

AMICUS CURIAE BRIEF

**PRESENTED TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS, SAN JOSÉ,
COSTA RICA**

**IN RELATION TO THE REQUEST FOR AN ADVISORY OPINION MADE BY CHILE
AND COLOMBIA ON THE CLIMATE EMERGENCY AND HUMAN RIGHTS**

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CHRISTOPHER CAMPBELL-DURUFLÉ, ASSISTANT PROFESSOR
LINCOLN ALEXANDER SCHOOL OF LAW, TORONTO METROPOLITAN UNIVERSITY
TORONTO, CANADA

BERNARD DUHAIME, FULL PROFESSOR
DÉPARTEMENT DES SCIENCES JURIDIQUES DE LA FACULTÉ DE SCIENCE
POLITIQUE ET DE DROIT, UNIVERSITÉ DU QUÉBEC À MONTRÉAL (UQAM)
MONTRÉAL, CANADA

With the invaluable collaboration of

CHARLIE-ANN BOUCHARD-LAROUCHE, LL.M. IN INTERNATIONAL LAW AND
INTERNATIONAL POLITICS, UNIVERSITÉ DU QUÉBEC À MONTRÉAL (UQAM)
MONTRÉAL, CANADA

ELAHEH SAJADI, JD CANDIDATE
LINCOLN ALEXANDER SCHOOL OF LAW, TORONTO METROPOLITAN UNIVERSITY
TORONTO, CANADA

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Executive Summary


The authors respectfully submit the following information in their capacity as *amici curiae* in response to the call for submissions made by the Honourable Inter-American Court of Human Rights (Court) regarding Chile and Colombia's request for an advisory opinion with respect to the Climate Emergency and Human Rights.¹ The authors focus on the three following propositions that arise from this Honourable Court's landmark advisory opinion *The Environment and Human Rights* (OC-23/17)²:

- A) States' obligation to prevent significant harm or damage to the environment, including harm that may involve a violation of the rights to life and to personal integrity, within or outside national territory, *is directly applicable to States' response to climate change, including mitigating greenhouse gas emissions, adapting to climate impacts, addressing climate-induced loss and damage, and supporting developing countries.*
- B) The notion of Climate Emergency is legally distinct from that of public emergencies that allow the suspension of certain basic rights to address exceptional situations such as wars, public dangers, or national security threats. Rather, *it transforms States' obligation to prevent significant harm or damage to the environment into a climate emergency action obligation.*
- C) Fulfilling the climate emergency action obligation contributes to preventing future pandemics and to protecting the human rights of vulnerable groups in the context of pandemics. In this context, *the "One Health" approach, which envisions the health of people, animals, and the environment as fully integrated, is directly relevant to defining and to implementing States' climate emergency action obligation.*

With the expression of our highest consideration,



Professor Christopher Campbell-Duruflé



Professor Bernard Duhaime, Ad. E.

¹ Solicitud de Opinión Consultiva sobre Emergencia Climática y Derechos Humanos a la Corte Interamericana de Derechos Humanos de la República de Colombia y la República de Chile, January 9th, 2023.

² Inter-American Court of Human Rights, *The Environment and Human Rights*, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23 (Nov. 15, 2017).

A) States' obligation to prevent significant harm or damage to the environment, including harm that may involve a violation of the rights to life and to personal integrity, within or outside national territory, is *directly applicable to States' response to climate change, including mitigating greenhouse gas emissions, adapting to climate impacts, addressing climate-induced loss and damage, and supporting developing countries.*

1. Climate change presents an unprecedented threat to the enjoyment of human rights across the Americas and globally. In its advisory opinion *The Environment and Human Rights*, this Honourable Court recognized that “environmental degradation and the adverse effects of climate change affect the real enjoyment of human rights.”³ Similarly, in its advisory opinion on constitutional jurisdiction over greenhouse gas pollution pricing, the Supreme Court of Canada found: “All parties to this proceeding agree that climate change is an existential challenge. It is a threat of the highest order to the country, and indeed to the world.”⁴ More recently, the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change warned: “The overall effect of inadequate actions to reduce [greenhouse gas] emissions is creating a human rights catastrophe.”⁵
2. The advisory opinion *The Environment and Human Rights* clarified that States have an international obligation to prevent significant harm or damage to the environment, including harm that may involve a violation of the rights to life and to personal integrity protected by the *American Convention on Human Rights*,⁶ within or outside national territory.⁷ In the precedent proceedings, this Honourable Court is presented with a unique opportunity to clarify how this obligation of prevention is directly relevant to the different aspects of States' response to climate change in light of the exceptional nature of this type of environmental harm (including being multi-factored, global, incremental, non-linear, and affecting multiple rights).
3. In particular, as highlighted by Campbell-Duruflé and Atapattu:⁸
 - Climate change may affect the right to a healthy environment, which this Honourable Court defined as an enforceable right in OC-23/17. The Protocol of San Salvador's working group

³ *Ibid.*, at para. 47.

⁴ Supreme Court of Canada, *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at para 167.

⁵ Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change, *Promotion and Protection of Human Rights in the Context of Climate Change Mitigation, Loss and Damage and Participation*, 26 July 2022, UN Doc A/77/226, at para 7.

⁶ *American Convention on Human Rights*, 22 November 1969, 1144 UNTS 123 (entered into force 18 July 1978).

⁷ Advisory Opinion OC-23/17, *supra* note 2 at 140.

⁸ This section borrows from Christopher Campbell-Duruflé & Sumudu Anopama Atapattu, “The Inter-American Court's Environment and Human Rights Advisory Opinion: Implications for International Climate Law” (2018) 8 Climate Law 321.

definition, relied on by this Honourable Court, points to States' obligation to "guarantee" a healthy environment.⁹

- Climate change may affect a whole range of other rights, both procedural and substantive, regardless of which subcategory of rights they belong to. This Honourable Court has reiterated: "the interdependence and indivisibility of the civil and political rights, and the economic, social and cultural rights, because they should be understood integrally and comprehensively as human rights, with no order of precedence, that are enforceable in all cases before the competent authorities."¹⁰
 - The obligation to prevent significant harm or damage to the environment is prospective, and thus well adapted to mitigating greenhouse gas emissions, adapting to climate impacts, and supporting developing countries in response to climate change. This Honourable Court affirmed a due diligence standard, according to which "States must take all appropriate measures to protect and preserve the rights recognized in the Convention, and to organize all the structures through which public authority is exercised so that they are able to ensure, legally, the free and full exercise of human rights."¹¹
 - The obligation to prevent significant harm or damage to the environment applies to transboundary environmental harms, such as many of those caused by climate change. This Honourable Court found that, "when transboundary damage occurs that effects treaty-based rights, it is understood that the persons whose rights have been violated are under the jurisdiction of the State of origin, if there is a causal link between the act that originated in its territory and the infringement of the human rights of persons outside its territory."¹²
 - This Honourable Court also emphasized the prospective dimension of the prevention obligation in the transboundary context, in a way that is highly relevant to States' responses to climate change. Indeed, lack of due diligence in mitigating emissions in one State could deprive another State of the ability to guarantee human rights *even before specific climate harm or damage occurs*: "Activities undertaken within the jurisdiction of a State Party should not deprive another State of the ability to ensure that the persons within its jurisdiction may enjoy and exercise their rights under the Convention."¹³
4. Throughout the Americas, tribunals are finding constitutional challenges against government responses to climate change to be justiciable legal questions. For example, in the United States of America, the First Judicial District Court of Montana recently found a youth complaint based on the right to a clean and healthful environment to be justiciable and to give rise to relief: "Montana's climate, environment, and natural resources are unconstitutionally degraded

⁹ Advisory Opinion OC-23/17, *supra* note 2 at 60. See also: *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* ("Protocol of San Salvador") (entered into force 16 November 1999), art. 11.

¹⁰ Advisory Opinion OC-23/17, *supra* note 2 at 57.

¹¹ *Ibid* at 123.

¹² *Ibid* at 101.

¹³ *Idem*.

and depleted due to the current atmospheric concentration of GHGs and climate change. The right to a clean and healthful environment allows plaintiffs to obtain equitable relief before harm occurs.”¹⁴ In Canada, the Ontario Superior Court of Justice also found a climate challenge to be justiciable under the rights to equality and to life, liberty, and security of person protected by the *Canadian Charter of Rights and Freedoms*.¹⁵ Although the Superior Court ruled against the youth plaintiffs on the merits, it highlighted that “the Constitution requires that courts review legislation and State action for Charter compliance when citizens challenge them, even when the issues are complex, contentious and laden with social values.”¹⁶

5. The authors respectfully submit that the foregoing provides useful elements for this Honourable Court to clarify how States’ obligation to prevent significant harm or damage to the environment, affirmed in its advisory opinion *The Environment and Human Rights*, is directly applicable to the different aspects of States’ response to climate change identified in relevant international treaties including, mainly, the *Paris Agreement*.¹⁷ Such aspects include: 1) mitigating greenhouse gas emissions in order to achieve global net-zero in time to limit average temperature increases well below 2 °C and closer to 1.5 °C (Article 4.2), 2) adapting to climate impacts in a way that takes into account vulnerable people, places, and ecosystems (Article 7.9), 3) addressing climate-induced loss and damage including extreme weather events and slow onset events (Article 8.3), and 4) supporting developing countries through the transfer of financial and other types of resources (Article 9.1 and 9.2).
6. These and other specific provisions from other international treaties are essential to interpret the *American Convention on Human Rights* by virtue of its Article 29(b) (according to which no provision shall be interpreted as restricting the enjoyment or exercise of any right or freedom recognized by virtue of another convention to which a State is a party) and of its Article 29(d) (according to which no provision shall be interpreted as excluding or limiting the effect of international acts of the same nature as the *American Declaration of the Rights and Duties of Man*).¹⁸ On the night of its adoption, the French President indicated to the other State representatives present at the negotiations that the *Paris Agreement* proclaimed rights for

¹⁴ Montana First Judicial District Court, Lewis and Clark County, *Rikki Held et al. v. State of Montana et al.*, Cause No. CDV-2020-307, Order of August 14, 2023, at paras 50-51.

¹⁵ *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

¹⁶ Ontario Superior Court of Justice, *Sophia Mathur et al. v His Majesty the King in Right of Ontario*, 2023 ONSC 2316 at para 106.

¹⁷ *Paris Agreement*, 12 December 2015, 3156 UNTS (entered into force 4 November 2016). See also: *United Nations Framework Convention on Climate Change*, 9 May 1992, 1771 UNTS 107 (entered into force 21 March 1994) and *Kyoto Protocol to the UNFCCC*, 11 December 1997, 2303 UNTS 148 (entered into force 16 February 2005).

¹⁸ OAS, International Conference of American States, 9th Sess, *American Declaration on the Rights and Duties of Man* (1948), OR OEA/Ser.L/V/II.23/Doc.21, rev. 6 (1979).

humanity as a whole and, as such, compared it to the *Declaration of the Rights of Man and of the Citizen* adopted in the same city in 1789.¹⁹

B) The notion of Climate Emergency is legally distinct from that of public emergencies that allow the suspension of certain basic rights to address exceptional situations such as wars, public dangers, or national security threats. Rather, it transforms States' obligation to prevent significant harm or damage to the environment into a climate emergency action obligation.²⁰

7. In 2020, the United Nations Secretary-General called “on all leaders worldwide to declare a State of Climate Emergency in their countries until carbon neutrality is reached.”²¹ As a result of a phenomenon which started with the city of Darebin, Australia in 2016, there are now at least 2,335 climate emergency declarations around the world at the national, regional, and municipal levels.²²
8. Such declarations have a “legally ambiguous nature”: they are more than “mere rhetoric”²³ but distinct from declarations of public emergencies that allow the suspension of certain basic rights to address exceptional situations such as wars, public dangers, or national security threats.²⁴ The concept of climate emergency has also faced criticism, including that of leading governments to take “performative” policy measures rather than truly transformative ones, of enabling the securitization of climate policy both nationally and internationally in ways that could legitimise “mitigation and adaptation action via undemocratic procedures,” and ultimately of opening the door to a “‘state of exception’ in which new forms of authoritarianism become viable.”²⁵

¹⁹ Élysée, Déclaration de M. François Hollande, Président de la République, sur l'adoption de l'accord de Paris sur le climat, au Bourget le 12 décembre 2015, online: <<https://www.elysee.fr/francois-hollande/2015/12/12/declaration-de-m-francois-hollande-president-de-la-republique-sur-ladoption-de-laccord-de-paris-sur-le-climat-au-bourget-le-12-decembre-2015>>

²⁰ This section borrows from Christopher Campbell-Durufié, “Interrogating Municipal Climate Emergency Declarations from a Climate Justice Perspective”, in Sumudu Atapattu, Freya Doughty, Enéas Xavier de Oliveira Jr., eds, *The Fourth Environmental Era: Climate Justice*, Vernon Press (Forthcoming 2024).

²¹ Secretary-General's remarks at the Climate Ambition Summit, United Nations Secretary-General, online: <<https://www.un.org/sg/en/content/sg/statement/2020-12-12/secretary-generals-remarks-the-climate-ambition-summit-bilingual-delivered-scroll-down-for-all-english-version>>.

²² Climate emergency declarations in 2,339 jurisdictions and local governments cover 1 billion citizens - Climate Emergency Declaration, July 21, 2023, online: <<https://climateemergencydeclaration.org/climate-emergency-declarations-cover-15-million-citizens/>>.

²³ Jocelyn Stacey, “The Public Law Paradoxes of Climate Emergency Declarations” (2022) 11 Transnational Environmental Law 291 at 295.

²⁴ *American Convention on Human Rights*, *supra* note 6, art. 27, *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), art. 4, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976), art. 8.

²⁵ For an excellent overview, see: Xira Ruiz-Campillo, Vanesa Castán Broto & Linda Westman, “Motivations and Intended Outcomes in Local Governments' Declarations of Climate Emergency” (2021) 9 PAG 17. See also: Lucy Holmes McHugh, Maria Carmen Lemos & Tiffany Hope Morrison, “Risk? Crisis? Emergency? Implications of the New Climate Emergency Framing for Governance and Policy” (2021) 12 Wires Climate Change e736 and Raven

9. In this context, the authors respectfully submit that this Honourable Court has an important opportunity to clarify the meaning and legal nature of the concept of “Climate Emergency” under international human rights law as one, distinct from public emergencies, that transforms States’ obligation to prevent significant harm or damage to the environment *into an emergency obligation to prevent significant climate harm or damage to the environment*.
10. Distinct features of such an obligation, which would arise without prejudice to States’ obligation to address other forms of significant environmental harm or damage, include the following:
- Human Rights-Based: The climate emergency does not require the suspension of fundamental rights. States’ emergency obligation to prevent significant climate harm or damage to the environment is rooted in international human rights law and in the concept of climate justice, both recognized in the preamble of the *Paris Agreement*. As such, it specifically takes into account the climate vulnerability for groups that are disadvantaged on grounds including the “intersection of gender with race, class, ethnicity, sexuality, indigenous identity, age, disability, income, migrant status and geographical location.”²⁶
 - Preventive: The climate emergency requires more than reactive measures. States’ emergency obligation to prevent significant climate harm or damage to the environment applies to mitigating greenhouse gas emissions, adapting to climate impacts, and supporting developing countries to avoid further climate-induced human rights violations. It is guided by the precautionary principle, as recognized in Article 3.3 of the *United Nations Framework Convention on Climate Change*.²⁷
 - Continuous: The climate emergency requires more than punctual and short-term measures. States’ emergency obligation to prevent significant climate harm or damage to the environment implies ongoing action. As recognized in the preamble of the *Paris Agreement*, its temporality differs as it is meant to further intergenerational equity. Brown Weiss emphasizes how the actions taken by this generation should satisfy the three criteria of equity of options, quality, and access: 1) conserving the diversity of the natural resource base so that future generations can use it to satisfy their own values, 2) ensuring

Cretney & Sylvia Nissen, “Emergent Spaces of Emergency Claims: Possibilities and Contestation in a National Emergency Declaration” (2022) 54 *Antipode* 1566 at 1581.

²⁶ Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change, *supra* note 5, at para. 29.

²⁷ *United Nations Framework Convention on Climate Change*, *supra* note 17.

the quality of the environment on balance is comparable between generations, and 3) non-discriminatory access among generations to the Earth and its resources.²⁸

- Global: The climate emergency knows no border and requires more than local measures. The concepts of common concern of humankind, equity, and “common but differentiated responsibilities and respective capabilities, in the light of different national circumstances” affirmed in the *Paris Agreement* all demand an equitable sharing of the burdens and benefits associated with climate change and climate action at the global, regional, national, and subnational levels. States’ emergency obligation to prevent significant climate harm or damage to the environment implies international cooperation and support (including climate finance, technology transfer, and capacity-building).
- Transformative: The climate emergency requires more than performative or superficial measures, sometimes known as greenwashing. As noted by Anderson, declaring a given social condition to be an emergency is a “hopeful act in that it aims to interrupt those conditions by making what has become ordinary into an exception.”²⁹ In the words of the United Nations Secretary-General, “business-as-usual guarantees [a] future of climate chaos.”³⁰ States’ emergency obligation to prevent significant climate harm or damage to the environment implies crosscutting and deeply transformative measures.

11. In sum, the authors hope that this Honourable Court will provide further guidance regarding how the distinct features of the climate emergency shape the scope of States’ emergency obligation to prevent significant climate harm or damage to the environment. As noted by the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change, “Urgent and drastic action is required by States and business enterprises to reduce their emissions.”³¹ For short, the distinct international obligation identified in this section could be known as the *climate emergency action obligation*.

C) Fulfilling the climate emergency action obligation contributes to preventing future pandemics and to protecting the human rights of vulnerable groups in the context of pandemics. In this context, the “One Health” approach, which envisions the health of

²⁸ Edith Brown Weiss, “Climate Change, Intergenerational Equity and International Law” (2008) 9 Vermont J Environ Law 615 at 616.

²⁹ Ben Anderson, “Emergency Futures: Exception, Urgency, Interval, Hope” (2017) 65 The Sociological Review 463 at 475.

³⁰ Press Release: Business-as-Usual Guarantees Future of Climate Chaos, Growing Threats to Peace, Secretary-General Tells General Assembly Meeting on ‘Our Common Agenda’, UN Doc SG/SM/20991 25 October 2021, online: <<https://press.un.org/en/2021/sgsm20991.doc.htm>>.

³¹ Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change, *supra* note 5, at para 15.

*people, animals, and the environment as fully integrated, is directly relevant to defining and to implementing States' climate emergency action obligation.*³²

12. The authors respectfully wish to draw the attention of this Honourable Court to two important dimensions of the health-environment nexus relevant to the present proceedings.
13. Firstly, environmental degradation exacerbated by climate change (including biodiversity loss and habitat fragmentation) increases the risk of future pandemics by facilitating the transmission of pathogens from wild animals to humans (also known as zoonotic spillovers). For example, mammal geographical range shifts caused by human activity and climate change generate “hotspots” for spillover risk that can now be pinpointed with increasing precision throughout the Americas.³³ At higher latitudes, sea ice loss in the Arctic heightens the risk of viral transmissions among seals, otters and other mammals between the North Atlantic and the North Pacific Oceans.³⁴ Reducing the risks of new zoonotic spillovers like COVID-19, but also Zika, Chikungunya, dengue fever, and so many others by taking climate emergency action is thus inseparable from promoting human rights, and in particular the right to health.
14. Secondly, environmental degradation exacerbated by climate change can heighten the vulnerability of equity-seeking groups to a pandemic's impacts. For example, the International Migration Organization observed that internal migrants that settle in urban and peri-urban areas of Bolivia due to slow onset events such as glacier melt, deforestation, and soil degradation are particularly vulnerable to COVID-19. Reasons identified include “precarious and/or overcrowded living conditions, limited access to basic services, and little or no social protection.”³⁵ In the Amazon basin, deforestation, biodiversity loss, and violation of Indigenous peoples' land rights (exacerbated by the pandemic) simultaneously undermined their right to health and increased their vulnerability to COVID- 19.³⁶
15. Considering the above, fulfilling the climate emergency action obligation is particularly important to guarantee the enjoyment of human rights because it contributes both to preventing future pandemics and to protecting the human rights of groups that are more vulnerable in the

³² This section borrows from Christopher Campbell-Durufié, “Mainstreaming “One Health” in the Inter-American Human Right System's Pandemic Actions” (2023) 48:1 University of Dayton Law Review 18.

³³ Colin J. Carlson et al., “Climate Change Increases Cross-Species Viral Transmission Risk” (2022) 607 Nature 555.

³⁴ Elizabeth VanWormer et al., “Viral Emergence in Marine Mammals in the North Pacific May be Linked to Arctic Sea Ice Reduction” (2019) 9 Scientific Reports 1 at 2.

³⁵ Ximena Flores-Palacios, *Climate Migration and COVID-19 in Bolivia: The nexus and the way*, IOM BLOG (Jun. 15, 2021) online: <<https://environmentalmigration.iom.int/blogs/climate-migration-and-covid-19-bolivia-nexus-and-way-forward>> See also: U.N. Human Rights Council, COVID-19, Displacement and Climate Change Factsheet (June 2020) online: <<https://www.unhcr.org/protection/environment/5ef1ea167/covid-19-displacement-climate-change.html>>

³⁶ Maria Antonia Tigre, “Covid-19 and Amazonia: Rights-Based Approaches for the Pandemic Response” (2021) 30:2 Review of European Comparative & International Environmental Law 162 at 172.

context of pandemics. As recognized by the Inter-American Commission on Human Rights (IACHR), these groups include “indigenous peoples, campesinos and rural workers, migrants, people who are deprived of their freedom, people living on the outskirts of cities, and people who are neglected by social security networks such as informal sector workers, people living in poverty, and the homeless” as well as “people with disabilities, people with certain pathologies and diseases, and, above all, the elderly.”³⁷

16. In this context, the “One Health” approach, recently adopted by the Pan American Health Organization³⁸ and the Organization of American States³⁹ is directly relevant to defining and to implementing States’ climate emergency action obligation. As defined by the One Health High-Level Expert Panel, One Health is “an integrated, unifying approach that aims to sustainably balance and optimize the health of people, animals, and ecosystems.”⁴⁰
17. The authors respectfully suggest that the One Health approach can assist this Honourable Court in further unifying human rights and environmental challenges in the context of the climate emergency, and in defining States’ climate emergency action obligation in a way that better integrates human, animal, and ecosystem health. In so doing, this Honourable Court would build on the outstanding work of the IACHR Special Rapporteur on Economic, Social, Cultural, and Environmental Rights, who recently found that “all aspects of the pandemic and climate change have a direct impact on the guarantee of all human rights from their indivisibility, interdependence and intersectionality. Therefore, all public policy measures taken by States to address both issues must be holistic and with a human rights approach.”⁴¹

Conclusion

18. In conclusion, the authors sincerely thank the distinguished members of this Honourable Court for their generous attention. They respectfully submit that the gravity of the threat to human rights posed by State inaction in the face of the climate emergency demands a decisive adaptation of the doctrines and institutions of the Inter-American human rights system. Interdisciplinary approaches and pragmatic legal developments, such as the affirmation of new general principles, the evolution of existing doctrines, and the reversal of certain burdens of

³⁷ Press Release, Inter-American Commission on Human Rights, IACHR and OSRESCER Urge States to Guarantee Comprehensive Protection for Human Rights and Public Health during the COVID-19 Pandemic, Press Release No. 060/20 (Mar. 20, 2020).

³⁸ Pan American Health Organization [PAHO], *One Health: A Comprehensive Approach for Addressing Health Threats at the Human-Animal- Environment Interface*, 20 July 2021, Document CD59/9 (Virtual session 20-24 September 2021).

³⁹ Org. of American States [OAS] General Assembly Res. 2993 at ¶ 9, OAS Doc. 2993 (LII-O/22) (Oct. 7. 2022).

⁴⁰ One Health High-Level Expert Panel (OHHLEP) et al., “One Health: A New Definition for a Sustainable and Healthy Future” (2022) 18 PLOS Pathogens 1 at 2.

⁴¹ Special Rapporteur on Economic, Social, Cultural and Environmental Rights of the IACHR, Fifth Annual Report, *The Imperative of Putting the Economy at the Service of People and Nature in the Most Unequal Region of the Planet* (May 26, 2022) OEA/SER. L/V/II ¶ 1692.

proof, are needed. The authors hope that this Honourable Court will find defining a “climate emergency action obligation” and explaining the relevance of the “One Health” approach to its implementation in the context of the present proceedings to be two useful steps in this direction.