



CLIMATE CHANGE AND ENVIRONMENTAL LAW: IMPACT ON COLOMBIA'S INDIGENOUS PEOPLES AND THEIR ROLE AS GUARDIANS OF NATURE



CLIMATE CHANGE AND ENVIRONMENTAL LAW: IMPACT ON COLOMBIA'S INDIGENOUS PEOPLES AND THEIR ROLE AS GUARDIANS OF NATURE

SUMMARY

Climate change is leaving its mark around the world, with record temperatures increasingly threatening the conditions necessary for a dignified life and other fundamental rights. At the global level, this phenomenon not only aggravates pre-existing inequalities and discrimination, but also generates unequal responses in terms of adaptation, creating a scenario of environmental injustice. This impact falls disproportionately on the most vulnerable populations, especially indigenous peoples, who, despite facing these adversities, continue to play a crucial role as guardians of nature and defenders of the environment.

Keywords: Environmental Law; Indigenous peoples; Climate Crisis; Human Rights Defenders

INTRODUCTION

The protection, preservation and management of ecosystems, natural habitats and animal species, as well as the maintenance of biological diversity, represent a cross-cutting issue. They are also closely linked to many global problems we face today, such as deforestation, desertification, fish depletion, soil erosion, misuse of farmland and the danger to habitats and animal populations. It is estimated that



indigenous peoples own or occupy approximately one quarter of the earth's surface. This proportion of land is home to most of the biodiversity that remains on the planet.

It also intersects with approximately 40% of all protected areas. Some estimates suggest that 50% of protected areas around the world have been established on the traditional territories of indigenous peoples. This figure is even higher in the Americas, where about 90% of the conservation areas in Central America are located on indigenous territories. This highlights the great contribution of indigenous peoples to conservation.

The United Nations Declaration on the Rights of Indigenous Peoples provides a framework for the dignity, survival and well-being of indigenous peoples. It also reiterates the rights of indigenous peoples in relation to the lands, territories and resources that they have traditionally owned, occupied, used, or otherwise acquired. In addition, indigenous peoples have the right to conserve and protect the environment and productive capacity of their lands, territories and resources, and States should grant legal recognition and protection for such lands, territories and resources with due respect for the customs, traditions and land tenure regimes of the indigenous peoples involved. Thus, indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands, territories or other resources, and to participate in decision-making on matters that could affect their rights.

A key challenge to the essential role of indigenous peoples in the conservation of their lands, territories and resources, and as guardians of the environment and ecosystems, is that a number of countries do not recognize the rights of indigenous peoples in relation to their lands, territories and resources. In areas where there is co-management of national parks or other protected areas, unequal power relations often result in the denial of indigenous peoples' rights. Indigenous areas are often included or demarcated as national parks or other conservation areas, with ignorance of indigenous peoples' rights to their lands, territories and resources, restriction or even illegalization of daily subsistence activities, or possible future resource extraction that has a negative impact on health and the environment.

Another important challenge is found in the current paradigm that presents human beings and their activities as incompatible with wildlife conservation and as harmful to nature. Conservation programmes based on the concept of exclusion do not recognize that indigenous peoples, through their livelihoods and traditional practices, have been responsible for land management and conservation for thousands of years, but have also led to gross violations of indigenous peoples' rights. These include forced displacement and evictions from their territories, the criminalization and destruction of their livelihoods, the loss of rights related to lands, waters, resources and sacred sites, and violence and extrajudicial executions against environmental defenders.

The interests of indigenous peoples could conflict with conservation objectives. Conservation projects could at best fail and, at worst, jeopardize the continuity of colonial legacies.

In order to adopt appropriate conservation measures, indigenous peoples must be seen as partners and equals during any process that affects their lands, territories and resources in any way. Conservation partnerships will only bear fruit if indigenous peoples' rights, knowledge systems and practices are fully recognized and integrated into conservation projects and plans in order to ensure environmental sustainability.

1. Climate change and human rights

Today our planet is at a tipping point of no return. Centuries of limitless industrial and economic development have had consequences on the environment in which we live, which have transformed our world. Climate change directly affects the absorption capacity of temperature in the atmosphere, which has meant the progressive increase in the Earth's temperature, and the proliferation of climate disasters such as droughts, melting glaciers, rising sea levels, floods, hurricanes, among others.



Population growth and concentration in megacities, the use of fossil fuels, extensive cattle ranching, the decomposition of landfills, the production and transportation of natural gas, industrial processes and deforestation, are some of the different anthropic factors that have caused global warming exponentially and persistently, as a result of human action.

Climate change manifests itself in the constriction of snow-covered areas and the melting of glaciers and sea ice, in the rise in sea level, water temperature, and extreme heat phenomena; in storms and heavy rainfall and in the increase in areas affected by drought, among others. The increase in global temperature has a great impact on all the components that make up the dignity of life, it affects a multiplicity of rights; among them, the right to

life, health, food, water, housing, to live in a healthy and balanced environment, and in the case of indigenous peoples and island States, it threatened the right to self-determination.

The scientific reports of the United Nations Intergovernmental Panel on Climate Change (hereinafter IPCC) are lapidary. They show that the effects of climate change affect communities and territories in different ways: the sustained loss of biodiversity, the dispersion of land use, the great appropriation of multiple ecosystem services, unprecedented in the history of humanity, are preponderant factors to understand the point to which we have reached.

The climate crisis demonstrates how the protection of nature has a direct impact on the protection of human rights, since there is an interdependence between our existence as humanity, and the other forms of life on the planet. This is stated in Resolution 3/2021 on climate emergency of the Inter-American Commission on Human Rights (hereinafter, IACHR) which establishes that all the impacts of global warming produce changes in the natural cycles of ecosystems that threaten the exercise of the right to a dignified life, among others. According to the IACHR, not only does climate change affect human rights, but also the measures adopted to respond to the climate crisis can influence the full enjoyment of human rights.

Regarding the right to life, the World Health Organization (WHO) estimates that between 2030 and 2050 climate change will cause an additional 250,000 deaths each year, and refers that there are significant effects on the right to health, through the spread of disease-transmitting vectors or by atmospheric pollution, lack of food and exposure to extreme weather phenomena such as heat waves, floods and storms.

The increase in global temperatures affects the availability, quality and quantity of water for basic human needs and alters water cycles and the ecosystems that depend on it, aggravating an already existing global problem such as the lack of access to drinking water, especially in areas that are already arid. According to figures from the World Bank, the increase in temperature of 2°C can cause between 1,000 and 2,000 million people to lose enough water to live, an absolutely serious and alarming situation given the importance of this good for human subsistence.

Natural disasters resulting from climate change jeopardize food production and with it the right to food. The United Nations General Assembly has stressed the importance of formulating and implementing measures aimed at reducing the adverse effects of climate change, stressing that climate change is a threat to this right, as it weakens food security and access to food.

With regard to the right to housing, global warming and its effects have a direct impact on the destruction of human habitats, increasing existing socio-economic inequalities and affecting the most disadvantaged populations, who usually live in precarious settlements and in risk-prone places, such as alluvial terrain in river basins or on slopes that pose the risk of erosion and mudslides during heavy rainfall.



Air pollution, a product of the emission of greenhouse gases, directly affects the human right to live in a healthy environment, while at the same time altering the cycles of nature, mainly biodiversity and the multiplicity of ecosystems existing on our planet, which today are subjects of protection and legal interests in themselves.

As the Inter-American Court of Human Rights (hereinafter, IACHR Court) has pointed out in Advisory Opinion OC-No. 23 of 2017: "It is a matter of protecting nature and the environment not only because of their connection with a utility for human beings or because of the effects that their degradation could cause on other rights of people, such as health, life or personal integrity, but because of their importance

for the other living organisms with whom the planet is shared, also deserving of protection in themselves".

Interdependence and indivisibility – characteristics of human rights – allow the protection of nature and the environment to be linked to other rights, such as the right to life, health, water, and food, since the protection of balanced habitats clearly has a direct impact on the enjoyment of different individual and collective rights. The recognition and appreciation of interdependence is essential to understanding the link between human rights, nature and the environment. The link between human rights and the environment is based on the recognition of interdependence, co-belonging and reciprocity in the relations of human beings with nature and constitutes a universal interest, which is due to both present and future generations, insofar as their violation may have direct or indirect repercussions on people due to their connection with other rights. such as the right to health, personal integrity or life, among others.

The interdependence of rights does not only occur in the field of human rights, it must necessarily include environmental rights, and the recognition of the intrinsic value of nature and its cycles, as an autonomous object of protection of human rights as such. The recognition of this link is of vital importance, it has been argued that the climate and ecological crises are based on the dissociation of human beings from nature.

Advisory Opinion 23/17 of the Inter-American Court of Human Rights states that the right to a healthy environment as an autonomous right is different from the environmental content that arises from the protection of other rights, such as the right to life or the right to personal integrity. This has the consequence that the protection of the components of nature is a legal interest in itself, even in the absence of certainty or evidence about the risk to individuals: "It is a matter of protecting nature and the environment not only because of their connection with a utility for human beings or because of the effects that their degradation could cause on other rights of people, such as health, life or personal integrity, but for their importance for the other living organisms with whom the planet is shared, also deserving of protection". The recently signed Kunming-Montreal Agreement recognizes the value of nature, which is conceptualized in different ways: "Nature's contributions to people also represent different concepts, such as the goods and services of ecosystems and the gifts of nature. Both the latter and its contributions to people are essential for the existence of the human being and the quality of life, among other things, for human well-being, to live in harmony with nature and to live well and in harmony with Mother Earth."

However, human action and economic growth in the post-industrial era, also called the "Anthropocene", has generated irreversible damage, which has altered natural cycles in a widespread and dangerous way, in such a way that human well-being is put at risk and with it, the rights of millions of people in the world.

But this damage has unequal impacts, it affects the populations and territories that emit the least greenhouse gases the most, and it has the least impact on those who generate the most pollution. In addition, there are inequalities in how people can adapt to climate change. As Welzer explains: "The consequences of climate change are unevenly distributed: as far as can be predicted, its greatest causes will suffer the least damage and have the greatest chance of profiting from the situation." The effects of climate change have a deeper impact on populations that depend directly on the goods and elements of nature for their subsistence, who live in natural environments and have less capacity to face natural disasters and the effects of the crisis.

2. Effects of climate change on indigenous peoples' rights

The climate crisis affects not only the rights of individuals, but also of peoples as a whole and the exercise of their right to self-determination. According to the 2009 United Nations report on the relationship between climate change and human rights, rising sea levels and extreme weather events related to climate change "are threatening the habitability and, in the long term, the territorial existence of several low-lying island states. Climate changes also threaten to deprive indigenous peoples of their traditional territories and sources of livelihood. Each of these two effects would have implications for the right to self-determination."



In this regard, the International Labour Office (hereinafter referred to as ILO) has determined that indigenous peoples are the group most vulnerable to the direct effects of climate change; to the consequences of environmental destruction that leads to climate change, and to the mitigation and adaptation measures to its effects developed by States and companies. Environmental protection is fundamentally linked to the realization of indigenous peoples' territorial rights and self-determination, given the 'special relationship' that exists between indigenous peoples and their natural environment.

The relationship with land and territory is intrinsic to the existence of indigenous peoples. This idea was first developed by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Erica-Irene A. Daes in 1996 and states that "indigenous peoples consider that all the products of the human mind and heart are related to each other and flow from the same source: the relations between the people and their land, their kinship with the other living creatures who share the earth, and with the spiritual world." For anthropologist Georgina Gaona: "[i]t is widely known the importance of the natural environment as the basis of the cultural element of indigenous peoples, insofar as it is constituted as an element that provides them with resources and identity, performing a function that generates concepts and structures their social organization." The exercise of the right to self-determination requires the material possibility of being able to exercise the political, cultural and environmental rights of indigenous peoples, in a protected territory and in a healthy and balanced environment.

The Framework Principles on Human Rights and the Environment (hereinafter "Framework Principles") recognize the principle of interdependence, according to which human beings are part of nature and our human rights are interrelated with the environment in which we live and that environmental damage intervenes in the exercise of human rights.

In the particular case of indigenous peoples, environmental degradation directly affects their specific rights, such as their cultural and territorial rights. The loss of biodiversity, the alteration of territories and has very profound effects on cultures whose relationship with nature is the basis for the exercise of their rights, traditionally exercised for the provision of food, medicine, housing and other essential elements for life. In this regard, the ILO points out that there are six specific risks shared by all indigenous groups in the context of climate change: "They are poor; they depend on renewable natural resources; these natural resources are vulnerable to climate change; indigenous communities have high rates of migration due to climate change; they are characterized by gender inequality; and they are often excluded from decision-making on matters related to their rights. These factors limit their ability to access solutions,

increasing their vulnerability and undermining their ability to mitigate or adapt to climate change. It also threatens their ability to assert and protect their rights." In the regions where the effects of climate change have manifested themselves most strongly, they are precisely territories inhabited by indigenous peoples, who maintain more direct and daily contact with the natural environment, and whose existence and ways of life have been affected, as in the case of the Inuit People in the Arctic or the Batwa pygmies and the Shipibo people of Peru. among others.

Among indigenous peoples, those who are most affected by environmental injustice and climate change are women, the elderly and children, they are the first people to experience the social effects of climate change, which limits their ability to adapt to the effects of the environmental crisis.

Climate change deepens the already unequal social organization of care and patriarchal cultural patterns, rooted in our societies. Historically, it has been women who have assumed the work of care, feeding and reproduction of life, which necessarily requires land, water, and living in a healthy, balanced and pollution-free environment, which places them in a dimension of vulnerability that must necessarily be recognized when analyzing the effects of global warming. In this regard, the European Parliament in 2018 in its Resolution on women, gender equality and climate justice, points out that: "[T]he women are especially vulnerable to climate change and suffer its effects disproportionately due to their social roles, such as providing water, food and fuel for their families and caring for other people; whereas women in the world are responsible for more than 70 % of water-related tasks and water management; whereas in the regions most affected by climate change, 70% of all women work in the agricultural sector and yet they are hardly involved in the development of climate policies.

Already in the 2007 IPCC report, the report on impacts and vulnerability highlights that men and women are affected differently in all phases of the climate disaster, from exposure to risk or perception of it; preparedness, communication of warnings and response behaviors; social and economic impacts; emergency response; and finally recovery and reconstruction; whereas natural disasters have been shown to result in an increase in gender-based violence and post-traumatic stress disorder in women; and that women contribute significantly to the reduction of these impacts, often informally by participating in the management of climate disasters and acting as agents of social change. Because of their resilience and networks, women become key agents for the recovery of households and communities.

When we analyze the effects of the environmental crisis, it is necessary to incorporate various variables that allow us to address the violence of climate change by incorporating an intersectional perspective,

which accounts in detail for the forms of oppression and disadvantage that those who are most affected by climate change go through, identifying gender, racial, disability inequalities, among other categories, which converge and are enhanced in relation to vulnerability and adaptive capacity in the face of climate change.



International law has been receptive to the important role that indigenous peoples play in this area. In 2015, the Paris Agreement was signed, an instrument that, along with recognizing climate change as a global challenge, sets the objectives of action to advance in the reduction of greenhouse gas emissions, and establishes the principle of common but differentiated responsibility among States, as the main axis. This agreement seeks to advance in a transition towards a development model low in greenhouse gas emissions, which will limit the progressive increase in global temperatures, taking into special consideration the most vulnerable groups, such as indigenous peoples.

While being a vulnerable group, indigenous peoples are key agents in addressing the climate crisis. Their ways of life, occupations, traditional knowledge and ways of life are essential to effectively combating climate change. As Salvador Millaleo points out, indigenous peoples are holders of ancestral knowledge; they are particularly vulnerable stakeholders; and they are protectors of biological diversity, due to their close relationship with nature. For this reason, they are recognized by international law as relevant and leading actors in the fight against climate change and defenders of nature.

Por ello, el artículo 7.5 del Acuerdo de París reconoce la importancia de los conocimientos y saberes ancestrales indígenas, y que estos deben ser considerados en las políticas de adaptación al cambio climático, y refiere que: "Las Partes reconocen que la labor de adaptación debería llevarse a cabo mediante un enfoque que deje el control en manos de los países, responda a las cuestiones de género y sea participativo y del todo transparente, tomando en consideración a los grupos, comunidades y ecosistemas vulnerables, y que dicha labor debería basarse e inspirarse en la mejor información científica disponible y, cuando corresponda, en los conocimientos tradicionales, los conocimientos de los pueblos indígenas y los sistemas de conocimientos locales, con miras a integrar la adaptación en las políticas y medidas socioeconómicas y ambientales pertinentes, cuando sea el caso". De ahí que se torna relevante la participación de los pueblos indígenas en la toma de decisiones respecto a los mecanismos de mitigación y adaptación frente al cambio climático y el resguardo de su rol de guardianes de la naturaleza.

3. The right to defend human and environmental rights

One of the main concerns of contemporary international human rights law is the protection of its defenders. International law and inter-American jurisprudence have enshrined the conceptual and normative development of the existence of the "right to defend human rights."

The United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (hereinafter referred to as "the



Declaration") defines human rights defenders - and therefore subjects of special protection - as those who "promote or seek in any way the realization of nationally or nationally recognized human rights and fundamental freedoms; or international"

This expression was developed by the Inter-American Court of Human Rights, precisely in a case in which the international responsibility of the State of Honduras was established for the death of environmental defender Carlos Escaleras Mejía on October 18, 1997, and the subsequent situation of impunity in this case. Carlos Escaleras Mejía took an active role in opposing the installation of an African palm oil extraction plant on the banks of the Tocoa River, near his community, in the face of the imminent risk that toxic waste would be deposited in the riverbed. Their struggle influenced the cancellation of a huge loan from the World Bank to the Cressida Company. In this context, the defender received an offer of money to stop his fight and when he refused, he was murdered. In this case, the Inter-American Court of Human Rights pointed out that respect for and observance of human rights in a democratic State depends on the effective and adequate guarantees enjoyed by human rights defenders to freely carry out their activities. In the judgment, the existence of the "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Human Rights and Fundamental Freedoms Universally Recognized" was taken into consideration, which in its Article 1 recognizes the right of all persons, both individually and collectively, to protect the realization of human rights, together with the correlative duty of States to protect them.

From the progressive establishment of this standard, it is understood that the effective enjoyment of human rights necessarily requires guarantees by States of the free exercise of activities for the defense and promotion of them, as fundamental pillars and as measures to safeguard the security and life of those who defend rights. Thus, for example, in the case of *Defensor de Derechos Humanos et al. v. Guatemala*, the Inter-American Court of Human Rights established that it is the duty of States to protect the integrity of human rights defenders, together with the duty to investigate violations of their rights, hand in hand with the correlative obligation to adopt special protection measures in favor of human rights defenders. which must be suitable and in accordance with the functions they perform.

At the global level, those who defend environmental human rights are at risk and threaten their lives. In 2019, the United Nations Secretary-General, in his Annual Report, expressed his alarm and concern over the occurrence of 431 murders – at least 8 per week – of human rights defenders, a reality present in 41 different countries. Within this group, those who are in a place most exposed to violence, and in a situation of greater danger, are precisely those who are dedicated to the defense of the environment

and territories. In 2020 alone, Global Witness recorded the killing of 227 land and environmental defenders, noting the growing threat to people defending their homes, land and livelihoods, as well as ecosystems that are vital to biodiversity and climate.

Defenders of nature are considered subjects of special protection in international human rights law. They are people, groups and organizations that promote and defend nature, the right to water, to land, to live in a healthy and balanced environment with respect to those who international law recognizes as holders of specific rights, as a response to the situation of vulnerability generated by their work in defense of nature and resistance to environmental damage. There is no established criterion regarding who are environmental defenders. In this sense, former United Nations Special Rapporteur on human rights and the environment John Knox, points out that, "their origins are diverse and they work in different ways. Some are lawyers or journalists, but many are ordinary people living in remote villages, forests or mountains, who may not even be aware that they are acting as environmental defenders in pursuit of respect for human rights." In this regard, Borrás states that "environmental defenders are individuals who do not necessarily identify themselves as activists for environmental justice, but through their actions they are defending environmental justice or the peoples affected by environmental injustices, whether at the community, national or international level."

The recognition of the importance of the defense of human rights and the environment, today, this defense is constantly under siege: threats to environmental defenders are a consequence of the confrontation against extractive models led by corporations and companies of great power. As Knox described, "the incentive to seek short-term material gain too often leads governments and private actors to violate relevant legal norms and to seek to silence those who oppose them. As natural resources become more valuable, governments, commercial companies, and other private actors often seek to avoid or violate legal restrictions on their exploitation."

Those who have historically benefited from the unsustainable exploitation of natural resources run the risk of losing economic benefits if they have to be governed by regulatory frameworks in which the activity and proposals of the environmental sectors are sustained. That is why companies, generally private – although often with the participation or acquiescence of the State – use their economic power and influence to isolate environmental defenders.

4. Right to defense, participation and access to environmental justice

The concept of environmental justice was born in the United States in the early 80's, to refer to environmental claims against environmental racism resulting from the burden of pollution in poor neighborhoods with African-American or Hispanic populations. Dominique Hervé defines environmental justice as the "equitable distribution of environmental burdens and benefits among all people in society, considering in this distribution the recognition of the community situation and the capacities of such people and their participation in the adoption of decisions that affect them". Today, environmental justice is linked by both intragenerational distribution (among people of the present) and intergenerational distribution (towards future generations), and includes non-distributive dimensions of justice, such as the recognition of the legitimacy of environmental defenders for the exercise of their rights and the inclusion of all those who suffer from extractivism and pollution.



At the international level, Article 23 of the United Nations World Charter for Nature of 1982 states that "[e]veryone shall have the opportunity to participate, individually or collectively, in the process of preparing decisions that directly concern his or her environment and, when it has been damaged or deteriorated, may exercise the necessary resources to obtain compensation". In this regard, Principle 10 of the Rio Declaration on Environment and Development states that "environmental issues are best addressed with the participation of all concerned citizens, at the appropriate level" and establishes the obligation of States to comply with rights of access to information. access to public participation in

decision-making and the right of access to environmental justice, which strengthen the realization of the human right to enjoy a safe, clean, healthy and sustainable environment. Likewise, the United Nations Sustainable Development Goal No. 16 raises the need to promote peaceful and inclusive societies for sustainable development, facilitating the right to access to justice and the creation of effective, accountable and inclusive institutions at all levels.

It is clear from these provisions that, along with substantive environmental obligations aimed at the preservation, care and repair of the environment, States also have a procedural obligation to provide environmental information to the public, facilitate public participation in environmental decision-making and provide access to jurisdictional remedies, allowing all interested individuals and communities to have access to environmental resources. environmental justice as a fundamental right.

In environmental matters, participation is fundamental, those of us who inhabit the planet need to live in a framework of freedom of expression, which includes the right to seek, receive and disseminate information with the rest of society, in equity and justice; and knowing, for example, what is the quality of the water we drink or the air we breathe. Environmental justice is composed of participation, access to distributive justice, access to information, and the right to non-discrimination.

The protection of nature defenders must be considered in the context of the protection of these rights. In particular, environmental participation is an essential element for the full realization and full enjoyment of the right to a safe, clean, healthy and sustainable environment, and is both a requirement for its fulfilment and part of its substantive content. The defense of environmental rights is a pillar of environmental justice.

Access to participation in a position of equality is a requirement that implies the exercise of the defense of human rights. However, there are recurrent mechanisms of discrimination against environmental rights defenders, in the exercise of their rights of participation. For John Knox, "discrimination can include, for example, the failure to ensure that members of disadvantaged groups have the same access as others to information on environmental issues, to participate in decisions related to the environment or to seek remedies against environmental damage". In turn, "indirect discrimination can also include measures such as the authorization of toxic and dangerous facilities in a large number of communities predominantly composed of racial or other minorities, which disproportionately interferes with their rights, including the rights to life, health, food and water."

In the region, access to environmental justice is strongly threatened by the risks and violence involved in the defense of nature. According to data from Global Witness, an organization that since 2012 has been investigating murders of people in the environment, the outlook is worrying. The evidence collected to date shows that as the climate crisis intensifies, so does violence against those who protect the planet.



According to this organization, it is "clear that the irresponsible exploitation and greed that drive the climate crisis are also driving violence against land and environmental defenders." In the same vein, the report of former Special Rapporteur on human rights and the environment John Knox states that environmental defenders "are among the human rights defenders most exposed to risks, which are particularly serious for indigenous peoples and traditional communities that depend on the natural environment for their livelihoods and culture." Women, children, poor people and members of indigenous peoples are the most vulnerable: "[t]he indigenous peoples and other communities depend on their ancestral

territories for their material and cultural existence and face increasing pressure from governments and companies that try to exploit their resources. They are often marginalized from decision-making processes and their rights are often ignored or violated." Therefore, States must ensure the protection of these vulnerable groups and facilitate access to effective remedies for violations of their rights, taking into consideration what these risks and threats generate.

ANDINA FOUNDATION

This situation of environmental vulnerability of indigenous peoples was recognized for the first time by the IACHR in Resolution No. 12/85 in the case of *the Yanomami People v. Brazil*, on the construction of a road in an area of the Amazon territory inhabited by the Yanomami indigenous people and its impact on the right to life, health, and health. freedom, security and the right of residence. More recently, in 2020 in the case of *Indigenous communities members of the Lhaka Honhat Association (Our Land) v. Argentina*, the Inter-American Court of Human Rights determined the responsibility of the Argentine State for the violation of the right to a healthy environment, adequate food, water and cultural identity of this

indigenous people, interpreting Article 26 of the American Convention on Human Rights. which enshrines the progressive obligation of States to adopt measures to achieve the full development of economic, social and cultural rights.

At the inter-American level, the Regional Agreement on Access to Information, Public Participation, and Access to Justice in Environmental Matters, known as the Escazú Agreement, is an international instrument that enshrines the rights of access to information, participation in the environmental decision-making process, and justice in environmental matters. This international treaty establishes obligations in order to ensure environmental information and participation, obligations that are also presented as participatory environmental rights or rights of access in environmental matters, "whose free exercise makes environmental policies more transparent, better founded and more adequate, therefore, today access to justice is considered one of the fundamental pillars of the rule of law".

Access to environmental justice requires that those who participate as environmental defenders can exercise their rights in an environment free of threats and violence. On this point, Article 9 of the Escazú Agreement, entitled "Human Rights Defenders in Environmental Matters," establishes that States have the duty to guarantee safe environments "in which individuals, groups, and organizations that promote and defend human rights in environmental matters can act without threats, restrictions, and insecurity." In paragraph 2, this article states that: "Each Party shall take appropriate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters, including their right to life, personal integrity, freedom of opinion and expression, the right to peaceful assembly and association, and the right to freedom of movement, as well as its ability to exercise the rights of access, taking into account the Party's international obligations in the field of human rights, its constitutional principles and the basic elements of its legal system". Finally, paragraph 3 states that: "Each Party shall take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidation that human rights defenders in environmental matters may suffer in the exercise of the rights contemplated in this Agreement."

5. The environmental defense of indigenous peoples and their threats

At the global level, the IACHR has identified seven groups of human rights defenders who are at greater risk, including environmental defenders and leaders of indigenous peoples and Afro-descendants. This reality is endorsed by the work of the UN Special Rapporteur on the rights of indigenous peoples: criminalization often occurs in the context of indigenous peoples' defense of their lands.

The IACHR recognizes that "the people who claim the rights of their peoples and communities are those spiritual leaders considered to be a source of ancestral knowledge and fundamental figures for the political, spiritual, and cultural development of the communities," whose unexpected absence – as a result of death or imprisonment – produces serious alterations to the identity, integrity, and culture of their peoples and communities. For this reason, the IACHR considers that reprisals against indigenous human rights defenders affect the survival of peoples and their cultural integrity, constituting violations of the human rights enshrined in the American Convention on Human Rights.



Indigenous peoples have been pioneers in developing multiple strategies for resilience to climate change, precisely because their lives and survival as peoples are in danger. Not only must they face the risks and impacts of climate change, but also the violence that arises from resistance to extractive projects that threaten indigenous territories and their ecosystems.

In this regard, Convention 169 on Indigenous and Tribal Peoples of the International Labour Organization of 1989 establishes that it is the duty of the State to respect the special relationship that indigenous peoples have with the lands or territories "or with both, as the case may be, that they occupy or use in

some other way". The protection of this relationship ultimately means guaranteeing the survival of these peoples, in view of the fact that the ways of life, beliefs, traditions. One of its pillars is the spiritual bond of indigenous peoples with their territories. The culture, identity and sovereignty of indigenous peoples depend on their connection to the land, as they are sustained and governed by it. The connection with the land gives indigenous peoples their identity and a sense of belonging, with balance, the balance of the human being with biodiversity and nature as a whole, being an essential factor.

This relationship is a bond of a collective nature, as established by the jurisprudence of the Inter-American Court of Human Rights, which has consistently pointed out that "among the indigenous people there is a community tradition of a communal form of collective ownership of land, in the sense that ownership of the land is not centered on an individual, but in the group and its community". The health of land and water is fundamental for indigenous cultures, the protection of biodiversity and ecosystems is essential for the preservation of indigenous spirituality and worldview, as well as for the maintenance of a level of material existence that allows them to have a dignified quality of life. in a relationship of co-responsibility with the care of biodiversity, as an indispensable element for the existence of native peoples.

The protection of biological diversity and the relationship that this has with a body of ancestral knowledge of indigenous peoples is also recognized by the Convention on Biological Diversity, which in its Preamble refers to how "the close and traditional dependence of many local communities and indigenous peoples who have traditional life systems based on biological resources, and the desirability of equitably sharing the benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components".

7. Conclusions

Today, law has the challenge of facing the innovative phenomenon of climate change from new perspectives, taking into consideration global regulatory structures and rethinking the validity and continuity of paradigms that have perpetuated a dichotomous relationship with nature, a paradigm of long tradition and persistence in legal systems, whose origin and development we will analyze below.

The loss of biodiversity is one of the great global problems facing humanity and has multiple impacts on climate change, the availability of and access to water, food, among many other relationships, which cross all socio-environmental problems and violate and threaten human and environmental rights.



The climate crisis, water scarcity and the effects of pollution make it necessary for the work of environmental defenders to be protected by States and respected by transnational companies and groups, especially in the case of all those who have a reinforced protection status such as leaders of communities and indigenous peoples. who, through the preservation of traditional ecological knowledge, have made it possible to preserve a relationship of care

towards the different organisms, habitats and ecosystems of our world.

The work of defending environmental rights and nature is essential in the context of the current climate crisis. However, this work entails multiple risks and violence that make nature defenders a group that is especially protected by international human rights law.

These threats and effects are more complex and profound when they fall on those who belong to groups historically subjugated by the colonial and patriarchal model of our legal systems, so that the intersectionality of this type of relationship places indigenous peoples, indigenous and rural women as the group with the greatest violation of their rights and exposure to risks and threats.

One of these risk factors also corresponds to the criminalization of the work associated with human rights and nature carried out by environmental defenders has negative consequences, both for individuals and for their communities and families. It also has a negative impact on the protection of nature. Environmental defenders who are subjected to criminalisation, face criminal proceedings and punishment by the State, suffer emotional and material damage. These effects extend to organizations, movements and communities, reaching special relevance in the case of indigenous peoples, due to the communal nature of their relationships and often the cultural and spiritual role of their leaders who are criminalized.

Given this reality, the Chilean legal system does not provide for any type of recognition of the existence of specific rights of environmental defenders, which is absolutely worrying since they constitute a group

that, as inter-American jurisprudence has already established, is entitled to special protection measures due to their persecution as a group.

The recent ratification of the Escazú Agreement opens up the possibilities for the protection of this group, specifically including the obligation of States to adopt and develop protection measures for environmental defenders and thereby guarantee the safety of those who defend and protect nature.

Bibliography cited

Aguilar Revelo, Lorena (2021): "Gender equality in the face of climate change: what can mechanisms do for the advancement of women in Latin America and the Caribbean?", in *Gender Affairs* series (No. 159) (LC/TS.2021/79), Santiago, Economic Commission for Latin America and the Caribbean (ECLAC).

Amnistía Internacional (2018): *A Recipe for Criminalization, Defenders of the environment, territory and land in Peru and Paraguay*. Amnesty International Ltd. 40 pp.

Borrás, Susana (2013): "The right to defend the environment: the protection of environmental defenders", in *Revista Derecho PUCP*, Lima, Peru. (70), pp. 291-324.

Dorador, Cristina and Costa, Ezio (2022): *Asylum against extinction. Science and Nature in the New Constitution* (Santiago, Editorial Paidós).

Daes, Erica-Irene A. (1997): Working paper on the concept of "indigenous people" / by the rapporteur/Rapporteur. [Disponible en: <https://digitallibrary.un.org/record/236429>].

Davis, Angela (2016 [1981]): *Women, Race and Class* (Madrid, Editorial Akal), 3rd edition.

De Oliveira, Valerio and De Faria Moreira Teixeira Gustavo (2015): Legal protection of the environment in the jurisprudence of the Inter-American Court of Human Rights, in *International Journal of Human Rights* (Year V, N°5), pp. 19-50.

Díaz Polegre, L.; Torrado Martín-Palomino, E. (2018): "Gender and its intersectionalities from a sociological and historical-critical perspective in the autobiographical narratives of Angelou, Lorde and Davis", in *Feminist Investigations* (Vol. 9, No. 2), pp. 291-307.

Gaona Pando, Georgina (2013): "The right to land and protection of the environment by indigenous peoples", in *New Anthropology* (Vol. 26, No. 78), pp. 141-161. [Available at:

http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S0185-06362013000100007&lng=es&tlng=es].

Hervé, D, (2010): "Notion and elements of environmental justice: guidelines for its application in territorial planning and strategic environmental assessment", in *Revista de derecho. Valdivia*. Chile (Vol. 23, No. 1), pp.9-36.

Hervé, D. (2010): "Sustainable Development and Environmental Justice in Law 19.300 and in the Environmental Institutional Reform Project", in Hervé, D., Guiloff, M., Pérez, R. *Reform of environmental institutions. Background and grounds*. (Universidad Diego Portales, Santiago, Chile) pp. 271-281.

Jiménez, H. (2019): "The Escazú Agreement and the right of access to information give birth to a new jurisprudence Jurisprudential analysis Judgment Fundación Ambiente y Recursos Naturales (FARN) C/ YPF SA s/ varios", in *Revista Derecho del Estado* (Nº44), pp. 385-396.

Márquez, Marcela (2022): *Environmental Justice, Conflicts and Development*, in Galdámez, Liliana; Millaleo, Salvador and Saavedra, Bárbara, *A Socio-Ecological Constitution for Chile: Integrated Proposals* (Santiago, Pehuen Editores).

Martinez Allier, J (2015): "Ecología política del extractivismo y justicia socio-ambiental", en *Interdisciplina* (Vol. 3, Nº 7), pp. 57-73.

Muñoz, Sergio (2014): "El Acceso a la Justicia Ambiental", in *Revista de Derecho Ambiental*. Santiago, Chile (Nº6), pp. 17-38.

Polanco, Rodrigo, (2014). What do we need to obtain environmental justice?. *Journal of Environmental Law*. Santiago, Chile (Year 6, Nº6), pp. 11- 13.

Stutzin, Godfrey (1984). "An ecological imperative: recognizing the Rights of Nature", in *Ambiente y Desarrollo* (Vol1, Nº1), pp. 97-114. [Available at: <https://opsur.org.ar/wp-content/uploads/2010/10/imperativo-ecologico.pdf>].