



INTERNATIONAL COURT OF JUSTICE

**ADVISORY OPINION OF THE INTERNATIONAL
COURT OF JUSTICE ON THE OBLIGATIONS OF
STATES IN RESPECT OF CLIMATE CHANGE**

**WRITTEN STATEMENT OF THE PLURINATIONAL
STATE OF BOLIVIA**

22 MARCH 2024



PLURINATIONAL STATE OF BOLIVIA
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OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

1. The Plurinational State of Bolivia submits this Written Statement pursuant to Court's Orders of 20 April, 4 August, and 15 December 2023 so as to furnish information on the questions submitted to the Court by the United Nations General Assembly in Resolution 77/276. In that Resolution, adopted by consensus on March 29 March 2023, the General Assembly requested the Court to render an advisory opinion on the following questions.
2. The present Statement is structured as follows: Chapter I shows that the Court has jurisdiction to render the advisory opinion requested and that there no reasons exist for it not to do so. Chapter II will focus on the substantive questions raised on which the opinion of the Court is sought.

CHAPTER I: JURISDICTION AND ADMISSIBILITY OF THE REQUEST

3. Before rendering an advisory opinion, the Court must satisfy itself that "it has jurisdiction to give the opinion requested and if so, whether there is any reason why the Court should, in the exercise of its discretion, decline to answer the request".¹
4. As to the first question, Bolivia submits that the Court has jurisdiction to render the requested advisory opinion. Its jurisdiction is founded in Article 65(1) of its Statute, which provides that "[t]he Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request".
5. There is no doubt that the General Assembly is competent to request an advisory opinion. Its competence to do so is enshrined in Article 96 (1) of the United Nations Charter, which provides that "[t]he General Assembly [...] may request the International Court of Justice to give an advisory opinion on any legal question". The competence of the General Assembly to request the Court to render an advisory opinion on legal questions has also been recognized by the Court,² and should include resolution on the "Protection of the global climate for present and future generations", the latest of which is resolution 77/165 adopted

¹ Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019, p. 95, p. 111, para. 54; Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I), p. 232, para. 10; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I), p. 144, para. 13; Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II), p. 412, para. 17.

² Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019, p. 95, para. 55.



by consensus on 14 December 2022; and the two questions asked by the UN General Assembly are clearly “legal questions”, one focusing on the “obligations of States under international law” and the other on “the legal consequences under these obligations”.

6. The relevant test is therefore whether the questions forming the object of the requests are in fact “legal questions”. Bolivia submits that there cannot be any doubt on the legal nature of these questions, which hinge on the “obligations of States under international law” and “the legal consequences under these obligations”.
7. The Court has also repeated, time and again, that the fact it may possess jurisdiction does not mean that it is obliged to exercise it. The Court has consistently recalled that Article 65, paragraph 1, of its Statute “should be interpreted to mean that the Court has a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met”.³ The Court has, on a number of occasions, clarified that its discretion to do decline to give an opinion “exists so as to protect the integrity of the Court’s judicial function as the principal judicial organ of the United Nations”.⁴
8. At the same time, the Court has repeatedly clarified that its answer to a request for an advisory opinion “represents its participation in the activities of the Organization, and, in principle, should not be refused”.⁵ Accordingly, only “compelling reasons” may lead to a refusal to render the opinion requested.

³ Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019, p. 95, para. 63; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I), p. 156, para. 44; Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II), pp. 415-416, para. 29.

⁴ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I), pp. 156-157, paras. 44-45; Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II), pp. 415-416, para. 29; Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019, p. 95, para. 64.

⁵ (Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950, p. 71; Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999 (I), pp. 78-79, para. 29; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I), p. 156, para. 44). Thus, the consistent jurisprudence of the Court is that only “compelling reasons” may lead the Court to refuse its opinion in response to a request falling within its jurisdiction (Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I), p. 156, para. 44; Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II), p. 416, para. 30; Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019, p. 95, p. 113, para. 65.

9. In this connection, the Court has at times been presented with the argument that questions raising complex and disputed factual issues may not be suitable for determination in advisory proceedings, and that therefore “compelling reasons” should exist in such cases for the Court to decline to exercise its jurisdiction. While there is no question that climate change is an extraordinarily complex matter, it should be recalled that the Court has been requested to render an opinion on two narrower legal questions, namely on the “obligations of States under international law” and “the legal consequences under these obligations”. Moreover, the Court has stated that the decisive test is whether it has “sufficient information and evidence to enable it to arrive at a judicial conclusion upon any disputed questions of fact the determination of which is necessary for it to give an opinion in conditions compatible with its judicial character”.⁶ Bolivia submits that the Court, which has already received a large amount of documentation from the Secretariat of the United Nations; it has authorized, pursuant to Article 66 of its Statute, the participation of several international organizations; and it will no doubt hear statements and comments from many states. There is therefore no doubt that the Court will have before it “sufficient information and evidence” to render the opinion requested in a way that is compatible with its integrity of the Court’s judicial function as the principal judicial organ of the United Nations.
10. Similarly, the Court has at times been invited to exercise its discretion to decline to give an advisory opinion because of the alleged lack of usefulness of its response to the requesting organ. This argument has been rejected by the Court, which has consistently reaffirmed that “it is not for the Court itself to determine the usefulness of its response to the requesting organ. Rather, it should be left to the requesting organ, the General Assembly, to determine ‘whether it needs the opinion for the proper performance of its functions’”.⁷ In any event, Bolivia submits that it cannot be doubted that the advisory opinion requested will be useful to the General Assembly, which regularly addresses different matters relating to climate change, including in its annual resolution on the “Protection of the global climate for present and future generations”, the latest of which is resolution 77/165 adopted by consensus on 14 December 2022.
11. In conclusion, Bolivia submits that no reasons exist, let alone compelling reasons, that may lead the Court to decline to exercise its jurisdiction.

⁶ *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, pp. 28-29, para. 46; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, p. 114, para. 71.

⁷ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, p. 95, para. 76, citing *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010 (II), p. 417, para. 34.

CHAPTER II SUBMISSIONSON THE QUESTIONS

12. The first paragraph of the question put to the Court states:

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

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

13. The nexus between climate change and human rights is increasingly evident and its recognition at the international level has reached significant levels of consensus, not only in the legal regime concerning climate change, but also in international human rights law. The basis of this development lies in the existence of a direct relationship between the increase in Greenhouse gases GHG emissions in the atmosphere, which cause climate change, and the frequency and intensity of the impacts caused by this phenomenon, which entails the amplification of the risks for States, and the present and future generations of their populations, as well as for all the communities of living beings that inhabit the planet.

14. Environmental obligations are implicit in various international human rights instruments, such as the Universal Declaration of Human Rights (right to an adequate standard of living), the International Covenant on Civil and Political Rights (right to life) and the International Covenant on Economic, Social and Cultural Rights (right to health).

15. The Charter of the United Nations in its Article 1 includes among the purposes of the Organizations "to achieve international cooperation in solving international problems of an economic, social, cultural or humanistic character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion".⁸ Similarly, the United Nations shall promote "universal respect for, and

⁸ Article 1, paragraph 2 of the Charter of the United Nations. Op.cit. Subparagraph b. Article 13

observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion".⁹

16. On this understanding, the Economic and Social Council of the United Nations may make recommendations for the promotion of respect for human rights and fundamental freedoms for all and shall establish commissions for their promotion.¹⁰
17. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as the Convention on the Rights of the Child, should also be considered, in addition to the 2021 Resolution of the UN Human Rights Council, which recognized "the right to a clean, healthy and sustainable environment as a human right fundamental to the enjoyment of human rights" and the resolutions issued by the General Assembly of this body, such as resolution 76/300 of July 2022, and, earlier, in the Resolution 48/13 of October 8, 2021 of the Human Rights Council.
18. The 1981 African Charter on Human and Peoples' Rights provides that "all peoples have the right to a general satisfactory environment conducive to their development".¹¹
19. The 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) establishes that "every person has the right to live in a healthy environment".¹²
20. The 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) refers to "the right of every person, of present and future generations, to live in an environment adequate to his or her health and well-being."¹³
21. The Rio Declaration on Environment and Development, Principle 7, states that: "States shall cooperate in a spirit of global solidarity to conserve, protect and restore the health and integrity of the Earth's ecosystem. Because they have contributed to varying degrees to the degradation of the global environment, States have common but differentiated responsibilities. Developed countries recognize their responsibility in the international pursuit of sustainable development, in view of the pressures their societies place on the global environment and the technologies and financial resources at their disposal."

⁹ Article 55(c) of the Charter of the United Nations

¹⁰ Numeral 2 del Artículo 62 y Artículo 68 de la Carta de Naciones Unidas.

¹¹ Article 24 of the African Charter. This Charter has 56 States Parties

¹² Article 11, paragraph 1, Protocol of San Salvador. This Protocol has 16 States Parties

¹³ Article 1 of the Aarhus Convention. The Aarhus Convention has 46 States Parties (plus the European Union)



22. The Declaration also enshrines in its principle 7 the "*principle of common but differentiated responsibilities*" for the degradation of the global environment and, in this sense, highlights the greater responsibility of the developed countries in this respect, both in the sense of having caused such degradation and being responsible for its solution. In this sense, the obligations of States to ensure the protection of the climate system and other elements of the environment from anthropogenic greenhouse gas (GHG) emissions are differentiated according to whether they are developed or developing countries."
23. Likewise, the United Nations Framework Convention on Climate Change (UNFCCC), in its preamble states that: "Recognizing that the global nature of climate change requires the widest possible cooperation of all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions".
24. It thus specifically applies the principle of "common but differentiated responsibilities" to the international legal regime on climate change.
25. As early as 1987, the Report of the World Commission on Environment and Development entitled "Our Common Future", known as the "Brundtland Report", was submitted to the United Nations (UN). This document is one of the most important precedents in terms of international awareness of the problem of climate change.
26. In 1994, when the UNFCCC came into force, the States undertook to act on the issue. This instrument differentiates between Annex I countries (which include developed countries) and non-Annex I countries with respect to responsibilities for GHG emission reductions and the provision of means of implementation (financing, technology transfer and capacity building):

"Article 4.2. The developed country Parties and other Parties included in Annex I specifically undertake the following: (a) Each such Party shall adopt national policies and take corresponding measures to mitigate climate change by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions in a manner consistent with the objective of this Convention, recognizing that a return to earlier levels of anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol by the end of the current decade would contribute to such a modification, and taking into account the differences in starting points and approaches, economic structures and resource bases of these Parties, the need

to maintain strong and sustainable economic growth, available technologies and other individual circumstances, as well as the need for each of these Parties to contribute equitably and appropriately to the global effort to achieve this objective. These Parties may implement such policies and measures jointly with other Parties and may assist other Parties in contributing to the objective of the Convention and, in particular, to the objective of this subsection;

Article 4.3. The developed country Parties and the other developed Parties listed in Annex II shall provide new and additional financial resources to meet the agreed full costs incurred by the developing country Parties in meeting their obligations under Article 12.1. They shall also provide such financial resources, including resources for the transfer of technology, as may be required by developing country Parties to meet the agreed full incremental costs resulting from the implementation of the measures set out in paragraph 1 of this Article and agreed between a developing country Party and the international entity or entities referred to in Article 11, in accordance with that Article. In the implementation of these commitments, account shall be taken of the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among developed country Parties.

Article 4.4. The developed country Parties and other developed Parties included in Annex II shall also assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adapting to the adverse effects of climate change.

Article 4.5. The developing country Parties and other developed Parties listed in Annex II shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, especially developing country Parties, to enable them to implement the provisions of the Convention. In this process, developed country Parties shall support the development and enhancement of endogenous capacities and technologies of developing country Parties. Other Parties and organizations in a position to do so may also contribute to facilitating the transfer of such technologies."

27. Likewise, the Paris Agreement of the afore-mentioned Convention establishes with respect to its objective that: "Article 2.2. This Agreement shall be implemented in a manner that reflects equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances."

28. In this sense, it reaffirms the principle of CBDR-RC with respect to climate change established in the UNFCCC, differentiating the obligations that



developed countries must assume in this regard, which is expressed in the following articles:

"Article 4.4. Developed country Parties should continue to take the lead by adopting economy-wide absolute emission reduction targets. Developing country Parties should continue to enhance their mitigation efforts, and are encouraged to adopt economy-wide emission reduction or limitation targets over time, in the light of different national circumstances.

Article 9.1. Developed country Parties shall provide financial resources to developing country Parties to assist them in both mitigation and adaptation, and thus continue to meet their obligations under the Convention."

29. Article 9.3. As part of a global effort, developed country Parties should continue to take the lead in efforts to mobilize climate finance from a wide range of sources, instruments and channels, taking into account the important role of public funds, through various measures, such as support for country-driven strategies, and taking into account the needs and priorities of developing country Parties. Such mobilization of climate finance should represent a progression from previous efforts.

30. The 15th Conference of the Parties to the UNFCCC (COP15), which was held in Copenhagen, Denmark, established a specific financing target in decision 2/CP.15, in the context of meaningful mitigation actions and transparency on implementation, developed countries decided to commit to a goal of mobilizing jointly USD 100 billion dollars a year by 2020 to address the needs of developing countries. Parties decided that this funding would come from a wide variety of sources, public and private, bilateral and multilateral, including alternative sources of finance, and that new multilateral funding for adaptation would be delivered through effective and efficient fund arrangements, with a governance structure providing for equal representation of developed and developing countries.

31. According to Oxfam's "*Climate Finance Shadow Report 2023*" the real value of the provision in 2020 was at most \$24.5 billion, the Organization for Economic Co-operation and Development (OECD) that developed countries mobilized \$83.3 billion in 2020. According to Oxfam "the \$83.3 billion claim is an overestimate because it includes projects where the climate objective has been overstated or as loans cited at their face value."

32. Likewise, the UNFCCC establishes the conditionality of developing countries to the means of implementation of which they are provided, for the achievement of its objective:

“Article 3.2. Full account should be taken of the specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear an abnormal or disproportionate burden under the Convention.

Article 4.7. The extent to which developing country Parties effectively implement their commitments under the Convention shall depend on the manner in which developed country Parties effectively implement their commitments relating to financial resources and technology transfer, and shall take fully into account that economic and social development and poverty eradication are the first and overriding priorities of developing country Parties.

Article 4.10. In the implementation of commitments under the Convention, the Parties shall, in accordance with Article 10, take into account the situation of Parties, especially developing country Parties, whose economies are vulnerable to the adverse effects of climate change response measures. This applies in particular to Parties whose economies are highly dependent on income generated by the production, processing and export of fossil fuels and associated energy-intensive products, or on their consumption, or on the use of fossil fuels whose substitution would cause them serious difficulties.”

33. The Paris Agreement also includes articles on this conditionality: Article 3. In their Nationally Determined Contributions to the global response to climate change, all Parties shall undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 with a view to achieving the objective of this Agreement as set out in its Article 2. The efforts of all Parties shall represent a progression over time, taking into account the need to support developing country Parties in achieving effective implementation of this Agreement.

“Article 4.1. In order to meet the long-term temperature goal set out in Article 2, the Parties aim to achieve the peaking of global greenhouse gas emissions as soon as possible, bearing in mind that developing country Parties will take longer to achieve this, and thereafter to reduce greenhouse gas emissions rapidly, in accordance with the best available scientific information, to achieve a balance between anthropogenic emissions by sources and removals by sinks in the second half of the century, on the basis of equity and in the context of sustainable development and efforts to eradicate poverty. [...]

Article 4.5. Support shall be provided to developing country Parties for the implementation of this Article, in accordance with the provisions of Articles 9, 10

and 11, bearing in mind that increased support will enable such Parties to increase the ambition of their actions. [...]

Article 4.15. In implementing this Agreement, the Parties shall take into consideration the concerns of those Parties whose economies are most affected by the impact of response measures, particularly those that are developing countries. [...]

Article 7.2. The Parties recognize that adaptation is a global challenge that concerns everyone, with local, subnational, national, regional and international dimensions, and that it is a fundamental component of, and contributes to, the long-term global response to climate change, aimed at protecting people, livelihoods and ecosystems, taking into account the urgent and immediate needs of developing country Parties that are particularly vulnerable to the adverse effects of climate change. [...]

Article 9.4. The provision of increased financial resources should seek a balance between adaptation and mitigation, taking into account nationally determined strategies and the priorities and needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change and have significant capacity constraints, such as the least developed countries and small island developing States, and taking into consideration the need for public and grant resources for adaptation. [...]

Article 9.9. The institutions serving this Agreement, including the operating entities of the Financial Mechanism of the Convention, shall endeavor to provide developing country Parties, in particular the least developed countries and small island developing States, with efficient access to financial resources through simplified approval procedures and enhanced readiness support, in the context of their national climate plans and strategies. [...]

Article 10.6. Support, including financial support, shall be provided to developing country Parties for the implementation of this Article, inter alia, to strengthen cooperative action in the development and transfer of technology at different stages of the technology cycle, with a view to achieving a balance between support for mitigation and adaptation. The global stocktaking referred to in Article 14 shall take into account information reported on efforts related to support for technology development and transfer to developing country Parties. [...]

Article 11.1. Capacity-building under this Agreement should enhance the capacity and capabilities of developing country Parties, in particular those with the least capacity, such as the least developed countries, and those that are particularly vulnerable to the adverse effects of climate change, such as small



island developing States, to take effective action on climate change, inter alia, to implement adaptation and mitigation measures, and should facilitate the development, dissemination and deployment of technology, access to climate finance, relevant aspects of education, training and public awareness, and the communication of information in a transparent, timely and accurate manner.

Article 11.2. Capacity building should be country-owned, based on and responsive to national needs, and encourage the involvement of Parties, particularly developing country Parties, including at the national, sub-national and local levels. Capacity building should be guided by lessons learned, including from capacity building activities under the Convention, and should be an effective, iterative, participatory, gender-responsive, and cross-cutting process.

Article 11.3. All Parties should cooperate to improve the capacity of developing country Parties to implement this Agreement. Developed country Parties should increase the support provided to capacity building activities in developing country Parties."

34. It is important to mention the "*Declaration on the Right to Development*" adopted by resolution 41/128, and resolution A/RES/77/212 entitled "*The Right to Development*" of the United Nations General Assembly, which reaffirms that the right to development is a universal and inalienable right and an essential part of fundamental human rights and that each person is the central subject and beneficiary of development, It is therefore fundamental that this right to development be related to the right to a healthy environment, recognizing also that historical injustices, among other things, have contributed to the poverty, underdevelopment, marginalization, social exclusion, economic disparity, instability and insecurity that affect many people in different parts of the world, especially in developing countries.
35. Recognizing that, both historically and today, most of the world's greenhouse gas emissions have originated in developed countries, that per capita emissions in developing countries are still relatively low, and that the proportion of total emissions originating in these countries will increase to enable them to meet their social and development needs.
36. The preamble also states that; "Recalling also that States, in accordance with the Charter of the United Nations and the principles of international law, have the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction",

"Recalling also that States, in accordance with the Charter of the United Nations and the principles of international law, have the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction".

37. According to the above, although the resolutions of the General Assembly are not binding, they are documents that emerge in the framework of the negotiation process with the UN Member States, in order to fulfill the mandate by which this body was created, respect the Charter of the United Nations as well as make and assume different commitments in order to fulfill the 2030 Agenda on Sustainable Development and its seventeen Goals.
38. Bolivia recognizes as the structural causes of climate change the current anthropocentric model, and in particular with the capitalist world system of the last two centuries, which has caused the current climate crisis and is modifying the life cycles of Mother Earth, causing the collapse of several ecosystems, the extinction of species, the change in the ways of life of hundreds of millions of people around the world, the extension of hunger and poverty in the world and a growing climate migration. It is urgent to give rise to a new civilizational horizon based on a cosmo-biocentric vision where human beings live in harmony with all living beings of Mother Earth.
39. It also considers that developed countries have disproportionately used the carbon budget to benefit from irrational development, while the most vulnerable to climate change are the peoples of developing countries, who have not contributed significantly to the alteration of atmospheric composition but who nevertheless bear a large part of the current impacts.
40. Along these lines, there is broad recognition in international law of the interdependent relationship between environmental protection, sustainable development, and human rights. This interrelationship has been affirmed since the Stockholm Declaration on the Human Environment, which stated that *"economic and social development is indispensable to ensure a favorable living and working environment for man and to create conditions on Earth for improving the quality of life"*, affirming the need to balance development with the protection of the human environment.
41. Subsequently, in the Rio Declaration on Environment and Development, States recognized that *"human beings are at the center of concerns for sustainable development"* and, at the same time, stressed that *"in order to achieve sustainable development, environmental protection must be an integral part of*



the development process". In this sense, there is an undeniable relationship between environmental protection and human rights, since environmental degradation and the adverse effects of climate change affect the effective enjoyment of human rights.

42. Bolivia considers that climate obligations are framed within the international human rights law cited in the preceding paragraphs, in terms of the duties of States to protect human rights; under international law and in connection with the protection of the aforementioned human rights, the protection of the climate system and other elements of the environment from anthropogenic emissions of greenhouse gases must be guaranteed in favor of the States and present and future generations, within the scope of the commitments assumed under the United Nations Framework Convention on Climate Change and its Paris Agreement, under the guiding principle of common but differentiated responsibilities to establish the obligations arising from these; therefore, developed countries must assume the historical responsibility they have both in;

(a) Leading the reduction of GHG emissions, allowing developing countries to have the remaining carbon budget¹⁴ to exercise their right to development,

(b) Provide means of implementation to developing countries, which are conditioned to this assistance, to enable them to adapt to the impacts of climate change that are already occurring, provide financial assistance, technology transfer and capacity building for the damages and losses caused, as well as to enable them to develop in a sustainable manner with low emissions, within the framework of nationally determined national contexts and priorities.

43. Legal consequences under those obligations of the conduct of States which has caused climate change and its impacts:

(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;

¹⁴ <https://www.carbonbrief.org/guest-post-what-the-tiny-remaining-1-5c-carbon-budget-means-for-climate-policy/>

44. The solution to the climate crisis must be based on a vision of climate justice that treats all countries and peoples fairly, particularly developing countries and vulnerable groups, who, although they have not caused the climate crisis, bear the significant burden of its impacts and potential solutions. Developed countries must assume their responsibility and leadership to face the climate crisis, assuming the payment of the climate debt that corresponds to them, within the framework of the principle of equity and common but differentiated responsibilities, which should consider the equitable distribution of the remaining carbon budget, considering the right to integral development of the countries and the historical and cumulative responsibility of GHG emissions.
45. Within the international legal framework established above, it is important to highlight that, 10 years after the adoption of the UNFCCC, in 2004, according to an IPCC report,¹⁵ “developed countries (UNFCCC Annex I countries) hold a 20% share in the world population but account for 46.4% of global GHG emissions. In contrast, the 80% of the world population living in developing countries (non-Annex I countries) account for 53.6% of GHG emissions.”
46. Also, by 2020, the cumulative historical GHG emissions of just 23 developed countries accounted for approximately half of all global GHG emissions, with more than 150 countries emitting the other half.¹⁶
47. Approximate per capita GHG emissions from some of the developed countries with the highest emissions, calculated based on UNFCCC data, should be considered.¹⁷ And that reality is also shown in the statistics and data as of 2021, 27 years after the entry into force of the UNFCCC.¹⁸
48. According to data from Carbon Brief¹⁹, taking 1850 as the base year, until 2021, developed countries continue to be the main responsible for the climate crisis, considering the criterion of emissions per population: “What matters for the atmosphere and the climate is cumulative CO₂ emissions. While cumulative per-capita emissions are interesting, they shouldn’t be interpreted as country shares of responsibility because they’re not directly relevant to the climate. You would have to multiply it by the country’s population to make that link to warming.”

¹⁵ <https://www.ipcc.ch/site/assets/uploads/2018/02/ar4-wg3-chapter1-1.pdf>

¹⁶ <https://www.nytimes.com/interactive/2021/11/12/climate/cop26-emissions-compensation.html>

¹⁷ https://di.unfccc.int/global_map

¹⁸ https://di.unfccc.int/global_map. Canada: 17.07 tCO₂; United States: 16.65 tCO₂; Denmark: 8.06 tCO₂; Germany: 9.19 tCO₂; United Kingdom: 6.3 tCO₂; New Zealand: 10.88 tCO₂; Ukraine: 8.24 tCO₂; Japan: 8.88 tCO₂.

¹⁹ <https://w.carbonbrief.org/analysis-which-countries-are-historically-responsible-for-climate-change/>

49. According to the Intergovernmental Panel on Climate Change (IPCC), the commitments reflected by the States in their obligations under the Paris Agreement would be far from limiting the average global temperature to 1.5°C; on the contrary, a trajectory towards a temperature above 2°C is predicted, if these commitments are not implemented. This would have devastating consequences, especially for the most vulnerable and those who bear the least responsibility for the causes of climate change.
50. Costa Rica claimed the "*right to a clean, healthy and sustainable environment*" in defense of its bans on offshore oil and gas development and open-pit metals mining. It was successful both at the national level and in the country's Constitutional Court, as well as in international arbitration proceedings under investment and trade treaties.
51. Some of the cases that fail in domestic courts reach regional judicial bodies, such as the Inter-American Court and the European Court of Human Rights.
52. The European Court of Human Rights, has a long tradition of considering environmental cases, but has just begun to consider its first contentious cases related to climate change. It currently has twelve cases pending.
53. In the regional framework, the Inter-American Commission on Human Rights recalls that climate change directly affects the right to a healthy environment, which has been recognized as an autonomous and justiciable human right by the jurisprudence of the organs of the Inter-American Human Rights System. Advisory Opinion 23/17²⁰ of the Inter-American Court of Human Rights (IACHR), stipulates that the protection of this right is not only intended to protect the interest of individuals in ecosystems, but also aims to protect nature and all its components for their intrinsic value. Likewise, the Inter-American Commission and Court understand that the "jurisdiction" referred to in Article 1.1 of the American Convention contemplates circumstances in which extraterritorial conduct by States constitutes an exercise of jurisdiction by that State.
54. In particular, climate change poses serious threats to States particularly vulnerable to this phenomenon, among which are the small island States. According to the IPCC, average temperatures in the region have increased between 0.1° and 0.2°C every decade over the last three decades. Rainfall patterns in the region have changed, and an increase in the number of consecutive dry days is expected.

²⁰ https://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf

55. In addition, sea levels have risen at a rate of two to four centimeters per decade over the past 33 years, a pattern that poses serious risks to valuable freshwater resources and to coastal populations dependent on tourism and agriculture.

ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?;

56. According to the United Nations Special Rapporteur on Human Rights and the Environment, the right to a healthy environment is now recognized by law in more than 150 countries and included in more than 100 constitutions. Furthermore, national and international courts have issued their first rulings on environmental matters, marking a historic milestone for the determination of the legal responsibilities of States.

57. The United Nations International Law Commission, in its report for the 72nd session in 2021, states in the section on the draft guidelines on the protection of the atmosphere that "*special consideration should be given to individuals and groups particularly vulnerable to air pollution and atmospheric degradation*"²¹.

58. According to the United Nations Special Rapporteur on Human Rights and the Environment, the right to a healthy environment is now recognized by law in more than 150 countries and included in more than 100 constitutions. Furthermore, national and international courts have issued their first rulings on environmental matters, marking a historic milestone for the determination of the legal responsibilities of States.

59. For its part, the United Nations International Law Commission, in its report for the 72nd session in 2021, states in the section on the draft guidelines on the protection of the atmosphere that "*special consideration should be given to individuals and groups particularly vulnerable to air pollution and atmospheric degradation.*"²²

60. The risk of harm is particularly high for those segments of the population that are currently marginalized or vulnerable or that, due to discrimination and pre-existing inequalities, have limited access to decision-making or resources, including women; children and adolescents; indigenous peoples; people with disabilities; people living in informal settlements; migrants; peasants; and people

²¹ A/76/10 United Nations General Assembly (26 April to 4 June and 5 July to 6 August 2021)

²² A/76/10 United Nations General Assembly (26 April to 4 June and 5 July to 6 August 2021)

living in rural areas²³. This is despite the fact that they have contributed marginally to greenhouse gas emissions, the main cause of the climate crisis.

61. Certain civil society groups and some indigenous communities have used the "*right to the environment*" as an argument to challenge inadequate climate action and problems in air and water quality, as well as the lack of protection of biodiversity, among other issues.
62. Progress has been made in national courts, such as the case of the Urgenda Foundation and 900 Dutch citizens²⁴, who successfully sued the government of the Netherlands in 2015 for not doing enough to reduce greenhouse gas emissions. The case was filed in 2015 and finally upheld by the Supreme Court in 2019. This case was emblematic as it spurred a movement to file such cases and try to get greater recognition of state responsibility.
63. On March 29, 2023, the Grand Chamber of the European Court held its first two public hearings on climate cases. The *Carême v. France* case²⁵ is a lawsuit brought by a resident and former mayor of the French municipality of Grande-Synthe, alleging that the French government has failed to take sufficient measures to prevent climate change and thus protect the lives of people under its jurisdiction. The case, *Verein Klima Seniorinnen Schweiz et al. v. Switzerland*²⁶, was brought by a group of elderly Swiss women concerned about the consequences of global warming on their living conditions and health.
64. Progress has been slower when it comes to lawsuits against private companies. In one notable case, an environmental group "Friends of the Earth" in the Netherlands sued Royal Dutch Shell in the District Court in The Hague, alleging that the oil company breached its duty of care and human rights obligations by contributing to climate change with its carbon dioxide emissions. The Dutch court ordered Shell to reduce its emissions by 45% by 2030, compared to 2019 levels.
65. From the Latin American society, the actions developed by individuals and peoples are framed at the national level and then at the regional level, based on the right to a healthy environment.

²³ https://www.oas.org/es/cidh/decisiones/pdf/2021/resolucion_3-21_spa.pdf

²⁴ <https://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/>

²⁵ <https://climatecasechart.com/non-us-case/careme-v-france/>

²⁶ At: <https://climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-council-and-others/>

66. The case called *La Oroya Community v. Peru*²⁷, pending before the Inter-American Court, deals with the right to a healthy environment in the context of industrial air pollution and toxic substances.
67. Human rights law is reinforced by the comments and decisions of the relevant treaty bodies, which in turn are not unrelated to different areas of law. This can be seen, for example, when the Human Rights Committee responded to a complaint about alleged violations of the International Covenant on Civil and Political Rights (ICCPR) for failure to respond to climate change in the case of "*Billy v. Australia*"²⁸, ruled against Australia's claim that the climate regime was not relevant to the ICCPR.
68. At the regional level, the Inter-American Court has been progressive on environment and human rights but has yet to rule in a case specifically addressing climate change. However, the IACHR has on several occasions taken progressive positions on environmental protection. For example, in relation to the obligation of states to cooperate for the preservation of goods shared by humanity, the court has reiterated the importance of the principle of international cooperation²⁹. Likewise, the IACHR, in its Advisory Opinion on the right to a healthy environment, clarified its jurisdiction to resolve disputes in which environmental harm has negatively impacted private individuals. In adjudicating cases, the Court determined that there are 3 types of obligations to be taken into account: (i) obligations to prevent environmental harm, (ii) obligations to cooperate and (iii) obligations to Provide Information, Justice and Public Participation.
69. In this understanding, domestic climate litigation can drive legal change at the international level and the indirect consequence of drawing attention to the climate crisis and pointing the finger at parties that fail to meet their obligations.

²⁷ https://www.corteidh.or.cr/docs/tramite/comunidad_la_oraya.pdf

²⁸ https://www.corteidh.or.cr/docs/tramite/comunidad_la_oraya.pdf

²⁹ The Advisory Opinion OC-23/17 (15 November 2017) requested by the Republic of Colombia to the Interamerican Court of Human Rights

CONCLUSIONS

70. On the basis of the foregoing considerations, the Plurinational State of Bolivia respectfully submits that the following elements should be part of the answers of the Court to the questions raised by the General Assembly in its request for an advisory opinion contained in Resolution 77/276.
71. Bolivia is of the view that, in the present case, the Court has jurisdiction to entertain the present request for an advisory opinion, and believes that the rendering of an advisory opinion by the Court would be of assistance to the General Assembly for the proper exercise of its functions, and thus the opinion from the Court has an historical role and could significantly contribute to preventing issues on climate change, which is, in the end, the main function of the Court as the principal judicial organ of the United Nations.
72. The present statement is without prejudice to the possibility to submit further comments regarding the statements presented by other States and organizations, in accordance with the timetable set by the Court. The Plurinational State of Bolivia also reserves its right to participate in the hearings, as set by the Court in due course.



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