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Mandate of the Special Rapporteur on human rights and the environment

Statement on the human rights obligations related to climate change,
with a particular focus on the right to life¹

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I. Introduction

1. I, David R. Boyd, have prepared this statement in my role as the United Nations Special Rapporteur on the human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment. I was appointed to this post on 1 August 2018. This voluntary position forms part of the UN's special procedures, experts selected from across the world to contribute to the fulfillment of human rights in areas related to their professional expertise. I work closely with the Office of the High Commissioner for Human Rights (OHCHR) and report annually to both the Human Rights Council and the General Assembly. I am also a professor at the University of British Columbia in Canada, jointly appointed in the Institute for Resources, Environment and Sustainability and the School of Public Policy and Global Affairs. I have worked as an environmental lawyer for 25 years, served as an advisor to many governments on environmental policy, and published nine books and more than 100 articles, reports, and book chapters.

2. My predecessor as Special Rapporteur, Professor John H. Knox of the United States, wrote or co-authored several important reports on the relationship between human rights and climate change. In this statement, I will draw upon a wide body of work including international human rights treaties, international environmental conventions, resolutions of the UN Human Rights Council, reports published by the Office of the High Commissioner for Human Rights, reports published by Professor Knox during his term as Special Rapporteur, and the authoritative reports of the Intergovernmental Panel on Climate Change.

¹ Authorization for the positions and views expressed by the UN Special Rapporteur on human rights and the environment, in full accordance with his independence, was neither sought nor given by the United Nations, including the Human Rights Council or the Office of the High Commissioner for Human Rights, or any of the officials associated with those bodies. This third-party intervention is made by the United Nations Special Rapporteur on a voluntary basis without prejudice to, and should not be considered as a waiver, express or implied of the privileges and immunities of the United Nations, its officials and experts on missions, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations.

3. This expert statement is submitted in relation to the case *Friends of the Irish Environment CLG* (“the Applicant”) v. *The Government of Ireland, Ireland and the Attorney General* (“the Respondent”). The Applicant seeks to quash the decision of the Respondent to approve the National Mitigation Plan published on 19th July 2017.

4. In the Statement required to ground an application for judicial review, the Applicant claimed, *inter alia*, that the Respondent’s approval of the National Mitigation Plan, absent any or any adequate mitigation measures, is unreasonable, unconstitutional and in breach of human rights law. According to the Statement, the Plan will impinge on and threaten: the right to life, right to liberty and security, right to the integrity of the person, right to respect for family and private life and home, right to property, the rights of the child, the rights of the elderly, equality between women and men, environmental protection; and/or the unenumerated constitutional right to a reasonable environment; and/or will breach the unenumerated constitutional commitment to intergenerational solidarity and/or the unenumerated constitutional obligation to vigilantly and effectively protect the environment.

5. I will limit my consideration to one of these issues: the right to life. In this context, I will analyze the following question: Does the Government of Ireland have positive human rights obligations to mitigate climate change? The conclusion reached is that climate change clearly and adversely impacts the right to life, a right which the Government of Ireland is legally obligated to respect, protect and fulfill. Therefore, the Government of Ireland has positive human rights obligations to mitigate climate change by rapidly reducing its greenhouse gas emissions.

II. Growing recognition of the impacts of climate change on human rights

6. States agreed in the 1992 United Nations Framework Convention on Climate Change (UNFCCC) that their goal is to achieve “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system” (Art. 2). The UNFCCC explicitly calls for efforts to mitigate the adverse effects of climate change including those on human health and welfare (Art. 1). At that time, however, human rights were not explicitly included in the Convention.

7. In the past decade, the relationship between human rights and climate change has received increasing attention from the UN Human Rights Council, special procedures, Governments and international bodies, including the Conference of the Parties to the UNFCCC. An important milestone was the Male’ Declaration on the Human Dimension of Global Climate Change, adopted by representatives of small island developing States in 2007. The Male’ Declaration was the first intergovernmental statement explicitly recognizing that climate change has “clear and immediate implications for the full enjoyment of human rights”, including the right to life.

8. In 2008, the Human Rights Council adopted its first resolution on climate change and human rights. In resolution 7/23, the Council expressed its concern that climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights.

9. After receiving input from Governments, civil society organizations and others, OHCHR published a report describing how climate change threatens the enjoyment of a wide range of

human rights, including the rights to life, health, food, water, adequate housing and self-determination.²

10. In 2009, in its resolution 10/4, the Human Rights Council again noted that climate change has implications for the effective enjoyment of human rights, and stated that the effects will be felt most acutely by those who are already in vulnerable situations.

11. At the beginning of the fifteenth session of the Conference of the Parties to the UNFCCC, held in Copenhagen in December 2009, 20 UN mandate holders issued a joint statement emphasizing that climate change poses serious threats to the full enjoyment of a broad range of human rights, warning that a weak outcome of the negotiations would threaten to infringe upon those rights and stating that mitigation and adaptation measures should be developed in accordance with human rights norms, including with the participation of affected communities.

12. In 2010, the Conference of the Parties to the UNFCCC adopted a decision quoting the statements in Human Rights Council resolution 10/4 that the adverse effects of climate change have a range of implications for the effective enjoyment of human rights and that the effects will be felt most acutely by those segments of the population that are already vulnerable. The decision stated that “Parties should, in all climate change related actions, fully respect human rights.”³

13. Since then, the Human Rights Council has repeatedly adopted resolutions reiterating its concerns about the effects of climate change on human rights, particularly those of the most vulnerable. For example, “climate change poses an immediate and far-reaching threat to people and communities around the world and has adverse implications for the full enjoyment of human rights.”⁴

14. In 2014, 27 special rapporteurs and other independent experts issued a joint letter on the implications of climate change for human rights, which stated in part:

A safe, clean, healthy and sustainable environment is indispensable to the full enjoyment of human rights, including rights to life, health, food, water and housing, among many others.... The most recent report of the Intergovernmental Panel on Climate Change (IPCC) brings into sharp focus the grave harm that climate change is already causing, and will continue to cause, to the environment on which we all depend. There can no longer be any doubt that climate change interferes with the enjoyment of human rights recognised and protected by international law.⁵

15. On Human Rights Day, 10 December 2014, all of the UN human rights mandate holders came together to issue a joint statement on climate change and human rights, which stated:

Climate change is one of the greatest challenges of our generation with consequences that transform life on earth and adversely impact the livelihood of many people. It poses great risks and threats to the environment, human health, accessibility and inclusion, access to water, sanitation and food, security, and economic and social development. These impacts of climate change interfere with the effective enjoyment of human rights. In particular, climate change has a disproportionate effect on many disadvantaged, marginalized,

² A/HRC/10/61.

³ Decision 1/CP.16, para. 8, FCCC/CP/2010/7/Add.1.

⁴ Human Rights Council resolution 18/22.

⁵ *A new climate change agreement must include human rights protections for all* (27 October 2014), <http://srenvironment.org/wp-content/uploads/2014/10/Letter-to-UNFCCC-FINAL.pdf>

excluded and vulnerable individuals and groups, including those whose ways of life are inextricably linked to the environment.⁶

16. In 2015, a number of UN human rights mandate holders published a report chronicling the range of adverse effects that climate change can have on human rights.⁷

17. The 2015 Paris Agreement represents a major milestone in the evolving relationship between human rights and climate change, as it is the first multilateral environmental agreement to explicitly make this link. The preamble provides that all States “should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights.” The preamble also specifically mentions the human rights of those who are disproportionately affected by climate change, such as women, children, migrants, indigenous peoples, and people with disabilities.

18. In the Paris Agreement, States committed to hold the increase in global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C, “recognizing that this would significantly reduce the risks and impacts of climate change”. The Intergovernmental Panel on Climate Change (IPCC) Report on Global Warming of 1.5°C (issued this year upon the request of the 21st Conference of the Parties to the UNFCCC) indicates that 1 degree of warming has already occurred. Notably, even this much warming contravenes the objectives of the UNFCCC to prevent adverse effects of climate change on human health and welfare and substantially impacts the effective enjoyment of human rights. For example, the report states that “Any increase in global warming is projected to affect human health, with primarily negative consequences.”⁸ Therefore neither 1.5°C or 2°C can be considered as safe targets for warming. However, there are substantial differences in the scale of expected negative impacts of climate change between 1.5°C and 2°C degrees of warming, with the latter causing higher risks of heat-related and ozone-related mortality.

19. The findings of the IPCC highlight that only the most ambitious action possible will mitigate the adverse effects of climate change on human health and welfare and that the time left to act is extremely limited. While neither the 1.5°C or well below 2°C targets of the Paris Agreement are wholly consistent with the human rights obligations of States acting together in accordance with the duty of international cooperation, to protect human rights from the adverse effects of climate change, they do represent a ceiling that States have agreed should not be exceeded.

20. The UN Environment Programme has determined that full implementation of the Nationally Determined Contributions⁹ (NDCs) of States under the Paris Agreement would lead to

⁶ Statement of the UN Special Procedures Mandate Holders on the occasion of Human Rights Day (10 December 2014),

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15393&LangID=E>

⁷ Special Procedures of the United Nations Human Rights Council, “The Effects of Climate Change on the Full Enjoyment of Human Rights,” 30 April 2015, available at:

http://unfccc.int/files/science/workstreams/the_2013-2015_review/application/pdf/cvf_submission_annex_1_humanrights.pdf, para 9.

⁸ Intergovernmental Panel on Climate Change. 2018. Special Report on 1.5°C: Summary for Policymakers, p. 11. http://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf

⁹ The Paris Agreement (Art 4, para. 2) requires each Party to prepare, communicate and maintain successive NDCs. NDCs are a statement of a State’s plans to reduce national emissions and adapt to the impacts of climate change. Most States submitted their Intended Nationally Determined Contribution

emission levels in 2030 that will likely cause a global average temperature increase of over 3°C.¹⁰ Therefore, even if States meet their current commitments under their NDCs, they will not achieve the objective of the Paris Agreement to limit global warming to 1.5°C or at the very least to well below 2°C.

21. Therefore, from a human rights perspective, States must not only implement their current NDC, but also strengthen those contributions to meet the targets set out in article 2 of the Paris Agreement and the objectives of the UNFCCC to mitigate the adverse effects of climate change. States are aware of the gap between their current commitments and their collective goal, and they agreed in Paris to review the adequacy of their commitments through stocktaking exercises every five years, beginning in 2023. However, it is already clear that States must begin to move beyond their current commitments even before the first stocktaking, in order to close the gap between what is promised and what is necessary. In all of these actions, States must take care to protect the rights of the most vulnerable.

The Foreseeable Impacts of Climate Change Upon the Right to Life

22. In general, the greater the increase in average temperature, the greater the effects on the rights to life, health, and other human rights. The foreseeable consequences of even a 2°C rise in average global temperature are dramatic. According to the Intergovernmental Panel on Climate Change, they include an increasing probability of “declining work productivity, morbidity (e.g., dehydration, heat stroke, and heat exhaustion), and mortality from exposure to heat waves. Particularly at risk are agricultural and construction workers as well as children, homeless people, the elderly, and women.”¹¹

23. Climate change will have many direct and indirect effects on the full enjoyment of the right to life. The IPCC’s 2007 assessment report (AR4) projects, with high confidence, an increase in people suffering from death, disease and injury from heatwaves, floods, storms, fires and droughts. Climate change will also affect the right to life through: an increase in hunger and malnutrition and related disorders impacting on child growth and development; cardiovascular disease and respiratory morbidity and mortality related to increasing concentrations of ground-level ozone. Climate change will exacerbate weather-related disasters which already have devastating effects on people and their enjoyment of the right to life, particularly in the developing world. For example, an estimated 262 million people were affected by climate disasters annually from 2000 to 2004, of whom over 98 per cent live in developing countries. Tropical cyclone hazards, affecting approximately 120 million people annually, killed an estimated 250,000 people from 1980 to 2000.¹²

(INDC) prior to the adoption of the Paris Agreement. Once a State submits its instrument of ratification, acceptance, approval or accession to the Paris Agreement, their INDC is converted to an NDC.

For more information, see the UNFCCC’s webpage on NDCs, available at:

<https://unfccc.int/process/the-paris-agreement/nationally-determined-contributions/ndc-registry#eq-2>

For information about each State’s NDC, see the UNFCCC’s NDC Registry (interim), available at:

<http://www4.unfccc.int/ndcregistry/Pages/Home.aspx>

¹⁰ UN Environment Programme (UNEP), “The Emissions Gap Report 2017”, available at:

https://wedocs.unep.org/bitstream/handle/20.500.11822/22070/EGR_2017.pdf

¹¹ Intergovernmental Panel on Climate Change Working Group II. Climate Change 2014: Impacts, Adaptation, and Vulnerability. <http://www.ipcc.ch/report/ar5/wg2/>, p. 811.

¹² Report of the Office of the United Nations High Commissioner for Human Rights on the relationship

24. The IPCC's 2014 assessment report (AR 5) provides more information about these types of effects. For example, it states that increased malnutrition from decreased food production will lead to increased risks of mortality, particularly in sub-Saharan Africa and south Asia.¹³ The rise in extreme weather-related events due to climate change, such as increased precipitation and flooding, contribute to an oral-faecal contamination pathway in water sources that is difficult to manage and that increases the number of cases of disease and fatalities. In addition, the IPCC determined with high confidence that since the middle of the 20th century climate change has already resulted in an increase in warm temperature extremes, which has in turn likely resulted in an increase in a number of heat-related deaths. Specifically, the report noted a "greater likelihood of injury and death due to more intense heat waves and fires."¹⁴ Studies have found that the mortality rate from extreme heat events outweigh the gains from less cold days.

25. A report by the World Bank affirmed many of the IPCC's conclusions, finding that "impacts of climate change could include injuries and deaths due to extreme weather events."¹⁵ The World Bank also highlighted that prolonged heat waves resulting from climate change "are generally the most destructive as mortality and morbidity rates are strongly linked to heat wave duration, with excess deaths increasing each additional hot day." Strong evidence is provided by the number of victims of recent heatwaves: "the death toll of the 2003 heat wave is estimated at 70,000, with daily excess mortality reaching up to 2,200 in France;" "the heatwave in Russia in 2010 resulted in an estimated death toll of 55,000."¹⁶ Climate change can also cause mortality through drought and expanding disease vectors.¹⁷

26. Conservative estimates from the World Health Organization (WHO) indicate that 250,000 additional deaths could potentially occur each year between 2030 and 2050 as a result of climate change.¹⁸ Based on these predictions, the OHCHR concluded that "at its most extreme, climate change kills."¹⁹ In order to uphold the right to life States have an affirmative obligation to take measures to mitigate climate change and thus prevent foreseeable loss of life.²⁰

between climate change and human rights, A/HRC/10/61, 15 January 2009, available at <https://undocs.org/A/HRC/10/61>, paras 22, 23.

¹³ IPCC, Working Group II Report "Climate Change 2014: Impacts, Adaptation, and Vulnerability," available at: <http://www.ipcc.ch/report/ar5/wg2/>, p. 1056.

¹⁴ IPCC, "Climate Change 2014: Synthesis Report," available at: <http://www.ipcc.ch/report/ar5/syr/>, p. 69.

¹⁵ The World Bank, "Turn down the heat: why a 4°C warmer world must be avoided," 2012, available at: <http://documents.worldbank.org/curated/en/865571468149107611/pdf/NonAsciiFileName0.pdf>, p. xvii.

¹⁶ Ibid, p. 13.

¹⁷ UN OHCHR, "Understanding Human Rights and Climate Change" - Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change, 2015, available at: <http://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf>, p. 14.

¹⁸ United Nations Environment Programme (UNEP), "Healthy Environment, Healthy People," Thematic report Ministerial policy review session, Second session of the United Nations Environment Assembly of the United Nations Environment Programme, Nairobi, 23–27 May 2016, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/K16/027/27/pdf/K1602727.pdf?OpenElement>, p. 6.

¹⁹ Analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/32/23, 6 May 2016, available at: <https://undocs.org/A/HRC/32/23>, para 8.

²⁰ Ibid, para 54.

Climate Change and Human Rights Obligations Related to the Right to Life

27. The right to life enjoys extensive worldwide recognition. According to the Universal Declaration of Human Rights “everyone has the right to life, liberty and security of person.”²¹ The International Covenant on Civil and Political Rights (ICCPR) reiterates that “every human being has the inherent right to life.”²² Article 2 of the European Convention on Human Rights (ECHR)²³ states that “[e]veryone’s right to life shall be protected by law”, and Article 2 of the Charter of Fundamental Rights of the European Union proclaims that “[e]veryone has the right to life”.²⁴

28. The UN Human Rights Committee, the body of independent experts appointed to review compliance with the ICCPR, has described the right to life as the “supreme right”, a right from which no derogation is permitted even in time of public emergency. “Moreover, the Committee has clarified that the right to life imposes an obligation on States to take positive measures for its protection.”

29. It has long been recognized that environmental harm threatens human rights and particularly the right to life. According to the 1972 Declaration of the United Nations Conference on the Human Environment (the Stockholm Declaration), “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 - even the right to life itself”.²⁵

30. Referring to the Stockholm Declaration, the Human Rights Committee stated in its draft general comment on Article 6 of the ICCPR (the right to life) that climate change constituted one of “the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.” It also concluded that obligations of States parties under international environmental law should inform the contents of article 6 of the ICCPR, and the obligation of States parties to respect and ensure the right to life must reinforce their relevant obligations under international environmental law.²⁶

31. In his final report to the Human Rights Council in 2018, my predecessor in the role of Special Rapporteur, Professor John Knox presented a set of “Framework Principles on Human Rights and the Environment: The main human rights obligations relating to the enjoyment of a

²¹ UN General Assembly, Universal Declaration of Human Rights (UDHR), 10 December 1948, 217 A (III), available at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217\(III\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217(III)), Article 3.

²² UN General Assembly, International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>, Article 6.

²³ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, ETS 5, 4 November 1950, available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf.

²⁴ European Union, Charter of Fundamental Rights of the European Union, 2012/C 326/02, 26 October 2012, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>.

²⁵ Report of the United Nations Conference on the Human Environment, Stockholm, 5 to 16 June 1972, A/CONF.48/14/Rev.1, Declaration of the United Nations Conference on the Human Environment, 17 June 1972, available at: <https://undocs.org/A/CONF.48/14/Rev.1>, para. 1 (preamble).

²⁶ Human Rights Committee, General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life (Advance Unedited Version), http://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/GCArticle6_EN.pdf, para 65.

safe, clean, healthy and sustainable environment.”²⁷ Framework Principle 11 is “States should establish and maintain substantive environmental standards that are non-discriminatory, non-retrogressive, and otherwise respect, protect, and fulfill human rights.” These measures should be preventive, precautionary, and consistent with all relevant international environmental, health, and safety standards.

32. Framework Principle 12 requires States to “ensure the effective enforcement of their environmental standards against public and private actors.” Clearly these principles (11 and 12) apply in the context of climate change, requiring States to establish, implement, and enforce effective laws and policies to reduce greenhouse gas emissions.

The Climate Change and Human Rights Jurisprudence of International Courts

The European Court of Human Rights

33. The European Court of Human Rights (ECtHR) has issued many decisions involving the right to life (Article 2 of the European Convention on Human Rights).²⁸ While the ECtHR has not dealt specifically with climate change, the other cases involving environmental risks are analogous.

34. The case law is clear that the State has a positive obligation to protect the lives of citizens within its jurisdiction under Article 2 of the ECHR. This obligation applies to both public and private activities that endanger the right to life. If the government knows that there is a real and imminent environmental threat, the State must take precautionary measures to prevent infringement as far as possible.

35. A leading precedent is *Öneriyildiz*, a case in which at least 26 people died in an explosion at a municipal landfill site, with evidence that Turkish governments knew for years about the serious danger of such an event. In its judgment, the Court stated, “The positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2 entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life.”²⁹

36. A similar case, *Budayeva*, arose after mudslides in the Caucasus killed several inhabitants of the town of Tyrnauz. The Government of Russia did not cause the mudslides, but the Court held that it still had a responsibility to take appropriate steps to safeguard the lives of those within its jurisdiction. Above all, the European Court stated, Governments must adopt legal frameworks designed to effectively deter threats to the right to life from natural disasters as well as dangerous human activities.³⁰

The Inter-American Court of Human Rights

37. In its 2017 Advisory Opinion, the Inter-American Court of Human Rights (IACHR)

²⁷ J. Knox, Special Rapporteur on Human Rights and Environment. 2018. “Framework Principles on Human Rights and the Environment: The main human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.” UN Doc. A/HRC/37/59.

²⁸ See, among other examples, *Öneriyildiz/Turkey* (ECtHR 30 November 2004, no. 48939/99), *Budayeva et al./Russia* (ECtHR 20 March 2008, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02), and *Fadayeveva/Russia* (ECtHR 9 June 2005, no. 55723/00).

²⁹ *Öneriyildiz/Turkey* (ECtHR 30 November 2004, no. 48939/99), para. 89.

³⁰ *Budayeva and others v. Russia*, application. No. 15339/02 (2008). European Court of Human Rights.

recognized the existence of an irrefutable relationship between the protection of the environment and the realization of other human rights, due to the fact that environmental degradation affects the effective enjoyment of other human rights.³¹ The opinion states, in particular, that the adverse effects of climate change affects human rights.³² The IACHR refers to a resolution of the General Assembly of the Organization of American States AG/RES. 2429, which highlighted that climate change has adverse effects on the enjoyment of human rights.³³ The Court also referred to several resolutions and reports from the UN Human Rights Council, stating that climate change has diverse impacts on the effective enjoyment of human rights, such as the right to life.³⁴

The Climate Change and Human Rights Jurisprudence of National Courts

38. National courts in other countries have confirmed that by failing to establish or implement adequate measures to address climate change, governments violate their human rights obligations related to the right to life.

Pakistan

39. In *Leghari v. Federation of Pakistan*, the Lahore High Court Green Bench determined that the inaction, delay, and lack of seriousness of the national government in implementing the National Climate Change Policy of 2012 and the Framework for Implementation of Climate Change Policy (2014-2030) offended the fundamental constitutional rights to life and dignity of Pakistani citizens. The relief granted included

- 1) directing multiple government Ministries, Departments and Authorities to nominate a climate change focus person to help ensure the implementation of the relevant policy and framework,
- 2) directing them to present a list of adaptation points that could be achieved by 31 December 2015, and
- 3) creating a Climate Change Commission to assist the Court in monitoring the progress

³¹ Inter-American Court of Human Rights, Environment And Human Rights, Advisory Opinion Oc-23/17 of 15 November 2017, requested by the Republic of Colombia, Official Summary Issued By The Inter-American Court, available at: http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2017/20171115_OC-2317_opinion-2.pdf, pp. 2-3.

³² Inter-American Court of Human Rights, Environment And Human Rights, Advisory Opinion Oc-23/17 of 15 November 2017, requested by the Republic of Colombia, available at: https://www.elaw.org/system/files/attachments/publicresource/seriea_23_esp.pdf, para 47.

³³ *Ibid*, para 49.

³⁴ Human Rights Council, Resolution 35, entitled "Human rights and climate change", adopted on June 19, 2017, UN Doc. A / HRC / 35 / L.32; Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations related to the enjoyment of a safe environment, clean, healthy and sustainable, 1 February 2016, UN Doc A / HRC / 31 / 52, paras. 9 and 23; Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, January 15, 2009, UN Doc. A / HRC / 10/61, paras. . 18 and 24, and Human Rights Council, Analytical study of the relationship between human rights and the environment, Report of the United Nations High Commissioner for Human Rights, December 16, 2001, UN Doc. A / HRC / 19/34, para. 7; Human Rights Council, Resolution 7/14, entitled "The right to food", approved on March 27, 2008, A / HRC / 7 / L.11; Human Rights Council, Resolution 10/12, entitled "The right to food", adopted on March 26, 2009, A / HRC / RES / 10/12, and Human Rights Council, Resolution 13/4, entitled " The right to food ", approved on March 24, 2010, A / HRC / RES / 13/4. Human Rights Council, Analytical study of the relationship between human rights and the environment, Report of the United Nations High Commissioner for Human Rights, adopted on December 16, 2001, UN Doc. A / HRC / 19 / 34, para. 49.

of the implementation. The court described climate change as “a defining challenge of our time” and stated that its impacts called for the protection of fundamental rights of the citizens, particularly vulnerable persons.³⁵

United States of America

40. In a 2016 interim decision in an American climate change lawsuit brought by a group of youth, Federal District Court judge Aiken rejected the government’s preliminary motion to dismiss the case, writing “I have no doubt that the right to a climate system capable of sustaining human life is fundamental to a free and ordered society.”³⁶ Plaintiffs assert that a stable climate system is a necessary precondition for the enjoyment of many rights, including the right to life.

Ireland

41. The High Court of Ireland in *Friends of the Irish Environment CLG v. Fingal County Council* recognized an unenumerated constitutional human right to a healthy environment.³⁷ The Court agreed that the scientific evidence, including the IPCC’s 2014 report, “can in truth leave no doubt but that climate change poses a real and immediate risk to” citizens.³⁸

Colombia

42. In Colombia in 2018, the Supreme Court ruled in favor of 25 young people, who had filed a lawsuit to protect their constitutional rights to life, food, water, and a healthy environment. The plaintiffs sought an order requiring the government to honor its commitment to address climate change, with a particular focus on stopping the country’s worsening deforestation.³⁹ The court gave the Colombian government four months to develop an effective plan to halt deforestation in the Amazon river basin.

Netherlands

43. In the Netherlands, the Urgenda Foundation and 886 Dutch citizens sued the Dutch government for allegedly failing to take adequate measures to address climate change. In 2015, the Hague District Court stated that because “there is a high risk of dangerous climate change with severe and life-threatening consequences for man and the environment, the State has the obligation to protect its citizens from it by taking appropriate and effective measures.”⁴⁰ The Court found that the government’s pledge to reduce emissions 17% by 2020 was insufficient to meet the State’s fair contribution toward the UN goal of limiting global temperature increases to no more than two degrees Celsius. As a result, the court ordered the Dutch state to limit GHG emissions to 25% below 1990 levels by 2020.⁴¹

³⁵ *Leghari v. Federation of Pakistan*, W.P. No. 25501/2015, Decision of 4 September 2015, available at: http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2015/20150404_2015-W.P.-No.-25501201_decision-1.pdf, paras 6-7.

³⁶ *Juliana v. United States*, (2016), Case No. 6:15-cv-01517-TC, US District Court, District of Oregon, 10 Nov., 2016, p. 32.

³⁷ *Friends of the Irish Environment CLG v. Fingal County Council*, 2017 No.344 JR, Judgement of 21 November 2017, para 264.

³⁸ *Ibid*, para 244.

³⁹ *Demanda Generaciones Futuras v. Minambiente*, 11001 22 03 000 2018 00319 00, Decision of 5 April 2018.

⁴⁰ *Urgenda Foundation v. Kingdom of the Netherlands*, C/09/456689 / HA ZA 13-1396, Decision of 24 June 2015 (English translation), available at:

<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2015:7196>, para 4.74.

⁴¹ *Ibid*, para 5.1.

44. The Dutch government appealed and lost. In 2018, the Hague Court of Appeal confirmed the lower court decision, writing that:

Under Articles 2 and 8 ECHR, the government has both positive and negative obligations relating to the interests protected by these articles, including the positive obligation to take concrete actions to prevent a future violation of these interests (in short: a duty of care). A future infringement of one or more of these interests is deemed to exist if the interest concerned has not yet been affected, but is in danger of being affected as a result of an act/activity or natural event.⁴²

45. The Hague Court of Appeal concluded that “it is appropriate to speak of a real threat of dangerous climate change, resulting in the serious risk that the current generation of citizens will be confronted with loss of life and/or a disruption of family life. As has been considered above by the Court, it follows from Articles 2 and 8 ECHR that the State has a duty to protect against this real threat.”⁴³

46. Finally, the Dutch Court also made the observation, highly relevant to Ireland’s situation, that “it deserves further attention that the Netherlands, as a highly developed country, has profited from fossil fuels for a long time and still ranks among the countries with the highest per capita greenhouse gas emissions in the world. It is partly for this reason that the State should assume its responsibility”⁴⁴

Climate change and the human rights obligations of the Government of Ireland

47. Ireland is a party to the 1992 UN Framework Convention on Climate Change (UNFCCC). According to the UNFCCC, industrialized countries such as Ireland, being the source of most past and current greenhouse gas emissions, are expected to have a leading role in reduction of emissions (pursuant to the legal principle of common but differentiated responsibilities).

48. Ireland is also a party to the 2015 Paris Agreement and a member of the European Union, which is also a party to both UNFCCC and the Paris Agreement. The EU has committed to achieve at least a 20% reduction of greenhouse gas emissions by 2020 compared to 1990. By decision No 406/2009/EC of 23 April 2009, the EU established national objectives for its Member States.⁴⁵ The minimum contribution to meeting the greenhouse gas emission reduction commitment of the EU established for Ireland is a 20% reduction of greenhouse gas emissions by 2020 compared to 2005 greenhouse gas emissions levels.

⁴² Netherlands v Urgenda Foundation, 2018 Hague Court of Appeal, Civil Law Division 09-10-2018, Case number: 200.178.245/01, at para 41.

<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHDHA:2018:2610>

⁴³ Netherlands v Urgenda Foundation, 2018 Hague Court of Appeal, Civil Law Division 09-10-2018, Case number: 200.178.245/01, at para 45.

<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHDHA:2018:2610>

⁴⁴ Netherlands v Urgenda Foundation, 2018 Hague Court of Appeal, Civil Law Division 09-10-2018, Case number: 200.178.245/01, at para 66.

<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHDHA:2018:2610>

⁴⁵ Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community’s greenhouse gas emission reduction commitments up to 2020, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=urisrv:OJ.L_.2009.140.01.0136.01.ENG.

49. The European Council subsequently endorsed a binding target of at least a 40% domestic reduction in economy-wide greenhouse gas emissions by 2030 compared to 1990. The Regulation 2018/842 of the European Parliament and of the Council of 30 May 2018, established binding annual greenhouse gas emission reductions by Member States from 2021 to 2030.⁴⁶ According to the Regulation, Ireland has an obligation to reduce its greenhouse gas emissions by at least 30% by 2030 compared to its 2005 greenhouse gas emissions levels.

50. Ireland is also bound by universal human rights instruments to which it is a party, such as International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and regional instruments such as the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. Ireland must respect, protect and fulfill human rights in accordance with these legally binding instruments.

51. Climate change will undoubtedly have increasingly negative impacts upon the Irish environment, threatening the human rights of its citizens. A report published by Ireland's Environmental Protection Agency in 2017 observed that "rising temperatures in the summer are likely to increase heat-related mortalities and morbidity."⁴⁷ As well, the IPCC's 2014 report indicated that significant sea level increases are projected in the eastern North Sea and west of UK and Ireland.⁴⁸ Climate change is also projected to affect the hydrology of rivers, increasing extreme discharges to varying degrees in several European countries, including Ireland.⁴⁹ Such events may lead to floods, which could affect other rights of Irish citizens, such as right to housing, property and respect for one's home.

52. As noted earlier, climate change will have increasingly devastating impacts on human rights around the world because of the increasing frequency of extreme weather events and natural disasters, rising sea-levels, floods, heat waves, droughts, desertification, water shortages, and the spread of tropical and vector-borne diseases. These phenomena directly and indirectly threaten the full and effective enjoyment of a range of human rights, including not only the right to life, but also the rights to self-determination, development, food, water and sanitation, health, and housing. The most severe impacts of climate change and consequential human rights violations are faced by developing countries, which contributed the least to creating the problem.

53. Since climate change directly contributes to human rights violations, the Government of Ireland has a positive obligation to take measures to mitigate climate change, to prevent its negative human rights impacts, and to ensure that all persons, particularly those in vulnerable situations, have adequate capacity to adapt to the growing climate crisis. Failure to prevent foreseeable human rights harms caused by climate change, or at the very least to mobilize maximum available resources in an effort to do so, constitutes a breach of this obligation.

54. Failure to take positive and effective measures to prevent the human rights harms caused

⁴⁶ Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.156.01.0026.01.ENG.

⁴⁷ M. Desmond et al. 2017. *A Summary of the State of Knowledge on Climate Change Impacts for Ireland*. Report 11 (2010-2016). EPA Research Programme Report 223. Ireland Environmental Protection Agency.

⁴⁸ IPCC, Working Group II Report "Climate Change 2014: Impacts, Adaptation, and Vulnerability," available at: <http://www.ipcc.ch/report/ar5/wg2/>, p. 1279.

⁴⁹ *Ibid*, p. 1279.

by climate change, including foreseeable long-term harms, breaches the human rights obligations of Ireland. The negative impacts of climate change will increase substantially according to the extent of global average temperature rise that ultimately takes place and will disproportionately affect individuals, groups and peoples in vulnerable situations. Therefore, Ireland must act to limit its emissions of greenhouse gases in order to prevent, to the greatest extent possible, the current and future negative human rights impacts of climate change.⁵⁰

55. Problematically, Ireland does not appear to be on track to meet its current commitments to reduce greenhouse gas emissions. Ireland's greenhouse gas emissions increased by more than six percent between 1990 and 2015. The latest projections from the Environmental Protection Agency anticipate a total increase in emissions of between eleven and twelve percent between 1990 and 2020.⁵¹ Ireland's Environmental Protection Agency concluded that "Ireland is not projected to meet 2020 emissions reduction targets and is not on the right trajectory to meet longer term EU and national emission reduction commitments."⁵²

56. According to Ireland's Climate Change Advisory Council, the current National Mitigation Plan will not do enough to reach the targets of the Paris Agreement or even Ireland's own emissions targets.⁵³ Indeed, the first key message of the Climate Change Advisory Council's 2018 report is that "Irish greenhouse gas emissions are rising rather than falling. Ireland is completely off course in terms of achieving its 2020 and 2030 emissions reduction targets."⁵⁴

57. From a human rights perspective, it is necessary for the Government of Ireland not only to take additional actions on an urgent basis to implement its current nationally determined contribution,⁵⁵ but also to seek to strengthen that contribution as part of the collective effort to meet and/or exceed the targets set out in article 2 of the Paris Agreement and ensure that global temperatures do not rise to levels that would inflict catastrophic damage on the right to life and other human rights.

Conclusion

58. There is no doubt that climate change is already violating the right to life and other human rights today. In the future, these violations will expand in terms of geographic scope, severity, and the number of people affected unless effective measures are implemented in the short term to reduce greenhouse gas emissions and protect natural carbon sinks.

59. The Government of Ireland has clear, positive, and enforceable obligations to protect against the infringement of human rights by climate change. It must reduce emissions as rapidly as possible, applying the maximum available resources. This conclusion follows from the nature of Ireland's obligations under international human rights law and international environmental law.

⁵⁰ OHCHR, "Key Messages on Human Rights and Climate Change", available at: http://www.ohchr.org/Documents/Issues/ClimateChange/KeyMessages_on_HR_CC.pdf, p. 1.

⁵¹ Environmental Protection Agency (Ireland). 2018. *Ireland's Greenhouse Gas Emissions Projections, 2017-2035*. https://www.epa.ie/pubs/reports/air/airemissions/ghgprojections2017-2035/EPA_2018_GHG_Emissions_Projections_Summary_Report.pdf

⁵² Ibid, p. i.

⁵³ Climate Change Advisory Council. 2017. *Annual Review 2017*. Dublin.

⁵⁴ Climate Change Advisory Council. 2018. *Annual Review 2018*. Dublin, p. iii. http://www.climatecouncil.ie/media/CCAC_AnnualReview2018.pdf

⁵⁵ Ireland's NDC under the Paris Agreement is via the intended nationally determined contribution submitted by the EU on behalf of the EU and its Member States, which on ratification has become the EU's first NDC. See: <http://www4.unfccc.int/ndcregistry/PublishedDocuments/European%20Union%20First/LV-03-06-EU%20INDC.pdf>