**Responses to Questionnaire**

The environment, the rights of the child and future generations. Contributions from Latin America[[1]](#footnote-1)

1. **Specific examples of legislation, policies and programmes in relation to the protection of children’s rights from environmental harm.**

1.1 Children in Latin America and the Caribbean –particularly those living in contexts of poverty– are highly vulnerable to environmental harm and anthropogenic disasters, including the impacts of climate change, experiencing their disproportionate and increasing effects. In these scenarios, public policy actions have been initiated in the region to address these problems; however, the perspective of the rights of children it is not explicit yet.

1.2 Environmental damage, anthropogenic disasters and extreme weather events force families –particularly those living in poverty– to make decisions that can have long-term detrimental effects on children, such as removing them from school or reduce health expenditures, which contributes to enhancing the intergenerational reproduction of poverty (Hallegatte et al., 2017)[[2]](#footnote-2). In Guatemala, for example, Storm Stan increased the probability of child labor in affected areas by more than 7% (Bustelo, 2011)[[3]](#footnote-3). Meanwhile, in the native communities of the Peruvian Amazon only three out of ten people have access to drinking water. In these conditions, indigenous children often suffer from gastrointestinal diseases due to the consumption of polluted water from rivers (UNICEF, 2017) [[4]](#footnote-4), often because of the discharge of salt water derived from the extraction of hydrocarbons or because of the use of mercury in illegal mining.

1.3 Also, due to the nature and vulnerability of their assets and limited access to disaster risk management tools (Vakis, 2006), economic losses to the population living in poverty have been estimated to be two or three times greater in relative terms with respect to those that are not poor. Considering also that children are overrepresented in poverty, this makes it even more necessary to take public policy actions to protect them from these events.

1.4 Therefore, *social protection* is a key public policy to address the impacts of environmental damages before, during and after they emerge. In particular, it can contribute to strengthening people's ability to cope with the negative effects of climate-related events and loss of livelihoods, for example through the regularity and predictability of social inclusion programs, including the provision of money transfer programs to meet basic needs, as this allows families to be better able to cushion shocks and crisis situations. Social protection policies can contribute to both the prevention and mitigation of environmental damage and disaster recovery, with a direct impact on the well-being of children (UNICEF, 2012)[[5]](#footnote-5).

1.5 The limitations of available statistical information make it difficult to have an accurate estimate of the child population affected by environmental damage, disasters and/or climatic events in the countries of the region[[6]](#footnote-6). However, two trends suggest that the number of children affected by these factors is high and increasing. On the one hand, in Latin America and the Caribbean (LAC), there has been an increase in the number of disasters and, on the other hand, there has been a growth in the child population, which now reaches 163 million children between 0 and 14 years of age. Although the process of population growth from 0 to 14 years has been interrupted since the mid-2000s, it continues to increase in many of the countries that are heavily affected by disasters, such as those in Central America and Haiti.

1. **Specific examples of good practices in environmental-related matters in the fulfilment of obligations to protect and promote children’s rights / Monitoring children’s rights affected by environmental related legislation, programmes and projects (e.g., rights to life, food, housing, health, water and sanitation, cultural rights, etc.)**
   1. Considering that Latin American economies are heavily dependent on the intensive extraction of their natural resources –and material growth in the region has slowed due to the international fall in commodity prices– national governments have begun to soften the institutional frameworks, policies and environmental standards and regulations to facilitate extractive investment (mining, oil and energy), thereby exacerbating the risks of environmental damage and reducing public investment in social programs, which will have a negative impact on environmental children's rights in the region. In scenarios of economic crisis, environmental rights are seen as barriers for private investment in high sensitive social and environmental areas.
   2. In this context, which is not very auspicious, an example of good practice that can guide the compliance with obligations to protect and promote the ecological child rights is the Sendai Framework for Disaster Risk Reduction 2015-2030, approved in the Third UN World Conference on Disaster Risk Reduction (Sendai, Japan 2015), which aims to prevent new disasters –and mitigate the effects of those already occurred– through the integrated implementation of cultural, economic, environmental, educational, social, technological and institutional measures. The Sendai Framework recognizes the leadership, regulation and coordination role of governments, but it also recommends that they interact with relevant actors –including children and young people– as they are actors for change, so they should be given the facilities and tools to contribute to the reduction of disaster risk.
   3. Another equally relevant aspect to consider for the effective implementation of the ecological child rights is «intercultural education»: intercultural education programs on environment and climate change might be important mechanisms to empower indigenous children. This is becoming increasingly visible and necessary in the various countries of LAC, and particularly in the Andean subregion, due to its important cultural diversity. These programs should consider a methodology for the recovery and assessment of the state (vitality/erosion) of the intergenerational transmission of traditional ecological knowledge (TEK). In the case of Perú, the country approved a National Climate Change Strategy (Ministry of the Environment, 2015) –which incorporates the systems of ancestral knowledge in climate adaptation policies– as well as a National Policy for Transversal Intercultural Approach (Ministry of Culture, 2015), however the perspective of the rights of indigenous children is not explicit in environmental or climate policies yet.
2. **Laws or policies referring to the rights of future generations in relation to environmental matters**
   1. The issue of the rights of future generations proposes a rupture with conventional thinking. It`s an innovative topic (a breakthrough idea) in evolution –at the philosophical, political and legal levels– that is becoming more visible every time in the forums and negotiations of Multilateral Environmental Agreements (MEA`s), especially in global climate negotiations. In this respect, the region can make fundamental contributions, considering also that from the ecological ethics of the ancestral cosmovisions of America, the duties of responsibility of the present generations with future generations are expressed in the «principle of guardianship of the Earth».

3.2 Precisely on December 9th, 2015, during the Twenty-first Conference of the Parties (COP21, Paris) of the United Nations Framework Convention on Climate Change (UNFCCC), the Andean Parliament, jointly with The Biosphere Group - Think Tank on Sustainable Futures Research, the Regional Office for Latin America (ORLA) of terre des hommes - tdh Germany and the Ministry of Environment of Perú (MINAM) launched the Side Event «Climate crisis and guardianship of the Earth: Andean ancient wisdom as legacy for future generations» and presented the Paris Declaration on Climate Change and Future Generations, that was subsequently endorsed by the Andean Parliament through its Resolution 7, which states in its second article: «... the design and formulation of a legal proposal on the ombudsman (high commissioner or rapporteur) for future generations»[[7]](#footnote-7).

* 1. Currently, the Andean Parliament's Third Committee on Regional Security and Sustainable Development has approved a recommendation –at the soft law level– on the scope of the mandate of an Ombudsman for future generations. The recommendation is still pending to debate and approval by the plenary of this platform of political representation of the Andean Community (CAN)[[8]](#footnote-8). This would be the first proposal of a regulatory framework –given by a regional legislative institution– that suggests the implementation of that defensive mechanism for future generations.
  2. We must highlight that an important precedent in this process is that the Andean Parliament –in exercise of its supranational mandate enshrined in the Cartagena Agreement– and in response to the common problems of the Andean subregion as a consequence of the effects of the global climate crisis, formulated a proposal for a Legal Framework on Climate Change –approved by Recommendation n.º 228[[9]](#footnote-9)– which points out in Article 11 that: «The States members of the Andean Parliament, within the framework of the principles of international law on equity, solidarity and intergenerational justice, recognize and assume the duty of responsibility of the present generations towards future generations by promoting policies, strategies, mechanisms and actions that allow them to bequeath a life in equilibrium on the Earth». The same article establishes that: «The States members of the Andean Parliament will foster and promote the creation –at the international level– of a defensive mechanism for future generations, in order to ensure the ethical oversight of environmental and climate multilateral agreements related to the sustainability of life on the planet».
  3. Among the main fundamentals for moving forward with the approval of the draft recommendation of the Andean Parliament on the Ombudsman for future generations, we have the following ones:

1. The rights of the present generations of children to the Earth are also the rights of future generations, regarding that the concept of sustainability links –in an equivalent way– the present generations with future generations: the unsustainable policies which affect the present generations, will affect future generations too, even more seriously, due to the accumulative effects and non-linear translimitations of the biosphere. Certainly, scientific studies demonstrate that the consequences of environmental harm and anthropogenic disasters can be extended from the generation affected in the present to the next one in the future (Caruso and Miller, 2015)[[10]](#footnote-10). That is the inexorable cause-effect relationship between the present generations and future ones.
2. The intergenerational equity principle must be strengthened with the precautionary principle, being fundamental to approximate human rights with international environmental law and climate law, in order to give meaning to the «right to sustainability» for the current generations of children, as well as future generations. Sustainability –from the beginning of its conceptual birth– includes both of them.
3. It`s necessary to develop an inclusive conceptual proposal for «future generations», and build up a methodology which will allow us to include the intergenerational variable in the design and implementation of sustainability global policies. Such a methodology must foresee how civilizational errors, in the present, could pose a threat to future generations, and endanger their existence on the Earth. The debate about the rights of future generations is a strong ethical matter that must include the concepts of intergenerational justice, interspecies justice and the rights of the Earth[[11]](#footnote-11) (or the rights of nature).
4. A legal recommendation about the rights of future generations (soft law) may guide important reflections and judiciary decisions at national or international levels. For instance, a judiciary decision taken by the Constitutional Court of Colombia (T-622, 2016)[[12]](#footnote-12) sentences that the Atrato river (Chocó region) is a subject of rights, that the environment is a common heritage of humanity and its protection ensures the survival of the present and future generations (p. 65). The same decision establishes that illegal mining activities constitute an infringement of the fundamental right to water and also a threat to indigenous peoples, to the environment, to biodiversity and to the present and future generations.
5. Under the París Agreement, the intergenerational equity principle, the right to the future and the rights of future generations need to be an integral part of efforts to mitigate and adapt to a 1.5°C warming, at the global as well as sub-national levels. These are key topics that are scaling up in the multilateral system, threading the way for the international mechanism for the defense of rights of future generations: the Ombudsman for future generations would be a highly supportive innovative governance arrangement to give voice to the generations to come, through a proxy.
6. In this regard, we must point out that the next Special Report of the Intergovernmental Panel on Climate Change (IPCC) on global warming of 1.5ºC (SR15) makes consistent references to intergenerational equity, intergenerational ethics and future generations, revealing the growing trend of these matters in the international debate.

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1. Contributions for the Special Rapporteur’s next thematic report that will focus on obligations relating to the rights of children and future generations, prepared by Erick Pajares G., on behalf of The Biosphere Group - Think Tank on Sustainable Futures Research and the Regional Office for Latin America (ORLA) of terre des hommes - tdh Germany. [↑](#footnote-ref-1)
2. Hallegatte, Stephane et al. *Unbreakable: Building the Resilience of the Poor in the Face of Natural Disasters.* *Climate Change and Development.* Washington, DC: World Bank, 2017. [↑](#footnote-ref-2)
3. Bustelo, Monserrat. *Bearing the Burden of Natural Disasters: Child Labor and Schooling in the Aftermath of the Tropical Storm Stan in Guatemala.* Chicago: University of Illinois at Urbana-Champaign, 2011. [↑](#footnote-ref-3)
4. UNICEF (The United Nations Children`s Fund). *Niñez amazónica. Remando hacia la igualdad.* Lima. UNICEF, 2017, p.2. [↑](#footnote-ref-4)
5. UNICEF (The United Nations Children`s Fund). Integrated Social Protection Systems, Enhancing Equity for Children, UNICEF Social Protection Strategic Framework, 2012. [↑](#footnote-ref-5)
6. Towards the end of the 1990s, the number of children affected annually by disasters worldwide was estimated at 66.6 million and it is projected that, given the impact of climate change, this figure could increase to 175 million per year in decades. Cfr. Tarazona, Marcela and Gallegos, José. *Children and Disasters: Understanding Differentiated Impacts and Enabling Child-Centred Agency. Recent trends in disaster impacts on child welfare.* New York: UNICEF, 2015. [↑](#footnote-ref-6)
7. Approved on March 29, 2016, in Bogotá (Colombia). [↑](#footnote-ref-7)
8. The CAN is conformed by Colombia, Ecuador, Perú, Bolivia and Chile. [↑](#footnote-ref-8)
9. Approved on October 29, 2015, in Bogotá (Colombia). [↑](#footnote-ref-9)
10. Caruso, Germán and Miller, Sebastián. «Long Run Effects and Intergenerational Transmission of Natural Disasters: A Case Study on the 1970 Ancash Earthquake». *Journal of Development Economic*, 117. Amsterdam: Elsevier, 2015. [↑](#footnote-ref-10)
11. Cfr. Shue, Henry. *Climate Justice: Vulnerability and Protection.* Oxford: Oxford University Press, 2014, 366 pp. [↑](#footnote-ref-11)
12. Constitutional judgment issued on November 10th, 2016, given by magistrates Alberto Rojas Ríos and Jorge Iván Palacio Palacio. [↑](#footnote-ref-12)