Remedies Guidebook for International Climate Change Litigation

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Abbreviations

ACHPR	African Commission on Human and Peoples' Rights
ACtHPR	African Court on Human and Peoples' Rights
CAT	Convention against Torture
CED	Convention on Enforced Disappearances
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of Racial Discrimination
COM	Committee of Ministers
CRC	Convention on the Rights of the Child
CRPD	Committee on the Rights of Persons with Disabilities
ECHR[1]	European Convention on Human Rights
ECtHR	European Court of Human Rights
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant/Convention on Economic, Social and Cultural Rights
IPCC	Intergovernmental Panel on Climate Change
UNCEDAW	United Nations Committee on the Elimination of Discrimination Against Women
UNCERD	United Nations Committee on the Elimination of Racial Discrimination
UNCESCR	United Nations Committee on Economic, Social and Cultural Rights
UNCMW	United Nations Committee on the Protection of the Rights of all Migrant Workers and Members of their Families
UNCRC	United Nations Committee on the Rights of the Child
UNEP	United Nations Environment Programme
UNHRC	United Nations Human Rights Committee

[1] In case citations in this document, "ECHR" refers to the European Court of Human Rights, not the European Convention on Human Rights.

I. Introduction

This guidebook seeks to assist those bringing climate change cases in international legal and quasi-legal fora. It offers discussion and advice on the legal remedies parties can seek in climate change cases. Our experience has shown us that applicants or plaintiffs often have difficulty convincing judicial bodies to keep jurisdiction over their climate change case where the remedies sought are not clearly laid out and narrowly defined. This guidebook provides recommendations on how to structure such remedy requests to increase the chance that the cases will move forward on its merits and not be thrown out by courts for "non-justiciability" or lack of jurisdiction.

Climate change is a global problem, the effects of which are experienced to various extents and in various forms by all of humanity. Halting climate change requires concerted effort on the part of all members of the global community and is thus at once domestic and international in scope. This duality was underscored by the 2015 adoption of the Paris Agreement, which recognized that states have a shared responsibility to reduce their domestic emissions sufficiently to limit warming to well below 2°C.[2]

While domestic courts have at times proven to be effective channels through which to prompt state government action,[3] they have also proven to be slow,[4] which is particularly problematic given the urgency of the situation. Claimants have thus started to complement domestic proceedings with actions in international fora, specifically, human rights bodies. These bodies are attractive options for three primary reasons. First, several human rights bodies have formally recognized that climate change has implications for the enjoyment of human rights.[5] Second, the Universal Declaration of Human Rights is an expression of universal values and should therefore

[2] Paris Agreement to the United Nations Framework Convention on Climate Change, adopted pursuant to Conference of the Parties decision 1/CP.21 of 12 December 2015, document FCCC/CP/2015/10/Add.1.

[3] See, for example, *Urgenda Foundation v. The State of the Netherlands (Ministry of Infrastructure and the Environment)*, [2015] HAZA C/09/00456689, 24 June 2015 [*Urgenda*].

[4] The *Urgenda* case (*supra* note 3) took exactly 4.8 years to receive a final judgement. Similarly, in *Juliana v. United States*, domestic courts took nearly five years to reach a final decision to dismiss the plaintiffs' case, finding that the remedy sought exceeded their jurisdiction. In New Zealand, *Mataatua District Maori Council v. New Zealand*, filed in 2017, remains pending despite the urgent application filed by the plaintiff regarding harm caused by delays in state climate action. The German case *Lliuya v. RWE AG*, filed in 2015, has yet to be resolved.

[5] See, for example, UNHRC, Human Rights and Climate Change, document A/HRC/10/L.30, 20 March 2009.

guide the application international law.[6] Third, given that the UN General Assembly, the Office of the High Commissioner of Human Rights, the Human Rights Council, and the UN Environment Programme have all emphasized that environmental rights are universal and that vulnerable people must have special environmental protections under the conditions of climate change.[7] Thus, international human rights bodies provide a broader scope and stronger enforcement mechanisms than conventional climate treaties.

While climate change litigation before regional and international adjudicatory bodies has proliferated in the past decade, there remains a shortage of literature addressing the appropriate remedies to request in such proceedings. International climate change cases are increasing in number partly due to the difficulty of obtaining remedies in domestic courts. The justiciability of a case – the determination of whether the court has jurisdiction to decide a given issue – is often impeded by the topic of remedies. For example, the United States Ninth Circuit Court of Appeals recently dismissed the youth-led human-rights-based action in *Juliana v. United States*, which challenged the American government's inaction on climate change, as non-justiciable because the Court did not have the power to grant the remedies sought.[8] In Canada, the case of *La Rose v. Canada* was dismissed as non-justiciable, partly on the grounds that, given the "undue breadth of the claim", the remedies would have required the Court to go beyond its role within a system based on the separation of powers between different branches of government.[9]

Although constraints such as the separation of government powers are not a concern for international human rights bodies, considerations of state sovereignty or the margin of appreciation for state derogation from international law obligations may instead determine the remedies that an international human rights body is willing to grant in climate change cases.[10] These doctrines weigh in favour of leniency for domestic authorities in relation to their respect for and protection of human rights, and thus discourage international bodies from granting remedies

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[6] Judith Blau, *The Paris Agreement: Climate Change, Solidarity, and Human Rights*, (North Carolina: Springer Nature, 2017), at p. 64.
[7] *Ibid*, at p. 68.
[8] *Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020) [*Juliana*].
[9] *La Rose v. Canada*, 2020 FC 1008, at para. 59.
[10] See, for example, *Hatton and Others v. the United Kingdom*, Application No. 36022/07, ECHR 2003.

that their domestic counterparts were unwilling to grant. Consequently, litigants tend to pursue different, yet complementary, objectives in domestic and international fora, with the latter often serving as a channel through which to call greater attention to the issues and indirectly influence domestic law.[11]

This guide provides information on the various types of remedies that could be requested in climate change litigation at the regional and international levels. As many reports concern climate litigation at the domestic level, we seek to meaningfully contribute to the conversation on climate change litigation by focusing on the international sphere.[12] We focus primarily on suits brought against governments over failures to reduce greenhouse gas emissions. Our recommendations seek to balance practical concerns about enforceability and likelihood of implementation with remedies that would advance the goals of environmental advocates. These goals include ensuring urgent international action on climate change, holding states accountable to their climate policies on the international stage, and influencing domestic law to pave the way for more successful climate change litigation in domestic courts. First, the guide will survey remedies that have been requested in climate change litigation. Second, the guide will discuss remedies that may be applicable given the urgent nature of climate change, such as interim and precautionary measures. Finally, the guide will offer perspective on the implementation challenges of remedies at the regional and international levels.

II. Remedies

A. Types of Remedies Available to Climate Change Litigants

Legal scholars have observed a “two-track approach,” when judges decide on human rights violations, with “first-track” remedies tailored to address past violations and “second-track” remedies tailored to prevent future violations.[13] Distinctions in remedy types can also be seen in

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[11] UNEP, *Global Climate Litigation Report: 2020 Status Review*, (Nairobi: United Nations Environment Programme, 2020) [UNEP], at p. 31.

[12] See, for example, UNEP (*supra* note 11); Joana Setzer and Rebecca Byrnes, *Global trends in climate change litigation: 2020 snapshot*, (London: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science, 2020) [Setzer and Byrnes].

[13] Kent Roach, Remedies for Human Rights Violations: A Two-Track Approach to Supra-national and National Law (Cambridge: Cambridge University Press, 2021) [Roach] at p. 74. This is not to say that the two-track approach is purely aspirational. Professor

supra-national courts, which distinguish between "individual measures" and "general measures" issued to States.[14] According to some scholars, both remedy tracks must be walked simultaneously for states to fulfill their remedial duties to both address the harm caused and prevent future harm:

> The two-track approach encourages adjudicators to separate out the question of the appropriate remedy to protect and compensate specific litigants from the broader questions of appropriate measures to prevent the repetition of similar violations in the future. It combines the traditional 'right to a remedy' task long articulated for courts in both domestic and supra-national law with the more modern task of promoting systemic reforms.[15]

First track remedies are individualized and limited to litigants who can establish violations of their rights, the most common being damages.[16] Meanwhile, second track remedies aim to prevent the occurrence of similar rights violations in the future.[17]

One obstacle to the proper application of the two-track approach for any human rights matter is the willingness of the court to apply this two-track approach in the cases before it. Some courts have identified the two-track approach as promising, while others hold fast to the belief that individual and systemic remedies are incompatible and irreconcilable. In Professor Kent Roach's view, it is "a matter of litigation strategy whether litigants seek individual remedies or systemic reform or both".[18]

Regardless of litigation strategy, for litigants in climate change cases, the two-track approach offers a helpful way to conceptualize and frame requests for remedies. Thus, the following sections on first-track and second-track remedies are framed using this two-track approach, with

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Roach's work has been influenced by many decisions from multiple jurisdictions at the domestic, regional, and international levels, where the two-track approach was arguably applied to the rights violations at hand. These adjudicative bodies include the Committee on the Elimination of Discrimination Against Women, the Inter-American Court of Human Rights, the South African Constitutional Court, and the Colombian Constitutional Court. See, e.g., *ibid* at 93-116. For further examples of Colombia's two-track approach, see also the Case Study on Central and South American environmental litigation, located in Section IV of the Guidebook.

[14] *Ibid.*

[15] *Ibid*, at p. 88.

[16] *Ibid*, at p. 74.

[17] *Ibid*.

[18] Roach, *supra* note 13, at 117.

examples taken from actual cases.[19] Given the focus of this report, we then narrowed our search to law suits brought before regional and international human rights bodies.

Prior to bringing a case before an international human rights body, the plaintiff must demonstrate they have exhausted all domestic remedies.[20] In practice, this means plaintiffs either must have already pursued the case through the domestic court system or must demonstrate that domestic remedies are ineffective.[21]

Following this section, we provide an in-depth case study on litigation undertaken in Latin America on violations of the right to a healthy environment, which illustrate the creativity and diversity in remedies that have been provided by domestic courts. Although these courts do not necessarily ascribe to the two-track approach, many adhere to its underlying principles and recognize the need for both individual redress and systemic change.

i. Individual or First-Track Remedies

Declaratory Remedies

Declaratory remedies are often requested by climate change litigants before human rights bodies. These requests generally divide into two types: declarations of specific rights violations and declarations of broader significance to all climate change litigants. For example, the petitioners in *Sacchi v. Argentina* requested that the UN Committee on the Rights of the Child (UNCRC) declare that respondent states had violated the petitioners' right to life and right to health, failed to prioritize the "best interests of the child" and violated the cultural rights of petitioners from Indigenous communities.[22] The petitioners in *Sacchi* also requested the UNCRC declare that climate change is a children's rights crisis and that each respondent state had "caused and is

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[19] See Sabin Centre for Climate Change Law's Climate Change Litigation Database, available at http://climatecasechart.com.

[20] Margaretha Wewerinke-Singh, "Remedies for Human Rights Violations Caused by Climate Change", Climate Law, vol. 9 (2019), p. 224 [Wewerinke-Singh], at p. 233.

[21] *Ibid.*

[22] Communication to the Committee on the Rights of the Child Submitted under Article 5 of the Third Optional Protocol to the United Nations Convention on the Rights of the Child, Sacchi et al. v. Argentina et al., 23 September 2019 [Sacchi], para. 328. For example, applicant Deborah Adegbile of Nigeria asserts she has been repeatedly hospitalized for asthma attacks triggered by rising temperatures and exacerbated smog. Applicant Ellen-Anne of Sweden alleges that climate change imperils her indigenous community's traditional reliance on reindeer husbandry and herding. Applicants David Ackley III, Litokne Kabua, and Ranton Anjain of the Marshall Islands similarly claim that sea-level rise poses an existential threat to their culture.

perpetuating the climate crisis".[23] Such declarations go beyond the individual circumstances of the petitioners and, had they been granted, could have had important persuasive significance for future petitions or cases in domestic courts. For instance, if the UNCRC had found that the respondent state has caused and perpetuated the climate crisis, future petitioners and plaintiffs could cite that declaration in their own efforts to hold the same state responsible for climate change impacts they have experienced. The strategic importance of such declaratory remedies should not be overlooked. In its decision, however, the UNCRC concluded it did not have jurisdiction to examine the possible rights violations because domestic remedies had not been exhausted.[24]

The strategic importance of declaratory remedies was apparent in the domestic case of *Neubauer v. Germany*, where a group of German youth filed a constitutional complaint against Germany's Federal Climate Protection Act, arguing that the Act's target for reducing emissions was insufficient and therefore violated their human rights.[25] Germany's Federal Constitutional Court agreed with the plaintiffs, but instead of granting the requested declaratory relief, the Court struck down portions of the Act it viewed as incompatible with the plaintiffs' fundamental rights.[26] Less than a week after the Court's ruling, Chancellor Merkel announced she would raise the German climate targets and the federal government agreed on a new Climate Protection Act,[27] which was approved by the federal parliament in June 2021.[28]

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[23] *Ibid*, at paras. 326-327.
[24] *Sacchi v. Argentina*, CRC/C/88/D/104/2019 at 10.15 to 10.21. The UNCRC concomitantly released a public letter of encouragement to the *Sacchi* youth applicants to keep up the good work. *See* UNCRC, "Re: Sacchi et al v. Argentina and four similar cases" (2021), online (pdf): *Office of the High Commissioner for Human Rights*, at https://www.ohchr.org/sites/default/files/2021-12/Open_letter_on_climate_change.pdf.
[25] Center for Human Rights and Global Justice, "Rights of the Future: Innovations & Global Implications of the German Constitutional Court's Ruling", at https://www.youtube.com/watch?v=vqj71UdhDR8&ab_channel=CenterforHumanRightsandGlobalJustice (visited 31 May 2021) [CHRGJ YouTube].
[26] *Ibid*.
[27] CHRGJ YouTube, *supra* note 25.
[28] Presse und Informationsamt der Bundesregierung, "Intergenerational contract for the climate", at https://www.bundesregierung.de/breg-de/themen/klimaschutz/climate-change-act-2021-1936846 (visited 30 October 2021).

Injunctions

The International Law Commission's Articles on State Responsibility affirm that any state that violates its international obligations must perform its original obligations and cease any wrongful conduct.[29] The UN Human Rights Committee (UNHRC) has further clarified that the duty of cessation is an "essential element of the human right to a remedy".[30] In the landmark case *Milieudefensie et al. v. Royal Dutch Shell*, the Hague District Court ruled that the multinational corporation Royal Dutch Shell (Shell) was obligated to reduce its CO_2 emissions by 45% relative to 2019 levels by the end of 2030.[31] The Court did not accept Shell's argument that only states have a responsibility to uphold the goals of the Paris Agreement, instead finding that non-state actors also have a responsibility to reduce emissions in line with the Agreement.

The claimants also argued that Shell's obligation to contribute to the prevention of climate change stemmed in part from the right to life and the right to respect for private and family life of Dutch residents, enshrined in Articles 2 and 8 of the European Convention on Human Rights (ECHR) and Articles 6 and 17 of the International Covenant on Civil and Political Rights (ICCPR).[32] The Court agreed, finding that while the claimants could not assert a direct violation of their rights by Shell,[33] the provisions of the ECHR and the ICCPR offer protection against climate change and accordingly must inform Shell's corporate strategy.[34] The *Milieudefensie* case thus stands as an important precedent for using human rights standards to hold private parties accountable for climate change-inducing conduct.

Damages

Requests for compensation beyond legal fees are less common in human rights-based climate change litigation. Considering that the very nature of climate change necessitates governments to act and not just provide monetary relief, this is unsurprising. It is important nonetheless to

[29] Wewerinke-Singh, *supra* note 20, p. 235. The German law now sets goals of achieving greenhouse gas neutrality by 2045, aiming to reduce emissions by 65 percent of 1990 levels by 2030.
[30] *Ibid.*
[31] *Milieudefensie et al. v. Royal Dutch Shell PLC*, [2021] HAZA C/09/00571932, 26 May 2021.
[32] *Ibid*, at para. 3.2.
[33] *Ibid*, at para. 4.4.9.
[34] *Ibid*, at para. 4.4.10.

consider the potential of requesting damages in a climate change lawsuit.[35] While no international cases thus far have made extensive damages claims, a growing number of cases at the domestic level are requesting extensive damages, with at least one case finding success before the courts. In exploring damages, we have taken inspiration from Canadian tort law to categorize examples of damages claims. This categorization may help future litigants narrow the focus of their compensation claims.

First, there are *nominal damages*. Nominal damages are awarded when legally protected right(s) of the plaintiff(s) are violated, regardless of whether they experienced actual harm.[36] They are conferred in small amounts, so they are seen more as a symbolic punishment for the defendant rather than actual recompense. For instance, in *Notre Affaire à Tous v. France*, the four plaintiff NGOs were awarded a symbolic payment of one euro each in compensation for moral damage, though the Court withheld a separate payment of one euro for ecological damage.[37] Meanwhile, the plaintiffs in *Environnement Jeunesse v. Canada* requested nominal damages in the amount of $100 per plaintiff.[38] In this case's first instance at the Québec Superior Court, the judge found that distribution of the money would be impracticable and too expensive, so the plaintiffs submitted that the nominal compensation could be substituted for a commitment to climate change mitigation.[39] Unfortunately, *Environnement Jeunesse* was unsuccessful on appeal at the Québec Court of Appeal and on July 28, 2022, the Canadian Supreme Court denied their leave to appeal.[40]

Then, there are the two categories that fall under compensatory damages: *pecuniary*, which are awarded to a plaintiff to compensate for quantifiable monetary loss and *non-pecuniary*, which are awarded to a plaintiff to compensate for non-monetary losses such as pain and suffering.[41] The

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[35] There is evidence of increasing interest among scholars in contemplating the sensibility of claimants in climate change adaptation cases seeking compensation for climate-change-related impacts; see Jacqueline Peel and Hari M. Osofsky, "Climate Change Litigation", Annual Review of Law and Social Science, vol. 16 (2020), p. 21 at p. 27

[36] Samuel Beswick, Tort Law: Cases and Commentaries, Peter A. Allard School of Law, University of British Columbia, 2nd ed (2022), 2021 CanLIIDocs 1859, https://canlii.ca/t/t9st [Beswick].

[37] *Notre Affaire à Tous et al. v. France*, Tribunal Administratif de Paris, Numéros 1904967, 1904968, 1904972, 1904976/4-1, 2 February 2021.

[38] *Environnement Jeunesse v. Canada (Attorney General)*, 2019 QCCS 2885 [Environnement Jeunesse].

[39] *Ibid.*

[40] "Justice climatique: La Cour supreme du Canada rejette law demande d'authorisation d'Environnement Jeunesse"" (28 July 2022), online: *Environnement Jeunesse* <https://enjeu.qc.ca/justice-decision-csc/>.

[41] Beswick, *supra* note 36.

purpose of pecuniary damages is to return the plaintiff to the position they were in at the time of loss.[42] Typically, pecuniary damages cover items such as medical bills or lost wages; in the context of climate change litigation, pecuniary damages could possibly also include remedial costs for a damaged ecosystem. For example, in *Consejo para la Recuperación Ambiental y Otros con Gobierno de Chile y Otros*, the plaintiffs requested that the defendants prepare a 'compensation plan' for current and historical emissions to account for their negative impact on the environment, as well as the plaintiffs' health and integrity.[43] This case is currently on appeal after being dismissed by the Court of Appeals of Copiapo on procedural grounds.[44] As for an example of a lost wages claim, *Center for Food and Adequate Living Rights et al. v. Tanzania and Uganda* is a case currently pending before the East African Court of Justice.[45] Alongside an injunction to stop a crude oil pipeline, the plaintiffs are requesting compensation for "loss already incurred due to restrictions issued on use of their property by the developer and violation of their right to livelihoods".[46]

It is difficult to determine how successful pecuniary damages claims would be in climate change litigation. The same can be said for non-pecuniary damages, with the only pertinent case (at the time of publication) awaiting a decision. This case, *Tsama William and Others v. Uganda's Attorney General and Others*, was brought in response to deadly landslides in the Bududa District of Uganda in December 2019.[47] The plaintiffs allege that the Ugandan government failed to protect their human rights, specifically in the context of natural disasters, which have increased in frequency due to climate change. Relying on previous case law, they are seeking UGX 100,000,000.00 (approximately $35,000.00 CAD) each for the families of twenty people killed in the landslides.[48]

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[42] *Ibid*.
[43] *Consejo para la Recuperación Ambiental y Otros con Gobierno de Chile y Otros,* 323-2021, available at <http://climatecasechart.com/non-us-case/women-from-huasco-and-others-v-the-government-of-chile-ministry-of-energy-environment-and-health/>.
[44] *Ibid*.
[45] *Center for Food and Adequate Living Rights et al. v. Tanzania and Uganda*, East African Court of Justice, First Instance Division, 6 November 2020, available at <http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2020/20201106_12737_application.pdf>.
[46] *Ibid,* at p. 18.
[47] *Tsama William and Others v. Uganda's Attorney General and Others*, Miscellaneous Cause No. 024 of 2020, High Court of Uganda at Mbale, available at <http://climatecasechart.com/non-us-case/tsama-william-and-others-v-ugandas-attorney-general-and-others/>.
[48] *Ibid*.

Canadian tort law also allows for *aggravated damages*. When a court awards aggravated damages, it is to compensate the plaintiff for intangible harms caused by the defendant's actions, such as humiliation and distress.[49] According to the Supreme Court of Canada, "[a]ggravated damages may be awarded in circumstances where the defendants' conduct has been particularly high-handed or oppressive", alongside a finding that the defendant was motivated by malice.[50] In our review of international and domestic climate change litigation, we were unable to find examples where aggravated damages were awarded. Admittedly, aggravated damages are challenging to obtain, given the requirement to prove specific "malicious" behaviour.

Punitive, or *exemplary damages*, are awarded as punishment against the defendant(s) for behaviour that is intentionally harsh, vindictive, or malicious.[51] There are no examples of punitive damages requests in domestic climate change cases where the defendant is a government entity. Like aggravated damages, punitive damages require a certain intent threshold be met, which would be difficult to reach when the opposing party is a state. Over the last few years, the United States has seen a surge in climate change litigation brought by states, counties, and cities against various energy corporations. In most of these cases, the plaintiff state, county, or city is seeking punitive damages, alleging that the energy companies operated with malice, as they knew their operations contributed to climate change for several decades, yet carried on as usual despite this awareness.[52] It is important to note that these cases do not rely on human rights law; instead, they rely on tort law, asserting the defendant energy corporations owed a duty of care to American citizens. Additionally, as these cases are still pending at the time of publication, it is again difficult to conclude whether punitive damages claims will be successful in climate change litigation.

Restitutionary damages will also be challenging for climate change litigants, as they require "the defendant to give back the value of the benefit he subtracted from the plaintiff in the course of

[49] Beswick, *supra* note 36.
[50] *Hill v. Church of Scientology of Toronto*, [1995] 2 SCR 1130, at paras 188-190.
[51] Beswick, *supra* note 36.
[52] See e.g., *City & County of Honolulu v. Sunoco LP*, available at <http://climatecasechart.com/case/city-county-of-honolulu-v-sunoco-lp/>.; *County of Santa Cruz v. Chevron Corp*., available at <http://climatecasechart.com/case/county-santa-cruz-v-chevron-corp/>; *Delaware v. BP America Inc.*, available at <http://climatecasechart.com/case/state-v-bp-america-inc/>; *Rhode Island v. Chevron Corp.*, available at <http://climatecasechart.com/case/rhode-island-v-chevron-corp/>.

committing a wrong against her" (emphasis added).[53] In other words, the plaintiff must have personally lost monetary value to the defendant due to the latter's unlawful conduct. We could find no examples of such damages claims in our review. Since the plaintiff must suffer a direct monetary loss to the defendant to be awarded restitution, this remedy will likely be unsuccessful in climate change cases.

Finally, there is *disgorgement*, which strips any gains the defendant acquired during their wrongdoing and awards them to the plaintiff.[54] Unlike restitutionary damages, disgorgement does not require the defendant to unjustifiably extract these gains directly from the plaintiff; rather, disgorgement encompasses any gains made through the defendant's wrongful acts. Like punitive damages, a claim for disgorgement is likely to be more fruitful when the defendant is a private entity, not a government. Again, the only climate change cases we found where disgorgement was requested came from the state, county, and city climate change lawsuits against energy companies in the United States.[55]

ii. Systemic or Second Track Remedies

Recommendations

Recommendations are arguably the most interesting and diverse remedies in human rights-based climate change litigation. A survey of current and past case law revealed a wealth of creative remedial requests in the recommendations issued by international fora, particularly in cases before the Inter-American Commission on Human Rights (IACHR). These requests range from broad to specific. There are indications that treaty bodies such as the UNHRC will welcome more specific remedial requests, which assists the treaty bodies in the adjudication process.[56]

In one of the pioneering cases, the *Petition to the Inter American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States*, Inuit petitioners requested that the IACHR recommend the United States "take into

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[53] Mysty S. Clapton, "Gain-Based Remedies for Knowing Assistance: Ensuring Assistants do not Profit From Their Wrongs" (2008) 45:4 Alta L Rev 989 at 992.
[54] Beswick, *supra* note 36.
[55] *Supra* note 52.
[56] Interview with Vasilka Sancin, 29 March 2021.

account the impacts of American greenhouse gas emissions on the Arctic and affected Inuit in evaluation and before approving all major government actions".[57] The petitioners also requested that the IACHR recommend the implementation of plans to both protect Inuit culture and resources and provide Inuit communities with assistance in adapting to the unavoidable impacts of climate change.[58] Although that case was ultimately unsuccessful,[59] it nonetheless demonstrates the breadth of recommendations that can be requested.

The *Torres Strait Islanders v. Australia* petition is an example of a successful attempt to secure recommendations from the UNHRC in response to the effects of climate change. In this case, which addressed the impacts of rising sea levels on Indigenous peoples of the Torres Strait Islands, the petitioners requested that UNHRC recommend that Australia:[60]

- provide $20 million in emergency funding for seawalls;
- provide long-term funding for sustained coastal defense and climate adaptation measures;
- reduce its emissions by at least 65% below 2005 levels by 2030 and to net zero by 2050; and
- phase out all thermal coal exported or used in domestic electricity generation.[61]

The UNHRC found that Australia had indeed violated Articles 17 and 27 of the ICCPR and found Australia had an obligation to make full reparations to the individuals whose covenant rights were violated.[62] In their decision, the UNHRC stated that Australia is obligated to: provide adequate compensation for the harm suffered by the victims; engage in meaningful consultation with the victims and their communities in order to conduct needs assessment; implement measures to secure the communities safe existence on their lands; monitor and review the effectiveness of the

[57] "Petition to the Inter American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States", 7 December 2005, at <http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2005/20051208_na_petition.pdf>.
[58] *Ibid*.
[59] Case documents and a summary of the case are available at http://climatecasechart.com/climate-change-litigation/non-us-case/petition-to-the-inter-american-commission-on-human-rights-seeking-relief-from-violations-resulting-from-global-warming-caused-by-acts-and-omissions-of-the-united-states/.
[60] ClientEarth, "Climate threatened Torres Strait Islanders bring human rights claim against Australia", 12 May 2019, at https://www.clientearth.org/latest/press-office/press/climate-threatened-torres-strait-islanders-bring-human-rights-claim-against-australia/ [Torres Strait Islanders].
[61] Torres Strait Islanders, *supra* note 60.
[62] UNHRC, Views adopted by the Committee under Article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019, CCPR/C/135/D/3624/2019, 22 September 2022, at para 11.

measures the implement to resolve deficiencies; and take steps to prevent similar violations in the future.[63]

Structural Injunction and Follow-Up Procedures

Structural injunctions are composite remedies available in domestic courts, the general objective of which is to "alter broad social conditions".[64] Under the banner of structural injunction, ordering judges assemble a collection of remedial devices, such as mandatory policy reforms and ongoing judicial supervision, which they believe will best assist in altering the specific social conditions of interest.[65]

Courts have employed structural injunctions in the environmental context, such as in the notable case *Metropolitan Manila Development Authority et al. v. Concerned Residents of Manila Bay et al.*[66] decided by the Supreme Court of the Philippines in 2008. The Philippines Supreme Court ordered thirteen government agencies to clean, rehabilitate and preserve Manila Bay.[67] In response, the government designed, and is currently implementing, the Manila Bay Clean Up Program.[68]

The Indian case of *Godavarman* was first filed to address deforestation in a protected forest in South India. The Supreme Court of India, after receiving submissions regarding non-compliance with the ordered injunction, significantly broadened the scope of the order, and thereby assumed control of the day-to-day management and governance of all of India's forests, including issues related to mining and tribal use.[69]

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[63] *Ibid*.
[64] Robert E. Easton, "The Dual Role of the Structural Injunction", The YLJ, vol. 99, no. 8 (1990), p. 1983 at p. 1983.
[65] *Ibid*.
[66] *Metropolitan Manila Development Authority et al. v. Concerned Residents of Manila Bay et al.*, G.R. Nos. 171947-48, 18 December 2008.
[67] *Ibid.*
[68] Details of the Program are available at https://www.denr.gov.ph/index.php?id=794&page=80&sort&filter&sea.
[69] *T.N. Godavarman Thirumulkpad v. Union of India* (1997) 2 SCC 267; Manoj S. Mate, "The Variable Power of Courts: The Expansion of the Power of the Supreme Court of India in Fundamental Rights and Governance Decisions", (2010), University of California, Berkely, Ph.D Dissertation, Proquest proquest.com/docview/1520328101?accountid=14656&forcedol=true&pq-origsite=summon.

In *Maria Khan et al. v. Federation of Pakistan et al.,* a case currently pending before the Lahore High Court,[70] the plaintiffs are seeking a structural injunction to ensure compliance with a requested order that respondents establish and implement a climate-compatible development policy.[71]

The international equivalent of a structural injunction is called a 'targeted recommendation'. For example, those seeking this type of remedy could request that the human rights treaty body follow-up on their recommendations to ensure implementation. The Rules of Procedure of the IACHR, for instance, specifically provide that the Commission may adopt follow-up measures it deems appropriate, such as requesting information from the parties and holding hearings to verify compliance with its recommendations.[72] That said, there are currently no cases where claimants have specifically requested targeted recommendations.

We discuss follow-up procedures further in the "Implementation of Remedies" section of this guide.

[70] *Maria Khan et al. v. Federation of Pakistan et al.*, Petition, Lahore High Court, Writ Petition No. 8690 of 2019, 14 February 2019, available at http://climatecasechart.com/non-us-case/maria-khan-et-al-v-federation-of-pakistan-et-al/.
[71] *Ibid*, at p. 19.
[72] Rules of Procedure of the Inter-American Commission on Human Rights, adopted pursuant to the 137th Regular Period of Sessions of the Inter-American Commission on Human Rights of August 13 2009 [IACHR Rules of Procedure], art. 48.

B. Case Study: Central & South America Remedies in Environmental Litigation[73]

The chart below surveys case law from Central and South America that touch upon one or more of the following: air pollution, toxic substances, children and the environment, and the right to a healthy environment. While not specifically considering climate change per se, these related cases showcase the variety of remedies Central and South American higher courts have imposed on governments and offending companies for human-caused damage to the environment.

Table 1

CASE	FACTS	REMEDIES
	Argentina	
Equística Defensa del Medio Ambiente Aso. Civ. v. Provincia de Santa Fe y otros[74]	Out-of-control fires had burned on islands off the coast of Rosario, Santa Fe, since June 2020. The case was decided on 11 August 2020.	After finding that the wildfires had impacted air quality, the Corte Suprema de Justicia, the highest court in Argentina, ordered the provinces of Santa Fe, Entre Rios, and Buenos Aires, and the municipalities of Victoria and Rosario, to create an Environmental Emergency Committee as a precautionary measure. The Committee was mandated to adopt measures to prevent, control, and stop irregular fires, as well as submit a report to the Corte on compliance within 15 calendar days.
Beatriz Silvia Mendoza y otros v. Estado Nacional y otros (20	The Matanza Riachuelo river basin had been polluted for years by industrial waste due to a lack of adequate	In the first *Mendoza* case, the Corte Suprema de Justicia, the highest court in Argentina, ordered the defendant companies to report, within 30 days, on the liquids they dumped in the water; any waste treatment systems in place; and legally required insurance per Argentina's General Law on the

[73] The contents of the table in this section are the result of research conducted by clinicians of the 2021-2022 International Justice and Human Rights Clinic cohort at the Peter A. Allard School of Law at the University of British Columbia, working with Dr. David Boyd, UN Special Rapporteur on human rights and the environment.
[74] *Equística Defensa del Medio Ambiente Aso. Civ. v. Provincia de Santa Fe y otros*, CSJ 468/2020, Fallos 343:726, available at https://sjconsulta.csjn.gov.ar/sjconsulta/documentos/verDocumentoByIdLinksJSP.html?idDocumento=7594871.

June 2006 & 8 July 2008)[75]	treatment systems. As a result, the river was contaminated with heavy metals, hydrocarbons, pesticides, and sewage.	Environment. Meanwhile, the National State, the province of Buenos Aires, and the cities of Buenos Aires and Cofema were ordered to fulfill two requirements within 30 days: 1. Submit an integrated plan that included an environmental ordering of the territory; control over the development of anthropic activities; an environmental impact study on the forty-four (44) companies involved; an environmental education programme; and a public environmental information program. 2. Convene a public hearing on 5 September 2006, where they were obligated to update the Corte on the above information. In a follow-up action, the Corte Suprema de Justicia reprimanded the defendants for utilizing deficient information in their plan and ordered: 1. Compliance in the execution of a court-designed Programme, consisting of three objectives (improvement of quality of life, rehabilitation, prevention of damage) and eight mandates related to: a. Public information; b. Industrial pollution; c. Landfill sanitation; d. Cleaning of river banks; e. Expansion of the drinking water system; f. Storm drains; g. Sewage; and h. An emergency health plan.

[75] *Beatriz Silvia Mendoza y otros v. Estado Nacional y otros*, M. 1569. XL. ORI, 20 June 2006, available at https://sjconsulta.csjn.gov.ar/sjconsulta/documentos/verDocumentoByIdLinksJSP.html?idDocumento=6044131&cache=1643940801119; *Beatriz Silvia Mendoza y otros v. Estado Nacional y otros*, M. 1569. XL. ORI, 8 July 2008, available at https://sjconsulta.csjn.gov.ar/sjconsulta/documentos/verDocumentoByIdLinksJSP.html?idDocumento=6044131&cache=1643940801119.

		2. That citizens participate in overseeing compliance with the plan and its programs. 3. That the Ombudsman of the Nation would coordinate public participation by forming a collegiate body, on which representatives of intervening NGOs would be interested third parties. 4. That the Juzgado Federal de Primera Instancie de Quilmes had jurisdiction to hear all matters regarding the execution of this decision.
	Chile	
Francisco Chahuan Chahuan v. Empresa Nacional de Petroleos ENAP S.A.	In August and September 2018, three ‘contamination events’ occurred in Quintero and Puchuncaví – these events were alleged to be the release of gases and chemical compounds from nearby gas and mining industries, though the Corte Suprema de Chile could not attribute responsibility to these companies. Instead, they determined that the government had known about these pollution problems for several years, yet had failed to take sufficient steps to prevent air pollution.	In application of the precautionary and prevention principles, the Corte Suprema de Chile ordered: 1. That the sectoral authorities carry out pertinent studies to establish the most suitable method to identify the nature and characteristics of the gases, elements, and compounds produced by each and every possible source located in the Bay of Quintero, Ventanas, and Puchuncaví. 2. On completion of (1), that the administrative authority provide whatever is needed to implement actions recommended by the above report, such as evaluating the installation of filters or devices that can identify and monitor pollutants at their source (i.e., chimneys). 3. That the Executive arrange whatever is needed to fully implement the measures from the report in (1) and be ready to begin operations within one year. 4. On completion of (1) to (3), that the sectoral authorities perform the appropriate actions to determine the identity of each and every compound harmful to human health and the environment generated in the Bay of Quintero, Ventanas, and Puchuncaví.

Additionally, they must also ascertain the characteristics, sources, and effects of these compounds on human health and the environment (i.e., air, water, soil).

5. On completion of (4), that the administrative authorities set emission levels and parameters for each identified contaminant. Once established, the facilities producing the contaminants must reduce their emission levels to those identified above within a limited and precise period also established by the administrative authorities.
6. That necessary procedures are initiated to assess the suitability of, and if necessary, increase, measures such as emissions standards and environmental quality regarding the contaminants produced by the industries in the Bay of Quintero, Ventanas, and Puchuncaví.
7. That the Health Authority, once the contaminants are identified and quantified, adopt necessary measures to protect affected populations in Quintero and Puchuncaví. Such measures must include:
    a. Diagnosing diseases amongst the population to determine what pathologies the contaminants caused;
    b. A monitoring system of the diseases to observe their prevalence and survival rate;
    c. Epidemiological surveillance measures in the emergency zone;
    d. Upon full documentation of the diagnoses, the preparation and implementation of health programs to meet community needs;
    e. A policy for contingency situations; and
    f. Provision of whatever necessary to undertake patient referrals.

		8. That the National Emergency Office prepare an emergency plan for similar contamination events. This plan must incorporate coordination measures, provision of resources, and other details deemed relevant and useful to respond to these events. 9. That should a contamination event reach unsafe levels, the competent authorities must arrange for the evacuation of children and adolescents to a safe place until the event ends. 10. That the rest of the vulnerable population of Quintero, Ventanas, and Puchuncaví, be evacuated each time a critical contamination event occurs. 11. That the classification of the latency zone and the saturated zone of the communities in question be re-evaluated, the analysis from which the competent authority must adopt the appropriate and corresponding measures. 12. That a website be created and maintained for all data, background information, investigations, reports, results, etc., to account for all actions carried out in compliance with this judgment, utilizing clear language. 13. That, during the execution of the tasks provided for in this ruling, the authorities under appeal detect the concurrence of situations that justify the application of their powers, they must initiate the relevant courses of action to make those powers effective. 14. That the Regional Ministerial Secretariat of Housing and Urban Development of the Fifth Region modify the Regulatory Plan of Valparaiso in relation to the affected area, with such work to be considered a priority. 15. Any other action necessary for the complete fulfillment of this ruling.
Colque/Bogado Ingenieros Consultores S.A.	Remavesa, a company that worked for the Ministry of Public Works, entered a	The Corte Suprema de Chile ordered the following:

	mining gravel collection sector, and extracted, without authorization, approximately thirty cubic meters of material. The site had been used as a dumping ground for toxic mining tailings.	1. Prohibition of waste removals from the site without prior study on toxicity, the latter of which was to be supervised by the Regional Ministerial Secretariat of Health and the Environmental Assessment Service. 2. Implementation of measures to prevent the access and free transit of third parties to the site, with the aim of avoiding the handling of waste, within 10 days. 3. Studies to identify the contaminants in the area and the danger posed to the nearby population and the population, of which the Corte asked to be informed of within eighteen days. 4. Evaluation of a methodology to reduce the area where the hazardous waste is located. 5. Information sessions for the community regarding the risks associated with the pollutants identified and ensure that the site has visible and detailed information and signs that communicates these risks, within 180 days.

Colombia		
Centro de Estudios para la Justicia Social 'Tierra Digna' y otros v. Presidente de la República y otros[76]	Illegal mining operations had dumped mercury, cyanide, and other toxic chemicals into the Atrato River, located in northwestern Colombia. The river is the main source of water for the local community, and its contamination had led to the poisoning of many local	Alongside declaring that serious violations had been perpetrated against the biocultural rights and fundamental rights to life, health, water, food security, and a healthy environment of the local ethnic communities, the Corte Constitucional de Colombia, the chamber of Colombia's highest court responsible for matters concerning the Constitution, recognized the Atrato River, its basins and tributaries, as an entity subject to the rights of protection, conservation, maintenance, and restoration. The national government and communities were ordered to exercise legal guardianship and representation of the river. They were instructed to design a commission of guardians for the Atrato River with two appointed guardians

[76] *Centro de Estudios de Justicia Social y otros v. Presidente de la República y otros*, T-622/16, available at http://files.harmonywithnatureun.org/uploads/upload838.pdf.

	indigenous peoples, killing at least three dozen children between 2013 and 2014.	and an advisory team integrated by invitation of the Humboldt institute and World Wildlife Foundation Colombia, within three months. The Corte went even further and ordered various governmental ministries, with the help of non-profit organizations, to create and implement a plan to decontaminate the Atrato River Basin, its tributaries, riverine territories, and recover their respective ecosystems within one year. It also ordered other entities to create and implement their own plan to eradicate illegal mining that occurred along the Atrato River and its tributaries. Other orders from the Corte included toxicological and epidemiological studies of the river and its tributaries, and local communities; and monitoring and follow-up on compliance with all orders.
Andrea Lozano Barragán, Victoria Alexandra Arenas Sánchez, José Daniel y Félix Jeffry Rodríguez Peña y otros v. Presidente de la República y otros[77]	Twenty-five children between the ages of seven and twenty-five sued the national government over widespread and unchecked deforestation occurring in the Colombian Amazon.	The Corte Suprema de Justicia, the highest court of ordinary jurisdiction in Colombia, ordered various governmental entities, alongside the plaintiffs, affected communities, and interested citizens in general, to prepare short, medium, and long-term plans within four months to counter deforestation in the Amazon, which had to include an examination of climate change impacts. These groups were also ordered to construct an 'intergenerational pact for the life of the Colombian Amazon' for the same purpose of reducing deforestation and greenhouse gas emissions. All municipalities in the Colombian Amazon were also told to update and implement their Land Management Plans so that they included action plans on reducing deforestation.

[77] *Andrea Lozano Barragán, Victoria Alexandra Arenas Sánchez, José Daniel y Félix Jeffry Rodriguez Peña y otros v. Presidente de la República y otros,* STC 4360-2018, available at http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2018/20180405_11001-22-03-000-2018-00319-00_decision.pdf.

		The Corporation for the Sustainable Development of the South Amazon, the Corporation for the Sustainable Development of the North and East Amazon, and the Corporation for the Sustainable Development for the Special Management Area in the Amazon were also ordered to create action plans on preventing deforestation.
Acción de Tutela Para Proteger Derecho a la Salud y Ambiente Sano de Communidad Indígena Frente a Actividades Extractivas de Carbon, Judgment T-614/19[78]	Coal mining located less than two kilometres from an indigenous reserve caused localized air, water, and environmental pollution. Pollutants included sulfur, chromium, copper, zinc, sulfates, and oxides. Various health problems were prevalent amongst the community, such as impaired lung function.	The Corte Constitucional de Colombia, the chamber of Colombia's highest court responsible for matters concerning the Constitution, ordered the offending defendant company, Carbones del Cerrejón Limited, to fulfill three requirements: 1. In application of the precautionary principle, to control its particulate emissions within one month to improve air quality. The order remained in effect until the company and the community agreed on an air quality standard for the reservation. 2. Also in application of the precautionary principle, to implement various measures to reduce the risks that their operations posed to the indigenous community, including exhaustive cleaning of carbon dust in the houses and wells of the reservation, reduction of noise levels, prevention of water contamination, and an increase of fire prevention efforts. 3. Translate the ruling into English and provide copies to their headquarters (Anglo America, BHP Billiton and Glencore) within one month. As for the government, the Corte also ordered several ministries and officials to:

[78] *Accion de Tutela Para Proteger Derecho a la Salud y Ambiente Sano de Communidad Indigena Frente a Actividades Extractivas de Carbon*, Judgment T-614/19, available at https://www.corteconstitucional.gov.co/Relatoria/2019/T-614-19.htm.

		1. Form a Technical Commission within one month, with objectives to identify risk factors relating to mining in the relevant area, as well as prevent and mitigate alternatives to correct risks in the short-, medium-, and long-term. The Commission was instructed to ensure community and company participation, and to request opinions from various expert bodies, like the Faculty of Health Sciences from the University of Sinu. 2. Implement monitoring systems for measuring air and water quality in the reservation. 3. Carry out strict and effective control of Carbones del Cerrejon Limited's operations. 4. Communicate the results of the above supervision to members of the reservation and ensure their participation in this oversight. 5. Regulate levels of vibrations related to blasting within three months. 6. Create a health brigade to assess members of the reservation and provide health services. 7. Ensure access to clean and safe drinking water for the reservation.

Costa Rica		
Orlando Rojas Rojas v. Instituto Costarricense de Acueductos y Alcantarillados y otros[79]	A pineapple plantation located in Pital de San Carlos had been utilizing a pesticide, bromacil (a prohibited herbicide toxic to humans), which had contaminated surface water and groundwater. Despite knowing about the	The Corte Suprema de Justicia, Sala Constitucional, the constitutional chamber of Costa Rica's highest court, ordered the relevant government ministries to eliminate the pesticide from all water sources that supplied the affected communities of Veracruz de San Carlos. Each entity was instructed to determine their own individual roles in this plan, which had to be drafted within six months. The Minister of Health was made responsible for the plan, and so was required to inform the Corte of any problems or obstacles in its execution.

[79] *Orlando Rojas Rojas v. Instituto Costarricense de Acueductos y Alcantarillados y otros*, Resolución No. 12312-2019, available at https://nexuspj.poder-judicial.go.cr/.

	contamination, the State Phytosanitary Service and the Ministry of Health continued to supply water to local communities and failed to inform them of the pesticide's presence.	The Corte additionally ordered that the government had to utilize every scientific and technological measure necessary for the decontamination of the water sources, including the prohibition of polluting agrochemicals and, if any orders are breached, even the immediate closure of offending companies and the further prohibition of problematic activities.
Ecuador		
Isaha Ezequiel Valencia Cuero y otros v. Palmeras de los Andes S.A. y otros[80]	The operations of an African palm plantation resulted in widespread air and water pollution, affecting the health of local communities.	The orders of the Corte Provincial de Justicia de Esmeraldas, the highest court in the Province of Esmeraldas, were extensive and wide-ranging. These will be broken down into who was ordered to do what. The defendant companies were ordered to fulfill eight requirements, along with the reminder that the use of environmentally harmful chemicals is prohibited under penalty of criminal liability: 1. Plant an endemic species vegetation buffer zone at water sources and begin the reversion of their plantations. 2. Use water treatment systems in the production process. 3. Provide potable water to the affected communities until a water system is constructed. 4. Provide water purification systems to areas that trucks cannot reach. 5. That all their legal representatives, employees, and workers, must attend a class on the myths and traditions of Ecuador, the history of the country's ancestral cultures, and the history of the Inca.

[80] *Isaha Ezequiel Valencia Cuero y otros v. Palmeras de Los Andes S. A.*, 08100-2010-0485, available at https://www.derechosdelanaturaleza.org.ec/cultivo-de-palma-en-la-comunidad-la-chiquita/.

6. Include in their payroll at least 10 young people from the communities and train them on a permanent basis within 90 days.
7. Maintain cordial relations with the communities, refrain from interfering in their way of life, and collaborate with them on how to improve their quality of life.
8. Commit themselves to utilize environmentally friendly production systems and develop pest control technologies.

The Ecuadorian State was instructed to restrict future authorizations for expanding the planting of African palm in the San Lorenzo canton.

The Ministry of the Environment was ordered to conduct periodic studies on the water quality of rivers near the plantation.

The Ministry of Agriculture, alongside the communities of La Chiquita and Guadualito, was ordered to find suitable mechanisms by which the plaintiffs could acquire teaching and learning tools for forest management within 12 months, without losing their ancestral way of life.

The Ministry of Sports was told to build two small sports complexes and contribute environmentally friendly playground equipment and an athletic track for children. It was also ordered to promote canoeing, athletics, and cycling in the affected communities, and to provide the necessary equipment for these activities within six months.

The Ministry of Health was tasked with building a medical center in the middle of the affected territory, with a laboratory, hospital care, and dental and maternity care. The court also ordered comprehensive medical examinations of all community members to determine their health status as well as any illnesses caused by environmental pollution.

The Ministry of Education was ordered to build a school for and in the communities, and to run a literacy program for those who could not read nor write within 12 months. It was also told to coordinate with the anthropology departments of the Universities of Quito and Guayaquil to revive the language of the Awa people, publicize an Awapit-Spanish dictionary, and incorporate the language into basic education.

The Ministry of Social and Economic Inclusion was instructed to incorporate the people of La Chiquita and Guadualito into their social development programs, while observing their traditions and ways of life, within 180 days.

The Ecuadorian Social Security Institute was told to affiliate all non-affiliated plaintiffs into their program within 60 days.

The Ministries of Agriculture and the Environment were ordered to carry out reforestation with the communities of no less than 500 hectares in the surrounding areas. And, with the defendant companies, to build fish hatcheries for the communities and reintroduce traditional aquatic species, once the area has been remediated, which was to be completed within one year.

The Provincial Government of Esmeraldas was ordered to build a sanitary and pluvial sewage system using environmentally friendly techniques and treat all sewage before release into rivers. It was also told to build the roads and bridges necessary for accessing the area, and to reforest the areas of question with endemic species, within 18 months.

The Office of the Comptroller General of the State was instructed to impose fines against all holders of the Environmental Portfolio related to the plantation after due process had been completed.

	The National Water Secretariat, SENAGUA, was told to construct a plant for drinking water within one year, under penalty of both civil and criminal liability. Finally, the communities were tasked with controlling the restriction of the use of chemical products harmful to the environment.

C. Recommendations for Constructing Remedy Requests in Climate Change Cases

i. Specificity

A significant challenge when requesting and issuing remedies is balancing the specificity of the remedy with the State's discretion to create its own domestic laws and policies.[81] Generally, the greater the specificity of a remedy or recommendation, the greater the likelihood of compliance, as a clear remedy is easier to implement.[82] One of the primary reasons States fail to implement international decisions is that they do not know how to integrate them within their own domestic legal systems.[83] Remedies with greater specificity facilitate better monitoring by both national and supra-national bodies, creating the transparency and accountability that supports implementation.

In international legal and quasi-legal fora, decision-making bodies, such as UN treaty bodies, are highly unlikely to recommend specific remedies if they are not requested. As such, applicants should include specific remedial requests in their applications.[84] The UN High Commissioner of Human Rights has recommended that treaty bodies include in their decisions "not only specific and targeted remedies for the victim in question but also general recommendations in order to ensure the non-repetition of similar violations in the future."[85] The Commissioner further asks that treaty bodies make prescriptive remedies so that implementation can be measured.

Victims of climate change have sought specific remedial requests at both the international and domestic levels. At the international level, cases include the *Torres Strait Islanders v. Australia* petition, filed with the UNHRC, and the *Petition Seeking to Redress Violations of the Rights of Children in Cité Soleil, Haiti,* filed with the Inter-American Commission on Human Rights. The *Torres Strait Islanders* requests are discussed in the preceding section on Recommendations.[86] The

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[81] Clara Sandoval, Philip Leach and Rachel Murray, "Monitoring, Cajoling and Promoting Dialogue: What Role for *Supra*national Human Rights Bodies in the Implementation of Individual Decisions?", Journal of Human Rights Practice, vol. 12 (2020), p. 71 at p. 71 [Sandoval, Leach and Murray]; Rachel Murray and Clara Sandoval, "Balancing Specificity of Reparation Measures and States' Discretion to Enhance Implementation", Journal of Human Rights Practice, vol. 12 (2020), p. 101 [Murray and Sandoval].
[82] Sandoval, Leach and Murray, *supra* note 81.
[83] Kate Fox Principi, "Implementation of UN Treaty Body Decisions: A Brief Insight for Practitioners", Journal of Human Rights Practice, vol. 12 (2020), p. 185 [Principi] at p. 188.
[84] Interview with Vasilka Sancin, 29 March 2021.
[85] UN General Assembly, United Nations reform: measures and proposals, document A/66/860, at p. 70.
[86] Torres Strait Islanders, *supra* note 60.

Children in Cité Solei, Haiti petition presented a lengthy set of requests/proposed remedies to the Commission, as follows:

1) Declare Haiti in violation of the American Convention on Human Rights.
2) Issue the following Precautionary Measures:
    a) Immediately refrain from bringing more waste into Cité Soleil.
    b) Immediately guarantee conditions of waste management that are compatible with international standards.
    c) Immediately adopt pertinent measures to offer a specialized medical diagnosis for the beneficiaries, and provide them with adequate medical care, taking into account the alleged contamination, and provide adequate medical attention in conditions of availability, accessibility and quality, pursuant to applicable international standards.
    d) Adopt the measures in question in consultation with the beneficiaries and their representatives.
    e) Report on the actions taken to allow the investigation of the conditions that led to the situation described in the Petition with the aim of ameliorating them and preventing their recurrence; and
    f) Take appropriate steps necessary to guarantee that the petitioners are protected from threats, harassment, or acts of violence while pursuing their interests in this Petition as environmental and human rights defenders.
3) Visit with the Petitioners and community victims in Cité Soleil.
4) Hold a hearing during a public session about this Petition.
5) Recommend that Haiti:
    a) Halt violations of the Convention;
    a) Investigate the environmental conditions of Cité Soleil specifically as related to the canals and trash dump sites.
    b) Adopt and implement preventative measures that, at a minimum:
        i) relocate the city's trash dump out of Cité Soleil to a place separate from human habitation;

ii) require all commercial and residential disposal of trash in Cité Soleil cease until it comports with appropriate international standards;

iii) provide access to effective medical services, including but not limited to hospitals, health centers, and dispensaries, for the children of Cité Soleil;

c) Install a functioning wastewater treatment system.

d) Make reparation for the harm caused,

e) Institute legal reform, and/or

6) Require the adoption of other measures or by action by Haiti and provide any other relief the Commission considers proper.[87]

The specificity of these remedial requests encourages the international bodies to closely consider each measure and consider what is required to address the specific harms.[88]

Support with Evidence

It is also important, especially in the international arena, for specific remedial requests to be supported with evidence. The pleadings of the parties are often the only information upon which treaty bodies make their determinations. Thus, evidence can help the commission, committee, or court — where decision-makers are generally not climate change experts — understand the remedial request.[89]

Specific requests on carbon budgets and targets, in accordance with scientific evidence, may be particularly helpful in expediting climate change litigation. In *Neubauer*, the plaintiffs requested that the Court direct the legislature to issue new greenhouse gas reduction quotas. While the Court did not make this exact declaration, it held the government's Climate Change Act "incompatible with fundamental rights insofar as they lack provisions on the updating of reduction

[87] "Petition to the Inter-American Commission on Human Rights Concerning Violations of the American Convention on Human Rights", 4 February 2021, available at http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2021/20210204_13174_petition.pdf, at pp. 83-85.

[88] Interview with Professor Vasilka Sancin, member of the United Nations Human Rights Committee, 29 March 2021.

[89] *Ibid*.

targets".[90] The Court's decision prompted swift government action, likely assisted by the imminent federal election.[91] As the Court's general declaration appears to have been successful in forcing the government to address climate targets, asking courts for specific reduction quotas may help the court order practical and meaningful remedies.

ii. The Urgenda Model

In the landmark case of *Urgenda,* a Dutch environmental group sought declaratory and injunctive relief against the Dutch government to limit greenhouse gas emissions. The decision of the District Court, which was upheld at the Hague Court of Appeal and the Supreme Court of the Netherlands, imposed targets on the government to limit emissions to 25% below 1990 levels by 2020.[92] The ruling did not contain specifics as to how the government should achieve the stricter targets, instead it provided suggestions.[93] Meanwhile, the claimants presented a plan consisting of 54 proposed solutions to lower emissions. As a result, in April of 2020, the Dutch government released an action plan to cut emissions in response to the *Urgenda* ruling, which included 30 of the proposals contained in Urgenda's "54 Climate Solutions Plan".[94]

Despite the decision's domestic constraints, the approach taken by the Supreme Court of the Netherlands could be adapted to the international climate litigation context. This strategy would involve requesting international treaty bodies to impose targets for climate change mitigation with strict timelines for the state to meet. Delays in state climate change responses are costly, so it is imperative to be specific regarding timing in remedial requests.[95] An international body may recommend stricter emissions reductions targets, like the Supreme Court of the Netherlands, as well as require the state to meet its Nationally Determined Contributions (NDC) obligations under the Paris Agreement. Requesting compliance with NDCs is an effective remedy if states are willing

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[90] *Neubauer, et al. v. Germany*, 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/20, 29 April 2021, available at http://climatecasechart.com/non-us-case/neubauer-et-al-v-germany/, at p. 6.
[91] CHRGJ YouTube, *supra* note 25.
[92] *Urgenda, supra* note 3.
[93] *Ibid*, at para. 4.72.
[94] Jonathan Watts, "Dutch officials reveal measures to cut emissions after court ruling", The Guardian, 24 April 2020, at https://www.theguardian.com/world/2020/apr/24/dutch-officials-reveal-measures-to-cut-emissions-after-court-ruling.
[95] Interview with César Rodríguez-Garavito, 9 April 2021.

to take the action required to meet their NDC obligations.[96] The components of the international system work in tandem, and while a NDC compliance request will always depend on what the state promised under its Paris Agreement obligations, litigants must still demand that the state party adhere to those promises.[97]

iii. Incorporating Implementation Considerations into the Remedial Request

Implementation considerations should be evaluated when developing remedial requests. Litigants should understand the challenges associated with implementing international human rights decisions at the domestic level because it can aid them in crafting effective and enforceable remedies, ensuring that rights violations are stopped entirely. More detail about implementation considerations and strategies is available under Part IV of this report. These considerations include ensuring civil society engagement and awareness by requesting that the state widely publish the international decision, creating connection mechanisms to help facilitate international implementation through focal point bodies,[98] and eliciting swift action via the imposition of short timelines.

III. Expediting Relief

This section contemplates filing for interim measures or early warning and urgent action procedures to obtain expedited relief from regional and international human rights treaty bodies.

A. Interim Measures

Interim, provisional, or precautionary measures (hereinafter, "interim measures") provide for urgent remedial action on climate change in the context of international litigation.[99] The objective of interim measures is to safeguard the integrity and effectiveness of an international human rights treaty body or court's final decision by avoiding irreparable damage that would render the

[96] Interview with Vasilka Sancin, 29 March 2021.
[97] *Ibid*.
[98] Focal point bodies are discussed further in the subsection titled "B. Connection Mechanisms and Focal Points", particularly on page 51.
[99] The term "interim measures" is employed by UN Treaty Bodies and the ECtHR. The term "provisional measures" is employed by the IACtHR and ACHPR (African Commission on Human and People's Rights). The term "precautionary measures" is employed by the IACHR.

decision nugatory, ineffective, or futile.[100] Interim measures therefore aim to protect and ensure the security of victims' future right to relief.

This guidebook does not describe in full detail the procedural requirements for interim measures requests. Instead, a brief overview of the human rights bodies under which interim measures are available is provided in Table 2, along with basic procedural considerations for each. We also discuss how climate change impacts could meet the threshold requirements for the acceptance of such interim measures requests and associated strategic considerations.

In the United Nations system, interim measures requests are currently permitted under the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture (CAT), the Convention on Enforced Disappearances (CED), and the International Convention on Economic, Social and Cultural Rights (ICESCR).[101] Interim measures procedures are also available at major regional human rights bodies, including the Inter-American Court of Human Rights (IACtHR), the Inter-American Commission on Human Rights (IACHR), the African Court of Human and Peoples Rights (ACtHPR), and the European Court of Human Rights (ECtHR) (see Table 2).

Among these different human rights bodies, the procedural rules for interim measures requests are similar. These requests accompany the submission of a communication and are granted only in exceptional circumstances to avoid potentially irreparable violations of the rights invoked by the author or claimant.[102] However, a committee's decision to transmit an interim measures request

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[100] UN Secretariat, Informal guidance note by the secretariat for the States parties on procedures for the submission and consideration by treaty bodies of individual communications, January 2017, at https://www.ohchr.org/Documents/HRBodies/TB/NoteStatesParties.pdf [UN Informal Guidance on Individual Communications], para. 7; UNCRC, Guidelines for Interim measures under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, January 2019, at https://www.ohchr.org/Documents/HRBodies/CRC/GuidelinesInterimMeasures.docx [UNCRC Interim Measures Guidelines], at para. 2.

[101] UN Informal Guidance on Individual Communications, *supra* note 100, at para. 1.

[102] *Ibid*, at para. 7; Inter-American Court of Human Rights, Rules of Procedure of the Inter-American Court of Human Rights, November 2000, at https://www.oas.org/36ag/english/doc_referencia/Reglamento_CorteIDH.pdf [IACtHR Rules of Procedure], art. 27; IACHR Rules of Procedure, *supra* note 72, art. 25(1).

to the state party is not a determination that the communication is admissible or a decision on the merits of the case.[103] Furthermore, reasons for acceptance or denial of interim measures requests are not generally provided. In the UN system, interim measures requests are not formally binding, though non-compliance is a breach of the international commitment to perform treaty obligations in good faith.[104] The binding nature of interim measures available before regional human rights bodies varies by body (see Table 2).

[103] Consideration of an interim measures request is not generally accompanied by sufficient evidence to substantiate a fair decision on admissibility or the merits of the case. See Hellen Keller and Cedric Marti, "Interim Relief Compared: Use of Interim Measures by the UN Human Rights Committee and the European Court of Human Rights", Heidelberg J Intl L, vol. 73 (2013), p. 325 [Keller and Marti], at p. 332.

[104] UN Informal Guidance on Individual Communications, *supra* note 100, para. 7; Vienna Convention on the Law of Treaties (Vienna, 23 May 1969), United Nations, *Treaty Series*, vol. 1155, p. 331 art. 26.

Table 2

	Who Can Initiate	Source of Authority	Timing of Request	Binding	Decision Maker	Additional Notes
United Nations						
UNHRC	Committee Parties	Rule 94 – *Rules of Procedure*[105]	Submitted after registration of a communication.	Yes	Committee	No follow-up/monitoring specified. Special rapporteur(s) designated to process requests for interim measures.
UNCESCR	Committee Parties	Rule 7 – *Rules of Procedure*[106] Art 5 of OPIC[107]		Yes	Committee	No follow-up/monitoring specified.
UNCERD	Committee Parties	Rule 94(3) – *Rules of Procedure*[108]		Yes	Committee	No follow-up/monitoring specified.
UNCRC	Committee Special rapporteur Working group	Rule 7 of OPIC *Rules of Procedure*[109]		Yes		Consideration of the communication is expedited if interim measures are requested.[112]

[105] UNHRC, Rules of procedure of the Human Rights Committee, 4 January 2021, document CCPR/C/E/Rev.12, rule 94.
[106] ICESCR, Provisional rules of procedure under the Optional Protocol of the International Covenant on Economic, Social and Cultural Rights, adopted by the Committee at its forty-ninth session (12-30 November 2012), 15 January 2013, document E/C.12/49/3, rule 7.
[107] Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, adopted pursuant to General Assembly resolution 63/117 of 10 December 2008, document A/Res/63/117, art. 5.
[108] UNCERD, Rules of procedure of the Committee on the Elimination of Racial Discrimination, document CERD/C/35/Rev.3, rule 94(3).
[109] UNCRC, Rules of procedure under the Optional Protocol to the convention on the Rights of the Child on a communications procedure, 16 April 2013, document CRC/C/62/3, rule 7.
[112] CRC OPIC, *supra* note 110, art. 10(3).

	Parties	Arts 6, 10(3) – Optional Protocol[110] Guidelines[111]				Special Rapporteur or working group may be involved in follow-up.
Regional						
ECtHR	Chamber Section President Duty judge Parties “Any other person concerned”	Rule 39(1) – *Rules of Court*[113]	May precede submission of petition.[114]	Yes[115]	Chamber Section President Duty judge	Monitoring and follow-up regarding implementation at the discretion of the Court.[116] Reasons for granting/denying interim relief not general provided.[117]
ACtHPR	The Court Parties	Rule 59(6) – *Rules of Court*[118]	Submitted after registration of a communication.	Yes – per *Rules of Court*.[120]	Court	No follow-up/monitoring specified.

[110] Optional Protocol to the Convention on the Rights of the Child on a communications procedure, adopted pursuant to General Assembly resolution 66/138 of 19 December 2011, document A/Res/66/138 [CRC OPIC], arts. 6, 10(3).
[111] UNCRC Interim Measures Guidelines, *supra* note 100.
[113] European Court of Human Rights, Rules of Court, 1 January 2020 [ECtHR Rules of Court], rules 39(1), at rule 92.
[114] Keller and Marti, *supra* note 103, at p. 331.
[115] In *Mamatklov and Askarov v. Turkey [GC]*, Application Nos. 46827/99 and 46951/99, ECHR 2005, the ECtHR indicated that states parties are obligated to comply with interim measures under Article 34 of the European Convention on Human Rights which stipulates that states parties to the Convention shall not hinder the effective exercise of an individual’s right to submit an application to the Court.
[116] ECtHR Rules of Court, *supra* note 113, rule 39(3).
[117] Keller and Marti, *supra* note 103.
[118] African Court on Human and Peoples’ Rights, Rules of Court, 01 September 2020 [ACtHPR Rules of Court], rule 59(6).
[120] *Ibid*.

		Article 27(2) – *Protocol*[119]				
IACHR	Commission Parties	Article 25 - *Rules of Procedure*[121]	Anytime – affiliation with a petition not required.[122]	No.	Commission	IACHR maintains a register of granted interim measures.[123] Follow-up required under Article 25(1).
IACtHR	The Court Presidency The Commission (IACHR)[124] Parties	Article 63(2) – American Convention[125] Article 27 – *Rules of Procedure*[126]	Yes – unless recommended by the IACHR	Not specified.	The Court The Presidency	Follow-up carried out through reports submitted by both parties.

[119] Protocol to the African Charter on Human and Peoples' rights on the Establishment of an African Court on Human and Peoples' Rights, 25 January 2004 [Protocol to the ACtHPR Rules of Court], art. 27(2).
[121] IACHR Rules of Procedure, *supra* note 72, art. 25(1).
[122] *Ibid*.
[123] See Organization of American States, "Precautionary Measures: Grants and extensions", at http://www.oas.org/en/IACHR/decisions/MC/precautionary.asp.
[124] See IACHR Rules of Procedure, *supra* note 72, art. 76.
[125] American Convention on Human Rights (San Jose, Costa Rica, 22 November 1969), Organization of American States, *Treaty Series*, No. 36, art. 63(2).
[126] IACHR Rules of Procedure, *supra* note 102, art. 27.

B. Satisfying Threshold Requirements for Interim or Provisional Measures in the Climate Change Context

A request for the application of interim measures before any of the human rights bodies previously discussed requires the author or petitioner to demonstrate an imminent risk of a grave impact on their treaty-protected rights and irreparable damage.[127] To achieve this, it is necessary to establish three key components: 1) gravity of impacts, 2) irreparability, and 3) immanency of the risk. Inevitably, these concepts become interlinked in the final analysis. Nonetheless, we endeavour in the proceeding sections to demonstrate how each component could be met in the climate change context.

i. Grave Impacts

What constitutes a "grave impact" for the purposes of interim measures may be informed by the past practice and decisions of the human rights body in question. One of the most common applications of interim measures is in the context of expulsion or extradition where there is a risk of death, torture, or inhuman or degrading treatment to the individual if returned to their country of origin.[128] Interim measures have also been applied, though less frequently, by the ECtHR to prevent violations of the right to a fair trial and the right to respect for private and family life.[129] International climate change cases often involve allegations of a violation of the right to life[130] or right to respect for private life,[131] which are protected under most human rights treaties, and often provide examples of these violations. For example, one petitioner in *Sacchi* asserted a violation of her right to health because of repeated hospitalizations from asthma attacks, which were brought

[127] UNCRC Interim Measures Guidelines, *supra* note 100, paras. 2-3. See also, IACtHR Rules of Procedure, *supra* note 102, at art. 27; IACHR Rules of Procedure, *supra* note 72, at art. 25(1); ACtHPR Rules of Court, *supra* note 118, rule 59(6).

[128] See, for example, UNHRC, Views adopted by the Committee under art. 5 (4) of the Optional Protocol, concerning communication No. 2753/2016, document CCPR/C/122/D/2753/2016, 2 May 2018; UNHRC, Views adopted by the Committee under art. 5 (4) of the Optional Protocol, concerning communication No. 2595/2015, document CCPR/C/122/D/2595/2015, 24 September 2018; *Ocalan v. Turkey [GC]*, Application No. 46221/99, ECHR 2005; *F.G. v. Sweden [GC]*, Application No. 43611/11, ECHR 2016. Note also that the UNHRC has requested interim measures to protect political rights: in 2018, the UNHRC requested that Brazil, as an interim measure, ensure that former president Luiz Inacio Lula da Silva had appropriate access to the media and members of his political party while in prison in 2018 and that he not be prevented from standing for election in the 2018 presidential elections until his appeals had been heard in a fair trial, at https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23464.

[129] See, for example, *Amrohllahi v. Denmark*, Application No. 56811/00, ECHR 2002; *Soares de Melo v. Portugal*, Application No. 72850/14, ECHR 2016.

[130] *Sacchi, supra* note 22.

[131] *Duarte Agostinho and Others vs. Portugal and Others*, Application No. 39371/20, ECHR.

on by rising temperatures and increasing smog. Given this example, it appears possible that one may meet the grave impact criterion in the climate change context. A strong basis for an interim measures request includes evidence of grave impacts that are clearly demonstrated, linked specifically to the individual applicant(s), and already occurring.

ii. Irreparability

The UNCRC Guidelines on Interim Measures define "irreparable damage" as "a violation of rights which, due to [the] nature [of the rights], would not be susceptible to reparation, restoration, or adequate compensation."[132] The right to life is one common example. Once violated, by arbitrary death for example, the violation of the right to life is irreparable.

The precise impacts on protected rights are central when defining irreparability. State inaction on greenhouse gas emissions reductions could constitute an irreparable violation of rights due to the irreversibility of certain climate change impacts once they have occurred. For example, sea level rise is causing the salinization of water resources, flooding, and erosion in island nations like Kiribati, Tuvalu, Fiji, the Maldives, and the Solomon Islands,[133] as well as in low-lying coastal communities like Shishmaref and Kivalina in Alaska.[134] As a result of rising sea levels, entire communities, including those of Indigenous peoples, have already been displaced.[135] For the Indigenous peoples of these islands and coastal communities, whose traditional food sources and cultural practices are fundamentally linked to the land,[136] relocation has irreversible impacts on their cultural rights. Sea levels will continue to rise even if there are immediate reductions in greenhouse gas emissions, leading to an irreparable impact on cultural rights.[137]

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[132] UNCRC Interim Measures Guidelines, *supra* note 100, at para. 2.
[133] *Ibid*, p. 231-232. UN General Assembly, Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, document A/74/161, 15 July 2019 [Safe Climate Report], at para. 10.
[134] Simon Albert et al., "Heading for the hills: climate-driven community relocations in the Solomon Islands and Alaska provide insight for a 1.5°C future", Regional Environmental Change, vol. 18 (2018), at p. 2261 [Albert].
[135] Safe Climate Report, *supra* note 133, at para 10.
[136] Albert, *supra* note 134.
[137] Intergovernmental Panel on Climate Change, *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* (2018), at p. 5.

iii. Immanency of Risk

The urgency of the need to address climate change is well-substantiated by reports of the Intergovernmental Panel on Climate Change (IPCC) and recognition by UN human rights treaty bodies and regional treaty bodies alike.[138] For example, the UNHRC in *Teitiota* acknowledged that

> …environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.[139]

Meanwhile, the ECtHR received its first human rights-based climate change case in September 2020 and, two months later, communicated its decision to prioritize the case's consideration due to the urgent nature of climate change.[140] Thus, to demonstrate urgency, applicants and petitioners can point to IPCC reporting and other scientific communiqués on the trajectory of global temperatures, and joint statements made by the UN human rights treaty bodies.

While climate change impacts are associated with urgency at the global scale, interim measures requests must be based on the immanency of the risk to the individual. It may be inadequate to simply demonstrate that, without urgent action on climate change, global climate thresholds will be crossed within the next few decades. The UNHRC was clear in its final views on *Teitiota* that 10-15 years for the islands of Kiribati to become uninhabitable was too long to establish immanency, since this timeframe allowed enough time for the state party to intervene.[141] In the context of interim measures, establishing immanency will require an even shorter period within which rights-impairing events will occur, since the risk must materialize before the adoption of final views or the final decision of a treaty body. Otherwise, the treaty body may refer to the possibility of state party intervention to refuse an interim measures request.

[138] UNCEDAW, UNCESCR, UNCMW, UNCRC and UNCRPD, "Joint Statement on 'Human Rights and Climate Change'", 16 September 2019, at https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E.
[139] HRC, Views adopted by the Committee under art. 5 (4) of the Optional Protocol, concerning communication No. 2728/2016, document CCPR/C/127/D/2728/2016, 7 January 2020 [*Teitiota*], at para. 9.4.
[140] ECtHR, Purpose of the Case and Questions – Duarte Agostinho and Others vs. Portugal and Others, 30 November 2020, available at http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2020/20201130_3937120_na-1.pdf.
[141] *Teitiota, supra* note 139, at para. 9.12.

The second stumbling block for the immanency component is the delay between policy decisions and the resulting impacts on individuals. For example, a country may be prepared to approve an oil pipeline; however, the climate risks associated with that pipeline – increased greenhouse gas emissions, resultant global warming, and associated impacts on human rights – may not materialize on a timescale deemed 'imminent' by a treaty body. Attribution of the human rights violations to the approval of one pipeline also presents challenges, as is the case for climate change impacts more generally.[142] Interim measures requests that are focused and well defined have a better prospect of overcoming the immanency barrier, as is discussed in more detail below.

C. Strategic Considerations Relevant to the Application of Interim or Provisional Measures

i. Scope

Requests for interim measures are more likely to be effective when formulated narrowly.[143] Past use of interim measures across international and regional human rights bodies have been limited to a narrow set of actions with a clear connection to the rights of the claimant. Often, they are framed in the negative – the court or treaty body requests that a state party desist an action. For example, a court or treaty body could request that a state suspend the deportation of an applicant who faces a risk of death in the country of origin while the application's merits is decided. Interim measures may also be constructed to require discrete positive actions. In one instance, the ECtHR ordered that specific medical care be provided to an individual complainant until the Court delivered its decision on the merits of the case.[144]

Spotlight 1.1: Toxic Pollution in La Oroya, Peru

Considered one of the world's most polluted places, La Oroya is a mining town in the Peruvian Andes. The residents suffer from chronic respiratory illnesses and have high concentrations of lead, cadmium and arsenic in their blood. The IACHR accepted a petition from La Oroya residents in 2009.

The IACHR had previously granted urgent precautionary measures to protect the health of La Oroya's inhabitants in 2007 (Precautionary Measure 271/05). These measures imposed positive

[142] UNEP, *supra* note 11, p. 31. See also Michael Burger, Jessica Wentz and Radley Horton, "The Law and Science of Climate Change Attribution", Colum J of Envtl L, vol. 45, no. 1 (2020), at p. 57.
[143] Interview with Ramin Pejan, 19 March 2021.
[144] *Paladi v. the Republic of Moldova [GC]*, Application No. 39806/05, ECHR 2009.

obligations on Peru, requiring the State to "adopt the appropriate measures for making a specialized medical diagnosis of the beneficiaries, provide specialized and adequate medical treatment for those persons whose diagnosis shows that they are at risk of facing irreparable harm to their personal integrity or life, and coordinate with the persons requesting the measures and the beneficiaries to ensure implementation of the precautionary measures." In 2016, the Commission expanded measures to cover 14 additional beneficiaries (Resolution No. 29/16). The IACHR also requested that Peru provide periodic updates regarding implementation.

In October 2021, the Commission referred the case to the Inter-American Court. A hearing was held during the 153rd Session of the Court, which took place in October 2022. A decision is still pending.

The IACHR has likewise requested positive measures, again in the form of medical care, for residents affected by toxic pollution in La Oroya, Peru (see Spotlight 1.1). Essentially, these interim measures were defined requests; they contained a concrete action that, if fulfilled by the state, would lead to a specific result. A request without these components is less likely to be successful as it would not guarantee that the desired outcome of the proposed remedy would be achieved, nor that it would ensure the respect, protection, and promotion of the right in question. It is possible that focused requests for interim measures may be more agreeable to human rights bodies than those that make broad requests, such as a request to reduce greenhouse gas emissions at the state level. A remedy along these general lines lacks specifications as to *how* emissions should be reduced, which afford the offending state overly broad discretion in implementation and fulfillment.

ii. Causation

Even where applications for interim measures are narrow in scope, applicants must be prepared to delineate links between the proposed remedy and an irreversible impact on their rights. As seen in other areas of climate litigation, there is the troublesome question of how to demonstrate impacts on the individual when the impacts of climate change are indiscriminate and variable. For example, one applicant may fall ill or face food insecurity due to climatic changes, whereas another may not.[145] Causation in climate change litigation is a major hurdle, and applications for interim

[145] Interview with César Rodríguez-Garavito, 09 April 2021.

measures are no exception.[146] However, the causation hurdle may be overcome in litigation brought by distinctive communities who have suffered a particularized climate change impact. The impacts of climate change on children and Indigenous peoples are two areas where it is likely more feasible to establish links between climate change and the violation of recognized human rights.[147]

iii. Enforceability

Finally, applicants must consider the enforceability of the interim measures they plan to request. As noted above, the binding nature of interim measures and the stringency of monitoring and follow-up varies by human rights treaty body. As per Table 2, the UNCRC may engage a special rapporteur or working group to monitor implementation, in addition to its commitment to expedite communications that the interim measures have been granted. Meanwhile, ECtHR jurisprudence regards interim measures requests as binding, while other human rights bodies are silent on the matter. The UNCRC and ECtHR may therefore be among the most promising venues for requesting interim measures.

iv. Receptivity

Some human rights bodies may be more receptive to interim measures requests than others. For example, the IACHR faced heavy criticism and threats of withdrawal of support from Brazil after it granted an interim measures request in the Belo Monte Dam case in 2011.[148] Since then, the Commission has been reluctant to grant similar measures for cases associated with environmental, climate change, or infrastructure issues.[149]

Spotlight 1.2: Belo Monte Dam (Brazil)

In April 2011, the IACHR granted precautionary measures benefiting several Indigenous communities with respect to the construction of the Belo Monte hydroelectric dam in the Xingu River Basin of Brazil (Precautionary Measure 382/10). The measures required Brazil to halt the dam's licensing process and construction until the state had consulted with the communities, guaranteed the communities access to the project's Social and Environmental Impact Study in their own languages, and adopted measures to protect the life and physical integrity of the

[146] Interview with Vasilka Sancin, 29 March 2021.
[147] Interview with César Rodríguez-Garavito, 09 April 2021.
[148] AIDA, "Belo Monte: The Urgency of Effectively Protecting Human Rights", 01 April 2015, at https://aida-americas.org/en/blog/belo-monte-urgency-effectively-protecting-human-rights.
[149] Interview with César Rodríguez-Garavito, 09 April 2021.

residents of these communities, including preventing the spread of disease that could be associated with the influx of people to the region.

The IACHR updated these measures four months later, lifting the suspension on licensing and construction and modifying the other measures (Provisional Measure 382/10). Some critics called this a major setback provoked by Brazil's threat to withdraw support for the IACHR. Regardless, Brazil did not abide by the precautionary measures request and continued construction despite the many environmental issues.

D. Early Warning and Urgent Action Procedures

More immediate relief for the impacts of climate change on human rights could be achieved through an early warning or urgent action procedure. These remedial options are currently available under the CERD, CED, CAT, and CRPD (Convention on the Rights of Persons with Disabilities). To illustrate the urgent action procedure, we will focus on the CERD. For the UNCERD, the purpose of early warning measures is to prevent "existing problems from escalating into conflicts", whereas the urgent action procedure aims to "respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention."[150]

UNCERD Guidelines for the procedure suggest several indicators that may warrant its usage, including "[p]olluting or hazardous activities that reflect a pattern of racial discrimination with substantial harm to specific groups". [151] Consequently, the procedure may be applicable if the individual who brings the complaint belongs to a racially marginalized group that will face disproportionate harm by the state party's climate change policies. These policies may range from failure to mitigate greenhouse gas emissions to failure to implement adequate climate adaptation measures in these vulnerable communities.

[150] UNCERD, "Early-Warning Measures and Urgent Procedures", at https://www.ohchr.org/EN/HRBodies/CERD/Pages/EarlyWarningProcedure.aspx#about.
[151] UNCERD, Report of the Committee on the Elimination of Racial Discrimination, document A/62/18 [CERD Early Warning and Urgent Action Guidelines], p. 117 at para. 12.

The eligibility requirements for urgent requests vary by treaty body.[152] At the UNCERD, anyone can submit such a request,[153] and there is no requirement to exhaust domestic remedies beforehand.[154] Alternatively, urgent actions can be initiated by the Committee itself,[155] the procedure for which is overseen by a Working Group that makes recommendations to the Committee.[156] Under this procedure, the Committee may request the urgent submission of information by the state; issue an expression of concern along with specific recommendations for action; or offer to send a member of the Committee to the state to assist with the implementation of human rights protections.[157]

Spotlight 1.3: Indigenous peoples of Canada

In late 2019, the UNCERD acted under its Early Warning and Urgent Action Procedure to issue a statement regarding racial discrimination against Indigenous peoples in Canada, with specific reference to the Wet'suwet'en (Decision 1(100)).

Among other recommendations and requests, the Committee called upon Canada to "immediately suspend the construction of the Site C dam", "immediately halt the construction and suspend all permits and approvals for the construction of the Coastal Gas Link pipeline", and "immediately cease construction of the Trans Mountain Pipeline Expansion project and cancel all permits" until the state obtained the free, prior and informed consent of the Indigenous peoples on whose territories these developments were to be constructed. So far, Canada has only responded regarding the Site C dam, stating that they "have confirmed in writing that [six Indigenous groups] consent to or do not oppose the Project, and that they have been consulted and accommodated with respect to the effects of Site C on their constitutional protect rights". Canada has yet to respond on the Coastal Gas Link project and the Trans Mountain Pipeline Expansion.

IV. Implementation of Climate Change Remedies

For domestic and international bodies, implementation of international human rights decisions remains a substantial challenge.[158] Ineffectively implemented decisions fail to provide justice and

[152] ISHR Academy, "Requesting an early warning or urgent action", at https://academy.ishr.ch/learn/treaty-bodies/requesting-an-early-warning-or-urgent-action (visited 26 March 2021).
[153] *Ibid*.
[154] *Ibid*.
[155] *Ibid*.
[156] CERD Early Warning and Urgent Action Guidelines, *supra* note 149, p. 119 at para. 15.
[157] *Ibid*, p. 116 at para. 8.
[158] Sandoval, Leach and Murray, *supra* note 81, at p. 71. See also Murray and Sandoval, *supra* note 81, at p. 102.

do little to safeguard against future violations.[159] This is especially true in the context of climate change, where implementation failures increase the likelihood that that catastrophic climate change — and the dangerous environmental consequences that follow — will remain a perilous reality. In this section, we will highlight the challenges surrounding implementation of climate change remedies at the international level and provide relevant considerations from domestic climate case-law that could be imported into the international sphere.

A. Challenges to International Oversight

There is a wide range of mechanisms available to international human rights bodies to support the implementation of decisions. Many of these mechanisms focus on facilitating and maintaining dialogue between the international body and the state through meetings, hearings, and report submissions.[160] Other tools are helpful to ensure follow-through when states are consistently reluctant to implement decisions, including a referral to a judicial body or political organs,[161] and the "name and shame" technique, which draws international attention to the issue and exerts pressure on states to comply with human rights decisions. A summary of international treaty body and court-specific implementation mechanisms can be found in Appendix A of this report.

Three significant issues arise for all international human rights bodies that can impede effective implementation. First, not all tools available to these bodies are used consistently and effectively. Second, states do not always comply with follow-up procedures. Finally, the monitoring capabilities of international bodies are regularly impeded by a lack of resources.[162]

Regardless of these barriers, "monitoring implementation should be seen as integral to supranational bodies' mandates."[163] There must be recognition of, and attention to, the dynamic realities of implementation.[164] This requires both a greater understanding of domestic

[159] Alice Donald, Debra Long and Anne-Katrin Speck, "Identifying and Assessing the Implementation of Human Right Decisions", J Hum Rights Prac, vol. 12 (2020), p. 125 [Donald, Long and Speck], at p. 126.
[160] Sandoval, Leach and Murray, *supra* note 81, at p. 76.
[161] See, for example, IACHR Rules of Procedure, *supra* note 72, art. 44; ACtHPR Rules of Court, *supra* note 116, rule 118; Sandoval, Leach and Murray, *supra* note 81, at p. 78.
[162] *Ibid*.
[163] Rachel Murray, "Addressing the Implementation Crisis: Securing Reparation and Righting Wrongs", J Hum Rights Prac, vol. 12 (2020) p. 1, at p. 11.
[164] *Ibid*.

implementation mechanisms and political factors,[165] as well as a closer look at how that domestic framework can work alongside international structures to foster implementation.

B. Connection Mechanisms and Focal Points

Climate change is both a domestic and international issue; while domestic action is required, it is not effective in isolation. International cooperation and coordination are needed to ensure that all states' implementation measures work together to mitigate climate change's most devastating effects. While some mechanisms exist for international bodies to exert pressure on states, on their own, they are ultimately inadequate to address climate change alone. Therefore, it is imperative that international and domestic implementation mechanisms work in tandem to guarantee effective adoption of climate change remedies. To promote this cooperation, state actors and international bodies must maintain clear, transparent, and responsive lines of communication. Moreover, due to the intersection of climate change and human rights, it is critical to ensure the existence of connection mechanisms between the international body and domestic actors who ensure implementation.

One example of such a connection mechanism arises from the ECtHR. The European Convention on Human Rights requires that the judgements of the ECtHR be presented to a Committee of Minister, a political body made up of state diplomats. This unique aspect of the ECtHR was introduced to facilitate implementation of the Court's judgements at the state level (a more detailed explanation of this procedure can be found in Appendix A).[166]

Another example of connection mechanisms can be seen in Peru, wherein the Ministry of Foreign Affairs explicitly assumes the responsibility of communication and coordination with human rights bodies and the Ministry of Justice is tasked with follow up procedures to support the process of implementing recommendations from international human rights bodies.[167]

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[165] *Ibid*, at p. 12.

[166] European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 (Rome, 4 November 1950), Council of Europe, *European Treaty Series*, No. 5 [European Convention for the Protection of Human Rights], art. 46(2).

[167] César Rodríguez-Garavito and Celeste Kauffman, "Making Social Rights Real: Implementation Strategies for Courts, Decision Makers and Civil Society", April 2014, available at https://www.dejusticia.org/wp-content/uploads/2017/04/fi_name_recurso_639.pdf, at pp. 52-53.

Spotlight 1.4: Peru and the Ministry of Foreign Affairs

Peru issued a supreme decree to "[r]egulate the Procedure to Follow-Up on the Recommendations of International Human Rights Bodies" in 2000, requiring the Ministry of Foreign Affairs to communicate decisions from those bodies to Peru's National Secretariat of Human Rights. From there, the decisions are communicated to the Special Commission to Follow Up on International Procedures. This Commission is responsible for responding to all communications from international human rights bodies and supervising implementation of international human rights decisions. The Ministry of Justice conducts follow up on all international decisions.

In their report "Making Social Rights Real: Implementation Strategies for Courts, Decision Makers and Civil Society" (see footnote 146 below), César Rodríguez-Garavito and Celeste Kauffman note that while Peru's decrees have been useful to implementation, they are "dependent on executive policy to remain effective" (page 53).

As was demonstrated in Peru, establishing focal point bodies responsible for implementation at the domestic level is one potential connection mechanism to pursue. Often called "national mechanisms for implementation, reporting and follow-up", these focal points have been recognized by international bodies as helpful in the domestic implementation of international human rights decisions.[168] This strategy's success can be seen in the context of litigation in relation to socio-economic rights.[169] To be effective, focal point bodies need to be transparent, must engage with a variety of state actors, and must be a standing (rather than ad-hoc) body.[170] As states sometimes argue that no mechanism exists to implement decisions from international human rights bodies,[171] ordering the creation of a specific domestic body that will serve as a focal point reduces the validity of this excuse. International human rights courts and treaty bodies, at least in the climate change context, may specify the creation of these focal point bodies as part of a remedial recommendation. Litigants have requested recommendations concerning similar bodies from international courts before. An example can be seen in *Tibi v. Ecuador*.

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[168] See, for example, Universal Rights Group, "Human Rights Implementation, Compliance and the Prevention of Violations: Turning International Norms into Local Reality", 2016, available at https://www.universal-rights.org/wp-content/uploads/2016/10/Glion_2016_spread.pdf; UNHRC, Promoting international cooperation to support national mechanisms for implementation, reporting and follow-up, adopted pursuant to Human Rights Council resolution 42/30 of 27 September 2019, document A/HRC/RES/42/30.
[169] Interview with César Rodríguez-Garavito, 09 April 2021.
[170] Rachel Murray and Christian De Vos, "Behind the State: Domestic Mechanisms and Procedures for the Implementation of Human Rights Judgements and Decisions", J Hum Rights Prac, vol. 12 (2020), at p. 22 [Murray and De Vos] at p. 30.
[171] Principi, *supra* note 83, at p. 188.

Spotlight 1.5: *Tibi v. Ecuador,* IACtHR, Series C No. 114 (September 7, 2004)

Daniel David Tibi, a French national residing in Ecuador, was the victim of arbitrary arrest and prolonged detention and torture at the hands of the Ecuadorian Government after a third party accused him of participating of drug trafficking. The Inter-American Court of Human Rights found that Ecuador was in violation of Articles 7(1), 7(2), 7(3), 7(4) and 7(5) of the Inter-American Convention on Human Rights, as well as Article 1(1) of the Inter-American Convention to Prevent and Punish Torture.

While this case did not concern climate litigation, an interesting aspect of this case was Tibi's request that the Court require the state to develop an inter-institutional committee to define and execute the training programs on human rights and treatment of inmates. This remedial request was granted by the Court as a measure of specific performance to guarantee non-repetition. The Court also required Ecuador to apportion specific resources to that inter-institutional committee to ensure it met its objectives.

In 2006, 2009 and 2011 the Court evaluated Ecuador's compliance with remedial orders, and each time found that the state had not created the inter-institutional committee. In each evaluation, the Court decided to keep the proceeding open to keep pressure on the state and instructed Ecuador to submit continuous reports on compliance.

Domestic courts have also issued remedies that involve the establishment of focal point bodies. In the climate litigation context, *Leghari v. Federation of Pakistan* is an example of this approach.[172] In this decision, the Lahore High Court ordered the creation of a commission that would monitor the implementation efforts of the government.[173]

Spotlight 1.6: *Leghari v. Federation of Pakistan*

Leghari, a case from the Lahore High Court in Pakistan, concerned a petition brought by Ashar Leghari against the Pakistani government for failing to implement climate change mitigation measures. Leghari argued this failure was a breach of his fundamental human rights and dignity. The Court structured the remedy in a particularly intriguing way. First, the Court issued an order that required the state to establish a Climate Change Commission, which was charged with implementing Pakistan's Framework for Implementation of Climate Change Policy. It also required that Pakistan ministries appoint a "climate change focal person" to help facilitate implementation of the Framework. The Court followed this up with a series of slowly released orders to expedite the Commission's work. In essence, it has approached the petition as a "*rolling review* or *continuous mandamus*" to ensure effective implementation of its orders.

[172] *Ashar Leghari v. Federation of Pakistan et al.*, Lahore High Court, W.P. No. 25501/201, 4 September 2015 [*Leghari*].
[173] *Ibid*, at para. 8(iii).

In its first supplemental decision, issued in 2015, the Court appointed individuals to the Climate Change Commission, comprised of individuals from Ministries in both Federal and Provincial governments. The follow-up judgement, issued in 2018, noted the Climate Change Commission's Supplemental Report on Implementation of Priority Actions, and that Pakistan had completed almost 66.1% of the priority action items contained within the Framework. Determining that the Commission had served its purpose, the Court dissolved the Commission and created a Standing Committee on Climate Change to continue the dialogue on the implementation of the Framework between the Court and the Executive branch.

Climate change administrative bodies as a focal point remedy, often comprised of those with specialized knowledge, are decidedly important given that international judges and tribunal members do not always have a solid grounding in climate change science or issues. However, it is paramount to recognize that this form of remedy is case and court specific. While structured remedies, such as the one in *Leghari*, are well-suited to domestic courts, it is much more challenging for an international court or tribunal to order a state to create a climate change body and have that body report back on implementation.[174]

C. Timelines and Effects: Domestic Court-Led Implementation

Domestic institutions bear most of the responsibility for implementing international human rights decisions.[175] Among these institutions, the judiciary occupies a central role, especially when a state is non-compliant. There is some debate on whether international decisions are binding on states, though this issue is more relevant for some international bodies than others.[176] Giving international decisions the force of domestic law can legitimize their binding nature and put pressure on governments to ensure implementation.[177] By doing so, a general principle emerges: the stronger the rule of law and the more independent the judiciary is in a state, the greater the likelihood of implementation.[178]

[174] Interview with Ramin Pejan, 19 March 2021.
[175] Donald, Long and Speck, *supra* note 159.
[176] States tend to view recommendations provided by human rights treaty bodies as less binding than decisions rendered by international human rights courts.
[177] OSJI (Open Society Justice Initiative), *From Rights to Remedies: Structures and Strategies for Implementing International Human Rights Decisions* (New York: Open Society Foundations, 2013), at p. 88.
[178] Murray and De Vos, *supra* note 170, at p. 26.

There have been several creative and effective remedies issued by domestic judicial bodies in response to climate change cases. One significant example comes from New Zealand, when the government characterized environmental entities sacred to Māori tribes, like the Whanganui River, as legal persons.[179] This approach was also utilized in *Future Generations v. Ministry of the Environment and Others,*[180] where the Supreme Court of Justice of Colombia ordered the government to create a plan, within four months, to stop deforestation of the Amazon and increase climate change mitigation measures. In ruling this way, the Court characterized the Colombian Amazon Forest as an entity that is a "subject of rights."[181] However, *Future Generations* is also a useful illustration of how implementation can prove to be an ongoing challenge. A year after the judgement was issued, the remedial actions ordered had not been fully undertaken.[182] The plaintiffs had to return to the Court and request measures like those seen in *Leghari,* asking the Court to agree to convene public hearings at which the Government of Colombia would report on its implementation progress.[183]

Though the abovementioned cases do not concern the implementation of an international human rights decision, they are indicative of judiciaries being willing to push states to realize international climate change obligations. Globally, domestic courts have proved willing to impose strict timelines on states to act on climate change, which reflects the understanding that climate change requires immediate and decisive action. These judicial demands help alleviate the pressure on litigants seeking to hold governments accountable for failing to comply with court-mandated orders.

Spotlight 1.7: *Conseil d'État Press Release*

In a very recent decision from France, the Conseil d'État handed down an order that stated France was exceeding its state-imposed emissions reductions targets for 2015–2018. In response, the French Government proceeded to lower their 2019–2023 goals to ensure adherence to Paris Agreement obligations that require a 37% reduction in emissions from 2005 levels. In its determination, the Court emphasized that while the Government was responsible

[179] Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (NZ), 2017 No. 7, s. 14.
[180] *Demanda Generaciones Futuras v. Minambiente* ("*Future Generation v. Ministry of the Environment and Others*"), Corte Suprema de Justicia de Colombia, STC4360-2018 Radicación No. 11001-22-03-000-2018-00319-01, 5 April 2018.
[181] *Ibid*, at p. 45.
[182] UNEP, *supra* note 11, at p. 31.
[183] *Ibid*.

for addressing the ecological damage resulting from its failure to meet its own emissions targets, it was not financially responsible for the damage.

In their ruling, the Conseil d'État requested that the French Government justify these target amendments and explain how international obligations will be met without more ambitious measures. The Court imposed a strict timeline, giving the Government three months to produce adequate information justifying the amended targets.

In July 2021, the Conseil d'État urged the French Government to take additional measures before March 31, 2022 to meet objectives under the Paris Agreement.

Short timelines also assist new litigation on non-compliance by reducing the period before the state can reasonably be said to be non-compliant. Non-compliance can then be deterred or sanctioned with further remedial or costs orders, which is important for an issue that is time-sensitive and requires urgent action. Such an approach could be imported into the international sphere to encourage and require immediate state action as well as transboundary cooperation. It is worth noting that, while potentially acting as a catalyst for state action on climate obligations, establishing deadlines will not eliminate other barriers to the implementation of orders from international judicial bodies.

Court rulings are particularly important for climate litigation against governments because they play a critical role in the implementation of international climate change commitments.[184] While the efficacy of court implementation is contingent on the structure and function of the judiciary in each country, climate change cases like those discussed throughout this report are frequently referenced and relied upon in new legal actions.[185] Successful cases present useful models for other litigants and courts to utilize, and even unsuccessful cases push climate discourse forward and can achieve meaningful change.[186] Unsuccessful cases help build narratives around combating climate change, may include dissenting judgments that support future litigants' claims, set a precedent for future cases with different facts, and encourage greater engagement with civil society — all of which serve to advance climate action.[187] From an advocacy perspective, one of

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[184] Setzer and Byrnes, *supra* note 12, at p. 11.
[185] Interview with Mae Manupippatong, 19 March 2021.
[186] *Ibid.*
[187] Setzer and Byrnes, *supra* note 12, at p. 25.

the most effective strategies for this type of rights-based litigation is "repeated, multi-jurisdictional and mass litigation,"[188] allowing civil society to utilize the legal system in order to motivate states to take action on their human rights obligations.

Spotlight 1.8: *ClientEarth v. UK*
ClientEarth, an environmental charity, won three successive cases against the UK Government (in 2015, 2016 and 2018) for their failure to address illegal pollution levels in the country. In each case, the UK Courts ruled that the government's air pollution plans were unlawful and that there had been a governmental failure to uphold obligations to clean up and maintain air quality. This case is an excellent example of repeated and concentrated mass litigation. It shows the courts and litigants engaged in a process of accountability, whereby the government was repeatedly brought back to the drawing board for failure to adequately respond to Court direction and environmental obligations.

D. Publicization

One of the most significant challenges in the relationship between domestic and international climate litigation, and therefore one of the biggest barriers to implementation of international decisions, is the dissemination of decisions.[189] State institutions are not always informed of international decisions, and so legislators are not always aware of the decisions that impact them, let alone of ways to operationalize the resulting recommendations.[190]

Spotlight 1.9: *VZW Klimaatzaak v. Kingdom of Belgium and Others*
In a recently decided case from the Brussels Court of First Instance, the plaintiffs had requested that the Belgian government formulate a plan to reduce greenhouse gas emissions and publish this plan on the government website and two newspapers. They also requested that the timeline for publication be within two weeks of finalization. Although the Court declined to impose reduction targets on the government due to the separation of powers, they ultimately decided that the four defendants (the Belgian State, the Walloon Region, the Flemish Region, and the Brussels-Capital Region) had infringed the rights of the plaintiffs under Articles 2 and 8 of the ECHR "by failing to take all necessary measures to prevent the effects of climate change on the plaintiffs' life and privacy" (page 83).

[188] Erika Dailey, "Implementation of Judgements: Practical Insights from Civil Society", J Hum Rights Prac, vol. 12 (2020), p. 224, at p. 225.
[189] Interview with Vasilka Sancin, 29 March 2021.
[190] *Ibid*.

Spotlight 1.10: ***Portillo Cáceres v. Paraguay***

In a 2013 petition to the UNHRC, petitioners alleged that Paraguay had failed to protect the right to life, enshrined in the ICCPR, by failing to enforce environmental regulation over agrochemicals.

The UNHRC found that there was a connection between environmental protection and the right to life, and that a state's failure to take action to prevent environmental harm can violate obligations under the ICCPR. While this determination alone was a landmark ruling, the Committee went even further to ensure non-repetition of the violation. In articulating remedies, the HRC requested not only full reparation to the victims, but also requested that Paraguay widely publicize the decision in daily newspapers. This is an unusual remedy, requested to ensure the general population knew about the decision and the violation. It is likely that future climate cases, especially in the international sphere, will look to and utilize this remedy to help engage civil society and local communities in the follow-up and implementation process.

Lack of awareness of international decisions also affects civil society engagement with climate change issues. Civil society plays an important role in climate litigation, as it can employ extra-legal methods to pressure the state to implement decisions. For example, the climate change marches in 2019 represented some of the most significant global protests of the century and were used to demand state action on climate change.[191] Thus, implementation can be made to be more effective through greater publicization of international decisions relating to climate change.

V. Conclusion

This report provides guidance on climate change litigation remedies at the regional and international levels. Given the urgency of climate change and its resulting impacts, remedial options such as interim measures and urgent action procedures may attract immediate attention. However, meaningful and consistent implementation of climate change remedies remains a challenge. To facilitate implementation, focal point bodies should be established, domestic courts should impose strict timelines on states to act on climate change, and international decisions relating to climate change should be more accessible and widely publicized.

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[191] Scoot Neuman and Bill Chappell, "Young People Lead Millions to Protest Global Inaction on Climate Change", 20 September 2019, at https://www.npr.org/2019/09/20/762629200/mass-protests-in-australia-kick-off-global-climate-strike-ahead-of-u-n-summit.

Appendix A – International Implementation Mechanisms

Inter-American Court and Commission of Human Rights

Article 48 of the Rules of Procedure of the Inter-American Commission outlines a follow-up procedure that includes "adopt[ing] the follow up measures it deems appropriate", which can include requesting information from the parties, and "holding hearings to verify compliance with friendly settlement agreements and its recommendations."[192] In addition to this, the Commission can report on compliance progress as it sees fit.

Article 69 of the Rules of Procedure for the Inter-American Court of Human Rights outlines the process for monitoring compliance with judgements and decisions. The primary mechanism of implementation is state reporting, which should aim to include observations by victims and their legal representatives.[193] The Court can determine if further data is required and is able to commission expert reports to this effect.[194] Finally, the Court can convene a hearing to monitor compliance, and this hearing will include the input of the Inter-American Commission.[195] Once the court has collected relevant information, it determines compliance and issues relevant orders.[196]

African Court and Commission on Human and Peoples' Rights

The African Court on Human and Peoples' Rights (ACtHPR) has the power to order reparations and collect information on implementation measures from parties. In Rule 81 of its Rules of Court, the ACtHPR requires state parties to submit reports on compliance,[197] and where a state party has failed to comply with its decision, the Court shall report the non-compliance to the Assembly.[198]
The African Commission on Human and Peoples' Rights considers implementation in Rule 125 of its Rules of Procedure.[199] This Rule places a 180-day timeline on a party to inform the Commission of implementation measures that are being taken if a decision on the merits requested the

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[192] IACHR Rules of Procedure, *supra* note 72.
[193] IACtHR Rules of Procedure, *supra* note 102, art. 69(1).
[194] *Ibid*, art. 69(2).
[195] *Ibid*, art. 69(3).
[196] *Ibid*, art. 69(4).
[197] ACtHPR Rules of Court, *supra* note 118, rule 81(1).
[198] *Ibid*, rule 81(4).
[199] African Commission on Human and Peoples' Rights, Rules of Procedure of the African Commission on Human and Peoples' Rights, 2020 [ACHPR Rules of Procedure].

respondent state take specific measures.[200] There is an additional 90-day timeline after the state has complied with the timeline under Rule 112(2) to submit supplementary information with respect to implementation.[201] Further, the appointed Rapporteur for the specific communication is tasked with monitoring implementation measures.[202] As for non-compliant states, the Commission will refer the matter to policy organs of the African Union and indicate in its Activity Report the status of implementation of decisions including non-compliance.[203]

European Court of Human Rights

Article 46(2) of the European Convention on Human Rights requires that European Court of Human Rights judgements be "transmitted to the [Committee of Ministers, or CoM], which shall supervise [their] execution."[204] The CoM is a political body, which means that the implementation of ECtHR decisions is supervised by state diplomats.[205] This includes communicating with state bodies, as well as civil society. The CoM is supported in these activities by a body called the Department of Execution of Judgements, which helps to both supervise and assess the efficacy of state implementation.[206]

The Court itself has generally avoided taking on any role in the implementation of its decisions. Additionally, the Court has stated that the specific role of the CoM does not prevent it from examining implementation measures where there is an application before it that contains "relevant new information relating to issues undecided by the initial judgement."[207]

UN Treaty Bodies

The main mechanism the UN Treaty Bodies use to facilitate implementation is decision-making on complaints of violations of human rights, brought to them through the individual complaint

[200] ACHPR Rules of Procedure, *supra* note 197, rule 125(1).
[201] *Ibid*, rule 125(3).
[202] *Ibid*, rule 125(5).
[203] *Ibid*, rule 125(8), 125(9).
[204] European Convention for the Protection of Human Rights, *supra* note 166.
[205] Sandoval, Leach and Murray, *supra* note 81, at p. 75.
[206] *Ibid*.
[207] *Bochan v. Ukraine (no. 2) [GC]*, Application No. 22251/08, ECHR 2015, para. 33. See also *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2) [GC]*, Application No. 32772/02, ECHR 2009, at paras. 61-63.

mechanism.[208] States do not always implement these decisions, however, which is problematic, given that UN treaty bodies views, though technically arising from a non-judicial body, "exhibit some important characteristics of a judicial decision."[209]

Implementation is a complex process that depends on a plethora of factors. UN treaty bodies frequently develop "focal points" for implementation, such as appointing special rapporteurs or working groups to the issue. These appointees gather information for the treaty bodies, prepare reports, and liaise with state representatives to create a dialogue that encourages implementation.[210] On some occasions, implementation mechanisms include a visit to the state in question to gather information.[211]

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[208] An overview of the individual complaint procedure is available at https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx.

[209] UNHRC, General Comment No. 33: Obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights, 25 June 2009, document CCPR/C/GC/33.

[210] Principi, *supra* note 83, at p. 189.

[211] *Ibid*, at p. 190.