

# CLIMATE CHANGE

A Comparative Overview of  
the Rights Based Approach  
in the  
Americas



**OAS** | More rights  
for more people



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### **OAS Cataloging-in-Publication Data**

Organization of American States. Department of Sustainable Development. Climate change: A comparative overview of the rights based approach in the Americas / [Published by the Department of Sustainable Development of the General Secretariat of the Organization of American States].

p. : ill. ; cm. (OAS. Official records ; OEA/Ser.D/XXIII.40)

ISBN 978-0-8270-6598-7

1. Climatic change. 2. Environmental law. 3. Human rights. 4. Environmental policy. 5. Sustainable Development Goals. I. Title. II. Series.

III. Paris Agreement on Climate Change 2015. IV. United Nations Framework Convention on Climate Change.

The views expressed herein are presented for informational purposes only and do not represent the opinions or official positions of the Organization of American States, its General Secretariat, its Member States or any of its partner institutions.

Graphic Design: Maria Montas

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# Prologue

By Luis Almagro, Secretary General,  
Organization of American States

The Paris Agreement on Climate Change entered into force on November 4th, 2016, ratified by 97 countries that account for 69.21% of the world's total greenhouse gas emissions. The presentation by 22 OAS Member States of their instruments of ratification, acceptance, approval and accession to the Agreement sends a powerful message regarding where the Americas stands on climate change.

Addressing climate change is an urgent priority, because its effects -especially in the Americas- could be devastating. More frequent and more powerful hurricanes in the Caribbean, melting Andean glaciers, diminished fish catches due to bleaching of coral reefs, and rising sea levels are just a few of the effects either already being felt, or at risk in the near future.

In this context, the rights-based approach to addressing climate change prioritizes the needs and concerns of the people of the Americas in the identification and implementation of solutions, and in particular those of most vulnerable groups. This approach also means that solutions must be based on the rule of law, while guided by the principles of equity, justice and inclusion. The United Nations Framework Convention on Climate Change (UNFCCC) includes commitments for Parties on public engagement, information and participation. All of the above make the standard for climate change decision making by the different branches of government clearly high.

The strength with which the Paris agreement has entered into force in the region does not happen in isolation; it follows a meeting of the OAS Gen-

eral Assembly focused on institutional strengthening for sustainable development, which also highlighted the rights-based approach. It also takes place at a time in which our member states have approved a comprehensive strategic plan with cross-cutting guidelines to align the actions of the Organization with the UNFCCC and the Paris Agreement on climate change adopted by the Parties to COP21. The plan also aims to contribute to the implementation of the 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs). Furthermore, these guidelines call for a focus on vulnerable groups.

COP 22 in Marrakech, marks the beginning of a new era focused on implementation and concrete actions in the Americas and beyond. In this new era, we must work to bridge the gaps between science, law and policy to benefit the citizens of every OAS member state.

On the occasion of the entry into force of the Paris Agreement and COP 22, this publication seeks to provide a perspective on climate change and rights in the Americas. First, by describing developments in the Inter-American climate change agenda and their linkages to environmental and human rights law; and second, by analyzing the implementation of legal principles to address the impact of climate change on the peoples of the Americas by the executive, the legislative and the judiciary branches.

Today, responses from these branches of government are truly defining how climate change is addressed on the ground. These responses also illustrate the role of institutions and that of the



OAS General Secretariat in assisting Member States in strengthening institutions and supporting implementation of the 2030 Agenda and the Paris Agreement, complementing the UN system and sister agency efforts.

Transparent, effective, responsible and inclusive institutions at all levels of governments will be critical to the implementation of these commitments, and to achieving the goals and targets of the 2030 agenda for Sustainable Development and those of the Paris Agreement in our region.

In addition to providing insight to our Member States I believe this publication will serve as a tool in the context of climate diplomacy, for awareness-raising regarding climate change and the rights-based approach in different upcoming for a and decision making processes.

It is my hope that this publication will relaunch a conversation about how climate governance can and should help to ensure the rights of more people in this new era through strengthened, inclusive institutions focused on implementation.



**Luis Almagro**  
**Secretary General**  
**Organization of American States**





# Foreword

By Michael Burger  
Executive Director and  
Research Scholar Sabin Center for Climate  
Change Law at Columbia Law School

In 2005, the Inuit people petitioned the Inter-American Human Rights Commission, lodging a claim that climate change impacts in the Arctic were violating their human rights. The Commission ultimately declined to hear the case, yet the Inuit petition remains a landmark. First, it signals a transition in the international community's awareness of the relationship between climate change and human rights. Second, it serves as an opening salvo in the climate justice litigation still emerging in the Americas and around the world.

It has long been recognized that a clean, healthy and functional environment is integral to the full enjoyment of human rights, such as the rights to life, health, food and an adequate standard of living. Anthropogenic climate change threatens billions of people and the ecosystems, natural resources and physical infrastructure upon which their livelihoods and well-being depend. This new publication from the Organization of American States aims to inform governments, judiciaries, civil society and industry actors operating within the Inter-American system by offering a regional perspective on the rights-based approach to climate action,

The Americas are confronting a wide range of climate change impacts—including ecosystem degradation, extreme events and water scarcity—often in situations where populations are highly vulnerable. These realities make clear that the need for greenhouse gas emissions mitigation and a global transition to a decarbonized economy must be balanced, especially in developing countries, with the demands of adap-

tation and disaster risk reduction and the ambitious platform for development set forth in the Sustainable Development Goals. Ultimately, all climate change-related activities must transpire with full respect for individuals' and communities' participatory and substantive human rights.

This publication offers a new resource for decision-makers and advocates alike, providing a snapshot summary of climate action in the Americas, with human rights shaping the background. Of particular note, the publication gives a country-by-country update on legislative and executive developments throughout the hemisphere. It also discusses several essential cases in domestic courts and the Inter-American system that highlight some of the key questions that arise in climate litigation: justiciability, causation, the extent of statutory authority and the scope of constitutional and international law protections.

This publication could not be more timely. It comes at a moment when the parties to the United Nations Framework Convention on Climate Change are convening in Marrakech, Morocco to develop rules and modalities for implementation of the Paris Agreement. The pivot to implementation requires nations understand the range of possibilities for action, along with its practical and legal necessity. This publication gives readers a comparative overview that may serve as an important reference for governments, judges, NGOs, business actors and anybody else involved in shaping the global post-2030 agenda.







# Preface

By H.E. Luis Alfonso de Alba Góngora  
Ambassador, Permanent Representative  
of Mexico to the OAS.

As former Special Envoy of Mexico for Climate Change, I consider the launch of this publication as an important step forward for the Americas following the Cancun Agreements, reached at the 2010 United Nations Climate Change Conference (COP16/CMP6).

Six years ago, in Cancun, Mexico, world nations took the first and largest collective effort to reduce greenhouse gas emissions in a mutually accountable way, enabling citizen protection from climate impacts and building a sustainable future through a shared vision for long-term cooperative action, the establishment of the Cancun Adaptation Framework, and an enhanced action on mitigation bearing in mind different circumstances of developed and developing countries.

Furthermore, in Cancun, parties agreed to create the Green Climate Fund, with a priority emphasis on financing efforts of the most vulnerable developing countries, such as the least developed countries and small island developing States, to adapt to climate change, basing its activities on a country-driven approach.

Today, in the context of the decisions to be made in COP 22 in Marrakesh following the entry into force of the Paris Agreement, the international community has the challenge and opportunity of enabling accountable and people-centered climate solutions in the near future. Accountability and clear rules for implementation are currently being negotiated, therefore the focus of this publication on a rights-based approach is timely and appropriate.

While it is true that multilateral negotiations to promote a coordinated international response to climate change are crucial and receive the world's attention, national efforts are of the utmost importance and thus also need to be followed closely by the international community.

The responses to climate challenges analyzed here clearly portray that, at the national level, decision makers are turning peoples' rights into a reality and are conceiving solutions to ensure that poor and vulnerable communities are supported and not left behind. These contributions represent a step forward in tracking and ensuring the implementation of climate plans that are supportive of the global goals set in the Paris Agreement and they also build on the foundational framework that our hemisphere helped achieve in Cancun.

In this context, I would like to encourage national authorities to continue acting on the existing commitments and to embrace the opportunities multilateralism offers to advance effective climate action.

Finally, I congratulate Secretary General Almagro for his leadership in promoting and highlighting the achievements of the countries of the Americas in advancing climate change and the rule of law.





# Acknowledgments and list of authors

The General Secretariat of Organization of American States (OAS), expresses gratitude to the following institutions and colleagues who contributed to this publication: UN Environment (The United Nations Environmental Programme –UNEP-) Division on Environmental Law and Conventions, the World Commission on Environmental Law (WCEL) of the International Union for Conservation of Nature (IUCN), Michael Burger, Executive Director Sabin Center for Climate Change Law, Research Scholar and Lecturer-in-Law, Columbia Law School; Cletus I. Springer, Director, Department of Sustainable Development, OAS; Claudia Arango, Department of Sustainable Development, OAS; Patricia Campos Mesen, Deputy Director of Climate Change, Ministry of Environment of Costa Rica; Matias Pinto Pimentel, Climate Change Negotiator, General Directorate of International Economic Relations (DIRECON) of Chile; Rosa Otero and Claudia Adames, International Cooperation Directorate of the Ministry of Environment of the Dominican Republic and Charles Di Leva, Chief Counsel ESSD, The World Bank.

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Prior to joining the OAS, Dr. de Windt was in private law practice in Dominican Republic, where she counseled international and local organizations in the areas of contracts, banking, maritime, corporate and investment Law and alternative dispute resolution. She is a Judicial



Interpreter of the Court of First Instance of the National District by appointment of the President of the Dominican Republic. Dr. de Windt is part of the roster of experts in environmental law of the EU-Central America Association Agreement. She is the Co-Chair of the Green Growth and the Law Committee of the Green Growth Knowledge Platform and is also a member of the Steering Committee of the World Commission on Environmental Law of the International Union for the Conservation of Nature (IUCN). Dr. de Windt is admitted to practice in her country and to the Dominican Bar Association.



## Maximiliano Campos

Max Campos. With an academic background in Earth Sciences and Meteorology from Millersville University of Pennsylvania and the University of Costa Rica, Max Campos is since October 2009, the Senior Chief for the Integrated Water Resources Management Division at the Organization of American States (OAS). Previously he was the Executive Secretary for the Regional Committee on Hydraulic Resources (CRRH), which is an agency for the Central America Integration System (SICA), specialized on integrated water resources management, hydro meteorology and climate.

Max Campos has developed a profession on administration of science as well as on formulation and evaluation of projects. He has done work for international organizations like GEF, UNDP, UNEP, WMO and OAS, for all governments in Central America, for non governmental organizations like IUCN and the Global Water Partnership (GWP), and for Universities and the private sector. He initiated his professional activities as a meteorologist at the Costa Rican National Meteorological Institute where he was head of the departments of climatology and information; from here he became advisor for Ministers of Foreign Affairs and Ministers of Environment for different countries in the region, particularly on global change issues, ranging from science to policies. Latter, was appointed Project Manager for the Central America Project on Climate Change, sponsored by the United States Country Study Program and coordinated by CRRH under the Integration System for Central America.

Campos has represented Costa Rica during the negotiation process for the United Nations Framework Convention on Climate Change (INC-UN-FCCC), and also had a very active participation in the organization and implementation of activities for the Inter-American Institute for Global Change Research (IAI), the United Nations Intergovernmental Panel on Climate Change (UN-IPCC), and several other international, regional and national organizations.



## Andrés Felipe Sánchez Peña



Environmental Economist from Los Andes University in Bogotá, Colombia. He holds further studies in Business Administration and on Integrated Water Resources Management (IWRM), as well as a Master's degree on Environmental Sciences and Policy from the Johns Hopkins University. Mr. Sanchez works with the Integrated Water Resources Management Section (IWRM) of the Department of Sustainable Development of the OAS, mainly supporting the formulation, implementation and execution of the IWRM's Global Environmental Facility (GEF) projects portfolio. He also works on the project coordination, formulation of new project proposals on integrated management of superficial and ground water resources in the Americas; and supporting efforts under those initiatives that promote the work with youth for the sustainable development in the region. Within his areas of interest and experience are environmental and economic management, energy production, climate change, social development, policy analysis and the development of multidisciplinary frameworks towards environmental management.

## Estefanía Jimenez



Estefanía holds a Bachelor of Science Degree in Meteorology from the University of Costa Rica. During her undergrad years, she worked at the Geophysical Research Center of her university, and then joined the National Meteorological Institute of Costa Rica where she worked for over 4 years. Here she worked in the Forecast Department and in the Climatology Department, where she garnered considerable knowledge and experience in climate variability and climate change. On several occasions, Estefanía had the opportunity to represent her country at meetings of the United Nations Framework Convention on Climate Change (UNFCCC). Importantly, she contributed to the formulation of Costa Rica's Third Communication on Climate Change which was submitted to the UNFCCC Secretariat and had lead responsibility for the management of the first meteorological stations network to monitor climate change in Costa Rica. Estefanía joined the Department of Sustainable Development of the Organization of American States in 2014, directly following a brief stint as an intern. She has provided sterling support to the Chief of the Integrated Water Resources Management Program of the Department of Sustainable Development. In this regard, she has been closely involved in projects in the Río de la Plata Basin in South America and in the Trifinio Region in Central America. These projects have as their main objective the imperative of building the resilience of communities to climate variability and climate change. Estefanía has decided to pursue her Post-Graduate studies in Climate Change Law and Policy.





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# I. Introduction and purpose

**T**his publication provides a regional perspective on climate change and rights for the Americas. First it looks at the best climate knowledge and understanding, as well as at developments in the Inter-American climate change agenda and its linkage to environmental and human rights law. Second, it looks at the implementation of legal principles to address some of the main impacts of climate change on the peoples of the Americas. These areas are addressed with the purpose of providing insight regarding climate and governance that is supportive of ensuring the rights of more people in the Americas in its changing climate.

## 1.1-The issues in context: what we know.

### Principle 1: The Declaration of the United Nations Conference on the Human Environment (1972)

*“Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights the right to life itself”.*

The Americas location in the planet, largely extended from the Arctic to the Antarctic, and its complex terrain expose the continent to a great variety of physical conditions which result in striking climate and ecological contrasts. Simultaneously, these conditions are defining factors in natural resource distribution and the evolution of the diverse societies present in the hemisphere. The defining role of these conditions is due to the association of development pathways to availability and access to nature’s benefits and to natural systems. The development patterns in the hemisphere also have close co-relation and significant implications for exposure, vulnerability, and risk associated to an anomalous climate.

According to the fifth assessment report (AR5) of the Intergovernmental Panel on Climate Change (IPCC) evidence of the impacts of climate-change for natural systems is the strongest and most comprehensive where human systems also exhibit attributable impacts to climate change. Climate chang-



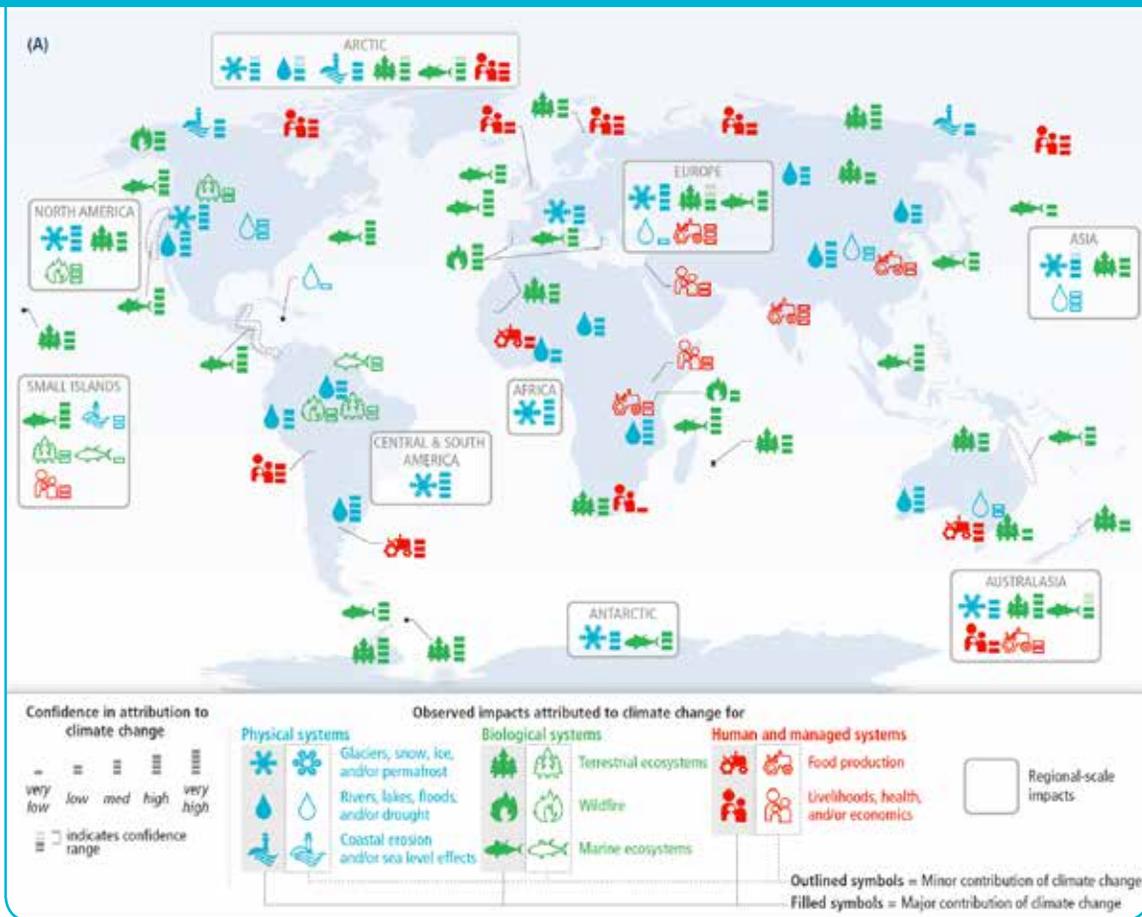
es and related hazards interact with the dynamic and evolving vulnerability and exposure in the Americas and therewith determine the changing level of risk.

The wide array of impacts derived from climate change in the Americas, exacerbate its vulnerabilities, and affects countries differently according to their adaptation capabilities. Scientists have stated that climate change vulnerability in the Caribbean, Central America and in some countries of South America is high and will be

severe and intense in 2030, while the vulnerability of the North American economy to the impacts of climate change will also be high and the loss of habitats will be intense<sup>1</sup>. Identifying these key vulnerabilities enables to estimate key risks when coupled with information about climate change associated evolving hazards.

As established by the AR5, the attributable impacts to climate change in the Americas are mostly in ecosystems, water security and extreme events.

### Chart 1. Observed Impacts Attributed to Climate Change in the Americas



Source: IPCC, 2014: Summary for policymakers.

<sup>1</sup> IPCC, 2014: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. IPCC, Geneva, Switzerland, 151 pp.



Although some countries of the region are not the largest emitters of green house gases-for instance the 22 OAS Member States that are Parties to the Paris Agreement contribute approximately 25.35 %<sup>2</sup> of the total global emissions-, their levels of vulnerability and limited adaptation capacity subjects them greatly to the impacts of climate change.

The economies of countries of the Americas rely greatly on natural resources which are climate dependent<sup>3</sup>. Thirty Three OAS Member States have submitted their Intended Nationally Determined Contributions (INDCs).

The rationale behind the Western Hemisphere joining the rest of the international community in confronting climate change challenges is more than clear. On February 2007, the Intergovernmental Panel on Climate Change (IPCC) established with 90 percent certainty that human activity is responsible for global warming.<sup>4</sup> Climate change threatens the basic elements of life for people around the world - access to water, food, health, and use of land and the envi-

ronment -.<sup>5</sup> Countries of Latin America and the Caribbean are extremely dependent on natural resources and as a result more vulnerable to these threats. Increased greenhouse gas (GHG) emissions<sup>6</sup> have contributed to the raising of the earth's temperature. This rise has caused changes in weather, sea-level, and water access and availability and land use patterns. The impact of these changes has been severe in the region. Hurricanes are more intense and destructive, glaciers are rapidly melting, fish stocks are depleting and landslides are more frequent.<sup>7</sup>

The above illustrates the fact that climate change has acquired greater political relevance in recent times towards defining common action and solutions that are effective not only for the region but also for the entire planet.

22 of the 97 Parties to the Paris Agreement are OAS Member States and account for 25.35 % of global emissions. The 13 Member States that have not signed or submitted their instruments of ratification together account for 2.23%<sup>8</sup> of the global emissions.

2 GS/OAS with data from <http://climateanalytics.org/>

3 IPCC, 2014: *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. IPCC, Geneva, Switzerland, 151 pp.

4 *Summary for Policymakers: A Report of Working Group I of the Intergovernmental Panel on Climate Change*, formally approved at the 10th Session of Working Group I of the IPCC (February 2007).

5 Nicholas Stern, *The Economics of Climate Change: The Stern Review*, Cambridge University Press (2007).

6 According the 2007 assessment of the Inter-governmental Panel on Climate Change, Latin America contributed to 4% of global greenhouse gas emissions.

7 See: <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/0,,contentMDK:21575230~menuPK:258569~pagePK:2865106~piPK:2865128~theSitePK:258554,00.html>

8 GS/OAS with data from <http://climateanalytics.org/>





PELIGRO  
OJO DE  
GANADO  
BUTALINO



## II. Climate Change in the OAS

**O**AS Member States have had an important leadership role regarding climate change, even hosting three of the Conferences of the Parties (COP) of the United Nations Framework Convention on Climate Change (UNFCCC) in the Americas (Argentina COP4, Mexico COP16 and Peru COP20), COP20 in Lima, was a fundamental step towards the achievement and conclusion of the Paris agreement.

What we know today, explains why climate change has recently acquired greater political relevance, towards common decision making in scenarios such as the OAS seeking to find decisions that are not only effective in the regional context but that have a global impact.

The OAS has four fundamental pillars of action: Democracy, Human Rights, Security and Development, and Climate change is considered to have crosscutting linkages to these pillars (see table below). Hence OAS hemispheric actions within these areas include relevant contributions to both mitigation and adaptation.

**Table 1. Pillars of the OAS and Climate Change Linkages:**

OAS Pillar	Linkages to Climate Change
Democracy	<p>The UNFCCC establishes access to information on climate change and its effects and public participation as part of the parties obligations in carrying out their commitments in addressing climate change and its effects and developing adequate responses. The purpose of these commitments is to guarantee a rule for citizens in activities and decision making processes with in impact in their lives and wellbeing. Article 6 of the Inter-American Democratic Charter establishes that it is the right and responsibility of all citizens to participate in decisions relating to their own development. This is also a necessary condition for the full and effective exercise of democracy. Promoting and fostering diverse forms of participation strengthens democracy. On the other hand, article 15 of the Charter, establishes that the exercise of democracy promotes the preservation and good stewardship of the environment. It is essential that the states of the Hemisphere implement policies and strategies to protect the environment, including application of various treaties and conventions, to achieve sustainable development for the benefit of future generations. This commitment includes the UNFCCC.</p> <p>OAS Member States are committed to the implementation of the Inter-American Strategy for the Promotion of Public Participation in sustainable development decision making (ISP) that has the objective of promoting transparent efficient and responsible public participation in the decision making process, as well as encouraging the formulation and execution of policies for sustainable development in the Americas.</p>
Human Rights	<p>a) Links between the right to a healthy environment affected by climate change and other rights such as the right to life, to water, food, culture among other; b) consequences of the impacts of climate change for the full enjoyment of human rights; c) Increased vulnerability of certain groups to climate change; d) Human rights implications of displacements and climate change induced conflicts and e) human rights implications of measures to address climate change.</p>
Security	<p>Recent studies and reports highlight that climate change is one of the main challenges for world peace and stability. The concept of multi-dimensional security adopted by OAS Member States includes environmental degradation and the impacts of climate change.</p>



## Development

The overall goal for the OAS development pillar is to *help the Member States to achieve their economic, social, and cultural development goals in a comprehensive, inclusive, and sustainable manner, taking into account the provisions of the OAS Charter, the Social Charter of the Americas, the Strategic Plan for Partnership for Integral Development, and other inter-American instruments, through different actions. This pillar stands out for its integrated approach combining policy and programmatic levels plans that are translated into concrete action through program implementation and cooperation.* In implementing the actions of the Strategic Plan's development pillar, the GS/OAS must take the following crosscutting strategic guidelines into account:

Align its actions with and contribute to the implementation of the 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs) as the general framework for its action.

Align its actions with the UNFCCC and the Paris Agreement<sup>9</sup> on climate change adopted by Parties to COP21.

Within this pillar efforts through the Inter-American Program on Sustainable Development (PIDS in Spanish) support climate change mitigation and adaptation and the creation of the enabling legal-institutional environment for climate resilience. Furthermore, efforts in this pillar contribute to democracy, security and to the guarantee of human rights.

While the UNFCCC is the primary international intergovernmental forum for negotiating the global response to climate change, the OAS has played an important role in advancing climate change cooperation and policy as the hemispheric political forum inclusive of all the countries of the Americas, committed to the strengthening of democracy, the promotion and protection of human rights, the advancement of integral development and the fostering of multidimensional security, all equal and interdependent, with justice and social inclusion, for the benefit of the peoples of the Americas<sup>10</sup>. For instance, in the Declaration of Santo Domingo for the Sustainable Development of the Americas, Member States agreed upon 12 paragraphs of which (8) are operative commitments with initiatives for action in the area of climate adaptation in the framework of the General Secretariat of the OAS. Through different resolutions of the General Assembly, the Organization has sent a powerful message regarding the relevance achieving climate agreements and pursuing climate action.

<sup>9</sup> The Government of the Republic of Nicaragua cannot endorse the reference to the so-called "Paris Agreement" because irregular procedures were used in its adoption, because the position of the most vulnerable countries was not taken into account, and because, on the contrary, the negotiation process was compromised by the failure to recognize the historical responsibility toward the countries suffering the effects of climate change and their indemnification, a position that was backed by Nicaragua and other countries in order to ensure that those states that have caused the climate change problem and are the main emitters of greenhouse gases assume the responsibility of mitigating the harm inflicted on the small countries—such as Nicaragua and other nations in Central America and the Caribbean—that suffer the consequences in the form of droughts, rising sea levels, hurricanes, and other catastrophes.

<sup>10</sup> AG/RES. 2814 (XLIV-O/14) Strategic Vision of the Organization of American States.



## Chart 2. – OAS General Assembly Resolutions on Climate Change.



Source: GS/OAS.

The issue of climate change has been extensively addressed by the OAS Permanent Council in the past decade<sup>11</sup>. Additionally for the past 25 years, the issue of climate change has been addressed by the Department of Sustainable Development through the PIDS and in support of implementation efforts of the UNFCCC.

11 Minutes of the Special Session held on February 23, 2007 approved in the session held on September 16, 2009: <http://www.oas.org/consejo/sp/actas/acta1579.pdf>; Minutes of the ordinary session held on September 10th 2008, approved on December 3 2009 (item 2 2 O of the Order of Business): <http://www.oas.org/consejo/sp/actas/acta1661.pdf>; Record of the Joint Permanent Council and CIDI session on the issue "Development of a Global regime to address Climate Change" October 2013: <http://scm.oas.org/IDMS/Redirectpage.aspx?class=CP/SA&classNum=1941&lang=s>



**Chart 3. – OAS Department of Sustainable Development PIDS implementation.**



Source: GS/OAS.

Climate change is one of the cross-cutting themes for the strategic areas identified in the recently adopted Inter-American Program for Sustainable Development (PIDS). This program also establishes strategic areas of actions, among which, the work of the General Secretariat of the OAS in support of institutions for sustainable development shall contribute directly to support Member States in their efforts towards the attainment of the SDG 16: “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable and inclusive institutions at all levels”. In this context, identified actions include: *supporting Member States to identify the challenges and needs on environmental law and management and to build capacity of key stakeholders including public officials or implementing governmental agents that participate in issues relating to the environmental rule of law and support effective enforcement of environmental laws, Multilateral and Regional Agreements.*

In the area of human rights law, AG/RES. 2429 (XXXVIII-O/08) “ Human Rights and Climate Change in the Americas”, instructs the Inter-American Commission on Human Rights (IACHR), with support from the General Secretariat, through the Executive Secretariat of the IACHR and the Department of Sustainable Development , to contribute, within its capacities, to the efforts to determine the possible existence of a link between adverse effects of climate change and the full enjoyment of human rights, in coordination with other international entities and in consultation with the Member States.



## Chart 4. United Nations Office of the High Commissioner for Human Rights. Climate impacts on human rights.

Effects	Examples of affected rights
Extreme weather events	Right to life <sup>70</sup>
Increased food insecurity and risk of hunger Right	Right to adequate food, right to be free from hunger <sup>71</sup>
Increased water stress	Right to safe drinking water <sup>72</sup>
Stress on health status	Right to the highest attainable standard of health <sup>73</sup>
Sea-level rise and flooding	Right to adequate housing <sup>74</sup>

**Source:** UNHCR, *Climate Change Displacement and International Law: Complementary Protection Standards*. 2011.

Against this background, the following sections of this publication, will provide insight regarding the linkages between climate change, environmental and human rights law to further illustrate the advancement and implementation of legal principles within the current governance framework to address the impact of climate change on the peoples of the Americas.





### III. Climate Change and Environmental Law

While the UNFCCC itself is a Multilateral Environmental Agreement (MEA), its purpose is interdisciplinary just as environmental law is. Most countries of the region have, through binding and non-binding international instruments, expressed not only an awareness of the real phenomenon of climate change; but have committed themselves to addressing it. This is evident in the most recently signed Paris Agreement and the previously referenced hemispheric commitments.

In order for countries of the region to move forward on issues related to climate change, it is important to identify and advance, among other things, the legal mechanisms in place at the national level to move forward the public policy framework agreed upon by the executive branches.

In the Americas, countries have adopted very different domestic policies to tackle the challenges posed by climate change. Some have utilized or amended existing legislation/regulations to address specifically identified challenges. For instance, many countries have included provisions related to climate change in their General Environmental Laws, issued Clean Air laws<sup>12</sup> or Laws and Executive decrees with their national climate change strategies. For example, Brazil has a National Climate Change Policy Law<sup>13</sup> to implement UNFCCC commitments reducing GHGs to mitigate climate change, creating adaptation and conservation policies and developing a national cap and trade policy. On the other hand, a unique example in the hemisphere is Mexico and their General Climate Change Law, which passed by unanimous congressional majori-

<sup>12</sup> See 42 U.S.C. §7401 et seq. (1970)

<sup>13</sup> LEI Nº 12.187, DE 29 DE DEZEMBRO DE 2009 Institui a Política Nacional sobre Mudança do Clima - PNMC e dá outras providências. Available in: <http://www2.camara.leg.br/legin/fed/lei/2009/lei-12187-29-dezembro-2009-599441-publicacaooriginal-121756-pl.html>



ty. Other approaches have been implemented by countries such as Belize and Guyana which have used land-use planning and zoning regulations, along with coastal zone management regulations to address challenges such as landslides, mudflows, and flooding.<sup>14</sup> This also illustrates a general realization that changes in, and improper use of land, along with the improper establishment of settlements on unstable lands by local populations, increase their vulnerability to the severe impacts of climate change;<sup>15</sup> hence the reason for applying such regulations. Further, the enforcement of existing laws, such as those relating to forestry, have proven useful in mitigation and adaptation efforts.

While in some countries, it is through the national legislative framework that climate change challenges are addressed, in others it is at the provincial or state level. For example, in the United States, as in many other countries, there is currently no federal legislation which sets limits on domestic greenhouse gas emissions. However, the state of California, through an Executive Order,<sup>16</sup> established its own GHG emission reduction requirements.

Although, many domestic laws address climate change challenges in some way, there are several gaps in domestic legal frameworks. One challenge is that many countries in the region have not enacted legislation implementing in holistic way their commitments and the principles of the binding and non-binding international instruments aforementioned. Also, many of the “Clean Air Acts” in the region have not been amended to reflect climate change issues such as setting targets or establishing requirements for the reduction of GHG emissions. Further, since climate change is such a cross-cutting issue there are not any single pieces of legislation addressing climate change exclusively, as most domestic legislation relevant to climate change issues are for example forestry, land use planning, and water management related, the challenge arises of having to identify the synergies and actions that need to be taken within domestic

IPCCC Climate Change 2014: Synthesis Report for Policy Makers.

“Recognition of diverse interests, circumstances, social-cultural contexts and expectations can benefit decision-making processes. Indigenous, local and traditional knowledge systems and practices, including indigenous peoples’ holistic view of community and environment, are a major resource for adapting to climate change, but these have not been used consistently in existing adaptation efforts. Integrating such forms of knowledge into practices increases the effectiveness of adaptation as do effective decision support, engagement and policy processes. Increasing efforts to mitigate and adapt to climate change imply an increasing complexity of interactions, encompassing connections among human health, water, energy, land use and biodiversity (*medium evidence, high agreement*). {3.1, 3.5, 4.5} Strategies and actions can be pursued now which will move towards climate-resilient pathways for sustainable development, while at the same time helping to improve livelihoods, social and economic well-being and effective environmental management. In some cases, economic diversification can be an important element of such strategies. The effectiveness of integrated responses can be enhanced by relevant tools, suitable governance structures and adequate institutional and human capacity (*medium confidence*). Integrated responses are especially relevant to energy planning and implementation; interactions among water, food, energy and biological carbon sequestration; and urban planning, which provides substantial opportunities for enhanced resilience, reduced emissions and more sustainable development (*medium confidence*)”. {3.5, 4.4, 4.5}

14 See [www.sciencedaily.com/releases/2007/04/0704/070410135944.htm](http://www.sciencedaily.com/releases/2007/04/0704/070410135944.htm)

15 Id.

16 Executive Order # S-3-05. See also, the state of Washington’s SSB 6001.



laws to address climate change associated issues. This may prove time consuming and onerous on human and financial resources.

Another challenge is related to enforcement. While countries around the world have laws that address climate change and the environment, these laws are not always enforced. Ensuring compliance with laws and regulations is thus a key feature of the rule of law. Even if countries are able to enact and update all their legislation, most of the challenges faced prior to enactment and amendment will still persist, if enforcement of the legal provisions is not considered early in the process. This is more so in the case of climate change where so many interest and sectors are subject to the legal provisions in question.

There is also the significant challenge of lack of education and awareness among the general public about the impacts of climate change, and about the importance of obeying laws which ultimately seek to protect the public from the harsh impacts. Thus, if the citizens are educated, for example, on why there are laws on illegal logging, and are made to understand the climate change related consequences from illegal logging, such as that deforestation which contributes to landslides and mudflows and thus the loss of life and property, then proper environment is created to foster partnerships between the government and civil society to work together in mitigating some of the impacts of climate change.

Climate change related issues have also been addressed by domestic courts. One of the first and a very notable case from the region is the *Massachusetts et al v Environmental Protection Agency et al.*<sup>17</sup> Supreme Court (SCOTUS) decision. The issues before the SCOTUS were whether the EPA Administrator may decline

to issue emission standards for motor vehicles based on policy considerations not enumerated in section 202(a) of the Clean Air Act; and whether the EPA Administrator has authority to regulate carbon dioxide and other air pollutants associated with climate change under section 202(a)(1). Among other aspects worthy of note from the case was the fact that the SCOTUS acknowledged that ‘the harms associated with climate change are serious’. It acknowledged that the science is strong that “global warming threatens, inter alia, a precipitate rise in sea levels, severe and irreversible changes to natural ecosystems...increases in the spread of diseases and the ferocity of weather events.” No other court in the region has made such acknowledgments about climate change.

The emerging challenges related to climate change in the region are constantly testing domestic legal frameworks in many respects. They also call for translating the basic principles of environmental law and governance into action. Furthermore these challenges require an understanding by key stakeholders and decision makers not only of substantive and procedural environmental rights, but of the environmental rule of law.

*The environmental rule of law addresses the rule of law as it pertains to the environment, with some distinct features related to the regulated matter and the uncertainties faced (i.e. the environment). Legal experts have agreed that the Environmental rule of law is indispensable in ensuring just and sustainable development outcomes and in guaranteeing fundamental rights to a healthy environment. The concept includes the following constituent elements: adequate and implementable laws, access to justice and information, public participation equity and inclusion, accountability, transparency, liability for environmental damage, fair and just enforcement, and human rights.<sup>18</sup>*

17 549 U.S. 1 (2007)

18 UNEP GC 27/9: Advancing Justice, Governance and Law for Environmental Sustainability, UNEA resolutions 1/3 and 1/13; Strengthening and Coordination of United Nations Rule of Law Activities: Report of the Secretary General A/70/206; Environmental Justice and Sustainable Development: A Global Symposium on Environmental Rule of Law, Summary and Key Messages (United Nations Environment Assembly UNEP/EA.1/CRP.1) and the agreements of the I Inter-American Meeting of Presidents of the Legislative Branch (Lima, Republic of Peru, July 17 and 18, 2014); The Parliament as a Key Stakeholder in the Collaborative Dialogue for Sustainable Economic Development, Climate Change and Social Inclusion





# IV. Climate Change and Human Rights Law: A Peoples Centered Approach to address the impacts of Climate Change



In February 2007, the Intergovernmental Panel on Climate Change (IPCC) established with 90 percent certainty that human activity is responsible for global warming.<sup>19</sup>

As mentioned above, climate change threatens the basic elements of life for people around the world - access to water, food, health, and use of land and the environment -.<sup>20</sup> Countries of Latin America and the Caribbean (LAC) are extremely dependent on natural resources and as a result more vulnerable to these threats. In this regard, a sense of injustice could arise from the impacts of climate change described in the conclusions of the Fifth Assessment Report (AR5) of the IPCC.<sup>21</sup> This report shows that while developed countries have been the greatest emitters of greenhouse gases (GHGs) for decades, the poor of the planet and the developing world (according to the World Bank, at least 16 countries of the LAC

region are developing countries) are most likely to suffer the worst consequences of climate change. In other words, the weakest communities in poor countries are the most affected, resulting in a justice and fairness challenge, as these communities are not equipped to adapt to unprecedented climate stress.

Climate change can affect human rights in different ways. First, the impacts of climate change clearly affect the right to a healthy environment, recognized by 24 countries of the Americas as a fundamental right<sup>22</sup>. As mentioned above attributable impacts mainly on water security, extreme events and ecosystems can have consequences with regards to availability of the resources of the environment, accessibility to these resources and to sustainability in terms of the ability of peoples to use the resources under their normal cultural practices and traditions.

19 *Summary for Policymakers: A Report of Working Group I of the Intergovernmental Panel on Climate Change*, formally approved at the 10th Session of Working Group I of the IPCC (February 2007) [hereinafter *Report of Working Group I*].

20 Nicholas Stern, *The Economics of Climate Change: The Stern Review*, Cambridge University Press (2007).

21 *IPCC, 2014: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. IPCC, Geneva, Switzerland, 151 pp.

22 Constitution of the Argentine Republic, article 41; Constitution of the Plurinational State of Bolivia, article 33; Constitution of Belize, preamble e) paragraph; Constitution of the Federative Republic of Brazil, 1988, article 225; Political Constitution of the Republic of Chile, article 19; Political Constitution of Colombia, article 79; Constitution of Costa Rica, article 50; Constitution of the Republic of Cuba, article 27; Constitution of the Republic of El Salvador, article 117; The Constitution of the Co-Operative Republic of Guyana, article 36; Political Constitution of the Mexican United States, article 4; Political Constitution of the Republic of Panamá, article 114; Constitution of the Dominican Republic, articles 66 and 67; Political Constitution of Ecuador, article 23; Political Constitution of the Republic of Guatemala, article 64; The Constitution of Guyana, article 36; Constitution of Haiti, article 253; Constitution of Honduras, article 172; Constitution of Nicaragua, article 60; Constitution of the Republic of Paraguay, article 7; Political Constitution of Peru, article 66; Constitution of Suriname, article 6; Constitution of the Oriental Republic of Uruguay, article 47; Constitution of the Bolivarian Republic of Venezuela, article 127.



Furthermore, these differences in vulnerability and exposure can also result as highlighted by the IPCC in further inequalities and differentiated impacts for vulnerable groups.

The Fourth Assessment Report (AR4) of the IPCC states those groups such as indigenous communities, minorities and a frequently invisible group: women are most vulnerable to the effects of climate change.<sup>23</sup> It compromises their health, causes unjust financial burdens, and social and cultural disruptions.

More recently, the IPCC AR5 further recognized with high confidence that climate change exacerbates other threats to social and natural systems, placing additional burdens particularly on the poor<sup>24</sup>. There is high agreement that people who are socially, economically, culturally, politically, institutionally or otherwise marginalized are especially vulnerable to climate change and also to some adaptation and mitigation responses. The Fifth IPCC Assessment Report further elaborates by indicating that the character and severity of impacts from climate change and extreme events emerge from risk that depends not only on climate-related hazards but also on exposure (people and assets at risk) and vulnerability (susceptibility to harm) of human and natural systems.

These differences in vulnerability and exposure from non-climatic factors are often related to

multidimensional inequalities produced by uneven development processes. These differences shape differential risks from climate change. This heightened vulnerability is the product of intersecting social processes that result in inequalities in socio-economic status and income, as well as in exposure. Such social processes include, for example, discrimination on the basis of gender, class, ethnicity, age, ability or disability. On the other hand, climate-related hazards affect poor people's lives directly through impacts on livelihoods, health, reductions in crop yields or the destruction of homes, and indirectly through, for example, increased food prices and food insecurity. Moreover, it has been estimated by a vulnerability study that climate change causes around 400,000 deaths yearly on average, and that related processes with a carbon intense system today is linked to 4.5 million more deaths linked to air pollution, hazardous occupations and cancer<sup>25</sup>.

While the nature and extent of the impacts of climate change on human health may vary by region (see table below), according to the extent and duration of exposure to climate change itself and to society's ability to adapt to the change, some of the impacts are already visible in the Americas. This is particularly so in areas such as sea level rise, water availability and disease transmission.

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23 Ben Wisner et al., *Climate Change and Human Security*, Radix: Radical Interpretations of and Solutions for Disasters (2007) at 1, available online: <<http://www.radixonline.org/cchs.html>>.

24 IPCC, 2014: *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. IPCC, Geneva, Switzerland, 151 pp

25 Climate Vulnerable Forum, DARA, 2012. Second Edition Climate Vulnerability Monitor: A Guide to the Cold Calculus of a Hot Planet,



**Chart 5. Number of extreme climatic/weather events, people killed and affected, by region of the world, in the 1980s and 1990s.**

	1980's			1990's		
	Events	Killed (thousand)	Affected (millions)	Events	Killed (thousand)	Affected (millions)
Africa	243	417	137.8	247	10	104.3
Eastern Europe	66	2	0.1	150	5	12.4
Eastern Mediterranean	94	162	17.8	139	14	36.1
Latin America and Caribbean	265	12	54.1	298	59	30.7
South East Asia	242	54	850.5	286	458	427.4
Western Pacific	375	36	273.1	381	48	1,199.8
Developed	563	10	2.8	577	6	40.8
Total	1,848	692	1,336	2,078	601	1,851

Source: WHO, 2016.

There could also be human rights consequences of climate change related displacements (2012 estimates worldwide in 2012 accounted for 32.4 millions people displaced as per estimates from the International Displacement Monitoring Center and Norwegian Refugee Council). In many areas of the hemisphere there are already “climate migrants” as a result of extreme events and disasters. Finally measures to address climate change could also have human rights implications. In this context procedural rights such as access to information and participation can play a critical role in addressing such implications.

A key institutional need is including public participation in decision-making processes on issues related to the environment. Together with access to information and access to justice, public participation is enshrined in Principle 10 of the Rio Declaration. These concepts have also been adopted at the Inter-American level in the Inter-

American Strategy for Public Participation in Sustainable Development Decision Making (ISP).

The UNFCCC calls for public participation in addressing climate change and developing adequate responses<sup>26</sup> in the commitment to: “formulate and implement national or regional programs containing measures to mitigate climate change ...[and] measures to facilitate adequate adaptation to climate change (emphasis added).” The goal of Principle 10 and of these provisions is to ensure that people “are accorded a role in the activities and decision-making processes that directly impact on their lives and wellbeing.”<sup>27</sup>

In order to weigh the effectiveness and value of acting on the threat of climate change, citizens and, in particular, most vulnerable groups, “need to have a good understanding of the basic mechanisms of natural systems, an appreciation of the implications about key features, and a clear vision of the viability of potential solutions.”<sup>28</sup>

<sup>26</sup> See *United Nations Framework Convention on Climate Change* (May 9, 1992), Articles 4 and 6.

<sup>27</sup> Kathleen Bottriel, *The Principle of Public Participation and Access to Information and Justice*, Worker Paper in the Series: Recent Developments in International Law Related to Sustainable Development, Centre for International Development Law (2005), at 3.

<sup>28</sup> *Supporting Effective Participation in the Climate Change Debate: The Role of System Dynamics Simulation Modeling*, Sustainability Institute (2002), at 1.



Several countries of the region have enacted access to information laws or have included provisions related to access within their general environmental laws. With regard to climate change, legal instruments related to the implementation of the UNFCCC remain very broad. Countries should ensure that legal and institutional frameworks provide for transparency, access to information, and public participation. In this way, countries will establish environmental justice, which entails “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”<sup>29</sup>

According to some scholars, “access to justice in the international environmental law arena concerns ‘three different adjudication procedures’: 1) to challenge the refusal of access to information; 2) to seek prevention and/or damages for environmentally harmful activities; and 3) to enforce environmental laws directly.”<sup>30</sup>

An example of bringing these differences in vulnerability and exposure is the case of the

Inuit people of Canada and Alaska who filed a petition with the Inter American Commission on Human Rights alleging human rights violations associated with the failure of the United States to curb its greenhouse gas emissions.

This publication, will provide some examples of uncertainties that still remain in addressing the issues of climate change from an environmental and human rights law perspective, and identifying the legal and institutional mechanisms in place at the national level. In particular, this involves addressing climate change from a people’s perspective: focusing on access to climate justice. A key element of this task is analyzing how legal frameworks have taken into account the specific circumstances of the peoples of the Americas, and whether they are consistent with the recognized existing principles, substantive and procedural rights such as those related to access.

Some of the human rights that can be affected by climate change include the right to life, the right to water, the right to food and land rights among other. This can be further illustrated in the following chart:

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29 *Environmental Justice*, U.S. Environmental Protection Agency, available online: <<http://www.epa.gov/compliance/environmentaljustice/>>.

30 Ved P. Nanda and George Pring, *International Environmental Law & Policy for the 21st Century* (2003), §2.2.1.3 at 52.



**Table 2. Links between Climate Change Impacts and Human Rights**

Human Rights, established in the following instruments: American Declaration of the Rights and Duties of Man (AD)  American Convention on Human Rights “Pact of San Jose, Costa Rica” – (AC)  Additional Protocol on ECOSOC (Protocol of San Salvador) to the American Convention on Human Rights – (PS)	Climate Change Impacts <sup>31</sup>		
	Ecosystems	Water Security	Extreme Events
<b>Right to life</b> AD: Article 1 AC: Article 4	Aquatic and terrestrial ecosystems affected (irreversibly). Changes in living stock and quality of resources.	Reduced surface water, groundwater and snowpack, less water quality. Saltwater inundation of freshwater resources.	Deaths and outbreaks of diseases. Risk human mortality as a result of an increased drying and high temperature trends in North America (high confidence)
<b>Right to a healthy environment</b> PS: Article 11, 1. & 2.	Degradation/reduction of ecosystems and species (irreversibly). Wildfire induce loss of ecosystems integrity in North America (high confidence).	Clean/quality water availability diminished.	Clean/quality water availability diminished due to Hazardous environments. (e.g. Tornadoes and Cyclones)

31 IPCC, 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



<p><b>Right to health and well being</b> AD: Article XI PS: Article 10, 1. &amp; 2.</p>	<p>Disease outbreaks. Air pollution leading to respiratory diseases. Human livelihoods affected. Risk of spread of vector-borne diseases in altitude and latitude in Central and South America (high confidence).</p>	<p>Flood water settlement may lead to unhealthy environments and increased vulnerability.</p>	<p>More heat related diseases and colds. Impact on quality of drinking water and freshwater resources.</p>
<p><b>Right to Self Determination<sup>32</sup> and to Progressive Development</b> AC: Article 26</p>	<p>Ecosystem changes may hinder freedom to pursue self-development. Un-sustainable development.</p>	<p>Water changes may hinder freedom to pursue self-development. Un-sustainable development e.g. loss of hydroelectric power.</p>	<p>Extreme event changes may hinder freedom to pursue self-development.</p>
<p><b>Right to Residence and Movement</b> AD: Article VIII AC: Article 22</p>	<p>Blockage of passages due to floods, slides, etc. Changes in landscapes. Mobility risks/vulnerability increased. Migration of species.</p>	<p>Mobility risks/vulnerability increased (e.g. melting of ice in the poles).</p>	<p>Increased frequency and intensity of natural disasters. Mobility risks/vulnerability increased (excess of warmth and cold). Risk of flooding and landslides in urban and rural areas due to extreme precipitation in Central and South America (high confidence).</p>

32 Art. 1, § 1(Right to Self Determination) International Covenant on Civil and Political Rights. G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171



<p><b>Right to inviolability of the home</b> AD: Article X</p>	<p>Sea level rise claiming beach homes and homes in close proximity to flood plains, changes in living stock and quality of resources. Forced displacement.</p>	<p>Clean/quality water availability diminished causing forced displacement.</p>	<p>Floods, hurricanes, cyclones and landslides causing forced displacement. Risk of urban floods in riverine and coastal areas, inducing property and infrastructure damage in North America (high confidence).</p>
<p><b>Right to Food (food security)</b> PS: Article 12</p>	<p>Changes in weather patterns: longer rain/dry seasons, longer/shorter winters producing irreversible changes in crops and quality of resources.</p>	<p>Food production diminished. Environmental changes (land infertility caused by excessive drought). Water availability risk in semi-arid and glacier-melt-dependent regions and Central America (high confidence).</p>	<p>Food production diminished by floods and droughts. Death of livestock, changes in agriculture.</p>
<p><b>Right to benefits of culture</b> AD: Article XIII PS: Article 14, 1. a.</p>	<p>Economic losses. Changes in animals dependency (e.g. cattle farming). Changes in communities. Ancestral ecosystems services stock affected (i.e. traditional medicine and nursing products in indigenous communities).</p>	<p>Season changes affecting fishing &amp; hunting patterns (e.g. indigenous people in the Arctic)</p>	<p>Extreme events affect activities of cultural life and activities of a community. Infrastructure losses (e.g. damage at cultural heritage).</p>



<p><b>Right to Petition, to Judicial Protection and to a Fair Trial</b> AD: Articles XXIV, XVIII, XVII, XXVI AC: Articles 3, 8 and 25.</p>	<p>Accuracy and reliability of environmental information may affect due process as well as access to process and justice. Changes in ecosystems may hinder access to petition mechanisms and judicial proceedings.</p>	<p>Changes and effects regarding access to water and in water availability may hinder access to petition mechanisms and judicial proceedings. Accuracy and reliability of information water quality may affect due process.</p>	<p>Extreme events related changes may hinder freedom to attend court and availability of judicial services.</p>
<p><b>Right to clean water and Basic Sanitation<sup>33</sup></b></p>	<p>Losses in forests and flora affects clean water availability (e.g. The Amazon)</p>	<p>Reduced surface water, groundwater and snowpack, saltwater inundation of freshwater resources affect clean water availability. Risk of water quality impairment in North America (high confidence).</p>	<p>Extreme events like hurricanes can jeopardize the supply of drinking water. (e.g. Damaged pipelines)</p>
<p><b>Right to Property (including ancestral)</b> AD: Article XXIII AC: Article 21</p>	<p>Forced displacement due to changes in ecosystems. Sea level rise claiming beach homes and homes in close proximity to flood plains. Forced displacement.</p>	<p>Clean/quality water availability diminished affecting housing. Forced displacement due to diminished water availability.</p>	<p>Floods, hurricanes, cyclones and landslides affecting housing. Changes in landscapes due to extreme events. Risk of property loss as a result of increased drying and temperature trend in North America (high confidence).</p>

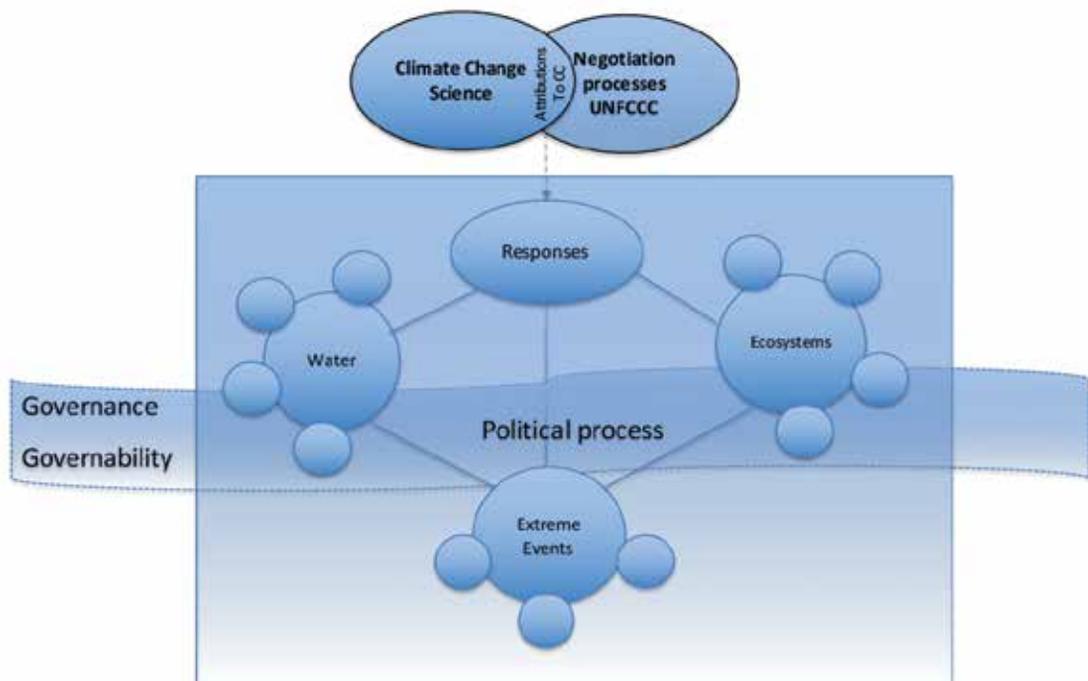
Source: GS/OAS with IPCC Data

33 See UN Resolution A/64/L.63/rev.1 “Human Right to Water and Sanitation” and OAS AG/RES. 2760 (XLII-O/12) Human Right to Safe Drinking Water and Sanitation. This right has also been established at the constitutional level and/or by Judicial decisions in many OAS Member States.





## V. Responses: How are Uncertainties being addressed?



Source: GS/OAS.

While there is scientific evidence with regards to climate change and even levels of certainty regarding its projected impacts many uncertainties still remain. The rationale for these uncertainties lays on the nature of the environment and climate as systems formed by different interacting variables that continuously change and evolve. These interactions that result in changes not only occur within the climate and environment systems but also between these systems, human beings and society upon which they have direct or indirect influence. Hence the notion of the environment and climate as systems is fundamental to understanding the legal implications, approaches and responses that can bring legal principles, both of environmental and human rights law to life.

The uncertainties that remain in addressing the challenges brought upon by climate change, make the relationship between environmental law, climate justice and science even more relevant.



These uncertainties motivate responses that from a legal perspective are aimed at addressing behavior rather than consequences. Given the consequences of environmental impact or stress, are directly derived from human behavior in a given context and the effectiveness of a governance system. Air pollution provides a good example in this regards, as it is the consequence of an action or a chain of actions rather than an act itself. The level of pollution depends on the regulatory context and on compliance with such regulations. Once there is an undesired level of pollution, levels of compliance drive a legal response. This response while based on the action or consequence it is focused on modifying or addressing human behavior. The same principle applies to climate change.

In addition to being strongly linked to science, as environmental law is, it is closely related to Beck's theory of risk society<sup>34</sup>, "a systematic way of dealing with hazards and insecurities induced

and introduced by modernization itself ".heavily on the concept of reflexivity, the idea that as a society examines itself, and in turn changes itself in the process.

Environmental law and climate change law can be seen as the result of reflexivity given the existing scientific evidence regarding the level of anthropogenic agency in producing, and mitigating such environmental and climate risks. The precautionary and the principle of prevention are concrete examples.

The establishment of these two principles has been the response of society to facts or situations that have driven legal responses to social demands or modern times that are perceived as urgent in nature. The same could be applied to responses to this issue of modern times from the legislative, the executive and the judiciary branch. Examples of these responses in the Americas are described and analyzed to some extent next.

## 5.1 Climate responses from the Legislative

Parliamentarians and Legislators of the Americas have been active in addressing the issue of climate change via the national legislative process and parliamentarian diplomacy. Examples of the latter include the call by the forum of Presidents of Parliaments of the Americas upon the establishment of formal parliamentarian participation in the UNFCCC COP<sup>35</sup> and the establishment of a parliamentarian climate change network jointly by the Latinamerican Parliament and ParlAmericas<sup>36</sup>. The comparative analysis below while not all inclusive and comprehensive, provides some insight on the trends and responsiveness through the legislative process at the country level.

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34 Beck, Ulrich. *Risk Society: Towards a New Modernity* in 1992

35 2015. Santiago de Chile. *Declaration of the II Inter-American Encounter of Presidentes of Parliaments of the Americas.*

36 *Declaration of Commitment on Parliamentarian Action to Stop Climate Change:* [http://parlAmericas.org/uploads/documents/Declaracion-ReddeCambioClimatico\\_Aprobada\\_SPA.pdf](http://parlAmericas.org/uploads/documents/Declaracion-ReddeCambioClimatico_Aprobada_SPA.pdf)





## Antigua & Barbuda.

There is no specific Climate Change Law in Antigua & Barbuda. Thus, other laws such as the Forestry Act<sup>37</sup>, the Beach Protection Act<sup>38</sup>, the Plant Protection Act<sup>39</sup>, the Fisheries Act<sup>40</sup>, Fisheries Regulations and the recently enacted Environment Protection Management Bill<sup>41</sup> have an effect in requiring or encouraging mitigation and adaptation actions.



## Argentina.

There is no specific law in Argentina that requires mitigation of or adaptation to the impacts climate change. Congress however has ratified via law the UNFCCC, the Kyoto Protocol and more recently the Paris Agreement. Thus other laws such as the National Environmental Policy Law 25.675, Law 26.190 establishing the regime for the National promotion for production and use of renewable sources of energy, the law for the promotion of biofuels, the law for the promotion of hydrogen energy among others have an effect in requiring or encouraging mitigation and adaptation actions. A unique legal regime that supports climate change mitigation and adaptations is the National Glacier Law 26.639<sup>42</sup>.



## Barbados.

There is no specific law in Barbados addressing Climate Change. Thus there are approximately 20 main pieces of legislation in Barbados, which deal with environmental, land use and building issues that have an effect in requiring or encouraging mitigation and adaptation actions and implications for responding to climate change. Amongst these laws is the Town and Country Planning Act which regulates the physical land use planning system and under its authority the National Physical Development Plan was developed<sup>43</sup>.



## Belize.

Belize does not have a specific Climate Change Law. Thus the Environmental Protection Act<sup>44</sup> regulates areas such as environmental impact assessment, pollution and effluents amongst other that an effect in requiring or encouraging mitigation and adaptation actions.

37 See <http://www.laws.gov.ag/acts/chapters/cap-178.pdf>

38 <http://www.laws.gov.ag/acts/chapters/cap-46.pdf>

39 <http://www.laws.gov.ag/acts/chapters/cap-329.pdf>

40 <http://laws.gov.ag/acts/2006/a2006-22.pdf>

41 Antigua & Barbuda Official Gazette, VOL: XXXV Thursday 24th September, 2015 NO. 54

42 [http://www2.medioambiente.gov.ar/mlegal/clima/menu\\_clima.asp](http://www2.medioambiente.gov.ar/mlegal/clima/menu_clima.asp)

43 2010. ECLAC. Review of the Economics of Climate Change(RECC)

In the Caribbean Project: Phase I Climate Change Profiles in Select Caribbean Countries (LC/CAR/L.250/Corr.1)

44 Environmental Protection (Amendment) Act, 2009. Available at: <http://www.doe.gov.bz/index.php/services/send/19-belize-environmental-laws-regulations/115-environmental-protection-amendment-act-2009>





## Bolivia.

Bolivia does not have a specific climate change law. However in 2012 Congress passed the Framework law of Mother Earth for Integral Development (Law300) and living well<sup>45</sup>. This Law establishes that climate change projections should be incorporated in development decision machined and also that climate change policies must be developed. Article 32 of this Law is focused exclusively on climate change. The Law establishes the notion of climate justice and access to justice through courts and tribunals in cases of violation of rights of Mother Earth.



## Brazil.

Brazil established by law the national climate change policy<sup>46</sup> in which principles, objectives, directives and climate action management instruments are defined. Law 12.187 instructs the Executive branch to issue sectoral plans for mitigation and adaptation. Other laws such as the forest code, the law that establishes a national system of conservation units, the solid waste policy law, the coastal zone management law, the electricity sector law, the biodiesel law amongst others have an effect in requiring or encouraging mitigation and adaptation actions. In Brazil, there are State legislative initiatives as well. An important feature of the Brazilian legal framework is the Constitutional provision established in article 225 which provides for an integral approach in environmental matters and establishes the responsibility of all branches of government as well as the public to protect and defend the environment for future generations. This provision as many other constitutional provisions in OAS Member States provides the basis for climate justice and legal action regarding climate change. Art.225 of the Brazilian Constitution<sup>47</sup>:*“Article 225. All have the right to an ecologically balanced environment, which is an asset of common use and essential to a healthy quality of life, and both the Government and the community shall have the duty to defend and preserve it for present and future generations”.*



## Canada.

Canada does not have a specific Law that addresses Climate Change. Thus the legal framework that regulates the environment and energy, including the environmental protection act<sup>48</sup>, the environmental assessment act<sup>49</sup>, the water act<sup>50</sup> and the energy efficiency act<sup>51</sup> amongst other have an effect in requiring or encouraging mitigation and adaptation actions and implications for responding to climate change. Furthermore in 2005 Canada enacted an act to establish a Greenhouse Gas Technology Investment fund for the reduction

45 <http://comunicacion.presidencia.gob.bo/docprensa/pdf/20121015-11-53-28.pdf>

46 <http://www2.camara.leg.br/legin/fed/lei/2009/lei-12187-29-dezembro-2009-599441-publicacaooriginal-121756-pl.html>

47 2010. Documentation and Information Center.Chamber of Deputies.53rd Congress – 4th Session. Constitution of the Federative Republic of Brazil. Constitutional text of October 5, 1988, with the alterations introduced by Constitutional Amendments No. 1/1992 through 64/2010 and by Revision Constitutional Amendments No. 1/1994 through 6/1994

48 Canadian Environmental Protection Act, 1999 S.C. 1999, c. 33

49 Canadian Environmental Assessment Act, 2012S.C. 2012, c. 19, s. 52

50 Canada Water Act. R.S.C., 1985, c. C-11

51 Canada Energy Efficiency Act S.C. 1992, c. 36



of GHG emissions and removal of GHGs from the atmosphere. This act was repealed before entering into force in 2008<sup>52</sup>. Some provinces in Canada have enacted Climate Change and emissions reduction Bills.



### **Chile.**

While Chile does not have an explicit Law that addresses climate change, the General Law of the Environment acknowledges climate change mitigation as a national priority. This law mandates the proposition of policies and the formulation of climate change plans and programs by the Ministry of Environment, in collaboration with different entities of the public administration to establish the necessary mitigation and adaptation measures. Other laws such as the General Law for Electric Services, the law on non-conventional renewable energies, the law on geothermal energy, the law that establishes a tax exemption on solar thermal systems and the forest law amongst other have an effect in requiring or encouraging mitigation and adaptation actions. The creation of a carbon tax and for emissions from fixed sources and the legal modifications to the energy agenda have accomplished the lowest solar energy prices in Chilean history.



### **Colombia.**

Since 2015, Colombia has been working on a draft bill to establish Climate mitigation and adaptation actions. Thus other laws such as the renewable natural resources and environmental protection code<sup>54</sup>, the energy efficiency promotion Laws among other have an effect in requiring or encouraging mitigation and adaptation actions.



### **Costa Rica.**

Since 2013, the Legislative Assembly in Costa Rica has been discussing a General Law on Climate Change. Meanwhile other general laws such as the environmental law and specific laws such as that, which ratified the UNFCCC commitments at the national level, the forest law and its regulation as well as the energy legal regime has an effect in requiring or encouraging mitigation and adaptation actions<sup>55</sup>.



### **Dominica.**

The Commonwealth of Dominica does not have a specific climate change law. Thus since issuance in 1950 of the first Forest Ordinance which authorized the establishment of forest reserves on crown lands and protected forests on private land for purposes of soil and water conservation, a series of laws have

52 Enacted by section 96 of chapter 30 of the Statutes of Canada, 2005, repealed before coming into force, see 2008, c. 20, s. 3.

53 Colombian Draft Climate Change Bill, available at: <http://www.andi.com.co/Ambiental/SiteAssets/Proyecto%20de%20ley%20sobre%20cambio%20clim%C3%A1tico.pdf>

54 See Law 2811 of 1994 and law 697 for promotion and efficient use of energy resources.

55 See Organic Environmental Law N° 7554; Law 7414 UN Framework Convention on Climate Change; Forest law N.º 7174



been enacted to regulate the use of fragile land resources. These include inter alia: the Town and Country Planning Act; the Land Management Authority Act; the Forest Reserve Rules; the Forestry and Wildlife Act; the National Parks and Protected Areas Acts (over 20% of the island's land mass is under legislated protection<sup>56</sup>); the Beach Control Act; the Water and Sewerage Act and the Pesticide Control Act. Currently, under Cabinet directive issued in August 2011, a comprehensive Environmental, Climate Change and Development Bill is being developed in collaboration with the Office of the Attorney General through broad-based consultation approved by Cabinet. This new legislation is expected to address key deficiencies in the existing legal and institutional framework, and establish an effective framework for managing anthropogenic threats to vulnerable ecosystems<sup>57</sup>. Furthermore, the Bill is meant to establish key legal and institutional frameworks needed to effectively implement Dominica's Low-Carbon Climate Resilient Strategy and address in an integrated fashion environment, climate and development issues<sup>58</sup>.



### **Dominican Republic.**

Dominican Republic does not have a specific climate change law. However, the national development strategy adopted by Law 12-1 sets a commitment to decrease GHG emissions. Additionally, much of the country's environmental legislation is relevant to climate change. Since issuance of the General Environmental Law (64-00) environmental and climate change management issues are the responsibility of the Ministry of Environment and Natural Resources. Legal frameworks such as the Law of Incentives for Renewable Energy, the Law on Hydrocarbon and the forest law among other have an effect in requiring or encouraging mitigation and adaptation actions.



### **Ecuador.**

Ecuador does not have a specific climate change law. However, the legal framework that regulates environment and energy has an effect in requiring or encouraging mitigation and adaptation actions<sup>59</sup>.



### **El Salvador.**

El Salvador does not have a specific climate change law. However, the legal framework that regulates environment and energy, including the general environmental law, its regulation, the forest law<sup>60</sup> and the land use planning

56 2013. Ministry of Environment, Natural Resources, Physical planning and Fisheries. Dominica National Biodiversity and Action Plan 2014-2020

57 Ibid 46.

58 2012. Climate Investment Funds and Government of the Commonwealth of Dominica. Dominica Low Carbon, Climate Resilience Development Strategy.

59 Texto Unificado de la Legislación Ambiental Secundaria Decreto Presidencial No. 3516, 31 de marzo de 2003, Edición Especial No. 2 del Registro Oficial

60 2002. Decreto Legislativo N°: 852 Diario Oficial 110. Tomo 355.



and development legal framework<sup>61</sup> amongst other have an effect in requiring or encouraging mitigation and adaptation actions<sup>62</sup>.



## Grenada.

Grenada does not have a specific Climate Change Law. Climate change is primarily addressed based on executive policy, such as strategies, policy frameworks, the Land Development (Control) Act<sup>63</sup> and strategy projects, without a single overarching legislation<sup>64</sup>. The constitution of Grenada recognizes under the general welfare clause the right to a clean, healthy and ecologically balanced environment which is the overarching framework for the mentioned policies<sup>65</sup>. Other laws support climate change objectives such as the Forestry Soil and Water Conservation Act<sup>66</sup>



## Guatemala.

Guatemala since 2013 has a framework law to regulate vulnerability reduction, adaptation to climate change and mitigation of Greenhouse Gas Emissions<sup>67</sup>. Complementary frameworks include the forest law<sup>68</sup> and the law that provides incentives for renewables.



## Guyana.

Guyana does not have a specific climate change law. However the Environmental Protection Act, the Energy Act and the Protected Areas Act Amongst other laws, have an effect in requiring or encouraging mitigation and adaptation actions.



## Haiti.

While there was a lot of discussion regarding the need to strengthen the environmental management framework in Haiti following the 2010 Earthquake, Haiti does not have a specific environmental management framework or a climate change law. Thus the 1987 Constitution of the Republic of Haiti contains articles in Chapter II regarding the environment, and provide for keeping ecological balance and addressing Climate Change by strictly forbidding any practices that might disturb this balance. In 2006 a Presidential Decree on Environmental Management<sup>69</sup> was issued and

61 2011 Decreto Legislativo N°: 644. Diario Oficial 143. Tomo 392

62 Ley de Medio Ambiente, Decreto No. 233, Diario Oficial de la República de El Salvador, América Central Tomo No. 339, Número 79, San Salvador, Lunes 4 de Mayo de 1998. Con enmiendas al 2012 disponible en: <http://www.marn.gob.sv/descargas/ley-del-medio-ambiente-2/>

63 Act N.40 1961

64 Ibid 75

65 Ministry of Legal Affairs.

66 Act, No. 34 of 1984

67 See Congress of the Republic of Guatemala Decree 7-2013 "Ley Marco para Regular la Reducción de la Vulnerabilidad, la Adaptación Obligatoria ante los Efectos del Cambio Climático y la Mitigación de Gases de Efecto Invernadero"

68 Congress of the Republic of Guatemala, Decree No. 101-96 "Ley Forestal"

69 Décret portant sur la gestion de l'environnement et du régulation de la conduite des citoyens et citoyennes pour un développement durable, Published in Le Moniteur, 26 January 2006;



complements the referred constitutional provisions. The decree contains provisions regarding environmental planning, protected areas, environmental assessments, the national environmental information system, pollution, and environmental damage amongst other.



### **Honduras.**

Honduras does not have a specific climate change law, thus the national legal framework that regulates environment and energy has important influence in addressing climate change.



### **Jamaica.**

In Jamaica, there is no law that expressly requires mitigation of or adaptation to the impacts on global climate change. Thus many other laws and regulations such as the Clean Air Act, the Watershed Protection Act, the Water Resources Authority Act, the Environmental Management Act, the Land Authority Act and the Land Development and Utilization Act, the Urban Development Corporation Act, the meteorological act, the Natural Resource Conservation Authority Act, the Office of Disaster Preparedness and Emergency Management Act and the Disaster Management Act as well as the National Heritage Trust Act and the Endangered Species Act and Forest regulations have an effect in requiring or encouraging mitigation and adaptation actions<sup>70</sup>.



### **Mexico.**

In 2011, Mexico issued a Law that limits vehicular emissions. In 2012 the Mexican congress passed the General Law on Climate Change (amended in 2014). Many other laws such as the general ecological equilibrium law (known in Spanish as LEGEPA) and in areas such as air quality, renewable energy and the energy transition, promotion of bioenergy, wild life, biodiversity and sustainable forest management an effect in requiring or encouraging mitigation<sup>71</sup>. In Mexico there are State legislative initiatives as well. Legislative initiatives in Mexico have been a strong driver of executive policy to tackle climate change following the Cancun Agreements in 2010.



### **Nicaragua.**

While Nicaragua does not have a specific climate change law, a resolution of the national Assembly<sup>72</sup> on climate change and adaptability amended the General environment and natural resources law to include climate protection. This amendment is based on the same principles of the environmental law which establish the prevalence of the principle of prevention above all other in public and private environmental management.<sup>73</sup>

70 Ministry of Justice of Jamaica: <http://moj.gov.jm/laws>

71 2015. General Secretariat of the OAS. Work Plan of the Committee on Environment and Natural Resources of the Mexican Senate. Defining a Mexican Environmental Legislative Agenda.

72 Resolution A. N. No. 003-2009, Approved on June 17, 2009 on Climate Change and adaptability in Nicaragua

73 Ley No. 217 "Ley General del Medio Ambiente y los Recursos Naturales"





## Panama.

Panama has a recently established Ministry of Environment by Law 8 of 2015 and amended Law 41, the National Environmental law of 1998 as well as some provisions in the water authority law. While Panama does not have a specific climate change law, the environmental legal and regulatory framework as well as the energy framework support climate changes adaptation and mitigation efforts.



## Paraguay.

Since 2014, the Paraguayan Congress assembly has been discussing a General Law on Climate Change. However the Legal framework on environmental management supports climate changes adaptation and mitigation efforts.



## Peru.

Since 2014, the Peruvian Congress has been working on a proposed Framework Law on Climate Change, including through outreach to different political sectors. While the Law has not passed, the Legal framework on environmental management in Peru, including the General Environmental Law, the Environmental Management system Law, the Law on regional governments, Law on Payment for Ecosystem Services, the Forest and Wild Fauna Law, the Protected Areas Law, and the Water Resources Law among other support climate changes adaptation and mitigation efforts.<sup>74</sup>



## St. Kitts & Nevis.

St. Kitts does not have a specific law addressing Climate change, thus the National Conservation and Environmental Protection Act (NCEPA), the fisheries Act, Development Control and Planning Act, the Agricultural Development Act, the Development Control and Planning Act and the forest ordinance amongst other have an effect in requiring or encouraging mitigation and adaptation actions<sup>75</sup>. Specifically, the purposes of the NCEPA are consistent with the principles of climate adaptation. Another example is the Development Control and Planning Act (No. 14 of 200) which established a Development Control and Planning Board with the responsibility of review and determination of all building and development planning applications, zoning and review of EIA amongst other. The Board's operational scope generally addresses climate adaptation related issues<sup>76</sup>.

74 2014. Sociedad Peruana de Derecho Ambiental. Compendio Legislativo sobre Cambio Climatico en el Peru. Actualizado al 26 de noviembre de 2014

75 2014. Island planning Services. Background Report. St Kitts and Nevis National Preparatory Process toward the Third International Conference on Small Island Developing States.

76 2012. Island Planning Services. St. Kitts & Nevis Stock taking report. Rio +20 Preparatory Process.





### **St. Vincent and the Grenadines.**

In St. Vincent & the Grenadines, there is no law that expressly requires mitigation of or adaptation to the impacts on global climate change and no general environmental management framework. Thus many laws support climate change adaptation and mitigation efforts, these include among other the Forest Resource Conservation Act<sup>77</sup>, the Beach Protection<sup>78</sup> and Fisheries Act<sup>79</sup> as well as the Waste Management Act<sup>80</sup> amongst other.



### **Suriname.**

Suriname does not have a specific law that addresses climate change nor a comprehensive environmental law enacted since the Nature Conservation Act of 1954<sup>81</sup>. Issues such as environmental pollution, the establishment of an environment authority and a fund for climate research, as well as making an environmental impact analysis mandatory<sup>82</sup> for new initiatives are expected to be regulated under a new environmental law under consideration by parliament.



### **Bahamas.**

In the Bahamas, there is no law that expressly requires mitigation of or adaptation to the impacts on global climate change. Thus other laws such as the Bahamas Conservation and Protection of the Physical Landscape of the Bahamas support climate change objectives.<sup>83</sup>



### **St. Lucia.**

In St. Lucia, there is no law that expressly requires mitigation of or adaptation to the impacts on global climate change. Thus many Saint Lucian laws support climate change adaptation and mitigation efforts, these include among other the Forest, Soil and Water Conservation Act, the Saint Lucia National Trust Act, the Wildlife Protection Act, the Fisheries Act, the Land Conservation and Improvement Act, the National Conservation Authority Act and the Physical Planning and Development Act.

77 No. 47 of 1992

78 Act, No. 10 of 1981

79 Act, No. 8 of 1986 Amended by No. 32 of 1986 and No. 25 of 1989

80 Act No. 31 of 2000.

81 The World Law Guide. Available at: <http://www.lexadin.nl/wlg/legis/nofr/oeur/lxwesur.htm> University of California, Irvine. Endangered Species Protection around the World. Available at: <http://darwin.bio.uci.edu/~sustain/h90/Suriname.htm>

82 Netherlands Commission for Environmental Assessment. <http://www.eia.nl/en/countries/sa/suriname/>

83 Bahamas Conservation and Protection of the Physical Landscape of the Bahamas (Amendment) Act 2000





## Trinidad & Tobago.

In Trinidad & Tobago, there is no law that expressly requires mitigation of or adaptation to the impacts on global climate change, thus provisions in laws such as the Vehicle Emissions Act, the Air and Noise Pollution Management Act, the Water Pollution Management Act, the Environmental Management Act, the Disasters Measures Act and the Forest Act support climate change adaptation and mitigation efforts.



## United States.

In the United States the Global Climate Change prevention Act of 1990<sup>84</sup> establishes mitigation actions on the agriculture, forestry and trade sectors. While there is no federal law that expressly requires overall mitigation of the impacts on global climate change many other laws, in areas such as air (Clean Air Act of 1970), energy, forest, water, coastal zone management have an effect in requiring or encouraging mitigation at the sector level. In the United States there are State legislative initiatives as well<sup>85</sup>. These legislative initiatives are complemented by executive initiatives.



## Uruguay.

While Uruguay does not have a law that expressly requires mitigation of or adaptation to the impacts on global climate change. The general environmental law supports compliance with climate change mitigation and adaptation measures. In Uruguay environmental protection is considered fundamental and a matter of public interest.



## Venezuela.

In Venezuela the legal framework regarding climate change is comprised of the Constitution, the organic environmental law<sup>86</sup> and the Law of Socio-Natural and Technological Risks of 2009<sup>87</sup>. The latter established a committee responsible for the National Adaptation to Climate Change Plan and assessing the country's vulnerabilities.

84 Public Law 108–198, Dec. 31, 2003

85 <https://www.whitehouse.gov/energy/climate-change>

86 Ley Orgánica del Ambiente (Gaceta Oficial N° 31.004 del 16 de junio de 1976)

87 Ley de Gestión Integral de Riesgos Socionaturales y Tecnológicos (Gaceta Oficial N° 39.095 del 9 de enero de 2009)



## 5.2 Climate responses and approaches from the Executive

The Executive branch at the national level has a two folded mission. First it outlines a policy framework that requires a legislative effort in order to be implemented and second, it executes through public policy the mandates it is given by the legislative. The following comparative analysis illustrates some for the trends regarding responses from the executive to the climate challenge of recent times.



### Antigua & Barbuda.

The Government of Antigua and Barbuda has demonstrated much commitment in implementation of Antigua and Barbuda's obligations under the UNFCCC, including the development of a climate change database, implementation of monitoring programs, research programs and economic instruments and policies as well as development of an inventory of GHG. Antigua & Barbuda also has issued a National Environmental Strategy and National Physical Development Plan a national Energy policy and an energy sustainability strategy<sup>88</sup>.



### Argentina.

Argentina hosted COP IV in 1998 of the UNFCCC. In 20015 by executive Decree (Decree 1070/05) the Argentina Carbon Fund was established. The fund was meant to promote mitigation projects under the Kyoto Protocol. Since 2012, Argentina has a National Climate Change Strategy. A unique action by the Executive was the establishment of a prior consultation mechanism for climate change projects<sup>89</sup> or measures focused on green gas house emissions. This mechanism supports addressing human rights implications of climate change actions.



### Barbados.

Barbados' has National Climate Change Policy approved by cabinet since 2012. The policy is mainly focused on adaptation and aims at continued institutional, administrative and legislative improvements to mitigate climate change and adapt as Barbados seeks green economy status, according to the government. Barbados has taken a leading role in climate finance issues, including representing Small Island Developing States in the Green Climate Fund board<sup>90</sup>.

88 July 2013. Gore-Francis, Dr. Janil and Environment Division – Ministry of Agriculture, Housing, Lands, and the Environment. "Antigua and Barbuda, SIDS 2014 Preparatory Progress Report".

89 [http://www2.medioambiente.gov.ar/mlegal/clima/res239\\_04.htm](http://www2.medioambiente.gov.ar/mlegal/clima/res239_04.htm)

90 2013. Government of Barbados. National Assessment Report for the Third International Conference on Small Island Developing States.





## **Belize.**

The Government of Belize worked on a proposal for a National energy Policy for Belize<sup>91</sup> with support from the OAS. One of the objectives of the proposal is to minimize the deleterious effects of climate change and greenhouse gas emissions. On the other hand, Belize's Climate Change Adaptation Policy encourages all agencies in Belize to explore and access the opportunities derived from climate change negotiations in areas such as capacity building, new sources of funding, and technology transfer. It also mandates the relevant government agencies to prepare adaptation policy options for their sectors<sup>92</sup>. In 2009, Belize also issued a National Adaptation Strategy and action plan to address climate change in the water sector<sup>93</sup>.



## **Bolivia.**

The Executive branch in Bolivia has promoted initiatives via decree that contribute to climate action such as Decree No. 28218 that includes clean development mechanisms in the national development policy.



## **Brazil.**

Many executive decrees have been issued in Brazil in areas that influence climate mitigation and adaptation. Examples include the establishment of an Inter-ministerial Committee on Climate Change (Decree No. 6263/2007) and the issuance of the National Plan on Climate Change. These executive initiatives have committed reduction of emissions to include 80 percent of renewables in the energy matrix and to a 10 percent reduction in electricity consumption by 2030 as requirements of the National Energy Plan to 2030 (PNE 2030).



## **Canada.**

Canada has shown strong leadership in the area of Climate Change recently. As part of their contribution to a new global climate change agreement, Canada intends to achieve an economy-wide target to reduce our greenhouse gas emissions by 30% below 2005 levels by 2030. In this context, the Government of Canada has been implementing a sector-by-sector regulatory approach to reduce emissions, aligned with Canada's major economic partners. Furthermore actions have been taken from the executive in areas such as transportation and hydrofluorocarbons amongst other<sup>94</sup>.

91 <http://www.oas.org/en/sedi/dsd/Energy/Doc/ProposalNationalEnergyPolicyforBelize.pdf>

92 Belize INDC Submitted to the UNFCCC on 1 October, 2015. Available at: <http://www4.unfccc.int/submissions/INDC/Published%20Documents/Belize/1/Belize%20INDCS.pdf>

93 2009. CCCCC and Belize Enterprise for Sustainable Technology (BEST). National Adaptation Strategy to Address Climate Change in the Water Sector in Belize: Strategy and Action Plan.

94 Canada's INDC Submission to the UNFCCC





## Chile.

The Chilean Government, through the Ministry of Environment of Chile contributes to the integration of climate change challenges to be addressed by national public policies with the purpose of contributing to Sustainable Development and achieving a low carbon economy. Chile also has an established Council at the Ministerial level focused on sustainability and climate change<sup>95</sup> and in 2014 issued a revised National Climate Change Adaptation Plan. Chile is currently updating its National Climate Change Action Plan and developing sector based adaptation plans. Furthermore, a draft national climate change action plan for the period 2017-2022 is currently undergoing public consultation as a supporting measure to the national climate adaptation plan. The creation of an Agency for sustainability and climate change has also been announced. This decentralized agency will support implementation in the private and public sector of State policies for sustainable development and climate action. It will also support institutional strengthening.



## Colombia.

Colombia through executive initiative has established a national climate adaptation plan with the objective of reducing vulnerability and increasing the response capacity to extreme events related to climate change<sup>96</sup>. In addition to the plan there three other strategies were included in the National Development Plan: a low carbon development strategy, the national Reduced Emission for Avoided Deforestation Strategy (REDD) and the strategy for financial protection regarding extreme events.<sup>97</sup>

Furthermore, through a Presidential Decree Colombia has an inter-sectoral technical committee on climate change and the National Climate Change System has been established to formulate and articulate climate policies (Decree 298)<sup>98</sup>. Since 2003, Colombia has a National Strategy for trade of climate mitigation environmental services<sup>99</sup>.



## Costa Rica.

The executive branch in Costa Rica has taken strong leadership in tackling Climate Change. Since 2008, Costa Rica has a National Climate Change Strategy and in July 2014, through a Decree its Plan of Action entered into force. Furthermore, recently Costa Rica has a carbón neutrality system established via Ministerial resolution<sup>100</sup> that has engaged the private sector

95 Chile INDC, 2015 available at: <http://portal.mma.gob.cl/wp-content/uploads/2016/05/2015-INDC-web.pdf>

96 <http://www.minambiente.gov.co/index.php/component/content/article/476-plantilla-cambio-climatico-32#documentos>

97 [http://www.contraloriagen.gov.co/documents/155638087/176477732/Adaptacion\\_al\\_Cambio\\_Climatico\\_en\\_Colombia.pdf/6fb6c5e4-6981-4dc8-987a-8f72a3f3ed06](http://www.contraloriagen.gov.co/documents/155638087/176477732/Adaptacion_al_Cambio_Climatico_en_Colombia.pdf/6fb6c5e4-6981-4dc8-987a-8f72a3f3ed06)

98 Presidential Decree 298 through which the National Climate Change System is established and other provisions are issued. Available at : <http://www.minambiente.gov.co/images/normativa/app/decretos/55-decreto%20298%20feb%202016.pdf>

99 See documents approved by the National Council of Social and Economic Policy (CONPES): <https://www.dnp.gov.co/CONPES/documentos-conpes/Paginas/documentos-conpes.aspx>

100 N° 70-2011-MINAET



and civil society in addressing the climate challenge. Based on this system, Costa Rica has reaffirmed its commitment to become carbon-neutral by 2021.



### **Dominica.**

Since 2002, more than 23 key national policy documents incorporate or make specific reference to Climate Change<sup>101</sup>. Within the CBD Strategy and Action Plan<sup>102</sup>, the Commonwealth of Dominica has implemented, reporting positive results, a Biodiversity and Climate Change adaptation program. Mitigation and adaptation to climate change is fully integrated into this Strategy. Since 2012, the Commonwealth also has a low carbon climate resilient development strategy which includes an innovative exercise of the formulation and implementation of a Pilot Programme on Climate Resilient (PPCR) and its Strategic Programme on Climate Resilience (SPCR). Implementation of this strategy is expected to reinforce integration and lead the transformation to a low carbon climate-resilient Dominica<sup>103</sup>.



### **Dominican Republic.**

The Dominican Republic has an economic Development plan compatible with climate change<sup>104</sup>. Furthermore via executive decree a National Council for Climate Change and Clean Development was established in 2008<sup>105</sup>. The council is composed by various ministries, government entities, and private sector as well as relevant civil society organizations and is chaired by the President of the Dominican Republic.



### **Ecuador.**

The Ministry of Environment of Ecuador is responsible for implementing adaptation and mitigation policy. Ecuador although, has an Inter-Institutional Committee on Climate Change that coordinates policies and actions through an inter-sectoral approach. Ecuador has taken important steps regarding Climate action within the national Climate Change Strategy to 2025<sup>106</sup>.



### **El Salvador.**

The Executive in El Salvador has issued various policy instruments that address climate change. These include the national environmental strategy, the national energy policy and the National Climate Change Strategy of 2013.

101 2012.Climate Investment Funds and Government of the Commonwealth of Dominica. Dominica Low Carbon, Climate Resilience Development Strategy.

102 Ibid 46

103 Ibid. 66

104 Plan de Desarrollo económico Compatible con el Clima de la República Dominicana (2015)

105 See Decree 601-08

106 Ecuador's INDC submitted to UNFCCC





## Grenada.

Grenada has a national climate change policy and action plan since 2007. These instruments were partially driven by the countries' participation in the Caribbean Planning and Adaptation to Climate Change (CPACC) project executed by the GS/OAS with funding from the Global Environmental Facility (GEF). Since 2011, Grenada has a Low Carbon Development Strategy, mostly driven by the priority of addressing the impacts of climate change. Grenada has been using the following policies as guiding principles for low carbon development. National Energy Policy 2011, Grenada Protected Area Systems Plan 2012, National Climate Change Policy and Action Plan (2007-2011)<sup>107</sup>.



## Guatemala.

Guatemala has taken important actions to address climate change. Among there an example is its recently adopted energy policy that aims to source 80% of its electricity from renewable energy by 2030.



## Guyana.

As a result of participating in the Caribbean Planning and Adaptation to Climate Change (CPACC) project, executed by the GS/OAS with funding from the Global Environmental Facility, since 2002, Guyana has a Climate Change Adaptation Policy and Implementation Plan. More recently, Guyana has been implementing a low carbon development strategy and has had a leading role internationally in avoided deforestation projects.



## Haiti.

In 2015, Haiti submitted its Planned Contribution determined at national level to provide for a reduction from 5% to 31% in emissions by 2030<sup>108</sup>. Haiti has an extensive policy framework in line with the global climate change objectives, despite challenges in its implementation; it includes the Strategic Development Plan and the National Adaptation Plan<sup>109</sup>. Some of the areas included in this framework are Integrated Water Resources Management, coastal zone management food security, bio trade, energy transition to reduce fossil fuel consumptions education and outreach.

107 2015. Grenada's INDC submitted pursuant to decision 1 CP/19 and decision 1 CP/20 of UNFCCC

108 2015. Contribution Prévue Déterminée au niveau National (CPDN) de la République d'Haïti

109 Plan Stratégique de Développement d'Haïti (PSDH), du Plan Action National d'Adaptation (PANA)





## Honduras.

Honduras has a National Climate Change Strategy and has taken important actions in the area of climate change taking a leading role in tackling the issue of the bark beetle affecting forest as a result of climate change<sup>110</sup>.



## Jamaica.

The 2009 Vision 2030 Jamaica National Development Plan establishes a blueprint for future development and it provides the overarching context within which Jamaica's mitigation activities will take place. The focus for mitigation actions is through greater energy conservation. Adaptation is addressed in the sector plan for Natural Resources and Environmental Management and Climate Change<sup>111</sup>. The Government of Jamaica developed a national policy on Trading of Carbon credits as a sub-policy of the national energy policy developed with support of the OAS.



## Mexico.

Mexico has a national climate change plan and an inter-ministerial committee that addresses climate change policies. Mexico also has strong programs focused on air quality and a registry of emissions. Further, the Federal level a climate change fund has been established to promote low carbon green growth<sup>112</sup>.



## Nicaragua.

Nicaragua adopted with the rest of the Central American countries a regional strategy on climate change. It also has issued a national environmental and climate change strategy. This strategy is cross cutting in nature as it is meant to be implemented by different sectoral Ministries and its objectives are to mainstream climate change in government public policy and land management while reducing risk and vulnerability. The strategy addresses issues such as inequality, climate mitigation and adaptation as well as institutional arrangements<sup>113</sup>. Within these strategies sectoral authorities have issued action plans for specific sectors as the case of the Ministry of Agriculture for agriculture, fisheries and forest<sup>114</sup>.

110 2016. National Commissioner for Human Rights of Honduras. Special report regarding the bark beetle and other severe environmental threats to the right to life of Hondurans. Available at: <http://conadeh.hn/wp-content/uploads/2016/05/Informe-Especial-Gorgojo-del-Pino-y-Amenazas-Ambientales.pdf>

111 2012. Planning Institute of Jamaica. Review of Policy, Plans, Legislation and Regulations for Climate. Available at: [https://www.cif.climateinvestmentfunds.org/sites/default/files/knowledge-documents/final\\_review\\_of\\_policy\\_plans\\_legislation\\_regulations\\_for\\_climate\\_0.pdf](https://www.cif.climateinvestmentfunds.org/sites/default/files/knowledge-documents/final_review_of_policy_plans_legislation_regulations_for_climate_0.pdf)

112 <http://www.gob.mx/semarnat>

113 2009. Gobierno de Nicaragua. Estrategia Nacional Ambiental y de Cambio Climático

114 2012. MAGFOR. Plan de Adaptación a la variabilidad y el Cambio Climático en el Sector Agropecuario, Forestal y Pesca en Nicaragua





### **Panama.**

Panama has a National Climate Change Strategy since 2007 and has recently engaged in developing a conceptual framework for developing a carbon market.



### **Paraguay.**

Paraguay has been working on a green gas house emissions inventory for over a decade. A national climate change commission is in full operation after being established by Presidential Decree. This Commission is formed by different ministries and government agencies and also includes representatives of academia<sup>115</sup>.



### **Peru.**

Since 2003 Peru has been working towards strengthening the normative, institutional and policy framework on climate change. With the adoption of the National Climate Strategy, the first comprehensive instrument that sought to comply with UNFCCC commitments at the national level. The strategy was updated and consulted with multiple stakeholders in occasion of the hosting of COP XX of UNFCCC by the Peruvian government<sup>116</sup>.



### **St Kitts and Nevis.**

The Federation of St. Kitts & Nevis has a broad policy framework to address environmental and climate change related challenges. For instance the National Environmental Management Strategy (NEMS) includes addressing the causes and Impacts of Climate Change as a guiding principle. More recently, in 2011 a National Energy Policy was developed with support of the OAS<sup>117</sup>.



### **St .Lucia.**

The aim of Saint Lucia's National Climate Change Adaptation Policy is to foster and guide a national process of addressing the short, medium and long term effects of climate change in a coordinated, holistic and participatory manner in order to ensure that, to the greatest extent possible, the quality of life of the people of St. Lucia, and opportunities for sustainable development are not compromised

115 2011. Paraguay Second National Communication to the UNFCCC

116 Ibid. 50

117 2011. Ministry of Public Works, Utilities, Energy and Housing and General Secretariat of the OAS. National Energy Policy of St. Kitts & Nevis available at: <http://www.oas.org/en/sedi/dsd/Energy/Doc/NationalEnergyPolicyStKittsandNevis.pdf>





## St. Vincent and the Grenadines.

Saint Vincent and the Grenadines has different policies to address its climate change objectives, mostly focused on adaptation. These include The St. Vincent and the Grenadines National Economic and Social Development Plan 2013 – 2025 which includes in its strategic objectives climate resilience. The National Environmental Management Strategy and Action Plan. Despite the obvious focus on adaptation to climate change and the fact that greenhouse gas (GHG) emissions from St. Vincent and the Grenadines are minimal in the context of global emissions, the GoSVG is striving to reduce its emissions, as well as developing a national Energy Action Plan<sup>118</sup>.



## Suriname.

In 2011, Suriname established “the Climate Compatible Development Agency”, to consolidate and streamline climate change-related efforts by the various departments within Suriname’s government. The agency’s responsibilities include coordinating the country’s policies on climate change mitigation and adaptation, as well as forest conservation; help win international funding for efforts related to those policies; lead the country’s Climate Change Fund and to support a Climate Compatible Knowledge Institute<sup>119</sup>.



## Bahamas.

Since 2005 the Commonwealth of the Bahamas has a national policy on adaptation to climate Change. This policy includes directives for multiple sectors such as agriculture, coastal and marine resources as well as fisheries, energy, the financial and insurance sector, forestry, human health and human settlements, biodiversity, and tourism among other<sup>120</sup>.



## Trinidad & Tobago.

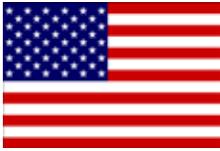
Trinidad and Tobago has a National Climate Change policy since 2011 and has an established Green fund. Trinidad and Tobago has a comprehensive policy framework addressing relevant issues to climate change such as forest, energy and environment among other.

118 2015. St. Vincent and the Grenadines, INDC submitted to the UNFCCC.

119 2011. Cernansky Rachel. Suriname Establishes Govt Agency for Climate Adaptation: An Emerging Trend?

120 2005. The National Climate Change Committee & The Bahamas Environment, Science and Technology Commission. The Bahamas National Climate Change Adaptation Policy.





## United States.

The President of the United States issued a Climate Action Plan in 2013<sup>121</sup>. Further in 2014, the US Environmental Protection Agency issued the Clean Power Plan<sup>122</sup> aimed at reducing carbon pollution from power plants with a focus on climate change action. This plan is currently under litigation<sup>123</sup>. The petitioners include: twenty-seven states; coal mining companies and coal-related trade associations and unions; the American Chamber of Commerce and other trade associations; the National Rural Electric Cooperative Association along with several cooperative distribution utilities; the American Public Power Association; and a few investor-owned utilities. Several parties have intervened in the case to support EPA<sup>124</sup>. There are various executive orders that address climate change including two focused on strengthening federal leadership in environmental, energy, and economic performance.



## Uruguay.

Uruguay has taken a leading role in the negotiations of multilateral environmental agreements and the support to the Montevideo Program on Environmental Law. Uruguay has a comprehensive national Strategy on Climate Change.



## Venezuela.

Climate change is addressed within Venezuela's Economic and social development plan. Additionally, in 2012 new strategies on mitigation and adaptation of climate change were adopted by the government<sup>125</sup>.

121 <https://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf>

122 <https://www.epa.gov/cleanpowerplan>

123 State of West Virginia, et al. v. EPA, U.S. Court of Appeals for the D.C. Circuit, No. 16-1264

124 2016. Harvard Law School. Environmental Law Program Clean Power Plan Litigation Updates. Available online at: <http://environment.law.harvard.edu/wp-content/uploads/2015/08/Clean-Power-Plan-Litigation-Updates-Apr-2016.pdf>

125 2015. Contribuciones Previstas Nacionalmente Determinadas de la República Bolivariana de Venezuela para la lucha contra el Cambio Climático y sus efectos.





### 5.3 Climate responses and approaches from the Judiciary

Faced with greater demands from citizens with regards to environmental and climate justice, the judiciary branches of the hemisphere are increasingly deciding relevant environmental and climate change cases. Brazil is an important example as its High Court issues more than 200 agreements on environmental matters and at least a dozen decisions with jurisprudence per year, many of these with climate change related implications<sup>126</sup>.

In understanding responses to environmental and climate issues from the judiciary’s standpoint the first issue that needs to be analyzed is the role of judges in these cases. While there is certainty in climate change science, attribution and a clear legal framework, as previously mentioned there are many uncertainties that a judge must deal with upon pondering an environmental and or climate change decision.

The role of judges is defined in most OAS Member States by the constitution and the legal framework that establishes the principle of liability for environmental damage. In the case of civil law countries this is based on the principle that establishes that anyone who causes damage must be held accountable to repair it and also on national law regarding liability and compensation for the victims of pollution and other environmental damage developed on accounts of Rio Principle 13<sup>127</sup>. This is more so, following of the recognition by scientists and the

IPCC of causality between human activity and climate change.

In fact, Brazilian jurisprudence has indicated to this effect that: *“judges do not create obligations for environmental protection. They spring forth from the law, after having passed through the analysis of Parliament. Therefore, we do not need activist judges, for the activism is done by the law and the constitutional text. Unlike other countries, our Judiciary is not impeded by a sea of gaps in the law or a series of legislative halfwords. If a gap exists, it is not due to the lack of a statute, nor even a defect in the statute; it is because of the absence of or a deficiency in administrative and judicial implementation of the unequivocal environmental duties established by Parliament in the law.”*<sup>128</sup>

In sum the judge is responsible for implementing the laws of the land, which in many cases involves principles of international environmental and human rights law.

In this context, the types of cases that could be considered climate justice related is relevant. Categorization of these could be accomplished by looking at the purpose of the case or the demand in question, for example is the case or lawsuit aiming to advance implementation of statute that seeks climate change mitigation? Or is its objective to achieve compliance with legal measures related to adaptation? Furthermore, is

126 <http://www.stj.jus.br/SCON/>

127 Rio Declaration on Environment and Development. Principle 13 :States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

128 Tribunal Superior de Justicia. Recurso Especial N° 650.728 de 2003, p. 11



the purpose of the case to remedy or seek redress for human rights violations resulting from the impacts of climate change?

We could call these cases purely climate justice related. Another way of looking at climate jurisprudence is by linking scientific evidence to climate change impact.

As mentioned before there are three main areas of attribution when it comes to climate impacts in the Americas, these are impacts on ecosystems, extreme events and water security.

Upon analyzing cases that fall within these categories it is relevant to have an understanding of the substantive and procedural rights that are involved. Meaning rights that are affected by environmental degradation or climate change and access rights (information, justice and process). The following jurisprudence within these two categories illustrates the responses from the judiciary in implementing and enforcing the law to address the impacts and effects of climate change.

### 5.3.1 Jurisprudence directly addressing climate change obligations or substantive rights affected by climate change and environmental degradation:

#### Massachusetts v. EPA

In the *Massachusetts et al v Environmental Protection Agency et al.*<sup>129</sup> Supreme Court (SCOTUS) decision, the key issues were whether the EPA Administrator may decline to issue emission standards for motor vehicles based on policy considerations not enumerated in section 202(a) of the Clean Air Act; and whether the EPA Administrator has authority to regulate carbon dioxide and other air pollutants associated with climate change under section 202(a)(1) of

the Clean Air Act. This case set an important precedent in the United States as it acknowledged that ‘the harms associated with climate change are serious’ and it enabled the regulation by the US Environmental Protection of Green House Gases and Carbon Dioxide as Pollutants under the Clean Air Act.

The initial petition to USEPA that resulted in the case cites that the IPCC’s 1995 report warned that “carbon dioxide remains the most important contributor to [man-made] forcing of climate change.”<sup>130</sup>. The petition further alleged that “climate change will have serious adverse effects on human health and the environment”<sup>131</sup>.

In sum this case established the link between the impacts of climate change and the right to health and event life itself. The case also illustrates the link between science and judicial decision making, the use of the prevention principle by establishing the role of EPA in preventing global climate change or reducing its impact and the contribution those different statutes can make to climate change mitigation. Finally Rio principle 10 and the principle of access in the is also brought to light in the Supreme Courts’ decision regarding whether a State has standing to sue the EPA for not enforcing the Clean Air Act. The Court ruled that States have standing as in order to have standing to sue in a federal court the petitioner must have; injury in fact, causation, and redressability in the claim, these elements are easier to meet if you are a State rather than an individual.

#### Pascua Lama Case, Second Environmental Tribunal of Chile. Case D-2-2013<sup>132</sup>

This case most commonly known as the Pascua Lama addresses innovative environmental and climate change issues in the Americas, while using as a forum the emerging institution of specialized environmental Tribunals or Courts.

129 549 US 497, 2007.

130 Ibid.122

131 Ibid 122

132 Rubén Cruz Pérez et al v, Nevada Mining Company. Subject: Pascua Lama Project. Community: Huasco. Region: Atacama. Date of decision: 3-20-2015



The key issues in the case included standing, causality and the establishment of environmental damage due to negligence, in the direct and direct destruction of the glacial and periglacial environment since the inception phase of a mining project.

The plaintiff in the case based on the environmental damage action established in Chilean environmental law, included mainly 20 inhabitants of the *Alto del Carmen* Community dedicated to cattle grazing and agriculture, bearing water rights allegedly affected by the mining project and concerned with environmental protection, the state of the glaciers and associated water resources.



The ruling establishes various important precedents. First regarding standing it admitted that the plaintiff could sue not because it was a popular action but using the theory of “adjacent environment” based on an analogy of the project zone of influence and because the law makes a distinction between actions for repair of environmental damage and for indemnization and liability. The latter is secondary to the action on repair of environmental damage and has to be pursued through the ordinary civil court following the decision regarding environmental damage in the specialized jurisdiction.

The tribunal used flexible criteria with regards to access to justice and granted that 17 of the inhabitants had a connection to the adjacent environment based on the following criteria:

i) inhabiting the community of *Alto del Carmen* and being dedicated to small scale agriculture and cattle grazing; ii) having affected water rights due to the impacts of the *Pascua Lama* project in

the glaciers; iii) having their water rights affected due to pollution; iv) having suffered an “environmental damage”.



The tribunal determined that 3 of the plaintiffs and a nongovernmental organization assisting the plaintiff had not standing in the case. There was a dissident vote with regards to the standing of the NGO.

On the merits, the tribunal rejected the claim due inability of the plaintiff to prove the environmental damage due to project activity. The Tribunal based in findings on scientific studies that showed that glacier changes were the result of the greater phenomenon of climate change and that the glaciers in question could even disappear prior to the project lifecycle.

Although it recognized the complexity surrounding the case for environmental management purposes, for the assessment of the impact of a project that could possibly affect the glaciers and for the specialized jurisdiction to decide an environmental damage action regarding glacial damage. This complexity was summarized by the tribunal in a) the ecological, environmental and social relevance acquired by glaciers in Chile in recent years, mostly due to frequent droughts and increased knowledge of the role of glaciers in the hydrological cycle as well as increased awareness and social perception of the need to protect this resource and its diffuse intangible nature. b) the difficulty in the environmental impact assessment and anticipating the effects of projects that present important technological challenges in diagnosing, monitoring and evaluating both the original glacier conditions and their changes throughout development activities mainly min-



ing to be implemented for decades and that require consideration of cumulative impact, both natural and anthropogenic; c) the increased precision and definition of the issue of climate change affecting the planet and which's effect in glaciers are monitored with greater certainty and confirming negative projections regarding the fate of many of these ice masses.

The tribunal recommended that both project developers and the administration consider measures for protection, mitigation or compensation that address the environmental situation of glaciers in project influence areas. It also recommended the adoption of appropriate mechanisms to ensure precision and reliability of information in monitoring of ice bodies making information accessible and the monitoring process transparent to facilitate management and enforcement of environmental policy instruments such as permits. The permit issued for the project by the administrative authority (RCA N° 24 de 2006) required that the glaciers not suffer any physical intervention and they not be moved or relocated.

Important principles addressed in this decision include the principle of access to justice referred to above in the context of *Massachusetts v. EPA*. The tribunal decided establishing criteria for standing taking into account the diffuse and public interest nature that lays in environmental damage. Also this is one of the first rulings that recognize causality regarding climate change damages and the “complexities” regarding addressing uncertainties in these type of cases.

### 5.3.2 Jurisprudence that addresses attributable impacts of climate change in ecosystems, extreme events and water security.

***Ecosystems: Unconstitutionality action regarding provisions on establishment and expansion of strategic mining reserves in law 1450 of 2011 Colombian National Development Plan***<sup>133</sup>

The action was divided in three parts, the first focused on the criteria for the establishment and expansion of Strategic Mining reserves, the second one on the system of strategic national interest projects and the third one on the regulation of extractive activities on high Andean grasslands above tree lines “*paramos*” ecosystems. The claim alleged that the provisions in the National Development Plan law by enabling mining activity in “*paramos*” ecosystems results in environmental damage contrary to the constitution, in the context of climate change threatens fundamental rights such as the right to life health and a clean and healthy environment favoring private interest instead of collective rights. Furthermore the claim addresses the principle of non-regression in the context of reducing the protection regime of “*paramos*”.



The ruling of the constitutional court recognizes that “Consequently, the high content of organic matter along with the volcanic material in soil of the “*paramos*” are “complex organic minerals [which] contribute to increasing the retention capacity and water regulation and carbon storage.” to this extent, the wetlands play an important role in mitigating climate change as they serve as natural carbon sinks, since “(...) the characteristics of the soil and vegetation enable the “*paramos*” to make great capture and accumulate carbon dioxide that occurs in the atmosphere as a result of industrial processes, and causes damage to the ozone layer and negatively influences global climate change. So on the “*paramos*” there are large amounts of carbon. If they were trapped in their soil, they would be in the atmosphere”.



The Court ruling in this case is in favor of protecting “paramos”, taking into account their soil and vegetation characteristics, which affirm the carbon capture and storage ability of “paramos” greater than that of tropical forest. To this degree, the Court established in this case, that “paramos” not only should be protected as a natural resource but in consideration of the environmental services they provide which are strategic and critical for climate mitigation and guaranteeing access to potable water.

The decision also recognizes the human rights principles of progression that aim at providing greater and more guarantees to person’s displaced due to armed conflict.

**Water Security: Case of the Yakye Axa v. Paraguay** <sup>134</sup>



In this case the Inter-American Court on Human Rights established the existence of “167. *Special detriment to the right to health, and closely tied to this, detriment to the right to food and access to clean water, have a major impact on the right to a decent existence and basic conditions to ex-*

*ercise other human rights, such as the right to education or the right to cultural identity. In the case of indigenous peoples, access to their ancestral lands and to the use and enjoyment of the natural resources found on them is closely linked to obtaining food and access to clean water. In this regard, said Committee on Economic, Social and Cultural Rights has highlighted the special vulnerability of many groups of indigenous peoples whose access to ancestral lands has been threatened and, therefore, their possibility of access to means of obtaining food and clean water”.*

**Extreme Events: Resolution. N° 2006-018051 (Constitutional Protection claim) Asociacion Administradora del Acueducto Comunal de Uvita y Bahia en Osa et al v. Mayor of the Municipality of OSA.**

In a case in which the municipality of OSA in Costa Rica, authorized land movements in private property of a company (La Gruta de Plata S.A), administrators of local aqueducts of Uvita, Bahía, La Colonia and surrounding areas filed a constitutional protection claim (“Amparo”) against the municipality of Osa, alleging that the land movements entailed a risk of contamination of the acquirers that supplied water to the referred townships and did not have a permit from the Ministry of Environment.

In its ruling the court, decided against the municipality based on the principle of *in dubio pro natura* and the precautionary principle. The Court established that based on the characteristics of aquifer contamination and their role in public water supply as well as the nature of their recharge and regeneration capacity, the measures to avoid contamination must be preventive and protective, including prohibition of certain human activities and ordering security measures in certain areas.

The court referred to a prior decision in which it analyzed the constitutional protection of aquif-

134 Inter-American Court of Human Rights Case of the Yakye Axa Indigenous Community v. Paraguay Judgment of June 17, 2005 (Merits, Reparations and Costs)



fers and groundwater<sup>135</sup>, and established that in “*abnormal circumstances that cause public calamity or internal commotion (ie. extraordinary drought, overexploitation of aquifers or saline intrusion to groundwater), the State via the executive branch and based on the principle of necessity can adopt the necessary measures with regards to hydraulic public domain and overcome the crisis or avoid that it increases in magnitude*”.



The Court also established in this decision that the safeguard and guarantee of the right to a healthy environment is the responsibility of the State and also reaffirmed the recognition of this right as fundamental as it is linked to Costa Rican Constitutional provisions regarding the right to health (art.21), the rational use of land (art.69) and the protection of scenic beauty (art.89)

Based on the above, the court also established that there was recourse not only against the private company and the municipality but against the Ministry of Environment as it could not admit (the Court) that as the regulatory environmental agency it enabled its officials to conduct an inspection without producing a report.

### 5.3.3 Considerations regarding responses from the Judiciary:

The above cases illustrate how the Americas has progressed in implementing emerging and consolidated principles of both environmental and human rights law, including the precautionary

principle, progression, non-regression, in-dubio pro-natura and the principle of necessity and maximum guarantees among others.

These decisions also show how the courts have struggled to achieve balance, between development and environment, but also with regards to the pro-persona principle.

Equity and justice are critical to sustainability and the cases that have been analyzed, show these at work in balancing immediate reward and long-term reward as well as competing interest in the context of seeking different rewards. Furthermore, these judiciary precedents have aimed to address human behavior across both different and similar socio-economic and political circumstances, in some cases across nations and across generations.

In order to achieve this balance, Justice and equity, within the rule of law some of these cases have showed flexibility in implementing procedural rights such as Access and a significant role in application of principles, both constitutional and sources of international law.

The judiciaries of the Americas and the Inter-American Human Rights System seem to be gaining greater relevance in this context both in supporting enforcement and implementation of the law to support both the environmental rule of law and the achievement of climate change global objectives and targets. More importantly there is great value in these responses as they serve the dual purpose of conflict resolution and prevention through awareness raising. However, further efforts are necessary in bridging the gaps between science, law and policy. Greater understanding by decision makers of the role of science is required, but also greater understanding by scientist of rules of procedure, legal and institutional frameworks is a must. This conversation is what will ensure that rather than focusing on legality, the focus shifts towards righteousness, and the rights based approach prevails as well as our future generations livelihoods.

135

Resolution 04-001923 of February 25, 2004 Constitutional Court of Costa Rica





## VI. Final thoughts and considerations

**I**t is clear that climate risk result in other risks such as those related to environmental damage and impact, usually with negative consequences for livelihoods in particular for those in poverty and vulnerable groups. Climate change exacerbates risks and can also be a source of conflict. As human beings seek equity in access to resources a vicious cycle forms in which conflicts of certain magnitude also increase climate vulnerability, deteriorating goods such as infrastructure, institutions, natural resources, social capital and wellbeing opportunities. All of these reduce the adaptation capacity of our societies. This is clearly illustrated in the Pascua Lama case in which glacier changes are affecting the livelihoods of local communities.

The beginning of the XXI century may well be remembered as the junction point in which humanity finally recognizes the need for a conscious model of the limits and planetary boundaries. The above analyzed responses from the legislative, the executive and the judiciary may be an important contributing factor to this realization.

Addressing the impacts of climate change requires an integrated and holistic approach, a common vision and supportive roles from and within the three branches of government at the country level in order to make legal frameworks, governance and the environmental rule of law work in tandem for strong institutions, peaceful and inclusive societies for sustainable development. This approach can only be in place through the use of one of the oldest democratic institutions: dialogue.

The impacts of climate challenge seen in our times also requires an engaged citizenship that takes a leading role to ensure their rights are safeguarded. Multilateralism offers in this sense an important opportunity, to convene and facilitate policy and political dialogue as well as cooperation in bridging the gap, between science, law and policy. The responses to the climate challenge in the Americas cannot be disconnected from evidence nor from the science basis.



In the case of the OAS, its role in the UN system, and as the hemispheric political forum that favors wellbeing with justice and social inclusion can help advance sustainable development, peace, democracy and human rights at the highest level and support Member States in the context of Climate Change. The need to have development stakeholders and scientist at the table when crafting climate responses and dealing with uncertainties, cannot be stressed enough while taming to achieve four (4) of the essential purposes established in the Charter of the OAS: strengthening the peace and security of the continent; preventing possible causes of difficulties and to ensure the pacific settlement of disputes that may arise among the Member States; seeking the solution of political, juridical, and economic problems that may arise among them; and promoting, by cooperative action, their economic, social, and cultural development. In this process and quest, partnerships such as those established in the area of Environmental Rule of Law with UN Environment and the International Union for the Conservation of Nature (IUCN) World Commission on Environmental Law (WCEL) are essential.







**OAS** | More rights  
for more people