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Proceduralising indigenous peoples' demands: Indigenous environmental rights and legal pluralism in contemporary jurisprudence

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ABSTRACT

Biodiversity, climate change and environmental protection are commonly associated with indigenous peoples' customs and holistic cosmovisions. This paper strives to uncover the legal rationale thereof, notably by identifying the procedural dimension underlying "indigenous environmental rights", and the importance of collective and intergenerational rights in channelling indigenous environmental rights into dominant legal orders while facilitating the exercise of these rights. Grounded in Latin American jurisprudence, we understand environmental claims from the perspective of indigenous peoples' rights, that is, their articulations in existing State law as well as the pertinence of legal pluralism as a transformative approach including its decolonising functions. It is examined to what extent such rights undergo processes of positivization or codification amidst the wide scenery of legal pluralist orders. Given their scarce procedural foundations, the main contribution lies with approaching indigenous environmental rights theoretically, exploring the possibilities for procedures in International Human Rights Law to be applied to them, including questions of representation, translation in a wider sense, or autonomies. Alongside classical procedural principles of human environmental law – information, participation, access to justice – indigenous environmental rights are related to concepts of guardianship, parental responsibility and best interest as these have been developed in relation to the rights of the child, or questions of autonomy and representation being derived from the framework governing persons with disabilities. In that sense, indigenous environmental rights find themselves (re-)imagined, including debates on vindicating these, their qualities and attributes as well as reflections on different procedural routes available.

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1. Introduction

The paper understands indigenous environmental rights as integral parts of specialised legal orders such as ILO C169 (*ILO Convention No. 169 on indigenous and tribal peoples*), UNDRIPS (*UN Declaration on the Rights of Indigenous Peoples*), or regional frameworks, including the 2016 *American Declaration on the Rights of Indigenous Peoples* (AG/RES. 2888) and the 2018 *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement)*. Indeed, Latin America occupies a frontrunner position in the field of both indigenous rights and the rights of nature, both at constitutional level and in view of the Latin American *Jus Commune*. Notably, the Inter-American Court of Human Rights (henceforth IACtHR or "the Court") has been placing emphasis on procedural participatory rights, emblematic being its proclaiming of prior consultation as a general principle of international law in the *Sarayaku vs. Ecuador*[1] decision. In that sense, indigenous environmental rights are being claimable by indigenous peoples procedurally speaking, they operate as facilitators to enforce claims on behalf of non-human species, they become articulated through broader collective and intergenerational rights, or as manifestations of legal pluralism. In that sense, we regard indigenous environmental rights as a *sui generis* matter, rather than placing the former under the broad umbrella of biodiversity regimes, environmental law or, alternatively, to find accommodation under dualistic frames. These dualistic manifestations become apparent in the anthropocentric vs.(?) eco-centric divide predominant in current thinking.

Inter-American jurisprudence as the most influential regional framework on the matter reveals a somewhat passive attitude towards embracing indigenous environmental rights in their own regard. Firstly, the latter come to the fore in the form of "derivative rights", mostly concerning the right to life which shall be understood as to secure environmental violations relating to the right to a healthy life (Leib 2011)[2] or framed as an environmental right as such, demanding for instance "minimal disturbance of ecological balance"[3]. Problems inherent to such derivations concern legal thresholds that qualify respective rights: commonly, for the right to environment to be qualified as such, violations need to be considered life-threatening (Leib 2011). Secondly and relatedly, indigenous environmental rights fall under "socio-environmental impacts", generally regarded as a subsidiary issue to be dealt with:[4] the environmental dimension of indigenous rights, it is argued, arises "in the interplay between the rights of indigenous peoples and the projects implemented at national level that may affect both indigenous livelihood and the environment in which they live" (Cittadino 2019, 32-33)[5]. More progressive judicial moves may be attributed to the rights holders themselves. Indigenous representatives have become key actors, as catalysers in relation to the development of rights, hence meriting our special attention as holders and defenders of collective rights. Based on their special (spiritual) relationship with nature and related dependencies as to basic subsistence goods, indigenous peoples assume an important role in the development of the right to a healthy environment.

Notably, progressive developments may be noted in Inter-American jurisprudence, departing from mere "environmental impacts" (*Saramaka People vs. Suriname*)[6] to

result in a new legal conceptualisation. Notably, a "human right to a healthy environment" has become recognised, and in turn positivised, deriving from the "integral development of their peoples" (*Lhaka Honhat Association vs. Argentina*)[7]. In fact, the right to a healthy environment has come to be understood as a fundamental and autonomous right, protecting "components of environment as legal interests in themselves, even in the absence of the certainty or evidence of a risk of individuals" as proclaimed by the IACtHR in its *Advisory Opinion 23/17*. In that sense, developments in the Inter-American *Jus Commune* and relevant constitutional achievements (Ecuador, Colombia, Guatemala principally) have served as main judicial sources to draw from in the debates on substantive, procedural and other particularities related to indigenous environmental rights. More precisely, regional jurisprudence on indigenous rights has been examined in detail given that relevant legislative developments would not reach the same level of protection. Also domestically, regionally and internationally, jurisprudence has been assuming considerable shaping potential (see. e.g. Bogdandy et al. 2017), being intertwined in the fields of indigenous rights (see e.g. Schilling-Vacaflor 2010) and the human right to a safe environment (Aguilera Bravo 2021). A final methodological emphasis was placed on international human rights law as a source of inspiration to enrich the procedural dimensions of indigenous environmental rights; in that sense, jurisprudence developed by the UN Human Rights Committee, the UN Committee on the Rights of the Child, and the UN Committee on the Rights of Persons with Disabilities served as a main basis to draw from.

In line with the above, anthropocentric/eco-centric dividing lines may indeed be overcome in practice or rendered irrelevant, following indigenous peoples' integral engagement with their (immediate) environment; indigenous (intergenerational) stewardship (Bennett and Bavikatte 2015; Winter 2022; Page 2007) may exemplify such special relation, opening, at the same time, the floor for accountability questions. Further categorisations may be found in constitutional law as it is stipulated by the Colombian Constitutional Court which differentiated between anthropocentric, bio-centric and eco-centric rights (in the T-622-16[8]; Ruiz Molleda 2021). A close reading of State law may indeed disclose strong adherence to binary opposites which are reinforced by the law. Critical voices hence view the law as anthropocentric, dualistic and positivistic, calling for (re-)orientation towards the relation(s) between its subjects (Bagni 2021). Others place emphasis on the separation of nature and people, to include patterns of dominion (Acosta 2021) or, alternatively, they underline the superior role of humans, terming such relations "ecological apartheid" resulting in violence, with indigenous peoples suffering from malnutrition as part of its larger consequences (Shiva 2021).

Indigenous environmental rights hence provide fruitful grounds for mediating between co-existing, allegedly contradictory, paradigms and claims. Illustrative may be Bolivia's *Mother Earth Law*, or accounts recognising mother earth as a subject of rights in its own regard as emerging from indigenous peoples (Acosta 2021), or so-called "earth jurisprudence" (Sajeva 2020; Solón 2017; Berry 1999) which may, however, be limited in scope, finding application in indigenous communities, most predominantly (Tumussiime 2021). Similarly, indigenous environmental rights have come to be embedded in the indigenous *Buen Vivir/Vivir Bien* paradigm(s), codifying

the spiritual relationship between indigenous peoples and the(ir) environment (Gudynas 2011; Solón 2017; Escobar 2014; Acosta 2015). In fact, *Vivir Bien/Buen Vivir* found recognition in Latin America's latest Plurinational Constitutions of Bolivia and Ecuador, hence allowing for relevant rights to be established and eventually invoked.

Yet another paradigmatic starting point may be sought among so-called biocultural rights approaches (Bennett and Bavikatte 2015; Sajeva 2018; Rodríguez Caguana and Morales Naranjo 2020). These are to be understood as "affirming the bond between indigenous, tribal and other communities with their land, together with the floral, faunal and other resources in and on the land" (Bennett and Bavikatte 2015). Such relation has been recognised elsewhere, including but not limited to the Māori obligation to improve the environment (*kaitiakitanga*) in exercising a form of intergenerational stewardship (Winter 2022; Page 2007). Despite their relevance in substance, biocultural rights have been viewed as distinct from indigenous rights:. in contrast to indigenous rights, biocultural rights do not "carry an undertone of political self-determination" and ultimately arenot "necessarily based on ethnicity, religion or minority status" (Bennett and Bavikatte 2015).

Instead, the paper strives to approach indigenous environmental rights from a procedural perspective, exploring possible ways for these rights to be articulated in the law. More explicitly, the paper pursues the objective of introducing and theorising the procedural dimension particular to indigenous environmental rights. It does so by relating to both classical procedural principles – information, participation, access to justice – and neighbouring legal constructs, namely indigenous collective rights and intergenerational rights while doing justice to indigenous perspectives, legal systems and paradigms. Its main contribution though lies with the construction of a new right, extending the somewhat scarce procedural foundations of indigenous environmental rights to borrow from international human rights regimes as these relate to pertinent questions such as representation, translation in a wide sense, or decision-making capacities. More specifically, indigenous environmental claims are related to the concepts of guardianship and parental responsibility[9] as these have been developed in relation to the rights of the child, and autonomy rights established for persons with disabilities. These rights are being re-imagined with the prospect of establishing a proper modus operandi for indigenous environmental rights and specific procedural venues to be accessed by indigenous peoples as "translators" and "defenders" of flora and fauna. Rather than viewing the matter from the perspective of legal personality (Heinämäki 2010; see also *Saramaka vs. Suriname*) and, relatedly, standing (see e.g. Jovanović 2012; Buchanan 1993), the paper focusses on both substantive and other procedural dimensions of these emerging legal categories to find materialisation. It thereby adds to the literature on collective rights, indigenous rights, human environmental rights, intergenerational rights, biocultural rights and earth jurisprudence presented earlier, yet remains far from developing any broader conclusions on any categorisation of rights or the interplay of legal regimes. Instead, the paper theorises rights in the field of indigenous environmental rights, deriving different legal amalgams and principles from international human rights law.

2. The transformative power of legal pluralism: Indigenous environmental rights as a bottom-up tool amidst a state-centric legal landscape

Indigenous environmental rights could be considered as being constitutive of a particularly emblematic claim for legal pluralism. Pachamama, *Vivir Bien/Buen Vivir*, vhuman-earth balance approaches or other cosmovisionist thinking are commonly referred to when addressing indigenous law(s) and its formalisation in dominant legal orders. This may concern pluricultural legal orders and their integration of or response to eco-centric discourses (Dancer 2021), it may also prove relevant for post-development discourse and its ecological orientation becoming apparent in plurinational frameworks (Gudynas 2011; Solón 2017; Escobar 2014; Acosta 2015; Álvarez 2020). Considering indigenous peoples' integral vision on human rights, their understanding of environmentalism too certainly does justice to the former, by bringing together a wide panoply of claims, combining violations to life, health, subsistence, integrity and dignity. Remarkably, these violations all concern rights of existential nature, revealing high levels of vulnerability and strong dependencies existing between indigenous peoples and the(ir) (immediate) environment.

Among the different forms of transformative legal pluralism, we may define indigenous environmental rights, firstly, as a manifestation of legal pluralism, technically speaking, that is, namely as a translating tool for indigenous and non-human needs to find voice under the State-centric order (section 2.2). Secondly, we may approach these rights by adopting a decolonising position, hence introducing critical legal thought into a State-centric legal landscape (section 2.1).

2.1. Indigenous environmental rights as a manifestation of transformative legal pluralism: decolonial approaches

Let us begin with the significance of decolonial thought and its transformative potential, eventually allowing for indigenous law(s) to find recognition in constitutional, regional or international legal frameworks. Indeed, legal pluralism develops a methodological function here, being described as a method to facilitate a "decolonising justice" approach (Nursoo 2018), as a way to decolonise the mind and knowledge-power relations (Nursoo 2018; Smith 1999; Watson 2018). At the same time, it may (re-)position indigenous law(s) in its interactions with State law (Santos 1987). Colonial context indeed qualifies the meaning of law in a distinct manner, often concealing while perpetuating societal asymmetries, logics of subordination –hence rendering the law a sophisticated tool of the colonial enterprise. The contemporary indigenous-State nexus necessarily demands a profound engagement with the latter. In fact, the concept of the "coloniality of power" may be illustrative in that regard: it essentially describes the continuation of colonial and imperial relations indigenous peoples in Latin America are subjected to, and its larger ramifications such as those relating to the "production, reproduction of knowledge, collective identities and subjectivities" (Gómez Isa 2018).) The "coloniality of power" thereby "(further) implies that indigenous peoples are still in a situation of vulnerability and symbolic domination through the internalization of the logics of the coloniality

of power" (Gómez Isa 2018). Similar arguments can be made about humanity's relationship with the environment (Farget 2016), reflecting a rather hierarchical positioning. Instead, it is proposed, a communitarian perspective should prevail, according to which all beings (shall) live in a spirit of community and dependence where (the exercise of) human needs should not violate the rights of others (Choquehuanca 2021).

Again, the law is referred to as a basic ingredient of such coloniality, becoming part and parcel of "this process of naturalisation of domination (in which) education and law play a remarkable role; they form a constitutive link to the coloniality of power" (Gómez Isa 2018; Walsh 2009). Law, in that sense, could be considered an instrument of the powerful (Gaventa 1980), a colonising strategy and weapon of powerful groups (Comaroff and Comaroff 2008). This reasoning may be juxtaposed with the decolonising functions exercised by some influential branches of international law (Gómez Isa 2018), UNDRIPS in particular, being understood as a "process (that) has allowed indigenous peoples to transform from mere victims to actors, and from objects of protection to subjects of rights" (Gómez Isa 2018). Relatedly, we may understand subject-holdership relationally, namely qualified by the entity or mechanism indigenous peoples are dealing with or participate in. This may range from consultative status with UN bodies to participatory roles in constitutional drafting processes. Indigenous representation and positionality may also find expression in the relation between indigenous and State law, a classical question of legal pluralism. Different scenarios may become apparent in that regard, namely by understanding indigenous law (I) as integrated into State law, such as constitutional frameworks illustrated by the Ecuadorian case; (II) as part of dedicated sporadic or ad hoc laws (see e.g. D'Andrea 2012); (III) as co-constituting a mixed sphere of mutual recognition and coexistence; and finally (IV) as complete autonomous orders including distinguished powers. Let us explore these questions of legal pluralism with the help of a few grassroots illustrations that have been dealt with by the States' judiciary.

2.2. Indigenous law and its shaping influence on state legal orders, forms of accommodation, and progressive developments in the field of environmental rights

Questions of what we may term "integrated legal pluralism" have been explored elsewhere, notably in the context of newly founded States, demonstrating openness towards indigenous institutionalities and (self-)governance, laws, languages and so forth (see e.g. Barrera 2012). While indigenous autonomies and sovereignties have been declared at (sub-)regional levels in some cases (e.g. in Bolivia), such new constitutionalities fall short of enjoying complete independence from State entities. Indeed, any systematic, integral manifestation of such recognition in a strict sense seems missing with indigenous demands not finding adequate responses in domestic constitutionalism or international law. Our focus of attention will be placed on ad-hoc attempts of judicializing legal pluralism instead, as stand-alone cases of legal pluralism or as illustrations of broader progressive

developments of the law if given a positive reading, perceptible to trends in the region.

Jurisprudential developments in Latin America prove emblematic of such processes of positivisation, especially as far as indigenous peoples' cultural, spiritual and environmental rights are concerned. Existing case-law in fact demonstrates positive attitudes towards the endorsement of new kinds of legal personality in that regard. This becomes apparent in *decision 452-2019* ruled by the Guatemalan Constitutional Court (GCC)[10] on the recognition of the particular Mayan conception of water as a sacred living being, including its *nahual* (guardian spirit). In terms of the legal grounds invoked by the applicants as a basis for unconstitutionality, it appears that the Court understands water "as a public domain [that] must evolve towards the inclusion of indigenous conceptions about water, which materialises in the expansion of the concept of water, to understand water as a symbol of life, as a living entity" (18). The Court further specifies respective obligations, calling upon Congress to take account of the fundamental nature of the right to water, a unique indigenous perception, both material and spiritual, of water, and respective international standards.

Such positioning generally resonates with regional legal developments, notably, OAS General Assembly *resolution 2349/2007* that recognises and calls upon States to respect the "ancestral use of water by urban, rural and indigenous communities in the framework of their habits and customs on water use" (art.4). Similarly, the IACtHR adopts a relational position in regard to the right to food, water and participation in cultural life: these rights, it is argued, prove particularly salient for "groups in situations of vulnerability" such as indigenous peoples since these "essentially depend economically or for their survival on environmental resources (such as those associated with) the marine environment, forested areas and river basins" (*Lhaka Honhat vs. Argentina*, para.209). The IACtHR thereby clearly adopts a stance that builds on the premise of indigenous special rights as a human rights regime on its own terms while also establishing a dedicated indigenous right, the right to a safe environment.

Resembling arguments are made by the Colombian Constitutional Court, in appreciation of the significance of the armed conflict in explaining environmental damage, especially its detrimental impacts on food security and self-sustainability of indigenous communities, eventually increasing death tolls and confinements (A004/09)[11]. In a different case, the *Chamber of Acknowledgment of the Truth, Responsibility and Determination of Facts and Conduct* of the *Special Jurisdiction for Peace* (JEP) reiterates the relevance of the conflict to indigenous peoples – and their suffering – by stating that the conflict is closely associated with and finds response in "the defense of the integral life of the territory, the rivers, the animals, the sea, the mangrove, the mountain, the sacred sites and the people" (A002-19[12] and A079-19[13], para.54). In the case of the Awá indigenous people in the Colombian context, it was maintained elsewhere that armed actors would "disharmonise the territory and seriously damage the Wat Uzan, which means living well or beautifully Awá" (Durán 2020, 4), hence impacting on practices relating to indigenous particular world views and collective identity. Indeed, the JEP identifies a wide panoply of attributes potentially interfered with when indigenous territorial integrity is being

violated: "the territory of the indigenous peoples is the origin of life, health, well-being, food, physical survival, cultural integrity, autonomy and self-determination of each of them" (A002-19 and A079-19, para.93).

Comparable to the GCC decision, the IACtHR similarly attributes essential legal qualities to the right to a healthy environment on its own accord, considering the latter

> a fundamental right for the existence of humankind (…) and an autonomous right, protecting the components of the environment such as forests, river and seas, as legal interests in themselves, even in the absence of the certainty or evidence or a risk to individuals. This means that nature must be protected, not only because of its benefits or effect for humanity, but because of its importance for the other living organisms with which we share the planet. (Advisory Opinion OC 23/17, paras.203, 62)

The IACtHR thereby assumes a non-anthropocentric position while rights remain to be vindicated by human beings, procedurally speaking.

Similar conclusions can be reached, following a close reading of recent Colombian jurisprudence which explores the wider consequences of the armed conflict for indigenous peoples and non-human beings:

> the experiences of war don't only affect the people, but its consequences are also inscribed in the view of beings that inhabit their territories and in the natural environment itself. The disappearance of charms, protective spirits or spiritual parents describes a series of effects that transcend human spheres, that is to say, they affect both the rights of people and the web of relationships in which people, places and non-human agencies participate. (A079/19, para.94)

Related arguments are made as far as land itself is concerned, being attributed a special legal status: the JEP notably maintained, by taking control of Awá territories and their environment, armed actors "directly attack the integrity and dignity of the territory and the people" (A002-19 and079-19, para.55). In a different judgement, the *Civil Cassation Chamber* of the Colombian Supreme Court went as far as declaring the Colombian Amazon "an entity, "subject of rights", holder of protection, conservation, maintenance and restoration" (STC4360-2018)[14]. The Chamber further substantiates its position, recognising the need for the Amazon to enjoy legal protection on its own terms, by stating that deforestation would "break the eco-systemic connectivity with the Andes, causing the probable extinction of or threat to the subsistence of the species inhabiting the corridor, generating 'damage to its ecological integrity'" (STC4360-2018).

On a last note, it seems worth stating that Colombian jurisprudence actively engages with indigenous conception(s) of the eco-system, its equality-driven orientation, and also demonstrates awareness of pluralism and its shaping role on Colombian constitutionalism more generally, by stating that

> it is about being aware of the interdependence of the global ecosystem – biosphere –, rather than normative categories of domination, simple exploitation or utility. This position is especially relevant in Colombian constitutionalism, taking into account the principle of cultural and ethnic pluralism that supports it, as well as the ancestral knowledge, uses and customs bequeathed by indigenous and tribal peoples. (T-622/16)[15]

Yet again, the concept of indigenous guardianship – rather than tutelage or subordination – implicitly shines through the relationship established between humans and nature here. Indigenous particular customs and ancestral knowledge are considered guiding principles in that regard, introducing pluralism(s) into the somewhat statically homogenised architecture of the State. Indeed, it has been maintained elsewhere, recognising indigenous knowledge (systems) would eventually result in some form of "epistemological parity", calling for a "cognitive opening of the first world" (Bautista 2021).

3. Collective rights as facilitators of indigenous environmental and corollary rights

When concerning ourselves with the development of international human rights law, we find ourselves confronted with standards that prioritise individual rights, both in substance and also procedurally speaking, that is, rights to be claimed following specific procedures. As a response, theorists have come to embrace the concept of "group differentiation" (Kymlicka 1996; Taylor 1994; Tully 2006), hence introducing a collective dimension to find articulation in constitutional frameworks and the multivariate landscapes of the law. Indeed, so-called "third generation rights" (Vasak 1977; Cornescu 2009; Tomuschat 2014) are to be considered as the latest addition to human rights law, allowing indigenous rights to be recognised as subjects of rights on their own terms (Watson 2018).

The IACtHR in particular actively associates collective rights with the individual legal tradition established by the *American Convention of Human Rights* (Pact of San José) adopted as early as 1969. Land rights stand at the forefront of such considerations, constituting, at the same time, an important nexus with environmental rights, with a specific focus on subsistence claims. In *Awas Tingni vs. Nicaragua*[16], the Court maintains "among indigenous peoples there is a communitarian tradition regarding a communal form of collective property of the land, in the sense that ownership of the land is not centred on the individual but rather on the group and its community" (para.149). This often quoted extract from the judgement could be considered emblematic for the Court's general approach towards collective rights – and evolutionary interpretation thereof – given the scarcity of provisions on collective rights – hence to be regarded as a milestone in its jurisprudence. By building on said rationale, the Inter-American Commission on Human Rights (henceforth IACHR or "the Commission") endorses positive discrimination to even out the justice gap inherent to its very framework: "special protections for indigenous peoples may be required for them to exercise their rights fully and equally with the rest of the population, special protection may be required to ensure their physical and cultural survival" (1997 *Report on the Situation of Human Rights in Ecuador*, 4th concluding paragraph).

Another related debate concerns indigenous peoples' possibilities to make claims as a group, commonly also reflecting indigenous proper procedures and structures of representation to be considered when taking a case to State courts. The IACtHR requires States to adopt positive measures in that regard, again, in the context of collective land claims, it states "States must establish the judicial and administrative

conditions necessary to ensure the recognition of their juridical personality with the aim of guaranteeing them the use and enjoyment of their territory in accordance with their communal property system" (*Saramaka vs. Suriname*, para.174). Other procedural dimensions become apparent where the rights to life and integrity are at stake, being facilitated by the ability to actually vindicate such rights. More explicitly, this requires individuals "to have access to information, participation in relevant decision-making processes, and judicial recourse", constituting a necessity also for ultimately living up to the objective of environmental preservation (Commission's 2010 report *Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources (to be abbreviated as 'Ancestral Lands')*, para.197).

Returning to the nature of indigenous collective rights, the Commission establishes a broader rationale according to which equality standards do not suffice to guarantee indigenous integral enjoyment of their rights. Instead, the principle of equality "may also sometimes require States to take affirmative action (…) to diminish or eliminate conditions which cause or help to perpetuate discrimination, including vulnerabilities, disadvantages or threats encountered by particular groups such as minorities" (*Maya Indigenous Community of the Toledo District vs. Belize*,[17] para.166). In that sense, collective rights assume the function of a protective umbrella, accommodating indigenous particular, multivariate demands, emblematic being indeed those relating to their very (collective) existence as peoples. Indigenous peoples' environmental rights prove particularly affected in that regard due to the specific significance attributed to their (immediate) environment as a traditional livelihood, as a source of subsistence, as safe surroundings – enabling the communities to maintain and develop their very collective identities -– and as a sacred side for indigenous peoples to uphold spiritual relationships with plants and other non-human species. In such light, the Commission identified two key entry points for indigenous environmental rights to find articulation under the collective framework. These concern firstly, the right to a safe and healthy environment, and secondly, the right to environmental integrity and quality (*Ancestral Lands*) which shall be explored in the following.

Constituting an increasingly recognised right, the claim to a safe and healthy environment requires specific preventive measures to be put in place (*Sawhoyamaxa Indigenous Community vs. Paraguay*)[18]. In that sense, respective measures of protection shall reflect the nature of violations – these principally concern those commonly occurring in extractive contexts or as resulting from other large-scale projects on indigenous grounds which reveal potential socio-economic impacts. While being recognised as a right on its own accords, intrinsic relations are disclosed with the right to life, security of person, physical, psychological and moral integrity and health, constituting at the same time a precondition for social progress and economic prosperity (1997 *Report on the Situation of Human Rights in Ecuador*). Indeed, these forms of subsidiary or derivative forms of protection prevail in many jurisdictions where the right to a safe and healthy environment is yet to be recognised, ultimately enforced.

Similar conclusions could be reached on the right to environmental integrity and quality as they relate to the prevalence of derivative rights. The Court establishes a so-called "minimum environmental quality" which also (re)presents a "necessary

precondition for the enjoyment of fundamental rights" (1997 *Report on the Situation of Human Rights in Ecuador*, para.190). In fact, in order to protect territories' environmental integrity, the Court deems it necessary to "secure certain fundamental rights of their members, such as life, dignity, personal integrity, health, property, and privacy or information" since these prove "directly affected" in case of pollution or similar impacts (para.194). The Court similarly discloses a "preventive" function as to the degradation of the environment (para.193). Elsewhere such somewhat passive engagement with indigenous environmental rights under the weak protective umbrella of "impacts" has been labelled "environmental interference" (Heinämäki 2010). International monitoring bodies reaffirm such degressive developments in human rights language, emblematic being the so-called "certain limited impact" doctrine which would not qualify as amounting to a violation of art.27 on the rights of ethnic, cultural, religious and language minorities (*I. Länsman vs. Finland*[19]).

A critical engagement with the jurisprudence developed however demands us to shed light on the threshold established for violations to qualify as such. Remarkably, illnesses, health impacts and suffering need to quality as *serious*, for the right to life to be invoked whilepollution needs to pose a *(persistent) threat* to the former (1997 *Report on the Situation of Human Rights in Ecuador*). It may also be argued that the intrinsic relations between the elements constituting the cultural-environmental nexus (e.g. 1994 Ksentini Report "Human Rights and the Environment") fall short of enjoying protection given the strict distinction that is drawn between varying degrees of violations. This may bring further complications where cultural activities including, for instance, subsistence harvesting result in psychological stress, anxiety or uncertainty (Heinämäki 2006; *Arctic Climate Impact Assessment* 2006; *Maya Indigenous Community of the Toledo District vs. Belize*). Indeed, the phenomenon of multiple human rights violations becomes particularly salient, hence pertinent, in the case of indigenous peoples: as an emerging legal category, collective rights thus assume a critical role in doing justice to the multi-layered nature of indigenous environmental rights while establishing procedural detail to make such rights to be justiciable, eventually.

4. Intergenerational rights and their relevance for channelling indigenous environmental rights

Intergenerational rights could be considered a reflection of or a natural corollary flowing from indigenous peoples' intrinsic relation with their (immediate) environment, their active dealing with colonial injustices and ancestry, and the future-oriented approach adopted, based on responsibilities, stewardship or guardianship. In that sense, biodiversity, climate or subsistence-related concerns have found entry into and accommodation with an emerging "third generation right", that is, indigenous intergenerational rights. Let us examine each element in detail.

Environmental issues have been described as forming the core of intergenerational justice, as constituting one of its most important elements and as demonstrating relation to virtually all aspects of intergenerational justice (Tremmel 2009; De-Shalit 1995). Justice theories, in turn, have allowed to shed light on broader questions of (re)distribution and arising inequalities, especially in the age of scarce natural

resources, also known under the term of "capitalocene" (Choquehuanca 2021; Bautista 2021). In that sense, a possible new paradigm would be oriented towards eradicating structural reasons related to the climate situation, tackling the accumulation of wealth causing misery (Choquehuanca 2021), at the same time as turning the human being into an object of exploitation (Bautista 2021). In response, environmental rights have come to be framed as a social justice matter, finding common expression under intergenerational equity theory. The latter holds "…every generation holds the earth in common with members of the present generation and with other generations, past and future. The principle articulates a concept of fairness among generations in the use and conservation of the environment and its natural resources" (Brown Weiss 2021; Brown Weiss 2005). Others have made sense of intergenerationality by "analysing the relationship between generations in relation to obligations of environmental nature concerning the preservation of the planet" (Fitzmaurice 2018). International jurisprudence too has come to embrace the term (ICJ *Nuclear Weapons Advisory Opinion*, also *Gabcikovo-Nagymaros* case[20]). Following this line, human responsibilities are clearly given rise to by environmental equity approaches, requiring us to critically examine old established rights holder vs. duty bearer divides or basic questions of attribution and causality.

Now, while reflecting a certain universality, indigenous peoples have gained a special position as far as intergenerational environmental duties are concerned. Such position is founded on traditional knowledge and practices related to the environment and their "well-known sustainable relationship with nature, and [that they] depict themselves as guardians" (Fitzmaurice 2018; Heinämäki 2010). The multi-scalar web of duties resonates with the indigenous cosmogenic approach towards Mother Earth, or "cosmo-bio-vision" (Choquehuanca 2021), adopting a holistic vision which places humans in a humble position as guardians rather than being hierarchically superior to non-human species and earth generally (Solón 2017; Berry 1999).

We may also approach the issue from a reverse perspective, by understanding future generations as rights holders whose interests such as life, health and subsistence, are supposed to be "sufficiently weighty to impose obligations on others" (Winter 2022). In fact, the classical, positivistic approach proclaiming a "temporal continuity of rights" is founded upon a strong equity-driven rationale, maintaining that the right's moral importance would not diminish over time (Winter 2022; Caney 2008). This means an essential procedural dimension is introduced here, allowing the rights to be vindicated by present generations. Doing justice to the preventive function of such right, it is argued that the present generation should be in the position of claiming such rights since "every rights claim precedes the implementation of the duties and obligations attached to it" (Winter 2022).

Returning to the particularities of indigenous contexts in that regard, current justice models reveal a strong orientation towards colonial injustices, remedy, truth and reconciliation approaches, permeating international and domestic constitutional law alike. Indeed, justice frameworks have been described as "backward-looking", in that way visualising the prominence of intergenerational ties. "Intergenerational segregation" may be emblematic of its larger shortcomings, referring to forms of disintegration in the communities as far as, for instance, family relationships are

concerned as well as indigenous peoples' exposure to the negative implications of the colonial venture (Kral 2012). Similarly, trauma experience has proven considerably relevant for getting a sense of the intergenerational impact of the colonial legacy (Eichler 2019). In fact, what could be termed "layered trauma" resulting from colonisation may be observed at different levels, including possible retraumatising effects (Atkinson 2002).

As hinted to earlier, intergenerational rights assume essential safeguarding functions in relation to future developments, the foundation of which may lay in the "seven generations belief" followed by some indigenous communities that considers the consequences of daily actions and decisions for future generations (Nutton and Fast 2015; Moran and Bussey 2007). Another renown point of departure concerns indigenous guardianship relation, building on a two-fold rights protection paradigm established by art.19 of the *American Declaration on the Rights of Indigenous Peoples*. To start with said paradigm follows a negative rights language of non-interference, allowing indigenous peoples to preserve, restore and protect the environment and manage lands sustainably while being protected against the introduction of harmful substance. Secondly, it calls upon States to establish and implement assistance programmes for the conservation and protection thereof, constituting a positive rights obligation (see also *Lhaka Honhat vs. Argentina*). The foregoing clearly departs from the assumption that sees indigenous peoples as rights holders rather than duty bearers. Others would go as far as finding the raison d'être of such regime in its history of stewardship rather than ethnicity, religion or minority status as such (Bennett and Bavikatte 2015). Admittedly, the universalistic nature of claims made intergenerationally may blur the boundaries between human rights applicable to all and those reserved for vulnerable groups including indigenous peoples. It may similarly and legitimately be asked why indigenous peoples should be shouldering a disproportionate burden in responding to the harm caused by humanity. Answers may be sought elsewhere instead. Dependence on their immediate environment clearly justifies the endorsement of specific environmental rights, of addressing indigenous peoples' particular vulnerabilities arising in life threatening scenarios, reminding us of the devastating consequences suffered by the Rapa Nui on Easter Island, a micro glance of what future generations may be facing.

5. Proceduralisation imagined and modus operandi: towards the construction of a new human right

Both collective and intergenerational rights certainly establish important venues for translating indigenous environmental claims into legal frameworks. In the present paper, we however also strive to uncover the potential for a *sui generis* right to arise. This is not to deny the importance of derivative rights such as the right to inter-alia life, subsistence, dignity, health, physical and moral integrity, security, establishing legal bases for indigenous environmental rights to become justiciable. In the present piece, however, indigenous environmental rights are being explored *per se,* both procedurally speaking in a strict sense, I) materialising in the adoption of dedicated procedural rights to e.g. information, participation or accessing justice (section 5.1), and II) substantially, carving out detailed obligations related to the

right, including relevant attributes such as "clean", "safe", "healthy", "integrity" and "quality" that have come to be embraced by relevant judicial bodies (section 5.2). We will also examine in detail III) how these rights could be invoked differently, what kind of procedures could be imagined for rendering indigenous environmental rights justiciable (section 6), taking neighbouring human rights regimes into account.

5.1. Ordinary environmental procedural law and its relevance for vindicating indigenous peoples' rights

The procedural dimension of indigenous environmental rights may also find articulation differently, namely by means of specific rights that facilitate (effective) access to justice systems and ultimately claiming environmental rights. Accordingly, the IACtHR maintains, "international human rights law imposes certain procedural obligations on States in relation to environmental protection, such as access to information, public participation, and access to justice" (*Advisory Opinion* OC-23/17, para.106, 1997 *Report on the Situation of Human Rights in Ecuador; also Escazú Agreement*). The Commission adopts a similar rationale in that regard, understanding procedural rights in the context of indigenous environmental rights as to include these last mentioned obligations, giving rise, at the same time, to what the Commission calls "effective protection of the natural resources in indigenous and tribal territories" (*Ancestral Lands*, para.197). For individuals to have access to information, to participate in decision-making and to access judicial recourse, these rights are placed in relation with other rights potentially affected: "protection of the right to life and physical integrity may be advanced through measures to support and enhance the ability of individuals to safeguard and vindicate those rights" (Ibid., para.197), in that sense, reinforcing other human rights. Indeed, the Commission clarifies elsewhere said procedural rights "constitute necessary means to attain the ultimate objective of environmental preservation" (Ibid. para.197). Most prominently, the right to consultation and to free, prior and informed consent (FPIC) merit mentioning in that regard, constituting crucial umbrella rights for channelling indigenous demands such as environmental rights (Rodríguez-Garavito 2011; Szablowski 2010; Eichler 2019; Doyle 2017).

The Court addresses the procedural nuances of the triple obligation (see also *Escazú Agreement*) arising with (indigenous) environmental rights elsewhere (see *Advisory Opinion* OC-23/17). The IACtHR states from the outset, these rights are to be seen as guarantees for other rights, notably life and personal integrity to be realised, in that sense, returning to the derivative origins of the right (para.211). By establishing the *right to information* in environmental matters, the Court considers its relevance for public interest, democratic control and scrutiny as underlying rationales of such right which indeed ought to be accessed in an affordable, effective and timely manner. It shall further be complete, understandable, conveyed in an accessible language and be helpful for the different sectors of the population while requiring the State to provide information as requested in the light of the principle of active transparency (paras. 221, 223). The latter gives rise to further obligations, namely for the State to publish relevant and necessary information on the environment, including information on environmental quality, respective impacts on health,

and on related influential factors whereby no specific interest involved is to be proven. Finally, positive obligations shall include the establishing of dedicated mechanisms and procedures for individuals to request information, and (for the State) to actively compile and disseminate information (paras. 222).

As to the second arising obligation, *public participation*, the Court reiterates the significance of democratic control relating to compliance with public functions, also in exercising accountability powers and social control by means of effective and responsible participation (paras.226-228). Particular safeguards are established in relation to indigenous communities, involving the renowed consultation proceedings that shall be realised in

> all stages of the planning and implementation of a project that could have an impact on the territory of an indigenous or tribal community, or on other rights that are essential for their survival as a people in keeping with their customs and traditions. (para.227; see also Kichwa Indigenous People of Sarayaku vs. Ecuador; Triunfo de la Cruz Garifuna Community and its members vs. Honduras[21]; Saramaka People vs. Suriname; Kaliña and Lokono Peoples vs. Suriname[22])

Relatedly, the Court maintains, the State is to make community members aware of possible risks such as environmental risks for them to form a voluntary and informed opinion on projects potentially affecting their territory as part of the consultation process, also to include "sustained, effective and trustworthy channels for dialogue (…) through their representative institutions" (para.227).

Finally and fundamentally, the IACtHR refers to the right to *access justice*, a re-occurring issue also for guaranteeing other (procedural) rights. To start with, the Court refers to the peremptory status of the norm (para.233). The procedural, instrumental nature of the norm becomes manifested in several ways, also with the objective of "guarantee(ing) the full realisation of the rights to public participation and access to information" (para.134). The environmental context proves considerably relevant in relation to such right, requiring the latter to follow an "effective and accessible procedure for individuals to have access to all relevant and appropriate information to evaluate the risks from hazardous activities" (para.235, also maintained by the European Court of Human Rights (henceforth ECtHR) in *Guerra and Others vs. Italy*[23], *McGinley and Egan vs. UK*[24]; *Taşkin and Others vs. Turkey*[25]). Generally, accessing justice in environmental matters requires several State obligations to arise: to enable rights holders to access remedies in line with due process of law principles as far as violations or potential infringements under environmental law are concerned, as well as redressing any infringements of environmental legal obligations (para.237).

As the foregoing demonstrates, indigenous rights are to be strongly associated with ordinary procedural standards; these do not necessarily disclose particular affinity with indigenous laws or legal pluralism in terms of legal origin, possibly owing to the diversity of indigenous legal systems to be accommodated. Three observations may however be made in that regard. Firstly, general references to "indigenous customs and traditions" and "representative institutions" throughout relevant standards of protection may allow for indigenous laws and governance systems to find entrance into State-centric regimes on environmental procedures.

While the notion certainly represents a catch-all-phrase, yet, it demonstrates sufficient openness for such customs and traditions to be widely interpreted, that is discretionary powers to be delegated to indigenous peoples. Secondly, the participatory dimension of environmental procedural law has served as a welcome forum for indigenous peoples' rights to find further articulation. Prior consultation and consent procedures serve as powerful illustrations in that regard. Similarly, the preventive nature of such procedural standards which considers redress as a last resort follows indigenous peoples' intergenerational, future-oriented, responsible approach in dealing with the environment. Ultimately, the language of the Court reveals a dedicated engagement with the urgencies relating to compliance issues in exercising important preventive functions, for instance, where indigenous peoples' physical survival or cultural survival (*Sarayaku vs. Ecuador)* are at stake or being threatened. Indeed, indigenous particular vulnerabilities and dependencies on their (immediate) environment have been referred to elsewhere as constituting a widely accepted rationale for contextualising generally applicable standards, that is, demanding dedicated protection beyond ordinary non-discrimination law (see e.g. *Lhaka Honhat Association vs. Argentina*).

5.2. Exploring attributes and qualities related to indigenous environmental rights

As highlighted earlier, indigenous environmental rights may also arise on their own terms, as distinct collective claims. Difficulties arise with the consideration, ultimately application, of these rights beyond their contextual significance, that is, their remedial or compensatory functions to be unleashed where extractive projects cause socio-environmental harm or where infrastructure projects prove destructive for environment and livelihoods. Other than what these ad-hoc, remedy-oriented functions suggest, environmental questions may be approached far beyond infringement-based frameworks, instead, emphasis shall be placed on the preventive dimensions of indigenous environmental rights. In fact, environmental damage is hardly ever understood intergenerationally, hence neglecting its preventive importance, and ultimately its effectiveness. This would ensure justice mechanisms actually manage to unleash remedial power, as relating to existential consequences for non-human species, for instance. Indeed, the remedies-based legal framework governing most contemporary legal orders may prove inadequate, ill-suited for meeting the needs of flora and fauna. The Commission however takes an active stance in that regard, it pronounces itself in favour of preventive and positive action whenever the fundamental rights of community members to inter-alia life, dignity, personal integrity, health, are directly affected by operations causing environmental damage such as pollution, deforestation or contamination of waters (*Ancestral Lands*, para.194). This becomes particularly apparent when examining the thresholds to be met where the human right to life is at stake: these shall not be limited to "protecting against arbitrary killing", instead, it is argued, a "threat to human life and health" shall suffice to "prevent such risk", requiring the adoption of "reasonable" or "necessary" measures (Ibid., para.194). It may also be worth mentioning that prevention involves due diligence obligations, applicable – above all – to third party intervention.

Accordingly, minimum standards shall be adopted, and for these to be "appropriate and proportional to the degree of risk of environmental damage" (Tigre 2020; *Advisory Opinion OC-23/17*). As argued earlier, restoration of the environment may prove impossible, requiring respective measures to be put into effect "ex-ante" (Tigre 2020; *Advisory Opinion OC-23/17*).

Indigenous environmental rights may also find further articulation when we engage with their very attributes, these co-constitute at the same time basic conditions for obligations to be met. This includes most essentially the following qualities, namely "clean", "safe", "healthy", "integrity" and "quality". Ever since the adoption of the San Salvador Protocol in 1988, the right to a healthy environment (art.11) forms part of the Inter-American legal order. The right was reaffirmed in IACtHR's *Advisory Opinion OC-23/17* and its recent decision *Lhaka Honhat Association vs. Argentina* (see also Mora Navarro 2020), declaring the right to a healthy environment an autonomous right, as being justiciable in its own regard, and as being of universal interest (*Ancestral Lands*, para.203). As becoming apparent in the case of (human) health, both IA organs derive respective safeguards building on the famous evolutionary, systemic interpretative culture of the Court most fundamentally. Similar reasoning permeates the attributes "integral/integrity" as well as "quality" (and "clean") understood as "necessary precondition(s) for the(ir) enjoyment (of fundamental rights)" (Ibid., para.190) or as "allow(ing) for the enjoyment of human rights" (Ibid., para.193). A similar notion finds mentioning in that regard, that of "territorial environmental integrity" (Ibid., para.194), disclosing the ever-present land dimension of indigenous claims. The right to a safe environment, by contrast, opens yet another debate, implying some form of urgency. Being introduced in the preambular paragraphs of the *Social Charter of the Americas* as instrumental to "integral development" (*Advisory Opinion 23/17*), again, assuming subsidiary value, it also shines through parts of the Charter which places particular emphasis on the prevention of non-communicable diseases, infectious diseases, environmental health concerns, natural and man-made disasters (arts.18, 22). The current CoViD19 crisis indeed exemplifies such broader meaning, disclosing particular vulnerabilities in the case of indigenous peoples who often rely on isolated, intact environments. Indeed, indigenous peoples have come to enjoy special safeguards, emblematic being the indigenous protected national park TIPNIS which was declared ecologically untouchable, also "indivisible", "indispensable", "inalienable" and "irreversible" (Bolivian law 180).

6. Proceduralisation re-imagined: uncovering the safeguarding potential of guardianship and legal representation

To start with, indigenous environmental rights assume meaning through the concept of guardianship or stewardship. Indeed, the close relationship between the two has been described in many contexts, shining through statements such as "I am the river and the river is me" promoted by Iwi and Hapú peoples, attributing legal personality to the river (MacPherson 2021). Or, alternatively, such relationship has been referred to as one maintained between mother (earth) and her children (Bautista 2021), a relationship of responsibility towards the river, its health and well-being (MacPherson 2021). While this slightly alienates us from classical human rights

theory being built on a binary divide between rights holders and duty bearers, indigenous environmental rights require the embracement of a distinct approach, involving the State as a main duty bearer, indigenous peoples as rights holders and guardians at the same time, as well as the environment as a subject of protection. Insights may be drawn from the legal concepts as they are used in the fields of child protection or the rights of persons with disabilities.

Basic procedural guarantees similarly need to be in place, including but not limited to those applicable throughout the justice process. Emblematic may be the violation of the right to be represented by a lawyer in absentia, infringing upon basic rights to defence and appeal against the decision taken while depriving the victim of the facto right of access to a court (CCPR, arts. 9 and 14, 14(3)(d) in particular; CCPR, *Zine El Abidine Ben Ali vs. Tunisia*[26], para.3.8). If we were to transpose such right into the field of application of indigenous peoples' rights, significant legal lacunae arise early onwards: basic procedural guarantees prove somewhat ill-suited to allow for adequate representation of the environment and its non-human species before the courts. Without respective legal representation and the necessarily in absentia nature of the process, a broad array of claims is easily infringed upon. The questions of legal representation and guardianship hence require our utmost attention.

6.1. Borrowing from the rights of the child: parenthood, legal guardianship and representation, and standing rights

To start with, communications are commonly to be submitted individually or by a victim's representative (see e.g. CCPR, *Rules of Procedure,* art.96(b)). As far as the rights of the child, including young refugees, are concerned, legal guardianship assumes significance in a multiplicity of contexts. Interestingly, the protective umbrella of the Convention on the Rights of the Child extends to legal guardians – for instance, as relating to discrimination based on a legal guardian's inter-alia race, colour, national, ethnic or social origin (art.2(2)). Clearly, legal guardians enjoy legal protection to a certain degree by virtue of their legal responsibility (see also arts.14(2), 18(1)). Similar arguments could be raised in the case of indigenous environmental rights where indigenous peoples are considered knowledge keepers and spiritual translators of issues of concern to the environment, including but not limited to survival and health of non-human species. Legal guardianship as far as children are concerned assumes a special role where a parent and mothers in particular are subjected to, for instance, domestic violence, wanting to exercise standing rights to represent a child (CEDAW, *J.I. vs. Finland*[27], para.6.9). The same may be true for indigenous peoples, requiring special consideration whenever they assume protective functions vis-à-vis the environment while being themselves subjected to violations of, for instance, basic subsistence rights or health-related infringements. Given the particular vulnerability of children, legal guardianship has been considered primordial: the ECtHR went as far as declaring the questioning of a juvenile without guardianship, defence lawyer or teacher psychologically coercive (*Blokhin vs. Russian Federation*[28]).

Relatedly, the CRC considers a child's access to legal representation a crucial procedural safeguard (CRC, *General Comment N°10 on children's rights in juvenile justice*, para.58), also falling under the right to be heard (art.12, ICRC). The child shall be enabled to seek representation of her/his/x own choosing (CRC, *Y.M. vs. Spain*[29]), barely being translatable to the situation of indigenous environmental rights. The Committee further calls for special protection and requires appropriate assistance to be put in place as far as juveniles in criminal proceedings are concerned, that is through representation by parents or legal guardians (CCPR, *Berezhnoy vs. Russian Federation*[30], para.9.7). Similar vulnerabilities undoubtedly arise in the case of the environment, requiring dedicated legal defence that demonstrates sensitivity towards the concerns, needs and voices of the environment. Another curious jurisprudential detail concerns children's ability to reach and access their parents and vice versa: the Committee places emphasis on such right, demanding, for instance, "that the issues complained of to be adjudicated expeditiously" (para.8.9). Again, Mother Earth has been considered a point of reference, resembling that of parenthood vis-à-vis indigenous peoples and vice versa, hence requiring safeguards to be established. This may include, while not limited to, speedy proceedings given not only the seriousness of environmental rights violations, but the often-disregarded intimate, spiritual relation between the two. Indeed, the right of parents or guardians to pursue remedies on behalf of their children was broadly conceived as early as 1966 with the adoption of ICCPR (see also CCPR, *Baban vs. Australia*[31], para.4.6). Similarly, jurisprudential developments under the regime regulating the rights of the child have demonstrated an inclusive position towards legal pluralism, allowing for, for instance, child adoption processes according to so-called *kafalah* arrangements to enjoy equivalent protection (CRC, *Y.B. and N.S. vs. Belgium*[32]). Related arguments could be raised as far as indigenous stewardship is concerned.

Interestingly, the Committee grants broad discretionary powers by referring to domestic procedures as being decisive for establishing standing, representation and the "best interests of the child", to be developed below (CCPR, *Humanitarian Law Center vs. Serbia*[33]; CCPR, *Balaguer Santacana vs. Spain*[34]; CCPR, *Laing vs. Australia*[35]). More precisely, the Committee applies the following test in terms of standing vis-à-vis minor children (in domestic custody proceedings) relating its work to relevant jurisprudence developed by the European Commission on Human Rights:

> (1) whether other or more appropriate representation existed or was available; (2) the nature of the links between the author and the child; (3) the object and scope of the application introduced on the victim's behalf; and (4) whether there were any conflicts of interest. (CCPR, S.P., D.P. and A.T. vs. UK[36]; ECtHR, P.C. and S. vs. UK[37])

Such test demonstrably widens the interpretative landscape of standing rights, tailoring them to the needs of (potential) victims. In the case of indigenous environmental rights, "appropriate (forms of) representation" indeed play(s) a crucial role, in the attempt of identifying adequate ways for translating environmental voices into the justice system(s). The intrinsic bio-cultural connection – also referred to as "special bond" between parents and children in CRC jurisprudence, – between indigenous peoples and their (immediate) environment provides yet another venue to be explored in relation to the special nature of the link between guardian and

victim. Ultimately, the Committee has referred to "knowledge as to the victim's present circumstances" (CCPR, *Humanitarian Law Centre vs. Serbia*, para.4.4), lending itself perfectly for indigenous (intergenerational) knowledge debates and indigenous peoples' position as knowledge keepers and guardians of non-human species. The test regains relevance where the legal guardian acts without express authorisation in which case a "sufficiently close relationship" with the victim needs to justify such acting (Ibid., para.6.7., also CCPR, *Valentini de Bazzano vs. Uruguay*[38]; CCPR, *Bourchef vs. Algeria*[39]).

6.2. Representation, translation and the best interest(s) (of the child)

A helpful point of departure certainly lies with "the best interest(s)" of the subject of protection, (art.3, see also *Optional Protocol to the Convention on a communication procedure*, art.2; CRC *S.M.A. vs. Spain*[40]; *M.B.S. vs. Spain*[41]; *M.B. vs. Spain*[42]; *A.B. vs. Spain*[43]) in the present case, the environment. In the case of the rights of the child, such right is to enjoy primary consideration in relevant procedures (e.g. CRC, *M.B. vs. Spain*, para.9.14). In fact, guardianship has been described elsewhere as a "key procedural guarantee of respect for the best interests of the unaccompanied child" (CRC, *Y.M. and Y.M. vs. Spain*[44], para.3.4, CRC, *N.B.F. vs. Spain*[45], para.3.4; CRC, *A.L. vs. Spain*[46], para.3.4; also CRC General Comment N°6, para.21) and as a precondition for "developing properly" (CRC, *N.B.F. vs. Spain*, para.3.7), prompting us to explore its pertinence as far as indigenous environmental rights are concerned. The best interest certainly constitutes a right suitable to translate the environment's interests into a legal protection regime given the often "voiceless" nature of the subjects to be protected. More jurisprudential detail may prove relevant in that regard: States are not only called upon to "appoint a qualified legal representative" free of charge (see e.g. CRC, *M.B.S. vs. Spain*, para.9.13) but require the latter to have acquired "the necessary linguistic skills" (CRC, *N.B.F. vs. Spain*, para.12.8), to provide for "where necessary, an interpreter" (para.10.8), to "recognise the representatives they designate" and to ensure "timely representation" (CRC, *J.A.B. vs. Spain*[47], para.13.7; CRC, *A.D. vs. Spain*[48], para.5.4). Indeed, the Committee repeatedly refers to the criterion of "timely representation", the absence of which would amount to "substantial injustice" (see e.g. CRC, *M.B. vs. Spain*, para.9.12). "Translation" potential similarly proves relevant in the case of the environment and the ways its voices are taken up by indigenous communities. Importantly, the provision in question also maintains, legal guardians' rights and duties are to be considered when ensuring protection and care for the child (art.3(2)), in that sense, fostering once more guardians' particular position.

A final condition concerns other forms of representation which may be of relevance to indigenous environmental rights: the Committee holds "any private lawyers chosen to represent the young person are recognised (…) and all legal and other representatives are allowed to assist the young person during the age determination procedure" (CRC, *M.A.B. vs. Spain*[49], para.11(a); CRC, *M.T. vs. Spain*[50], para.14(a)(ii)). Especially where legal frameworks prove little flexible as far as indigenous quasi parenthood or other stewardship are concerned, such complementary

arrangements may offer sufficient space for respective judicial articulation. This is reaffirmed elsewhere, notably in the context of age assessment procedures in which a "competent guardian" shall be assigned (CRC, *A.D. vs. Spain*, para.11(b); CRC, *S.M.A. vs. Spain*, para.8(b)), leaving any requirements or specialisation open for interpretation, hence offering potential to be laid out to the benefit of victims and their representation.

Remarkably, the Committee establishes a two-step procedural duty to assess and determine the child's best interest(s) when making decisions, however, it absolves legal guardians from following these procedures strictly (*General Comment N°14 on the right of the child to have his or her best interests taken as a primary consideration*, para.86). As a matter of complementary protection, children can approach an authority where a child's views conflict with those of his, her or x representative, requiring yet another procedure to be established (para.90). It could be argued, such safeguards lend themselves to be applied to indigenous environmental rights where diverging views may emerge at community level, also in view of possible external influences that may potentially conduce to bribes or corruptive practice,hence manipulating community opinion(s). A related safeguard concerns the involvement of an additional legal representative to be provided for where a conflict arises between the parties in the decision (para.96). In the case of indigenous environmental rights, mandate holdership in the field of socio-environmental defence – being experts on the subject-matter – could potentially prove comparably significant, namely when issues are delegated to the courts. This may also become relevant where appointed defence services such as those recruited by public prosecution services encounter conflicts of interests, requiring the assignation of "defence lawyers to such minors or to recognise their capacity to bring legal proceedings" according to Spanish courts (CRC, *M.B.S. vs. Spain*, para.7.3). Similar needs may arise in the case of indigenous environmental rights which necessarily require experts on the matter to assume defence functions in relevant litigations.

A wide panoply of safeguards indeed finds judicialization where multiple, intersecting violations become apparent, so-called intersectionalities as in the case of e.g. unaccompanied young asylum seekers, also described as "defenceless and highly vulnerable unaccompanied child migrant(s)" (CRC, *A.D. vs. Spain*, para.3.3): the Committee establishes several criteria making reference to its General Comment N°6 (2005):

> States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State (…) In cases where children are involved in asylum procedures or administrative or judicial proceedings, they should, in addition to the appointment of a guardian, be provided with legal representation (…) the failure to assign the author a guardian (…) led him being deprived of the special protection that is to be afforded to unaccompanied asylum-seeking minors and exposed him to a risk of irreparable harm in the event of his deportation to his country of origin. (CRC, R.K. vs. Spain[51], para.9.12; CRC, General Comment N°6, paras.33 and 36)

Similarly, the environment demonstrates a certain vulnerability requiring exceptionalism or exceptional treatment in turn. Constituting at the same time a violation

of human security and requiring possibly lower thresholds to be met, exceptional measures may be justified indeed. Interim measures may similarly be regarded as possible safeguarding options, especially given the urgency of some environmental infringements, again, finding reflection in CRC-based jurisprudence (CRC, *M.T. vs. Spain*, para.13.11). On a final note, we may be guided by a reiterated concern to children, that of upholding procedural rights in age determination proceedings, ultimately qualifying not only their rights to be assigned a legal representative, but also directly impacting on their right to an identity while exercising informed consent (CRC, *L.D. and B.G. vs. Spain*[52], para.3.4). Indigenous environmental rights may easily confront similar dilemmas, with the law impacting seriously on identities including self-perception, self-identification and defining own needs, also opening broader debates on subjects of rights and legal personality.

6.3. Procedural inspirations from the rights of persons with disabilities: Representation, autonomy, participation, and legal capacity

Insights on comparative safeguarding practice may be drawn from the field of persons with disabilities under the Convention on the Rights of Persons with Disabilities. This may concern, for instance, their participation in political and public life, including the right to effectively and fully participate directly or through freely chosen representatives (art.29(a)), also "allowing for assistance in voting by a person of their own choice" (art.29(a)(iii)). Violations may be manifold, including restrictions of the right to vote and its realisation by means of legal guardianship: the Committee hence unequivocally states, unreasonable restrictions or exceptions for any groups are not foreseen by the provision, rather, exclusion therefrom would amount to discrimination. To be clear, the right to vote and participate in public life shall be guaranteed to persons under guardianship on an equal basis with others, requiring legislation to be put in place where needed (CRPD, *Bujdosó and others vs. Hungary*[53]; CRPD, 2011 *Concluding Observations on Tunisia*; CRPD, 2011 *Concluding Observations on Spain*). Indeed, in the field of environmentalism, earth or climate governance approaches are emerging at global levels, requiring the translation of voices into the public space. Relatedly, independent environmental justice approaches have been adopted, including but not limited to the International Rights of Nature Tribunal. A final recourse to external assistance may be provided by dedicated organisations and mechanisms to represent persons with disabilities at different levels; this is, in fact, being endorsed by a strong framework for representation and related rights (arts.29(b)(ii), 4(3), 32(1), 33(3)). Such multi-institutional forms of representation seemingly provide interesting points of departure for indigenous environmental rights, given the multi-scalar level of impacts that may be caused, ranging from local extractivism, to domestic "development" agendas, regional infrastructure plans or global trade regimes.

Legal guardianship as such does not find mentioning in the framework, the Convention being largely built on individual autonomy and the freedom to make one's own choices. The Committee maintains legal personality, legal capacity and legal agency are to be considered key for putting into effect other rights (*General comment N°5 on living independently and being included in the community*, para. 27), in that

way, rendering guardianship functions rather inapplicable. In fact, the Committee adopts strong language in that regard, stating: "It (the obligation to respect) includes the prohibition of all forms of guardianship and the obligation to replace substituted decision-making regimes with supported decision-making alternatives" (Ibid., para.48). On-the-ground experience in fact demonstrates the shortcomings, such as cases of victims not disposing of the rights to initiate legal proceedings on grounds of disability-based discrimination (CRPD, *D.R. vs. Australia*[54], para.2.9).

Similar observations have been made in the case of women who failed to be granted equal rights in representing themselves in, for instance, marriage disputes; they depended on legal guardians or male family members instead (CEDAW, *O.M. vs. Ukraine*[55], para.3.9). Guardianship-like mandates may however also be created as complementary to autonomous forms of representations, emblematic being the case of asylum seekers who are supported by NGO representatives as observers. They may provide comments in the critical interview phase, as far as evidence is concerned generally, country of origin information or broadly contesting allegations (CAT, *N.A.A. vs. Switzerland*[56], para.5.5). Respective violations are common, including cases where the victim lacked any access to legal representation throughout the whole process (e.g. CCPR, *M.G.C. vs. Australia*[57]; CCPR, *M.K.H. vs. Denmark*[58]). Similar functions could be imagined for environmental justice, understanding indigenous representatives as translators key in the legal process, as expert knowledge keepers and ultimately as advocates of the environment.

7. Discussion: contextualising indigenous environmental rights

Indigenous environmental rights could be considered a novel or emerging legal regime in the fields of human and environmental rights respectively. Only recently, the Inter-American Court of Human Rights has come to embrace environmental human rights as autonomous rather than derivative rights (see e.g. *Lhaka Honhat Association vs. Argentina*), also finding support in the 2016 American Declaration on the Rights of Indigenous Peoples. Adding an indigenous dimension merits some further thought. The present particularity may be grounded in noteworthy vulnerability situations indigenous peoples have been facing in the light of often permanent dependencies on livelihoods and natural resources. An often explored phenomenon lies in guardianship or stewardship roles (Fitzmaurice 2018; Heinämäki 2010; Bennett and Bavikatte 2015) indigenous communities have been assuming towards the(ir) environment, mirroring their special collective responsibilities which also relate to a third dimension, that is, intergenerational claims (e.g. Winter 2022). These are commonly interwoven with indigenous cosmovisions such as seven-generation belief systems (Nutton and Fast 2015) or the collective memory of suffering and traumatisation, that way, bringing together several generations. Despite the value inherent to studying indigenous vulnerable position vis-à-vis the(ir) (immediate) environment – constituting, at the same time, a fundamental human rights concern – such relation bears considerable potential for exploring the global-local nexus (see e.g. Goodale and Merry 2017). Most visibly, this becomes apparent in the field of natural resource demands, as far as "development" operations are concerned, in relation to so-called mega projects, or in terms of the impacts attributable to CoViD19. Another common approach on the matter

concerns indigenous knowledge systems (Nursoo 2018; Smith 1999), an argument that has been raised to understand indigenous peoples' special position in protecting the environment. Any such utilitarian reasoning certainly adds to the integrationist, assimilationist discourse dominating international law for decades (Watson 2018), that is, placing emphasis on indigenous peoples' value for promoting diversity in society, or being disguised under the right to access State institutions, education systems, or health services in exchange for concessions on autonomies, pluralistic systems or indigenous proper customs and traditions. The paper adopts a critical view on these approaches, by assuming a decolonising stance, oriented towards indigenous self-determined collective positions vis-à-vis the environment. Legal pluralism and its bottom-up transformative potential may be emblematic of such endeavour.

Rather than discussing environmental human rights more broadly (e.g. Aguilera Bravo 2023), building bridges with intergenerational thought (Brown Weiss 2021; Fitzmaurice 2018), or delving into the complexities of collective rights approaches (Jovanović 2012), the piece has been engaging with the procedural nuances of an emerging regime, that of indigenous environmental rights. Given the scarcity of procedural principles underlying the human right to a safe environment, the piece explored collective and intergenerational rights as possible channels to vindicate indigenous rights, also serving to contextualise indigenous environmental claims further in view of these neighbouring regimes. Some previous definitional efforts may be noted here as far as the substantive part of such rights is concerned, especially in relation to derivative rights (Leib 2011) or as broadly associating them with biocultural rights (Bennett and Bavikatte 2015; Sajeva 2018; Rodríguez Caguana and Morales Naranjo 2020). While discussing main qualities and conditionalities to indigenous environmental rights, to an albeit minor extent, the main contribution here primarily lies with procedural detail, eventually enabling indigenous peoples to access justice. More precisely, it is built on commonly defended principles including the right to information, participation and accessing justice (IACtHR *Advisory Opinion 23/17*), but importantly, expands on these, with the objective of "indigenising" environmental rights to embrace questions of representation or autonomy. The imaginable legal relationship between non-human species and indigenous peoples resembling guardianship or parental responsibility, is explored further to uncover the particular potential lying with indigenous peoples as defenders of the environment through formalised justice arrangements. By borrowing from procedural obligations established in relation to the rights of the child and persons with disabilities principally, the authors attempt to widen and deepen the procedural scope of indigenous environmental rights. Indeed, international human rights law demonstrates considerable potential to expand the procedural obligations inherent to indigenous environmental rights in a more tailored manner, doing justice to indigenous peoples' particular roles as representatives, as translators and defenders of flora and fauna.

8. Concluding remarks: what procedural route to take?

Let's keep in mind, procedural routes may be embedded in environmental or biodiversity regimes irrespective of any detailed human rights obligations, let alone collective rights duties. This paper however departs from a human rights perspective, considering

indigenous vulnerabilities arising in such environmental hotspots particularly relevant for enhancing relevant claims. Collective rights certainly provide a considerable venue to be explored, especially as far as land and natural resource rights are concerned. Commonly, environmental claims arise where mega projects affect indigenous lands and livelihoods. Indeed, basic subsistence claims and related existential rights are primarily affected in that regard. The most common approach certainly arises with derivative rights such as basic health or food claims, the right to life or dignity. In that sense, we may argue these substantive rights remain oriented towards classical human rights approaches with different degrees and thresholds to be met which become relevant in high risk environmental contexts. Procedurally speaking, the right to information, participation or consultation and access to justice stand out as main safeguards. Intergenerational rights too prove relevant due to their focus on responsibilities and stewardship, commonly attributable to indigenous peoples while also placing emphasis on the environment as a cross-generational, future concern. Interesting legal questions on future harm and the pertinence of current human conduct are raised, again, relating closely to indigenous cosmovisions and needs.

Indigenous environmental rights may also be approached differently, that is through legal representation, parenthood, or guardianship arrangements, finding expression in existing human rights regimes, the rights of the child in particular. The intrinsic relation between subject and guardian merits particular attention in such procedural regimes, again, proving highly relevant to indigenous peoples and their distinguished claims. Possibly constituting its most known guiding principle, the "best interest" shall guarantee the subjects' (here: flora and fauna) genuine consideration throughout the process which, in turn, relates back to the question of translating or channelling voices, commonly associated with representation matters. As defenders of environmental concerns, indigenous peoples do emerge as relevant candidates for assuming guardianship functions as they are articulated in neighbouring human rights regimes. Conflicting views – between subjects and guardians – arising in that context may be less likely, building on the commonly propagated indigenous holistic view on the environment and the respect towards non-human species. Competing perspectives may however arise, at community level or across indigenous contexts, thereby complexifying any debates on the question of legitimate representation. Indigenous peoples' cosmovisions built on the idea of environmental responsibilities and intergenerational justice do however seem to generally justify a special procedural treatment, disentangling or re-inventing established principles such as legal capacity, standing, representation, autonomies or best interest. Eventually, indigenous environmental rights would much benefit from a procedural reading of neighbouring regimes, carving out firstly, their particular vulnerabilities, strong dependencies as a founding rationale and secondly, their special position assumed towards the environment as far as legal guardianship and representation are concerned.

Notes

1. *Kichwa Indigenous People of Sarayaku vs. Ecuador*. IACtHR in 2012.
2. As ruled in the by the Supreme Court of India: *K.M. Chinappa, T.N. Godavarman Thirumalpad vs. Union of India & Ors*. Supreme Court of India in 2002.

3. For further details see judgement *Rural Litigation and Entitlement Kendra Dehradun & Ors. vs. State of U.P. & Ors*. Supreme Court of India in 1985.
4. For further engagement please consider the *Saramaka vs. Suriname* and *Sarayaku vs. Ecuador* cases.IACtHR in 2007 and 2012.
5. A similar treatment became apparent before the UN Human Rights Committee which checked for measures taken to "minimise negative effects of water diversion" in the *Ángela Poma Poma vs. Peru* case. HRC in 2009.
6. *Saramaka People vs. Suriname*. IACtHR in 2007.
7. *Lhaka Honhat (Our Land) Association vs. Argentina*. IACtHR in 2020.
8. *T-622/16 judgement*. Colombian Constitutional Court in 2016.
9. A **guardian** refers to "one who is formally appointed to look after a child's interests on the death of the child's parents. (…) A guardian automatically has parental responsibility for the child." with **parental responsibility** referring to "all the rights, duties, powers, and responsibilities that by law a parent of a child has in relation to the child and his or her property" (Law 2015)
10. *452-2019 judgement*. Guatemalan Constitutional Court in 2019.
11. *004-2009 judgement*. Colombian Constitutional Court in 2009.
12. *A002-2019 judgement*. Colombian Constitutional Court in 2019.
13. A*079-2019 judgement*. Colombian Constitutional Court in 2019.
14. *STC 4360-2018 judgement*. Colombian Supreme Court in 2018.
15. *T622-16 judgement*. Colombian Constitutional Court in 2016.
16. *Mayagna (Sumo) Awas Tingni vs. Nicaragua*. IACtHR in 2001.
17. *Maya Indigenous Community of the Toledo District vs. Belize*. IACHR in 2004.
18. *Sawhoyamaxa Indigenous Community vs. Paraguay*. IACtHR in 2006.
19. *Ilmari Länsman et al. vs. Finland*. HRC in 1992.
20. *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*. International Court of Justice in 1997.
21. *Garífuna Community of Triunfo de la Cruz and its Members vs. Honduras*. IACtHR in 2015.
22. *Kaliña and Lokono Peoples vs. Suriname*. IACtHR in 2015.
23. *Guerra and Others vs. Italy.* ECtHR in 1998.
24. *McGinley and Egan vs. UK*. ECtHR in 1998.
25. *Taşkin and Others vs. Turkey*. ECtHR in 2005.
26. *Zine El Abidine Ben Ali vs. Tunisia*. HRC in 2012.
27. *J.I. vs. Finland*. CEDAW in 2018.
28. *Blokhin vs. Russian Federation*. ECtHR in 2016.
29. *Y.M. vs. Spain*. CRC in 2018.
30. *Vyacheslav Berezhnoy vs. Russian Federation*. HRC in 2016.
31. *Omar Sharif Baban vs. Australia*. HRC in 2003.
32. *Y.B. and N.S. vs. Belgium*. CRC in 2018.
33. *Humanitarian Law Center vs. Serbia.* HRC in 2007.
34. *Balaguer Santacana vs. Spain*. HRC in 1994.
35. *Deborah Joy Laing vs. Australia*. HRC in 2004.
36. *S.P., D.P. and A.T. vs. UK*. HRC in 1996.
37. *P.C. and S. vs. UK*. ECtHR in 2002.
38. *Moriana Hernández Valentini de Bazzano, Luis María Bazzano Ambrosini, Martha Valentini de Massera and José Luis Massera vs. Uruguay*. HRC in 1979.
39. *Fatma Zohra Bourchef vs. Algeria.* HRC in 2006.
40. *S.M.A. vs. Spain.* CRC in 2020.
41. *M.B.S. vs. Spain.* CRC in 2020.
42. *M.B. vs. Spain*. CRC in 2020.
43. *A.B. vs. Spain.* CRC in 2021.
44. *Y.M. and Y.M. vs. Spain.* CRC in 2018.
45. *N.B.F. vs. Spain.* CRC in 2018.
46. *A.L. vs. Spain.* CRC in 2019.

47. *J.A.B. vs. Spain.* CRC in 2019.
48. *A.D. vs. Spain.* CRC in 2019.
49. *M.A.B. vs. Spain.* CRC in 2020.
50. *M.T. vs. Spain.* CRC in 2019.
51. *R.K. vs. Spain.* CRC in 2019.
52. *L.D. and B.G. vs. Spain.* CRC in 2020.
53. *Bujdosó, Márkus, Márton, Mészáros, Polk, Szabó vs. Hungary.* CRPD in 2013.
54. *D.R. vs. Australia.* CRPD in 2017.
55. *O.M. vs. Ukraine.* CEDAW in 2019.
56. *N.A.A. vs. Switzerland.* CAT in 2018.
57. *M.G.C. vs. Australia.* HRC in 2015.
58. *M.K.H. vs. Denmark.* HRC in 2016.

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References

Acosta, Alberto. 2021. "Los derechos de la naturaleza como una necesidad global." Paper presented at the Jornadas Internacionales Derecho y Naturaleza: Simposio Latinoamericano de la Alianza Global por los Derechos de la Naturaleza, Universidad Andina Simón Bolívar, June 3–4.

Acosta, Alberto. 2015. "El Buen Vivir como alternativa al desarrollo: Algunas reflexiones económicas y no tan económicas." *Política y Sociedad* 52 (2): 299–330. doi:10.5209/rev_POSO.2015.v52.n2.45203.

Aguilera Bravo, Mario G. 2021. *Human Rights and the Environment in Latin America and the Caribbean: Environmental Human Rights under the American Convention on Human Rights and the Escazú Agreement on Access Rights*. Göttingen: Geog-August Universität Göttingen.

Aguilera Bravo, Mario G. 2023. *Environmental Human Rights in Latin America and the Caribbean: A Regional Contribution to Sustainable Development*. Leiden: BRILL.

Álvarez, Yesica. 2020. *Postdesarrollo, Pluralismo Jurídico y Derechos Indígenas: Alternativas al desarrollo y al Derecho*. Valencia: tirant lo blanch.

Atkinson, Judy. 2002. *Trauma Trails, Recreating Song Lines: The Transgenerational Effects of Trauma in Indigenous Australia*. North Melbourne: Spinifex Press.

Bagni, Silvia. 2021. "Derechos de la naturaleza e interculturalidad en Europa." Paper presented at the Jornadas Internacionales Derecho y Naturaleza: Simposio Latinoamericano de la Alianza Global por los Derechos de la Naturaleza, Universidad Andina Simón Bolívar, June 3–4.

Barrera, Anna. 2012. "Turning Legal Pluralism into State-Sanctioned Law: Assessing the Implications of the New Constitutions and Laws in Bolivia and Ecuador." In *New*

Constitutionalism in Latin America: Promises and Practices, edited by Almut Schilling-Vacaflor and Detlef Nolte, 371–390. Abingdon: Routledge.
Bautista, Rafael. 2021. "Speech." Paper presented at The Taller Internacional: Armonía, Con la Naturaleza en el Contexto Del Marco Global de Biodiversidad Posterior al 2020, FILAC, Ministerio de Relaciones Exteriores de Bolivia, Ministerio de Medio Ambiente y Agua, August 17.
Bennett, Tom, and Kabir Sanjay Bavikatte. 2015. "Community Stewardship: The Foundation of Biocultural Rights." *Journal of Human Rights and the Environment* 6 (1): 7–29. doi:10.4337/jhre.2015.01.01.
Berry, Thomas. 1999. *The Great Work*. New York: Three Rivers Press.
Bogdandy, Armin, Ferrer MacGregor, Morales Edoardo, Mariela Antoniazzi, and Flávia Piovesan. 2017. *Transformative Constitutionalism in Latin America: The Emergence of a New Ius Commune*. Oxford: Oxford University Press.
Brown Weiss, Edith. 2005. "Implementing Intergenerational Equity." In *Research Handbook on International Environmental Law*, edited by Malgosia Fitzmaurice, David M. Ong, and Panos Merkouris, 100–116. Cheltenham: Edward Elgar Publishing.
Brown Weiss, Edith. 2021. "Intergenerational Equity." *Max Planck Encyclopedia of Public International Law (MPEPIL)*. https://doi.org/10.1093/law:epil/9780199231690/law-9780199231690-e1421
Buchanan, Allen. 1993. "Role of Collective Rights in the Theory of Indigenous Peoples' Rights." *Transnational Law and Contemporary Problems* 3 (1): 89–108.
Caney, Simon. 2008. "Human Rights, Climate Change, and Discounting." *Environmental Politics* 17 (4): 536–555. doi:10.1080/09644010802193401.
Choquehuanca, David. 2021. "Speech." Paper presented at the Taller Internacional: Armonía, con la Naturaleza en el Contexto del Marco Global de Biodiversidad Posterior al 2020, FILAC, Ministerio de Relaciones Exteriores de Bolivia, Ministerio de Medio Ambiente y Agua, August 17.
Cittadino, Federica. 2019. *Incorporating Indigenous Rights in the International Regime on Biodiversity Protection: Access, Benefit-Sharing and Conservation in Indigenous Lands*. Leiden: BRILL | Nijhoff.
Comaroff, Jean, and John L. Comaroff. 2008. *Law and Disorder in the Postcolony*. Chicago, IL: Chicago University Press.
Cornescu, Adrian Vasile. 2009. *The Generation of Human Rights. Days of Law: The Conference Proceedings*. Brno: Masaryk University.
D'Andrea, Ariella. 2012. "Legal Pluralism and Customary Water Resources Management in Guatemala." *Water International* 37 (6): 683–699.
Dancer, Helen. 2021. "Harmony with Nature: Towards a New Deep Legal Pluralism." *Journal of Legal Pluralism and Unofficial Law* 53 (1): 21–41.
De-Shalit, Avner. 1995. *Posteriority Matters*. London: Routledge.
Doyle, Cathal. 2017. *Indigenous Peoples, Title to Territory, Rights and Resources: The Transformative Role of Free, Prior and Informed Consent*. Abington: Routledge.
Durán Castellanos, María Alejandra. 2020. El pueblo indígena Inkal Awá en Colombia: Ante las armas, la palabra. *Revista Catalana de Dret Ambiental* 11 (2).
Eichler, Jessika. 2019. *Reconciling Indigenous Peoples' Individual and Collective Rights: Participation, Prior Consultation and Self-Determination in Latin America*. Abington: Routledge.
Escobar, Arturo. 2014. *Sentipensar con la Tierra: Nuevas Lecturas sobre Desarrollo, Territorio y Diferencia*. Medellín: Ediciones UNAULA.
Farget, Doris. 2016. "Colonialisme et pollution environnementale: prolongement et effets sur les droits des peuples autochtones." *Criminologie* 49 (2): 95–114.
Fitzmaurice, Malgosia. 2018. "Indigenous Peoples and Intergenerational Equity as an Emerging Aspect of Ethno-Cultural Diversity in International Law." In *Ethno-Cultural Diversity and Human Rights: Challenges and Critiques*, edited by Pentassuglia, Gaetano, 123–124. Leiden: BRILL | Nijhoff.
Gaventa, John. 1980. *Power and Powerlessness: Quiescence and Rebellion in an Apalachian Valley*. Urbana: University of Illinois Press.

Gómez Isa, Felipe. 2018. "International Law, Ethno-Cultural Diversity and Indigenous Peoples' Rights: A Postcolonial Approach." In *Ethno-Cultural Diversity and Human Rights: Challenges and Critiques*, edited by Pentassuglia, Gaetano, 168–187. Leiden: BRILL | Nijhoff.
Goodale, Mark, and S. E. Merry. 2017. *The Practice of Human Rights: Tracking Law between the Global and the Local*. Cambridge: Cambridge University Press.
Gudynas, Edoardo. 2011. "Buen Vivir: Today's Tomorrow." *Development* 54 (4): 441–447.
Heinämäki, Leena. 2006. "The Protection of the Environmental Integrity of Indigenous Peoples in Human Rights Law." *Finnish Yearbook of International Law* XVII: 187–232.
Heinämäki, Leena. 2010. "The Right to Be a Part of Nature: Indigenous Peoples and the Environment." Academic diss., Faculty of Law, University of Lapland.
Jovanović, Miodrag. 2012. *Collective Rights: A Legal Theory*. Cambridge: Cambridge University Press.
Kral, Michael J. 2012. "Postcolonial Suicide among Inuit in Arctic Canada." *Culture, Medicine and Psychiatry* 36 (2): 306–325.
Kymlicka, Will. 1996. *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Oxford University Press.
Law, Jonathan. 2015. "Guardian." *A Dictionary of Law*. https://doi.org/10.1093/acref/9780199664924.001.0001/acref-9780199664924-e-1740?rskey=QibORE&result=1918
Leib, Linda Hajjar. 2011. *Human Rights and the Environment: philosophical, Theoretical, and Legal Perspectives*. Leiden: BRILL | Nijhoff.
MacPherson, Elizabeth. 2021. "Speech." Paper presented at the Taller Internacional: Armonía, con la Naturaleza en el Contexto del Marco Global de Biodiversidad Posterior al 2020, FILAC, Ministerio de Relaciones Exteriores de Bolivia, Ministerio de Medio Ambiente y Agua, August 17.
Mora Navarro, Fanny Verónica. 2020. "Los derechos a un ambiente sano, a la alimentación, al agua y a la identidad cultural." *e-Revista Internacional de la Protección Social* V (2): 330–355.
Moran, J., and M. Bussey. 2007. "Results of an Alcohol Prevention Program with Urban American Indian Youth." *Child & Adolescent Social Work Journal* 24 (1): 1–21.
Nursoo, Ida. 2018. "Indigenous Law, Colonial Injustice and the Jurisprudence of Hybridity." *The Journal of Legal Pluralism and Unofficial Law* 50 (1): 56–70.
Nutton, Jennifer, and Elizabeth Fast. 2015. "Historical Trauma, Substance Use, and Indigenous Peoples: Seven Generations of Harm from a 'Big Event'. *Substance Use & Misuse* 50 (7): 839–847.
Page, Edward A. 2007. "Intergenerational Justice of What: Welfare, Resources or Capabilities?" *Environmental Politics* 16 (3): 453–469.
Rodríguez Caguana, Adriana, and Viviana Morales Naranjo. 2020. "Los derechos de la naturaleza en diálogo intercultural: una mirada a la jurisprudencia sobre los páramos andinos y los glaciares indios." *Deusto Journal of Human Rights* (6): 99–123.
Rodríguez-Garavito, César. 2011. "Ethnicity.gov Global Governance, Indigenous Peoples, and the Right to Prior Consultation in Social Minefields." *Indiana Journal of Global Legal Studies* 18 (1): 263–305.
Ruiz Molleda, Juan Carlos. 2021. ¿Tiene cobertura constitucional el reconocimiento de los derechos de la naturaleza? Lima: Área de Justicia Constitucional del Instituto de Defensa Legal.
Sajeva, Giulia. 2018. *When Rights Embrace Responsibilities: Biocultural Rights and the Conservation of Environment*. Oxford: Oxford University Press.
Sajeva, Giulia. 2020. "Earth Jurisprudence: New Paths Ahead." *Diritto e questioni pubbliche* 20 (2): 7–10.
Santos, Boaventura de Sousa. 1987. "Law: A Map of Misreading. Toward a Postmodern Conception of Law." *Journal of Law and Society* 14 (3): 279–302.
Schilling-Vacaflor, Almut. 2010. *Recht als umkämpftes Terrain: Die neue Verfassung und indigene Völker in Bolivien*. Baden-Baden: Nomos.
Shiva, Vandana. 2021. "La importancia de los derechos de la naturaleza en este momento de transformación." Paper presented at the Jornadas Internacionales Derecho y Naturaleza: Simposio Latinoamericano de la Alianza Global por los Derechos de la Naturaleza, Universidad Andina Simón Bolívar, June 3–4.

Smith, Linda Tuhiwai. 1999. *Decolonising Methodologies: Research and Indigenous Peoples*. London: Zed Books.

Solón, Pablo. 2017. *Systemic Alternatives: Vivir Bien, Degrowth, Commons, Ecofeminism, Rights of Mother Earth and Deglobalisation*. La Paz: Fundación Solón, Attac France, Focus on the Global South.

Szablowski, David. 2010. "Operationalising FPIC in the Extractive Industry Sector? Examining the Challenges of a Negotiated Model of Justice." *Canadian Journal of Development Studies/ Revue Canadienne D'ětudes du Développement* 30 (1–2): 111–130.

Taylor, Charles. 1994. *Multiculturalism*. Princeton, NJ: Princeton University Press.

Tigre, Maria Antonia. 2020. "Inter-American Court of Human Rights Recognises the Right to a Healthy Environment." *ASIL Insights* 24 (14). https://www.asil.org/insights/volume/24/issue/14/inter-american-court-human-rights-recognizes-right-healthy-environment

Tomuschat, Christian. 2014. *Human Rights: Between Idealism and Realism*. Oxford: Oxford University Press.

Tremmel, Joerg. 2009. *A Theory of Intergenerational Justice*. Abingdon: Routledge.

Tully, James. 2006. *Strange Multiplicity: Constitutionalism in an Age of Diversity*. Cambridge: Cambridge University Press.

Tumussiime, Frank. 2021. "Speech." Paper presented at the Taller Internacional: Armonía, con la Naturaleza en el Contexto del Marco Global de Biodiversidad Posterior al 2020, FILAC, Ministerio de Relaciones Exteriores de Bolivia, Ministerio de Medio Ambiente y Agua, August 17.

Vasak, Karel. 1977. "A 30 Year Struggle: The Sustained Effort to Give the Force of Law to the Universal Declaration of Human Rights." *UNESCO Courir* 3 (11): 29–32.

Walsh, Catherine E. 2009. *Interculturalidad, estado y sociedad. Luchas (de)coloniales de nuestra época*. Quito: Universidad Andina Simón Bolívar.

Watson, Irene. 2018. *Indigenous Peoples as Subjects of International Law*. Abingdon: Routledge.

Winter, Christine J. 2022. *Subjects of Intergenerational Justice: Indigenous Philosophy, the Environment and Relationships*. Abington: Routledge.