

Appendix A



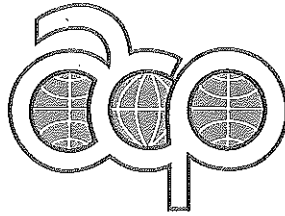
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Brussels, 6 December 2019

THE GEORGETOWN AGREEMENT

As revised by Decision No.1/CX/19 of the 110th session of the ACP Council of Ministers held in Nairobi, Kenya, on the 7 December 2019, and endorsed by the 9th summit of the ACP Heads of State and Government, Nairobi, Kenya, 9-10 December 2019.

EOA



REFERENCE **ACP/27/001/20**
Legal Services/EOA/cna *EOA*

NOTE VERBALE

The Secretariat of the African, Caribbean and Pacific Group of States – Legal Services – presents its compliments to all ACP Embassies and Missions in Brussels, and wishes to remind all Member States that have not yet signed the revised Georgetown Agreement to do so, in accordance with Article 40 of the revised Agreement. To date, 18 Member States have signed the revised Agreement.

In accordance with Article 7(2) of the Vienna Convention on the Law of Treaties, Heads of State, Heads of Government, and Ministers of Foreign Affairs are eligible to sign the Revised Georgetown Agreement. However, Ambassadors based in Brussels may sign on behalf of their countries once they obtain appropriate full powers from their governments, in accordance with Article 7(1)(a) of the Vienna Convention.

The Secretariat of the African, Caribbean and Pacific Group of States – Legal Services – thanks ACP Embassies and Missions for their cooperation and avails itself of this opportunity to renew to them the assurances of its highest consideration. *EOA*



Brussels, 16 January 2020

To all ACP Embassies and Missions

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PREAMBLE

[WE, the Heads of State or Government of:

List of all ACP Heads of State; hereinafter referred to as the ACP States;

- 1. THE PRESIDENT OF THE REPUBLIC OF ANGOLA**
- 2. THE GOVERNOR-GENERAL OF ANTIGUA AND BARBUDA**
- 3. THE PRIME MINISTER OF THE COMMONWEALTH OF THE BAHAMAS**
- 4. THE HEAD OF STATE OF BARBADOS**
- 5. THE PRIME MINISTER OF BELIZE**
- 6. THE PRESIDENT OF THE REPUBLIC OF BENIN**
- 7. THE PRESIDENT OF THE REPUBLIC OF BOTSWANA**
- 8. THE PRESIDENT OF BURKINA FASO**
- 9. THE PRESIDENT OF THE REPUBLIC OF BURUNDI**
- 10. THE PRESIDENT OF THE REPUBLIC OF CAMEROON**
- 11. THE PRESIDENT OF THE REPUBLIC OF CAPE VERDE**
- 12. THE PRESIDENT OF THE CENTRAL AFRICAN REPUBLIC**
- 13. THE PRESIDENT OF THE ISLAMIC FEDERAL REPUBLIC OF THE COMOROS**
- 14. THE PRESIDENT OF THE REPUBLIC OF THE CONGO**
- 15. THE PRESIDENT OF THE DEMOCRATIC REPUBLIC OF CONGO**
- 16. THE PRIME MINISTER OF THE COOK ISLANDS**
- 17. THE PRESIDENT OF THE REPUBLIC OF CÔTE D'IVOIRE**
- 18. THE PRESIDENT OF THE COUNCILS OF STATE AND MINISTERS OF THE REPUBLIC OF CUBA**
- 19. THE PRESIDENT OF THE REPUBLIC OF DJIBOUTI**
- 20. THE PRIME MINISTER AND MINISTER FOR FINANCE AND PUBLIC SERVICE OF THE COMMONWEALTH OF DOMINICA**
- 21. THE PRESIDENT OF THE DOMINICAN REPUBLIC**
- 22. THE PRESIDENT OF THE STATE OF ERITREA**
- 23. THE HEAD OF STATE OF THE KINGDOM OF ESWATINI**
- 24. THE PRIME MINISTER OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA**
- 25. THE PRIME MINISTER AND MINISTER FOR ITAUKEI AFFAIRS AND SUGAR INDUSTRY OF THE REPUBLIC OF THE FIJI ISLANDS**
- 26. THE PRESIDENT OF THE GABONESE REPUBLIC**

27. THE PRESIDENT OF THE REPUBLIC OF THE GAMBIA
28. THE PRESIDENT OF THE REPUBLIC OF GHANA
29. THE PRIME MINISTER AND MINISTER FOR NATIONAL SECURITY, PUBLIC ADMINISTRATION, HOME AFFAIRS, INFORMATION COMMUNICATION TECHNOLOGY AND MINISTER FOR FINANCE, PLANNING, ECONOMIC DEVELOPMENT AND PHYSICAL DEVELOPMENT OF GRENADA
30. THE PRESIDENT OF THE REPUBLIC OF GUINEA
31. THE PRESIDENT OF THE REPUBLIC OF GUINEA BISSAU
32. THE PRESIDENT OF THE REPUBLIC OF EQUATORIAL GUINEA
33. THE PRESIDENT OF THE CO-OPERATIVE REPUBLIC OF GUYANA
34. THE PRESIDENT OF THE REPUBLIC HAITI
35. THE PRIME MINISTER OF JAMAICA, MINISTER OF DEFENCE, ECONOMIC GROWTH AND JOB CREATION
36. THE PRESIDENT AND COMMANDER-IN-CHIEF OF THE DEFERENCE FORCES OF THE REPUBLIC OF KENYA
37. THE PRESIDENT, HEAD OF GOVERNMENT AND MINISTER FOR FOREIGN AFFAIRS AND IMMIGRATION OF THE REPUBLIC OF KIRIBATI
38. THE KING OF THE KINGDOM OF LESOTHO
39. THE PRESIDENT OF THE REPUBLIC OF LIBERIA
40. THE PRESIDENT OF THE REPUBLIC OF MADAGASCAR
41. THE PRESIDENT OF THE REPUBLIC OF MALAWI, MINISTER FOR DEFENCE AND COMMANDER-IN-CHIEF OF THE MALAWI DEFENCE FORCE AND THE MALAWI POLICE SERVICE
42. THE PRESIDENT OF THE REPUBLIC OF MALI
43. THE PRESIDENT OF THE REPUBLIC OF THE MARSHALL ISLANDS
44. THE PRESIDENT OF THE ISLAMIC REPUBLIC OF MAURITANIA
45. THE PRIME MINISTER OF THE REPUBLIC OF MAURITIUS
46. THE PRESIDENT AND HEAD OF GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA
47. THE PRESIDENT OF THE REPUBLIC OF MOZAMBIQUE
48. THE PRESIDENT OF THE REPUBLIC OF NAMIBIA
49. THE PRESIDENT OF THE REPUBLIC OF NAURU
50. THE PRESIDENT OF THE REPUBLIC OF NIGER
51. THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA
52. THE PRESIDENT OF THE REPUBLIC OF PALAU

53. THE PRIME MINISTER AND MINISTER FOR THE AUTONOMOUS REGION OF BOUGAINVILLE OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA
54. THE PRESIDENT OF THE REPUBLIC OF RWANDA
55. THE PRIME MINISTER, MINISTER FOR SUSTAINABLE DEVELOPMENT, NATIONAL SECURITY, PEOPLE EMPOWERMENT AND CONSTITUENCY EMPOWERMENT OF SAINT KITTS AND NEVIS
56. THE PRIME MINISTER AND MINISTER FOR FINANCE, ECONOMIC GROWTH, JOB CREATION, EXTERNAL AFFAIRS AND THE PUBLIC SERVICE OF SAINT LUCIA
57. THE PRIME MINISTER, MINISTER FOR FINANCE, THE PUBLIC SERVICE, NATIONAL SECURITY, LEGAL AFFAIRS AND GRENADINES AFFAIRS OF SAINT VINCENT AND THE GRENADINES
58. THE PRIME MINISTER AND MINISTER FOR FOREIGN AFFAIRS AND TRADE OF THE INDEPENDENT STATE OF SAMOA
59. THE PRESIDENT OF THE DEMOCRATIC REPUBLIC OF SÃO TOMÉ AND PRÍNCIPE
60. THE PRESIDENT OF THE REPUBLIC OF SENEGAL
61. THE PRESIDENT OF THE REPUBLIC OF SEYCHELLES
62. THE PRESIDENT OF THE REPUBLIC OF SIERRA LEONE
63. THE PRIME MINISTER OF SOLOMON ISLANDS
64. THE PRESIDENT OF THE FEDERAL REPUBLIC OF SOMALIA
65. THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA
66. THE PRESIDENT OF THE REPUBLIC OF SOUTH SUDAN
67. THE HEAD OF STATE OF THE REPUBLIC OF THE SUDAN, CHAIRMAN OF THE TRANSITIONAL MILITARY COUNCIL
68. THE PRESIDENT OF THE REPUBLIC OF SURINAME
69. THE PRESIDENT OF THE UNITED REPUBLIC OF TANZANIA
70. THE PRESIDENT OF THE REPUBLIC OF CHAD
71. THE PRESIDENT OF THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE
72. THE PRESIDENT OF THE OF TOGOLESE REPUBLIC
73. THE ACTING PRIME MINISTER, ACTING MINISTER FOR FOREIGN AFFAIRS, AND ACTING MINISTER FOR PUBLIC ENTERPRISES OF THE KINGDOM OF TONGA
74. THE PRIME MINISTER OF THE REPUBLIC OF TRINIDAD AND TOBAGO
75. THE PRIME MINISTER AND MINISTER FOR PUBLIC UTILITIES OF TUVALU

76. **THE PRESIDENT OF THE REPUBLIC OF UGANDA**
77. **THE PRIME MINISTER OF THE REPUBLIC OF VANUATU**
78. **THE PRESIDENT OF THE REPUBLIC OF ZAMBIA**
79. **THE PRESIDENT OF THE REPUBLIC OF ZIMBABWE**

PURSUANT to the Georgetown Agreement as amended on 28 November 2003;

REAFFIRMING the solidarity among the Member States of the OACPS, their unity in diversity, their commitment to the promotion of good governance, and the rule of law, as well as social justice;

DETERMINED to reinforce intra-ACP cooperation and extend it to all strategic sectors, as a mean of promoting the socio-economic development of the Member States of the OACPS and achieving and surpassing the basic needs of their peoples;

REAFFIRMING their commitment to adherence to the fundamental human rights defined in the Universal Declaration of Human Rights, particularly with regard to compliance with democratic principles, the rule of law, the right to development, as well as the right to self-determination;

DETERMINED to promote and develop greater and closer trade, economic, political, social, and cultural relations among the Member States and regions of the OACPS;

COMMITTED to the purposes and principles enshrined in the United Nations Charter, to the defence of multilateralism and to international law;

REJECTING the application of unilateral coercive measures to the Member States of the OACPS, including those measures with extraterritorial effects;

RESOLVED to consolidate and reinforce the existing solidarity and unity of the OACPS to address regional specificities in the implementation of the sustainable socio-economic development goals of the Member States of the OACPS and their peoples;

RECOGNISING the importance of regional integration and continental, intra OACPS cooperation, as well as North-South, South-South, and Triangular Cooperation as instrumental in promoting development based on the principles of subsidiarity, complementarity, and proportionality;

RECOGNISING that the objective of achieving sustainable development for all the Member States of the OACPS can only be achieved through the transformation of their economies, including by taking advantage of the benefits of regional trade, intensifying further trade cooperation and trade facilitation;

CONVINCED that the realisation of all internationally agreed development goals, as well as the integration of the Member States of the OACPS into the global economy, and the responsible management of the environment, are legitimate objectives reflecting the aspirations of the peoples of the Member States of the OACPS;

DETERMINED to ensure that all ACP Partnership Agreements contribute to the realisation of the common aspirations of developing countries, to self-reliant, endogenous and self-sustained development, based on their systems of cultural and social values;

COGNISANT of the need to maintain favourable multifaceted relations with our traditional partners, in particular those with the European Union, and to extend these to all other strategic international relations actors;

DESIROUS of enhancing the political identity of the OACPS to enable it to speak with one voice and to act as a single entity in the international arena on all issues of common interest, and to actively participate in global governance in order to meet global challenges and to contribute to the search for solutions to them;

RECOGNISING the ongoing impact of climate change on the well-being and sustainable development of the Member States of the OACPS, especially the Small Island Developing States (SIDS), and the importance of working together to identify and put in place measures to face the challenges presented by climate change;

RESOLVED to establish the OACPS as an international organisation, in order to achieve common objectives, thereby helping to create conditions that favour the socio-economic development of Member States of the OACPS and their peoples;

HAVE AGREED as follows:

CHAPTER I

DEFINITIONS

Article 1

Definitions

In this Agreement,

“This Agreement” means the Revised Georgetown Agreement;

“ACP State” means a State that has acceded to the Georgetown Agreement as amended in 2003;

“Committee of Ambassadors” means Committee of Ambassadors of the OACPS established under Article 18;

“Council of Ministers” means Ministers of Foreign Affairs or such other Ministers or Authorities as are designated by the Government of Member States and established under Article 14;

“External Parties” means the partners and non-observers of the OACPS in line with Article 36;

“Funds” means resources available at a given time for the implementation of the Endowment and Trust Fund provided for under Article 31;

“IROCC” means the Inter-Regional Organisations Coordination Committee of the OACPS established under ANNEX II;

“Member State” means a Member State of the OACPS in line with Article 6;

“National Focal Point” means the liaison between the Government and the Secretariat established under Annex II;

“OACPS” means Organisation of African, Caribbean and Pacific States;

“Parliamentary Assembly” means a consultative organ representing the voice of the peoples of the Member States of the OACPS within the institutions of the OACPS provided for under Article 21;

“Region” means geographical area of Member States of the OACPS referred to under Article 2(2);

“Secretary-General” means the Chief Executive Officer of the OACPS appointed under Article 24;

“Small-Island Developing States Forum” means the SIDS Forum established under ANNEX II;

“Subsidiary and Consultative Organs” means organs created by the Council of Ministers in line with Article 25;

“Summit” means the Summit of Heads of State or Government of the OACPS established under Article 11;

“Troika” means the President-in-office, the outgoing President, and the designated incoming President. The Troika also applies to the Organs referred to under Article 10(2).

CHAPTER II
ESTABLISHMENT AND LEGAL STATUS

Article 2

Establishment

1. The Organisation of African, Caribbean and Pacific States, designated as the OACPS, is hereby established;
2. The OACPS shall be organised on the basis of geographical regions, namely Central Africa, East Africa, Southern Africa, West Africa, the Caribbean, and the Pacific, or any other configuration agreed to by the Summit.

Article 3

Legal Status

The OACPS shall be an international organisation, established under international law, with legal personality.

CHAPTER III
PRINCIPLES AND OBJECTIVES

Article 4

Principles

In the context of the objectives set out in Article 5, the OACPS and its Member States reaffirm their commitment to the purposes and principles of the United Nations Charter.

Article 5

Objectives

The objectives of the OACPS shall be to:

- a) promote the efforts of Member States of the OACPS to eradicate poverty, achieve sustainable development, and fully benefit from the advantages of trade, through their gradual and more effective participation in the world economy;
- b) promote and strengthen unity and solidarity among the Member States of the OACPS as well as understanding among their peoples;
- c) consolidate, strengthen, and maintain peace and stability as a precondition for improving the well-being of the peoples of the OACPS, in a democratic and free environment;
- d) deepen and strengthen economic, political, social, and cultural relations among the Member States of the OACPS, through regional integration, strategic partnerships between OACPS regions, and inter-regional cooperation in the fields of trade, science and technology, industry, transport and communications, education, training and research, information and communication, the environment, demography, and human resources;

- e) promote policies, especially in the areas of the environment and the rational management of natural resources, in pursuit of sustainable development of the Member States of the OACPS;
- f) serve as a forum for formulating and coordinating common positions on global issues;
- g) advocate for a multilateral system that is fair, equitable, and rules-based, and which contributes to economic growth and sustainable development of the Member States of the OACPS,
- h) develop strategic relations and partnerships with external parties including within the global South, as well as with regional and international organisations for the purposes of building global consensus on South-South and Triangular Cooperation;
- i) strengthen the political identity of the OACPS to enable it to act as a coherent political force in international bodies and to ensure that due regard is accorded to its specific interests;
- j) promote and reinforce political dialogue within the OACPS so as to consolidate the unity and solidarity of the OACPS;
- k) strengthen regional mechanisms for the prevention, management, and peaceful settlement of conflicts, by pursuing and developing cooperation among the Member States of the OACPS and between the Member States of the OACPS and other States.

CHAPTER IV
MEMBERSHIP AND OBSERVERSHIP

Article 6

Membership

1. A Member State of the OACPS is any State, which has ratified or acceded to this Agreement, in accordance with its own internal procedures.
2. New Member States may be admitted to the OACPS in accordance with the preceding paragraph in this Agreement.
3. The procedure for the application and admission of new Member States to the OACPS shall be established by the Council of Ministers.
4. On the recommendation of the Committee of Ambassadors, the Council of Ministers may recommend to the Summit the grant of membership of the OACPS to:
 - a) Independent States belonging to the African, Caribbean and Pacific regions; or
 - b) Independent States with comparable economic structures or needs, irrespective of their geographical location.
5. Admission to the OACPS shall be based on the following criteria:
 - a) Recognition by the majority of Member States;
 - b) Commitment to be bound and abide by this Agreement; and
 - c) Ability and willingness to assume and fulfil all the rights and obligations arising from this Agreement.
6. Admission shall be decided by consensus by the Summit, on the recommendation of the Council of Ministers.
7. An applicant State whose membership has been decided by the Summit shall be admitted to the OACPS upon deposit of an instrument of accession to this Agreement.

Article 7

Observers

1. On the recommendation of the Committee of Ambassadors, the Council of Ministers may grant observer status in the OACPS to:
 - a) Independent States;
 - b) Continental and regional bodies to which Member States of the OACPS belong; and
 - c) International organisations pursuing objectives similar to those of the OACPS, on the basis of reciprocity.
2. Observers admitted to a meeting of the OACPS:
 - a) may not vote in formal decision-making procedures, as prescribed in the Rules of Procedures;
 - b) may not make oral statements during the meeting, except upon the invitation of the Chairman;
 - c) may not participate or attend the in-camera sessions of the Summit, the Council of Ministers and the Committee of Ambassadors;
 - d) may be invited to participate in sectoral Ministerial conferences, symposia, expert meetings, etc.; and
 - e) may receive non-confidential information and documentation disseminated by the Secretariat.

CHAPTER V

RIGHTS, OBLIGATIONS, IMMUNITIES AND PRIVILEGES

Article 8

Rights and Obligations

1. All Member States shall have equal rights and obligations under this Agreement.
2. Member States of the OACPS shall fulfil in good faith their obligations under this Agreement, so as to ensure the full enjoyment of the rights and benefits resulting from membership.
3. Member States shall take all appropriate measures to carry out all the obligations arising from membership of the OACPS under this Agreement or resulting from decisions adopted by the various Organs of the OACPS.
4. Member States shall facilitate the achievement of the objectives of the OACPS and shall refrain from adopting any measures that may negatively impact upon the achievement of the objectives of the OACPS.

Article 9

Immunities and Privileges of the OACPS

1. The OACPS shall enjoy in the territories of the Member States such immunities and privileges as are necessary for the fulfilment of its objectives.
2. The immunities and privileges under this Article shall be laid down in a separate agreement between the OACPS and the host Member State, in line with the Vienna Convention on Diplomatic Relations.

CHAPTER VI

ORGANS

Article 10

Organs

1. The following Organs are hereby established:
 - a) Summit of Heads of State or Government;
 - b) Council of Ministers;
 - c) Sectoral Ministerial Committees;
 - d) Committee of Ambassadors;
 - e) OACPS Parliamentary Assembly; and
 - f) OACPS Secretariat.
2. A Troika shall be established for the above-mentioned organs, with the exception of the OACPS Secretariat.

Article 11

The Summit

The Summit of Heads of State or Government of the OACPS is the supreme organ of the OACPS, and shall consist of the Heads of State or Government of the OACPS or their designated representatives.

Article 12

Powers and Functions of the Summit

1. The Summit shall:
 - a) be the supreme decision-making organ of the OACPS;
 - b) lay down the general policy of the OACPS and issue directives relative to its implementation to the Council of Ministers;
 - c) deliberate, provide policy guidance, and take decisions on key issues pertaining to the realisation of the objectives of the OACPS, important matters of interest to Member States, and all issues referred to it by the Council of Ministers and the Secretary-General;
 - d) approve the amendments made to this Agreement;
 - e) appoint the Secretary-General of the OACPS, through its Troika, on the recommendation of the Council of Ministers;
 - f) relieve the Secretary-General of his/her duties, through its Troika in the event of a serious breach of his/her obligations, under this Agreement, on the recommendation of the Council of Ministers;
 - g) instruct other relevant Organs to hold ad hoc inter-Ministerial meetings, and address cross-cutting issues;
 - h) on the recommendation of the Council of Ministers, consider emergency situations affecting the OACPS by taking appropriate actions;
 - i) act as an appellate body to resolve any dispute between Member States in accordance with Article 33;
 - j) play a facilitative and substantial role in political dialogue and advocacy with partner countries and organisations, as appropriate.
2. The Summit shall:
 - a) meet every three years, and shall be hosted by the Member State holding the Presidency of the OACPS;
 - b) be chaired by the Head of State or Government of the host country;
 - c) be convened, whenever necessary, as special or ad hoc meetings, and be chaired by the presiding Member State, at venues to be agreed upon by the Council of Ministers;
 - d) be convened on the initiative of the troika of the Summit or on the recommendation of the Council of Ministers;
 - e) take decisions in accordance with Article 27 of this Agreement;

3. The Summit shall be managed by a troika comprising the following:

- a) The President-in-Office;
- b) The outgoing President;
- c) The incoming President.

Article 13

Appointment and Role of the President of the Summit

1. A Head of State or Government shall be appointed as the President of the Summit, based on the principle of rotation among the geographical regions of the OACPS.
2. The President of the Summit shall:
 - a) preside over meetings of the Bureau and the Summit;
 - b) use his/her good offices to actively promote and protect the interests of the OACPS;
 - c) provide an effective and timely response to urgent issues or crisis situations affecting the OACPS;
 - d) represent the OACPS in meetings required for strengthening and promoting closer relations with external partners, and for cooperation within the OACPS regions;
 - e) carry out such other tasks and functions as may be agreed upon by the Members of the OACPS.

Article 14

Council of Ministers

1. The Council of Ministers shall comprise Ministers of Foreign Affairs or such other Ministers or Authorities as designated by the Governments of Member States.
2. The Council of Ministers shall meet twice per year in ordinary session.
3. The Council of Ministers may decide to meet in special session on its own initiative, or based on a decision by the President, after consultation within the Troika and with the representative of each of the regions on the Bureau.

Article 15
Powers and Functions of the Council of Ministers

1. The Council of Ministers shall:

- a) prepare the Summit meetings;
- b) coordinate the implementation of agreements and decisions of the Summit;
- c) coordinate the activities of the Sectoral Ministerial Committees so as to enhance policy coherence, efficiency, and cooperation among them;
- d) examine the reports of the Sectoral Ministerial Committees;
- e) approve the Budget, audit the functions of the Secretariat, and provide strategic direction and analysis of the Secretariat's work programme and implementation of mandates;
- f) consider the annual reports of the:
 - i. Committee of Ambassadors;
 - ii. Secretary-General;
 - iii. Parliamentary Assembly; and
 - iv. Consultative Committees.
- g) undertake any other tasks provided for in this Agreement, or such other functions as may be assigned by the Summit;
- h) determine the modalities for the implementation of the general policy and objectives of the OACPS and periodically monitor and evaluate their state of execution;
- i) determine the organisational structure of Secretariat, and approve its staff regulations, on the proposal of the Committee of Ambassadors;
- j) propose to the Summit the establishment of other consultative Organs whenever necessary;
- k) impose sanctions on a Member State which violates its obligation under this Agreement, upon the recommendation of the Committee of Ambassadors, in accordance with Article 32;
- l) delegate some of its powers to the Committee of Ambassadors;
- m) adopt its Rules of Procedure, in accordance with Article 28 of this Agreement;
- n) establish Sectoral Ministerial Committees to which it may delegate specific duties;
- o) establish satellite offices, as deemed necessary.

2. The acts of the Council of Ministers may take the form of a decision, resolution, recommendation or declaration, in accordance with Article 27 of this Agreement.
3. There shall be a Bureau of the Council of Ministers, which shall coordinate its work.
4. The Council of Ministers shall appoint the members of its Bureau at the end of each ordinary session.
5. The Bureau of the Council of Ministers shall be comprised of nine Members, as follows:
 - a) The President of the Council of Ministers;
 - b) The outgoing President and the incoming President;
 - c) One member from each of the four regions of Africa, one from the Caribbean and one from the Pacific, with the region holding the Presidency being represented by another country from the same region.

Article 16

Appointment and Role of the President of the Council of Ministers

1. The President of the Council of Ministers shall be appointed from among the Members of the Council, based on the principle of rotation among the regions of the OACPS;
2. The President of the Council shall:
 - a) preside over the meetings of the Bureau and the sessions of the Council;
 - b) use his/her good offices to actively promote and protect the interests of the OACPS;
 - c) provide an effective and timely response to matters affecting the OACPS, which require attention at the level of Council;
 - d) represent the OACPS in meetings required for strengthening and promoting closer relations with external partners, and cooperation within the regions of the OACPS;
 - e) carry out such other tasks and functions as may be agreed upon by its Members.
3. The President shall consult with the Bureau on matters of an urgent nature requiring attention.

Article 17

Sectoral Ministerial Committees

1. Each Sectoral Ministerial Committee shall:
 - a) function in accordance with its respective mandates established by the Summit;
 - b) implement the agreements and decisions of the Summit under its respective purview;
 - c) strengthen cooperation in its specific fields, in support of the objectives of the OACPS;
 - d) submit reports and recommendations to the Council of Ministers.
2. The meetings of the Sectoral Ministerial Committees shall be preceded by meetings of Senior Officials and subsidiary Organs to support them.
3. The decisions of the Sectoral Ministerial Committees shall be taken in accordance with Article 27 of this Agreement.

Article 18

Committee of Ambassadors

1. The Committee of Ambassadors shall comprise the representatives of Member States of the OACPS, at the level of Head of Missions.
2. The Committee of Ambassadors shall meet at least once every month, or as necessary to carry out its duties and functions.
3. In addition, the Committee of Ambassadors may decide to meet in special session on its own initiative, or based on a decision by the Chairman, after consultation with the Troika and with the representative of each of the regions on the Bureau.

Article 19

Powers and Functions of the Committee of Ambassadors

1. The Committee of Ambassadors shall:
 - a) support the Council of Ministers in the execution of its functions, and shall carry out any mandate assigned to it by the Council;
 - b) liaise with the Secretary-General of the OACPS and the Secretariat on all subjects relevant to its work;
 - c) facilitate cooperation with external partners;
 - d) perform such other functions as may be determined by the Council of Ministers and Sectoral Ministerial Committees;
 - e) present a report on its activities to each ordinary session of the Council of Ministers.

2. The Committee of Ambassadors shall act as an advisory body to the Council of Ministers on all matters, including trade and economic issues, forging linkages with new and emerging partners, and encouraging South-South Cooperation to facilitate development cooperation.
3. The Committee of Ambassadors shall oversee the audit activities of the Secretariat. To this end, an Audit and Budget Committee shall be established within the Committee of Ambassadors, to oversee the internal audit activities, and in particular to:
 - a) approve the Internal Audit Work Programme as well as the relevant Budget; and
 - b) receive the internal audit reports directly, examine them, and follow up on the implementation of recommendations approved by the Secretariat.
4. The acts of the Committee of Ambassadors shall take the form of a decision, resolution, or recommendation, and shall be adopted in accordance with Article 27.
5. There shall be a Bureau of the Committee of Ambassadors, which shall coordinate its work.
6. The members of the Bureau of the Committee of Ambassadors shall be the representatives, at relevant levels, of the States whose representatives comprise the Bureau of the Council of Ministers.
7. The Bureau of the Committee of Ambassadors, shall be comprised of nine Members, as follows:
 - i. The Chairman of the Committee of Ambassadors;
 - ii. The outgoing Chairman and the incoming Chairman; and
 - iii. One member from each of the four regions of Africa, one from the Caribbean and one from the Pacific, with the region which holds the Presidency being represented by another country from that region.

Article 20

Appointment and Role of the Chairman of the Committee of Ambassadors

1. The Chairman of the Committee of Ambassadors shall be appointed from among the membership of the Committee, based on the principle of rotation among the regions of the OACPS;
2. The Chairman of the Committee of Ambassadors shall:
 - a) preside over the meetings of the Bureau and the Committee;
 - b) use his/her good offices to actively promote and protect the interests of the OACPS;

- c) provide an effective and timely response to matters affecting the OACPS, which require attention at the level of the Committee of Ambassadors;
 - d) represent the OACPS in meetings required for strengthening and promoting closer relations with external partners, and cooperation within the regions of the OACPS;
 - e) carry out such other tasks and functions as may be agreed upon by its Members.
3. The Chairman shall consult with the Bureau on matters of an urgent nature requiring attention.

Article 21

Parliamentary Assembly

1. The Parliamentary Assembly is to be regularly informed by the Council of Ministers and the OACPS Secretariat, of the decisions and recommendations adopted and their implementation status.
2. The Parliamentary Assembly shall be comprised of one member of each Parliamentary House of each Member State of the OACPS.
3. It shall meet at least once per year.
4. It shall submit an annual report on its activities to the Council of Ministers.
5. The work of the OACPS Parliamentary Assembly shall be linked to and feed into the work of all the other Organs of the OACPS.
6. The OACPS Secretariat shall provide administrative and technical support to ensure the smooth functioning of the Parliamentary Assembly.
7. The Parliamentary Assembly shall adopt its rules of procedures.
8. The decisions of the Parliamentary Assembly shall be made in accordance with the Charter that it has freely adopted.

Article 22

Secretariat and Secretary-General

The OACPS shall have a Secretariat headed by a Secretary-General, who shall be the Chief Executive Officer.

Article 23

The Secretariat

1. The Secretariat of the OACPS shall be located in Brussels, Belgium and shall function as the Headquarters of the OACPS. The Secretariat may be relocated to a Member State, if the Summit so decides.
2. There may be established satellite offices of the Secretariat of the OACPS, to carry out specialised functions, in keeping with the mandate of the OACPS.
3. The Secretariat of the OACPS shall:
 - a) implement the decisions of all Organs of the OACPS;
 - b) implement, as appropriate, agreements concluded with development partners;
 - c) provide services to the Organs of the OACPS and, as appropriate, the joint institutions established with all external parties;
4. The Secretariat shall work in collaboration with the National Focal Points of the OACPS.
5. The Secretariat shall be designated a Centre of Excellence, in keeping with the mandate of the OACPS.

Article 24

The Secretary-General

1. The Secretary-General:
 - a) shall be appointed for a non-renewable term of five years;
 - b) shall ensure that high quality work, technical and administrative support, and services are provided by the Secretariat to the Members and Organs of the OACPS;
 - c) shall be the Authorising Officer for the Budget;
 - d) shall be responsible for managing the staff, projects, and programmes of the OACPS;
 - e) shall be the designated spokesperson and representative of the OACPS and the Secretariat and may also be authorised by the Council of Ministers to negotiate, conclude, and sign agreements with external parties;
 - f) may present proposals to the Committee of Ambassadors for the effective achievement of the objectives of the OACPS;
 - g) shall present a report to each regular session of the Council of Ministers on the activities of the Secretariat;
 - h) shall recruit staff, in accordance with the Staff Regulations of the Secretariat.

2. The Secretary-General shall be supported in the discharge of his/her duties by Assistant Secretaries-General appointed in accordance with the modalities agreed upon by Member States.
3. The Secretary-General of the OACPS, assisted by the Secretariat or any other designated body, shall monitor compliance with the findings, recommendations, or decisions resulting from recourse to a dispute settlement mechanism as provided for in Article 34, and submit a report to the Summit.

Article 25

Subsidiary and Consultative Organs

1. The subsidiary and consultative Organs, including those mentioned in Annex II, deemed necessary for the implementation of the policies of the OACPS, may be created. They shall operate within the general framework of the Secretariat of the OACPS, both functionally and financially, in accordance with the principles of the OACPS, and as set out in the resolutions of the Council of Ministers.
2. These subsidiary and consultative Organs shall:
 - a) coordinate and support the national preparations for the meetings of the OACPS;
 - b) promote the identity of the OACPS, ensure the implementation of its decisions and resolutions in particular, and promote awareness at national level;
 - c) facilitate greater interactions among Member States, to promote public awareness on development issues;
 - d) promote democratic processes through dialogue and consultation.

CHAPTER VII

MEETINGS

Article 26

Quorum

The quorum for all meetings of the Organs of the OACPS shall be two-thirds of their membership.

CHAPTER VIII
DECISION-MAKING MODALITIES

Article 27

1. The acts of the Organs of the OACPS shall be adopted by consensus.
2. However, under special circumstances, and after consultation among its members, the Organs may decide on a matter by a majority of fourth-fifths of their members present and voting.
3. In the event that such a majority is not obtained after voting in the course of two meetings or sessions of an Organ, the matter shall be postponed to the next session, at which the Organ shall decide on the matter by a majority of two-thirds of its members present and voting.

Article 28

Rules of Procedure

The Organs of the OACPS shall determine their own Rules of Procedure.

CHAPTER IX
FINANCIAL PROVISIONS

Article 29

Financial Rules and Management

1. The Council of Ministers shall establish financial rules and procedures in accordance with international standards.
2. The OACPS shall observe sound financial management policies, practices, and budgetary discipline.
3. Financial accounts shall be subject to internal financial controls and external audits.

Article 30

Budget and Finances of the Secretariat of the OACPS

1. The Secretariat shall be provided with the necessary financial resources to perform its functions effectively.
2. The Budget of the Secretariat of the OACPS shall be met by Member States through annual contributions and any other sources, which shall be remitted in a timely manner, as prescribed in paragraph 6 of this Article.

3. The Secretary-General shall prepare the draft annual Budget of the Secretariat of the OACPS for approval by the Council of Ministers, upon the recommendation of the Committee of Ambassadors.
4. The Secretariat of the OACPS shall manage the Budget in accordance with the financial rules and procedures determined by the Council of Ministers, upon the recommendation of the Committee of Ambassadors.
5. Each Member State shall contribute to the Budget in accordance with the above provisions and Scale of Contributions established by the Council of Ministers.
6. Contributions to the Budget for each financial year shall be payable in freely convertible currency and shall become due on the first day of that financial year.

Article 31

Endowment and Trust Fund

In order to ensure the financial security required to finance the operational programmes and projects of the OACPS, an Endowment and Trust Fund shall be set up to solicit alternative means of financing the OACPS. The working modalities of this fund shall be determined by the Council of Ministers.

CHAPTER X

SANCTIONS

Article 32

Sanctions

1. The Council of Ministers shall determine and impose sanctions on a Member State which breaches its obligations under this Agreement. These sanctions may be imposed upon a Member State which:
 - a) continuously fails to honour its obligations under this Agreement, without a valid reason;
 - b) implements policies that undermine the principles and objectives of the OACPS;
 - c) does not conform to the decisions and policies of the OACPS.
2. The Council of Ministers will review the situations on a case-by-case basis to determine the suitable political or economic measures to be imposed, in order to ensure that the Member State in question fulfils its obligations.
3. As stipulated in Annex I of this Agreement, the sanctions decided on shall be imposed by the Secretariat of the OACPS on a Member State that is in arrears in the payment of contributions to the budget of the Secretariat of the OACPS.

CHAPTER XI
DISPUTE SETTLEMENT

Article 33

Dispute Settlement

1. Member States shall endeavour peacefully to resolve all disputes concerning the interpretation or application of this Agreement and other instruments set up under OACPS in a timely manner, through dialogue, consultation, and negotiation in keeping with Article 33(1) of the Charter of the United Nations.
2. The OACPS shall maintain and establish dispute settlement mechanisms in all fields of cooperation.
3. Disputes relating to specific instruments shall be settled through the mechanisms and procedures provided for in such instruments.
4. Where not otherwise specifically provided, appropriate dispute settlement mechanisms, including arbitration, shall be established for resolving disputes.
5. Any Member State affected by the findings, recommendations, or decisions resulting from a dispute settlement mechanism may refer the matter to the Summit for a decision.

CHAPTER XII
FOREIGN RELATIONS

Article 34

Conduct of External Relations

1. The OACPS may conclude agreements with external countries or sub-regional, regional, and international organisations and institutions. The procedures for concluding such agreements shall be prescribed by the Council of Ministers or Sectoral Ministerial Committees, upon the recommendation of the Committee of Ambassadors.
2. The OACPS may collaborate with entities such as regional or international organisations that support this Agreement, its objectives and principles. In this regard, the Secretary-General shall be able to conclude a Memorandum of Understanding, where necessary.

Article 35

Relations with the United Nations System and other International Organisations and Institutions

1. The OACPS may seek Observer Status within the United Nations as well as with other sub-regional, regional, and international organisations and institutions.
2. The Council of Ministers shall decide on the participation in such sub-regional, regional, and international organisations and institutions.

Article 36

Status of External Parties

1. In conducting the external relations of the OACPS, the Council of Ministers may confer on an External Party the formal status of Dialogue Partner, Sectoral Dialogue Partner, Development Partner, Special and/or External Observer, Guest, or any other status that may be established.
2. External Parties may also be invited to attend meetings of the OACPS or to participate in collaborative activities without being conferred any formal status.

Article 37

Committees in Non-Member States and International Organisations

The OACPS may set up Committees in non-Member States comprising Heads of diplomatic missions of Member States. Similar Committees may be established relating to international organisations. Such Committees shall promote the interests and identity of the OACPS in the host countries and international organisations, including the United Nations.

CHAPTER XIII

FINAL PROVISIONS

Article 38

Languages

The official languages of the OACPS shall be English, French, Portuguese, Spanish, and any other language as the Summit may stipulate.

Article 39

Amendments

1. The provisions of this Agreement may be amended by decision of the Summit, on the recommendation of the Council of Ministers.
2. A proposal for an amendment shall be submitted in writing by any Member State to the OACPS Secretariat. It shall be accompanied by supporting documents.
3. The proposed amendment shall not be included on the Agenda of a meeting of the Council of Ministers unless a period of at least six months from the date of its submission to the Member States has elapsed.
4. The Council of Ministers shall approve the draft amendment and submit it to the Summit at its next session for adoption and signature.

Article 40

Signature, ratification, and accession

1. This Agreement shall be open for signature by Member States for a period of one year from the date of its conclusion.
2. This Agreement may be ratified subsequently by signatory States, in accordance with their internal constitutional procedures.
3. The instruments of ratification shall be deposited with the Secretariat of the OACPS.
4. Any new member that accedes to this Agreement after its entry into force shall deposit its instrument of ratification or accession with the Secretariat of the OACPS.

Article 41

Registration of the Agreement

This Agreement shall be registered by the Secretary-General with the Secretariat of the United Nations Organisation, pursuant to the provisions of paragraph 1 of Article 102 of the United Nations Charter.

Article 42

Entry into force

This Agreement shall enter into force thirty (30) days after being signed or ratified by one-third (1/3) of the Member States of the OACPS, in accordance with their internal constitutional procedures.

Article 43

Withdrawal of a Member State

1. Any Member State that decides to withdraw from the OACPS shall submit a written notification to the Summit through the Secretary-General. At the end of one year from the date of such notification, unless revoked, the Agreement shall cease to apply to that State.
2. A Member State withdrawing under this Article undertakes to honour any financial obligations duly assumed during its membership of the OACPS.
3. In the event that a withdrawing Member State refuses to honour its obligations under this Agreement, the dispute shall be settled using the methods stipulated by international law.

Article 44

Annexes

The Annexes shall form an integral part of this Agreement.

ANNEXE I

Arrears in Contribution

1. Sanctions may be imposed on any Member State which is in arrears in the payment of contributions to the Budget of the Secretariat of the OACPS, for reasons other than those caused by natural disasters or exceptional circumstances seriously affecting its economy, and which has not been exempted from payment by the Council of Ministers;
2. The following sanctions may be imposed on a Member State:
 - a) When in arrears for one year, suspension of the Member State's right to speak, vote and to receive documentation at meetings of the OACPS;
 - b) When in arrears for two years, suspension:
 - i. of the Member State's right to speak, vote and receive documentation at meetings of the OACPS; and
 - ii. of recruitment of personnel originating from the Member State in question to work in the Secretariat of the OACPS, and of the renewal of the employment contracts of personnel employed from the Member State in question;
 - c) When in arrears for three years or more, suspension:
 - i. of the Member State's right to speak, vote and receive documentation at meetings of the OACPS;
 - ii. of recruitment of personnel originating from the Member State in question to work in the Secretariat of the OACPS, and of the renewal of the employment contracts of personnel employed from the Member State in question; and
 - iii. of the provision by the OACPS of funds for new projects in the Member State.
3. The sanctions referred to in this ANNEXE shall be applied by the Secretariat of the OACPS without referring the matter to the Council of Ministers or to the Committee of Ambassadors, once the application of these sanctions is brought to the attention of Member States.

ANNEXE II

Subsidiary and Consultative organs

The Inter-Regional Organisations Coordination Committee

1. The Inter-Regional Organisations Coordination Committee (IROCC) shall operate on the basis of the principles of subsidiarity, complementarity, and proportionality. It shall address crosscutting, thematic and all other issues necessary for the promotion of regional integration and cooperation.
2. The IROCC shall meet annually, and shall be composed of the Chief Executive Officers of the participating organisations.
3. In areas and sectors common to the OACPS and regional organisations, the Inter-Regional Coordinating Committee shall play a consultative role, while negotiating with external partners or any other development party.
4. The Inter-Regional Organisations Coordination Committee shall also form part of the structure responsible for the management of the Endowment Trust Fund established under Article 31.

Business Forum

1. The active involvement of the private sector as a driving force in the creation of a market-driven economy is crucial for the attainment of the objective of the OACPS. In this regard, a Business Forum shall be established, which shall also serve as a public and private sector forum.
2. This forum shall comprise the Chief Executive Officers of OACPS Member States' private sector organisations. It shall meet annually on the margins of the meeting of the Council of Ministers. It shall submit its report to the President of the Council of Ministers.
3. The operational modalities of the Business Forum shall be determined.

SIDS Forum

1. A SIDS Forum shall be established to address the specificities and needs of Small Island Developing States (SIDS).
2. This Forum shall support the economies of SIDS and improve their resilience before and after natural disasters. It will address the vulnerabilities and challenges caused by climate change, through the adoption and implementation of adaptation and mitigation measures.
3. Efforts shall be made to define common positions on the promotion and safeguard of the interests of SIDS, through the definition and adoption by the OACPS of a common position in all fora where relevant issues are discussed.

Cultural Foundation

1. The Member States of the OACPS shall place culture high on their political agenda, while recognising the economic importance of cultural industries and other cultural activities.
2. Culture helps to promote understanding among the peoples of the Member States of the OACPS, thereby contributing to the promotion of peace and security. Greater attention should be paid to cultural products and services during discussions with the European Union and other potential partners, particularly for the free movement of artists and cultural goods.
3. In order to develop cultural activities both between and among the Member States of the OACPS and partner countries, a Cultural Foundation shall be established.
4. The Foundation shall support the Secretary-General and collaborate with the relevant organs of the OACPS, in order to promote greater awareness of the identity of OACPS, increased interaction among populations, and closer collaboration among the business sector, civil society, academia, and other stakeholders.
5. The Foundation shall be accountable to the Secretary-General, who shall submit its report to the Summit, through the Council of Ministers.

National Focal Points

1. Each Member State shall establish appoint a National Focal Point which shall:
 - a) serve as the focal point for activities related to the mandate of the OACPS;
 - b) be the repository of information on all matters at the national level concerning the Organisation;
 - c) coordinate the implementation of all decisions at the national level;
 - d) coordinate and support national preparations for meetings of the OACPS; and
 - e) promote the identity of the OACPS, ensure implementation of its decisions and resolutions, and create awareness at the national level.

Appendix B

**RACIAL EQUALITY AND RACIAL NON-DISCRIMINATION OBLIGATIONS OF STATES IN RESPECT
OF CLIMATE CHANGE
EXPERT REPORT OF PROFESSOR E. TENDAYI ACHIUME, MARCH 2024**

INTRODUCTION AND OUTLINE

1. On 29 March 2023 the General Assembly, through resolution A/RES/77/276, requested from the International Court of Justice an Advisory Opinion on “the obligations of States in respect of climate change,” posing the following questions:
 - (a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;
 - (b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:
 - (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?
 - (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?
2. This Expert Report is submitted pursuant to a request by the Organization of African, Caribbean and Pacific States (OACPS) to address the racial equality and racial non-discrimination of States in respect of climate change. Section I summarizes the credentials of the Expert. Section II outlines the racist, colonial foundations of the global ecological crisis caused by anthropogenic greenhouse gas emissions. It emphasizes the historic role of systemic racism, and proceeds to explain the contemporary legacies of this racism, which include the racially disparate effects of anthropogenic greenhouse gas emissions and the resulting climate crisis. Section III details the racial non-discrimination and equality obligations of States under international law in relation to protecting the climate system and other parts of the environment from anthropogenic greenhouse gas emissions for present and future generations. Section IV concludes with the legal consequences that flow from breaches of these obligations.

I. CREDENTIALS OF THE EXPERT

3. I hold a Juris Doctor degree from the Yale Law School, and a Graduate Certificate in Development Studies from Yale University. I am the inaugural Alicia Miñana Professor of Law at the University of California, Los Angeles School of Law, a research associate of the African Center for Migration and Society at the University of Witwatersrand, and an Extraordinary Professor in the Department of Jurisprudence at the University of Pretoria. I am also currently the Leah Kaplan Visiting Professor of Human Rights at Stanford Law School. The focus of my scholarship includes the global governance of racism and xenophobia through international law.

4. I am the former United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, and was the first woman to serve in this role since its creation in 1994 following my appointment by the United Nations Human Rights Council. I served as Special Rapporteur for five years and submitted over eighteen reports on UN Member States' racial equality and non-discrimination obligations in the context of a broad range of global issues. My final report in October 2022 was entitled *Ecological Crisis, Climate Justice and Racial Justice*, and I draw heavily from that report in this Expert Report. I also draw on a number of my other reports submitted to the United Nations, including a 2019 report entitled *Global Extractivism and Racial Equality*. These reports were the product of extensive research and consultations with a broad range of legal and other experts, and with representatives of racially marginalized communities. In 2023, I was invited by the Inter-American Court of Human Rights to make an amicus submission to inform its advisory opinion on the obligations of States under international law in respect of the climate crisis.

II. THE RACIST COLONIAL FOUNDATIONS OF THE GLOBAL ECOLOGICAL CRISIS AND THE CONTEMPORARY LEGACIES OF THESE FOUNDATIONS

a. The Racist and Colonial Foundations of the Global Ecological Crisis Caused by Anthropogenic Greenhouse Emissions and the Processes that Produce These Emissions

5. Historically, systemic racism served as a foundational organizing principle for the global systems and processes that have dominated anthropogenic emissions of greenhouse gases. As such, understanding and addressing contemporary effects of these gases on the climate system and other parts of the environment requires an historicized approach to how “race” and racism have shaped the political economy of climate and environmental realities. International human rights law has rightfully repudiated the concept of “race” as a biological category.¹ But during Europe’s colonization of territories across the globe, Europeans conceptualized and deployed race as a biological fact that placed the peoples they designated as “White” as morally and otherwise superior to the peoples they designated as “non-White”. For centuries, European colonizers and enslavers used race, understood in these terms, to justify and organize the brutal territorial dispossession, natural resource extraction, industrialization and industrial processes, and consumption of the outputs of these processes that have driven anthropogenic emissions of greenhouse gases.
6. The historical development of the global natural resource extraction industry is an illustrative case in point. As detailed in my report to the United Nations Human Rights Council,² for centuries, colonialism justified and relied upon brutal regimes of slavery and then indentured servitude to establish and sustain transnational extractivist processes in exploitation and settler colonies. In the settler-colonial territories of the Americas and Australia, Indigenous extermination and land dispossession formed part of this picture, and Indigenous Peoples and people of African descent were commodified to ensure the supply of cheap labour. In African and Asian exploitation and settler colonies, Europeans murdered, forcibly displaced and

¹ See, e.g., Preamble to the International Convention on the Elimination of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter ICERD].

² See generally E. Tendayi Achiume, (Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance), *Global Extractivism and Racial Equality*, submitted to HRC, U.N. Doc. A/HRC/41/54 (May 14, 2019).

indentured, all to ensure their economic prosperity. As European colonialism oversaw global capitalist expansion, the racial ordering it produced to achieve and sustain this expansion meant that “both race and the division of labor remained structurally linked and mutually reinforcing.”³ Race and racial ordering permeated the global capitalist order, privileging the political, economic and cultural interests of Europeans and imposing them on colonized peoples and territories. The overwhelming material and social benefits of the colonial extractivism economy accrued along racial lines. Specifically, the colonial regimes that underpinned the extraction of coal, gas and oil, forged a global capitalist system that depended on the maintenance of racial hierarchies.⁴ The colonial States—both metropolitan European States and their settler colonial States outside Europe—responsible for a sizeable proportion of historic anthropogenic emissions of greenhouse gases relied on racist and racially discriminatory means to achieve the processes and outputs that caused these emissions. The logical outcome was that territories and peoples designated as “non-White” were sacrificed by and for the benefit of territories and peoples designated as “White”.⁵

7. Because climate change today is driven by the accumulation of greenhouse gases in the atmosphere, historical emissions are an existential contemporary problem. Between 1850 and 2019, industrialized countries contributed 57% to cumulative carbon dioxide emissions from fossil fuel combustion and industrial processes while the Africa, Asia and Pacific, and Latin America and Caribbean regions contributed a combined 28%, and “least developed countries” contributed 0.4%.⁶ The disproportionate contribution of industrialized countries to greenhouse gas emissions is even more striking when emissions from colonial territories are rightly included in calculating the emissions of former colonial powers that administered these territories.⁷ Yet it is the Global South, and colonially designated non-White regions of the world such as Africa, the Caribbean and Pacific Small Island States that are most affected and least able to mitigate and survive global ecological crisis, in significant part due to the colonial processes that caused historical emissions in the first place.

³ Anibal Quijano and Michael Ennis, *Coloniality of Power, Eurocentrism, and Latin America*, 1 NEPANTLA: VIEWS FROM THE SOUTH 533, 536 (2000).

⁴ See generally E. Tendayi Achiume (Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance), *Ecological Crisis, Climate Justice and Racial Justice*, submitted to United Nations General Assembly [hereinafter UNGA], U.N. Doc. A/77/549 (Oct. 25, 2022); see also Sarah Mason-Case & Julia Dehm, *Redressing Historical Responsibility for the Unjust Precarities of Climate Change in the Present*, in DEBATING CLIMATE LAW 170 (Benoit Mayer & Alexander Zahar eds., 2021); Carmen G. Gonzalez, *Racial Capitalism, Climate Justice, and Climate Displacement*, 11 OÑATI SOCIO-LEGAL SERIES 108 (2021); Leon Sealey-Huggins, *The Climate Crisis is a Racist Crisis: Structural Racism, Inequality and Climate Change*, in THE FIRE NOW: ANTI-RACIST SCHOLARSHIP IN TIMES OF EXPLICIT RACIAL VIOLENCE 99 (Azeezat Johnson et al. eds., 2018); Keston K. Perry & Leon Sealey-Huggins, *Racial Capitalism and Climate Justice: White Redemptive Power and the Uneven Geographies of Eco-Imperial Crisis*, 145 GEOFORUM 103772 (2023).

⁵ See Achiume, *Global Extractivism and Racial Equality*, supra note 2 ¶¶ 23, 42; Committee on the Elimination of Racial Discrimination [hereinafter CERD], General Recommendation No. 23, ¶ 3, U.N. Doc. A/52/18, annex V. (Aug. 18, 1997).

⁶ Intergovernmental Panel on Climate Change [hereinafter IPCC], *Climate Change 2022: Mitigation of Climate Change. Working Group III Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, at 65 (2022), <https://doi.org/10.1017/9781009157926>.

⁷ See Simon Evans & Verner Viisainen, *Revealed: How Colonial Rule Radically Shifts Historical Responsibility for Climate Change*, CARBON BRIEF (Nov. 26, 2023), <https://www.carbonbrief.org/revealed-how-colonial-rule-radically-shifts-historical-responsibility-for-climate-change/>.

8. North America is responsible for 23% of total cumulative carbon dioxide emissions.⁸ Europe is responsible for 16%,⁹ and 90 transnational corporations predominantly headquartered in the Global North are responsible for 63% of cumulative industrial emissions from 1751 to 2010.¹⁰ The Intergovernmental Panel on Climate Change (IPCC) reports that “[t]he lifestyle consumption emissions of the middle income and poorest citizens in emerging economies are between five and 50 times below their counterparts in high-income countries (*medium confidence*).”¹¹ According to one study, the average person’s carbon dioxide emissions in the United Kingdom over a two-week period is more than a resident of Rwanda, Malawi, Ethiopia, Uganda, Madagascar, Guinea or Burkina Faso will emit in a year.¹² Africa’s energy-related emissions account for about 2% of global emissions, but it is likely to shoulder almost 50% of the estimated global climate change adaptation costs.¹³

b. Racially Disparate Contemporary Effects of the Global Ecological Crisis

9. The formal international repudiation of colonialism has by no means eradicated its racist legacies, including as they relate to the contemporary global ecological crisis created by anthropogenic greenhouse gas emissions. Even in the contemporary period where biological theories of race have been thoroughly debunked, “race” remains a potent social construction that continues to determine the enjoyment of fundamental human rights for the majority of the world’s population, which is racialized as non-White. In this report, the term “racially marginalized” is used to refer to peoples and persons whose contemporary racial and ethnic identity are significant factors in the denial of their fundamental human rights.¹⁴
10. Peoples in formerly colonized territories, who were historically racially designated as non-White, today bear the disproportionate environmental burdens of extraction, processing and combustion of fossil fuels. The United Nations Special Rapporteur on Human Rights and the Environment has highlighted that although all humans are exposed to the ecological crisis, the burden of this crisis falls disproportionately on systemically marginalized groups, and that many environmental injustices are rooted in “racism, discrimination, colonialism, patriarchy, impunity and political systems that systematically ignore human rights.”¹⁵ The IPCC has observed that “[v]ulnerable communities who have historically contributed the least to current

⁸ IPCC, *Climate Change 2022*, *supra* note 6 at 64.

⁹ *Ibid.* at 65.

¹⁰ Sarah Mason-Case & Julia Dehm, *Redressing Historical Responsibility for the Unjust Precarities of Climate Change in the Present*, in *DEBATING CLIMATE LAW* 170, 172-73 (Benoit Mayer & Alexander Zahar eds., 2021).

¹¹ IPCC, *Climate Change 2022*, *supra* note 6 at 65.

¹² *Average Brit Emits More Carbon by January 12 Than Residents of Seven African Countries in a Year*, OXFAM (Jan. 7, 2020), https://oxfamapps.org/cymru/press_release/average-brit-emits-more-carbon-by-january-12-than-residents-of-seven-african-countries-in-a-year/.

¹³ Elias Meseret & Cara Anna, *Africa Shouldn't Need to Beg for Climate Aid, Says Bank President*, PBS NEWS HOUR (Feb. 11, 2020), <https://www.pbs.org/newshour/world/africa-shouldnt-need-to-beg-for-climate-aid-says-bank-president>.

¹⁴ In keeping with the Durban Declaration and Programme of Action adopted by the United Nations General Assembly which lists the victims of historical and contemporary racism rooted in colonialism and the Trans-Atlantic trade in enslaved Africans, this includes Africans, people of African descent, Asians, people of Asian descent, and Indigenous Peoples. World Conference Against Racism, Racial Discrimination, Xenophobia and Related Violence, *Durban Declaration and Programme of Action*, ¶¶ 31-45, U.N. Doc. A/CONF.189/12 (Sep. 8, 2001).

¹⁵ David R. Boyd (Special Rapporteur on Human Rights and the Environment), *The Right to a Clean, Healthy and Sustainable Environment: Non-toxic Environment*, ¶ 22, submitted to the UN Human Rights Council [hereinafter HRC], U.N. Doc. A/HRC/49/53 (Jan. 12, 2022).

climate change are disproportionately affected [...] with the largest adverse impacts observed in many locations and/or communities in Africa, Asia, Central and South America, LDCs, Small Islands and the Arctic, and globally for Indigenous Peoples, small-scale food producers and low-income households.”¹⁶

11. In fact, the contemporary global extractivism economy remains racially stratified because of its colonial origins and the ongoing failure of Member States—especially those who benefitted the most from colonial domination—to decolonize the international system and provide reparations for racial discrimination rooted in slavery and colonialism.¹⁷ The territories subject to the most rapacious forms of extraction are those belonging to groups and nations that were colonially designated as racially inferior. The nations least capable of mitigating and responding to ecological crisis, including the consequences of anthropogenic greenhouse emissions, have been rendered so, both by histories of colonial domination, and in the postcolonial era by externally imposed neoliberal and other economic policies.¹⁸
12. The United Nations Working Group of Experts on People of African Descent has detailed how environmental racism and the climate crisis have disproportionately affected people of African descent globally, due in part to racist histories of colonial domination, the trade in enslaved Africans, and systematic discrimination against and segregation of people of African descent.¹⁹ The United Nations Special Rapporteur on the Rights of Indigenous Peoples has shed a similar light on environmental racism and climate injustice as they affect the lives and threaten the very existence of Indigenous Peoples.²⁰

c. Race, Ethnicity, National Origin and “Sacrifice Zones”

13. The term “sacrifice zones” is derived from a designation used during the Cold War to describe areas irradiated due to production of nuclear weapons.²¹ Racially marginalized and formerly colonized peoples were among those whose communities were disproportionately “sacrificed” to the demands of nuclear proliferation, as prominently illustrated by the impacts of nuclear testing on the people of the Marshall Islands, as well as Indigenous Peoples and ethnic

¹⁶ IPCC, *Climate Change 2023: Synthesis Report. Summary for Policymakers*, at 5 (2023), <https://www.ipcc.ch/report/sixth-assessment-report-cycle/>.

¹⁷ See Achiume, *Global Extractivism and Racial Equality*, *supra* note 2; see also E. Tendayi Achiume (Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance), *Reparation, Racial Justice and Equality*, submitted to UNGA, U.N. Doc A/74/321 (Aug. 21, 2019).

¹⁸ See E. Tendayi Achiume (Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance), *2030 Agenda for Sustainable Development, the Sustainable Development Goals and the Fight Against Racial Discrimination*, submitted to HRC, U.N. Doc. A/HRC/50/60 (June 17, 2022). Multiple submissions received by the mandate of the United Nations Special Rapporteur on Racism, including by representatives of racially marginalized communities around the world, highlighted the ongoing racially disparate effects of the ecological crisis and its drivers, some of them highlighting colonial legacies. See, e.g., Achiume, *Ecological Crisis, Climate Justice and Racial Justice*, *supra* note 4 ¶¶ 18-33.

¹⁹ See Rep. of the Working Grp. of Experts on People of Afr. Descent on Its Twenty-Eighth Session, submitted to HRC, U.N. Doc. A/HRC/48/78 (2021).

²⁰ See Victoria Tauli Corpuz (Special Rapporteur on the Rights of Indigenous Peoples), *Report of the Special Rapporteur on the Rights of Indigenous Peoples*, submitted to HRC, U.N. Doc. A/HRC/36/46 (Nov. 1, 2017); see also Rodolfo Stavenhagen (Special Rapporteur on the Rights of Indigenous Peoples), *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council”*, submitted to HRC, U.N. Doc. A/HRC/4/32 (Feb. 27, 2007).

²¹ STEVE LERNER, *SACRIFICE ZONES: THE FRONT LINES OF TOXIC CHEMICAL EXPOSURE IN THE UNITED STATES* 2 (2010).

minorities living in territories controlled by military superpowers.²² According to the United Nations Special Rapporteur on Human Rights and the Environment, “[t]oday, a sacrifice zone can be understood to be a place where residents suffer devastating physical and mental health consequences and human rights violations as a result of living in pollution hotspots and heavily contaminated areas.”²³ Climate change is driving the proliferation of sacrifice zones,²⁴ which in many places are, in effect, *racial* sacrifice zones because these zones are territories inhabited predominantly by racially marginalized groups and individuals. The United Nations Special Rapporteur on Human Rights and the Environment has identified approximately 100 sacrifice zones around the world, of which roughly 55 are located in Africa, the Caribbean, and the Pacific.²⁵ The Special Rapporteur observes that “the climate crisis is creating a new category of sacrifice zones” in which communities face forced relocation and entire countries may be in jeopardy.²⁶ He identifies 32 such “climate crisis sacrifice zones,” all of which are Small Island Developing States (SIDS) and OACPS Member States.²⁷

14. My report to the United Nations General Assembly as Special Rapporteur on Racism highlighted the prevalence of racial sacrifice zones, using examples drawn from a global call for submissions from affected communities.²⁸ For example, in the Caribbean, farmers and peasants are confronted with catastrophic changes in the weather that make agricultural labor increasingly difficult and that predominately affect poor farmers and rural women. Across the African continent, extractive projects and toxic waste dumping have wreaked havoc on natural environments, as African States, with arid ecosystems, struggle to maintain local livelihoods in the midst of climate change. SIDS face extreme risks, as rising sea levels, intensifying natural disasters and the destruction of natural ecologies threaten lives and livelihoods.²⁹ The Multidimensional Vulnerability Index, a newly developed metric measuring the economic, geographic, financial and environmental vulnerabilities of SIDS, put the average score of SIDS 50 to 60% higher than the global average, indicating a starker vulnerability than would be implied by income levels.³⁰ For SIDS, the global ecological crisis is predicted to wipe out some of their territories before the end of the 21st century.³¹ Communities located in racial sacrifice zones—economically marginalized and thus lacking the financial resources necessary to mitigate and adapt to the effects of the global ecological crisis—suffer some of the most egregious forms of historical and contemporary racial subordination and human rights violations in the global ecological crisis context.³²

²² Jessica Barkas Threet, *Testing the Bomb: Disparate Impacts on Indigenous Peoples in the American West, the Marshall Islands, and in Kazakhstan*, 13 UNIV. BALT. J. ENV'T L. 29 (2005).

²³ Boyd, *The Right to a Clean, Healthy and Sustainable Environment: Non-toxic Environment*, *supra* note 15 ¶ 27.

²⁴ *Ibid.*

²⁵ *See ibid.*; *see also* David R. Boyd (Special Rapporteur on Human Rights and the Environment), *Additional Sacrifice Zones*, submitted to HRC, Annex 1 to U.N. Doc. A/HRC/49/53 (Feb. 3, 2022).

²⁶ Boyd, *Additional Sacrifice Zones*, *supra* note 25 ¶ 55.

²⁷ *Ibid.* ¶¶ 55-56; *see also* *About Us*, OACPS, <https://www.oacps.org/about-us/> (last visited Mar. 14, 2024).

²⁸ Achiume, *Ecological Crisis, Climate Justice and Racial Justice*, *supra* note 4 ¶¶ 18-33

²⁹ IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, at ch. 15 (2022), <https://www.ipcc.ch/report/ar6/wg2/chapter/chapter-15/>.

³⁰ UNDP, *Towards a Multidimensional Vulnerability Index: Discussion Paper*, at 10 (Feb. 2021).

³¹ *Ibid.*

³² Achiume, *Ecological Crisis, Climate Justice and Racial Justice*, *supra* note 4 ¶ 50.

15. Racial sacrifice zones also include racially segregated neighborhoods and territories in the Global North. In the United States, for example, “Cancer Alley” is a petrochemical corridor along the Mississippi River, where 150 petrochemical facilities operate. With a predominantly African American population, it is a region with the highest rates of multiple forms of cancers in the United States. Racist legacies loom large over Cancer Alley. It was originally called Plantation Country, a place where enslaved Africans were forced to labor. New facilities like the “Sunshine Project” stretch over at least four ancestral burial grounds and are concentrated in the Fifth District, whose residents are 86.3% African American. The land use plan for the District has been changed from “residential” to “residential/future industrial” without notice, allowing for one of the largest plastics facilities to be approved. By contrast, chemical companies are barred from constructing new facilities in the Third District, whose residents are 78.4% White.³³ A 1987 study revealed a nationwide pattern, with racially marginalized communities in the United States five times more likely than White communities to live near toxic waste.³⁴ These disparities cannot be explained solely on the basis of income inequality: An in-depth study in 2008 found that Black people in the U.S. with an annual household income of 50,000 to 60,000 U.S. dollars live in neighborhoods subject to greater pollution than the average White people with household incomes under 10,000 dollars.³⁵

d. Race, Ethnicity, National Origin and Climate-Induced Displacement

16. Racial and xenophobic discrimination are not only root causes of forced displacement,³⁶ but they also significantly determine who can move within and across borders, and who is immobilized against their will.³⁷ This is particularly apparent in the context of environmental and climate-induced displacement.³⁸ Manifestations of environmental racism and climate injustice include forced displacement as well as the *inability* of racially marginalized peoples to flee contamination hot spots or areas of escalated natural disaster risk. Entire Indigenous territories, particularly those in the SIDS, are at risk from the combined disruptive impacts of extractivism and climate change, and even the full-scale relocation of entire State populations will not rectify the fallout of the destruction of their islands. The permanent loss of Indigenous homelands is and will remain a massive global failure and a deep racial injustice in the absence of urgent rectificatory action.³⁹

17. According to the United Nations Refugee Agency, 90% of refugees and most Internally Displaced Persons (IDPs) come from highly climate vulnerable countries.⁴⁰ At the same time, highly climate vulnerable countries host over 40% of refugees, while IDPs in conflict-affected

³³ OHCHR, *Information Received Concerning Allegations of Environmental Racism in Louisiana, Specifically the Industrialization of an Area Known by its Residents as “Cancer Alley”*, Communication No. JAL USA 33/2020 (Feb. 16, 2021).

³⁴ UNITED CHURCH OF CHRIST, *TOXIC WASTES AND RACE IN THE UNITED STATES – A NATIONAL REPORT ON THE RACIAL AND SOCIO-ECONOMIC CHARACTERISTICS OF COMMUNITIES WITH HAZARDOUS WASTE SITES* (1987).

³⁵ Liam Downey & Brian Hawkins, *Race, Income, and Environmental Inequality in the United States*, 51 SOCIO. PERSPS. 759 (2008).

³⁶ See E. Tendayi Achiume (Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance), *Rep. on Racial Discrimination in the Context of Citizenship, Nationality, and Immigration Status*, submitted to HRC, U.N. Doc. A/HRC/38/52 (Apr. 25, 2018).

³⁷ See *ibid.*

³⁸ Carmen Gonzalez, *Climate Change, Race, and Migration*, 1 J. LAW & POL. ECON. 109 (2020).

³⁹ See CERD General Recommendation No. 23 ¶ 3.

⁴⁰ *Climate Change Link to Displacement of Most Vulnerable is Clear: UNHCR*, UN NEWS (Apr. 22, 2021), <https://news.un.org/en/story/2021/04/1090432>.

and climate vulnerable countries are often displaced to areas where they are exposed and vulnerable to climate-related hazards.⁴¹ The risk for refugees and IDPs is two-fold: on the one hand, settlements are disproportionately concentrated in regions that are exposed to higher-than-average warming levels and specific climate hazards, including temperature extremes and drought; on the other hand, these populations frequently inhabit settlements and legal circumstances that are intended to be temporary but are protracted across generations, all the while facing legal and economic barriers in their ability to migrate away from climate impacts. Large concentrations of these settlements are in the Sahel,⁴² the Near East, and Central Asia,⁴³ where temperatures will rise higher than the global average, and extreme temperatures will exceed thresholds for safe habitation.

18. Many refugees are racially and ethnically marginalized people. Systemic racism in international border regimes constrains the movement of racially marginalized peoples, while allowing citizens of industrialized countries unprecedented autonomy to travel, migrate⁴⁴ and avoid environmentally unsafe areas. Ease of migration is closely linked to ease of short-term mobility, which in turn is closely governed by visa regimes based on passport nationality, and thus citizenship. Visa-free access to the European Union and the United States, for example, is limited primarily (though not exclusively) to majority-“White” nation-states through facially neutral visa requirements based on nationality.⁴⁵ Australia’s border regime has long been shaped by racialized differential inclusion, with Pacific Islanders labelled as undesirable others and targeted for deportation.⁴⁶ Formerly colonized nation-state passport holders—especially African, Caribbean, and Asian—are treated as presumptively undesirable and face structural barriers to accessing the territories of former colonial powers⁴⁷ that bear significant responsibility for anthropogenic greenhouse gas emissions. Despite the rise of climate-induced displacement, climate migrants continue to face mobility restrictions as “climate-refugee” claims are rejected, and climate justice questions are obscured in the adjudication of such claims.⁴⁸

19. As I noted in my report to the UN General Assembly, racial sacrifice zones produce significant proportions of climate-displaced persons globally.⁴⁹ In other words, for many, climate-induced displacement is experienced on a racially discriminatory basis. For such groups, the vulnerability of their territories to climate-induced catastrophe is the product of racist, colonial legacies of extraction and related processes. Furthermore, many displaced from racial sacrifice zones are then subject to racist and xenophobic treatment when they seek refuge in the States

⁴¹ Based on analysis of available data of the Internal Displacement Monitoring Center Global Internal Displacement Database and the Notre Dame Global Adaptation Initiative (ND-GAIN) Country Index.

⁴² Boris Cheshirkov, *Decade of Sahel Conflict Leaves 2.5 Million People Displaced*, UNHCR (Jan. 14, 2022), <https://www.unhcr.org/us/news/briefing-notes/decade-sahel-conflict-leaves-2-5-million-people-displaced>.

⁴³ *Displaced on the Frontlines of the Climate Emergency*, UNHCR (2021), <https://storymaps.arcgis.com/stories/065d18218b654c798ae9f360a626d903>.

⁴⁴ E. Tendayi Achiume, *Racial Borders*, 110 GEO. L. J. 445 (2022).

⁴⁵ *Ibid.* at 466-70.

⁴⁶ See Henrietta McNeill & Marinella Marmo, *Past-Present Differential Inclusion: Australia’s Targeted Deportation of Pacific Islanders, 1901-2021*, 12 INT’L J. CRIME, JUST. & SOC. DEMOCRACY 42 (2023).

⁴⁷ Achiume, *Racial Borders*, *supra* note 44 at 474.

⁴⁸ Andreas Neef & Lucy Bengé, *Shifting Responsibility and Denying Justice: New Zealand’s Contentious Approach to Pacific Climate Mobilities*, 22 REG’L ENV’T CHANGE 93 (2022).

⁴⁹ Achiume, *Ecological Crisis, Climate Justice and Racial Justice*, *supra* note 4 ¶¶ 34-40.

primarily responsible for the creation of the racial sacrifice zones in the first place. For example, climate change is increasing displacement and migration to urban areas and out of Haiti, due to negative economic impact to the livelihoods of farmers.⁵⁰ Racism limits Haitians' freedom of movement, limiting their ability to escape climate harms through dignified migration. In the United States, Haitians were targeted for deportation under Title 42, which was used to detain and exclude Haitian migrants at the border.⁵¹

20. In sum, the crisis engendered by anthropogenic greenhouse gas emissions is also a racial justice crisis because of the unrepaired historical colonial foundations of this ecological crisis, and its contemporary racially disparate impacts.

III. THE RACIAL NON-DISCRIMINATION AND EQUALITY OBLIGATIONS OF STATES IN INTERNATIONAL LAW IN RELATION TO PROTECTING THE CLIMATE SYSTEM AND OTHER PARTS OF THE ENVIRONMENT FROM ANTHROPOGENIC EMISSIONS OF GREENHOUSE GASES

21. Within the context of the global ecological crisis, for States to meet their non-discrimination obligations they must protect racially and ethnically marginalized communities and individuals from the adverse impacts of climate change and ensure that they do not face discrimination in claiming their human rights. This Section analyzes States' racial equality and non-discrimination obligations under international law, with particular focus on the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). It should be noted, however, that non-discrimination and equality obligations are enshrined across many other international human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women,⁵² the Convention on the Rights of the Child,⁵³ and the Convention on the Rights of Persons with Disabilities.⁵⁴
22. Non-discrimination and the prohibition of racial discrimination are broadly accepted peremptory norms of public international law (*jus cogens*).⁵⁵ Under Article 1, paragraph 3 of the UN Charter, one of the purposes of the United Nations is “[t]o achieve international co-operation [...] in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”⁵⁶ The International

⁵⁰ NYU GLOBAL JUSTICE CLINIC ET AL., SUBMISSION TO THE UN SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE (2022), <https://www.ohchr.org/sites/default/files/documents/issues/climatechange/cfi-hrc-53-session/submissions/2022-11-28/Global-Justice-Clinic-1.pdf>.

⁵¹ OHCHR, *Information Received Concerning Allegations of Systematic Forcible Expulsion of Haitian Migrants Under Authority Granted by Title 42 of the U.S. Code (42 U.S.C. § 265)*, Communication No. JAL USA 27/2021 (Oct. 14, 2021).

⁵² See Convention on the Elimination of All Forms of Discrimination Against Women art. 1, Dec. 18, 1979, 1249 U.N.T.S. 1.

⁵³ See Convention on the Rights of the Child art. 2, Nov. 20, 1989, 1577 U.N.T.S. 3.

⁵⁴ See Convention on the Rights of Persons with Disabilities art. 2, Dec. 13, 2006, 2515 U.N.T.S. 3 [hereinafter CRPD].

⁵⁵ See *Report of the International Law Commission to the General Assembly*, 77 U.N. GAOR Supp. No. 10, U.N. Doc. A/77/10 (Aug. 12, 2022); Dire Tladi (Special Rapporteur of the International Law Commission), *Fourth Report on Peremptory Norms of General International Law (Jus Cogens)*, U.N. Doc. A/CN.4/727 (Jan. 31, 2019); see also *Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain)*, Judgment, 1970 I.C.J. Rep. 3 (Feb. 5, 1970); Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 I.C.J. Rep. 16 (June 21, 1971).

⁵⁶ U.N. Charter art. 1, ¶ 3.

Law Commission’s non-exhaustive list of peremptory norms of international law includes “the prohibition of racial discrimination and apartheid.”⁵⁷ In its *Kosovo* advisory opinion, the International Court of Justice explained that the Security Council’s declaration of the illegality of the unilateral declaration of independence of Southern Rhodesia was linked to “the unlawful use of force or other egregious violations of norms of general international law, in particular those of a peremptory character (*jus cogens*).”⁵⁸ The prohibition of racial discrimination was at the core of the Security Council’s decision to call upon “all States not to recognize this illegal racist minority régime in Southern Rhodesia.”⁵⁹ The Court thus implicitly recognized the *jus cogens* character of the prohibition of racial discrimination in its *Kosovo* advisory opinion. Moreover, in the *Barcelona Traction* case, the Court acknowledged that the prohibition of racial discrimination generates *erga omnes* obligations.⁶⁰

23. Article 26 of the ICCPR states that the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁶¹ ICESCR also prohibits discrimination on these grounds.⁶²
24. Article 2(2) of ICESCR requires States to guarantee the exercise of social, cultural, and economic rights without discrimination.⁶³ Article 2(1) of ICESCR further requires States to “take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”⁶⁴ Although ICESCR provides that guaranteeing certain social, cultural, and economic rights will require progressive realization, it also imposes obligations with an immediate effect, including that States satisfy a “minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights.”⁶⁵ Of particular importance, States Parties’ non-discrimination obligations under ICESCR are of immediate effect,⁶⁶ such that States Parties may never justify racially or otherwise discriminatory treatment on the basis of progressive realization.

⁵⁷ See *Report of the International Law Commission to the General Assembly*, 77 U.N. GAOR Supp. No. 10, at 16, U.N. Doc. A/77/10 (Aug. 12, 2022).

⁵⁸ Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 403, ¶ 81 (July 22, 2010).

⁵⁹ S.C. Res. 216, ¶ 2 (Nov. 12, 1965).

⁶⁰ *Barcelona Traction*, *supra* note 55 ¶ 34.

⁶¹ International Covenant on Civil and Political Rights art. 26, Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

⁶² International Covenant on Economic, Social and Cultural Rights art. 12, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

⁶³ ICESCR art. 2(2). Discrimination is defined as “any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights.” Committee on Economic, Social and Cultural Rights [hereinafter CESCR], General Comment No. 20, ¶ 7, U.N. Doc. E/C.12/GC/20 (July 2, 2009).

⁶⁴ ICESCR art. 2(1); *see also* CESCR, General Comment No. 3, ¶ 9, U.N. Doc. E/1991/23 (Dec. 14, 1990).

⁶⁵ CESCR General Comment No. 3 ¶¶ 1, 9-10.

⁶⁶ CESCR General Comment No. 3 ¶¶ 1, 5; ICESCR art. 2(2).

25. Article 15(1)(a) of ICESCR further recognizes the right to participate in cultural life.⁶⁷ As the Committee on Economic, Social, and Cultural Rights (CESCR) has stated, “cultural rights are an integral part of human rights and, like other rights, are universal, indivisible, and interdependent.”⁶⁸ Cultural rights are closely related to the right to enjoy the benefits of scientific progress and its applications under ICESCR (art. 15, ¶ 1(b)); the right to education (arts. 13, 14), through which individuals and communities pass on their values, religion, customs, language and other cultural references, and which helps to foster an atmosphere of mutual understanding and respect for cultural values; the right of all peoples to self-determination (art. 1); and the right to an adequate standard of living (art. 11).⁶⁹ Each of these rights is intimately affected by the climate catastrophe, as climate harms disproportionately result in racially marginalized groups losing access to their ancestral lands, homes, work, education, and more. Under ICESCR, States Parties are obligated to construct adaptation measures that prioritize the rights and needs of affected communities, especially those at risk of displacement or loss of livelihoods due to climate impacts.⁷⁰ States have a duty to prevent third parties, including corporations, from violating economic, social, and cultural rights. In the context of climate change, this includes holding corporations accountable for their contributions to climate change and their impacts on human rights.⁷¹ In addition, States Parties to ICESCR must ensure a transition to a low-carbon economy that is just and equitable, protecting the livelihoods and rights of workers in high-carbon industries and marginalized communities affected by economic shifts.⁷²
26. Finally, both ICCPR and ICESCR obligate States to protect Indigenous and other minority group rights to consultation regarding and protection from the impacts of environmental degradation. The UN Human Rights Committee, interpreting the ICCPR, recently reinforced the protective power of the right to culture and the right to home for Indigenous peoples in *Daniel Billy and others v. Australia*.⁷³ In that case, the Committee found for the first time that a State’s failure to adapt to the foreseeable harms of climate change violated the right to culture and the right to home and privacy.⁷⁴ Moreover, CESCR makes clear that engaging participation and consultation with affected communities is non-negotiable.⁷⁵ ICESCR also encourages participation of and consultation with affected communities.⁷⁶

⁶⁷ ICESCR art. 15(1)(a); CESCR, General Comment No. 21, ¶ 21, U.N. Doc. E/C.12/GC/21 (Dec. 21, 2009) (clarifying that the non-discrimination principles of international law apply to ICESCR art. 15).

⁶⁸ CESCR General Comment No. 21 ¶ 1.

⁶⁹ CESCR General Comment No. 21 ¶ 2.

⁷⁰ CESCR General Comment No. 26, ¶¶ 56-57, U.N. Doc. E/C.12/GC/26 (Jan. 24, 2023).

⁷¹ *Ibid.* ¶ 41.

⁷² *Ibid.* ¶¶ 2(d)-(f), 58 (“Cooperation mechanisms for climate change mitigation and adaptation measures shall provide and implement a robust set of environmental and social safeguards to ensure that no project negatively affects human rights and the environment and to guarantee access to information and meaningful consultation with those affected by such projects.”); *see also* Olivier De Schutter (UN Special Rapporteur on Extreme Poverty and Human Rights), *The “Just Transition” in the Economic Recovery: Eradicating Poverty within Planetary Boundaries*, submitted to UNGA, U.N. Doc. A/75/181/Rev.1 (Oct. 7, 2020).

⁷³ *Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, Human Rights Committee (Sep. 18, 2023).

⁷⁴ *Id.* ¶¶ 8.9-12.

⁷⁵ CESCR General Comment No. 26 ¶¶ 20-21, 28, 35, 44, 53 (“Individuals and communities *shall* be properly informed about and allowed to meaningfully participate in decision-making processes that may affect their enjoyment of rights under the Covenant in land-related contexts, without retaliation.”) (emphasis added).

⁷⁶ ICESCR art. 2(1).

27. ICERD articulates the most comprehensive prohibition of racial discrimination in international law. It has been ratified by 182 States Parties,⁷⁷ signaling almost universal acceptance of the international obligations it imposes. Article 1(1) of ICERD defines prohibited racial discrimination as:

“any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”⁷⁸

28. This prohibition of racial discrimination thus applies to purposive, direct, or intentional discrimination, as well as indirect discrimination or discrimination in effect, which includes structural racial discrimination.⁷⁹ ICERD’s substantive approach to equality encompasses the protection of both “de jure” and “de facto” equality. The latter is especially important in the context of environmental degradation and climate change, where discriminatory intent is difficult to prove but disparate impacts of environmental harm are clearly apparent.

29. ICERD’s prohibition of racial discrimination applies equally to the broad range of civil, political, social, economic, and cultural rights violated as a consequence of anthropogenic emissions of greenhouse gases. Notably, Article 5 requires States Parties to prohibit racial discrimination and guarantee equality before the law in enjoyment of, *inter alia*: the right to freedom of movement and residing within the border of a State; the right to leave any country, including one’s own, and return to one’s country; the right to nationality; the right to housing; and the right to public health.⁸⁰

30. Article 2 of ICERD requires States Parties to “condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in *all* its forms.”⁸¹ Article 2 proceeds to lay out a mandatory framework of legal obligations tailored to giving effect to the prohibition of racial discrimination that includes dismantling structural and institutionalized forms of racial discrimination. Specifically, it requires States Parties, *inter alia*, to

“(a) [...] engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

[...]

(c) [...] take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination *wherever it exists*;

⁷⁷ *International Convention on the Elimination of All Forms of Racial Discrimination: Ratification Status*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=_en (last accessed Mar. 17, 2024).

⁷⁸ ICERD art. 1(1).

⁷⁹ CERD, General Recommendation No. 32, ¶¶ 6–7, U.N. Doc. CERD/C/GC/32 (Sep. 24, 2009).

⁸⁰ ICERD art. 5.

⁸¹ ICERD art. 2 (emphasis added).

(d) [...] prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization[.]”⁸²

31. The UN High Commissioner for Human Rights has recently defined “systemic racism” as “the operation of a complex, interrelated system of laws, policies, practices and attitudes in State institutions, the private sector and societal structures that, combined, result in direct or indirect, intentional or unintentional, de jure or de facto discrimination, distinction, exclusion, restriction or preference on the basis of race, colour, descent or national or ethnic origin.”⁸³ Systemic racism captures the entrenched nature of the racially discriminatory impact of anthropogenic greenhouse emissions and the processes related to their production. The regime of legal obligations established by ICERD requires States Parties to eliminate systemic racism in the climate context.
32. In addition to this comprehensive set of obligations requiring States Parties to cease and prevent racial discrimination, Article 2(2) mandates States Parties to take concrete affirmative action or special measures to ensure the adequate protection of racially marginalized groups or individuals:
- “States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.”⁸⁴
33. Accordingly, as also provided by Article 1(4) of ICERD, States may engage in special measures “for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection” as a means of promoting equal enjoyment and exercise of fundamental human rights.⁸⁵ In its jurisprudence concerning the rights of Indigenous Peoples, for example, CERD has underscored the importance of special measures in order to uphold the non-discrimination and equality rights of Indigenous Peoples.⁸⁶
34. CERD further recognizes that people of African descent have specific rights to property and the use, conservation and protection of lands traditionally occupied by them, to cultural

⁸² ICERD art. 2 (emphasis added).

⁸³ United Nations High Commissioner for Human Rights, *Promotion and Protection of the Human Rights and Fundamental Freedoms of Africans and of People of African Descent Against Excessive Use of Force and Other Human Rights Violations by Law Enforcement Officers*, submitted to HRC, U.N. Doc. A/HRC/47/53 (June 1, 2021).

⁸⁴ ICERD art. 2(2).

⁸⁵ ICERD arts. 1(4), 2; CERD General Recommendation No. 32 ¶¶ 6–7 (stating that the Convention “combines formal equality before the law with equal protection of the law, with substantive or de facto equality in the enjoyment and exercise of human rights as the aim to be achieved by the faithful implementation of its principles,” meaning that State obligations to address racial discrimination may necessarily include treating racially marginalized peoples *differently* than other groups so that facially neutral laws do not *de facto* disadvantage or harm them).

⁸⁶ CERD General Recommendation No. 23 ¶¶ 4-5.

identity, to the protection of traditional knowledge and culture, and to prior consultation with respect to decisions which may affect their rights.⁸⁷ This is in line with the UN system’s acknowledgement of States’ obligations to protect people of African descent from racial discrimination through its implementation and follow-up to the Durban Declaration and Programme of Action.⁸⁸ The UN Human Rights Council has also published several resolutions to promote and protect the human rights and fundamental freedoms of Africans and people of African descent.⁸⁹ As noted above, CERD has identified similar rights for Indigenous Peoples in General Recommendation 23. CERD’s jurisprudence acknowledges the protection that ICERD provides to ways of life based on close ties to land (including material and spiritual ties). With respect to the right to property, which is guaranteed on an equal basis under Article 5 of ICERD, CERD has found that “to ignore the inherent right of indigenous peoples to their traditional territories—which is grounded in indigenous customary law—constitutes a form of discrimination as it results in nullifying or impairing the recognition, enjoyment or exercise by indigenous peoples, on an equal footing, of the property rights tied to their identity.”⁹⁰

35. The UN recognizes the need for an intersectional approach to discrimination. Intersectionality is an analytical framework that describes how different identities a person holds results in intersecting forms of privilege or oppression, reflecting existing power structures, such as patriarchy, ableism, colonialism, imperialism, and racism. As CERD has noted, racial discrimination manifests alongside multiple, intersecting forms of discrimination, such as gender, class, nationality, disability, and age.⁹¹ Many other treaty bodies and international organizations likewise adopt an intersectional lens to discrimination, including CESCR;⁹² the

⁸⁷ CERD, General Recommendation No. 34, ¶¶ 4(a)-(d), U.N. Doc. CERD/C/GC/34 (Oct. 3, 2011).

⁸⁸ G.A. Res. 76/226, A Global Call for Concrete Action for the Elimination of Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Comprehensive Implementation of and Follow-Up to the Durban Declaration and Programme of Action (Jan. 10, 2022).

⁸⁹ *See, e.g.*, HRC Res. 47/21, U.N. Doc. A/HRC/RES/47/21 (July 26, 2021) (Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers through transformative change for racial justice and equality); HRC Res. 43/1, U.N. Doc. A/HRC/RES/43/1 (June 19, 2020) (Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers).

⁹⁰ CERD, Opinion adopted by the Committee under article 14 of the Convention, concerning communication No. 61/2017, ¶ 4.7, U.N. Doc. CERD/C/106/D/61/2017 (July 26, 2022).

⁹¹ *See generally* CERD General Recommendation No. 32; CESCR General Comment No. 20 (emphasizing the importance of recognizing and addressing intersecting forms of discrimination because many people face overlapping injustices due to discriminatory norms in modern society).

⁹² *See* CESCR General Comment No. 20 ¶ 17 (noting that “[s]ome individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example women belonging to an ethnic or religious minority. Such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying”).

Committee on the Elimination of Discrimination against Women;⁹³ the UN Human Rights Council;⁹⁴ the Committee on the Rights of Persons with Disabilities;⁹⁵ and UN Women.⁹⁶

IV. THE LEGAL CONSEQUENCES OF THE RACIAL NON-DISCRIMINATION AND EQUALITY OBLIGATIONS OF STATES, WHERE STATES, BY THEIR ACTS AND OMISSIONS, HAVE CAUSED SIGNIFICANT HARM TO THE CLIMATE SYSTEM AND OTHER PARTS OF THE ENVIRONMENT

36. Notwithstanding the thoroughgoing racially disparate and discriminatory impacts of anthropogenic greenhouse gas emissions, these impacts are often overlooked in conventional responses to the climate emergency.⁹⁷ Yet as detailed above, international law requires States to address not only explicit racism and intolerance but also indirect and structural forms of discrimination that result from the global ecological crisis. Furthermore, the analysis above explains that States are in breach of their racial equality and non-discrimination obligations under international human rights law when they: fail to adopt or enforce anti-discrimination legislation regulating the conduct of both public and private actors; fail to amend, rescind or nullify any laws and regulations that have the effect of creating or perpetuating discrimination;⁹⁸ or fail to adopt all appropriate immediate and effective measures to prevent, diminish and eliminate the conditions, attitudes and prejudices which cause or perpetuate discrimination in all its forms, or, where necessary, fail to implement concrete special measures aimed at realizing de facto, substantive equality.⁹⁹ Special measures or “affirmative action”—specific steps taken by a State aimed at achieving equality in effect, correcting inequality and discrimination, and/or securing advancement of disadvantaged groups or individuals¹⁰⁰—are a

⁹³ See, e.g., Committee on the Elimination of Discrimination Against Women [hereinafter CEDAW Committee], General Recommendation No. 26 on Women Migrant Workers, U.N. Doc. CEDAW/C/2009/WP.1/R (Dec. 5, 2008); CEDAW Committee, General Recommendation No. 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women, U.N. Doc. CEDAW/C/GC/32 (Nov. 14, 2014); CEDAW Committee, General Recommendation No. 37 on the Gender-Related Dimensions of Disaster Risk Reduction in the Context of Climate Change, U.N. Doc. CEDAW/C/GC/37 (Mar. 13, 2018); CEDAW Committee, General Recommendation No. 39 on the Rights of Indigenous Women and Girls, U.N. Doc. CEDAW/C/GC/39 (Oct. 31, 2022).

⁹⁴ Gerard Quinn (Special Rapporteur on the Rights of Persons with Disabilities), *Rights of Persons with Disabilities*, ¶¶ 31-34, submitted to HRC, U.N. Doc. A/HRC/46/27 (Jan. 19, 2021).

⁹⁵ Committee on the Rights of Persons with Disabilities [hereinafter CRPD Committee], General Comment No. 6, ¶¶ 11, 55(a), U.N. Doc. CRPD/C/GC/6 (Apr. 26, 2018).

⁹⁶ UN WOMEN & UNPRPD, INTERSECTIONALITY RESOURCE GUIDE AND TOOLKIT: AN INTERSECTIONAL APPROACH TO LEAVE NO ONE BEHIND (2022); UN WOMEN, ADDRESSING EXCLUSION THROUGH INTERSECTIONALITY IN RULE OF LAW, PEACE AND SECURITY CONTEXT (2020).

⁹⁷ Achiume, *Ecological Crisis, Climate Justice and Racial Justice*, supra note 4 ¶¶ 1-9.

⁹⁸ CESCR General Comment No. 20 ¶¶ 11, 37, 39–40; Human Rights Committee, General Comment No. 31, ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004).

⁹⁹ Human Rights Committee, General Comment No. 18, ¶ 10, U.N. Doc. CCPR/C/21/Rev.1/Add.1 (Nov. 10, 1989); CESCR, General Comment No. 16, ¶ 15, U.N. Doc. E/C.12/2005/4 (Aug. 11, 2005); CESCR General Comment No. 20 ¶¶ 8(b), 9, 39; CEDAW Committee, General Recommendation No. 25, U.N. Doc. HRI/GEN/1/Rev.7 (May 12, 2004). See also ICERD art. 7; CERD General Recommendation No. 32; CRPD Committee, Concluding Observations on the Initial Report of the Dominican Republic, ¶ 50, U.N. Doc. CRPD/C/DOM/CO/1 (May 8, 2015).

¹⁰⁰ CEDAW art. 4(1); CRPD art. 5(4); ICERD art. 2(2); CRPD Committee General Comment No. 6 ¶ 29; Human Rights Committee, General Comment No. 18 ¶ 10.

protected human rights remedy¹⁰¹ that States are required to implement where necessary.¹⁰² The racially disparate impacts of environmental degradation and climate injustice, including the proliferation of racial sacrifice zones, amount to evidence that States that have caused significant harm to the climate system are in breach of these racial equality and non-discrimination obligations.

37. International practices, tribunal decisions and other sources of international law have long held that State breaches of legal obligations entail a responsibility on the part of States to provide full reparations.¹⁰³ As the Permanent Court of International Justice concluded in 1927, “it is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a [breach].”¹⁰⁴
38. The draft articles on responsibility of States for internationally wrongful acts, with commentaries, adopted by the General Assembly in 2001,¹⁰⁵ outline a contemporary understanding of the obligation of States to make reparations. Drawing on existing international law, article 31 of the draft articles codifies the basic reparative obligation of States “to make full reparation for the injury caused by the internationally wrongful act,” where “injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.”¹⁰⁶ In the commentary to the draft articles, it is noted that two of the elements of article 31 correspond to principles enshrined in international law.¹⁰⁷ It is also noted in the commentary that article 31 requires a responsible State to endeavour to “wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed”¹⁰⁸ through the provision of one or more of the forms of reparation. Full reparations entail restitution, compensation and satisfaction, as appropriate. States are required, if possible, to pursue restitution, that is, restoration to the status quo before the internationally wrongful act was committed.¹⁰⁹ If full restitution is not materially possible or is out of proportion to the harm suffered,¹¹⁰ States should supplement their restitution efforts with compensation.¹¹¹ Should restitution and compensation fail to result in full reparations, States have an obligation to implement forms of satisfaction.¹¹² Forms of

¹⁰¹ See CESCR General Comment No. 16, ¶¶ 9, 39; Committee on the Rights of the Child, General Comment No. 4, ¶¶ 1, 12, U.N. Doc. CRC/GC/2003/4 (July 1, 2003).

¹⁰² ICERD art. 2(2); CERD General Recommendation No. 32 ¶ 30; CESCR General Comment No. 20 ¶¶ 8(b), 9; Human Rights Committee General Comment No. 28, ¶ 3, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000).

¹⁰³ Chorzów Factory Case, Merits Judgment No. 13, 47 (Sep. 23, 1928), <https://jsumundi.com/en/document/decision/en-factory-at-chorzow-merits-judgment-thursday-13th-september-1928>.

¹⁰⁴ Chorzów Factory Case, Jurisdiction Judgment No. 8, 21 (Feb. 8, 1927), <https://jsumundi.com/en/document/decision/en-factory-at-chorzow-jurisdiction-judgment-tuesday-26th-july-1927>.

¹⁰⁵ Int'l Law Comm'n, Rep. on the Work of Its Fifty-Third Session, U.N. Doc. A/56/10 (2001).

¹⁰⁶ *Ibid.* at 87, 91.

¹⁰⁷ *Ibid.* at 91-94.

¹⁰⁸ *Ibid.* at 91.

¹⁰⁹ *Ibid.* art. 35.

¹¹⁰ *Ibid.* art. 35.

¹¹¹ *Ibid.* art. 36.

¹¹² *Ibid.* art. 37.

satisfaction may include an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality,¹¹³ such as a guarantee of non-repetition.¹¹⁴

39. The United Nations human rights system follows a more detailed and expansive approach to types of remedies and reparations than the three-pronged approach set out in the draft articles on responsibility of States for internationally wrongful acts. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law¹¹⁵ (“Basic Principles and Guidelines”), adopted by the General Assembly in 2005, aim to consolidate rights and best practices for remedies and reparations recognized within the United Nations human rights system.¹¹⁶ The Basic Principles and Guidelines now constitute an important element of the United Nations human rights system.¹¹⁷
40. The Basic Principles and Guidelines enshrine the longstanding principle of international human rights law that victims of gross violations of international human rights law must be “provided with full and effective reparation,” which may include “restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.”¹¹⁸ Restitution may include: “restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property.”¹¹⁹ Compensation should be provided for damage such as “[p]hysical or mental harm,” “loss of earnings, including loss of earning potential,” and “moral damage.”¹²⁰ Satisfaction should include “[e]ffective measures aimed at the cessation of continuing violations,” and relatedly, guarantees of non-repetition should include “[r]eviewing and reforming laws contributing to or allowing gross violations of international human rights law.”¹²¹
41. In the event of breaches of States’ racial equality and non-discrimination obligations, the ICCPR and ICESCR obligate States to redress harms experienced by victims of any breach through adequate and effective reparations.¹²² Article 6 of ICERD establishes similar obligations for effective remedies and adequate reparation or satisfaction.¹²³ Such reparations

¹¹³ *Ibid.* art. 37(2).

¹¹⁴ *Ibid.* at 88-91.

¹¹⁵ G.A. Res. 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Dec. 16, 2005).

¹¹⁶ Pablo de Greiff (Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence), *Rep. of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence*, ¶ 18, submitted to UNGA, U.N. Doc. A/69/518 (Oct. 14, 2014).

¹¹⁷ See Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child: Mozambique, ¶ 78, U.N. Doc. CRC/C/MOZ/CO/2 (Nov. 4, 2009); Gustavo Gallón (Independent Expert on the Situation of Human Rights in Haiti), *Rep. of the Independent Expert on the Situation of Human Rights in Haiti*, ¶ 93, submitted to HRC, U.N. Doc. A/HRC/34/73 (Mar. 8, 2017).

¹¹⁸ G.A. Res. 60/147, *supra* note 115 annex, ¶ 18.

¹¹⁹ G.A. Res. 60/147, *supra* note 115 annex, ¶ 19.

¹²⁰ G.A. Res. 60/147, *supra* note 115 annex, ¶ 19.

¹²¹ G.A. Res. 60/147, *supra* note 115 annex, ¶¶ 22-23.

¹²² ICCPR art. 2.3; CESCR General Comment No. 3 ¶ 5 (describing that though ICESCR lacks a provision like the one in the ICCPR, explicitly mandating that States provide individuals with a remedy for rights violations under the Covenant, “the enjoyment of rights recognized [under the Covenant], without discrimination, will often be appropriately promoted, in part, through the provision of judicial or other effective remedies.”); G.A. Res. 60/147, *supra* note 115.

¹²³ ICERD art. 6.

are required when states violate their international law obligations to ensure racial equality and non-discrimination in the enjoyment of human rights affected by anthropogenic greenhouse gas emissions and the processes associated with the production of these emissions.

42. In accordance with the draft articles on responsibility of States for internationally wrongful acts, States owe obligations to make reparations for a wide range of violations of international law, including violations of treaty law, as well as crimes against humanity, human rights violations and violations *erga omnes*.¹²⁴ However, the draft articles codify a fairly strict standard regarding a State's international responsibility and the associated obligation to make reparations.¹²⁵ The draft articles decline to discuss the obligations of States to repair harms caused by legal acts,¹²⁶ concluding instead that States only incur international responsibility for acts that are both internationally wrongful and attributable to the State.¹²⁷ Similarly, the widely recognized intertemporal principle limits State responsibility for reparations to those acts that were internationally wrongful at the time the State committed them.¹²⁸ However, the intertemporal principle is not an absolute bar. Extensions in time for international responsibility apply when: (a) an act is ongoing and continues to a time when international law considered the act to be a violation;¹²⁹ or (b) the direct ongoing consequences of the wrongful act extend to a time when the act and its consequences are considered internationally wrongful.¹³⁰
43. States bear reparations obligations for racial equality and non-discrimination protection breached by anthropogenic greenhouse gas emissions and the processes associated with their production at the very latest since 1948 when the United Nations adopted the Universal Declaration of Human Rights, whose non-discrimination obligations have achieved the status of customary international law. To the extent that the racial equality and non-discrimination obligations in international human rights law discussed in the Section above have not achieved the status of customary international law, States Parties to these treaties are bound to repair breaches of these obligations resulting from anthropogenic greenhouse emissions at least since their respective ratifications of these treaties.
44. Furthermore, States bear reparations obligations for *historic* anthropogenic greenhouse emissions whose *contemporary* effects violate racial equality and non-discrimination obligations. As discussed above, the intertemporal principle does not apply "when (a) an act is ongoing and continues into a time when international law considered the act a violation, or (b) the wrongful act's direct ongoing consequences extend into a time when the act and its consequences are considered internationally wrongful."¹³¹ Importantly, this means that claims for reparations for contemporary racial discrimination rooted in racist, colonial systems are not barred by the intertemporal principle.¹³² The intertemporal principle does not bar state

¹²⁴ Int'l Law Comm'n, *supra* note 105 at 32-38, 91-94.

¹²⁵ Int'l Law Comm'n, *supra* note 105 arts. 12-15.

¹²⁶ Int'l Law Comm'n, *supra* note 105 at 31-32.

¹²⁷ Int'l Law Comm'n, *supra* note 105 art. .

¹²⁸ Int'l Law Comm'n, *supra* note 105 art. 13.

¹²⁹ Int'l Law Comm'n, *supra* note 105 art. 1.

¹³⁰ Int'l Law Comm'n, *supra* note 105 art. 15.

¹³¹ Achiume, *Reparation, Racial Justice and Equality*, *supra* note 17 ¶ 49.

¹³² *Ibid.* ¶¶ 49-50.

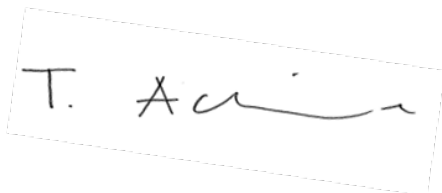
obligations to provide reparations for present-day racially discriminatory effects of slavery and colonialism, including as they relate to anthropogenic greenhouse gas emissions.¹³³

45. Reparations require addressing historic climate injustice, as well as eradicating contemporary systemic racism that is a legacy of historic injustice in the context of the global ecological crisis. Climate migrants and refugees should be provided with the requisite legal and substantive protections, especially in States that have caused significant harm to the climate system and other parts of the environment. In order to cease continuing racial discrimination and related human rights violations and guarantee non-repetition of the racially discriminatory harms caused by anthropogenic greenhouse gas emissions, States responsible for such harms must take all necessary measures to preserve Indigenous homelands and mitigate the effects of climate change on SIDS.
46. To the extent that contemporary international legal principles present barriers to historical responsibility for climate change, the law must be decolonized or transformed in a manner that makes it capable of guaranteeing genuine equality and self-determination for all peoples. Reparations, which entail equitable international economic, political and legal frameworks, are a precondition for reorienting the global order away from racial injustice and ecological crisis.

DECLARATION BY THE EXPERT

I confirm that all the matters about which I expressed my opinion in this Expert Report are within my competence and professional knowledge. I understand that I have an obligation to assist the International Court of Justice with resolving the matters addressed by this Expert Report and I attest that I have fulfilled this obligation. I confirm that the conclusions in this Expert Report are unbiased, objective and impartial; they were not led by the influence of the proceedings, nor of any participant thereto.

Signed in Palo Alto on March 19, 2024

A handwritten signature in black ink, appearing to read "T. Achiume", enclosed within a dashed rectangular border.

E. Tendayi Achiume

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¹³³ *Ibid.* ¶ 49.