São Paulo, Brazil, may 25, 2023.

**Ref: Submission for Special Rapporteur’s call for inputs on the promotion and protection of human rights in the context of climate change.**

Dear Mr. Special Rapporteur Ian Fry,

This submission, made by Alana Institute, presents contributions from the Brazilian context about the relationship between human and children’s rights, climate change, focusing on the principle of intergenerational justice.

Alana Institute [[www.alana.org.br](http://www.alana.org.br)] is a Brazilian-based global organization that focuses on promoting integral development and children's rights through advocacy, litigation, and communication at national and international levels. Since 2022, the Alana Institute has Consultative Status in the United Nations Economic and Social Council (ECOSOC). In addition, Alana Institute also operates nationally as a counselor in the National Children and Adolescent's Rights Council (Conanda), the National Council for Food Security and Nutrition (Consea), the National Environmental Council (Conama), the Senate's Social Communication Council, and the National Justice Council's Human Rights Observatory.

**Advancement of the principle of intergenerational justice**

12. **What examples do you have of how intergenerational justice, as it applies to climate change and human rights, has been incorporated into international law, national constitutions or domestic law?**

At the international level, a legal instrument that clearly defines the elements of intergenerational justice and places it at the center of environmental and climate discussions has yet to be developed. However, there are examples that address it as a principle[[1]](#footnote-1):

(a) the 1997 United Nations Educational, Scientific and Cultural Organization (UNESCO) Declaration on the Responsibilities of the Present Generations toward Future Generations (‘UNESCO Responsibilities Declaration’);

(b) The 1992 Rio Declaration on Environment and Development (‘Rio Declaration’) developed the legal principles to carry out sustainable development. The principle of common but differentiated responsibilities, articulated in the Rio Declaration, could also be related to a principle of intergenerational equity to the extent that historical actions affect the allocation and timing of responsibilities owed to present and future generations;

(c) In 2012, the zero draft of the outcome document prepared by governments for the Rio + 20 Conference in Rio de Janeiro included a call for the creation of a High Commissioner for Future Generations.

An indispensable opportunity for further progress is the General Comment n. 26 on children's rights and the environment with a focus on climate change, currently being developed by the UN Committee on the Rights of the Child, to establish concrete guidelines for states for intra- and intergenerational justice.

As far as domestic law is concerned, the main example of the principle of intergenerational justice applied is article 225, caput, of the 1988 Constitution of the Federative Republic of Brazil: “Everyone has the right to an ecologically balanced environment, an asset for common use by the people and essential to a healthy quality of life, and it is the duty of the government and the community to defend and preserve it for present and future generations”.

But there are other examples that promote intergenerational justice even if they do not expressly mention it, especially those that preserve nature, traditional territories, and the rights of children. In the Brazilian Federal Constitution, articles 225, 231 and 227[[2]](#footnote-2), respectively.

13. **How would you best define intergenerational justice in the context of climate change and human rights?**

The principle of intergenerational justice is provided for in the World Declaration on the Environmental Rule of Law and is defined as: “The present generation must ensure that the health, diversity and productivity of the environment is maintained or restored to ensure equitable access to the benefits of the environment by each successive generation”.

The idea of intergenerational justice, associated with the principle of intergenerational solidarity, points to a complex of duties and responsibilities of the present generations to safeguard existential conditions so that the children and people who will come to inhabit the planet have the collective right to a clean, healthy and sustainable environment[[3]](#footnote-3).

Intergenerational justice can achieve a more consistent definition from listening to traditional peoples and children themselves, those who are in direct confrontation with climate change and are most affected by it. Thus, intergenerational justice can go beyond the provision of a duty from the present to the future, but rather compose the notion of climate justice, in which the relationship between past, present, and future is understood in its dynamics, history, and intra- and intergenerational inequalities.

An adequate definition of intergenerational justice, in the context of climate change and human rights, should not be restricted merely to the preservation of natural resources and biodiversity for the next generations, but to reach an existential inflexion in the dominant human-nature relationship in the world, which includes historical reparations to exploited peoples, communities, and environments, towards a model that is actually fair for the next ones to come.

14. **Has the concept of intergenerational justice been incorporated into climate change litigation?**

Although still incipient in terms of effectiveness, the concept of intergenerational justice has been incorporated into litigation, especially in the Brazilian Supreme Court.

In this regard, the Supreme Court Justice Cármen Lúcia's vote - historic for Brazilian environmental law - in the proceedings of the “Action for Noncompliance with a Fundamental Precept” 760, on the State's actions and omissions in relation to deforestation in the Amazon: “Even when the subjects of rights have not yet been identified - as future generations are - attention must be paid to the rights of those who will come to an ecologically balanced environment, so that the legacy of humanity respects the future and those who come to live in it. (...) issues concerning environmental matters, which are linked to the right to a dignified life for the present and future generations, are an essential item on the contemporary constitutional agenda”.

In the ''Direct Unconstitutionality Lawsuit'' 6148, about air quality monitoring standards, Justice Rosa Weber, also from the Supreme Court, voted: “the effective protection of the environment assures the human being of the present and future generations a dignified existence: the preservation of the environment is inseparable from the very defense of human rights”.

It is also worth mentioning the judgment STC 4360-2018 of the Supreme Court of Colombia[[4]](#footnote-4). In that case, the Court ordered the Colombian Presidency, the Environmental and Sustainable Development Ministry, and the Agriculture and Rural Development Ministry, to develop a plan and draft an Intergenerational Pact for the life of the colombian Amazon in order to adopt measures that will initially reduce and ultimately fully eliminate deforestation (Pacto intergeneracional por la vida del Amazonas colombiano” - PIVAC), with the participation of the petitioners and public in general. It also ordered the municipalities of the Colombian Amazon to design a plan to reduce to zero the deforestation rate in their territories, and ordered environmental agencies in the Amazon to develop a plan, including police, legal and administrative measures, to counteract deforestation.

However, legal parameters and recommendations still need to be consolidated to instruct decisions in local courts with the concept of intergenerational and climate justice.

15. **What options are available for enshrining the principle of intergenerational justice in international law?**

It is important that there are effective instruments to establish the obligations of states to address climate change, taking into account the inequalities between the Global North and South, with a view to intergenerational justice in the world. To this end, all available legal means should be employed, in a participatory way, including the production of reports, recommendations, decisions in international courts and general comments from Treaty Bodies from the UN.

It is essential to bring together the existing bodies of international law and the peoples and population groups most affected by climate change in order to build sensitive and appropriate solutions. In this context, it is essential to listen to the population, especially to children, and to give real consideration to their voices in decision-making spaces.

16. **How can States incorporate the concept of intergenerational justice in their national constitutions and legislation? What are some good practices in that respect?**

Following the example of the aforementioned Article 225 of the Brazilian Constitution, which expressly provides for the relationship between present and future generations, States can provide for the notion of intergenerational justice in their constitutional and infra-legal normative provisions, expressly establishing the responsibility and duties of present generations to guarantee the right to a balanced, healthy, and sustainable environment.

However, it is fundamental to build effective mechanisms to prevent and repair environmental damage that take into consideration climate justice and the right to the environment of future generations. To this end, it is essential to have effective means for civil society participation in legislative processes and to listen to the people most affected by climate change.

17. **Can you share some good practices that allow youth to be represented in courts and to have their views and concerns properly expressed in the judicial process?**

It is important to have procedural mechanisms for considering the best interests of the child in any judicial decision that may affect their rights. In this sense, it is necessary to create an environment and a justice system that is sensitive, accessible and friendly to children and youth.

At the international level, it is necessary to create effective alternatives to solve the slowness of local judiciaries and guaranteeing the reasonable duration of the process, because the rule of exhausting domestic remedies for international denunciation has prevented access to justice for children and young people in several regions of the world, as in the case of “Children vs. Climate Change”, under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, of the Committee on the Rights of the Child. The climate activism of children and youth in the streets and in the branches of state power is certainly an intergenerational instrument that strengthens intergenerational climate justice.

Furthermore, one form of youth representation in the courts is the possibility of directly filing collective lawsuits, such as popular action (Law No. 4.717/1965) or public civil action (Law No. 7.347/85) in Brazil. In the case of popular action, any citizen can file it to seek the annulment of acts harmful to the State's assets, including the environment, while public civil action depends on the legitimacy of a duly constituted association or other state bodies defined by law.

In this context, it is necessary that States adopt a legal interpretation of the right to a clean, healthy and sustainable environment as diffuse and collective, so that it can be claimed collectively by children or organizations, and adopt appropriate legal remedies to address collective claims relating to this right without the need to specify individual victims or plaintiffs.

1. Oxford Public International Law (http://opil.ouplaw.com). (c) Oxford University Press, 2021. All Rights Reserved. Date: 15 April 2021. [↑](#footnote-ref-1)
2. Art. 231, caput, CRFB/88. The social organization, customs, languages, beliefs, and traditions of Indians are recognized, as are their original rights over the lands they traditionally occupy, the Union being responsible for demarcating them and protecting and enforcing respect for all of their assets;

   Art. 227, caput, CRFB/88. It is the duty of the family, the society, and the State to ensure to the child, the adolescent, and the youth, with absolute priority, the right to life, health, food, education, leisure, professionalization, culture, dignity, respect, freedom, and family and community life, in addition to protecting them from all forms of neglect, discrimination, exploitation, violence, cruelty, and oppression. [↑](#footnote-ref-2)
3. Alana Institute. Legal Policy Brief: o direito das crianças e dos adolescentes à natureza e a um ambiente saudável / organized by Angela Barbarulo, Pedro Hartung. - 1 ed. - São Paulo: Alana Institute, 2022. [↑](#footnote-ref-3)
4. [ACRiSL](https://www.acrisl.org/casenotes/mudzuru-ampamp-another-v-ministry-of-justice-legal-ampamp-parliamentary-affairs-no-ampampothers-const-application-no-7914-cc-12-15-2015-zwcc-12-20-january2016ccz-122015-ghfkj-b44w5-wz5en-mwjha). Colombia Supreme Court - Sentencia STC 4360-2018, Radicación No. 11001-22-03-000-2018-00319-01 - Colombia. [↑](#footnote-ref-4)