

**Mr. Pablo Saavedra Alessandri**

Secretary of the Inter-American Court of Human Rights  
Avenida 10, Calles 45 y 47 Los Yoses, San Pedro  
San José, Costa Rica

Washington D.C., 18 December 2023

**Ref:** Amicus Curiae brief regarding the request of Advisory Opinion submitted by the Republic of Chile and the Republic of Colombia soc\_1\_2023\_

Dear Secretary Pablo Saavedra Alessandri,

As stated in Article 44 of the American Convention on Human Rights (ACHR), in accordance with Article 73.3 of the Rules of Procedure of the Inter-American Court of Human Rights, Oil Change International (OCI) and Bank Climate Advocates (BCAs) respectfully present a written opinion to the Court pursuant Article 64(1) of the ACHR.

Our primary objective is to bring the Court's attention to the public finance expenditures and underscore how ongoing financial support from governments facilitates the expansion of the fossil fuel industry and contributes to carbon locked-in development, which aggravates the Climate Emergency and hinders the efforts to protect Human and Environmental Rights.

OCI is a research, communications, and advocacy organization focused on exposing the impacts of fossil fuels on people and the environment and advancing the ongoing transition to clean energy. We inform the public with reliable data and analysis about the scale and risks of fossil fuel finance. OCI draws on its collective issue area expertise in the Oil & Gas industry, energy policy and finance to rapidly respond to global policy and industry developments. Within OCI, the Global Public Finance team works specifically to determine best practice on aligning international public finance with the 1.5°C warming objectives of the Paris Agreement, aiming to shift public finance out of fossil fuels into a just transition to renewable energy. OCI maintains a public finance for energy database<sup>1</sup> covering over 15,000 fossil fuel and renewable energy transactions, with a combined value of over USD 2 trillion at a project level.

BCAs is a public benefit nonprofit corporation that works to reform and greatly improve the climate change policies and practices of financial institutions. BCA uses advocacy, research, education, and legal efforts to hold financial institutions accountable to their climate change policies and obligations under domestic and international law.

Respectfully, we submit this written opinion with the hope that the information provided will assist the Court in interpreting the obligations of States to address climate change's root causes and consequences, both individually and collectively under the ACHR.

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<sup>1</sup> This database is publicly available on [energyfinance.org](https://energyfinance.org)



**BANK  
CLIMATE  
ADVOCATES**



We thank the Secretary for taking note of this document and bringing it to the attention of the parties and the judges.

Sincerely,

A handwritten signature in black ink that reads "Elizabeth S. Bast".

**Elizabeth Bast**

Executive Director, Oil Change International

714 G St. SE #202, 20003

[info@priceofoil.org](mailto:info@priceofoil.org) / (+1) 202 518 9029

<https://priceofoil.org/>

A handwritten signature in black ink that reads "Jason Weiner".

**Jason Weiner**

Executive & Legal Director Bank Climate  
Advocates

303 Sacramento Street, Floor 2, San Francisco, CA  
94111

P.O. Box 49697, Los Angeles, CA 90049

[jason@bankclimateadvocates.org](mailto:jason@bankclimateadvocates.org)

(+1) 310 439 8702

[www.bankclimateadvocates.org](http://www.bankclimateadvocates.org)

## Introduction

Already at 1.1°C of global heating, the climate crisis is here with devastating wildfires, floods, and extreme heat all around the world. A rapidly warming planet poses an existential threat to all life on Earth. Under the Paris Agreement adopted in 2015, countries committed to pursue efforts to limit global warming to 1.5°C as well as to align financial flows with the low carbon transition [Article 2.1(c)], and yet eight years later they are not on track.

Some countries are more responsible for the climate crisis than others and have larger financial means to address it, as recognized under the principle of common but differentiated responsibilities. Despite that, all parties to the United Nations Convention Framework on Climate Change (UNFCCC) share a responsibility to prevent dangerous anthropogenic interference in the climate system and pursue efforts to limit global warming to 1.5°C<sup>2</sup>, which requires an urgent and just phase-out of fossil fuel production and use.

Fossil fuels are the biggest single source of greenhouse gas emissions (GHG), accounting for 91% of CO<sub>2</sub> emissions globally in 2022<sup>3</sup>. Under scenarios where global warming is limited to 1.5°C, there is no room for new investments in oil, gas, and coal production, including LNG infrastructure, according to the latest analysis published by the International Energy Agency (IEA) and the Intergovernmental Panel on Climate Change (IPCC). Yet, Oil Change International (OCI) and Friends of the Earth US (FOE US) research shows that from 2019 to 2021, G20 countries and the major Multilateral Development Banks (MDBs) provided at least USD\$55 billion per year in international public finance for oil, gas, and coal. This fossil fuel finance was almost two times more than the support given to clean energy, which averaged only \$29 billion per year. As is documented in the following sections, OCI's Public Finance for Energy Database indicates that Export Credit Agencies (ECAs) were among the worst public finance actors, providing seven times more support for fossil fuels than clean energy – at least \$34 billion per year for fossil fuels and just \$4.7 billion for clean energy.

ECAs can be government institutions or private companies operating on behalf of governments, typically providing finance products such as loans, loan guarantees, and insurance to help eliminate some of the uncertainty of exporting abroad. ECAs play a critical role in stepping in to provide financing where private finance may not be available for high-risk industries. Without this government-backed finance, often concessional, fossil fuel projects and infrastructure would often be too risky for the private sector to finance alone. Based on the IEA's Net Zero Emissions by 2050 Scenario (NZE) there is no need for expanding oil, gas, coal, and Liquefied Natural Gas (LNG) infrastructure as clean energy expands and fossil fuel demand declines.<sup>4</sup> Nevertheless, instead of phasing out fossil fuel production, many rich governments continue to subsidize fossil fuel production with public funds.

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<sup>2</sup> United Nations Framework Convention on Climate Change (UNFCCC) 9 May 1992, 1771 U.N.T.S. 107 (entered into force on 21 March 1994) [hereinafter UNFCCC] Art. 2

<sup>3</sup> Dr Zeke Hausfather, Prof. Pierre Friedlingstein. "Analysis: Global CO<sub>2</sub> emissions from fossil fuels hit record high in 2022" 11 Nov. 2022. Carbon Brief

<<https://www.carbonbrief.org/analysis-global-co2-emissions-from-fossil-fuels-hit-record-high-in-2022/#:~:text=Global%20carbon%20dioxide%20emissions%20from,by%20the%20Global%20Carbon%20Project>>

<sup>4</sup> IEA (2023), *World Energy Outlook 2023*, IEA, Paris, <<https://www.iea.org/reports/world-energy-outlook-2023>>

Due to its global nature, climate change gives rise to States' duties under multiple bodies of law, including international customary law, human rights law and environmental law. As stressed by the Republic of Colombia and Chile, there is a close relationship between the climate emergency and the violation of human rights. At the same time, human rights laws and regulations can help accelerate the response to the climate emergency, promoting policies to ensure that key stakeholders comply with the obligation to respect international agreements and guarantee the protection of human rights. But, this will not be possible if governments continue to invest billions of US dollars in fossil fuel expansion.

Conscious of the complex process of defining the scope of the relevant obligations established in the American Convention and other Inter-American treaties to confront the situations arising from the climate emergency, their causes and consequences; respectfully, we present scientific evidence and analysis of public finance data to assist the Court in answering the questions posed by the Republic of Colombia and Chile in line with international law and the best available science.

This amicus brief outlines the duty of States to phase out fossil fuel production and use in order to comply with the 1.5°C limit (**Section I**). The following section summarizes evidence regarding ongoing government funding for fossil fuels in order to draw attention to the potential violation of international commitments (**Section II**). Finally, we incorporate OCI's research and other expert organizations into policy recommendations for governments to address the climate crisis in light of International Law duties (**Section III**).

#### **I. The State has the duty to phase out fossil fuel production and use in order to meet the 1.5°C limit**

**The fossil fuel<sup>5</sup> industry and its enablers in government have already licensed, permitted, and constructed more oil and gas fields, coal mines and other fossil fuel infrastructure than is compatible with a livable climate.** The IPCC's recent synthesis report warned that, "*projected CO2 emissions from existing fossil fuel infrastructure without additional abatement would exceed the remaining carbon budget for 1.5°C.*"<sup>6</sup> The IEA concludes that in its scenario that maintains a 50% chance to limit global heating to 1.5°C, there are no further investments in new oil, gas and coal production<sup>7</sup>. In addition, no further LNG infrastructure investments are required in such scenarios, and even under construction LNG projects exceed what is compatible with 1.5°C.<sup>8</sup> According to the IEA's NZE there is *no need* for production and infrastructure expansion given the rate of clean energy growth and fossil fuel demand reduction required under the 1.5°C limit.

Peer-reviewed research further shows that the majority of the fossil fuel reserves within active fields and mines must stay in the ground to have a one in two chance of limiting warming to 1.5°C. An OCI-led study published in the journal *Environmental Research Letters* found that existing oil and gas fields and

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<sup>5</sup> Fossil Fuel: Includes the oil, fossil gas, and coal sectors across their whole life cycle. This includes exploration and appraisal, development, extraction, preparation, transport, power plant construction and operation, distribution, and decommissioning. It also includes energy efficiency projects where the energy source(s) involved are primarily fossil fuels.

<sup>6</sup> IPCC, 2023: Summary for Policymakers. In: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 1-34, doi: 10.59327/IPCC/AR6-9789291691647.001

<sup>7</sup> IEA (2023), *Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach*, IEA, Paris, p. 16, <<https://www.iea.org/reports/net-zero-roadmap-a-global-pathway-to-keep-the-15-0c-goal-in-reach>>

<sup>8</sup> IEA (2023), *World Energy Outlook 2023*, IEA, Paris, p. 139, <<https://www.iea.org/reports/world-energy-outlook-2023>>

coal mines contain enough fossil fuels to cause 936 billion tonnes of CO<sub>2</sub> pollution if fully extracted,<sup>9</sup> **an amount 3.5 times the size of the world's remaining 1.5°C carbon budget**, as highlighted in the UN's 2023 Emissions Gap Report.<sup>10</sup> Even if coal mining stops immediately, developed oil and gas reserves alone could push the world beyond 1.5°C.<sup>11</sup> All together, developed fields and mines contain enough fossil fuels to push the world beyond 2°C, a significantly more dangerous threshold<sup>12</sup>. These findings are alarming and represent a higher threat to the guarantee and protection of human rights. **Pursuant to the international climate agreements, States committed to take action to prevent dangerous anthropogenic interference in the climate system.**

**A. Protecting a livable climate and environment requires a fast and fair phase out of existing fossil fuel production alongside a fast and fair ramp up of energy efficiency and renewable energy solutions**

**Ending oil and gas expansion is a crucial and urgent step but not sufficient.** Protecting a livable climate and environment will require a fast and fair phase out of existing fossil fuel production alongside a fast and fair ramp up of energy efficiency and renewable energy solutions globally. **The phase out must begin immediately because the remaining carbon budget to limit global warming to 1.5°C has dwindled rapidly.** At current rates of carbon pollution, the world will exhaust the 1.5°C budget in just seven years<sup>13</sup>. Recent analysis from Climate Analytics finds that fossil fuel production and use (oil, gas, and coal combined) must fall by 40% by 2030<sup>14</sup>. The same analysis shows that fossil fuels can be replaced with better, safer alternatives, ramping up wind and solar energy deployment five-fold, to 1.5 terawatt (TW) per year by 2030, while using energy more efficiently and fairly, including curbing overconsumption by the world's wealthiest countries<sup>15</sup>.

**A fair phase-out must be guided by principles of justice and equity to leave no one behind,** taking into consideration that not all fossil fuel producing countries have the same degree of dependence on fossil fuel revenues and ability to plan and implement economic diversification and just transition strategies, nor the same level of historical responsibility for driving climate pollution and exploitative models of resource extraction<sup>16</sup>. As over 150 economists detailed ahead of the 2023 "Summit for a New Financing Pact," wealthy countries have no shortage of resources to pay their fair share to support a global fossil fuel phase-out. Wealth taxes, Global South debt cancellation, and defunding fossil fuels are three key levers that could raise over \$3 trillion per year in public funds for these efforts<sup>17</sup>. **The phase-out of fossil**

<sup>9</sup> Kelly Trout et al 2022 Environ. Res. Lett. 17 064010 DOI 10.1088/1748-9326/ac6228

<sup>10</sup> United Nations Environment Programme (2023). Emissions Gap Report 2023: Broken Record – Temperatures hit new highs, yet world fails to cut emissions (again). Nairobi, pp. 34-35, <<https://doi.org/10.59117/20.500.11822/43922>>

<sup>11</sup> United Nations Environment Programme (2023). Emissions Gap Report 2023: Broken Record – Temperatures hit new highs, yet world fails to cut emissions (again). Nairobi, <<https://doi.org/10.59117/20.500.11822/43922>> see Figure 5.1.

<sup>12</sup> Kelly Trout et al 2022 Environ. Res. Lett. 17 064010 DOI 10.1088/1748-9326/ac6228 page 9

<sup>13</sup> Pierre Friedlingstein et al, "Global Carbon Budget 2023," Earth Syst. Sci. Data, 15 (2023), 5301–5369, <<https://doi.org/10.5194/essd-15-5301-2023>>

<sup>14</sup> Climate Analytics (2023). 2030 targets aligned to 1.5°C,

<<https://climateanalytics.org/publications/2030-targets-aligned-to-15c-evidence-from-the-latest-global-pathways>>

<sup>15</sup> Climate Analytics, "2030 Targets."

<sup>16</sup> Greg Muttitt and Sivan Kartha, "Equity, climate justice and fossil fuel extraction: principles for a managed phase out," Climate Policy 20, no. 8 (2020): 1024-1042 <<https://www.tandfonline.com/doi/abs/10.1080/14693062.2020.1763900>>

<sup>17</sup> "Letter: Global North leaders must redirect trillions from fossils, debt, and the 1% to address global crises," Oil Change International, June 19 2023

<<https://priceofoil.org/2023/06/19/open-letter-globalnorth-governments-can-redirect-trillions-in-fossil-debt-and-superrich-harms-to-fix-global-crises-the-paris-summit-must-be-aboutbuilding-the-roadmap-to-do-so/>>

**fuels must be guided not only by economic capacity and historical responsibility, but also by environmental justice and respect for Indigenous sovereignty, prioritizing the need to end extraction practices that destroy health and livelihoods, or violate the rights of Indigenous Peoples to free, prior and informed consent.** The energy transition must also ensure universal access to healthy, safe energy and protect workers and communities; ensuring labor rights, decent work, and the clean-up of local environments.

The historic Referendum in Ecuador, which banned oil operations in the Yasuní rainforest, marks a significant milestone. The outcome recognizes the crucial need to protect the ecosystem and Indigenous Peoples. It also exerts pressure on the Government to develop a comprehensive recovery plan for Yasuní, addressing the existing damage to human health and the environment. This plan should offer robust protection for the rainforest and its communities. Additionally, the Referendum sheds light on how the government and oil companies contribute to 'uncertainty and fear among the local populations' affected by oil drilling in the provinces of Orellana and Sucumbíos, and also exposes the detrimental impact of State neglect, resulting in a 'relationship of dependency and blackmail' between these communities and the oil companies.<sup>18</sup>

Saying no to new oil and gas is a basic and essential building block to a fast and fair phase out of all fossil fuel production, grounded in climate science. It is a requirement for any government pursuing efforts to limit global warming to 1.5°C. **Moreover, under article 2.1(c) of the Paris Agreement, States have the duty to ensure that finance flows are “consistent with a pathway towards low greenhouse gas emissions and climate-resilient development”<sup>19</sup>. This objective requires to align all finance and investment away from unsustainable high GHG emission activities, which includes fossil fuels.** And yet, eight years after the adoption of the Paris Agreement countries continue to prop up fossil fuel production.

#### **B. The current global oil and gas expansion makes it impossible to hold temperature rise to 1.5°C**

**Recent OCI research shows that just 20 countries could be responsible for nearly 90% of the carbon-dioxide (CO<sub>2</sub>) pollution from new oil and gas fields and fracking wells planned between 2023 and 2050<sup>20</sup>.** This planned expansion contributes to the alarming findings of the 2023 Production Gap Report, which warns that governments plan to produce more than double the amount of fossil fuels in 2030, and 350% more in 2050, than is compatible with limiting warming to 1.5°C.<sup>21</sup> If planned expansion goes ahead, and fossil fuel production increases through 2030, this would make it impossible to hold temperature rise to 1.5°C.

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<sup>18</sup> Activists brace for fight to uphold oil ban in Ecuador’s Amazon rainforest, Camila Osorio. Open Democracy. 8 Sept. 2023 <<https://www.opendemocracy.net/en/5050/ecuador-amazon-yasun%C3%AD-rainforest-oil-ban-referendum/>>

<sup>19</sup> Paris Agreement to the United Nations Framework Convention on Climate Change, 12 December 2015, 3156 U.N.T.S. (entered into force on 4 November 2016) [hereinafter Paris Agreement], art. 2.1(c).

<sup>20</sup> Romain Ioualalen and Kelly Trout. “Planet Wreckers Report: how countries' Oil and Gas extraction plans risk locking in Climate Chaos.” Oil Change International, Sept. 2023 page 4 <<https://priceofoil.org/content/uploads/2023/09/OCI-Planet-Wreckers-Report.pdf>>

<sup>21</sup> SEI, Climate Analytics, E3G, IISD, and UNEP. (2023). The Production Gap: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises. Stockholm Environment Institute, Climate Analytics, E3G, International Institute for Sustainable Development and United Nations Environment Programme <<https://doi.org/10.51414/sei2023.050>>

Some countries are taking action to end fossil fuel production. In 2021, a group of countries, including Costa Rica, launched the Beyond Oil and Gas Alliance (BOGA) at COP26 in Glasgow, committing to end new oil and gas licensing. Chile and Colombia are friends of BOGA, having signed up to its Declaration, which supports “a socially just and equitable global transition to align oil and gas production with the objectives of the Paris Agreement, and commits the signatories to work together to facilitate effective measures to this end in line with the Paris Agreement and national climate neutrality targets”.<sup>22</sup> This initiative is an important step in the right direction, but more concrete actions are needed as all States have the duty to phase out fossil fuel production and use in order to meet the 1.5° limit. Though it must be noted that **only 8% of new extraction planned by the top 20 countries with the largest projected expansion from 2023 to 2050 depends on new licenses; the rest is already licensed or leased to companies.**<sup>23</sup>

The IPCC Reports (AR4<sup>24</sup>, AR5<sup>25</sup>) linked climate change to human activities and detailed the various ways climate change adversely affects human well-being. **In 2016 the Paris Agreement entered into force, signifying countries’ commitment to combating climate change**<sup>26</sup>. At the Conference of the Parties (COP) States have repeatedly recognized the climate emergency, with the signature of the Glasgow Pact<sup>27</sup> countries ultimately agreed to a provision calling for a phase-down of coal power and a phase-out of “inefficient” fossil fuel subsidies. Recently, at COP28 the Global Stocktake outcome explicitly calls on Parties to contribute to, **“Transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner, accelerating action in this critical decade.”**<sup>28</sup>

**The IPCC’s Synthesis Report (AR6) published in March 2023<sup>29</sup>, once more raised the alarms to code red, and reiterated that urgent action is needed on the climate crisis.** Given the evidence that global heating at 1.1°C is already causing millions of deaths worldwide<sup>30</sup> and that further temperature increases

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<sup>22</sup> Beyond Oil and Gas Alliance, “Who We Are,” <<https://beyondoilandgasalliance.org/who-we-are/>>

<sup>23</sup> Romain Ioualalen and Kelly Trout. “Planet Wreckers Report: how countries’ Oil and Gas extraction plans risk locking in Climate Chaos.” Oil Change International, Sept. 2023 page 5  
<<https://priceofoil.org/content/uploads/2023/09/OCI-Planet-Wreckers-Report.pdf>>

<sup>24</sup> IPCC, 2007: Summary for Policymakers. In: Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, M.L. Parry, O.F. Canziani, J.P. Palutikof, P.J. van der Linden and C.E. Hanson, Eds., Cambridge University Press, Cambridge, UK, 7-22.

<sup>25</sup> 2014: Summary for policymakers. In: Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Field, C.B., V.R. Barros, D.J. Dokken, K.J. Mach, M.D. Mastrandrea, T.E. Bilir, M. Chatterjee, K.L. Ebi, Y.O. Estrada, R.C. Genova, B. Girma, E.S. Kissel, A.N. Levy, S. MacCracken, P.R. Mastrandrea, and L.L.White (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, pp. 1-32.

<sup>26</sup> Paris Agreement to the United Nations Framework Convention on Climate Change, 12 December 2015, 3156 U.N.T.S. (entered into force on 4 November 2016) [hereinafter Paris Agreement]

<sup>27</sup> UNFCCC, aArt. 4.1. Recently reaffirmed in the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, 26th session, 31 October-13 November 2021, Glasgow Climate Pact, 1/CMA.3, U.N. Doc. No. FCCC/PA/CMA/2021/10/Add.1, Art. 1

<sup>28</sup> COP28 Agreement Signals “Beginning of the End” of the Fossil Fuel Era. 13 December 2023

<<https://unfccc.int/news/cop28-agreement-signals-beginning-of-the-end-of-the-fossil-fuel-era>>

<sup>29</sup> The Glasgow Statement on International Public Support for the Clean Energy Transition (2021) (hereinafter the Glasgow Statement) <<http://bitly.ws/CeijL>>

<sup>30</sup> “Summary for Policymakers Headline Statements,” Intergovernmental Panel on Climate Change, 2023, <https://www.ipcc.ch/report/ar6/syr/resources/spm-headline-statements>; Hoesung Lee et al., “Climate Change 2023: Synthesis Report,” Intergovernmental Panel on Climate Change, 2023, doi: 10.59327/IPCC/AR6-9789291691647.001, <[https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_SPM.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf)>

aggravate the threat to human life, in the context of States' mitigation obligations, continued fossil fuel expansion is incompatible with pursuing efforts to limit warming to 1.5°C, and undermines the rights to freedom, to life, to dignity, property, protection of children and of privacy under Articles 1, 4, 5, 11 and 19 of the American Convention. This is particularly alarming, given the scientific consensus regarding fossil fuels as the main driver of rising GHG emissions and the international commitments to “achieve stabilization of GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”<sup>31</sup>

**The phase-out from fossil fuel production and use in order to align with the 1.5°C limit is not only necessary but is also a responsibility of States in the context of the protection and guarantee of the rights to life and to personal integrity.**<sup>32</sup> Pursuant to their duties to respect and protect human rights and to have a chance at a livable and equitable future, States must pursue a rapid phase-out of fossil fuels. However, this will not be possible if governments continue funding fossil fuels related projects or activities.

## **II. Continued government funding of fossil-fuels does not respond to the climate emergency and violates international and regional commitments**

In addition to licensing and permitting of fossil fuel projects and activities, governments enable fossil fuel expansion through the provision of public money to support fossil fuel production. OCI's report “At a Crossroads: Assessing G20 and MDB international energy finance ahead of stop funding fossils pledge deadline” shows that **between 2019 and 2021 the G20 countries, including Brazil and Mexico, and the Multilateral Development Banks (MDBs), provided at least \$55 billion per year in finance for oil, gas, and coal projects, almost twice their support to renewable energy over the same period.** Most (53%) fossil fuel financing flows to fossil gas projects, which receives more public support than any other energy type. In addition, the IEA estimates global fossil fuel subsidies provided at the domestic level at more than \$1 trillion dollars in 2022. Meanwhile, **international public finance for clean energy has remained largely stagnant.** Public finance for clean energy<sup>33</sup> increased only slightly from an annual average of \$27 billion between 2016 and 2018 to \$29 billion between 2019 and 2021, instead of growing exponentially as is needed to support a globally just energy transition.

In the region, Brazil is the top recipient of G20 and MDB international public financing for fossil fuel projects, receiving over USD 5 billion between 2019 and 2021<sup>34</sup>. At the same time, it is the top recipient for international public finance for renewables: between 2019 and 2021, Brazil received almost USD 9.5 billion. In its turn, Argentina received USD 826.7 million over this time for fossil fuels and USD 1.26 billion for renewables, and Mexico received USD 1.67 billion for fossil fuels and USD 1.2 billion for clean energy. **Brazil, Mexico, Argentina and Venezuela are at the top of the rank for Oil and Gas producers.** Guyana is seeing a surge of new supply for oil<sup>35</sup>, and Colombia is the main coal supplier in the region. **If all G20**

<sup>31</sup> United Nations Framework Convention on Climate Change (UNFCCC) 9 May 1992, 1771 U.N.T.S. 107 (entered into force on 21 March 1994) [hereinafter UNFCCC], Art. 2

<sup>32</sup> IACtHR interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights

<sup>33</sup> Clean: Includes energy that is both low-carbon and has negligible impacts on the environment and human populations if implemented with appropriate safeguards. This includes solar, wind, tidal, geothermal, and small-scale hydro. This classification also includes energy efficiency projects where the energy source(s) involved are not primarily fossil fuels.

<sup>34</sup> Public Finance for Energy Database, Oil Change International, [energyfinance.org](https://energyfinance.org)

<sup>35</sup> Our database only at least one project of \$27,777 from the UK between 2019-2021



**countries and MDBs shift their fossil support to cleaner ways of energy, this would nearly triple clean energy finance to \$85 billion, shifting away from carbon locked-in development.**

OCI's report uses data from the Public Finance for Energy Database, an open access database released in April 2022. The database includes 15,000+ energy transactions – with a total value of \$2 trillion – of G20 ECAs, national development banks, DFIs, and the nine major MDBs dating back to 2008. Each finance entry is classified as fossil fuel, clean, or other, based on the description of the project and project documents. OCI's Database indicates that Export Credit Agencies (ECAs) were among the worst public finance actors, providing seven times more support for fossil fuels than clean energy – at least \$34 billion per year for fossil fuels and just \$4.7 billion for clean energy. ECAs can be government institutions or private companies operating on behalf of governments, typically providing finance products such as loans, loan guarantees, and insurance to help eliminate some of the uncertainty of exporting abroad. ECAs play a critical role in stepping in to provide financing where private finance may not be available for high-risk industries. Most developed countries have ECAs, other countries have development banks or analogue institutions that serve as an intermediary between governments and exporters, providing credit insurance or financial guarantees, or both, as part of a financing.

Regrettably, OCI's analysis does not cover sovereign wealth funds, majority government owned banks without a clear policy mandate, or public finance institutions with subnational governance. It does not include subsidies to fossil fuel production at the national level in G20 State budgets, which were estimated at \$697 billion in 2021 by the OECD.<sup>36</sup> OCI builds its database with information made publicly available by the financial institutions and other public sources of information, in addition to information provided by the Infrastructure Journal (IJ) Global database<sup>37</sup> and Boston University Global Development Policy Center's China's Global Energy Finance (CGEF) Database,<sup>38</sup> which are consulted whenever aggregate estimates at the subsector level available differ substantially from project-level reporting. Which is the case of Canada for instance. To get a holistic view of government support for fossil fuels, this data should be combined with data on domestic public finance and domestic fossil fuel subsidies. This reflects a problem of Data Access and oversight.

**The continued finance of fossil fuels, which lacks of transparency and full access, contrasts with the high potential and essential role Latin America and the Caribbean countries have in the global transition to a more secure and sustainable energy system<sup>39</sup>.** The Latin America Energy Outlook 2023 highlights opportunities and key challenges in this vast and diverse region rich in natural resources, but with a high level of dependence in fuels and minerals. "Pursuing opportunities in the new energy economy could help boost its economic development. Its low-emissions power sector, critical mineral resources and potential for clean energy development mean that the region could play a key role in

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<sup>36</sup> OECD, OECD Companion to the Inventory of Support Measures for Fossil Fuels 2021, 9 September 2021.  
<[https://www.oecd-ilibrary.org/environment/oecd-companion-to-the-inventory-of-support-measures-for-fossil-fuels-2021\\_e670c620-en](https://www.oecd-ilibrary.org/environment/oecd-companion-to-the-inventory-of-support-measures-for-fossil-fuels-2021_e670c620-en)>

<sup>37</sup> <https://www.ijglobal.com/>

<sup>38</sup> Boston University's CGEF Database tracks loan commitments between China's policy banks – the China Development Banks and the Export Import Bank of China – and government borrowers for energy projects overseas. This means deals with private entities are not included. Loan commitment years are based on the calendar year of the loan agreement signing.

<sup>39</sup> International Energy Agency (IEA), "Latin America Energy Outlook 2023". Nov. 2023  
<<https://www.iea.org/reports/latin-america-energy-outlook-2023>>

clean energy transitions.”<sup>40</sup> The report also acknowledges the significant potential for further development of high quality solar and wind resources.

#### **A. The progress made at the international sphere lacks of domestic implementation**

Some progress has been made with shifting international public finance out of fossil fuels and into clean energy. At COP26, the 2021 Global Climate Conference in Glasgow, 34 countries and 5 institutions pledged to end direct international public finance for unabated fossil fuels by the end of 2022 and prioritize their public finance fully for the clean energy transition<sup>41</sup>. **This commitment, called the Clean Energy Transition Partnership (CETP), was the first international political commitment that focused on ending public finance for oil and gas in addition to coal.**<sup>42</sup> The signatories include some of the largest historic providers of international public finance, including Canada, Germany, Italy, United States, United Kingdom, and France. If all signatories meet the CETP commitment, \$19.4 billion per year could be shifted away from fossil fuels, which would help increase clean energy finance to \$37 billion per year<sup>43</sup>.

The majority of the 16 large international public finance providers that signed the CETP have kept their promise and *not* financed fossil fuels since the deadline elapsed<sup>44</sup>. **However, several major countries are continuing to finance fossil fuel projects in breach of the commitment, such is the case of the US and Canada.** Since the passing of the end of 2022 deadline, the US has provided the most fossil fuel finance of all Glasgow signatories, providing public finance for 6 projects for a total of \$1.8 billion with 3 more projects pending approval, including highly controversial projects<sup>45</sup>. The Export-Import Bank of the United States (U.S. EXIM) explores providing domestic finance to boost the U.S. LNG exports through the “Make More in America” initiative.<sup>46</sup> This potential support for LNG contradicts the US commitment to end financial support for fossil fuels. At the same time, Canada, one of the largest fossil financiers signed on to the statement, lacks adequate policies to phase out its fossil fuel finance. Canada’s ECA Export Development Canada has suggested ending “new direct financing to international fossil fuel companies

<sup>40</sup> ibidem

<sup>41</sup> The Glasgow Statement on International Public Support for the Clean Energy Transition (2021) (hereinafter the Glasgow Statement) <<http://bitly.ws/Ceijl>>

<sup>42</sup> Clean Energy Transition Partnership: [www.cleanenergytransitionpartnership.org](http://www.cleanenergytransitionpartnership.org)

<sup>43</sup> “Promise Breakers: Assessing the impact of compliance with the Glasgow Statement commitment to end international public finance for fossil fuels” published in 2023.

<<https://priceofoil.org/2023/03/15/promise-breakers-assessing-the-impact-of-compliance-with-the-glasgow-statement-commitment-to-end-international-public-finance-for-fossil-fuels/>>

<sup>44</sup> Oil Change International. “Fossil Finance Violations: Tracking Fossil Fuel Projects that violate commitments to end international public finance for fossil fuels”. Sept. 2023

<<https://priceofoil.org/2023/09/06/fossil-finance-violations-tracking-fossil-fuel-projects-that-violate-commitments-to-end-international-public-finance-for-fossil-fuels/>>

<sup>45</sup> Adam McGibbon and Laurie van der Burg, “Leaders & Laggards: tracking implementation of commitments to end international public finance for fossil fuels.” Sep. 2023

<<https://priceofoil.org/content/uploads/2023/09/Leaders-and-Laggards-September-2023.pdf>>

This analysis builds on and updates previous OCI research: “Promise Breakers: Assessing the impact of compliance with the Glasgow Statement commitment to end international public finance for fossil fuels” published in 2023.

<<https://priceofoil.org/2023/03/15/promise-breakers-assessing-the-impact-of-compliance-with-the-glasgow-statement-commitment-to-end-international-public-finance-for-fossil-fuels/>>

<sup>46</sup> 5 Lee Harris, “Export Financing Subsidies Could Pour Into Fracked Gas,” The American Prospect, April 14, 2022,

<https://prospect.org/environment/export-financingsubsidies-could-pour-into-fracked-gas/>; Bronwen Tucker and Kate DeAngelis Release the Guidance! Backgrounder on US International Energy Finance ahead of COP 27 deadline to Stop Funding Fossils, FoE US and OCI, October 2022, p. 10

[https://priceofoil.org/content/uploads/2022/10/US\\_International\\_Energy\\_Finance\\_Brief\\_v3.pdf](https://priceofoil.org/content/uploads/2022/10/US_International_Energy_Finance_Brief_v3.pdf)

and projects by the end of 2022,” is enough to meet the Glasgow Statement, but this would leave out much of Canada’s international fossil fuel support, which flows to domestic companies involved in international fossil fuel trade and operations. It also ignores related promises to end all fossil subsidies and public finance, international or not. Such examples represent a clear violation of article 2.1(c) of the Paris Agreement.

The main technical conclusions emerging from the stocktake at COP28<sup>47</sup> are not new. **Nations are not cutting emissions fast enough, they are not sufficiently prepared for climate hazards and developed countries are not providing enough support to developing countries.**

**B. States must have regard to the goals and obligations of Climate Agreements, particularly Article 2.1(c) of the Paris Agreement**

According to a legal opinion from Kate Cook and Professor Jorge Viñuales, commissioned by OCI, **States must have regard to the goals and obligations of Climate Agreements, particularly those relating to finance**<sup>48</sup>. The principle of common but differentiated responsibilities appears to be particularly relevant to fossil fuel funding as is the principle of equity, drawn from Article 3(1) of the UNFCCC and Article 2(2), 4(1) and 14(1) of the Paris Agreement. To achieve the finance goal laid down in Article 2(1)(c) the specific needs of developing countries in addressing the eradication of poverty and sustainable development, including promoting access to sustainable energy, should be addressed by developed States in making their national contributions to the achievement of the Paris Agreement climate goals.

The continued financing of fossil fuel-related projects or activities, in the form of export credits does not appear on current evidence to meet development and climate goals. Conduct of States should be legally assessed in a specific context characterized by the climate emergency, the rapidly decreasing carbon budget, and the widely acknowledged need to reform fossil fuel subsidies and support. **This specific context is established on the basis of the compelling scientific evidence.**

**In regards to environmental and human rights obligations, granting a license, permitting the expansion of fossil fuel projects, as well as refusing to disclose environmental information proactively is a violation of international law.** Government institutions that grant financial support, which in most cases are ECAs or National Development Banks, do not operate in an international legal vacuum. When the conduct is attributable to the State, it is legally deemed to be conduct of the State. All the relevant international obligations binding on the State are applicable to determine the lawfulness of the conduct or act. In making decisions on the provision of export credit for fossil fuel-related projects/activities, States must have regard to the goals and obligations of the Paris Agreement, and of those of the Regional Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).

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<sup>47</sup> FCCC/PA/CMA/2023/L.17. Conference of the Parties serving as the meeting of the Parties to the Paris Agreement Fifth session United Arab Emirates, 30 November to 12 December 2023 Agenda item 4 First global stocktake.  
<[https://unfccc.int/sites/default/files/resource/cma2023\\_L17\\_adv.pdf](https://unfccc.int/sites/default/files/resource/cma2023_L17_adv.pdf)>

<sup>48</sup> Matrix Chambers, “Kate Cook’s legal opinion concludes continued public funding to finance fossil fuel infrastructure are potentially at risk of climate litigation” Nov. 2021  
<<https://www.matrixlaw.co.uk/news/kate-cooks-legal-opinion-concludes-continued-public-funding-to-finance-fossil-fuel-infrastructure-are-potentially-at-risk-of-climate-litigation/>>

**On the basis of the best available scientific evidence, and taking into account the current emission and production gaps and the associated risk of overshoot of the temperature goals, it appears that export credits, or its equivalent at a domestic level, which support fossil-fuel related projects/activities are not in principle consistent with the pathways set out in Article 2(1)(c), the temperature goals laid down in Article 2(1)(a) or the mitigation requirements under Article 4 of the Paris Agreement.** Specific issues which should be addressed by the government and its institutions include the need to proactively avoid locking-in fossil fuel-related emissions, as these are inconsistent with the progressive and ambitious approach for nationally determined contributions and long-term strategies laid down in the Paris Agreement.

According to Kate Cook and Professor Viñuales, under customary international law, States are required, in principle: **(i)** to not finance new fossil fuel-related projects/activities or increase the financing of existing ones; **(ii)** to decrease existing support within a clear timeframe dictated, first and foremost, by scientific considerations and the temperature goals of the Paris Agreement, as a reflection of a global consensus; **(iii)** to make proactive efforts to avoid “locking-in” fossil fuel-related projects/activities which may use up a significant part of the remaining carbon budget; **(iv)** to adopt and proactively implement adequate procedures to assess the carbon footprint of any project to be potentially supported; and **(v)** to adopt and proactively implement guidelines concerning the performance of the business activities.

### **III. Under International Law States must act urgently to limit global warming below 1.5°C**

The IACHR in a previous Advisory Opinion<sup>49</sup> on the relationship between the environment and human rights, recognized the obligation of States to avoid transboundary environmental damage that could violate the human rights of persons outside their territory. **To this point it is relevant to highlight the substantial contribution of States to enable the emissions of GHGs associated with existing and new fossil fuel-related projects/activities overseas, and their compliance of the due diligence duty.** As individual duty-bearers, government institutions, including those that exercise public authority, are subject to certain international obligations analogous to those of States, mainly under international human rights law, to discharge duties to respect and to protect, as well as to provide access to environmental information; including the obligations concerning the active production of information and transparency reflected in Article 13 and derived from the obligations under Articles 4(1) and 5(1) of the American Convention, in light of articles 5 and 6 of the Escazú Agreement.

Their conduct is directly or indirectly governed by certain international legal obligations as it may be attributed to the State and/or because States may be required under international law to regulate their conduct and/or because as such, may be subject to certain international legal obligations. When an ECA is, according to the domestic law of the creditor economy where it is based, part of the State structure, it must be legally considered as an organ of the State and its conduct in an official capacity – whether in the exercise of public authority or of a commercial nature – is entirely attributable to the State, even when the entity acts beyond its mandate. Developed country ECAs need to take the lead in ending financing for fossil fuel industries as this undermines the positive impact of finance flows which are consistent with Article 2(1)(c) of the Paris Agreement. Otherwise, **taxpayer-funded fossil fuel projects are in breach of their international climate commitments.**

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<sup>49</sup> Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A), 15 November 2017

Given the evidence that global heating at 1.1°C is already causing millions of deaths worldwide and that further temperature increases aggravate the threat to human life, in the context of States' mitigation obligations, the above-outlined evidence underlines that **continued fossil fuel expansion is incompatible with pursuing efforts to limit warming to 1.5°C and undermines the human right to a healthy and sustainable environment, and consequently the right to life, property and health.**

**A. Fossil fuel expansion is incompatible with pursuing efforts to limit warming to 1.5°C and undermines human and environmental rights**

As set out above, States regulations must cover the extraterritorial and transboundary activity of actors in the State's territory and control. **Both international and domestic bodies have recognized the transboundary effects and recalled the extraterritorial obligations.** The Committee on the Rights of the Child found that, "it is generally accepted and corroborated by scientific evidence that the carbon emissions originating in the State party contribute to the worsening of climate change, and that climate change has an adverse effect over the enjoyment of rights by individuals both within as well as beyond the territory of the State party (...) through its ability to regulate activities that are the source of these emissions and to enforce such regulations, the State party has effective control over the emissions."<sup>50</sup> This is particularly relevant pursuant to Article 19 of the American Convention, in light of the of international human rights law framework, including article 12 of the Convention on the Rights of the Child, recognizing the consensus of the scientific community which identifies children as the group that is most vulnerable in the long term to the imminent risks to life and well-being as a result of the climate emergency<sup>51</sup>.

The Intergovernmental Panel on Climate Change (IPCC) warns that the climate emergency has the potential to have a devastating impact on life on Earth. The IPCC estimates that if global warming continues to increase at the same rate, the increase in global average temperature is likely to reach 1.5°C in the first half of the 2030s<sup>52</sup>. **As mentioned in the request presented by the Republic of Colombia and Chile, the climate effects would create a serious threat to human survival with forced migrations that will cause differentiated impacts on the most vulnerable populations.** This is a concern of the honorable Inter-American Court particularly associated to the violations to land rights of Indigenous and traditional peoples<sup>53</sup>, who also play a fundamental role as human rights and environmental defenders, and whose work is essential to fight climate change.

**B. States must guarantee the protection of human and environmental rights**

**The State's obligation to provide a special protection to human rights defenders has been recognized by the Human Rights Council as fundamental for the functioning and the strengthening of democracy and the rule of law.**<sup>54</sup> Likewise, the recognition of the rights to a healthy environment, Indigenous

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<sup>50</sup> CRC, *Sacchi v. Argentina*, para. 10.9.

<sup>51</sup> Convention on the Rights of the Child (CRC). Article 12.1

<sup>52</sup> Hoesung Lee et al., "Climate Change 2023: Synthesis Report," Intergovernmental Panel on Climate Change, 2023, doi: 10.59327/IPCC/AR6-9789291691647.001, <[https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_SPM.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf)>

<sup>53</sup> *Mayagna (Sumo) Awas Tingni Cmty. v. Nicaragua, Merits, Reparations, and Costs*, Judgment Inter-Am. CT. H.R. (ser. C) No.79, 73 (Aug. 31, 2001)

<sup>54</sup> Human Rights Council, Thirty-first session, Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. A/HRC/31/L.28, Pag. 1 Distr.: Limited 21 March 2016 Original: English <https://documentsddsny.un.org/doc/UNDOC/LTD/G16/055/98/PDF/G1605598.pdf?OpenElement>

community property, cultural identity, food, and water were analyzed by the Court in a recent contentious case<sup>55</sup>, determining that such rights enshrined in the American Convention on Human Rights had been violated to the detriment of the communities. While considering the human rights that may be affected by environmental damage, the Court noted that these “can occur with greater intensity in certain groups in vulnerable situations,” which include Indigenous peoples and “the communities that depend, economically or for their survival, fundamentally on environmental resources, like the forest areas or river domains.” Therefore, “based on the international regulations of human rights law, States are legally bound to address these vulnerabilities, in accordance with the principle of equality and not discrimination.” Moreover, the Court ruled that States have an obligation to adopt measures and policies to ensure that all persons are able to exercise the right to cultural identity, as well as measures to protect this right and prevent third-party interference<sup>56</sup>.

The Universal Declaration of Human Rights provides that “everyone has the right to share in scientific advancement and its benefits,”<sup>57</sup> and the International Covenant on Economic, Social, and Cultural Rights recognizes the right of everyone “to enjoy the benefits of scientific progress and its applications”.<sup>58</sup> **This right requires States to align government policies and programmes with the best available, generally accepted scientific evidence.** The U.N. human rights treaty bodies have relied on the IPCC reports in setting out States’ duties to avert the threat of climate change.<sup>59</sup> The States obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity can be drawn also from the interpretation and scope of articles 4(1) and 5(1) in relation to articles 1(1) and 2 of the American Convention on human rights.

Understanding that the climate emergency calls for and demands the priority of actions for the appropriate management and response to its impacts, it also requires the promotion of participatory and open dialogue encompassing the diverse perspectives working on the climate emergency and international human rights law. Thus, **prior and informed decisions are also necessary before licensing fossil fuel projects and activities, or when granting public finance support for new fossil fuel exploration projects.** As stated in the Escazu Agreement, States must ensure “the right to guarantee mechanisms for the participation of the public in decision-making processes, revisions, reexaminations or updates with respect to projects and activities, and in other processes for granting environmental permits that have or may have a significant impact on the environment, including when they may affect health”.<sup>60</sup> Disclosure of GHG emissions impact analysis and mitigation for example, prior to financing

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<sup>55</sup> *Comunidades Indígenas Miembros de la Asociación Lhaka Honhat (Nuestra Tierra) v. Argentina*, Inter-Am. Ct. H.R. (Feb 6, 2020) [hereinafter IACtHR].

<sup>56</sup> International Justice Resource Center, “Inter-american Court decides first environmental rights case against Argentina”, April 8, 2020 <<https://ijrcenter.org/2020/04/08/inter-american-court-decides-first-environmental-rights-case-against-argentina/>>

<sup>57</sup> UN General Assembly, Universal Declaration of Human Rights, U.N. Doc. No. 217 A (III), 10 December 1948, art. 27(2)

<sup>58</sup> International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 U.N.T.S. 3 (entered into force on 3 January 1976) [hereinafter ICESCR], art. 15(1)(b); Committee on Economic, Social and Cultural Rights, General Comment No. 25 (2020) on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. No.E/C.12/GC/25, 30 April 2020 [hereinafter CESCR GC No. 25] paras. 52, 83.

<sup>59</sup> Joint statement by the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, Statement on human rights and climate change, U.N. Doc. No. HRI/2019/1, 14 May 2020 [hereinafter UN Human Rights Treaty Bodies’ joint statement on human rights and climate change] paras. 2, 5,6.

<sup>60</sup> Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, [hereinafter “Escazu Agreement”] Sept. 27, 2018 Article 7

approval provides the opportunity for public review. It is critical to ensuring projects the State finance adequately quantify, assess the impacts of, and mitigate GHG emissions as central to informed decision making, important to managing environmental, social, and governance risks as well.

**Vulnerable communities, environmental defenders and non-governmental organizations are actively advocating and calling for the defense of the rights of the people and the environment, helping States fulfill their duties to respect and guarantee all fundamental human rights and avoid impunity.** Domestic Courts around the world are effectively averting the risk that climate change poses to human rights and requesting active and sufficient measures within their powers to curb and regulate the principal driver of emissions<sup>61</sup>. In the case *Generaciones Futuras v. Minambiente*,<sup>62</sup> the Supreme Court ordered the government of Colombia to formulate and implement action plans to address deforestation in the Amazon rainforest, recognising the "fundamental rights of life, health, the minimum subsistence, freedom, and human dignity are substantially linked and determined by the environment and the ecosystem." In the *State of the Netherlands v. Urgenda*, the Supreme Court of the Netherlands considered that the State is required pursuant to Articles 2 [right to life] and 8 [right to respect for private and family life] of the European Convention on Human Rights (ECHR) to take measures to counter the genuine threat of dangerous climate change<sup>63</sup>.

Furthermore, **States must adhere to the goals and obligations of Climate Agreements, particularly those relating to finance.**<sup>64</sup> Government institutions grant financial support, including through their bilateral development banks, ECAs, national development banks, domestic subsidies and through the MDBs. These institutions do not operate in isolation of their international obligations as clearly stated in the Advisory Opinion 23/17 by the honorable Inter-American Court, where it recalled the indisputable link between environmental harm and the vulnerability of human rights, "all of which results in a series of environmental obligations for States to comply with their duty to respect and to ensure those rights (...)." When determining the State obligations, the Court recognised the interdependence and indivisibility of human rights and environmental protection, as a decisive contribution to establishing the scope of the obligations under the American Convention.<sup>65</sup>

The Court also reasoned that the State control over the source of harm and by analogy over a government institution, may be sufficient to consider that a situation taking place abroad falls under the jurisdiction of a State. Thus, it not only made clear that the right to a healthy environment is a fundamental human right, but that **States have an obligation to ensure that their actions, and of those under their effective control, do not impact the enjoyment of these rights, including the rights of those living outside the State's own borders.**

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<sup>61</sup> *Urgenda Foundation v. The State of the Netherlands (Ministry of Infrastructure and the Environment)*, Judgment, No. ECLI:NL:HR:2019:2007

<sup>62</sup> Supreme Court of Colombia, 5 April 2018, *Generaciones Futuras v. Minambiente*, Judgment, STC. 4360-2018

<sup>63</sup> *Urgenda Foundation v. The State of the Netherlands (Ministry of Infrastructure and the Environment)*, Judgment, No. ECLI:NL:HR:2019:2007

<sup>64</sup> Kate Cook, Jorge Viñuales. "International Obligations Governing the Activities of Export Credit Agencies in Connection With the Continued Financing of Fossil Fuel-Related Projects and Activities" Nov. 2021

<<https://priceofoil.org/2021/05/04/eca-legal-opinion/>>

<sup>65</sup> Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A), 15 November 2017

Following this landmark opinion, the Inter-American Commission of Human Rights (IACHR)<sup>66</sup> provided recommendations to States<sup>67</sup> to contribute to the “efforts to determine the possible existence of a link between the adverse effects of climate change and the full enjoyment of human rights” and build up normative and jurisprudential developments. For instance, it requires **an end to public financial support, and concrete exclusion policies to avoid “locking-in” fossil fuel-related projects/activities**. As part of doing their fair share to limit warming to 1.5°C and ensure a livable future, governments, their bilateral public finance institutions and the MDBs must follow their international duties and, particularly, exercise due diligence when granting license or finance in fossil fuel related projects and activities. This due diligence duty, firmly rooted in customary international law and recognised by the International Courts<sup>68</sup> also applies in the context of transboundary environmental pollution<sup>69</sup>. Thus, States are not only responsible for reducing their greenhouse gas emissions (GHG) both within and beyond their borders, but also must act urgently to limit global warming below 1.5°C.

### **Concluding remarks**

We agree that the request for an Advisory Opinion submitted by the Republic of Colombia and Chile is fundamental for expanding the understanding of the interrelationship between the environment and human rights, and national and regional policies related to the guarantee of such rights. The debate on this issue within the framework of a regional Court will allow not only national or regional obligations to be addressed from a human rights perspective, but also those related to international cooperation, and the shared but differentiated obligations.

Oil Change International supports the request for an Advisory Opinion, in the sense that human rights not only provide a necessary perspective from which to assess the consequences of the emergency, but also essential tools to seek solutions that are opportune, just, and adequate. Even as renewable solutions take off, governments keep dragging their feet on phasing out fossil fuels.

Following Oil Change International reports, the scientific evidence and the international law obligations, States are required, in principle: (i) not to finance new fossil fuel-related projects/activities or increase the financing of existing ones; (ii) to decrease existing support within a clear timeframe dictated, first and foremost, by scientific considerations and the temperature goals of the Paris Agreement, as a reflection of a global consensus; (iii) to make proactive efforts to avoid “locking-in” fossil fuel-related projects/activities which may use up a significant part of the remaining carbon budget; (iv) to adopt and proactively implement adequate procedures to assess the carbon footprint of any project to be potentially supported; (v) to adopt and proactively implement guidelines concerning the performance of the business activities.

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<sup>66</sup> Resolution No. 3/2021, “Climate emergency: scope of the Inter-American Human Rights Obligations” Adopted by the IACHR on December 31st, 2021

<[<sup>67</sup> Ibidem page 7](https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2022/045.asp#:~:text=The%20resolution%20recognizes%20that%20climate%20species%20that%20inhabit%20the%20hemisphere.></a></p></div><div data-bbox=)

<sup>68</sup> The Case Concerning Pulp Mills on the River Uruguay, Argentina v. Uruguay, ICJ Rep. (2010) p. 14

<sup>69</sup> Corfu Channel case (UK v. Albania), ICJ Reports 1949, p. 4, at 22 ; Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, ICJ Reports 2010, p. 14, paragraph 197



Ambitious government action to stop new fossil fuel expansion, combined with shifting government-backed financial support away from fossil fuels and towards clean alternatives, will have mutually reinforcing benefits, including: stopping fossil fuel projects from moving forward, avoiding environmental damage and the destruction of livelihoods for communities affected by such projects, and closing the ambition gap in terms of what is needed to meet Paris climate agreement targets. In addition, in order to meet climate agreements, States must promote measures and policies that guarantee the protection of human rights and respond to the climate emergency in an equitable and just manner. Hence, we hope the Court determines clear guidelines for governments to end fossil fuel expansion, including through licensing fossil fuel production and financing it, based on a human rights approach.

Respectfully, the amicus curiae or friends of the court, by means of the present, approach this Honorable Court with relevant research and analysis on oil and gas industries to support the analysis of the international standards to determine the scope and content of States international obligations to respond to the climate emergency with respect to the protection of human rights.