



The environmental rights of children and future generations in the Inter-American Court of Human Rights: Advances and challenges

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Abstract

This article examines the evolving treatment of intergenerational environmental protection within the Inter-American Human Rights System, focusing on the relationship—and growing tension—between the well-established framework of children’s environmental rights and the emerging recognition of future generations as potential rights-holders. While the Inter-American Court of Human Rights has developed robust standards protecting children from environmental and climate-related harms—grounded in their heightened vulnerability, the principle of the best interests of the child, and the intergenerational scope of State obligations—the parallel move to recognize future generations as subjects of rights raises significant conceptual and procedural challenges. These include the indeterminacy of who qualifies as a “future generation,” difficulties identifying victims for admissibility purposes, and the Court’s own precedent requiring rights-holders to be “present” human beings. Through an analysis of key jurisprudence, including *La Oroya v Peru* and Advisory Opinions 23/17, 32/25, and 35/25, the article argues that children’s rights offer a more coherent, operational, and normatively grounded pathway for advancing intergenerational justice.

Key words

Intergenerational justice, children’s environmental rights, future generations, Inter-American Court of Human Rights.

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Resumen

Este artículo examina la evolución de la protección ambiental intergeneracional en el Sistema Interamericano de Derechos Humanos, centrándose en la relación —y la creciente tensión— entre el marco consolidado de los derechos ambientales de la infancia y el reconocimiento emergente de las generaciones futuras como posibles titulares de derechos. Si bien la Corte Interamericana de Derechos Humanos ha desarrollado estándares sólidos para proteger a los niños y las niñas frente a los daños ambientales y climáticos —fundamentados en su especial vulnerabilidad, el principio del interés superior del niño y el alcance intergeneracional de las obligaciones estatales—, el avance paralelo hacia el reconocimiento de las generaciones futuras como sujetos de derechos plantea importantes desafíos conceptuales y procesales. Entre ellos figuran la indeterminación de quiénes integran las "generaciones futuras", las dificultades para identificar a las víctimas a efectos de admisibilidad y la propia jurisprudencia de la Corte, que exige que los titulares de derechos sean seres humanos "presentes". Mediante un análisis de la jurisprudencia pertinente, incluido el caso *La Oroya vs. Perú* y las opiniones consultivas 23/17, y 35/25, el artículo sostiene que los derechos de los niños, niñas y adolescentes ofrecen una vía más coherente, operativa y sólidamente fundamentada desde el punto de vista normativo para avanzar hacia la justicia intergeneracional.

Palabras clave

Justicia intergeneracional, derechos ambientales de los niños, niñas y adolescentes, generaciones futuras, Corte Interamericana de Derechos Humanos.

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1. Introduction

The Advisory Opinion 32/25 of the Inter-American Court of Human Rights, issued on 29 May 2025 concerning the climate emergency and human rights, constitutes a milestone in global climate litigation. In this opinion, the Court extensively develops States' specific human rights obligations in the face of climate change through a holistic approach that recognizes the intrinsic value of nature, now understood as a subject of rights, while simultaneously broadening the focus to the new forms of human vulnerability generated by this phenomenon from both intra- and intergenerational perspectives. This development is framed within a new right to a healthy climate which, informed by the principles of interdependence, intergenerational equity, and pro natura, seeks to protect the global climate system as the physical and biological foundation of life, capable of holding rights of its own, but also in view of its importance for "humanity as a whole, and both present and future generations". At the same time, guided by the principle of common but differentiated responsibilities, this new right aims to prevent the imposition of disproportionate burdens on those who will make up future generations, by postponing climate action in ways that shift costs and harm onto them, and on those who comprise the present generations, by assigning "the costs of the energy transition without taking into account the vulnerability of certain groups of the population today".²

Between the generations yet to come and those in the present who suffer the consequences of climate change are children, whose rights, as the Inter-American Court itself notes, are particularly threatened by climate change.³ For them, climate and environmental disruptions not only affect their quality of life as children today, but also shape their physical, cognitive, and emotional development, with repercussions for the adults they will become (UNICEF 2021, 27-55). Children are intergenerational subjects par excellence, as they may bear the impacts of both sudden climatic events and slow-onset phenomena. It is therefore not surprising that, when children's rights are invoked in environmental matters, they are frequently included alongside—or within—the discourse on the rights of future generations.⁴

The language of future generations has played an increasingly important role in environmental and climate litigation, providing courts with a framework through which to address the long-term consequences of present decisions (Bertram 2023, Nedevska 2023, Drigo 2024, 1131-1134, Sulyok 2024, 481-485). Cases such as *Minors Oposa v Factoran*,⁵ *Urgenda v The Netherlands*,⁶ and *Future Generations v Ministry of the Environment*

² Inter-American Court of Human Rights. Advisory Opinion AO-32/25 requested by the Republic of Chile and the Republic of Colombia on "Climate Emergency and Human Rights", of May 29, 2025, paras. 305-316.

³ Inter-American Court of Human Rights. Advisory Opinion AO-32/25, paras. 597-604.

⁴ As documented by the Youth Climate Justice Project database, of the 80 environmental and climate-related cases involving children's rights that have been filed over the past 10 years, only eight of them do not invoke the rights of future generations (last search date: 20/11/2025). The information in the database can be consulted at the following link: <https://www.ucc.ie/en/youthclimatejustice/caselawdatabase/>

⁵ Supreme Court of the Philippines, *Minors Oposa v Secretary of the Department of Environment and Natural Resources (Factoran)*, G.R. No. 101083, Judgment of 30 July 1993.

⁶ Supreme Court of the Netherlands, *State of the Netherlands v Urgenda Foundation*, Case No. 19/00135, Judgment of 20 December 2019.

of *Colombia and Others*⁷ illustrate the different ways in which intergenerational concerns have entered judicial reasoning and their utility for climate litigation. However, across these cases, the question of how the protection of future generations should be legally articulated has not been fully resolved. It remains open whether intergenerational concerns are better addressed through the principle of intergenerational equity and the corresponding duties of present generations, or whether they also require recognizing future generations themselves as holders of rights (Bos 2026). As this article seeks to demonstrate, the way in which this question is resolved may shape the development and protection of children's rights in the context of climate change.

Although at first glance the link between children's rights and the rights of future generations appears natural, it conceals multiple theoretical and practical tensions arising from the indeterminacy of the concept of "future generations" and from the consequences this may have for the rights of present-day children and other human groups. The Maastricht Principles on the Human Rights of Future Generations, for example, define future generations as "those generations that do not yet exist but will exist and who will inherit the Earth" (Principle 1), a formulation that excludes children who are already alive from this category. Yet the Principles simultaneously recognize the position of present-day children in relation to future generations, including their role in advocating on their behalf (Principles 22(c) and 30(c)). Under this formulation, children would not themselves be holders of the rights attributed to future generations. Rather, they would occupy an intermediate position as present rights-holders whose interests are closely connected to those of future generations and who may, in certain circumstances, act in their representation (Basson *et al.* 2025, 760). Although this intermediary role reflects an intergenerational understanding of children's rights, the recognition of future generations as a distinct category of rights-holders raises questions about the compatibility of the two frameworks and about the scope of the rights attributed to each category of rights-holders in climate litigation.

In this regard, it has been emphasized that, unlike the category of children, the notion of future generations is extremely vague, generating significant uncertainty about who its holders are or who may legally represent them (Gosseries 2008, 450-457, Nolan 2024, 529-531). This makes it difficult to determine the scope of these rights, who may invoke them, and the criteria for admissibility, often leading courts to reject such cases for lack of justiciability, legitimacy, or standing (Donger 2022, 274, Muller and Daly 2025, 1063-1064).⁸ It has also been noted that grounding litigation in an abstract collective such as future generations may divert attention away from more robust frameworks, such as already-recognized children's rights (Daly 2022). Moreover, the rights of future generations may come into tension with the rights of children living today. As Nolan warns, it cannot be assumed that the interests of children and those of future generations

⁷ Supreme Court of Justice of Colombia, Civil Cassation Chamber, *Future Generations v Ministry of the Environment & Others*, Judgment STC4360-2018, 5 April 2018.

⁸ These difficulties also raise broader concerns about the legitimacy of future-focused climate litigation. Questions arise as to whether courts have a sufficiently clear legal basis to protect the interests of persons who do not yet exist, whether those interests can be adequately represented in proceedings from which future generations are necessarily absent, and whether judicial remedies adopted in their name can actually be said to advance their interests given the uncertainty surrounding their future circumstances and preferences (Nedevska 2023).

will necessarily align, particularly when long-term environmental protection may conflict with the urgent needs of present-day children, such as poverty or intragenerational inequalities. If it is unclear who forms the group of future generations or what the scope of their rights is, it becomes highly challenging to balance their interests against those of children whose status as legal rights-holders is already clearly defined (Nolan 2024, 544).

The debate on the points of connection and divergence between the discourse on the rights of future generations and children's rights is particularly relevant considering the recent standards established by the Inter-American Court of Human Rights on this matter. Indeed, the three major frameworks addressed in this article—environment, children's rights, and the rights of future generations—emerged simultaneously in the Court's jurisprudence. The Court's first environmental case was *Awas Tingni v Nicaragua* in August 2001, where, as we will see, inspired by Indigenous worldviews, the Court referred for the first time to an intergenerational perspective. Only a year later, in August 2002, it issued its first in-depth pronouncement on children's rights in *Advisory Opinion No. 17/2002 on the Juridical Status and Human Rights of the Child*. However, although the Court subsequently decided several other environmental cases, it was not until *La Oroya v Peru* (2023) and the recent *Advisory Opinion 32/25 on Climate Emergency and Human Rights* (2025) that the Court expressly addressed the interconnection between environmental harm, children's rights, and the protection of future generations. Specifically, in its *Advisory Opinion 32/25*, the Court established parameters regarding the differentiated obligations of States with respect to the rights of children and future generations in the face of the climate emergency.⁹

Building on these developments, it becomes necessary to examine how the broader theoretical debates align—or fail to align—with the practical and conceptual challenges of applying future-generations discourse within the Inter-American system. Traditional human rights frameworks, which emphasize individual and immediate harms, struggle to accommodate abstract risks and environmental harms that transcend borders and generations. Other key challenges include conceptual limitations, such as defining “future generations” and who can be considered a “victim” within the Inter-American Human Rights System. But, at the same time, recent cases demonstrate the Inter-American Court's evolving commitment to principles like intergenerational equity and ecocentric approaches, moving beyond traditional anthropocentric frameworks. With this context, this article examines the evolving landscape of intergenerational rights within the IAHRs from a primarily theoretical perspective, exploring the legal challenges that could arise if future generations were recognized as rights-holders. Through an analysis of relevant advisory opinions and case law, the article identifies potential pathways for strengthening the protection of future generations within the IAHRs. In particular, it examines the possibility of conceptualizing the rights of future generations through the lens of the rights of present-day children. To this end, it

⁹ This account is not intended to provide a comprehensive overview of the Inter-American Court's environmental jurisprudence. The Court has decided a number of other important environmental cases during this period. The cases discussed here have been selected because they are the only ones in the Court's jurisprudence that directly address the specific inquiry of this article, namely the intersection between environmental protection, children's rights, and intergenerational concerns.

considers strategies such as the principle of intergenerational equity, the ecocentric turn, and reparation measures with an intergenerational approach.

2. A view from the child who is, the child who once was, and the child yet to come: children's environmental rights before the Inter-American Court of Human Rights

The protection of children's rights has become a central issue in the international human rights discourse, especially in the context of climate change (Gubbay and Wenzler 2021, Muller and Daly 2025, Rodrigues Gonçalves 2025, Tigre 2025). As documented by the Youth Climate Justice Project database, as of November 2025, around 80 environmental and climate-related cases worldwide have invoked children's rights.¹⁰ This number should not surprise us, as it is children who will have to confront most directly the effects of climate change generated by today's adults. In the absence of binding legal frameworks that decisively address the causes of global warming and biodiversity loss, children have turned to environmental and climate litigation as a tool to ensure that their concerns are heard and that their rights as children and as future adults are protected¹¹. For children, whose opportunities to influence political decision-making remain particularly limited, climate litigation has become an important avenue for exercising agency and making their experiences of climate harm legally visible. As Daly *et al.* observe, climate litigation "supports children's stories and experiences to be told in such a space, as well as bringing to life the harm caused by climate change" (2026, 144).

In Latin America, youth-led climate litigation¹² is also growing at both the national and regional levels (Rodrigues Gonçalves 2025). Specifically, within the Inter-American Human Rights System, although there are no judgments in which the rights-holders are themselves children, important steps have been taken to strengthen climate litigation grounded in children's rights, including the development of clear standards on their scope of application and corresponding guarantees.

First, regarding its scope of application, the Inter-American Court of Human Rights, from its earliest decisions on children's rights and in line with the UN Convention on the Rights of the Child,¹³ has defined a child as "every human being below the age of 18".¹⁴ When the Court refers to the environmental rights of children, it understands these

¹⁰ For a comprehensive analysis of these cases, see Daly *et al.* 2026, 139-171. The information in the database can be consulted at the following link: <https://www.ucc.ie/en/youthclimatejustice/caselawdatabase/>

¹¹ As Parker and others state, these lawsuits demand: "(1) insufficient efforts to reduce carbon emissions and meet climate commitments; (2) insufficient efforts to implement mitigation and adaptation measures; and (3) specific regulatory approvals that are expected to have dramatic climate impacts" (Parker *et al.* 2022, 71).

¹² As there are no specific cases brought directly by children, I have relied on Donger's definition of what constitutes a "youth-led climate case" as the framework for analyzing the Inter-American Court's jurisprudence. According to this definition, such cases involve plaintiffs who are: "(i) named children and young people, (ii) an NGO led by children and young people, or (iii) a class of children and young people" (Donger 2022, 269).

¹³ Article 19 of the American Convention on Human Rights enshrines the rights of the child, but does not define what we should understand by 'child'.

¹⁴ Inter-American Court of Human Rights, *Case of the "Street Children" (Villagrán Morales et al.) v Guatemala*, Judgment of 19 November 1999 (Merits), para. 188; and Inter-American Court of Human Rights, Advisory Opinion OC-17/2002 of 28 August 2002 on Juridical Condition and Human Rights of the Child, paras. 38–42.

as rights held by individuals who were under 18 at the time the human rights violations took place. Children's environmental rights are therefore not limited to people who remain children when the judgment is issued. The Court has also recognized violations of the environmental rights of individuals who, although children at the time of the events, had already reached adulthood by the time the ruling was delivered.

This was the approach adopted by the Court in the *Inhabitants of La Oroya v Peru* case of 27 November 2023. The case concerns pollution in the city of La Oroya, Peru, caused since 1922 by a smelting and refining industry that processes polymetallic concentrates containing high levels of lead, copper, and zinc, as well as other metals such as silver, gold, bismuth, selenium, tellurium, cadmium, antimony, indium, and arsenic.¹⁵ Thus, the case involved severe and long-standing pollution that endangered the rights of multiple generations of inhabitants at different stages of their lives as children, adults, and older people. The intergenerational nature of the harm becomes particularly clear when examining the victims themselves: a total of 80 individuals, 23 of whom were children when the petition was submitted to the Inter-American System;¹⁶ 71 had been children at some point after the State began causing the environmental contamination; and 57 were children when the American Convention on Human Rights and the contentious jurisdiction of the Inter-American Court entered into force for Peru.¹⁷ Given that 17 years elapsed between the submission of the petition and the judgment,¹⁸ all victims who had been children at the start of the proceedings were adults by the time the Court issued its decision. Nevertheless, the Court examined and accepted as evidence the testimony provided by these adults regarding the effects of the pollution on them during childhood. These testimonies described physical and social impacts—such as respiratory difficulties, headaches, and low academic performance—that manifested from early ages and shaped their future development. Based on this evidence, the Inter-American Court found Peru responsible for violating the rights of the child (Article 19) with respect to the 57 individuals who were minors at the time the obligations of the American Convention became judicially enforceable for Peru (1981).¹⁹

In this way, the Court recognized that the effects of the contamination suffered during childhood were more severe and long-lasting than those experienced by the adult population of the time. Consequently, the Tribunal appears to affirm that the condition of being a child, for the purposes of determining specific violations of children's rights in contexts of environmental harm, does not disappear upon reaching adulthood: adults

¹⁵ As a result of the above, in 2006 La Oroya was listed as one of the 10 most polluted cities in the world, affecting both the environment and its inhabitants in different ways.

¹⁶ Inter-American Court of Human Rights. *Case of the Inhabitants of La Oroya v Peru. Preliminary objections, merits, reparations and costs*, Judgment of November 27, 2023. Series C No. 511, para. 235 and 238.

¹⁷ The Inter-American Court's jurisdiction to issue binding judgments over States that have ratified the American Convention on Human Rights is conditioned by the moment at which those States accepted the Court's contentious jurisdiction. Peru ratified the Convention on 28 July 1978, but recognized the Court's contentious jurisdiction only on 21 January 1981. For this reason, the Court had jurisdiction *ratione temporis* only over events that occurred after 1981. As a result, in determining the victims of the violation of children's rights, it was able to consider only the 57 individuals who were still children when Peru accepted the Court's contentious jurisdiction in 1981.

¹⁸ The case was submitted to the Inter-American Commission on Human Rights on 27 December 2006. It was admitted by the Commission on 5 August 2009. Finally, it was referred to the Inter-American Court with the Merits Report on 30 September 2021.

¹⁹ Inter-American Court of Human Rights. *Case of the Inhabitants of La Oroya v Peru*, para. 239 and 245.

remain child rights-holders with respect to the violations that affected us during our childhood. This, in my view, reveals the truly intergenerational nature of children's rights. While the discourse on future generations is commonly oriented toward protecting human beings yet to come, children's rights operate simultaneously in the past, present, and future. They safeguard not only the child who exists today, but also the child we once were and, of course, the child who is yet to come. In fact, the Court itself considers this clearly intergenerational nature of children's rights when it states that:

the special protection of children as a group that is particularly vulnerable to the effects of environmental pollution, is of special importance bearing in mind the principle of intergenerational equity (...) protecting the rights of future generations requires States to respect and ensure the full enjoyment of children's human rights in the present as well as ensuring that their human rights in the future are not jeopardized.²⁰

For the Inter-American Court of Human Rights, the principle of intergenerational equity acquires relevance in relation to children, given that "they are the ones who may be most affected by the present and future consequences of environmental degradation". As the Tribunal notes, this principle entails an "enhanced obligation" or "increased duty" to "protect children from health risks caused by the emission of polluting gases that contribute to climate change". This enhanced obligation requires the adoption of short-, medium-, and long-term measures aimed at ensuring children's development and, in doing so, may also contribute indirectly to the protection of future generations. *La Oroya* case provides a particularly clear example of the prospective dimension that litigation grounded in children's environmental rights can acquire.

A closer examination of the reparations ordered by the Court in *La Oroya* shows that they went well beyond redressing past violations. They were also designed to remedy the underlying environmental conditions and to prevent similar harms from continuing or recurring in the future. As measures of restitution, the Court required Peru to conduct a baseline assessment of air, soil, and water pollution and to adopt an action plan for environmental remediation, including short-, medium-, and long-term measures directed at the decontamination of affected areas (paras. 333–334). The plan must identify pollution sources and contamination hotspots, prioritize areas according to the risks posed to health and the environment, incorporate the most recent scientific information, and ensure the effective participation of the victims throughout its implementation. As guarantees of non-repetition, the Court adopted a broader set of structural measures aimed at preventing similar violations in the future (paras. 345–355). These include the harmonization of air quality standards with current scientific criteria and World Health Organization standards, the establishment of monitoring and alert systems for air, soil, and water quality, and the creation of a continuously updated information system on pollution and associated health risks (paras. 346–347, 354). The Court also required specialized health care for persons exposed to pollution, with differentiated attention for children, pregnant women, and older persons, together with an assistance fund for those requiring treatment outside La Oroya (paras. 348–349). In environmental and regulatory terms, Peru must ensure that future operations of the Metallurgical Complex comply with international environmental standards, implement

²⁰ Inter-American Court of Human Rights. *Case of the Inhabitants of La Oroya v Peru*, para. 141.

an environmental compensation plan aimed at the full restoration of the affected ecosystem, and ensure compliance with international business and human rights standards (paras. 350–352). The Court further ordered a permanent environmental training program for public officials (paras. 353, 355). Taken together, these restitution measures and guarantees of non-repetition show that *La Oroya* was not limited to recognizing and repairing past violations. The judgment also established obligations designed to operate over time, prevent the recurrence of environmental harm, and restore the conditions necessary for the enjoyment of rights in the future.

This forward-looking dimension of children’s rights is further strengthened by the principle of the best interests of the child. As the Court establishes, this principle requires that children’s rights be prioritized and obliges the State to implement “a stricter process of due diligence and an effective monitoring system” in cases involving corporate pollution that poses a high risk to children’s rights.²¹ These standards are grounded in the understanding that children are among the groups most vulnerable to the impacts of climate change.²² This insight enabled the Inter-American Court, in Advisory Opinion 32/25, to establish specific and differentiated obligations for States concerning the protection of children’s rights within the context of the climate crisis. Specifically, the Inter-American Court establishes that children face a differential and increased vulnerability to the climate crisis due to their physical, biological, and mental development — vulnerability that is, in some cases, exacerbated by the intersection with other conditions such as poverty, disability, gender, or membership in a historically discriminated group.²³ In this context, the Inter-American Court establishes that States must progressively adopt all measures aimed at ensuring children’s access to comprehensive, high-quality health services capable of addressing climate-related harms (including mental health impacts such as “eco-anxiety”), aligning environmental health policies with the best available scientific evidence on climate impacts on children, and guaranteeing that these protections effectively reach socioeconomically excluded groups, such as Indigenous children, children with disabilities, and those living in poverty.²⁴

Likewise, the Inter-American Court establishes that the procedural rights of children must be guaranteed by ensuring their access to clear, reliable, and accessible scientific information on the climate emergency, as well as adequate mechanisms for their direct and effective participation in the development and implementation of laws, policies, and decisions that may affect them. The Court also underscores the duty to promote and protect children’s climate action, including that of child environmental defenders, and to strengthen institutions such as ombudspersons’ offices to ensure their independence, capacities, and resources. Finally, States have the obligation to facilitate children’s access to justice through judicial and non-judicial mechanisms adapted to their age; to remove barriers that prevent them from filing complaints or initiating proceedings on their own;

²¹ Inter-American Court of Human Rights. *Case of the Inhabitants of La Oroya v Peru*, paras. 143, 243.

²² Inter-American Court of Human Rights. *Advisory Opinion OC-23/17, of November 15, 2017, “The Environment and Human Rights”*, para. 67.

²³ Inter-American Court of Human Rights. *Advisory Opinion AO-32/25 requested by the Republic of Chile and the Republic of Colombia on “Climate Emergency and Human Rights”*, of May 29, 2025, paras. 597, 598.

²⁴ Inter-American Court of Human Rights. *Advisory Opinion AO-32/25*, paras. 599 and 600.

to guarantee effective judicial remedies; and to ensure access to free legal assistance for the protection of their rights in the face of environmental and climate-related harm.²⁵

In sum, the Inter-American Court's recent developments place children's rights at the center of the legal response to climate change, not only because of children's increased vulnerability but also due to the intergenerational character of the state obligations that these rights trigger and the opportunities that children's participation offers for improved climate policymaking. These points show that the Court does not view children as passive subjects whose rights must simply be protected by others, but rather as agents with their own capacity to act and as key actors in the fight against climate change. As Maria Antonia Tigre notes, children are central actors in climate action because of their ability to situate climate harm within concrete and deeply human lived experiences. By sharing these experiences—ranging from impacts on their health to effects on their psychological well-being—"the child figure functions rhetorically as a moral counterweight to institutional inertia, helping to dramatize the urgency and injustice of climate inaction" (Tigre 2025, 1012).

The legal strength of youth-led climate litigation also lies in the fact that, unlike claims advanced on behalf of future generations, children's rights are already embedded in a well-established normative framework at both the international and domestic levels. Children are recognized as present rights-holders under international human rights law and, in many jurisdictions, under constitutional and statutory protections, providing litigants and courts with an existing body of substantive and procedural standards through which climate-related harms can be articulated and adjudicated (Daly *et al.* 2026, 26-38). Thus, youth-led climate litigation not only strengthens the enforceability of children's rights in an environmental and intergenerational key but also emerges as a transformative tool that exposes both the present and future injustices of climate change. It reminds us that protecting the child who exists today is also protecting the adult they will become and the generations yet to come.

3. A future-oriented responsibility: intergenerational equity for future generations

The severity of the ecological crises we are experiencing suggests the need to operate on ecological time scales that move beyond the temporal limitations of the classical environmental law approach. While environmental law often focuses on the present or the past, ecological law adopts an ecocentric perspective aimed at maintaining and restoring the integrity of the systems that sustain life on Earth (Kotzé and Kim 2019, 7). The irreversible harm that human activity is inflicting on the planet threatens not only to radically transform life as we know it, but also to deprive future human beings of a habitable world. To respond to this intergenerational demand, two main legal pathways may be distinguished. The first is to articulate the protection of future generations through the principle of intergenerational equity, understood as a source of present duties requiring States and other actors to consider the long-term consequences of their decisions. The second is to recognize future generations themselves as autonomous rights-holders. Although both approaches seek to protect those who will live in the future and, in some cases, are presented jointly in legal argument and judicial reasoning,

²⁵ Inter-American Court of Human Rights. Advisory Opinion AO-32/25, paras. 521, 601-604.

they rest on different legal foundations and raise different conceptual questions. This section focuses on the first pathway, while the recognition of future generations as rights-holders will be examined separately in Section 4.

The debate on the temporal scope of rights has been a central element in discussions about future generations. This is evident in the first international declaration on the subject, the 1997 UNESCO Declaration on the Responsibilities of the Present Generations Towards Future Generations, whose Article 4 states that “The present generations have the responsibility to bequeath to future generations an Earth which will not one day be irreversibly damaged by human activity”. This proposal has grown over time, giving rise to new laws, international treaties, and judicial decisions that recognize the responsibilities of present human beings toward future generations.

Intergenerational equity refers to fairness in the distribution, use, and preservation of planetary resources across time. Its most influential formulation is associated with Edith Brown Weiss, who conceives humanity as an intertemporal community in which each generation occupies a dual position. It is both a beneficiary of the planetary legacy inherited from previous generations and a trustee responsible for transmitting that legacy to those who will follow. From this perspective, no generation should be permitted to consume or degrade the natural resource base in a manner that leaves subsequent generations with significantly diminished environmental conditions or opportunities (Brown Weiss 1990, 199-200, 1992). This does not imply an identical allocation of resources between generations or require the present generation to preserve the world unchanged. Rather, intergenerational equity seeks a fair balance between present and future needs while maintaining the ecological conditions and range of possibilities necessary for future generations to pursue their own conceptions of well-being (Slobodian 2020, 571).

From a legal perspective, the significance of intergenerational equity lies particularly in its capacity to translate concern for the future into obligations governing present conduct. The principle may require decision-makers to consider the long-term consequences of environmental policies, to avoid transferring disproportionate environmental burdens into the future, and to adopt preventive, mitigation, adaptation, conservation, and restoration measures whose effects extend beyond the present generation (Brown Weiss 1992, 26). In climate litigation, it has therefore operated not only in defining substantive obligations, but also in long-term planning and in the design of remedies capable of maintaining judicial or institutional oversight over time (Bookman and Wewerinke-Singh 2024, 2-3). This does not mean that the precise legal status or content of intergenerational equity is fully settled. Although references to future generations are widespread in international environmental law, the principle has historically been criticized for its normative indeterminacy, and there remains debate over whether it independently gives rise to enforceable obligations (Bertram 2023).

The Inter-American Court of Human Rights offers a clear example of this evolution. In its first judgment addressing human rights and the environment, the *Mayagna (Sumo) Awas Tingni Community v Nicaragua* decision of 31 August 2001, the Court had already incorporated an intergenerational perspective on environmental harm, grounded in Indigenous worldviews. The case concerned the violation of Indigenous property rights resulting from the granting of a concession for road construction and logging activities

on the lands of the Awas Tingni community. It was the first case in which the Court, through an evolutionary interpretation of Article 21 of the Convention (right to property), recognized the communal property rights of members of Indigenous peoples. In this interpretation, the Court emphasized the close relationships that this Indigenous community maintains with 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 generation”.²⁶

In this way, the Inter-American Court of Human Rights incorporates, for the first time, the relationship between human beings and nature into the framework of reflection on human rights, thereby inserting reflection on the importance of environmental conservation for future generations. This was expressed by Judges Cançado Trindade, Pacheco Gómez, and Abreu Burelli in their joint reasoned opinion, noting the importance that the element of conservation, in this case, reflects a cultural manifestation of the integration of human beings with nature and the world in which they live from an “intertemporal dimensión”. This integration, in their words: “is projected into both space and time, as we relate ourselves, in space, with the natural system of which we are part and that we ought to treat with care, and, in time, with other generations (past and future), in respect of which we have obligations”.²⁷ Following this interpretation, in another case involving Indigenous peoples, the *Case of the Xákmok Kásek Indigenous Community v Paraguay* (2010), the Court ordered, as a measure of reparation, the creation of a Community Development Fund aimed at protecting the environment and both present and future generations. As the Court explained, for this community environmental harm entails “the risk of losing or suffering irreparable harm to their life and identity and to the cultural heritage to be passed on to future generations”.²⁸

In this way, the Court’s first pronouncements on the intergenerational character of environmental harm emerged through the protection of the rights of Indigenous peoples. Yet, despite this early recognition, the discourse on intergenerational responsibilities remained absent from the Inter-American Court’s environmental jurisprudence for more than sixteen years. It was not until Advisory Opinion OC-23/17 on the Environment and Human Rights, issued on 15 November 2017, that the Court revisited the intergenerational framework by recognizing that the collective dimension of the right to a healthy environment protects both present and future generations.²⁹ However, in that Advisory Opinion, the Court did not develop any specific obligations regarding the protection of this collective and intergenerational dimension of the right to a healthy environment. That development would come in a case that, due to its characteristics, was especially well-suited to address the intergenerational nature of environmental harm: the already discussed *Inhabitants of La Oroya v Peru* of 27 November 2023.

²⁶ Inter-American Court of Human Rights. *Case of the Mayagna (Sumo) Awas Tingni Community v Nicaragua*. Judgment of August 31, 2001. (Merits, Reparations and Costs), para. 149.

²⁷ Joint concurrent opinion of judges A.A. Cançado Trindade, M. Pacheco Gómez and A. Abreu Burelli in the case of the *Mayagna (Sumo) Awas Tingni Community v Nicaragua*. Judgment of August 31, 2001, paras. 8-10.

²⁸ Inter-American Court of Human Rights. *Case of the Xákmok Kásek Indigenous Community v Paraguay*. Merits, reparations and costs. Judgment of August 24, 2010. Series C No. 214, para. 321.

²⁹ Inter-American Court of Human Rights. Advisory Opinion OC-23/17, para. 59.

In that case, the Inter-American Court recognized the extended dimension of the environmental harm caused in La Oroya, noting that, in accordance with the principle of intergenerational equity, States must “comply with their obligations to protect the environment taking into account the effects that environmental damage has on present and future generations”. At the same time, it held that, pursuant to the precautionary principle, States must “preserve the environment in order to allow future generations opportunities for development and ensure the viability of human life”, which includes “the creation of environmental policies aimed at ensuring that current generations leave behind a stable environment that will allow future generations similar opportunities for development”.³⁰

This approach was reaffirmed by the Inter-American Court in its Advisory Opinion 32/25 on the climate emergency and human rights, where it indicated that “intergenerational equity” entails the “equitable distribution of the burden of climate action and climate impacts, in both the effective enjoyment of rights by present generations, and in their transmission to future generations” because, “the human generations exist within an unbroken continuum that is continually renewed and redefined as untold new members join the living human community”.³¹ Under this interpretation, intergenerational equity does not simply involve looking toward the future; rather, it requires avoiding:

the imposition of disproportionate burdens on members of both future and present generations. The former may occur if, for example, climate action is unjustifiably postponed, leaving the damage and cost to future generations. The latter would happen if, for example, the costs of the energy transition are allocated without considering the vulnerability of certain groups of the population today.³²

With this, the Inter-American Court incorporates a climate justice perspective into the framework of our obligations toward future generations. Climate justice seeks to bring into climate litigation both the differentiated effects of climate change on people in situations of vulnerability and the procedural barriers faced by certain historically discriminated groups in making their voices heard and in demanding respect for their rights within the design of public policies aimed at addressing climate change (Chalifour 2021, 23-29, Goldston 2022). This concept has been key for the Inter-American System to recognize that not all social groups face climate change on equal terms and that not all therefore have the same responsibilities to address it.³³ This is particularly relevant for the region, as countries in the Global South, despite having contributed the least to climate change historically, face a greater likelihood of suffering its most severe impacts, either due to limitations in their economic, social or institutional response capacities and/or factors associated with their geography. In this context, the Inter-American Court is careful to affirm that our obligations toward future generations must be grounded in both an intra- and intergenerational perspective. That is, protecting the planet for those

³⁰ Inter-American Court of Human Rights. *Case of the Inhabitants of La Oroya v Peru*, paras. 128 and 243.

³¹ Inter-American Court of Human Rights. Advisory Opinion AO-32/25, paras. 312.

³² Inter-American Court of Human Rights. Advisory Opinion AO-32/25, para. 310.

³³ IACHR. Report on Business and Human Rights: Inter-American Standards, approved on November 1, 2019, para. 252; IACHR. Resolution No. 2/24. Climate Change–Induced Human Mobility, adopted on December 26, 2024, resolution number 5.

who will come cannot justify the continuation of injustices or rights violations suffered in the present by human beings who are themselves victims of global warming.³⁴

4. Beyond intergenerational responsibility framework: can Future generations be considered rights-holders under the Inter-American Human Rights System?

As discussed in the previous section, intergenerational equity can be articulated primarily through duties imposed on present generations to preserve the environmental conditions necessary for those who will live in the future. However, this is not the only way in which the principle has been understood. Intergenerational equity may also be formulated in terms of corresponding rights held by future generations themselves. This is the position adopted by Edith Brown Weiss, who understands intergenerational equity as generating both obligations for present generations and corresponding “planetary rights” for future generations (Brown Weiss 1990, 202). Although she acknowledges that obligations toward future generations could theoretically exist without correlative rights, she rejects an exclusively duty-based formulation. In her view, leaving the matter solely in terms of obligations would allow the present generation to define the content of those obligations largely from its own perspective. Recognizing corresponding rights shifts the inquiry toward what future generations should themselves be entitled to receive and gives greater normative force to their interests (Brown Weiss 1990, 203–204).

While recognizing future generations as rights-holders may strengthen their normative protection, it does not resolve the underlying difficulties of identifying the interests attributable to persons who do not yet exist and determining the legal content of their rights in the present. This is particularly important because recognizing a subject of rights tells us who is to be protected but does not necessarily tell us what that subject would value, which environmental conditions should be preserved, or how competing present and future interests should be balanced. As will be discussed below, the difficulty of representing future generations is therefore not exhausted by formally recognizing their legal subjectivity. These difficulties may help explain why, despite the growing judicial invocation of future generations, there is still no consolidated line of jurisprudence in which their protection is consistently grounded in their status as autonomous rights-holders.

A closer examination of the cases commonly associated with the rights of future generations reveals a more complex picture, as many of them do not actually recognize future generations as holders of the rights at issue. One of the earliest and most influential examples is *Minors Oposa v Factoran*,³⁵ where the Philippine Supreme Court allowed children to act not only on their own behalf but also on behalf of succeeding and unborn generations. Yet the precise legal significance of this aspect of the decision remains contested. The Court’s reference to future generations has been characterized as

³⁴ This concern is particularly visible in debates over “green colonialism,” where measures adopted in the name of environmental protection or climate mitigation—such as conservation initiatives, carbon-offset projects, or large-scale renewable energy developments—may reproduce patterns of dispossession, exclusion, or unequal control over land and natural resources affecting Indigenous peoples and local communities (Lang *et al.* 2024, Montalván-Zambrano y Wences 2024).

³⁵ Supreme Court of the Philippines, *Minors Oposa v Secretary of the Department of Environment and Natural Resources*, 30 July 1993.

obiter dictum, rather than as a binding recognition of autonomous rights held by unborn persons (Spentzou 2021, 159). In the same vein, later Philippine jurisprudence has cautioned against assuming that present litigants can adequately determine the interests of those who will live under different future circumstances, warning that such representation may restrict the ability of future generations to assess their own concerns and pursue their own interests (Bookman and Wewerinke-Singh 2024, 13-14). In *Urgenda Foundation v State of the Netherlands*, the District Court of the Hague accepted that the claimant organization could represent future generations.³⁶ Yet the Court of Appeal did not recognize standing on behalf of future generations, and the Supreme Court ultimately grounded the case in the State's duties toward present residents under Articles 2 and 8 ECHR (Drigo 2024, 1136, Bos 2026, 12-14). The Colombian *Future Generations v Ministry of the Environment and Others* case went further by expressly referring to the rights of future generations. However, the claim was brought by twenty-five young people asserting their own constitutional rights alongside those of future generations, and the Court operationalized protection partly through recognition of the Colombian Amazon as a legal person from an ecocentric perspective.³⁷ In *Neubauer v Germany*,³⁸ the German Constitutional Court relied primarily on the fundamental rights of persons already alive, interpreting those rights as "intertemporal guarantees" that impose present obligations to safeguard freedom over time, rather than grounding its reasoning in the legal standing of future generations themselves (Bos 2026, 16-17). In *Billy and Others v Australia*,³⁹ the Human Rights Committee likewise assessed future climate harm through the victim status and existing rights of present applicants, requiring a sufficiently concrete risk (Bos 2026, 14-16). Finally, in *KlimaSeniorinnen*,⁴⁰ the ECtHR expressly declined to recognize a right of representation for future generations, while nevertheless relying on intergenerational burden-sharing to define concrete positive obligations owed by the State in the present (Pedersen and Sulyok 2024, 466). In sum, these cases show that courts have increasingly incorporated the interests of future generations into adjudication but have often done so through the rights of present people, intertemporal duties or intergenerational equity. The move from protecting future interests to recognizing future generations as autonomous present rights-holders therefore remains uneven and conceptually unsettled.

This conceptual tension becomes particularly significant in light of the recent development of the Inter-American Human Rights System. As we have seen, when addressing intergenerational equity, the Inter-American Court has tended to understand this principle not as a mandate directed solely toward the future, but as a way of acknowledging the responsibilities that humanity shares across time to protect life on the planet. Within this framework, we have shown that children have played a central role as the beings who most clearly embody this intergenerational perspective. However,

³⁶ District Court of The Hague, *Urgenda Foundation v State of the Netherlands*, 24 June 2015.

³⁷ Supreme Court of Justice of Colombia, Civil Cassation Chamber, *Future Generations v Ministry of the Environment & Others*, STC4360-2018, 5 April 2018.

³⁸ German Federal Constitutional Court, *Neubauer et al. v Germany*, 24 March 2021.

³⁹ UN Human Rights Committee, *Billy et al. v Australia*, 21 July 2022.

⁴⁰ European Court of Human Rights (Grand Chamber), *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*, Judgment, 9 April 2024.

more recently, another intergenerational subject of rights has begun to emerge within the Inter-American Human Rights System: the future generations.

In OC 35/25, the Inter-American Court of Human Rights expressly recognizes future generations as rights holders, stating that: “even though international human rights law recognizes that everyone is a possessor of non-derogable rights, the ethical and legislative grounds for this transcend those who inhabit the planet today, extending also to humanity as a legal and moral community that endures over time”.⁴¹ This substantive recognition of the rights of future generations is accompanied by procedural rights aimed at making such recognition effective. Thus, the Court establishes that, for initiating claims on behalf of future generations, the *pro actione* principle must apply, according to which “the interpretation or application of procedural rules must not unjustifiably prevent or hinder a court from hearing and ruling on the claims submitted to it in accordance with the law, and the interpretation most favorable to access to justice must always prevail”.⁴² This principle relaxes procedural requirements for bringing claims, thereby facilitating the incorporation of the interests of “future generations in their climate actions”.⁴³

This is in fact confirmed by the judges of the Inter-American Court of Human Rights Rodrigo Mudrovitsch, Eduardo Ferrer Mac-Gregor and Ricardo Perez Manrique in their concurring opinion in Advisory Opinion 35/25, in which they state that the recognition of future generations as rights holders: “does not amount to a mere nominal or empty form of rights-holding; rather, it must translate into adjustments to both substantive and procedural law so that those concerned may invoke their protection.”⁴⁴ This position had already been anticipated by the same judges in their concurring opinion in the *La Oroya v Peru* judgment of November 2023, where they stated that “given the particular nature of protecting future generations, States must ensure standing in judicial proceedings and environmental protection claims, whether for organizations or human rights defenders, present generations, or the ombudsperson or similar institutions”.⁴⁵

Following this new line of jurisprudence, future generations could be understood as rights-holders within the Inter-American Human Rights System (IAHRS). While the narrative and reasoning underlying this recognition are important contributions to addressing the severe ecological crisis we are facing, significant doubts remain regarding its operability within the IAHRS and the multiple indeterminate elements embedded in its formulation. One of the questions the judge might ask when hearing from a representative of future generations is: Who are the future generations that you represent? People who will be born ten years from now, 30 years from now, or hundreds of years from now? These questions are not merely provocative; on the contrary, taking

⁴¹ Inter-American Court of Human Rights. Advisory Opinion AO-32/25, para. 311.

⁴² Inter-American Court of Human Rights. Advisory Opinion AO-32/25, para. 543.

⁴³ Inter-American Court of Human Rights. Advisory Opinion AO-32/25, paras. 469.

⁴⁴ Concurring Opinion of 18 June 2025 issued by the judges Rodrigo Mudrovitsch, Eduardo Ferrer Mac-Gregor and Ricardo Perez Manrique in the Advisory Opinion AO-32/25 “Climate Emergency and Human Rights” de la Inter-American Court of Human Rights, para. 76.

⁴⁵ Concurring Opinion of the judges Ricardo Perez Manrique, Eduardo Ferrer Mac-Gregor and Rodrigo Mudrovitsch in the case of *the Inhabitants of La Oroya v Peru*. Preliminary objections, merits, reparations and costs, Judgment of November 27, 2023, para. 176.

a position on an answer can completely affect the resolution of the case and the remedial measures within it.

As Voigt observes, the human rights impacts of climate change are the result from a combination of interconnected factors. In other words, what matters is not the climatic event itself, but whether the event occurs in conjunction with particular risk conditions affecting specific groups of people. For this reason, human rights violations affecting future generations as a consequence of climate change should be assessed by considering at least three components: the climatic event, exposure, and vulnerability (Voigt 2016, 479). Exposure refers to the degree to which an individual or community is likely to experience the effects of climate change, given the environmental, infrastructural, social, economic, and cultural conditions in which they live. Vulnerability, in turn, concerns the extent to which those individuals or communities are likely to suffer harm from climate impacts (Voigt 2016, 483-484).

Both exposure and vulnerability are dynamic variables, shifting across time and place depending on economic, social, geographic, demographic, cultural, institutional, technological and environmental factors. This dynamism suggests that the responses human rights courts provide in climate-related cases may—and perhaps must—evolve over time, complicating the establishment of fixed and universally applicable standards. What today we understand as exposure to climate risks may change as technology advances, for instance, risks that currently appear unpredictable might become foreseeable in the future. Likewise, vulnerability levels may vary as improvements arise in the techniques and capacities available to resist and address climate-related threats. In this context, the assessment of how environmental damage threatens people who will be born within a decade would likely differ significantly from an assessment oriented towards human beings who might inhabit the planet two centuries from now. Advances in technology and scientific knowledge could mean that what we currently consider a threat may no longer be perceived as such in the future. This uncertainty also affects the question of how the burdens of climate action should be distributed across generations. If future generations are expected to possess greater technological capacities and economic resources, it could be argued that, in some circumstances, they may be better placed to bear part of the costs associated with climate adaptation or mitigation. By contrast, if technological progress is uncertain or insufficient to compensate for worsening environmental conditions, postponing action may simply transfer greater risks and costs to those who come later (Meijers 2023, 632). Additionally, even if future generations benefit from greater technological knowledge and capacities, we should not assume that these advantages would constitute reasonable compensation for the large-scale and potentially irreversible environmental damage imposed on them by present generations (Thompson 2010, 21).

These uncertainties become even more significant in light of Bos's observation "that it is in the present that the future (and past) exists" (Bos 2026, 8). Future generations can only enter legal reasoning through representations constructed by present actors, who necessarily project onto the future their assumptions about risks, needs, values, and desirable forms of development. The debate is therefore not simply between the interests of present and future generations as two clearly identifiable groups. It also takes place among competing perspectives in the present about what kind of future should be

protected and how it should be achieved. These may include, for example, more technologically optimistic projections that anticipate greater adaptive capacities, as well as more precautionary or conservation-oriented approaches that emphasize ecological limits and the preservation of environmental conditions. In this sense, arguments made on behalf of future generations inevitably reflect present-day disagreements about what constitutes a desirable and just future.

To these difficulties must be added the further question of whether future individuals can, in fact, be harmed by present decisions, a problem captured by Derek Parfit's well-known "non-identity problem". According to Parfit, when considering future people, we must answer two questions: "(1) If we cause someone to exist, who will have a life worth living, do we thereby benefit this person? (2) Do we also benefit this person if some act of ours is a remote but necessary part of the cause of his existence?" (Parfit 1992, 358). According to this argument "actions and choices that are necessary parts of the causal chain leading up to the existence of a person cannot harm that person—had the act or choice not occurred that person would have never existed, and one is better off existing than not" (Herstein 2009, 1174). In other words, the people who will live in the future will be the result of a chain of events shaped by the actions of present generations and those that follow. Within this framework, a person born as result of an environmentally responsible generation would be different from the person born of a generation that is not, since these decisions will influence social dynamics and, consequently, the relationships that give rise to future individuals.⁴⁶ In this context, it becomes difficult to claim that an action constitutes a violation of the rights of future generations if that action was, in one way or another, a necessary condition for the very existence of the future person in question.⁴⁷

In response to the previous argument, one could contend that mere existence does not necessarily place a person in a better position (Thompson 2010, 22). There are reasons to affirm that living on a planet with climatic conditions incompatible with human flourishing could place someone below a minimum threshold of well-being, even if that person would not have existed under an alternative course of action. Yet this approach raises both normative and legal difficulties, since any attempt to identify such a threshold necessarily depends on contestable judgments about the conditions required for a life of sufficient dignity and well-being, as well as on determining when that threshold should be regarded as legally breached (Andina and Corvino 2023, 670). An

⁴⁶ For a comprehensive analysis of the implications of the non-identity argument for climate ethics, as well as the main responses proposed in the literature, see: Andina and Corvino 2023.

⁴⁷ Parfit illustrates the non-identity problem through the "Risky Policy" dilemma. A community must choose between two energy policies. Both are safe for the next three centuries, but one—the Risky Policy—will generate dangers thousands of years later because it involves storing nuclear waste that could release radiation in the distant future. The community chooses this policy, and centuries later a catastrophe occurs that kills thousands of people. However, because small differences in choices affect who is born and when, the people who die only exist because the Risky Policy was chosen. Had the safer policy been adopted instead, those individuals would not have existed; different people would have been born in their place. In this scenario, the dilemma is as follows: can we say that the decision harmed anyone if the people who die would not have existed under the safer alternative? In Parfit's words: "We should ask, 'If people live lives that are worth living, even though they are killed by some catastrophe, is this worse for these people than if they had never existed?' Our answer must be No. Though it causes a predictable catastrophe, our choice of the Risky Policy will be worse for no one" (Parfit 1992, 371-372).

alternative response is to shift the focus from comparative harm to the nature of the wrong itself. The wrong may be understood in relation to future persons as members of an intergenerational human community, rather than solely as harm inflicted upon identifiable individuals. From this perspective, what matters is not whether a particular person has been made comparatively worse off, but whether present actions fail to respect the dignity, rationality, and basic interests that attach to human beings across generations (Meijers 2023, 627).

However, even if we accept these answers, the conclusion that future generations may be owed duties of justice does not by itself determine the content or extent of those duties. A further question therefore remains: *What do future generations want?* In other words, how do we determine the content of their rights and the level of protection they should receive? Is it appropriate to project our own needs onto their rights? How can we engage in terms of justice with beings who do not yet exist? The most widely accepted answer to these questions in environmental debates is that, although we may legitimately doubt the specific preferences of future generations, we can reasonably assume that they will have an interest in certain minimum conditions necessary for human life and flourishing, including a healthy and habitable environment. This idea is consistent with approaches that understand intergenerational justice in terms of basic rights or a minimum threshold of well-being (Meijers 2023, 629-633). Yet even if we accept that future generations are entitled, at the very least, to conditions compatible with life, health, subsistence, and human flourishing, this still tells us little about *how* those conditions should be secured. Once we assume that future generations have a right to a habitable world, another question emerges: *How should that ideal be achieved?* Through the development of less polluting energy sources, or, on the contrary, by slowing technological progress to foster less invasive and utilitarian relationships with the environment? Should we create more natural parks, or more wind farms? In these debates, the *how* is more important than the *what*.

The question about *how* is even more relevant if we take into account that the ambiguity surrounding the notion of future generations can obscure present-day power inequalities—between the local and situated, and the ostensibly universal—in the struggle against climate change (Meijers 2023, 638-639). As Humphreys notes, invoking a universal “we” who are “all in this together,” alongside an equally homogeneous future “they,” conceals the fact that the costs and sacrifices of climate change (and of the policies adopted to address it) are distributed today in profoundly unequal ways across countries and social groups. The generic call to sacrifice for those who will come tends to render invisible those who are already suffering now, shifting urgent debates on adaptation, loss and damage, financing, and technology transfer into a temporally distant abstraction. In this sense, the discourse of the rights of future generations risks depoliticizing the climate crisis, blurring concrete responsibilities, and, paradoxically, perpetuating the very structures of inequality it purports to correct (Humphreys 2022, 1062-1073).

Although it has also been argued that the ambiguity between present and future inherent in the concept of future generations can be productive, allowing climate injustices to be understood as a temporal continuum (Wewerinke-Singh *et al.* 2023, 653-654), its practical application reveals that the overlap between the discourse of future

generations and children's rights can become problematic when each framework is not clearly defined. One of the central demands of contemporary children's rights scholarship has been to move toward a post-paternalist understanding of childhood that recognizes children's present agency and legal subjectivity, treating them as *beings* rather than merely as *becomings*. Traditional conceptions of childhood have often portrayed children as individuals progressing through fixed developmental stages under adult guidance and protection, assuming a stable trajectory toward adulthood and placing greater emphasis on what children will become than on who they already are as rights-holders in the present (Daly *et al.* 2026, 38-43). In the context of climate litigation, this raises the question of whether framing children primarily through the rights or interests of future generations may once again displace attention from their present rights, agency, and experiences of harm. The issue, therefore, is not only whether children belong to the category of future generations, but also whether the temporal assumptions embedded in that category risk obscuring present inequalities by projecting climate justice toward an abstract future. In Latin America, for example, this linkage has often been made without deeper reflection on the specific content of the category of "future generations" (Paz Landeira 2025).⁴⁸

Finally, another source of uncertainty generated by the discourse on the rights of future generations concerns its impact on the standards governing the concepts of "victim" and rights-holder. As discussed above, some authors in the philosophical literature have argued that the non-identity problem can be addressed by moving away from the identity of particular future individuals and focusing instead on the preservation of the conditions that make human life possible across generations (Andina and Corvino 2023, 677-681). On this view, the relevant question is not *who* will exist, but whether present generations preserve the environmental and social conditions that will allow future human beings to exist and live well. Translating this approach into human rights law, however, is more difficult. As Herstein notes, a right is always a right of *someone* or *something* (2009, 1187). In other words, a rights-based framework ultimately requires the identification of a subject to whom the right can be attributed and, where a violation is alleged, of a victim whose rights have been affected. Within the Inter-American Human Rights System, this perspective is made explicit in Article 1(2) of the American Convention on Human Rights, which states: "For the purposes of this Convention, a person is every human being." In this way, the Convention defines the subject of protection within the Inter-American system. Traditionally, the Court's jurisprudence has interpreted "a person is every human being" as referring exclusively to "the rights of the individual—the human being of flesh and blood" (Gros Espiell 1991). In other words, it must be a human subject who is "concrete" and "present".⁴⁹

⁴⁸ In the emblematic judgment of the Colombian Supreme Court in *Future Generations v Ministry of the Environment & Others*, for example, although strong arguments were presented for considering the 25 child petitioners as the future generations at issue (Marrero 2025, 5-7), the Supreme Court did not engage with the meaning of the concept of "future generations" (Nolan 2024, 530). Instead, it merely stated that climate change would affect both "our children" and "future generations," separating both concepts without offering further elaboration on the meaning of either. Colombian Supreme Court, Judgment No. STC4360-2018, April 5, 2018, pp. 13 and 20.

⁴⁹ This was stated by the Inter-American Court of Human Rights in Advisory Opinion No. OC-22/16, dated 26 February 2016, on the entitlement of legal persons to rights in the inter-American system, in which the

This raises the question of whether a human being who will exist in the future can also be considered a victim. Judges Ricardo Pérez Manrique, Eduardo Ferrer Mac-Gregor, and Rodrigo Mudrovitsch, in their separate opinion in the *La Oroya v Peru* judgment of November 2023, relying on the principle of intergenerational equity, argue that the answer is yes. They state that:

For its part, Article 1(2) of the American Convention defines a ‘person’ as every human being, without distinctions of any kind, and this must be the criterion that guides our interpretation of Article 1(1) (Concurring Opinion of the judges Ricardo Perez Manrique, Eduardo Ferrer Mac-Gregor and Rodrigo Mudrovitsch in the case of the Inhabitants of *La Oroya v Peru*, para. 130).

Although this interpretation may be interesting, it is of limited practical utility. Procedural obstacles within inter-American legislation continue to require that the victims named in the complaint be specific and clearly identified. Article 44 of the American Convention on Human Rights allows any person to file a petition alleging human rights violations, without requiring that the petitioner be a victim. In other words, the Inter-American System does not require a direct or indirect personal interest to submit a complaint. This does *not*, however, permit the filing of *actio popularis*—that is, complaints filed on behalf of all inhabitants of a country or of humanity at large. On the contrary, for a case to be admissible within the Inter-American System, the individuals allegedly affected by the violation must be identified.

This requirement is consistent with Article 35(1) of the Rules of Procedure of the Inter-American Court of Human Rights, which provides that the Commission’s Merits Report—initiating proceedings before the Court—must include the identification of the alleged victims. In short, the Inter-American System does not allow abstract complaints. Consistent with this doctrine, in 2003 the Inter-American Commission on Human Rights declared inadmissible a petition submitted by a Panamanian citizen alleging environmental harms on behalf of all citizens of Panama (CIDH 2003). Victims within the Inter-American System must be identified or identifiable and, in any case, specific.

Lastly, regarding the requirement that the rights-holder be a “present” human being, the Court has made this clear in a case unrelated to environmental matters but relevant to the present analysis because it interprets the notion of “person” under Article 1(2) of the Convention. In *Atravía Murillo et al. v Costa Rica*, concerning in vitro fertilization, the Court, after examining the ordinary meaning of the relevant terms, the drafting history of the Convention, other international instruments, and scientific evidence, the Court concluded that an embryo could not be understood as a “person”, therefore could not be a subject of protection under the right to life. This judgment constitutes a landmark case in the regional social mobilization in favor of the right to abortion and its decriminalization, as it categorically establishes that, prior to the implantation of the embryo in the uterus, there is no “person” to whom the rights protected by the Convention can be attributed.⁵⁰

Inter-American Court established that, in accordance with Article 1.2 of the Convention, the rights recognised in that instrument correspond only to “human beings”.

⁵⁰ Inter-American Court of Human Rights. *Case of Artavia Murillo et al. (“in vitro fertilization”) v Costa Rica*. Judgment of november 28, 2012 (preliminary objections, merits, reparations and costs), para. 264.

The significance of this precedent for the present analysis lies not in the status of the embryo as such, but in the Court's insistence that the attribution of Convention rights depends on whether there is a subject that can be regarded as a "person" within the meaning of the Convention. The key point of this interpretation—when applied to the topic addressed in this article—is that it denies protection to "beings" that do not yet exist. For these reasons, any proposal to protect the environment *for future human generations* (that is, for "beings" that do not yet exist) must contend with the conceptual constraints established by this precedent and with the possible consequences of altering it. It would be difficult to maintain, on the one hand, that personhood under the Convention depends on the satisfaction of certain conditions relating to the existence of the human subject and, on the other, that abstract and indeterminate human beings who do not yet exist may already be regarded as "persons" and holders of Convention rights.

5. Conclusions

This article has examined the evolving landscape of intergenerational protection within the Inter-American Human Rights System, focusing in particular on the tension between two approaches: the long-standing and increasingly robust jurisprudence on children's environmental rights, and the emerging—but still unstable—recognition of future generations as potential rights-holders. While children's rights constitute a well-established, operational, and normatively coherent framework through which intergenerational concerns can be effectively addressed, the recognition of future generations as subjects of rights raises complex conceptual and practical challenges. As discussed, the indeterminacy of who "future generations" are, the difficulty of identifying victims for admissibility purposes, and the precedent set in *Artavia Murillo* requiring rights-holders to exist "here and now" all hinder the operability of future-generations rights within the Inter-American System. These weaknesses suggest that, for the time being, future generations may be better understood as a moral and interpretive guideline rather than as rights-holders capable of generating justiciable claims.

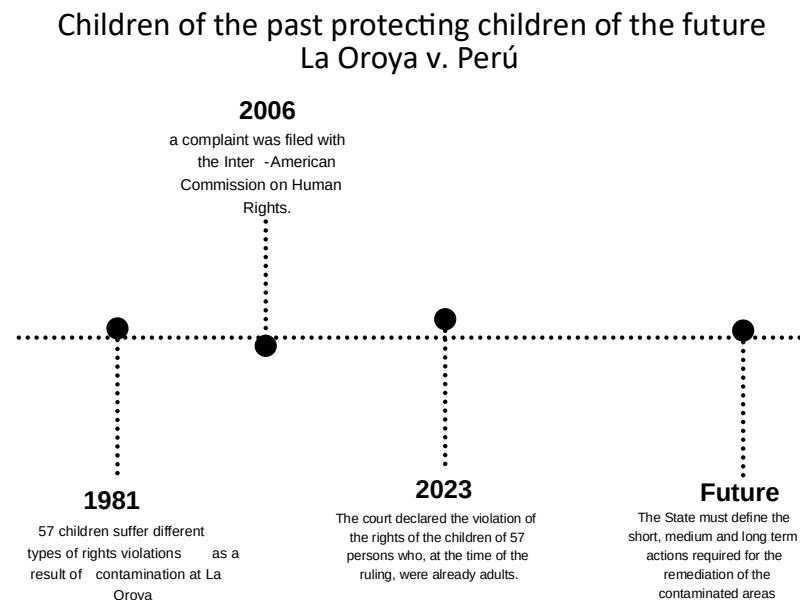
By contrast, centering intergenerational protection on the rights of children living today offers a more promising and doctrinally grounded pathway. Children occupy a uniquely intergenerational position: they are present rights-holders whose development extends into the future, and whose lived experiences can meaningfully reflect both immediate and long-term environmental harms. As shown through *La Oroya* case, their rights function across temporal dimensions, enabling the Court to impose obligations with long-term horizons without relying on hypothetical rights-holders who do not yet exist.

In *La Oroya*, the Court ordered extensive intergenerational reparations, including baseline environmental assessments, short-, medium-, and long-term remediation measures, and ecosystem compensation plans.⁵¹ These include the State's obligation to update and strengthen air-quality standards in line with WHO guidelines and scientific evidence; establish permanent systems for monitoring air, soil, and water contamination and ensure public access to real-time information; continuously supervise the metallurgical complex's compliance with international environmental and human rights standards, and design and implement an ambitious environmental compensation plan aimed at achieving no net loss of biodiversity and ensuring the full ecological restoration

⁵¹ Inter-American Court of Human Rights. *Case of the Inhabitants of La Oroya v Peru*, para. 333.

of the high-Andean ecosystem.⁵² Together, these measures demonstrate the Court's capacity to impose long-term obligations that safeguard the well-being of those who will inhabit the affected areas in the future, without relying on the juridically fraught notion of future generations as direct rights-holders. In this way, the case of La Oroya shows how even children from the past can protect children in the future.

GRAPH 1



Graph 1. Children of the past protecting children of the future: *La Oroya v Perú*.

Complementing this approach, the Court has also incorporated an ecocentric perspective into its interpretation of the right to a healthy environment, recognizing nature as a subject of rights (Montalván-Zambrano 2021). This approach is particularly relevant from an intergenerational perspective because, unlike future generations, nature is not a temporally indeterminate subject. Nature exists here and now in concrete ecological systems whose condition can be observed, scientifically assessed, and affected by present conduct. Environmental degradation can therefore be identified through present evidence, while the ecosystems concerned can be represented in legal proceedings by persons, communities, public institutions, or other actors that already exist. This does not eliminate questions concerning who is entitled to speak on behalf of nature or how its interests should be legally defined. It does, however, locate those questions within the representation of an existing subject rather than requiring courts to construct the identity and interests of persons who have not yet come into existence.

This distinction has important implications for intergenerational protection. Recognizing the intrinsic value of nature allows legal protection to be anchored in the preservation and restoration of ecological systems themselves, rather than depending exclusively on predictions about what future persons may need or value. The continued integrity of those systems is also a material precondition for the enjoyment of human rights across time. Protecting them in the present can therefore produce intergenerational effects without requiring future generations to be treated as presently

⁵² Inter-American Court of Human Rights. *Case of the Inhabitants of La Oroya v Peru*, para. 345-355.

existing legal subjects. In this sense, an ecocentric approach could provide a concrete legal point of reference for long-term environmental protection. It connects present duties and present representation with the preservation of the ecological conditions that future generations will inherit, while avoiding some of the temporal and representational difficulties involved in attributing rights and interests directly to persons who do not yet exist.

Taken together, these developments suggest that intergenerational justice within the Inter-American System may be pursued without recognizing future generations as present rights-holders. A different route could lie in strengthening the protection of children and nature as existing legal subjects whose rights already carry an important temporal dimension. Children embody the continuity between present and future because the protection of their rights today directly shapes the conditions of their lives as future adults. Nature, in turn, provides the material basis on which the enjoyment of rights across generations depends. Building on these existing frameworks may allow the Court to address long-term environmental harm through legal subjects that are present, identifiable, and capable of representation, while still giving meaningful effect to intergenerational concerns. By deepening these frameworks, the Court can advance an intergenerational vision that is normatively robust, procedurally viable, and responsive to the ecological crises of our time. Ultimately, protecting the rights of children who live today, ensuring that their voices and climate action meaningfully shape environmental decision-making, and safeguarding the natural world that sustains them are essential components of securing the dignity and rights of generations to come.

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