

INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)



Written Comments of Saint Vincent and the Grenadines

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I Introduction

- 1) Pursuant to the Order of the President of the Court of 30 May 2024, Saint Vincent and the Grenadines hereby submits its written comments on the written statements presented in connection with the request for an advisory opinion contained in UN General Assembly Resolution 77/276, adopted by consensus on 29 March 2023.
- 2) Scientific evidence firmly establishes that our planet is now in a period marked by accelerated and hazardous human-induced climate change, known as the Anthropocene Epoch, which began around the late 1940s to early 1950s, following the Holocene Epoch. While hurricanes and storms have always existed, the ongoing transformation of planetary boundaries by human actions particularly driven by exploitative global capitalism has resulted in these weather events becoming more frequent, intense, and catastrophic, particularly for Small Island Developing States (SIDS) like Saint Vincent and the Grenadines.
- 3) Saint Vincent and the Grenadines underscores that in the current century, the scale of global warming, fuelled by the excessive release of greenhouse gases from modern industrial activities and consumption patterns, particularly in developed and emerging capitalist nations, has increased at an alarming rate. This escalation is a result of both past emissions and ongoing accelerations.
- 4) Humanity's existing path is steering Earth towards a catastrophic future, with SIDS—despite their minimal contribution to this crisis—being the most vulnerable to its effects. According to scientific findings, SIDS warn that global warming beyond 1.5 degrees Celsius above pre-industrial levels will rapidly lead to the collapse of nations like Saint Vincent and the Grenadines. Given the present trajectory, SIDS are calling out with urgency: "1.5 to stay alive!" It is a frightening prospect that instead of achieving "net zero" emissions, humanity appears to be on course to surpass the critical 1.5 degrees Celsius limit. At this point, the accuracy of "1.5 to stay alive" is even being questioned given the calamitous impacts that are being experienced below the 1.5 mark.

- 5) Saint Vincent and the Grenadines through the following comments addresses specific issues arising from the written statements submitted by other States and international organisations.
- 6) As such, Saint Vincent and the Grenadines respectfully submits that the International Court of Justice should have regard to the following key issues when formulating its advisory opinion with climate justice as the benchmark:
 - a) **Identification of State Obligations:** The Court must determine the obligations that States have concerning their actions and omissions that result in greenhouse gas (GHG) emissions causing substantial harm to the climate system as an integral component of the environment.
 - b) **Advisory Jurisdiction and Negotiation Processes:** The Court's previous advisory opinions affirm the appropriateness of exercising its advisory jurisdiction to elucidate the rights and obligations of parties involved in ongoing negotiation processes.
 - c) **Climate Protection Instruments:** The UNFCCC and the Paris Agreement are not the sole instruments designed to safeguard the climate system from significant harm due to GHG emissions. This protection also derives from the explicit terms and limited scope of these instruments and is informed by relevant decisions of the Court and other relevant bodies.
 - d) **Composite Acts and State Responsibility:** A series of acts or omissions, when collectively resulting in significant harm to the climate system, constitutes a breach arising from a composite act. Consequently, each State engaging in any such act or omission bears responsibility, which entails legal consequences including cessation of the harmful activities and reparations for the damage caused. These reparations include, but are not limited to, restitution and compensation, which are within the purview of the climate change legal regime.

II Issues Arising from Written Statements

A. Jurisdiction

- 7) Saint Vincent and the Grenadines posits that the three fundamental points before the Court are:
 - i) whether the Court has jurisdiction to render the advisory opinion requested;

- ii) whether there are any compelling reasons why the Court should not use the power it has to render the advisory opinion; and
 - iii) whether there are any exceptional grounds to reformulate the question.
- 8) Saint Vincent and the Grenadines rebuts the mischaracterisation of the formulation of questions and the role entrusted by the UN General Assembly to the Court. These mischaracterisations by the respective States are listed as follows -
- i) the question is “*not precise enough*” (para 14 Iran);
 - ii) the question is “*inviting the Court to enter lex ferenda*” (para 14 Iran);
 - iii) the Court may consider reformulating the question (para 25 Iran; para 10 South Africa);
 - iv) the Court should be mindful of its “*judicial function*” and not to “*exercise a political function*” as “*States are currently engaged in negotiations regarding the legal obligations with respect to climate change*” and “*The development of new international law is a political matter...*” and because the primary obligations arise under the UNFCCC, the Kyoto Protocol and the Paris Agreement (paras 3.11- 3.12 Saudi Arabia; paras 15–23 OPEC); and
 - v) pronouncements from multiple international courts/tribunals on climate change may lead to “*fragmentation in international law, creating uncertainty and potentially allowing for forum shopping*” (para 11 South Africa).
- 9) Saint Vincent and the Grenadines emphasise that the relevant provisions are Article 96(1) of the United Nations Charter and Chapter IV of the Statute of the ICJ, particularly Article 65(1). Article 96(1) of the United Nations Charter states that: “*The General Assembly [...] may request the International Court of Justice to give an advisory opinion on any legal question*”. Further, Article 65(1) of the ICJ Statute states that: “*The 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.*”
- 10) Therefore, on the foregoing issues, Saint Vincent and the Grenadines makes the following arguments:
- (a) In rebutting the points at paragraph 8 (i) and 8 (iii) (above), it must be emphasised that the Court has only reformulated the questions posed to it under extraordinary

circumstances, for reasons that have no significance on the current situation.¹ Moreso, it is pertinent to note that in this context that the specific formulation of the question was adopted **by consensus** following intense negotiations on the wording. It is argued that the expression “*legal consequences*” was expressly stated mindful of the Court’s statement, in its advisory opinion on Kosovo, that “*in past requests for advisory opinions, the General Assembly and the Security Council, when they have wanted the Court’s opinion on the legal consequences of an action, have framed the question in such a way that this aspect is expressly stated*”.² More importantly, it is inadmissible to argue in good faith that the language of a resolution that was co-sponsored by approximately 130 States when it was presented and that the States of the General Assembly then unanimously adopted does not accurately reflect the specifics that the General Assembly requires the Court to clarify.

- (b) Contrary to point 8 (ii), it should be stressed that the argument that the Court is invited to create law is contrary to the express wording of Resolution 77/276 which requests the Court “*having particular regard to*” (Chapeau) a list of rules and instruments which are binding, then to clarify the obligations of States “*under international law*” (Question (a)) and, finally, to determine “*legal consequences under these obligations*” (Question (b)). Moreover, in its Advisory Opinion on the *Legality of Nuclear Weapons*, the Court had made clear that it can answer abstract questions:

“it is the clear position of the Court that to contend that it should not deal with a question couched in abstract terms is ‘a mere affirmation devoid of any justification’, and that ‘the Court may give an advisory opinion on any legal question, abstract or otherwise” (*Conditions of Admission of a State to Membership in the United Nations (Article 4 of Charter)*, Advisory Opinion, 1948, I.C.J. Reports 1947–1948, p. 61; see also *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*, Advisory Opinion, I. C.J. Reports 1954, p. 51 ; and *Legal Consequences for States of the Continued Presence of South Africa in*

¹ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 403, para. 50.

² *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 403, para. 51.

Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 27, para. 40)³

(c) Saint Vincent and the Grenadines refutes the aforementioned at point 8 (iv), as the political nature of a question, including the existence of negotiations, has been expressly rejected by the Court as a relevant consideration for the decision of whether to render or not an advisory opinion. The Court has previously acknowledged that obtaining an advisory opinion may be “*particularly necessary*” to clarify “*the legal principles applicable with respect to the matter under debate*”.⁴ Ironically, in paragraph 3.11 of Saudi Arabia’s written statement, where it purports to limit the Court’s function, it also acknowledged that “*the existence of ongoing negotiations does not legally prevent the Court from exercising its judicial function*”. Saint Vincent and the Grenadines concurs with the latter position, thus reiterating that the Court is empowered to give the advisory opinion on the obligation of States under the current existing international law regime and is not creating new international law. Moreover, the Court has underscored that it is not within its purview to challenge the General Assembly’s determination regarding the political utility of an advisory opinion. This principle is particularly pertinent when the resolution requesting the opinion is adopted by consensus, thereby conveying a clear and unequivocal message that, at this specific moment, the Court’s guidance is considered indispensable. Climate negotiations stand to gain significantly from a definitive pronouncement on the principal obligations and their implications for conduct contributing to climate change. In its advisory opinion on *Kosovo*, the Court explicitly recognized that:

“Nor does the Court consider that it should refuse to respond to the General Assembly’s request on the basis of suggestions, advanced by some of those participating in the proceedings, that its opinion might lead to adverse political consequences. Just as the Court cannot substitute its own assessment for that of the requesting organ in respect of whether its opinion will be useful to that organ, it cannot — in particular where there is no basis on which to make such an assessment — substitute its own view as to whether an opinion would be likely to have an

³ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 15.

⁴ *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion*, I.C.J. Reports 1980, p. 73, para. 33. *Aegean Sea Continental Shelf (Greece v. Turkey), Judgment*, I.C.J. Reports 1987, p.12, para 29 “[T]he fact that negotiation is being actively pursued during the present proceedings is not, legally, any obstacle to the exercise by the Court of its judicial function.”

adverse effect. As the Court stated in its Advisory Opinion on *Legality of the Threat or Use of Nuclear Weapons*, in response to a submission that a reply from the Court might adversely affect disarmament negotiations, faced with contrary positions on this issue “there are no evident criteria by which it can prefer one assessment to another”⁵

(d) Saint Vincent and the Grenadines argues against point 8 (v) as a fundamental argument, the Court has consistently maintained that the existence of pending proceedings on related matters has never precluded it from delivering an advisory opinion. Moreover, the relevant proceedings concern much narrower normative contexts, specifically that of the United Nations Convention on the Law of the Sea and the American Convention on Human Rights. In agreement with the Written Submissions of Saint Lucia⁶, Vanuatu,⁷ Kenya⁸ and Portugal⁹ on the point that these advisory opinions will not result in fragmentation. The concurrent proceedings before the International Tribunal for the Law of the Sea (ITLOS) and the Inter-American Court of Human Rights (IACtHR) present no impediment to this Court's consideration of the matters at hand. The questions referred to this Court are of a broader scope than those under review in the other forums. Moreover, any overlap in referrals does not justify the Court, as the principal judicial organ of the United Nations, declining to respond to a valid request from the UN General Assembly. On the contrary, the existence of these other advisory proceedings underscores the shared recognition among States of the necessity for judicial clarity on the intersection of international law and climate change. As such, Saint Vincent and the Grenadines posits that the Court is not limited in considering the opinions rendered from the respective bodies in crafting its advisory opinion. Rather than fragmenting international law, these alternative procedures will provide the Court with the advantage of understanding and considering the perspectives of judicial bodies specifically established to interpret the relevant treaties.

⁵ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 403, para. 35.

⁶ *Saint Lucia Written Submissions para 15.*

⁷ *Vanuatu Written Submissions paras 46-50.*

⁸ *Kenya Written Submissions para 4.5.*

⁹ *Portugal Written Submissions para 23-37.*

B. States Conduct

- 11) The precise definition of the conduct underlying the two questions presented to the Court is of critical importance. Without this clarification, the Court would be unable to determine which legal obligations apply to such conduct or to ascertain the legal consequences arising from it—specifically, the consequences of having substantially contributed to the causation of climate change.
- 12) There exists a scientific consensus regarding the cause of climate change, specifically the anthropogenic emissions of greenhouse gases over time. This consensus is articulated in the reports of the Intergovernmental Panel on Climate Change (IPCC), including in their Summaries for Policymakers,¹⁰ which are adopted by States, acting by consensus, following a procedure of line-by-line approval.¹¹ This consensus is explicitly articulated in preambular paragraph 9 of UN General Assembly Resolution 77/276, serving as a prelude to the request for an advisory opinion:

*“Noting with utmost concern the scientific consensus, expressed, inter alia, in the reports of the Intergovernmental Panel on Climate Change, including that anthropogenic emissions of greenhouses gases are unequivocally the dominant cause of the global warming observed since the mid-20th century”*¹²

- 13) The conduct responsible for climate change is explicitly characterized in the text of the resolution, initially described in broad and general terms (Question (a) refers to

¹⁰ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.1 (“Human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850–1900 in 2011–2020”); Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement A.1 (“It is unequivocal that human influence has warmed the atmosphere, ocean and land”)

¹¹ Intergovernmental Panel on Climate Change, Appendix A to the Principles Governing IPCC Work: Procedures for the preparation, review, acceptance, adoption, approval and publication of IPCC Reports (adopted 15th sess, San José, 15-18 April 1999; amended 37th sess, Batumi, 14-18 October 2013), sections 2 and 4.4.

¹² UN General Assembly Resolution 77/276: “Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change”, preambular paragraph 9, relying on Intergovernmental Panel on Climate Change, *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2014), statement 1.2 ; Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement A.1.

“*anthropogenic emissions of greenhouse gases*”), then in more detail so as to guide the identification of the relevant obligations (preambular paragraph 5, refers to “*the conduct of States over time in relation to activities that contribute to climate change and its adverse effects*”). Ultimately, the resolution provides detailed specificity, enabling the Court to determine whether, as a matter of principle, the conduct in question is consistent or inconsistent with international law, and if found inconsistent, to assess the specific legal consequences that follow (Question (b) refers to “*acts and omissions*” whereby States “*have caused significant harm to the climate system and other parts of the environment*”).

- 14) Saint Vincent and the Grenadines relies on the evidence reported in the Written Statement of Vanuatu in providing the Court with specific empirical information to identify who are the main State emitters of greenhouse gases, individually and collectively,¹³ and the share of both emissions and global warming for which each of them (and groups thereof) is responsible.¹⁴
- 15) The GHG emissions from these individual States, collectively, have caused not only significant damage to the climate system and other parts of the environment but also catastrophic harm, manifested as climate change and its adverse effects. Consequently, there exists a robust evidentiary foundation for the Court to examine the Relevant Conduct not only in general terms but also at the level of individual States or specific groups of States. There is precedent for this approach. In its advisory opinion on the *Legality of Nuclear Weapons*, the Court was consulted about the permissibility “*under international law*” of the “*threat or use of nuclear weapons*” with regard to “*any circumstance*”. The General Assembly did not identify any individual State or group of States, nor did it specify any particular set of circumstances involving threat or use.¹⁵ The Court addressed the conduct in general, at times distinguishing between “*nuclear-weapon States*” and “*non-nuclear-weapon States*” as well as identifying other relevant subjects such as individual bearers of the human right to life.¹⁶

¹³ Written Statement of Vanuatu, paras. 151-154, 162-170, 177-192.

¹⁴ Written Statement of Vanuatu, paras. 162-170.

¹⁵ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 1.

¹⁶ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, paras. 24-25, 60-63.

(i) Attribution Science

- 16) Saint Vincent and the Grenadines concur with the submissions of Sri Lanka that attribution science is fundamental in assessing climate change and that it has been accepted through State consensus¹⁷. It is hereby asserted that robust and credible scientific evidence establishes a direct correlation between the causative sources of climate change and its resulting impacts, particularly as demonstrated by attribution science. Consequently, event attribution serves as a critical precursor to source attribution, thereby enabling the determination that specific extreme weather events can be traced to particular anthropogenic sources. The most compelling evidence is found in instances of extreme heatwaves, severe rainfall, intense precipitation, coastal flooding, and prolonged drought conditions.
- 17) The IPCC AR6¹⁸ issues several authoritative declarations regarding attribution science, consistently expressing these findings with a high confidence including:

“A.3.2. The frequency and intensity of heavy precipitation events have increased since the 1950s over most land area for which observational data are sufficient for trend analysis (*high confidence*), and human-induced climate change is likely the main driver. Human-induced climate change has contributed to increases in agricultural and ecological droughts in some regions due to increased land evapotranspiration¹⁶ (*medium confidence*).”

“A.3.4. It is likely that the global proportion of major (Category 3–5) tropical cyclone occurrence has increased over the last four decades, and it is very likely that the latitude where tropical cyclones in the western North Pacific reach their peak intensity has shifted northward; these changes cannot be explained by internal variability alone (*medium confidence*). There is low confidence in long-term (multi-decadal to centennial) trends in the frequency of all-category tropical cyclones. Event attribution studies and physical understanding indicate that human-induced climate change increases heavy precipitation associated with tropical cyclones (*high confidence*), but data limitations inhibit clear detection of past trends on the global scale.”

¹⁷ Sri Lanka Written Submissions para 27.

¹⁸ IPCC, Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Summary for Policymakers, statement A.3.2,A.3.4, available at:

https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf

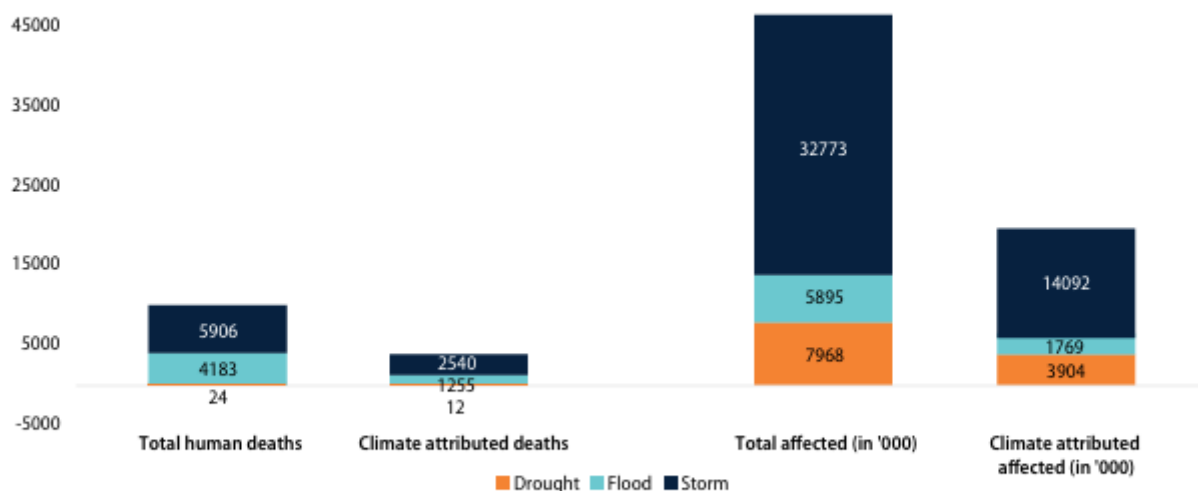
- 18) Beyond the scope of event attribution, which assesses the influence of climate change on specific recent extreme weather events, a new and rapidly advancing field known as impact attribution has emerged in recent years. Impact attribution builds upon traditional event attribution techniques by incorporating socio-economic impact data to determine the contribution of climate change to the observed effects of extreme weather events. Therefore, the assertion in paragraph 2.26 of Written Submissions of the United States of America does not fully encompass the current breadth of scientific understanding available.
- 19) SIDS experience disproportionately severe macroeconomic and fiscal impacts from extreme weather events due to their limited population size, constrained resources, narrow economic sectors, and restricted human resource capabilities (Wilkinson *et al.*, 2023)¹⁹. As the frequency and intensity of such events escalate, SIDS will likely incur greater debt, diminishing their capacity to invest in resilience measures. This, in turn, will impair their ability to effectively respond to future disasters. Consequently, climate change is expected to initiate a detrimental cycle in SIDS, impeding opportunities for sustainable development (Wilkinson *et al.*, 2023). According to Panwar *et al.*(2023)²⁰ which calculates the attributable loss and damage from extreme weather events in the SIDS, it was found that –

“From 2000 to 2022, a total of 10,113 deaths associated with climate-related events were recorded in SIDS, of which anthropogenic climate change is responsible for an estimated 38% (a total of 3,806 deaths) (Figure 1)...Climate change is responsible for 39% (\$41.3 billion) of total economic losses recorded (Figure 2), of which 65% are due to loss of life, measured as statistical loss of life (SLOL)”

¹⁹ Wilkinson, E., Panwar, V., Pettinotti, L., Cao, Y., Corbett, J. and Bouhia, R. (2023) *A fair share of resilience finance for Small Island Developing States: Closing the gap between vulnerability and allocation*. Overseas Development Institute. London: ODI.

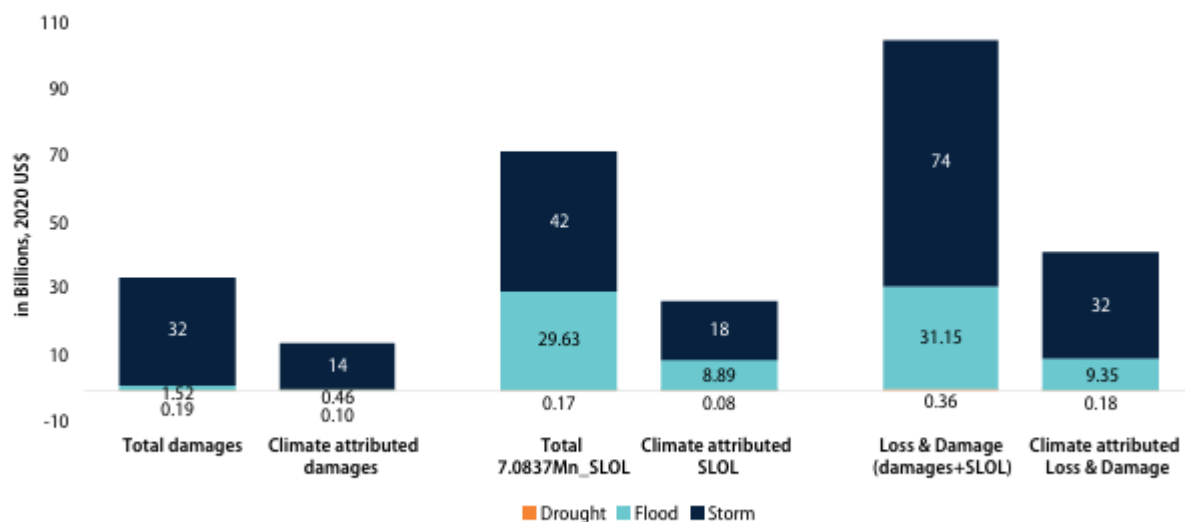
²⁰ Panwar, V., Noy, I., Wilkinson, E. and Corbett, J. (2023) *The Costs of Inaction: Calculating climate change-related loss and damage from extreme weather in Small Island Developing States*. ODI Working Paper. London: ODI. p. 6. <https://odi.org/en/publications/calculating-loss-and-damage-from-extreme-weather-in-sids>

Figure 1 Climate-attributed loss and damage (deaths and numbers affected) in SIDS during the period 2000–2022, cumulative and by event type



Note: Analysis is based on the disaster damage records of EM-DAT, using regional average FARs. Analysis includes 37 of the 39 UN Member SIDS, excluding Singapore and Nauru. All figures are in 2020 US\$.

Figure 2 Climate-attributable loss and damage (economic losses) in SIDS (2000–2022), cumulative and by event type



Note: Analysis is based on the disaster damage records of EM-DAT, using regional average FARs. Analysis includes 37 of the 39 UN Member SIDS, excluding Singapore and Nauru. All figures are in 2020 US\$.

- 20) Following tropical storms and floods, SIDS experience short-term reductions in economic output, as evidenced by studies on Caribbean SIDS²¹. For instance, a typical hurricane in the Caribbean is estimated to decrease local income growth by about 1.5% and national GDP by approximately 0.7%–0.8% in the year of impact²².
- 21) Initially, the reduction in economic output after such extreme weather events is often followed by a rebound in economic activity, likely due to reconstruction efforts, government initiatives, and foreign aid, which collectively provide a typical ‘Keynesian’ stimulus to the economy.²³ These short-term economic fluctuations from extreme weather impacts the overall business cycles in SIDS. In the Eastern Caribbean, the economic impact of climate-induced disruptions was found to be a more significant factor in short-term macroeconomic variability than changes in external demand or oil prices.²⁴
- 22) Saint Vincent and the Grenadines reiterates that extreme weather events result in short-term adverse impacts on the trade balance, marked by a decline in exports and varying effects on imports. Further, in the Eastern Caribbean, hurricanes are estimated to decrease exports of goods by approximately 20% during the first four months following their occurrence²⁵. However, severe weather events lead to more extensive and broader impacts as has been evident in Saint Vincent and the Grenadines during the recent devastating passage of Category 4 Hurricane Beryl on 1 July 2024.
- 23) In Saint Vincent and the Grenadines, agriculture and tourism are heavily impacted by extreme weather events threatening mainly food security and livelihoods. Short-term declines in agricultural production and exports following hurricanes are well-

²¹ Ishizawa, O. A., Miranda, J. J. and Strobl, E. (2019) ‘The impact of hurricane strikes on short-term local economic activity: Evidence from nightlight images in the Dominican Republic’ *International Journal of Disaster Risk Science* 10: 362–370.

²² Bertinelli, L. and Strobl, E. (2013) ‘Quantifying the Local Economic Growth Impact of Hurricane Strikes: An Analysis from Outer Space for the Caribbean’ *Journal of Applied Meteorology and Climatology* 52(8): 1688–1697 <https://doi.org/10.1175/JAMC-D-12-0258.1>

²³ Campbell, A. and Spencer, N. (2021) ‘The macroeconomic impact of extreme weather: Evidence from Jamaica’ *International Journal of Disaster Risk Reduction* 61: 102336.

²⁴ Cashin, P. and Sosa, S. (2013) ‘Macroeconomic fluctuations in the Eastern Caribbean: The role of climatic and external shocks’ *The Journal of International Trade & Economic Development* 22(5): 729–748. <https://doi.org/10.1080/09638199.2011.599854>

²⁵ Mohan, P. S. (2023) ‘The Impact of Tropical Storms on International Trade: Evidence from Eastern Caribbean Small Island Developing States’ *Economics of Disasters and Climate Change* 7: 179–208.

documented for the Caribbean region.²⁶ The adverse effects on agriculture tend to be more severe in smaller islands and those with less agricultural diversification and it varies among different crop types, with crops that grow above ground such as bananas or those sensitive to soil saturation (e.g., soils with high water transmission)²⁷ being more adversely affected. The tourism sector is similarly vulnerable, with studies highlighting short-term declines in tourist arrivals in the Caribbean.²⁸

- 24) Extreme weather events inflict considerable fiscal strains on Saint Vincent and the Grenadines, affecting its revenue, expenditure, and levels of public debt. In the Caribbean, hurricanes typically lead to increased government spending and reduced revenue, which in turn aggravates fiscal deficits²⁹. Specifically, while routine spending goes up, investments in capital projects often remain unchanged. Furthermore, while income-related revenues drop, revenues from sales and tariffs may see an uptick.³⁰
- 25) To manage these fiscal disruptions and fund reconstruction efforts, as a necessity Saint Vincent and the Grenadines resort to borrowing both domestically and internationally, which contributes to rising public debt levels. Evidence suggests that extreme weather events can lead to both short-term³¹ and longer-term³² increases in debt. For instance, Lugay and James (2014) found that damage from an extreme weather event equivalent to 2% of GDP in the Eastern Caribbean could result in a 6.7% rise in the debt-to-GDP ratio.³³

²⁶ Mohan, P. and Strobl, E. (2017b) 'A hurricane wind risk and loss assessment of Caribbean agriculture' *Environment and Development Economics* 22(1): 84–106.

²⁷ *Ibid.*

²⁸ Carballo Chanfón, P., Mohan, P., Strobl, E. and Tveit, T. (2023) 'The impact of hurricane strikes on cruise ship and airplane tourist arrivals in the Caribbean' *Tourism Economics* 29(1): 68–91.

²⁹ Ouattara, B., Strobl, E., Vermeiren, J. and Yearwood, S. (2018) 'Fiscal shortage risk and the potential role for tropical storm insurance: evidence from the Caribbean' *Environment and Development Economics* 23(6): 702–720.

³⁰ *Ibid.*

³¹ Mohan, P. and Strobl, E. (2021) *Hurricanes and their implications for unemployment: Evidence from the Caribbean*. ILO Working Paper No. 26.

³² Acevedo, S. (2014) *Debt, Growth and Natural Disasters: A Caribbean Trilogy*. IMF Working Paper WP/14/125. International Monetary Fund <https://doi.org/10.5089/9781498337601.001>

³³ Lugay, B. and James, R. (2014) *The impact of natural disasters on public debt accumulation in selected ECCU countries*. CBB Working paper No. 14/6. Central Bank of Barbados [2022-02-04-09-07-12-The-Impact-of-Natural-Disasters-on-Public-Debt-Accumulation-in-Selected-ECCU-Countries.pdf](https://www.centralbank.org.bb/2022-02-04-09-07-12-The-Impact-of-Natural-Disasters-on-Public-Debt-Accumulation-in-Selected-ECCU-Countries.pdf) ([centralbank.org.bb](https://www.centralbank.org.bb))

- 26) Additionally, in the context of extreme event attribution, it is crucial to recognise that exposure and vulnerability are considered constant.³⁴ The primary focus is on quantifying the additional burden imposed by climate change. Although it is evident that climate change is not the sole contributor to impacts, loss or damage, impact attribution for extreme weather primarily examines how climate change influences the weather hazard itself. It does not probe the effects of non-climate factors such as exposure and vulnerability or vice-versa.³⁵
- 27) As adaptation is required to tackle the adverse impacts of climate change, technological advancements are pertinent. Interestingly, Imperial College London researchers created an innovative model capable of assessing the probability of tropical cyclone wind speeds affecting any location worldwide. This storm model, detailed in the IRIS dataset, was published in *Nature* in April 2024.³⁶ Notably, this model facilitates rapid event attribution assessments, as demonstrated with Category 5 Hurricane Beryl. It noted, through its analysis of Hurricane Beryl during its passage in Jamaica, where it passed as a Category 4 hurricane, that:

The intensity of a Beryl type event was increased by about 4.5 m/s or 7% – a change from the middle to nearer the top of the Category 4. From this we can also determine that the likelihood of this type of event near Jamaica has changed from an event expected on average once every 60 years to once every 35 years.

Consequently, it can be scientifically concluded that events such as Hurricane Beryl is almost twice as likely to occur as a result of anthropogenic climate change.

(ii) Saint Vincent and the Grenadines – Double Jeopardy: Category 4 Hurricane Beryl

- 28) The evidence³⁷ suggests that Hurricane Beryl stands as the most devastating hurricane to strike Saint Vincent and the Grenadines since the great hurricane of 1898 resulting in 8 fatalities. Some aspects of the catastrophic impacts can be viewed via the videos on

³⁴ Noy, I., Stone, D. and Uher, T. (2024) 'Extreme events impact attribution: A state of the art', *Cell Reports Sustainability*, 1(5), p. 100101. doi:10.1016/j.crsus.2024.100101.

³⁵ *Ibid.*

³⁶ Sparks, N., Toumi, R. The Imperial College Storm Model (IRIS) Dataset. *Sci Data* **11**, 424 (2024). <https://doi.org/10.1038/s41597-024-03250-y>

³⁷ Unity Labour Party. (2024, August 4). *Who pays for the climate damage done to SVG?* IWitness News.

the links in **Annex 1**. In the period between the country's independence in 1979 and 2001, two significant hurricanes or storms occurred: Hurricane Allen in 1980, which inflicted damage amounting to US \$16.3 million (equivalent to US \$31.7 million in 2024), representing 20% of the 1980 gross domestic product (GDP); and Tropical Storm Danielle in 1986, causing US \$9.2 million in damage (equivalent to US \$26.4 million in 2024), or 6% of the 1986 GDP.

29) Since 2001, Saint Vincent and the Grenadines has endured 10 major hurricanes, storms, or incidents of excessive flooding, with cumulative damages exceeding US \$1 billion. It has been burdened by continuous disastrous weather events resulting in severe economic damage namely:

- i) 2002: Tropical Storm Lili: Damage of US\$14.8 million (or US\$25.9 million in 2024) or 9% of 2002 GDP
- ii) 2004: Hurricane Ivan: Damage of US\$40 million (or US\$66.5 million in 2024) or 8% of 2004 GDP.
- iii) 2010: Hurricane Tomas: Damage of US\$48 million (or US\$69 million in 2024), or 7% of 2010 GDP.
- iv) 2011: 16 separate flood events during March and April: Damage of US\$31.1 million (or US\$53.4 million in 204) or 19% of 2011 GDP.
- v) 2013: Christmas Trough: Damage of US\$86.4 million (or US\$117 million in 2024) or 12% of 2013 GDP.
- vi) 2016: November Floods: Damage of US\$29.7 million (or US\$38.9 million in 2024) or 4% of 2016 GDP.
- vii) 2017 and 2018: Hurricane Harvey and Tropical Storm Kirk respectively (no data at hand).
- viii) 2021: Hurricane Elsa of July 2021 (due to the proximity of events, data of damage is not properly disaggregated from the damage caused by the 21 volcanic eruptions of April 2021).
- ix) 2024: Hurricane Beryl: Damage of US\$230.6 million on the basis of a Global Rapid Post-Disaster Damage Estimation (GRADE) or 22% of GDP. Inevitably, the comprehensive damage assessment surpasses what would be captured by a GRADE evaluation.

- 30) It is important to note that, in addition to the damages from hurricanes and storms since 2001, Saint Vincent and the Grenadines has also faced periods of moderate-to-severe drought and the volcanic eruptions of 2021. Furthermore, the nation has had to endure the health, economic, social, and security challenges brought about by the COVID-19 pandemic, as well as the repercussions of the global economic downturn from 2008 to 2011, driven by the forces of global capitalism.
- 31) On 1 July 2024, Hurricane Beryl, the earliest recorded Category 4 hurricane—later escalating to Category 5—struck Saint Vincent and the Grenadines, inflicting severe devastation across the islands, with the Grenadine islands being particularly hard hit. The hurricane's destructive winds, reaching speeds of up to 195 km/h (120 mph), resulted in an estimated 40,000 individuals being affected, with significant damage to infrastructure and the disruption of essential services, including water and electricity. Health facilities in Canouan, Mayreau, Ashton, and Clifton were forced to cease operations due to the extensive damage, further compounding the difficulties faced by the affected populations. Consequently, thousands of residents were displaced, necessitating urgent emergency shelter and assistance. The profound impact on Saint Vincent and the Grenadines highlighted the urgent need for immediate humanitarian aid and sustained recovery efforts to restore infrastructure and support the affected communities.
- 32) The World Bank's rapid GRADE assessment estimates that Hurricane Beryl caused direct economic damage to Saint Vincent and the Grenadines amounting to US\$230.6 million, or approximately EC\$625 million, which equates to nearly one-quarter of the country's Gross Domestic Product (GDP). The full extent of the additional economic loss is still under assessment by the Government, with a definitive evaluation to be provided by the United Nations Development Programme (UNDP) or the Economic Commission for Latin America and the Caribbean (ECLAC). This comprehensive assessment process is currently underway.
- 33) The distinction between direct damage and the total damage, including economic loss, can be illustrated by the figures from the 2013 Christmas Trough event, where direct damage was estimated at US\$86.4 million, while the total damage, including economic loss, reached US\$122 million, or 16% of the 2013 GDP. The government's internal

estimate of direct damage from Hurricane Beryl is approximately US\$300 million (EC\$800 million), exceeding the World Bank's rapid GRADE assessment of US\$230.6 million (EC\$625 million). When economic loss is factored in, the total economic damage and loss caused by Beryl is projected to be in the region of EC\$1 billion.

Figure 3. St. Vincent Shelter Occupancy on 11 July 2024



**St Vincent & the Grenadines: Hurricane Beryl
St Vincent Shelter Occupancy - 11 July 2024**



Total in Formal Shelters: 736
Total in Informal Shelters: 31

Where disaggregation of occupancy is known, totals are:

Men: 224
Women: 238
Boys: 154
Girls: 116

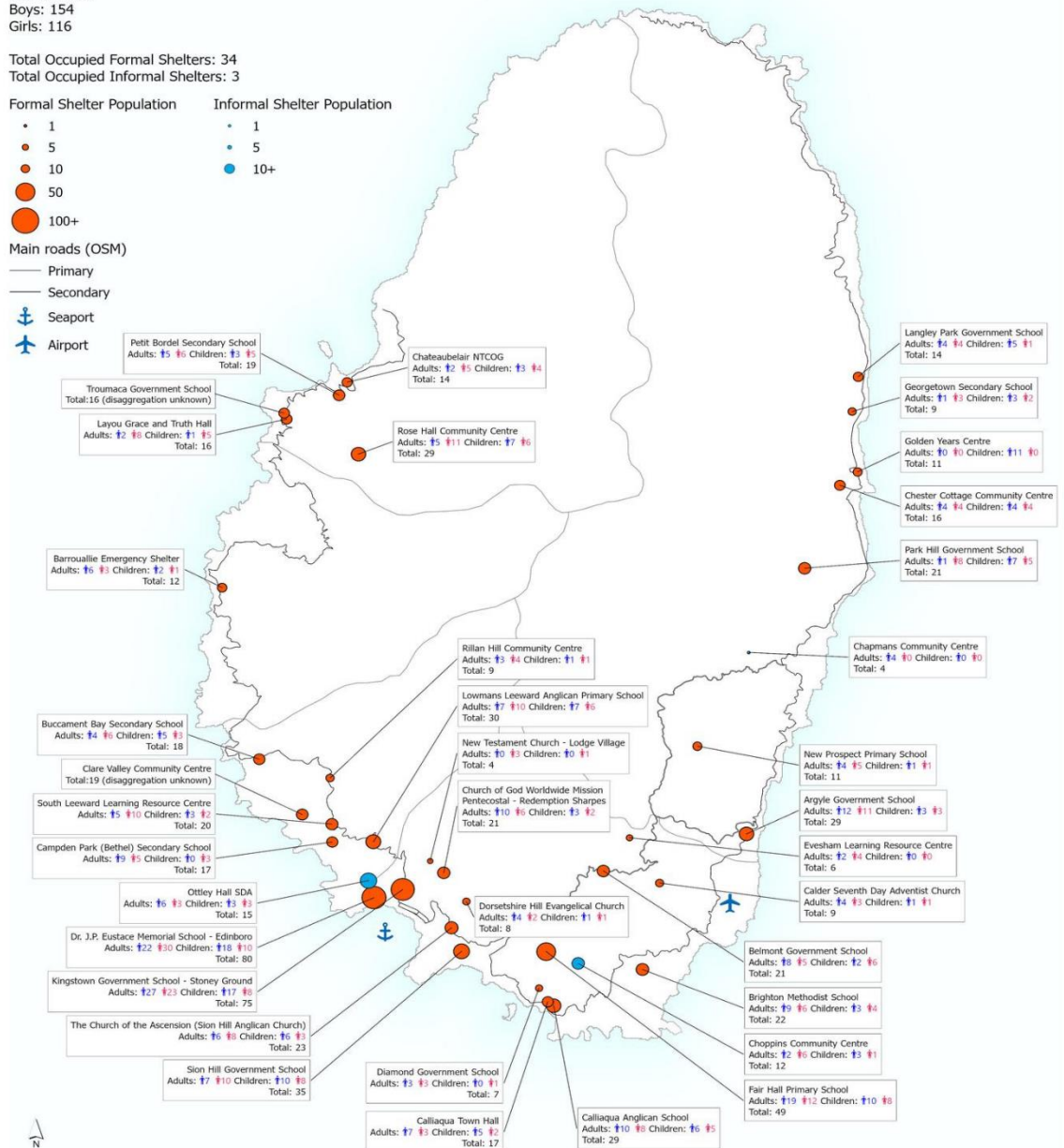
Total Occupied Formal Shelters: 34
Total Occupied Informal Shelters: 3

Formal Shelter Population **Informal Shelter Population**

- 1
- 5
- 10
- 50
- 100+

Main roads (OSM)

- Primary
- Secondary
- ⚓ Seaport
- ✈ Airport



5 km
The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations or MapAction.

Data Sources
Ministry of Education, St Vincent and the Grenadines Government, PDC, IOM, OpenStreetMap, OurAirports, World Port Index.
Map created by MapAction (12/07/2024)

Figure 4. Grenadines Shelter Occupancy on July 11, 2024

Total in Shelters: 866

Where disaggregation of occupancy is known, totals are:

- Men: 22
- Women: 26
- Boys: 14
- Girls: 26

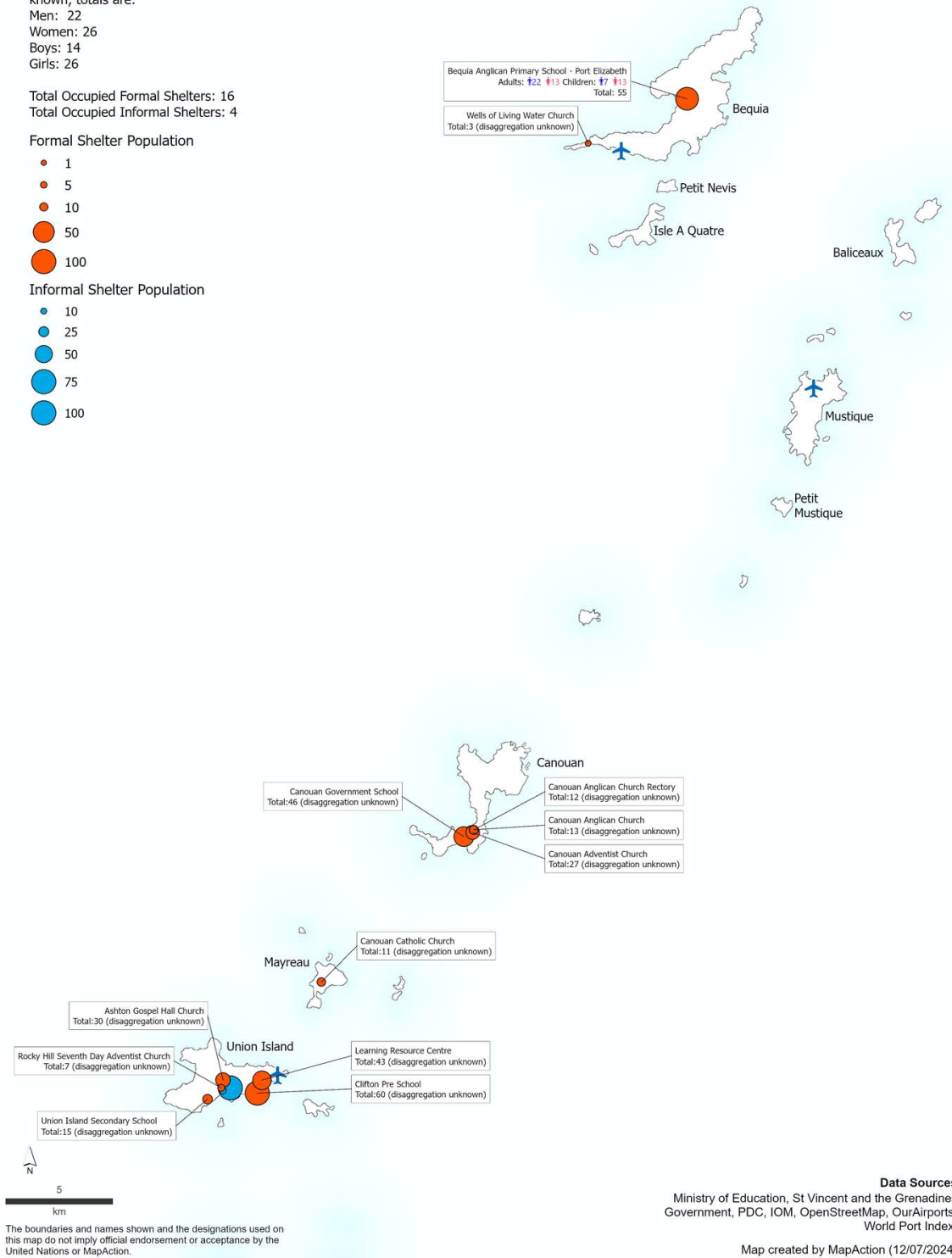
Total Occupied Formal Shelters: 16
Total Occupied Informal Shelters: 4

Formal Shelter Population

- 1
- 5
- 10
- 50
- 100

Informal Shelter Population

- 10
- 25
- 50
- 75
- 100



34) However, as of 31 July, 2024, there were 1,331 persons in 72 emergency shelters, 44 of which are listed shelters by the Government and 28 are operated by non-governmental

entities but fully supported by the Government being an increase from the statistics available on 11 July, 2024 (combination of **Figure 3** and **Figure 4**). Of the 1,331 persons seeking shelter, 711 are on St. Vincent, 52 on Bequia, 95 on Canouan, 44 on Mayreau, and 429 on Union Island. **Table 1** illustrates a synopsis of the aftermath of Hurricane Beryl in Saint Vincent and the Grenadines as at July 18, 2024.

Table 1. Post-Hurricane Beryl impact across Saint Vincent and the Grenadines

	NATIONAL	CANOUAN ISLAND	MAYREAU ISLAND	UNION ISLAND	BEQUIA ISLAND
Hurricane-related deaths	8	1	2	4	1
Hurricane-related injuries	28	1	6	21	0
Population in emergency shelters (11 July estimates)	1,021 (733 in Saint Vincent; 288 in the Grenadines)	130	0	103	55
Population potentially affected	40,000	-	-	-	-

Source: ACAPS, 2024

- 35) The Caribbean Disaster Emergency Management Agency (CDEMA) conducted a rapid, partial assessment of the housing sector in Saint Vincent and the Grenadines. ACAPS (Assessment Capacities Project) indicated that 90–100% of buildings in the Southern Grenadines were damaged or destroyed as depicted in **Table 2**. According to CDEMA, EC\$335 million will be required to repair and rebuild the housing stock damaged or destroyed by Hurricane Beryl. However, the Government's estimate is higher, projecting that over EC\$400 million will be necessary. The existing 2024 budget allocated EC\$35 million for housing needs prior to Beryl, with an additional EC\$25 million added in the supplementary budget. Funds initially designated for completing repairs from the volcanic eruptions and addressing other urgent housing needs now must be partially redirected to address the damage caused by Hurricane Beryl.

Table 2. Destroyed, damaged and potentially damaged buildings according to satellite imagery on July 2-4, 2024 across Saint Vincent and the Grenadines.

ISLAND	RESIDENTIAL BUILDINGS DESTROYED	RESIDENTIAL BUILDINGS DAMAGED	RESIDENTIAL BUILDINGS POTENTIALLY DAMAGED	TOTAL AFFECTED RESIDENTIAL BUILDINGS	TOTAL RESIDENTIAL BUILDINGS ON THE ISLAND, PRE-HURRICANE
Union Island	869	553	30	1,452	1,473
Saint Vincent Island	600 (damage and loss not disaggregated in reporting)		-	-	-
Canouan Island	243	229	250	722	722
Mayreau Island	136	54	43	233	249
Mustique Island	0	0	0	8	855

Source: ACAPS, 2024

(iii) Financial Constraints

36) Given the disastrous effect, Saint Vincent and the Grenadines underscores the importance of climate finance including the loss and damage fund to come to fruition instead of annual “lip service” at the COPs to aid in the recovery efforts to adapt and build a more resilient Saint Vincent and the Grenadines. On July 19, 2024, the Parliament of Saint Vincent and the Grenadines approved the Supplementary Estimates and Supplementary Appropriation Bill totalling EC\$136.4 million to address immediate relief and initial recovery efforts. The majority of this Supplementary Budget was sourced from:

- a) These loans and insurance funds make up a total of EC\$92 million.
 - i) The Government's Contingencies Fund (financed by taxpayers): EC\$50 million
 - ii) Insurance proceeds from the government’s policy with the CCRIF (a regional catastrophic insurance fund): EC\$5 million. Given the meagre quantity, the government has formally initiated a review of the payout, arguing that it should be increased
 - iii) Local Loans: EC\$5.3 million
 - iv) Loan from the World Bank/International Development Agency: EC\$18.3 million
 - v) Loan from the Caribbean Development Bank: EC\$13.4 million

- b) The remaining EC\$44.4 million of the supplementary budget is comprised of grants. The major contributors to this sum include:
- (i) Taiwan, with a grant of EC\$14 million (including EC\$13.4 million from a repurposed grant); and
 - (ii) EC\$13.4 million from a wealthy homeowner in Canouan, who later provided an additional EC\$13.4 million.
- c) In summary, while the much publicised and appreciated grants for immediate humanitarian relief constitute a relatively small portion of the supplementary budget, there are minimal or no grants allocated for substantial recovery efforts, and none yet for reconstruction.
- 37) Saint Vincent and the Grenadines argues that this double jeopardy vicious cycle is grossly unjust, unacceptable and financially unattainable. A clarion call for climate justice is being echoed. First, as a negligible contributor to the GHG emissions yet we bear the brunt of the effects. Secondly, the limited resources are stretched beyond their elastic limit while trying to ameliorate the adverse effects caused by the Global North and/or other major emitters yet fostering development, only to ponder the frequency of another catastrophic event.

C. Governance (Applicable Obligations)

- 38) The overarching point is that the UN General Assembly has expressly requested the Court not to confine itself to the interpretation and application of specific treaties, such as the UNFCCC and the Paris Agreement. Instead, the Court is asked to identify the relevant obligations from the entire body of international law and to assess the legal consequences of the conduct responsible for climate change under international law. This mandate includes the consideration of both treaty law and general international law.
- 39) Saint Vincent and the Grenadines submits that in the context of climate change, certain written submissions have raised several contentions that necessitate refutation, as they inaccurately portray the prevailing nature of international law concerning conduct that contributes to climate change. As previously undertaken, these issues are succinctly

highlighted, with appropriate references to the specific written statements from which these arguments originate:

- i) some States and organisations (including the USA, OPEC and China) have argued, mainly in response to Question (a) in Resolution 77/276, that international legal obligations in respect of climate change are found in the treaties solely relating to the climate change regime, mainly the UNFCCC and the Paris Agreement;
 - ii) some States (including European Union, China, United Kingdom) have also argued in response to Question (b), that the International Law Commission's Draft Articles on the Responsibility of States for Internationally Wrongful Act (**ARSIWA**)³⁸ are inapplicable or has limited utility (including Joint statement Denmark; Finland, Iceland, Norway, Sweden; South Africa; New Zealand; Korea; Australia).
- 40) On the aforementioned issues, Saint Vincent and the Grenadines refutes these arguments on the following grounds:
- (a) With respect to the first argument above (at paragraph 39(i)), it is important to emphasize two perspectives. From the *perspective of rules and treaties other than those of the climate change regime*, the formal application of human rights treaties and UNCLOS to govern the relevant conduct – anthropogenic emissions of greenhouse gases from a State – has been specifically confirmed by the European Court of Human Rights,³⁹ the Human Rights Committee⁴⁰, ITLOS (in its advisory opinion of 21 May 2024)⁴¹ and the Inter-American Court of Human Rights.⁴² There

³⁸ Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the ILC (2001), Volume II, Part II, Report of the Commission to the General Assembly on the Work of its Fifty-Third Session*, document A/CN.4/SER.A/2001/Add.1 (Part 2)

³⁹ *Case of Verein Klimasenioren Schweiz and others v. Switzerland*, ECtHR Application no. 53600/20, Judgment of the Grand Chamber (9 April 2024), paras. 410-411.

⁴⁰ UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 22 September 2022, para. 8.7 ; UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016: Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, 23 September 2020, para. 9.9.

⁴¹ *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal)*, available at: <https://www.itlos.org/en/main/cases/list-of-cases/request-for-an-advisory-opinion-submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law-request-for-advisory-opinion-submitted-to-the-tribunal/>

⁴² *Solicitud de Opinión Consultiva presentada por Colombia y Chile ante la Corte Interamericana de Derechos Humanos*, 9 de enero de 2023, pending, available at: https://www.corteidh.or.cr/observaciones_oc_new.cfm?nId_oc=2634

is substantial evidence, as well, from the practices of the Human Rights Council and its special procedures—explicitly referenced in preambular paragraph 4—as well as from domestic litigation.⁴³ In any case, the wording of Resolution 77/276 dispels any uncertainty regarding the legal instruments that the General Assembly—and all UN Member States, which adopted the resolution by consensus—deem to constitute the applicable law. This is evident from the first paragraph of the question presented to the Court:

“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”

It is further confirmed by four preambular paragraphs of Resolution 77/276:

“Recalling its resolution 77/165 of 14 December 2022 and all its other resolutions and decisions relating to the protection of the global climate for present and future generations of humankind, and its resolution 76/300 of 28 July 2022 on the human right to a clean, healthy and sustainable environment,

Recalling also its resolution 70/1 of 25 September 2015 entitled “Transforming our world: the 2030 Agenda for Sustainable Development”,

Recalling further Human Rights Council resolution 50/9 of 7 July 2021 and all previous resolutions of the Council on human rights and climate change, and Council resolution 48/13 of 8 October 2021, as well as the need to ensure gender equality and empowerment of women,

Emphasizing the importance of the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the United Nations Convention on the Law of the Sea, the Vienna Convention for the Protection of the Ozone Layer, the

⁴³ *Urgenda Foundation v. State of the Netherlands*, Supreme Court of the Netherlands, ECLI:NL:HR, 20 December 2019 (Netherlands), para. 5.3.2, 5.6.2, 5.8; *VZW Klimaatzaak v. Kingdom of Belgium*, Decision of 30 November 2023, Cour d’appel Bruxelles, 2021/AR/1589, para. 139; *Neubauer v. Germany*, 1 BvR 2656/18 2020, Decision of 24 March 2021, (Germany), para. 144 ; *Generaciones Futuras v. Ministerios de Ambiente y Desarrollo Sostenible*, República de Colombia Corte Suprema de Justicia STC4360-2018 (Apr. 5, 2018), para. 11; *Kula Oil Palm Ltd v. Tieba* [2021] PGNC 611, N9559, para. 26.

Montreal Protocol on Substances that Deplete the Ozone Layer, the Convention on Biological Diversity and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, among other instruments, and of the relevant principles and relevant obligations of customary international law, including those reflected in the Declaration of the United Nations Conference on the Human Environment and the Rio Declaration on Environment and Development, to the conduct of States over time in relation to activities that contribute to climate change and its adverse effects”

(b) This is further corroborated from the standpoint of the UNFCCC and the Paris Agreement, which do not encompass *ratione materiae* issues related to human rights, the law of the sea, or the broader obligation to prevent significant environmental harm. Notably, the preamble of the UNFCCC explicitly acknowledges the prevention principle as a foundational pillar underpinning climate action.⁴⁴ There is therefore no basis to claim that the prevention principle is not applicable to conduct leading to anthropogenic emissions of greenhouse gases. Similarly, the preamble of the Paris Agreement “*acknowledges*” the application of human rights to Parties “*when taking action to address climate change*” and, specifically, the need for them “*respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity*”.⁴⁵ Aside from this acknowledgment that such “*obligations*” apply to “*action to address climate change*”, no further reference is made in the Paris Agreement (and none is made in UNFCCC) to human rights. Thus, while the Paris Agreement expressly acknowledges the application of human rights to the relevant conduct, there is no valid basis to assert that the Paris Agreement functions as a *lex specialis* in relation to human rights obligations. Similar

⁴⁴ United Nations Framework Convention on Climate Change, 9 May 1992, 1771 UNTS 107, preambular paragraph 8: “Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, 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”. It further refers to the Declaration of the Stockholm Conference on the Human Environment and the Rio Declaration on Environment and Development, which in their principles 21 and 2, respectively, provide the canonical formulation of the prevention principle.

⁴⁵ Paris Agreement, 12 December 2015, 3156 UNTS 79, preambular paragraph 11.

reasoning applies to the protection and preservation of the marine environment. The UNFCCC addresses the marine environment in a highly limited scope—not as an environment to be protected and preserved in accordance with Article 192 of UNCLOS and the customary rule it codifies, but rather as mere "*sinks and reservoirs*" of greenhouse gases, as stated in article 4(1)(d). This position is further substantiated by the UNFCCC and the Paris Agreement, which do not extend to *ratione materiae* matters concerning human rights, the law of the sea, or the broader duty to prevent significant environmental harm. Importantly, the preamble of the Paris Agreement expressly recognizes the prevention principle as a key foundation of climate action. The preamble notes: "*the importance of ensuring the integrity of all ecosystems, including oceans ... when taking action to address climate change*".⁴⁶

(c) Accordingly, while climate action is still governed by obligations aimed at ensuring the integrity of the oceans, the Paris Agreement does not even attempt to regulate this aspect. Moreover, it is important to note that neither the UNFCCC nor the Paris Agreement came into force before 21 March 1994 and 4 November 2016, respectively, whereas the relevant conduct has persisted for over a century. Therefore, from both *ratione materiae* and *ratione temporis* perspectives, it is untenable to assert that the UNFCCC and the Paris Agreement are the sole treaties governing the relevant conduct. In fact, this conduct predates the negotiation of these instruments and was already subject to regulation by various treaties, which the UN General Assembly has requested the Court to "hav[e] particular regard" to, as indicated in the chapeau of Resolution 77/276's operative part.

(d) In refuting the arguments outlined at paragraph 39 (ii) (above), the following are posited for the Court's consideration. First, it is universally recognised that the ARSIWA apply irrespective of the primary rules (the obligations) which have been breached.⁴⁷ Only if the treaty in question contains special secondary rules will the ARSIWA give way to such rules, and only for the specific aspects addressed in such

⁴⁶ Paris Agreement, 12 December 2015, 3156 UNTS 79, preambular paragraph 13.

⁴⁷ Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the ILC (2001), Volume II, Part II, Report of the Commission to the General Assembly on the Work of its Fifty-Third Session*, document A/CN.4/SER.A/2001/Add.1 (Part 2), general commentary, para. 5 ("the present articles are concerned with the whole field of State responsibility. Thus they are not limited to breaches of obligations of a bilateral character, e.g. under a bilateral treaty with another State. They apply to the whole field of the international obligations of States, whether the obligation is owed to one or several States, to an individual or group, or to the international community as a whole.")

rules (e.g. specific rules of attribution of State conduct). However, neither the UNFCCC nor the Paris Agreement includes specific secondary rules that define the content of State responsibility. Furthermore, the application of the ARSIWA to the relevant conduct, particularly the anthropogenic emissions of greenhouse gases by a State, has been expressly recognized and examined by the European Court of Human Rights in the case of *Verein Klimaseniorinnen Schweiz v. Switzerland*, where the ECtHR observed that...:

“the Court notes that while climate change is undoubtedly a global phenomenon which should be addressed at the global level by the community of States, the global climate regime established under the UNFCCC rests on the principle of common but differentiated responsibilities and respective capabilities of States (Article 3 § 1). This principle has been reaffirmed in the Paris Agreement (Article 2 § 2) and endorsed in the Glasgow Climate Pact (cited above, paragraph 18) as well as in the Sharm el-Sheikh Implementation Plan (cited above, paragraph 12). It follows, therefore, that each State has its own share of responsibilities to take measures to tackle climate change and that the taking of those measures is determined by the State’s own capabilities rather than by any specific action (or omission) of any other State (see Duarte Agostinho and Others, cited above, §§ 202-03). The Court considers that a respondent State should not evade its responsibility by pointing to the responsibility of other States, whether Contracting Parties to the Convention or not [...]

This position is consistent with the Court’s approach in cases involving a concurrent responsibility of States for alleged breaches of Convention rights, where each State can be held accountable for its share of the responsibility for the breach in question (see, albeit in other contexts, *M.S.S. v. Belgium and Greece*, cited above, §§ 264 and 367, and *Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia*, nos. 75734/12 and 2 others, §§ 160-61 and 179-81, 19 November 2019). *It is also consistent with the principles of international law relating to the plurality of responsible States, according to which the responsibility of each State is determined individually, on the basis of its own conduct and by reference to its own international obligations (see ILC, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Commentary on Article 47, paragraphs 6 and 8).* Similarly, the alleged infringement of rights under the Convention through harm arising from GHG emissions globally and the acts and

omissions on the part of multiple States in combating the adverse effects of climate change may engage the responsibility of each Contracting Party”⁴⁸

Third, the text of the operative part of Resolution 77/276 specifically uses the terminology of ARSIWA. In Question (b), the terms “*injured*” States and “*especially affected*” States are borrowed from Article 42 ARSIWA. Additionally, the UN General Assembly has specifically used the terminology of “*legal consequences*”, which the Court understands in its case law as a reference to State responsibility.⁴⁹

(i) The Preservation of State Sovereignty and the Right to Self-Determination

- 41) As emphasised in our Written Statement, sea level rise and climate induced mobility due to climate change has resulted in debilitating effects threatening the sovereignty and self-determination of Saint Vincent and the Grenadines. The preservation of sovereign and jurisdictional rights is not only a uniquely legal issue—falling squarely within the Court’s jurisdiction—but also one of significant systemic importance. In essence, it pertains to the adaptation of the international legal framework in response to physical changes brought about by harmful anthropogenic activities.
- 42) Saint Vincent and the Grenadines concurs with the Written Statements that reiterates the preservation of sovereign and jurisdictional rights through various approaches. The right to self-determination is codified as well in the ICCPR and the ICESCR. Both provide in common Article 1(1) that “[a]ll peoples have the right of self-determination” and by virtue of that right, “they freely determine their political status and freely pursue their economic, social and cultural development.”⁵⁰ Some participants linked the issue to the obligations under international law as addressed in question (a), while others considered it within the context of the legal consequences outlined in question (b). Certain submissions emphasized the interpretation of UNCLOS, while others relied on general principles of international law. The legal arguments presented were diverse, including emerging State practice led by small island states and the Pacific Islands Forum; the principles of legal certainty and stability (Bahamas para. 223; Salomon Islands para.

⁴⁸ *Case of Verein Klimaseniorinnen Schweiz and others v. Switzerland*, ECtHR Application no. 53600/20, Judgment of the Grand Chamber (9 April 2024), paras. 442-443 (emphasis added)

⁴⁹ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, p. 95, paras. 175-182.

⁵⁰ ICCPR and ICESCR, Common Article 1. See also Africa Charter on Human and People’s Rights, Art. 20.

209); the right of States to survival, as affirmed by the ICJ in the *Nuclear Weapons* advisory opinion; the principle of territorial integrity (Dominican Republic, paras 4.34-4.42); the right of self-determination (Sierra Leone, para. 3.91); the right to permanent sovereignty over natural resources (Liechtenstein, para. 77); the principle of stability of boundaries (Bahamas, para. 223); obligations of cooperation (Bahamas, paras. 224-226); and the obligation to provide restitution following the commission of an internationally wrongful act (Vanuatu, para. 582). Though there are varied legal arguments, they are drawn together by the common thread of preservation of sovereign rights.

- 43) Saint Vincent and the Grenadines supports the view of Liechtenstein that cultural heritage encompasses not only tangible sites but also the "practice and transmission of a wide array of intangible cultural heritage practices—ranging from oral traditions to performing arts, social practices, rituals, festive events, traditional craftsmanship, and interactions and relationships with nature."⁵¹ These aspects of cultural heritage are increasingly threatened by climate change. Extreme weather events have disrupted and can continue to disrupt traditional events such as festivals and holidays, as well as daily life, thereby undermining key aspects of cultural transmission, including oral storytelling, rituals, and the teaching of traditional crafts and practices. The losses associated with these disruptions include the ability to live on ancestral lands, guardianship of sacred sites, preservation of folklore, song, and dance, traditional medicine, religious rites, and cultural knowledge, including indigenous knowledge and practices.⁵²
- 44) For indigenous peoples or natives of an island, the loss of territory could result in the permanent deprivation of access to traditional social and cultural spaces that are essential to their identity.⁵³ The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) affirms the "inherent rights of indigenous peoples, which stem from their political, economic, and social structures, as well as from their cultures, spiritual traditions, histories, and philosophies, particularly their rights to their lands, territories,

⁵¹ UN General Assembly, *Report of the Special Rapporteur in the field of cultural rights, Karima Bennouna*, UN Doc. A/75/298 (10 August 2020) (Dossier No. 326), para. 33.

⁵² *Ibid.*

⁵³ Sierra Leone paras 3.91-3.92.

and resources."⁵⁴ In the case of *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, which addressed the rights of indigenous communities, the IACtHR recognised the connection between these communities and their land as vital for preserving their cultural heritage and transmitting it to future generations.⁵⁵ This is akin to the extant circumstances in Saint Vincent and the Grenadines, where due to the deleterious effects of Hurricane Beryl ravishing Union Island, for example, it results in climate displacement as they had to evacuate and it has been a concern of its natives whether its unique culture such as the "Cake Dance" and "Rain Dance" would survive to be passed to their descendants. Similarly, the indigenous population of Saint Vincent and the Grenadines residence is threatened due to erosion of the coast as a result of sea level rise and the increase intensity and severity of storm surges. Therefore, Saint Vincent and the Grenadines endorses the above sentiments of Sierra Leone.

- 45) As posited by Liechtenstein⁵⁶ and approved by Saint Vincent and the Grenadines, the risk of displacement, whether due to long-term rising sea levels or extreme weather events, threatens to sever the vital connection between communities and their traditional lands. This disconnection raises serious concerns, encapsulated by the poignant question from a Tuvaluan official: "If we are not here anymore, what will happen to our culture?"⁵⁷
- 46) It is acknowledged that Vincentians' right to self-determination is inalienable, and even the physical disappearance of their land cannot legally extinguish this right, whether exercised collectively or individually. As both a collective and as individuals, the Vincentian people will perpetually retain their "right to have rights"⁵⁸ as protected by international law, which guarantees they will never be rendered stateless. The Vincentian people will remain entitled to exercise their right to self-determination over their entire territory, even if they are temporarily forced to relocate due to climate events. This right

⁵⁴ UN General Assembly, Resolution 61/295, *United Nations Declaration on the Rights of Indigenous People*, UN Doc. A/RES/61/295 (2 October 2007), Preamble. See also *ibid.*, Art. 3 ("Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.").

⁵⁵ *Mayagna (Sumo) Awas Tingni Community v. Nicaragua Case*, IACtHR, Judgment (31 August 2001), para. 149. The Joint Separate Opinion of three of the judges addressed the intertemporal dimension more fully and explicitly, noting that "*we relate ourselves ... in time, with other generations (past and future), in respect of which we have obligations.*" *Ibid.*, Joint Separate Opinion of Judges Cançado Trindade, Pacheco-Gómez, and Abreu-Burelli, para. 10.

⁵⁶ Para 71.

⁵⁷ UN General Assembly, *Report of the Special Rapporteur in the field of cultural rights, Karima Bennouna*, UN Doc. A/75/298 (10 August 2020) (Dossier No. 326), para. 4

⁵⁸ Hannah Arendt, *The Origins Of Totalitarianism* (Harcourt Brace & Company, 1951).

is rooted in their human right to their ancestral lands, which is a fundamental aspect of their identity. However, Saint Vincent and the Grenadines stress the views of Nauru⁵⁹, as climate change threatens the existence of the population, a land mass to populate and its livelihoods because whilst “physical disappearance of their land cannot **legally** extinguish this right”, it more importantly means that in **reality** Saint Vincent and the Grenadines will not physically exist, which is the unvarnished facts.

- 47) Saint Vincent and the Grenadines asserts and draws attention to –
- a) *Primary Positive Obligation*: States have a fundamental obligation to implement preventative measures aimed at mitigating the factors driving climate mobility. These measures must include both legislative and administrative actions to ensure the fulfilment of these obligations.
 - b) *Jurisprudential Guidance*: Saint Vincent and the Grenadines seeks the jurisprudence of the Court to address the specific criteria that must be satisfied for these positive obligations to apply. This includes assessing the significance of the harm to be prevented, its imminence, and the likelihood of its occurrence.
 - c) *Duty of Cooperation*: Climate mobility demands a robust duty of cooperation, particularly as it often involves the movement of people across sovereign borders. The development of these positive obligations must therefore include cooperative inter-State engagement.
 - d) *Non-Discrimination and Vulnerable Populations*: State participants must ensure that the implementation of preventative measures to mitigate climate mobility is grounded in principles of non-discrimination, both in intent and impact. Particular attention should be given to vulnerable populations and States such as Saint Vincent and the Grenadines and other SIDS who are most susceptible to forced displacement and least likely to have a voice in shaping these mitigation measures.
 - e) *Trustee to Protect the Atmosphere*: Saint Vincent and the Grenadines wishes to reconfirm its argument that States have a joint duty as trustees to protect the atmosphere (as well as the other parts of the climate system and the environment), from the anthropogenic emissions of greenhouse gases (at Part D of our written statement). For similar reasons, Saint Vincent and the Grenadines wholeheartedly endorses Grenada's

⁵⁹ Nauru Written Statement para 13.

arguments on the State acting as a trustee for the environment (at paras 46-63 of Grenada's written statement).

III Breach

- 48) A critical aspect of Resolution 77/276 is its engagement of the authority of the ICJ to clarify a significant legal uncertainty with far-reaching consequences. Essentially, the issue at hand is whether the actions contributing to what is described as an “*unprecedented challenge of civilizational proportions*” (as stated in the Resolution’s preamble), specifically climate change, are permissible under the entire international law regime. As detailed in section B prior, the conduct in question is specified within the text of Resolution 77/276 (referenced in Question (a), then in preambular paragraph 5, and subsequently in Question (b)). The conduct to be examined is outlined in Question (b) as “*acts and omissions*” by one or more States that “*have caused significant harm to the climate system and other parts of the environment.*” This conduct may be analysed at the level of individual States, a particular coalition of States, or as a general assessment of its compliance or non-compliance with international law principles.
- 49) Upon perusal of the written statements, the opposing view of States were noted where (for example European Union) it was posited that the Court cannot/should not determine legal consequences based on the ARSIWA and that compliance with climate change obligations can only be assessed under the climate change treaty regime. Also, that the assessment of legal consequences (based on the ARSIWA) is mired in difficulties and/or cannot be done in the abstract (for example the Joint statement of Denmark Finland, Iceland, Norway, Sweden). Saint Vincent and the Grenadines argues that these submissions seek to remove the issue of climate justice (responsibility for causing significant harm to the climate system and other parts of the environment) from the purview of the Court and as such relies on the factual and legal analysis of why the conduct constitutes a breach provided in some written statements;⁶⁰
- (a) Further, it must be noted that Article 15 ARSIWA: the relevant conduct giving rise to a breach constitutes a “*composite act*” under the law of State responsibility – “*a*

⁶⁰ Written Statement of Vanuatu, pages 241-266.

series of actions or omissions defined in aggregate as wrongful".⁶¹ A breach is established when cumulative emissions over a period exceed the threshold that leads to significant harm, with the inception of the wrongful act being retroactively determined to the time of the initial act or omission in the series.⁶² This indicates that States with historically high cumulative emissions cannot assert compliance with their international obligations solely based on a peak or decline in annual emissions. Their prior negligence in addressing emissions sufficiently constitutes a persistent composite breach. Furthermore, the standard for proving diligent conduct is elevated for these States due to their significant contribution to the issue, in line with the principles of equity and common but differentiated responsibilities and respective capabilities.

(b) The specific analysis of the European Court of Human Rights in *Klimaseniorinnen v. Switzerland* regarding Switzerland's breach of Article 6 (right to a fair trial) and,

⁶¹ Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the ILC (2001), Volume II, Part II, Report of the Commission to the General Assembly on the Work of its Fifty-Third Session*, document A/CN.4/SER.A/2001/Add.1 (Part 2), art. 15. The concept of a breach resulting from a composite act has received wide recognition in international judicial and arbitral practice. See e.g. *Gemplus S.A., SLP S.A., Gemplus Industrial S.A. de C.V. v. The United Mexican States and Talsud S.A. v. The United Mexican States*, ICSID Cases No. ARB(AF)/04/3 and ARB(AF)/04/4, Award (16 June 2010), para. 12-44; *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. The Government of Mongolia*, UNCITRAL Arbitration, Award on Jurisdiction and Liability (28 April 2011), paras. 495-500; *El Paso Energy International Company v. The Argentine Republic*, ICSID Case No. ARB/03/15, Award (31 October 2011), para. 516; *Pac Rim Cayman LLC v. The Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on the Respondent's Jurisdictional Objections (1 June 2012), paras. 2.70-2.71, available at the following link: <https://www.italaw.com/cases/783> (visited on 15 March 2024); *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award (4 April 2016), para. 669, available at the following link: <https://www.italaw.com/cases/1530> (visited on 15 March 2024); *Rusoro Mining Limited v. The Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award (22 August 2016), para. 227; *Blusun A.A., Jean-Pierre Lecorcier and Michael Stein v. Italian Republic*, ICSID, Case No. ARB/14/3, Award (27 December 2016), para. 361; *Burlington Resources Inc. v. Republic of Ecuador*, ICSID, Case No. ARB/08/5, Decision on Reconsideration and Award (7 February 2017), para. 452; *Hydro S.r.l. et al. v. Republic of Albania*, ICSID Case No. ARB/15/28, Award (24 April 2019), paras. 557-558; *Global Telecom Holding S.A.E. v. Canada*, ICSID Case No. ARB/16/16, Award (27 March 2020), para. 411, available at the following link: <https://www.italaw.com/cases/4695> (visited on 15 March 2024); *Carlos Ríos and Francisco Ríos v. Republic of Chile*, ICSID Case No. ARB/17/16, Award (11 January 2021), para. 189; *Infinito Gold Ltd. v. Republic of Costa Rica*, ICSID Case No. ARB/14/5, Award (3 June 2021), para. 230; *El-Masri v. The Former Yugoslav Republic of Macedonia*, European Court of Human Rights, Application No. 39630/09, Judgment (13 December 2012), para. 97; *Husayn (Abu Zubaydah) v. Poland*, European Court of Human Rights Application No. 7511/13, Judgment (24 July 2014), para. 201; *Nasr et Ghali v. Italy*, European Court of Human Rights Application 44883/09, Judgment, 23 February 2016, para. 185; *Duzgit Integrity Arbitration (Republic of Malta v. Democratic Republic of Sao Tome and Principe)*, PCA Case No. 2014-07, Award on Reparation (18 December 2019), para. 86.

⁶² Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the ILC (2001), Volume II, Part II, Report of the Commission to the General Assembly on the Work of its Fifty-Third Session*, document A/CN.4/SER.A/2001/Add.1 (Part 2), art. 15, commentary, para. 8.

above all, Article 8 (right to respect for private and family life) as a result of not doing enough to cut is emissions of greenhouse gases. The following paragraphs of this judgment would be of particularly relevance:

“In the context of climate change, the particularity of the issue of causation becomes more accentuated. The adverse effects on and risks for specific individuals or groups of individuals living in a given place arise from aggregate GHG emissions globally, and the emissions originating from a given jurisdiction make up only part of the causes of the harm. Accordingly, the causal link between the acts or omissions on the part of State authorities in one country, and the harm, or risk of harm, arising there, is necessarily more tenuous and indirect compared to that in the context of local sources of harmful pollution. Furthermore, *from the perspective of human rights, the essence of the relevant State duties in the context of climate change relates to the reduction of the risks of harm for individuals. Conversely, failures in the performance of those duties entail an aggravation of the risks involved, although the individual exposures to such risks will vary in terms of type, severity and imminence, depending on a range of circumstances.* Accordingly, in this context, issues of individual victim status or the specific content of State obligations cannot be determined on the basis of a strict condition sine qua non requirement [...]

It is therefore necessary to further adapt the approach to these matters, taking into account the special features of the problem of climate change in respect of which the State’s positive obligations will be triggered, depending on a threshold of severity of the risk of adverse consequences on human lives, health and well-being [...]

The respondent Government raised an issue concerning the proportion of the respondent State’s contributions to global GHG emissions and the capacity of individual States to take action and to bear responsibility for a global phenomenon that requires action by the community of States [...] Such arguments have been examined and rejected by the domestic courts in some national climate-change cases [...]

For its part, the Court notes that while climate change is undoubtedly a global phenomenon which should be addressed at the global level by the community of States, the global climate regime established under the UNFCCC rests on the

principle of common but differentiated responsibilities and respective capabilities of States (Article 3 § 1). This principle has been reaffirmed in the Paris Agreement (Article 2 § 2) and endorsed in the Glasgow Climate Pact (cited above, paragraph 18) as well as in the Sharm el-Sheikh Implementation Plan (cited above, paragraph 12). *It follows, therefore, that each State has its own share of responsibilities to take measures to tackle climate change and that the taking of those measures is determined by the State's own capabilities rather than by any specific action (or omission) of any other State (see Duarte Agostinho and Others, cited above, §§ 202-03). The Court considers that a respondent State should not evade its responsibility by pointing to the responsibility of other States, whether Contracting Parties to the Convention or not.*

[...] *This position is consistent with the Court's approach in cases involving a concurrent responsibility of States for alleged breaches of Convention rights, where each State can be held accountable for its share of the responsibility for the breach in question [...] It is also consistent with the principles of international law relating to the plurality of responsible States, according to which the responsibility of each State is determined individually, on the basis of its own conduct and by reference to its own international obligations (see ILC, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Commentary on Article 47, paragraphs 6 and 8). Similarly, the alleged infringement of rights under the Convention through harm arising from GHG emissions globally and the acts and omissions on the part of multiple States in combating the adverse effects of climate change may engage the responsibility of each Contracting Party [...]*

Lastly, as regards the “drop in the ocean” argument implicit in the Government's submissions – namely, the capacity of individual States to affect global climate change – it should be noted that in the context of a State's positive obligations under the Convention, the Court has consistently held that it need not be determined with certainty that matters would have turned out differently if the authorities had acted otherwise. The relevant test does not require it to be shown that “but for” the failing or omission of the authorities the harm would not have occurred. Rather, *what is important, and sufficient to engage the responsibility of the State, is that reasonable measures which the domestic authorities failed to take could have had a real prospect of altering the outcome or mitigating the harm [...] In the context of climate change, this principle should also be understood in the light of Article 3 §*

3 of the UNFCCC according to which States should take measures to anticipate, prevent or minimise the causes of climate change and mitigate its adverse effects”⁶³

- (c) This analysis examines the connection between inadequate action and specific harm to human rights, mediated by the damage inflicted on the environment, particularly the climate system. For many obligations related to this conduct, harm reaching a defined threshold (termed “significant” or similar) to the environment—whether to the climate system as a whole or to specific components like the marine environment—is enough to establish a breach of obligation, without needing to demonstrate a direct link between that harm and the injury suffered by any individual or group. Consequently, the analysis conducted by the European Court of Human Rights in *Klimaseniorinnen v. Switzerland* exemplifies the application of a stringent standard, concluding that insufficient greenhouse gas emission reductions constitute a violation of human rights.

IV Legal Consequences

- 50) Saint Vincent and the Grenadines reiterates its position pertaining to legal consequences in its Written Submissions. It further emphasises that:
- (a) With respect to “*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*”:
- i) **Obligation of Cessation and Non-Repetition:** There is a requirement for States to enact necessary legislation aligned with the best available scientific evidence and to acknowledge the binding nature of the policies set forth in their nationally determined contributions under the Paris Agreement. Additionally, it must be recognized that geoengineering and carbon dioxide removal measures do not constitute cessation of harmful activities.

⁶³ *Case of Verein Klimaseniorinnen Schweiz and others v. Switzerland*, ECtHR Application no. 53600/20, Judgment of the Grand Chamber (9 April 2024), paras. 439-444 (emphasis added)

- ii) **Obligation of Reparation (Restitution):** States must acknowledge the continuity of existing maritime zones and the ongoing sovereignty of States that may lose their territory due to sea-level rise.
 - iii) **Obligation of Reparation (Compensation):** Compensation for loss and damage should be recognised not merely as a primary obligation (such as aid “Loss and Damage Fund” or financial assistance), but also as a secondary obligation under the rules of State responsibility. Noteworthy, it must be acknowledged that it goes beyond economic and that psychological damage must also be considered given the trauma that victims face because of these catastrophic events. Such psychological damage includes eco-anxiety, ecological grief, climate worry and climate trauma.⁶⁴
 - iv) **Obligation of Reparation (Satisfaction):** There must be recognition of the existing maritime zones and the continued sovereignty of States whose territories are submerged due to sea-level rise.
 - v) **Legal Consequences of Serious Breaches of Obligations Owed *Erga Omnes* or to the International Community as a Whole:** All States are obligated to recognise existing maritime zones and the continued sovereignty of affected States to ensure respect for the right of peoples to self-determination.
- (b) With respect to “*Peoples and individuals of the present and future generations affected by the adverse effects of climate change*”:
- i) **Remedies and Redress for Loss and Damage:** There must be mechanisms for remedies and redress, particularly addressing climate-induced mobility, including displacement and migration, as well as the protection of the rights of future generations. This includes recognising that geoengineering and carbon dioxide removal do not equate to cessation of harmful activities.

⁶⁴ Paolo Cianconi and others “Eco-emotions and Psychoterratic Syndromes: Reshaping Mental Health Assessment Under Climate Change” (2023) 96(2) Yale Journal of Biology and Medicine 211.

- ii) Legal Consequences Arising from the Right to Self-Determination: Specific forms of reparation must be implemented to ensure the continuity and identity of peoples who may lose their territory due to climate change, thereby upholding their right to self-determination.

- iii) Legal Consequences of Climate Mobility as State Responsibility: The comprehensive legal framework addressing climate mobility encompasses a spectrum of obligations, ranging from preventive measures to State responsibility for losses and damages attributable to specific States. States are required to prevent displacement caused by climate change, which includes both mitigation and adaptation efforts. These obligations involve legislative, administrative, and judicial actions and are accompanied by procedural duties related to consultation, non-discrimination, and the protection of vulnerable communities. Climate mobility includes both internal and cross-border movement resulting from both gradual and abrupt climate events. Currently, the framework addressing these issues is incomplete, revealing gaps in effectively managing the full scope of climate mobility. States have a duty to provide innovative and progressive responses to these challenges, ensuring that both present and future generations are adequately protected and supported in dealing with climate mobility within and across national borders.

V Conclusion

- 51) In the words of Honourable Prime Minister of Saint Vincent and The Grenadines, Dr Ralph E Gonsalves at COP28⁶⁵:

Human beings are sleepwalking into a disaster of historic proportions...The leaders of the countries, which are the major emitters of greenhouse gases, know it. The profiteering barons and corporate barons globally know it. **The informed population of our planet knows it, and we in the Caribbean know it quite well because we feel it. So too the world's poorest people, who experience daily the consequences of calamitous climate change, they know it very well.** Yet we continue to tinker here and there with paltry

⁶⁵ Staff, T. (2023, December 4). *“Human beings are sleepwalking into a historic calamity”*- SVG PM. St Vincent Times. <https://www.stvincenttimes.com/st-vincent-pm-delivers-speech-at-cop28/>.

initiatives. And then celebrate them falsely as epoch-making and transformative. We may fool ourselves. We cannot fool nature. Humanity is facing a metaphoric chasm, a sprawling divide between what is required and what is being timidly advanced. We cannot cross this chasm with baby steps. If we seek to do so, we would fall below and beneath the widening gorge. Saving humanity from the disaster of man-made climate change is a great cause... We know that the planet cannot survive beyond global warming in excess of 1.5°C above pre-industrial levels. On the present course, humanity will exceed this target soonest. We know the compelling answers to this existential challenge, but we recoil from embracing them and acting upon them.

52) On the basis of the foregoing considerations, Saint Vincent and the Grenadines respectfully submits that the following arguments submitted by some States are inherently flawed and refutes them:

- i) The complexity of climate change and its negative impacts makes it impossible to ascribe responsibility to any specific action or inaction by States.
- ii) The Court should refrain from intervening in the ongoing negotiations taking place under the UNFCCC framework.
- iii) The legal framework governing climate change operates as a specialised regime (*lex specialis*).
- iv) Actions that have substantially harmed the climate system do not result in legal liabilities under the principles of State responsibility.

53) In this climate change forum, the principal tenet of shared but differentiated responsibilities ought to be a guiding path of States. Therefore, Saint Vincent and the Grenadines submits that States must comply with and consider the entire corpus of international law obligations jointly and severally and humbly submits that the Court declare that:

- i) States are mandated to curtail their human-induced greenhouse gas emissions;
- ii) States must undertake both individual and collective actions to ensure global temperature increases remain below 1.5°C relative to pre-industrial levels, thereby safeguarding the climate system and other environmental components;
- iii) The ambit of these obligations should be guided by principles of equity with climate justice as the bedrock, taking into account and finding the equilibrium between the rights and interests of current and future generations; and

- iv) The obligations and rights originate from the entire corpus of the international law regime and is not *lex specialis*.
- v) States failing to fulfil these obligations are required to cease their breaches and provide reparations mainly through compensation, for the loss and damage which has resulted.

Respectfully submitted,

Mr Desmond Simon

Authorised Signatory for Saint Vincent and the Grenadines, Chargé d' Affaires a.i. Embassies
of the Eastern Caribbean States & Missions to the European Union

August 15, 2024

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Annex: Links to videos depicting the devastating impacts of Category 4 Hurricane Beryl on Saint Vincent and the Grenadines

Link 1: <https://www.youtube.com/watch?v=oSP8RYqM3Q0> (2:32)

Link 2: <https://www.youtube.com/watch?v=p20es54iCxY> (1:14)

Link 3: https://www.youtube.com/watch?v=_s19Wf9LYOg (4:10)

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