

**Observations submitted by the Child Rights International Network and
the University of Nottingham Human Rights Law Centre**

In the Inter-American Court of Human Rights

**Request for an Advisory Opinion on the Climate Emergency and Human
Rights**

Amicus Curiae Submission

15 December 2023

Presented by:



**University of
Nottingham**
Human Rights Law Centre



I. Introduction

1. In this brief, Child Rights International Network (CRIN) and the University of Nottingham Human Rights Law Centre submit observations to the request for an Advisory Opinion submitted by the Republic of Chile and the Republic of Colombia.
2. This response will focus on the issue of children's rights in light of the following question outlined at page 10 of the [request for an advisory opinion](#) submitted to the Inter American Court of Human Rights ("the Court"):

Pursuant to Article 19 of the American Convention,⁴⁴ in light of the corpus iuris of international human rights law, including article 12 of the Convention on the Rights of the Child,⁴⁵ and recognizing the consensus of the scientific community which identifies children as the group that is most vulnerable in the long term to the imminent risks to life and well-being as a result of the climate emergency:

1. *What is the nature and scope of the obligation of a State Party to adopt timely and effective measures with regard to the climate emergency in order to ensure the protection of the rights of children derived from its obligations under Articles 1, 4, 5, 11 and 19 of the American Convention?*
2. *What is the nature and scope of a State Party's obligation to provide children with significant and effective means to express their opinions freely and fully, including the opportunity to initiate or, in any other way, to participate in any administrative or judicial proceedings concerning prevention of the climate change that represents a threat to their lives?*

II. Information on the authors

3. The authors have outstanding expertise and experience in relation to children's rights, climate justice and inter-generational justice that straddles the academic, policy and practitioner fields.
4. The [Child Rights International Network \(CRIN\)](#) is a human rights organisation focused on children's rights. CRIN presses for rights – not charity – and campaigns for a genuine shift on how governments and societies view and treat under-18s. CRIN has worked internationally on issues related to access to justice for children since 2013 and is currently engaged in a global project examining access to justice for children's rights in the context of the environmental crisis. CRIN's work on this submission is led by Leo Ratledge, its Co-Director, who has substantial expertise on access to justice for children, including in the context of climate justice.
5. The [University of Nottingham Human Rights Law Centre \(HRLC\)](#) is committed to promoting and protecting human rights, as well as strengthening the rule of law worldwide through research, training, publications, knowledge exchange and capacity-building. Founded in 1993, the HRLC originally sought to conduct human rights research in the countries of the former USSR and provide training to the judiciary and law enforcement agencies in that region. From this beginning, the centre has grown to accommodate the key human rights challenges experienced in an increasingly globalised world. The HRLC implements research, training, publications and

capacity-building programmes worldwide in collaboration with governments, intergovernmental organisations, academics and students, and civil society. The six operational units of the HRLC are shaped by its thematic expertise, which includes economic and social rights. The HRLC's work on this submission is led by its Director, [Professor Aoife Nolan](#), who is an internationally recognised expert on child rights, regional and international human rights law, has extensive experience in research and litigation focused on, child rights, climate justice and future generations' rights at the international and national levels.

6. These comments are submitted as part of the **Advancing Child Rights Strategic Litigation** project (www.acrisl.org), an international research collaboration with a range of academic and advocacy partners in Europe, Africa and Asia. This project forms part of the Global Campus of Human Rights – Right Livelihood collaboration on children's rights.

III. What is the nature and scope of the obligation of a State Party to adopt timely and effective measures with regard to the climate emergency in order to ensure the protection of the rights of children derived from its obligations under Articles 1, 4, 5, 11 and 19 of the American Convention?

7. The authors do not propose to answer this question in detail. Rather, our aim is to highlight the key sources that the Court should consider when identifying the nature and scope of the obligations of States Parties to adopt timely and effective measures with regard to the climate emergency in order to ensure the protection of the rights of children contained within relevant Inter-American system basic documents. We do so to indicate the wide range of relevant civil, social, economic, political, cultural and environmental rights under the Inter-American human rights system that should shape the Court's approach to answering this question.
8. First, the Court should draw upon its extensive jurisprudence on children's rights, and with regard to the positive obligations imposed by those rights in particular.¹ The authors urge the Court to develop its Article 19 jurisprudence in this context, engaging directly with the challenges posed by the climate emergency for children in *rights terms*. There have been significant recent statements from other international bodies such as the UN Committee of the Rights of the Child (CteeRC)² on children's rights and the environment that can and should be used by the Court to establish "the content and scope" of the obligations undertaken by the State through Article 19 and other elements of the American Convention on Human Rights (ACHR). However, it is vital that the Court's key focus should be the interpretation and application of the elements of Inter-American standards and case-law that are relevant to children's rights and the climate emergency, building on and expanding on its existing jurisprudence. The children of the Americas face region-specific challenges and are

¹ See, e.g., the "Street Children" Case (Villagrán Morales et al.), judgment of November 19, 1999, Inter-Am. C.H.R. (Ser. C) No. 63 (1999); Advisory Opinion on the Juridical Condition and Human Rights of the Child Juridical Condition and Human Rights of the Child, Advisory Opinion OC-17/2002, 28 August 2002, Inter-Am Ct HR (Ser A) No 17 (2002); Case of the 'Juvenile Reeducation Institute' v. Paraguay, judgment of September 2, 2004, Inter-Am. C.H.R. (Ser. C) No. 112 (2004).

² UN Committee on the Rights of the Child, [Comment No.26 on Children's Rights and the Environment, with a Special Focus on Climate Change](#) UN Doc, CRC/C/GC/26 (22 August 2023).

accorded region-specific human rights protections that are of direct relevance to the climate emergency. These do not necessarily correspond in all instances with those protections under the international system. In some instances, such protections go well beyond their international counterparts (for instance, in the context of Indigenous children's rights). The Advisory Opinion will enable the court to make these specificities clear and bring an Inter-American "child rights lens" to bear on the climate emergency.

9. The current Advisory Opinion provides a crucial opportunity to explain several existing "general" rights protections under the American Convention on Human Rights (ACHR) in terms of the climate emergency from a child-specific perspective. While the Court has previously recognised children's particular vulnerability as a group to environmental harm,³ it has not yet delineated the scope of the obligations owed by States Parties in terms of children's rights in this context. The Advisory Opinion constitutes an important chance to do so, building on and developing existing crucial statements of the Court on the environment. This includes considering Article 1 from a children's rights perspective, including through engaging with age and/or birth cohort discrimination caused by the climate emergency and state responses thereto – an area that has been the subject of extensive and growing domestic litigation in the Americas.⁴
10. While the request for an Advisory Opinion makes specific references to Articles 1, 4, 5, 11 and 19 – all of which have and will be affected by environmental harm, it is vital that the Court should look beyond those rights to consider the issues arising in relation to the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights ("Protocol of San Salvador"). Particularly relevant provisions of that instrument include Articles 11 (right to a healthy environment), 12 (right to food) 10 (right to health), 13 (right to education), 14 (right to the benefits of culture) and 16 (rights of children). Although not all States Parties to the ACHR have ratified the Protocol of San Salvador, and the Court cannot directly consider violations of the San Salvador Protocol that are not based on trade union rights or the right to education,⁵ the Court has repeatedly turned to that instrument and the Convention on the Rights of the Child (CRC) in order to determine the content and scope of Article 19 ACHR.⁶ Given the impacts of the climate emergency for the aforementioned rights under the Protocol, they should be taken into account by the Court in establishing the scope of child rights protection in the context of environmental harm and indeed more broadly.
11. Relatedly, given the impacts of the emergency on multiple economic, social and cultural rights under both the Convention and the Protocol, the Court should address

³ See, e.g., *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, Inter-Am. C.H.R. (Ser. A) No. 23 (2017).

⁴ See, e.g., *Mathur v. His Majesty the King in Right of Ontario*, 2023 ONSC 2316 (Canada); *Held v. Montana*, No. CDV-2020-307 (1st Dist. Ct. Mont., Aug. 14, 2023).

⁵ Article 19(c) of the San Salvador Protocol.

⁶ See, e.g., 'Street Children' Case, judgment of 26 May 2001, Inter-Am. C.H.R (Ser. C) No. 77, para.196.

Article 26 of the ACHR when considering the scope of state obligations in terms of the wide range of ESC rights that are both affected by and at risk from the climate emergency. The Court has made clear that Article 26 ACHR imposes both immediate and positive obligations in relation to children's ESC rights,⁷ and that the rights deriving from it include the rights to health, adequate food, water, cultural identity, and to a healthy environment.⁸ Children's enjoyment of all of these rights are implicated by the climate emergency and states responses thereto.

12. Furthermore, the climate emergency has important linkages with and implications for children's civil and political rights beyond Articles 4, 5 and 11. The subject of the Advisory Opinion provides the Court with a much-needed opportunity to consider the scope of the civil and political rights accorded to children as the bearers of rights accorded to 'every person' under Articles 13 (right to freedom of expression), Article 15 (right of assembly), Article 16 (freedom of association) and Article 14 (right of reply) under the ACHR. Given the rights challenges faced by child environmental rights defenders (including reprisals, intimidation, and punishment imposed by diverse national authorities (including, inter alia, police and education authorities).⁹ Given the activities of children as civic and political actors in the context of the climate emergency it will not be sufficient for the Court to focus solely on the child's right to be heard in terms of, for example, Article 8 of the ACHR, if it is to adequately delineate States' obligations in the context of the climate emergency.¹⁰

13. Finally, it is crucial that the Advisory Opinion address the obligations of states owed with regard to non-state actors whose actions cause, contribute to or exacerbate the climate crisis. While other submissions will undoubtedly provide detailed comments in relation to business and other third parties, the authors wish to highlight children's particular vulnerability when it comes to climate harm caused by non-state actors and their extremely limited ability to prevent such harm or to hold perpetrators to account. As such, the authors urge the Court to focus in detail on the states' obligations to prevent vis-à-vis rights-harming activities by non-state actors in the context of the climate emergency, building on and extending its existing case-law by considering those obligations from the perspective of children specifically.¹¹

IV. What is the nature and scope of a State Party's obligation to provide children with significant and effective means to express their opinions freely and fully, including the opportunity to initiate or, in any other way, to participate in any administrative or

⁷ Case of Vera Rojas et al v Chile, judgment of 1 October, 2021, Inter-Am. C.H.R. (Ser. C) No.439 (2021).

⁸ See *ibid* and Case of Vera Rojas et al v Chile, judgment of 6 February 2020, Inter-Am. C.H.R. (Ser. C) No.400 (2020).

⁹ For more, see UN Committee on the Rights of the Child, [Comment No.26 on Children's Rights and the Environment, with a Special Focus on Climate Change](#) UN Doc, CRC/C/GC/26 (22 August 2023), paras 29-34; A. Nolan '[General Comment No.26 on Children and the Environment – A Milestone in International Human Rights Law?](#) *EJIL-Talk* (11 September 2023).

¹⁰ See, e.g., Case of Atala Riffo and daughters v. Chile, judgment of February 24, 2012, Series C No 239 (2012).

¹¹ See, e.g., *Velásquez-Rodríguez v Honduras* IACtHR Series C 4 (1988)., para 175 ; 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, Inter-Am. C.H.R. (Ser. A) No. 23 (2017), paras 115-122.

judicial proceedings concerning prevention of the climate change that represents a threat to their lives

State Party Obligations under the American Convention on Human Rights (ACHR)

14. In addressing the rights of children to free expression and to initiate and engage with administrative and judicial proceedings concerning climate change, the request for an Advisory Opinion particularly highlights Article 19 ACHR and Article 12 of the CRC. These provisions are important in establishing the scope of State Parties' obligations under the ACHR in this context, but to fully establish those obligations, it is important for the Court to engage with the full scope of relevant rights under the ACHR, including in light of relevant provisions under the CRC.
15. The Court has recognised that access to justice is a peremptory norm of international law,¹² that States Parties are obliged to provide effective judicial remedies to the victims of human rights violations under Article 25 ACHR and that remedies must be substantiated in accordance with the rules of due process of law.¹³ An essential question for the Court in the context of this Advisory Opinion is the ways in which Article 19 ACHR interacts with existing obligations of States Parties with regards to children's right to be heard and their right to access to justice. In this submission, the authors provide relevant material from international sources, particularly the CtteeRC and explore the ways in which this material may interact with and support the interpretation of the ACHR in this context.

The Convention on the Rights of the Child (CRC) as an interpretive tool

16. The Inter-American Court has recognised the role of the Convention on the Rights of the Child in helping the Court "to establish the content and scope of the general provision established in Article 19 of the American Convention."¹⁴ The Court has also made use of the provisions of the CRC for interpretive purposes in contexts beyond the direct application of Article 19, including with regards to the justice system.¹⁵
17. The CRC contains several significant provisions addressing the rights of children with regards to their ability to express their opinions freely and fully, including participating in administrative and judicial proceedings. The right to be heard is central with regards to this participation, but exists alongside other rights, including freedom of expression and the general implementation provisions of the CRC. In this context, the CtteeRC has developed substantial guidance for States in elaborating the application of children's access to justice, including in the context of the environment.

Article 12 (the right to be heard)

¹² Cf. Case of Goiburú et al. v. Paraguay, Judgment of September 11, 2006, Inter-Am. C.H.R. (Ser. C) No. 153, para. 131; and Case of La Cantuta v. Peru, judgment of 29 November 2006, Inter-Am. C.H.R., (Ser. C) No. 162, para. 160.

¹³ Advisory Opinion OC-23/17 of November 15, 2017, Inter-Am. C.H.R. (Ser. A) No. 23 (2017), para 233.

¹⁴ Case of the "Street Children" (Villagran-Morales et al.) v. Guatemala [1991], para. 194.

¹⁵ E.g. see Case of Mendoza et al. v. Argentina, 2013, judgment of 14 May 2013, Inter-Am. C.H.R., (Ser. C) No. 260, paras. 161-163.

18. The CRC guarantees the right of the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.¹⁶ The CtteeRC has identified this right as one of the “general principles” of the Convention, acknowledging it as a right in itself, but also that it should be considered in the implementation of all other rights.¹⁷ There are two key elements under this obligation, the first to ensure that mechanisms are in place to solicit the views of the child in all matters that affect them, and the second to give due weight to those views.¹⁸ This protection is consistent with the jurisprudence of the Inter-American Court, which has consistently applied children’s right to be heard when applying Article 8 ACHR in cases involving children.¹⁹
19. The CtteeRC has developed extensive guidance on the means for ensuring that mechanisms are in place to solicit the views of the child. With regard to judicial processes, the Committee has emphasised that Article 12 applies to “all relevant judicial proceedings affecting the child, without limitation, including, for example separation of parents, custody, care and adoption, children in conflict with the law, child victims of physical or psychological violence, sexual abuse or other crimes, health care, social security, unaccompanied children, asylum-seeking and refugee children, and victims of armed conflict and other emergencies.”²⁰ The CtteeRC has also stated that the right to be heard applies both to proceedings initiated by the child, as well as those initiated by others which affect the child.²¹
20. In addition, the CtteeRC has examined the application of the requirement that the views of the child be given due weight in accordance with age and maturity, stating that “simply listening to the child is insufficient; the views of the child must be seriously considered when the child is capable of forming her or his own views”.²² The inclusion of “age” and “maturity” within the considerations relevant to assessing the weight to be given to a child’s views indicates that age alone cannot determine the significance of a child’s views. In the practice of the CtteeRC, maturity refers to “the ability to understand and assess the implications of a particular matter”²³ and the CtteeRC has recognised that “the greater the impact of the outcome on the life of the child, the more relevant the appropriate assessment of the maturity of the child”.²⁴ The CtteeRC has noted that information, experience, environment, social and cultural expectations, and levels of

¹⁶ Convention on the Rights of the Child, Article 12(1).

¹⁷ Committee on the Rights of the Child, *General Comment No. 12 (2009) on the right of the child to be heard*, CRC/C/GC/12, 20 July 2009, para. 2.

¹⁸ *Idem* at para. 19.

¹⁹ See Advisory Opinion OC-17/02 of 28 August 2002, Inter-Am. C.H.R. (Ser. A) No. 17, para. 99; Case of Atala Riffo and daughters v. Chile, judgment of 24 February 2012, Inter-Am. C.H.R. (Ser. C) No. 239, para. 196; Case of Ramirez Escobar et al v. Guatemala, judgment of 9 March 2018, Inter-Am. C.H.R. (Ser. C), No. 351, para. 171.

²⁰ Committee on the Rights of the Child, *General Comment No. 12 (2009) on the right of the child to be heard*, CRC/C/GC/12, 20 July 2009, para. 32.

²¹ *Idem* at para. 33.

²² *Idem* at para. 29.

²³ *Idem* at para.30.

²⁴ Committee on the Rights of the Child, *General Comment No. 12 (2009) on the right of the child to be heard*, CRC/C/GC/12, 20 July 2009, para. 30.

support all contribute to the development of a child's capacities to form a view and so the views of the child have to be assessed on a case-by-case examination.²⁵

21. Specifically in the context of the environment, the CtteeRC has recommended that from an early age, "[c]hildren's views should be proactively sought and given due weight in the design and implementation of measures aimed at addressing the significant and long-term environmental challenges that are fundamentally shaping their lives".²⁶ The Cttee has recognised that in ensuring the right to be heard is implemented in this context, States must ensure that age-appropriate mechanisms are in place for children's views to be heard regularly and at all stages of environmental decision-making for legislation, policies, regulations, projects and activities that may affect them.²⁷
22. Crucially, the CtteeRC has also stated that children must have access to child-sensitive complaint procedures and remedies when their right to be heard in the environmental context is disregarded.²⁸ Though this recommendation relates specifically to complaint procedures in the context of the right to be heard, it exists alongside more extensive guidance on children's right to access justice that is addressed below (see para. 26 below).

Articles 13 and 15 (freedom of expression, association and peaceful assembly)

23. The CRC also recognises the right of the child to freedom of expression, including to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
24. The right to freedom of expression as protected under the CRC is broadly comparable to that protected under Article 13 of the American Convention. Both provisions provide for a qualified right that may only be subject to such restrictions as are provided by law and necessary to ensure the respect for the rights or reputations of others or for the protection of national security or of public order, or of public health or morals.²⁹ In addition, the American Convention provides additional provisions prohibiting prior censorship, regarding indirect methods of restricting expression, public entertainments and propaganda for war and any advocacy of national, racial or religious hatred.³⁰ Similarly, both the ACHR and the CRC contain comparable protections on freedom of association.³¹
25. In the environmental context, the CtteeRC has recognised that child-specific measures are necessary to provide a safe and enabling environment and a legal and institutional

²⁵ *Idem* at para. 29.

²⁶ Committee on the Rights of the Child, *General Comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change*, CRC/C/GC/26, 22 August 2023, para. 26.

²⁷ *Idem* at para. 27.

²⁸ *Idem* at para. 27.

²⁹ Convention on the Rights of the Child, Article 13(2); American Convention of Human Rights, Article 13(2).

³⁰ American Convention of Human Rights, Article 13(2)-(5).

³¹ American Convention on Human Rights, Article 16; Convention on the Rights of the Child, Article 15.

framework within which children can effectively exercise their rights.³² With regards to the involvement of children in protests, the CtteeRC has recommended that State actors, such as the police, should receive training on children’s civil and political rights. Regarding defamation and libel, the CtteeRC has stated relevant laws should not be abused to suppress children’s rights.³³

Access to justice

26. Unlike the protection of the right to judicial protection under Article 25 ACHR, the CRC does not include a provision explicitly addressing remedies or access to justice. However, Article 4 of the CRC sets out States Parties obligations to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised under the CRC. The Article serves as an “implementation” provision for the CRC. In applying Article 4, the CtteeRC has set out several elements of the provision, including a requirement for a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance with the CRC,³⁴ giving legal effect to all provisions of the CRC,³⁵ the provision of remedies for the violation of children’s rights,³⁶ and cross sector coordination across government and between government and civil society.³⁷
27. The CtteeRC has consistently recognised the need for children to be able to access justice to ensure that their rights are protected. This material may assist the Court in examining the intersection of its existing jurisprudence addressing access to justice under the ACHR and the application of Article 19 ACHR in this context. In interpreting Article 4, the Committee has stated that “for rights to have meaning, effective remedies must be available to redress violations” finding that “[t]his requirement is implicit in the Convention and consistently referred to in the other six major international human rights treaties.”³⁸ The CtteeRC has stated that “the test must be whether the applicable rights are truly realised for children and can be directly invoked before the courts”.³⁹
28. More recently, the CtteeRC has given specific guidance to States to ensure that children can access justice in the context of the climate emergency. The CtteeRC has recognised accessible and child friendly complaint mechanisms as an essential element in ensuring access to justice for children, including judicial, quasi-judicial, non-judicial mechanisms and child-centred national human rights institutions.⁴⁰ In particular, the CtteeCR has recommended that States provide for collective complaints, such as class action suits and public interest litigation regarding violations of children’s rights due to

³² Committee on the Rights of the Child, *General Comment No. 26 (2023) on children’s rights and the environment, with a special focus on climate change*, CRC/C/GC/26, 22 August 2023, para. 29.

³³ *Idem* at para. 30.

³⁴ Committee on the Rights of the Child, *General Comment No. 5 (2003) on General Measures of Implementation for the Convention on the Rights of the Child*, CRC/GC/2003/5, para. 18.

³⁵ *Idem* at para. 19, 20 and 22.

³⁶ *Idem* at para. 24.

³⁷ *Idem* at para. 27.

³⁸ *Idem* para. 24.

³⁹ *Idem* at para. 21.

⁴⁰ Committee on the Rights of the Child, *General Comment No. 26 (2023) on children’s rights and the environment, with a special focus on climate change*, CRC/C/GC/26, 22 August 2023, para. 83.

environmental harm.⁴¹ Within this recognition is a requirement to remove barriers for children to initiate proceedings themselves including, where necessary, adjusting the rules of standing to ensure children can do so.⁴²

29. There is a consistent recognition within the recommendations of the CtteeRC of the importance of legal aid and assistance for children to have meaningful access to justice. Most recently, the CtteeRC has noted that in the context of environmental legal cases, “[c]hildren should have access to free legal and other appropriate assistance, including legal aid and effective legal representation.”⁴³

30. A further important aspect of the CtteeRC’s recommendations on access to justice for children has been the recognition of the limiting effect that financial barriers have for children. With this in mind, the CtteeRC has urged States to consider measures to lower the costs for children seeking remedies, for example, through protection from adverse cost orders, to limit the financial risk of children who bring cases in the public interest regarding environmental matters.⁴⁴

31. With regards to transboundary harm in the context of the environment, the jurisprudence of the CtteeRC is closely aligned with that of the Court. In addressing *Sacchi et al v. Argentina* under its communications procedure, the CtteeRC adopted a test for jurisdiction applied by the Court in its Advisory Opinion on the Environment and Human Rights,⁴⁵ finding:

“when transboundary harm occurs, children are under the jurisdiction of the State on whose territory the emissions originated for the purposes of article 5 (1) [jurisdiction] of the Optional Protocol if there is a causal link between the acts or omissions of the State in question and the negative impact on the rights of children located outside its territory, when the State of origin exercises effective control over the sources of the emissions in question”.⁴⁶

32. With regards to remedies for violations of children’s rights in the context of the climate emergency, the CtteeRC has emphasised the wide variety of means that reparation may take, including restitution, adequate compensation, satisfaction, rehabilitation and guarantees of non-repetition. The CtteeRC has specifically highlighted that remedial mechanisms should consider the specific vulnerabilities of children to the effects of environmental degradation, including the possible irreversibility and lifelong nature of the harm.⁴⁷ The CtteeRC has also encouraged what it calls “novel forms of remedy”, including intergenerational committees in which children are active participants, to determine and oversee the expeditious implementation of measures to mitigate and

⁴¹ *Idem* at para. 85.

⁴² *Idem* para. 83.

⁴³ *Idem* at para. 86.

⁴⁴ *Idem* at para. 83.

⁴⁵ See Advisory Opinion OC-23/17 on the environment and human rights, judgment of 15 November 2017, Inter-Am. C.H.R. (Ser. A) No. 23, para. 238.

⁴⁶ *Sacchi et al v. Argentina* [2021] CRC/C/88/D/104/2019, para. 10.7.

⁴⁷ Committee on the Rights of the Child, *General Comment No. 26 (2023) on children’s rights and the environment, with a special focus on climate change*, CRC/C/GC/26, 22 August 2023, para. 89.

adapt to the impacts of climate change.⁴⁸ Such measures have been used in environmental cases within Latin America, including in the Colombian Supreme Court case of *Future Generations v. Ministry of the Environment and others*.⁴⁹

V. The Rights of New Generations – Some Observations

33. In a number of places, the request refers to the rights of ‘new generations’ (page 10) and ‘future generations’ (pages 1 and 6). In the former instance, the rights of new generations are linked to those of children in the section heading: ‘Regarding the differentiated obligations of States in relation to the rights of children and the new generations in light of the climate emergency’. It should be noted, however, that as yet there is no clear definition of ‘new generations’ or ‘future generations’ in international human rights law or regional human rights law. As such, it is not clear the extent to which children’s rights overlap with those of the categories of future generations or ‘new generations’ in the context of Inter-American case-law.
34. Historically, the specific scope of FG and the extent to which they benefit from protection under IHRL has historically been unclear. Nor is the agreement on this point in academic literature.⁵⁰
35. There have been a number of references to future generations in the context of UN treaty bodies’ outputs,⁵¹ with a recent, increased focus on this issue as a result of work since 2021 by the UN Committee on the rights of the Child and the UN Committee on Economic, Social and Cultural Rights on their general comment and draft general comment on children and the environment and sustainable development and the International Covenant on Economic, Social and Cultural Rights, respectively⁵². September 2022 saw a Human Rights Committee decision in which that body found, inter alia, that Australia had violated Article 24(1) International Covenant on Civil and Political Rights (ICCPR) which sets out the right of children to such measures of protection as are required by their status as a minor. This was due to its failure to take adequate steps to ‘protect the rights of future generations of the authors’ community, including the six named children, who are the most vulnerable

⁴⁸ *Ibid.*

⁴⁹ Colombia Supreme Court - Sentencia STC 4360-2018, Radicación No. 11001-22-03-000-2018-00319-01.

⁵⁰ A. Nolan, ‘Children and Future Generations Rights before the Courts: The Vexed Question of Definitions’ (paper under review with *Transnational Environmental Law*) (October 2023); A. Nolan, ‘[The Children are the Future – Or Not? Exploring The Complexities of the Relationship between the Rights of Children and Future Generations](#)’ *EJIL-Talk* (26 May 2022); A. Nolan, ‘Children and Future Generations Rights before the Courts: The Vexed Question of Definitions’ (working paper on file with the author).

⁵¹ The work Committee on Economic, Social and cultural Rights has been particularly notable in this regard. See, e.g., CESCR, ‘General comment No. 25 (2020) on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/GC/26 (30 April 2020), para 56; CESCR, ‘General Comment No. 19 on the right to social security (Art. 9)’, UN Doc. E/C.12/GC/19 (4 February 2008), para 11; CESCR, ‘General Comment No. 15 on the right to water (Arts 11 and 12 of the Covenant), UN Doc. E/C.12/2002/11 (2 January 2003); CESCR, General Comment No. 12 on the right to adequate food, UN Doc. E/C.12/ 1999/5, (12 May 1999), para 7.

⁵² See, e.g., CRC, Draft General Comment No.26 on children and the environment with a special focus on climate change (December 2022); CESCR Drafting Group, ‘Issues Paper on Sustainable Development and the International Covenant on Economic, Social and Cultural Rights’ (September 2021).

and affected by climate change'.⁵³ Elsewhere in its decision, however, the Committee appeared to treat children and future generations and discrete groups⁵⁴. As such, the specific relationship between children's rights and future generations in terms of the ICCPR remains unclear.⁵⁵

36. Nor has the recent UN Committee on the Rights of the Child's [General Comment on Children's Rights and the Environment](#) resolved this confusion. As Nolan notes, while the Committee makes reference to "future generations" in different parts of that document, the General Comment leaves key questions unanswered with regard to the extent to which 'future generations' coincide with currently living children (whether as children or future adults), and/or the extent to which 'future generations' (however defined) are afforded protection under the UN Convention on the Rights of the Child.⁵⁶ Nor does it engage in a meaningful way with the implications of children's rights for the interpretation and application of the principle of intergenerational equity.
37. The recently adopted expert Maastricht Principles on the Human rights of Future Generations usefully state that 'future generations are those generations that do not yet exist but will exist and who will inherit the Earth. Future generations include persons, groups and Peoples.'⁵⁷ The Principles recognise that 'States must recognise and respect that present children occupy a proximate position to future generations, and must protect their rights to be heard and other participatory rights, including when advocating for human rights on behalf of themselves and future generations'.⁵⁸ However, while constituting a significantly authoritative interpretation of what FG should be understood to be for the purposes of FG protection under IHRL, the specific nuances of the relationship between children and FGs' rights at IHRL ultimately remain to be worked out in greater detail by those entities with primary responsibility for the interpretation and application of IHRL standards. The same is true in the context of the ACHR and the Inter-American treaty system more broadly.
38. The authors are not arguing for the adoption of a particular definition of "future generations" (or indeed "new generations") to be adopted by the Court (albeit that Maastricht Principles has the great advantage of clarity). If, however, the term "future generations" or "new generations" is used in the Advisory Opinion, the Court should

⁵³ *Billy et al v Australia*, CCPR/C/135/D/3624/2019, 22 September 2022, para 3.7.

⁵⁴ See *ibid* par 8.14.

⁵⁵ The complexity of the extent to which children and FG rights is not always recognised by those working in the context of international law and the environment, see 'Status Report on Principles of Human Rights International Law' in World's Youth Climate Justice, *The Youth Justice Climate Justice Handbook* (WYCJ: May 2023) W 'which presents the CRC as outlining treaty obligations related to future generations with no justification for that approach.

⁵⁶ A. Nolan, [General Comment No.26 on Children and the Environment – A Milestone in International Human Rights Law? EJIL-Talk](#) (11 September 2023).

⁵⁷ Maastricht Principles on the Human Rights of Future Generations, Principle 1, [Maastricht Principles on The Human Rights of Future Generations \(2\).pdf](#) (Accessed 16 June 2023). A similar approach was adopted in the UN Secretary General's 'Our Common Agenda: Policy Brief 1: to think and act on future generations', UN Doc. A/77/CRP.1 (7 February 2023), the language on the definition of future generations and the relationship between FG and child rights were so similar as to suggest that they were relying on the text of the Maastricht Principles prior to the publication of that document.

⁵⁸ Maastricht Principles, Principle 22(c).

make clear exactly what is meant by those terms. It is vital that whatever definition is chosen, the relationship between “future generations” and living children is made clear. The use of the wording of future generations in the Advisory Opinion without making clear who qualifies as such would pose significant problems in terms of the identification and attribution of responsibility vis-à-vis rights in the context of the climate emergency. Ultimately, national authorities cannot give proper effect to their rights obligations if it is not clear to whom those obligations are owed – and who may assert them.⁵⁹

VI. Conclusion

39. As detailed above, the authors submit these observations to support the Court in considering the nature and scope of the obligations of States Parties to adopt timely and effective measures with regard to the climate emergency in light of specific obligations to ensure the protection of the rights of children. To do so, the authors encourage the Court to address implications of the full range of rights within the ACHR as they apply to children, including drawing on relevant international and comparative material to assist the Court in interpreting this application. Finally, should the Advisory Opinion address the rights of future generations, the authors encourage the court to be clear about the relationship between “future generations” and children’s rights.

⁵⁹ For more, see A. Nolan, 'Children and Future Generations Rights before the Courts: The Vexed Question of Definitions' (paper under review with *Transnational Environmental Law*) (October 2023); A. Nolan, '[The Children are the Future – Or Not? Exploring The Complexities of the Relationship between the Rights of Children and Future Generations](#)' *EJIL-Talk* (26 May 2022);