

Climate Change-Related Obligations under the Inter-American Human Rights System: A prospective mapping

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Abstract: On January 9, 2023, the states of Colombia and Chile submitted an interpretative consultation to the Inter-American Court of Human Rights with the main purpose of clarifying “...the scope of State obligations... in order to respond to the climate emergency within the framework of international human rights law [...]”. This piece offers a prospective analysis of the approach the Court might take and, to some extent, of the scope of the climate-related human rights obligations to be determined. It does so by examining, on the one side, the request and the interpretative margins of the advisory function and, on the other, the relevant environment-related jurisprudence of the Court. As a result, the paper makes three remarks regarding the foreseeable approach, content and scope of the future opinion: a) the general climate-related obligations will be complemented by *enhanced obligations* for the protection of groups in vulnerable situations, disproportionately affected by climate change; b) the scope and functioning of the climate-related obligations will be influenced by the particular features of the right to a healthy environment recognized by the Court; and c) the Court will answer the request by applying and further developing the ‘Inter-American framework of environment-related obligations’ to climate change.

Keywords: Climate change human rights Inter-American Court of Human Rights climate litigation

(A) INTRODUCTION

On January 9, 2023, the states of Colombia and Chile submitted an interpretative consultation (article 64.1. of the American Convention on Human Rights (ACHR)) to the Inter-American Court of Human Rights (hereinafter the IACtHR or the Court), with the main purpose of clarifying “...the scope of State obligations... in order to respond to the climate emergency within the framework of international human rights law [...]”.¹ A wide range of questions were raised on, for instance, obligations of prevention and guarantee of human rights, differentiated obligations in relation to vulnerable groups and communities, procedural obligations and shared and differentiated responsibilities.

Following the rules of procedure, the Secretariat of the Court sent notice of the consultation to all member states of the Organization of American States (OAS) and relevant OAS organs, which have a legal right to submit written observations to

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¹ The Republic of Colombia and the Republic of Chile, *Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile*, 9 January 2023.

protect their legitimate interests.² Eight member states (Costa Rica, Barbados, Paraguay, Colombia, Chile, El Salvador, Brazil, and Mexico) and four OAS organs, including the Inter-American Commission on Human Rights (IACommHR), presented written submissions. Additionally, the President of the IACtHR invited *all interested parties* to also present their written observations. A record number of actors took advantage of the opportunity, including a non-OAS state (the Republic of Vanuatu), international and domestic organs and bodies, and more than 200 civil society actors. On February 22, 2024, the Court decided to hold two in-person hearings.³ The first one took place in Bridgetown (Barbados) in April and the second in Brasília and Manaus (Brazil) in May 2024. During these hearings, many of the aforementioned actors presented oral arguments to the Court. Now is the time for the Inter-American judges to deliberate, seek consensus and issue the long-awaited opinion – the AO-32 –, which is expected by mid-2025.

Will the opinion live up to expectations? Only time will tell. As I write this piece, the full scope of the climate change-related obligations to be established by the IACtHR can only be a matter of speculation. However, a prospective analysis of the approach to be taken by the IACtHR and, to some extent, of the scope of climate-related human rights obligations can be conducted by examining the request and the interpretative margins of the IACtHR's advisory function (section B), and the relevant environment-related jurisprudence of the Court (section C). Section D concludes.

(B) THE REQUEST AND THE INTER-AMERICAN COURT'S ADVISORY JURISDICTION

Between December 2022 and March 2023, three advisory opinion requests on states' climate-related obligations were submitted to international courts. In addition to the one that is the subject of this paper, in December 2022 the Commission of Small Island States (COSIS) triggered an advisory proceeding before the International Tribunal for the Law of the Sea (ITLOS),⁴ and four months later the United Nations General Assembly (UNGA) followed suit taking climate change to the International Court of Justice (ICJ).⁵ A simple glance at the three requests is enough to notice how different the approach taken by Colombia and Chile with their request was when compared to the other two. While COSIS and UNGA each posed two carefully thought-out questions of general nature, Chile and Colombia's request included a long list of 24 questions, not very clearly structured and covering a wide range of specific (sub)topics. There is no room in this piece to discuss the several factors influencing the drafting of the questions⁶ or

² *Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*. IACtHR, Advisory Opinion OC-3/83 of September 8, 1983. Series A No 3 at 24.

³ IACtHR, *Request for an Advisory Opinion OC-32. Call to a public hearing. Order of the President of the Inter-American Court of Human Rights of February 22, 2024*.

⁴ COSIS, *Request for Advisory Opinion*, 12 December 2022.

⁵ UNGA Res. 77/276, 29 March 2023.

⁶ E.g., while COSIS and Chile and Colombia had wide latitude to design their questions, UNGA request was constrained by the need to reach consensus.

whether a better approach could have been taken.⁷ What it is of interest here is to note, on the one hand, how vast the scope of the request posed before the IACtHR is, and, on the other, how wide the contours of the task to be conducted by the Court under its advisory function are.

Regarding the request, as mentioned, it includes more than 20 questions divided into the following six blocks: a) states' obligations derived from the duties of prevention and guarantee of human rights; b) states' obligations to preserve the right to life and survival; c) differentiated obligations of states in relation to the rights of children and new generations; d) states' obligations arising from consultation procedures and judicial proceedings; e) convention-based obligations of prevention and the protection of territorial and environmental defenders, as well as women, Indigenous Peoples, and Afro-descendant communities; and f) shared and differentiated human rights obligations and responsibilities of states. At minimum, the following specific (sub)topics can be extracted from the questions:

- (i) climate change mitigation;
- (ii) climate change adaptation;
- (iii) climate-induced losses and damages;
- (iv) procedural rights (access to information, active transparency, participation and justice) in climate matters;
- (v) differentiated protection for vulnerable groups (Indigenous Peoples, Afro-descendant, peasant communities, women);
- (vi) rights of the child and future generations;
- (vii) environmental defenders;
- (viii) just transition policies;
- (ix) climate-induced migration and forced displacement;
- (x) duty to cooperate;
- (xi) common but differentiated responsibilities and fair share.

Regarding the IACtHR's advisory function, two aspects are of note. First, under article 64.1 ACHR, OAS states and organs may consult the Court regarding the "interpretation of [the ACHR] or of other treaties concerning the protection of human rights in the American States." That means that opinions are not limited to the interpretation of the sense, scope or correct application of the ACHR, but rather of

any provision dealing with the protection of human rights set forth in any international treaty applicable in the American States, regardless of whether it be

⁷ See, e.g., D. Bodansky, 'Advisory opinions on climate change: Some preliminary questions', 32(2) *Review of European, Comparative & International Environmental Law* (2023) 185-192, <https://doi.org/10.1111/reel.12497>; S. Meckievi and J. Viñuales, 'The Search for Clarity: Resort to Advisory Opinions as a Strategy for the Implementation of International Environmental Law', 33(1) *The Italian Yearbook of International Law Online* (2024) 85-109, <https://doi.org/10.1163/22116133-03301005>

bilateral or multilateral, whatever be the principal purpose of such a treaty, and whether or not non-Member States of the inter-American system are or have the right to become parties thereto.⁸

In this sense, the Court may, in the context of its advisory function, directly interpret *human rights-connected* provisions in any other international treaty. In addition, the Court's consolidated practice of integrating its interpretations of the ACHR with relevant international norms should be highlighted. In its *Advisory Opinion OC-23/17 on the Environment and Human Rights* (hereinafter the 'AO-23/17'), the Court observed that, in application of the systematic interpretation established by the Vienna Convention on the Law of the Treaties, it must take international environmental law into consideration when defining the meaning and scope of states' obligations under the ACHR, in particular, when specifying the measures that the states must adopt.⁹ This implies that the list of treaties that can potentially be brought to the IACtHR's attention, under an advisory proceeding both for a *direct* or *indirect* interpretation, is broad and non-restrictive, expressing a systemic understanding of human rights' (universal) protection.¹⁰ In their request, Colombia and Chile referred to some treaties which will surely integrate, among others, the Court's design of the climate-related human rights obligations: the United Framework Convention on Climate Change (UNFCCC), the Paris Agreement, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (the Escazú Agreement), and the Convention on the Rights of the Child. The list provided by the request directs the Court towards possibly relevant norms from which to derive and interpret states' obligations, but in no way limit its response.

A second aspect to consider is that the IACtHR, when exercising its advisory function, is not constrained by the number or literal wording of the questions posed and can answer only some or rephrase them in order to provide better assistance in the protection of human rights to all the states and organs of the Inter-American Human Rights System (IAHRS). The quantity and the intricate nature of the questions posed by Colombia and Chile make foreseeable that the Court will exercise its discretion to rephrase and restructure the questions when answering the request. This was done by the Court in the past, for example in its AO-23/17 to generalize and expand the scope of the questions then posed by Colombia.¹¹

All this hints at a wide latitude for the IACtHR when deciding how to respond to the main question posed by Colombia and Chile, that is the scope of states' obligations in order to respond to the climate emergency within the framework of international human

⁸ 'Other Treaties' Subject to the Consultative Jurisdiction of the Court (Art. 64 American Convention on Human Rights). IACtHR, Advisory Opinion OC-1/82 of September 24, 1982, Series A No 1 at 12 first resolute paragraph and 21.

⁹ *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention*. IACtHR, Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23 at 44.

¹⁰ *The Institution of Asylum and its recognition as a human right under the Inter-American System of Protection (interpretation and scope of Articles 5, 22(7) and 22(8) in relation to Article 1(1) of the American Convention on Human Rights)*. IACtHR, Advisory Opinion OC-25/18, of May 30, 2018. Series A No 25 at 15.

¹¹ *The Environment and Human Rights...*, *supra* n. 9, at 36.

rights law, not only regarding the subtopics to be addressed, but also the normative basis to be utilized and the approach to be taken.

(C) A PROSPECTIVE MAPPING OF THE CLIMATE CHANGE-RELATED OBLIGATIONS UNDER THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

After exploring the terms of the consultation and the margins of the IACtHR's advisory function and concluding that the Court has broad discretion with respect to the content, scope, approach and normative basis of the future advisory opinion, a question emerged: where to lay the foundations of the prospective mapping?¹² Lacking any explicit reference to climate change in the normativity of the IAHRs, the obvious choice of where to look for some guidance is the previous jurisprudence of the Court.

The IACtHR has a rich jurisprudence on environmental matters that will arguably define the approach to be taken and be the basis of the future opinion. This environmental jurisprudence can be classified in two clearly differentiated phases.¹³ An early phase in which environmental protection was mainly addressed by the Court through the protection of the rights of Indigenous Peoples – collective property (article 21 ACHR), dignified life (article 4 ACHR) and political participation (article 23 ACHR) –. A second phase in which the IACtHR, on the one side, recognized, under article 26 ACHR, an autonomous and actionable right to a healthy environment of individual and collective nature, with an ecocentric dimension and, on the other, systematized the specific environment-related human rights obligations.¹⁴ Climate change has been mentioned by the Court, although as a passing reference, in both its early and current environmental jurisprudence.

The following sections identify key developments of this rich environmental jurisprudence and speculate about their value and implications for the future climate-related advisory opinion. In doing so, a map on the foreseeable climate change-related obligations under the IAHRs begins to be drawn.

(1) The Interrelationship between Human Rights and Climate Change

In its AO-23/17, the Court devoted an entire section to describe the human rights-environment nexus, emphasizing the foundational idea that “an undeniable relationship between the protection of the environment and the realization of other human rights” exists.¹⁵ This idea was established by the Court for the first time in 2009 in the case of *Kawas Fernández v. Honduras*¹⁵ and constantly reminded in the following environmental

¹² See, e.g., M.G. Aguilera, *Environmental Human Rights: New Thinking from Latin America and the Caribbean* (Brill, Leiden, 2023).

¹³ *The Environment and Human Rights...*, *supra* n. 9.

¹⁴ *Ibid* at 47.

¹⁵ *Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs*. IACtHR, Judgment of April 3, 2009. Series C No. 196 at 148, referencing its own jurisprudence on Indigenous Peoples and that of the European Court of Human Rights.

case law. Returning to this idea, in the AO-23/17, the Court referred to its own case law on Indigenous Peoples – noting the connection between a healthy environment and rights such as the collective property and dignified life –, the work of other OAS bodies, the European Court of Human Rights’ (ECtHR) case law, the work of UN bodies, some basic documents of the sustainable development paradigm (Stockholm Declaration, Rio Declaration, Agenda 2030) and the Inter-American Democratic Charter.¹⁶ On this basis, the Court reaffirmed the idea of a relationship of *interdependence* and *indivisibility* between human rights, the environment, and sustainable development and derived from this connection three key ideas: a) the existence of a right to a healthy environment as a right in itself; b) the existence of a series of states’ environment-related human rights obligations; and c) the use of international environmental law for determining those obligations under the ACHR.¹⁷

Similarly, it is foreseeable that the Court devotes some ink in its future advisory opinion to describe and reflect on the interrelationship between human rights and climate change. Indeed, when the Court made its foundational recognition of the environment-human rights nexus back in 2009, it also referred to the “adverse effects of the climate change” on the effective enjoyment of human rights.¹⁸ The origin of that phrasing dates back to resolutions by the UN Commission on Human Rights and the OAS General Assembly on the matter, particularly the 2008 Resolution 2429 on ‘Human Rights and Climate Change in the Americas’¹⁹. This passing reference would be reiterated and expanded in the AO-23/17, citing the work of the Human Rights Council (HRC), which affirmed that “climate change has a wide range of implications for the effective enjoyment of human rights, including the rights to life, health, food, water, housing and self-determination” and that “environmental degradation, desertification and global climate change are exacerbating destitution and desperation, causing a negative impact on the realization of the right to food, in particular in developing countries”.²⁰ To explore this specific relationship in the future opinion, the Court will not be short of references. It can rely on the work on the matter of several regional and international bodies, including the IACommHR;²¹ the ECtHR;²² the African Commission on Human and Peoples’ Rights;²³ and UN bodies,²⁴ including Special Rapporteurs²⁵ and treaties’

¹⁶ *The Environment and Human Rights...*, *supra* n. 9 at 48-53.

¹⁷ *Ibid* at 54, 55.

¹⁸ *Case of Kwas Fernández...*, *supra* n. 15, at 148.

¹⁹ OAS AG/Res. 2429 (XXXVIII-O/08) *Human Rights and Climate Change in the Americas* (adopted 3 June 2008).

²⁰ *The Environment and Human Rights...*, *supra* n. 9 at 47, 54.

²¹ IACommHR, Resolution 3/2021, *Climate Emergency: Scope of Inter-American Human Rights Obligations* (adopted 31 December 2021).

²² *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, ECHR (2024) 53600/20, 9 April 2024.

²³ African Commission on Human and Peoples’ Rights, Res. 417 (LXIV) *Resolution on the human rights impacts of extreme weather in Eastern and Southern Africa due to climate change* (adopted 14 May 2019).

²⁴ See Office of the High Commissioner for Human Rights, OHCHR and climate change (accessed 22 December 2024).

²⁵ See, e.g., Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, *Paying polluters: the catastrophic consequences of investor-State dispute settlement for climate and environment action and human rights*, A/78/168, 13 July 2023; Special Rapporteur on the promotion and protection of human rights in the context of climate change, *Access to information on climate change and human rights*, A/79/176, 18 July 2024.

committees,²⁶ among others. As it did in the AO-23/17, the IACtHR may identify a list of human rights that are particularly vulnerable to climate change, which probably overlap in great extent with those already identified when examining the environment-human rights nexus.²⁷

Furthermore, considering the questions posed by Chile and Colombia and the extensive IACtHR case law on groups in vulnerable situations, it is more than probable that the Court will devote some paragraphs to refer to the particular impacts of climate change on those groups. In the AO-23/17, the Court referred to certain groups in vulnerable situations whose rights may be affected to a greater extent by environmental degradation and to which states have *enhanced obligations* based on the principles of equality and non-discrimination. That includes Indigenous Peoples; children; people living in extreme poverty; minorities; people with disabilities; communities that, essentially, depend economically or for their survival on environmental resources from the marine environment, forested areas and river basins; or run a special risk of being affected owing to their geographical location, such as coastal and small island communities.²⁸ It is clear that the Court was already considering climate change effects when making this list, as proven by the references to the 2009 HRC Report on the relationship between climate change and human rights²⁹ with respect to Indigenous Peoples, women and displaced people, and to the international climate legal regime with respect to coastal and small island communities.³⁰

Those were not unique references that the Court has already made to groups in vulnerable situation affected by climate change. In its 2023 decision in *Inhabitants of La Oroya v. Peru*³¹ – a case on air, soil and water pollution – the Court again made passing reference to the vulnerable situation of children and women in the context of climate change, based on the work of the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women (CEDAW).³² The main consequence of identifying vulnerable groups and the application of the principles of equality and non-discrimination is the establishment of *enhanced obligations* that will arguably play a key role in the future climate-related opinion. In the 2023 case, for example, the Court asserted that “States should... put children’s health concerns at the

²⁶ Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 104/2019*, CRC/C/88/D/104/2019, 8 October 2021; Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019*, CCPR/C/135/D/3624/2019, 22 September 2022; Committee on Economic, Social and Cultural Rights, *General comment No. 26 (2022) on land and economic, social and cultural rights*, E/C.12/GC/26, 24 January 2023.

²⁷ *The Environment and Human Rights...*, *supra* n. 9 at 66.

²⁸ *Ibid* at 67.

²⁹ HRC, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*, A/HRC/10/61, 15 January 2009.

³⁰ *The Environment and Human Rights...*, *supra* n. 9 at 67.

³¹ *Case of the Inhabitants of La Oroya v. Peru. Preliminary Objections, Merits, Reparations and Costs*. IACtHR, Judgment of November 27, 2023. Series C No. 511.

³² *Ibid* at 140, 143, 232; Committee of the Rights of the Child, *General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, CRC/C/GC/15, 17 April 2013; Committee on the Elimination of Discrimination against Women, *General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change*, CEDAW/C/GC/37, 13 March 2018.

forefront of their climate change adaptation and mitigation strategies” and that they have “an increased duty to protect children from health risks caused by the emission of polluting gases that contribute to climate change”.³³

(2) A Right to a Stable/Safe Climate?

One of the reasons to assert that the IACtHR broke ground with its AO-23/17 is the recognition of an autonomous and actionable right to a healthy environment contained in article 26 of the ACHR. According to the Court, this right has both an individual and collective nature and includes an ecocentric dimension.³⁴ In *Inhabitants of La Oroya*, the Court observed that this right is comprised of a set of procedural and substantive elements. The former give rise to obligations relating to access to information, political participation and access to justice. Within the latter are the air, the water, the food, the ecosystem, *the climate*, among others.³⁵ After identifying these elements, the Court *derived* from the right to a healthy environment two specific rights – the ‘right to breath clean air’ and the ‘right to clean water’ – and listed a series of specific obligations connected to them.³⁶

This ‘derivative practice’ allows one to wonder whether a specific ‘right to (live in) a stable/safe climate’ will be enshrined in the future opinion. Being not a stand-alone but a derived right, it does not seem to require – following the Court’s reasoning – to find any new normative basis beyond that of the right to a healthy environment. In this sense, it would be a reasonable incremental – rather than a truly disruptive – development by the Court. This recognition would be aligned with the findings of the former UN Special Rapporteur on Human Rights and the Environment who expressed that the substantive elements of the right to a safe, clean, healthy and sustainable environment include a safe climate and that “States must not violate the right to a safe climate [...]”.³⁷

As a derived right, the right to a safe/stable climate would share the main features of the right a healthy environment, in particular, its collective and intergenerational nature, as well as an ecocentric dimension.³⁸ This means that it would, at least in principle, protect from climate change not only individuals but communities, future generations, other components of the environment (rivers, forests, seas...) and other living organisms.

³³ *Case of the Inhabitants of La Oroya*..., *supra* n. 31 at 140, 143; based on Committee on the Rights of the Child, *Decision adopted*..., *supra* n. 26.

³⁴ *The Environment and Human Rights*..., *supra* n. 9 at 62.; the Court established a violation of this right for the first time in *Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v Argentina. Merits, Reparations and Costs*. IACtHR, Judgment of February 6, 2020. Series C No. 400, on the ‘ecocentric’ jurisprudence of the Court, see D.G. Montalván Zambrano, ‘Antropocentrismo y ecocentrismo en la jurisprudencia de la Corte Interamericana de Derechos Humanos’, 23(46) *Araucaria* (2021), 505-527, <https://doi.org/10.12795/araucaria.2021.i46.25>

³⁵ *Case of the Inhabitants of La Oroya*..., *supra* n. 31 at 118.

³⁶ *Ibid* at 120, 121.

³⁷ Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, A/74/161, 15 July 2019, at 43, 65; see A.O. Jegede, ‘Arguing the Right to a Safe Climate under the UN Human Rights System’, 9 *International Human Rights Law Review* (2020) 184-212, <https://doi.org/10.1163/22131035-00902001>, arguing that the ‘right to a safe climate’ meets the Alston’s criteria for a new right to emerge.

³⁸ *The Environment and Human Rights*..., *supra* n. 9 at 59, 62.

This would be a key finding with implications for complex aspects of the human-right based approach to climate change, such as the climate victim status, the consideration of inter-temporal risks or the order of remedies with collective effects. This was indeed expressly acknowledged by three of the seven Inter-American judges in their concurring decision in *Inhabitants of La Oroya* when affirming – in reference to the provision of collective reparations that also protect future generations – the relevance of the case as an “important source of standards for States regarding their obligations to ensure equitable conditions for development in the face of climate change”.³⁹ The detailed references by these judges⁴⁰ of the *climate* rulings of the German Constitutional Court in the so-called *Neubauer case*⁴¹ and the Colombian Supreme Court in the so-called *Future Generations case*⁴² are of note in this regard.⁴³

In short, the collective, inter-generational and ecocentric dimensions of the enshrined right to a healthy environment are key factors when thinking of the scope of the climate-related obligations under the IAHRs. And this is true regardless of whether or not the Court explicitly recognizes a right to a safe/stable climate. That recognition, although reasonable, is by no means necessary for the Court to apply to its full extent the right to a healthy environment to climate change and its human rights impacts, and it would arguably not change the scope or ambition of the Court’s response. That said, it is worth noting that a Court’s recognition of this *new* right could have political or legal effects beyond the IAHRs. On the one hand, it would arguably be a milestone for the climate movement that has been advocating for it⁴⁴ and, on the other, it could trigger normative developments in other jurisdictions with (at least for this paper) unforeseeable legal consequences.

(3) The ‘Inter-American Framework on Environment-Related Obligations’ and its Application to Climate Change

Irrespective of the relevance of the findings described in the previous sections regarding the *enhanced* obligations or the special features of the right to a healthy environment, the core of the mapping exercise is to be found in other key development of the environmental jurisprudence of the Court: the ‘Inter-American framework on environment-related obligations’. This is a structured set of specific obligations relating to the protection of the environment, derived from the general obligations to respect and ensure human rights (article 1.1. ACHR).⁴⁵ It was the result of a systematization task conducted by the Court in its AO-23/17 that included the translation of international

³⁹ *Case of the Inhabitants of La Oroya...*, *supra* n. 31 at 70 (concurring opinion of the judges Ricardo C. Pérez Manrique, Eduardo Mac-Gregor Poisot and Rodrigo Mudrovitsch).

⁴⁰ *Ibid* at 137, 139 (concurring opinion of the judges Ricardo C. Pérez Manrique, Eduardo Mac-Gregor Poisot and Rodrigo Mudrovitsch).

⁴¹ 1 BvR 2656/18; 1 BvR 78/20; 1 BvR 96/20; 1 BvR 288/20, German Federal Constitutional Court, order of 24 March 2021.

⁴² STC4360-2018, Supreme Court of Colombia, order of 5 April 2018.

⁴³ On these cases and the connection between intergenerational responsibility and climate litigation, see M. de Armenteras Cabot, ‘El litigio climático ante la responsabilidad intergeneracional’, 44 *Cuadernos Electrónicos de Filosofía del Derecho* (2021) 1-22 <https://doi.org/10.7203/CEFD.44.19409>

⁴⁴ E.g., Union of Concerned Scientists, *The Human Right to a Stable Climate*, 25 September 2023.

⁴⁵ *The Environment and Human Rights...*, *supra* n. 9 at 23, 35, 115.

environmental law obligations into human rights duties. In its following contentious jurisprudence, the Court applied and developed it further. The (not so bold) argument here is that the Court will follow (expressly or not) this framework when defining the scope of states' climate-related obligations in its future opinion.

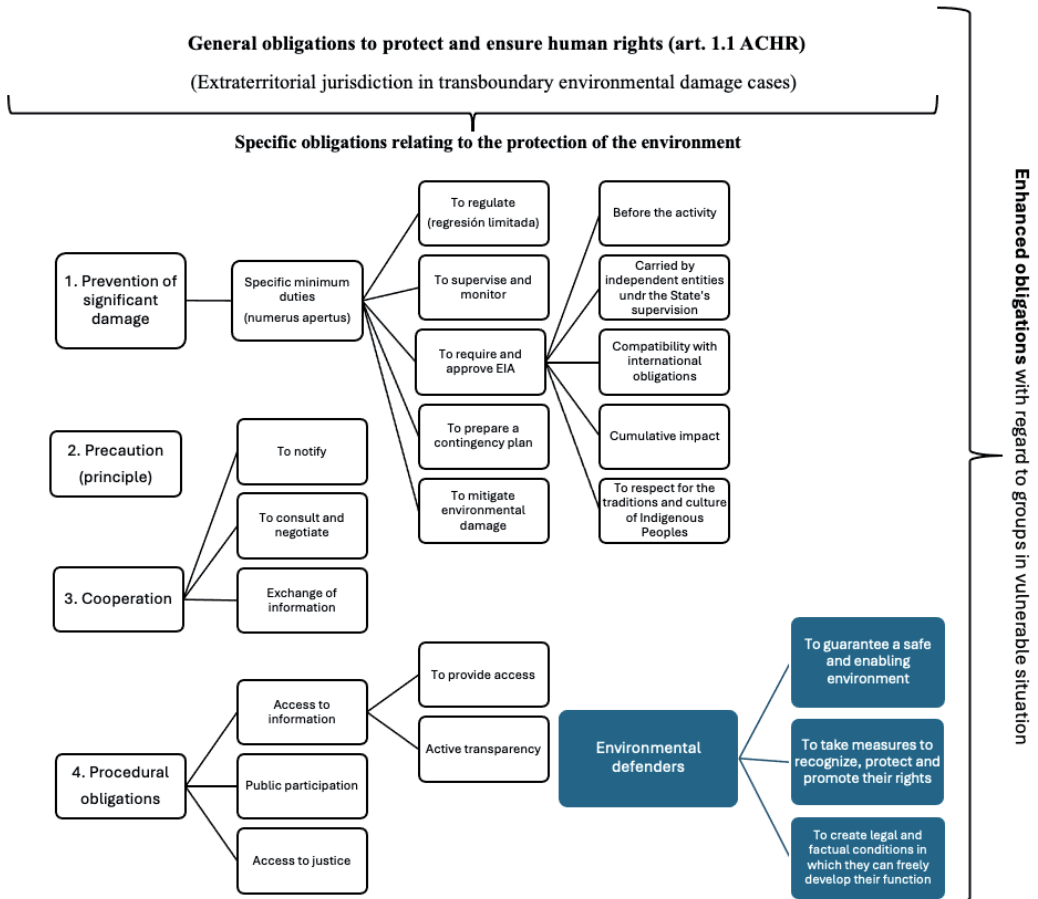


Figure 1. Inter-American framework on environment-related obligations. The author based on concurring opinion of the judges Ricardo C. Pérez Manrique, Eduardo Mac-Gregor Poisot and Rodrigo Mudrovitsch in *Inhabitants of La Oroya v. Peru* (2023), par. 33)

There is insufficient room here to go in detail on this framework, but some initial notes are worthy of mentioning. First, the framework includes both obligations of results (in particular, negative obligations, such as to not unlawfully pollute) and conduct (due diligence).⁴⁶ Second, it covers not only activities carried out by public agents but also private parties⁴⁷ with impacts both within and beyond national borders, according to

⁴⁶ *Ibid* at 117, 118.

⁴⁷ *Ibid* at 118.

the extraterritorial jurisdiction approach adopted by the Court.⁴⁸ Third, the intensity of the duties is defined by the level of risk.⁴⁹ Fourth, compliance with these duties should be informed by the best available science and technology.⁵⁰ Fifth, the framework applies irrespective of whatever the activity, geographical area or component of the environment affected are, and without detriment to other environment-connected obligations agreed by the states.⁵¹ Sixth, although the framework was originally designed to answer a question regarding the environment-related obligations emerging from the right to life and personal integrity, it is clear that the Court conceives it as having general character.⁵² That means that the obligations and specific duties contained in the framework apply also when considering states' compliance with other human rights in their connection with environmental protection, including the right to a healthy environment.⁵³ In other words, the framework also embodies, at least to a large extent, the *obligational* content of the right to a healthy environment and its derived rights, including a possible right to a safe/stable climate.

A reasonable and consistent approach for the Court, therefore, would be to answer Colombia and Chile's questions by applying and further developing this framework to climate change. In doing so, as mentioned *ut supra*, the Court will, in application of the systemic interpretation, draw on the international climate legal regime, and other international treaties, as well as the work of international courts and bodies particularly the HRC and its special procedures and treaties committees and even extended domestic practices. Of particular note in this regard are the climate rulings recently delivered by the ECtHR (especially, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*),⁵⁴ and the ITLOS' climate-related advisory opinion.⁵⁵ Providing a full catalogue of the foreseeable specific climate-related standards to be established by the IACtHR in the future opinion is beyond the aim and scope of this piece.⁵⁶ However, in a speculative exercise, it is worth mentioning at least some of its possible developments, to illustrate how they would be placed into the identified map, i.e., the framework.

For example, the Court could define that, under the *duty to regulate* of the *obligation of prevention*, a mandate of having an effective national climate legal framework exists. Having an effective climate legal framework could require the determination of intermediate and long-term ambitious and fair emissions mitigation targets, in accordance with the Paris Agreement goals and the best available science, together with clear timelines.⁵⁷ Furthermore, under the application of the *precautionary principle* (and intergenerational

⁴⁸ *Ibid* at 101.

⁴⁹ *Ibid* at 142.

⁵⁰ *Ibid* at 142, 172; *Case of the Inhabitants of La Oroya...*, *supra* n. 31 at 120, 121.

⁵¹ *The Environment and Human Rights...*, *supra* n. 9 at 126.

⁵² *Ibid* at 69, 125, 243.

⁵³ *Case of the Inhabitants of La Oroya...*, *supra* n. 31 at 120, 121; *Case of the U'wa Indigenous People and its members v. Colombia. Merits, Reparations and Costs*. IACtHR, Judgment of July 4, 2024. Series C No. 530 at 292.

⁵⁴ *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland...*, *supra* n. 22.

⁵⁵ *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, ITLOS Advisory Opinion, 21 May 2024.

⁵⁶ Catalogues of proposed climate-related obligations under the IAHRs can be found in the written observations submitted to the IACtHR in the opinion's proceeding, IACtHR, *Observations on the Request for an Advisory Opinion* (accessed 23 December 2024).

⁵⁷ *Ibid*; *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland...*, *supra* n. 22 at 550; *The Environment and Human Rights...*, *supra* n. 9 at 146-151; *Case of the U'wa Indigenous People...*, *supra* n. 53 at 296.

equity), the Court could ask the states to take into account inter-generational distributional costs when defining their mitigation targets and timelines.⁵⁸ Likewise, the IACtHR could observe that a failure to comply with the established emissions limits can imply, on its own, a human rights violation that needs to be avoided by instituting solid and transparent monitoring (and enforcement) mechanisms applicable to every economic sector, as part of the *duty to supervise and monitor*.⁵⁹ In addition, the Court may develop the *duty to require and approve environmental impact assessments*, clarifying that, in this context, it includes mandatory quantification and assessment of all direct and indirect emissions of projects and a consideration of their compatibility with the international and national climate commitments, thus ensuring regulatory consistency.⁶⁰

The Court may also observe that, under the *duty to regulate* as well as the *duty to prepare contingency plans* and to *mitigate environmental damage*, states have obligations to enact and implement adaptation plans, early warning systems and compensation mechanisms for losses and damages.⁶¹ Or it may refer to the need, in complying with the *cooperation obligation*, to participate in good faith in international negotiations connected with climate issues, which would include not only the climate regime, but other relevant fora, such as multilateral financial institutions.⁶²

Finally, the Court was also asked by Chile and Colombia about the obligations relating to climate defenders and the procedural obligations of states in climate matters. With regard to the first issue, the Court may bring to the opinion its extended case law on human rights and *environmental defenders* and refer to the worrying proliferation of Strategic Lawsuits against Public Participation (SLAPPs) and the criminalization of climate protest.⁶³ With regard to *procedural obligations*, the Court could refer, among other things, to the need to maintain updated and accessible emissions' inventories and other relevant climate information under the *duty of active transparency*.⁶⁴ Furthermore, it could further develop the *access to justice* obligation, in accordance to the Escazú Agreement, by requiring states to guarantee particularly broad standing criteria in climate cases, especially when vulnerable groups or future generations are involved,⁶⁵ or it could address due process requirements for climate-induced migratory procedures.⁶⁶

⁵⁸ *Case of the Inhabitants of La Oroya...*, *supra* n. 31 at 128; and 137 (concurring opinion of the judges Ricardo C. Pérez Manrique, Eduardo Mac-Gregor Poisot and Rodrigo Mudrovitsch) with reference to 1 BvR 2656/18; 1 BvR 78/20; 1 BvR 96/20; 1 BvR 288/20..., *supra* n. 41.

⁵⁹ *The Environment and Human Rights...*, *supra* n. 9 at 152-155.

⁶⁰ *Ibid* at 156-170; see G. Medici-Colombo, *La litigación climática sobre proyectos. ¿Hacia un punto de inflexión en el control judicial sobre la autorización de actividades carbono-intensivas?* (Tirant lo Blanch, Valencia, 2024).

⁶¹ *The Environment and Human Rights...*, *supra* n. 9 at 171-173.

⁶² See, e.g., Barbados, *Written Observations on Behalf of Barbados*, 18 December 2023.

⁶³ N. Lakhani, D. Gayle and M. Taylor, 'How criminalization is being used to silence climate activists across the world', *The Guardian*, 12 October 2023; *Case of Baraona Bray v. Chile. Preliminary Objections, Merits, Reparations and Costs*. IACtHR, Judgment of November 24, 2022. Series C No. 481 at 91, 127.

⁶⁴ *The Environment and Human Rights...*, *supra* n. 9 at 221.

⁶⁵ *Case of the Inhabitants of La Oroya...*, *supra* n. 31 at 155 (concurring opinion of the judges Ricardo C. Pérez Manrique, Eduardo Mac-Gregor Poisot and Rodrigo Mudrovitsch); see G. Medici-Colombo and T. Ricarte, 'The Escazú Agreement Contribution to Environmental Justice in Latin America: An Exploratory Empirical Inquiry through the Lens of Climate Litigation' 16(1) *Journal of Human Rights Practice* (2024) 160-181, <https://doi.org/10.1093/jhuman/huado29>

⁶⁶ IACommHR, *Resolution 3/2021...*, *supra* n. 21.

(D) CONCLUSION

This paper aimed to present a mapping of the climate-related human rights obligations under the IAHRs which will be defined by the IACtHR in the upcoming AO-32. As with any prospective exercise, it integrated an analytical task with a *pinch* of intuition and speculation, which may lead the exercise to findings that may be proved wrong (soon). The broadness of the request posed by Chile and Colombia and the wide margins enjoyed by the IACtHR in the context of its advisory function further diminish the prospects of getting it right. In this scenario, appealing to the relevant previous jurisprudence of the Court is probably the safest choice in order to make a useful contribution to the topic. This is particularly the case when, as apparent from the above revisit, the Court has produced a rich environment-related jurisprudence that includes various elements with the potential to meaningfully affect and define the approach, content and scope of the future opinion.

In this sense, in section C.1, the piece observed that, given the centrality of the issue of vulnerable groups both in the request and in the Court's jurisprudence, it is more than probable that the IACtHR will complement the general climate-related obligations to be defined in its future opinion with *enhanced obligations* owed to a variety of groups particularly affected by the impacts of climate change. Furthermore, in section C.2, the enshrinement of an autonomous and actionable right to a healthy environment with an individual, collective and intergenerational nature, and that includes an ecocentric dimension was highlighted. The contention, in this regard, is that the features of this right will meaningfully influence the scope and functioning of the climate-related obligations to be determined, even if the Court opts not to refer to a 'right to a safe/stable climate' as a derived right. Finally, section C.3. presented the 'Inter-American framework of environment-related obligations' as the core of the map in which the forthcoming climate-related standards should be pinpointed. This is based on the understanding that a reasonable and consistent approach for the Court to take would be to answer Colombia and Chile's questions by applying and further developing this framework to climate change. To illustrate this point, the paper offers a few speculative examples regarding how the duties identified by the Court in its framework can be translated and developed to address the climate concerns raised by the request.

As mentioned, the Court is expected to deliver its advisory opinion in 2025, some months after this piece is published. Only then will it become clear how right or wrong it was. But, much more importantly, it will then be time to assess the IAHRs' contribution to International Law's response to one of the most pressing threats of this era, at a particularly critical time.

