

WRITTEN STATEMENT

PRESENTED TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Re: Request for an Advisory Opinion
instituted by the Republic of Chile and the Republic of Colombia
concerning the “Climate Emergency and Human Rights”

Presented by

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Sincerely,



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Honorable President, Judges and Judges of the
Inter-American Court of Human Rights,
Honourable Secretary,
Dr. Pablo Saavedra Alessandri

Executive Summary

Section I – Introduction and Statement of Purpose: World’s Youth for Climate Justice (WYCJ) submits this document pursuant to Article 73(3) of the Rules of Procedure of the Inter-American Court of Human Rights in response to the ongoing advisory proceedings on “Climate Emergency and Human Rights” initiated by Chile and Colombia. Focusing on question ‘C’ of the advisory request, WYCJ advocates for intergenerational equity and differential protection regimes for children, youth, and future generations in the context of climate change.

Section II - Background and Challenges: the submission begins by outlining the challenges faced by children, youth, and future generations due to the climate emergency. While not exhaustive, this section provides illustrative facts representing the severity of the issue.

Section III - Legal Framework and Intergenerational Equity: the submission delves into the necessity of differentiated legal and policy approaches, analysing international legal frameworks relevant to human rights protection from climate change impacts. The focus is on intergenerational equity, with a call to consider universally applicable rules, customary international law, principles like CBDRRC, precautionary measures, and obligations to prevent harm and protect.

Section IV - Inter-American Standards and Beyond: examining Inter-American standards, the submission advocates for special protection regimes for vulnerable groups. Expanding the analysis beyond the specified Convention articles, it integrates international law such as UNFCCC, Paris Agreement, UNCRC, ICCPR, VCLT, ECSR, and the Escazú Agreement. The section concludes by proposing how international standards can be incorporated into the American Convention on Human Rights (ACHR).

Section V - Challenges and Solutions: the submission addresses challenges in making obligations and rights justiciable under the Inter-American system. It suggests solutions to overcome these challenges, ensuring effective protection for the rights of children, youth, and future generations from climate change consequences.

Conclusion: the submission concludes by summarising legal recommendations to the Court, emphasising the operationalization of intergenerational equity. WYCJ aims to inform not only the ongoing proceedings but also future cases related to climate change and human rights protection. The document encourages the Court to consider a comprehensive approach, incorporating diverse international legal principles for robust and forward-looking arguments.

We are grateful for this opportunity to submit this written statement in response to the advisory request on “Climate Emergency and Human Rights”, instituted by the Republic of Chile and the Republic of Colombia. Enclosed to this are the pertinent documents that authenticate the legal existence of our organisation.

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I. Introduction and Statement of Purpose

Pursuant to Article 73(3) of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter ‘the Court’ or ‘IACtHR’), World’s Youth for Climate Justice (WYCJ) hereby makes a written statement to the honourable Inter-American Court of Human Rights in response to the Court’s invitation letter dated 22nd March 2023 with respect to the on-going advisory proceedings on the “Climate Emergency and Human Rights”, instituted by the Republic of Chile and the Republic of Colombia, dated 9th January 2023.

WYCJ is a youth-led movement that advocates for intergenerational equity; we, therefore, have chosen to make a submission with an intent to submit observations to the Court predominantly on question C of the advisory request resolution.¹ In this submission, we (as youth representing WYCJ) expand on States’ differential obligations by asserting the importance of intergenerational equity from a human rights and climate change perspective as well as the need for differentiated protection regimes addressing the specific needs of children, youth, and future generations in the now and in the near future. While the question uses the term “new generations” we propose the term “future generations”, which is the term used throughout this amicus. This submission is purely from a youth perspective and hopes to inform the Court during the current proceedings and any future proceedings related to climate change and the protection of human rights of children, youth, and future generations from adverse impacts of climate change.

Following this introduction, section II of our submission gives a brief overview of the background and the challenges that children, youth, and future generations are currently, and are going to, face as a result of the climate emergency - it should be noted that this section only highlights a few relevant and illustrative facts but that it is not representative of the entirety of the climate emergency. Section III then establishes how differentiated legal and policy approaches are required and outlines the international legal framework relevant to the protection of the human rights of children, youth, and future generations from adverse impacts of climate change. To that end, we analyse and elucidate the most relevant legal provisions and jurisprudence relating to the international legal principle of intergenerational equity.

We submit our legal arguments based on the assumption that the Court will consider this submission in light of other relevant legal principles of international environmental law that may have been referred to in the following sections. We also submit to the Court that the following should be read with the universally applicable rules of customary international law and general principles of international law with a special emphasis on the principle of common but differentiated responsibilities with respective capabilities (CBDRRC),² the precautionary principle, the obligation to prevent harm, and the obligation to protect, among others.³ We

¹ https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf.

² According to the Inter-American Commission of Human Rights, under the CBDRRC principle, States with greater financial capacity must provide support to developing States which are particularly impacted by climate change, but which nevertheless have less financial, technical and infrastructure resources to mitigate and adapt to climate change; Also see Inter-American Commission on Human Rights, “Climate Emergency: Scope of Inter-American Human Rights Obligations”, (2021) Resolution No. 3/2, point I.7. “(...) those States that have greater financial capacity must provide the guarantees to provide greater technical and logistical capacity to the States that have a greater degree of impact on climate change, as well as less financial and infrastructure capacity to face the climate emergency”.

³ E. Sobenes et al. Part II ‘Legal Memorandum’, ‘Youth Climate Justice Handbook’, (2023) WYCJ, pg. 19

submit to the Court that the following should be read, in good faith,⁴ in the light of other international legal texts, including but not limited to the United Nation Framework Convention on Climate Change (UNFCCC), the Paris Agreement, the United Nations Convention on Rights of the Child (UNCRC), the International Covenant on Civil and Political Rights (IPCCR), the Vienna Convention on the Law of the Treaties (VCLT), International Covenant on Civil and Political Rights (ICCPR), Economic Cultural and Social Rights (ECSR), the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).

Section IV establishes the Inter-American standards related to this topic while filling the gaps with the help of the abovementioned international law to make ambitious and forward-looking arguments. In its first subsection, the final part discusses the existence and further implementation of special protection regimes for children, youth, and future generations as vulnerable groups. The submission goes beyond the purview of question C in light of the Court's inherent power to reformulate the questions presented to it by the requesting organ or State. For the reasons described in the sections below, even though the request formulated by Chile and Colombia makes reference to only Articles 1, 4, 5, 11, and 19 of the Convention, this Amicus has opted to expand its analysis to also include Articles 2 and 26 of the Convention. This section concludes by outlining how the international standards regarding substantive obligations of States can be incorporated into the ACHR. Finally, Part V discusses selected challenges to making these obligations and rights justiciable under the Inter-American system. We then suggest how these challenges can be solved in order to guarantee the best possible protection of the rights of children, youth, and future generations from the adverse consequences of climate change. Finally, we conclude with summarising our legal recommendations to the Court in order to operationalise and move towards intergenerational equity.

⁴ United Nations Charter, Art. 2(2) see also, Vienna Convention on the Law of Treaties (VCLT), Arts. 18, 26, and 31; The principle of good faith in international law requires conduct that is honest, fair, and reasonable, and plays a crucial role in the creation, interpretation, and performance of treaties and other international obligations. It requires recognizing a common interest, participating in measures to promote that interest, and refraining from impairing it. Good faith is also a principle of treaty interpretation, and can assist in balancing conflicting interests and reducing textual ambiguity: also see Fitzmaurice G, 'The Future of Public International Law and of the International Legal System in the Circumstances of Today: Special Report' (Institut de Droit International, 1973), pp. 319–20, 278; Georg Schwarzenberger G, *Manual of International Law* (Professional Books, 1976), pp. 118-19; Georg Schwarzenberger, 'The Fundamental Principles of International Law' *Recueil des Cours*, 1955-I, 323–5.

II. Brief Overview of the Factual Basis: Children, Youth, and Future Generations Are Disproportionately Affected by Climate Change

Children are vulnerable to climate change in two distinct senses. First, children have particular vulnerabilities, which mean that existing impacts of climate change affect them with notable severity. Secondly, children yet to be born also form part of the broader category of future generations, which means that they are more likely to be exposed to the long-term effects of climate change. With climate change being recognised by experts⁵ and international bodies, such as the Committee on the Rights of the Child (CRC) and the United Nations Human Rights Committee (HRCttee), as one of the most pressing and serious threats to children's rights to health and life,⁶ States have a duty to consider, to prevent, and to redress the impact of environmental degradation and climate change on children, including those not yet born, and **to act responsibly as stewards of the planet.**

It is expected that over the next decade, around 175 million children will be affected by climate-related disasters.⁷ It is observed that a child born in 2020 is likely to experience nearly seven times as many heat waves as someone born in 1960, over twice as many wildfires, crop failures, droughts, and river floods.⁸ In the case of Latin America, over 362,000 children were affected by disasters between 2017 and 2019. In Colombia, floods took the lives of 92 children in 2017 alone.⁹ In Brazil, floods and landslides killed seven children in Rio de Janeiro in 2022 and displaced at least 25,000 people.¹⁰ The health and development of children is subjected to an inequitable and increased risk of climate-related harm, such as adverse effects of malaria, diarrhoea, and under/malnutrition.¹¹ Despite children being recognised among the most vulnerable to the impacts of climate change,¹² they are still not being placed at the forefront of climate policy, advocacy, and research.¹³

⁵ Jeffrey L Goldhagen et al., 'Rights, Justice, and Equity: A Global Agenda for Child Health and Wellbeing' [2020] The Lancet Child & Adolescent Health 80, at 1

<https://www.flacso.org.ar/wp-content/uploads/2019/12/Rights-justice-and-equity-A-global-agenda-for-child-health-Lancet-CAH.pdf>.

⁶ UN Committee on the Rights of the Child (CRC), 'General Comment No. 26 on children's rights and the environment with special focus on climate change' (22 August 2023) UN Doc CRC/C/GC/26, para. 1; CRC, 'General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health' (17 April 2013) UN Doc CRC/C/GC/15, para. 50; UN Human Rights Committee 'General Comment No. 36 Article 6 (Right to Life)' (3 September 2019) UN Doc CCPR/C/GC/36, para. 62; UNHRC, *Ione Teitiota v. New Zealand*, Admissibility and Merits Views, No. 2728/2016, CCPR/C/127/D/2728/2016, Sept. 23, 2020, para. 9.4; also see UNHRC, *Daniel Billy et al. v. Australia*, Admissibility and Merits Views, No. 3624/2019, CCPR/C/135/D/3624/2019, Sept. 22, 2022, para. 5.8.

⁷ Save the Children (2007). *Legacy of disasters: The impact of climate change on children*. London: Save the Children. Available at: www.savethechildren.org.uk/.

⁸ As detailed in the Save the Children report *Born into the Climate Crisis* based on the original emissions reduction pledges that countries made under the 2015 Paris Agreement Save the Children, *Born Into the Climate Crisis: Why we must act now to secure children's rights*, 2021 <https://resourcecentre.savethechildren.net/pdf/born-into-the-climate-crisis.pdf/>.

⁹ Generation Hope 2.4 billion reasons to end the global climate and inequality crisis, at 8.

¹⁰ *Ibid.*, at 8.

¹¹ Human health: impacts, adaptation, and co-benefits. 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*, p. 717.

¹² UNHRC, Res 32/33 (2016) UN Doc A/HRC/RES/32/33, preamble; A/76/L.75, UNGA, "The Human Right to a Clean, Healthy and Sustainable Environment", 26 July 2022.

¹³ *The Challenges of Climate Change: Children on the front line*, at 47.

Along with children, climate change has put youth in immediate danger from its adverse effects. The youth (composed of individuals between the ages of 18 and 30) has a more concentrated population in the most climate vulnerable countries.¹⁴ However, the decreasing availability of nutritious food and clean water has not only destroyed ecosystems and posed threats to secure living environments, but has also led to malnutrition, poor health, and migration, thus rendering youth particularly vulnerable.¹⁵ The International Fund for Agricultural Development (IFAD) observed in a 2019 report that “no country with a large youth population share is expected to be able to avoid significant impacts of climate change by 2050”.¹⁶ The increase of temperatures intensifies the adverse impacts that are already affecting every region of the globe; even though the youth, along with children, has contributed the least to the current climate emergency, they are the ones currently destined to suffer the most from its consequences, **with one’s vulnerability and risk increasing on a sliding scale in proportion to one’s date of birth.**¹⁷ Therefore, climate change is a human rights issue of the youth and it is the youth that should be taken into consideration and consulted in relation to establishing State responsibility for climate change related human rights violations.

The Intergovernmental Panel on Climate Change (IPCC) observed that continued emissions will carry irreversible damage, threatening ecosystems, biodiversity, livelihoods, health, and the well-being of current and future generations, requiring urgent climate action.¹⁸ Future generations are those that do not yet exist but who will exist and who will inherit the Earth,¹⁹ including the children and the youth to be born in the future. There is an evident nexus between climate change and human rights,²⁰ as well as a marked differential impact of the climate emergency by age, for reasons related to wealth, political power, and opportunity.²¹ The Special Rapporteur on the promotion and protection of human rights in the context of climate change has even noted that the intersection between age, ethnicity, race, class, sexuality, indigenous identity, disability, income, migrant status, and geographical location often compound vulnerability to climate change impacts and exacerbate inequity.²²

¹⁴ ‘Climate Change is a Youth Issue’ in ‘Creating opportunities for rural youth’, Rural Development Report, 2019 pg. 196; also see Fig 7.1.

https://www.ifad.org/documents/38714170/41133075/RDR_report.pdf/7282db66-2d67-b514-d004-5ec25d9729a0.

¹⁵ ‘Youth and Climate Change’, fact sheet prepared by the United Nations Joint Framework Initiative on Children, Youth and Climate Change (2013) <https://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-climatechange.pdf>.

¹⁶ ‘Climate Change is a Youth Issue’ in ‘Creating opportunities for rural youth’, Rural Development Report, 2019 pg. 195. https://www.ifad.org/documents/38714170/41133075/RDR_report.pdf/7282db66-2d67-b514-d004-5ec25d9729a0.

¹⁷ IPCC, 2023: Summary for Policymakers. In: Climate Change 2023: Synthesis Report, Figure SPM.1, p.7.

¹⁸ IPCC, 2023: Summary for Policymakers. In: Climate Change 2023: Synthesis Report, C.1.3(c), p. 24.

¹⁹ Maastricht Principles on the Human Rights of Future Generations (Maastricht Principles), adopted on 3 February 2023, available at <https://www.ohchr.org/sites/default/files/documents/new-york/events/hr75-future-generations/Maastricht-Principles-on-The-Human-Rights-of-Future-Generations.pdf>.

²⁰ Inter-American Commission on Human Rights, “Climate Emergency: Scope of Inter-American Human Rights Obligations”, (2021) Resolution No. 3/2, p. 4.

²¹ Generation Hope 2.4 billion reasons to end the global climate and inequality crisis, at 10.

²² Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation, A/77/226, Jul. 26, 2022, para. 29.

Therefore, WYCJ submits there is **broad scientific and policy consensus that children, youth, and future generations are groups which are particularly vulnerable to the adverse effects of climate change**, which will indubitably place a wide array of their human rights in serious danger. Furthermore, they are at **risk of grave and irreparable, present and foreseeable future, harm as a result of which immediate action must be taken now** in order to prevent such consequences and protect these groups. Finally, the levels of **risk and vulnerability increase on a sliding scale in proportion to one's date of birth**. The legal analysis presented in subsequent sections is premised on the factual basis presented in the preceding chapter.

III. The International Framework for States' Differential Obligation To Protect the Human Rights Of Children, Youth, and Future Generations in the Face of Climate Change

Considering the status of the climate emergency, it is pertinent to discuss the international legal framework that governs the protection of human rights of children, youth, and future generations from climate change. There is value to systematically integrate²³ this framework into the Inter-American system of human rights protection. The following subsections elucidate the need to interpret and synthesise the international legal framework in context of the climate change emergency and the protection of human rights of children, youth, and future generations from the adverse effects of climate change.

III.A The Rights-Centred Jurisprudence Recognising Intergenerational Equity

This subsection requests the Court to discuss the differential obligation of States on the rights of children, youth, and future generation in light of the climate emergency (section IV.B further elaborates on exactly how this can be integrated into the inter-American jurisprudence). With a view towards intergenerational equity, this subsection highlights several relevant provisions of the international legal framework that have emphasised the need for a children, youth, and intergenerational rights-centred approach in climate change adaptation and mitigation. In particular, it illustrates the observations by the HRCttee, CRC General Comment No. 26, the Maastricht Principles on Human Rights of Future Generations, and jurisprudence from the International Court of Justice (ICJ) as well as select national jurisdictions. We contend that these provisions should be interpreted in good faith and systemically integrated with the relevant provisions of the ACHR as discussed in section IV of this document.

In a study conducted by the HRCttee, it was observed that all children were exceptionally vulnerable to the negative impacts of climate change, with the youngest children being most at risk.²⁴ In the study, the HRCttee outlined the key requirements of a child rights-based approach, including ambitious mitigation measures to minimise the future negative impacts of climate change on children, as well as adaptation measures that focused on protecting the most vulnerable children. The HRCttee highlighted the need for mitigation and adaptation actions that were the product of participatory, evidence-based decision-making processes that took into account the ideas and best interests of children as expressed by children themselves.²⁵

The principle of intergenerational equity lies at the heart of the need for a children and youth rights-centred approach in climate change adaptation and mitigation policies. Stemming from the international law concept of equity, fairness between generations has been interpreted, observed, and applied through

²³ VCLT, Art. 31(3)(c).

²⁴ A/HRC/35/13.

²⁵ OHCHR, Frequently Asked Questions on Human Rights and Climate Change. Fact Sheet No. 38, New York & Geneva, 2021, p. 24.

international, regional,²⁶ and national²⁷ jurisdictions. In the *Continental Shelf* case in 1982, for instance, the ICJ noted that “the legal concept of equity is a general principle directly applicable as law” and one that requires adjudicators to apply these principles in interpreting the relevant rules of international law.²⁸ The concept was further explored in the *ICJ Advisory Opinion on the Threat of Use of Nuclear Weapons*, where the Court emphasised that the environment “represents the living space, the quality of life and the very health of human beings, including generations unborn”.²⁹ In their dissenting opinion, Judge Weeramantry referred to “the principle of intergenerational equity” as an emerging principle, which they viewed as an important and rapidly developing principle of contemporary international law.³⁰ In the *Pulp Mills Case*, Judge Cançado Trindade noted that “[n]owadays, in 2010, it can hardly be doubted that the acknowledgment of intergenerational equity forms part of conventional wisdom in international environmental law”, marking the influence of the principle and **the temporal dimension of climate change**.³¹

²⁶ ECtHR, *Duarte Agostinho and Others v. Portugal and 32 Others* (app. no. 39371/20); also see I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, (analysed below).

²⁷ *Dejusticia v Colombia Corte Suprema de Justicia de Colombia* [Supreme Court of Justice of Colombia] (Bogotá 5 April 2018) STC 4360-2018, *DG Khan Cement Co Ltd v Government of Punjab Through Its Chief Secretary, Lahore*, Supreme Court of Pakistan (15 April 2021) CP1290-L/2019, *Goa Foundation v Union of India and Others* Supreme Court of India (21 April 2014) 435 SCC 2012, *H Carlos Schneider S/A Comércio e Indústria e Outro v Ministério Público Federal Superior Tribunal de Justiça* [Superior Court of Justice of Brazil] (Brasília 23 October 2007) *Recurso Especial no 650.728/SC* (2d Panel), *Juliana v United States* United States Court of Appeals (9 Circuit) (17 January 2020) Case No 18-36082 DC, No 6:15-cv-01517-AA, *Leghari v Federation of Pakistan* Lahore High Court (25 January 2018) Case WP No 25501/2015. *Maria Khan and Others v Federation of Pakistan and Others* Lahore High Court (14 February 2019) Application No 8960 of 2019, *Ministério Público Federal v Ogata* Superior Tribunal de Justiça [Superior Court of Justice of Brazil] (Brasília 14 October 2008) *Recurso Especial no 840.918/DF* (2d Panel) Relator: Min. Eliana Calmon (Majority Opinion of Min. Antonio Herman Benjamin) (14 October 2008) (Brazil), *Motta v UNIÃO* Superior Tribunal de Justiça [Superior Court of Justice of Brazil] (Brasília 10 November 2009) *Recurso Especial no 1.109.778/SC* (2d Panel) Relator: Min. Antonio Herman Benjamin (10 November 2009) (Brazil). *Netherlands v Urgenda Foundation* *Gerichtshof Den Haag* [The Hague Court of Appeal] (9 October 2018) Case No 200.178.245/01 ECLI:NL:GHDHA:2018:2591. *Netherlands v Urgenda Foundation* *Hoge Raad der Nederlanden* [Supreme Court of the Netherlands] (The Hague 20 December 2019) Case No 19/00135 ECLI:NL:HR: 2019:2006, *Notre Affaire à Tous and Others v France* Tribunal Administratif de Paris [Paris Administrative Court] (3 February 2021) Nos 1904967, 1904968, 1904972, 1904976/4-1 (accessed 7 April 2021). *Oposa v Secretary of the Department of Environment and Natural Resources (Factoran)* Supreme Court of the Philippines (Manila 30 July 1993) (1994) 33 ILM 173, *Urgenda Foundation v Netherlands* *Rechtbank den Haag* [The Hague District Court] (24 June 2015) Case No C/09/456689 / HA ZA 13-1396 ECLI:NL:RBDHA:2015:7145. *Waweru, Mwangi (joining) and others v Kenya* High Court of Kenya (2 March 2006) Misc Civil App No 118 of 2004; *Neubauer et al v. Germany* [2022] Bundesverfassungsgericht [BVerfG] [1 BvR 3084/20] (German Federal Constitutional Court), para. 92.

²⁸ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, ICJ Reports 1982, p. 18, para. 71.

²⁹ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, p. 226, Jul. 8, 1996, para. 29.

³⁰ *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*, Dissenting Opinion Of Judge Weeramantry, at p. 280.

³¹ *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, Separate Opinion, ICJ Reports 2010, p.80 at para. 122. See also, Separate Opinion in the 2014 case *Whaling in the Antarctic (Australia v Japan: New Zealand Intervening)*, where he concluded that ‘inter-generational equity marks presence nowadays in a wide range of instruments of international environmental law, and indeed of contemporary public international law’ (para.47).

In the context of climate change and environmental protection through human rights, international organs of human rights protection, national adjudicators, and lawmakers should pay due regard to this concept in the elaboration of legislation. In the realm of international treaty law, the concept of intergenerational equity is recognized in several international treaties, such as the Convention on Biological Diversity (CBD), the World Heritage Convention, the United Nations Economic Commission for Europe Water Convention, the UNFCCC, and the Paris Agreement. We, therefore, contend that the principle of intergenerational equity has been incrementally incorporated into international law through its widespread acceptance in treaty law, constitutional law, as well as international and domestic jurisprudence, and that its recognition is a crucial element in safeguarding the environment and preserving cultural heritage. The concept requires the consideration of the impact of environmental degradation and climate change on future generations and the duty of present generations to act responsibly as stewards of the planet. This includes the expressly distributional dimensions of climate action and inaction: the principle rightly frames the failure to act as a violation of the needs, rights, and interests of young and future persons.

We, therefore, submit that it is pertinent for the Court to consider the concept of intergenerational equity, as it is essential to the protection of not only children's rights endangered by climate change but also human rights of future generations. In this regard, CRC General Comment No. 26 (explained below) also clarifies States' obligations with regards to international equity as they should look:

"beyond their immediate obligations under the Convention with regard to the environment, **States bear the responsibility for foreseeable environment-related** threats arising as a result of **their acts or omissions now, the full implications of which may not manifest for years or even decades**". [emphasis added]

In addition to the application of the principle of intergenerational equity, we submit that the Court should also consider the Maastricht Principles on the Human Rights of Future Generations ("Maastricht Principles") that were adopted earlier in 2023. These principles provide a progressive interpretation and clarify the application of international law to the human rights of future generations. They "provide humanity with a compass to guide us out of the current global environmental crisis. Governments, businesses, and courts must adopt and apply these Principles so that we all learn to be good ancestors".³² Building on similar initiatives,³³ the Maastricht Principles were signed by experts including current and former members of international human

³² Center for International Environmental Law (July 13, 2023), quote by David Boyd, United Nations Special Rapporteur on human rights and the environment in Legal Principles Shed New Light on Human Rights of Future Generations <https://www.ciel.org/news/legal-principles-shed-new-light-on-human-rights-of-future-generations/>. .

³³ The *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* (1986); the *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* (1997); and the *Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights* (2011).

rights treaty bodies (e.g. CRC³⁴), regional human rights bodies, and former and current Special Rapporteurs of the United Nations Human Rights Council. Therefore, these Principles support the interpretation of international law to better protect the rights of future generations.

We contend that the Maastricht Principles will be of help **to better understand nature and scope of a State Party's obligation³⁵ to adopt timely and effective measures in the face of a climate emergency** since they articulate obligations to respect, protect, and fulfil the human rights of future generations, as well as acts and omissions of States that violate³⁶ those human rights obligations. The Court ought to recognise that the Principles also reinforce the crystallisation of concrete and specific obligations and human rights violations when determining whether States are adopting timely and effective measures in the face of the climate emergency to ensure the protection of these rights. **We, therefore, submit that these Principles should be interpreted harmoniously with the ACHR, General Comment No. 26, the UNCRC, and other relevant principles of international law and regional law.**

III.B Relevant International Legal Framework Focusing on the Rights of Children, Youth, and Future Generations in the Context of Climate Change

This section elucidates general principles and relevant provisions of international law applicable to the protection of the rights of children, youth, and future generations in the climate crisis. The normative framework conceptualises climate change obligations and responsibilities specifically in the context of adopting timely and effective climate action. More than two decades ago, governments, under the umbrella of the UN General Assembly, already pledged to provide assistance and protection for children to “minimize the impact of natural disasters and environmental degradation”.³⁷ This seemingly extends to protecting children and youth from climate change, as they are a vulnerable group especially affected by climate change impacts, and bear the brunt of the climate crisis.³⁸ The international climate change regime refers to children as a vulnerable group only sparingly. The preamble of the UNFCCC provides a core principle of preserving the environment “for the benefit of present and future generations”, but the treaty does not mention children or youth specifically. The Paris Agreement, contrarily, does specify that States should “respect, promote and consider their respective obligations” on children’s rights when taking climate action, but only in its Preamble. In light of this, the interpretation of the UNCRC in the context of the climate regime is vital.

In August 2023, the CRC put forward its General Comment No. 26 on children’s rights and the environment, with a special focus on climate change. This General Comment promotes a child and intergenerational rights-based approach to climate change, and should, therefore, inform the answer to the

³⁴ For instance, please see Ann Skelton (President of the UN Committee on the Rights of the Child), Philip D. Jaffé (Member and former vice-chair of the UN Committee on the Rights of the Child), Velina Todorova (Member of the UN Committee on the Rights of the Child).

³⁵ Art. 16, 18, 20 of the Maastricht Principles..

³⁶ *Ibid.*, Art. 17, 19, 21.

³⁷ UNGA, ‘Resolution S-27/2. A world fit for children’ (10 May 2002) UN Doc. A/RES/S-27/2, para. 7.10.

³⁸ UNICEF, *The Challenges of Climate Change: Children on the Front Line* (Innocenti Insights 2014), 15-31.

question regarding the differential obligations of States with respect to the rights of children and future generations in the face of climate emergencies. We strongly recommend that the Court takes into account the following principles established by the CRC - in consonance with provisions discussed in Part IV of this document - which provide a dynamic interpretation of the content and scope of States' duties under the UNCRC. They are based on sound jurisprudential precedents from the Committee on the Rights of Child, the advisory opinions of the ICJ, and regional and national court cases:

In *Sacchi et al v. Argentina et al*, the Committee on the Rights of the Child heard a group of children that complained that several States Parties to the UNCRC had violated their rights to life, survival and development, their right to health, and to enjoy their minority culture by failing to prevent and mitigate the consequences of climate change.³⁹ The communication was found to be inadmissible due to the failure to exhaust domestic remedies, but the Committee did show its receptivity to the argument that States have obligations based on children's rights in the context of climate changes in multiple instances. CRC General Comment No. 26 asserts the best interest of the child "shall be the primary consideration in the adoption and implementation of environmental decisions"⁴⁰ and that children have a right to a clean, healthy and sustainable environment that should be incorporated and implemented at the national level.⁴¹ Concrete measures to be taken in this regard include the equitable phase out of coal, oil and gas, as well as the conservation and protection of biodiversity.⁴² Relatedly, specific obligations for States with regard to children's rights for climate mitigation and adaptation are set out, while it is also encouraged to recognise loss and damage as a third central pillar of climate action.⁴³ Furthermore, the Committee emphasises that States have specific obligations in their relation to third parties, mainly businesses. As many businesses' emissions contribute majorly to the climate crisis, States have an obligation to influence business operations to reduce their greenhouse gas emissions to mitigate climate change, as well as establishing legislation which ensures that businesses undertake child rights due diligence procedures and environmental impact assessments.⁴⁴

The objective of General Comment No. 26 is to emphasise the need to focus on the consequences of climate change on children's rights and to promote an understanding of children's right in this context, as well as, more specifically, to clarify the States Parties' obligations and provide guidance on the appropriate measures they should take with regards to climate change.⁴⁵ As such, the focus should be on abstracting the State duties that the General Comment No. 26 proposes. These duties exist due to the responsibility that States have for

³⁹ CRC, 'Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 104/2019' (8 October 2021) UN Doc CRC/C/88/D/104/2019, para. 1.1.

⁴⁰ *Ibid.*, para. 16.

⁴¹ *Ibid.*, para. 67.

⁴² *Ibid.*, para. 65.

⁴³ *Ibid.*, paras. 95-103, 106.

⁴⁴ *Ibid.*, paras. 79-90, 107.

⁴⁵ CRC, 'General Comment No. 26', para. 12.

environmental threats that are a consequence of their acts and omissions now, even if the consequences of these environmental threats will only manifest later.⁴⁶

General Comment No. 26 does not only outline States' obligations, but also provides guidance to the way in which States should fulfil these obligations and, thus, speaks to the scope of States' obligations on children's rights in light of the climate crisis. The Committee declares that States are required to take deliberate steps towards developing "legislation, policies, strategies or plans that are science-based and consistent with relevant international guidelines related to environmental health and safety".⁴⁷ To do so, States must devote financial and information resources to the maximum extent of their available resources.⁴⁸ Consequently, the Committee in its interpretative activities has stipulated the core State obligation to "ensure a clean, healthy and sustainable environment in order to respect, protect and fulfil children's rights"⁴⁹ - an obligation that cannot be adhered to without significant national and international efforts against the climate crisis.

States have obligations to take joint action through the notion of international cooperation to respect, protect, and fulfil children's rights in light of the consequences climate change is exerting on this vulnerable group.⁵⁰ The full realisation of children's rights is, consequently, contingent upon such cooperation between States. In the context of climate change, the principle of international cooperation may be linked to the provision of climate finance. In relation to economic, social, and cultural rights, Article 4 UNCRC stipulates that States should undertake measures to implement children's rights "to the maximum extent of their available resources and, where needed, within the framework of international co-operation". The maximum extent of resources to mitigate and adapt to climate change differs greatly by State, so in order to ensure all States are in a position to protect children's rights from the consequences of the climate crisis, climate finance flowing between States is essential.⁵¹ The same holds true for informational and other resources that may be unequally divided between States, but that can aid the protection of the rights of the child.⁵²

The principle of international cooperation also ensures the provision of participatory mechanisms and the availability of effective remedies. In particular, the principle calls for collaboration in establishing and implementing mechanisms that allow and support the participation of children in climate decision-making.⁵³ In the same vein, international cooperation can support mechanisms that allow children access to effective remedies when their rights have been violated by the consequences of climate change.⁵⁴ Therefore, States should, in light of the international legal principle of cooperation,

⁴⁶ *Ibid.*, para. 11.

⁴⁷ *Ibid.*, para. 71.

⁴⁸ *Ibid.*, para. 72.

⁴⁹ *Ibid.*, para. 68.

⁵⁰ *Ibid.*, para. 91.

⁵¹ Elizabeth D Gibbons, 'Climate Change, Children's Rights, and the Pursuit of Intergenerational Climate Justice' (2014) 16(1) Health and Human Rights Journal, 25-6.

⁵² CRC, 'General Comment No. 26', para. 72.

⁵³ Gibbons (n 57) 24.

⁵⁴ CRC, 'General Comment No. 26', para. 93.

collaborate “in good faith in the establishment and funding of global responses to address climate change related harm suffered” by children.⁵⁵

First, we submit that the principle of international cooperation is recognized as important in both the preamble of the UNCRC and the preamble of the UNFCCC. Therefore, the Court should view it as a central feature of a child rights-based approach to the climate crisis. In this capacity, the notion of international cooperation can inform the nature and scope of States’ duties to protect the rights of children, youth, and future generations in the context of climate change.

Secondly, we submit that the Court ought to interpret the obligations under the ACHR in light of the relevant principles established by the UNCRC pursuant to the principle of systemic integration as established by Article 31(3)(c) of the VCLT⁵⁶ and to incorporate its principles into the Inter-American jurisprudence in context of the climate emergency to protect human rights of children, youth, and future generations.

Thirdly, we submit that the Court ought to put emphasis on recognising children’s best interests as a “primary consideration”⁵⁷ in all actions by public and private entities and that, in light of the recent developments in the international legal realm, States have increasingly heightened duties and obligations with respect to climate change. CRC General Comment No. 26 clarifies States’ obligations and incorporates existing principles that should guide States’ conduct. Thus, always bearing in mind that out of all of the issues that affect the lives of children, youth, and future-generations, perhaps the most pressing is climate change as they bear the greatest impact due to its adverse effects, **we NEED an intergenerational approach to climate change.**

⁵⁵ *Ibid.*, para. 94.

⁵⁶ VCLT, Articles 31-32; In addition to these general rules of interpretation, interpreters often use other interpretation techniques, including a contrario principle, whereby a right or obligation would not exist where it is not explicitly mentioned in a treaty. Additionally, the *lex posterior derogat legi priori* principle states that the later rule should prevail in cases where two possible rules could apply to the same issue. Similarly, the principle *lex specialis derogat legi generali* dictates that the specific rule should prevail over the general rule. See Murphy Sean D. 2018. Principles of International Law (version Third edition) Third ed. St. Paul MN: West Academic Publishing, pp. 96-98.

⁵⁷ UNCRC, Article 3.1; CRC, ‘General Comment No. 26’, para. 16.

IV. Differentiated Regimes of Protection under the Inter-American Convention On Human Rights with Respect to the Climate Emergency

We now turn our attention to the jurisprudential treatment that children, youth, and future generations have received, and should receive, under the Inter-American Convention on Human Rights (ACHR). The following section is subdivided as follows: the first focuses on enhanced protection regimes, specifically in relation to children and future generations; the second section then develops the substantive obligations under the ACHR in relation to the measures of protection to be implemented to safeguard Articles 1, 4, 5, 11, and 19, as well as - for the reasons described in the sections below - Articles 2 and 26 of the American Convention on Human rights.

IV.A Special Regimes of Protection under the ACHR Awarded to Children, Youth, and Future Generations

IV.A.1 The Child as a Subject and Object of Protection

Article 19 ACHR states that “[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the State”. This article, consistently used in tandem with other articles of the Convention, has made way for a rich body of case law that specifies the measures which States are bound to observe in order to duly protect the rights of children - all the while taking into account the special protection that they are owed in a variety of contexts. The article, however, fails to delimit who exactly qualifies as a “child” for the purposes of the Convention.⁵⁸

To address this ambiguity, the Court has consistently sought recourse in the pronouncements of the CRC as an authoritative interpretative tool for the content and scope of Article 19.⁵⁹ For example, the Court, in Advisory Opinion (hereafter, ‘AO’) 17, transposed the definition of a child instantiated in Article 1 CRC into the Inter-American *corpus juris* justifying this reasoning with the universal ratification amongst Organisation of American States (OAS) member States of the UNCRC.⁶⁰ Thus, the Court considers “every human being who has not attained 18 years of age to be a child”.⁶¹ The Court has further established that “the term child, obviously, encompasses boys, girls, and adolescents”⁶² and has, interestingly, used the terms “minor” and “child” interchangeably, which seems oriented towards ensuring that no distinction takes place between ‘older’ children (say between the ages of 14 and 18) and ‘minor’ children (between the ages of 0 and 14) that may prejudicially

⁵⁸ I/A Court H.R., Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Merits. Judgment of November 19, 1999. Series C No. 63, para. 188.

⁵⁹ “Both the American Convention and the Convention on the Rights of the Child form part of a very comprehensive international corpus juris for the protection of the child that should help this Court establish the content and scope of the general provision established in Article 19 of the American Convention” (*Ibid.*, para. 194).

⁶⁰ *Ibid.*, para. 188; I/A Court H.R., Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No.17, paras. 38 and 42.

⁶¹ I/A Court H.R., Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala, paras. 188 and 194.

⁶² I/A Court H.R., Advisory Opinion OC-17/02, para. 42, footnote 45.

affect the enhanced protection both of these groups are owed.⁶³ Thus, we can observe that for the purposes of the Convention an **individual is considered a child as long as they are under the age of 18 irrespective of the age of maturity defined at a national level.**

In light of the statement of purpose of the Court's AO 17,⁶⁴ which is heavily influenced by paragraphs 6 and 7 of the preamble of the UNCRC,⁶⁵ children are characterised as existing in a state of vulnerability due to children's cognitive development and their diminished capacity to act.⁶⁶ Because of this, children are often seen as mere **objects of protection** – i.e. a group who, in light of their vulnerable condition, are owed an enhanced level of protection – which, in turn, positions the State as a sort of special guarantor for their protection with the responsibility to ensure their development.⁶⁷ AOs 17 and 21 and subsequent case law⁶⁸ clearly dispel this unitary conception and have clarified the true scope that is to be afforded to children: added to their status as objects of protection, children are further seen as genuine **subjects of protection** who have the same rights as everyone else in addition to the special rights derived from their condition of vulnerability and the specific duties that are placed upon the family, society, and the State.⁶⁹

These pronouncements, reiterated throughout the Court's jurisprudence on Article 19, bring to bear the fact that the impetus for the protection of children is twofold: first, the protection is done with a view for the present, being that all children have the "enjoyment of their recognized rights" protected; but this protection is also instantiated with a view to the future. The Court's case law on the protection of children consistently highlights the "harmonious development" and the promise of being "prepared to live an individual life in society"⁷⁰ as guiding underlying objectives for the protection granted by Article 19; as is evident from a plain reading of these phrases, they tacitly inject **an intertemporal dimension to the protection of children.** Added to these more semantic observations, this intertemporal dimension is also manifested through the positive obligations incumbent on States in regard to children all of which are oriented to ensuring that the

⁶³ See *Ibid.*, Judge Sergio García Ramírez explanation in paragraph 3 of his Separate Concurring Opinion that "the word 'minor', widely used at a national level, refers to a person who has not yet reached the age at which full—or broad—exercise of his or her rights has been established there, together with the respective duties and responsibilities. [...] The meaning of the word 'child', in turn, has in principle been more biological or psychological than juridical, and this meaning, that is in line with popular usage of the term, contrasts with adolescent, youth, adult, or elderly persons."

⁶⁴ "The ultimate objective of protection of children in international instruments is the harmonious development of their personality and the enjoyment of their recognized rights" (I/A Court H.R., Advisory Opinion OC-17/02, para. 53).

⁶⁵ The preamble emphasises, first, the need for a child to enjoy a "full and harmonious development of his or her personality" and, second, that they should "be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations."

⁶⁶ See I/A Court H.R., Advisory Opinion OC-17/02, para. 41.

⁶⁷ *Ibid.*, para 53.

⁶⁸ See for instance I/A Court H.R., Case of the Pacheco Tineo family v. Bolivia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 272; I/A Court H.R., Case of expelled Dominicans and Haitians v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282; I/A Court H.R., Case Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011 Series C No. 221; I/A Court H.R., Case of Furlan and family v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C No. 246; and I/A Court H.R., Case of Atala Riffo and daughters v. Chile. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239.

⁶⁹ I/A Court H.R., Advisory Opinion OC-17/02, para. 54.

⁷⁰ UNCRC Preamble, paras. 6-7.

youngest generations are able to live their lives free of unnecessary suffering and pain. In the Court's own words '[the tempered] observance [of the rights contained in the convention will allow the subject to fully develop his or her **potential**']'.⁷¹

This section, thus, contends that **there is a clear future facing or intertemporal dimension inherent in the protection Article 19 is intended to provide.** Thus, considering the serious challenges the climate emergency presents to the youngest among us, **it is incumbent on States to duly account for future harms that children may suffer as a result of climate change since this is precisely the type of protection Article 19 was intended to protect.**

Throughout its case law, the Court has consistently used a number of principles derived from public international law for the protection of children in order to interpret the other articles of the Convention in the light of Article 19. First and foremost, the Court has consistently emphasised that the State and the public authorities should always act in the child's "best interest",⁷² which should be interpreted into all other rights of the Convention.⁷³ Since the Court has adopted this approach in a variety of different contexts,⁷⁴ the same should apply to the protection of children in the context of climate change; a context, it should be recalled, where children (youth, and future generations) are poised to be disproportionately affected. According to AO 21, other principles to be taken into account when interpreting the provisions of the Convention include: the principle of non-discrimination,⁷⁵ the principle of respect for the right to life, survival and development,⁷⁶ and

⁷¹ I/A Court H.R., Advisory Opinion OC-17/02, para. 59.

⁷² *Ibid.*, para 56.

⁷³ I/A Court H.R., Case of the Las Dos Erres Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para. 184.

⁷⁴ For instance, armed conflicts (/A Court H.R., Case of the Santo Domingo Massacre v. Colombia. Preliminary Objections, Merits and Reparations. Judgment of November 30, 2012. Series No. 259), migration (/A Court H.R., Case of the Pacheco Tineo family v. Bolivia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 272; I/A Court H.R., Case of expelled Dominicans and Haitians v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282; and I/A Court H.R., Rights and guarantees of children in the context of migration and/or in need of international protection. Advisory Opinion OC-21/14 of August 19, 2014. Series A No.21, *inter alia*, paras. 69-79, 84-86, 102-106, 115-143, 153-170), and enforced disappearances (I/A Court H.R., Case Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011, Series C No. 221).

⁷⁵ Article 2 of the UNCRC establishes the obligation of States to respect the rights set forth in the Convention and to ensure their application to each child within their jurisdiction without discrimination of any kind, which "requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures." Committee on the Rights of the Child, General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (Articles 4, 42 and paragraph 6 of Article 44), *supra*, para. 12. See also, Committee on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin, *supra*, para. 1.

⁷⁶ Article 6 of the UNCRC recognizes the child's inherent right to life, and States Parties' obligation to ensure to the maximum extent possible the survival and development of the child, in its broadest sense, as a holistic concept embracing the child's physical, mental, spiritual, moral, psychological and social development. Cf. Committee on the Rights of the Child, General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (Articles 4, 42 and paragraph 6 of Article 44), *supra*, para. 12.

the principle of respect for the opinion of the child in any procedure that affects her or him in order to ensure the child's participation.⁷⁷

As far as Articles 4 and 5 ACHR are concerned, the Court has consistently noted that for children the rights to life and to humane treatment are existential and that the State is under enhanced obligations in this respect. The State, therefore, has not only heightened negative obligations not to interfere with these rights,⁷⁸ but also heightened positive obligations to “prevent situations that might lead, by action or omission, to negatively affect it”.⁷⁹ Importantly, the Court has not defined which situations might negatively affect a child's right to life, but has simply established that, in line with the best interest of the child principle, the State is under an obligation to prevent, ostensibly, any and all situations, which, by act or omission, could represent a serious threat to a child's life.

It follows, that **the genuine and foreseeable harm, which might come about as a result of the climate emergency engenders a broad base of obligations**, which States must observe all with a view to mitigating, though hopefully eliminating, the undoubtedly cataclysmic effects of climate change.

Added to this, the Court has instantiated a constructive reading of the right to life which underlines the importance of allowing children the “full and harmonious development of their personality” so that they may live in dignity and be able **to develop a “project of life”**.⁸⁰ This is yet another instance which goes to demonstrate that the Court has sought to ensure that the protection afforded by the Convention **contemplates the future prospects of an individual as being material in their evaluation of the damage suffered**. Finally, it should be noted that the Court's outline of States' positive obligations in AO 17 expressly refers to the obligation to ensure the exercise and full enjoyment of their rights through the implementation of “economic, social and cultural measures”,⁸¹ especially when they pertain to the children's right to life and right to humane treatment.⁸² The Court has established the scope and content of States' positive obligations on a case by case

⁷⁷ Article 12 of the UNCRC establishes the child's right to express his or her views freely in “all matters affecting the child,” those views being given due weight, taking into account his or her age and degree of maturity. Cf. Committee on the Rights of the Child, General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (Articles 4, 42 and paragraph 6 of Article 44), *supra*, para. 12, and Committee on the Rights of the Child, General Comment No. 12: The right of the child to be heard, UN Doc. CRC/C/GC/12, 20 July 2009.

⁷⁸ I/A Court H.R., Case of the Gómez Paquiyauri Brothers v. Peru. Merits, Reparations and Costs. Judgment of July 8, 2004. Series C No. 110, para. 170.

⁷⁹ *Ibid.*, para 171 and I/A Court H.R., Case of Bulacio v. Argentina. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para 138.

⁸⁰ I/A Court H.R., Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala, para 191; I/A Court H.R., Advisory Opinion OC-17/02, para 24.

⁸¹ I/A Court H.R., Advisory Opinion OC-17/02, para. 88; see also UNHRC, ‘General Comment No. 17’, para. 3.

⁸² I/A Court H.R., Case of the “Juvenile Reeducation Institute” v. Paraguay. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112, para. 149.

basis,⁸³ but has not listed a specific set of obligations. Hence, these are to be made through an exercise of interpreting the ostensibly affected right through the lens of Article 19.

The Court has deployed the aforementioned principles throughout a number of cases regarding a wide variety of matters. To date, however, the Court has yet to pronounce itself on the nature, content, and scope of these obligations with regard to the protection of children in the context of the climate emergency. It is pertinent for the Court to explain and explore how the obligations surrounding the protection of the right to a healthy environment, and connected rights are to be tempered or expanded when interpreted through the lens of Article 19 - that is with a differentiated regime of protection applicable to children. So too is it necessary for the Court to explore how exactly States are to make due on the promise that “the right to a healthy environment constitutes a **universal value that is owed to both present and future generations**”.⁸⁴ Some proposals are made to this effect in subsequent sections.

IV.A.2 Future Generations as Objects of Protection

Subsection C of the Request for the advisory opinion includes the phrase “new generations”, which provides a unique opportunity for the Court to pronounce itself regarding what obligations, if any, are owed to “new” or, “future” generations by State parties in the context of the climate emergency. In line with the definition given by the Maastricht principles these are “those generations that do not yet exist but will exist and who will inherit the Earth. Future generations include persons, groups and Peoples”.

Only by taking into account the **intertemporal nature of the climate crisis can an adequate standard of protection be instantiated**. Incorporating **future generations as a distinct category of protection** and, by extension, **operationalizing the principle of intergenerational equity** stands as a uniquely suited measure **to ensure a comprehensive response to the challenges posed by the climate emergency** to all generations, present, past, and future.

Section III has already dealt with the nature and international origins of intergenerational equity as an emerging principle of international law. The Inter-American Court, for their part, has already operationalized the concept in a few instances. First, in the case of *Myagna (Sumo) Awas Tingni v. Nicaragua*, the Court recognized the importance of the **temporal dimension** of international law and upholding the indigenous

⁸³ See for instance in the context of detention: I/A Court H.R., Case of the “Juvenile Reeducation Institute” v. Paraguay. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112 and in the context of amnesties I/A Court H.R., Case Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011 Series C No. 221.

⁸⁴ I/A Court H.R., The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 59 emphasis added.

cosmovision.⁸⁵ Second, in AO 23, the Court noted that the “right to a healthy environment has been understood as a right that has both individual and collective connotations. **In its collective dimension, the right to a healthy environment constitutes a universal value that is owed to both present and future generations**”.⁸⁶

To make protection effective, it is imperative to precisely define the nature and scope of the protected category of future generations. The Court has previously dealt with the “rights of the unborn” in the context of the IVF case,⁸⁷ where it disagreed with the Costa Rican Supreme Court’s view that the human embryo was a person from the time of conception and, thus, could not be treated as an object. This is to say that the Costa Rican Supreme Court argued that unborn individuals are genuine subjects of protection comparable to the living, a position which, in the context of the case, the Court considered seriously jeopardise the bodily autonomy of women. Indeed, the Inter-American Court decided that an embryo alone has no personality and only achieves the status of a “person” following implantation.⁸⁸ In its analysis, the Court examined of all relevant international conventions and instruments on human rights (including the UNCRC)⁸⁹ and concluded that it could not infer an absolute protection of prenatal life or the life of the embryo.⁹⁰

The following points are important to note regarding the Court’s reasoning: first, the Court’s reasoning limits itself **to rejecting “the unborn” as subjects of protection**. This is to say that for all intents and purposes the Court does not consider the unborn to hold separate and distinct legal personality prior to the moment of conception; and second, the Court limited itself to this pronouncement to making **no mention of whether the unborn could, nevertheless, be considered as an object of protection**.

We, therefore, contend that a **conceptual differentiation** must be made between **“the unborn” as a subject of protection and “future generations” as objects of protection**. The former takes the position that the unborn are authentic holders of rights comparable to those which have already come into the world. The latter, in contrast, recognizes that future generations are not holders of rights but that they, nevertheless, have a **material interest in coming into a world where they may develop their personality freely and unencumbered by, in this case, environmental damage**. States, in this vein, must have an **obligation towards these future generations** in order to effectively ensure that the world they enter into is not one beset by cataclysm.

⁸⁵ I/A Court H.R., Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79.

⁸⁶ I/A Court H.R., Advisory Opinion OC-23/17, para. 59.

⁸⁷ I/A Court H.R., Case of Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2012. Series C No. 257.

⁸⁸ *Ibid.*, paras. 244, 264.

⁸⁹ *Ibid.*, paras. 229-233.

⁹⁰ *Ibid.*, para. 236, footnote 371 - Particular attention was paid to a 1980 decision by the European Court on Human Rights (ECtHR), which held that recognizing an absolute right to prenatal life would be contrary to the object and purpose of the European Convention on Human Rights (ECHR), because that would mean that the ‘unborn life’ of the foetus would be regarded as being of a higher value than the life of the pregnant woman”.

Naturally, this category of future generations should not be applicable in every situation: doing so would tacitly give credence to the arguments presented by Costa Rica in the *I.V.F.* case and risk substantially jeopardising the rights of the living.⁹¹ Its application should, instead, be confined to contexts where the diffuse nature of the prospective violations necessitates a more expansive protection in order to duly safeguard the interests of persons that are, may, or will be, affected by it. This more cautious approach to an expansive interpretation of the temporal scope of the Convention has already been adopted in the past by the Court when protecting future generations in indigenous communities' right to culture. In *Mayagna (Sumo) Awas Tingni Community* the Court noted the following:

“Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. **For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations**”.⁹²

There are a number of key points that may be taken from the above extract. First, the Court takes a casuistic approach to the resolution of each case, taking into account not only the material problems which may have affected the individual, but also how these fit into the broader features of a community or group. Second, the Court has, in the past, recognized that in certain circumstances, in order for the protection afforded by the Convention to have an *effet utile*, it is necessary to have a view towards future generations. And third, that this expansive protection is given as a function of the nature of the alleged violation and the contextual reverberations it may have, thus, tacitly delimiting its scope.

Given this prior practice this amicus would respectfully urge the Court to adopt a similar approach in the context of climate change. This would be warranted, not in the least, because of the nature of challenge as it has been described throughout this amicus. Climate change related matters are situations where the interests of past and future generations are perfectly aligned: both people living today and those that will come after us have an interest in ensuring that the planet is in liveable conditions. **In sum, we maintain that integrating the figure of future generations would not only be possible within the Court's existing case law but also appropriate in the light of the nature of climate change based human rights violations.**

⁹¹ This interpretation would also run contrary to General Provision 4(C) of the Maastricht Principles which stipulates the following: “Nothing in these Principles recognizes any rights of human embryos or fetuses to be born, nor does it recognize an obligation on any individual to give birth to another. These Principles may not be construed as accepting any interferences with the bodily autonomy of women, girls, and others who can become pregnant, including their actions and decisions around pregnancy or abortion and other sexual and reproductive health and rights.”

⁹² I/A Court H.R., Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, para. 149 (emphasis added).

With this in mind, we strongly urge the Court to continue to incorporate the pronouncements UNCRC into its own *corpus juris* and to apply a similar approach to the Committee’s most recent General Comment No. 26 (2023), where it recognized the “principle of intergenerational equity and the interests of future generations”, adapting, as necessary, the pronouncements contained therein to the Latin-American reality.⁹³ The Committee referred to future generations, which find themselves in a position of extreme vulnerability in light of their inability to act on their own behalf; their interests are affected by the decisions of present generations and yet they are wholly unable to make their interests heard.

In line with the preceding argumentation this amicus maintains that future generations are **objects of protection in the specific context of the environmental emergency**. Thus, as an object of protection, we urge the Court to use the existence of this category in a similar manner to what is done with the protection of children: given the fact that the interests of future generations may be substantially affected it is incumbent on States to interpret all rights in the Convention through the lens of the interests of future generations when implementing legislation and/or other measures made with a view to curtailing the effects of climate change. The specific manner in which this may be done is discussed in a subsequent section.

To conclude, the definition of future generations is a collective object of protection which is composed of individuals who are not born yet. Incorporating the protected category of future generations into the Court’s approach would be the most appropriate pathway **to effectively account for the principle of intergenerational equity, thus compelling States, in their positive obligations, to duly account for the intertemporal nature of environmental degradation,** and the serious prejudice that future generations may suffer in the event that nothing is done.

IV.A.3 The Youth as a Subject of Protection

Throughout this amicus, extensive attention has been given to the protection that is owed to the youngest among us and those who are not yet born (children and future generations respectively; See Section II on the Factual Basis). At this point, however, it is relevant to explore what, if any, protection is owed to those that are above the age of 18 but who have not yet fully become a part of society. Indeed, when exploring the negative impacts of climate change, an analysis which excludes the youth as a class of individuals is wholly incomplete since it, once again, fails to take into account the transcendental impacts this phenomenon is poised to cause.

⁹³ “While the rights of children who are present on Earth require immediate urgent attention, the children constantly arriving are also entitled to the realization of their human rights to the maximum extent. Beyond their immediate obligations under the Convention with regard to the environment, States bear the responsibility for foreseeable environment-related threats arising as a result of their acts or omissions now, the full implications of which may not manifest for years or even decade (CRC, ‘General Comment No. 26’, para. 11).

Throughout its case law the Court has consistently indicated how “children exercise their own rights **progressively** as they develop a greater level of personal autonomy”.⁹⁴ This process, ostensibly, continues even after children become 18: this is to say that an 18–19-year-old, despite being vested with legal capacity, does not have the same level of access/understanding of their rights as someone above the age of 30. Indeed, it should be noted that between the ages of 18 and 25 most individuals are still heavily dependent on their parents and or other sources of support: oftentimes, at this point in life, individuals find themselves in higher education, undertaking professional training, or are otherwise at the beginning of their life project. This stage in life is characterised by uncertainty, dependence, and importantly, a diminished capacity to effectively engage in the decision-making processes of the State in more official capacities. Indeed, the primary means which this group of individuals has to pressure the State, and/or to make their opinions heard, is through the channels offered by civil society given that employment in State institutions, or the possibility to run for public office, is oft subject to educational and, importantly, age restrictions, meaning that this group would only be able to participate effectively (that is to have their opinion taken seriously) after completing their education and reaching a minimum level of “maturity”. One would be amiss to ignore the disqualifications that are often levied against the youth when mobilising in response to the climate emergency. One characteristic example can be seen when Greta Thunberg, after a poignant UN speech, was staunchly criticised by media outlets and government officials.⁹⁵ These criticisms have a unifying throughline: the opinions of the youth are not treated with the same respect as the opinions of, say, someone above the age of 30 due their relative lack of experience, professional training and “maturity”. We are, thus, presented with a situation where though the youth cannot be treated in the same way as children having reached the age of maturity of 18, they are, nevertheless, functionally treated as children because of their youth. The “what do you know about the world”-argument often levied at youth seeking to have their interests heard is used as a means of slighting the legitimate concerns the youth has with their continued existence on planet earth.

Thus, in light of Articles 1 and 24 of the Convention, this state of affairs engenders an affectation of the youth’s rights to enjoy all the rights of the Convention in conditions of equality. Indeed, we augur that the effects of **the climate emergency can be put on a sliding scale of impact**: children and future generations will obviously be affected the worst given, first, the fact that they will need to spend a higher proportion of their lives reckoning with the effects of climate change when compared to older generations (say 30 and above), and second, given their lack of legal personality until they reach the age of maturity which effectively deprives them of having their opinions heard; the youth, in this sense, would be further along the scale of impact but by finding themselves at the beginning of their life plan can be said to, first, be similarly forced to reckon with the full extent of the climate crisis in the course of their lives, and second, are similarly put in a position where

⁹⁴ I/A Court H.R., Rights and guarantees of children in the context of migration and/or in need of international protection. Advisory Opinion OC-21/14 of August 19, 2014. Series A No. 21, para. 66. Emphasis added.

⁹⁵ For instance, Michael Knowles, a Fox news pundit at the time, called Thunberg a “a mentally ill Swedish child” (<https://www.nytimes.com/2019/09/24/climate/greta-thunberg-un.html>) while former president Donald Trump, in a tweet dated December 12, 2019, noted “So ridiculous. Greta must work on her Anger Management problem, then go to a good old fashioned movie with a friend! Chill Greta, Chill!” (<https://www.nbcnews.com/politics/donald-trump/trump-mocks-greta-thunberg-after-she-wins-time-person-year-n1100531>).

decisions being made for them be it as a result of legal limitations to access office or as a result of cultural currents which disqualify the opinions of the youth because of their lack of ‘maturity’.

No comprehensive pronouncement has been made by the Court on this front. To this end, however, and attending to the Court’s jurisprudence on the concept of “vulnerability”,⁹⁶ the Inter-American Court has been able to take advantage of the principle of non-discrimination (Article 1(1))⁹⁷ in order to end structural inequalities in which individuals and/or groups have suffered from historical, sociological, economic, or even political “discriminatory” marginalisation.⁹⁸ In this context, vulnerability reinforces the game of the right to non-discrimination by allowing a host of positive obligations to be imposed on States. As a result, vulnerability implies “the adoption of special measures to ensure their protection” (Article 19 American Convention). In this context, the Court has had no difficulty in establishing a substantive notion of equality, stating that “it is essential to recognize and respect the differences in treatment which correspond to different situations”.⁹⁹ This vision of equality was also developed and even conceptualised in AO 17:¹⁰⁰ the Court has notably asserted that “there are certain inequalities which may lead legitimately to inequalities in legal treatment without thwarting justice” (para. 46) and that “under Articles 1 and 24 of the American Convention, States cannot establish differences that lack an objective and reasonable justification and which do not have as their sole purpose, ultimately, the exercise of rights enshrined therein” (para. 55).

Though the youth cannot be said to be vulnerable in the same way as a child is, they may, nevertheless, be considered vulnerable vis-a-vis older generations - as already noted, in section II of this brief, the levels of risk and vulnerability increase in correspondence to one’s date of birth. Indeed, the youth around the world currently finds themselves in unprecedented levels of precarity – employment or otherwise – which is only compounded when we consider the intersectional composition of this group which is composed of indigenous persons, persons residing in disconnected communities, LGBTQ+ youth, among others. Bearing in mind the fact that this group, too, finds itself poised to reckon with the effects of the climate catastrophe, and that they continue to find themselves in situations of dependence or precarity, the Court should interpret the Convention, bearing in mind the vulnerability and majority of this group in the context of the climate crisis. Being that they are outside of the protected category of “child” (and are not a part of future generations as

⁹⁶ As for doctrinal references on vulnerability, see M. A. Fineman, ‘The Vulnerable Subject: Anchoring Equality in the Human Condition’, *Yale Journal of Law and Feminism*, 9 (2008–2009); M. A. Fineman, A. Grear (eds), *Vulnerability: Reflections for a New Ethical Foundation for Law and Politics*, Ashgate, 2013; L. Burgorgue-Larsen (ed), *La vulnérabilité saisie par les juges en Europe*, Paris, Pedone, 2014 ; C. Boiteux-Picheral (ed), *La vulnérabilité en droit européen des droits de l’homme*, Brussels, 2019.

⁹⁷ E. Ferrer Mac-Gregor v. M. Pelayo Möller, ‘Article 1’, *Convención americana de derechos humanos. Comentario*, C. Steiner, P. Uribe (eds), Konrad Adenauer Stiftung, 2014, pp. 44–68; Caballero Ochoa J.L., Aguilar Contreras M., ‘New Trends on the Right to Non-Discrimination in the Inter-American System of Human Rights’, 2016, *Inter-Am. & Eur. Hum. Rts. J.*, pp. 80-90.

⁹⁸ Lourdes Peroni and Alexandra Timmer make no secret of their attraction to a human rights framework in which vulnerability plays an essential role. They are, however, nevertheless aware of the risks inherent in the unchecked judicial use of vulnerability understood through ‘groups’ (*the concept of vulnerable groups*). They identify the risks of essentialization, stigmatisation and paternalism—see ‘Vulnerable groups: The Promise of an Emerging Concept in European Human Rights Convention Law’, *ICON*, vol. 11, no 4, 2013, pp. 1056–1085.

⁹⁹ I/A Court H.R., Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala, para. 96.

¹⁰⁰ I/A Court H.R., Advisory Opinion OC-17/02.

defined in this text), it is improper to identify this group as an object of protection, rather, they are full subjects of protection who, nevertheless, find themselves in a vulnerable situation which, *in concreto*, requires States to consider their input in conditions of equality.

Thus, for the purposes of this text, we strongly recommend that the Court ought to maintain that the youth, as a vulnerable group, may be defined as any individual between the ages of 18-30, and we respectfully urge the Court to duly account for this group when addressing the questions presented.

IV.A.4 Incorporation of the Protected Groups into the Court's *Corpus Juris*

In light of the foregoing analysis, we recommend that the Court:

1. Develop extensive case law on the manner in which **all Articles of the Convention must be interpreted in the light of Article 19 and the best interests of the child and concretize** how exactly this protection must operate in the form of positive obligations addressing climate change;
2. Recognize **future generations as a collective object of protection as a means of integrating the principle of intergenerational equity into the Inter-American *corpus juris***; and
3. Incorporate the **youth as a vulnerable group in the context of the climate emergency** given their relative lack of 'maturity', into its *corpus juris*.
4. Establish obligations keeping in mind that **the climate emergency can be put on a sliding scale of impact in respect to one's date of birth.**

We, therefore, respectfully, **urge that the Court interpret all Articles of the Convention with a view to the differentiated impact and vulnerability these groups operate under is the best way to make due on the promise of the environment being a "universal value that is owed to both present and future generations"**.¹⁰¹

IV.B Substantive Obligations to Adopt Timely and Effective Measures with Regard to the Climate Emergency

This section elucidates the existing obligations contained in the ACHR in relation to environmental matters. Before this, however, it must be noted that the Court has recently asserted its inherent power to reformulate the questions presented to it by the requesting organ or State. This is to say that in the context of a request, the Court has broad discretion to evaluate the topics of its choosing thus, *de facto*, expanding its competence *ratione materiae* - with the two opinions on *Gender Identity* and the *Environment* being key illustrations of this practice.¹⁰² This is to say that though the request formulated by Chile and Colombia makes

¹⁰¹ I/A Court H.R., Advisory Opinion OC-23/17, para. 59. Emphasis added.

¹⁰² IACtHR, August 19, 2014, *Rights and guarantees of children in the context of migration and/or in need of international protection*, Series A No. 21/14, para 30; IACtHR, February 26, 2016, *Entitlement of legal entities to*

reference to only Articles 1, 4, 5, 11, and 19 of the Convention, the Court, nevertheless, has the discretion to expand the scope of its evaluation to cover articles not contained in the request. In this specific case we, thus, open this section arguing in favour of such an expansion to consider both Article 2 (on the obligation to give legal effects to the provisions of the convention) and Article 26 (on the right to progressive development and more specifically the right to a healthy environment) since we consider that an analysis of these, in tandem with the aforementioned rights, will give the most complete vision of the obligations incumbent on states in relation to the protection of the environment. This, further, gives the Court the opportunity to clarify how Article 19 is to affect the interpretation of the articles cited in the request as well as Articles 2 and 26 in order to afford differentiated and tailored protection to the aforementioned categories.

IV.B.1 States' Positive Obligations to Protect and to Prevent

The Court has thus far only had **one** occasion to comprehensively expressly pronounce itself on the interpretation of Articles 4 and 5 in the context of environmental degradation in two instances.¹⁰³ Nevertheless, the right to a healthy environment finds its origins in the Court's jurisprudence on indigenous communities,¹⁰⁴ where, progressively, the Court has come to set in place a number of distinct standards of protection, some of which are highlighted below.

First, continuing on its trajectory set in the *Kichwa de Sarayaku* case, in AO 23 the Court has expressly pronounced itself on the right to a healthy environment in both its individual and collective dimensions - importantly, owed to both present and future generations, which is connected to other rights and fundamental "for the existence of humankind".¹⁰⁵

hold rights under the Inter-American Human Rights System, Series A No. 22/16, para. 24; IACtHR, November 15, 2017, *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity)*, Series A No. 23/17, para. 27; IACtHR, November 24, 2017, *Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights)*, Series A No. 24/17, para. 25.

¹⁰³ Namely in I/A Court H.R., Advisory Opinion OC-23/17; I/A Court H.R., Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina. Merits, Reparations and Costs. Judgment of February 6, 2020. Series C No. 400; The Court's resolution on the case of *La Oroya* is still pending as of writing this document.

¹⁰⁴ See for instance: I/A Court H.R., Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125; I/A Court H.R., Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146; I/A Court H.R., Case of the Saramaka People. v. Suriname. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172; I/A Court H.R., Case of the Xákmok Kásek Indigenous Community. v. Paraguay. Merits, Reparations and Costs. Judgment of August 24, 2010. Series C No. 214; I/A Court H.R., Case of Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245; I/A Court H.R., Case of the Community Garifuna Triunfo de la Cruz and its members v. Honduras. Merits, Reparations and Costs. Judgment of October 8, 2015. Series C No. 305; I/A Court H.R., Case of the Kaliña and Lokono Peoples v. Suriname. Merits, Reparations and Costs. Judgment of November 25, 2015. Series C No. 309.

¹⁰⁵ I/A Court H.R., Advisory Opinion OC-23/17, para. 59.

Hence, the right to a healthy environment is, and must, be considered as both an individual right, of which all individuals are to be beneficiaries, but also, in light of its transcendental and widespread impacts, has a **distinct collective dimension of protection, which extends to the protection of future generations.**

Second, throughout this section we analyse the obligations incumbent on States through the lens of the right to a healthy environment given the interdependence and indivisibility of civil and political rights, on the one hand, and economic, social, cultural, and environmental rights (ESCER) on the other.¹⁰⁶ The Court has further “recognized the existence of an undeniable relationship between the protection of the environment and the realisation of other human rights, in that environmental degradation and the adverse effects of climate change affect the real enjoyment of human rights” and the close relationship between ESCER – which include the right to a healthy environment – and of civil and political rights and vital importance of protection all these rights.¹⁰⁷

Thus, a complete analysis of the obligations of States necessitates a **holistic interpretation**, which attends to the exigencies of a given situation. In the context of climate change, **Articles 4, 5, 11, and 19 of the Convention may only be given an *effet utile* if interpreted through the lens of the most specific and tailored right contemplated by the Convention: Article 26 on the right to a healthy environment.**

These considerations being made, in AO 23, the Court detailed the duties derived from Articles 4 and 5 in the context of environmental protection. Regarding the first of these, the Court stated that States must not only refrain from arbitrarily depriving people of their life (negative obligation), but also **“take all appropriate measures to protect and preserve the right to life (positive obligation)”**.¹⁰⁸ Additionally, the Court emphasised the existence of “special duties that can be determined based on the particular needs for protection

¹⁰⁶ On more than one occasion since the landmark judgement of *Lagos del Campo*, the Court has reiterated “the interdependence and indivisibility of the civil and political rights, and the economic, social and cultural rights, because they should be understood integrally and comprehensively as human rights, with no order of precedence, that are enforceable in all cases before the competent authorities (I/A Court H.R., Advisory Opinion OC-23/17, para. 57; I/A Court H.R., Case of Acevedo Buendía et al. (“Discharged and Retired Employees of the Comptroller”) v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009. Series C No. 198, para 101; I/A Court H.R., Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 340, para 141.

¹⁰⁷ I/A Court H.R., Advisory Opinion OC-23/17, para. 47.

¹⁰⁸ *Ibid.*, para. 108; see also I/A Court H.R., Case of Juan Humberto Sánchez v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 110; I/A Court H.R., Case of Ortiz Hernández et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 22, 2017. Series C No. 338, para. 100.

of the subject of law, due to either their personal conditions or specific situation”.¹⁰⁹ Even though the Court only speaks of “damage that has occurred” as opposed to damage that will occur, it goes on to explore duties of “**prevention**” which implies that these obligations operate before the occurrence of the damage and, thus, bind the State to take the necessary measures in order to ensure that said damage does not come to pass and **to protect current and future generations**. From the specific elements that the Court discussed, this section specifically addresses, first, the obligation of prevention and, second, the precautionary principle.

The principle of prevention, also a principle of international environmental law,¹¹⁰ has been adapted by the IACtHR to the context of human rights protection. To that end, the Court has noted that “[b]earing in mind that, frequently, it is not possible to restore the situation that existed before environmental damage occurred, prevention should be the main policy as regards environmental protection”.¹¹¹

Hence, **the duty to prevent harm, which is often irreversible, must apply whenever there is a risk that significant harm¹¹² may occur to the rights of individuals as a result of climate change.**¹¹³

Even though the Court considered it impossible to enumerate all measures, as they may vary according to the situation¹¹⁴ there are certain minimum measures States must take must implement, which include the following: (1) the obligation to regulate; (2) the obligation to supervise and monitor; (3) the obligation to require and approve environmental impact assessments; (4) the obligation to establish contingency plans; and (5) the obligation to mitigate when environmental damage has occurred¹¹⁵ - all of which should and do extend to the climate change emergency as well.

In regard to the obligations listed by the Court, what is so far lacking is an express clarification that - in line with the special protection regimes elaborate in the previous section - States must fulfil these obligations

¹⁰⁹ *Ibid.*, para. 155; see also I/A Court H.R., Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 111; I/A Court H.R., Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 329, para. 206.

¹¹⁰ In its classical, public international law, interpretation entails that States have the “responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction” (Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, Río de Janeiro, June 3 to 14 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. 1), Principle 2, and Stockholm Declaration on the Human Environment, United Nations Conference on the Human Environment, Stockholm, June 5 to 16, 1972, UN Doc. A/CONF.48/14/Rev.1, Principle 21). See also Cf. ICJ, Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay). Judgment of April 20, 2010, para. 101. See also, Court of Arbitration, Trail Smelter Case (United States v. Canada). Decision of April 16, 1938, and March 11, 1941, p. 1965, and ICJ, Corfu Channel case (The United Kingdom v. Albania). Judgment of April 9, 1949, p. 22.

¹¹¹ I/A Court H.R., Advisory Opinion OC-23/17, para. 130.

¹¹² *Ibid.*, para. 144.

¹¹³ See also section V.B.4.

¹¹⁴ *Ibid.*, para. 144; see also I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 175; I/A Court H.R., Case of the “Five Pensioners” v. Peru. Merits, Reparations and Costs. Judgment of February 28, 2003. Series C No. 98, para. 126.

¹¹⁵ I/A Court H.R., Advisory Opinion OC-23/17, para. 145.

taking into account the vulnerabilities of children, youth, and future generations and with a view towards granting them enhanced protection. This is particularly relevant in relation to the obligations to regulate, to supervise and monitor, and to require and approve environmental impact assessments - all of which should be done with a view towards vulnerable groups and, especially, with a view towards children, youth, and future generations.

Hence, it is strongly recommended that the Court specify that **enhanced protection for children, youth, and future generations in relation to climate change is to be incorporated in relation States' positive obligations**, and, in particular, in regard to the obligations to regulate, to supervise and monitor, and to require and approve environmental impact assessments.

In AO No. 23 the Court noted that, in line with the precautionary principle the Court is under an obligation to seek “the ‘best perspective’ for the protection of the individual”¹¹⁶ and that, therefore, “States must act in keeping with the precautionary principle in order to protect the rights to life and to personal integrity in cases where there are plausible indications that an activity could result in severe and irreversible damage to the environment, even in the absence of scientific certainty”. Hence, they must act with due caution and “take ‘effective’ measures to prevent severe or irreversible damage”.¹¹⁷

This exigency of the Court to seek the **“best perspective” for the protection of the individual** opens the door for the incorporation of Article 19 and a more holistic interpretation of the obligations incumbent on States **to take measures of protection with a view towards protecting particularly vulnerable groups as are children, youth, and future generations.**

Indeed, the development of the right to a healthy environment holds a number of *lacunae*, which the Court may, on occasion of the present advisory opinion, seek to close in order to ensure the most comprehensive protection possible. The first of these *lacunae* can be seen in the situations which the Court has primarily dealt with: first, cases where the protection of the environment was an incidental matter to the protection of other rights;¹¹⁸ and second, these cases have only dealt with instances where the damage being alleged has already occurred, as is the case of *Lhaka Honhat* and *La Oroya*, meaning that analysis has been made by the Court in regards to damages that will only fully materialise in 15-20 years. Regarding this last point it is important to note that even AO 23 was elaborated in response to the degradation of the ecosystems in the Gran Caribe region as a result of large infrastructure projects - that is, in response to a specific project with concrete potential impacts.

¹¹⁶ *Ibid.*, para. 180.

¹¹⁷ *Ibid.*, para. 180.

¹¹⁸ For instance, in the case with the right to culture enjoyed by indigenous communities (See in particular I/A Court H.R., Case of the Kaliña and Lokono Peoples v. Suriname. Merits, Reparations and Costs. Judgment of November 25, 2015. Series C No. 309).

The Court is not alone in this predicament. Indeed, both the European Court of Human Rights¹¹⁹ and the United Nations Human Rights Committee,¹²⁰ are yet to address a case where the general degradation of the environment was alleged to have caused a human rights violation. Turning our attention back to the Inter-American Court, it is important to note that the measures thus described in AO 23 can be characterised as being aimed at ensuring that novel projects and/or other polluting activity are done in a way that will protect, or minimise adverse impact to, the environment. Nevertheless, these principles elaborated can be taken as a starting point **for the full exploration of minimum guarantees necessary to address the diffuse and long-haul nature of climate change.** There is an imminent need to specify what obligations are incumbent on States to prevent the harm that may result from such a general long-term degradation of the environment. Added to this, as already discussed, no consideration is given to the differentiated protection that is owed to the certain vulnerable group: children, youth, and future generations.

Thus, this amicus respectfully urges the Court **to provide greater clarity**, first on **how States' obligations may be modulated in response to a general and long-term degradation of the environment**, and second, **how these obligations must be interpreted through the lens of the vulnerability which children, youth, and future generations** operate in the context of the climate emergency.

IV.B.2 How Existing Obligations Are to Be Tempered by the Status of these Groups as Vulnerable in the Context of the Climate Crisis

With a view towards assisting the Court in concretizing the obligations of States in the context of the climate crisis this section is devoted to presenting a series of standards and principles which may aid in its analysis.

First and foremost, we strongly urge the Court to incorporate the standards set by the CRC in their novel General Comment No. 26 on children's rights and the environment, with a special focus on climate change into the Court's *corpus juris*. Throughout the life of the Inter-American system the Court has made extensive use of the definitions provided by the universal system of human rights protection and, more

¹¹⁹ Indeed, much of the European Court's case law only addresses the potential violations to Article 8 of the ECHR caused as a result of concrete projects or polluting activities (See, *inter alia*, ECtHR, López Ostra v. Spain, (6 December 1994, app. no. 16798/90), paras. 51, 55 and 58; ECtHR, Guerra and Others v. Italy, (19 February 1998, app. no. 14967/89), paras. 57, 58 and 60; ECtHR, Hatton and Others v. The United Kingdom (8 July 2003, app. no. 36022/97), paras. 96, 98, 104, 118 and 129; ECtHR, Taşkin and Others v. Turkey (10 November 2004, app. no. 46117/99), paras. 113, 116, 117, 119 and 126; ECtHR, Fadeyeva v. Russia (9 June 2005, app. no. 55723/00), paras. 68 to 70, 89, 92 and 134; ECtHR, Roche v. The United Kingdom (19 October 2005, app. no. 32555/96), paras. 159, 160 and 169; ECtHR, Giacomelli v. Italy (2 November 2006, app. no. 59909/00), paras. 76 to 82, 97 and 98; ECtHR, Tătar v. Romania (28 January 2009, app. no. 67021/01), paras. 85 to 88, 97, 107, 113 and 125, and ECtHR, Di Sarno and Others v. Italy (10 January 2012, app. no. 30765/08), paras. 104 to 110 and 113).

¹²⁰ The Human Rights Committee for its part, has been presented with some cases on the right to a healthy environment but have not delved extensively into the obligations incumbent on States regarding the right to life or personal integrity. (See, *inter alia*: UNHRC, Ione Teitiota v. New Zealand (n 5); Pereira Benega v Paraguay, Dictamen aprobado por el Comité a tenor del artículo 5, párrafo 4, del Protocolo Facultativo, respecto de la comunicación núm. 2552/2015; UNHRC, Daniel Billy et al. v. Australia (n 5)).

specifically, the UNCRC and the pronouncements of the corresponding Committee. To this end, the Court has previously stated that “[b]oth the American Convention and the Convention on the Rights of the Child form part of a very comprehensive international corpus juris for the protection of the child that should help this Court establish the content and scope of the general provision established in Article 19 of the American Convention”,¹²¹ thus establishing the CRC as an authoritative interpretative tool for the content and scope of Article 19. Indeed, in both *Villagrán Morales*¹²² and Advisory Opinion 17,¹²³ the Court noted that the universal ratification of the UNCRC by member States of the OAS “shows a broad international consensus (*opinio iuris communis*) in favour of the principles and institutions set forth in that instrument, which reflects current development of this matter”.¹²⁴ To this end, and given the uniqueness and novelty of this General Comment, the Court is strongly advised to incorporate said standards into its own jurisprudence to afford the necessary levels of protection to these vulnerable groups in the midst of this emergency.

First, it is important to note that the Committee considers that an enhanced level of protection is owed to future generations and, arguably, the youth. The driving forces behind the position of the Committee were the comments received in consultation with children who expressed their deep concerns over the fact that decisions were being made for them.¹²⁵ Incorporating elements of this GC is clearly conducive to the enhanced protection of the interests of future generations as objects of protection, but also opens the door for the protection of the youth as a vulnerable group affected by climate change. As was argued prior, the situation of dependency which individuals presently find themselves between the ages of 18-30, paired with a cultural current which does not respect the inputs of young adults in light of their “immaturity” and inexperience, makes it incumbent on organs of human rights protection to afford these individuals a specific level of protection.

We, therefore, respectfully urge the Court to similarly **recognize the principle of intergenerational equity** and to operationalize this principle by **incorporating future generations and the youth as protected categories** under the American Convention.

Turning their attention to the principle of the best interests of the child, the Committee emphasised that the best interest of the child standard should be taken into account in any environmental decision,¹²⁶ which “should include an assessment of the specific circumstances that place children uniquely at risk in the context of

¹²¹ *Ibid.*, para. 194.

¹²² *Ibid.*, para. 188.

¹²³ I/A Court H.R., Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No.17, paras. 38 & 42

¹²⁴ *Ibid.*, para 29, in a similar vein see I/A Court H.R., Case of the Gómez Paquiyauri Brothers v. Peru. Merits, Reparations and Costs. Judgment of July 8, 2004. Series C No. 110, paras. 164-171

¹²⁵ “The environment is our life.” **“Adults [should] stop making decisions for the future they won’t experience.** [We] are the key means [of] solving climate change, as it is [our] lives at stake.” “I would like to tell [adults] that we are the future generations and, if you destroy the planet, where will we live?!” (UNCRC, ‘General Comment No. 26’, para. 3 emphasis added).

¹²⁶ *Ibid.*, para. 16.

environmental harm”.¹²⁷ Additionally, it emphasised that it is essential to promote the development of child impact assessments in order to ensure that the special vulnerability of children, and other groups, are taken into account when implementing environmental policy¹²⁸ and which should “incorporate a special regard for the differential impact of environmental decisions on children, in particular young children and other groups of children most at risk, as measured against all relevant rights under the Convention, including short-, medium- and long-term, combined and irreversible impacts, interactive and cumulative impacts and impacts in the different stages of childhood. should be required”.¹²⁹ Hence, this highlights the need for an **intergenerational impact assessment** such that the interests of all groups placed in a special position of vulnerability by climate change, i.e. children, youth, and future generations, are duly accounted for.

Regarding the right to life, survival and development, the Committee noted States had obligations to protect children from foreseeable deaths and threats to their lives caused by acts or omissions, as well as activities from business actors¹³⁰ due to the fact that States’ Article 6 obligations apply to structural and long-term challenges arising from environmental conditions” which, thus, require special measures of protection for children and groups in vulnerable situations.¹³¹ The crux of the need for such special protection is that environmental degradation “jeopardizes children’s ability to achieve their full developmental potential, with implications for a wide range of other rights under the Convention” as a result of the inherent link between the development of children and the environment in which they live.¹³²

Furthermore, the Committee contemplated the right to a healthy environment which it considers implicit in Articles 6, 24, 27, 28 and 29 of the CRC (Article 26 and related articles under the ACHR).¹³³ Importantly the Committee went on to list specific actions which States must take in order to effectively protect this right, relating to air quality, access to water and sanitation, agriculture and fisheries, the use of coal, oil, and natural gas, biodiversity, marine pollution, and toxic substances.¹³⁴ **We humbly urge the Court to incorporate these requirements into its *corpus juris* given the transcendental, and indeed existential, risk which climate change poses.**

Added to this, the Maastricht Principles are similarly instructive and a viable way to modulate the obligations thus described to account for the interests of future generations. More specifically, provisions 7 and 9 of these Principles, which detail State’s intragenerational and intergenerational human rights obligations as well as prevention and precaution obligations. Additionally, provision 8 details the obligation of each generation on Earth to act as trustees of the Earth for future generations and, thus, to protect and sustain its natural and cultural heritage for the future generations to come.¹³⁵ Moreover, in addition to the principles elaborated by the CRC, the Maastricht Principles specify three concomitant obligations on States intended to protect the rights of

¹²⁷ *Ibid.*, para.17.

¹²⁸ *Ibid.*, para. 18, see also para. 75.

¹²⁹ *Ibid.*, para. 76.

¹³⁰ *Ibid.*, para. 20.

¹³¹ *Ibid.*, para. 21.

¹³² *Ibid.*, para. 23.

¹³³ *Ibid.*, para. 63.

¹³⁴ *Ibid.*, para. 65.

¹³⁵ For more details, please refer to provisions 7-9 of the Maastricht Principles.

future generations and measures to be implemented to meet these obligations: **the obligation to respect; the obligation to protect; and the obligation to fulfil the rights of future generations.**¹³⁶ Important to emphasise is the principles refer to a “foreseeable or reasonably foreseeable” standard¹³⁷ in regard to the obligations, which is further elaborated upon in the upcoming section. Incorporating elements of the Maastricht Principles could prove useful for the Court when delineating the obligations owed to future generations.

At this juncture we strongly urge the Court **to incorporate these provisions established by the Maastricht Principles into its *corpus juris*.** In particular, the Court should pay special attention to the **principle of trusteeship and of intergenerational duties**, serving as a concrete basis to understand future generations as objects of protection and the obligations **to respect, to protect, and to fulfil** the rights of future generations. Additionally, we would request that the Court adapt and implement the measures foreseen by the principles, being that in doing so the Court would be able **to distinguish between the specific and differentiated protection** which is owed to children from the protection which is owed to future generations under the Inter-American system. Similarly, and attending to our argument on the necessity to protect the rights of the youth, we would request that the Court adapt these principles such that they may be also applicable to this group.

The incorporation of the elaborated standards into the Court’s *corpus juris* may be the most effective way to close the *lacunae* identified above. The question remains as to what specific actions States could be required to take in order to fulfil their protection and prevention obligations in a way that pays due regard to the vulnerable groups thus presented. The following points are examples for specific recommendations on how exactly States could pay special regard to these protected groups as part of their differentiated responsibilities:

1. Adopt and Implement Climate Action Plans:

States should be directed to develop and implement comprehensive climate action policies that prioritise the protection of human rights, with a special focus on children, youth, and future generations. These plans should include GHG emission reduction goals and measures aimed at mitigating and adapting to climate change while integrating intergenerational equity. They should also include strategies on mitigation, adaptation, finance, technology transfer, and capacity building.

2. Legislate for Intergenerational Equity:

States should enact legislation explicitly recognizing the principle of intergenerational equity within their domestic legal systems. This legislation should require that climate policies and decisions take into account the long-term impact on future generations.

3. Build Institutional Mechanisms:

¹³⁶ For more details, please refer to provisions 13-20 of the Maastricht Principles.

¹³⁷ *Ibid.*, provision 16.

States should establish independent institutions or commissions tasked with safeguarding the rights and interests of future generations. This body would monitor national policies, ensuring they are in line with intergenerational equity principles. The institution could also serve as a platform for youth participation in decision-making processes concerning climate change.

4. Establish Independent Climate Commission:

States should establish an independent climate commission or authorities responsible for monitoring and assessing climate policies and their impact on human rights, with a special focus on monitoring impacts on most vulnerable groups such as children, youth, future generation, among other minority communities. The commission should have the authority to recommend changes and ensure accountability. The commissions should allow youth and other affected groups to be represented during decision-making.

5. Introduce Intergenerational Impact Assessments:

Similar to Environmental Impact Assessments (EIA), States should introduce Intergenerational Impact Assessments (IIA) that analyse the long-term effects of policies, projects, and laws on future generation.

6. Report to Regional Bodies:

Require States to provide regular reports with the Commission's findings, to the Inter-American Commission on Human Rights, on their efforts to protect the human rights of children, youth, and future generations in the context of climate change.

7. Allocate Adequate Resources:

Ensure that States set up an 'Climate Emergency Fund' and allocate adequate financial resources under this fund to protect human rights, including those of future generations. This includes funding for climate mitigation, adaptation, and resilience-building measures.

8. Transparency and Public Participation:

States should ensure that children, youth, and civil society organisations representing them have adequate opportunities to participate in decision-making processes on climate change. States should ensure transparency in climate policymaking and ensure meaningful public participation, including the active involvement of children and youth, in decision-making processes related to climate policies and projects. This can be ensured through establishing platforms or forums specifically for youth consultations on climate policies.

9. Collaboration and Information Sharing:

Encourage States to collaborate regionally and internationally to address the global nature of climate change. Facilitate information sharing on best practices such as equity in access to benefit sharing, technology transfer, capacity building while integrating intergenerational equity.

10. Strengthen Environmental Education:

States should promote environmental education at all levels of the education system. This education should include awareness of climate change and its impacts on the social, economic, political development of human rights.

To conclude, the Court, in its various pronouncements, has taken great care to ensure that all individuals receive the highest standard of protection when a violation to their human rights may emerge as a result of polluting activities. However, there are crucial gaps in the Court's approach; namely, the Court has yet to consider the obligations incumbent on States in regards to a general degradation of the environment; and that the Court's previous pronouncements do not contemplate children, youth, and future generations within the measures required of states to comply with their obligations. General Comment No. 26 of the Committee on the Rights of the Child and the Maastricht Principles are uniquely poised to fill the gaps in the Court's approach indicating specific measures, principles, and standards with a view to protecting the rights of children, future generations, and the youth. Incorporating these standards, in line with previous Court practice and the *pro persona* principle enshrined in Article 29 of the Convention, would be a strategy to provide the most comprehensive, tailored, and elevated standard of protection which the Convention seeks to ensure.

To summarise these principles: States must refrain from causing climate change related harm and to protect children, youth, and future generations against reasonably foreseeable climate change-related damage, paying due regard to the precautionary principle; they must respect, protect, and fulfil the rights of children and the youth in relation to the environment, and take urgent, deliberate, specific and targeted steps towards achieving the full and effective enjoyment of these rights; States must likewise take steps to ensure that the world into which future generations enter into is such that they are able to plainly and freely enjoy their rights; they must devote significant and wide-ranging resources to realise said rights and to evaluate how the rights of future generations may be affected if concerted action is not taken; and they have the duty to collect the necessary data and research in regard to present and future climate change related harm.¹³⁸

This amicus also strongly encourages the Court to consider incorporating the following: that the obligation to supervise and monitor should be understood in reference to the Maastricht Principles and General Comment No. 26 of the CRC; that the Court adopt and adapt the specific measures contained in both General Comment No. 26 of the CRC and the Maastricht Principles to the exigencies of the Latin American reality; the tempering of the obligation to require environmental impact assessments such that an additional intergenerational impact assessment is conducted whenever polluting activity may or already has taken place; the incorporation to the aforementioned recommendations for implementation in regard to their obligations; and, finally, to consider the principles of best interest of the child, prevention, trusteeship, and intergenerational equity as the guiding interpretative principles when elucidating the obligations of States in the light of the climate emergency.

Only through the adoption of these standards will it be possible to temper the obligations that already exist in the Inter-American system to duly account for the interests that the described vulnerable groups have in relation to the climate emergency. In many ways these standards simply complement the pre-existing requirements of preventative measures and observance of the principle of precaution and could, thus, be useful to imbue the Inter-American Court's approach with an affinity to the interests and rights of children, youth,

¹³⁸ For more details, please refer to paragraphs 68-74 of the Advisory Opinion.

and future generations. Thus, we humbly request that the Court adopt these standards into its *corpus juris* as a means of closing the *lacunae* described.

V. Intertemporal Obstacles to Human Rights-Based Climate Change Litigation

Climate change is a unique phenomenon that poses cross-cutting legal challenges, especially in relation to its **uniquely intertemporal dimension**. One of its major challenges is that the adverse impact and suffering incurred as a result of climate change can be deferred in a temporal sense of the meaning. Actions that have taken place decades ago are only now yielding an apparent effect on human society; actions that are being taken now will only be yielding such an effect in the future – although it should be noted that the timeframe for said impact is significantly decreasing. Nevertheless, the temporal delay of said harm creates a legal challenge for the purpose of rights-based climate change litigation and, thus, for the possibility of people to make their rights actionable and to stop the behaviour that will inevitably result in the degradation of the environment while this is still possible; we are rapidly “approaching a tipping point of foreseeable and irreversible catastrophic effects”.¹³⁹ To that end, one should ask oneself the following questions: i) should we really have to wait for suffering to occur before we can take action or should we be able to prevent it from happening in the first place?, and ii) can we justify waiting until the occurrence of harm, if by then the harm will be irreversible? According to the IPCC report, “there is a rapidly closing window of opportunity to secure a liveable and sustainable future for all”.¹⁴⁰ In order to preserve the rights of generations now and in the future, it is necessary for courts to implement a legal process that can accurately address these problems. As the CRC has made clear: “States bear the responsibility for foreseeable environment-related threats arising as a result of their acts or omissions now, the full implications of which may not manifest for years or even decades later”.¹⁴¹ To that end, this section discusses several pertinent legal issues that the Court is strongly advised to resolve and give clarity as part of its forthcoming Advisory Opinion. These are outlined in turn.

V.A Victim Status: the Notions of Violation and Harm

First and foremost, one of the major challenges to successful climate change litigation before most international and regional human rights organs - including within the Inter-American system of human rights protection – is the admissibility requirement of victim status. Traditionally, a victim may be seen as someone who has already suffered harm as a result of the violation of the State. However, the slow, but progressive, and eventually irreversible nature of climate change requires action to be taken before such harm has occurred. Indeed, this is one of the major hurdles many climate change cases are currently facing.¹⁴² Thus, in relation to climate change-related cases, standing should be relaxed, especially if due regard is to be given to children, youth, and, most of all, future generations.

From the Inter-American Convention’s admissibility requirements, two relevant notions can be derived: i) a violation must already have occurred, and ii) said violation must be infringing upon the rights of a

¹³⁹ UNCRC, *Sacchi et al. v. Argentina et al.* (dec.), para. 2.1.

¹⁴⁰ IPCC, 2023: Summary for Policymakers. In: *Climate Change 2023: Synthesis Report*, at C.1, p.24.

¹⁴¹ UNCRC, ‘General Comment No. 26’, paras. 83-84.

¹⁴² See, for instance, ECtHR, *Plan B. Earth and Others v. the United Kingdom* (01 December 2022, app. no. 36959/22) which was considered inadmissible as the applicants were considered to not have been sufficiently affected by the alleged breach; further see ECtHR, *Duarte Agostinho and Others v. Portugal and 32 Others*, (app. no. 39371/20).

specific individual, as opposed to the general population at large.¹⁴³ However, nothing in the requirements specifies what exactly constitutes a violation. According to Article 12 of the ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts occurs “when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character”. Notably nothing in Article 12 nor the commentary to it¹⁴⁴ suggests that a violation requires the past occurrence of harm; a violation is merely the failure of the State to uphold its international obligations.¹⁴⁵ In the light of the State’s positive obligations in relation to climate change - including their precautionary obligations - it is clear that, in general, States can breach such obligations without already having caused any harm. Of course, the Convention, in addition to the occurrence of a violation, requires that such violation has a direct causal link to a specific individual, the victim, in order for individual petitions to be admissible. However, there is no specification as to the temporal relation between the violation and the resulting harm, i.e. the length of time that may pass between the two. Consequently, only because the violation must have already occurred, this in no way also requires that the harm has also already materialised, only that it will do so at some point.

All of the above is to demonstrate the possibility for the Court to accept communications submitted by individuals **who have not yet suffered from any harm caused by the violation, but who are likely to do so in the future, i.e. “potential victims”**. Such consideration would be a right step towards achieving intergenerational equity and towards ensuring the future for generations to come.

¹⁴³ See, in particular, Article 44 ACHR: “any person or group of persons’ may lodge petitions ‘containing denunciations or complaints of violations’; Article 47 ACHR, which establishes that a communication will be determined inadmissible if it ‘does not state facts that tend to establish a violation of the rights guaranteed by’ it; and Article 46(1)(b): “b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment”. In relation to the latter, the Court has already clarified that a communication or a petition must allege “a concrete violation of the declared human rights of a specific individual” (I/A Court H.R., *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No.14, para. 45).

¹⁴⁴ The Commentary to the Article further explains that „[i]n the terms of article 12, the breach of an international obligation consists in the disconformity between the conduct required of the State by that obligation, and the conduct actually adopted by the State—i.e. between the requirements of international law and the facts of the matter” (Commentary to ILC Articles, *Yearbook of the International Law Commission*, 2001, vol. II(2), p. 54 (§2 commentary to art. 12).

¹⁴⁵ For further explanation see Evelyne Schmid and Véronique Boillet, Third party intervention under article 44(3) of the Rules of the European Court of Human Rights in *Verein KlimaSeniorinnen and others v. Switzerland* (Application No. 53600/20) – Submission for the Grand Chamber, available at: https://serval.unil.ch/en/notice/serval:BIB_A64D62947BC2, paras. 15-18.

V.B Victim Status: Potential Victim

The Court has already recognized potential victim status in certain instances or, at the very least, paved the way for recognition of such.¹⁴⁶ In the case of *Wong Ho Wing v. Peru*,¹⁴⁷ the Court has rather explicitly employed the notion of potential victims.¹⁴⁸ Even though it specifically related the use of potential victim status to the extradition, the same reasoning followed by the Court in this case can, and should, also be used in relation to climate change-related violations. In fact, nothing in the Court's explanation of why it thought it appropriate to decide the case – despite the fact that no harm had yet occurred – is only relevant to extradition cases. According to the Court, rendering a judgement in this case was justified in order “to prevent the occurrence of grave and irreparable harm” and because the State's treatment would be contrary to the victim's rights to life and personal integrity (para. 142). If this is true for extradition cases, it is most certainly true for the soon irreversible harm that will occur as a result of climate change, which will undoubtedly threaten the rights to life and personal integrity of entire populations and generations. Hence, the Court should continue to use the same standard it has developed in *Wong Ho Wing* and apply it to climate change cases, allowing for potential victims to claim potential violations of their rights, as long as this is necessary **“to prevent the occurrence of grave and irreparable harm”**.

The second important standard applied in this case is that the State's act would be internationally unlawful if it constituted a **“foreseeable risk”** to the applicant's rights (para. 142). The Court re-stated this by arguing that “the risk ‘must be real; in other words, it must be a foreseeable consequence’”. The Court thereby developed a causation requirement between the State's actions and the incurring harm under the standard of foreseeability.

¹⁴⁶ One such instance, is the case of self-executing laws, where the mere existence of such laws may constitute a violation of the Convention, whether or not they have already been applied to specific individuals (I/A Court H.R., Case of *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. Merits, Reparations and Costs. Judgment of June 21, 2002. Series C No. 94, paras. 116-117; I/A Court H.R., International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 36; I/A Court H.R., Case of *Suárez Rosero v. Ecuador*. Merits. Judgment of November 12, 1997. Series C No. 35, para. 98). The Court has on multiple occasions declared that amnesty laws are per se inadmissible with the Convention as a result of which they are declared to lack legal effect (I/A Court H.R., Case of *Barrios Altos v. Peru*. Merits. Judgment March 14, 2001. Series C No. 75, para. 44; I/A Court H.R., Case of *Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2010. Series C No. 219, para. 171; I/A Court H.R., Case *Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011 Series C No. 221, paras. 225f).

¹⁴⁷ I/A Court H.R., Case of *Wong Ho Wing v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2015. Series C No. 297.

¹⁴⁸ “[I]t is not normally for this Court to pronounce on the **existence of potential violations** of the Convention. However, when the **presumed victim** claims that, if he is expelled or, in this case, extradited, he would be subject to treatment contrary to his rights to life and personal integrity, it is necessary to ensure his rights and **to prevent the occurrence of grave and irreparable harm**. Since the ultimate aim of the Convention is the international protection of human rights, it must be permissible to analyze this type of case before the violation takes place. Therefore, the Court must rule **on the possibility that such harm may occur** if the person is extradited. Thus, since the extradition has not occurred yet (which would constitute the internationally unlawful act if a **foreseeable risk** to the rights of *Wong Ho Wing* existed), the Court must examine the State's responsibility conditionally, in order to determine whether or not there would be a violation of the rights to life and personal integrity of the presumed victim should he be extradited” (para. 142). Emphasis added.

As to the assessment of the level of severity required, according to the Strasbourg Principles of International Environmental Human Rights Law 2022 “the adverse effects of environmental harm on an alleged individual victim must attain a certain minimum level of severity”, but the assessment of such severity must **“take into account all the circumstances of the situation – taken cumulatively” and the general context of the environmental emergency** (para. 19). This amicus strongly urges to apply a similar test in the assessment of severity in order to adequately address the wide-ranging adverse consequences of climate change and to lower the burden of proof.

Consequently, potential victims’ petitions could be admissible as long as the State’s violation poses a foreseeable risk of causing grave and irreparable harm. This standard should be applied to allow potential victims of climate change related consequences, and environmental matters in general, to forward petitions. In fact, the Court may already have opened the door to do so in its Advisory Opinion OC-12/17,¹⁴⁹ where it referred to “[t]he potential victims of the negative consequences” activities under the jurisdiction of a State causing transboundary environmental harm (para. 102). This should be extended to future harm to allow for the admissibility of potential victims’ petitions. **The minimum level of severity of such harm should be assessed taking into account all the circumstances of the situation, taken cumulatively, including the general context of the environmental emergency.**

V.C The Immediacy Requirement and Reasonable Foreseeability

The Court has in the past used the criterion of imminence in several of its cases when establishing a State’s positive obligations in relation to the right to life,¹⁵⁰ following the European Court’s test developed in its decision in *Osman*.¹⁵¹ It continued to apply the same test in Advisory Opinion OC-12/17, requiring that “the authorities knew or should have known of the existence of a situation of real and *imminent* danger for the life of a specific individual or group of individuals and failed to take the necessary measures within their area of responsibility that could reasonably be expected to prevent or to avoid that danger, and (ii) that there was a causal link between the impact on life and integrity and the significant damage caused to the environment” (para. 120).¹⁵² The use of the term “immediate” poses a significant problem, depending on how exactly it is interpreted in the context of climate change-related litigation. If it is interpreted to be imposing a temporal requirement into the positive obligations of States, it could significantly hinder the possibility of holding States accountable for their contributions to climate change and the suffering caused as a result.

Instead, the Court should follow the interpretation used by the Dutch Supreme Court in the *Urgenda* case.¹⁵³ In said case, when interpreting the *Osman* test’s requirements of “real and immediate risk” of the damage

¹⁴⁹ I/A Court H.R., Advisory Opinion OC-23/17.

¹⁵⁰ See, in particular, I/A Court H.R., Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 124.

¹⁵¹ ECtHR, Case of Osman v. the United Kingdom (28 October 1998, app. no. 23452/95).

¹⁵² Emphasis added.

¹⁵³ Netherlands v Urgenda Foundation Hoge Raad der Nederlanden [Supreme Court of the Netherlands] (The Hague 20 December 2019) Case No 19/00135 ECLI:NL:HR: 2019:2006.

caused by climate change, which is imposed by the ECHR, the Dutch Supreme Court interpreted the term “immediate” in the following manner: “the term ‘immediate’ does not refer to imminence in the sense that the risk must materialise within a short period of time, but rather that the risk in question is directly threatening the persons involved. The protection of Article 2 ECHR also regards risks that may only materialise in the longer term” (para. 5.2.2).

Despite the clear wording of the test, there is a basis for a broader interpretation found within the Court’s case law. The IACtHR first applied the *Osman* test in the *Puerto Bello Massacre* case.¹⁵⁴ Nevertheless – as has been argued elsewhere¹⁵⁵ – despite formally incorporating the *Osman* test into the IACtHR’s jurisprudence, it did not strictly apply it. Instead, the Court simply considered that knowledge of the context of an ongoing threat to human rights to be sufficient to establish State responsibility, which is a lower threshold to meet.¹⁵⁶ Such an emphasis on the general context essentially requires “reasonableness and foreseeability” as opposed to specific knowledge of a temporally imminent event.¹⁵⁷ The Court and the Commission have similarly used the general context of violence in order to establish a State’s positive obligations in other cases.¹⁵⁸ Even though the Court has also quite strictly applied the *Osman* test¹⁵⁹ in the *Human Rights Defenders* case, two dissenting judges criticised such an approach as “excessively formalistic” and argued that “all the evidence should have been assessed as a whole, in light of the context of vulnerability that affected human rights defenders at the time of the events”.¹⁶⁰

The Court could further orient itself by the judgement of the Colombian Supreme Court in *Future Generations v Ministry of the Environment*.¹⁶¹ Here, the Supreme Court considered that the current phenomena caused by climate change¹⁶² resulted in “short, medium, and long term imminent and serious damage to the children, adolescents and adults” (p. 34). There are three important things to note. For one, the Supreme Court

¹⁵⁴ I/A Court H.R., Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140.

¹⁵⁵ Justine Bell-James, Briana Collins, ‘Human rights and climate change litigation: should temporal imminence form part of positive rights obligations?’, [2022] Journal of Human Rights and the Environment, 212, p. 225f.

¹⁵⁶ Justine Bell-James, Briana Collins, ‘Human rights and climate change litigation’, p. 225.

¹⁵⁷ *Ibid.*, p. 225.

¹⁵⁸ I/A Court H.R., Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Merits. Judgment of November 19, 1999. Series C No. 63; I/A Court H.R., Case of Valle Jaramillo et al. v. Colombia. Interpretation of the Judgment on the Merits, Reparations and Costs. Judgment of July 7, 2009. Series C No. 201, paras. 82-94; Inter-Am. Comm’n H.R., Jessica Gonzales v. United States, 2011, Report No. 80/11, Case 12.626, paras. 132-143; Inter-Am. Comm’n H.R., Maria de Penha v. Brazil, 2001, Report No. 54/01, Case 12.051, para. 56 “climate of violence”.

¹⁵⁹ See I/A Court H.R., Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205; I/A Court H.R., Case of Human Rights Defender et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 283.

¹⁶⁰ Joint Partially Dissenting Opinion of Judges Roberto F Caldas and Eduardo Errer Mac-Gregor Poisot in Human Rights Defender v Guatemala, para. 9.

¹⁶¹ Demanda Generaciones Futuras Minambiente (Unreported, Supreme Court of Colombia, Villabona J, 5 April 2018). An unofficial English translation is available at <<http://climatecasechart.com/non-us-case/future-generation-v-ministry-environment-others/>> .

¹⁶² “such as the excessive increase of temperatures, the thawing of the poles, the massive extinction of animal and plant species, the increasingly frequent occurrence of meteorological events and disasters outside margins previously considered normal” are “imminent dangers” (p. 15).

seemed to refer to the entire context of climate change rather than trying to single out specific instances, questioning whether those instances would pose an imminent danger. Second, the phrase “**long term imminent** and serious damage” (emphasis added) is *inter alia* using “long term” in order to describe the imminence of the situation, signalling that “imminent” is not to be interpreted in a temporal manner, but, most likely, should be interpreted to require a direct link to the victim, as suggested in *Urgenda*. Thirdly, the judgement is directly referring to the imminent danger these environmental factors are posing not only to current, but also to future generations.

The above discussion focused on the term “immediate” as employed by the Court in its AO No. 17. If this requirement were to be interpreted in a strict sense of the term in line with the *Osman* judgement this could result in the “threat of an increasingly insurmountable evidentiary burden”.¹⁶³ Hence, it is imperative for the Court to clarify what it meant with “immediate”, at least in the context of climate change-related litigation, which represents a diffused phenomenon and requires leeway to be given to account for its partially deferred consequences. In line with its case law, the Court should adopt a more flexible interpretation that allows for a contextual knowledge of the danger of climate change to suffice to establish States’ positive obligations. Additionally, the Court should interpret the term “immediate” in the same manner as the Dutch Court has done in the *Urgenda* case and require States to protect from the long-term consequences of climate change, as done by the Colombian Supreme Court.

The above exploration of the term “immediacy” does not mean that State’s positive obligations should be without limits. Instead of immediacy in a temporal sense, the Court should rely on a “reasonably foreseeable” standard, for which the knowledge of a context of violence, in this case environmental degradation, suffices. Such a standard was employed by the CRC in *Sacchi*¹⁶⁴ and in its recent AO on Children’s Rights and the Environment,¹⁶⁵ where it explicitly attached States’ positive obligations to “structural and long-term challenges arising from environmental conditions” (para 21). According to the Committee, States have the due diligence obligation to take appropriate preventive measures to protect children against reasonably foreseeable environmental harm and violations of their rights, paying due regard to the precautionary principle.¹⁶⁶

¹⁶³ Justine Bell-James, Briana Collins, ‘Human rights and climate change litigation’, p. 230.

¹⁶⁴ CRC, *Sacchi et al. v. Argentina et al.* (dec.), 22 September 2021, CRC/C/88/D/104/2019: Failure to take measures to prevent foreseeable human rights harm caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States’ human rights obligation” (para. 9.6) and that “the alleged harm suffered by the victims needs to have been *reasonably foreseeable* to the State party at the time of its acts or omissions even for the purpose of establishing jurisdiction” (para. 9.7). It should be noted that even though the Committee rejected the claim as inadmissible for failure to exhaust domestic remedies, it did accept that States had individual responsibility for the violations caused to the youth as victims of foreseeable threats to their rights to life, health, and culture.

¹⁶⁵ CRC, General Comment No. 26 (2023) on children’s rights and the environment, with a special focus on climate change: “States should take positive measures to ensure that children are protected from **foreseeable** premature or unnatural death and threats to their lives that may be caused by acts and omissions, as well as the activities of business actors, and enjoy their right to life with dignity” (para. 20) (Emphasis added).

¹⁶⁶ This includes assessing the environmental impacts of policies and projects, identifying, and preventing foreseeable harm, mitigating such harm if it is not preventable and providing for timely and effective remedies to redress both foreseeable and actual harm (para. 69) and that “mechanisms should be available for claims of imminent or foreseeable harms” (para. 84).

Finally, it should be noted that the standard of “reasonably foreseeable” should have a low evidentiary burden, as suggested in *Sacchi*,¹⁶⁷ where the State’s signing of international agreements on climate change¹⁶⁸ and the existing scientific evidence sufficed to fulfil said standard.¹⁶⁹ Afterall, to quote the interveners in *Sacchi*, “[i]t is not only reasonably foreseeable but inevitable that emitting greenhouse gases will have a direct impact on the human rights of the authors and children around the world” (para. 6.3). Attention should also be drawn to the Human Rights Committee’s cases of *Ioane Teitiota v. New Zealand*¹⁷⁰ and *Billy et al. v. Australia*¹⁷¹ as examples of a too strictly interpreted burden of proof. Indeed, in his dissenting opinion to the *Teitiota* case Committee member Duncan Laki Muhumuza described this decision as having “placed an unreasonable burden of proof on the author” and commented that the conditions of life resulting from climate change in the region “are significantly grave, and pose a real, personal and reasonably foreseeable risk of a threat to life” (para. 1 of the dissenting opinion).

To conclude, interpreting “real and immediate” in a way that *requires States to have awareness of foreseeable or reasonably foreseeable harm*, which can be derived from the *general context* of the situation, is the standard most appropriate to accurately tackle the problem of climate change and the often-deferred negative consequences it is going to have on a myriad of people and generations.

V.D Direct Causation and Attribution

As already explored earlier, in order to establish State responsibility and in order for potential victims to petition the Court, two important things need to be established. The victim needs to be directly affected by the State’s violation and said violation must cause foreseeable harm.

As for the need to be directly affected, inspiration can be drawn from the European case *Cordella and Others v. Italy*,¹⁷² where the applicants were considered being personally affected if they were in a situation “of high environmental risk”, as environmental threat “becomes potentially dangerous for the health and well-being of those who are exposed to it”.¹⁷³ Moreover, it should be noted that the requirement that one is personally

¹⁶⁷ Because it is “generally accepted and corroborated by scientific evidence that the carb on emissions originating in the State party contribute to the worsening of climate change, and that climate change has an adverse effect over the enjoyment of rights by individuals both within as well as beyond the territory of the State party” there should be a low evidentiary burden (UNCRC, *Sacchi et al. v. Argentina et al.* (dec.), para. 9.9).

¹⁶⁸ Specifically, its signing of the United Nations Framework Convention on Climate Change in 1992 and the Paris Agreement in 2016.

¹⁶⁹ UNCRC, *Sacchi et al. v. Argentina et al.* (dec.), para. 9.11.

¹⁷⁰ UN Human Rights Committee, *Ioane Teitiota v. New Zealand*, 7 January 2020, communication no. 2728/2016, CCPR/C/127/D/2728/2016.

¹⁷¹ UN Human Rights Committee, *Daniel Billy et al. v. Australia*, 22 September 2022, communication no. 3624/2019, CCPR/C/135/D/3624/2019.

¹⁷² ECtHR, *Cordella and Others v. Italy* (24 January 2019, app. nos. 54414/13, 54264/15).

¹⁷³ Evelyn Schmid, ‘Victim Status before the ECtHR in Cases of Alleged Omissions: The Swiss Climate Case’ [2022] EJIL: Talk!, available at:

<https://www.ejiltalk.org/victim-status-before-the-ecthr-in-cases-of-alleged-omissions-the-swiss-climate-case/>.

affected must **not be interpreted** in a strict sense, as the Swiss courts have, for instance done, in *Verein KlimaSeniorinnen*,¹⁷⁴ as this would significantly preclude almost all cases concerning climate change from being admissible. **Direct causation simply means that the State's actions have resulted in personal harm, but must not mean that one must be the only one, or one of few, being affected by the matter.** To that end, the Strasbourg Principles of International Environmental Human Rights Law 2022 could be taken as inspiration. According to said principles, “the term ‘victim’ denotes the person or persons directly, indirectly or potentially affected by the alleged violation. For the purposes of environmental human rights litigation, direct victims include persons who would have a valid personal – **including diffuse** – interest in seeing a violation brought to an end. Potential victims are persons to whom the violation would cause harm in a foreseeable and not too distant future” (para. 12, emphasis added). According to the same principals, it suffices for the harm, “whether past, present or future” to “produce tangible effect on the alleged victim’s human rights” (para. 16), whereby the causal link must simply be “sufficiently close” and can be “established through a combination of indirect evidence or by a presumption drawn from serious, specific and consistent facts and/or based on statistical correlation” (paras. 17-18).

Consequently, while direct causation should be required in order to hold States accountable, this must be interpreted in a broad manner. This amicus suggests that **victims must have a valid personal - including diffuse - interest in the violation coming to an end.**

Finally, it should also be noted that in line with *Sacchi*, State parties should carry “individual responsibility for their own acts or omissions in relation to climate change and their contribution to it” (para 9.8) and that “in accordance with the principle of common but differentiated responsibility, as reflected in the Paris agreement [...] the collective nature of the causation of climate change does not absolve the State party of its individual responsibility” (para 9.10).¹⁷⁵ A similar reasoning can be found in the *Urgenda* judgement.¹⁷⁶

Thus, the fact **that other States have also caused the adverse impact resulting from climate change must not affect the causation requirement and prevent their own international responsibility.**

¹⁷⁴ ECtHR, *Verein Klimaseniorinnen Schweiz and Others v. Switzerland* (app. no. 53600/20, communicated on 17 March 2021). In that case, the Swiss courts had considered that the applicants’ rights had not been individually and sufficiently affected, simply because they were not the only ones being affected by climate change - an interpretation that could essentially exclude wide-ranging violations from being admissible. To that end see also Evelyne Schmid and Véronique Boillet, Third party intervention under article 44(3) of the Rules of the European Court of Human Rights in *Verein KlimaSeniorinnen and others v. Switzerland* (Application No. 53600/20) – Submission for the Grand Chamber, available at: https://serval.unil.ch/en/notice/serval:BIB_A64D62947BC2, para. 13.

¹⁷⁵ Further see preamble to the Convention, article 3 of the United Nations Framework Convention on Climate Change, as well as the Preamble and articles 2 and 4 of the Paris Agreement. See also Draft articles on Responsibility of States for Internationally Wrongful Acts, article 47, commentary, para. 8.

¹⁷⁶ *Netherlands v Urgenda Foundation Hoge Raad der Nederlanden* [Supreme Court of the Netherlands] (The Hague 20 December 2019) Case No 19/00135 ECLI:NL:HR: 2019:2006, para. 5.7.7.

V.E How to Ensure Protection Despite the Temporal Delay of Harm

This section dealt with select issues regarding admissibility and State responsibility in relation to climate change litigation before the Court. It will be pertinent for the Court to clarify how these issues function in relation to climate change cases before it in order to ensure the protection of human rights of current and future generations. In particular, the temporally diffused consequences of climate change could pose an issue but, as elaborated in this section, can be integrated into the legal framework of the Court.

To that end, the Court is strongly urged **to recognize potential victims on the requirement that the State's conduct poses a foreseeable risk of causing grave and irreparable harm** in relation to their rights protected under the Convention, whereby one can be considered personally affected if they are exposed to high environmental risk. **The assessment of the minimum level of severity of such harm should take into account all the circumstances of the situation and the general context of the climate emergency.**

Additionally, in order to hold States accountable, what should be required is the State's **awareness of such foreseeable or reasonably foreseeable harm, which can be derived from the general context of the situation**, including the current scientific knowledge of the consequences.

Finally, **States can be held accountable irrespective of whether they were the sole or one of many contributors of climate change.**

VI. Conclusion and Recommendations

Based on the foregoing, the World's Youth for Climate Justice respectfully submits that the Court ought to pay due regard to the following points and recommendations in the elaboration of its forthcoming Advisory Opinion on the "Climate Emergency and Human Rights" with the aim to provide a framework for States' differentiated obligations that adequately protects the vulnerable groups of children, youth, and future generations.

- 1) The Court should pay due regard to the broad scientific and policy consensus that children, youth, and future generations are particularly vulnerable to the adverse effects of climate change, placing them at risk of grave and irreparable, present and future, harm in violation of their human rights, unless immediate action is taken. Such levels of risk and vulnerability increase on a sliding scale in proportion to one's date of birth.
- 2) There is international recognition of the cross-cutting issues of climate change-based human rights violations. As such, the principle of intergenerational equity to achieve intergenerational equity has been reflected in international jurisprudence and international law. To that end, this brief respectfully requests the Court to recognize, incorporate, and operationalize this principle as well as the principle of trusteeship into the Inter-American *corpus juris*.
- 3) In light of the vastly growing international jurisprudence concerning human rights and climate change, we request the Court to pay close attention to, and incorporate the relevant principles established by international organisations into the Inter-American *corpus juris* - including, but not limited to: the Maastricht Principles and General Comment No. 26 of the Committee on the Rights of the Child, interpreted harmoniously with the of principles of international law.
- 4) The Court is respectfully urged to recognise, incorporate, and/or expand upon the following special regimes of protection when interpreting all articles of the Convention with a view to address their specific needs and vulnerabilities - in the now and in the future - in the context of climate change:
 - a) **Children** (those between the ages of 0 and 18) as subjects and objects of protection;
 - b) **Youth** (those between the ages of 18 and 30) as subjects of protection; and
 - c) **Future Generations** (those yet to be born) as collective objects of protection in line with the principle of intergenerational equity.
- 5) The Court should elaborate and concretize States' obligations in relation to children, youth, and future generations with a view towards climate change and its long-term, often irreversible, and devastating consequences in relation to Articles 1, 4, 5, 11, 19, as well as Articles 2 and 26 of the Convention. In doing so, the following points should be taken into consideration:

- a) The distinctly intertemporal dimension to States' obligations under the Convention in relation to climate change;
 - b) Establish obligations keeping in mind that the climate emergency functions on a sliding scale of impact in respect to one's date of birth;
 - c) The collective dimension of protection, which extends also to the protection of future generations;
 - d) The incorporation of the aforementioned enhanced protection regimes into States' obligations and the specification of a set of minimum guarantees that can adequately address the diffuse and long-haul nature of climate change, as well as the vulnerabilities of children, youth, and future generations in the context of the climate emergency.
 - e) States' obligation to respect rights of children, youth, and future generation in relation to climate change and, thus, to refrain from causing and/or contributing towards climate change;
 - f) States' positive obligations of protection against, and prevention of, reasonably foreseeable harm occurring to children, youth, and future generations as a result of climate change - in line with the precautionary principle - and, thus, to take urgent, deliberate, specific and targeted steps towards fulfilling this obligations;
 - g) In regard to the obligations to regulate and to supervise and monitor, differentiated responsibilities could include, but are not limited to, the obligations to adopt and implement climate action plans, to legislate for intergenerational equity, to build institutional mechanisms, to establish independent climate commissions, to introduce intergenerational impact assessments along with environmental impact assessments, to report to regional bodies, to allocate adequate resources, to be transparent and encourage public participation, to collaborate and share information, and to strengthen environmental education.
- 6) In regard to admissibility requirements and the nature of States' obligations, it is pertinent to adequately take into account the irreversible, diffuse, and long-haul nature of the adverse effects of climate change, which can often occur with significant delay. To ensure justiciability of human rights despite this intertemporal dimension of human rights, the Court should adopt the following principles:
- a) The admissibility of potential victims' petitions under the condition that the State's violation poses *a foreseeable risk of causing grave and irreparable harm*;

- b) The minimum level of severity of such harm should be assessed taking into account all the circumstances of the situation, taken cumulatively, including the general context of the environmental emergency.
- c) It should suffice for victims to have a valid personal - including diffuse - interest in seeing a violation come to an end;
- d) In order to hold States accountable for climate change-related human rights violations “real and immediate” should be interpreted so that States must have awareness of the foreseeable or reasonably foreseeable harm, which can be derived from the general context of the situation;
- e) States ought to be able to be held accountable irrespective of whether they were the sole or one of many contributors of climate change.