World's Youth for Climate Justice

MAY 25, 2023

Climate Change and Intergenerational Justice

Submission by the World's Youth for Climate Justice
Call for inputs by the Special Rapporteur on the promotion and protection of human rights in the context of climate change

Contributors: Ecab Amor Vazquez and Theresa Jürgenssen
Editors: Aditi Shetye and José Daniel Rodríguez Orúe

Memorandum on Climate Change and Intergenerational Justice

Author: World's Youth for Climate Justice
Main Contributors: Ecab Amor Vazquez and Theresa Jürgenssen
Editors: Aditi Shetye and José Daniel Rodríguez Orúe

The World's Youth for Climate Justice (WYCJ) is a global youth-led movement seeking to influence States to protect the rights of present and future generations from the adverse effects of climate change. We focus on the operation of the principle intergenerational equity, within the international legal sphere, to achieve climate justice.

This memorandum is being submitted by World's Youth for Climate Justice in response to the the Call for inputs by the Special Rapporteur on the promotion and protection of human rights in the context of climate change: "Enhancing climate change legislation, support for climate change litigation and advancement of the principle of intergenerational justice".

1. Introduction

The global wave of environmental litigation that is currently taking place is fundamentally challenging the linear conception of human rights violations; indeed, the diffuse and long-haul nature of human rights violations emerging from a generalized degradation of the environment fundamentally challenges the traditional understanding of a myriad of human rights concepts, beckoning national, regional, and international courts to reevaluate their approaches. While climate change litigation is facing a series of legal challenges, one particularly imperative notion is the need to imbue systems of adjudications with a view towards intergenerational equity when it comes to human rights violations stemming from environmental degradation. Introducing intergenerational equity into our court systems will be a crucial step forward in guaranteeing the right to a healthy environment of current and future generations as well. To that end, this memo will primarily focus on the concept of intergenerational justice and its application in litigation, addressing questions 7, 10, 13, 14, and 15 of the questionnaire.

2. The Concept of Intergenerational Equity

2.1 The Foundations for Intergenerational Equity

The concept of equity, *per se*, is not new in international law; organs of human rights protection must pay due regard to this concept.[1] This is especially true in the context of environmental protection,[2] where the concept has been extensively developed.[3] The latter, however, presents the following problem: if the cataclysmic effects of climate change will only truly show themselves in the long run, how does a just system ensure that the rights of future generations are protected? The notion of intergenerational equity is a way to address this exact obstacle, functioning as an "attractive legal frame to confront the long-term stakes of the climate crisis".[4]

2.2 Origins of Intergenerational Equity in International Law

At the international level, the concept was explored in the ICJ *Advisory Opinion on the Threat of Use of Nuclear Weapons*, where the Court emphasized that the environment "represents the living space, the quality of life and the very health of human beings, including generations unborn".[5] In his dissenting opinion Judge Weeramantry referred to "the principle of intergenerational equity" as an emerging principle, which he viewed as an important and rapidly developing principle of contemporary international law.[6] In the realm of treaty law the concept of intergenerational equity is recognized in several international treaties.[7] The Inter-American Court

---

[1] See, the *Continental Shelf* case in 1982, where the ICJ noted that "the legal concept of equity is a general principle directly applicable as law" and one that requires adjudicators to apply these principles in interpreting the relevant rules of international law (ICJ, Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, ICJ Reports 1982, p. 18, para. 71).

[2] Francesco Francioni, "Equity in International Law" (November 2020) in Max Planck Encyclopedia of Public International Law, in Professor Anne Peters (2021–) and Professor Rüdiger Wolfrum (2004–2020), online ed. 7. See also, Frontier Dispute (Burkina Faso v. Mali), Judgment, ICJ. Reports 1986, para. 28.

[3] For instance, the concept of equity is present in the principle 3 of the Rio Declaration on Environment and Development, in the principle of the "commons but differentiated responsibilities and respective capabilities" (UN Secretary General, *Gaps in international environmental law and environment-related instruments: towards a global pact for the environment*, UN Doc A/73/419, 30 November 2018, para. 21), Articles 3.3 and 4 of the UNFCCC, and the preamble and Article 2.2 Preamble of the PA (see World's Youth for Climate Justice, *Youth Climate Justice Handbook: Legal Memorandum*, 2023, pp. 23-25, https://www.wy4cj.org/handbook).

[4] Hilson, C., 'Framing Time in Climate Change Litigation' (2019) 9(3) Oñati Socio-Legal Series, pp. 361–79.

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

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

[7] See, inter alia, the Convention on Biological Diversity (CBD), the United Nations Economic Commission for Europe Water Convention, the UNFCCC and the Paris Agreement, Preamble of the International Convention for the Regulation of Whaling, Art. 4 of the Convention Concerning the Protection of the World Cultural and Natural Heritage, Preamble of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Art. 1 of the Aarhus Convention, Arts.1 and 3 of the Escazú Agreement.

of Human Rights has similarly operationalized the concept, first, in the case of *Myagna (Sumo) Awas Tingni v. Nicaragua*, where the Court recognized the importance of the temporal dimension of international law and upholding indigenous cosmovisions,[8] and, second, in Advisory Opinion 23, where the Court noted that "right to a healthy environment has been understood as a right that has both individual and also collective connotations. In its collective dimension, the right to a healthy environment constitutes a universal value that is owed to both present and future generations".[9]

2.3 Origins of Intergenerational Equity in Domestic Law

At the domestic level, several rulings have also recognized the principle of intergenerational equity or related concepts (such as the interests of future generations).[10] Further, as many as 81 of 196 national constitutions include some reference to future generations with the majority of these provisions being instantiated in the past 30 years.[11] Taking all these elements into account, it

[8] IACtHR., Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Judgment of Aug. 31, 2001. Series C No. 79.

[9] IACtHR, November 15, 2017, *Medio ambiente y derechos humanos (obligaciones estatales en relación con el medio ambiente en el marco de la protección y garantía de los derechos a la vida y a la integridad personal - interpretación y alcance de los artículos 4.1 y 5.1, en relación con los artículos 1.1 y 2 de la Convención Americana sobre Derechos Humanos)*, Series A No. 23, para 59.

[10] See i.e., Decision No 14/2020 (VII.6 AB) Constitutional Court of Hungary (9 June 2020) (accessed 26 April 2021). Dejusticia v Colombia Corte Suprema de Justicia de Colombia [Supreme Court of Justice of Colombia] (Bogotá 5 April 2018) STC 4360-2018, DG Khan Cement Co Ltd v Government of Punjab Through Its Chief Secretary, Lahore, Supreme Court of Pakistan (15 April 2021) CP1290-L/2019, Goa Foundation v Union of India and Others Supreme Court of India (21 April 2014) 435 SCC 2012, H Carlos Schneider S/A Commércio e Indústria e Outro v Ministério Público Federal Superior Tribunal de Justiça [Superior Court of Justice of Brazil] (Brasília 23 October 2007) Recurso Especial no 650.728/SC (2d Panel), Juliana v United States United States Court of Appeals (9 Circuit) (17 January 2020) Case No 18-36082 DC, No 6:15-cv-01517-AA, Leghari v Federation of Pakistan Lahore High Court (25 January 2018) Case WP No 25501/2015. Maria Khan and Others v Federation of Pakistan and Others Lahore High Court (14 February 2019) Application No 8960 of 2019, Ministério Público Federal v Ogata Superior Tribunal de Justiça [Superior Court of Justice of Brazil] (Brasília 14 October 2008) Recurso Especial no 840.918/DF (2d Panel) Relator: Min. Eliana Calmon (Majority Opinion of Min. Antonio Herman Benjamin) (14 October 2008) (Brazil), Motta v UNIÃO Superior Tribunal de Justiça [Superior Court of Justice of Brazil] (Brasília 10 November 2009) Recurso Especial no 1.109.778/SC (2d Panel) Relator: Min. Antonio Herman Benjamin (10 November 2009) (Brazil). Netherlands v Urgenda Foundation Gerichtshof Den Haag [The Hague Court of Appeal] (9 October 2018) Case No 200.178.245/01 ECLI:NL:GHDHA:2018:2591. Netherlands v Urgenda Foundation Hoge Raad der Nederlanden [Supreme Court of the Netherlands] (The Hague 20 December 2019) Case No 19/00135 ECLI:NL:HR: 2019:2006, Notre Affaire à Tous and Others v France Tribunal Administratif de Paris [Paris Administrative Court] (3 February 2021) Nos 1904967, 1904968, 1904972, 1904976/4-1 (accessed 7 April 2021). Oposa v Secretary of the Department of Environment and Natural Resources (Factoran) Supreme Court of the Philippines (Manila 30 July 1993) (1994) 33 ILM 173, Urgenda Foundation v Netherlands Rechtbank den Haag [The Hague District Court] (24 June 2015) Case No C/09/456689 / HA ZA 13-1396 ECLI:NL:RBDHA:2015:7145. Waweru, Mwangi (joining) and others v Kenya High Court of Kenya (2 March 2006) Misc Civil App No 118 of 2004.

[11] R. Araújo & L. Kössler, 'The Rise of the Constitutional Protection of Future Generations' (2021) *LPP Working Paper Series No. 7–2021*, available at: https://dx.doi.org/10.2139/ssrn.3933683.], pgs. 10-16. In page 21 of the paper

seems certain that the concept of intergenerational equity is a near inescapable concept in the protection of human rights and the environment.

2.4 The Need for the UN's Harmonised Approach Towards Intergenerational Equity

There have been seeds for, and explorations of, the concept of intergenerational equity throughout the legal world. However, to date, there is no harmonized conception of what intergenerational equity is or of its legally binding nature. This needs to change in order to fully integrate the concept into the legal sphere of the protection of human rights and the environment. To that end, the World's Youth for Climate Justice has elaborated the following understanding, which it urges to be adopted by national, regional, and international instruments and organs: "**intergenerational equity requires that the current generation considers the impact of its current actions on future generations when making decisions related to climate change and safeguards the preservation and stability of the climate system for the benefit of present and future generations."**[12]

3. Intergenerational Equity and Human Rights-Based Climate Change Litigation

This memo will now turn its attention to the exploration of a selected number of cases, which demonstrate several of the challenges that exist in the adjudication of climate change cases, specifically in relation to intergenerational equity.

3.1 The Concepts of "Harm" and "Victimhood"

Both nationally and internationally a common admissibility requirement instantiated by organs of human rights protection is the need to prove the existence of a direct harm, which was already endured by applicants and which, consequently, vests them with victim status. Hence, most cases deal with instances in the **past;** the future - and with that the rights of future generations - lies outside of the purview of these systems of protection. Indeed, at the level of regional courts, near all cases[13] where the environment has affected a person's rights and which have been admitted by

---

the authors note that 28 countries impose on state organs some sort of duty to protect future generations, while 15 constitutions mold this protection into actionable rights.

[12] World's Youth for Climate Justice, *Youth Climate Justice Handbook: Legal Memorandum*, 2023, p. 25, https://www.wy4cj.org/handbook.

[13] See for instance Inter-American Court of Human Rights, February 6, 2020, Merits, Reparations and Costs, Indigenous Communities Members of the Lhaka Honhat Association (Nuestra Tierra) v. Argentina, Series C No 400; ECtHR, December 9, 1994, Judgement in the case of López Ostra v Spain, App No. 16798/90; ECtHR, February 19,

courts have centered on punctual instances of harm.[14] Climate change-related cases, however, are inherently more complicated due to the prolonged, less direct, and future implications of actions taken today. Meaning that the strict conceptualizations of "harm" and "victimhood" is a recurring obstacle in human-rights based climate change litigation.

3.2 A "Real and Reasonable Risk"

In *Billy v Australia*[15] the petitioners and their children claimed that their rights had been violated as Australia failed to adapt to climate change. The Human Rights Committee, however, decided that no violation of Article 6 ICCPR had taken place. In its reasoning the Committee[16] argued the following: first, the information presented did not allow the Committee to conclude that the measures taken by the State had been insufficient so as to represent a *direct threat* to the authors' right to life with dignity; and second, the State still had *enough time* before the authors' right to life would be *irredeemably* affected (10-15 years) and could, thus, still take action to mitigate the

1998, Judgement in the case of Guerra and others v Italy [GC], App no. 116/1996/735/932; ECtHR, June 9, 1998, Judgement in the Case of McGinley and Egan v the United Kingdom, App No. 10/1997/794/995-996; ECtHR, April 6, 2000, Judgement in the Case of Athanassoglou and Others v. Switzerland [GC], App no. 27644/95; ECtHR, November 30, 2004, Judgement in the case of Öneryildiz v Turkey [GC], App No. 48939/99; ECtHR, March 30, 2005, Judgement in the Case of Taskin and Others v. Turkey, App no. 46117/99; ECtHR, November 30, 2005, Judgement in the Case of Fadeyeva v Russia, App no. 55723/00; ECtHR, March 26, 2007, Judgement in the Case of Giacomelli v Italy, App No. 59909/00; ECtHR, July 6, 2009, Judgement in the Case of Tatar v Romania, App no. 67021/01; ECtHR, May 10, 2011, Judgement in the case of Dubetska and others v Ukraine, App no. 30499/03; ECtHR, February 14, 2012, Judgement in the Case of Hardy and Maile v the United Kingdom, App No. 31965/07; ECtHR, June 24, 2019, Judgement in the Case of Cordella and others v Italy, App nos. 54414/13 and 54264/15

[14] For instance, the approval and creation of a factory releasing chemicals into the surrounding areas which resulted in a degradation of an individual's health (see, inter alia, ECtHR, December 9, 1994, Judgement in the case of López Ostra v Spain, App No. 16798/90; ECtHR, February 19, 1998, Judgement in the case of Guerra and others v Italy [GC], App no. 116/1996/735/932; ECtHR, June 9, 1998, Judgement in the Case of McGinley and Egan v the United Kingdom, App No. 10/1997/794/995-996; ECtHR, April 6, 2000, Judgement in the Case of Athanassoglou and Others v. Switzerland [GC], App no. 27644/95; ECtHR, March 30, 2005, Judgement in the Case of Taskin and Others v. Turkey, App no. 46117/99; ECtHR, November 30, 2005, Judgement in the Case of Fadeyeva v Russia, App no. 55723/00; ECtHR, March 26, 2007, Judgement in the Case of Giacomelli v Italy, App No. 59909/00; ECtHR, July 6, 2009, Judgement in the Case of Tatar v Romania, App no. 67021/01; ECtHR, May 10, 2011, Judgement in the case of Dubetska and others v Ukraine, App no. 30499/03; ECtHR, February 14, 2012, Judgement in the Case of Hardy and Maile v the United Kingdom, App no. 31965/07); and instances where the state did not adequately prepare for a natural disaster which resulted in the death of individuals (see, inter alia ECtHR, November 30, 2004, Judgement in the case of Öneryildiz v Turkey [GC], App No. 48939/99; Budayeva and others v Russia (App. nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, 2008; ECtHR, July 9, 2012, Kolyadenko and others v Russia, app. nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05; ECtHR, November 17, 2017, Case of M. Özel and Others v. Turkey (app. nos. 14350/05, 15245/05 and 16051/05); ECtHR, May 19, 2019, Vladimirov v Bulgaria, App no 58043/10; ECtHR, May 15, 2012, *Hadzhiyska v. Bulgaria (dec.)*, app no. 20701/09).

[15] HRC, *Billy v Australia* No. 3624/2019, CCPR/C/135/D/3624/2019, September 22, 2022.

[16] Building upon the approach already taken in HRC, *Ioane Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, 7 January 2020.

effects of climate change.[17] Essentially, the Committee did not consider that the petitioners had suffered any harm, nor that they were at a "real and reasonably foreseeable risk"[18] of suffering such harm in the near future.

While the Committee should be commended for not keeping the notion of "harm" entirely tied to past actions, its interpretation of what amounts to a "real and reasonable risk" seems to have created an unreasonably high standard. One would assume that the adverse impact of climate change is certainly going to have on people should be able to meet the criteria of such a risk. Most likely, however, the fact that the State, in the opinion of the Committee, still had "enough" time to reverse its actions meant that it was not absolutely guaranteed that harm would occur. Consequently, the risk was not "real and reasonably foreseeable". This elaborates the crux of the issue of human rights based climate change litigation: At which point will it be too late for a State to take actions? If our rights only become actionable once the State has run out of time to prevent the harm, it will already be too late. A restrictive interpretation of harm will lead to exactly such an outcome.

It follows that we must broaden the concepts of "harm" and "victim status" in order to accommodate for the needs of the crisis we are currently facing and to address the rights of everyone who will come after us. It should be noted that, even though references to the rights of future generations can increasingly be found in the arguments brought forth by applicants,[19] to date neither the European nor the Interamerican Court on Human Rights have pronounced themselves on whether a more expansive conception of harm is possible within their respective frameworks.[20]

---

[17] HRC, *Billy v Australia* No. 3624/2019, CCPR/C/135/D/3624/2019, September 22, 2022, paragraph 8.7; HRC, *Ioane Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, 7 January 2020, paragraph 9.12.

[18] HRC, *Billy v Australia* No. 3624/2019, CCPR/C/135/D/3624/2019, September 22, 2022, paragraph 8.6

[19] See ECtHR, Duarte Agostinho and Others v. Portugal and Others, App no. 39371/20; ECtHR, Verein KlimaSeniorinnen Schweiz and others v. Switzerland, App no. 53600/20; Constitutional Court of Austria, Children of Austria v. Austria (petition submitted in February 2023).

[20] More clarity will be had to this effect upon the emission of judgements in the cases of Duarte Agostinho et al. v. Portugal et al and Verein KlimaSeniorinnen Schweiz and Others v. Switzerland in the European System and Advisory Opinion 30 in the InterAmerican system. Though here, it must be noted, that the European Court has proved especially reluctant to consider a harm not directly suffered by the applicants as a result of human related environmental degradation as sufficient to engender the state's international responsibility see ECtHR, August 22, 2003, Judgement in the Case of Kyratatos v Greece, App No. 41666/98, para 53 where the Court noted that "In the present case, even assuming that the environment has been severely damaged by the urban development of the area, the applicants have not brought forward any convincing arguments showing that the alleged damage to the birds and other protected species living in the swamp was of such a nature as to directly affect their own rights under Article 8 § 1 of the Convention. It might have been otherwise if, for instance, the environmental deterioration complained of had consisted in the destruction of a forest area in the vicinity of the applicants' house, a situation which could have

3.3 The Problem of Individuality

Cases have been attempting to circumvent the victimhood barrier by focusing on the already-occurring health issues of certain individuals,[21] such as heat strokes, asthma problems, etc. For instance, in *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*[22] the applicants are *inter alia* a group of elderly women who complained of worsening health problems that were linked to climate change. Despite this loophole, the case was rejected by the Swiss courts, which argued that the applicant's rights had not been individually and sufficiently affected, because the applicants were not the only ones being affected by climate change. The case is now awaiting a decision by the European Court of Human Rights. However, even if the Court decided in their favour, it would do so by only focusing on the harm suffered by certain individuals and without fully realizing the magnitude of the climate change problem by acknowledging the rights of future generations. Intergenerational equity, however, requires that not only individual rights but the rights of communities can be recognized. Afterall, it is the future generations as a whole that are certain to suffer the full force of the repercussions of humanities' actions today. To that end, courts and legislators should adopt a notion similar to that found in the African Charter on People's Rights[23], which recognizes communal rights, in order to give full effect to intergenerational equity.

4. Examples of Intergenerational Justice in Judgements

The most recent, and perhaps most explicit, national iteration of the application of the principle of intergenerational equity was decided by the German Constitutional Court in *Neubauer et al. v. Germany.*[24] In its reasoning, the Constitutional Court seems to have elaborated an intertemporal

---

affected more directly the applicants' own well-being. To conclude, the Court cannot accept that the interference with the conditions of animal life in the swamp constitutes an attack on the private or family life of the applicants."

[21] See ECtHR, Müllner v. Austria, App no. 18859/21; ECtHR, Duarte Agostinho and Others v. Portugal and Others, App no. 39371/20; ECtHR, Verein KlimaSeniorinnen Schweiz and others v. Switzerland, App no. 53600/20.

[22] ECtHR, Verein KlimaSeniorinnen Schweiz and others v. Switzerland, App no. 53600/20.

[23] African Charter on People's Rights (1981) arts 19-24.

[24] German Constitutional Court (BverfG), Neubauer et al. v. Germany, 24 Mar. 2021, 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/2. This case is interesting for a number of reasons: first, it involved a complaint brought forth by a group of minors residing both inside and outside Germany; and second, by challenging the constitutionality of the German Climate Protection Act it is one of the few instances where the insufficiency of the measures adopted to combat climate change were directly targeted. In essence the group argued that the German Climate Protection Act of 2019 instantiated a manifestly insufficient 2030 emissions reduction target (55% vis-à-vis 1990 levels), which was argued to infringe the complainants' fundamental rights.

dimension of fundamental rights in relation to climate change. In the Court's own words: "it follows from the principle of proportionality that one generation must not be allowed to consume large portions of the CO2 budget while bearing a relatively minor share of the reduction effort, if this would involve leaving subsequent generations with a drastic reduction burden and expose their lives to serious losses of freedom".[25] The Court, ultimately, found the relevant provisions unconstitutional for violating the complainants' fundamental rights and freedoms given the future burden they would be forced to endure. Despite being a momentous leap for the principle of intergenerational justice, it must be noted that the Court did not consider the substance of the arguments based on the claims that the current emission levels of Germany significantly impaired the groups' right to a "humane future" or to a "future consistent with human dignity"[26] considering that said rights did not confer standing.[27] Indeed, despite being an important step forward the issue of standing remains ever present.

A solution to this challenge may be found in the approaches taken by some national courts. In the Dutch *Urgenda* case in 2015, the Hague District Court controversially ruled at first instance that "the possibility of damages for … current and future generations of Dutch nationals is so great and concrete that given its duty of care, the State must make an adequate contribution greater than its current contribution, to prevent hazardous climate change."[28] The Court seems to have expanded the notion of harm in a manner that allows for the operationalization of intergenerational justice through vicarious representation. A similar conclusion may be gleaned from *Future Generations v. Ministry of the Environment* decided by the Supreme Court of Colombia,[29] where the Supreme Court of Colombia observed that unborn individuals "deserve to enjoy the same environmental conditions enjoyed by us".[30] By ruling in this manner these, and

[25] German Constitutional Court (BverfG), Neubauer et al. v. Germany, 24 Mar. 2021, 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/2, paragraph 192.
[26] Ibid, paras 113-115
[27] Here it is also relevant to note that the Court did not engage with the arguments relating to the German state's responsibility with respect to the minors residing outside of Germany (Bangladesh and Nepal), thus also sidestepping the attribution question oft present in cases relating to greenhouse gas emissions.
[28] *Urgenda* v. *The State of the Netherlands*, Rechtbank Den Haag [The Hague District Court], 24 June 2015, ECLI:NL:RBDHA:2015:7196, para. 4.89, available at: https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBDHA:2015:7196.
[29] Here, the Court was faced with a complaint alleging the violation of a wide array of fundamental rights as a consequence of the rapid deforestation of the Amazon rainforest. The young plaintiffs demanded, among others, an 'intergenerational agreement' to reduce said deforestation and counteract one of the main drivers of global climate change.
[30] Andrea Lozano Barragán, Victoria Alexandra Arenas Sánchez, José Daniel Rodríguez Peña y otros Vs. Presidencia de la República, Ministerios de Ambiente y Desarrollo Sostenible y de Agricultura y Desarrollo Rural y otros, Sala Cas. Civil CSJ Colombia, No. STC4360-2018, Apr. 5, 2018, paragraphs 11.1 - 11.3.

other cases, have effectively circumvented the issue of present harm by tacitly altering the procedural posture of the petitioners; the exercise effectively shifting from the need to prove individual/collective harm in the here and now for the petitioners redress, to positioning the petitioners as representatives of an abstract entity and the need to prove the harm suffered by this entity to a sufficiently certain degree. The effects of this change are manifold, but the most important one is the ability to make intergenerational justice actionable and effective both for the purposes of curtailing future harm and the need to receive present redress. Vicarious representation is nothing new in the legal sphere,[31] A similar exercise has been undertaken in a number of jurisdictions when it comes to the protection of nature.[32]

5. Conclusion and Recommendations

In light of the presented considerations there are a number of punctual recommendations to be made.

5.1 In response to Questions 7, 10, and 15

The restrictive conception of "harm" and "victimhood" so far applied by most systems of justice presents an alarming challenge to the adjudication of the entire spectrum of human rights adversely affected by climate change, making it impossible for individuals, let alone communities or future generations, to petition their judicial bodies to review the actions of the State. Consequently, we must broaden the concepts of "harm" and "victim status" in order to accommodate for the needs of the crisis we are currently facing and to address the rights of generations to come, adopting a future-looking notion of harm and a community-based notion of victim. One possibility to address these issues is the adoption of vicarious representation of the interests of future generations. This, it is maintained, would ensure that harm is understood from

[31] The fiction of corporate legal personality has existed as far back as 1862 when *Salomon v A. Salomon & Co. Ltd* gave effect to the 1862 UK Companies Act.

[32] In 2008, Ecuador became the first country in the world to declare in its constitution that nature is a legal person. Articles 10 and 71-74 of the Constitution recognize the inalienable rights of ecosystems, give individuals the authority to petition on the behalf of ecosystems, and require the government to remedy violations of nature's rights, including "the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution." (Article 71 of the Ecuadorian Constitution). In Bolivia, the 2010 Law of Mother Earth (*Ley de Derechos de la Madre Tierra*) first implemented a constitutional amendment by redefining the country's mineral deposits as "blessings" and establishing new rights for nature.

an intertemporal perspective and position the environment itself as the "universal value that is owed to both present and future generations",[33] which it indisputably is.

5.2 In response to Questions 13, 14, and 15

There are indications that the concept of intergenerational justice has been progressively integrated into climate litigation at a national level; internationally, however, regional courts of human rights are yet to indicate how exactly the concept will be integrated into their respective legal frameworks. Despite this progress, there is a genuine need for the UN to take a stand on the need to incorporate the principle of intergenerational justice (understood in line with the definition presented by the World's Youth for Climate Justice[34]) into systems of adjudication. To do so, the UN could issue a resolution which, first, defines the concept of intergenerational justice, and second, urges both national and international adjudicating bodies to incorporate said concept into their understanding of legal standing in climate related matters.

Appendix

World's Youth for Climate Justice, *Youth Climate Justice Handbook: Legal Memorandum*, 2023, https://www.wy4cj.org/handbook

[33] IACtHR, November 15, 2017, *Medio ambiente y derechos humanos (obligaciones estatales en relación con el medio ambiente en el marco de la protección y garantía de los derechos a la vida y a la integridad personal - interpretación y alcance de los artículos 4.1 y 5.1, en relación con los artículos 1.1 y 2 de la Convención Americana sobre Derechos Humanos)*, Series A No. 23, para 59.

[34] World's Youth for Climate Justice, *Youth Climate Justice Handbook: Legal Memorandum*, 2023, https://www.wy4cj.org/handbook.