Ara Kouwo, paras. 60-62 (**Exhibit 14**).

on the places and peoples of Melanesia. The fabric of life has already come apart, and in many cases the loss is permanent and irreparable.

59. Below, MSG will share just a few stories of the harm that climate change has already inflicted on Melanesian cultures and traditions. These examples are representative of broader patterns of loss that are being experienced across the region.

Impacts on customary food

60. Gardening is at the core of Melanesian life and culture. Many communities in Melanesia rely on their gardens for both their physical and spiritual sustenance. The gardens not only provide crops that are staples of Melanesian diets, they also provide cultural crops that are essential to all important ceremonies and rituals.
61. The viability of the gardens depends on a stable and predictable seasonal calendar. All crops require specific conditions to grow, and so have been planted at certain times of the year depending on the predictable and reliable cycles of nature.³⁰ Traditionally, there have been stable seasons in Melanesia. For example, in New Caledonia there are two seasons: the hot season and the cold season, with a period of rain in the transition period between the two.³¹ These reliable seasons have allowed the peoples of Melanesia to garden in accordance with nature and reliably produce bountiful harvests.
62. Climate change has disrupted the seasonal calendar. The weather has grown increasingly erratic over the last two decades, compromising the ability of people to grow food. As Francois Neudjen explains: “[T]here has been an upheaval. Something has gone wrong. The seasonal cycle has been disrupted. We haven’t been able to plant as we should”.³²
63. Rain occurs when it should not, even during the dry season.³³ This causes the crops to rot and spoils the harvest.³⁴ Heavy rains also result in floods and landslides, which not only destroy the harvest, but render arable land unusable.³⁵
64. Even when the weather occurs as it should—hot and dry during the dry season, and rainy during the rainy period—it has grown too extreme. The sun burns too hot, causing the plants to wither on their vines. The rain is too heavy and floods the gardens, causing the plants to rot.³⁶

³⁰ See, e.g., Statement of Jeanette Bolenga, paras. 79-88 (**Exhibit 19**); Statement of Francis Hickey, paras. 14-31 (**Exhibit 18**).

³¹ Statement of Francois Neudjen, para. 27 (**Exhibit 11**).

³² Statement of Francois Neudjen, para. 28 (**Exhibit 11**); see also, e.g., Statement of Yvon Poedi, paras. 20-22 (**Exhibit 9**); Statement of Alpi Nangia, para. 20 (**Exhibit 23**); Statement of Sailosi Ramatu, paras. 24-28 (**Exhibit 8**).

³³ See, e.g., Statement of Francis Hickey, para. 36 (**Exhibit 18**); Statement of Jenny Toata, para. 14 (**Exhibit 24**).

³⁴ See, e.g., Statement of Cynthia Rosah Bareagihaka Houniuhi, paras. 17-19 (**Exhibit 15**).

³⁵ See, e.g. Statement of the Women of Yakel Village, para. 7-8 (**Exhibit 27**); Statement of the Ouara Tribe, paras. 34-37, 48-52, 59 (**Exhibit 12**); Expert Statement of Jamon Halvaksz, paras. 16-17 (**Exhibit 33**).

³⁶ See, e.g., Statement of Johnny Loh, paras. 26-32 (**Exhibit 26**); Statement of Simione Batu, paras. 7-11 (**Exhibit 6**); Statement of the Women of Yakel Village, para. 9 (**Exhibit 27**).

65. Compounding these harms, cyclones have grown more intense, destroying gardens and giving them little time to recover;³⁷ crops that grow near the coast are failing as rising seas inundate the soil and render it too salty for the crops to survive.³⁸
66. In Yakel, all of these impacts have compounded to result in severe food shortages, making life untenable. Yakel is a kastom village, meaning the people have chosen to reject Western influences and preserved their traditional ways of life.
67. Mangau Iokai, a 78-year-old gardener from Yakel explains that the changes to the weather have been so extreme they have rendered his world unrecognizable:
- “I’ve seen big changes in the weather over my lifetime. Before, I knew the weather pattern. But now, even though I am living in my homeland, it feels like I am living in a foreign land. It is strange. I don’t know my place anymore”.³⁹
68. As a result, the people have Yakel have experienced all of their staple crops failing, including the coconut, the banana, the taro, and the yam.⁴⁰ They have noticed the changes beginning in the 1980s, but have observed that things have gotten much, much worse since Cyclone Pam in 2015.⁴¹ The women of Yakel, who elected to provide their testimony as a collective, explain that “the changing weather is causing the crops to shrink. The rain is too much and the sun is too strong. They are killing the crops. The repeated landslides and cyclones also destroy the crops. As a result of these changes, we don’t have enough food”.⁴²
69. Johnny Loh, a gardener, observes:
- “Tanna has always been an island with plenty. Our land is naturally fertile. Our people were never hungry. We always had food in the garden. Our people were very self-sufficient in terms of subsistence farming. We had lots. But it is very different now. The harvests are getting smaller and smaller, and every time you have a small harvest, you have less and less to plant”.⁴³
70. Landslides have depleted the nearby river of prawns, fish, and eel, once a staple of the Yakel community’s diet and an important source of protein. The landslides have also destroyed the village’s hunting grounds, where they previously hunted for wild chickens and pigs.⁴⁴
71. In the past, the women maintained their gardens near the village. But Cyclone Pam in 2015 triggered a landslide that rendered the arable land near the village completely

³⁷ See, e.g., Statement of Jimmy Namile, para. 24 (**Exhibit 28**).

³⁸ See, e.g., Statement of the Ouara Tribe, paras. 38-40 (**Exhibit 12**); Statement of Ara Kouwo, paras. 68-74 (**Exhibit 14**).

³⁹ Statement of Mangau Iokai, para. 8 (**Exhibit 21**).

⁴⁰ Statement of Johnny Loh, paras. 9-22 (**Exhibit 26**).

⁴¹ Statement of Johnny Loh, para. 23 (**Exhibit 26**).

⁴² Statement of the Women of Yakel Village, para. 9 (**Exhibit 27**).

⁴³ Statement of Johnny Loh, para. 25 (**Exhibit 26**).

⁴⁴ Statement of the Women of Yakel Village, paras. 12-17, 24-26 (**Exhibit 27**).

unusable. As a result, the women are forced to travel far from their village to find appropriate land for gardening—down a mountain, across a valley, and up the side of the mountain on the other side. It takes almost the entire day to get there and back.⁴⁵

72. The trip is so long, the women only have between 30 minutes and one hour to spend in their garden.⁴⁶ The trip is so exhausting, that sometimes the women do not have the energy to make it to the garden at all, further limiting the food available to their families.⁴⁷
73. The village has lost all of their primary sources of food and do not have enough to eat. Constant food shortages are affecting the health of the community. The women of Yakel explain:

“The food shortages are affecting our health. Our lifespans are getting shorter. The women are dying at a younger age and not reaching the age when they are supposed to die”.⁴⁸

“It is affecting the growth of both our children and our adults. We are getting smaller. We are afraid that if we continue without having our staple foods, it will make us sick”.⁴⁹

74. The food shortages are also preventing the village from engaging in essential cultural practices. For example, because they have little else to eat, the village has been forced to rely on animals that have been raised for ceremonial purposes. The women explain that because they have been forced to eat ceremonial animals:

“[W]e cannot perform our Kastom ceremonies . . . [w]e are avoiding doing the ceremonies when we are supposed to do them, and with each one we miss, this is building up”.⁵⁰

75. The ceremonies are a sacred duty that is owed to the Nakamal, which is the heart of the village and the place where the community may commune with the spirits. The women, in particular, feel a deep sense of shame and failure when they cannot perform their ceremonies.⁵¹

“We are feeling very depressed and worried. Some women in the community have become so worried about the Kastom ceremony they are supposed to be doing that they are having strokes”.⁵²

76. The customary way of life that the people of Yakel has chosen to keep has withstood the pressures of colonization, Christianity, modernity, and globalization. Now, however, the

⁴⁵ Statement of the Women of Yakel Village, para. 7 (**Exhibit 27**).

⁴⁶ Statement of Jenny Toata, para. 25 (**Exhibit 24**).

⁴⁷ Statement of Jenny Toata, para. 27 (**Exhibit 24**).

⁴⁸ Statement of the Women of Yakel Village, para. 21 (**Exhibit 27**).

⁴⁹ Statement of the Women of Yakel Village, para. 15 (**Exhibit 27**).

⁵⁰ Statement of the Women of Yakel Village, para. 28 (**Exhibit 27**).

⁵¹ See Statement of the Women of Yakel Village, paras. 6-8 (**Exhibit 27**).

⁵² Statement of the Women of Yakel Village, para. 29 (**Exhibit 27**).

food shortages and other hardships caused by climate change threaten to bring their way of life to an end. The women of Yakel explain:

“Because of the food shortages due to the changing weather, life is getting hard. Our children are looking elsewhere for a different life. They are leaving the village. As mothers, this makes us feel so sad, because we want them to keep our *Kastom* and our way of life”.⁵³

77. Across the region, failure of gardens and loss of other food sources has replaced abundance with scarcity. This lack is eroding relationships and relationship building.
78. Jeanette Bolenga, from North Pentecost, Vanuatu, explains that an important part of her community’s culture is a coming together at the *agamali* to share food. In recent years, because of food shortages caused by disruption of seasonal weather patterns, the community does not have enough food to share, and so they no longer gather.⁵⁴
79. Jeanette grew up in Pentecost, but now lives in the urban centre of Port Vila. She recounts a recent experience of going to visit her home village:

“[In the past, when I would visit], everyone is happy to see me, they all come to say hello, the young and the old, everybody, and they would offer me fruit, lots of things to eat. But this time, people seemed a bit hesitant to talk to me. I couldn’t understand why. They were standing at a distance and not greeting me warmly. Something was wrong. I think it was because they didn’t have anything to offer me. They didn’t have enough food to share, they didn’t have anything to give me, so they felt ashamed and like they couldn’t greet me properly. Life has changed. Scarcity has changed who people are . . . this scarcity of food is changing the whole character of our people”.⁵⁵

80. Similarly, the community of Vunidogoloa village, Fiji, has lost much of their *dalo* (taro), which is an important crop essential for the customary practice of gift giving. *Dalo* is presented by the men to their communities and their chiefs as a show of respect, and likewise is presented at funerals and other important ceremonies. “In the I-taukei (Indigenous Fijian) protocol it is an unheard-of behaviour to go to the chief empty-handed or go to a ceremony with nothing to present. We cannot do this”.⁵⁶ However, too much sun and too much rain has so compromised the *dalo*, that the community can no longer grow sufficient quantities to engage in gift giving protocols. It has therefore “become difficult to maintain our traditions with the *dalo*”.⁵⁷

⁵³ Statement of the Women of Yakel Village, para. 35 (**Exhibit 27**).

⁵⁴ Statement of Jeanette Bolenga, para. 71 (**Exhibit 19**).

⁵⁵ Statement of Jeanette Bolenga, paras. 70, 96 (**Exhibit 19**).

⁵⁶ Statement of Sailosi Ramatu, para. 30 (**Exhibit 8**).

⁵⁷ Statement of Sailosi Ramatu, para. 30 (**Exhibit 8**).

81. The same climate change impacts—changing seasons, heavy rains, landslides, cyclones, and saltwater inundation—are resulting in the failure of custom crops—crops that are sacred. People share intimate familial relationships with many of these crops and hold them close to their hearts.
82. Custom crops are essential to many ceremonies and rituals. Because of the failure of crops and destruction of gardens, peoples across Melanesia are unable to properly perform their customary ceremonies.
83. For example, in Port Resolution, Tanna, Vanuatu, the banana is tied to the creation of the land. Many species of banana grow there. All of these varieties are ancestors and extremely important to the people of Port Resolution. They are necessary for ceremonies and are also a source of traditional medicine. Each of these varieties are struggling as a result of increasingly extreme heat, which prevents the banana tree from fruiting successfully. Seven years ago, several of these varieties ceased to grow entirely. As Werry Narua, a community leader in Port Resolution explains, this is “a deep spiritual loss because these Bananas are [] ancestors and are part of the origin of my place”.⁵⁸

Impacts on the Yam

84. Of the custom crops impacted by climate change, the Yam is the most significant. For many Melanesian peoples, the seasonal calendar—and life itself—revolves around the Yam.
85. In Vanuatu, in the words of Jeanette Bolenga, “Yam, is very, very important to us. Our seasons, our calendar, and our lives are centred around the Yam”.⁵⁹ Indeed, Mangau Iokai explains: “[t]he Yam is the most important crop in our Kastom . . . out of all of the crops, Yam is the most important. We consider it to be the King of all crops. Of all the crops that I have in my garden, I need to have the Yam”.
86. In New Caledonia:

“The Yam is everything. It is the centre of our lives. It is sacred. It is who we are . . . The Yam cycle has always been the organizing principle of Kanak life.”⁶⁰

We say that man is the Yam. The Yam is us. Our lives are entwined. There are other species that are important too, like the Taro. They are important to custom too. But the Yam is custom. That’s because it’s the one in charge. It manages the year for us”.⁶¹
87. The Yam has been part of life in Melanesia since the subregion was first settled. The Yam has ancient lineage. Different communities have different origin stories about the Yam. Some stories talk about the Yam migrating with them. In Vanuatu, “[t]he Yam is

⁵⁸ Statement of Werry Narua, paras. 18, 33 (**Exhibit 29**).

⁵⁹ Statement of Jeanette Bolenga, para. 73 (**Exhibit 19**).

⁶⁰ Statement of the Ouara Tribe, paras. 18, 21 (**Exhibit 12**).

⁶¹ Statement of Francois Neudjen, para. 23 (**Exhibit 11**).

what the people have eaten since they first arrived on these islands more than 3,000 years ago. It is their staple and their sustenance”.⁶²

88. But the Yam is much more than this, too. The Yam is sacred. Communities across Melanesia hold beautiful creation stories centred on the Yam.⁶³ While the specifics vary, many believe that the Yam is a gift from a god, or from the ancestors, which has allowed their communities to survive and thrive since the beginning.⁶⁴ For communities that hold these beliefs, virtually all customary ceremonies and rituals require the Yam.⁶⁵
89. The seasonal calendar in different communities is centred on the Yam, because the Yam requires particular conditions to grow. Indeed, “[t]he predictable seasons and the weather are what have always allowed the Yam to grow well. The Yam needs a short period of rain to get the vines out, and then after that it needs a lot of sunshine to firm up and grow big and healthy. Because the Yam depends on the predictable temperatures, weather, rain, and seasons, these are all essential factors of our culture”.⁶⁶
90. The disruption of the seasonal calendar has placed the Yam in peril. Across Melanesia, the Yam is struggling to survive. The yields are increasingly poor, and the Yams are shrinking in size. In some places, the Yam has vanished entirely.
91. In Yakel, the Yam has not been able to grow for four years due to changes in the weather. The Yakel community have observed that it is “bad rain”—rain that is too heavy and that is coming at the wrong time, that has caused the Yam to disappear.⁶⁷ Each year they have planted the Yam, but it has not grown. They have tried everything they can think of to get the plants to grow—planting in different locations, enriching the soil, planting on raised beds, but still the Yam will not grow.⁶⁸
92. In many other parts of Melanesia, the Yam has not yet vanished, but it is struggling to survive. This has often left communities without adequate harvests to meet their subsistence needs or perform important ceremonies and rituals.
93. For example, on Ouara Island, New Caledonia, heavy rain coupled with inundation from rising seas has repeatedly flooded the gardens and destroyed the Yam. While the Yam has not disappeared entirely, there have been many times when the entire yield has been

⁶² Statement of Francis Hickey, para. 32 (**Exhibit 18**).

⁶³ See, e.g., Statement of Mangau Iokai, paras. 16-26 (**Exhibit 21**); Statement of Jeanette Bolenga, paras. 73-78 (**Exhibit 19**).

⁶⁴ See, e.g., Statement of Jeanette Bolenga, para. 74 (“The Yam originated as a gift from a God, a spiritual God. We called him Saldam. He lived but he decided that he should be killed to become something for the people. He decided to sacrifice himself to make something good for the people.”); Expert Statement of Jamon Halvaksz, para. 11 (“Yams are important for Biangai, as it marks both a relationship with historical ancestors who are said to have created them from their own flesh, and ongoing genealogies.”) (**Exhibit 19**).

⁶⁵ See e.g., Statement of Johnny Loh, para. 34 (“Each of the ceremonies require different crops. The Yam is the King of the crops and plays a central role in all ceremonies.”) (**Exhibit 26**); Statement of the Ouara Tribe, para. 20 (“The Yam is needed to perform all of our ceremonies and is at the center of all of our important events. For example, the Yam is essential for marriage, and for mourning, and for deaths.”) (**Exhibit 12**).

⁶⁶ Statement of Francois Neudjen, para. 27 (**Exhibit 11**).

⁶⁷ Statement of Mangau Iokai, para. 33 (**Exhibit 21**).

⁶⁸ Statement of Mangau Iokai, paras. 36-37 (**Exhibit 21**).

destroyed. This has forced the community to abandon their traditional gardening grounds and move to a higher elevation, near the only mountain on the island.⁶⁹

94. This move is not a solution, however, because landslides have begun occurring regularly as a result of the unnaturally heavy rain. Already landslides have destroyed some of the relocated gardens.⁷⁰ The community has nowhere else left to go: “[w]ith the sea coming in from the coast and the landslides coming down from the mountain, the amount of space left for gardening is getting smaller and smaller. We are getting squeezed from both sides”.⁷¹
95. In Yakel, the loss of the Yam has undermined the community’s governance, which is based in their customs and is self-determining. The most important ceremony in Yakel is the *Naukial*. It is a ceremony of dance performed every four to five years. Many dances are performed and, of these, the *Toka* is the most important.⁷² Mangau Iokai explains:

“It is essential to our governance. It is during the *Toka* that we decide who is *Ialmalu*, who is the high chief of our village . . . To perform the *Toka*, we must have Yam. It is only the Yam that is used in the *Toka*, this is how important it is. The practice for the *Toka* takes a full year.

The Yam plays a vital role because the Yam is the chief of the crops and the *Toka* is the dance to decide the *Ialmalu*. The Yam also gives us the energy to us to dance for all four days. . . .

Now that the Yam is gone, the *Naukial* is not being done as much anymore. I am not sure if it can survive into the future”.⁷³

96. The Yam is essential to customary ceremonies for many communities. Where communities do not have enough Yam to complete the rituals, they are still through the motions of performing the ceremonies. But without the Yam, the ceremonies are devoid of their meaning, value, and purpose. This has left members of impacted community heartbroken:

“Since the Yam has vanished, I am still doing the Kastom ceremonies, but I am using a different crop, Taro. It isn’t right. When I am doing Kastom rituals it is very important that I have Yam. When I did the Kastom ceremony with the Yam, it was good and right. . . But now, although I am still performing the ceremony, it does not feel right in my heart. The ceremonies are worthless without the Yam”.⁷⁴

⁶⁹ Statement of the Ouara Tribe, paras. 32-33 (Exhibit 12).

⁷⁰ Statement of the Ouara Tribe, para. 59 (Exhibit 12).

⁷¹ Statement of the Ouara Tribe, para. 36 (Exhibit 12).

⁷² Statement of Mangau Iokai, para. 52 (Exhibit 21).

⁷³ Statement of Mangau Iokai, paras. 53-54, 56 (Exhibit 21).

⁷⁴ Statement of Mangau Iokai, para. 56 (Exhibit 21).

“Performing the ceremony without the Yam doesn’t feel good. It doesn’t feel right. We have a word to describe the way it feels to perform the ceremony without the Yam, but there is no English translation. The best way we can describe it is to say the ceremony is devalued. But that doesn’t really capture the depth of our feeling or the meaning of doing the ceremony without the Yam”.⁷⁵

“Yam is a national identity. It is used in all of our customs: In our custom marriages, for funerals, for births, for selecting and appointing leaders. You can’t conceive of these ceremonies without the Yam. You must have Yam to perform these ceremonies. Otherwise, they don’t make sense. They aren’t real . . . An important part of the ceremony is the discourse, the speech, that describes our relationship to the Yam. When we use purchased food [as a substitute], the sense is gone. The spirit is gone. The relationship is gone. It feels despicable. It isn’t right”.⁷⁶

Loss of land and forced relocation

97. Land across Melanesia has been lost because of climate change impacts including rising seas and intensified natural disasters. Already, communities across the region have been forcibly displaced as a result of these impacts, and many more are watching their lands disappear before their eyes. Culture in Melanesia is tied to land, and so this loss of land also represents an unequivocal loss of culture. Here we share a few stories that exemplify the losses our peoples have experienced.

98. In the Kikori River Delta of PNG, Veraibari village has already been forced to relocate four times because of rising seas.⁷⁷

99. The village is now preparing to move for a fifth and last time. It will be the last time because there is nowhere left to move. Mr. Ara, the headman of the village explains:

“The seas are coming into our houses, which are built on tall wooden post foundations. If this relocation fails, we have nowhere else to go, as we are already pushing back into the swamp lands”.⁷⁸

100. From the village’s current location, Mr. Ara can see where the village stood in the past. That place is now fully submerged.⁷⁹

101. Mr. Ara explains that the intervals between each relocation has gotten shorter and shorter, because the seas are rising at an increasing rate. The first move took place before he was born (in 1972), the second in 1980, the third in 2013, and the fourth in 2020. Now, just four years later, the community has no choice but to move again.⁸⁰ In each relocation,

⁷⁵ Statement of the Women of Yakel Village, para. 34 (**Exhibit 27**).

⁷⁶ Statement of Yvon Kona, paras. 33, 39-40 (**Exhibit 10**).

⁷⁷ Statement of Ara Kouwo, para. 9 (**Exhibit 14**).

⁷⁸ Statement of Ara Kouwo, para. 9 (**Exhibit 14**).

⁷⁹ Statement of Ara Kouwo., para. 21 (**Exhibit 14**).

⁸⁰ Statement of Ara Kouwo., para. 25 (**Exhibit 14**).

the village has been forced to abandon their homes and rebuild from scratch. As Mr. Ara explains, “we can’t keep up with the rising sea. It is coming up so fast now. In the last three years, it has been rapid”.⁸¹

102. The community has no choice but to move because their living situation has become deadly. As Mr. Ara puts it, “the sea keeps coming in closer and it endangers our lives and our homes”.⁸²
103. During monthly high tide events, and during king tides, the seas enter the village, sweeping with it logs and heavy debris. “The splashing waves causes those logs to continuously hit the wooden structures that supports our houses and can cause our houses to collapse”. Often, this happens at night.⁸³
104. To prevent the houses from collapsing, the boys and men of the village must jump into the water and try their best to physically prevent the logs from hitting the houses. Sometimes, the situation is so dire, that the entire community must jump into the water to help. The community members risk their lives to protect their homes:

“There are saltwater crocodiles where we live . . . I worry that one of the children or even the adults will be attacked by a crocodile, especially at night during high tide, when we are in the water trying to save our homes from collapse. . . .

In 2018, a young boy was caught by a crocodile at the shoreline, so this worry is always at the forefront of my mind during high tides and king tides”.⁸⁴

105. Despite the community’s best efforts, the battering waves have caused some houses to collapse. When people lose their homes, they salvage what they can and attempt to build a temporary structure, but the rising seas have left the community with scarce materials with which to build, and scarce land on which to erect the temporary structures. As a result, multiple families are now living together in the same, small homes.⁸⁵
106. The village is also under assault from increasingly strong storms and winds. In 2022, the village was hit by a cyclone for the first time. The cyclone destroyed 12 homes and damaged 21, and destroyed a lot of the mangrove trees which the community relies upon to build their homes.⁸⁶
107. In the past, the village relied on groundwater as their source of freshwater. However, the community lost this source of water in 1995 because rising seas turned the wells “permanently salty”.⁸⁷ Now, the village collects rainwater in water tanks for drinking and

⁸¹ Statement of Ara Kouwo, para. 10 (**Exhibit 14**).

⁸² Statement of Ara Kouwo, para. 41 (**Exhibit 14**).

⁸³ Statement of Ara Kouwo, para. 42 (**Exhibit 14**).

⁸⁴ Statement of Ara Kouwo, paras. 43-44 (**Exhibit 14**).

⁸⁵ Statement of Ara Kouwo, paras. 45-46 (**Exhibit 14**).

⁸⁶ Statement of Ara Kouwo, para. 48 (**Exhibit 14**).

⁸⁷ Statement of Ara Kouwo, para. 28 (**Exhibit 14**).

strains saltwater for other uses, such as cooking and bathing. They regularly run out of potable water, especially during the dry season.⁸⁸

“When there is no rain, we will also go to the swamp further inland . . . we experience stomach problems, coughs and diarrhoea from drinking this water, but quite often it is the only source of water”.⁸⁹

108. In the past, there was a coconut forest on the island, and the community could drink from the coconut for hydration. But most of the coconut trees, too, have been destroyed by rising seas.⁹⁰ The rising seas have also left the community without adequate food. According to Mr. Ara:

“With the rising sea level the water has washed out most of our gardens in 2022. Our crops cannot grow when the land is salty with water.

We have a food security problem. We are unable to make gardens like we traditionally used to. We even had a food security project with the Piku Biodiversity Network [a local NGO] to try and find alternative options for food security and it failed. The king tides washed these alternative options away”.⁹¹

109. These life-threatening conditions are only growing more intense. Mr. Ara fears that the fifth relocation, too, will be unsuccessful. The community cannot move further inland, because all that is left is swampland, and because the community has reached the boundary of their customary lands. If this relocation is unsuccessful, they will have no choice but to abandon their place altogether.⁹²

110. But the prospect of leaving the Kikori Delta is unthinkable. Other tribes in the area have a migration story, but the people of Verabairi were created and originate from Kikori:

“There are no stories of migration to this place . . . We originate here, we were created here. We are *from* here. This is our only home. We cannot leave.”⁹³

“My mother gave birth to me in this land, her blood was spilt into this land, when she gave birth to me. My umbilical cord was buried in this land, and so I am attached to the land permanently. I cannot be separated from the land and I speak the language of this land”.⁹⁴

111. Already, much of the cultural connection between the people of Veraibari and their place has been severed. For example, the village had several secret and sacred places to

⁸⁸ Statement of Ara Kouwo, paras. 29-34 (**Exhibit 14**).

⁸⁹ Statement of Ara Kouwo, para. 34 (**Exhibit 14**).

⁹⁰ Statement of Ara Kouwo, para. 73 (**Exhibit 14**).

⁹¹ Statement of Ara Kouwo, paras. 68-69 (**Exhibit 14**).

⁹² Statement of Ara Kouwo, para. 75 (**Exhibit 14**).

⁹³ Statement of Ara Kouwo, para. 6 (**Exhibit 14**) (emphasis in original).

⁹⁴ Statement of Ara Kouwo, para. 56 (**Exhibit 14**).

commune with the spirits of the ancestors.⁹⁵ All but one of these sites has been destroyed by the rising sea. As a result, “[o]ur ability to commune with the spirits [is] gone. The communal spirit in the village is also affected. We have lost our traditional knowledge and the kastom that is being associated to our sacred places because we can no longer go there”.⁹⁶

112. One such place is their secret tree, which was located in the centre of the village. The tree was home to the spirit man. When new babies were born, the uncles would bring the baby to the tree. They would make an offering to the spirit man and draw him out into the celebration. The spirit man connected the baby to the community and to their place—the land and the sea. “That night, the whole community [would] dance and celebrate. There [would] be much joy because the spirit man has joined them and they are connected”.⁹⁷ Now, the tree is gone, and this ceremony of connection cannot take place.

113. If the community is forced to move, their connection to the land, and thus, to their culture, will be destroyed entirely:

“If we are forced to move to other people’s lands, it will never be our own because of how Kastom land works here. It will cause social disharmony and conflict. We will lose our food sources and our hunting grounds. What will become of us”?⁹⁸

114. Mr. Ara learned about climate change for the first time in 2020, and started to understand the source of all of his village’s loss:

“After learning more about the problem [] I spent time overseas and in one city I saw the smoke in the skies from the factories. . . I then realised we do not have any factories in Kikori. We are innocent. We need help”.⁹⁹

115. In Fiji, too, communities have already been displaced from their lands. In 2014, Vunidogoloa Village in the Cakaudrove Province of Fiji was forced to abandon their homeland and relocate inland. Their community was rendered uninhabitable by increasingly frequent and severe flooding, caused both by rising seas and by increasingly frequent and heavy rainfall.¹⁰⁰

116. Sea level rise began impacting the village as early as the 1970s, destroying the gardens, entering the homes, and washing the land away.¹⁰¹ The village attempted twice to erect seawalls, but each time they were washed away by the rising seas. “[T]he sea walls could not protect us”.¹⁰²

⁹⁵ Statement of Ara Kouwo, paras. 58 (**Exhibit 14**).

⁹⁶ Statement of Ara Kouwo, paras. 59 (**Exhibit 14**).

⁹⁷ Statement of Ara Kouwo, para. 60 (**Exhibit 14**).

⁹⁸ Statement of Ara Kouwo, para. 77 (**Exhibit 14**).

⁹⁹ Statement of Ara Kouwo, para. 80 (**Exhibit 14**).

¹⁰⁰ Statement of Simione Batu, paras. 7-14 (**Exhibit 6**).

¹⁰¹ Statement of Simione Batu, paras. 7-14 (**Exhibit 6**).

¹⁰² Statement of Sailosi Ramatu, para. 15 (**Exhibit 8**).

117. Increasingly, with high tides, the seas entered into the homes of the village. Former headman of Vunidogoloa Village, Sailosi Ramatu, recalls that “At night when we were sleeping, we could hear the water coming into our house . . . Sometimes we moved away from our home entirely. We would climb up a hill and live there until morning when the water would go down and then come back home again”.¹⁰³
118. Beginning in the year 2000, the village began discussing the possibility of relocating. Although the community held land tenure in an inland area and thus were able to move relatively easily, the discussions dragged on because many people did not want to leave their village. By 2013, however, the flooding grew so severe that the village was no longer habitable. “During high tide, the saltwater would come up into the middle of the village. Half of the village [would] be under water”.¹⁰⁴
119. In Fiji, as is the case across Melanesia, the land and the people are one. Thus, “[w]hen the land is destroyed and washed away by the sea water coming in, it is like killing us”.¹⁰⁵ Sailosi Ramatu was the headman of Vunidogoloa when the village was relocated. The day of the relocation was the most painful day of Sailosi’s life:
- “When we left the old village, we had to break our link with the land and the environment and our ancestors. The day we were relocating was a sad day for us. The people on that day were very emotional and we could hear the cries of the people. I had not experienced mourning until that day and the day we left the village it was the day I felt even more loss than losing a loved one”.¹⁰⁶
120. Now, the former village site is submerged. “The whole village has been drowned”.¹⁰⁷ The village was the resting place of the ancestors. When they relocated, the community was forced to leave their ancestors behind. The rising seas have effectively condemned the graves.¹⁰⁸ Current chief, Simione Batu, explains the harm that the community is experiencing as a result of the loss of the graveyard:
- “The cemetery where our ancestors are buried is sacred to us as it is their final resting place. Saltwater intrusion and inundation . . . has further disrupted our link with our ancestors, a loss that will be difficult to quantify, as it is part of our identity. In the past, there were customary rituals involving the visiting of graves, lighting of lights at the graves and performing rituals. We are now unable to carry out these rituals”.¹⁰⁹
121. As coastal people, the village’s identity, cultural practices, and ways of life centre around the ocean. The villagers mourn the loss, not only because of the culture they were forced

¹⁰³ Statement of Sailosi Ramatu,, para. 17 (**Exhibit 8**).

¹⁰⁴ Statement of Penioni Suqovata, paras. 5-6 (**Exhibit 5**).

¹⁰⁵ Statement of Sailosi Ramatu, para. 20 (**Exhibit 8**).

¹⁰⁶ Statement of Sailosi Ramatu, para. 21 (**Exhibit 8**).

¹⁰⁷Statement of Sailosi Ramatu, para. 16 (**Exhibit 8**).

¹⁰⁸ Statement of Simione Batu, para. 18 (**Exhibit 6**).

¹⁰⁹ Statement of Simione Batu, para. 18 (**Exhibit 6**).

to leave behind, but because “[o]ur younger generation will never have the opportunity to experience life as it was and to know about their origin”.¹¹⁰

122. The community of Ouara Island, New Caledonia, has also been subject to a forced relocation, but due to French colonization rather than climate change:

“Our ancestors are from all over New Caledonia. We were pushed off our land by the colonisers. First, we were forced to move to Mont-Dore, which is a village on the mainland near Noumea. Then we were forced to move here. For some of us, it was our great grandparents who were forced to move, and for others of us, it was our grandparents. It was not their choice. They were displaced. They were chased here by the French. This occurred a long time ago, more than 100 years—at the end of the 1800s.

We were told by our great grandparents and grandparents that our lands before were much better. The soil was better and more fertile. And we had plenty of land to cultivate, to work, to occupy. But because our land was so good, the French wanted it for themselves. They violently forced us off our lands, and we ended up here on this island”.¹¹¹

123. The people forced onto Ouara Island came from all over New Caledonia and did not share a common link prior to the forced relocation. Despite this, and “[e]ven though our ancestors were moved here against our will, this island is our home now. And even though we came from different clans and different places, now we are one. We are the Ouara Tribe from Ouara Island. It is who we are”.¹¹²
124. On the island, the Tribe has developed special relationships with three animals—the Turtle, represented by the island’s only mountain, which is the guardian of the island; the Whale, which is the guardian of the reef; and the Shark, which is their totem and protects all the Kanak people living along the southern waters of the country.¹¹³
125. The Ouara Tribe now faces the threat of a second forced relocation, this time due to climate change. From the ocean side, the seas are encroaching on the village—routinely flooding the only road on the island, entering homes, and destroying the gardens. The community has relocated homes and gardens inland, toward the mountain. But increasingly heavy rains are resulting in landslides that destroy the relocated homes and gardens. There is nowhere else for the Tribe to go.¹¹⁴
126. The community knows that it is getting harder and harder to live on Ouara, but for them, “moving is not an option”.¹¹⁵

¹¹⁰ Statement of Simone Batu, para. 19 (**Exhibit 6**).

¹¹¹ Statement of the Ouara Tribe, paras. 9-10 (**Exhibit 12**).

¹¹² Statement of the Ouara Tribe, para. 12 (**Exhibit 12**).

¹¹³ Statement of the Ouara Tribe, paras. 13-17 (**Exhibit 12**).

¹¹⁴ Statement of the Ouara Tribe, paras. 28-36 (**Exhibit 12**).

¹¹⁵ Statement of the Ouara Tribe, para. 50 (**Exhibit 12**).

“Because of the colonisation, we have already lost our lands and been forced to move. We do not want to move again. We have been thinking for the past months and years about how to ensure that the sea is not going to flood our garden. What we can do to make sure we can continue to live here. . . .

We want to install seawalls to stop the sea from entering and do some dredging and filling to build up the island. We know this won’t stop the sea from rising, but it might allow us to stay longer. We can’t afford to do this on our own, so we are trying to think of how to get funding for projects to protect our community and our island, and our lives here.

We don’t want to leave our land. Again.”¹¹⁶

127. The picture is the same for coastal peoples throughout Melanesia. Whether quickly or slowly, the sea is taking their land, their gardens, their homes, and their dead.¹¹⁷
128. Inland peoples, too, are also facing forced displacement, not due to rising seas but because of increasing severe weather and extreme events. For example, in inland PNG, the Biangai people live on the upper slopes of the Bulolo Valley. There, land has become increasingly unliveable due to increased periods of heavy rain, landslides, and drought.¹¹⁸
129. For example, during the 2015-16 El Nino event, the Biangai experienced drought, which resulted in extreme food scarcity, grass and forest fires, and water shortages. The drought also killed the vegetation that plays a key role in maintaining soil stability of the slopes. This was followed by a period of extreme rain. The rains “were so heavy that they washed out coffee gardens and yam gardens and completely devastated them”.¹¹⁹ The impacts of the heavy rain were exacerbated by nearby mining infrastructure, which maintains drainage systems that “directed all of the new rains and heavy rains down onto these gardens. As a result of that, the gardens get completely overthrown with mud and sediment and they’re no longer viable and they die”.¹²⁰
130. For the Biangai people, land is “core to being a person in this world.”¹²¹ The connection is so deep that it is “hard to distinguish persons from places and vice versa in terms of what it means to be Biangai”.¹²²
131. Biangai people are connected to their community and their ancestors through the land. The imprints that people leave on the land infuse it with their presence and forge deep

¹¹⁶ Statement of the Ouara Tribe, paras. 51, 53-54 (**Exhibit 12**).

¹¹⁷ See, e.g., Statement of Hilary Fioru, paras. 59-66 (**Exhibit 16**); Statement of Francois Neudjen, paras. 51-56 (**Exhibit 11**).

¹¹⁸ Expert Statement of Jamon Halvaksz, paras. 13-16 (**Exhibit 33**).

¹¹⁹ Expert Statement of Jamon Halvaksz, para. 17 (**Exhibit 33**).

¹²⁰ Expert Statement of Jamon Halvaksz, para. 18 (**Exhibit 33**).

¹²¹ Expert Statement of Jamon Halvaksz, para. 8 (**Exhibit 33**).

¹²² Expert Statement of Jamon Halvaksz, para. 8 (**Exhibit 33**).

bonds with other members of the community, past and present. The Biangai use the term *han mak* (hand mark) to explain this presence.¹²³

132. An important site of the *han mak* is the Yam garden. For the Biangai, “Yams are kin”.¹²⁴ They are created from the flesh of historical ancestors and are part of the ongoing genealogy of the people. The Biangai plant their Yam in the same gardens as their ancestors, “reinforcing that connection among present and past yams, and present and past gardeners. To lose a garden is to lose this history of relationships”.¹²⁵
133. The extreme weather the Biangai have been experienced has obliterated the gardens, rendering them unrecognisable. The gardens have been so decimated they are no longer viable for planting. The loss of the gardens has severed the connections between people and their lands. This has broken the spirits of some gardeners, causing them to leave the village and move in with relatives in other communities.¹²⁶
134. The Expert Statement of Jamon Halvaksz shares stories of two healthy and active men that moved away after the gardens were destroyed. One of these men, Yalamu, explained, “I have no business being here anymore. I have nothing to do and no enjoyment”.¹²⁷ Although otherwise healthy, he died a year later. His death was premature by PNG standards. The other man, too, died shortly after moving away from his garden.¹²⁸

Destruction of worlds

135. As the foregoing stories demonstrate, climate change has unravelled the fabric of life across Melanesia. In effect, climate change is destroying entire belief systems, entire ways of life, and entire worlds.
136. In New Caledonia, the entire cosmology of the Kanak people has been broken. Francois Neudjen, Special Advisor to the Kanak Customary Senate, explains that:

“[The] Kanak world consists of three realms: the vegetal, the animal, and the mineral. Together these three realms complete us and form our existence. ...

[T]he mineral realm is about the cosmos . . . We understand that the mineral is synonymous with power. There is power in the stones. For example, there is a certain stone with the power to call for the rain, there is another stone with the power to ensure that plants will grow.

Not just anyone can use these powerful stones. A certain clan has the relationship to call on a certain powerful stone. One clan has the relationship with the stone to call on rain for example, and another has the relationship with the stone with the

¹²³ Expert Statement of Jamon Halvaksz, para. 9 (**Exhibit 33**).

¹²⁴ Expert Statement of Jamon Halvaksz, para. 11 (**Exhibit 33**).

¹²⁵ Expert Statement of Jamon Halvaksz, para. 10 (**Exhibit 33**).

¹²⁶ Expert Statement of Jamon Halvaksz, paras. 17, 19, 24 (**Exhibit 33**).

¹²⁷ Expert Statement of Jamon Halvaksz, para. 21 (**Exhibit 33**).

¹²⁸ Expert Statement of Jamon Halvaksz, paras. 23 (**Exhibit 33**).

power to help crops grow. So, to be clear, because each clan has a certain power, they also have a role and a responsibility on the level of the society, the clan, the group in which and to which it belongs”.¹²⁹

137. In the past, the people were able to call upon the power of the stones and see the results.

“What was so powerful is that although our grandparents didn’t do any science, they knew the power of the cosmos. They received it directly. They could feel it. They could see it. They could smell it. They knew how to read the harmony of nature and understand their world”.¹³⁰

“But the power of the rocks is broken now. We can’t call upon the rain anymore or ensure the plants will grow. There has been a loss. We’ve lost a lot of the cosmos. The connection is missing. We’re disconnected. It isn’t harmonious”.¹³¹

138. Francois Neudjen explains that his forefathers predicted this collapse based upon the industrialization they observed:

“[O]ur grandfathers could also see that things would change with industry. And now things have changed so much. The weather is unpredictable, the rains don’t come, the seasons are disrupted. We can’t understand our world and we can’t connect with the cosmos. We deplore this lack, but our grandfathers already knew it would happen”.¹³²

139. Climate change has also severed the people of Yakel from their ancestors and from the cosmos. Mangau Iokai is not only a Yam farmer, he is the *Tupunis* for the Yam. On the island of Tanna, Vanuatu, *Tupunis* are special people who hold “a special relationship with a particular crop, species, or element, and hold sacred knowledge about that the thing. For example, we have a *Tupunis* for Taro, a *Tupunis* for Kava, and a *Tupunis* for the Weather”.¹³³

140. Mangau is *Tupunis* for the Yam because of his lineage: “My first ancestor was the spirit of the Yam. He manifested as a human being in Yakel and my family has been here ever since, taking care of the Yam crop”.¹³⁴ “The spirit of Yam flows through my ancestors, my family and me”.¹³⁵

¹²⁹ Statement of Francois Neudjen, paras. 18, 34-35 (**Exhibit 11**).

¹³⁰ Statement of Francois Neudjen, paras. para. 38 (**Exhibit 11**).

¹³¹ Statement of Francois Neudjen, paras. para. 37 (**Exhibit 11**).

¹³² Statement of Francois Neudjen, para. 39 (**Exhibit 11**).

¹³³ Statement of Mangau Iokai, para. 26 (**Exhibit 21**).

¹³⁴ Statement of Mangau Iokai, para. 29 (**Exhibit 21**).

¹³⁵ Statement of Mangau Iokai, para. 28 (**Exhibit 21**).

141. As *Tupunis*, Mangau is the custodian of sacred stones. The stones and the knowledge of how to use them were given to his ancestors by their highest god, *Kalbabeng*.¹³⁶ He explains:

“As *Tupunis*, I am responsible for ensuring we get a good crop of Yam. I use sacred Stones to commune with the spirits, and to ask them to look after the crop and make sure that my community has enough harvest. . . .

Now that the Yam has vanished, my heart is broken. My connection with the Yam spirit is broken. Before, through my family and my ancestors, I was able to lean on the spirit when I needed it. But now I don’t have anything to lean on. It just feels like empty space. Because the spirit is no longer there, I feel empty. I am walking around like an empty shell. I feel that I have failed in my duty that has been passed down from my ancestors, to my grandfathers, to me”.¹³⁷

142. The cosmological power of other *Tupunis* has been broken as well. For example, there is also a *Tupunis* for the weather, who in the past could call upon their stones to “stop the cyclones from hitting us, but they can no longer the rituals are not working anymore. The power is broken”.¹³⁸

143. Climate change is also altering sacred landscapes. For example, for Kanak people, the mountains are sacred. They contain medicines, totems, and sacred power. They are also the resting place of the dead. Yvon Kona, a member of the Kanak Customary Senate and resident of Canala, explains:

“The spirits of people near the sea go to the Sea Mounds to rest, and the spirits of inland people go to the Mountains. For us inland people, the Mountains are our cemetery, our resting place. But they are connected to the Sea Mounds. It is all linked. The Sea Mounds are tied to the Mountains, and so our spirits are connected too.

The spirits in the Mountains have a pathway to the Sea Mounds, a way for them to go into the ocean. They leap from specific, known sites in the Mountains. We have local names for these sacred places. From those spots the spirits are able to plunge into the depths of the ocean and reach the underwater land, the graveyard. So the spirits of all Kanak, both inland and sea, are connected”.¹³⁹

144. The mountains have already been injured by French mining and logging, which have stripped the mountains, leaving them vulnerable. Now, because of climate-induced heavy rain falls, these sacred mountains are collapsing.¹⁴⁰

¹³⁶ Statement of Mangau Iokai, paras. 30-31 (**Exhibit 21**).

¹³⁷ Statement of Mangau Iokai, para. 30, 43 (**Exhibit 21**).

¹³⁸ Statement of Mangau Iokai, para. 63 (**Exhibit 21**).

¹³⁹ Statement of Yvon Kona, paras. 26-27 (**Exhibit 10**).

¹⁴⁰ Statement of Yvon Kona, para. 28 (**Exhibit 10**).

145. The cosmologies, beliefs, and life ways of Melanesia have already been irreparably harmed by the impacts of climate change.

2. BIODIVERSITY

146. Melanesia is among the most biodiverse regions on the planet.¹⁴¹ The entire region is a biodiversity hotspot. PNG, in particular, is home to the world's third largest rainforest and an estimated 7-10% of the total biodiversity on the planet. PNG also contains many distinct habitats, including mountain glaciers, humid tropical rainforests, swampy wetlands, and coral reefs.

147. The ocean territories of MSG Members comprise some the most biodiverse ocean areas in the world.¹⁴² The Solomon Islands and PNG are part of the Coral Triangle, which is "the centre of biodiversity for the world's marine life".¹⁴³ The reef system of New Caledonia is among the three most extensive in the world and has the highest coral diversity of any reef system on the planet. In 2008, New Caledonia's reefs were designated as a UNESCO world heritage site in recognition of this unparalleled richness of biodiversity.¹⁴⁴

148. Melanesian culture developed from and remains intertwined with the subregion's biodiversity. Biodiversity is sacred, and many Melanesian communities see themselves as guardians, dutybound to protect these species not only for themselves, but for future generations and humanity as a whole.

149. The biodiversity of the region is also essential to the culture and well-being of Melanesian peoples. For many communities, biodiversity is the source of all the necessary conditions to life, including food, medicine, and housing. Many native plants are also central to culture, with specific spiritual and cultural uses in ceremonies, rituals, and magic.

150. As set forth in more detail below, climate change is damaging biodiversity in the region, with profound and heart-breaking implications for Melanesian peoples.

Impacts to Terrestrial Biodiversity

151. Climate change has devastated terrestrial biodiversity across the Melanesian subregion, with profound impacts for the communities that rely on it. This section will share stories of losses that have already been experienced and the harm that Melanesian peoples have already felt as a consequence. These stories are representative of broader patterns of loss that have occurred across the subregion.

¹⁴¹ The Pacific Community (SPC), Expert Report for the Melanesian Spearhead Group from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division, pg. 5 [hereinafter **SPC Report**] (**Exhibit 37**).

¹⁴² SPC Report, pg. 5 (**Exhibit 37**).

¹⁴³ SPC Report, pg. 5 (**Exhibit 37**).

¹⁴⁴ UNESCO, Decision 32 COM 8B.10, Examination of nomination of natural, mixed and cultural properties to the World Heritage List - Lagoons of New Caledonia.

152. Climate impacts are destroying and degrading entire ecosystems within Melanesia. Within PNG, one of the most biodiverse is the Kikori River Basin. This site is home to a staggering number of species, including 41 species of sharks and rays, many of which are critically endangered. The delta is also home to 33 of the 34 species of mangroves in the world.
153. The extensive mangrove forest ecosystems of the delta traditionally provided important habitat for many species, including the endangered pig-nosed turtle. They also have protected the villages along the Kikori River, allowing them to withstand storms and flooding.
154. The mangrove ecosystems are dying as a result of saltwater inundation and increasingly severe storm damage. Yolarnie Ampou, a Papua New Guinean biologist and the founder of the Piku Biodiversity Network, has worked in biodiversity conservation in the Kikori Delta since 2012, where she lives for six months out of the year. Every year since 2012, she has observed more and more mangrove trees dying.¹⁴⁵
155. The death of the mangroves has become so extensive that the villages living along the Delta are left with “little protection” from increasingly severe storms.¹⁴⁶ As a result, Yolarnie explains, “after every storm season some villages would stop existing as they previously did. People couldn’t remain in their villages and so they just locked their doors and moved inland to Kikori Town, where they would largely live in squatter settlements . . . whole villages [are] increasingly being abandoned”.¹⁴⁷ She explains further:
- “[w]hen people are forced to abandon their villages, they often say the ‘sea took our village’. It is a very common sentence for a lot of villages in the Kikori Delta islands. . . . And you understand from it, that the sea has encroached, it’s gone into the freshwater sources, it’s destroyed the houses, all of the above. And so that’s why they moved”.¹⁴⁸
156. Across the Melanesian subregion, changing weather conditions has also resulted in the loss of biodiversity that is essential to important cultural practices. For example, plants used for traditional medicine are disappearing as a result of changing weather conditions, undermining the health of Melanesian communities, as well as their ability to practice their cultures.
157. In Yakel, the community relies on certain herbs for medicine. Naus Iaho, a medicine woman in the village, is responsible for making a medicine to aid women in getting pregnant.
158. In the past, the herbs were abundant, and it was easy for Naus to make the medicine. But now, the herbs have largely vanished. She observes that “[i]n the past, . . . we had good

¹⁴⁵ Expert Statement of Yolarnie Amepou, para. 78 (**Exhibit 35**).

¹⁴⁶ Expert Statement of Yolarnie Amepou, para. 83 (**Exhibit 35**).

¹⁴⁷ Expert Statement of Yolarnie Amepou, para. 85 (**Exhibit 35**).

¹⁴⁸ Expert Statement of Yolarnie Amepou, para. 89 (**Exhibit 35**).

rain and the medicinal herbs grow very well”.¹⁴⁹ But now, “bad rain” that is too heavy is coming and “mak[ing] the plants die off”.¹⁵⁰ She observed the bad rains beginning to affect the herbs around the time of Cyclone Uma in 1987, with things getting much worse since Cyclone Pam in 2015.¹⁵¹

159. The loss of the herbs has made the preparation of the medicine difficult and, at times, impossible. This is both a deep loss of culture, and a breaking of the sacred duty that Naus holds as a medicine woman. Naus explains:

“I am asked to prepare the medicine every time a woman wants to have a baby. They ask me every time because the medicine is that important . . . I used to always be able to make it. But now, when I can’t find the herbs, sometimes when they come to ask me, I cannot make the medicine . . . Making the medicine is my sacred duty. It’s something that I must do . . . I have to look everywhere for the plant so I can make the woman pregnant. When I can’t do it, to me it is a failure”.¹⁵²

160. Another medicine woman in the village, Sera Nawahta, makes “essential” medicine to relieve fever, joint pain, and headaches.¹⁵³ The same heavy rains that have killed off the herbs that Naus relies on have also resulted in the disappearance of the herbs that Sera uses.¹⁵⁴ Sera fears for the well-being of her community because “without the plants to make medicine, I cannot look after my community’s medical needs”.¹⁵⁵

161. Sera wants to pass the knowledge of how to prepare the medicine on to her daughter, but with the plant disappearing, she worries that this is futile:

“I was going to teach my daughter about the medicine[,] but due to the weather that is happening, I do not know whether I am going to teach my daughter about the medicine or not. I would like my daughter to learn this medicine so she can serve the community by saving their lives when they are sick. If the plant[s] [are] not growing anymore, she may not be able to find the plants to practice the medicine”.¹⁵⁶

162. In Lilisiana, Solomon Islands, traditional medicinal plants are also disappearing, in this case due to rising seas. A particular herb used to treat coughs can only be planted by the sea. Hilary Fioru is a resident of the village and a practitioner of traditional medicine. He has observed that, over the past 10 years, storm surges have destroyed these plants and saltwater inundation has made the soil too salty for them to grow. The community has

¹⁴⁹ Statement of Naus Iaho, para. 10 (**Exhibit 22**).

¹⁵⁰ Statement of Naus Iaho, para. 10 (**Exhibit 22**).

¹⁵¹ Statement of Naus Iaho, para. 11 (**Exhibit 22**).

¹⁵² Statement of Naus Iaho, paras. 7, 12-13 (**Exhibit 22**).

¹⁵³ Statement of Sera Nawahta, paras. 2, 10 (**Exhibit 25**).

¹⁵⁴ Statement of Sera Nawahta, paras. 4-6 (**Exhibit 25**).

¹⁵⁵ Statement of Sera Nawahta, para. 10 (**Exhibit 25**).

¹⁵⁶ Statement of Sera Nawahta, para. 8 (**Exhibit 25**).

tried to plant the herb further inland, but the conditions are not right, and the transplanted plants all died.¹⁵⁷ As Hilary explains:

“This has resulted in the loss of these herbal medicines for our people, and we no longer have access to this to treat our people . . . This is a huge loss of traditional knowledge of herbal medicine for our people. Now we have to pay for hospital medicines to treat ourselves and it is also very expensive to buy medicine from the clinic”.¹⁵⁸

163. These stories provide just a few small examples of the way in which climate change is degrading biodiversity and therefore undermining fundamental aspects of life for Melanesian peoples.

Impacts to Marine Biodiversity

164. The marine environments and coral reefs of Melanesia have been irrevocably injured by climate change impacts, including ocean acidification, rising sea-surface temperature, and increased sedimentation from storms and coastal erosion. These and other climate impacts have compromised the biodiversity of the region, resulting in the decline and extinction of precious species that are integral to Melanesian culture.
165. In New Caledonia, for example, communities have observed that species of crustaceans and fish have disappeared entirely. Jean-Yves Poedi is a senator to the Kanak Customary Senate. He holds particular expertise about the ocean environment and thus also holds a special role in the Senate as Referent for the Sea. This means he provides knowledge, expertise, and advice to inform the Customary Senate’s activities and decisions with respect to the sea. Jean-Yves has observed that certain species have been entirely gone from the environment for the past two years. He explains that these species were already under stress because of pollution from French nickel mining and were unable to tolerate the additional stress of increased ocean temperatures.¹⁵⁹
166. These species played important ecological roles. For example, a particular crustacean that is only known by local people by its indigenous, oral name, used to clean the sand, including removing detritus on the beach from nickel mining. Now, with the crustacean gone, the pollution remains.¹⁶⁰ Likewise, a particular sea snake that played an important role in keeping the reef clean is no longer seen on the reef.¹⁶¹
167. Beyond their ecological role, these species are an integral part of the genealogy of Kanak communities. Jean-Yves explains:

“Reciting the genealogy is at the core of Kanak life. We recite the genealogy at the three most important moments of Kankak life: birth, customary marriage,

¹⁵⁷ Statement of Hilary Fioru, paras. 67-69 (**Exhibit 16**).

¹⁵⁸ Statement of Hilary Fioru, para. 70 (**Exhibit 16**).

¹⁵⁹ Statement of Jean-Yves Poedi, para. 15 (**Exhibit 9**).

¹⁶⁰ Statement of Jean-Yves Poedi, para. 17 (**Exhibit 9**).

¹⁶¹ Statement of Jean-Yves Poedi, paras 18 (**Exhibit 9**).

and death. We recite a person's genealogy going back through the generations, including links to the ancestors and to different clans through marriage. And when we do that, we also talk about the environments of each of our forebears, including each of the species in the environment, because that is part of who they are and who we are. These species are our family and our ancestors too . . . Now that the species have disappeared, there is a link missing in the genealogy. The genealogy is incomplete. Part of who we are is gone".¹⁶²

168. Even beyond their genealogical importance, Jean-Yves explains, "[t]he biodiversity around us creates our world and is also how we understand the world. Now that these species have disappeared, we aren't talking about them anymore, and we are losing that knowledge. We are losing part of our world, our Kanak vision".¹⁶³

169. In New Caledonia, this loss is especially devastating because of the Kanak peoples' non-self-governing status. Jean-Yves further explains:

"Our culture has already been damaged severely by French colonialism. We are working hard to revitalize the culture and to build a basket of Kanak culture and Kanak vision to bring back to the country. But at the same time, we are losing elements of cultural importance like these fish and these crustaceans. So it is difficult to fill the basket and carry our culture forward . . . The entire culture is in danger of collapsing and disappearing as a result of the loss of these species".¹⁶⁴

170. Throughout Melanesia, coral reefs are bleaching and dying because of climate change. Werry Narua, who lives in Port Resolution, Tanna, Vanuatu, has been living and fishing on the reef since childhood. He remembers seeing reefs "close to the shore" and that "the coral [were] colourful and living. There were different shaped coral and a lot of fish." Now, however, Werry sees that the coral is "severely damaged, but mostly dead".¹⁶⁵

171. Werry has been observing the land and the sea since he was a child, and holds customary knowledge about their connections. Based on his intimate knowledge of the environment, he has observed that the coral deaths are caused by "cyclones, the sun and soil runoff from the landslides, which have become more frequent in recent years".¹⁶⁶ Further, because his community has experienced intense cyclones more frequently in recent years, "the coral never has time to recover" and "the reef is not coming back. It is slowly disappearing. It is dying".¹⁶⁷ As a result, the fish and crustacean population on the reef has severely declined, including trocar snails and parrot fish, which were an important food source for the community.¹⁶⁸

¹⁶² Statement of Jean-Yves Poedi , paras. 21, 23 (**Exhibit 9**).

¹⁶³ Statement of Jean-Yves Poedi, para. 26 (**Exhibit 9**).

¹⁶⁴ Statement of Jean-Yves Poedi, paras. 27-28 (**Exhibit 9**).

¹⁶⁵ Statement of Werry Narua, paras. 43, 46 (**Exhibit 29**).

¹⁶⁶ Statement of Werry Narua, paras. 46-47 (**Exhibit 29**).

¹⁶⁷ Statement of Werry Narua, paras. 48-49 (**Exhibit 29**).

¹⁶⁸ Statement of Werry Narua, para. 50 (**Exhibit 29**).

172. Hilary Fioru, a fisherman from Solomon Islands, has likewise observed the decline and loss of reef ecosystems over his lifetime. For Hilary’s village, “traditionally, our people have relied upon fishing as our daily sustenance where we fish to feed our families and to also earn a living by selling it at the local markets”.¹⁶⁹
173. In Hilary’s village an important cultural practice is communal fishing, which took place in a traditional fishing ground called the *e’re*. The *e’re* was located “right in front of the village and within the mangrove forest. This fertile, swampy area was filled with sea creatures and the entire community could fish there”.¹⁷⁰
174. Communal fishing brought the whole village together and was a way to build and strengthen relationships. Hilary describes the communal fishing practice:
- “The communal fishing practice happened in the *e’re* and is like this[:] all men will gather standing around the *e’re* in a circle, holding woven coconut fishing nets, that were woven by our women, to catch the fish. Once the men corner all of the fish into one spot, then a few of the men holding spears will spear the fish.
- After the catch, the usual practice is that they will offer some fish as a sacrifice to the ancestors first before sharing the rest with the whole village. The sacrifice to the ancestors is made to thank the ancestors for blessing them with their fish catchment”.¹⁷¹
175. The communal fishing practice ended in the late 1980s because rising seas destroyed the *e’re* and killed the sea creatures that lived there. Although, in the early 1980s, the community built a seawall to protect the *e’re* and the village from rising seas, “it did not protect it for long. All the mangroves on our shoreline were eventually uprooted by the strong seas, and so too, all the sea creatures that lived at their roots”.¹⁷² The *e’re* is now a “dead place”.¹⁷³
176. Because the *e’re* ecosystem was destroyed, Hilary has never been able to partake in the communal fishing practice. However, he was “told by my grandfather and father of how they used to do communal fishing and about the *e’re* and its importance. They explained to me the cultural significance of communal fishing in our village in that it brings unity, peace, and harmony . . . I feel sad to lose these practices, practices that used to unite and hold our community and our people together. It is devastating for our people to lose our way of living that breeds unity in our village”.¹⁷⁴
177. The loss of the communal fishing practice has had cascading impacts on culture. The communal fishing practice was the mechanism by which traditional fishing knowledge

¹⁶⁹ Statement of Hilary Fioru, para. 10 (**Exhibit 16**).

¹⁷⁰ Statement of Hilary Fioru, para. 22 (**Exhibit 16**).

¹⁷¹ Statement of Hilary Fioru, paras. 24-25 (**Exhibit 16**).

¹⁷² Statement of Hilary Fioru, para. 28 (**Exhibit 16**).

¹⁷³ Statement of Hilary Fioru, para. 30 (**Exhibit 16**).

¹⁷⁴ Statement of Hilary Fioru, paras. 29, 45 (**Exhibit 16**).

was passed down to future generations. But it is “very hard to practice these traditions where there are no fishing grounds to practice on, so the elders are not passing down the knowledge and it is being lost”.¹⁷⁵ Likewise, the women’s traditional way of weaving big coconut nets for communal fishing is no longer practiced. The practice is “now dead and women today in our village no longer have this knowledge and skill”.¹⁷⁶

178. Severe storms and high tides have also broken the near-shore reef, and Hilary has observed corals washing ashore and entering the village. The fish have vanished from the dying reef, and the people can no longer fish there.
179. Due to the death of the reef, fishermen are forced to go out to the deep sea to look for fish. This has required the village to abandon their traditional canoes, called *baru*, and switch to taking out motorboats. The shift to motorboats is costly, meaning for many it is more economical to switch their diets from eating fresh fish to purchasing canned food. The cultural practice of constructing and sailing canoes is also breaking down.¹⁷⁷
180. Hilary explains that fishing has also become challenging because of increasingly erratic weather. The weather used to be stable with two predictable seasons: *Koburu* (cyclone season) and *Ara* (humid season). He explains, “[i]n the past, we could fish based on our knowledge of the *Koburu* and *Ara* seasons. We know where the wind would be blowing, what the weather will be like, and what the tides will be like.” In the past 15 years, however, “the *Koburu* and *Ara* seasons have become very unpredictable”.¹⁷⁸
181. The combination of the unpredictable seasons and loss of the biodiversity of the coral reefs and near-shore fisheries has resulted in a deadly situation:

“Just recently in 2023, toward the end of the year, 4 local fishermen from our village were lost in the sea due to the unpredictable change in the weather. They lost their way to return to our village when they came across strong wind and rainfall in the sea. We sent a search team to search for them for 2 weeks, but we never found their bodies. . . . Some people feel like giving up on fishing due to the fear of losing their loved ones in the sea when they go fishing. These traumatic experiences of losing our families in our village have also brought so much fear for me as well when I go out fishing”.¹⁷⁹

182. Climate change is also harming endangered and culturally significant marine species directly. In Vanuatu, for example, the critically endangered leatherback turtle is especially impacted.
183. Francis Hickey is the Coordinator of the Traditional Resource Management Program at the Vanuatu Kastom Center and also leads the nation’s turtle monitoring program. He explains that, for ni-Vanuatu, turtles have been “part of life from the beginning”: when

¹⁷⁵ Statement of Hilary Fioru, para. 38 (**Exhibit 16**).

¹⁷⁶ Statement of Hilary Fioru, para. 40 (**Exhibit 16**).

¹⁷⁷ Statement of Hilary Fioru, paras. 47-52 (**Exhibit 16**).

¹⁷⁸ Statement of Hilary Fioru, para. 14 (**Exhibit 16**).

¹⁷⁹ Statement of Hilary Fioru, paras. 54-55 (**Exhibit 16**).

the first people settled the islands.¹⁸⁰ Communities in Vanuatu “have [always] lived with turtles as part of their biocultural realms. . . . For some tribes, their totem is the turtle, which means it represents them and also is their guardian and protector”.¹⁸¹

184. Turtles are sacred. They are occasionally eaten, for certain ceremonial purposes or to convey a great honour. The taking of turtles for these purposes are carefully managed by the chiefs based on traditional resource management practices, which are also linked to the seasonal calendar and the Yam cycle.¹⁸²
185. Francis explains that “turtles are very important to culture. Very important to the fabric of life here. Unfortunately, they are really being impacted by climate change”.¹⁸³ In particular, the nests are being washed out by cyclones, storms, flooding, and king tides. Francis explains:

“The turtles always come to the same nesting spots, it is in their DNA [N]ow, with the severe weather we are experiencing, with sea-level rise, which causes higher tides and more severe storm surge, and with the increasingly intense cyclones, the turtle nests are just getting wiped out. This has happened time and time again. And it is really concerning because these turtles are endangered”.¹⁸⁴

186. Rising temperatures also impacts turtles. In the ocean, rising temperatures are killing off sea grass ecosystems, which are one of the primary food sources for turtles. On land, rising temperatures are affecting the sex of the eggs: “The warmer temperatures we’ve been experiencing mean more females hatch than males. In the short term maybe you think that’s good because the females are the ones that lay the eggs, but in the long term we need both males and females for the species to survive. If it is too hot, we aren’t going to get any males, and it is only going to keep getting hotter”.¹⁸⁵

187. Francis also shares a kastom story about the turtle:

“One day, a young man woke up and had a strong craving to eat turtle. He thought, I just have to eat turtle today. So he walks down to the shore and he stands there with his spear and he is waiting all day for a turtle to swim by. He is there over lunch, he doesn’t move, and everyone is thinking what’s going on with this guy? Then it is getting to sunset, and he still hasn’t moved, so some of his friends come up and say, what are you doing? Why haven’t you moved all day? And he replied, I’m looking for a turtle. And they said, well just look down—you are standing on one!

It is a favourite story and the saying is ‘standing on the back of a turtle,’ meaning

¹⁸⁰ Statement of Francis Hickey, para. 48 (**Exhibit 18**).

¹⁸¹ Statement of Francis Hickey, para. 48 (**Exhibit 18**).

¹⁸² Statement of Francis Hickey, paras. 50-53 (**Exhibit 18**).

¹⁸³ Statement of Francis Hickey, para. 54 (**Exhibit 18**).

¹⁸⁴ Statement of Francis Hickey, paras. 56, 58 (**Exhibit 18**).

¹⁸⁵ Statement of Francis Hickey, para. 60 (**Exhibit 18**).

looking for something that you already have. And it is something that we all do right? We've got everything we need but we still want more. ...

That's a good analogy . . . everything must be connected to the base, to the foundation, which is culture. You already have what you need, everything you need, in the culture. We are lucky we still have a living system still with us. So to me, the most treasured thing, the most important thing in the culture, is the knowledge of the environment, how to live with it, the people who live off the land and the sea. It is such precious knowledge."¹⁸⁶

188. Across Melanesia, loss of biodiversity is resulting in an erosion of that precious knowledge, most directly through corresponding impacts on linguistic diversity.

Impacts of biodiversity loss on language and culture

189. The Melanesian region is the site of not only some of the richest biodiversity in the world, but also the richest linguistic diversity. It is well-established that linguistic diversity is directly related to biodiversity.
190. The region of the globe situated between the 45th parallel and the tropic of Capricorn is the site of both biodiversity hotspots and linguistic diversity hotspots.¹⁸⁷ This part of the globe is home to a third of the world's languages, or almost 20% of global diversity. All MSG Members are found this region. In Melanesia, approximately 1,500 distinct languages spoken.¹⁸⁸ Some of these are on the verge of extinction, with as few as 20 language speakers still living.¹⁸⁹
191. It is the wealth and richness of biodiversity in Melanesia that gives birth to linguistic diversity. At the same time, preservation of linguistic diversity is essential to protect biodiversity. Local and indigenous languages contain layers of knowledge about the flora and fauna specific to their places. The names of various species contain information about cultural practices and uses of that species, as well as information about resource management.¹⁹⁰ In this way, language itself also operates as a mechanism to transmit customary and ancestral knowledge.
192. Fabrice Wacalie, a linguistic expert from New Caledonia, explains that in his mother tongue, *Drehu*, which is one of the 28 indigenous languages spoken in New Caledonia, a particular fish, the *bec-de-cane* in French, has several different names depending on the level of maturity. The purpose of these various names is transmission of indigenous knowledge, because the fish is only to be caught when it reaches a certain level of maturity. Fabrice explains, "you can hook this type of fish, fish it only at a certain time, when they have reached a level of maturity so the people knew that when the name was

¹⁸⁶ Statement of Francis Hickey, paras. 65-67 (**Exhibit 18**).

¹⁸⁷ Expert Report of Fabrice Wacalie, paras. 10-11 (**Exhibit 30**).

¹⁸⁸ Expert Report of Fabrice Wacalie, para. 12 (**Exhibit 30**).

¹⁸⁹ Expert Report of Fabrice Wacalie, para. 14 (**Exhibit 30**).

¹⁹⁰ Expert Report of Fabrice Wacalie, para. 8 (**Exhibit 30**).

a good one they could go and fish for it”.¹⁹¹ In this way, the naming convention ensures sustainable fishing practices and protects the species. Fabrice explains that the correct time for fishing is also indicated by nature. For example, when certain trees flower, the people know it is time for the fishing season. All of this knowledge is contained through language.¹⁹²

193. Linguistic diversity also enshrines cosmologies and ways of thinking which form the foundation of culture. In particular, Melanesian languages reflect the relationship between humans, nature, and the cosmos: “[T]he Kanak identifies with the world around him, particularly the plant world. The world lives in him, is in him”.¹⁹³ Thus some Melanesian languages have the same word for the leaf of the tree and the human lung; the same word for the sap of the tree and for human blood. The terms are not metaphorical, but simultaneously represent both elements of nature and elements of humanity, demonstrating that they are one.¹⁹⁴
194. Loss of biodiversity has direct consequences on language diversity, “because we can only name that which exists. And so inevitably, when elements of nature disappear, the words that are assigned to those elements will disappear too”.¹⁹⁵ Loss of biodiversity amounts to loss of language, and thus, to loss of culture. It is not just one word that will be erased when an element disappears. For example, in Fabrice’s mother tongue, *Drehu*, “we have more than one hundred words to describe the coconut palm”.¹⁹⁶ Thus, if the coconut palm is lost, all of those words and all of the layers of knowledge associated with them, too, are going to disappear.
195. Loss of biodiversity is an irreparable harm, not only for the peoples of Melanesia but for humanity more broadly.¹⁹⁷ Fabrice explains that, when biodiversity is lost, what is lost is human heritage. In New Caledonia, “it is the Kanak people who must preserve the elements of nature. We Kanaks were placed here in a certain way to look after these species . . . we see ourselves as the guarantors of this nature, but we don’t protect nature it only for ourselves, we protect it entirely”.¹⁹⁸

3. RURAL COMMUNITIES (YOUTH AND CHILDREN)

196. Melanesia has among the largest youth population in the world. Our children and youth are severely impacted by climate change, with the youth of rural communities especially impacted. The youth will also face the brunt of the long-term consequences as the planet continues to warm.
197. The youth of Melanesia are also fighting for a brighter future. It was a group of Melanesian youth, the Pacific Students Fighting Climate Change (PSFCC) that initiated

¹⁹¹ Expert Report of Fabrice Wacalie, at Annexure 1, pg. 8-9 (**Exhibit 30**).

¹⁹² Expert Report of Fabrice Wacalie, at Annexure 1, pg. 9 (**Exhibit 30**).

¹⁹³ Expert Report of Fabrice Wacalie, para. 20 (**Exhibit 30**).

¹⁹⁴ Expert Report of Fabrice Wacalie, para. 19 (**Exhibit 30**).

¹⁹⁵ Expert Report of Fabrice Wacalie, Annexure 1, pg. 17 (**Exhibit 30**).

¹⁹⁶ Expert Report of Fabrice Wacalie, Annexure 1, pg. 17 (**Exhibit 30**).

¹⁹⁷ Expert Report of Fabrice Wacalie, Annexure 1, pg. 18 (**Exhibit 30**).

¹⁹⁸ Expert Report of Fabrice Wacalie, Annexure 1, pg. 18 (**Exhibit 30**).

the campaign to seek an advisory opinion on climate change from the International Court of Justice in 2019. These 27 law students from the University of the South Pacific developed the idea and presented it to leaders throughout the region. Ultimately, the government of Vanuatu agreed to champion the initiative.

198. Cynthia Rosah Bareagihaka Houniuihi, a young woman from the Solomon Islands and one of the original 27 law students who formed PISFCC, explains that she pursued a career in law in order to help her people. She explains:

“My motivation . . . has always been our people and that they deserve better. They do not deserve the reality that they have now and that is why I joined the Pacific Islands Students Fighting Climate Change. I wanted to bring back some hope for our people, some certainty to our people”.¹⁹⁹

199. For these reasons, MSG has chosen to highlight, in particular, the impacts of climate change on youth and children.

Impacts on Physical and Mental Well-being

200. Climate change is associated with a range of impacts to the health and physical well-being of children and youth, including food shortages, water insecurity, and increased disease burden. Higher temperatures have been linked to increased rates of malnutrition, cholera, diarrhoeal disease and vector-borne diseases like dengue fever and malaria. Children are at far greater risk of contracting these diseases and succumbing to their complications than adults. Indeed:

“Children often spend more time outdoors (which is the case in the Pacific) which increases their risk of exposure to air pollution, allergens, extreme heat or waterborne pathogens from climate change. Due to their immature thermoregulatory systems, children are more vulnerable to heat stress, especially children under 1 year of age. Climate change is increasing the risk of several vector-borne diseases that influence children, including malaria, dengue fever, and chikungunya. Malaria is a leading cause of global child mortality. Dengue fever is the most rapidly spreading mosquito borne virus in the world and a majority of annual mortality is among children. Diarrhoeal disease is the third leading cause of death in children under 5 years old and is responsible for killing around 450,000 children every year”.²⁰⁰

201. For example, the destruction of gardens and other food sources mean that children are experiencing food insecurity, with direct impacts on their physical well-being. For example, and as detailed above, these conditions are rendering food so scarce in Yakel that it is impacting children’s growth.²⁰¹ Likewise, in Cynthia’s village in the Solomon

¹⁹⁹ Statement of Cynthia Rosah Bareagihaka Houniuihi, para. 33 (**Exhibit 15**).

²⁰⁰ Expert Statement of Tan Sri Dr. Jemilah Mahmood, section 9.

²⁰¹ Statement of the Women of Yakel, para. 15 (**Exhibit 27**).

Islands, heavy rains and too much sun are spoiling the gardens, leaving people without enough to eat.²⁰²

202. One of the most devastating impacts on youth and children is the increased frequency of severe cyclones. In Vanuatu, a severe (category 3-5) cyclone is expected to hit once every three years. In the past three years alone, Vanuatu has experienced four severe cyclones.
203. In 2015, Cyclone Pam hit the country with unprecedented force. At the time, it was the most severe cyclone ever experienced in the South Pacific. Camila Noel, a 23-year-old woman and member of PISFCC, experienced Cyclone Pam in Port Vila, Vanuatu. She was 14 years old. She had learned about climate change in school, but “learning about something and witnessing it first-hand are two very different experiences”.²⁰³
204. Camila recalls her fear the night Cyclone Pam made landfall. She explains:

“I was asleep on the floor when the water came in from beneath the shutters. Half of the house was flooded and I was literally floating in my own house.

I was not the only child in the house, my 8-year-old nephew, my cousin’s son, was also there. I tried to reassure him that he would be fine because his mother was there. Then I realised that I was without my parents and I began to ask myself ‘what if something happens to me?’, or ‘am I going to be alive the next day?’. I was just scared and all I could do was hold onto my nephew until the morning, and try not to show that I was scared”.²⁰⁴

The next day, Camila observed:

“I saw people just sitting in defeat outside their roofless houses. . . . I could see the worry in people’s faces. The worry of how they would rebuild from this. Keep in mind that I had only witnessed the capital, Port Vila, and I could only imagine what the rural communities looked like. I saw mothers trying their best to put up shelters for their children and it made me wish I were older so I could help or if I had money, to provide it to them, but all I could do was pray for them”.²⁰⁵

205. Since that time, Camila has observed that subsequent cyclones have had the same destructive effect. Cyclones are exacerbated with other changes such as prolonged dry season and increasing water insecurity, meaning that things “have only gotten worse”.²⁰⁶
206. Elders observe that things are different for children now, compared to when they were young, when the cyclones were not as severe. Alpi Nangia, a chief in Yakel, recalls his

²⁰² Statement of Cynthia Rosah Bareagihaka Houniuhi, paras. 17-19 (**Exhibit 15**).

²⁰³ Statement of Camila Noel, para. 15 (**Exhibit 20**).

²⁰⁴ Statement of Camila Noel, paras. 16-17 (**Exhibit 20**).

²⁰⁵ Statement of Camila Noel, para. 18 (**Exhibit 20**).

²⁰⁶ Statement of Camila Noel, para. 19 (**Exhibit 20**).

experience with Cyclone Pam: “I was shocked and questioning—what is this? What type of cyclone is this? I had never seen anything like Pam . . . it destroyed all the trees, destroyed everything. It destroyed all our crops”.²⁰⁷

207. Jimmy Namile, an elder from the White Sands area of Tanna, Vanuatu, worries about his grandchildren and great grandchildren. He recalls that during Cyclone Pam: “The children really suffered . . . My grandchildren were frightened and still have that feeling whenever there is heavy rain or storm”.²⁰⁸ He goes on, “[i]n the future, I will be dead already, but I worry for my grandchildren and great grandchildren. I wish these changes would stop”.²⁰⁹
208. The education of children across Melanesia is also being threatened by climate change. Impacts such as frequent and severe cyclones, landslides, and flooding have impeded the ability of children to go to school and receive an education.²¹⁰
209. In Verabairi, the school has twice been destroyed by rising seas. After the first school was destroyed, the community relocated to higher ground, but that school too was destroyed. The community has been forced to relocate four times due to climate change, and no longer has the resources to construct a new school. The children have been unable to go to school since 2020. Verabairi headman, Mr. Ara, wishes to save up money to send his children away to school, but has been unable to do so due to the costs of repeated relocations.²¹¹
210. Climate change has deprived children of much of their joy. Before their relocation, the children of Vunidogoloa had plenty of space to play and to explore by the sea. Now, there is not much space for children to play and they do not have access to the same leisure activities they had by the coast.²¹² More broadly, children across the region are increasingly required to give up both education and play to help their families survive, for example by contributing to gardening or traveling long distances to acquire scarce water.²¹³
211. Youth in Melanesia are confronted daily with ceaseless loss and harm as a result of climate change. Unlike their elders, the children of Melanesia have only lived in a world fundamentally altered by climate change. They have witnessed the rapid degradation of their environments, loss of their culture, and suffering of their people. This leaves many young people feeling hopeless about the future. PISFCC member, Cynthia explains: “Speaking with young people, many feel hopeless saying that we are a small island nation and what can we do to change if the problem is caused by bigger countries? They feel nothing is going to change, that the system is not for us”.²¹⁴

²⁰⁷ Statement of Alpi Nangia, para. 34 (**Exhibit 23**).

²⁰⁸ Statement of Jimmy, para. 25 (**Exhibit 28**).

²⁰⁹ Statement of Jimmy, para. 27 (**Exhibit 28**).

²¹⁰ *See, e.g.*, Statement of Simione Batu, para. 16 (**Exhibit 6**).

²¹¹ Statement of Ara Kouwo, para. 37-40 (**Exhibit 14**).

²¹² Statement of Penioni Suquvata, para. 11 (**Exhibit 5**).

²¹³ SPC Expert Report, pg. 14 (**Exhibit 37**).

²¹⁴ Statement of Cynthia Rosah Bareagihaka Houniuhi, para. 16 (**Exhibit 15**).

212. For Camila, the destruction of her homeland has resulted in a severing of her connection to nature. She explains that her parents “merged her upbringing with the environment”²¹⁵:

“They taught me that when the world applies its external pressure on me, then I can always find solace in nature . . . I was raised with the mentality that if we take care of our environment, our environment will take care of us, so the least we could do was show our appreciation and not harm the environment. This mentality is not unique to me because that is how everyone was raised back home. The natural environment we grew up in has become a place of solitude that we retreat to in times of hardship”.²¹⁶

213. She further explains the way in which climate change has taken that connection to nature away from her:

“Nature used to speak to me and I would listen, but now the connection I had nurtured with my environment is slowly being lost. This is because the environment is changing and becoming unrecognisable. Nature is no longer the place of refuge it once was. Instead I am afraid. I see great loss when I see the areas that are affected by sea level rise. Those families are being forced out of their homes and are made to adapt to the areas they have relocated to because, in a way, they have left their culture behind”.²¹⁷

214. Youth in Melanesia fear for their people and for their future. Camila explains: “I do not want to see my people struggling again because it hurts. Even the youths that are still so young today; they did not sign for a world this damaged and chaotic. It’s not just cyclones, because it’s food and water accessibility, longer dry seasons, and sea level rise, and relocation. It is not just one thing”.²¹⁸

215. Cynthia likewise fears for the future of the Solomon Islands:

“Thinking about the future of the Solomon Islands scares me. It’s very uncertain and that uncertainty keeps me up at night thinking, what if this extreme weather event happens, what would the people have to face? What if a cyclone or a hurricane were to hit someone that I love? All of this also makes me think about how unfair the situation is. Why are our people suffering more and having to face this uncertainty?

People know the information about climate change but why isn’t anything changing? This makes me very worried, scared and anxious about the future and angry and frustrated about why nothing is being done because I have a lot to lose and my people have a lot to lose. We ask the question – will it stop? Will

²¹⁵ Statement of Cynthia Rosah Bareagihaka Houniuihi, para. 16 (**Exhibit 15**).

²¹⁶ Statement of Camila Noel, paras. 10, 12 (**Exhibit 20**).

²¹⁷ Statement of Camila Noel, para. 26 (**Exhibit 20**).

²¹⁸ Statement of Camila Noel, para. 24 (**Exhibit 20**).

it have to be another island sinking before the world takes attention? Whose island will it be? Will it be mine?

It feels very hopeless but we choose to stay and fight for the children that we will bring into this world”.²¹⁹

Impacts on Transmission of Culture

216. As has been demonstrated, communities across Melanesia are losing their customary practices because of climate change. In many communities, important customary practices including fishing, gardening, traditional medicine, and weaving have been or are being lost. It is now impossible to transmit these practices and knowledge to the next generation.²²⁰
217. For example, in North Pentecost, Vanuatu, repeated cyclones have destroyed the pandanus trees that are required to weave ceremonial mats, called *bwana*. The *bwana* are sacred and are required for all ceremonies. The dead are laid to rest in *bwana*; they are exchanged during weddings to bind families together; and they are essential to the ceremony that designate community leaders. Jeanette Bolenga explains, “*bwana* are just essential to our kastom. They are what bind us together. They are our relationships and identity”.²²¹
218. Women have always woven the *bwana*, which also feature in the creation story of North Pentecost. “Weaving is central to a woman’s life”.²²² Today, young girls are not weaving anymore. Jeanette notes that modernization was already pulling young girls away from their culture, but that this has been greatly accelerated and exacerbated by the shortage of pandanus, which has rendered the practice of weaving nearly impossible.²²³
219. With so many customary practices lost, communities worry about how the youth will live without their customs and traditions. Yvon Poedi explains: “It makes me sad. I am thinking more about my grandchildren. How are they going to deal with climate change? I am trying to think of ways to preserve the culture for them. But we are up against a wall right now. It is hard to think of possibilities”.²²⁴

V. LEGAL QUESTION

220. In this section, MSG addresses the legal questions the UNGA has asked this Court to answer. MSG first briefly describes the relevant conduct to be evaluated in responding to both Question (a) and (b). Next, MSG examines Question (a), which asks the court to clarify the international legal obligations of States in respect of climate change. Finally,

²¹⁹ Statement of Cynthia Rosah Bareagihaka Houniuh, paras. 29-31 (**Exhibit 15**).

²²⁰ See, e.g., Statement of Naus Iaho, para. 14 (**Exhibit 22**); Statement of Hilary Fioru, paras. 20, 46 (**Exhibit 16**); Statement of Simone Batu, para. 19 (**Exhibit 6**); Statement of Adi Sivo, para. 14 (**Exhibit 7**).

²²¹ Statement of Jeanette Lini Bolenga., para. 11 (**Exhibit 19**).

²²² Statement of Jeanette Lini Bolenga., para. 41 (**Exhibit 19**).

²²³ Statement of Jeanette Lini Bolenga., paras. 40-43 (**Exhibit 19**).

²²⁴ Statement of Yvon Poedi, para. 42 (**Exhibit 10**).

MSG examines Question (b), which concerns the legal consequences that arise for States which have violated their obligations in respect of climate change.

1. THE CONDUCT

221. In this section, MSG addresses the State conduct to be evaluated by the Court. Both Question (a) and (b) of Resolution 77/276 ask the Court to consider the conduct that causes climate change and its adverse effects.

222. Scientifically, the cause of climate change is incontrovertible. It is beyond debate that:

“Human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850–1900 in 2011–2020. Global greenhouse gas emissions have continued to increase, with unequal historical and ongoing contributions arising from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production across regions, between and within countries, and among individuals”.²²⁵

And that:

“Vulnerable communities who have historically contributed the least to current climate change are disproportionately affected (high confidence)”.²²⁶

223. These propositions have been repeatedly and consistently established in “Summaries for Policy Makers” produced by the IPCC. These documents represent both the scientific and political consensus on the matter of climate change.²²⁷

224. These statements thus demonstrate, scientifically, not only that human activity is the cause of climate change, but that there are deep inequalities inherent in this conduct. Different countries have not contributed equally to the phenomenon we now know as climate change, yet those who have contributed least suffer disproportionate harm.

²²⁵ IPCC, *Synthesis Report of the IPCC Sixth Assessment Report (AR6)*, Summary for Policymakers, March 2023, statement A.1, available at: https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf

²²⁶ IPCC, *Synthesis Report of the IPCC Sixth Assessment Report (AR6)*, Summary for Policymakers, March 2023, statement A.2, available at: https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf

²²⁷ The IPCC is an intergovernmental body of the United Nations charged with the mandate to produce reports on the state of the science on climate change. These reports are prepared by the most qualified experts on the topic of climate change, representing virtually all countries in the world, including both developed and developing countries. They therefore represent the best available scientific knowledge on the topic. Further, the sections of the IPCC reports entitled “Summaries for Policy Makers” represent not only scientific consensus, but political consensus on the topic of climate change. The summaries are subject to line-by-line review by the governments of each State party to the IPCC (195 States are party to the organisation), and agreement is achieved amongst governments at this level of granularity. The IPCC “Summaries for Policy Makers”. The statements contained in these documents, therefore, are not controversial from either a scientific or political standpoint.

225. It is both the anthropogenic cause of climate change and the inequity inherent in this conduct that both Question (a) and (b) ask the Court to address.
226. Question (a) concerns “anthropogenic emissions of greenhouse gases”. As the above referenced paragraph makes clear, the source of these anthropogenic emissions is “human activities,” including “unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production across regions”.
227. Preambular paragraph 5 of Resolution 77/276 offers additional guidance, indicating that the legal questions concern “the conduct of States over time in relation to activities that contribute to climate change and its adverse effects”. This clarifies that the relevant conduct is that of “States over time”, referring to their total historical greenhouse gas emissions, “in relation to activities”, thus encompassing not only the emissions of the States themselves but also those of private actors under their jurisdiction. These activities “contribute” to climate change and its adverse effects, regardless of whether they are the exclusive or primary cause.
228. Question (a) asks the Court to clarify “obligations of States under international law” that govern these activities. This formulation confirms that the State conduct to be evaluated by the Court includes not only direct emissions, but also the steps States have taken as sovereigns to regulate anthropogenic emissions under their jurisdiction and control in accordance with their international legal obligations.
229. After identifying the applicable conduct in response to Question (a), the Court is then asked, in response to Question (b), to elaborate on the legal consequences of this conduct, for States that, “through their acts and omissions, have caused significant harm to the climate system and other parts of the environment”. The phrase “have caused” signals once more that the conduct of States is to be evaluated over time, thus encapsulating past and present emissions, with implications for the future. Importantly, even if the actions and inactions of a single State cannot be considered the sole cause of climate change or any particular adverse effect, those actions and inactions are still considered part of the conduct that the Court must evaluate if they “have caused significant harm to the climate system and other parts of the environment”.
230. The criterion of “significant harm” narrows the scope of the conduct at issue with respect to Question (b). It asks the court only to consider legal consequences with respect to State conduct that has surpassed the threshold of “significant harm”. MSG submits that “significant harm” is that which is more than negligible but much less than catastrophic.

2. QUESTION (A)

231. Question (a) asks the Court to consider the obligations of States under the entire corpus of international law. While the chapeau paragraph highlights sources of law for the Court to pay particular regard to, this list is not exhaustive. MSG submits that the Court consider the entire corpus of international law.
232. In the following paragraphs, MSG will examine a sub-set of these obligations of particular relevance to our three areas of concern: (1) culture and traditions; (2)

biodiversity; and (3) rural communities (youth and children). These obligations are: (1) self-determination; and (2) human rights, in particular, the right to life, cultural rights, and the right to a clean, healthy and sustainable environment.

Self-determination

233. Self-determination is both an essential principle of international law and a fundamental human right.²²⁸ It guarantees all peoples the inalienable right to control their own destiny by “freely determin[ing] their own political status” and “freely pursu[ing] their economic, social, and cultural development”.²²⁹
234. Self-determination is expressly recognized in the UN Charter of 1945,²³⁰ as a principle and as a right.²³¹ The *right* to self-determination norm has since been enshrined in numerous international instruments, including common article 1 of the ICCPR and the ICESCR. Beyond this, self-determination is widely recognized as a peremptory norm of customary international law, with *jus cogens* status.²³² This court has recognized that States’ self-determination obligations are owed *erga omnes*.²³³ Given this, all States—regardless of whether they are party to any particular treaty—are obliged to respect and ensure the right, with no derogations permitted. Accordingly, **all** States have been bound to respect and ensure the right to self-determination at least since 1945, when self-determination was codified in the UN Charter. That is so irrespective of whether and when a State has signed and ratified any relevant human rights treaty.

²²⁸ *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995 (June 30), p. 90, at para. 29; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Rep. 2019, p. 131, para. 144.

²²⁹ Common Article 1(1) of the International Covenant on Civil and Political Rights (**ICCPR**), 16 December 1966, 999 UNTS 171 and International Covenant on Economic, Social and Cultural Rights (**ICESCR**), 16 December 1966, 993 UNTS 3; *see also* UN General Assembly, Declaration on the Granting of Independence to the Colonial Countries and Peoples, UNGA Res. 1514 (XV), 14 December 1960, para. 2.

²³⁰ UN Charter, Art. 1(2) (as a purpose of the UN being “[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples...”) and art. 55 (referring to the goal of the UN, in the fields of social and economic development and respect for human rights, to create the “conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”).

²³¹ The French version of these provisions refers to respect for the “right” of self-determination, the “principe de l’égalité de droits des peuples et leur droit à disposer d’eux-mêmes”).

²³² Articles on Responsibility of States for Internationally Wrongful Acts (**ARISWA**), with commentaries, Yearbook of the ILC (2001), Volume II, Part II, Report of the Commission to the General Assembly on the Work of its Fifty-Third Session, UN Document A/CN.4/SER.A/2001/Add.1 (Part 2), p. 85, para. 5 of commentary to art. 26 (Compliance with peremptory norms); *see also Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Separate Opinion of Judge Robinson*, I.C.J. Rep. 2019 (July 9), p. 317, at para. 71(a); Dire Tladi, “Fourth Report of the Special Rapporteur on Peremptory Norms of General International Law (Jus Cogens)”, 31 January 2019, UN Doc A/CN.4/727, p. 48–52, paras. 108–115; Marcelo G Kohen, “Self-Determination” in Jorge E Viñuales (ed), *The UN Friendly Relations Declaration at 50 An Assessment of the Fundamental Principles of International Law* (Cambridge University Press, 2020) 151, 153.

²³³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, para. 156; *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 102, para. 29.

235. Self-determination is a collective right enjoyed by peoples. Although the right holds special significance in the context of decolonization,²³⁴ it belongs to “all peoples” irrespective of their colonial status.²³⁵ “Peoples” can include the entire populations of a State, indigenous peoples, colonised peoples, and minority groups within a State who share a common identity.
236. The right to self-determination encompasses the right to permanent sovereignty over natural resources (PSNR). PSNR is both a stand-alone customary norm and an integral part of the right to self-determination.²³⁶ It provides:
- “All peoples may, for their own ends, 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. In no case may a people be deprived of its own means of subsistence”.²³⁷
237. Territorial integrity, or the right to inviolability and cohesion of territory, is an essential corollary to all aspects of self-determination.²³⁸
238. Climate change—and thus the relevant conduct which is responsible for it—has violated the right to self-determination of all peoples represented by MSG by (1) destroying natural resources; and (2) compromising territorial integrity.
239. In relation to the destruction of natural resources, as we have explained in Section III, climate change impacts, including increasingly intense storms and cyclones, sea-level rise, coastal erosion, saltwater inundation, flooding, drought, and extreme heat are degrading terrestrial natural resources, depriving affected peoples of permanent sovereignty over the same. Rising ocean temperatures and acidity levels coupled with cyclone damage and coastal erosion have damaged and degraded essential marine resources, including coastal fisheries and coral reef ecosystems. In many cases, important natural resources and species have disappeared entirely because of climate change impacts, permanently foreclosing the ability of peoples to enjoy permanent sovereignty over the same.

²³⁴ E.g., *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. Rep. 883, paras. 49-52 (July 4); *Western Sahara*, Advisory Opinion, 1975 I.C.J. Rep. 12, paras. 31–36 (Oct. 16); G.A. Res. 65/119, Third International Decade for the Eradication of Colonialism (2011–2021) (Dec. 10, 2010)

²³⁵ ICCPR, art. 1(1); ICESCR, art. 1(1).

²³⁶ *Armed Activities on the Congo (Congo v. Uganda)*, Judgement, ICJ Reports 2005, p. 251-252, para. 244.

²³⁷ *Permanent Sovereignty over natural resources*, GA Res. 1803 (XVII), U.N. GAOR, 17th Sess. (14 December 1962) UN Doc A/RES/1803, para. 1; UNDRIP, art. 8(2)(b).

²³⁸ See, e.g., *Case Concerning East Timor (Portugal v. Australia)*, Judgment, 1995 I.C.J. Rep. 90, 94 (June 30) (holding that “territorial integrity and unity” is fundamental to the self-determination right); cf. *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, 2019 I.C.J. Rep. 169, para. 177 (discussing self-determination in the context of decolonization).

240. Further, many of the natural resources impacted by climate change include food crops that are staples of Melanesian diets. Climate change is thus tangibly depriving our peoples of the “means of their own subsistence” in clear violation of their rights to PSNR.
241. For the indigenous peoples of Melanesia, climate-induced loss of natural resources further evidence related but distinct violations of their right to self-determination. As we have demonstrated, climate change has led to the loss of resources that are vital to the cultural, economic, social, and governance systems of indigenous peoples throughout Melanesia. By damaging—and in some cases causing the complete loss of—these important natural resources, climate change is causing the very fabric of life to unravel. These losses are such that indigenous peoples across Melanesia are now unable to engage in their ways of life.²³⁹
242. The loss of these lifeways amounts to a clear violation of the right to self-determination. Indeed, the deep injury to indigenous self-determination caused by climate change impacts on natural resources has been acknowledged by numerous courts and tribunals, which have held that: “[i]n the case of Indigenous peoples, their close ties to their land are ‘the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival’”.²⁴⁰
243. As to territorial integrity, the Office of the UN High Commissioner for Human Rights has warned in 2009 that climate change could interfere with the right of peoples to self-determination by “threaten[ing] to deprive indigenous peoples of their traditional territories and sources of livelihood”.²⁴¹ In Melanesia, this threat has now materialised. As we have explained, indigenous peoples across Melanesia have *already* been deprived of their traditional territories and livelihoods by climate change induced natural disasters and coastal inundation.
244. Further, sea-level rise is projected to not only disrupt territorial integrity but divest entire low-lying island States and peoples of their habitable territories.²⁴² Loss of habitable

²³⁹ See Agreed Principles of Co-operation Among Independent States in Melanesia (1988).

²⁴⁰ I/A Court H.R., *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of Aug. 31, 2001 (Merits, Reparations and Costs), Series C, No. 79, para. 149. See, also: I/A Court H.R., *Yakye Indigenous Community vs. Paraguay*, Judgment of June 17, 2005, Series C, No. 125, para. 135; I/A Court H.R., *Saramaka People vs. Suriname*, Judgment of Nov. 28, 2007, Series C, No. 125, at para. 90; I/A Court H.R., *Moiwana Community vs. Suriname* (2005), Judgment of June 15, 2005, Series C, No. 124, para. 132-133; I/A Court H.R., *Kichwa Indigenous People of Sarayaku v. Ecuador*, Judgment of 27 June 2012 (Merits and Compensation), Series C No. 245, paras. 145–147. The distinctive relationship that Indigenous peoples have with their territories has also been recognised by national courts, see e.g., *Mabo v. Queensland* (No 2), [1992] HCA 23; (1992) 175 CLR 1 at pp. 15-16 (Mason CJ and McHugh J), 68-70 (Brennan J), 100 (Deane and Gaudron JJ) (Australia); *Northern Territory v. Griffiths (Deceased) on behalf of the Ngaliwurru and Nungali Peoples*, [2019] HCA 7; (2019) 269 CLR 1 at paras. 23, 84, 98, 153, 187, 206, 217, 223 (Kiefel CJ, Bell, Keane, Nettle and Gordon JJ) (Australia); *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010 (Canada), paras. 65, 71, see paras. 137-139.

²⁴¹ Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights (15 January 2009), UN Doc A/HRC/10/61, para. 40.

²⁴² IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability: Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2022), p. 2095, available at https://report.ipcc.ch/ar6/wg2/IPCC_AR6_WGII_FullReport.pdf (last accessed 7 February 2024); See Storlazzi, C *et al.*, “Most Atolls Will Be Uninhabitable by the Mid21st Century Because of Sea-Level Rise Exacerbating Wave-Driven Flooding”, 4 SCI. ADVANCES 1, 3–6 (2018), available at <https://www.science.org/doi/10.1126/sciadv.aap9741> (last accessed 27 February 2024).

territory threatens the very existence of impacted States and peoples. This is especially true for the peoples of Melanesia, whose collective identities are inseparable from their lands.

245. MSG submits that, by virtue of their *erga omnes* duties to respect and ensure the right to self-determination, States are obligated to undertake necessary steps to prevent further infringement of the right to self-determination, including by reducing their greenhouse gas emissions and providing reparation for any harm resulting from having failed to do so, including but not limited to assistance with climate change adaptation.

The particular case of New Caledonia as a non-self-governing territory

246. As administering power of the non-self-governing territory of New Caledonia, France owes particular obligations to safeguard the self-determination of the territory's people—the Kanak. Self-determination holds special importance in the context of colonised peoples. With the creation of the United Nations in 1945, decolonization became, and continues to be, a primary objective of the modern international legal system.²⁴³ The United Nations reconfirmed the importance of this objective with its Declaration on the Granting of Independence to Colonial Countries and Peoples in 1960, during which it pledged to “end colonialism in all its manifestations”.²⁴⁴ This goal has also been reflected in the establishment of the current and past three decades as International Decades for the Eradication of Colonialism.²⁴⁵
247. As this Court has confirmed, the right to self-determination for colonised peoples crystallised as a customary norm of international law by at least 1960, when the United Nations General Assembly promulgated the Declaration on the Granting of Independence for Colonial Peoples.²⁴⁶ The norm provides that colonial subjugation is a fundamental denial of the right to self-determination and that decolonization is thus an absolute legal right of colonised peoples as a necessary condition to realise self-determination.²⁴⁷
248. New Caledonia has been included on the UN non-self-governing territories list since 1946.²⁴⁸ This list represents territories recognized by the United Nations as having not yet attained self-governance, whose right to self-determination remains impeded by colonial rule, and who are therefore entitled to a formal act of decolonization.²⁴⁹

²⁴³ UN Charter, art. 1(2), art. 55, art. 73

²⁴⁴ UN General Assembly, Declaration on the Granting of Independence to the Colonial Countries and Peoples, UNGA Res. 1514 (XV), 14 December 1960.

²⁴⁵ UNGA Res. 75/123, Fourth International Decade for the Eradication of Colonialism (2020).

²⁴⁶ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Rep. 2019, pp. 132-133, paras. 150-155.

²⁴⁷ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Rep. 2019, para. 160; UN General Assembly, Declaration on the Granting of Independence to the Colonial Countries and Peoples, UNGA Res. 1514 (XV), 14 December 1960.

²⁴⁸ See United Nations, Non-Self-Governing Territories, available at <https://www.un.org/dppa/decolonization/en/nsgt> (last accessed 7 February 2024).

²⁴⁹ United Nations, Non-Self-Governing Territories, <https://www.un.org/dppa/decolonization/en/nsgt> (last accessed 7 February 2024); see also UN Charter art. 73-75; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Rep. 2019, p. 143, para. 160.

249. Administering powers of non-self-governing territories have accepted, as a “sacred trust,” obligations to ensure the well-being of territorial inhabitants and effectuate their right to self-determination.²⁵⁰ This includes not only the duty to achieve decolonization, but also to ensure the ability of colonised peoples to enjoyment of full self-determination once decolonization has been achieved, including by protecting and preserving territorial integrity and natural resources.²⁵¹
250. As New Caledonia’s administering power, France has assumed this “sacred trust” with respect to the Kanak. In particular, France is obligated to facilitate decolonization by ensuring “political, economic, social, and educational advancement,” aiding the Kanak people in “develop[ing] self-government, taking due account of the political aspirations of the peoples,” “assist[ing] them in the progressive development of their free political institutions,” and safeguarding their territorial integrity and right to PSNR.²⁵²
251. MSG submits that by virtue of these sacred duties, France is obligated to protect the colonised peoples of New Caledonia from climate change impacts that undermine their right to self-determination, and that threaten their ability to enjoy full expression of that right in the future, including through provision of climate finance and adaptation.²⁵³ In line with France’s duty to effectuate self-government, these steps should ensure the autonomy of the Kanak people.²⁵⁴ The same duties are held by all administering authorities to the peoples of their non-self-governing territories.

Human Rights

252. MSG submits that the full catalogue of international human rights give rise to State obligations to ensure the protection of the climate system and other parts of the environment.
253. Human rights have formed an integral part of the international legal system since at least 1945, when they were enshrined in the United Nations Charter and the Universal Declaration of Human Rights (UDHR).²⁵⁵ These rights are universal, meaning that every

²⁵⁰ UN Charter, art. 73.

²⁵¹ See *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Rep. 2019, p. 143, para. 160 (“The Court considers that the peoples of non-self-governing territories are entitled to exercise their right to self-determination in relation to their territory as a whole, the integrity of which must be respected by the administering Power.”)

²⁵² UN Charter, art. 73.

²⁵³ Committee for the Elimination of Racial Discrimination, Concluding observations on the combined twenty-second and twenty-third periodic reports of France (2022) (calling on France, with respect to the Kanaky people of New Caledonia to “adopt measures to offset or mitigate the consequences of extractive activities on their health and environment, as well as measures to mitigate the effects of the climate crisis on their lands, territories and resources with the aim of protecting their ways of life and means of subsistence”).

²⁵⁴ UN Charter, art. 73.

²⁵⁵ This understanding is reflected in the UN General Assembly Resolution adopting the UDHR, UNGA Res. 217A (III), A/Res/217(III), 10 December 1948, which clarified the role of the UDHR to elaborate and give substance to the Charter’s human rights provisions. Further, numerous UN General Assembly resolutions have affirmed that “[a]ll States shall observe faithfully and strictly the provisions of the ... Universal Declaration of Human Rights”: see, e.g., UN General Assembly, Declaration on the Granting of Independence to the Colonial Countries and Peoples, UNGA Res. 1514 (XV), 14 December 1960, para. 7.

person is entitled to equal enjoyment of the same rights; and they are inalienable, meaning they cannot be waived or taken away. Every individual is legally entitled to protection against interference with their rights and is guaranteed an effective remedy if their rights are violated.

254. Human rights are grounded in both customary international law and in treaty law. The foundational human rights instrument, the UDHR, enshrines a number of core human rights that have been impacted by climate change, including the right to health, right to life, right to private and family life, right to cultural life, and right to an adequate standard of living. In addition, these and more impacted human rights are enshrined in the International Covenant on Civil and Political Rights (**ICCPR**) and International Covenant on Economic, Social and Cultural Rights (**ICESCR**), which impose legally binding obligations on State parties (175 States in the case of the ICCPR and 173 States in the case of the ICESCR).
255. MSG submits that the rights expressed in the UDHR have crystallised into customary norms of international law. These rights were found in the domestic law of 55 nations when the UDHR was promulgated, demonstrating that the UDHR codified prior state practice.²⁵⁶ Since promulgation of the UDHR, state practice has further confirmed the customary status of these rights—nearly all States have incorporated relevant rights into their domestic legal systems.²⁵⁷ Further, these rights underpin numerous widely ratified international treaties and conventions,²⁵⁸ and UN practice has consistently and routinely confirmed UDHR rights and obligations as applicable to all States.²⁵⁹ Numerous domestic, international, and regional tribunals,²⁶⁰ including this Court,²⁶¹ as well as legal

²⁵⁶ See Schabas, W, “The Customary International Law of Human Rights” (OUP, 2021), p. 15; O’Boyle, M and Lafferty, M, ‘General Principles and Constitutions as Sources of Human Rights Law’, in Shelton, D (ed), *The Oxford Handbook of International Human Rights Law* (Oxford University Press, 2013) p. 199.

²⁵⁷ See O’Boyle, M and Lafferty, M, ‘General Principles and Constitutions as Sources of Human Rights Law’, in Shelton, D (ed.), *The Oxford Handbook of International Human Rights Law* (Oxford University Press, 2013) pp. 203-204.

²⁵⁸ All UN Member States have ratified at least one core human rights treaty and 80 per cent have ratified four or more: see United Nations, ‘Universal Declaration of Human Rights: The Foundation of International Human Rights Law’ (website), at: <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law#:~:text=Universal%20Values&text=Today%2C%20all%20United%20Nations%20member,UDHR%20and%20international%20human%20rights> (last accessed 7 February 2024).

²⁵⁹ See the extensive examples referred to and discussed in Myres S. McDougal, Harold D. Lasswell, Lung-chu Chen, *Human Rights and World Public Order* (Oxford University Press, 2nd ed, 2019) pp. 328-330 (referring also to United Nations Action in the Field of Human Rights (1974) UN Doc ST/HR/2, 129-151). See, further, Bruno Simma and Philip Alston, “The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles” (1992) 12 *Australian Yearbook of International Law* 82, 98.

²⁶⁰ Hannam, H, “The Status of the Universal Declaration of Human Rights in National and International Law” (1995/96) 25 *Georgia Journal of International and Comparative Law* 287, pp. 377-391. For more recent examples of domestic cases referring to the UDHR, see e.g., *European Roma Rights v. Immigration Officer at Prague Airport* (2004) 131 ILR 652, 684–5; *Re Minister for Immigration, ex p Ame* (2005) 148 ILR 503, 549–50; *HJ (Iran) v. Home Secretary* (2010) 159 ILR 428, 440–1; *Wakaba v. Attorney-General* (2010) 152 ILR 431, 445–6; *Juri-Nepal v. Government of Nepal* (2014) 158 ILR 476, 516–7, 523–4. In the regional context, see e.g., *In the matter of Anudo Ochieng Anudo v. United Republic of Tanzania* (African Court of Human and Peoples’ Rights, Judgment, 22 March 2018), para. 76 (recognizing the UDHR as “forming part of Customary International Laws”).

²⁶¹ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Separate Opinion of Judge Robinson*, I.C.J. Reports 2019, para. 35 (“Certainly the [UDHR] reflects customary international law”).

scholars,²⁶² have recognized the customary character of UDHR rights. Accordingly, these norms are binding on all States regardless of whether and when they have ratified the ICCPR or ICESCR.

256. Under both customary and treaty law, States hold obligations to respect, protect, and fulfil human rights. These obligations extend to all areas of governance, as well as to third-party conduct under State jurisdiction and control.²⁶³ Where, by their acts or omissions, States have failed to comply with these obligations, they are responsible for providing a remedy to victims of resultant human rights violations.
257. MSG submits that State customary human rights obligations are held *erga omnes*²⁶⁴ and apply extraterritorially. This interpretation is supported by the fact that the UDHR guarantees the fundamental human rights of “all human beings” and imposes no territorial restriction on State obligations to respect, protect, or fulfil them.²⁶⁵ Numerous human rights bodies and tribunals have likewise confirmed that, even under the human rights conventions, “[t]he obligations of States in the context of climate change and other environmental harms extend to all rights-holders and to harms that occur both inside and beyond [national] boundaries”.²⁶⁶
258. Like the UDHR, the ICESCR contains no jurisdictional provision. Further, the treaty vests States with a duty to cooperate internationally to achieve the universal realisation of the rights enshrined in the treaty, including through assistance provided from developed States to developing States.²⁶⁷ This, coupled with references to international action throughout the treaty,²⁶⁸ and with interpretations of extraterritorial application by

²⁶² See e.g., William A Schabas, *The Customary International Law of Human Rights* (Oxford University Press, 2021), p. 18, pp. 15-21; Olivier de Schutter, *International Human Rights Law, Cases, Materials, Commentary* (Cambridge University Press, 3rd ed, 2019) p. 60; Ilias Bantekas and Lutz Oette, *International Human Rights, Law and Practice* (Cambridge University Press, 3rd ed, 2020) p. 6; Myres S. McDougal, Harold D. Lasswell, Lung-chu Chen, *Human Rights and World Public Order* (Oxford University Press, 2nd ed, 2019) p. xcvi.

²⁶³ See e.g., Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, UN Doc CRC/C/GC/26 (22 August 2023) paras. 69, 106.

²⁶⁴ *Barcelona Traction, Light and Power Company, Limited, Judgment*, I.C.J. Reports 1970, p. 32, para. 34 (deriving obligations erga omnes “from the principles and rules concerning the basic rights of the human person”); *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment*, I.C.J. Reports 2012, p. 422, paras. 64-70.

²⁶⁵ UDHR, art. 1.

²⁶⁶ See, e.g., Office of the High Commissioner of Human Rights, *Key Messages on Climate Change and Human Rights; Joint Statement on human rights and climate change*, HRI/2019/1 (14 May 2020) para. 10. See further, in the context of extraterritorial obligations in respect of economic, social and cultural rights: Committee on Economic, Social and Cultural Rights, *General comment No. 26 on land and economic, social and cultural rights*, E/C.12/GC/26 (24 January 2023), paras. 40-47. Views adopted by the Committee under art. 10 (5) of the Optional Protocol on a communications procedure, concerning communication No. 104/2019, Committee on the Rights of the Child CRC/C/88/D/104/2019, 11 November 2021 (“*Sacchi v. Argentina*”), para. 10.7; Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health (article 12)*, 11 August 2000, E/C.12/2000/4, para. 39; Committee on Economic, Social and Cultural Rights, *General Comment No. 12: Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: The Right to Adequate Food (article 11)*, 12 May 1999, E/C12/1999/5, paras. 36-37.

²⁶⁷ ICESCR, art. 2(1).

²⁶⁸ See ICESCR, art. 2(1), 11, 15, 22, 23.

the Committee on Economic, Social and Cultural Rights,²⁶⁹ demonstrate that the ICESCR is intended to apply extraterritorially.

259. While the ICCPR does contain a jurisdictional provision,²⁷⁰ it is clear from the treaty text²⁷¹ and its subsequent interpretation by the UN Human Rights Committee²⁷² that this provision does not restrict States' obligations to peoples and individuals situated within the State's territory. Specifically, it is well-established that the ICCPR obliges State Parties to "respect and ensure the right laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party".²⁷³ The rationale is that a State should not be allowed "to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory".²⁷⁴ This approach helps give effect to the object and purpose of human rights treaties,²⁷⁵ and is particularly relevant in cases of transboundary environmental harm.²⁷⁶
260. In *Chiara Sacchi et. al. v. Argentina, Brazil, France, and Germany*, the Committee on the Rights of the Child interpreted the Convention on the Rights of the Child's jurisdiction clause—which is similarly worded as the ICCPR's—in a case concerning climate change. Specifically, the case concerned the acts and omissions of States related to climate change and its impact on rightsholders situated outside those State's territory. The Committee confirmed that rightsholders fall within a State's jurisdiction based on the State's ability "to regulate activities that are the source of [carbon] emissions and to enforce such regulations" by virtue of which "the State party has effective control over the emissions".²⁷⁷

²⁶⁹ Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health (article 12)*, 11 August 2000, E/C.12/2000/4, para. 39; Committee on Economic, Social and Cultural Rights, *General Comment No. 12: Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: The Right to Adequate Food (article 11)*, 12 May 1999, E/C.12/1999/5, paras. 36–37.

²⁷⁰ ICCPR, art. 2(1)

²⁷¹ E.g. Article 1(3); Article 5(1) which states that "Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognised herein or at their limitation to a greater extent than is provided for in the present Covenant".

²⁷² E.g. Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication R12/52 ('*Sergio Euben Lopez Burgos Uruguay*'), para. 12.3.

²⁷³ Human Rights Committee, *General Comment No. 31: The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, UN Doc. CCPR/C/21/Rev.1/Add. 1, para. 10.

²⁷⁴ Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication R12/52 ('*Sergio Euben Lopez Burgos Uruguay*'), para. 12.3.

²⁷⁵ *Austriav. Italy*, ECtHR, para. 116 *et seq.*

²⁷⁶ Advisory Opinion on Human Rights and the Environment, *OC-23/17*, 15 November 2017, Inter-American Court of Human Rights Series A No. 23, paras. 95, 101-102.

²⁷⁷ *Chiara Sacchi et. al. v. Argentina, Brazil, France, and Germany* (Communication Nos. 104-107/2019, CRC/C/88/D/104/2019, CRC/C/88/D/105/2019, CRC/C/88/D/106/2019, CRC/C/88/D/107/2019) Committee on the Rights of the Child, 11 November 2021, para. 10.10, see also para. 10.7 (where the Committee sought to adapt the relevant approach to jurisdiction taken by the Inter-American Court of Human Rights in its advisory opinion on human rights and the environment); see *Advisory Opinion on Human Rights and the Environment*, *Advisory*

261. MSG submits that this interpretation is correct, meaning that peoples and individuals in Melanesia whose rights are affected by significant harm to the climate system and other parts of the environment fall within the jurisdiction of the States who have caused this harm through their acts and omissions.
262. It should also be noted that many of the rights codified in the ICCPR are part of customary international law and as such, oblige all States to respect and ensure them with respect to peoples and individuals who are affected by their acts and omissions, irrespective of their location.
263. That climate change results in human rights violations has been confirmed by numerous tribunals, human right treaty bodies, and UN organs.²⁷⁸ In Melanesia, our communities are disproportionately vulnerable to climate change, and have already experienced severe violations of their fundamental human rights.
264. The remainder of this section will focus on human rights of particular concern in our Melanesian region—the right to life, cultural rights, and the right to a clean, healthy and sustainable environment.

Right to life

265. The right to life is broadly acknowledged as a fundamental principle of customary international law from which no derogations are permitted.²⁷⁹ It is also codified in numerous human rights instruments, including Article 3 of the UDHR and Article 6 of the ICCPR.²⁸⁰ The right to life is the “supreme right” from which all other rights flow.²⁸¹ The right guarantees individuals protection from arbitrary deprivation of life, as well as acts and omissions that are intended or may be expected to cause their unnatural or premature death. It also entitles every individual to enjoyment of a life with dignity.²⁸²
266. The right to life is inherently linked with environmental well-being. As the Human Rights Committee has explained, “environmental degradation can compromise effective enjoyment of the right to life” and “severe environmental degradation can adversely

Opinion OC-23/17, 15 November 2017, Inter-American Court of Human Rights Series A No. 23, paras. 95, 101-102.

²⁷⁸ See Human Rights Committee, *General Comment No. 36 (Article 6)*, 3 September 2019, CCPR/C/GC/36, para. 3.

²⁷⁹ Schabas, W, *The Customary International Law of Human Rights* (Oxford University Press, 2021), p. 112; see ACHPR, GC 3, 12 December 2015, para. 5; Mario Alfredo Lares- Reyes et al. v. United States, Case 12.379, Report No. 19/ 02, 27 February 2002, para. 46, fn. 23.

²⁸⁰ UDHR, art. 3 (“Everyone has the right to life”); ICCPR, art. 6 (“[e]very human being has the inherent right to life”).

²⁸¹ Human Rights Committee, *General Comment No. 36 (Article 6)*, 3 September 2019, CCPR/C/GC/36, para. 2. See also Human Rights Committee, *General Comment No. 6 (Article 6)*, 30 April 1982, para. 1.

²⁸² Human Rights Committee, *General Comment No. 36 (Article 6)*, 3 September 2019, CCPR/C/GC/36, para. 3. See *General Comment No. 3 on the African Charter of Human and Peoples’ Rights: The Right to Life (Article 4)*, African Commission on Human and Peoples’ Rights, 12 December 2015, paras. 3, 6; see Human Rights Committee ‘Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019’ (22 Sept 2022) Un Doc CCPR/C/135/D/3624/2019 (“*Billy v. Australia*”), para. 8.3.

affect an individual's well-being and lead to a violation of the right to life".²⁸³ Indeed, "[e]nvironmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life".²⁸⁴

267. States hold both positive duties to protect against the deprivation of life as well as negative duties to refrain from conduct that results in the arbitrary deprivation of life. In both cases the duties extend to impairment to life with dignity. States' obligations to protect extend to reasonably foreseeable threats that could result in violations of the right.²⁸⁵ By failing to take measures to protect against such foreseeable threats, States may be in violation of their obligations, "even if such threats and situations do not result in the loss of life".²⁸⁶ Thus, the right to life with dignity protects the conditions of life.
268. The standard against which States compliance with their obligations can thus be understood as that of due diligence.

269. As stated in *Billy v Australia* (in line with *General Comment No.36*):

"The Committee recalls that State parties should take all appropriate measures to address the general conditions in society that may give rise to direct threats to the right to life or prevent individuals from enjoying their right to life with dignity".²⁸⁷

270. These general conditions include environmental well-being. In *Portillo Cáceres v Paraguay*, the Human Rights Committee was satisfied that the right to life (with dignity) had been violated due to the heavy use of toxic agrochemicals. These posed a reasonably foreseeable threat to the authors' lives given that such large-scale fumigation had contaminated the rivers in which the authors fished, the well water they drunk and the fruit trees, crops and farm animals that were their source of food.²⁸⁸

271. In *Billy v Australia*, the Human Rights Committee stated that threats to the right to life can include adverse climate change impacts.

"The Committee considers that such threats may include adverse climate change impacts and recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life".²⁸⁹

272. While the Human Rights Committee found that the violation of the right to life was not proved in *Billy v Australia* (the evidence did not extend beyond feelings of "insecurity"),

²⁸³ *Billy v. Australia*, para. 8.3.

²⁸⁴ *Billy v. Australia*, para. 8.3.

²⁸⁵ Human Rights Committee, *General Comment No. 36 (Article 6)*, 3 September 2019, CCPR/C/GC/36, para. 7.

²⁸⁶ *Billy v. Australia*, para. 8.3.

²⁸⁷ *Billy v. Australia*, para. 8.3.

²⁸⁸ *Portillo Cáceres and Others v. Paraguay*, CCPR/C/126/D/2751/2016, Communication 2751/2016, para. 7.5.

²⁸⁹ *Billy v. Australia*, para. 8.3.

MSG submits that this does not mean that a violation of the right to life has not materialised in the context of climate change. To the contrary, as the stories of the peoples across our region have demonstrated, violations of the right to life have already occurred as a result of the conduct of States at stake in the present proceedings. Our people have lost their lives as a result of climate change impacts, and entire communities have been deprived of their ability to live dignified lives.

Cultural Rights

273. Cultural rights, though described differently, are codified in the UDHR,²⁹⁰ human rights treaties including the ICCPR, ICESCR, and International Covenant on the Elimination of Racial Discrimination (**ICERD**),²⁹¹ and specific United Nations human rights treaties applying to different groups.²⁹² They are also codified in several UN Declarations, including, the United Nations Declaration on the Rights of Indigenous Peoples.²⁹³ Further, the people’ right to freely pursue culture development is an essential component of the right to self-determination. MSG submits that the right to culture and to freely participate in cultural life has also reached customary international law status.²⁹⁴ These cultural rights are also reflected and confirmed in the regional TK and Culture Treaty.
274. In this subsection, MSG will focus on content of the right in Article 27 of the ICCPR and Article 15 of the ICESCR (noting, in any event, the overlap in meaning between the various manifestations of the right, including in the CRC at articles 30 and 31).²⁹⁵ MSG will also discuss ICERD in this context.
275. Mirroring the language of the UDHR, Article 15 of the ICESCR protects the right of everyone to “take part in cultural life”. In order to enjoy this right, individuals must be able to access essential aspects of their culture, including “nature’s gifts, such as seas, lakes, rivers, mountains, forests and nature reserves, including the flora and fauna found

²⁹⁰ UDHR, article 27(1) (“Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.”).

²⁹¹ ICCPR, article 27; ICESCR, article 15 and ICERD, article 5(e)(iv).

²⁹² Convention on the Elimination of All Forms of Discrimination against Women, article 13(c); Convention on the Rights of the Child, article 31(2); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, article 43(1)(g); Convention on the Rights of Persons with Disabilities, article 30(1).

²⁹³ See e.g. UNDRIP, arts. 1, 8(1); Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 18 Dec. 1992, UNGA Res. 47/135, arts. 1(1), 2(1), 4(2).

²⁹⁴ William A. Schabas, *The Customary International Law of Human Rights* (Oxford University Press, 2021), p. 321-323 (and the materials relied on therein).

²⁹⁵ Articles 30 and 31 of the Convention on the Rights of the Child provide as follows: Article 30 states: “In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language”; and Article 31 states: “1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. 2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.”

there” as well as “intangible cultural goods, such as languages, customs, traditions, beliefs, knowledge and history, as well as values”.²⁹⁶

276. The scope of the right under the ICCPR Article 27 is narrower, reserved to “ethnic, religious or linguistic minorities,” including indigenous peoples. It guarantees members of minority groups the right to “enjoy their own culture, to profess and practise their own religion, [and] to use their own language.” Though held individually, the right depends upon “the ability of the minority group to maintain its culture”.²⁹⁷
277. Indigenous peoples hold distinct cultural rights, which reflect the fundamentally communal nature of indigenous culture,²⁹⁸ as well as the inseparability of indigenous culture and environment.²⁹⁹ Indigenous peoples also enjoy special cultural protections in recognition of long histories of cultural genocide they have experienced through colonization. Thus, for example, the UN Declaration on the Rights of Indigenous Peoples (**UNDRIP**) establishes that “Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture”.³⁰⁰
278. The Committee on Economic, Social and Cultural Rights has confirmed: “Indigenous peoples’ cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity”.³⁰¹
279. Likewise, in *Billy v. Australia*, the Human Rights Committee recently confirmed, in finding that climate change has violated the cultural rights of indigenous Torres Strait Islanders under the ICCPR that “article 27 of the Covenant, interpreted in the light of the United Nations Declaration on the Rights of Indigenous Peoples, enshrines the inalienable right of indigenous peoples to enjoy the territories and natural resources that they have traditionally used for their subsistence and cultural identity”.³⁰²

²⁹⁶ Committee on Economic, Social and Cultural Rights, GC 21, December 2009, E/C.12/GC/21, para. 16(a).

²⁹⁷ ICCPR, art. 27.

²⁹⁸ Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2552/2015 (*Benito Oliveira Pereira et alv. Paraguay*), 21 September 2022, UN Doc CCPR/C/132/D/2552/2015, para. 8.6 (“The strong communal dimension of indigenous peoples’ cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.”)

²⁹⁹ Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2552/2015 (*Benito Oliveira Pereira et alv. Paraguay*), 21 September 2022, UN Doc CCPR/C/132/D/2552/2015, para. 8.6 (“[I]n the case of indigenous peoples, the enjoyment of culture may relate to a way of life which is closely associated with territory and the use of its resources, including such traditional activities as fishing or hunting. Thus, the protection of this right is directed towards ensuring the survival and continued development of the cultural identity”). See also UN Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 1457/2006, *Ángela Poma Poma v. Peru*, CPR/C/95/D/1457/2006, 27 March 2009.

³⁰⁰ UNDRIP, art. 8(1).

³⁰¹ Committee on Economic, Social and Cultural Rights, *General Comment No. 21: Right of everyone to take part in cultural life*, E/C.12/GC/21, 21 December 2009.

³⁰² *Billy v. Australia*, para. 8.13.

280. The right to culture for indigenous peoples also encompasses a right to “to transmit to their children and future generations their culture and traditions and use of land and sea resources”.³⁰³
281. Cultural rights are violated when an act or omission has caused a substantial interference with or substantial impact on culture.
282. Climate change has already had a devastating and irreparable impact on the right to culture across Melanesia. In *Daniel Billy*, the Human Rights Committee concluded that the right to culture under the ICCPR had been violated where the complainants’ “ability to maintain their culture has already been impaired by the reduced viability of their islands and the surrounding seas, owing to climate change impacts”.³⁰⁴ Specifically, the Human Rights Committee found that climate change had compromised culture by “erod[ing] their traditional lands and natural resources that they use for traditional fishing and farming and for cultural ceremonies that can only be performed on the islands”.³⁰⁵ Further the Committee noted that “the health of their land and the surrounding seas is closely linked to their cultural integrity”.³⁰⁶ As we have demonstrated in Section III, the same impacts and more have already been experienced across Melanesia.

Right to a Clean, Healthy and Sustainable Environment

283. MSG submits that the right to a clean, healthy and sustainable environment is a human right, which States are required to respect, protect, ensure and fulfil. The right arises as one or more of the following and applies as part of States’ substantive human rights obligations:
- a. a *sui generis* customary international law right;
 - b. a general principle of law;
 - c. a right derived from either or all of the UNDR, ICCPR and the ICESCR (“the importance of a clean, healthy and sustainable environment as critical to the enjoyment of human rights”);
 - d. a right with respect to indigenous peoples (see cultural rights).
284. MSG argues that from a matter of substance, it does not matter whether the right to a healthy environment emerges by virtue of (a)-(d). Regardless, MSG submits that the right to a healthy environment has emerged as an autonomous or standalone right.
285. As noted above, the right to a healthy environment as a human right has been recognized by both the Human Rights Council and the UNGA. In two resolutions adopted with overwhelming support,³⁰⁷ the UN Human Rights Council has recognized the right to a clean, healthy and sustainable environment as a human right that is prerequisite to the

³⁰³ *Billy v. Australia*, para. 8.14.

³⁰⁴ *Billy v. Australia*, para. 8.14.

³⁰⁵ *Billy v. Australia*, para. 8.14.

³⁰⁶ *Billy v. Australia*, para. 8.14.

³⁰⁷ Human Rights Committee, *The human right to a clean, healthy and sustainable environment*, HRC Res 48/13, adopted 8 October 2021, A/HRC/RES/48/13 (adopted with 43 votes in favour, 4 abstentions, 0 votes against).

enjoyment of other human rights. The UNGA has likewise recognized the right to a clean, healthy and sustainable environment as a human right in a resolution adopted with only 8 abstentions and no opposition.³⁰⁸

286. The evidence of its status as a rule of general international law abounds. States comprising the Human Rights Council and the UNGA overwhelmingly adopted the two resolutions recognising the right (with no votes against). Statements made by numerous States during the Universal Periodic Review process explicitly referenced a right to a healthy environment. Over 110 States who have recognised the right to a healthy environment in their constitutions (including Fiji) and well over 150 States (more than 80% of UN member States) have recognised the right in constitutions, legislation, court decisions (including in Papua New Guinea) and regional treaties.³⁰⁹
287. Secondly, from the perspective of its existence as a human right derived from other rights, as MSG has shown above, there has been a significant greening of human rights law at an international level. This is, as has been demonstrated, well-established and consistent with article 31 of the Vienna Convention. However, the derivation of the right to a healthy environment from ICCPR and/or ICESCR is also firmly grounded in the principle of effectiveness; that is, that rights and obligations should be effective. This is explicitly acknowledged by both the Human Rights Committee and the UNGA. Even though the principle of effectiveness was not explicitly included in article 31 of the Vienna Convention, it is considered an underlying principle in that norm.
288. MSG's alternative argument is that the right to a healthy environment patently exists with respect to indigenous peoples and those similarly situated.
289. The content of the right is based upon two things. First, it protects the quality of the environment ("clean", "healthy", "sustainable"). Second, the right is related to the "environment" which, as argued above, is context derived. Moreover, the quality of the environment that it protects is also shaped by whatever environment is at issue. Thus, for indigenous peoples who rely on their environments for subsistence, for example, the quality of that environment must be even more clean, healthy and sustainable.

3. QUESTION (B)

290. Question (b) asks the Court to consider the legal consequences that arise under applicable legal obligations (as determined in response to Question (a)) for States where they, by their acts and omissions, have caused significant harm to the climate system and other

³⁰⁸ UNGA, *The human right to a clean, healthy and sustainable environment*, GA res 76/300, adopted 28 July 2022, A/RES/76/300 (adopted with 161 votes in favour, 8 abstentions, 0 votes against).

³⁰⁹ John H Knox, "Human Rights" in Lavanya Rajamani and Jacqueline Peel (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press, 2nd ed, 2021) 784, 786-787 (link or exhibit); *Right to a healthy environment: good practices*, "Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment" (30 December 2019) A/HRC/43/53, para. 10. Some constitutions, laws and policies speak of the right to a healthy environment as an individual guarantee, whereas others provide it as a collective right or general principle; and some use different nomenclature to describe a substantively similar right. In this respect, Vanuatu submits that state practice need not be identical: *Case Concerning Military and Paramilitary Activities In And Against Nicaragua (Nicaragua v. United States of America)* (Merits), Judgment of 27 June 1986, para. 186.

parts of the environment, with respect to (1) “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”; and (2) “Peoples and individuals of the present and future generations affected by the adverse effects of climate change”.

291. In answering this question, the Court is tasked with two inquiries. First, the Court must determine that State conduct causing significant harm to the climate system and other parts of the environment constitutes an internationally wrongful act in breach of the obligations identified in Question (a). Second, the court must address the legal consequences stemming from said violations. MSG addresses each issue in turn.

Internationally Wrongful Acts

292. MSG maintains that the States that have caused significant harm to the climate system and other parts of the environment have committed internationally wrongful acts. The question of internationally wrongful conduct is governed by the general international law of State responsibility, as reflected in the ILC Draft Articles on State Responsibility for Internationally Wrongful Acts (**ARSIWA**).

293. To constitute an internationally wrongful act entailing State responsibility, the conduct (1) must be attributable to the State; and (2) must amount to a breach of one or more international legal obligations of that State. MSG submits that each of these conditions is satisfied with respect to the “acts and omissions” of States which “have caused significant harm to the climate system and other parts of the environment”. MSG maintains that such conduct is attributable to the relevant States and that it is in breach of relevant obligations under international law that these States were bound by at the time the acts occurred, in line with the principle of contemporaneity codified in Article 13 of ARSIWA.

294. For the purpose of determining international responsibility, conduct comprises acts or omissions of the State itself or one of its organs.³¹⁰ Here, several forms of conduct that cause significant harm to the climate system are attributable to the State. These include (1) the provision of governmental subsidies to fossil fuels (coal, oil and gas); (2) the adoption of laws, policies, programmes and decisions regarding energy policy; and – most significantly– (3) the failure to act to limit GHG emissions to a level below the threshold of significance of the relevant conduct.

295. The first two categories of conduct are attributable to the State for the same reason. Subsidies, as well as energy laws, policies, programmes, and decisions are all attributable to the State if they are issued by the State itself or any State organ.³¹¹ Thus, governmental

³¹⁰ ARSIWA, art. 4; Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, chapter II, commentary, paras. 1, 5 (“The principle of the unity of the States entails that the acts or omissions of all its organs should be regarded as acts or omissions of the State for the purposes of international responsibility.”)

³¹¹ *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion, ICJ Reports 1999, p. 62, para. 62. Article 4 of ARSIWA defines an organ as follows: “1. The conduct of any State organ shall be considered an act of that State under international law, whether the

fossil fuel subsidies, as well as any legislative, executive, or other policy action to promote the production of fossil fuels is directly attributable to the State. In addition, subsidies and policy actions undertaken by an entity that is not structurally part of the State is still attributable to that State if the entity is “empowered by the law of that State to exercise elements of the governmental authority” and is “acting in that capacity in the particular instance”.³¹²

296. The failure to curtail GHG emissions below the threshold of significance is also directly attributable to the State. This is the most significant aspect of the conduct at stake in the present proceedings, particularly with respect to those few States that have jurisdiction or control over corporations and other entities responsible for significant emissions of GHGs over time. Only States have the sovereign power to regulate the GHG emissions of private entities under their jurisdiction and control. The failure to do so is an omission (i.e., conduct) that is directly attributable to the State.
297. Next, State acts and omissions that have caused, through their emissions of greenhouse gases, significant harm to the climate system and other parts of the environment, amount to breaches of their international obligations. State conduct constitutes a breach “when an act of th[e] State is not in conformity with what is required of it by that obligation, regardless of its origin or character”.³¹³ As discussed in response to Question (a), many of the international rules governing the relevant conduct obligate States to take action to avoid harming other States, individuals, and peoples. As such, the failure over time to act to bring GHG emissions below the threshold of significance constitutes an internationally wrongful omission attributable to the State.
298. MSG notes that States have been bound since at least the 19th century by the duty of due diligence, which requires them to not allow their territory to be used in a way that causes significant harm to other States.³¹⁴ This duty became more specific in relation to environmental protection over the 20th century, for example through the *Trail Smelter* arbitration which affirmed no State has the right to use its territory to cause serious injury to another State by air pollution.³¹⁵ Therefore, continuing to allow high GHG emissions

organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organisation of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State. 2. An organ includes any person or entity which has that status in accordance with the internal law of the State.”

³¹² *Noble Ventures, Inc. v. Romania*, ICSID Case No. ARB/01/11, Award (12 October 2005), para. 70; *Jan de Nul N.V., Dredging International N.V. v. Egypt*, ICSID Case No. ARB/04/13, Decision on Jurisdiction (16 June 2006), para. 89.

³¹³ ARSIWA, art. 12.

³¹⁴ See, *Alabama Claims of the United States of America against Great Britain*, Award rendered on 14 September 1872 by the tribunal of arbitration established by Article I of the Treaty of Washington of 8 May 1871, XXIX Reports of International Arbitral Awards p. 125. See also, *International Duties of Neutral States—Rules of Washington* in James Brown Scott (ed), *Resolutions of the Institute of International Law Dealing with the Law of Nations: With an Historical Introduction and Explanatory Notes* (Oxford University Press 1916), available at: <https://www.idi-iiil.org/app/uploads/2019/06/Annexe-1bis-Compilation-Resolutions-EN.pdf> . See also the original version in French: ‘Devoirs internationaux des Etats neutres. Règles de Washington. Conclusions adoptées à La Haye.’ (1877) 1 *Annuaire de l’Institut de Droit International* 139, available at: https://www.idi-iiil.org/app/uploads/2017/06/1875_haye_04_fr.pdf

³¹⁵ *Trail Smelter Arbitration*, RIAA, vol. III, pp. 1905–82, p. 1963, p. 1965.

after the risks became scientifically understood, especially from the 1960s onwards, constitutes a clear breach of due diligence by major emitting States. Moreover, as noted above, States have been bound since 1945 by human rights obligations, including the rights to self-determination and non-discrimination. The disproportionate impacts of climate change on vulnerable groups, including the indigenous peoples of Melanesia, amount to breaches of these human rights obligations by major emitting States.

299. The cumulative nature of State acts and omissions causing climate harm makes them an ongoing composite breach under Article 15 of ARSIWA, with the breach extending over the entire period starting retrospectively with the first act or omission in the series. The failure to act to curtail emissions has continued to the present day, meaning the composite breach is continuing. MSG submits that for the determination of legal consequences, the wrongful conduct must be considered in its entirety, as an aggregate conduct.
300. MSG notes that there are no circumstances precluding wrongfulness that may justify the internationally wrongful conduct. The grounds listed in Articles 20-26 of ARSIWA, such as necessity and force majeure, must be specifically invoked and do not give blanket authorization for otherwise unlawful conduct. Such conduct remains unlawful in principle unless justified. Moreover, the peremptory character of some of the obligations breached, including the obligation to respect the right to self-determination and the prohibition on racial discrimination, places strict limits on any attempt to preclude wrongfulness.

Legal Consequences

301. MSG now turns to consider the legal consequences stemming from the aggregate conduct in breach of the international obligations of States with large historical GHG emissions. As this Court held in the *Namibia* advisory opinion, an illegal situation determined by a competent UN organ “cannot remain without consequence” and the Court would fail its judicial functions if it did not declare there is an obligation to bring such a situation to an end.³¹⁶ This section will discuss the requirements arising from breaches caused by the relevant conduct with respect to the two classes of victims contemplated by the Legal Question: (1) certain State victims; and (2) human victims, including individuals and peoples of present and future generations.

Legal consequences for harm to certain States

302. The Court is asked to clarify the legal consequences of States’ internationally wrongful conduct with respect to harm caused to other 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”. The Court is further asked to take particular consideration of harm caused to small island developing States,

³¹⁶ *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, para. 117.

which are widely recognized as the class of States most adversely impacted by climate change.

303. The “State” category of victims in the operative question is identified based on the international law of State responsibility for wrongful acts.³¹⁷ In particular, the terms “injured” and “specially affected” are codified in the ARSIWA.
304. Article 31(2) of ARSIWA defines “injury” as “any damage, whether material or moral, caused by the internationally wrongful act of a State”. Clearly, the harms described in preceding Sections stemming from the States conduct causing significant harm to the climate systems and other parts of the environment satisfy this definition.
305. Pursuant to Article 42 of ARSIWA, an injured State may invoke the responsibility of another State for a breach of its international legal obligations in three circumstances.³¹⁸ First, “when the obligation breached is owed to the injured State individually”.³¹⁹ In the context of climate change, this would be the case, for example, with respect to commitments under Article 11(5) of the United Nations Framework Convention on Climate Change to provide financial assistance to specific States.
306. The other two bases arise when the obligation is owed to a group of States that includes the injured State, or to the international community as a whole. First, an injured State may invoke the international responsibility of the breaching State if the breach causes harm that “specially affects” the injured State. This means that the State “must be affected by the breach in a way which distinguishes it from the generality of other States to which the obligation is owed”.³²⁰
307. The situation of “specially affected” States is particularly pertinent in the context of climate change. This is because many of the obligations of relevance are owed to the entire international community, yet the harm stemming from breach of those obligations through significant harm caused to the climate system has been and continues to be disproportionately felt by certain States, chief among them small island developing States, including those in Melanesia.
308. Indeed, there is both political and scientific consensus, as expressed consistently in the IPCC Summaries for Policymakers, as well as publications and other outputs from UN expert bodies that small island States suffer exceptionally and disproportionately from the impacts of climate change.³²¹

³¹⁷ The UN Secretariat recognised such reference and included in the dossier communicated to the Court the ARSIWA, with commentaries and supplement.

³¹⁸ Article 42 of ARSIWA reads in full: “A State is entitled as an **injured State** to invoke the responsibility of another State if the obligation breached is owed to: (a) that State individually; or (b) a group of States including that State, or the international community as a whole, and the breach of the obligation: (i) **specially affects** that State; or (ii) is of such a character as radically to change the position of all the other States to which the obligation is owed with respect to the further performance of the obligation” (emphasis added).

³¹⁹ ARSIWA, art. 42(a)

³²⁰ ARSIWA, art. 42(b)(i)

³²¹ See generally IPCC, “Chapter 15: Small Islands” in *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel*

309. Moreover, as the evidence put forth in support of this submission demonstrates, climate change is unravelling the fabric of life across Melanesia. This is because our Melanesian ways of life are intimately interwoven with our environments.³²² The same deep injury is felt by similarly situated States, whose ways of life are similarly inseparable from the land and sea, including other Small Island Developing States.³²³ The deep injury experienced by Melanesian States is disproportionate to that experienced by the generality of States, especially those whose ontologies and philosophies see human and natural systems as separate.
310. Finally, an injured State may invoke the international responsibility of the breaching State if the breach is “of such a character as to radically change the position of all the other States to which the obligation is owed with respect to the further performance of the obligation”.³²⁴ Obligations of this type arise from treaties “where each party’s performance is effectively conditioned upon and requires the performance of each of the others”.³²⁵ This situation is clearly implicated in respect of State obligations identified above in connection with Question (a).
311. In addition to injured and specially affected States, the Legal Question asks the Court to consider legal consequences with respect to “particularly vulnerable States”. In the climate context, vulnerability is broadly understood as “[t]he propensity or predisposition to be adversely affected” including due to “sensitivity or susceptibility to harm and lack of capacity to cope and adapt”.³²⁶ This category thus encapsulates States which, though not impacted to the point of being “injured” or “specially affected”, are nevertheless more exposed to the adverse effects of climate change than the generality of States “due to their geographical circumstances and level of development”.
312. States that have, through their internationally wrongful conduct, caused injury to other States as set out above are internationally responsible. Under the customary rules of State responsibility codified in ARSIWA, several consequences arise from such breaches.
313. The general international legal rules governing State responsibility provide that responsible States are obligated to provide injured States, at minimum, (1) cessation and non-repetition of the violation; and (2) reparation in a suitable form, including restitution or compensation, or a combination of the two.³²⁷

on *Climate Change*, Full Report (2022), available at <https://www.ipcc.ch/report/ar6/wg2/chapter/chapter-15/> (last accessed 7 February 2024).

³²² See Part VI, *supra*.

³²³ See generally IPCC, “Chapter 15: Small Islands” in *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), available at <https://www.ipcc.ch/report/ar6/wg2/chapter/chapter-15/> (last accessed 7 February 2024).

³²⁴ ARSIWA, art. 42(b)(ii).

³²⁵ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, Art. 42, commentary, para. 13.

³²⁶ IPCC Glossary, available at: <https://apps.ipcc.ch/glossary/>

³²⁷ *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, I.C.J. Reports 2012, p. 99, para. 137. (“the State responsible for an internationally wrongful act is under an obligation to cease that act, if it is continuing. Furthermore, even if the act in question has ended, the State responsible is under an

314. In this context, cessation requires States to stop causing significant harm to the climate system and other parts of the environment. This means States must use their sovereign powers to urgently adopt measures to bring anthropogenic emissions under their jurisdiction and control in line with what the best available science indicates is needed to prevent further harm. As the IPCC has indicated, this requires States with the highest historical emissions to rapidly implement deep emission cuts across all sectors, immediately scaling down fossil fuel use and production. A specific requirement arising from the obligation of cessation is, moreover, that no new fossil fuel (coal, oil and gas) projects are approved or developed.³²⁸
315. In addition to cessation, responsible States must provide assurances and guarantees of non-repetition.³²⁹ These must not be mere placations, but concrete measures adopted to ensure non-reoccurrence of the breach, thus, in this context, requiring the immediate phasing out of fossil fuels.
316. Further, responsible States are obligated to provide reparation to injured States in order to remedy the harm already suffered as the result of the responsible State’s internationally wrongful conduct.³³⁰ Reparation is of paramount importance for MSG Members and other climate vulnerable countries, as it begins to address the fundamental injustice that those who have contributed the least to the climate crisis are suffering the most from its effects. Reparation should thus be approached as part of a process of historical redress.
317. The preferred form of reparation is restitution, which entails the responsible State taking measures to “wipe out the legal and material consequences of its wrongful act by re-establishing the situation that would exist if that act had not been committed”.³³¹ The objective of restitution is to undo the harm and put the injured State back in the position it had been in prior to the harm.³³² The notion of restitution is broad, encompassing “any action that needs to be taken by the responsible State to restore the situation resulting from its internationally wrongful act”.³³³ Restitution “may take the form of material

obligation to re-establish, by way of reparation, the situation which existed before the wrongful act was committed”)

³²⁸ United Nations Environment Programme, *Emissions Gap Report 2023: Broken Record. Temperatures reach new highs, yet world fails to cut emissions (again)* (November 2023), at p. 30.

³²⁹ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, Art. 30, commentary, para. 13.

³³⁰ *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, para. 460; *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, I.C.J. Reports 2012, p. 99, para. 137.

³³¹ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, Article 35, commentary, para. 3 (“because restitution most closely conforms to the general principle that the responsible State is bound to wipe out the legal and material consequences of its wrongful act by re-establishing the situation that would exist if that act had not been committed, it comes first among the forms of reparation”)

³³² Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, Article 35, commentary, para. 3.

³³³ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, Article 35, commentary, para. 5.

restoration or return of territory, persons or property, or the reversal of some juridical act, or some combination of them”.³³⁴

318. In the climate change context, while it is not possible to fully restore the climate system or undo all associated loss and damage, MSG contends that restitution may still be provided through, amongst other things, assisting with adaptation measures to reduce vulnerability and restore resilience.³³⁵ This could include measures to actively restore biodiversity loss and land degradation, reclaim or protect territory, and provide the financial and technological means for transformative adaptation. Such assistance helps return injured States closer to the conditions, in terms of climate vulnerability and resilience, that existed prior to suffering climate harms.
319. In many cases, however, restitution is materially impossible because climate change has resulted in irreparable losses. As set forth in the preceding sections, these include extinction of biodiversity, collapse of ecosystems, and permanent loss of territory, including, in some cases, loss of entire islands. It is not possible to revive a species that is now extinct, restore an ecosystem that has collapsed, or restore territory that has been destroyed. To address such harms, responsible States are obligated to provide adequate compensation, entailing the provision of money damages by the responsible State to the injured States. This includes both compensation “for damage caused to the environment, in and of itself, in addition to expenses incurred by the injured State as a consequence of such damage”.³³⁶
320. Compensation must be provided for both tangible and intangible damage. Some of the damage caused by climate change is tangible and can be readily assessed and compensated in economic terms. Examples include destruction of infrastructure, costs associated with relocation of displaced peoples, and the material value of natural resources. Cultural damages are equally compensable, even if harder to quantify.³³⁷ Importantly, international law allows compensation to be awarded on equitable grounds where the fact of damage is clear even if the monetary value is hard to precisely calculate. The appropriate compensation must instead be assessed on a case-by-case basis.
321. In the context of climate change, “expenses incurred by the injured State” also include the investments that injured States have been forced to make in responding and adapting to climate change. Often, vulnerable States have had to divert large portions of their limited national budgets away from other urgent priorities like healthcare, education and

³³⁴ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, para. 5.

³³⁵ IPCC, *Synthesis Report of the IPCC Sixth Assessment Report (AR6)*, Summary for Policymakers, March 2023, statement A.3, B.4, available at:

https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf (last accessed 7 February 2024). Note that ineffective adaptation (known as maladaptation) can actually increase vulnerability. Thus implementation of adaptation must be grounded in accurate science, specific to the place and communities at issue, responsive to the needs of affected peoples, flexible, and considered on a long-term time horizon, taking into account future climate risks and uncertainties, among other criteria. In all cases it is essential that impacted States and communities have autonomy over their adaptation.

³³⁶ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, p. 15, paras. 34, 41-43.

³³⁷ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, p. 15, paras. 34, 41-43.

poverty alleviation to cover things like disaster response, climate-resilient infrastructure, and community relocation. They have also had to take on unsustainable amounts of debt. In addition to compensation for environmental damage itself, responsible States must compensate injured States for the expenses they have accrued in order to respond to climate harms.

322. Given the massive scale of climate devastation suffered by MSG Members and other particularly vulnerable States, however, reparations through restitution and compensation alone are not enough. Responsible States have an additional duty to cooperate in fundamentally reforming the international economic and financial systems that have entrenched vulnerability and exacerbated the impacts of climate change. Such reforms are needed to reduce the immense costs of climate resilience and address systemic injustices that impede sustainable development. Modalities like the new Loss and Damage Fund established under the UNFCCC can assist in providing compensation, but do not displace responsible States' underlying legal obligation to make full reparation.

Aggravated responsibility for violations of jus cogens and erga omnes obligations

323. It must be further emphasized that the conduct causing climate change violates not just ordinary international obligations, but several norms recognized as having peremptory or *erga omnes* status—including the rights to self-determination and non-discrimination, the prohibitions on genocide and apartheid, and the duties of due diligence and prevention of transboundary harm. For such serious breaches of international law's most fundamental norms, the customary rules codified in ARSIWA provide for an aggravated regime of State responsibility entailing additional legal consequences.
324. Article 40 of ARSIWA makes clear that this special regime applies to “serious” breaches of peremptory norms, defined as those involving a “gross or systematic failure by the responsible State to fulfil the obligation”. Both this Court and the International Law Commission have consistently affirmed that serious breaches of *jus cogens* and *erga omnes* obligations trigger this aggravated responsibility.
325. Given the character and gravity of the peremptory and community-wide obligations being violated by conduct causing climate change, all States have additional obligations beyond just those of the States directly responsible for the harms.
326. First, all States are under an obligation not to recognize as lawful any situation resulting from these serious breaches. In the context of climate change, this means not recognizing any maritime entitlements or statehood status of climate-vulnerable States due to sea-level rise or other irreversible harms caused by breaches of international law. Second, all States must refrain from rendering any aid or assistance that helps perpetuate the unlawful situation, meaning they must end any financial or regulatory support for activities that lead to more greenhouse gas emissions. Finally, all States must actively cooperate, through lawful means, to bring these systematic violations to an end as swiftly as possible, particularly the ongoing breaches of peoples' right to self-determination.

Legal Consequences for harm to individuals and peoples

327. The Court is also asked to clarify the legal consequences of States' internationally wrongful conduct with respect to "[p]eoples and individuals of the present and future generations affected by the adverse effects of climate change". This formulation asks the Court to specifically consider the remedies and redress available to victims of human rights violations emanating from the conduct of States relating to climate change. The question concerns both individual and collective rightsholders who suffer these violations.
328. The question of the legal consequences for States who have violated individual and collective rights is of great importance to MSG. As the evidence and testimonies presented in this submission demonstrate, our peoples and communities are already experiencing devastating human rights impacts, losing everything from ancestral lands to lives and livelihoods to cultural traditions and heritage. The disproportionate burden borne by youth, women, persons with disabilities and other marginalized groups compounds this injustice.
329. Moreover, with a very young population, today's children and future generations of Melanesians are condemned to suffer increasingly severe rights violations over the course of their lifetimes unless the States most responsible for the climate crisis drastically change course. MSG submits that the UNGA's request for an advisory opinion purposefully and unambiguously directs the Court to consider harms to both present and future generations through the lens of international law. This understanding is reinforced by the opinions of expert bodies, including the Human Rights Committee, which has clarified that: "[f]uture generations . . . have a fundamental right to a stable climate system capable of sustaining human life".³³⁸ Likewise, the Committee on the Rights of the Child has confirmed that "the principle of intergenerational equity and the interests of future generations" inform the content of States' human rights obligations.³³⁹
330. The explicit reference to "peoples" as victims of climate harm is also critically important to MSG, given our strong cultural identities as Melanesian peoples with deep connections between land and community, as well as our commitment to the collective and sustained liberation of colonised peoples, including those of our members who have attained independence and self-determination, as well as those who remain subject to colonial oppression.³⁴⁰ This framing appropriately characterises climate change as a collective human rights issue, in addition to one that violates rights of individuals.
331. It is now well-established that climate change interferes with a wide range of internationally protected human rights—both individual and collective in nature. UN human rights bodies, regional human rights tribunals, UN special rapporteurs and other expert authorities have confirmed that climate impacts caused by breaches of

³³⁸ *Billy v. Australia*, para. 3.7.

³³⁹ UN Committee on the Rights of the Child, *General Comment No. 26 on Children's Rights and the Environment, with a Special Focus on Climate Change* (2023), para. 11.

³⁴⁰ As discussed previously, "Peoples" can include "Peoples" of States which have declared independence, "Peoples" of non-self-governing territories, "Indigenous Peoples", and "Tribal Peoples" and/or "First Nations."

international obligations violate rights to life, health, food, water, housing, development, self-determination, a healthy environment, cultural rights, and more. This inevitably gives rise to legal consequences for States responsible for the violations.

332. As a general rule under international law, a State's violations of human rights obligate it to provide the victims (1) cessation of the wrongful conduct and non-repetition; (2) full reparation for the harm, including restitution, compensation, satisfaction and rehabilitation as appropriate; and (3) structural reforms to laws and practices to prevent recurrence of similar violations. Depending on the sources of law binding the State, these duties may arise as a *lex specialis* under particular treaty regimes, or from the general international law of State responsibility as adapted to the human rights context. But the core requirement is the same either way: States that violate human rights owe effective remedies to victims.³⁴¹
333. In the climate change context, the duty of cessation requires States to urgently implement all necessary measures to prevent future emissions that would lead to further human rights harms, including a rapid and just transition away from fossil fuels. As multiple UN human rights authorities have affirmed, these actions are essential to comply with States' positive obligations to protect human rights from foreseeable harms.³⁴²
334. To fulfill their duty of reparation for the human rights violations they have caused through their acts and omissions related to climate change, responsible States must provide modalities of redress that adequately and appropriately remedy the harms victims have suffered, taking into account the nature and severity of the rights impacted. Some guidance may be taken from UN human rights treaty bodies that have found human rights violations arising from State conduct contributing to climate change. For example, in *Billy v Australia*, the Human Rights Committee specified that adequate remedies for Indigenous peoples whose rights were violated as a result of climate change required the responsible State to, *inter alia*:

“[P]rovide adequate compensation, to the authors for the harm that they have suffered; engage in meaningful consultations with the authors' communities in order to conduct needs assessments; continue its implementation of measures necessary to secure the communities' continued safe existence on their respective islands; and monitor and review the effectiveness of the measures implemented and resolve any deficiencies as soon as practicable. The State party is also under an obligation to take steps to prevent similar violations in the future”.³⁴³

³⁴¹ Human Rights Committee, *General comment no. 31: The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 15.

³⁴² See e.g. Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change, Ian Fry (26 July 2022), A/77/226, para. 26; Human Rights Committee, *General comment no. 31: The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 15-17, para. 106.

³⁴³ *Billy v. Australia*, paras. 10-11.

335. As the above indicates, one component of an adequate remedy is provision of assistance with climate adaptation. While cessation of the violation (in terms of curtailing GHG emissions) is necessary to offset future harm, so too is climate adaptation. Effective climate adaptation is essential to build resiliency to future harm, and can thus help to prevent future violations and losses—avoiding the need for additional and often inadequate compensation for otherwise unavoidable loss and damage.³⁴⁴
336. In addition to victim-specific redress, an adequate remedy requires implementation of structural remedies, including changes to the violative State’s “laws and practice” necessary “to avoid recurrence of the type of violation in question”.³⁴⁵ This may include, in addition to States adequately regulating GHG emissions under their jurisdiction and control, adopting legislation, strategies, and policies to directly address and prevent human rights violations stemming from climate change. As the UN Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change has elaborated, this requires legislation that, *inter alia*:
- (a) Support processes for international cooperation on loss and damage based on the principle of solidarity entailing a duty of assistance without expectation of reciprocity;
 - (b) Create provisions for compensation, liability and reparations to ensure that major greenhouse gas polluters – countries and corporations alike – pay for the harm they are causing. This should include domestic and transnational liability;
 - (c) Ensure that individuals are granted freedom of movement and given full legal rights as though they were refugees if they are displaced across international borders as a consequence of climate change;
 - (d) Develop affordable insurance and risk-pooling mechanisms to assist the most vulnerable
 - (e) Create mechanisms to assess, quantify and compensate for loss and damage for economic and non-economic losses, including human rights impacts;
 - (f) Support the establishment of an international mechanism for processing loss and damage claims in an expedited manner.³⁴⁶

³⁴⁴ IPCC, *Synthesis Report of the IPCC Sixth Assessment Report (AR6)*, Summary for Policymakers, March 2023, statement A.3, B.4, available at:

https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf (last accessed 7 February 2024). Of course, to the extent that loss and damage is unavoidable, compensation should be provided.

³⁴⁵ Human Rights Committee, *General comment no. 31: The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 17.

³⁴⁶ Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change, Ian Fry (28 July 2023), A/78/255, para. 72.

337. For some of the human rights harms suffered in Melanesia, such as the permanent loss of ancestral lands, cultural sites and cultural touchstones (e.g., the Yam), no remedy will ever be fully adequate. Cessation cannot bring back what has been irretrievably taken, nor can money compensate for a stolen way of life, a broken connection to spirits and ancestors, the loss of an entire language. For such existential losses, MSG submits that something more is required. Responsible States must work with impacted communities to co-create processes, such as a truth and reconciliation commission, that provide for acknowledgment, reckoning and healing on the terms of the victims—including future generations. Culturally grounded rituals of atonement and reconciliation must complement formal legal remedies.

VI. CONCLUSION

338. In Melanesia, we have already suffered irreparable harm from the myriad adverse effects of climate change. As those harms multiply and intensify, it is critical that States step up their actions to protect the climate vulnerable. However, the glacial pace at which global climate action is progressing plainly shows that States are failing to satisfy their obligations under international law to protect the climate system and other parts of the environment. This is in part because those obligations have for too long remained vague and unclarified. This lack of clarity has impeded the ability of the international community to respond effectively to the climate crisis. The Court has been asked to provide this legal clarity.

339. As the principal judicial organ of the United Nations, an advisory opinion that clarifies the international legal principles as concerns climate change would constitute an independent, authoritative assessment of the adequacy of actual and pledged climate action to date. It would also recognise that climate change is disproportionately felt by those in vulnerable situations such as those living in the Pacific region in general, and the Melanesian subregion in particular.

340. MSG specifically invites the Court to confirm that acts and omissions of States that have caused significant harm to the climate system and other parts of the environment constitute a breach of these States' obligations under international law. This breach takes the form of a "composite act", or "a series of actions or omissions defined in aggregate as wrongful".³⁴⁷ With respect to rules of a *jus cogens* or *erga omnes* nature, the series of acts and omissions qualify as a breach of a serious character.

341. In all events, the breach triggers legal consequences with respect to the two categories of victims. Reinforcing and clarifying these legal consequences as they arise with respect to the two categories of victims identified in question (b) of the operative part of Resolution 77/276 would help accelerate State action towards effective and equitable solutions to climate change, while also assisting in the determination of who bears the responsibility of climate change and what measures must be taken as a matter of law to remedy the situation. This in turn would enable States to share the burdens of climate change and its resolution equitably, while safeguarding the rights of the most vulnerable, including

³⁴⁷ As per the rule codified in Article 15(1) of ARSIWA.

MSG Members and their peoples. Such an opinion would finally begin to deliver on the promise of climate justice.

342. Such an opinion could in the end ensure the continuation, in perpetuity, of the Melanesian way—replete with the precious cultures, traditions, and values that have guided the many peoples of this subregion through the ages.