The Inter-American Court's Advisory Opinion on Climate Emergency and Human Rights: A Breakthrough for the Environment and Business & Human Rights

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Introduction

On July 3rd, the Inter-American Court of Human Rights (IACtHR) released its Advisory Opinion OC-32/25 on Climate Emergency and Human Rights. In 2023, Chile and Colombia submitted a petition to the IACtHR to determine state obligations to address and mitigate the impact of climate change under a human rights perspective. In the past years, the International Tribunal for the Law of the Sea, the International Court of Justice, and the African Court on Human and Peoples' Rights have been seized to determine what are the legal

obligations of states to mitigate the impact of climate change.

In the Americas, particularly Caribbean states, Central America and countries on the Amazon basin, are particularly vulnerable to the impact of climate change. Due to the importance of this topic, states, international organizations, NGOs and academia participated in three public hearings and submitted, altogether, 263 briefings to the Court. This is the highest participation before the IACtHR, by a landslide.

This Advisory Opinion represents a legal milestone in the consolidation of state obligations to address climate emergency while respecting their human rights obligations. The Court divided its analysis into three fundamental pillars: the substantive rights affected by climate change, the procedural rights essential to combat it, and the differentiated impacts that affect people and groups in situations of vulnerability.

The purpose of this post is to assess the main environmental breakthroughs of this Advisory Opinion as well as the business & human rights assessment the Court does on this matter.

The Environmental Obligations of States to Address Climate Change

In 2017, the IACtHR released a groundbreaking Advisory Opinion on the Environment and Human Rights. 5 years before the UN General Assembly adopted a resolution recognizing the right to a healthy environment, the IACtHR had laid down the blueprint of the obligations of state to protect, promote and guarantee the right to a healthy environment. In the Advisory Opinion regarding Climate Emergency, the IACtHR reiterates the importance of this right.

However, the Court goes one step further. Using the best science available (para. 182), the Advisory Opinion confirms that we are living in a climate emergency. By using climate change law, it recognizes an autonomous right to a healthy climate (para. 300) under the scope of the American Convention on Human Rights and the San Salvador Protocol on Social, Economic and Cultural Rights, the two leading Conventions of the Inter-American Human Rights System relevant to this Advisory Opinion. This right derives from the right to a healthy environment and its recognition contributes to clarifying what are the

obligations to respect this right to a healthy climate, independently of other state duties (para. 300).

This right to a healthy climate has an individual and collective nature (paras. 302-304) and it’s based on the idea that states must adopt measures to ensure that people and communities live in a climate that enables life, allowing them to exercise their human rights. In addition, the Court says that the right to a healthy climate should guide states to adopt specific measures to address, protect and mitigate the impact of climate change (para. 320, 322, 342). Two guiding principles to fulfill this right to a healthy climate are the need to have a climate free from dangerous anthropogenic activities (para. 300) and the protection of present and future generations (para. 302).

The recognition of a new right reinforces the obligation of States to regulate and supervise business activities that contribute to the worsening of the climate crisis. There is a clear indication that the State should require climate impact studies (paras. 358-359) to be carried out on activities that present a high risk of causing impact. The Court emphasizes that rights to life, personal integrity, health, housing, property, food, water, work, culture, and education are under concrete and growing threat because of climate change.

In the field of procedural rights, the Court emphasized that access to information, public participation and access to justice are indispensable tools for addressing the climate emergency (paras. 488-560). In this context, it is important to mention the importance and use by the IACtHR of the Escazú Agreement, a treaty that entered into force in 2021, with the purpose of assuring the aforementioned rights. The IACtHR states in this Advisory Opinion the obligation to produce and disseminate relevant information for the protection of human rights in the context of the climate emergency (para. 505), i.e., the design and implementation of information systems with up-to-date data on air and water quality, together with information on the health risks arising from pollution.

For the Court, these rights must be guaranteed not only by States, but also by companies (para. 516) that, through their activities, may restrict or facilitate the enjoyment of environmental rights. In this context, states must refrain from impeding people's rights to information about the actual or potential impacts of

their operations on the environment and, on the contrary, have a duty to adopt practices of active transparency (paras. 352, 504). This means providing true, accessible and timely information to the different affected audiences, to ensure a democratic and informed debate on the risks and decisions that impact the environment and human rights (para. 525). In addition, the IACtHR concludes that both states must adopt access to justice and reparation mechanisms so that individuals and communities can seek remedies against the climate emergency (paras. 556-559).

Business & Human Rights, International Investments Agreements and Climate Emergency

The IACtHR, as a regional human rights tribunal, only has jurisdiction over states. However, throughout its case law, particularly in the field of business and human rights, the Court has determined that businesses have responsibilities to ensure that their activities do not breach human rights of individuals and communities. Throughout the Advisory Opinion, the Court respects its practice, by stating that states must adopt laws and policies to assure that businesses do their part in addressing the climate emergency (paras. 345-351) while establishing that businesses have a responsibility to address the climate emergency (para. 246 and para. 347).

As written in the previous section, businesses must refrain from impeding people's rights to information about the actual or potential impacts of their operations on the environment and, on the contrary, have a duty to adopt practices of active transparency (para 506). In the context of a climate emergency, this includes, among other things, in adopting public and transparent policies to reduce the emission of greenhouse gases (para. 350). This means providing true, accessible and adequate information to the different affected audiences, to ensure a democratic and informed debate on the risks and decisions that impact the environment and human rights.

Furthermore, businesses must also refrain from practices that limit the right to participation, especially about the protection of human rights and environmental defenders (paras. 561-587), recognizing the importance of these actors for the safeguarding of collective rights and nature.

Another relevant aspect of the opinion is that States, to fulfil their duty to guarantee rights in the context of climate emergency, must exercise enhanced due diligence (paras. 231-237). It also defines climate emergency by pointing to the combination and interrelationship between three factors, namely: the urgency of effective action, the severity of the impacts, and the complexity of the responses required (para. 184). Facing such a phenomenon, the mere existence of laws or public policies is insufficient. It is imperative that states ensure their effective implementation and enforcement, creating concrete means for environmental and human rights standards to be respected in practice. In other words, the Court indicates States need to have their due diligence in order also to identify activities which might produce harm related to climate.

Upon identifying them the State has a duty to regulate business activities to ensure the protection of the environment and human rights what encompasses the obligation to adopt and implement legislation, policies and regulations that prevent business activities from resulting in climate impact. State's due diligence becomes somehow extended to the obligation to ensure that companies, especially those whose activities contribute to climate change, carry out periodic assessments of the impacts of their operations and production chains (paras. 323-351). These assessments, which are part of human rights due diligence processes, must explicitly consider the climate impacts and risks that climate change poses to people and the environment.

Finally, there is a rather short but highly relevant section of the Advisory Opinion focusing on International Investment Agreements (IIA). In this section (paras. 162-171 and paras. 350-351), the IACtHR recognizes the importance that these IIA. What is interesting here is that the Court opines that IIA cannot be used to halt a state's ability to protect the environment (para. 351). To our understanding, this is a brief, but significant statement related to IIA that the IACtHR has ever carried. It is important to highlight that the language used mirrors the language of the (still to enter into force) bilateral investment treaty between Morocco and Nigeria.

Unfortunately, the Court falls short from criticizing how the sections related to the solution of controversy within IIA has been used by businesses to launch arbitration proceedings against states for adoption regulations or canceling

permits that would present an irreparable social and environmental harm. We hope that this Advisory Opinion could trigger a more thorough analysis of the impact that these arbitrations have on a state duty to mitigate and address the climate emergency under a human rights and environmental perspective.

Conclusions

The Advisory Opinion on the Climate Emergency and Human Rights is a significant milestone in the region. In addition to the findings analyzed in this article, the Court reiterates the importance of mitigating climate change can only be done under a democratic regime that considers and prioritizes the differentiated needs of vulnerable groups.

This Advisory Opinion also incorporates international climate change law as guiding instruments for the protection of human rights. This “inter-Americanisation” of the Paris Agreement and other climate change documents is fundamental for the region to adopt laws and policies that prioritize the protection of nature and us.

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