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ALTERNATIVE RELATIONS BETWEEN NATURE AND HUMAN RIGHTS: 
DECOLONIALITY AND THE INTER-AMERICAN COURT OF HUMAN RIGHTS CASE LAW¹

Relações Alternativas entre Direitos Humanos e da Natureza: 
decolonialidade e a jurisprudência da Corte Interamericana de Direitos Humanos

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ABSTRACT: In the last decade, the debate on environmental protection and its link to human rights has gained momentum worldwide. At the same time, decolonial thought has also been gaining ground in the political, academic, and social agendas. On the one hand, we have been threatening immense and globally important ecosystems; on the other, indigenous, and black peoples have been seeking emancipation. Rooted in this emancipatory thought, we seek to analyse the Inter-American Court of Human Rights progressive jurisprudence to find out to what extent the underlying notions on the relationship between humanity and nature on the Court’s case-law derive from Western’s modern-colonial paradigms, such as sustainable development, or are guided by other perspectives, such as the Andean buen vivir paradigm. We believe that, despite some advances in incorporating concepts that come from the ‘margins’, this court’s case law on environmental rights is still rooted in the western hegemonic tradition.

Keywords: Inter-American Court of Human Rights. Environmental Rights; Decolonial Studies; Ecology of Knowledge.

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RESUMO: Na última década, o debate a respeito da proteção ambiental e sua vinculação aos direitos humanos ganhou impulso em todo o mundo. Ao mesmo tempo, o pensamento decolonial também vem ganhando espaço nas agendas política, acadêmica e social. Isso se deve, por um lado, à necessidade de proteção dos ecossistemas ameaçados e, por outro, à busca dos povos indígenas e pretos por emancipação. Enraizados nesse pensamento emancipatório, buscamos analisar a jurisprudência progressista da Corte Interamericana de Direitos Humanos, a fim de descobrir em que medida as noções subjacentes sobre a relação entre humanidade e natureza derivam dos paradigmas coloniais modernos do Ocidente, como o desenvolvimento sustentável, ou se orientam por outras perspectivas, como o paradigma andino do buen vivir. Acreditamos que, apesar de alguns avanços na incorporação de conceitos provenientes das “margens”, a jurisprudência desse tribunal sobre direitos ambientais ainda está enraizada na tradição hegemônica ocidental.

Palavras-chave: Corte Interamericana de Direitos Humanos; Direitos Ambientais; Estudos Decoloniais; Ecologia do Conhecimento.

In the afternoon, we reached the top of the mountain ranges that surround the Apurímac. ‘God who speaks’ is the meaning of the name of this river [...] The sound of the Apurímac reaches the peaks, diffusely, from the abyss, like a rumour from space. The river flows between blackish forests and reed beds that only grow in the scorching lands. The reed beds creep up the steep slopes or appear suspended on the cliffs. The clear high air becomes thicker and thicker towards the bottom of the valley. The traveller enters the gorge abruptly. The voice of the river and the depth of the dusty abyss, the play of the distant snow and the rocks shining like mirrors, awaken in his memory the primitive memories, the most ancient dreams. [...] The voice of the river grows louder; it does not deafen, it exalts. It captivates children, instils in them presentiments of unknown worlds. The tufts of the reed forests stir by the river. The current marches as if at the pace of horses, of great horses of the hills. -Apurímac mayu! Apurímac mayu! - repeat the Quechua-speaking children, with tenderness and a touch of fear (ARGUEDAS, 2006, p. 66-67, our translation). 2

1 INTRODUCTION: CONTEXT AND CONCEPTS

Los ríos profundos [Deep rivers] is a novel written by the Peruvian writer Jose Maria Arguedas (1911-1969), which gives us a glimpse of the Andean traditional cosmovision. The

2 En la tarde llegamos a la cima de las cordilleras que cercan al Apurímac. “Dios que habla” significa el nombre de este río [...] El sonido del Apurímac alcanza las cumbres, difusamente, desde el abismo, como un rumor del espacio. El río corre entre bosques negruzcos y mantos de cañaverales que sólo crecen en las tierras quemantes. Los cañaverales reptan las escarpadas laderas o aparecen suspendidos en los precipicios. El aire transparente de la altura va tornándose denso hacia el fondo del valle. El viajero entra a la quebrada bruscamente. La voz del río y la hondura del abismo polvoriento, el juego de la nieve lejana y las rocas que brillan como espejos, despiertan en su memoria los primitivos recuerdos, los más antiguos sueños. [...] La voz del río aumenta; no ensordece, exalta. A los niños los cautiva, les infunde presentimientos de mundos desconocidos. Los penachos de los bosques de carrizo se agitan junto al río. La corriente marcha como a paso de caballos, de grandes caballos cerriles. —¡Apurímac mayu! ¡Apurímac mayu! — repiten los niños de habla quechua, con ternura y algo de espanto.
author uses Quechua expressions and songs, and very lyrical narratives, to explore how this cosmovision sees nature as an alive entity in all its forms - rivers, animals, the wind, the light, the stars. Ernesto, the teenage protagonist of the novel, identifies himself with nature, thus seeking it to find comfort and company during troublesome times and to rejoice in happy moments. He also describes his body, state of mind/spirit as natural elements of his surroundings, giving himself the same characteristics of birds and rivers, or different typical natural ensembles of Peru, in their different states and seasons. Differently, we can say global human interaction with nature over the last four centuries, rooted in modern-colonial Western capitalist hierarchical concepts and categorisations, has not been neither a close nor organic one.

Humanity sees nature as external to itself, a source of resources we can conquer and dominate. From this perspective, humans can exploit and transform nature to meet their needs of technological and social progress. Through science, we could rationally analyse and apprehend this object (nature) (LEFF, 2004, p. xi). But the accumulated effects of modern capitalist exploitation of nature have been posing existential threats to the entire ecosystem, such as deforestation, pollution and contamination of soils, water and air, soil depletion, reduction of biodiversity. Also, they have been harming many national and international human rights, i.e., the right to life, health, housing, personal integrity, culture, water, food, property, not to be forcibly displaced, among others (BORDENAVE, 2011, p. 196). That is the reason why some alternative comprehensions have been gaining momentum.

First, we have started to criticise the hegemonic link between environmental and substantive human rights. Second, we have been questioning how much the frame of the ecological subject – as well as other knowledge and power systems in society – derives from the thought’s tradition that caused the damages – the modern Western one. Third, we have been debating to what extent listening to other voices, philosophies, worldviews, and legal traditions could help to enrich the analysis and enable more inclusive, multidimensional, complex, more ‘human’ human and environmental rights. In the Americas, the analysis on the social and legal construct of the relationship between humans and nature is especially relevant if we consider some interrelated factors that singularize the American region compared to others, in terms of 1) biodiversity, 2) socioeconomic context and 3) social diversity. Concerning biodiversity, seven of the twenty world’s mega-diverse countries are on the continent. So, environmental mismanagement in Latin America can have severe negative consequences for the life of the entire planet, causing irreparable biodiversity loss and aggravating climate change phenomena related to deforestation and fires (LEÓN, 2016, p. 71). And western modern and capitalist have deeply influenced this mismanagement.

Regarding socioeconomic context, Latin America and the Caribbean’s countries have been subject to structural reforms, financial deregulation, and economic opening to foreign investment by the hand of the Washington Consensus in the 1980s and 1990s (THORP, 1998, p. 226). As a result, companies from the Global North aim at exploring the region’s economic frontier, and abundant offer of the cheap labour force and raw materials. But their controversial projects have been causing massive environmental and human damage, giving rise to this

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3 Quechua is an important family of indigenous South American languages, spoken today by around ten million people of various ethnic groups in Argentina, Bolivia, Chile, Colombia, Ecuador, and Peru along the Andes, and one of the official languages of Bolivia, Peru, and Ecuador.
4 Brazil, Colombia, Ecuador, Mexico, Peru, the United States, and Venezuela.
article’s debate and potential contribution (see SENGUPTA, 2002; UVIN, 2007). Not to mention that the history of the region amplifies the risks of this context.

Latin America is a producer of primary products, stemming from agricultural and extractive industries. And history influences the present social/economic conditions and structures of the region, conditioning its development path (SVAMPA, 2012a, p. 473; p. 18). Social diversity is also a major aspect when dealing with this subject. The American continent is home to a high percentage of indigenous peoples, both in gross and relative terms, which means the human element of this environmental-human rights equation has more weight and is more delicate (DAVIS-CASTRO, 2021, p. 3). And they hold a fragile place in the social, political, economic organisation and balance of power of their countries to date, given that western modernity and capitalism have been oppressing them and expropriating their ancestral lands. Therefore, all these features have been conditioning Latin America and Caribbean comprehensions regarding human rights.

From the 1970s on (see section 2), international human rights courts, national legal orders, lawmakers, and legal scholars have been paying greater and more systematic attention to the question of the relation between environment and human rights (BOYD, 2011; BOYLE, 2007; SHELTON, 1991). Only recently the focus has been turned to how nature itself is framed in this debate, and humanity in relation to it, as opposed to the traditional reverse relation (ROMÁN; KAM; GONZÁLEZ, 2019, p. 26). Hence, to contribute to this debate, this article aims to analyse what is the construction/understanding of this relation in the recent case law on environmental rights of the Inter-American Court of Human Rights (IACHR). The question we seek to answer in this article is: Do the links between environment and human rights in the IACHR case-law derive from western dominant views of nature or re-emerging thoughts coming from the margins, such as Andean traditional views?

The west sees nature as an object to which humanity (separated, autonomous subject) can exercise power, both intellectually and concretely (ARAÓZ, 2010, p. 43). As regards the first, the west grounds its environmental comprehensions in Jewish-Christian tradition of thought, later developed into its modern form by philosophers of the Enlightenment such as Descartes, Bacon and Kant. As concerns the second, we can see this perspective towards nature in western colonial and capitalist hegemonic understandings. It is opportune to expose that capitalist modernity, as well as its colonialist facet, are ‘historical aberrations’, a deformation of the aforementioned western traditional thought, which did not have such an exploitative character towards nature and other peoples (POESCHE, 2020, p. 241). Differently, indigenous worldviews regard nature as a part of themselves. Hence, nature is an important element to their physical well-being, as well as spiritual, psychological, and social integrity. Consequently, nature’s degradation threatens their existence in all these dimensions (BORDENAVE, 2011, p. 199-202; FERIA-TINTA; MILNES, 2016, p. 73). Thus, it is between these two epistemological perimeters/universes that we will try to locate the underlying notions on the nature-human

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5 Alongside this legal debate, another interesting discussion that arose from these processes is about the ‘right to development’, very much in vogue in the late 1990s and early 2000s. The concept summarises the need for the underdeveloped/developing countries to untap their economic potential and support social development, the possibility to do so by the hand of its natural resources. This is, however, in contradiction to nature’s protection and conservation, which is a condition to development.

6 Interestingly, Poesch (2020, p. 241) argues that capitalist modernity, as well as its colonialist face, is ‘a historical aberration’, a deformation of the aforementioned Western traditional thought, which, according to him, did not have such an exploitative character towards nature and other peoples.
rights link of the IACHR case-law on environmental rights, detecting, for instance, its premises in relevant sentences.

Decolonial studies of the Modernity/Coloniality group are the main theoretical bases for accomplishing this task. This thought criticises hegemonic perspectives and unveils how they have historically aimed for universality and completeness, while silencing other cosmovisions. So, supported by these studies, we aim at carrying out an ‘ecology of knowledge’ (SANTOS, 2014), which means the establishment of a horizontal dialogue between Western hegemonic thoughts and oppressed and ‘silenced’ worldviews, recognising the plurality of knowledge existing in the world, and seeking to emancipate and enrich our perspectives. On the concrete subjects we here explore, non-Western views can help humanity to rebuild an important relationship that connects human belonging, physical, and spiritual existence in, alongside, and through nature (SILVA, 2019, p. 49). The logic of the Buen Vivir, as well as other logics of peoples from the margins, embodies an “alternative” based on subaltern knowledge for overcoming humanity’s predatory relations towards the environment.

Indigenous perspectives point to another relation between the natural and the human, since they help us to understand that the human experience is guided by a communitarian biocentric conjuncture. Then, environmentalism, conservatism, and protectionism should be guided not by agendas of dominant states and universalising perspectives, but by a search to promote the participation of traditional communities and peoples. With their knowledge, they can contribute to the perception and existence of humankind towards/with nature out of the political-economic progressivism that only contributes to increased inequalities between the Global North and South. In other words, including other worldviews can contribute to building more respectful and balanced relationships between nature and humanity (MANTELLI; ALMEIDA, 2019, p. 5). We hence aim to contribute to complexifying our understanding of the ‘colonial matrix of power’, which, according to decolonial theories, is a complex structure that interconnects different levels of control, such as economic, authority, nature, gender, sexuality, and subjectivity (MIGNOLO, 2008, p. 290).

The ‘decolonial turn’ is as an intellectual/political turn in Latin America, which considers that the knowledge and experience of the historically oppressed subjects by colonisation are ‘highly relevant to understanding modern forms of power and to providing alternatives to them’. Then, this alternative perspective helps to re-emerge an ‘indefinite number of contested strategies and forms that pose a radical shift in current hegemonic forms of power, being and knowing’ (MALDONADO-TORRES, 2008, p. 66). One concrete example of that in the legal field is in the region’s recent constitutions. Notably, the 2007 Ecuadorian Constitution and the 2008 Bolivian one have reflected the traditional Andean views, giving constitutional protection to nature on its own terms, subject of rights on its own right, beyond whatever value human society can give to it, allowing communities to reject projects that allow for or cause nature’s destruction, even if no specific human victim is identified (MÉDICI, 2010a, p. 5; 2010b; ROMÁN; KAM; GONZÁLEZ, 2019, p. 27-28). We hypothesise that the IACHR has already begun to decolonize its notions and to put thoughts from the margins to base its decisions.

There remains a long way to go for this decolonization to be more solid and deeply developed. The IACHR is well-known for its evolutive interpretation of rights, as opposed to static or originalist ones. The evolutive interpretation allows the Court to protect the rights of social groups that had not been considered at the time when drafting the norms within each country subject to the Court’s jurisdiction, and of its own norms, and interpret the latter not according to what they were originally intended to mean but also in the light of recent
developments of regional and international law, contexts, and understandings, especially in the field of International Human Rights Law (MORENO-CISNEROS, 2013; SHELTON, 2010, p. 115). Then, the IACHR is an organism that has a certain permeability to these factors, as has been proven by its rulings regarding children, women, and other minority's rights based on the concept of intersectionality (BERNAL, 2015, p. 270). But deep structural transformations in power, knowledge and legal instruments take time. Here, we must consider the resistance of neoliberal corporations and investments which can often politically and legally carry out their projects, based on a predatory notion of nature and disrespecting the human rights of marginalised peoples.

To carry out this analysis, first we briefly set a historical panorama of the main landmarks of the evolution of environmental rights philosophy and its links to human rights. Internationally and turning to the specific context of the Inter-American region. Then, we turn to the primary object of analysis, which is analysing IACHR’s selected case law on the matter and discussing what each and the ensemble of the relevant sentences and advisory opinions on the matter tell us both about the Court’s understanding of nature and the links between environmental and human rights.

2 EVOLUTION OF THE RELATIONSHIP BETWEEN ENVIRONMENTAL AND HUMAN RIGHTS IN THE INTERNATIONAL AND INTER-AMERICAN LAW

When drawing a solid dividing line between man and animals, the main purpose of the early modern period’s intellectuals was to justify hunting, domestication, the habit of eating meat, vivisection (which had become a current scientific practice in the late century) and the systematic extermination of harmful or predatory animals. But such a strong insistence on distinguishing the human from the animal also had important consequences for relations between men. Indeed, if the essence of humanity was defined as comprising some specific quality, then any man who did not show such a quality would be subhuman or semi-animal. (THOMAS, 2010, p. 49)

The link between environment and human rights was an indispensable premise during the Stockholm Declaration and Plan of Action of 1972, issued from the first international conference called for by the United Nations specifically on environmental affairs, or, as is described in its title 'on the Human Environment'. The introduction of such a declaration already points to the above-mentioned Western view of nature:

Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social, and spiritual growth. [...] Both aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights - even the right to life itself (UN, 1972, emphasis added).

Next, principle 1 of this declaration draws the environment-human rights link:

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7 It is interesting to note how the anthropocentric view of nature, present throughout the document released after the conference, can be seen in its very title. A possible underlying message to be understood is that the environment is the focus of the debate, insofar as and only because it is a human surrounding and life scenario.
Man has the fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations (UN, 1972, emphasis added).

Despite the absence of an explicit reference to a right to a safe environment, which would come later, it is possible to understand that a healthy environment was considered a basic condition for fully enjoying political, civil, and economic rights then recognised. In other words, preserving the environment was an important instrument to guarantee the effective enjoyment of human rights (SHELTON, 2010, p. 111). After this important milestone, many United Nations (UN) Member States have passed laws based on this view, which guarantee the human right to an environment that is ‘safe’, ‘clean’ or ‘healthy’ and hence allows for the fulfillment of human needs (SHELTON, 2010, p. 112). The next important landmark on this question is the different approach proposed by the Declaration of Rio, issued from the Conference of Rio de Janeiro on Environment and Development of 1992, or the Earth Summit, which establishes a link between Human and Environment rights through procedural law. The instrumentalist perspective gains a new dimension, as it considers that the full exercise of certain human rights is fundamental to reach the goal of protecting the environment, which is, in its turn, a means to the final aim, as aforesaid, of guaranteeing human rights and needs.

Principle 1
Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

Principle 10
Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided (UN, 1992, emphasis added).

It is interesting to note how a capitalist language of production and management is present. Human beings have a right to have the conditions to lead a ‘healthy and productive’ life, not a ‘healthy and happy’ or ‘fulfilling’ one. In their turn, environmental issues are ‘handled’, like an affair, business deal, problem - not administered as a public good. This wording seems to be no accident and can reveal the wider context at the time. The 1970s, 1980s and 1990s saw a transition in central capitalist/early industrialised countries, such as the United States, and in regions highly dependent on them, such as Latin America and the Caribbean. These countries underwent a shift from industrial to financial capitalism, partly because of a scenario of depletion of resources from developed nations. Namely, the North American oil production peak. Then, a discourse emerged on the need to administer, maximise, and plan the use of natural resources for guaranteeing future generations the same possibilities that we have (to produce and consume). This construction has as its most well-defined, synthetic, and widely known form the expression ‘sustainable development’.

The sustainable development concept was first launched in 1987 in the famous Brundtland Report on the environment-development nexus and has been guiding international
law, politics, and governance on the environment ever since (ESCOBAR, 1995, p. 93). We trust this concept express elements of the western neoliberal hegemonic thought, notably when it claims that all environmental exploitation compromises the subsistence of future generations, so we should support a ‘rational’ use of natural resources. But this rationality serves the most powerful, those who are in the producing/consuming end of capitalism, and un-serves the most fragile, those who are in the supplying end of it – having its human and natural resources exploited. This logic legitimises the supposedly more developed countries to ‘teach’ ‘developing’ countries and populations how to act; generalises western particular concerns; universalises the equal responsibility of protecting the environment, even though modernity/coloniality from the global North is greatly responsible for its destruction; hides the capitalist structure that was designed in their favour and detriment of other peoples and states worldwide (GOMES; SILVA; CARMO, 2020, p. 27). Since 1992, many other legal and political instruments, at national and international levels, have come to light, in a trend of increasing specialisation of the subtopics within the realm of environment and a greater, more visible link between it and human rights. Despite their many developments, they remain related to the two faces of the instrumentalist, sustainable paradigm of nature and human rights discussed above.

The conceptions that guide treaties, agreements and conventions forged ever since are, on the one hand, that nature conservation is an instrument, an underlying condition to fulfil human rights, and, on the other, that such conservation is best achieved through the exercise of a specific human right: well managed public information and participation. Hence, and given the limited scope of this paper, we will not discuss other legal and political instruments at the global level that relate to human and environmental rights in detail here. Concerning the relation between environment and human rights in the Inter-American context:

Despite the absence of reference to the environment in almost all inter-American normative instruments, the inter-American commission and court have constructed a wide range of state obligations aimed at maintaining a degree of quality in the environment that allows for the enjoyment of the rights guaranteed. OAS bodies have also joined the global insistence on procedural rights to information, public participation, and access to justice (SHELTON, 2010, p. 113).

Thus, it is not on conventions, declarations, and protocols, but rather on case law, OAS resolutions, and related documents that the principal contribution/instruments/obligations of environmental protections connect with human rights in the IACHR. Hence, it is only with articles 11 and 17 of the Additional Protocol to the 1988 American Convention on Economic, Social and Cultural Rights, ‘the Protocol of San Salvador’, that there is the first mention of the ‘right to live a healthy environment’ and the duty of the Parties to promote ‘the protection, preservation and improvement of the environment’. Other than that, in the lines of the UN and its organisations, the OAS and the Inter-American Human Rights system have developed many specific conventions, such as on Indigenous Peoples Rights, Biodiversity and so forth. These have prescribed rights that are in close relation to the conservation of nature, regulation and management of land, contamination-related issues, sanctions on offenders, assurance of the right to take part in decisions, and so on. States have also developed their own mechanisms in

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8 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 decolonisation of the African and Asian countries in the 1950s and 1960 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.
their respective legal orders on these issues (SHELTON, 2010, p. 115). We can even complexify this multi-level protective legal framework.

Apart from national and regional legal mechanisms, there is also supranational law which is outside of the organisation but applies to the continent. The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (2021), more widely known as the Escazu Agreement, is an important example of supranational law. Twenty-four Latin America and Caribbean countries signed it on the rights of access to information about the environment, public participation in environmental decision-making, environmental justice, and a healthy and sustainable environment. The agreement binds more explicitly environment and human rights and assures the human right for communities and individuals to take part in all processes and get justice for environmental crimes (FERIA-TINTA; MILNES, 2016, p. 69). All these features display the novelty of this approach.

Even if focused on procedural law and human conduct, environment and human rights are no longer marginally but centrally linked. Then, it does not require a human identifiable victim/damage for the offender to be punished. State parties contract the obligation to prevent environmental damage, to any extent, even if there is no proof that this might directly or indirectly affect any person or people and endanger their human rights. This powerfully deepens and confirms the trend in constitutional and international law to recognise nature’s legal personality, as a bearer and subject of rights in its own interest (FERIA-TINTA; MILNES, 2016, p. 69).

3 ENVIRONMENTAL RIGHTS IN THE CASE-LAW OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

We were, for a long time, lulled by the story that we are human. In the meantime (...) we have alienated ourselves from this organism of which we are a part, the Earth, and we have come to think that it is one thing, and we are another: the Earth and humanity. I do not understand where there is anything other than nature. Everything is nature. The cosmos is nature. All I can think of is nature. (...) The idea of us humans detaching ourselves from the earth, living in a civilising abstraction, is absurd. It suppresses diversity, it denies the plurality of forms of life, existence, and habits. Offers the same menu, the same costume and, if possible, the same language for everyone (KRENAK, 2019, our translation).9

The IACHR has related restrictive case law on the right to a healthy environment, primarily receiving cases in which the analysis of the environment is mixed to and under the focus of property rights, on the one hand, and issues involving ancestral lands of indigenous peoples, on the other (SILVA, 2019, p. 16). Until 2014, of the 286 cases tried by the IACHR, only four dealt with environmental issues, and analysed in a reflex and without commitment to accountability for violations: displaced Afrodescendant Communities of the Cacarica River Basin v.

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9 Fomos, durante muito tempo, embalados com a história de que somos a humanidade. Enquanto isso (...) fomos nos alienando desse organismo de que somos parte, a Terra, e passamos a pensar que ele é uma coisa e nós, outra: a Terra e a humanidade. Eu não percebo onde tem alguma coisa que não seja natureza. Tudo é natureza. O cosmos é natureza. Tudo em que eu consigo pensar é natureza. (...) A ideia de nós, os humanos, nos descolarmos da terra, vivendo numa abstração civilizatória, é absurda. Ela suprime a diversidade, nega a pluralidade das formas de vida, de existência e de hábitos. Oferece o mesmo cardápio, o mesmo figurino e, se possível, a mesma língua para todo mundo.
The case-law booklet of the IACHR itself (2021) only adds two more to this list, both of 2015, *Garifuna Triunfo de la Cruz Community and its members v. Honduras* (*Garifuna Triunfo de la Cruz Community and its members v. Honduras, 2015*), and *Kaliña Peoples v. Suriname* (*Kaliña Peoples v. Suriname, 2015*). This rather short list of case-law can give us an idea of the marginal place environmental rights has had in the Inter-American Human Rights System. However, the IACHR Advisory Opinion 23/2017 on the environment and human rights can support our pretensions to this article. Although without binding, final and enforceable effects, it is a ‘high profile international judicial ruling that acknowledges legal consequences for environmental harm’ (FERIA-TINTA; MILNES, 2016, p. 64). It is also recognised as a register of the Court’s understandings on an issue, which can be applied when a contentious case is submitted (ABELLO-GALVIS; AREVALO-ROMERO, 2019).

The IACHR interpreted for many years that healthy environment issues reflected private property and conflicting interests of the population within a state. Starting from the evolution of the case-law of the IACHR on property rights, it is worth considering the case of *Yakye Axa v. Paraguay* (*The Yakye Axa Indigenous Community v. Paraguay, 2005*). Besides the liberal matrix of land use, usufruct and ownership, the sentence conveyed a new meaning in relation to land not directly linked to pecuniary purposes, but rather to ancestry. This reference sets the tone of cultural and intergenerational identities of indigenous peoples, thus reflecting the IACHR evolutionary interpretation of human rights. In the same sense, in *Sawhoyamaxa v. Paraguay* (*Sawhoyamaxa v. Paraguay 2006*), the Court stressed that there is a close link between the environment-natural resources and indigenous peoples, not only as a means of subsistence but also elements of culture, religiosity, and cultural identity (MAZZUOLI, 2019, p. 501). The central idea analysed by the IACHR is the existence of integration between indigenous peoples and the lands inhabited by them, generating a particular cultural identity that must be preserved.

From a dogmatic point of view, the recognition of a non-liberal-based property rights represent an important decolonising step. The enrichment of the notions of human rights by non-western comprehensions can explain this advance, thus partially overcoming the historical invisibility of peoples of Latin America and the Caribbean. The IACHR presently recognises indigenous communities regardless of state formalities (AMORIM; TAJRA, 2020). Hence, it prevents the lack of recognition of legal personality from being a hindrance to the protection and support of indigenous rights, as in cases of violation of traditionally occupied lands and state negligence in the duty of territorial demarcation. So, when dealing with property, the IACHR seems to exercise an ‘ecology of knowledge’, as it has been applying indigenous notions to judge cases on which their land was in dispute. Western liberal lens would mean disregarding the specificity of their reality. The interpretative layer given by the IACHR is mainly due to the corpus juris used by it to include concepts introduced in the International Labour Organisation (ILO) 169 Convention (1989), the main normative instrument aimed at giving relevance to indigenous rights, including prior consultation on issues of interest and land exploitation.

The Court seems to be also following the recent decolonial turn in the region, are the postulates present in the sentence *Kichwa Indigenous People of Sarayku v. Ecuador* (*Kichwa
Indigenous People of Sarayku v Ecuador, 2012) and the Garifuna Triunfo de la Cruz Community and its members v. Honduras (Garifuna Triunfo de la Cruz Community and its members v. Honduras, 2015). There, the Court insisted on the obligation to carry out environmental impact assessments, established on the art.7.3 of the ILO 169 Convention, before any concession of permit to develop a project in indigenous land (IACHR, 2021, p. 138). The IACHR goes a step further, however, stating that these studies must assess not only potential environmental impacts but also their social, cultural, and spiritual incidence on the affected indigenous peoples. Thus, the respect of their traditions and existence in all these dimensions, connected to the lands, can determine whether a permit to invest, build, develop a project within their communal territory will be given. And the non-respect of these preliminary steps violates human (and) environmental rights (IACHR, 2021, p. 138).

The positive potential capitalist effects of investment, infrastructure, the extractive project in indigenous peoples’ territories does not pass over or overshadow, in the eyes of the Court, the importance of indigenous’ adequate enjoyment of their land, in a biological dimension, as well as in a sociocultural and spiritual one. This reveals a decolonial reading of the IACHR, as it does not relativise the lives and rights of marginalised peoples, as protected in its integrity according to their values and worldviews, in favour of a development project supposedly (in a neoliberal capitalist perspective) positive to them. On the other hand, what seems to express a very colonial/hegemonic thought on nature and environment is another part of the justification for the aforementioned protection of indigenous lands in face of capitalist exploitation: it is said that ‘they [indigenous peoples] can perform a relevant role in the conservation of nature, given that certain traditional uses imply sustainable practices, and are considered fundamental for the effectiveness of the conservation strategies’ (IACHR, 2021, p. 139).

We can infer that the indigenous’ existence itself seems to be considered a tool for the conservation of our environment, considered in the capitalist lens of an object of usufruct. Their utilization of their lands; thus, is protected in its integrity, in an interdisciplinary, multidimensional and participatory approach, because their traditional practices and cultures are ‘compatible with the demands of the conservation or sustainable use of nature’ (IACHR, 2021, p. 139). In Advisory Opinion 23/2017, the IACHR linked environmental protection to the human rights system, recognising the interdependence and indivisibility between them, and the right to a healthy environment as an autonomous right. So, its violation does not need to produce individualised and clearly identifiable human victims to be defined. By so doing, the IACHR sought to point out the obligation of states to contain damages to the environment, which has been considered more than a contextual space in which human rights should be effective and progressively protected (TAVARES; STIVAL; SILVA, 2020, p. 251).

It also made clear that any individual or community, directly affected or not by an environmental intervention, may come to Court if it identifies that the environment is threatened or has been damaged. Therefore, the environment is delineated here as a subject of substantial rights itself, which can be said to reflect the native Andean line of thought already present in the 2007 Ecuador’s and 2008 Bolivia’s constitutions. This advisory opinion presented as well a landmark when it comes to cross-border claims and transnational environmental impacts, the so-called ‘diagonal human rights’ (FERIA-TINTA; MILNES, 2016, p. 73). It clarified that the obligation to prevent damages (based on the principles of precaution and of due diligence) as well as any accountability necessary for damages caused, can be invoked by any person or people against states other than their own, or other than where they
live. Thus, states can be accounted for not preventing, for allowing (third parties to commit) or committing themselves environmental crimes that occur outside their own borders (FERIA-TINTA; MILNES, 2016, p. 75).

It seems remarkable that this advisory opinion considers the causal nexus between an act/omission, in their territory, and its environmental impact (even without direct proven or foreseeable human victims), wherever it might happen, more important to determine responsibility than the limits of any state’s borders. This can be said to be breaking with the colonial matrix of power, as national borders have been the basis of the international order founded on Westphalian-liberal-western principles. States’ borders have often been used by states to escape responsibility for human rights violations they committed, or allowed businesses based on their territory to commit, against other states’ citizens (whose lives, often, are worth much less in their eyes, when it comes to colonised states of the Global South/periphery).

It is also notable to compare this conception established in the Advisory Opinion 23/2017 to a much earlier sentence on environmental rights, Salvador Chiriboga vs. Ecuador (2008), where a ‘legitimate or general interest’, or a ‘cause of public utility’ was needed to establish a correct expropriation of property to preserve an ecological park (IACHR, 2021, p. 137). If we look further back in time, the contrast is still starker with the declaration of the Inter-American Commission of Human Rights, in 2004, that a petition by a Panamanian citizen concerning the Natural Metropolitan Park – which had arguably violated all Panamanians’ rights since it had been built on a protected natural reserve – was not admissible because it did not individualize concrete and precise victims and was too broad (SHELTON, 2010, p. 126). This represents well the modern-liberal paradigms – focused on the individual, the human-centric conception of gains and losses, rights, and damages, that the Inter-American System of Human Rights is gradually overcoming when it comes to environmental rights. A decolonizing leap seems to be thus identified in the system’s legal views regarding nature and environmental rights. However, the IACHR pointing out the obligation of states to share justly and equitably the protection to natural resources, even beyond their boundaries and jurisdictions, shows that the focus of this advisory opinion is the management of natural resources (MAZZUOLI, 2019, p. 778). Thus, despite its formerly discussed advances that break with this logic, a little shadow of modern/colonising, capitalist thought may be said to taint this advisory opinion, in that nature is again perceived as an instrument, an object.

On another matter, primordially based on the jurisprudence Spoltore v. Argentina (Spoltore v. Argentina, 2020), The IACHR recognised the existence of implicit and autonomous protection of the work environment based on the conditions and labour law itself. Thus, the work environment considered the health of workers and the right to be compensated for damages to them as part of an artificial environment with protection in the IACHR (2021, p. 29). Such reasoning leads the IACHR to expand the boundaries of dogmatics through the hermeneutics of a complex and dialogical environment as a step forward for breaking the dominant thought in the matter. Although the case broadened the understanding of the environment, it did not contribute to the dissociation of capitalist exploitation when qualifying the environment. In addition, the judges related the environment to issues involving monetisation of impacts on worker lives and the centrality of a human environment that should minimise the deleterious effects of capital. Then, the epistemological foundations of the Court’s analyses seem to be influenced by Western views of nature and its contextual and instrumental relation to humankind.
The application of a biocoloniality of power as coloniality of nature, integrating the agenda of the current model of eco-capitalism, sees the environment as another instrument for the use of capital (CAJIGAS-ROTUNDO, 2007, p. 187). As initially discussed in this paper (section 2), this is framed within the discourse of sustainable development and a uniform matrix of thought on nature that allows for ‘globalised’ policies that promote homogeneity in the Global North/South relation to nature, based on a conception of scarcity and, resource exploitation. The contemplation of the environment in the case law in the IACHR has mainly focused so far on narratives of reflex protection, problems experienced by indigenous communities, and community property of ancestral lands (TAVARES; STIVAL; SILVA, 2020, p. 258). This seems to show not an interference of the Court on the subject, but rather a selectivity of reading that generates a lack of cases examined on the environmental topic itself. We assume such an absence is due to the lack of information or guidance to victims about the possibility of the accountability of states on environmental matters other than those related to land/its violation and consequently of their material, spiritual, and identity existence.

The IACHR is admittedly experiencing an evolutionary moment of expansion of economic, social, and environmental rights that began in the Case of Lagos Del Campo v. Peru (NASCIMENTO; CORREA; FERREIRA, 2020, p. 18), notably rooted in the possibility of a progressivity of rights. However, the IACHR maintains dogmatic discussions that focus on the minimisation of damages, punitiveness of states that violate the environment, and anthropocentric perspectives on the rights of people humans as a purpose of protection. Thus far, the IACHR has mainly accepted to analyse cases of violation of the right to the environment, primarily in the perspective of conflict of interests between subordinated peoples and modern-capitalist elites, or between third parties and the State itself and about land. By so doing, it ends up summarising the dogmatics of the environment to the logic of scarcity and the existence of exploitable natural resources, which epistemologically removes any immanent character to nature that is not Western, modern-capitalist (SILVA, 2019, p. 5).

4 CONCLUSION

This article has sought to analyse and identify the underlying epistemological foundations/influences of the case-law of the IACHR on human and environmental rights and its framing of nature. We have seen that, initially, considerations about the environment were made in the context of international law and the gradual standardisation of environmental protection umbilically linked to human rights. However, as opposed to the centrality of humans and human rights, the place of the environment in the discussion remained marginal, restricted to, in procedural aspects - the dissemination of information, popular participation in environmental agendas, the right to be informed and consulted about potentially damaging projects – as well as substantive ones – among others, the search for a healthy and sustainable environment.

With the change of contexts and influenced by the decolonial turn, the case-law of the IACHR started to reflect that the protection of the environment is an integral part of the cultural identity of indigenous peoples, under the umbrella of a right of communities and ancestral property. Furthermore, the court has gradually recognised nature as a legal interest and subject of rights in itself, even in contexts of transnational disputes, and the absence of human victims. However, it seems reasonable to say that these perspectives coexist paradoxically with others that are their opposite, considering indigenous as a tool for sustainable development, that compensations for violation of work environment are to be exclusively pecuniary, and that
nature is primarily a resource to be protected. The panorama on the IACHR case law on environmental and human rights are, therefore, one of lights and shadows. In some respects, it seems to perform a reproduction of Western views, anchored in the usefulness of nature to achieve capitalist purposes, in the centrality of the human, the money, resources. In other aspects, it reflects epistemological dialogues with other worldviews, notably those from indigenous peoples.

Therefore, it is possible to suggest that the sentences of the Court still miss/sub-utilise the evolution of the IACHR itself that has taken into account the history of Latin America and the Caribbean, for instance, regarding the structural violence affecting a great part of peoples within the region and autochthones perspectives. Thus, these peoples and their defendants, among which the Court, must act on the new/re-emerging foundations of thought and practice that pave the so-called Latin American ius commune and the multilevel dialogue between states and the Inter-American Court. This shall strengthen Latin American peoples’ future and efforts to diminish inequalities and violence within the region (PIOVESAN, 2017, p. 28). We argue that there is a need for a fluid dialogue between decolonial studies and Latin American and Caribbean concepts of human rights. The present-day international case law of the IACHR is still to a certain extent universalising modernity, thus reinforcing capitalist structures of domination that now are also more visibly staged on the environment (MANTELLI; SANCHEZ-BADIN, 2018, p. 10). On the other hand, the Court has started, and should expand and deepen; its decolonial turn, since decoloniality thought shows the human is a member of nature, who should build integration practices and not necessarily withdraw resources for capital exploitation (SILVA, 2019, p. 2-5).

The case-law of the IACHR, although in frank evolution, including rights previously neglected by international instruments and exempted from state responsibility, must dialogue with alternative Latin American Constitutionalism to pave a commune ius compatible with the continental reality. The Court should, therefore, repel an imported universalizing dogmatic that contributes neither to removing colonising invisibilities nor capitalist domination over nature and humanity in the region. By so doing, the IACHR can expand the limits imposed thus far to the link between human and environmental rights by the hegemonic dismissal and sub-use of non-western ancestry knowledge, as well as reinforce interculturality in the epistemological foundations of so-called universal human rights. There are other pathways for research to contribute to the achievement of this advancement – or to examine whether the IACHR has been doing so more recently or in other areas. One obvious one is to qualitatively better the overview here made on the subject, examining one or two core sentences of the Court more in-depth, instead of a handful of sentences, as we have here done. The objective of this article was an overall panorama of the state of play, and as it has thus not gone into the details of each sentence, which could be very enlightening.

Another interesting project would be to look beyond the sentences that deal with ancestral indigenous land and property rights. It could open other horizons to examine sentences involving business and human rights, on fronts other than development, infrastructure, extractive projects. In addition, it may be important to see if there are, even if marginally, readings of the Court on environmental and human rights, and how (de)colonial they are, on sentences involving other concrete environmental topics such as pollution and contamination with toxic products, social conflict or wars, environmental refugees, agricultural and livestock activities. Finally, one potentially illuminating way to examine case-law on nature and environment is to analyse the sentences of the IACHR in the light of those of other
supranational courts, such as the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea, the European Court of Human Rights, and the African Court on Human Rights and Peoples. This comparative analysis could potentially show i) cross-fertilization between them on some issues, ii) potential ways forward coming from the inspiration of other courts on some matters, iii) or conversely the which extent the Inter-American system is advancing in decolonizing its epistemologies, if compared to other tribunals.

The idea of nature and environment should be central to discussions of new/re-emerging epistemologies revisiting the bases of international law. This topic specifically helps to put into perspective the fact that the discourses and interests of the Global North and South do not coincide, and environmental protection so far proposed by most international legal instruments is not neutral within this division. It derives from the colonial matrix of knowledge and frames nature and the human-environmental nexus according to Western philosophies. Therefore, it favours the fulfilment of the colonial elites’ (Global North) objectives of capitalist exploitation and enrichment. As advocated during the text, decolonial studies and the recognition of the importance of marginalised knowledge on the subject have the power to critically expand the concept of environment used by the IACHR. Hence, the process of constitution of case law does not need to be restricted to the punishment of damages and popular participation in the projects of extraction of natural resources. Rather, it can also consider that, as illustrated in the lyric words of Jose Manuel Arguedas that open this text, for many peoples of Latin America and the Caribbean, nature represents the existence, the spirit/kin/ensemble of the universe without which there is no life.

The modern capitalist western logic sees nature as yet another element of integration into global capitalism. Differently, we should re-signify realities that cannot be shared or read-only through the eyes of sovereign states or international organisations, which reproduce structures of power and ‘subalternity’. The ecology of knowledge - or the exercise of a horizontal dialogue between the hegemonic Western epistemology and the historically silenced, marginalised re-emerging ones - seems to be a fruitful way forward. The IACHR can be said to have been practising it - to a certain extent, but there is still a long way forward.

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