

## Article

# Expanding the Protection of Children's Rights towards a Dignified Life: The Emerging Jurisprudential Developments in the Americas

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**Abstract:** The Inter-American Court of Human Rights (IACrHR) has developed in recent years an innovative jurisprudence that has integrated the entity and extension of States' obligations regarding children's rights—as established in Article 19 ACHR—through the evolutive, dynamic, and effective interpretation of the American Convention on Human Rights (ACHR). In fact, by acknowledging the existence of an international corpus juris for the protection of children's rights, the Court has examined this provision in the light of instruments enshrined within the corpus juris, such as the UN Convention of the Rights of the Child. This process of normative integration was not only limited to the application of international instruments adopted outside of the Inter-American system, but also includes internal references to interconnected rights recognised within the American Convention. Consequently, by analysing the scope of Article 19 ACHR in the light of Article 4 ACHR (right to life) and the corpus juris for the protection of children, the Inter-American Court has further expanded the protection of children's rights towards the protection of the right to a dignified life. While focusing on the landmark jurisprudence developed by IACrHR, this paper seeks to unveil the hermeneutical paths undertaken by the regional tribunal in connection with the systemic integration of Article 19 ACHR. In particular, it focuses on the emerging jurisprudential development of positive obligations upon States Members regarding the effective protection of children's right to a dignified existence.

**Keywords:** American Convention of Human Rights; Convention on the Rights of the Child; Inter-American Court of Human Rights; right to dignified life; systemic interpretation

## 1. Introduction

In recent years, the Inter-American Court of Human Rights (IACrHR, the Court, or the Inter-American Court)<sup>1</sup> has developed a landmark jurisprudence on children's rights based on the evolutive, dynamic and effective interpretation of the American Convention on Human Rights (ACHR, the Convention, or the American Convention).<sup>2</sup> As a result of this jurisprudential development, the Court has expanded the scope of protection of Article 19 ACHR (rights of the child),<sup>3</sup> by means of interpreting its provisions in connection with other relevant norms enshrined in the American Convention, such as Article 4 (right to life), Article 5 (right to humane treatment), and Article 7 (right to personal liberty), among others.

<sup>1</sup> The Inter-American Court of Human Rights is as an autonomous judicial institution with the purpose of the interpretation and application of the Convention on Human Rights. It was created on 18 July 1978 by the entering into force of the American Convention on Human Rights (1969) and it has adjudicatory and advisory jurisdiction.

<sup>2</sup> The American Convention on Human Rights (ACHR) also denominated "Pact of San Jose, Costa Rica" was adopted on 22 November 1969 and entered into force on 18 July 1978.

<sup>3</sup> Article 19 ACHR (rights of the child) states that: "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state".

In addition to the above-mentioned internal integration of the provisions of the American Convention, the Court has further extended the scope of protection of children's rights through an external integration of those provisions. This hermeneutical step was possible by interpreting Article 19 ACHR in the light of other international instruments that integrate the corpus juris of international human rights law. In other words, through a systemic interpretation of the American Convention, the regional tribunal has affirmed that in cases related to the rights of children, the United Nations Convention of the Rights of the Child (CRC)<sup>4</sup> is the most suitable instrument for the interpretation of Article 19 ACHR.<sup>5</sup>

In this regard, the Court has acknowledged that both the American Convention and the Convention on the Rights of the Child form part of the same comprehensive legal system, that is, the international corpus juris for the protection of children's rights. Within this legal framework, the CRC should guide and support the regional tribunal while determining "the content and scope of the general provision established in Article 19 of the American Convention" in cases related to children's rights.<sup>6</sup> Moreover, the expansive integration of the scope of protection of Article 19 ACHR, in the light of the provisions enshrined in the CRC, has paved the way for the identification of concrete positive obligations regarding children's rights. As an example of this jurisprudential trend, it would be possible to mention the recognition of the right of children to a *dignified* existence, which has been identified as protected within the scope of Article 19 ACHR (in connection with Article 4 ACHR). In addition, and as a direct consequence of this recognition, the regional tribunal has identified and clarified the extension of States' positive obligations regarding the effective protection of this right (Pasqualucci 2008), demanding increased level of protection from States authorities as part of their conventional obligations emanated from the protection of the right to life. In other words, States have the positive obligation to generate the necessary conditions capable of guaranteeing children's dignified existence. Furthermore, through this expansive interpretation, the court has recognised that the individual fate of children in situations of vulnerability requires increased level of protection from States authorities, such as children under detention.

Children's right to a dignified life is a fundamental right strictly connected to the realization of other rights such as the right to development, education, and health. Therefore, this paper proposes a critical analysis of the hermeneutical steps undertaken by the Inter-American Court in connection with the systemic integration of Article 19 ACHR, focusing in particular on the right of children to a dignified life. Special attention is given to the way in which the corpus juris for the protection of the rights of the child has been interpreted and applied by IACrTHR in order to enhance the effective protection of children's right to a dignified existence.

Accordingly, the article will first outline the methods of interpretation applied by the Inter-American Court. It will then discuss the systemic integration of Article 19 ACHR (Rights of the Child) in light of the international instruments part of the corpus juris of international human rights law relevant for the protection of children's rights. This will lead to a discussion on the praetorian construction of the right to (a dignified) life and the emerging jurisprudential development of positive obligations for the protection of a dignified life in connection to the rights of the child.

## 2. The Court's Interpretative Paths

As a general rule, the regional tribunal in its analysis of the American Convention applies both traditional and particular rules of interpretation. The former finds expressions in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (Vienna Convention

<sup>4</sup> The Convention on the Rights of the Child (CRC) was adopted by the UN General Assembly resolution 44/25 on 20 November 1989 and entered into force on 2 September 1990.

<sup>5</sup> For an in-depth study on this matter, see—for example—(Nola and Kilkelly 2016).

<sup>6</sup> "Street Children" (Villagran-Morales et al.) v. Guatemala, 19 November 1999, IACrTHR, Merits, Series C No. 32, para. 24.

or VCLT), and the latter has been a jurisprudential creation of the Inter-American Court, as recognised by the court in the early 1980s in its very first advisory opinion.<sup>7</sup>

In line with Article 31 VCLT,<sup>8</sup> the first guidance in the interpretation of the American Convention is provided by its own object and purpose, which in the case of a human rights treaty such as the American Convention is the “effective protection of human rights”.<sup>9</sup> In the views of the Court, this method of interpretation not only “respects the principle of the primacy of the text, that is, the application of the objective criteria of interpretation”,<sup>10</sup> but also guarantees the teleological purpose of delivering effective protection of the human rights of individuals.<sup>11</sup> In other words, when interpreting the American Convention, the role of the interpreter is to identify the ‘autonomous regional meaning’ of the terms and legal institutions enshrined in the Convention in order to deliver an effective protection of those rights. As stated by the Court:

“The terms of an international human rights treaty have an autonomous meaning, for which reason they cannot be made equivalent to the meaning given to them in domestic law. Furthermore, such human rights treaties are live instruments whose interpretation must adapt to the evolution of the times and, specifically, to current living conditions.”<sup>12</sup>

Additionally, the Court also applies—in a subsidiary manner—supplementary methods of interpretation, in accordance with Article 32 VCLT.<sup>13</sup> For instance, IACrHR could take into consideration the preparatory work of a treaty in order “to confirm the meaning resulting from that interpretation or when it leaves an ambiguous or obscure meaning, or leads to a result which is manifestly absurd or unreasonable”.<sup>14</sup> Nonetheless, it is important to bear in mind that the inherent purpose of all treaties is to be effective.<sup>15</sup> Therefore, supplementary methods of interpretation cannot be applied in a way that could lead towards an interpretation that manifestly contradicts the object and purpose of the American Convention. Thus, the interpretation of the Convention should always be executed “in such a way that the system for the protection of human rights has all its appropriate effects (effet utile)”.<sup>16</sup>

In addition to the interpretative pre-eminence of the object and purpose of the ACHR, it would be important to mention another interpretative principle that has gained significant recognition within the jurisprudence of the regional tribunal, that is, the pro-homine or

<sup>7</sup> See “Other Treaties” Subject to the Consultative Jurisdiction of the Court (Art. 64 American Convention on Human Rights), 24 September 1982, IACrHR, Advisory Opinion oc-1/82, Series A No.1, para. 33.

<sup>8</sup> Article 31 VCLT—in its first paragraph—reads as follows, “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”.

<sup>9</sup> In this sense, the Court has said that “[t]he safeguard of the individual in the face of the arbitrary exercise of the powers of the State is the primary purpose of the international protection of human rights”. *Yatama v. Nicaragua*, 23 June 2005, IACrHR, Preliminary Objections, Merits, Reparations and Costs, Series C No. 127, para. 167.

<sup>10</sup> *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75)*, 24 September 1982, IACrHR, Advisory Opinion oc-2/82, Series A No. 2, para. 29.

<sup>11</sup> See *Velásquez Rodríguez v. Honduras*, 26 June 1987, IACrHR, Preliminary Objections, Series C No. 1, para. 30.

<sup>12</sup> *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, 31 August 2001, IACrHR, Merits, Reparations and Costs, Series C No. 79, para. 146 and *Right to Information on Consular Assistance in the Framework of Guarantees for Due Process of Law*, 1 October 1999, IACrHR, Advisory Opinion OC-16/99, Series A No. 16, para. 114. See also, *Artavia Murillo et al. (“In Vitro Fertilization”) v. Costa Rica*, 28 November 2012, IACrHR, Preliminary Objections, Merits, Reparations and Costs, Series C No. 257, para. 173.

<sup>13</sup> Article 32 VCLT recognises the possibility to recourse to supplementary means of interpretation, such as “the preparatory work of the treaty and the circumstances of its conclusion”.

<sup>14</sup> *Restrictions to the Death Penalty (Arts. 4.2 and 4.4 American Convention on Human Rights)*, 8 September 1983, IACrHR, Advisory Opinion OC-3/83, Series A No. 3, para. 49.

<sup>15</sup> *Velásquez Rodríguez v. Honduras*, *supra* note 11, para. 30.

<sup>16</sup> *The Right to Information on Consular Assistance*, *supra* note 12, para. 58.

pro-persona principle.<sup>17</sup> Based on the normative content of Article 29 ACHR,<sup>18</sup> the Court has concluded:

“[N]o provision of the Convention may be interpreted as restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said States is a party, or excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.”<sup>19</sup>

Based on these premises, it appears clear that the interpretation of the ACHR should not be performed in a way in which it could deprive efficacy or unjustifiably limit the scope of protection of the rights recognised therein (Fuentes 2015).<sup>20</sup> Anything to the contrary denies the centrality of the protection of the individual fate in the process of interpretation, as hermeneutically required by the pro-homine principle (Fuentes 2018).

Finally, the effective protection of the rights and freedoms enshrined in the Convention also requires the adequate consideration of relevant contextual factors that could affect or intersect in a given case. This interpretational approach incorporates into the hermeneutical process the consideration of societal changes under “present day conditions.”<sup>21</sup> As highlighted by IACrHR, the regional tribunal “must adopt the proper approach to consider [the interpretation of a given right] in the context of the evolution of the fundamental rights of the human person in contemporary international law.”<sup>22</sup> This also means that, in order to deliver an effective protection of rights in a given case, the interpreter needs to consider the contextual, historical, and evolutive interpretation of those rights. Hence, the effective protection of rights would be based on an interpretation that would take into consideration all circumstances and contextual factors of the specific case under analysis.<sup>23</sup>

### 2.1. Systemic Interpretation of the American Convention

As introduced above, the contextual and evolutive interpretation of the American Convention provides the hermeneutical tool that facilitates a coherent integration of its provisions under the current evolution of the Inter-American System. In this sense, an up-to-date interpretation of the provisions enshrined in the Convention requires that the interpreter takes into consideration not only the instruments and agreements directly related to it (in accordance with Article 31(2)(a)(b) VCLT), but also “any relevant rules of international law applicable in the relations between the parties” (cf. Article 31(3)(c) VCLT).

In other words, in order to determine the extension of the scope of protection of a given conventional right, the interpreter should analyse its contents in the light of any other relevant rules or provisions enshrined within different human rights instruments that have been ratified, adopted, or otherwise agreed upon by a given State. International law permanently evolves; and international human rights law (IHRL) is not an exception to this general principle. On the contrary, its provisions and norms are under constant

<sup>17</sup> For an in-depth study on this matter, see—for example—(Mazzuoli and Ribeiro 2016).

<sup>18</sup> Article 29 ACHR (restrictions regarding interpretation) reads as follows: “No provision of this Convention shall be interpreted as: (a) permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein; (b) restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party; (c) precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; (d) . . . ”

<sup>19</sup> *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, 19 August 2014, IACrHR, Advisory Opinion OC-21/14, Series A No. 21, para. 54.

<sup>20</sup> In this sense, the Court has stressed that “[a]ny interpretation of the Convention that [ . . . ] would imply suppression of the exercise of the rights and freedoms recognized in the Convention, would be contrary to its object and purpose as a human rights treaty”. *Ivcher Bronstein v. Peru*, 24 September 1999, IACrHR, Competence, Series C No. 54, para. 41.

<sup>21</sup> *The Right to Information on Consular Assistance*, *supra* note 12, para. 114.

<sup>22</sup> *Ibid.*, para. 115.

<sup>23</sup> As Judge Sergio Garcia-Ramirez highlighted, “[i]t would be useless and lead to erroneous conclusions to extract the individual cases from the context in which they occur. Examining them in their own circumstances—in the broadest meaning of the expression: actual and historical—not only contributes factual information to understand the events, but also legal information through the cultural references—to establish their juridical nature and the corresponding implications”. *Case of Yatama v. Nicaragua*, *supra* note 9, Concurring Opinion of Judge Sergio Garcia-Ramirez, para. 7.

development following the changes in society, with the aim of providing meaningful and up-to-date effective protection to human beings.

Following this line of thought, we must conclude that international human rights norms “should be interpreted as part of a whole, the meaning and scope of which must be defined based on the legal system to which they belong.”<sup>24</sup> As stated by the International Court of Justice (ICJ): “[A]n international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation”.<sup>25</sup>

Therefore, the evolutive interpretation of the American Convention needs to consider and needs to be based on its systemic integration (Mc Lachlan 2005; Koskeniemi 2006; Rachovitsa 2017), taking into consideration other documents and instruments that are part of the same system, that is, the international human rights law system.<sup>26</sup> Indeed, the principle of systemic integration of international human rights law is the reason why the IACrHR does not hermeneutically limit itself to the text of the American Convention, but expands its considerations to other human rights instruments—part of the same system—that could be relevant in a specific case.<sup>27</sup>

However, it is important to notice that the integration of the scope of protection of a given conventionally protected right, by virtue of its systemic interpretation in the light of international human rights law, does not mean that the Court would resolve a given case through the direct application of a different instrument than the American Convention.<sup>28</sup> Only violations to rights contemplated in the Convention, or within other treaties that expressly or implicitly recognise the competence of the regional tribunal, will open the jurisdiction of the Court.<sup>29</sup>

Based on these considerations, it is possible to conclude that the principle of systemic integration constitutes a key hermeneutical tool that enables the regional tribunal to take into consideration other relevant instruments, part of the corpus juris of international human rights law, which would provide the Court with a better understanding of the rights enshrined in the American Convention (Fuentes 2018).

## 2.2. The Interpretative Relevance of the Corpus Juris of IHRL and the Pro-Homine Principle

As introduced above, the systemic integration of international law provided the Court with the possibility to interpret the American Convention in the light of other universal and regional instruments that integrate the corpus juris of international human rights law. In the words of the regional tribunal:

“The corpus juris of international human rights law comprises a set of international instruments of varied content and juridical effects (treaties, conventions, resolutions and declarations). Its dynamic evolution has had a positive impact on international law in affirming and building up the latter’s faculty for regulating relations between States and the human beings within their respective jurisdictions. This Court, therefore, must adopt the proper approach to consider this

<sup>24</sup> *Artavia Murillo*, *supra* note 12, para. 191. See also *González et al. (“Cotton field”) v. Mexico*, 16 November 2009, IACrHR, Preliminary Objection, Merits, Reparations and Costs, Series C No. 205 para. 43 and *The Right to Information on Consular Assistance*, *supra* note 12, para. 192.

<sup>25</sup> *Legal Consequences of States of the Continued Presence of South Africa in Namibia (South West Africa)*, *Notwithstanding Security Council Resolution 276* (1970), 21 June 1971, ICJ, Advisory Opinion, ICJ Reports 1971, pp. 16 and 31.

<sup>26</sup> *The Right to Information on Consular Assistance*, *supra* note 12, para. 113; and *Kichwa Indigenous People of Sarayaku v. Ecuador*, 27 June 2012, IACrHR, Merits and Reparations, Series C No. 245, para. 161.

<sup>27</sup> In this sense, the Court has declared that “it could “address the interpretation of a treaty provided it is directly related to the protection of human rights in a Member State of the Inter-American System,” even if that instrument does not belong to the same regional system of protection”. *Sarayaku v. Ecuador*, *supra* note 26, para. 161.

<sup>28</sup> In connection with the direct inapplicability of international instruments outside of the Inter-American System, see—among other resolutions—the following cases: “*Street Children*” *v. Guatemala*, *supra* note 6, para. 192–95; *Bámaca Velásquez v. Guatemala*, 25 November 2000, IACrHR, Merits, Series C No. 70, para. 208–10; *Plan de Sánchez Massacre v. Guatemala*, 29 April 2004, IACrHR, Merits, Series C No. 105, Separate Concurring Opinion of Judge Sergio García-Ramírez, para. 19.

<sup>29</sup> For an enumerative list of the treaties that—within the Inter-American System—have recognised the competence of the Commission, and the Court, for the reception of the individual complains, see Article 23 of the Rule of Procedure of the Inter-American Commission on Human Rights.

question in the context of the evolution of the fundamental rights of the human person in contemporary international law”.<sup>30</sup>

The incorporation of the notion of the corpus juris of international human rights law within the jurisprudence of the court has been one of the key developments that has paved the way for a pro-persona integration of international human rights law (Cançado Trindade 2007). Based on this jurisprudential development, States cannot simply disregard the compliance with their international human rights’ obligations, by allegations based on the lack of ratification of a given treaty.<sup>31</sup> In other words, all instruments that integrate the corpus juris of IHRL (such as international treaties, declarations, and decisions) could be used as a valid reference for the interpretation of the scope of protection of the rights enshrined in the ACHR, independently of their potential binding character.<sup>32</sup> It is, therefore, in this sense that the Court has declared that States are “bound by the corpus juris of the international protection of human rights, which protects every human person erga omnes, independently of her statute of citizenship, or of migration, or any other condition or circumstance”.<sup>33</sup>

With the incorporation of the pro-homine or pro-persona principle, the regional tribunal has enhanced the effective protection of the rights recognised in the American Convention, based on the application of the “principle of the rule most favourable to the human being”.<sup>34</sup> In other words, the incorporation of the pro-homine principle facilitates the interpretation of the Convention “in accordance with the canons and practice of International Law in general, and with International Human Rights Law, specifically, and which awards the greatest degree of protection to the human beings under its guardianship.”<sup>35</sup>

Based on the above considerations, it is imperative to conclude that the systemic integration of the American Convention—in the light of the relevant provisions of the corpus juris of international human rights law—together with the centrality of the pro-homine principle, have become essential hermeneutical tools for the effective protection of human rights, especially in cases of individuals or groups in situations of vulnerability.<sup>36</sup> As it will be further analysed in the following paragraphs, the protection of the rights of the child developed by the regional tribunal is an unequivocal confirmation of this interpretative path.

### 3. Systemic Integration of Article 19 ACHR (Rights of the Child)

Article 19 ACHR specifically recognises the right of every child “to measures of protection required by his condition as a minor on the part of the family, society and the state”. This provision has been complemented through the hermeneutical action of the Court by providing effective realisation to the aim and purpose of the Convention, that is,

<sup>30</sup> *Juridical Condition and Rights of Undocumented Migrants*, 17 September 2003, IACrTHR, Advisory Opinion OC-18/03, Series A No. 18, para. 120, *Yakye Axa Indigenous Community v. Paraguay*, 17 June 2005, IACrTHR, Preliminary Objections, Merits, Reparations and Costs, Series C No. 172, para. 67, *Ituango Massacres v. Colombia*, 1 July 2006, IACrTHR, Preliminary Objections, Merits, Reparations and Costs, Series C No. 148, para. 157. See also, *Rights and Guarantees of Children*, *supra* note 19, para. 60.

<sup>31</sup> According to Judge Cançado Trindade: “The rights protected thereunder, in any circumstances, are not reduced to those “granted” by the State: they are inherent to the human person, and ought thus to be respected by the State. The protected rights are superior and anterior to the State, and must thus be respected by this latter, by all States, even in the occurrence of State disruption and succession”. Cf. ICJ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Dissenting Opinion of Judge Cançado Trindade, para. 58.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Juridical Condition and Rights of the Undocumented Migrants*, *supra* note 30, para. 85

<sup>34</sup> See *Baena-Ricardo et al. v. Panama*, 2 February 2001, IACrTHR, Merits, Reparations and Costs, Series C No. 72, para. 189; *Herrera-Ulloa v. Costa Rica*, 2 July 2004, IACrTHR, Preliminary Objections, Merits, Reparations and Costs, Series C No 107, para. 184; *Ricardo Canese v. Paraguay*, 31 August 2004, IACrTHR, Merits Reparations and Costs, Series C No 111 para. 181; *Mapiripán Massacre*, 15 September 2005, IACrTHR, Merits, Reparations and Costs, Series C No. 134, para. 106; *Boyce et al. v. Barbados*, 20 November 2007, IACrTHR, Preliminary Objection, Merits, Reparations and Costs, Series C No. 169, para. 5; *Atala Rizzo and daughters v. Chile*, 24 February 2012, IACrTHR, Merits, Reparations and Costs, Series C No. 254, para. 84; and *Juridical Condition and Rights of Undocumented Migrants*, *supra* note 30, para. 156. For an in deep study on this matter, see also (Lixinski 2010).

<sup>35</sup> *Case of Benjamin et al. v. Trinidad and Tobago*, 1 September 2001, IACrTHR, Preliminary Objections, Series C. No. 81, para. 70.

<sup>36</sup> As stated by the Court: “[A]ny person who is in a vulnerable condition is entitled to special protection which must be provided by the States if they are to comply with their general duties to respect and guarantee human rights.” *Ximenes-Lopes v. Brazil*, 4 July 2006, IACrTHR, Merits, Reparations and Costs, Series C No. 149, para. 103. See also *Maritza Urrutia v. Guatemala*, 27 November 2003, IACrTHR, Merits, Reparations and Costs, Series C No. 103, para. 87; and *Bámaca Velásquez v. Guatemala*, *supra* note 28, para. 150.

the protection of human rights in accordance with current developments of international human rights law (Fuentes and Vannelli 2019).

For IACrTHR, the interpretation of Article 19 ACHR “should respond to the new circumstances in which it will be projected and one that address[es] the needs of the child as a true legal person, and not just as an object of protection,”<sup>37</sup> considering “the changes over present day conditions”.<sup>38</sup> Further, in the eyes of this regional tribunal, Article 19 ACHR provides an additional protection to those individuals who are in need of higher measures of protection due to their physical and psychological development.<sup>39</sup>

In fact, since the first judgment in which the Inter-American Court dealt specifically with the rights of children, the case of the “*Street Children*” (*Villagran Morales et al.*) *v. Guatemala*, the Court has interpreted Article 19 ACHR under the principles of dynamic, evolutive and systemic integration. As highlighted by IACrTHR, “when interpreting a treaty, not only the agreements and instruments formally related to it should be taken into consideration (Article 31.2 of the Vienna Convention), but also the system within which it is (inscribed) (Article 31.3).”<sup>40</sup>

Following the footsteps of this leading case, the Court has developed in recent years an expansive interpretation of Article 19 ACHR, through building systemic references to provisions enshrined within various kinds of relevant documents and instruments (binding or not, universal, regional, or domestic) (Tigroudja 2013).

As a result of the systemic integration of Article 19 ACHR, in the light of relevant provisions of the international corpus juris for the protection of the rights of the child, the regional tribunal has analysed and developed the content of the “measures of protection” enshrined in this provision, and its corresponding states’ obligations. Indeed, through this systemic hermeneutical approach, the regional tribunal has made references both to other international human rights instruments that integrate the corpus juris of IHRL, including references to soft law documents (external integration) and to interconnected provisions within the text of the American Convention (internal integration).

### 3.1. External Integration: The Convention on the Rights of the Child

The special emphasis on the protection of the rights of the child could be consistently traced throughout the jurisprudence of the Court under both its contentious and advisory jurisdictions. In fact, the Court has increasingly used the notion of vulnerability in order to enhance the level of effective protection of children’s rights and, as a consequence of this hermeneutical action, equally expand the content of States’ obligations.<sup>41</sup>

In order to fully understand these jurisprudential developments, the legal analysis should be guided by the interpretative method used in the “*Street Children*” case, where the Court has made its first interpretative references to the Convention on the Rights of the Child. As it will be discussed below, the result of this systemic integration has been the enhancement of the protection of children in the region. This has been achieved by means of clarifying the states’ obligations that are intimately connected with the special situation of minors facing manifest vulnerability, such as children temporarily living in the streets and children unlawfully detained.

For example, the Inter-American Court resorted to the evolutive and systemic integration of Article 19 ACHR by recognising the interpretative relevance of the provisions

<sup>37</sup> *Juridical Condition and Human Rights of the Child*, 28 August 2002, IACrTHR, Advisory Opinion OC-17/02, Series A No. 17, para. 28.

<sup>38</sup> *Ibid.*, para. 21.

<sup>39</sup> See *Mapiripán Massacre v. Colombia*, *supra* note 34, para. 152; “*Juvenile Reeducation Institute*” *v. Paraguay*, 2 September 2004, IACrTHR, Preliminary Objections, Merits, Reparations and Costs, Series C No. 112, para. 147; *Gomez Paquiyauri Brothers v. Peru*, 8 July 2004, IACrTHR, Merits, Reparations and Costs, Series A No. 18, para. 164; *Juridical Condition and Human Rights of the Child*, *supra* note 37, para. 54; and *Ituango Massacres*, *supra* note 30, para. 244.

<sup>40</sup> “*Street Children*” (*Villagran Morales et al.*) *v. Guatemala*, *supra* note 6, para. 192.

<sup>41</sup> The Court has recognised the vulnerability of children on several occasions. See—among others—*Girls Yean and Bosico v. Dominican Republic*, 8 September 2005, IACrTHR, Preliminary Objections, Merits, Reparations and Costs, Series C No. 130, para. 134; and *V.R.P., V.P.C., et al. v. Nicaragua*, 8 March 2018, IACrTHR, Preliminary objections, merits, reparations, and costs, Series C No. 350, para. 156.

enshrined within the international corpus juris for the protection of children's rights. In the words of the Court:

"Both the American Convention and the Convention on the Rights of the Child form part of a very comprehensive international corpus juris for the protection of the child that should help this Court establish the content and scope of the general provision established in Article 19 of the American Convention."<sup>42</sup>

The interpretation of Article 19 ACHR in the light of the principles and norms contained in CRC has contributed to the identification and development of special measures that States have to implement for the effective protection of children. Accordingly, the Court highlighted a number of provisions of the CRC that should be taken into consideration for the determination of the "measures of protection" referred by Article 19 ACHR. Among these provisions, it would be possible to mention Article 2 (non-discrimination), Article 3 (best interests of the child), Article 6 (survival and development), Article 20 (children deprived of family environment), Article 27 (adequate standard of living), and Article 37 CRC (detention and punishment).<sup>43</sup> As stated by the Court, the hermeneutical role played by these norms is to "allow [the Court] to define the scope of the 'measures of protection' referred to in Article 19 of the American Convention, from different angles", which could influence the full enjoyment of children rights.<sup>44</sup>

For instance, the enhancement of the protection of children, through the development and identification of "measures of protection", has also been reaffirmed through the external references to the CRC in cases of children under detention. In this sense, Articles 2, 6, and 37 CRC should be taken into consideration in cases of children deprived of their liberty. As stressed by IACrTHR:

"The provisions transcribed above allow us to specify, in several directions, the scope of the 'measures of protection' mentioned in Article 19 of the American Convention. Several such measures stand out, including those pertaining to non-discrimination, prohibition of torture, and the conditions that must exist in cases of deprivation of the liberty of children."<sup>45</sup>

Moreover, the Court expressly acknowledged, in relation to children in the context of migration, that Article 19 ACHR "in addition to granting special protection to the rights recognized therein, establishes a State obligation to respect and ensure the rights recognized to children in other applicable international instruments".<sup>46</sup> Therefore, by means of reading Article 19 ACHR under the interpretative light of Articles 12 (respect for the views of the child) and 22 (refugee children) CRC, the Court has recognised children's right to be heard in immigration proceedings and children's right to receive appropriate protection and humanitarian assistance from the State.<sup>47</sup>

Further, in connection with children who are members of minority groups or with indigenous origin, the Inter-American Court has taken into consideration Article 30 CRC to identify additional measures of protection and complementary obligations anchored on Article 19 ACHR. For instance, children's right to their own culture, their own religion, and their own language has been identified as protected under the text of the American

<sup>42</sup> "Street Children", *supra* note 6, para. 194. See also *Juridical Condition and Human Rights of the Child*, *supra* note 37, para. 24; *Gomez-Paquiyaui Brothers v. Peru*, *supra* note 39, para. 166; *Santo Domingo Massacre v. Colombia*, 30 November 2012, IACrTHR, Preliminary Objections, Merits and Reparations, Series C No. 250, para. 238; *Forneron and daughter v. Argentina*, 27 April 2012, IACrTHR, Merits, Reparations, and Costs, Series C No. 242; para. 137. In this context, the Court "has repeatedly stressed the existence of a very comprehensive corpus juris of international law on the protection of the rights of the child, which the Court must use as a source of law to establish 'the content and scope' of the obligations that States have assumed under Article 19 of the American Convention with regard to children; particularly, by specifying the 'measures of protection' to which this article refers." Cf. *Rights and Guarantees of Children*, *supra* note 19, para. 194.

<sup>43</sup> "Street Children", *supra* note 6, para. 195.

<sup>44</sup> *Ibid.*, para. 196.

<sup>45</sup> See *Gomez-Paquiyaui Brothers v. Peru*, *supra* note 39, para. 168.

<sup>46</sup> *Pacheco Tineo Family v. Plurinational State of Bolivia*, 25 November 2013, IACrTHR, Preliminary Objections, Merits, Reparations, and Costs, Series C No. 272, para. 219.

<sup>47</sup> *Ibid.*

Convention.<sup>48</sup> Following the same interpretative line, the Court has also resorted to Article 35 CRC (abduction, sale, and trafficking) in cases related to adoption and, in this manner, contributing to the clarification of the content and extension of the “measures of protection” that States should comply with when fulfilling their conventional obligations.<sup>49</sup>

In addition to the systemic integration through judicial decisions, the IACrHR has further expanded the scope of protection and content of Article 19 ACHR by including extensive references to CRC under its advisory jurisdiction (Pasqualucci 2014). For instance, under the *Advisory Opinion on the Juridical Condition and Human Rights of the Child* (2002), the IACrHR acknowledged the interpretative relevance of CRC for the determination of children’s rights in cases of separation from parents; determination of parental responsibilities and State’s assistance; cases of adoption; and cases related to juvenile justice.<sup>50</sup>

As a step forward regarding these jurisprudential developments, it would be important to mention the *Advisory Opinion on the Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection* (2014).<sup>51</sup> This decision has consolidated the importance of the pro-homine principle and systemic integration as hermeneutical tools that have paved the way for reading the American Convention in the light of both the corpus juris for the protection of children and the corpus juris for the protection of migrants (Fuentes and Vannelli 2019).

In line with the fundamental principles enshrined within the CRC, the regional tribunal has identified several obligations that States should comply with in order to achieve a “system of comprehensive protection” of children’s rights under Article 19 ACHR.<sup>52</sup> In particular, the IACrHR has highlighted four guiding principles of the CRC that have the transversal capacity to guide and inspire this hermeneutical process. These principles are “the principle of non-discrimination, the principle of the best interest of the child, the principle of respect for the right to life, survival and development, and the principle of respect for the opinion of the child in any procedure that affects her or him in order to ensure the child’s participation”.<sup>53</sup>

Indeed, by stressing the interpretative centrality of CRC, the Court has deliberately enhanced the protection of children’s rights in immigration procedures.<sup>54</sup> In particular, the regional tribunal recognised the right to be heard and to participate in immigration procedures, in the light of the provisions contained in Article 12 CRC and in connection with the interpretative guidance offered by the Committee on the Rights of the Child under its General Comment No. 12.<sup>55</sup> Furthermore, when analysing the protection of children under migration, the Court acknowledged that the 1951 Convention,<sup>56</sup> its 1967 Protocol,<sup>57</sup> and the regional definition of refugee contained in the Cartagena Declaration<sup>58</sup> integrate the corpus juris of international law on the protection of the rights of the child.<sup>59</sup>

<sup>48</sup> *Xakmok Kasek Indigenous Community v. Paraguay*, 24 August 2010, IACrHR, Merits, Reparations, and Costs, Series C No. 214, para. 261.

<sup>49</sup> *Forneron and daughter v. Argentina*, *supra* note 42, para. 138–39.

<sup>50</sup> In the words of the Court: “[I]f we take into account that the Convention on the Rights of the Child refers to the best interests of the child (Articles 3, 9, 18, 20, 21, 37 and 40) as a reference point to ensure effective realization of all rights contained in that instrument. Their observance will allow the subject to fully develop his or her potential. Actions of the State and of society regarding protection of children and promotion and preservation of their rights should follow this criterion.” *Juridical Condition and Human Rights of the Child*, *supra* note 37, para. 59.

<sup>51</sup> For further studies on this advisory opinion see—among others—(Arlettaz 2016).

<sup>52</sup> *Rights and Guarantees of Children*, *supra* note 19, para. 69.

<sup>53</sup> *Ibid.*

<sup>54</sup> In this sense, the Inter American Court has identified—among others—children’s right to a legal representative, a guardian when the applicant is an unaccompanied or separated minor, the opportunity to communicate with consular authorities, the right of the child to be notified during the proceedings, to appeal, and to have the immigration process conducted by a specialized official or judge. See *Rights and Guarantees of Children*, *supra* note 19, paras. 116–43.

<sup>55</sup> United Nations Committee on the Rights of the Child, General Comment No. 12, *The right of the child to be heard*, 2009. See *Rights and Guarantees of Children*, *supra* note 19, paras. 122–23.

<sup>56</sup> UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951. Entry into force: 22 April 1954.

<sup>57</sup> UN General Assembly, Protocol Relating to the Status of Refugees, 31 January 1967. Entry into force: 4 October 1967.

<sup>58</sup> Cartagena Declaration on Refugees, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, held at Cartagena, Colombia from 19–22 November 1984.

<sup>59</sup> *Rights and Guarantees of Children*, *supra* note 19, para. 59.

Moreover, the Court has also identified special guarantees that States must implement in line with the international corpus juris in order to protect children in the context of armed conflicts. In effect, in addition to the rights and principles enshrined in CRC, the Court has stressed the relevance of the provisions contained in the Protocol II of the Geneva Convention,<sup>60</sup> which also need to be considered as part of the corpus juris for the protection of children.<sup>61</sup>

Finally, it is noteworthy to bear in mind that the Convention on the Rights of the Child has not been the only instrument applied by the regional tribunal in its external integration of Article 19 ACHR. In fact, the Court has extended the corpus juris of children's rights through both its contentious and advisory jurisdictions to other international treaties and soft law documents.<sup>62</sup> For instance, in the context of children under detention, the regional tribunal has made references to both CRC and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador),<sup>63</sup> as part of the corpus juris of for the protection of children.<sup>64</sup>

### 3.2. Internal Integration of ACHR's Provisions

As introduced above, interpretative references to instruments adopted outside of the Inter-American system, such as the CRC, have been decisive for the development of a broad interpretation of the normative content enshrined in Article 19 ACHR. In other words, under the guidelines of the pro-homine principle, the regional tribunal has integrated the content of the latter provision with relevant principles and norms as part of the corpus juris of international human rights law.

In addition to these external references, the Court has also highlighted the hermeneutical relevance of the internal interconnections and interrelations that Article 19 ACHR has with other provisions of the American Convention ([Feria Tinta 2007](#)). For instance, Article 19 ACHR has been examined and applied in connection with other conventionally protected rights, such as the right to life (Article 4), right to humane treatment (Article 5), right to personal liberty (Article 7), right to fair trial (Article 8), right to a name (Article 18), judicial protection (Article 25), and more.<sup>65</sup> In these cases, the content and scope of the "measures of protection" and corresponding States' obligations have been determined by exploring the normative interconnection and interrelation between these provisions.<sup>66</sup> The Court has also resorted to a careful balancing exercise between possible competing rights when required by the specific circumstances of each case.<sup>67</sup>

In this context, it would be important to mention a landmark case that could shed light on the manner in which the Court internally integrated the text of the Convention,

<sup>60</sup> International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. Entry into force: 7 December 1978.

<sup>61</sup> As expressed by the Court: "The content and scope of Article 19 of the American Convention must be specified, in cases such as the instant one, taking into account the pertinent provisions of the Convention on the Rights of the Child, especially its Articles 6, 37, 38 and 39, and of Protocol II to the Geneva Conventions, as these instruments and the American Convention are part of a very comprehensive international corpus juris for protection of children, which the States must respect". See *Mapiripán Massacre v. Colombia*, *supra* note 34, para. 153.

<sup>62</sup> IACrTHR has considered as part of the corpus juris for the protection of children—among others—the American Declaration of the Rights and Duties of Man (1948), the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1985), UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines, 1990), and the UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules, 1990).

<sup>63</sup> Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"), 16 November 1999.

<sup>64</sup> *"Juvenile Reeducation Institute" v. Paraguay*, *supra* note 39, para. 148.

<sup>65</sup> For an overview of the case law of the Inter-American Court in relation to the rights of children, see—among others—([Feria Tinta 2008](#)).

<sup>66</sup> The Court analysed the scope of Article 19 ACHR under a wide array of different situations such as: forced disappearance (*Gelman v. Uruguay*, 24 February 2011, IACrTHR, Merits and Reparations, Series C No. 215), detention (*"Juvenile Reeducation Institute" v. Paraguay*, *supra* note 39), armed conflicts (*Mapiripán Massacre v. Colombia*, *supra* note 34; and *Ituango Massacres v. Colombia*, *supra* note 30), migration (*Pacheco Tineo Family v. Plurinational State of Bolivia*, *supra* note 46; and *Case of the Expelled Dominicans and Haitians v. Dominican Republic*, 28 August 2014, IACrTHR, Preliminary Objections, Merits, Reparations, and Costs, Series C No. 282).

<sup>67</sup> In this sense: "The Court emphasizes that children enjoy the rights established in the American Convention, in addition to the special measures of protection contemplated in 19 of the Convention, which must be defined according to the circumstances of each specific case." *Atala Rizzo and daughters v. Chile*, *supra* note 34, para. 196.

that is, the case of the *“Juvenile Reeducation Institute” v. Paraguay*.<sup>68</sup> In this case, the Inter-American Court decided not to examine Article 19 ACHR separately but, on the contrary, in connection with the right to humane treatment (Article 5 ACHR) and the right to life (Article 4 ACHR). In fact, Article 19 ACHR was considered as an “added right” for those who are in need of special protection “because of their physical and emotional development”.<sup>69</sup> Accordingly, IACrTHR concluded—while referring to children deprived of their liberty—that States have additional obligations that emerge from the joint application of Articles 4, 5, and 19 ACHR.<sup>70</sup> In the words of the Court:

“The examination of the State’s possible failure to comply with its obligations under Article 19 of the American Convention should take into account that the measures of which this provision speaks go well beyond the sphere of strictly civil and political rights. The measures that the State must undertake, particularly given the provisions of the Convention on the Rights of the Child, encompass economic, social and cultural aspects that pertain, first and foremost, to the children’s right to life and right to humane treatment”.<sup>71</sup>

Hence, we must conclude that the internal references made by the Court between conventionally interconnected and interrelated rights, such as children’s right to life and humane treatment, have paved the way for the reinforcement and expansion of the scope of protection of Article 19 ACHR. Indeed, it is important to stress that the interpretation of children’s rights could not lead to an unjustifiable restriction in the enjoyment of other conventionally protected rights; therefore, their interpretation must adequately balance all potentially competing rights.<sup>72</sup> In other words, the principle of the most favourable interpretation—or pro-persona principle—will require the interpreter to always take into consideration the interconnection and interrelation between conventionally protected rights, in the light of the object and purpose of the American Convention ([Fuentes 2017](#)).

An additional interpretative step made by the regional tribunal was to reinforce the protective effect of the internal references between Article 19 ACHR and other interrelated and interconnected rights of the Convention by means of expanding that interconnection with express references to other instruments that are part of the corpus juris for the protection of the right of the child. Among them, it would be possible to mention the Convention on the Rights of the Child (Articles 3, 6, and 27); the General Comment No. 5 of the Committee on the Rights of the Child;<sup>73</sup> UN Rules for the Protection of Juveniles Deprived of Their Liberty; and UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), etc.<sup>74</sup>

For instance, through a systemic integration of the interrelated provisions enshrined in the American Convention, the Court was able to further develop States’ obligations regarding children’s right to life under detention, as requested by the normative content of Article 19 ACHR.<sup>75</sup> Thus, as the particular situation of vulnerability connected with the situation of children deprived of their liberty, the responding State “must be all the more diligent and responsible in its role as guarantor and must take special measures based on the principle of the best interests of the child.”<sup>76</sup> As stated by the Court, “the child’s detention or imprisonment does not deny the child his or her right to life or restrict

<sup>68</sup> *“Juvenile Reeducation Institute” v. Paraguay*, *supra* note 39, para. 150.

<sup>69</sup> *Ibid.*, para. 147.

<sup>70</sup> *Ibid.*, para. 172.

<sup>71</sup> *Ibid.*, para. 149.

<sup>72</sup> See *Yakye Axa v. Paraguay*, *supra* note 30, para. 146.

<sup>73</sup> UN Committee on the Rights of the Child, *General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003.

<sup>74</sup> *“Juvenile Reeducation Institute” v. Paraguay*, *supra* note 39, paras. 161–63.

<sup>75</sup> *Ibid.*, para. 160.

<sup>76</sup> *Ibid.*

that right”; therefore, state authorities “must be particularly attentive to that child’s living conditions while deprived of his or her liberty”.<sup>77</sup>

Another relevant case illustrating the relevance of the internal integration of conventional norms in the case of children rights is the case of *Girls Yean and Bosico v. Dominican Republic*. In this case, the IACrTHR has further reaffirmed its approach to not examine Article 19 ACHR in isolation, but rather, in conjunction to other conventionally protected rights, such as the right to education; right to equal protection; right to a name; and right to nationality, among others.<sup>78</sup> For instance, it would be important to notice that, in connection with the right to education, the Court has stressed the existing correlation between special protection afforded to children’s rights (Article 19 ACHR) and States’ obligation to ensure their progressive development (Article 26 ACHR). Based on this inherent connection, the IACrTHR has concluded that States are responsible for guaranteeing “free primary education to all children in an appropriate environment and in the conditions necessary to ensure their full intellectual development”.<sup>79</sup>

Based on the above considerations, this paper will explore within the following paragraphs the hermeneutical steps taken by the Inter-American Court that have paved the way to the expansion of the scope of protection of the right to life (Article 4 ACHR) in the case of children. In particular, the internal and external integration of the ACHR’s provisions will be analysed in line with the corpus juris for the protection of children, which has contributed to the recognition of the right to a dignified life, as protected under Article 19 ACHR.

#### 4. Praetorian Construction of the Right to (a Dignified) Life

The right to life is recognised in Article 4(1) of the American Convention, which establishes that “Every person has the right to have his life respected”. The Court has acknowledged in several occasions that this right “plays a key role in the American Convention as it is the essential corollary for realization of the other rights”.<sup>80</sup> To state the obvious, life is an indispensable precondition for the enjoyment of any other right.

The fundamental character of the right to life is reaffirmed by the entity of States’ obligations. In this sense, it is important to remember that the American Convention imposes to States the general obligations to respect, protect, and fulfil the realisation of conventionally recognised rights.<sup>81</sup> In particular, under Article 1(1) ACHR, States have assumed the obligation to respect and protect human rights to “all persons subject to their jurisdiction” without discrimination of any kind. This obligation is complemented by Article 2 ACHR, which imposes to States the obligation to guarantee the full domestication of the Convention within their legal systems. As an essential feature of the jurisprudential developments towards a more effective regional system for the protection of fundamental rights, the Court has consistently paid attention—in its contentious jurisdiction—to the clarification of the content and extension of the States’ general obligations to respect, protect, and fulfil.

Coming back to the scope of protection of the right to life, the regional tribunal has acknowledged that the obligation to respect the right to life included both States’

<sup>77</sup> Ibid.

<sup>78</sup> In the words of IACrTHR: “[T]he Court will not rule on the alleged violation of Article 19 of the American Convention in isolation, but will include its decision in this regard together with the examination of the other articles that are relevant to this case.” *Girls Yean and Bosico v. Dominican Republic*, 8 September 2005, IACrTHR, Preliminary Objections, Merits, Reparations and Costs, Series C No. 130, para 135.

<sup>79</sup> Ibid, para. 185.

<sup>80</sup> “*Juvenile Reeducation Institute v. Paraguay*, *supra* note 39, para. 156. According to the Court: “When the right to life is not respected, the other rights vanish because the bearer of those rights ceases to exist. States have the obligation to ensure the conditions required for full enjoyment and exercise of that right.” Ibid. See also *Gomez Paquiyauri Brothers v. Peru*, *supra* note 39, para. 128.

<sup>81</sup> The Inter-American Court has addressed in several occasions under its contentious jurisdiction the scope of States’ obligations to respect, protect and fulfil human rights. See e.g., *Velásquez Rodríguez v. Honduras*, 29 July 1988, IACrTHR, Merits, Series C No. 4; *Yean and Bosico Girls v. Dominican Republic*, *supra* note 78; *Gonzalez et al. (“Cotton Field”) v. Mexico*, *supra* note 24; *Baldeon Garcia v. Peru*, 6 April 2006, IACrTHR, Merits, Reparations and Costs, Series C No. 147; *Indigenous Community Sawhoyamaya v. Paraguay*, 29 March 2006, IACrTHR, Merits, Reparations and Costs, Series C No. 145; and *Massacre of Pueblo Bello v. Colombia*, 31 January 2006, IACrTHR, Merits, Reparations and Costs, Series C No. 140. See also (Lavrysen 2014).

negative obligation to abstain from jeopardising this right and the positive obligation to adopt measures to ensure the effective exercise of this right.<sup>82</sup> In this sense, the Court has stated that,

“Compliance with Article 4 of the American Convention, in conjunction with Article 1(1) of this same Convention, not only requires that a person not be deprived arbitrarily of his or her life (negative obligation) but also that the States adopt all the appropriate measures to protect and preserve the right to life (positive obligation), as part of their duty to ensure full and free exercise of the rights of all persons under their jurisdiction.”<sup>83</sup>

Based on these jurisprudential developments, the Court has identified a number of measures that need to be implemented—as States’ positive obligations—in order to create the necessary conditions in society that could enable the fulfilment of the right to life.<sup>84</sup> For instance, the regional tribunal has recognised the need to put in place a legal framework that discourages any threat to this right. It has demanded the establishment of an effective system of administration of justice for the investigation, punishment and reparation of any deprivation of life by states’ agents or private individuals.<sup>85</sup> Additionally, even more importantly in the context of this paper, the Court has recognised States’ positive obligations to adopt measures to effectively guarantee the right to life, which includes the obligation “of generating minimum living conditions that are compatible with the dignity of the human person”.<sup>86</sup> As mentioned elsewhere, the result of this jurisprudence is the praetorian introduction of the right to a dignified life ([Fuentes 2015](#)).

#### 4.1. Scope of Protection and Extension of the Right to a Dignified Life

Under both its contentious and advisory jurisdictions, the Court has systematically built the content and scope of protection of the right to a dignified life, in particular regarding individuals or groups in situations of vulnerability. Clear examples of this development could be found in cases dealing with indigenous peoples, children, and persons under detention. In the framework of these cases, the Court has acknowledged that States have a general obligation “to take positive, concrete measures geared toward fulfilment of the right to a decent life, especially in the case of persons who are vulnerable and at risk, whose care becomes a high priority”.<sup>87</sup>

Under the evolutive and systemic interpretation of the American Convention, the IACrtHR proceeded to analyse the extent of States’ positive obligations aiming at facilitating indigenous peoples’ access to a dignified life, especially by means of protecting the access and enjoyment of their ancestral lands ([Antkowiak 2013](#); [Fuentes 2021](#)). For instance, in the *Yakye Axa* case, the Court examined if the State of Paraguay took the necessary positive measures to guarantee the dignified life of the members of the Yakye Axa Community in light of the corpus juris for the protection of indigenous communities.<sup>88</sup> In this context, through an external and internal integration of the text of the Convention, the Court made interpretative references not only to numerous provisions of the American Convention, but also to several sources of international law, aiming to determine the content and extension of Article 4 ACHR.<sup>89</sup>

<sup>82</sup> See “*Juvenile Reeducation Judgment Institute v. Paraguay*, *supra* note 39, para. 158; and *Gomez Paquiyauri Brothers v. Peru*, *supra* note 39, para. 129.

<sup>83</sup> *Gomez Paquiyauri Brothers v. Peru*, *supra* note 39, para. 129.

<sup>84</sup> See—among others—*Myrna Mack Chang v. Guatemala*, 25 November 2003, IACrtHR, Merits, Reparations and Costs, Series C No. 101; *Huilca-Tecse v. Peru*, 3 March 2005, IACrtHR, Merits, Reparations and Costs, Series C No. 121; and *Juan Humberto Sanchez v. Honduras*, 7 June 2003, IACrtHR, Preliminary Objections, Merits, Reparations and Costs, Series C No. 99.

<sup>85</sup> *Sawhoyamaya Indigenous Community v. Paraguay*, *supra* note 81, para. 153.

<sup>86</sup> *Indigenous Community of Yakye Axa*, *supra* note 30, para. 162.

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*, para. 163.

<sup>89</sup> *Ibid.*

Among instruments that integrate the above-mentioned corpus juris, the IACrTHR has made specific references to the ILO Convention No. 169<sup>90</sup> and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, in combination with Article 1(1) and Article 26 ACHR.<sup>91</sup> By means of incorporating these references, the regional tribunal has clarified the scope of protection of Article 4 ACHR. That is, through an expansive interpretation of the right to life, the Court has not only included within its scope of protection the right to a dignified life, but it has also emphasized that the latter involves the right to health, right to food, right to access to clean water, right to education, and the right to cultural identity, among others.<sup>92</sup> For instance, in the *Yaxye Axa Community* case, the IACrTHR highlighted the interconnection of these fundamental rights and the importance of an integrated protective approach vis à vis groups in situations of vulnerability, such as indigenous peoples. In the wording of the regional tribunal,

“Special detriment to the right to health, and closely tied to this, detriment to the right to food and access to clean water, have a major impact on the right to a decent existence and basic conditions to exercise other human rights, such as the right to education or the right to cultural identity”.<sup>93</sup>

A similar interpretative path has been used by the Court in order to establish the connection between the right to communal property of indigenous peoples over their traditional lands and territories—as protected by Article 21 ACHR—and their right to a dignified life—as protected under Article 4 ACHR. In this sense, the Inter-American Court considered that States’ denial to guarantee the members of Yaxye Axa Community their right to communal property had a negative effect on their right to a dignified life, as it deprived them from accessing to their traditional means of subsistence, including the use and enjoyment of the natural resources traditionally used or possessed.<sup>94</sup> In this regard, Justices Cançado Trindade and Ventura Robles have particularly emphasized the relation between the right to a dignified existence and the right to property, by expressing that the latter “is especially significant because it is directly related to full enjoyment of the right to life including conditions for a decent life”.<sup>95</sup>

Finally, it is worthwhile to stress that most indigenous communities in the Americas live under structural conditions of vulnerability. These positions of manifest vulnerability reinforce the need for the introduction of jurisprudential safeguards, capable to guarantee their equal access to dignified life conditions.<sup>96</sup> As mentioned elsewhere, indigenous peoples’ cultural distinctiveness (e.g., language, religion, or land tenure systems), together with their particular situation of vulnerability, would require the adoption of specific measures of protection—or positive actions—in order to guarantee equal opportunities in the enjoyment of conventionally protected rights (Fuentes 2015).

The application of these jurisprudential developments, which emphasize the hermeneutical importance of the situation of vulnerability that negatively affects and limit the effective enjoyment of conventionally protected rights, is not limited to the case of indigenous

<sup>90</sup> International Labour Organization (ILO), Indigenous and Tribal Peoples Convention, 27 June 1989.

<sup>91</sup> *Indigenous Community of Yakye Axa*, *supra* note 30, para. 163. The Court had a similar pronouncement in *Xakmok Kasek v. Paraguay*, where it examined the right to a decent existence in connection with the right to water, food, health and education. Based on a wide array of sources of international law the Court declared that the State had not provided “the basic services to protect the right to a decent life of a specific group of individuals in these conditions of special, real and immediate risk, and this constitutes a violation of Article 4(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of all the members of the Xakmok Kasek Community.” *Xakmok Kasek v. Paraguay*, *supra* note 48, para. 217.

<sup>92</sup> For an in deep study on this matter, see—for example (Harrington 2013) and (Keener and Vasquez 2009).

<sup>93</sup> *Indigenous Community of Yakye Axa*, *supra* note 30, para. 167.

<sup>94</sup> *Ibid.*, para. 168.

<sup>95</sup> *Indigenous Community of Yakye Axa*, *supra* note 30, Dissenting Opinion of judges Cançado Trindade and Ventura Robles, para. 20.

<sup>96</sup> It has been said that “[t]he State’s duty to take positive measures to protect the right to life, even when it includes providing for vulnerable populations affected by extreme poverty, cannot be limited to them, given that assistance, by not attacking the root causes of poverty in general, and extreme poverty in particular, can not create those conditions for a dignified life”. *Xakmok Kasek v. Paraguay*, *supra* note 48, Concurring and dissenting opinion of Judge A. Fogel Pedrozo, para. 23.

peoples. Other groups in situations of vulnerability, such as the case of children, benefit from these interpretative approaches too (Fuentes and Vannelli 2019).

#### 4.2. Emerging Jurisprudential Developments of Positive Obligations for the Protection of a Dignified Life in Case of Children's Rights

As introduced above, the right to a dignified life has been constructed by the Court throughout its evolving jurisprudence.<sup>97</sup> Since its very first decision in which the regional tribunal addressed the application of Article 19 ACHR, that is, in the *Street Children* case, the Court linked the rights of the child to the right to a dignified existence. Additionally, as a consequence of this jurisprudential development, it has elaborated upon the States' obligation to generate the societal conditions that would guarantee the full enjoyment of this right, allowing children to develop a project of life.<sup>98</sup> In the words of the Inter-American Court:

"In essence, the fundamental right to life includes, not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence. States have the obligation to guarantee the creation of the conditions required in order that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it".<sup>99</sup>

Accordingly, States have the duty to prevent the direct infringement or arbitrary deprivation of the right to life by its agents or any individual. However, the States obligation extends beyond that. In addition to this negative obligation, States also have the positive obligation to generate the necessary societal conditions capable to guarantee a dignified existence and allow children to harbour a project of life towards the "full and harmonious development of their personality."<sup>100</sup> These obligations assume even more relevancy in cases of children affected by special conditions of vulnerability, such as the case of children deprived of their liberty and under the custody of the State.<sup>101</sup>

In this context, the Court has repeatedly referred to the right of every person under detention to live in conditions that are compatible with their dignity.<sup>102</sup> However, when the person deprived of his or her liberty is a child, States have additional obligations in accordance with Articles 4 and 19 ACHR, and therefore, it should take special measures based on the best interest principle.<sup>103</sup> In fact, "to protect a child's life, the State must be particularly attentive to that child's living conditions while deprived of his or her liberty".<sup>104</sup>

Consequently, the Court has recognised—in light with the provisions of the CRC and the authoritative interpretations made by the Committee on the Rights of the Child—that the provisions of health care and education are included within States' duty to "ensure to the maximum extent possible the survival and development of the child",<sup>105</sup> and additionally "ensure to them that their detention will not destroy their life plans".<sup>106</sup> Further,

<sup>97</sup> In this regard, the Inter-American Commission has expressed that: "The concept of decent life, as it relates to children, developed by the Inter-American Court and the Inter-American Commission, coincides with the concept used by CRC and by the Committee on the Rights of the Child in their decisions, and presumes a close link with the concept of integral development of the child" (IACHR 2013, para. 104).

<sup>98</sup> *"Street children"*, *supra* note 6, para. 191.

<sup>99</sup> *Ibid*, para. 144

<sup>100</sup> *Ibid*, para. 191.

<sup>101</sup> See *"Juvenile Reeducation Institute" v. Paraguay*, *supra* note 39.

<sup>102</sup> See e.g. *Bulacio v. Argentina*, 18 September 2003, IACrHR, Merits, Reparations and Costs, Series C No. 100, paras. 126 and 138.

<sup>103</sup> In this sense, the Court has stated: "In the case of the right to life, when the person the State deprives of his or her liberty is a child, which the majority of the alleged victims in the instant case were, it has the same obligations it has regarding to any person, yet compounded by the added obligation established in Article 19 of the American Convention. On the one hand, it must be all the more diligent and responsible in its role as guarantor and must take special measures based on the principle of the best interests of the child *"Juvenile Reeducation Institute" v. Paraguay*, *supra* note 39, para. 160.

<sup>104</sup> *Ibid*.

<sup>105</sup> Cf. Article 6 CRC

<sup>106</sup> *"Juvenile Reeducation Institute" v. Paraguay*, *supra* note 39, para. 161.

based on these principles, the Court has recognised States' obligation to provide children under detention with schooling and educational training, "so that they could undergo social rehabilitation and develop a life project".<sup>107</sup> In this sense, the regional tribunal has stated that one of the most appropriate ways to ensure a decent life "is through training that enables them to develop appropriate skills and abilities for their autonomy, insertion in the workforce, and social integration".<sup>108</sup>

Based on the above considerations, we must conclude that the rationale behind the positions assumed by the IACrTHR is the enhancement of the protection of children in situations of vulnerability. As stated by the Court, "education and care for the health of children require various measures of protection and are the key pillars to ensure enjoyment of a decent life by the children, who in view of their immaturity and vulnerability often lack adequate means to effectively defend their rights".<sup>109</sup>

Moreover, the regional tribunal has made special emphasis on the right to education by acknowledging that this right assumes a key role in contributing to the possibilities of the child towards the enjoyment of a dignified life.<sup>110</sup> The advisory jurisdiction of the Inter-American Court provided the suitable and flexible judicial environment for the development and further elaboration of the concept of children's right to dignified life, highlighting the importance of the education as a vehicle for their development. For instance, on the *Advisory Opinion on the Juridical Condition and Human Rights of the Child* (2002), the regional tribunal has further identified several "measures of protection" derived from the provisions enshrined in Article 19 ACHR.

Not surprisingly, the hermeneutical channel that has paved the way for this expansive interpretation has been the internal integration of Article 19 ACHR with other provisions of the Convention (e.g., Article 4 ACHR), and external references to the corpus juris for the protection of children. Among those external provisions used by the regional tribunal for the identification of the States' positive obligations towards children's right to a decent life,<sup>111</sup> it would be important to highlight Article 23(1) CRC.<sup>112</sup> In this regard, the Court has acknowledged that the right to education assumes an essential role in contributing both to the possibilities of enjoyment of a dignified life and to the prevention of unfavourable situations for children.<sup>113</sup> As highlighted by the IACrTHR, "[i]t is mainly through education that the vulnerability of children is gradually overcome".<sup>114</sup> Therefore, the latter right "stands out among the special measures of protection for children and among the rights recognized for them in Article 19 of the American Convention".<sup>115</sup>

Further, in connection to children in the context of armed conflicts, the Court reiterated that States' obligation to respect the right to life, "takes on special aspects in the case of children, and it becomes an obligation to prevent situations that might lead, by action or omission, to breach it".<sup>116</sup> In the case of *Mapiripán Massacre v. Colombia*, the regional tribunal stated that the State of Colombia exposed the children of Mapiripán to constant insecurity and violence, affecting their right to a decent life.<sup>117</sup> The Court concluded that the State "did not take the necessary steps for the boys and girls of the instant case to have and develop a decent life".<sup>118</sup>

<sup>107</sup> *Mendoza et al. v. Argentina*, 14 May 2013, IACrTHR, Preliminary objections, merits and reparations, Series C No. 260, para. 316.

<sup>108</sup> *Ibid.*

<sup>109</sup> *Juridical Condition and Human Rights of the Child*, *supra* note 37, para. 86.

<sup>110</sup> *Ibid.*, para. 84.

<sup>111</sup> *Ibid.*, para. 80.

<sup>112</sup> Article 23(1) CRC refers to children who suffer some type of disability and reads as follows: "States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community".

<sup>113</sup> *Juridical Condition and Human Rights of the Child*, *supra* note 37, para. 84.

<sup>114</sup> *Ibid.*, para. 88.

<sup>115</sup> *Ibid.*, para. 84.

<sup>116</sup> *Mapiripán Massacre v. Colombia*, *supra* note 34, para. 162.

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

Finally, it is important to note that the jurisprudence of the Inter-American Court has also influenced the doctrinal position assumed by the Inter-American Commission on Human Rights (the Commission or IACHR). The Commission has also referred to these judicial developments regarding the right of children to a decent life and—by doing so—contributed to the effective protection of their rights in the Americas. For instance, the Commission has identified States’ positive obligations to guarantee children with the necessary conditions to develop their “life in dignity” when they find themselves in residential care (IACHR 2013). In the views of the IACHR, States shall ensure children’s effective enjoyment of all their rights: “in order to be able to consider that the conditions for a decent life and the overall harmonious development of the child exist” (IACHR 2013, para. 563).

## 5. Conclusions

This paper has critically examined how the Inter-American Court has expanded the scope of protection of the right to life, as recognised by the American Convention on Human Rights, in the particular case of children. By means of implementing a systemic, evolutive, dynamic and effective interpretation of the Convention in the light of the corpus juris of IHRL, the regional tribunal was able to stress the hermeneutical importance of the corpus juris for the protection of children at the time of interpreting the provisions contained within the American Convention. In this sense, the Court has highlighted the contribution made by the Convention on the Rights of the Child in the development of a pro-children jurisprudence, that is, a jurisprudence that recognised the interpretative centrality of the principle of the best interest of the child.

The integration of Articles 19 and 4 ACHR in the light of the corpus juris for the protection of the right of the child has led to the development of children’s rights to a dignified life and to the identification of concrete positive obligations upon States Members regarding the effective realisation of this right. Examples of these obligations can be found in connection with children under detention where the State should “ensure to the maximum extent possible the survival and development of the child”<sup>119</sup> and “ensure to them that their detention will not destroy their life plans”.<sup>120</sup> The Court has also acknowledged positive measures to guarantee children’s right to a dignified life in cases concerning indigenous communities or in the context of armed conflict based on the specific situation of vulnerability that is inherently connected with the condition of being a minor.<sup>121</sup>

In short, the systemic, dynamic and *evolutive* integration of the American Convention, under the corpus juris for the protection of the rights of the child, has paved the way for the development of higher levels of protection of children’s rights in the Americas. Through the expansive interpretation of the Convention applied by the Court, States could be found responsible for violations to the right to life, even when individuals have not been deprived of it. In fact, the regional tribunal has expanded the scope of protection of the right to life as recognised under Article 4 ACHR, by means of including the protection of the right to a dignified existence. Therefore, in the case of children, Article 19 ACHR needs to be interpreted in connection with Article 4 ACHR.

The contrary introduces an unjustifiable restriction to the protection of the superior interest of the child under international law (i.e., pro-homine principle) and, therefore, it would be detrimental to secure children’s conditions for a dignified existence in the Americas.

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<sup>119</sup> Cf. Article 6 CRC.

<sup>120</sup> “*Juvenile Reeducation Institute*” v. *Paraguay*, *supra* note 39, para. 161.

<sup>121</sup> See Section 4.

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## Abbreviations

ACHR	American Convention on Human Rights
CRC	Convention on the Rights of the Child
IACHR	Inter-American Commission of Human Rights
IACtHR	Inter-American Court of Human Rights
ICJ	International Court of Justice
IHRL	International Human Rights Law
VCLT	Vienna Convention on the Law of Treaties

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