

**The Role of the Amicus Curiae  
before the Inter-American Court  
of Human Rights:  
How Growing Civil Society  
Participation in the Form of a Third  
Intervenor Has the Potential to  
Shape Human Rights-Based  
Climate Litigation**

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## WTI Working Paper Series

# **The Role of the *Amicus Curiae* before the Inter-American Court of Human Rights: How Growing Civil Society Participation in the Form of a Third Intervenor Has the Potential to Shape Human Rights-Based Climate Litigation**

Ms. Riccarda Heepen<sup>1</sup>

### **I. Introduction**

The *Advisory Opinion on Climate Emergency and Human Rights* issued by the Inter-American Court of Human Rights (IACtHR) on July 3, 2025, has been described as a historic event and a turning point in human rights-based climate litigation. The requested advisory opinion by the Republics of Colombia and Chile has attracted a total of 263 *amicus curiae* briefs – nearly as many as were submitted in the first 40 years of the Court’s functioning since 1979. In their consultation, the two requesting states ask the Court to clarify state obligations to respond to the climate emergency within the framework of international human rights law. This is a moment of unprecedented significance in the development of climate and human rights litigation and requires detailed analysis in order to understand the exponential rise in civil society and NGO (non-governmental organization) participation. Therefore, it is necessary to examine the historical background that led to the close relationship we observe today between the IACtHR and CSOs (civil society organizations), as well as the increasingly recognized nexus between human rights and the climate emergency. As explained by Pennino (forthcoming), NGOs present a subcategory of the broader concept of the CSO, which encompasses a diverse range of actors and groups (Dupuy & Vierucci, 2008). Our team had the opportunity to submit an *amicus curiae* brief before the Inter-American Court in relation to the *Advisory Opinion on Climate Emergency and Human Rights*, and to intervene in person during the public hearings held in April 2024 in Bridgetown, Barbados. At

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the same time, we conducted semi-structured interviews with experts in human rights-based climate litigation who intervened before the Court and possess a significant amount of practical experience and technical expertise in this field. This paper seeks to examine the significance of *amicus curiae* participation before the Inter-American Court of Human Rights, while studying the underlying dynamics that have contributed to the notable increase in *amicus curiae* submissions in recent years, particularly in light of the *Advisory Opinion OC-32/25 on Climate Emergency and Human Rights*. The first part of this paper addresses the historical background of the *amicus curiae* and analyzes the multiple reasons for the recent rise in *amici* involvement. The second part examines the content and scope of the Advisory Opinion OC-32/25, while integrating outcomes from our interviews conducted in Barbados in the spring of 2025. The final section deals with the role of civil society actors in human rights-based climate litigation and to what extent strategic litigation is a useful instrument before courts in this domain. This paper constitutes a working paper, based on academic publications and legal documents, while recognizing the current limitations that exist, particularly regarding data and statistical assertions of *amicus curiae* submissions before the IACtHR.

## **II. The Origins and Dimensions of the *Amicus Curiae* and its Development Before International Courts**

### **a. The *Amicus Curiae*: From Roman, to Common, to International Law**

The legal concept of the “amicus curiae”, which means “friend of the court”, stems from Roman law and has been embedded into Common Law systems starting from the 1400s (Lowman, 1992). The *amicus curiae* was utilized as an intervening third party – something that was rather precluded from the Anglo-Saxon adversary system of the time (Krislov 1963). The “friend of the court” was originally seen as a neutral bystander without personal interest in the matter and who assists the court by either providing useful information, such as citing precedent cases unknown to the judges, or by intervening on behalf of third parties, such as children (Krislov 1963; Kent & Trinidad, 2016). In this sense, the *amicus curiae* serves the court by taking an “informative auxiliary role” (Delcides et al., 2025). It is a unique legal tool, since courts have always avoided a precise definition of the instrument, which gives it an important degree of flexibility (Lowman, 1992). Despite its long history and well-established place in the Anglo-Saxon legal tradition, there have been voices criticizing its flexible nature, arguing that this would give the court too much judicial discretion and ultimately harm the court’s credibility (Krislov, 1963). While it is not common to find any third-party intervention in the form of an *amicus curiae* in Civil Law systems, in recent years, *amicus curiae* briefs have increasingly been accepted in

international legal bodies (Rivera Juaristi, 2014). This is due to a growing interest by CSOs to participate through the *amicus* instrument, combined with a gradually increasing openness of courts to facilitate the intervention by *amici* (Wiik, 2018).

Different courts in the international sphere have been accepting *amicus curiae* briefs, although to a different extent. One of the first ones is the European Court of Human Rights (ECtHR), which has been receiving *amicus curiae* briefs since 1981, usually by NGOs, civil society organizations, and academic institutions (Kent & Trinidad, 2016). Other international judicial bodies that have shown their openness towards *amicus curiae* participation include the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the Special Tribunal for Lebanon (STL) (Pascual Vives, 2011). The International Court of Justice (ICJ), on the other hand, is famously reluctant in accepting the intervention of third parties via the submission of a brief. Article 34(2) of its Statute stipulates that the Court “*may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative*”<sup>2</sup>, whereas the term “public international organization” excludes non-governmental organizations. So far, the ICJ has systematically rejected requests for *amicus curiae* intervention by non-governmental as well as governmental agencies (Wiik, 2018; Kent & Trinidad, 2016). In its 1971 advisory opinion *Namibia*<sup>3</sup>, the Court argued that it doesn’t want to open the “floodgates” to an uncontrolled high number of *amicus curiae* briefs (Kent & Trinidad, 2016). The degree of openness of international courts and tribunals towards *amici curiae* depends not only on the attitude of member states towards this procedural instrument, but also on the institution’s procedural rules, its power over proceedings, and the specific context of a case or advisory opinion (Wiik, 2018).

Turning to the American continent, the IACtHR has been inclined to receive letters by *amici curiae* since its early days. Just three years after its foundation in 1979, the Court received its first *amicus curiae* brief for the advisory opinion *Other Treaties*<sup>4</sup>, which was its first advisory opinion ever (Rivera Juaristi, 2014). The participation of third parties is based on the *Rules of Procedure of the Inter-American Court of Human Rights*<sup>5</sup>. Although the Court has experienced interventions by *amici* since its beginning, the Rules of Procedure never explicitly used the term “amicus curiae” nor did they define the instrument. Only with the amendments of the Rules in 2009 did the Court specify the scope of the

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<sup>2</sup> United Nations (1945). *Statute of the International Court of Justice, Article 34(2)*. Retrieved from: <https://www.icj-cij.org/en/statute>.

<sup>3</sup> International Court of Justice (1971, June 21). *Advisory Opinion, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)* (ICJ Rep. 1971, p. 16). Retrieved from: <https://www.icj-cij.org/en/case/53/advisory-opinions>.

<sup>4</sup> Inter-American Court of Human Rights (1982, September 24). *Advisory Opinion OC-1/82, “Other Treaties” Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human Rights)*. (Series A No. 1). Retrieved from: [https://www.corteidh.or.cr/docs/opinion/es/seria\\_01\\_ing.pdf](https://www.corteidh.or.cr/docs/opinion/es/seria_01_ing.pdf).

<sup>5</sup> Inter-American Court of Human Rights (2009). *Rules of Procedure of the Inter-American Court of Human Rights*. (Approved by the Court during its 85th Regular Session, November 16–28, 2009; in force from January 1, 2010). Retrieved from: <https://www.corteidh.or.cr/reglas.cfm>.

tool by introducing a normative and jurisprudential definition under article 2(3): “*The expression ‘amicus curiae’ refers to the person or institution who is unrelated to the case and to the proceeding and submits to the Court reasoned arguments on the facts contained in the presentation of the case or legal considerations on the subject-matter of the proceeding by means of a document or an argument presented at a hearing.*”<sup>6</sup>. Articles 44 and 58 of the same document specify the technical framework of a submission, while article 73 regarding advisory opinions states that “*The Presidency may invite or authorize any interested party to submit a written opinion on the issues covered by the request. (...)*”<sup>7</sup>. However, intervention through the submission of an *amicus curiae* brief has its limits, since *amici* can only intervene with the explicit permission of the Court and are not allowed to examine witnesses or demand financial compensation, as might be granted to the parties to a case. Nevertheless, as mentioned by Shelton (1994), taking the place of an *amicus* may be the only available way to participate before international courts.

#### **b. The growing influence of *Amicus Curiae* participation**

The legal body of the Inter-American System has seen continuous growth of intervention by non-state actors as third parties. The largest participation of *amici* in the Court’s history until 2021, both in contentious cases and advisory opinions, was the Advisory Opinion OC-24/17 on *Gender Identity, and Equality and Non-Discrimination with Regard to Same-Sex Couples*<sup>8</sup>, where the Court received 73 briefs (Herrera & Haeck, 2021). Furthermore, in relative terms, *amicus curiae* participation is higher in advisory opinions than in contentious cases<sup>9</sup> (Wiik, 2018). This confirms that civil society groups and NGOs are usually most interested in submitting an *amicus curiae* brief when the matter is of broad public interest (Rivera Juaristi, 2014). Participation has especially been growing since the 2010s, exemplified by the fact that 42% of all briefs submitted between 1987 and 2013 were presented to the Court in the short period of 2010-2013 (Rivera Juaristi, 2014). The last advisory opinion on *Climate Emergency and Human Rights* published the 3<sup>rd</sup> of July 2025, confirms this trend, attracting the submission of 263 *amicus curiae* briefs by 613 actors. In contrast, the IACtHR had received only slightly less than double (around 500 briefs) in its first 35 years of operating (Rivera Juaristi, 2014). Regrettably, more precise and up-to-date statistical analyses are lacking, making it difficult to determine the scope and significance of the rise in *amicus curiae* briefs as of 2025.

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<sup>6</sup> Inter-American Court of Human Rights (2009). *Rules of Procedure of the Inter-American Court of Human Rights, Article 2(3)*, *op. cit.*

<sup>7</sup> Inter-American Court of Human Rights (2009). *Rules of Procedure of the Inter-American Court of Human Rights, Articles 44, 58, & 73*. *Op. cit.*

<sup>8</sup> Inter-American Court of Human Rights (2017, November 24). *Advisory Opinion OC-24/17, Gender Identity, and Equality and Non-Discrimination with Regard to Same-Sex Couples: State Obligations in Relation to Change of Name, Gender Identity, and Rights Deriving from a Relationship Between Same-Sex Couples* (Series A No. 24). Retrieved from: [https://www.corteidh.or.cr/docs/opiniones/seriea\\_24\\_esp.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_24_esp.pdf).

<sup>9</sup> As illustrated by Wiik (2018), as of the year 2018, 122 out of 317 contentious cases and 20 out of 22 advisory opinions attracted *amicus curiae* intervention.

The causes for this growing number of *amicus* participation before the Court are multifaceted and can be divided into four main reasons: (1) the procedural openness of the IACtHR towards *amicus curiae* participation; (2) the nature of issues which stir the interest of numerous different non-state actors; (3) the strong tradition of civil society participation in Latin America; and finally (4), the rise of NGOs and the global trend towards broader public participation in human rights-based litigation. Firstly, starting in the early 1990s, CSOs and academics have been trying to participate as *amici curiae* before the Court, which has been facilitated by the amendments of the Rules of Procedure (Kent, Skoutaris, & Trinidad, 2019). The Court has shown its openness towards third-party intervention by publishing open calls on their website in order to encourage the submission of *amicus curiae* briefs. Furthermore, in the advisory opinion concerning the *Interpretation of Article 55 of the American Convention on Human Rights*<sup>10</sup> from 2009, as well as in the *Kimel v. Argentina*<sup>11</sup> case from 2008, the IACtHR recognizes the “invaluable” nature of *amicus curiae* briefs and their potential to strengthen the Inter-American System of Human Rights and contribute to the progressive development of human rights norms (Wiik, 2018). Secondly, starting from the early 2000s, the IACtHR concentrated on more cases that stirred a broad public interest, either because they affected a large number of people and communities or because these cases were seen as quite controversial, engaging in fundamental ethical questions, such as reproductive health, LGBTIQ+ rights, or environmental issues (Herrera & Haeck, 2021). These types of cases attract more attention and therefore increase the willingness of CSOs and private individuals to intervene. Thirdly, the IAS has had a close relationship with NGOs and local civil society groups on the continent since the 1960s and 1970s, and the Inter-American human rights bodies have obtained their legitimacy thanks to the constant support and lobbying by NGOs (Herrera & Haeck, 2021). Today, they have a relationship of cooperation and interdependency while sharing the goal of maximizing compliance with human rights and incentivizing states to fulfill their legal obligations (Delcides et al., 2025). Fourth and finally, the rise in *amicus curiae* participation before the IACtHR can be explained in part by a global trend of growing civil society movements. Wiik (2018) argues that this world-wide mobilization is a counter-reaction to the tendency since the 1990s to handle conflicts through investment arbitration and economic dispute settlement mechanisms such as the WTO Appellate Body. These have been highly criticized for being secretive, non-democratic, and acting in favor of large corporations (Wiik, 2018). Civil society groups from the Global South, where many regions are disproportionately affected by human rights violations in relation to multinational corporations, have started building a vast international network of like-minded NGOs and CSOs, bringing cases before courts and submitting *amicus curiae* briefs (Auz, 2022).

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<sup>10</sup> Inter-American Court of Human Rights (2009, September 29). *Advisory Opinion OC-20/09, Interpretation of Article 55 of the American Convention on Human Rights* (Series A No. 20), p. 17. Retrieved from: [https://www.corteidh.or.cr/docs/opiniones/seriea\\_20\\_ing.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_20_ing.pdf).

<sup>11</sup> Inter-American Court of Human Rights (2008, May 2). *Kimel v. Argentina* (Series C No. 177), p. 5. Retrieved from: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_177\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_177_ing.pdf).

All these factors show that the IACtHR is increasingly seen as a popular and effective forum for third parties that want to present their human rights-based claims (Rivera Juaristi, 2014). Interestingly, *amicus curiae* briefs are submitted by a wide range of actors to international judicial bodies, and the IACtHR is no exception. Out of all submissions between 1988 and 2013, nearly 60% were written by NGOs, 24.5% by academics, and the rest are divided between states, regional governments, corporations, agencies, private individuals, and law clinics (Rivera Juaristi, 2014).

**c. The *Amicus Curiae*: A Neutral Friend of the Court or an “Outright Advocate”?**

Several questions arise when examining the role of the contemporary *amicus curiae* in international courts and tribunals. A series of scholars underline that the “friend of the court” is progressively taking the role of a “litigating *amicus curiae*”, lobbying for interests of a specific group and distancing itself from its original neutral standpoint (Lowman, 1992). Krislov (1963) and Lowman (1992) both argue that the changing nature of the *amicus curiae* mirrors broader changes in international law systems. The line between the intervenor and the neutral bystander seems too blurred, and the modern *amicus* is performing tasks that are actually reserved for the parties to a conflict (Krislov, 1963). Other scholars argue that *amicus curiae* briefs tend to be too lengthy and general, while academics especially may submit briefs for their own prestige, even when the matter at stake is not exactly in their area of expertise (Kent & Trinidad, 2016). Furthermore, one might argue that *amici* are increasingly less neutral and that their real interests may be difficult to identify (Pascual Vives, 2011). On the other hand, some scholars argue that the *amicus curiae* is a progressive legal instrument, helping courts to raise awareness of issues that may affect more people than just the parties before the court (Wiik, 2018). The rise in the use of the tool potentially leads to a greater plurality of participants and facilitates the dialogue between different interest groups, while increasing public participation (Kent & Trinidad, 2016).

The lack of a clear universal definition of the role of the *amicus curiae* raises a number of significant challenges. The effective influence of *amici* on the final outcome is difficult to empirically determine, as courts often omit this information in their judgements (Rivera Juaristi, 2014; Wiik, 2018; Krislov, 1963). According to Wiik (2018), when comparing *amicus curiae* briefs with judgements and based on former court officials, the IACtHR evidently relies on these briefs on a regular basis for inspiration when writing judgments and advisory opinions, but the extent to which is not clear (Wiik, 2018). Furthermore, the rise in *amicus curiae* participation could lead to an overwhelming amount of work for court administrations, which is already so often limited in human and financial resources (Rivera Juaristi, 2014). However, the argument of the court being “flooded” by *amicus curiae* briefs, as used by the ICJ, should be put into perspective, since the majority of cases do not attract any *amici* (Kent, Skoutaris, & Trinidad, 2019; Wiik, 2018). The flexible nature of the *amicus curiae* instrument can be

seen either as the root of procedural challenges and excessive discretionary power for the court, or as an innovative tool that ultimately enhances participation, fulfilling the IACtHR's values of inclusivity, democracy, transparency, and representativeness (Pascual Vives, 2011; Kent, Skoutaris, & Trinidad, 2019).

### **III. The Role of Civil Society Organizations submitting an *Amicus Curiae* Brief for the Advisory Opinion OC-32/25 on Climate Emergency and Human Rights**

Similarly to other international judiciary bodies, the Inter-American Court of Human Rights not only adjudicates contentious cases but also holds the discretion to issue advisory opinions. The option to request an advisory opinion is reserved for members of the Organization of American States (OAS), thereby excluding non-state public and private actors, as well as states not party to the Organization. The advisory opinion function of the IACtHR is enshrined in article 64(2) of the American Convention on Human Rights which reads as follows: “*The Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments*”. Accordingly, the goal of an advisory opinion is to assist states in comprehending and interpreting the content and scope of the legal norms they are obliged to apply and translate into their domestic legal systems (Arévalo Ramírez & Rousset Siri, 2023). This mechanism serves as an important legal tool, enabling states to enhance compliance with international and regional human rights standards and to guarantee the enjoyment of fundamental rights by their populations. Moreover, members of the OAS may use the outcome of advisory opinions as guidance in shaping public policies and addressing legal uncertainties in domestic law (Arévalo Ramírez & Rousset Siri, 2023). Another interesting aspect of the advisory function is that it gives the Court the possibility to examine relevant issues that so far haven't been addressed through caselaw (Arévalo Ramírez & Rousset Siri, 2023). Although advisory opinions issued by the IACtHR are not explicitly binding under Article 64(2) of the American Convention of Human Rights, the Court retains procedural authority as the final interpreter of the Convention. Furthermore, advisory opinions are widely recognized as having an *erga omnes* effect – meaning they are relevant not only to the requesting states but to all states party to the American Convention (Arévalo Ramírez & Rousset Siri, 2023). Several Latin American states have shown their willingness to comply with advisory decisions by the Court and even went to the length of annulling certain judgments issued by low-level domestic courts that conflicted with the IACtHR's interpretation (Arévalo Ramírez & Rousset Siri, 2023).

### **a. The Advisory Opinion OC-32/25 and its Main Legal Obligations**

On Thursday, July 3, 2025, the Inter-American Court of Human Rights published its *Advisory Opinion on Climate Emergency and Human Rights*, following the request by Chile and Colombia. This marks a turning point in human rights-based climate litigation, as civil society participation has never been as high in the Court's history, with a total of 263 *amicus curiae* briefs submitted by 613 actors. In January 2023, the Republics of Colombia and Chile requested the IACtHR, based on Article 64 of the American Convention, to clarify obligations of states to respond to the climate emergency within the framework of international human rights law<sup>12</sup>. The two states wished to obtain clear information on the application and interpretation of human rights norms in the climate context, while taking into consideration the impact that both the effects of and responses to the emergency have on groups in vulnerable situations. This includes economically and socially disadvantaged communities and segments of the population such as women, children, the elderly, Indigenous groups, Afro-descendants, and peasants (Delcides et al., 2025).

In their request, the states of Colombia and Chile pointed out that the Court should base its argumentation on the principles of equity, justice, cooperation, and sustainability (Delcides et al., 2025). They also highlighted the importance of international instruments used in international environmental law, such as the Paris Agreement or the IPCC. The data used in their request state that the American region faces multiple risks exacerbated by climate change, especially in coastal regions, drylands, and rain forests (Delcides et al., 2025). The consequences of climate change will manifest through heatwaves, floods, a rise in mosquito-borne diseases, altered precipitation patterns, and other extreme weather events, which will put millions of people in the Americas at risk (Seneviratne et al., 2021). According to Delcides, Rosa, da Cunha & Romero (2025), which is why it is crucial to apply an intersectional and broad approach when tackling human rights-based obligations of states in relation to climate change.

While the first 80 pages examine the effects of climate change and the complexity of the correlation between cause and damage, the main body of the Advisory Opinion OC-32/25 studies the primary obligations that states have in protecting human rights in the context of climate change. These obligations are divided into four subcategories: general, substantive, and procedural obligations, as well as obligations derived from the principles of equality and non-discrimination. The outcome of the requested advisory opinion on climate emergency is visibly rich – illustrated by the 234 pages – and is,

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<sup>12</sup> Inter-American Court of Human Rights (2025, May 29). *Advisory Opinion OC-32/25, Climate Emergency and Human Rights* (Series A No. 32). Retrieved from: [https://www.corteidh.or.cr/docs/opiniones/seriea\\_32\\_en.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf).

overall, unprecedented in nature. However, it is worth pointing out some key aspects of the outcome. Firstly, the Court explicitly and unanimously recognized that the current situation amounts to a climate emergency caused by human activities. Secondly, the Court used an ecocentric approach, as seen in past decisions such as the Advisory Opinion OC-23/17 and the *Lhaka Honhat Indigenous Communities v. Argentina* case<sup>13</sup>, by recognizing that the obligation to protect the environment is independent of the impact that environmental damage would have on the people living within it<sup>14</sup>. Furthermore, the Advisory Opinion states that the obligation not to cause irreversible harm to the climate and the environment constitutes a *jus cogens* norm in subchapter B.1.3. Finally, the judges further expanded the right to a healthy environment by developing the concept of a right to a healthy climate<sup>15</sup>, thereby laying the groundwork for a potentially new human rights norm. Central international legal principles mentioned in the opinion include the principle of prevention, the principle of cooperation, and the *pro natura* principle<sup>16</sup>.

#### **b. The Right to a Healthy Climate as Part of the Rights to a Healthy Environment**

Examining the *Advisory Opinion on Climate Emergency and Human Rights* published in 2025, it is indispensable to refer to the *Advisory Opinion on the Environment and Human Rights* OC-23/17, issued in November 2017. The Opinion OC-23/17, requested by the State of Colombia, considers the protection and guarantees of specific rights – namely, the right to life in Article 4 of the ACHR and the right to personal integrity based on Article 5(1) of the ACHR<sup>17</sup>. Colombia had a special interest in requesting clarifications from the Court in relation to the development of several large-scale infrastructure projects in the Caribbean Sea, and whether they might potentially harm the environment and the people living nearby (Mardikian, 2023). According to Auz (2022), the *Advisory Opinion on the Environment and Human Rights* constitutes a “path-breaking” outcome that examines the relationship between the environment and human rights while clarifying specific procedural and substantive aspects of state obligations in protecting the environment. Interestingly, the Court has a tendency to expand fundamental rights through its advisory opinions, and the Opinion OC-23/17 is no exception (Wiik,

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<sup>13</sup> Inter-American Court of Human Rights (2020, February 6) *Lhaka Honhat Indigenous Communities v. Argentina: Merits, Reparations and Costs* (Series C No. 400). Retrieved from: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_400\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_400_esp.pdf).

<sup>14</sup> Inter-American Court of Human Rights (2025, May 29). *Advisory Opinion OC-32/25, Climate Emergency and Human Rights, op. cit.*, p. 102-106.

<sup>15</sup> Inter-American Court of Human Rights (2025, May 29). *Advisory Opinion OC-32/25, Climate Emergency and Human Rights, op. cit.*, p. 109-116.

<sup>16</sup> The *amicus curiae* brief by Fornalé et al. (2023) was one of few referring to the *pro natura* principle, in their subchapter *In dubio pro natura* (p. 33-38). See: Fornalé, E., Bilková, V., Burgorgue-Larsen, L., Cristani, F., De Vido, S., Doebller, C., & Hertogen, A. (2023, December 18). *Amicus Curiae: 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 of January 9, 2023* [Amicus curiae brief submitted to the Inter-American Court of Human Rights]. Retrieved from: [https://corteidh.or.cr/sitios/observaciones/OC-32/6\\_fornale\\_otros.pdf](https://corteidh.or.cr/sitios/observaciones/OC-32/6_fornale_otros.pdf).

<sup>17</sup> Inter-American Court of Human Rights (2017, November 15). *Advisory opinion OC-23/17, State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and Personal Integrity* (Series A No. 23). Retrieved from: [https://www.corteidh.or.cr/docs/opiniones/seriea\\_23\\_ing.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf).

2018; Mardikian, 2023). By issuing the Advisory Opinion OC-23/17, the Court laid the groundwork for an expansion of the right to a healthy environment under Article 26 of the American Convention on Human Rights. Article 26 on “Progressive Development” stipulates that States Parties “*undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires*”<sup>18</sup>. One might wonder where the right to a healthy environment can be found in this provision. In this regard, then-judge Humberto Antonio Sierra Porto argued in his divergent opinion that Article 26 has been interpreted too broadly, exceeding the purpose of the present advisory opinion – especially since Colombia had asked for a clarification of the rights to life and personal integrity<sup>19</sup>. Judge Sierra Porto, on the other hand, argued that the outcome of the requested advisory opinion regarding the environment aligns with the values and aims of the Court, namely the protection of human rights (Delcides et al., 2025).

The two advisory opinions examined in this paper have several key aspects in common and are closely interrelated. Both were praised by many CSOs for their ecocentric approach, acknowledging that nature should be protected independently of the impacts environmental harm has on the population living in and around it. Furthermore, in both situations, the Court took the opportunity to expand fundamental rights in favor of broader human rights protection (Mardikian, 2023; IGSD, 2025; Kaminski, 2025). By establishing the right to a healthy climate as part of the broader right to a healthy environment, Advisory Opinion OC-32/25 builds upon the foundation laid in Advisory Opinion OC-23/17, which itself expanded the interpretation of Article 26 of the ACHR. However, the two opinions differ significantly in the scale of attention they received from non-state actors, the media, and the public in general. While the advisory opinion from 2017 attracted 51 submissions – which was already high at that time – the advisory opinion from 2025 confirms the exponential growth of *amicus curiae* participation, receiving a total of 263 briefs (Delcides et al., 2025).

### **c. Civil Society Involvement through *Amicus Curiae* Briefs in the course of the Public Hearings of the Advisory Opinion OC-32/25**

For many involved civil society groups and stakeholders, the *Advisory Opinion on Climate Emergency and Human Rights* constitutes a landmark decision with the potential to shape future action in the sphere

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<sup>18</sup> Organization of American States (1969). *American Convention on Human Rights*, “*Pact of San José*” (B-32), Article 26. Retrieved from: [https://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm).

<sup>19</sup> Inter-American Court of Human Rights (2017, November 15). *Advisory opinion OC-23/17: State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and personal integrity*, *op. cit.*, p. 98-99.

of human rights-based climate litigation. Throughout the week in Barbados, when submitting our oral statement before the IACtHR, we had the chance to interview several members of NGOs and grassroots organizations. This was an invaluable contribution to our research projects and enabled us to deepen our understanding of the complexity of strategic climate litigation in the Americas<sup>20</sup>. Six members of CSOs were interviewed, each working for an organization that submitted an *amicus curiae* brief before the Court. The interviews were conducted in a semi-structured format, in order to allow the interviewees to fully share their expertise and experience in human rights-based climate litigation before national and international courts. Answering the first question – on which human rights are most affected by the consequences of climate change – interviewees mentioned a wide range of rights, also highlighted in the many *amicus curiae* briefs of NGOs and CSOs that were present in Barbados. The most frequently cited rights in our interviews were the right to a healthy environment, the right to life, the right to personal integrity, and the right to access to information, participation, justice, and education. When asked about key principles, the CSO representatives referred to the principle of cooperation, the principle of common but differentiated responsibilities (CBDR), the principle of prevention, and the precautionary principle, among others. The choice of these core principles and rights is of no coincidence, since all the experts and legal practitioners interviewed have several years – if not decades – of experience before the IACtHR. Accordingly, citing human rights principles that have already been developed by the Court, such as the right to a healthy environment, is particularly useful and confirms the ongoing dialogue between civil society groups and the Court (Delcides et al., 2025; Herrera & Haeck, 2021). Regarding key international legal instruments, the interviewees referred to those widely recognized by states, such as the Paris Agreement, the American Convention on Human Rights, Escazú Agreement, and the two international covenants on human rights – ICCPR and ICESCR.

The reaction to the final outcome of the Advisory Opinion OC-32/25 was largely positive. Several intervenors emphasized that this was a historic moment and that the Court had made the decision to provide affected groups and individuals with a legal tool that could significantly advance climate litigation (IGSD, 2025; Kaminski, 2025). The expected effects will potentially not only shape regional and domestic decision-making and jurisprudence but may also serve as guidelines for other international courts (IGSD, 2025; Kaminski, 2025). A representative of the NGO *Center for International Environmental Law* (CIEL) pointed out that the IACtHR had established a “critical connection” between fundamental human rights and the protection of the ecosystems on the one hand, and the effects of the climate emergency on the other (Kaminski, 2025). As discussed earlier, both contentious and

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<sup>20</sup> The interviews have been conducted in the framework of the research project “Slow Violence and Human Rights” and Horizon Europe Project “HRJust”. The first project aims to explore the role of the concept of slow violence in the specific legal domain of access to justice by means of three successive steps: 1) investigating when to situate climate justice claims; 2) identifying who is affected by slow distress, and 3) asking how – by what methods and legal tools access to climate justice can be ensured. The second project constitutes a study in civil society engagement and human rights through the lens of gender and intersectionality, which aims to address significant and important gaps in human rights regulations and to develop a theory of human rights justifications.

advisory cases before the IACtHR are more likely to attract public attention and *amicus curiae* submissions when the topic is of broad public interest or implicates fundamental ethical questions (Wiik, 2018). Accordingly, this is an unprecedented event, having the potential to address questions that are becoming more pressing each year. In this context, the judges of the IACtHR Nancy Hernández López and Rodrigo Mudrovitsch, emphasized the urgency of the matter examined in Advisory Opinion OC-32/25, as well as the fact that this consultation facilitates the establishment of standards and norms specifically tailored to the global climate emergency, while taking into account the unique character of each region within the Americas (Mengardo, 2024).

The Court cited 16 briefs issued by CSOs and 4 by academics. One of these was issued by legal scholars Prof. Fornalé, Prof. Bilkova, Prof. Burgogue-Larsen, Dr. Cristani, Prof. De Vido, Prof. Doebbler, and Dr. Hertogen. Their intervention focused on question F of the request by Colombia and Chile concerning the “shared and differentiated human obligations and responsibilities of states in the context of the climate emergency”. While highlighting key legal principles such as the principle of CBDR, the principle of prevention, and the principle of good neighborliness, the group of *amici* underscored the importance of considering climate-induced migration (Fornalé et al., 2023). Accordingly, the current climate emergency is exacerbating slow violence and migration across the world. This increase in forced human mobility requires states and other decision-making bodies to adopt common strategies based on multilateralism and cooperation (Fornalé et al., 2023). This was reflected in the Advisory Opinion OC-32/25, paragraph 431, where the Court reiterated that “*la gestión segura, ordenada y regular de los flujos migratorios constituye una preocupación y responsabilidad compartida de la comunidad internacional*”, and highlighting the centrality of principle of cooperation in the context of climate-induced migration<sup>21</sup>. More broadly, the IACtHR dedicated a six-page subchapter to the principle of cooperation in its Advisory Opinion on the climate emergency<sup>22</sup>.

#### **IV. Civil Society as Actors in Climate Litigation in the Inter-American System**

##### **a. The Rise of Civil Society Organizations on the American Continent**

Mobilization of human rights-focused non-state organizations in Latin America began in the early 1970s as a response to the many dictatorships that emerged during the Cold War on the continent (Soley, 2019). Not only was this fast-growing trend a reaction to political events in Latin American countries, but it

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<sup>21</sup> Inter-American Court of Human Rights (2025, May 29). *Advisory Opinion OC-32/25: Climate Emergency and Human Rights, op. cit.*, p.153-154.

<sup>22</sup> Inter-American Court of Human Rights (2025, May 29). *Advisory Opinion OC-32/25: Climate Emergency and Human Rights, op. cit.*, p. 92-98.

also mirrored the rise in NGOs and CSOs on a global scale (Kent, Skoutaris, & Trinidad, 2019). NGOs in South America concentrated on documenting human rights violations by their governments that occurred during the dictatorship and started to build a solid foundation in writing petitions to the Inter-American Commission of Human Rights, which was seen as the only platform in the region open to receiving denunciations of human rights violations by states (Herrera & Haeck, 2021). Even after the Cold War, when most Latin American countries underwent democratization, the body of human rights-based CSOs continued to grow – either by addressing the crimes committed during the dictatorships retrospectively or by tackling structural injustices and systemic exclusions and violence against historically vulnerable groups such as Indigenous peoples, Afro-descendants, migrants, or rural populations (Soley, 2019). CSOs have played a central role in the transition from autocratic to democratic states by influencing the drafting of new constitutions and creating important transnational networks of non-state organizations (Herrera & Haeck, 2021). The close relationship between human rights-based CSOs and entities of the Inter-American System, dating back to the 1960s and 1970s, explains why these non-governmental organizations occupy such a solid and influential position today. Additionally, since the 1990s, cooperation between the two has taken multiple forms. Human rights-based organizations assist the Commission in writing country reports and monitoring states' compliance with human rights obligations. Furthermore, these NGOs often represent victims, conduct human rights training, and run social media campaigns in order to inform the public and raise awareness among government officials. Often, the IACtHR or the Commission lack the financial means or the capacity to prepare cases. Therefore, CSOs support these bodies by providing crucial information, for example through *amicus curiae* interventions, or by submitting reports and petitions (Herrera & Haeck, 2021).

#### **b. A Growing Nexus Between Climate Litigation and Human Rights**

In recent years, the number of cases where environmental CSOs go before courts using human rights-based arguments has steadily increased. Especially in the Global North, non-state organizations have begun using legal pathways to hold their governments accountable for environmental damage and emissions contributing to climate change (Auz, 2022). As of the end of 2022, there have been over 2,100 climate-related cases globally, with some leading to landmark decisions, such as the *Duarte Agostinho*<sup>23</sup> case, the *Carême* case<sup>24</sup>, and the case issued by the *KlimaSeniorinnen*<sup>25</sup> before the ECtHR (Cristani & Fornalé, forthcoming). On the American continent, a growing body of human rights-based climate litigation can be observed, grounded in the strong and influential network of national and

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<sup>23</sup> European Court of Human Rights (2024, April 9). *Duarte Agostinho and Others v. Portugal and 32 Others* (App. No. 39371/20, Grand Chamber, Judgment). Retrieved from: <https://hudoc.echr.coe.int/eng?i=001-232096>.

<sup>24</sup> European Court of Human Rights (2024, April 9). *Carême v. France* (App. No. 7189/21, Grand Chamber, Decision of inadmissibility). Retrieved from: <https://hudoc.echr.coe.int/eng?i=001-232095>.

<sup>25</sup> European Court of Human Rights (2024, April 9). *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (App. No. 53600/20, Grand Chamber, Judgment). Retrieved from: <https://hudoc.echr.coe.int/eng?i=001-232097>.

regional CSOs. Latin America experienced a rise in climate claims in the early 2010s, following a boom in commodities that provoked a rapid decline in raw material prices and a rise in extractivism (Auz, 2022). According to Auz (2022), many states in the region don't have the financial means or institutional capacity to adopt post-extractive economic reforms to counter the socio-economic inequalities resulting from centuries of colonialist exploitation and neoliberal extractivism. Many countries in Latin America are rich in natural resources such as oil and minerals, and since the 1980s and 1990s have been bound by obligations agreed upon with private and public investment banks and financial institutions, which often hinder the adoption and implementation of crucial human rights (Auz, 2022).

The core of the interviews conducted focused on the arguments used by states to justify their actions or inactions in climate litigation. Since the interviewees had significant practical experience standing before courts in human rights-related climate cases, they were able to share crucial information about the behavior of states when accused of violating human rights in the context of environmental degradation. Commonly, states argue on procedural grounds to avoid addressing substantive accusations. This may involve claiming that a case is inadmissible because it does not respect the separation of powers, or, because the issue is of a political nature that should be addressed by the executive branch, not judiciary (for example, in the *KlimaSeniorinnen* Case). Another frequent argument mentioned is the lack of proof of correlation between the harm and the cause of environmental damage. Climate change is a complex matter with transboundary effects that may not manifest until generations later, making it difficult to prove causality (Pollock & Patel, 2018). Plaintiffs often struggle with the burden of proof required to hold governments accountable. According to one interviewee, states may simply deny the existence of climate change or assert that there is no violation because they are fully complying with their obligations, as was Colombia's strategy in the *Future Generations* case<sup>26</sup>. One type of argument frequently used by governments of economically disadvantaged and formerly colonized countries is the assertion that they have a right to development, based on the 1986 *Declaration on the Right to Development*<sup>27</sup>. A landmark decision reflecting this line of reasoning is the *Goa Foundation v. Union of India* case<sup>28</sup> from 2014. Additionally, given the complexity of environmental damage and climate change, some states argue that they lack the resources to comply with new environmental standards, and that responsibility lies with the historically largest polluters – namely, formerly imperialist states in Europe and North America. This aligns closely with the principle of CBDR and the polluter pays principle (PPP). The outcome of the qualitative interviews with representatives of NGOs and CSOs is reflected in the article by Dr. Cristani and Prof. Fornalé *Human Rights and*

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<sup>26</sup> Supreme Court of Justice of Colombia (2018, April 5). *Future Generations v. Ministry of the Environment and Others* (STC 4360-2018). Retrieved from: <https://www.r2heinfo.com/casebook/future-generations-v-ministry-of-the-environment-and-others-colombia/>.

<sup>27</sup> United Nations General Assembly (1986, December 4). *Declaration on the Right to Development* (Un Doc A/RES/41/128). Retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-development>.

<sup>28</sup> Supreme Court of India (2014, April 21). *Goa Foundation v. Union of India & Others* (Writ Pet. (Civil) No. 435 of 2012; 6 SCC 590, Grand Bench). Retrieved from: <https://www.indiankanoon.org/doc/120646079>.

*Justifications in Climate Litigation: A First Attempt at Conceptualization*. There, the two scholars identify three main typologies of state justification: (1) the defensive approach, which includes a lack of causality as well as raising procedural objections; (2) the promotive approach, in which states argue that they have already fulfilled their obligations; and finally (3) the boundary-testing approach, whereby governments assert that human rights-related obligations in environmental questions are directly competing with other fundamental rights, such as the right to development, and therefore cannot be fully complied with (Cristani & Fornalé, forthcoming).

These justifications all illustrate the complexity and controversy of linking specific harm to an explicit harmful action by a particular state. They confirm the necessity of considering not only contextual and historical facts but also a wider range of rights, obligations, and legal principles in order to create a balance between different human rights, respecting the principle of proportionality.

### **c. Strategic Climate Litigation of Civil Society Organizations before the IACtHR**

The term “strategic litigation” has a variety of definitions, but here we refer to it as “*litigation with an intended impact beyond a particular case to influence broader change at the level of law, policy, practice, or social discourse*” (Pollock & Patel, 2018). Strategic litigation is a tool that has enjoyed great popularity, especially by non-state CSOs, but has also been used by states aiming to protect human rights (Arévalo Ramírez & Rousset Siri, 2023). Soley (2019) argues that many issues in Latin America have been advanced through strategic litigation by selecting exemplary cases whose outcome will ultimately have a broad impact on a much larger number of people affected by the same issue. Furthermore, she states that strategic litigation has served CSOs as a tool with “enormous agenda-setting power” within the Inter-American System of Human Rights (Soley, 2019). Regarding human rights-based climate cases, strategic litigation has become a useful and common tool for CSOs. One strategy in Latin America is to refer to international instruments that have been globally recognized, such as the UNFCCC, the Paris Agreement, or the ICCPR and ICESCR, since the legal systems of the region are usually receptive to those instruments (Auz, 2022). Furthermore, CSO plaintiffs might base their argumentation on the determination of causation and attribution of GHG emissions, demanding from states reparations and mitigation strategies (Auz, 2022). Due to the complexity of strategic climate litigation, complaints before courts are often led by internationalized and highly specialized NGOs, such as *DeJusticia*, the *Center for Legal and Social Studies* (CELS), *Amnesty International*, the *Due Process of Law Foundation* (DPLF), or the *Center for Justice and International Law* (CEJIL) (Auz, 2022; Herrera & Haeck, 2021). *CEJIL*, for example, was founded in 1991 in Argentina but has various regional offices and its headquarters in Washington, D.C., in the US. Today, *CEJIL* enjoys advisory status before the IACtHR and the UN, having built alliances with more than 400 organizations and receiving funding from several Global North associations and states such as Switzerland and Sweden

(Center for Justice and International Law, n.d.). *CEJIL* is one of the most active non-governmental litigators before the IACtHR and has represented numerous victims before the Inter-American Commission since the early 1990s (Herrera & Haeck, 2021). These large organizations are highly specialized and possess a vast amount of experience in strategic litigation. One might argue that they monopolize the Inter-American System, rarely representing grassroots and civil society groups involved in local struggles anymore, since these NGOs are constituted of well-trained, technocratic, or even “elitist” staff, often based in the Global North and far away from the environmental and human rights conflicts they represent (Auz, 2022; Herrera & Haeck, 2021; Kent, Skoutaris, & Trinidad, 2019). On the other hand, affected communities suffering from the consequences of environmental harm rarely have the tools, knowledge, and financial means to bring a case before a court in order to claim reparation for the violation of their fundamental human rights. From a realist perspective, relying on large transnational litigating NGOs might be the only viable way to hold governments accountable – especially since the latter often rely on complex procedural and technical arguments that require specific knowledge (Herrera & Haeck, 2021; Cristani & Fornalé, 2024).

## V. Conclusion

This paper has analyzed the significance of *amicus curiae* participation before the Inter-American Court of Human Rights and examined the scope and content of the landmark *Advisory Opinion OC-32/25 on Climate Emergency and Human Rights*. We examined in detail the origins and role of the *amicus curiae* before the IACtHR and the reasons why the participation of *amici* is growing rapidly. We conclude that the reasons are multifaceted, essentially stemming from a combination of the procedural openness of the IACtHR to facilitate CSO intervention and the growing interest from an expanding global and regional network of highly specified and well-equipped NGOs litigating before courts. This opens discussions about the true nature of the *amicus curiae*, which was once described as an unrelated and neutral bystander, whereas today's *amici* clearly follow a certain agenda. Other issues that arise include questions of transparency, accessibility, and legitimacy of CSO intervention, since international courts often omit the extent to which briefs are used in their judgements and advisory opinions. Furthermore, there is currently a lack in statistical assessment of *amicus curiae* participation before the IACtHR as of 2025. In this line, more academic analyses are needed to fully comprehend the significance of the *Advisory Opinion OC-32/25* in relation to precedent cases and opinions, as well as its potential influence for future decisions by national and international courts. Regarding the use of human rights-based strategic climate litigation, we can conclude, based on our interviews and research, that CSOs rely on a wide range of interrelated human rights and internationally recognized legal instruments and principles. The Latin American continent is known for its openness regarding international human rights standards and norms, as well as its progressive post-dictatorship constitutions, many of which include the right to a healthy environment and recognize that nature itself has rights. The region holds important potential to advance human rights and environmental litigation, setting an example for other regional courts.

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