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Redefining human–nature relations: decolonial perspectives on Inter-American Court environmental jurisprudence

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ABSTRACT

Debates surrounding environmental protection and its intersection with human rights have gained significant traction in the past decade, coinciding with the advancement of decolonial thought across political, academic and social spheres. These discussions and agendas have become intertwined as humanity faces unprecedented threats to essential global ecosystems while indigenous peoples and traditional black communities, often the primary stewards of the environment, seek emancipation from historical violence. This dynamic struggle between resilience and violence, along with the link between nature and human rights, is also evident within the Inter-American Court of Human Rights. Drawing upon decolonial insights and employing a dialectical method, our analysis aims to scrutinize the Court's jurisprudence to understand its approach concerning the connection between human and environmental rights.

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Corte Interamericana de Derechos Humanos; derechos Humanos; derechos Ambientales; derechos de propiedad; pensamiento decolonial; visión del Mundo Occidental; filosofía Andina; naturaleza

Redefiniendo las relaciones entre humanos y naturaleza: perspectivas decoloniales sobre la jurisprudencia ambiental de la Corte Interamericana

RESUMEN

Los debates en torno a la protección ambiental y su intersección con los derechos humanos han cobrado una relevancia significativa en la última década, coincidiendo con el avance del pensamiento decolonial en ámbitos políticos, académicos y sociales. Estas discusiones y agendas se han entrelazado a medida que la humanidad enfrenta amenazas sin precedentes a los ecosistemas globales esenciales, mientras que los pueblos indígenas y las comunidades negras tradicionales, a menudo los principales guardianes del medio ambiente, buscan emanciparse de la violencia histórica. Esta intrincada y dinámica lucha entre la violencia y la resiliencia,

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junto con el nexo entre la naturaleza y los derechos humanos, también se refleja dentro de la Corte Interamericana de Derechos Humanos. Basándonos en las perspectivas decoloniales y empleando un método dialéctico, nuestro análisis tiene como objetivo examinar la jurisprudencia de la Corte para comprender su enfoque en relación con la conexión entre los derechos humanos y ambientales.

Introduction

The impacts of capitalist exploitation have led to deforestation, pollution, soil degradation and biodiversity loss, threatening global ecosystems. Latin America and the Caribbean face severe environmental challenges because of viewing nature primarily as a resource. With widespread soil degradation, vast areas suffer from desertification, erosion and salinization, severely impacting agricultural productivity (Gardi et al. 2014, 130–1). Water pollution also poses a critical issue, with many rivers and freshwater ecosystems contaminated, threatening both human and environmental health (UN 2021). Indigenous communities, deeply intertwined with their natural environments, are particularly vulnerable, as degradation not only harms their ecosystems but also leads to economic marginalization and social displacement (Garcia 2024).

Latin America, home to seven of the planet's twenty megadiverse countries, is pivotal in humanity's efforts to avert environmental catastrophe (León 2016, 71; Mittermeier and Goettsch Mittermeier 1997).[1] However, within the global political-economic landscape, Latin America's historically dependent position has affected various human rights domains, including life, health, housing and culture (Bordenave and Picolotti 2017, 196). The neoliberal turn of the late 1970s significantly exacerbated this dynamic.

The neoliberal development paradigm has significantly influenced Latin America's political-economic structure, which has historically been dominated by agricultural and extractive industries geared toward exports (Svampa 2012a, 473; 2012b, 18). Neoliberal policies, through deregulation and relaxed barriers to foreign investment, reinforced Latin America's position as a raw materials supplier (Harvey 2005, 39–40, 55, 66–37; Thor, 1998, 226). National and transnational projects have resulted in significant environmental and human rights violations across the region, often impacting indigenous and traditional black communities (for further insight, see PPT 2010; 2014; Oliveira 2012, 10; Davis-Castro 2021, 3). The legal framework of Latin America, especially within the purview of the Inter-American Court of Human Rights (IACHR) jurisprudence, has been dynamically shaped by and has influenced the intricate nexus between human and environmental rights challenges. Indeed, the Court's case law has brought to the fore clashes between disparate epistemologies pertaining to human and environmental rights.

Interactions and interpretations: human rights in relation to nature

Over the past four centuries, the relationship between humans and nature in Western modern-capitalist societies has lacked closeness, with nature seen as an external resource for exploitation. This perspective originates from philosophical

foundations like Descartes' and Baconian Empiricism (Harland 1991, 76).[2] As the world is considered a given, humans are tasked with finding a methodology to accurately measure it while avoiding using subjective ideas that might introduce biases and disrupt the obtained results. While "ideas" are subjective and intertwined with the concept of internal thought processes, "things" are objective and connected to the external world. As a result, experiences are simply the interaction between objective phenomena and subjective thoughts. Western societies approach nature through a lens of scientific rationality, lacking the symbolic representations of nature seen in other cultures. Humans are perceived as entitled to exploit and manipulate nature to fulfill their technological and social needs, predominantly through positivist scientific rationality (Araóz 2010, 43; Latour 1993, 97–9; Leff 2004, xi; Thomas 2010, 49). As Carolyn Merchant (1990) argues, the scientific revolution facilitated this view; a perspective with enduring colonial and post-colonial consequences.

An anthropocentric lens on nature–human bridging

Jürgen Poesche (2020) describes modernity and capitalism as "historical aberrations", distorting worldviews to sever connections with nature for global exploitation. Keith Thomas (2010, 21–36, 49) and Mark Brett (2008, 32–39) echo Poesche's view, highlighting how Western inclinations to dominate the earth have shaped attitudes toward nature. This dichotomy is viewed as a distinct feature of the Western worldview. Wilson Harris (in Wynter 1992, 1–2) conceptualizes it as an ego-centered historical project that fundamentally divorces nature from divinity, resulting in the "de-godding of nature" and fostering a tendency toward ontic closure, confining the ego to a partial and limited reality. However, the rigid separation between nature and human rights could no longer be unequivocally upheld due to the repercussions of contemporary environmental challenges.

The interconnection between the environment and human rights was first emphasized in the 1972 Stockholm Declaration (Cajigas-Rotundo 2007, 187). Notably, the anthropocentric perspective of nature permeates the document, evident even in its title, implying that the environment warrants attention solely because it constitutes the backdrop and milieu of human existence (UN 1972). Although lacking explicit reference to a "right to a safe environment", the document underscored the notion that a healthy environment is essential for human rights. Subsequently, many Member States of the UN have enacted legislation grounded in this perspective, affirming the human right to an environment that is "safe", "clean" or "healthy", thereby facilitating the fulfillment of human needs (Shelton 2010, 111–12).

Significant legal milestones include the Rio Declaration, establishing a nexus between human and environmental rights through procedural law. The instrumentalist viewpoint assumes a new dimension, positing that the whole exercise of certain human rights would be indispensable for achieving the objective of environmental protection, which, in turn, serves the ultimate end of safeguarding human rights and needs. Principle 10 highlighted the importance of citizen participation in environmental decision-making (UN 1992).

Notably, a capitalist language permeates the discourse, emphasizing a "productive" rather than "happy" life. Similarly, environmental issues are "handled" as if they were

business deals or problems to be solved rather than administered as a public good. This choice of wording appears deliberate and may shed light on the broader context of the time. The 1970s, 1980s and 1990s witnessed a significant neoliberal transition in prominent capitalist and early industrialized countries, such as the United States, and regions highly dependent on the current global political economy, such as Latin America.

The Volcker Shock served as the means to concentrate the world's wealth in the US. This shock entailed monetary contraction, interest rate increases, lower taxes for the wealthiest and nearly unrestricted freedom for capitalist companies, transforming the US into a global financial hub and the largest recipient of foreign capital in the 1980s. Through a dialectical process of suppressing social movements and expanding the market-led logic of the global economy, neoliberalism reconfigured pivotal states in the Global North and disseminated its morality and policies worldwide (Harvey 2005, 22–36; Lander 2005, 8; Arrighi and Silver 2003, 341–45). This logic gave rise to a discourse emphasizing the necessity of managing, maximizing and planning the use of natural resources to ensure that future generations have the same opportunities we do to produce and consume. This conceptualization is most succinctly encapsulated in the notion of "sustainable development".

The concept of sustainable development was initially introduced in 1987 in the Brundtland Report on the environment–development nexus and has since guided international law, politics and environmental governance.[3] This perception embodies elements of Western neoliberal hegemonic thought, particularly in its assertion that all environmental exploitation jeopardizes the survival of future generations, thus advocating for the "rational" use of natural resources. Nevertheless, this rationality serves the powerful, while disadvantaging vulnerable suppliers who bear the brunt of exploitation (Escobar 1995, 93).

Moreover, this logic legitimizes the purportedly more developed countries to impart knowledge to "developing" nations and populations, prescribing universal solutions to environmental concerns, despite modernity/coloniality originating from the Global North significantly contributing to environmental degradation. It also obfuscates the role of the global capitalist structure in perpetuating the existing labor division, which disproportionately benefits the Global North at the expense of the states and peoples of the Global South (Gomes, Schramm da Silva, and Moura Do Carmo 2020, 27). Since 1992, numerous legal and political instruments at both national and international levels have emerged, reflecting a trend toward increased specialization in environmental subtopics and a more explicit connection between environmental issues and human rights. Despite these advancements, they continue to align with the dualistic, instrumentalist paradigm of nature and human rights discussed earlier.

Therefore, the underlying conceptions guiding treaties, agreements and conventions have asserted that nature conservation serves to fulfill human rights, advocating for conservation through well-managed public information and participation. Consequently, the application of a bio-coloniality of power, akin to a coloniality of nature, integrates the agenda of the prevailing eco-capitalist model, viewing the environment as yet another tool for capital utilization (Cajigas-Rotundo 2007, 187). This narrative also operates within the discourse of sustainable development, promoting a standardized framework for nature that fosters globalized policies based on a paradigm of scarcity and resource exploitation.

Relinking nature and living beings

Krenak (2019) critiques the idea of humans detaching from the earth, emphasizing the need to embrace nature's diversity and reject the notion of civilization as a separate entity. Indigenous perspectives prioritize a balanced relationship with nature, rooted in a communitarian biocentric approach. Nature is paramount for the physical, psychological and spiritual well-being, and social integrity of Andean/Amazonian communities (Renard-Casevitz, Saigner, and Taylor 1988),[4] so its degradation threatens these peoples' existence in all dimensions (Albert 2000; Bordenave and Picolotti 2017, 199–202; Feria-Tinta and Milnes 2016, 73). Mantelli and de M. Almeida (2019, 5) highlight indigenous perspectives on a communitarian biocentric approach to nature. Consequently, environmentalism, conservationism and protectionism should not be dictated by the agendas of dominant states and universal perspectives but should instead incorporate the traditional knowledge of peoples from the Global South. Indeed, peripheral communities have the potential to catalyze a new coexistence with nature, diverging from the political-economic progressivism that exacerbates inequalities between the Global North and South, thereby fostering a more respectful and balanced relationship between nature and humanity.

Indigenous worldviews, particularly Andean traditional philosophy, eschew rationality and instead strive to achieve optimal harmony by employing two indispensable criteria. Firstly, transcending dualistic understandings, individuals are always "being" and "doing" in a perpetual "making of the world", signifying that the relationships between nature and living beings are complementary. Secondly, living beings exist in an eternal gravitational tension with nature, imbuing their relationships with an intrinsic aspect of proportionality. The original cosmogony of Pachatata and Pachamama is rooted in these criteria.

The term "Pacha" denotes the interrelation of the cosmos, encompassing both temporality and spatiality and representing a reality beyond dualities such as visible/invisible, material/immaterial and exterior/interior. Pacha is a space–time continuum where past and future coexist, transcending beings and levels of existence (Estermann 2006, 156–8). It does not signify totality but rather a virtual and preexisting reality. "Pachatata" refers to the male space–time, a state of rest where real space is visible, and time is noticeable and intentional. Its complementary and proportionally opposing force is "Pachamama", the female space–time, characterized by constant movement driven by various forces. In this realm, the space of the virtual world asserts itself, and time is sensible, fully open to absolute new creations and the impossible. It is the space where the movement of life emanates from Mother Earth to all living beings, transforming the world into a living entity, a repository of living wisdom in constant connection with the world (Fehlauer 2016, 6–8).

"Good Living" refers to the pursuit of equilibrium and the "just middle" in various circumstances, embodying the art of finding balance within the intricate interactions of these three interconnected worlds (Lajo 2006, 133–41). This equilibrium is achieved through a harmonious balance between feeling and thinking, enabling heightened awareness of moments and leading to purposeful action. The proportionality and complementarity between masculine/feminine and human/nature should be guided by the principles of justice, correctness and accuracy, embodying the ways of wisdom and peace (Lajo

2006, 152). Good Living does not represent a distinct form of development but rather an alternative subjectivity grounded in philosophical, ontological, existential and ethical reasoning. It rejects the notion of total reality intelligibility and the possibility of a comprehensive intellectuality of human beings (Estermann 2006, 39–50).

The clashes between Western and indigenous epistemologies have been strident within the case law of the IACHR, particularly concerning the human–nature relationship. Thus, we seek to discern whether the links between environment and human rights in the IACHR case law derive from dominant Western views of nature or reemerging perspectives from the margins, such as indigenous epistemologies.

Western epistemology and jurisprudence Ius commune

Decolonial thinking is a continuous effort to expose and overcome the logic of coloniality embedded within the rhetoric of modernity. This framework is crucial in understanding how concepts like "nature" have been co-opted into the colonial matrix of power, shaping control and management of the environment through Western economic and epistemic lenses (Mignolo 2011, 10–15).

Holistic understandings of and policies toward nature occupy a delicate position in Latin American countries' social, political and economic organization. Despite the enduring influence of modern and capitalist Western ideologies on human rights perceptions, efforts have been made by human rights courts, national legal orders, lawmakers and legal scholars to transcend these influences. They draw upon both historical and contemporary insights into the human–nature relationship (Boyd 2011; Boyle 2007; Mignolo 2011, 10–15; Shelton 1991). Recently, attention has shifted toward framing the debate around nature and humanity's relationship to it rather than the traditional reverse relation (Román, Nicole Campoverde Kam, and Carlos Jiménez González 2019, 26).

Established on 22 May 1979, the IACHR serves as both a judicial body and advisory body within the Organization of American States (OAS) system. It has developed extensive jurisprudence concerning the protection of civil and political rights in Latin America. The IACHR has become a pivotal reference in human rights protection, rooted in its pragmatic and progressive interpretations of the American Convention on Human Rights (1969) and the Additional Protocol of San Salvador (1988). Flávia Piovesan (2017) states that the IACHR has significantly contributed to understanding human rights through its legal judgments and advisory opinions. Its most notable contribution is paving the way for developing a distinct regional constitutional framework, leveraging Latin America's unique political, economic and social contexts to address regional conflicts and violence.

The inclusion of the "right to live in a healthy environment" and the duty to promote environmental protection, as outlined in Articles 11 and 17 of the Additional Protocol to the 1988 American Convention on Economic, Social and Cultural Rights ("the Protocol of San Salvador"), represented a significant milestone. Moreover, in alignment with the UN and its agencies, the OAS and the Inter-American Human Rights system have developed numerous specific conventions, such as those addressing Indigenous Peoples' Rights and Biodiversity. These conventions established rights closely linked to nature conservation, land regulation, pollution control, punitive measures against

offenders and ensuring participation in decision-making processes. States have also devised their own mechanisms within their legal frameworks to address these issues (Shelton 2010, 115). The evolution of Latin America's constitutional framework has also been a crucial source for the Court's progressive jurisprudence.

The constitutions of Ecuador and Bolivia directly or indirectly establish the groundwork for ecological states, wherein nature is recognized as a rights-bearing entity (Ecuador 2008, Arts. 10 and 71). Additionally, they emphasize the rights of future generations and other living beings and the imperative to live in harmony with nature (Ecuador 2008, Arts. 15, 16, 33 and 108). Among other provisions, both countries ensure access to healthy food and prohibit transgenic crops and seeds (Bolivia 2009, Art. 16; Ecuador 2008, Art. 13). They also promote sustainable development in harmony with nature, with particular emphasis on protecting the Amazon (Bolivia 2009, Art. 390; Ecuador 2008, Arts. 250 and 259). Notably, Bolivia has established the Agri-Environmental Court, a specialized tribunal tasked with adjudicating matters related to agriculture, forestry, livestock, environmental, water and biodiversity, guided by principles of social function, comprehensiveness, immediacy, sustainability and interculturality (Bolivia 2009, Arts. 158, cl. 155 and 186).

Ecuadorian courts have upheld these rights in various rulings, such as a 2019 ban on mining operations and a 2022 case extending rights to animals, emphasizing their individuality and intrinsic worth. In contrast, Bolivia's progress has been slower, hindered by political instability and debates over the meaning of "Vivir Bien" (Living Well). However, Bolivia has seen increasing recognition of nature's rights, as evidenced by the national ombudsperson's 2021 condemnation of animal cruelty and biocide, signaling a gradual shift toward stronger environmental and animal protections (González Chacon 2023, 388–9, 393). Beyond national and regional legal frameworks, supranational law also plays a role.

The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (2021), commonly known as the Escazu Agreement, exemplifies this. Signed by twenty-four Latin American and Caribbean countries, it guarantees rights to environmental information, public participation in environmental decision-making, environmental justice and a healthy and sustainable environment. The agreement explicitly binds environmental protection with human rights and ensures the right of communities and individuals to participate in all processes and seek justice for environmental crimes (Feria-Tinta and Milnes 2016, 69).

Therefore, the ensemble of these developments reflects novel aspects of the human–nature relationship in Latin America and the Caribbean. The Inter-American Commission and Court have been dialectically influenced by and influencing the region's states and peoples concerning the maintenance of environmental quality conducive to the enjoyment of guaranteed rights. In general, OAS bodies have aligned with global efforts to secure procedural rights to information, public participation and access to justice (Shelton 2010, 113). In our assessment, it is through case law and advisory opinions that the principal contributions, instruments and obligations regarding environmental protection intersect with human rights within the IACHR.

The intersection of human rights and environmental law in IACHR case law

The IACHR has not specifically handled a significant number of cases related to the right to live in a safe and healthy environment. Rather, the typical scenario entails a multifaceted analysis that intertwines property rights with matters pertaining to the ancestral lands of indigenous peoples (Silva 2019, 16). D'Avila et al. (2014) reported that, up to 2014, out of the 286 cases adjudicated by the IACHR, only four addressed environmental issues, yet lacked substantial commitment to holding violators accountable: *Mayagna Awas Tingni Community v. Nicaragua* (IACHR 2001), *Saramaka People v. Suriname* (IACHR 2007), *Kichwa Indigenous People of Sarayku v Ecuador* (IACHR 2012) and *Afro-descendant Communities of the Cacarica River Basin v. Colombia* (IACHR 2013). The IACHR's case-law booklet (IACHR 2021) only includes two additional cases on environmental matters, further underscoring the marginalization of environmental rights within the Inter-American Human Rights System: *Garifuna Triunfo de la Cruz Community and its members v. Honduras* (IACHR 2015a) and *Kaliña and Lokono Peoples v. Suriname* (IACHR 2015b).

Rather than exhaustively analyzing all six cases, this inquiry focuses on specific subjects encountered by the Court in cases involving environmental issues, particularly when addressing traditional communities' property rights and environmental impact assessments. This approach also applies to two additional cases: *Yakye Axa Indigenous Community v. Paraguay* (IACHR 2005) and *Sawhoyamaxa v. Paraguay* (IACHR 2006). Additionally, the investigation includes two other cases indirectly addressing environmental issues: *Salvador Chiriboga v. Ecuador* (IACHR 2008) and *Spoltore v. Argentina* (IACHR 2020b). By adopting a subject-focused approach, these ten cases can contribute to a more holistic understanding of the issue at hand.

Traditional communities' property rights and the environment

The case *Salvador Chiriboga v. Ecuador* (IACHR 2008) centered on expropriation issues involving Salvador Chiriboga and the Quito City Council. The crux of the matter revolved around Article 21 of the Pact of San Jose, which addresses the right to private property.[5] However, this case is significant for this inquiry due to the arguments presented by the Court regarding expropriation and its implications for the environment. The decision aimed to assess the compatibility of the expropriation with the right to private property, considering it was carried out for reasons of public utility and social interest and subject to fair compensation; specifically, for the establishment of a Metropolitan Park (IACHR 2008, 20). Of importance to this article is the recognition that environmental protection constituted a legitimate public utility, even though the state failed to meet the necessary requirements for restricting the property rights of the affected individual (IACHR 2008, 33). This decision exemplifies a liberal interpretation of land rights, wherein private rights of use, usufruct and ownership may only be infringed upon in exceptional circumstances of public necessity. Yet, much of the IACHR jurisprudence on environmental rights transcended these individual perspectives, revolving around specific conflicts between private property and the communal land rights of traditional communities.

The case *Mayagna Awas Tingni Community v. Nicaragua* (IACHR 2001) delves into another aspect of land rights, which is not directly tied to monetary interests but rather ancestral connections. This case sets a precedent for recognizing indigenous peoples' cultural and intergenerational identities, underscoring the IACHR's evolving interpretation of human rights. Based on Article 21 of the Convention, the Commission argued that the Mayagna Community holds communal property rights to land and natural resources, grounded in traditional land use patterns and occupation of ancestral territories, which exist independently of state actions that recognize them. These territories, not necessarily bound to a single location or social configuration, are collectively held, with individuals and families enjoying subsidiary rights of use and occupation (IACHR 2001, 69). Similarly, in cases such as *Yakye Axa v. Paraguay* (IACHR 2005, 62), *Sawhoyamaxa v. Paraguay* (IACHR 2006, 71), *Afro-descendant Communities of the Cacarica River Basin v. Colombia* (IACHR 2013, 103)[6] and *Kaliña and Lokono Peoples v. Suriname* (IACHR 2015b, 36), the Court emphasized the intrinsic connection between land and traditional communities, viewing the former not only as a means of subsistence but also as a fundamental element of cultural identity. Following anthropologist Theodore Macdonald Jr's perspective on indigenous peoples (Arruti and Andion 1997):

> A history and an ancestral possession has been constructed with indigenous people from different ethnic groups. The Community's perception of its boundaries has been strengthened through interactions with their neighbors. The only evidence that can be used to determine the existence of the Community before 1990 is oral tradition. There are research studies on the history of the Community, and some experts were also consulted at Harvard University, in the United States, and in Central America, and no data were found that contradicted the oral tradition on which his study is based. Forms of land use in the Awas Tingni Community are based on a communal system, in which there is usufruct by individuals, which means that no one can sell or rent this territory to people outside the Community. (in IACHR 2001, 22)[7]

The central idea examined by the IACHR was the integration between indigenous peoples and the lands they inhabit, which fosters a distinct cultural identity worthy of preservation. In both cases, the Court acknowledged that traditional land use and occupation patterns by indigenous communities establish customary property systems, creating property rights under Article 21 in relation to Articles 1(1)[8] and 2[9] of the Convention. Consequently, states would have to establish and implement specific mechanisms for delineating, demarcating and titling indigenous community properties (IACHR, 2001, 82; 2005, 104–05; 2006, 105–06).

From a doctrinal standpoint, recognizing property rights not based on liberal principles represents a critical decolonizing step.[10] The enrichment of human rights concepts by non-Western understandings helps explain this advancement, thereby partially overcoming the historical marginalization of Latin American and Caribbean peoples. Presently, the IACHR recognizes indigenous communities irrespective of state formalities, preventing the lack of legal recognition from impeding the protection and support of indigenous rights, particularly in cases of violations of traditionally occupied lands and state negligence in territorial demarcation duties (Amorim and Tajra 2020).

In addressing property issues, the IACHR engages in a horizontal dialogue with indigenous peoples' understandings of the human–nature relationship, applying indigenous notions to adjudicate cases concerning disputed lands. Applying a strict Western

liberal lens to these cases would disregard the specificity of indigenous conceptions and realities. Furthermore, the Court appears to align with the recent decolonial shift[11] in the region, as evident in cases such as *Saramaka People v. Suriname* (IACHR 2007), *Kichwa Indigenous People of Sarayku v. Ecuador* (IACHR 2012) and *Garifuna Triunfo de la Cruz Community and its members v. Honduras* (IACHR 2015a). In these cases, the Court (IACHR 2021, 138) emphasized the obligation to conduct environmental impact assessments, as stipulated in Article 7.3 of the ILO 169 Convention, before granting permits for projects on indigenous lands. The IACHR further stipulated that these assessments must evaluate potential environmental impacts and their social, cultural and spiritual implications for affected indigenous peoples. Thus, adherence to their traditions and existence across all dimensions linked to the lands can determine whether a permit for investment, construction or project development within their communal territory will be granted: failure to adhere to these preliminary steps violates human and environmental rights.

Property has been a historical source of power in Latin America, enabling the elites to concentrate resources and wealth. Colonization had a profound impact on indigenous conceptions of property, replacing them with acculturated and individualistic interpretations and imposing restrictions on their land access. Hence, the recognition of collective property serves as a historical reparation, allowing autonomous indigenous cultural and economic practices (Piovesan 2024, 310). The affirmation of territorial rights in decisions also sheds light on the historical vulnerability of Afro-descendant communities, resulting from colonialism and structural racism. Moreover, these decisions acknowledge the necessity of consulting indigenous peoples in advance, ensuring their rights are considered and respecting their self-determination. This illustrates a decolonial approach that is increasingly influencing the IACHR's rulings (IACHR, 2013; 2015a).

The Inter-American Court's jurisprudence has experienced a crucial transformation, as observed by Gonçalves (2023), with a growing emphasis on environmental matters, which is commonly referred to as the "greening" of the Court. It surpasses the traditional safeguarding of environmental rights linked to civil and political rights, acknowledging the environment as a distinct legal entity. This change has further enhanced the Court's responsibility to safeguard the current and future generations from environmental damage. According to the Court, the ramifications of capitalist development within indigenous territories, particularly extractive projects, cannot supersede or overshadow their rightful enjoyment of ancestral lands across biological, sociocultural and spiritual dimensions. This understanding underscores a decolonial interpretation by the IACHR, which prioritizes the protection of the integrity of these peoples based on their values and worldviews rather than marginalizing their lives and rights in favor of development projects, as per a neoliberal capitalist perspective (Dussel 2005, 29; Escobar 1995, 4). The IACHR's Advisory Opinion 23/2017 on environmental and human rights (IACHR 2017) further supports this stance.

Reconceptualizing environmental protection within the human rights framework

While not legally binding, the advisory opinion records the Court's understanding of an issue, which can be applied when contentious cases are brought forward (Abello-Galvis and Arevalo-Ramirez 2019). It marks a significant international judicial ruling acknowledging legal repercussions for environmental harm (Feria-Tinta and Milnes 2016, 64).

So, it does not represent a complete departure from previous jurisprudence. In cases involving territorial rights and indigenous peoples, the Court had already recognized the link between a healthy environment and the protection of human rights, owing to indigenous worldviews closely tied to nature. However, transcending the summary of past interpretations, the advisory opinion extends them by explicitly connecting environmental protection to the human rights system, acknowledging their interdependence, indivisibility and the autonomy of the right to a healthy environment. Consequently, for instance, the violation of this right does not necessitate the definitive identification of individual victims.

This stance contrasts sharply with the 2004 Inter-American Commission of Human Rights declaration, in which a petition concerning the Natural Metropolitan Park in Panama was deemed inadmissible due to its failure to specify concrete and precise victims, rendering it too broad (Shelton 2010, 126). Contrastingly, environmental concerns are now closely intertwined with human rights, shifting from a marginal to a central focus. This linkage does not necessitate the identification of a human victim or damage to punish offenders. State parties are obligated to prevent environmental harm, irrespective of its direct or indirect impact on individuals or communities, thus affirming nature's legal personality as a rights-holder, echoing the Andean worldview already enshrined in the constitutions of Ecuador (2007) and Bolivia (2008) (Feria-Tinta and Milnes 2016, 69), and present in the non-approved Chilean Constitutional draft of 2022. Through the 2017 Advisory Opinion, the IACHR aimed not only to emphasize states' obligations to mitigate environmental damage, viewing it as more than just a context in which human rights should be protected progressively, but also to assert that any individual or community, regardless of direct impact, may seek recourse if they perceive a threat to or damage of the environment (Tavares, Stival, and Silva 2020, 251).

Incorporating indigenous philosophical ideas has significantly contributed to deconstructing the European model of rationality, fostering an open dialogue with once marginalized and despised experiences and knowledge. By incorporating this formerly subaltern knowledge, there is a push to reject the Western dualistic conception of reality, which maintains artificial and ideological divisions between the divine and the human, heaven and earthly life, and individuals and nature (Tavares, Stival, and Silva 2020). These legal advancements align with what Javier Sanjínes refers to as the "presentness" of the past, a reclamation of "the embers of the past" (2013, 47–48).

Furthermore, the advisory opinion also marks a breakthrough in addressing cross-border claims and transnational environmental impacts, known as "diagonal human rights" (Feria-Tinta and Milnes 2016, 73). The IACHR has demonstrated a critical potential to challenge the international order rooted in Westphalian-liberal-Western principles. Frequently, states have exploited border delineations to evade accountability for human rights violations committed within their territory or facilitated by businesses based within their jurisdiction against citizens of other states.

Thus, the decolonial shift highlights the Court's potential to challenge liberal principles by incorporating non-liberal elements, such as collective property and the indigenous self-determination. This perspective decentralizes the individual in favor of broader communal rights. In Advisory Opinion No. 23, the Inter-American Court of Human Rights introduced the perspective of a human right to a healthy environment (IACHR 2017). This recognition was also present in the decision of the *La Oroya v. Peru* (IACHR

2023) case, which adopted an eco-centric approach. Similarly, the decision in the *Lhaka Honhat v. Argentina* (IACHR 2020a) case combined the recognition of collective property rights with the right to a healthy environment.

In paragraph 62 of the Advisory Opinion, the Court not only indicates a trend toward recognizing legal personality and rights of nature – in judicial rulings and in constitutional frameworks – but also blends an anthropocentric and ecocentric perspective. This approach seeks to protect nature itself while also safeguarding human rights that stem from environmental protection, such as the right to health. Therefore, the Court's liberal and Eurocentric interpretation of human rights coexists with a post-liberal perspective that emphasizes collective protection and new rights concepts, like the right to a healthy environment, moving beyond traditional individual guarantees.

In response, the Court clarified that the obligation to prevent damages, based on principles of precaution and due diligence, and any accountability for damages caused, could be invoked by individuals against states other than their own or where they reside. Consequently, states can be held responsible for failing to prevent or allow environmental crimes committed by third parties or even by the states themselves, regardless of where these crimes occur (Feria-Tinta and Milnes 2016, 75). Notably, this advisory opinion considers the causal link between an act or omission within a state's territory and its environmental impact, irrespective of direct or foreseeable human victims, as more crucial in determining responsibility than the confines of any state's borders. This fresh interpretation has evidently influenced subsequent jurisprudence within the Court, even when not addressing environmental issues or indigenous peoples directly.

In the case of *Spoltore v. Argentina* (IACHR 2020b), the IACHR recognized the implicit and autonomous protection of the "work environment", where workers' health and rights must be safeguarded. This expanded understanding of the work environment, encompassing holistic well-being conditions for both workers and nature, presents a more comprehensive conceptualization of damages, potentially impacting subsequent compensations (IACHR 2021, 29). With this interpretation, the Court signals a willingness to apply historically marginalized knowledge beyond situations involving traditional communities, fostering a horizontal epistemological dialogue in which indigenous knowledge informs various contexts without solely focusing on indigenous rights. However, this does not imply that the predominance of Western epistemology has disappeared.

Current boundaries, future horizons

The Inter-American Human Rights System is gradually moving away from modern-liberal paradigms, which focus solely on individual human-centric conceptions of gains, losses, rights and damages, particularly concerning environmental rights. A decolonizing shift is evident in the system's legal perspectives regarding nature and environmental rights. The Court has embraced a more holistic understanding when addressing the ancestral lands property rights of subaltern peoples and conducting environmental impact assessments based on their distinct life patterns. In these instances, the IACHR incorporates Andean perspectives on the intimate relationship between ancestral lands and indigenous peoples' spiritual, biological and cultural realms. Additionally, the Court recognizes that their way of life is better aligned with the current imperative for more

comprehensive environmental protection. However, its jurisprudence and legal output reveal specific challenges.

Primarily, the Court views indigenous existence as an instrumental necessity to conserve the environment and prevent humanity's destruction. Indigenous peoples play a significant role in nature conservation due to their sustainable traditional practices, which are deemed fundamental for effective conservation strategies. Consequently, land use is protected comprehensively through an interdisciplinary, multidimensional and participatory approach because their traditional practices and cultures are seen as "compatible with the demands of conservation or sustainable use of nature" (IACHR 2021, 139).

Furthermore, the Court underscores a focus on natural resource management by emphasizing the obligation of states to justly and equitably share the protection of natural resources, even beyond their boundaries and jurisdictions (Mazzuoli 2019, 778). As can be seen, despite its progressive strides, a lingering aspect of modern-colonizing-capitalist thought persists in the Court's system, where nature is perceived as an instrument or object. Additionally, the Court's jurisprudence falls short of effectively criticizing specific development models that have significantly impacted the environment. Environmental impacts are often viewed from an anthropocentric standpoint, considering only monetary and human well-being impacts, thereby maintaining the interpretation based on Western epistemology. The future horizons are thus dubious.

The consideration of environmental issues within the case law of IACHR has predominantly focused on narratives of reflexive protection, the challenges faced by indigenous communities and the communal ownership of ancestral lands (Tavares, Stival, and Silva 2020, 258). This interpretation suggests not an interference by the Court on the subject but rather a selective approach that results in a lack of cases specifically addressing environmental issues. This absence may be attributed to a lack of information or guidance provided to victims regarding the potential accountability of states for environmental matters beyond land violations, encompassing the material, spiritual and identity aspects of their existence. Flavia Piovesan (2017, 28) contends that these peoples, their advocates and the Court itself are operating within new or reemerging frameworks of thought and practice, paving the way for what is termed Latin American Ius Constitutionale Commune and fostering multilevel dialogues between states and the Court. She posits that such practices would bolster the future of Latin American peoples and their efforts to mitigate regional inequalities and violence. However, we believe that the Court could take further steps in this direction.

The Ius Constitutionale Commune of Latin America represents the emergence of innovative human rights standards in the region, fostering a pioneering regional constitutionalism focused on promoting these rights, particularly through both diffuse and concentrated controls of conventionality. As noted by Piovesan (2024, 323), the Latin American Ius Constitutionale Commune was largely shaped by the Inter-American system's pioneering role in human rights protection. Moreover, the inclusion of constitutional opening clauses in Latin American countries has elevated human rights treaties within their legal systems, strengthening human rights protections, which is especially valuable for countries aiming to enhance human rights as part of their democratization processes. Finally, Piovesan highlights the crucial role of an increasingly participatory

civil society in shaping the Ius Constitutionale Commune of Latin America, emphasizing its importance in the ongoing pursuit of rights and justice in the region.

The IACHR is currently undergoing an evolutionary phase marked by the expansion of economic, social and environmental rights, with a notable emphasis on the potential progressivity of these rights (Nascimento, Correa, and Ferreira 2020, 18). Nevertheless, the Inter-American Human Rights system continues to engage in dogmatic discussions focusing on minimizing damages, addressing punitive measures against states that violate environmental regulations and adopting anthropocentric perspectives on human rights as a means of protection (Silva 2019, 5). Thus far, the IACHR has predominantly analyzed cases involving violations of the right to a clean environment from the perspective of conflicts of interest between marginalized communities and modern-capitalist elites or between third parties and the state itself, often revolving around land ownership issues. This approach tends to reduce environmental matters to the logic of scarcity and the exploitation of natural resources, thereby epistemologically excluding any inherent character of nature that does not conform to Western, modern and capitalist frameworks.

In collaboration with researchers, the Court could explore additional avenues to scrutinize its jurisprudence and legal documents, expanding the analysis beyond issues related to development, infrastructure and extractive projects. Furthermore, it would be beneficial to examine whether the Court's readings of environmental and human rights issues, particularly in cases involving pollution, toxic contamination, social conflicts, environmental refugees and agricultural activities, demonstrate any decolonial tendencies (Silva 2019, 5). For instance, Gonçalves suggests the Court could adopt a proactive stance toward environmental issues by acknowledging them through the precautionary principle. This principle would provide safeguards against environmental harm, even in situations where scientific certainty is lacking (Gonçalves 2023, 305–06).

Additionally, conducting a comparative analysis of the IACHR's judgments about nature–human relationships alongside those of other supranational courts, such as the International Court of Justice, the International Tribunal for the Law of the Sea, the European Court of Human Rights and the African Court on Human and Peoples' Rights, could shed light on the cross-fertilization of ideas and potential avenues for progress.

The concept of nature and the environment should occupy a central position in discussions surrounding emerging epistemologies, prompting a reexamination of the foundations of international law. It is crucial to recognize that the discourses and interests of the Global North and South do not align, and environmental protection advocated by most international legal instruments is not neutral within this division. According to Western philosophies, environmental protection is rooted in a colonial matrix of knowledge that frames nature and the human–environmental relationship (Mignolo 2008, 290). This framework serves the objectives of capitalist exploitation and enrichment pursued by colonial elites in the Global North (Maldonado-Torres 2008, 66). Embracing decolonial studies and acknowledging the significance of marginalized knowledge can significantly broaden the understanding of the environment within the IACHR's framework. Consequently, the process of shaping case

law should not be confined to the imposition of damages or public participation in natural resource extraction projects, but should also encompass a holistic conception of nature as the foundation of existence, encompassing both physical and spiritual dimensions of the universe.

Conclusion

This article aimed to analyze and identify the underlying epistemological foundations and influences of the IACHR case law concerning human and environmental rights and its conceptualization of nature. Initially, environmental considerations were made within international law and the gradual standardization of environmental protection was closely tied to human rights. However, despite this linkage, the environment remained marginally addressed in the discussion, focusing primarily on procedural aspects such as information dissemination, public participation in environmental agendas and the right to be informed and consulted about potentially damaging projects, as well as substantive issues like the pursuit of a healthy and sustainable environment.

With changing contexts influenced by the decolonial turn, the IACHR's case law has begun to recognize the environment as an integral part of the cultural identity of indigenous peoples, falling under the rights of communities and ancestral property. Additionally, the Court has gradually acknowledged nature as a legal interest and subject of rights itself, even in transnational disputes and cases lacking human victims. However, these perspectives coexist paradoxically with opposing views, such as regarding indigenous peoples as tools for sustainable development, advocating solely pecuniary compensations for violations of the work environment and considering nature primarily as a resource for protection, as synthesized in Table 1. Consequently, the panorama of the IACHR's case law on environmental and human rights presents a blend of illumination and shadow, reflecting Western views emphasizing nature's utility for capitalist purposes and the centrality of humans, money and resources, as well as engaging in epistemological dialogues with indigenous worldviews.

Despite advancements, the Court continues to underutilize the decolonial shift experienced in the region, only partially applying Andean concepts and understandings, particularly in cases directly related to oppressed communities. Consequently, while a distinct Latin American Ius Constitutionale Commune is emerging, fluid dialogues between different epistemologies remain scarce within the Court's jurisprudence. Moreover, the present-day case law of the IACHR still universalizes modernity to a certain extent, reinforcing capitalist structures of domination, particularly evident in environmental matters. Marginal ideas such as complementarity, parity and a fluid-holistic unity with nature and living beings are absent from the Court's jurisprudence.

Despite the Court's dependence on states and their interests in an interstate international environment, reforms in certain Latin American states, notably Bolivia and Ecuador, have pushed the Court to overcome Western epistemological barriers, as seen in Advisory Opinion 23/2017. The IACHR must engage in further dialogue with alternative Latin American Constitutionalism to develop a shared legal framework compatible with the

Table 1. The IACHR's environmental jurisprudence.

Epistemological basis	Subjects and jurisprudence	Main comprehensions
The predominance of Western epistemology	(1) **Liberal (property) rights while dealing with environmental-related issues:** (2) *Salvador Chiriboga v. Ecuador 2008*	(1) Individualized responsibilities (2) Individualized human rights to be defended (3) Individualized victims
The predominance of Western epistemology while adopting Andean understandings in specific situations	(4) **Ancestry as the basis for property rights:** (5) *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua 2001* (6) *Yakye Axa v. Paraguay 2005* (7) *Sawhoyamaxa v. Paraguay 2006* (8) *Displaced Afrodescendant Communities of the Cacarica River Basin v. Colombia 2013* (9) *Kaliña and Lokono Peoples v. Suriname 2015* (13) **Environmental impact assessments:** (14) *Saramaka People v. Suriname 2007* (15) *Kichwa Indigenous People of Sarayku v. Ecuador 2012* (16) *Garifuna Trinfo de la Cruz Community and its members v. Honduras 2015* (17) *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina 2020* (18) *La Oroya v. Peru 2023* (19) **Environmental Interpretations Influencing Other Contexts** (20) *Spoltore v. Argentina 2020*	(10) Holistic human rights to be defended, connecting land to cultural, spiritual and biological contexts (11) Collective human rights to be defended (12) Individualized but accepting broader possibilities of responsibility and accountability

Source: Developed by the authors.

continental reality. Rejecting universalizing dogma and incorporating non-Western views, the IACHR can deepen its understanding of human–environmental rights links.

Notes

1. Megadiverse countries are the ones where there is an extremely high concentration of the world's endemic species and high-level ecosystem diversity. In the Americas, the identified megadiverse countries are Brazil, Colombia, Ecuador, Mexico, Peru, the United States and Venezuela.
2. Despite the apparent stark contrast between these two philosophical roots, they share fundamental similarities, representing a classic case of polarization that, beneath the surface conflict, defines a singular conceptual dimension while excluding all other possibilities.
3. It is important to highlight, however, that the concerns about environmental protection did not exactly arise globally at this time. Rather, it was following the decolonization of the African and Asian countries in the 1950s and 1960s that the subject was brought to the fore, coupled with nationalization of resources of the emerging nation-states, accumulated natural degradation and destructive social and economic systems.

4. We acknowledge the diversity among indigenous ethnicities, such as the 303 in Brazil alone, but argue for shared roots between Amazonian and Andean knowledge, particularly regarding their holistic understanding of nature and humanity. Two key factors support this connection: first, the pre-colonial exchange of goods, knowledge and migrations between these groups, primarily via navigable rivers; and second, their united resistance against Western challenges, especially over the past five decades, as indigenous movements across the continent have strengthened to counter historical violence.
5. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society; 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law; 3. Usury and any other form of exploitation of man by man shall be prohibited by law.
6. In this specific case, Article 17 – Rights of the Family – played a crucial role, as the forced displacement of black traditional communities resulted in the destruction of community and family ties, inter-relationships and structures. Consequently, this displacement led to the loss of cultural traditions and practices within the affected communities.
7. This perspective can also be applied in general to black traditional communities, as can be seen in Arruti and Nadio (1997).
8. Article 1. Obligation to Respect Rights: 1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.
9. Article 2. Domestic Legal Effects: Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.
10. Decolonial critique finds its origins in Latin America, drawing on the works of anti-Eurocentric thinkers such as José Carlos Mariátegui, as well as dependency theory and liberation philosophy. While colonial thought embodies the worldview that justified European imperialism, decolonial thought aims to dismantle these structures by centering indigenous and non-Western epistemologies. It emphasizes the recovery of subaltern approaches to nature and community, where respect, balance and coexistence take precedence over exploitation and domination (Saal 2013, 60).
11. "Decolonial turn does not refer to a single theoretical school but rather points to a family of diverse positions that share a view of coloniality as a fundamental problem in the modern age" while considering "decolonisation or decoloniality as a necessary task that remains unfinished" (Maldonado-Torres 2011, 2).

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