



**OBLIGATIONS OF STATES  
RELATED TO THE RIGHT OF  
CONSULTATION AND FREE,  
PRIOR AND INFORMED  
CONSENT IN THE CONTEXT  
OF CLIMATE EMERGENCY**

*org.*

**LIANA AMIN LIMA  
RACHEL DANTAS LIBOIS  
GISELA HURTADO**

**ANA CAROLINA ALFINITO VIEIRA  
CLARISSA MARQUES DA CUNHA  
GISELE JABUR**



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**CEPEDIS**

Centro de Pesquisa e Extensão  
em Direito Socioambiental

**Rua Imaculada Conceição, 1155. Prado Velho. Curitiba-PR**

**[www.direitosocioambiental.org](http://www.direitosocioambiental.org)**

**Arte & Letra**  
**selo Letra da Lei**

**Rua Des. Motta, 2011. Batel. Curitiba-PR**

**[www.arteeletra.com.br](http://www.arteeletra.com.br)**

org.  
**LIANA AMIN LIMA**  
**RACHEL DANTAS LIBOIS**  
**GISELA HURTADO**  
**ANA CAROLINA ALFINITO VIEIRA**  
**CLARISSA MARQUES DA CUNHA**  
**GISELE JABUR**

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Conselho Científico:

Carlos Frederico Marés de Souza Filho  
Claudia Regina Sala de Pinho - Pantaneira  
Cristiane Gomes Julião - Pankararu  
Joaquim Shiraishi Neto  
José Aparecido dos Santos  
Liana Amin Lima da Silva  
Vercilene Francisco Dias - Kalunga

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Centro de Pesquisa e Extensão em Direito Socioambiental (Cepedis)

# **OBLIGATIONS OF STATES RELATED TO THE RIGHT OF CONSULTATION AND FREE, PRIOR AND INFORMED CONSENT IN THE CONTEXT OF CLIMATE EMERGENCY**

## **Cover and Graphic Design**

Frede Tizzot

## **Cover Photography**

Michael Dantas / Avaaz

In the photo: Ayrumá Tuxá (APOINME, Brazil), Milena Mura (OMIM, Brazil), Junior Anderson Barbosa Guarani Kaiowá (Aty Guasu, Brazil), Eva Patrícia Fernandes Braga (CONAQ-MS, Brazil) and Jhajayra Machoa (CONFENIAE, Ecuador), members of the delegation from the Observatório de Protocolos Comunitários present at the Hearing on Climate Emergency and Human Rights of the Inter-American Court of Human Rights, in Manaus-AM, May 27-29, 2024.

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## **Scientific Council**

Carlos Frederico Marés de Souza Filho

Claudia Regina Sala de Pinho - Pantaneira

Cristiane Gomes Julião - Pankararu

Joaquim Shiraishi Neto

José Aparecido dos Santos

Liana Amin Lima

Maira de Souza Moreira

Vanuza da Conceição Cardoso

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Consultation And Free, Prior And Informed Consent In  
The Context Of Climate Emergency**  
Amicus curiae brief submitted to the  
**INTER-AMERICAN COURT OF HUMAN RIGHTS**

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## **Research Coordination**

Liana Amin Lima; HURTADO, Gisela;

## **Work Organization**

LIMA, Liana Amin; HURTADO, Gisela; VIEIRA, Ana Carolina Alfinito; LIBOIS, Rachel Dantas; CUNHA, Clarissa Marques da; JABUR, Gisele.

## **Co-authors**

Ana Carolina Alfinito Vieira

Ayrumã Tuxá (Tuxá People; APOINME, Brazil)

Clarissa Marques da Cunha (OPCPLI/ GEPT/ UPE)

Dinaman Tuxá (Antonio Fernandes de Jesus Vieira / Tuxá People, ABIP, Brazil)

Donald Moncayo (UDAPT, Ecuador)

Eva Patrícia Braga (Quilombola, CONAAQ, Brazil)

Gisela Hurtado (Amazon Watch)

Gisele Jabur (OPCPLI/ CEPEDIS/ PUCPR, Brazil)

Isabella Cristina Lunelli (OPCPLI/ UFSC, Brasil)

Jhajayra Machoa (A'I Cofán People, CONFENIAE, Ecuador)

Jeferson da Silva Pereira (Quilombola, CONAQ, RENAAQ, Brazil)

José Esach Puenchir (Shuar People; CONFENIAE, Ecuador)

José Homero Mutumbajoy (Inca People, OPIAC, Colombia)

Jorge Pérez Rubio (Uitoto Muruy People, AIDASEP, Peru)

Junior Anderson Barbosa Guarani Kaiowá (Aty Guasu, Brazil)

Junior Pankararu (Adelmar Fernandes Barbosa Júnior / APIB, Brazil)

Liana Amin Lima (OPCPLI/ CEPEDIS/ PPGFDH/ UFGD, Brazil)

Lucas Cravo de Oliveira (Depto. Jurídico APIB, Brasil)

Mauricio Terena (APIB, Brazil)

Milena Mura (Mura People; OMIM, Brazil)

Rachel Dantas Libois (OPCPLI/ CEPEDIS/ PUCPR, Brasil)

Vivian Idrovo Mora (Alianza DDHH, Ecuador)

Vladimir Pinto (Amazon Watch)

### **Translation**

Spanish: Gisela Hurtado; Ana Carolina Alfinito

Portuguese: Gisele Jabur; Rachel Libois

English: Maira Flores; Felipe Mattos;

### **Preface**

Liana Amin Lima

### **Oral Argument (IACHR Hearing in Manaus, May 28, 2024)**

Jhajayra Machoa (A'I Cofán People, CONFENIAE, Ecuador)

Inocente Sangama Sangama (Kichwa People, CEPKA, Peru)

Jeferson da Silva Pereira (Quilombola, CONAQ, RENAAQ, Brazil)

Junior Anderson Barbosa Guarani Kaiowá (Guarani Kaiowá People, Aty Guasu, Brazil)

Liana Amin Lima (OPCPLI/ PPGFDH/ UFGD, Brazil)

## **Description of signatory organizations:**

**1. Amazon Watch (United States)** is a civil society organization that since 1996 has accompanied the indigenous peoples in their struggle to protect their territories and the environment, as well as their resistance to extractive activities that cause impacts not only the traditional territories but also the surrounding ecosystem. Amazon Watch has different teams on active fieldwork in countries such as Ecuador, Peru and Brazil, constantly visiting the communities and participating in internal processes. See: <https://amazonwatch.org/>.

**2. Observatory of Consultation and Free, Prior and Informed Consent Autonomous Protocols, Research and Extension Center of Socio-environmental Law - CEPEDIS (Brazil)** is a non-profit civil society association founded in 2015 in the city of Curitiba (Paraná, Brazil). The association brings together researchers of socio-environmental law, graduate students, master's and doctoral students of the research group "Environment: traditional societies and hegemonic society" from the Pontifical Catholic University of Paraná (PUCPR/Brazil), with the aim of promoting research and extension in socio-environmental law, as well as providing free legal advice to indigenous peoples, *quilombolas* and traditional communities. The Observatory of Consultation and Free, Prior and Informed Consent Autonomous Protocols: territo-

rial rights, self-determination and jusdiversity, has been associated since 2018 with the Federal University of Grande Dourados (UFGD), the Pontifical Catholic University of Paraná (PUCPR/Brazil) and the **Research and Extension Center of Socio-environmental Law (CEPEDIS)**; it brings together a network of researchers in a national level, international contributors, and representatives of traditional peoples in association with civil society organizations dedicated to monitoring cases of threats and violations to the right to consultation and free, prior and informed consent in Brazil and other countries in Latin America and Africa, in the defense of territorial rights and respect to the nature of autonomous protocols. The Observatory keeps an updated Map of Autonomous Protocols with the documents that have been published by the peoples who elaborated them. See: <http://observatorio.direitosocioambiental.org/>; <https://direitosocioambiental.org/>.

**3. Articulation of Indigenous Peoples and Organizations of Northeast, Minas Gerais and Espírito Santo - APOINME (Brazil)** is an indigenous organization created in 1990 during the 1st Coordination Meeting of the Indigenous Peoples of the East and Northeast Brazil in the Pataxó Hãhãhãe Indigenous Land (Bahia). In 1995, the organization was formally established as a non-profit civil society association, with the aim of fighting for the recuperation of indigenous territories and to advocate for differentiated public policies regarding education, health, development,

environment, sustainability and autonomy for indigenous peoples. Today, after more than 30 years of political activities, Apoinme remains an organization formed by indigenous peoples, subdivided in eight micro-regions, representing 130 indigenous territories, around 80 indigenous peoples and an estimated population of 230.000 people. See: <https://apoinme.org/>.

**4. Munduruku Indigenous Association Dace (Brazil)** is representative organization of the Munduruku People that inhabits the Kayabi indigenous lands, between Mato Grosso and Pará States, in the Teles Pires community. It is an organization that operates in a local level in the defense of the Munduruku people's rights in this region.

**5. ClimaInfo Institute (Brazil)** emerges with the objective of offering an environment free of speculations and fake news about climate change to contribute to a productive debate, based upon real facts and data, about actions and politics for the mitigation and adaptation to the consequences of global climate change.

**6. National Organization of the Indigenous Peoples of Colombian Amazon - OPIAC (Colombia)** is a non-profit indigenous special public law institution which exercises the political representation of the Colombian Amazon indigenous peoples before International and National institutions; the main objective of OPIAC is to ensure that every collective and

individual rights of its members are respected and recognized by every actor located in the Colombian Amazon region. See: <https://www.opiac.org.co/>.

**7. Interethnic Association of Development for the Peruvian Jungle - AIDSESEP (Peru)** is a representative organization of the indigenous peoples of the Peruvian Amazon that works for the defense and respect of collective rights through actions that expose the main problems faced by them and to present alternative proposals of development, guided by the indigenous peoples' cosmovisions and way of life. AIDSESEP is led by a National Directive Council elected periodically each 5 years by the regional bases: 9 decentralized organizations located in the north, center and south regions of the Peruvian Jungle. Moreover, it relies on 109 federations that also participate in the elections through National Congresses. These federations represent 2439 communities where more than 650.000 indigenous men and women live, grouped into 19 linguistic families. See: <https://aidesep.org.pe/>.

**8. Articulation of Indigenous Peoples of Brazil - APIB (Brasil)** is the organization that articulates and represents the indigenous peoples of Brazil nationwide, formed by grassroots indigenous organizations from different parts of the country. Apib is an instance of national reference to the indigenous movement in Brazil, created from the roots. It reunites regional

indigenous organizations and was created with the objective of strengthening the unity of peoples, the articulation between different regions and indigenous organizations of the country, and to mobilize the indigenous peoples and organizations against the threats and attacks against the indigenous rights. See: <https://apiboficial.org/?lang=es>.

**9. Confederation of Indigenous Nationalities of Ecuadorian Amazon - CONFENIAE (Ecuador)** is the regional indigenous organization that represents around 1500 communities of the amazonic nationalities Kichwa, Shuar, Achuar, Waorani, Sapara, Andwa, Shiwiar, Cofan, Siona, Siekopai and Kijus in Ecuador. See: <https://confeniae.net/>.

**10. Alliance for the Human Rights of Ecuador (Ecuador)** is a coalition made by 14 organizations (Ecumenical Commission of Human Rights (CEDHU); Amazon Frontlines; the Human Rights Committee of Guayaquil (CDH-GYE); the Support and Protection Center for Human Rights (SURKUNA); the Latin American Foundation for Alternative Development (ALDEA); Ecological Action; the Alejandro Labaka Foundation; Amazon Watch; the Association of Rural Land Owners of North Ecuador (APT-Norte); the Collective of Critical Geography of Ecuador; the Mining Environmental and Social Observatory of North Ecuador (OMASNE), the Yasunidos Collective, BOLENA gender and diversity advisor and the Col-

lective of Anthropologists), which decided to join efforts, experiences and knowledges to develop a collective work that contributes to the respect and guarantee of human rights for the peoples and nature of Ecuador. See: <https://ddhhecuador.org/>

**11. Union of People Affected by Texaco's Oil Operations – UDAPT (Ecuador)** is a non-profit organization that brings together communities of 6 indigenous nations (Waorani, Siekopai, Siona, A'I Kofan, Shuar and Kichwa) and around 80 peasant communities settled in areas that were contaminated by the transnational company Chevron, former Texaco, that initiated in 1993 a trial against the oil company for the damage caused in the provinces of Sucumbíos and Orellana located in the Ecuadorian Amazon. The UDAPT is formed directly by the affected people, and through a struggle for the reparation of the Amazon in north Ecuador, impacted by the oil operations conducted by Chevron Corporation.

**12. Federation of Indigenous Organizations of Napo - FOIN** is one of the grassroots organizations of CONFENIAE, formed by Kichwa indigenous communities of Napo province. In the last years, the struggle of this organization has focused on territorial defense and complaints about threats and violations in the context of legal and illegal mining activities in their lands and the promotion of collective rights.

**13. National Coordination of the Rural Black Quilombola Communities (CONAQ):** The National Coordination of the Rural Black Quilombola Communities (CONAQ) is an organization founded in 1996 that represents and politically advocates for Quilombola communities across Brazil. Its work is focused on defending the territorial, social, cultural, and environmental rights of Quilombola peoples, strengthening their ethnic identity and traditional forms of community organization. CONAQ plays a fundamental role in the struggle for land titling, the recognition of African ancestry, and the promotion of social and racial justice in the Brazilian countryside. See: <https://conaq.org.br/>





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## I. Introduction

1. The objective of this submission is to provide information to the Inter-American Court of Human Rights for the elaboration of the Advisory Opinion on Climate Emergency and Human Rights, requested by the Republic of Colombia and the Republic of Chile on January 9, 2023<sup>1</sup>.

2. The climate change, defined by the article 1 of the United Nations Framework Convention on Climate Change<sup>2</sup>, is an anthropogenic phenomenon resulting from human interventions that release greenhouse gases (GHG) massively into the atmosphere, including the burning of fossil fuels, livestock farming and activities associated with deforestation, such as mining and monoculture farming. Due to the pressure of civil society about the severity and urgency of necessary actions on climate change, in 2019, the Secretary-General of the United Nations, Antonio Guterres, remarked that we are facing a climate crisis<sup>3</sup>, subsequently

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<sup>1</sup> Advisory Opinion on Climate Emergency and Human Rights to the Inter-American Court of Human Rights of the Republic of Colombia and the Republic of Chile. Available at: [https://www.corteidh.or.cr/docs/opiniones/soc\\_1\\_2023\\_es.pdf](https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_es.pdf).

<sup>2</sup> Article 1 of the *United Nations Framework Convention on Climate Change*. Definitions: [...] 2. "Climate change" means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods. Available at: <https://unfccc.int/resource/docs/convkp/convsp.pdf>.

<sup>3</sup> The term climate crisis was first conceived by Al Gore. Available at: <https://subscriber.politicopro.com/article/eenews/1060718493>. Afterwards, the term was taken up again by the Secretary-General of the United Nations, Antonio Guterres, in 2018, after civil society movements demanded a term that recognized the importance of the problem. Thus, in a speech for Climate Action during the preparation of the Climate Action Summit 2019, the Secretary-General recognized that there was no doubt about the climate crisis, and called for a move from fossil fuels, which are the main cause of climate change.

calling the states, in 2020, to declare climate emergency in their countries<sup>4</sup>.

3. The climate change<sup>5</sup> has disruptive and harmful impacts in groups, communities and human societies. These disturbances manifest themselves in intense droughts, water shortages, severe fires, rising sea levels, melting of the polar ice caps, catastrophic storms and loss of biodiversity. For human societies, such impacts affect the availability of water, the capacity to grow food, and the conditions of labor, health and social reproduction. All of this constitutes the current climate emergency.

4. Beyond the transformations in global climate patterns, a phenomenon widely recognized by the international scientific community and particularly by the Intergovernmental Panel on Climate Change (IPCC)<sup>6</sup>, some researchers proposed that

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Available at: <https://www.un.org/sg/en/content/sg/speeches/2018-09-10/remarks-climate-change>.

<sup>4</sup> In 2019, the Secretary-General Guterres used the term “climate emergency” for the first time, remarking the urgency of taking every necessary measures amidst the crisis and pointing out that “the climate emergency is a race we are losing, but it is a race we can win”. Available at: <https://www.un.org/sg/en/content/sg/speeches/2019-09-23/remarks-2019-climate-action-summit>. Finally, in 2020, the Secretary-General made an urgent call to the member states to “declare a State of Climate Emergency in their countries until carbon neutrality is reached”. Available at: <https://www.un.org/sg/en/content/sg/statement/2020-12-12/secretary-generals-remarks-the-climate-ambition-summit-bilingual-delivered-scroll-down-for-all-english-version>.

<sup>5</sup> Article 1 of the *United Nations Framework Convention on Climate Change*. Definitions: [...] *Convención Marco de las Naciones Unidas sobre el Cambio Climático*. Definitions: [...] “Adverse effects of climate change” means changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare”. Available at: <https://unfccc.int/resource/docs/convkp/convsp.pdf>

<sup>6</sup> The Intergovernmental Panel on Climate Change (IPCC) is a pane of experts created in 1988 to facilitate integral evaluations of the state of art regarding scientific, technical and socioeconomic knowledge about climate change, as well as its causes, implications and response strategies. The reports of IPCC can be accessed in the following address: <https://www.ipcc.ch/>.

the human interventions could have contributed to the emergence of a new geological era, called Anthropocene<sup>7</sup>, characterized by a change not only in climate, but also in other terrestrial systems that defined the Holocene era, such as biodiversity, the global proportion of land converted for agriculture, the acidification of the oceans, among others<sup>8</sup>. Ironically, this new era, formed by human intervention, results in terrestrial conditions that are hostile to our own existence.

5. Although the climate emergency is a global phenomenon, its impacts on human groups are far from equitable. The communities that live in vulnerable areas to climate change, such as slopes, riverines, mangroves and forests increasingly prone to fires, are the first ones to suffer from floods, landslides and other extreme weather and climate events. Also, the peoples and communities whose ways of life are directly linked to ecological processes, rivers and forests, such as fishermen, farmers, hunters, also experience the impacts of climate emergency more immediately. Changes in the availability, quality and location of fishing, hunting, fertile soil, and drinking water can have a deep impact in the social, political and cultural orga-

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<sup>7</sup> ZALASIEWICZ, Jan; WATERS, Colin; ELLIS, Erle, et al. The Anthropocene: Comparing its meaning in Geology (Chronostratigraphy) with conceptual approaches arising in other disciplines. *Earth's Future*, n. 9, 2021.

<sup>8</sup> CREUZEN, Paul. Geology of mankind: the Anthropocene. *Nature*, n. 415, p. 23, 2002. MOORE, Jason. O surgimento da natureza barata. In: MOORE, J. (org), *Antropoceno ou capitaloceno? Natureza, história e a crise do capitalismo*. São Paulo, Elefante, 2022; ARAÓZ, Horacio Machado. El Extractivismo y las raíces del "Antropoceno". Regímenes de sensibilidad, régimen climático y derechos de la naturaleza. *Revista Direito e Práxis*, Rio de Janeiro, 14. (1), 2023.

nization of these communities, at a speed that greatly hinders the ability to generate collective responses to new contexts.

6. The manifestations of climate emergency are associated with the violation of a multitude of rights of indigenous and tribal peoples, as well as Afro-descendant, peasants, riverines and other communities that distinguish from national society for being guided partly due to their own customs, traditions and territorialities. From now on, we will refer to this constellation of societies as *peoples and communities*. The right to self-determination is one of the rights most directly threatened by climate emergency. In the case of peoples and communities, the cumulative impacts of climate emergency and other sources of pressure on their living conditions put in danger their permanence and existence as communities.

7. The right to consultation and free, prior and informed consent is one of the main rights regarding the mediation between the rights and interests of peoples and communities, and the interests of nation states. Enacted in Convention 169 of the International Labor Organization (ILO) and in the United Nations Declaration on the Rights of Indigenous Peoples, it establishes that it is the obligation of States to ask peoples and communities in an appropriate and respectful manner about their position on administrative and legislative decisions that might affect their lives and rights. This refers to the right of peoples and communities to be consulted and to participate in State decisions through intercultural dialogue marked by good faith,

including the right to reject projects that they consider to have negative and destructive impacts on their collective lives. As will demonstrated in this presentation, the right to consultation and free, prior and informed consent must be understood and interpreted in light of the right to self-determination of peoples and communities, and applied in a manner that strengthens and enables the latter<sup>9</sup>.

8. As will be explained in Part II, we understand that, under both international and national law, every peoples and communities referred to in this document have the right to self-determination and consultation and free, prior and informed consent<sup>10</sup>. Thus, peoples and communities have the right to freely determine their political status and freely pursue their economic, social and cultural development<sup>11</sup>.

9. The different components of the right to self-determination, including the right to consultation and consent, are still fragile and disrespected by nation states, besides being doubly threatened by climate emergency.

10. On the one hand, the climate emergency, characterized by changes in climate patterns, and especially the increasingly

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<sup>9</sup> The right to self-determination is a complex right composed of a series of other rights, such as the right to self-identification, the right to cultural identity and non-discrimination, the right to collectively used lands and territories, the right to self-government, and the right to consultation and free, prior, and informed consent, among others.

<sup>10</sup> We discuss the issue of the right to consultation and free, prior, and informed consent in Chapter II.

<sup>11</sup> Inter-American Commission of Human Rights. **Right to Self-Determination of Indigenous and Tribal Peoples**. Approved by the Inter-American Commission on Human Rights on December 28, 2021. Available at: <https://www.oas.org/en/iachr/reports/pdfs/self-determination-EN.pdf>.

frequent occurrence of extreme weather and climate events such as droughts, floods and the sea level rise, undermine the ability of peoples to preserve their identity and to freely determine their political status, to relate to their territory in accordance to their customs and traditions, and to collectively determine the direction of their economic, social and cultural development.

11. On the other hand, it is urgent to point out that, frequently, the measures implemented by the States and companies to supposedly mitigate the climate emergency, especially the installation of infrastructure and the extraction of inputs for the generation of the so-called “clean”, “renewable” or “green” energy in the context of energy transition<sup>12</sup>, as well as REDD+ (Reducing Emissions from Deforestation and Forest Degradation) project, and other kinds of carbon offset projects or programs, reinforce and reproduce patterns of violations to the people’s rights to self-determination<sup>13</sup>. These measures are being planned and implemented without any clarity on how they will affect peoples and communities, often using incomplete or misleading information about socio-environmental impact, and without respecting the right to consultation and free, prior, and informed consent.

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<sup>12</sup> Article 2.1.a of the Paris Agreement established the obligation to “Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change”. In order to achieve this goal, it is necessary to shift the energy matrix from fossil fuels to other types of energy. This process is called energy transition.

<sup>13</sup> In Chapter IV, we present a series of cases that demonstrate the violation of the right to self-determination in the implementation of projects aimed at “clean” energy production, such as wind farms and mega-mining of minerals critical to the transition.

12. Given their ways of living and their direct relation with the cycles of land and water, the peoples and communities are particularly vulnerable to both the impacts of climate change and the impacts of mitigation measures. Therefore, States have a number of obligations to mitigate the effects of the climate emergency on their self-determination and to prevent measures to combat the climate emergency from further undermining their ability to determine the course of their history.

### **a.Objectives of *amicus curiae***

13. The purpose of this submission is to provide information specifically on issues A.2<sup>14</sup>, A.2.A<sup>15</sup>, B.1<sup>16</sup>, D.2<sup>17</sup> y E.3<sup>18</sup> contained in the Request for an Advisory Opinion from the Inter-American Court on Climate Emergency and Human Rights.

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<sup>14</sup> A.2. In particular, what measures should States take to minimize the impact of damage caused by climate emergencies, in light of the obligations established in the American Convention? In response to this, what differentiated measures should be taken with regard to vulnerable populations or intersectional considerations?

<sup>15</sup> A.2.A. What considerations should a State take into account in order to implement its obligation to (i) regulate, (ii) monitor and supervise; (iii) require and approve social and environmental impact studies, (iv) establish contingency plans, and (v) mitigate activities within its jurisdiction that aggravate or may aggravate the climate emergency?

<sup>16</sup> On the state's obligations to preserve the rights to life and survival in the face of the climate emergency in light of scientific findings and human rights. Taking into account the right of access to information and the obligations regarding active production of information and transparency, provided for in Article 13 and derived from the obligations under Articles 4.1 and 5.1 of the American Convention, 42 in light of Articles 5 and 6 of the Regional Agreement on Access to Information, Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).

<sup>17</sup> D.2. To what extent should the obligation to consult on the consequences of the activity in the climate emergency or the projections of the emergency be taken into account?

<sup>18</sup> E.3. What specific considerations must be taken into account to guarantee the right to defend a healthy environment and territory due to intersectional factors and differentiated impacts, among others, on Indigenous Peoples, peasant communities, and Afro-descendant peoples in the face of the climate emergency?

14. In this context, the document has the following objectives:

- Demonstrate that in the current context of the climate emergency, States have an obligation to guarantee, respect, and promote the right to self-determination of indigenous and tribal peoples in Latin America, given that their territories are the most preserved and function as carbon sinks.

- Demonstrate how and why the climate emergency poses a serious, distinct, and urgent threat to the right to self-determination of the peoples and communities of Latin America, protected by international, regional, and national standards.

- Demonstrate how some of the measures proposed by states and companies to address the climate emergency, mainly those related to the generation of “green energy,” the energy transition, and nature-based conservation measures, often reproduce the logic of violating the right to self-determination and associated rights, such as the right to territory, information, and free, prior, and informed consent.

- Propose recommendations for measures that States should be required to adopt in order to (i) promote conditions for the exercise of self-determination in the context of a climate emergency and (ii) guarantee the right to self-determination in the context of the ecological-energy transition driven by climate change, including post-extractive development paths and the promotion of “green energies.”

15. To meet these objectives, we use information about the communities and territories represented or accompanied by the

organizations signing this document, as well as a database of violations of the right to consultation and free, prior, and informed consent developed and maintained by the Observatory of Community Protocols for Consultation and Free, Prior, and Informed Consent<sup>19</sup>. The recommendations to States were developed based on international and regional standards, precedents from the Inter-American Court of Human Rights, and reports from the Inter-American Commission on Human Rights.

**b. Structure of the amicus curiae brief**

16. The presentation is structured as follows:

- Part II argues about the importance of guaranteeing the right to self-determination of peoples and communities in the current context of climate emergency and invites the Court to rethink legal concepts such as consultation and free, prior, and informed consent based on the right to self-determination.
- Part III demonstrates why and how the climate emergency poses a threat to the right to self-determination.
- Part IV presents cases of violations of the right to self-determination of indigenous and tribal peoples in the context of energy transition.
- Finally, Part V proposes obligations for States regarding the respect for the rights to self-determination and consultation and free, prior, and informed consent in the current context of climate emergency.

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<sup>19</sup> This database was consolidated at the Third Meeting of the Community Protocols Observatory, held from September 13 to 16, 2023, in Luziânia, Goiás, Brazil.

## **II. The importance of guaranteeing the right to self-determination of peoples and communities in the context of the climate emergency**

17. According to the Food and Agriculture Organization of the United Nations (FAO), traditional territories cover 28% of the world's land area and contain 80% of the planet's biodiversity<sup>20</sup>. A research entitled *The State of Indigenous Peoples' and Local Communities' Lands and Territories* show that “[65%] of the lands of indigenous peoples and local communities have low or no levels of human modification, meaning that they are natural or semi-natural lands that have not been modified by more than 10% due to intensive human impacts. These intact ecosystems are also likely to be playing an important role in mitigating climate change. Another 27% of the lands of indigenous peoples and local communities are subject to moderate forms of human modification. In total, 91% of the lands of indigenous peoples and local communities are in good or moderate ecological condition, providing further evidence that the stewardship of indigenous peoples and local communities is consistent with biodiversity conservation”<sup>21</sup>.

18. These figures are directly related to food security and agrobiodiversity, considering that the decline in genetic diver-

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<sup>20</sup> Five ways indigenous peoples can help the world eradicate hunger. Available at: <https://news.un.org/pt/story/2019/08/1683741>. Last accessed on 05/24/2023.

<sup>21</sup> The state of the lands and territories of Indigenous Peoples and Local Communities. Available at: [https://www.flac.awsassets.panda.org/downloads/estado\\_de\\_iplc\\_tierras\\_y\\_territorios\\_final\\_1\\_1\\_1.pdf](https://www.flac.awsassets.panda.org/downloads/estado_de_iplc_tierras_y_territorios_final_1_1_1.pdf). Last accessed on 12/13/2023.

sity of species exposes the remaining ones to pests and diseases that can collapse entire production and consumption systems. A study conducted by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) identified that, in 2016, 559 of the 6,190 mammals used for food and agriculture became extinct, while another 1,000 were at risk of extinction<sup>22</sup>. In the context of a climate emergency and accelerating biodiversity loss, it is more necessary than ever to preserve territories and strengthen communities that cultivate and protect threatened species.

19. In the Amazon region, we see that indigenous lands constitute important barriers against deforestation. Less than 2% of historical deforestation in the Brazilian Amazon occurred within indigenous lands, even though they occupy 25% of the region<sup>23</sup>. A recent study by the Socio-Environmental Institute (ISA) showed that, in Brazil, indigenous lands and Conservation Units where traditional occupation is permitted show higher rates of native vegetation preservation and regeneration<sup>24</sup>. This means that the presence of traditional communities ensures greater environmental protection than the sim-

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<sup>22</sup> IPBES. (2019). Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (Version 1). Zenodo. Available at: <https://doi.org/10.5281/zenodo.6417333>.

<sup>23</sup> WALKER, Wayne; GORELIK, Seth; BACCINI, Alessandro; et al. The role of forest conversion, degradation, and disturbance in the carbon dynamics of Amazon indigenous territories and protected areas. *Proceedings of the National Academy of Science of the United States of America*, v. 117, 2020.

<sup>24</sup> Forests need people. Antonio F. P. Oviedo and Juan Doblás. Available at: <https://acervo.socioambiental.org/sites/default/files/documents/m9d00064.pdf>.

ple demarcation of protected areas, since it is they, with their knowledge, who are responsible for the environmental work of caring for the forests.

20. The protection of forests, jungles, rivers, biodiversity, and the sociocultural diversity that make up the territories of indigenous peoples is only possible to the extent that their right to self-determination is guaranteed: the right to freely determine their present and their future projects through their forms of organization and political, legal, and social institutions, and the right to use, inhabit, and give meaning to their territories in accordance with their cultures, traditions, and collective projects. The right to self-determination also includes the right to each people's modes of existence and their own ways of interrelation and interdependence with biomes, lands, waters, air, more-than-human persons, and other beings with whom they share their territories, constituting rich socio-biodiversities.

21. The low rate of deforestation and degradation in indigenous lands and traditional territories is closely linked to traditional modes of land occupation, sustainable use of resources, and the political struggle of indigenous peoples, which leads to the preservation of forests and biodiversity. This achievement is possible thanks to the self-determination of these peoples, who, by autonomously deciding on their history, development, and relationship with the land, contribute significantly to the protection of vast natural areas. In the current context of the climate emergency, guaranteeing the right to self-determination

is a central and urgent measure, as traditional practices and knowledge play a crucial role in mitigating and combating the adverse effects of climate change. This right is inherent to the very existence of any people and is an essential condition for the exercise of other fundamental rights.

22. However, despite the need to protect these ways of life, the right to self-determination or self-determination of peoples<sup>25</sup> is severely threatened by the climate emergency and by climate emergency mitigation measures.

**a. The content of the right to self-determination of peoples and communities**

23. The self-determination or self-determination of peoples is the freedom to be and coexist as a community that expresses its way of life, its collective knowledge and wisdom transmitted and transformed over generations, its own form of collective and political organization, its self-government in a specific territory where its cultural and ethnic identity, territoriality, and future are forged. However, over the centuries, the indigenous peoples of Latin America were deprived of this right due to colonization, which transformed them into peoples “under the guardianship” of the states that assumed political control of their territories.

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<sup>25</sup> International instruments on the rights of indigenous peoples use the term “self-determination,” such as the United Nations Declaration on the Rights of Indigenous Peoples and the American Declaration on the Rights of Indigenous Peoples. However, the term “self-determination” is also used in the available literature to refer to the inherent, pre-existing, and historical rights of indigenous and tribal peoples.

24. Self-determination implies that through collective aspirations rooted in tradition and ancestry, as well as respect for memory and resistance to colonization processes, it becomes essential to think about a dignified future for peoples, where the community can guarantee its existence free from forced assimilation processes or the imposition of ways of being or models of development that do not fit their aspirations and ways of life<sup>26</sup>.

25. By embracing the right to self-determination, States recognize the right of peoples to a dignified existence through self-governance, respecting their cultural diversity and autonomy. Therefore, they have the right to decide priorities in relation to development that affects their lives, through their own decision-making mechanisms and political organization.

26. This right to economic, cultural, and social development based on the self-determination of indigenous and tribal peoples was first addressed in Article 7 of ILO Convention 169<sup>27</sup>, which must be interpreted on the basis of the United Na-

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<sup>26</sup> Definition by SILVA, Liana Amin Lima da. In: Consulta previa y libre determinación de los pueblos indígenas y tribales en América Latina: re-existir para co-existir. Thesis (doctorate), 2017. Updated in *Informe de Investigación de posdoctorado en Derecho Socioambiental*, PUCPR, 2020.

<sup>27</sup> Article 7 of the Convention on Indigenous and Tribal Peoples of the International Labor Organization (ILO), of 1989: 1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly. 2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement. 3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural

tions Declaration on the Rights of Indigenous and Tribal Peoples. Convention 169 applies to indigenous and tribal peoples, and defines tribal peoples quite broadly<sup>28</sup>, opening space for the category to be extended to encompass other communities characterized by their social and political forms, customs, and territorialities, regardless of their self-designation. At the national level, there are various peoples and communities whose right to self-determination is recognized, such as Afro-descendant communities, fishing communities, peasant communities, among other groups.

27. Adopted on September 13, 2007, Articles 3, 20, and 23 of the United Nations Declaration on the Rights of Indigenous Peoples ensure that indigenous peoples<sup>29</sup>, in exercising their right to self-determination, have the power to freely determine their political status and pursue their economic, social, and cultural development. This implies the maintenance and development of their political, economic, and social systems, as

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and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities. 4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit. Available at: [https://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:31231](https://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:31231).

<sup>28</sup> The Convention 169 of the International Labor Organization (ILO) defines tribal peoples as “peoples in independent countries whose social, cultural, and economic conditions distinguish them from other sectors of the national community and who are governed, in whole or in part, by their own customs or by special legislation” (Article 1). Thus, the provisions of Convention 169 can and have been applied not only to indigenous and tribal peoples in the strict sense, but also to Afro-descendant communities (such as the quilombola communities in Brazil) and other traditional peoples and communities, such as riverine, fishing, and other communities governed by their various customs, traditions, and territorialities, regardless of their self-designation.

<sup>29</sup> United Nations Declaration on the Rights of Indigenous Peoples. Available at: [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf)

well as security in the enjoyment of their traditional livelihoods and economic activities.

28. The American Declaration on the Rights of Indigenous Peoples<sup>30</sup>, approved by the General Assembly of the Organization of American States (OAS) on June 15, 2016, in Santo Domingo, Dominican Republic, reaffirmed in Articles III, VI, XIII, XXI, XXVIII, and XXIX that indigenous peoples, in exercising their right to self-determination, have autonomy and self-government, participate in decisions that affect their rights, and are recognized as having the collective right to exist, prosper, and develop by determining their political, economic, social, and cultural priorities.

29. Both declarations also expressly recognize the right of indigenous peoples to freely determine their political status and to freely pursue their economic, social, and cultural development. Based on this, the IACHR<sup>31</sup> report on the right to self-determination of indigenous and tribal peoples explains that, for these peoples, self-determination is an inherent, pre-existing, and historical right.

30. At the state level, we also find regulations that guarantee the right to self-determination for peoples and communities. In Brazil, Article 231 of the 1988 Federal Constitution

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<sup>30</sup> American Declaration on the Rights of Indigenous Peoples. Available at: <https://www.oas.org/en/sare/documents/decamind.pdf>.

<sup>31</sup> Inter-American Commission on Human Rights. Right to self-determination of indigenous and tribal peoples / Approved by the Inter-American Commission on Human Rights on December 28, 2021. Available at: <https://www.oas.org/en/iachr/reports/pdfs/self-determination-EN.pdf>.

recognizes<sup>32</sup> the right of Indigenous Peoples to their culture and ways of life, as well as their original rights to the lands they traditionally occupy. Paragraph 3 of the aforementioned article establishes the right to free, prior, informed, good faith, and culturally appropriate consultation as part of the hearing of communities affected by the exploitation of natural resources. The protection of the right to difference, which implies equal dignity among groups and individuals, extends to other traditional peoples and communities, including communities of African descent.

31. In Peru, the right to self-determination of Indigenous Peoples can be better understood from a historical perspective. With the establishment of the Republic of Peru in 1821, the

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<sup>32</sup> Article 231 of the 1988 Constitution of the Federative Republic of Brazil: Article 231. Indigenous peoples are recognized for their social organization, customs, languages, beliefs, and traditions, as well as their original rights to the lands they traditionally occupy, and it is the responsibility of the Union to demarcate and protect these lands and ensure that all their commons are respected. § 1º Lands traditionally occupied by indigenous peoples are those permanently inhabited by them, those used for their productive activities, those essential for the preservation of the environmental resources necessary for their well-being, and those necessary for their physical and cultural reproduction, in accordance with their customs, traditions, and practices. § 2º Lands traditionally occupied by indigenous peoples are intended for their permanent possession, and they have the exclusive usufruct of the riches of the soil, rivers, and lakes existing therein. § 3 The exploitation of water resources, including energy potential, and the exploration and exploitation of mineral wealth on indigenous lands may only be carried out with the authorization of the National Congress, after consultation with the affected communities, guaranteeing their participation in the results of the exploitation, as established by law. § 4 The lands referred to in this article are inalienable and unavailable, and the rights over them are imprescriptible. § 5º The removal of indigenous groups from their lands is prohibited, except "ad referendum" of the National Congress, in the event of a catastrophe or epidemic that puts their population at risk, or in the interest of the country's sovereignty, after deliberation by the National Congress, guaranteeing in any case their immediate return as soon as the risk ceases. § 6 Any acts aimed at the occupation, ownership, and possession of the lands referred to in this article, or the exploitation of the natural resources of the soil, rivers, and lakes existing therein, shall be null and void, without legal effect, except in the relevant public interest of the Union, as provided for in the complementary law, and shall not give rise to any right to compensation or action against the Union, except, as established by law, in respect of improvements resulting from occupation in good faith. § 7 The provisions of Article 174, § 3 and § 4 shall not apply to indigenous lands. Available at: [https://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm).

Creole elites created a single nation that abandoned political recognition of Indigenous Peoples, who had maintained the legal status of the “Republic of Indians,” recognized by the Spanish colonizers as a system of relative self-government. In 1920, one hundred years after its independence, the Peruvian state included in its Constitution the recognition of indigenous peoples as subjects of collective rights, but based on indigenous communities that existed prior to the formation of the Republic. The idea of recognizing indigenous communities based on self-determination spread in the 1970s to the Amazon region, artificially creating the concept of “Native Communities” without granting legal status to the larger indigenous peoples of which these small communities are part of. In the current Constitution of 1993, the idea of “community” remains a central element of indigenous peoples<sup>33</sup>. Reference is also made to the right to self-justice<sup>34</sup> as a means of expressing self-determination.

32. In Ecuador, since the 1998 Constitution, collective rights have been explicitly recognized for those peoples who “define themselves as nationalities with ancestral roots, and

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<sup>33</sup> Article 89 of the Political Constitution of Peru: “[R]ural and indigenous communities have legal existence and are legal entities. They are autonomous in their organization, community work, and use and free disposal of their lands, as well as in economic and administrative matters, within the framework established by law”. Available at: [https://cdn.www.gob.pe/uploads/document/file/198518/Constitucion\\_Politica\\_del\\_Peru\\_1993.pdf?v=1594239946](https://cdn.www.gob.pe/uploads/document/file/198518/Constitucion_Politica_del_Peru_1993.pdf?v=1594239946).

<sup>34</sup> Article 149 of the Political Constitution of Peru: “[t]he authorities of the Peasant or Native Communities, with the support of the Peasant Patrols, may exercise jurisdictional functions within their territorial jurisdiction, in accordance with customary law, provided that they do not violate the fundamental rights of the individual.” Available at: [https://cdn.www.gob.pe/uploads/document/file/198518/Constitucion\\_Politica\\_del\\_Peru\\_1993.pdf?v=1594239946](https://cdn.www.gob.pe/uploads/document/file/198518/Constitucion_Politica_del_Peru_1993.pdf?v=1594239946).

black or Afro-Ecuadorian peoples, who form part of the Ecuadorian State”<sup>35</sup>. Ten years later, ownership was extended to communes, communities, peoples and nationalities, and several rights supporting their self-determination were made explicit, including, among others, the right to maintain, develop, and strengthen their identity, forms of social organization, forms of coexistence and social organization, and the generation and exercise of authority<sup>36</sup>. In addition, international human rights instruments and their interpretations are directly applicable<sup>37</sup>.

33. In Colombia, the 1991 Constitution recognizes ethnic and cultural diversity as a guiding principle of the State<sup>38</sup>, establishing in its articles 63<sup>39</sup> and 329<sup>40</sup> the inalienability and

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<sup>35</sup> Article 83 of Ecuador’s 1998 Constitution: “Indigenous peoples, who define themselves as nationalities with ancestral roots, and Black or Afro-Ecuadorian peoples, form part of the Ecuadorian State, which is unique and indivisible”. Available at: [https://www.oas.org/juridico/pdfs/mesicic4\\_ecu\\_const.pdf](https://www.oas.org/juridico/pdfs/mesicic4_ecu_const.pdf).

<sup>36</sup> Article 57 of the Constitution of the Republic of Ecuador: “The following collective rights are recognized and guaranteed to indigenous communes, communities, peoples, and nationalities, in accordance with the Constitution and with international human rights covenants, conventions, declarations, and other instruments: 1. To freely maintain, develop, and strengthen their identity, sense of belonging, ancestral traditions, and forms of social organization”. Available at: [https://www.oas.org/juridico/pdfs/mesicic4\\_ecu\\_const.pdf](https://www.oas.org/juridico/pdfs/mesicic4_ecu_const.pdf).

<sup>37</sup> Article 11 of the Constitution of the Republic of Ecuador: 3. The rights and guarantees established in the Constitution and in international human rights instruments shall be directly and immediately applicable by and before any public, administrative, or judicial official, either ex officio or at the request of a party. No conditions or requirements other than those established in the Constitution or the law shall be imposed on the exercise of constitutional rights and guarantees. Rights shall be fully justiciable. The absence of a legal norm may not be invoked to justify their violation or disregard, to dismiss action based on such facts, or to deny their recognition. Available at: [https://www.oas.org/juridico/pdfs/mesicic4\\_ecu\\_const.pdf](https://www.oas.org/juridico/pdfs/mesicic4_ecu_const.pdf).

<sup>38</sup> Article 7 of the 1991 Political Constitution of Colombia: “The State recognizes and protects the ethnic and cultural diversity of the Colombian Nation”.

<sup>39</sup> Article 63 of the 1991 Constitution of Colombia: “Public property, natural parks, communal lands of ethnic groups, reserve lands, the nation’s archaeological heritage, and other property determined by law are inalienable, imprescriptible, and unattachable”.

<sup>40</sup> Article 329 of the 1991 Political Constitution of Colombia: “The formation of indigenous territorial

imprescriptibility of indigenous reserve lands. In addition, Article 286<sup>41</sup> grants indigenous territories the status of territorial entities, classifying them as ordinary reserves, reserves with municipal status, and indigenous territorial entities. The autonomy of the peoples is supported by Article 287<sup>42</sup>, granting them the right to govern themselves through their own authorities, exercise powers, administer resources, establish taxes, and participate in national revenues. This autonomy was affirmed by the Constitutional Court, which stated that “indigenous territorial entities, like all territorial entities, enjoy full autonomy in the administration of their affairs. Here, autonomy is even greater, since the general considerations on self-government in Article 287 of the Constitution are supplemented by specific prerogatives in matters of government customs, language, justice, and elections [...]”<sup>43</sup>.

34. After decades of practical exercise of self-determination, such as the Autonomous Territorial Government of the

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entities shall be subject to the provisions of the Organic Law on Territorial Planning, and their boundaries shall be established by the National Government, with the participation of representatives of the indigenous communities, following consultation with the Territorial Planning Commission”.

<sup>41</sup> Article 286 of the 1991 Constitution of Colombia: “The territorial entities are the departments, districts, municipalities, and indigenous territories.”

<sup>42</sup> Article 287 of the 1991 Political Constitution of Colombia: “Territorial entities enjoy autonomy in the management of their interests, within the limits of the Constitution and the law. As such, they shall have the following rights: 1. To be governed by their own authorities. 2. To exercise their respective powers. 3. To administer resources and establish the taxes necessary for the fulfillment of their functions. 4. To participate in national revenues.”

<sup>43</sup> Sentence Number T-257/93. Action for protection of constitutional rights, ownership/Legal entity. Available at: <https://www.corteconstitucional.gov.co/relatoria/1993/T-257-93.htm#:~:text=T%2D257%2D93%20Corte%20Constitucional%20de%20Colombia&text=En%20principio%2C%20es%20necesario%20tutelar,razonable%20del%20juez%20de%20tutela>.

Wampís Nation and the Kichwa Indigenous People of Sarayaku<sup>44</sup> who established their constitutive laws, protocols for relations with the state, and life plans; as well as normative influence in international forums and complex coexistence agreements in the various states where they live, progress has been made toward recognition of “internal self-determination,” as recognized by the United Nations Declaration on the Rights of Indigenous Peoples<sup>45</sup>, such as the right to maintain ownership and control over their ancestral territories and establish their cultural and social norms to govern their destiny, without undermining the political unity of the States to which they belong, and which in no case may be interpreted as a right that affects the sovereignty of states.

35. Some communities, as we will explain later, have freely determined their development model through Life Plans and Protocols that establish the minimum conditions for consultation and free, prior, and informed consent.

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<sup>44</sup> Indigenous peoples such as the Wampís Nation of Peru or the Kichwa People of Sarayaku have exercised their right to self-determination by establishing Protocols for Relations with the State or Life Plans.

<sup>45</sup> Article 3 of the Declaration states that “[I]ndigenous peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural development.” Resolution 61/295. United Nations Declaration on the Rights of Indigenous Peoples. Available at: <https://www.acnur.org/fileadmin/Documentos/BDL/2008/6030.pdf>.

**b. Free, prior, and informed consultation and consent as a fundamental mechanism for realizing the right to self-determination, especially in the context of the climate emergency.**

36. Enacted in Articles 6.1.a, 6.2, and 15.2 of ILO Convention 169, Articles 2, 17, 19, 32, 36, and 38 of the United Nations Declaration on the Rights of Indigenous Peoples, and Articles XX, XXIII, XXIX, and XXVIII of the American Declaration on the Rights of Indigenous Peoples, the right to consultation and free, prior, and informed consent is an obligation of States to ask peoples and communities in an appropriate and respectful manner for their position on any decision that may affect their lives and rights<sup>46</sup>.

37. The Inter-American Court of Human Rights established that “the obligation to consult, in addition to being a conventional norm, is also a general principle of international law”<sup>47</sup> and has interpreted it based on the collective property rights of indigenous and tribal peoples<sup>48</sup>, enshrined in Article 21 of the American Convention on Human Rights. This topic

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<sup>46</sup> Inter-American Commission on Human Rights. Right to self-determination of indigenous and tribal peoples. Approved by the Inter-American Commission on Human Rights on December 28, 2021. Available at: <https://www.oas.org/es/cidh/informes/pdfs/LibreDeterminacionES.pdf>.

<sup>47</sup> Inter-American Court of Human Rights, Case of the Sarayaku Indigenous People v. Ecuador, para. 164. Available at: [https://corteidh.or.cr/docs/casos/articulos/seriec\\_245\\_ing.pdf](https://corteidh.or.cr/docs/casos/articulos/seriec_245_ing.pdf).

<sup>48</sup> Inter-American Court of Human Rights, Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, para. 149; Case of the Xákmok Kásek Indigenous Community v. Paraguay, paras. 85 to 87; Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations, and costs, judgment of November 28, 2007, Series C, No. 172; Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations. Judgment of June 27, 2012. Series C No. 245, para. 146.

has been the subject of extensive literature and analysis that we will not repeat in this paper. However, the right to consultation and free, prior, and informed consent is not an isolated right, but rather a fundamental mechanism for the realization of the right to self-determination of peoples and, as such, must be read in conjunction with that right<sup>49</sup>.

38. Through consultation, the State recognizes the right of peoples to ethnic and cultural diversity and to decide on their development projects through their own decision-making mechanisms and political organization<sup>50</sup>. More than safeguarding collective property, the right to free, prior, and informed consultation is essential to the realization of the right to self-determination<sup>51</sup>, allowing communities to assess whether proposed measures, such as extractive projects, are consistent with their ancestral ways of life, which are effective in conserving and addressing the climate emergency. In this regard, the interpretation of the right to free, prior, and informed consultation must be made in light of Article 3 of the United Nations Dec-

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<sup>49</sup> GLASS, Verena (ed). *Protocolos de Consulta Previa y el Derecho a la libre determinación*. São Paulo: Fundación Rosa Luxemburgo; CEPEDIS, 2019.

<sup>50</sup> According to Article 7 of ILO Convention No. 169: "The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. Furthermore, these peoples shall participate in the formulation, implementation, and evaluation of national and regional development plans and programs that may affect them directly." Available at: [https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/documents/publication/wcms\\_345065.pdf](https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/documents/publication/wcms_345065.pdf)

<sup>51</sup> SILVA, Liana Amin Lima da. *Consulta Prévia e Livre Determinação dos Povos Indígenas e Tribais na América Latina: Re-existir para coexistir*. Thesis (doctorate), supervisor: Carlos Frederico Marés de Souza Filho - Pontifícia Universidad Católica de Paraná. Curitiba, 2017. Available at: [http://observatorio.direitosocioambiental.org/wp-content/uploads/2020/10/TESE\\_LianaAminLimadaSilva\\_2017.pdf](http://observatorio.direitosocioambiental.org/wp-content/uploads/2020/10/TESE_LianaAminLimadaSilva_2017.pdf).

laration on the Rights of Indigenous Peoples and Article 4 of the American Declaration on the Rights of Indigenous Peoples.

39. As we will explain in sections III and IV, the climate emergency and energy transition models are violating Indigenous Peoples' right to self-determination, as well as related rights, such as the right to consultation and free, prior, and informed consent. In this regard, in the current context of climate emergency and energy transition, we invite the Inter-American Court of Human Rights to examine the right to free, prior, and informed consultation of peoples and communities from the perspective of the self-determination of these peoples. Not only as an exercise in protecting territories that are carbon sinks and their environmental defenders, but also as a way of rethinking a colonial vision long imposed on Indigenous Peoples, of development models that are different and alien to their traditional ways of life.

40. Before analyzing these violations, we first outline the subjects of consultation and free, prior, and informed consent and the timing of consultation, based on the right to self-determination.

**i. Subjects of the right to self-determination and their related rights, such as consultation and free, prior, and informed consent**

41. Latin America is home to a wide variety of ethnic groups, including indigenous peoples, Afro-descendant communities, tribal communities, and peasant communities, each with its own cultural identity and self-recognition based on

their shared collective identity and territoriality. These groups, which are distinct from national society in that they are governed, at least in part, by their own customs, traditions, and territorialities, and which recognize themselves based on their uniqueness and difference in relation to the hegemonic society, inhabit regions whose ecosystems are extremely vulnerable to the climate emergency. It is worth remembering that many of these peoples and communities, throughout centuries of forced displacement, inhabited regions that, due to geographical factors, were of little interest to territorial colonization policies, having once been considered inhospitable to human occupation.

42. Just as the right to self-determination applies to the diversity of peoples and communities in Latin America, so too does the right to consultation and free, prior, and informed consent<sup>52</sup>. In the socio-diverse context of Latin America, the right to consultation and free, prior, and informed consent applies to indigenous peoples, Afro-descendants (quilombolas, black communities, palenqueras, raizales), and other traditional peoples and communities, considered to be peoples of the countryside, forests, and waters (hereinafter, we refer to this constellation of societies as peoples and communities).

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<sup>52</sup> Article 1 of Convention 169 of the International Labor Organization (ILO) applies: "a) to tribal peoples in independent countries whose social, cultural, and economic conditions distinguish them from other sectors of the national community and who are governed wholly or partly by their own customs or traditions or by special legislation; (b) to peoples in independent countries who are considered indigenous because they are descended from populations that inhabited the country or a geographical region to which the country belongs at the time of conquest or colonization or the establishment of present-day state borders and who, whatever their legal status, retain all or part of their own social, economic, cultural, and political institutions."

43. In the Report on the Right to Self-Determination of Indigenous and Tribal Peoples, the Inter-American Commission has understood tribal peoples to whom the right to self-determination applies “as those peoples who are not indigenous or native to the region they inhabit, but who, like indigenous peoples, share conditions that distinguish them from other sectors of the national community<sup>53</sup>”. It also pointed to practical examples of the exercise of self-determination by Afro-descendant communities in Colombia, Quilombola communities in Brazil, and the Afro-descendant Creole people of Nicaragua, as well as referring to consultation protocols for a variety of collective identities such as extractive communities, fishermen, riverine communities, flower gatherers, and the Calon Romani<sup>54</sup> people.

44. At the national level, there are various peoples and communities whose right to self-determination is recognized. In Brazil, for example, given the social diversity, there are three broad legal categories: indigenous peoples, quilombolas, and other traditional peoples and communities, without any fixed boundaries between them, as some may belong to more than one group. To get an idea of the diversity we are dealing with<sup>55</sup>, one need only look at Decree No.

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<sup>53</sup> Inter-American Commission on Human Rights. Right to self-determination of indigenous and tribal peoples. Approved by the Inter-American Commission on Human Rights on December 28, 2021. Available at: <https://www.oas.org/en/iachr/reports/pdfs/self-determination-EN.pdf>.

<sup>54</sup> Inter-American Commission on Human Rights. Right to self-determination of indigenous and tribal peoples. Approved by the Inter-American Commission on Human Rights on December 28, 2021. Available at: <https://www.oas.org/en/iachr/reports/pdfs/self-determination-EN.pdf>.

<sup>55</sup> The Community Protocols Observatory, in its Map of Autonomous Protocols, identified 94 protocols published by Traditional Peoples and Communities in Brazil. Among the collective subjects are Indigenous Peoples, quilombola communities, fishermen, beiradeiros, extractivists, riverine com-

8,750<sup>56</sup>, which created the National Council of Traditional Peoples and Communities, which lists up to 29 socio-diverse groups. Decree No. 6,040 of February 2007, which establishes the National Policy for the Sustainable Development of Traditional Peoples and Communities (PNPCT)<sup>57</sup>, is inspired by ILO Convention 169 and uses similar terms to recognize the social existence of these groups.

45. In Ecuador, recognition of the subjects entitled to the collective right to free, prior, and informed consultation, as understood under Convention 169, is not limited to indigenous communities and peoples, but expressly extends to Afro-descendant peoples<sup>58</sup> and Montubio peoples<sup>59</sup>. In addition, Article 398 of the

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munities, agro-extractivists, everlasting flower gatherers, caiçaras, faxinalenses, terreiro peoples, and gypsy peoples - Calon ethnic group. Available at: <https://observatorio.direitosocioambiental.org>.

<sup>56</sup> Article 2 of Decree No. 8,750 of May 9, 2016, lists the following groups: indigenous peoples; quilombola communities; terreiro peoples and communities/peoples and communities of African descent; gypsy peoples; artisanal fishermen; extractivists; coastal and maritime extractivists; caiçaras; faxinalenses; benzedeiros; ilhéus; raizeiros; geraizeiros; caatingueiros; vazanteiros; veredeiros; collectors of everlasting flowers; pantaneiros; morroquianos; Pomeranian people; mangaba collectors; babaçu coconut breakers; retirantes de araguaia; communities of pasture lands and fences; riverine communities; cipozeiros; andirobeiros; caboclos. Available at: [https://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2016/decreto/d8750.htm](https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/decreto/d8750.htm).

<sup>57</sup> Article 3 of the Brazilian National Policy defines Traditional Peoples and Communities as “culturally distinct groups that recognize themselves as such, that have their own forms of social organization, that occupy and use territories and natural resources as a condition for their cultural, social, religious, ancestral, and economic reproduction, using knowledge, innovations, and practices generated and transmitted by tradition,” establishing a dialogue with the definition in ILO Convention 169. Available at: [https://www.planalto.gov.br/ccivil\\_03/\\_ato2007-2010/2007/decreto/d6040.htm](https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/decreto/d6040.htm).

<sup>58</sup> Article 58 of the Constitution of the Republic of Ecuador: In order to strengthen their identity, culture, traditions, and rights, the Afro-Ecuadorian people are recognized as having the collective rights established in the Constitution, the law, and international human rights pacts, conventions, declarations, and other instruments. Available at: [https://www.oas.org/juridico/pdfs/mesicic4\\_ecu\\_const.pdf](https://www.oas.org/juridico/pdfs/mesicic4_ecu_const.pdf).

<sup>59</sup> Article 59 of the Constitution of the Republic of Ecuador: The collective rights of the Montubio peoples are recognized in order to guarantee their comprehensive, sustainable, and enduring human development, the policies and strategies for their progress, and their forms of associative administration, based on knowledge of their reality and respect for their culture, identity, and vision, in accordance with the law. Available at: [https://www.oas.org/juridico/pdfs/mesicic4\\_ecu\\_const.pdf](https://www.oas.org/juridico/pdfs/mesicic4_ecu_const.pdf).

Constitution, which establishes “environmental consultation” in cases of environmental impact, broadens the scope of those entitled to consultation by stating that: “Any state decision or authorization that may affect the environment must be consulted with the community.” The Ecuadorian Constitutional Court clarified that “the ownership of this right belongs to the community or communities, regardless of their ethnicity, whose environment may be affected by any state decision or authorization”<sup>60</sup>. However, it pointed out that “when the subject consulted is indigenous communities, the consultation established in Article 57.7 of the Constitution must be carried out” (in reference to the free, prior, and informed consultation of ILO Convention 169), while for other communities (non-indigenous and non-tribal), environmental consultation must be applied, expanding the possibilities of subjects in specific situations of environmental impact<sup>61</sup>.

46. Peru, despite having Law No. 29785<sup>62</sup> and Regulation Supreme Decree 001-2012-MC<sup>63</sup> on free, prior, and informed

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<sup>60</sup> Judgment No. 1149-19-JP/21 of the Constitutional Court of Ecuador, para. 274. Available at: [http://esacc.corteconstitucional.gob.ec/storage/api/v1/10\\_DWL\\_FL/e2NhcBldGE6j3RyYW1pdGUnLCB1dWlkOic2MmE3MmIxBmE4LTQyZmMfYjJkOS1mYzYzNWE5ZTAwNGYucGRmJ30=](http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcBldGE6j3RyYW1pdGUnLCB1dWlkOic2MmE3MmIxBmE4LTQyZmMfYjJkOS1mYzYzNWE5ZTAwNGYucGRmJ30=).

<sup>61</sup> Judgment No. 1149-19-JP/21 of the Constitutional Court of Ecuador, para. 280. Available at: [http://esacc.corteconstitucional.gob.ec/storage/api/v1/10\\_DWL\\_FL/e2NhcBldGE6j3RyYW1pdGUnLCB1dWlkOic2MmE3MmIxBmE4LTQyZmMfYjJkOS1mYzYzNWE5ZTAwNGYucGRmJ30=](http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcBldGE6j3RyYW1pdGUnLCB1dWlkOic2MmE3MmIxBmE4LTQyZmMfYjJkOS1mYzYzNWE5ZTAwNGYucGRmJ30=).

<sup>62</sup> Article 5 of Law 29785, Law No. 29785, Law on the Right to Prior Consultation of Indigenous or Native Peoples, recognized in Convention 169 of the International Labor Organization (ILO), establishes that “[t]he subjects of the right to consultation: The holders of the right to consultation are Indigenous or Native Peoples whose collective rights may be directly affected by a legislative or administrative measure.” Law 29785 of September 2011, Available at: [https://www.culturacusco.gob.pe/wp-content/uploads/2017/07/DERECHO-A-LA-CONSULTA-PREVIA\\_2020\\_publicaci%C3%B3n.pdf](https://www.culturacusco.gob.pe/wp-content/uploads/2017/07/DERECHO-A-LA-CONSULTA-PREVIA_2020_publicaci%C3%B3n.pdf).

<sup>63</sup> D.S. 001-2012-MC, Regulation of Law No. 29785, Law on the Right to Prior Consultation of

consultation, maintains a restrictive approach to the subjects of the right to consultation. Only “indigenous or native peoples” are considered collective subjects of consultation, according to objective and subjective criteria<sup>64</sup>. Other traditional peoples, such as Afro-descendants or fishing communities on the country’s coasts, have not been included in any consultation process, despite maintaining ancestral practices and ways of life that differ from other sectors of the national community. However, although the Peruvian regulatory system does not recognize these communities, the legislation must be interpreted in accordance with ILO Convention 169, the United Nations Declaration on the Rights of Indigenous Peoples, and the American Declaration on the Rights of Indigenous Peoples.

47. In this regard, we understand that all peoples and communities that share particular conditions that distinguish them from the national society and are governed, at least in part, by their own customs, traditions, and territorialities, have the right to self-determination, consultation, and free, prior, and

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Indigenous or Native Peoples recognized in Convention 169 of the International Labor Organization (ILO). Available at: <https://minem.gob.pe/minem/archivos/file/Mineria/LEGISLACION/2012/ABRIL/DS%20001-2012-MC.pdf>.

<sup>64</sup> Article 7 of Law 29785 establishes that the “[c]riteria for identifying Indigenous or Native Peoples To identify Indigenous or Native Peoples as collective subjects, objective and subjective criteria are taken into account. The objective criteria are as follows: a) Direct descent from the original populations of the national territory, b) Lifestyles and spiritual and historical ties to the territory they traditionally use or occupy, c) Social institutions and customs of their own, d) Cultural patterns and ways of life distinct from those of other sectors of the national population. The subjective criterion is related to the collective group’s awareness of having an indigenous or native identity. Peasant or Andean communities and native communities or Amazonian peoples may also be identified as Indigenous or Native Peoples, in accordance with the criteria set forth in this article. The names used to designate Indigenous or Native Peoples do not alter their nature or their collective rights.

informed consent<sup>65</sup>. They have the right to freely determine their political status and freely pursue their economic, social, and cultural development<sup>66</sup>.

**ii. Time and timing of prior, free, and informed consultation**

48. The right to free, prior, and informed consultation consists of the right of peoples and communities to be consulted and to express their collective will, consent, and self-determination, as these peoples and communities suffer the impacts, by participating in state decision-making that has the potential to affect their collective and territorial rights<sup>67</sup>. Similarly, it implies the duty and obligation of the government to consult them **in advance** whenever any administrative or legislative measure to be taken may affect their lives, their territories, and the environment with which they are connected and interdependent.

49. In Latin America, it is common practice for mining, oil, forestry, and other concessions to be created by a single administrative decision of the State without consulting the peoples and communities concerned. States offer the territo-

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<sup>65</sup> We discuss the issue of the right to consultation and free, prior, and informed consent in Chapter V.

<sup>66</sup> Inter-American Commission on Human Rights. Right to self-determination of indigenous and tribal peoples. Approved by the Inter-American Commission on Human Rights on December 28, 2021. Available at: <https://www.oas.org/es/cidh/informes/pdfs/LibreDeterminacionES.pdf>.

<sup>67</sup> SILVA, Liana Amin Lima da. Consulta Prévia e Livre Determinação dos Povos Indígenas e Tribais na América Latina: Re-existir para coexistir. Thesis (doctorate), advisor: Carlos Frederico Marés de Souza Filho. Pontifícia Universidade Católica do Paraná., Curitiba, 2017. Available at: [http://observatorio.direitosocioambiental.org/wp-content/uploads/2020/10/TESE\\_LianaAminLimadaSilva\\_2017.pdf](http://observatorio.direitosocioambiental.org/wp-content/uploads/2020/10/TESE_LianaAminLimadaSilva_2017.pdf).

ries of these peoples and communities to bidders from extractive industries without first considering that many of them have established ways of life and development plans that are diametrically opposed to a model that includes extractive activities. By deciding on these territories through the creation of concessions without prior consultation with the peoples and communities on whether or not they want their territories to be put out to tender for extractive projects, the State violates their decision on an ancestral and determined way of life, in accordance with their right to self-determination.

50. Additionally, the right to consultation must be a process that respects the diverse temporalities and axiologies of groups that have different ways of understanding and valuing time. This must be carried out without pressure, through transparent, good-faith, and culturally appropriate dialogue (when necessary, in the presence of trusted translators appointed by the peoples themselves, at a place and date also stipulated by the peoples; remembering that it is a matter of translating worlds) and lasting long enough for all the information to be understood and debated, and for these decisions to be made consciously in accordance with their legitimate social and political organizations<sup>68</sup>.

51. Shortly after winning a concession, companies begin to enter the territories, sending personnel, initiating preparatory work, installing small-scale infrastructure, etc. Due to the interest

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<sup>68</sup> YAMADA, Erika M.; GRUPIONI, Luís Donisete Benzi; GARZÓN, Biviany Rojas. **Protocolos autónomos de consulta e consentimento**: Guia de Orientações. São Paulo: RCA, 2019.

in operating the concessions, the consultation process is carried out quickly without respecting the timelines of the peoples and communities. This impacts and affects the ways of life of peoples and communities, who understand that with the granting of a concession, a decision has already been made by the State to implement an extractive project in their territory, and that any subsequent consultation process is merely a formality to formalize this decision. That is why many peoples and communities, who do not see an extractive project as part of their way of life, consider the right to consultation to be impracticable<sup>69</sup>.

52. Therefore, for the consultation process to be effective and guarantee free, prior, and informed consent, the creation of concessions must undergo a consultation process. Otherwise, the consultation loses its status as prior and becomes merely a formality to formalize the decision to implement an extractive project in a territory. In this sense, if the concession was created without consultation and free, prior, and informed consent, it should be considered null and void.

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<sup>69</sup> This is the case of the Autonomous Territorial Government of the Wampís Nation, an indigenous people of the Peruvian Amazon who consider that the right to free, prior, and informed consultation is a mere formality to make a pre-established decision by the State viable.

### **III. Climate emergency, large-scale infrastructure projects, and extractivism: differentiated and synergistic impacts on the self-determination of peoples and communities**

54. The self-determination and forms of territoriality of peoples and communities are fundamental to combating environmental degradation, limiting the loss of socio-biodiversity, and curbing deforestation. They are also crucial to the fight against climate change. However, the climate crisis and actions aimed at adapting to and mitigating its impacts violate the right to self-determination of peoples and communities, putting their survival, their ways of life, and their connection to the land at risk.

#### **a. Differentiated impacts: how and why peoples and communities are most affected by the climate emergency**

55. Although the climate emergency is a global phenomenon, its impacts on human groups are far from equitable. This was pointed out by the Inter-American Commission in its report, *Climate Emergency: Scope of Inter-American Obligations on Human Rights*, stating that “the risk of harm is particularly high for those segments of the population that are currently marginalized or vulnerable or that, due to discrimination and pre-existing inequalities, have limited access to decision-making or resources, including women; children and adolescents; indigenous peoples; persons

with disabilities; persons living in informal settlements; migrants; peasants; and persons living in rural areas. This is despite the fact that these groups have contributed marginally to greenhouse gas emissions, the main cause of the climate crisis. For example, during the fires in August 2019 that affected much of the Brazilian and Bolivian Amazon, as well as the Chaco region in Paraguay, due in part to poor forest management controls, the Commission warned that indigenous peoples are the most affected<sup>70</sup>.

56. Indeed, the peoples and communities living in areas most vulnerable to the adverse effects of climate change, such as hillsides, riverbanks, mangroves, and forests increasingly prone to fires, are the first to suffer from floods, landslides, and other extreme weather events. In addition, peoples and communities whose livelihoods are directly linked to ecological processes, rivers, and forests, such as fishermen, farmers, and hunters, also experience the impacts of the climate emergency more immediately. Changes in the availability, quality, and location of fishing, hunting, fertile soils, and drinking water can profoundly affect the social, political, and cultural organization of these communities at a speed that greatly hinders their ability to generate collective responses to new contexts.

57. The right to self-determination of peoples, as well as their right to their territories, have been directly affected by the

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<sup>70</sup> Inter-American Commission on Human Rights. Climate Emergency: Scope of Inter-American Obligations on Human Rights adopted by Resolution No. 3/2021. Available at: [https://www.oas.org/es/cidh/decisiones/pdf/2021/resolucion\\_3-21\\_spa.pdf](https://www.oas.org/es/cidh/decisiones/pdf/2021/resolucion_3-21_spa.pdf).

climate emergency. By altering the ecological conditions for the production and reproduction of collective life, changes in temperature, humidity, wind, and precipitation patterns, and climatic variations directly affect the ability of these peoples and communities to decide on their ways of life and forms of social organization. Climate change affects various aspects of their relationship with the environment, such as crops on their land, fishing cycles and marine life reproduction, extractive and religious practices, with profound consequences for food security and, consequently, the quality of collective life.

58. In 2014, the first indigenous publication on climate change in the Brazilian context was launched. The landmark report *Amazad Pana'adinhan: Indigenous communities' perceptions of climate change - Serra da Lua/RR Region*<sup>71</sup>, published by the Indigenous Council of Roraima (CIR), compiled a series of accounts describing the impacts suffered by the indigenous peoples of Roraima between 1990 and 2012, the year in which the interviews were conducted. During this period, the state of Roraima experienced historic droughts and floods that contributed to forest fires and the destruction of crops and infrastructure that served the region's communities. The legacy of these events included a higher incidence of diseases such as malaria, increased difficulty in food production, and ecological imbalance.

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<sup>71</sup> Indigenous Council of Roraima. *Amazad Pana'adinhan: perceptions of indigenous communities on climate change: Serra da Lua region - RR*. Organization Alessandro Roberto de Oliveira, Sineia Bezerra do Vale. Boa Vista: CIR, 2014. Available at: <https://acervo.socioambiental.org/sites/default/files/documents/OBL00002.pdf>.

59. Interviewees report a decline in hunting due to forest fires, fishing due to water pollution that hinders fish spawning, and a significant change in the planting and harvesting cycle of traditional foods in the region. Many crop species that were planted in the past suffered from pests and diseases that prevented their continued cultivation, thus reducing the diversity of food options for the local population<sup>72</sup>. All these transformations call into question the right to food and food sovereignty, central components of self-determination.

60. The climate crisis disrupts or breaks the constellation of relationships that constitute the territory, which, in extreme situations, can lead to the forced displacement of peoples and communities to other areas and cities. In Brazil, the traditional caiçara community of Enseada da Baleia, in the Traditional Territory of Ilha do Cardoso, on the coast of the state of São Paulo, is at risk of disappearing due to soil erosion, which has intensified over the last decade. According to the Enseada da Baleia Consultation Protocol: Traditional Caiçara Community (2020), “the erosion process is intensifying and the risk of the waters meeting (between the channel and the ocean) puts an end to the dream of the community remaining in its original place. A struggle begins for the community’s right to be relocated on Ilha do Cardoso itself. Authorization for the change in

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<sup>72</sup> For a more comprehensive analysis of the report “Amazad Pana’adinhan: Indigenous communities’ perceptions of climate change - Serra da Lua/RR Region,” see the presentation by the Articulação dos Povos Indígenas do Brasil (Apib) to the Advisory Opinion on the impacts of the climate emergency on indigenous peoples.

an area chosen by the community was granted, but without any support or planning by the government for the reconstruction of homes, collective spaces, and commercial areas<sup>73</sup>.” This was the first initiative in Brazil by a traditional community to develop its own autonomous protocol for prior consultation to address the adverse effects of climate change and the risks of land loss, with a view to developing reterritorialization policies with community participation in government decisions that affect them.

61. The state of Amazonas, located in the Brazilian Amazon, experienced one of the worst droughts in its history in 2023. The Negro River, one of the largest rivers in the world and the main tributary on the left bank of the Amazon River, is approaching its worst recorded drought. This extreme situation is the result of a severe drought exacerbated by a combination of abnormal warming of the Atlantic Ocean and the presence of the El Niño phenomenon. The connection to climate change is direct.

62. Of the 40 municipalities in the state of Amazonas in a state of emergency, 21 are in the Negro River basin, home to dozens of indigenous and riverine communities that have an intrinsic relationship with the region<sup>74</sup>. For the indigenous peoples and riverine communities of the Negro River, the drought represents a radical reorganization of their way of life and the violation

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<sup>73</sup> Enseada da Baleia Community. Community Protocol of Enseada da Baleia Community. Cardoso Island, SP, 2020. Available at: <https://observatorio.direitosocioambiental.org/wp-content/uploads/2021/04/PROTOCOLO-DE-CONSULTA-ENSEADA-DA-BALEIA.pdf>

<sup>74</sup> Carvalho, Rosiene. “Aqui não chega socorro na seca”, relatam comunidades em lago no Amazonas. Agência Pública, October 6, 2023. Available at: <https://apublica.org/2023/10/aqui-nao-cha-ga-socorro-na-seca-relatam-comunidades-em-lago-no-amazonas/>

of many of their rights. One example of this is the fishing communities living in the Piranha Sustainable Development Reserve (RDS) in the state of Amazonas, established to protect the way of life of riverside peoples and preserve the territory against the advance of logging. The death of fish, which are found floating in massive numbers in the rivers, is caused by high water temperatures and affects the food supply of families. At the same time, the drought makes navigation on the Negro River and its tributaries difficult, preventing communities from accessing drinking water, health services, and even educational services, as classes in schools are suspended due to the rivers being unnavigable. Today, fishing communities depend on donations of water and food<sup>75</sup>. Thus, the climate emergency has led to the violation of the rights of these and other communities in terms of territory, food sovereignty, health, water, and education. This is a widespread violation of all the rights that make up self-determination and constitute the conditions for a way of life that has proven to be the most effective in addressing the climate emergency.

63. As the above cases illustrate, the climate emergency directly and immediately affects the foundations of self-determination for peoples and communities. In addition to violently affecting the conditions for the reproduction of their material life, such as food sovereignty and access to clean drinking water,

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<sup>75</sup> FAS. Aproximadamente R\$ 100 mil em doações são entregues em comunidades que enfrentam dificuldades devido a seca extrema. 2023. Available at: <https://fas-amazonia.org/aproximadamente-r-100-mil-em-doacoes-sao-entregues-em-comunidades-que-enfrentam-dificuldades-devido-seca-extrema/>

etc., the climate emergency impacts the conditions for the reproduction of their symbolic life and forms of political organization. These impacts can occur so abruptly and violently (e.g., flooding of ancestral lands or systematic fires in territories) that they challenge the community's capacity to adapt or respond. In this way, peoples and communities are urgently affected and threatened in their material lives as well as in their cultures, territorialities, symbolic forms, and identities.

**b. The synergy of climate impacts with the impacts of large-scale construction projects, other projects, and extraction on the right to self-determination**

64. The climate emergency alone does not suffocate the life and self-determination of peoples and communities. Currently, many territories and peoples face the cumulative and synergistic impacts of the climate emergency, which alters rainfall patterns, changes water availability, increases temperatures, and other human activities such as river damming, mining expansion, road construction, and agricultural expansion, which exacerbate its effects.

65. Apart from the adverse impacts of greenhouse gas emissions, the oil industry and mega-projects developed in the territories of indigenous peoples and communities exacerbate the climate emergency due to their negative impacts on these territories, which, as we have pointed out above, are the best preserved. For example, in Peru, the hydrocarbon industry has caused the spill of 87,751.01

barrels of oil and its derivatives as of May 2023<sup>76</sup>. The North Peruvian Pipeline, responsible for transporting crude oil from fields located in the Peruvian Amazon to a terminal on the Peruvian coast, has had around 111 spills between 1997 and 2021<sup>77</sup>. Of these, the two most serious occurred in 2016, spilling approximately 2,000 barrels<sup>78</sup> into the rivers and forests of the Amazon, impacting the surrounding towns and communities. Between 2014 and 2016, this infrastructure, which crosses the entire northern Peruvian Amazon, spilled more than 25,000 barrels of oil<sup>79</sup>.

66. In Ecuador, the province of Napo is another clear example of synergistic impacts. In January 2022, the rupture of the Heavy Crude Oil Pipeline (OCP) caused one of the largest disasters in the history of recorded spills. In this spill, at least 6,300 barrels of oil affected the Piedra Fina, Quijos, Coca, and Napo river basins<sup>80</sup> and several Kiwcha communities<sup>81</sup>. The

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<sup>76</sup> This data is taken from a report currently being prepared based on data from the Supervisory Agency for Investment in Energy and Mines (OSINERGMIN) and the Agency for Environmental Assessment and Enforcement (OEFA).

<sup>77</sup> La sombra de los hidrocarburos. Available at: [https://oi-files-cng-v2-prod.s3.eu-west-2.amazonaws.com/peru.oxfam.org/s3fs-public/file\\_attachments/La-sombra-de-los-hidrocarburos-en-el-Peru%CC%81.pdf](https://oi-files-cng-v2-prod.s3.eu-west-2.amazonaws.com/peru.oxfam.org/s3fs-public/file_attachments/La-sombra-de-los-hidrocarburos-en-el-Peru%CC%81.pdf)

<sup>78</sup> Petroperú confirmó un nuevo derrame de petróleo en Loreto. Available at: <https://www.actualidadambiental.pe/petroperu-confirmando-nuevo-derrame-de-petroleo-en-loreto/>

<sup>79</sup> Los derrames de petróleo en las “zonas de sacrificio” en el Perú. Available at: <https://inte.pucp.edu.pe/en/noticias-y-eventos/noticias/los-derrames-de-petroleo-en-las-zonas-de-sacrificio-en-el-peru/>

<sup>80</sup> Las deudas ambientales de Ecuador en el 2022: derrames de petróleo, sentencias no cumplidas y el impacto imparable de la minería. Available at: <https://es.mongabay.com/2022/12/deudas-ambientales-de-ecuador-en-el-2022-derrames-de-petroleo-mineria/>.

<sup>81</sup> COMUNICADO PÚBLICO Nuevo y previsible derrame de petróleo confirma que los riesgos advertidos de afectación de derechos humanos y de la naturaleza por los hechos de abril del 2020 son responsabilidad directa del Estado de Ecuador por su negligencia en la reparación integral con garantías de no repetición. Available at: <https://ddhhecuador.org/sites/default/files/documentos/2022-02/COMUNICADO%20P%C3%9ABLICO%20Nuevo%20y%20previsible%20derrame%20de%20>

decision on this case is pending review by the Constitutional Court of Ecuador<sup>82</sup>. Likewise, by 2022, mining had severely affected this province, where there are 135 formal concessions and illegal mining had advanced more than 70 hectares along the Jantuyacu River<sup>83</sup>.

67. The Volta Grande do Xingu, a unique Amazonian territory in terms of socio-biodiversity located near the municipality of Altamira, Pará, is an example of these synergistic impacts. The region suffers from the cumulative impacts of the climate emergency and the Belo Monte hydroelectric dam (UHE Belo Monte), which, since 2015, has diverted the Xingu River to power generation turbines. The approximately 100 km stretch of the river that is diverted, known as the reduced flow section, irrigates the Arara da Volta Grande, Paquiçamba, and Trinchira Bacajá Indigenous Lands, as well as dozens of riverside communities and other indigenous lands not recognized by the state. With the damming and diversion of the Xingu, the quantity, speed, and level of water in the region no longer depend on the natural flow of the river, but on the concessionaire that operates the hydroelectric plant, Norte Energia S.A. The same region already impacted by the Belo Monte hydroelectric

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petr%C3%B3leo%20en%20el%20r%C3%ADo%20Coca%20confirma%20que%20los%20riesgos%20advertidos%20de%20afectaci%C3%B3n%20de%20derechos%20humanos%20y%20de%20la%20naturalaleza%20por%20los%20hechos%20de%20abril%20del%202020%20son%20respons.pdf

<sup>82</sup> Corte Constitucional resolverá caso por derrame de petróleo de abril de 2020 en la Amazonía. Available at: <https://gk.city/2021/05/22/derrame-petroleo-amazonia-corte-constitucional/>.

<sup>83</sup> Ecuador: la minería ilegal está acabando con dos ríos de la provincia de Napo. Available at: <https://es.mongabay.com/2022/02/ecuador-la-mineria-ilegal-esta-acabando-con-dos-rios-de-napo/>

plant now suffers from the threat of open-pit gold mining by the Canadian mining company Belo Sun<sup>84</sup>.

68. In the reduced flow section, Norte Energia diverted up to 80% of the river's original volume, drying up the Xingu for the riverside communities, indigenous peoples, fishermen, and farmers who live in the region. The damming of the river meant the death of fish, plants, and the culture of the canoeing peoples who live in sync with the river's flow. In September 2022, the Federal Supreme Court (STF) recognized that there had been a violation of the right to consultation and prior consent of the Indigenous Peoples affected by Belo Monte, and declared that Legislative Decree 788/2005, issued by the National Congress to authorize the implementation of Belo Monte, is unconstitutional because it was not preceded by a hearing of the affected indigenous communities<sup>85</sup>.

69. The climate emergency contributes to water conflicts in the region and will contribute, with greater intensity, to the water scarcity that already affects the peoples of the Volta Grande. Studies predict that in the next 30 years, water in the Xingu basin will decrease by between 20% and 30%. Some even predict a reduction of more than 40% in the basin's water in 50

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<sup>84</sup> Regarding violations of the right to prior consultation, the Protocol Observatory published the report: Violations of the right to consultation and prior consent of indigenous peoples and riverine communities: the case of a mining project in Volta Grande do Xingu. Oliveira, Rodrigo Magalhães de [et al.]. Curitiba: Letra da Lei, 2022. Available at: <https://observatorio.direitosocioambiental.org/wp-content/uploads/2022/07/livroVoltaGrandeDigital-2.pdf>

<sup>85</sup> STF reconhece que o direito a consulta prévia dos povos indígenas afetados por Belo Monte foi violado. Available at: <https://www.mpf.mp.br/pa/sala-de-imprensa/noticias-pa/stf-reconhece-que-o-direito-de-consulta-previa-dos-povos-indigenas-afetados-por-belo-monte-foi-violado>

years<sup>86</sup>. The scenario of increasingly severe droughts in the Xingu River reduces the power generation capacity of the hydroelectric plant, and Norte Energia, in response, diverts a greater proportion of the river's flow to the turbines. Thus, the territories, cultures, and self-determination of each of these peoples are being impacted by the synergy of immediate or local causes of drought (the diversion of the river) and global or climatic causes.

70. At no point during the environmental licensing process for the Belo Monte hydroelectric plant or in the development of impact scenarios was it taken into account that the river's flow would also be affected by climate change<sup>87</sup>. And this mistake is being repeated in the environmental licensing of the Volta Grande Project, a mega open-pit gold mining project that the Canadian company Belo Sun Mineração Ltda. wants to set up in the region. The project, whose licensing process has already violated the right to consultation and prior consent of the Juruna and Arara Indigenous Peoples<sup>88</sup>, as well as the river-

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<sup>86</sup> According to researcher André Sawakuchi, "climate projections converge toward intensified droughts (longer dry seasons and/or rainy seasons with less precipitation) in the Xingu basin. A specific study on the future flow of the Xingu River in the Belo Monte area was recently completed by geologist Marcelo Pereira Garcia de Camargo as part of his master's thesis defended at the Institute of Geosciences at USP. This study projects a reduction of approximately 30% (compared to historical flows) in the flow of the Xingu River in the Belo Monte area over the next 30 years. Therefore, conflicts over water for power generation, ecosystem conservation, and the livelihoods of traditional Xingu populations could intensify. Available at: <https://www.ihu.unisinos.br/categorias/159-entrevistas/594597-projeto-de-belo-monte-ignora-ciclos-de-estiagens-poe-em-risco-a-hidreletrica-e-aumenta-danos-sociais-e-ambientais-entrevista-especial-com-andre-sawakuchi>

<sup>87</sup> Higgins, Tiffany. O elefante branco de Belo Monte: maior e mais cara hidrelétrica brasileira pode ser inviável. *Neo Mondo*, 2020. Available at: <https://neomondo.org.br/2020/02/07/o-elefante-branco-de-belo-monte/>

<sup>88</sup> Violaciones al derecho a la consulta y al consentimiento previo de indígenas y ribereños: el caso de un emprendimiento minero en la Volta Grande del Xingu / Oliveira, Rodrigo Magalhães de [et al.].

side communities living in its area of impact, will use massive amounts of water for its operation. However, the company did not conduct any study on how its mining operations will contribute to and exacerbate the effects of drought caused by the climate emergency and the Belo Monte hydroelectric plant.

71. The Brazilian Pantanal, the world's largest floodplain and home to diverse indigenous and tribal peoples, offers another worrying example of this synergy. According to recent research, the increasingly frequent occurrence of forest fires is bringing the biome closer to the point of no return<sup>89</sup>. Over the past 20 years, the probability of large fires occurring in the Pantanal has increased from 1.2% to 11%, a nearly tenfold increase, and is expected to continue rising with worsening climate change, lack of rainfall, and dry air. According to Ludmila Rattis, a researcher at the Amazon Environmental Research Institute (IPAM) and the Woodwell Climate Research Center in the United States, the climate most conducive to fire is being caused by global climate change and deforestation, which also changes the local climate. The fuel, in turn, is due to deforestation, with the creation of edges and the degradation of forests<sup>90</sup>.

72. This scenario poses a threat to biodiversity and to the indigenous and traditional peoples living in the region. A study by

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Curitiba: Letra da Lei, 2022. Coleção Jusdiversidade e autodeterminação. Disponível em: <http://observatorio.direitosocioambiental.org/wp-content/uploads/2022/07/livroVoltaGrandeDigital-2.pdf>

<sup>89</sup> <https://iopscience.iop.org/article/10.1088/1748-9326/ac7342/pdf>

<sup>90</sup> A composite event-oriented framework for tropical fire risk assessment in a changing climate. Available at: <https://oeco.org.br/reportagens/incendios-estao-aproximando-pantanal-e-xingu-de-ponto-de-nao-retorno-alerta-estudo/>

the Public Agency revealed that, between August and September 2021, more than half of the recognized indigenous lands in the Brazilian Pantanal were affected by the fires that ravaged the region that year<sup>91</sup>. There were more than 300 fires in less than two months. Once again in 2022, the Pantanal burned extensively. In November 2022, more than 800 hectares of the Guató Indigenous Land (TI) were consumed by fires. Located in the municipality of Corumbá (MS), the TI is close to the Serra do Amolar<sup>92</sup>.

**c. The right to self-determination and prior consultation as a response by peoples and communities to the effects of extractive activities that exacerbate the climate emergency**

73. In the cases described above, no effective mechanisms were implemented to enable peoples and communities to collectively choose their path of development and self-determination in the face of the climate emergency and the works and projects that exacerbate it. The affected peoples and communities did not have access to data and information on the impacts that the synergy between extractive activity and the climate emergency would have on them. They were not adequately consulted, nor did they give their consent, nor did they have the opportunity to say no to these activities. In these cases and many others, we see

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<sup>91</sup> The fires now cover almost half of the indigenous lands in the Pantanal. Available at: <https://apublica.org/2020/09/incendios-ja-tomam-quase-metade-das-terras-indigenas-no-pantanal/>

<sup>92</sup> Incendio atinge terra indígena no pantanal sul-matogrossense. Available at: <https://oeco.org.br/noticias/incendio-atinge-terra-indigena-no-pantanal-sul-mato-grossense/>.

that indigenous peoples and other affected communities did not have access to any mechanism that would guarantee their self-determination and other rights in the face of these threats.

74. The climate emergency has had severe impacts on the right to self-determination of the peoples and communities of the Americas. These impacts must be understood, mitigated, and combated by the State, always based on the precepts and guidelines dictated by the peoples involved, respecting the primacy of their right to determine the collective course of their lives and histories.

75. But that's not all. The adverse effects of global and regional climate change are exacerbated and deepened by works and projects that affect ecological conditions in regions inhabited by indigenous peoples. These works and projects, whether they are large infrastructure projects, mining or oil extraction, or monoculture grain, livestock, and forestry operations, also disrupt ecological conditions that were previously relatively stable, such as water cycles and availability and climatic conditions in the regions where they are located. These works and projects affect the availability of fishing and hunting, and hinder cultivation and access to water for consumption, bathing, and recreation.

76. There is a growing number of specific cases demonstrating how the impacts of large-scale development works and projects, as well as extraction and monoculture activities, and carbon offset projects worsen the climate crisis and act synergistically with it, amplifying the impacts caused by the latter.

This leads to the need to ensure that the possibility of synergistic impacts is taken into account in administrative processes.

#### **IV. Violation of the right to self-determination in the context of energy transition**

77. The concept of energy transition has gained relevance in light of the urgency to meet the objectives of the Paris Agreement. To achieve this, it is essential to eliminate greenhouse gas emissions, which means abandoning fossil fuels (oil, natural gas, lignite, and coal) and adopting a new and sustainable energy matrix.

78. On September 8, 2023, the Subsidiary Body for Scientific and Technological Advice of the United Nations Framework Convention on Climate Change issued a synthesis report of the Technical Dialogue of the First Global Stocktake<sup>93</sup>. This report refers to key findings that address challenges in implementing the Paris Agreement, specifically limiting the average global temperature increase to 1.5°. One of the most important findings is Finding 6, which refers to the urgency of making a just energy transition, eliminating fossil fuels, expanding renewable energies, and stopping deforestation<sup>94</sup>.

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<sup>93</sup> Technical dialogue of the first global review of nationally determined contributions. Co-chairs' synthesis report on the technical dialogue. Available at: [https://unfccc.int/sites/default/files/resource/sb2023\\_09\\_adv.pdf](https://unfccc.int/sites/default/files/resource/sb2023_09_adv.pdf).

<sup>94</sup> Technical dialogue of the first global stocktake of nationally determined contributions. Co-chairs' synthesis report on the technical dialogue. Available at: [https://unfccc.int/sites/default/files/resource/sb2023\\_09\\_adv.pdf](https://unfccc.int/sites/default/files/resource/sb2023_09_adv.pdf).

79. Similarly, on October 8, 2023, in preparation for COP 28, the UN presented a new synthesis report intended to guide States' decisions on the global stocktake of the Paris Agreement at COP 28<sup>95</sup>. The report reflects the views of numerous stakeholders and indicates that the world has not made sufficient progress toward meeting the Paris Agreement targets, highlighting the need for urgent action such as phasing out fossil fuels and investing in renewable energy<sup>96</sup>.

80. While there is broader consensus on the need to take these urgent measures for the phasing out of fossil fuels and an energy transition, this energy transition must not replicate the same extractivist logic that characterizes the fossil fuel and mining industries, which consider the territories of peoples and communities as sacrifice zones where extractive activities can be imposed, privileging an alien model of development, especially when there is opposition to such projects.

81. As mentioned above, the concepts of self-determination, climate change, territory, consultation, and free, prior, and informed consent are intrinsically linked and must be read and interpreted together in order to address the challenges of the climate emergency and seek measures to combat it.

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<sup>95</sup> Perspectives on elements for consideration of the outcomes of the first global review component. Synthesis report by the secretariat. Available at: [https://unfccc.int/sites/default/files/resource/SYR\\_Views%20on%20Elements%20for%20CoO.pdf](https://unfccc.int/sites/default/files/resource/SYR_Views%20on%20Elements%20for%20CoO.pdf).

<sup>96</sup> *Idem*.

**a. The transition away from fossil fuels must respect the self-determination of peoples and communities.**

82. At the Climate Ambition Summit, held on September 20, 2023, convened by United Nations Secretary-General Antonio Guterres, various countries pointed out that the total elimination of oil and gas is necessary in order to meet climate commitments<sup>97</sup>. The victory of the Yasuní referendum in Ecuador is a significant step toward the elimination of fossil fuels. However, its implementation presents challenges that underscore the importance of considering the right to self-determination in the energy transition model.

**i. The Yasuní referendum in Ecuador to stop oil exploitation**

83. On August 20, 2023, in Ecuador's early national elections, nearly 60% of the electorate voted in favor of halting oil exploitation in Block 43<sup>98</sup> of Yasuní National Park<sup>99</sup>. Until 2013, there were six oil blocks in operation in Yasuní that directly touched some

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<sup>97</sup> The countries that highlighted the need to eliminate fossil fuels were Colombia, Denmark, the Marshall Islands, Tuvalu, and the State of California. Opening remarks by the Secretary-General at the Climate Ambition Summit. Available at: [https://www.un.org/sites/un2.un.org/files/climate\\_ambition\\_summit\\_-\\_20\\_september\\_2023\\_-\\_chairs\\_summary.pdf](https://www.un.org/sites/un2.un.org/files/climate_ambition_summit_-_20_september_2023_-_chairs_summary.pdf).

<sup>98</sup> According to the official results of the National Electoral Council, the vote in favor of not exploiting oil in Block 43 of the Yasuní National Park reached a total of 5,541,585 votes, representing 58.95% of the electorate. See: <https://resultados.cne.gob.ec/>.

<sup>99</sup> Yasuní National Park is one of the world's most biodiverse biosphere reserves per square meter on the planet. According to Ecuador's Ministry of the Environment, at least 120 species of reptiles, 596 species of birds, 200 species of mammals, and some 100,000 species of insects per hectare have been identified in the area. It is also the ancestral territory of several recently contacted indigenous communities, including the Waorani, Amazonian Kichwa communities, and the Tagaeri, Taromnane, and Dugakaeri (or PIAV) peoples, who live in voluntary isolation. Yasuní Biosphere Reserve, Ecuador. Available at: <https://es.unesco.org/biosphere/lac/yasuni>.

part of this park, and only Block 43, made up of the Ishpingo, Tambococha, and Tiputini (ITT) oil fields, had not been exploited<sup>100</sup>. On August 18, 2013, the Ecuadorian government launched the “ITT initiative<sup>101</sup>”, which sought to obtain financial compensation from the international community in exchange for not exploiting 846 million barrels of oil from the ITT oil fields<sup>102</sup>.

84. Following the failure of this initiative, on October 3, 2013, Ecuador’s National Assembly authorized oil exploitation in blocks 31 and 43 within Yasuní National Park<sup>103</sup>. Over time, the official discourse defended oil exploitation in block 43, indicating that the expected yield was 1.672 billion barrels of oil<sup>104</sup>, almost double the initial estimate.

85. Covering an area of almost 2,000 hectares, 100 of which are within Yasuni<sup>105</sup>, Block 43 borders the northeastern

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<sup>100</sup> Isolated indigenous peoples under threat of oil expansion. Available at: <https://amazonwatch.org/es/news/2021/1102-isolated-indigenous-peoples-under-threat-of-oil-expansion>.

<sup>101</sup> It was a proposal by the Ecuadorian government, which sought financial compensation from the international community in exchange for leaving the crude oil in this area underground. See: <https://www.planificacion.gob.ec/iniciativa-yasuni-itt-una-apuesta-ecuatoriana-que-marca-un-cambio-de-era/>.

<sup>102</sup> Executive Decrees 74 (see: [https://www.yasunidos.org/wp-content/uploads/2021/02/decreto\\_74.pdf](https://www.yasunidos.org/wp-content/uploads/2021/02/decreto_74.pdf)) and Decree 84 (see: [https://www.yasunidos.org/wp-content/uploads/2021/02/decreto\\_74.pdf](https://www.yasunidos.org/wp-content/uploads/2021/02/decreto_74.pdf)), the end of the Yasuni initiative is declared and it is stated that one thousandth of the territory of the Yasuni National Park will be exploited.

<sup>103</sup> In January 2014, a ministerial resolution directly assigned the exploitation of Block 43 (ITT) to the Public Hydrocarbon Exploration and Exploitation Company Petroamazonas EP – now EP PETROECUADOR. Through the “Declaration of National Interest in the oil exploitation of blocks 31 and 43 within the Yasuní National Park.” Available at: <https://www.asambleanacional.gob.ec/es/contenido/asamblea-aprobo-declaratoria-de-interes-nacional-la-explotacion-en-el-parque-nacional-and-by-Resolution-of-the-Secretariat-of-Hydrocarbons-No.-19>. Available at: <https://geografiacriticaecuador.org/minkayasuni/wp-content/uploads/2020/05/ASIGNACION-DIRECTA-BLOQUE-43-ITT.pdf>.

<sup>104</sup> Petroamazonas EP invertirá USD 148 millones en nueva campaña de perforación en Tambococha - Bloque 43 ITT. Available at: <https://www.recursosyenergia.gob.ec/petroamazonas-ep-invertira-usd-148-millones-en-nueva-campana-de-perforacion-en-tambococha-bloque-43-itt/>.

<sup>105</sup> Parque Nacional Yasuní: entre la explotación y la conservación. Available at: <https://dialogochino.net/es/actividades-extractivas-es/52121-parque-nacional-yasuni-entre-la-explota>

part of the “Intangible Zone” and the “Buffer Zone,” which are also located within Yasuní National Park; created in 1999 for the protection of Indigenous Peoples in Voluntary Isolation (PIAV)<sup>106</sup>.

86. Despite opposition from civil society to start oil exploitation within Yasuní, such as the activist group “Yasunidos<sup>107</sup>”, after almost ten years of legal battles<sup>108</sup>, the Ecuadorian Constitutional Court ordered a referendum to be held so that the decision to exploit Block 43<sup>109</sup> or not could

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cion-y-la-conservacion/#:~:text=In%20the%20depths%20of%20Yasuni,oil%20drilling%20in%20this%20Latin%20American%20country.

<sup>106</sup> This area was created by Executive Decree 552 of February 2, 1999, and its boundaries were not defined until 2007, through Decree 2187. Following a national referendum held in 2018, which proposed expanding the intangible zone, the current area of this zone is 818,501 hectares. Available at: <https://www.recursoyenergia.gob.ec/gobierno-nacional-incrementa-la-zona-intangible-ta-gaeri-taromenane-en-diez-mil-hectareas-mas-de-lo-establecido-en-la-consulta-popular-de-2018/>. Despite the determination of these areas, the dispute over oil expansion in Yasuní dates back to the 1970s. Available at: <https://www.eltelegrafo.com.ec/noticias/masgmenos-2/1/la-disputa-por-el-yasuni-empezo-hace-70-anos>. Case No. 12,979 is currently pending before this Honorable Court, concerning the impact on the rights of the PIAV caused by oil pressure. See press release at: <https://www.oas.org/es/cidh/prensa/comunicados/2020/245.asp>.

<sup>107</sup> To learn more about the history of the collective, visit <https://www.yasunidos.org/nuestra-historia/>.

<sup>108</sup> The first major obstacle for Yasunidos was the decision of the Constitutional Court at that time, which ordered the collective to first comply with the requirement of “democratic legitimacy” as a preliminary step before analyzing the constitutional validity of the referendum. In other words, it had to first collect the minimum number of signatures in support of the popular initiative proposed by Yasunidos, which, according to Article 104 of the Constitution, corresponds to 5% of the national electoral roll. Although Yasunidos announced that it had collected more than twice the required number of signatures and denounced irregularities in the verification process, the National Electoral Council denied Yasunidos the certificate of compliance with the democratic legitimacy requirement and rejected the appeals filed by the group. After several appeals, on May 9, 2023, the Constitutional Court of Ecuador gave the green light for a referendum to be held, with the original question posed almost a decade ago: Do you agree that the Ecuadorian government should keep the ITT crude oil, known as Block 43, indefinitely underground? Available at: <https://www.eluniverso.com/noticias/2013/10/01/nota/1526066/cne-da-paso-entrega-formularios-recoger-firmas-convocatoria/>; <https://gk.city/2023/06/28/cronologia-caso-yasunidos-crudo-underground-referendum-2023/>; <https://www.eluniverso.com/noticias/2014/04/29/nota/2898556/yasunidos-denuncia-29-irregularidades-verificacion-sus-firmas/>; [https://esacc.corte-constitucional.gob.ec/storage/api/v1/10\\_DWL\\_FL/e2NhcNBLdGE6j3RyYw1pdGUnLHV1aWQ-6jZxWmJjJlyzc1LWViYzctNDNjYi05MjJjLWUyOTVhN2I4OTBjMySwZGYnfQ==](https://esacc.corte-constitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcNBLdGE6j3RyYw1pdGUnLHV1aWQ-6jZxWmJjJlyzc1LWViYzctNDNjYi05MjJjLWUyOTVhN2I4OTBjMySwZGYnfQ==).

<sup>109</sup> The Ecuadorian Constitutional Court determined complementary measures in the event that the op-

be put to a popular vote. During this time, oil exploitation in the ITT continued<sup>110</sup>.

87. The campaign to stop oil exploitation in Yasuní brought together various sectors of civil society and the indigenous movement<sup>111</sup>. In contrast, the Ecuadorian government and the state-owned company Petroecuador promoted a campaign aimed at instilling fear based on the economic consequences of stopping oil exploitation in Yasuní<sup>112</sup>. During

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tion to ban oil exploitation in Yasuní wins due to the passage of time and the advance of oil exploitation in the area: "For all the above reasons, this Court clarifies that if the "yes" vote wins in the referendum, the State: (i) could not take actions aimed at initiating new contractual relationships to continue oil exploitation in block 43; and, (ii) must adopt immediate measures for the restoration of nature and the protection of the territory of the PIAV, among other actions, through the competent ministries." Thus, in the operative part of the ruling, it stated that "[i]n accordance with the provisions of ruling 6-22-CP/23, the measures to be implemented, in the event of an affirmative vote by the electorate, shall be carried out through a progressive and orderly withdrawal of all activities related to oil extraction within a period not exceeding one year from the notification of the official results. Additionally, the State may not take any action to initiate new contractual relationships to continue the exploitation of Block 43." Constitutional Court of Ecuador, Ruling No. 6-22-CP/23, p. 21, para. 91. Available at: [http://esacc.corteconstitucional.gob.ec/storage/api/v1/10\\_DWL\\_FL/e2NhcBldGE6J3RyYW1pdGUnLHV1aWQ6JzYwMjJlYzct1LWVYzctNDNjYi05MjJjLWUyOTVhN2l4OTBjMy5wZGZyYnfQ==](http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcBldGE6J3RyYW1pdGUnLHV1aWQ6JzYwMjJlYzct1LWVYzctNDNjYi05MjJjLWUyOTVhN2l4OTBjMy5wZGZyYnfQ==).

<sup>110</sup> In September 2016, the first drilling took place in the Tiputini field. Available at: <https://www.elcomercio.com/opinion/editorial/editorial-opinion-tiputini-explotacion-petroleo.html>. In December 2017, work began on the Tambococha field. Available at: <https://www.lahora.com.ec/pais/inicio-explotacion-campo-ishpingo-itt/>; and in April 2022, the first well in the Ishpingo field was opened. Available at: <https://www.eppetroecuador.ec/?p=18015>. A total of 230 oil wells and 12 platforms. In addition, Petroecuador acknowledged that there were 26 oil spills in this area. Available at: <https://www.primicias.ec/noticias/elecciones-presidenciales-2023/petroecuador-incidentes-itt-derrames/>.

<sup>111</sup> Twenty-three organizations officially registered to promote a "yes" vote for Yasuní, including the Confederation of Indigenous Nationalities of Ecuador (CONAIE). At a press conference, CONAIE, together with other grassroots leaders, including the Organization of Waorani Nationalities of the Province of Orellana (ONWO), highlighted the importance of Yasuní in tackling climate change, protecting PIAVs, and moving away from the capitalist model of consumption that is destroying the Earth's resources. Available at: <https://www.primicias.ec/noticias/politica/campanas-yasuni-choco-andino-colectivos/> and <https://www.primicias.ec/noticias/elecciones-presidenciales-2023/yasuni-movimiento-indigena-consulta-campana/>.

<sup>112</sup> They warned of losses of more than \$1 billion to the state, an increase in the fiscal deficit, and the high cost of removing the oil infrastructure. Available at: <https://www.elcomercio.com/actualidad/politica/conaie-iza-apoyo-consulta-popular-yasuni.html> and <https://www.primicias.ec/>

the campaign, several media outlets and the government itself echoed the internal division caused by oil activity among the indigenous peoples affected by Block 43<sup>113</sup>.

88. These internal divisions, beyond having been used to sustain an electoral position, reveal the consequences of extractivism, which contributes to the dispossession of ethnic territories and interethnic convergence, exacerbates pre-existing conflicts between indigenous peoples, and undermines organizational processes<sup>114</sup>. It highlights the imposition of a purely economic development model, which conditions the satisfaction of their social, economic, and cultural rights in exchange for acceptance of that model, without considering that peoples and communities may have diametrically opposed perspectives on development based on their self-determination<sup>115</sup>.

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noticias/politica/yasunidos-yasuni-consulta-elecciones/. However, researchers such as Larrea and Rivas have contested this government position in order to support the defense of Yasuni and stop Block 43, as these figures do not take into account production costs, the fall in the price per barrel, the quality of the crude oil, the failure of the oil model to combat poverty, and the need to move away from the extractivist model. Available at: <https://www.climatica.lamarea.com/ecuador-petroleo-del-yasuni/> and <https://revistagestion.ec/analisis-economia-y-finanzas/los-costos-de-cerrar-el-yasuni-itt-no-serian-tan-altos-como-dice/>.

<sup>113</sup> For example, despite the majority position of the Waorani nationality in favor of the referendum, the community of Kawymeno, one of the seven located within the block, spoke out against the referendum due to fears of losing the basic services and employment promoted by oil activity. Available at: [https://aler.org/nota\\_informativa/presidente-de-la-nacionalidad-waorani-llama-a-la-conservacion-del-yasuni/](https://aler.org/nota_informativa/presidente-de-la-nacionalidad-waorani-llama-a-la-conservacion-del-yasuni/); <https://efe.com/medio-ambiente/2023-08-02/los-indigenas-waorani-de-ecuador-divisan-el-posible-end-of-oil-in-their-territories/>; and <https://www.france24.com/es/minuto-a-minuto/20230624-el-petr%C3%B3leo-la-discordia-entre-ind%C3%ADgenas-amaz%C3%B3nicos-de-ecuador>.

<sup>114</sup> Oil, development, and nature: approaches to a scenario of expanding extractive frontiers into the southeastern Amazon in Ecuador. Available at: [https://www.flacoandes.edu.ec/sites/default/files/%25f/agora/files/agora\\_vallejo.pdf](https://www.flacoandes.edu.ec/sites/default/files/%25f/agora/files/agora_vallejo.pdf). p.134.

<sup>115</sup> Amicus brief filed by Amazon Watch on May 10, 2022, in the case of the U'wa Indigenous People and its Members v. the State of Colombia, p. 8.

89. Once the results in favor of stopping exploitation of the Yasuní were known, the Confederation of Indigenous Nationalities of Ecuador (CONAIE) emphasized that this victory is a message to move away from the oil exploitation model toward a change of model<sup>116</sup>. However, despite the victory, the implementation of this decision has brought challenges.

### **ii. Consolidating the post-oil transition: The need to implement the Yasuní decision while respecting the right to self-determination**

90. Ecuador ratified its commitment to the Paris Agreement on September 20, 2017, and since 2008, the Ecuadorian Constitution has established the obligation to adopt measures, among others, to mitigate climate change, limit greenhouse gas emissions, conserve forests, and protect at-risk populations.<sup>117</sup>. The victory of the referendum to halt oil exploitation in Block 43 is an important step toward eliminating fossil fuels and building a post-oil model, whose economy has depended heav-

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<sup>116</sup> CONAIE emphasized that the victory “represents a significant contribution to the fight against climate change.” We have won at the polls and we are spreading this message so that other peoples around the world can also exercise their right as citizens to protect nature. We emphasize that in the midst of the worst security and violence crisis in Ecuadorian history, we developed a campaign for life, and the majority of the country embraced the message, demonstrating the power of organization and leadership of indigenous peoples and nationalities, of citizen participation together with broad social organizations, collectives, activists, and diverse groups, whom we recognize and thank for their work and commitment, for their unity and for joining this cause for the future of humanity. After 50 years of oil exploitation, the “YES” vote sends a strong message to stop extractivism and move towards an economic model that prioritizes respect for nature. In this context, we believe it is important to declare our commitments and demands for the future. Available at: <https://conaie.org/2023/08/23/celebramos-el-triunfo-del-si-por-yasuni-y-el-choco-andino/>.

<sup>117</sup> Constitution of Ecuador, Article 414.

ily on oil production for almost fifty years despite the high environmental impacts caused<sup>118</sup>. The promise of prosperity from oil was not fulfilled. Oil dependency and the lack of diversification in the Ecuadorian economy have prevented the country from overcoming its structural problems, such as poverty, social exclusion, and underemployment<sup>119</sup>.

91. However, the transition towards eliminating fossil fuels in Ecuador was not proposed as a measure until the Yasuní referendum. Adaptation and mitigation measures in Ecuador had focused on superficial policies in the oil sector, prioritizing the exploitation of fossil fuels<sup>120</sup>. But Ecuador's exit from oil dependence is inevitable. Given its remaining proven reserves, Ecuador will cease to be an oil-exporting country by 2030 at best<sup>121</sup>. The difference lies

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<sup>118</sup> Mainly due to oil spills, environmental liabilities left behind by Chevron-Texaco's operations, and the resulting deforestation.

<sup>119</sup> Larrea, Carlos. Why we need to overcome our dependence on oil. Available at: <https://repositorio.uasb.edu.ec/bitstream/10644/7166/1/Larrea%2CC-C031-EcuadorPospetroleo2020.pdf>, p. 1. Furthermore, according to INEC, as of June 2023, national poverty stood at 27.0% and extreme poverty at 10.8%, with a Gini coefficient of 0.440 in urban areas and 0.479 in rural areas. The Ecuadorian Amazon, where oil is extracted, is the poorest region in the country. For example, as of December 2023, in the Amazonian province of Pastaza, 72 out of every 100 people are poor and the Gini coefficient is 0.58. Available at: <https://www.primicias.ec/noticias/economia/pobreza-provincias-desempleo-empleo-ecuador/>.

<sup>120</sup> For example, Ecuador's National Climate Change Strategy 2012-2015 recognized that "(...) the direct impact of oil on the national economy is weak, due to low job creation, its limited links to the national economy, and the fact that most of the production is exported without processing. All these factors have led to the Amazon being valued solely in terms of GDP growth and not as sustainable economic development, which is determined through the analysis of quality of life and environmental indicators." Something similar happened in Ecuador's recent National Climate Change Adaptation Plan (2023-2027), presented in February 2023, where measures for the oil sector are limited to generating studies on the vulnerability of oil pipelines to climate threats and designing monitoring systems, among others. Available at: Ministry of Environment, Climate Change Strategy, p. 27. Available at: <https://faolex.fao.org/docs/pdf/ecu140074.pdf>.

<sup>121</sup> Larrea, Carlos. Why we need to overcome our dependence on oil. Available at: <https://repositorio.uasb.edu.ec/bitstream/10644/7166/1/Larrea%2CC-C031-EcuadorPospetroleo2020.pdf>, p. 2.

in the social and environmental costs that can be avoided, and the implementation of the Yasuní initiative is a step in that direction.

92. Following the victory of the Yasuní referendum, the government led by Guillermo Lasso questioned the feasibility of complying with the order to phase out oil activity within a year, arguing that the economic costs would be too high<sup>122</sup>. In addition, resistance was noted in provinces that have depended on the oil industry, such as Orellana and Sucumbíos, where the option not to stop oil exploitation won with 58% and 51% respectively<sup>123</sup>. The former president of the Republic even promoted a meeting with those indigenous communities that rejected the referendum due to the possible loss of services and jobs in the oil industry, as a measure to support his position<sup>124</sup>. For their part, activists and academics proposed fiscal alternatives and tax debt payments to the country's wealthiest economic groups<sup>125</sup>.

93. In this context, in addition to the technical and economic challenges of dismantling the oil infrastructure in Block 43 and phasing out fossil fuels, as well as repairing environmental damage, there are challenges related to protecting and restoring the right to self-determination of the affected peoples in

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<sup>122</sup> Yasuní: President Lasso says that holding the referendum is "suicidal." Available at: <https://www.primicias.ec/noticias/politica/presidente-lasso-aplicacion-consulta-yasuni/>.

<sup>123</sup> Two oil-producing provinces did not support the Yasuní referendum. Available at: <https://www.primicias.ec/noticias/economia/orellana-sucumbios-consulta-itt-yasuni/>.

<sup>124</sup> Yasuní: El presidente Lasso dice que aplicar la consulta es "suicida". Available at: <https://www.primicias.ec/noticias/politica/presidente-lasso-aplicacion-consulta-yasuni/>.

<sup>125</sup> Estas son las razones económicas para dejar el crudo del ITT en el subsuelo. Available at: <https://www.planv.com.ec/historias/plan-verde/estas-son-razones-economicas-dejar-el-crudo-del-itt-el-subsuelo> and <https://www.cadtm.org/Economistas-del-mundo-dicen-Si-al-Yasuni>.

the area. The phase-out of fossil fuels in Yasuní without taking into account the indigenous communities that for years have either resisted the advance of the oil frontier or depended on it could become a new form of violation of their right to self-determination and consent, now in a stage of remediation and post-oil energy transition.

94. In this regard, it is essential that the Ecuadorian government respect and guarantee the rights to decide on their own development priorities, in accordance with Article 7 of ILO Convention 169, in line with the United Nations Declaration on the Rights of Indigenous Peoples and the American Declaration on the Rights of Indigenous Peoples. Similarly, the design of alternatives to oil activity, livelihoods, and social rights coverage demanded by those communities that initially opposed the popular consultation, as well as the best forms of reparation, must be carried out through consultation and consent processes based on the governance processes of the communities affected—affected in a broad sense—by the departure from Block 43, in accordance with Article 6 of ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples and the American Declaration on the Rights of Indigenous Peoples.

95. Excluding indigenous peoples and communities from the design and implementation of the Yasuní referendum would be tantamount to replicating the same practices of rights violations that have been denounced for decades in the implementation of extractive plans and programs in their territories.

**b. The energy transition that replicates the patterns of an extractive economy threatens the right to self-determination of peoples and communities.**

96. At the recent Climate Ambition Summit, the States Parties emphasized the vital importance of the energy transition<sup>126</sup>. However, the transition model prioritizes the expansion of mining projects in search of critical or strategic minerals<sup>127</sup>, and other “clean energy” models such as hydroelectric and wind power, as well as resorting to misleading strategies such as planting trees, promoting carbon markets, REDD+ programs, or using unproven technologies in order to achieve net zero emissions and offset greenhouse gas emissions.

97. These supposed solutions to the climate crisis repeat a model imposed on peoples and communities that violates their right to self-determination and related rights such as the right to consultation and free, prior, and informed consent; the right to development; the right to food; the right to water; the right to sanitation; the right to housing; among others.

98. Given the impacts of energy transition projects, which can occur synergistically and cumulatively when associated with existing extractive or development projects in the same traditional territories, peoples and communities need recognition of their right to consent as an expression of a right to

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<sup>126</sup> Opening remarks by the Secretary-General at the Climate Ambition Summit. Available at: [https://www.un.org/sites/un2.un.org/files/climate\\_ambition\\_summit\\_-\\_20\\_september\\_2023\\_-\\_chairs\\_summary.pdf](https://www.un.org/sites/un2.un.org/files/climate_ambition_summit_-_20_september_2023_-_chairs_summary.pdf).

<sup>127</sup> Guterres calls for Africa to become a renewable energy superpower. Available at: <https://news.un.org/en/story/2023/09/1140362>.

say no—that is, to withhold their consent<sup>128</sup>. Furthermore, the combined effects of all these impacts, together with the effects of the climate crisis and emergency, may further aggravate existing threats to the collective existence of these peoples. Thus, ecocide and ethnocide<sup>129</sup> may occur in an interconnected manner.

99. In this context, it is urgent to reinterpret the right to consultation and consent, including principles and practices of deep and meaningful consultation, based on the right to self-determination. Going further and challenging the understanding that the final decision on the viability of these projects rests with nation states, even more so in the context of the climate emergency, where we have seen that protecting the territories of peoples and communities is key to addressing the climate crisis. The recognition of the right to say no, as a final and binding decision, is linked not only to the protection of territories that act as carbon sinks, but also to the collective right of these peoples to life,

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<sup>128</sup> We will further develop the aspect of the “right to say no” based on the right to self-determination of peoples and communities in section V.

<sup>129</sup> In 2021, an independent panel of environmental and legal experts convened by the Stop Ecocide Foundation provided a definition of ecocide as exceptional violence against the environment that therefore deserves the protection of the international community. According to the panel, ecocide occurs in the presence of unlawful or reckless acts committed with the knowledge that there is a substantial probability of causing severe damage, whether extensive or long-term, to the environment. On the other hand, genocide is a crime under Brazilian law and legal systems, as well as being included in the Rome Statute as an international crime. In the early 1930s, Raphael Lemkin coined the legal notion of genocide to refer to physical genocide (crimes committed against human beings) as well as cultural genocide (undermining the way of life of a community). Lemkin’s original definition focused on wrongful conduct that not only affected individuals but also destroyed the environment of a population. Today, a distinction is generally made between genocide, which harms human beings, and ecocide, which harms nature itself. However, there are dissenting voices. For example, Damien Short sees ecocide as a tool for committing genocide. See: LEMKIN, R., “Totally Unofficial Man” in TOTTEN, S. and JACOBS, S. (eds), *Pioneers of Genocide Studies*, Routledge, 2013, (365) 393; SHORT, D. and CROOK, M., *The Genocide-Ecocide Nexus*, Routledge, 2022.

including their survival as a people, and to self-determination of their physical, social, cultural, and political existence.

100. Next, we will detail from case studies how the implementation of energy transition projects has impacted the right to self-determination and related rights.

**i. The expansion of mining due to the need for critical minerals may violate the right to self-determination in the context of energy transition: the case of the Mocoa project in Putumayo, Colombia**

101. The current energy transition model increases the demand for certain minerals, known as critical and/or strategic minerals<sup>130</sup>, for the production of so-called clean or renewable energies, which puts pressure on the peoples and communities in whose territories these minerals are found. Mining is presented as a solution to the climate crisis; however, if it continues to operate under the same extractivist logic and without taking into account the right to self-determination of peoples and communities, it will generate social and environmental challenges.

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<sup>130</sup> Some of the main critical metals and minerals are: uranium, copper, cobalt, manganese, chromite, rare earths, germanium, beryllium, bauxite, lithium, and the platinum group elements. Lithium, graphite, cobalt, rare earths, copper, aluminum, and nickel are essential for the creation of solar panels, wind turbines, electric vehicles, and energy storage and batteries that enable low-carbon economies that meet the climate goals of the Paris Agreements. Some of them, such as lithium, graphite, and cobalt, are mainly used in energy storage technologies. On the other hand, copper, aluminum, and nickel are necessary in a wide variety of renewable energies (solar, geothermal, wind, hydroelectric, etc.). Critical and strategic minerals. Available at: [https://repositorio.segemar.gov.ar/bitstream/handle/308849217/4183/Serie%20Contribuciones%20T%C3%A9cnicas\\_Recur-sos%20Minerales\\_N%C2%BA%2045.pdf?sequence=5&isAllowed=y#:~:text=CRITICAL%20MINERALS%20are%20those,for%20any%20other%20raw%20material](https://repositorio.segemar.gov.ar/bitstream/handle/308849217/4183/Serie%20Contribuciones%20T%C3%A9cnicas_Recur-sos%20Minerales_N%C2%BA%2045.pdf?sequence=5&isAllowed=y#:~:text=CRITICAL%20MINERALS%20are%20those,for%20any%20other%20raw%20material).

102. For example, the Mocoa project, located in the department of Putumayo, Colombia, and operated by the Canadian company Libero Copper, has copper and molybdenum deposits<sup>131</sup>. This company has highlighted the importance of critical minerals and mining in the energy transition, as well as emphasizing that the copper project it operates promises to contribute significantly to the reindustrialization of the Colombian economy and the energy transition<sup>132</sup>.

103. Despite the ban on mega-mining in the municipality of Mocoa, the company began operations without the necessary environmental permits and operated under a suspended mining title<sup>133</sup>. The project caused environmental and social impacts on surrounding communities, particularly the Inga indigenous people<sup>134</sup>. This has violated the cultural rights of the

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<sup>131</sup> The Mocoa deposit, located in Putumayo, Colombia, is one of the largest undeveloped copper and molybdenum deposits in the world. With inferred resources of 636 million tons, it includes 4.6 billion pounds of copper and 511 million pounds of molybdenum. Libero Copper planned an exploration program in 2022 with five diamond drill holes. Available at: <https://www.libero-copper.com/projects/mocoa/overview/>.

<sup>132</sup> See the company's post at: <https://twitter.com/LiberoCopper/status/1661776381556973570>. A journalistic alliance also consulted the ministers of Environment and Mines on how they could harmonize their policies, which conflict here: on the one hand, promoting the mining of metals that are key to the energy transition, and on the other, prioritizing the conservation of the Amazon. Neither the Minister of Mines, Irene Vélez, nor the Minister of Environment, Susana Muhamad, responded at the time of publication. Available at: <https://news.mongabay.com/2023/06/a-powerful-political-family-from-new-hampshire-is-behind-a-copper-mine-in-the-colombian-rainforest/>.

133 Condagua, the Indigenous reserve that refuses to lose its sacred mountains. Available at: <https://es.mongabay.com/2022/11/condagua-el-resguardo-indigena-que-se-resiste-a-perder-sus-montanas-sagradas-en-colombia/#:~:text=%E2%80%9CCondagua%20was%20legally%20founded%20in,the%20river%20to%20try%20to%20protect%20ourselves.>

<sup>134</sup> Environmental impacts include impacts on mountains, water, and the Amazon rainforest, with deforestation, water and soil pollution, and the use of chemicals without due diligence. Condagua, the Indigenous reserve that refuses to lose its sacred mountains. Available at: <https://es.mongabay.com/2022/11/condagua-el-resguardo-indigena-que-se-resiste-a-perder->



scientific certainty<sup>138</sup>, and to take effective measures to prevent any significant negative impacts<sup>139</sup>.

105. As we move away from fossil fuels in search of cleaner energy sources, demand for minerals such as cobalt, lithium, nickel, and others is skyrocketing<sup>140</sup>. We do not have a complete understanding of the potential effects of mining to meet this growing demand. Therefore, it is imperative to apply the precautionary principle due to the potential for serious and irreversible damage to the environment and to peoples and communities.

106. It is also important to guarantee the primacy of the right to self-determination and, therefore, to free, prior, and informed consultation, including consent and the right of peoples to say no to mining projects that may affect their lives and lands. Respecting the right to self-determination should be a minimum condition for the energy transition.

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<sup>138</sup> The Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, principle 15 states that "in order to protect the environment, States shall widely apply the precautionary approach in accordance with their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." Available at: <https://www.un.org/spanish/esa/sustdev/agenda21/riodeclaration.htm>.

<sup>139</sup> Inter-American Court of Human Rights. Advisory Opinion OC-23/17 of November 15, 2017. Available at: [https://www.corteidh.or.cr/docs/opiniones/seriea\\_23\\_ing.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf).

<sup>140</sup> <https://www.worldbank.org/en/topic/extractiveindustries/brief/climate-smart-mining-minerals-for-climate-action>.

**ii. Hydroelectric and wind power projects are seriously impacting the right to self-determination: the cases of Belo Monte in Volta Grande do Xingu, Brazil, and La Guajira, Colombia.**

107. Just as the expansion of mining has potential impacts on the right to self-determination in the context of energy transition, there are projects considered “green,” such as hydroelectric dams and wind farms, that are currently violating the right to self-determination of peoples and communities, as well as their related rights. In this section, we will detail case studies to highlight that the change in the energy matrix must be carried out while respecting the right to self-determination, thus avoiding the continuation of a colonialist economic model in which the rights of these peoples and communities are sacrificed to maintain the model.

108. The advance of hydroelectric dams in the Amazon has even affected the survival of neighboring towns and communities. This is the case of the Belo Monte Hydroelectric Dam located on the Volta Grande of the Xingu River in Brazil. The dam altered the flow of the river, affecting natural flood and drought cycles, fish reproduction, and the food security of the towns and communities that depend on fishing<sup>141</sup>.

109. Before the dam was built, the Xingu River used to start rising in November, which was essential for the reproduction of fish known as *piracemas*. The water level would then

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<sup>141</sup> Independent monitoring by indigenous and riverine communities has revealed devastating events, such as the appearance of a curimatã egg graveyard due to the lack of adequate water in breeding areas.

gradually decrease until it reached its lowest point in September, which was crucial for the reproduction of other species, such as *tracajás*<sup>142</sup>. The islands historically occupied by the Juruena people, which are fundamental to fish reproduction and other aspects of life in the region<sup>143</sup>, are also being impacted by the change in the river's flow. That is why indigenous and riverine peoples are pushing for the restoration of a water flow that reflects the natural cycles of the Xingu River.

110. The prior, free, and informed consultation for the dam's construction did not take into account all the potentially affected peoples and communities. Currently, social movements are also demanding a consultation before renewing the license held by the Brazilian Institute of the Environment and Renewable Natural Resources (Ibama), taking into account all peoples and communities.

111. Despite the widely documented violations in hydroelectric projects such as the Belo Monte Hydroelectric Plant, the Brazilian government has maintained its model of advancing these projects on rivers, biomes, and the territories of traditional peoples and communities, insisting on defending hydroelectric plants as clean energy and as solutions for an energy transition that will slow climate change.

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<sup>142</sup> A solução para o caos ambiental de Belo Monte está na mesa do IBAMA. Available at: <https://www.socioambiental.org/noticias-socioambientais/solucao-para-o-caos-ambiental-de-belo-monte-esta-na-mesa-do-ibama>.

<sup>143</sup> Violations of the right to consultation and prior consent of indigenous peoples and riverine communities: the case of a mining venture in the Volta Grande do Xingu / Oliveira, Rodrigo Magalhães de [et al.] – Curitiba : Letra da Lei, 2022. – Coleção Jusdiversidade e autodeterminação. Available at: <http://observatorio.direitosocioambiental.org/wp-content/uploads/2022/07/livroVoltaGrandeDigital-2.pdf>.

112. Another emblematic example of the advance of hydroelectric power plants in the Brazilian Amazon is found in the Juruena River basin, in the northwest of the state of Mato Grosso, with 179 hydroelectric projects identified in a monitoring study conducted up to May 31, 2023<sup>144</sup>, with a predominance of CGHs (Hydroelectric Power Plants) at 46% and PCHs (Small Hydroelectric Plants) at 40%, in addition to 14% of UHEs (Hydroelectric Power Plants). Civil society, organized in the Rede Juruena<sup>145</sup> Vivo coalition, has been monitoring the increase in these projects, especially with the advance of CGHs, which are related to the flexibility of environmental legislation for this type of venture, with simplified licensing and exempt from analysis by the National Electric Energy Agency (ANEEL).

113. One of the greatest threats to the basin is the Castanheira hydroelectric plant project, an unviable project that would mark new ethnocidal processes, with large-scale and irreversible impacts on the peoples and communities who oppose the project<sup>146</sup>. However, it continues to feature as a priority in the federal government's Partnership and Investment Plan<sup>147</sup>.

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<sup>144</sup> Pereira, Cristian Felipe Rodrigues. Relatório de monitoramento das hidrelétricas na bacia do Rio Juruena.. Operação Amazônia Nativa (OPAN): Cuiabá, May 2023. Available at: <https://amazonianativa.org.br/2023/10/02/relatorio-monitoramento-das-hidreletricas-na-bacia-do-rio-juruena/>.

<sup>145</sup> Visit the Juruena Network live page. Available at: <https://www.redejruenavivo.com/>.

<sup>146</sup> Povos indígenas e agricultores familiares se manifestam contra usina de castanheira e outras ameaças durante festival Juruena Vivo. Available at: <https://amazonianativa.org.br/2023/11/16/povos-indigenas-e-agricultores-familiares-se-manifestam-contr-a-usina-de-castanheira-e-outras-ameacas-durante-festival-juruena-vivo/>.

<sup>147</sup> Resolution No. 72 of August 21, 2019, of the Investment Partnership Program Council. Available at: <https://www.ppi.gov.br/wp-content/uploads/2023/01/ata-10a-reuniao-conselho-ppi-21-08-2019.pdf>.

114. The proliferation of hundreds of hydroelectric projects in a sub-basin of great socio-biodiversity<sup>148</sup> importance is advancing under the premise that they are low-impact ventures, but without adequate assessment of their impacts. Several of these projects have simplified licensing processes, including exemptions from environmental impact studies<sup>149</sup>. Even when studies do exist, they have serious gaps and do not consider the cumulative and synergistic effects on the basin, underestimating their impacts<sup>150</sup> and violating the right to access environmental information, a prerequisite for social participation. In addition, licenses have been granted without complying with ILO Convention 169. The Judiciary and the Mato Grosso State Secretariat for the Environment have

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<sup>148</sup> The Juruena Basin, one of the main sub-basins forming the Tapajós Amazon basin, is home to immense socio-biodiversity. Formed by clear, fast-flowing rivers that originate in the Cerrado, considered the cradle of waters, and flow towards the northern Amazon, it is the ancestral home and source of sustenance for the Apiaká, Bakairi, Enawenê-Nawê, Paresi, Kayabi, Tapayuna, Nambikwara, Irantxe-Manoki, Myky, Munduruku, Rikbaksta, and isolated groups. This basin provides the fundamental conditions for maintaining their ways of life (ALMEIDA, Juliana. In: *Operação Amazônia Nativa (OPAN). Paisagens ancestrais do Juruena*. Cuiabá: OPAN, 2019. Available at: <https://amazonianativa.org.br/paisagens-ancestrais-do-juruena/>. The Juruena Basin region covers 190,000 km<sup>2</sup>, with 25 settlement projects and 20 indigenous lands representing 21% of the sub-basin area, resulting in more than 4 million hectares of protected land.

<sup>149</sup> Between 2011 and 2021, the Mato Grosso State Environmental Council (Consema-MT) exempted the preparation of environmental impact studies and reports (EIA-RIMA) in 195 licensing processes affecting the buffer zones of Indigenous Lands in the state of Mato Grosso, out of a total of 197 processes submitted for exemption assessment, representing an exemption of 98.9% of the processes. These exemptions are based on Consema-MT Resolution No. 26/07, which exempts the preparation of EIA/RIMA in licensing in buffer zones of Indigenous Lands when the technicians of the licensing agency consider such preparation unnecessary, a regulation that undermines access to environmental information and the right to free, prior, and informed consultation (*Operação Amazônia Nativa (OPAN)*). The Application of Consema Resolution No. 26/07 for EIA/RIMA exemptions in the Consema plenary from 2011 to 2021: correlations with the weakening of rights in Mato Grosso. Cuiabá: OPAN, 2023. Available at: <https://amazonianativa.org.br/2023/09/05/21239/>.

<sup>150</sup> The socio-environmental impacts and energy unsustainability of small hydroelectric power plants (SHPs) in the Amazon. Available at: <https://amazonianativa.org.br/2021/04/12/os-impactos-socioambientais-e-a-insustentabilidade-energetica-das-pchs-na-amazonia/>.

allowed entrepreneurs to carry out prior consultation processes, when the responsibility lies with the State<sup>151152</sup>.

115. This type of land use and extractive development in the region<sup>153</sup> is resulting in climate change, which is being perceived and recorded by the peoples of the region<sup>154</sup>. which has led members of Rede Juruena Vivo to participate in regional, national, and international discussions on climate change<sup>155</sup>, denouncing the threats to their territories, rights, lives, and cultures posed by the advance of hydroelectric projects, falsely presented as climate solutions in the energy transition<sup>156</sup>.

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<sup>151</sup> Vieira, Flavia do Amaral; Lunelli, Isabella Cristina. The Right to Consultation and Free, Prior, and Informed Consent in the State of Mato Grosso. OPAN, 2022. Available at: <https://amazonianativa.org.br/2022/08/18/relatorio-dclpi-no-estado-de-mato-grosso/>

<sup>152</sup> Lunelli, Isabela; Silva, Liana. Unconstitutional State of Affairs in Brazil: Corporate Capture of the State's Obligation to Consult Traditional Peoples and Communities in Environmental Licensing Procedures. In: *Revista Direito e Práxis*, 14, 536–566, 2023. Available at: <https://www.e-publicacoes.uerj.br/revistaceaju/article/view/73124>.

<sup>153</sup> Mato Grosso is the state with the largest cultivated area in Brazil, leading the way in fertilizer and pesticide consumption both nationally and globally. Development pressures on indigenous territories, such as the impacts of infrastructure projects, have had disastrous consequences for the quality of life and ways of life of indigenous peoples in various ways: affecting food security and collective health, flooding part of their territories (including archaeological sites, cultural heritage areas, sacred sites, etc.); affecting the environmental balance and resources essential for the reproduction of life and culture, and even promoting deforestation and illegal land appropriation as indirect effects. These projects accumulate consequences that are ignored or poorly assessed in a historical process of successive failure to comply with human rights (OPAN). Monitoring of energy infrastructure projects in the Juruena basin. Challenges and recommendations for communities and public authorities. 2019. Available at: <https://amazonianativa.org.br/acompanhamento-de-projetos-de-infraestrutura-energetica-na-bacia-do-juruena>.

<sup>154</sup> Lima, Artema; Mendes, Mel (Eds.). *Mudanças climáticas e a percepção indígena*. OPAN: Mato Grosso, 2015. Disponible en: <https://amazonianativa.org.br/2018/12/15/mudancas-climaticas-e-a-percepcao-indigena/>.

<sup>155</sup> “Com quantas barragens se mata um rio?” mulheres indígenas denunciam empreendimentos na COP26. Available at: <https://amazonianativa.org.br/2021/11/05/com-quantas-barragens-se-mata-um-rio-mulheres-indigenas-denunciam-empreendimentos-hidreletricos-na-cop26/>.

<sup>156</sup> Lideranças indígenas debatem impactos das hidrelétricas em evento internacional sobre clima. Available at: <https://amazonianativa.org.br/2020/12/02/liderancas-indigenas-debatem-impactos-das-hidreletricas-em-evento-internacional-sobre-clima>.

Among the extractive advances in the region, it is important to highlight the substantial increase in mining applications in the state of Mato Grosso, including those overlapping with Indigenous Lands<sup>157</sup>, which are already under investigation by the Federal Public Ministry. Despite the withdrawal of several processes by the National Mining Agency (ANM) overlapping with Indigenous Lands following the recommendation of the MPF, there are still several processes in the buffer zones of these areas, fueling conflicts and environmental degradation<sup>158</sup>.

116. But hydroelectric plants are not the only sources of so-called “green energy” that violate peoples’ right to self-determination. The La Guajira I wind farm, owned by the Canadian company Isagen in Colombia<sup>159</sup>, is located in a region inhabited by the Wayuu people, the largest indigenous group in Colombia. Despite being a response to the transformation of the country’s energy matrix and the reduction of CO2 emissions, this project has had significant impacts on the rights of indigenous peoples in Colombia.

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<sup>157</sup> Looking at the period from 2018 to 2021, the number of mining processes registered with the ANM and located in Mato Grosso increased from 7,526 to 10,543, equivalent to approximately 21% of the state’s territory. In terms of overlap and proximity to Indigenous Lands (Terras Indígenas), in 2021 there were five cases of particular concern: the Kayabi Indigenous Land, with 3,771 hectares of overlapping applications; the Paukalirajausu Indigenous Land with 91% of its area overlapping with mining applications; and the Escondido, Erikpátsa, and Japuira Indigenous Lands with overlap, as well as several processes in their buffer zones. In addition, the Piripkura Indigenous Land has applications that directly border its northwest, south, and southeast boundaries (Operação Amazônia Nativa (OPAN). Mining processes in Mato Grosso with emphasis on overlap and the environment of Indigenous Lands in the Juruena basin. Cuiabá: OPAN, 2021. Available at: <https://amazonianativa.org.br/2021/12/15/relatorio-tecnico-sobre-processos-minerarios-em-mato-grosso-com-enfase-na-sobreposicao-e-entorno-das-terras-indigenas-na-bacia-do-juruena/>

<sup>158</sup> Civil Investigation No. 1.20.000.000147/2022-75.

<sup>159</sup> See the ISAGEN company website. Available at: [https://www.isagen.com.co/LineaVIVA/linea\\_viva\\_edicion\\_132/html/page-03.html](https://www.isagen.com.co/LineaVIVA/linea_viva_edicion_132/html/page-03.html)

117. This project has violated the right to self-determination, territory, consultation, and free, prior, and informed consent, as not all affected Indigenous communities were consulted<sup>160</sup>. It also overlaps with collectively owned community territories that were converted to private property owned by companies such as Isagen, displacing traditional families who lived on those lands<sup>161</sup>. Seven of the wind farm's wind turbines overlap with Indigenous territory, particularly affecting Indigenous cemeteries<sup>162</sup>. Communities that support the company

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<sup>160</sup>Colombia: Wayúu Indigenous communities protest ahead of ISAGEN wind farm inauguration. With response from the company, Center for Information on Business and Human Rights, CIEDH, February 3, 2022. Available at: <https://www.businesshumanrights.org/es/%C3%BAltimas-noticias/colombia-ante-inauguraci%C3%B3n-del-parque-e%C3%B3lico-de-isagencomunidades-ind%C3%ADgenas-way%C3%BAu-protestan-con-respuesta-de-la-empresa/>

<sup>161</sup>The communities of Cabo de la Vela and the entire Guajira region remember that what began as a project owned by the Wayuu people and a small engineering company ended up being a park owned by a multinational corporation located on indigenous collective property. Originally called Joutkai, the project was initiated by Wayuu Esp, a company formed by municipalities and private shareholders, with the participation of the Waya Wayuu association and ONIC since 2002. However, over time, the participatory model with equal shareholders became the exclusive property of the Canadian multinational Isagen. The private shareholders who co-founded Wayuu Esp first promoted a partial partnership with Isagen and eventually sold the entire project to it, abandoning the initial intention of demonstrating the benefits of a model of indigenous co-ownership. The sale was carried out with incomplete prior consultation, and to date it is not known how they managed to get the municipalities and communities of the Wayuu territory to renounce their rights. Guajira 1. The hidden truths of the only wind farm installed, "Renewables Yes, but not Like This," say communities. Available at: [https://indepaz.org.co/wp-content/uploads/2022/01/Eo%CC%81lico-Guajira-1.-\\_Renovables-SI-pero-no-ASI%CC%81-.pdf](https://indepaz.org.co/wp-content/uploads/2022/01/Eo%CC%81lico-Guajira-1.-_Renovables-SI-pero-no-ASI%CC%81-.pdf).

<sup>162</sup> Isagen's Guajira 1 wind farm is facing disputes with the Maleen community, located about 800 meters away. They claim that they were never included in the prior consultation despite being in the area of influence. A member of the community filed a writ of protection in 2022, arguing that the company paid 80 million pesos to a nephew as compensation for closing the cemetery, an agreement that was not recognized as legal and caused family tensions. Isagen claims that the cemetery is not within the communities consulted and that, according to custom, the Maleen community has no rights over the territory. Although the injunction was declared inadmissible, the case reflects the territorial tensions generated by wind energy projects in the region. The wind of energy transition brings disputes to Colombia's La Guajira. Available at: <https://elpais.com/america-futura/2023-05-14/el-viento-de-la-transicion-energetica-lleva-disputas-a-la-guajira-colombiana.html>.

have clashed violently with those that oppose it, especially in the protection of their cultural funerary legacies<sup>163</sup>.

118. Although the Guajira I wind farm was established as a possible solution to reduce CO2 emissions by generating “clean” energy, its construction and operation have negative impacts on biodiversity. The location of the wind turbines and associated infrastructure alter local ecosystems and wildlife. It has led to a decrease in family income and protein intake by preventing goats from grazing on the affected land. For example, the operation of the infrastructure has caused the departure of birds and bats that were essential for the pollination of plants, which are the source of food not only for the towns and communities, but also for the animals that inhabit the territory<sup>164</sup>. This disruption of the ecosystem has caused the child

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<sup>163</sup> The La Guajira region has seen a significant increase in the arrival of energy companies and renovation projects, generating tensions and protests in local communities. The expansion of renewable energy projects, which began in 2005, has resulted in disputes, especially regarding the lack of consultation and participation of the affected communities. Although the department has the support of regional corporations, such as CORPOGUAJIRA, to grant licenses, some communities demand to be consulted on projects that affect their territories. Recently, the Wayuu community protested and blocked access to the Guajira 1 Wind Farm, alleging lack of consultation and desecration of ancestral territories, including a cemetery. The Isagén company claims to have consulted with “the communities that are,” warning of possible problems with business groups if the road is not unblocked. Wayuu communities protest Isagén’s invasion of their territories in La Guajira. Available at: <https://www.infobae.com/america/colombia/2022/01/14/comunidades-wayuu-protestan-por-invasion-de-sus-territorios-en-la-guajira-por-parte-de-isagen/>.

<sup>164</sup> At this point, the significant variation in the number of bird and bat species between neighboring wind projects that have already been licensed is highlighted, without explaining the absence of cumulative impact studies on these projects. The displacement of pollinators could trigger a loss of biodiversity, impacting the Wayuu way of life, especially in terms of goat feeding. It is noted that this synergistic or cumulative consideration is not addressed in the Environmental Impact Assessments (EIA). Joanna Barney. By sea and land, the Wayuu wind blows Püloui and Waneetu’unai are on alert due to the siege of multinational wind power companies in Wayuu territory. Available at: <https://co.boell.org/sites/default/files/2023-04/por-el-viento-y-el-mar-guajiros.pdf>.

population to experience severe levels of undernourishment and malnutrition, leading to precautionary measures by the Inter-American Commission on Human Rights<sup>165</sup>.

119. In Brazil, wind energy projects are growing rapidly, mainly in the northeast region of the country. States such as Pernambuco, Rio Grande do Norte, and Ceará are already reporting serious socio-environmental impacts resulting from the implementation of wind farms, including in traditional territories. The overall situation points to a failure to comply with the right to prior consultation, as well as the absence of specific legislation regulating this type of initiative. The lack of legal provisions in the states to determine a minimum distance between wind towers and the homes of directly affected communities seems to be a political-economic strategy that is gaining strength. Given the regulatory vacuum, foreign companies are investing resources in the implementation of wind power projects<sup>166</sup>, considering that the licensing process has been simplified<sup>167</sup>, in most cases without the requirement for an Environmental Impact Study. A decade after the implementation of the

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<sup>165</sup> Inter-American Commission on Human Rights. Precautionary Measure No. 51-15 Children and adolescents from the communities of the municipalities of Uribí, Manaure, Riohacha, and Maicao of the Wayúu People in the department of La Guajira, and others with respect to Colombia. Available at: <https://www.oas.org/es/CIDH/decisiones/MC/cautelares.asp?Year=2022&searchText=acceso%20a%20agua>.

<sup>166</sup> CARVALHO, Jiane. Projects attract foreign investment. *Valor Econômico*. São Paulo, April 28, 2022. Available at: <https://valor.globo.com/empresas/noticia/2022/04/28/projetos-atraem-investidor-estrangeiro.ghtml>.

<sup>167</sup> IBAMA Resolution 462 of 2014 establishes procedures for the environmental licensing of wind power generation projects on land. Part 2 (Articles 5 et seq.) establishes the Simplified Licensing Procedure. Available at: <https://www.ibama.gov.br/component/legislacao/?view=legislacao&legislacao=133565>.

first initiatives, the socio-environmental impacts are beginning to show. The ways of life and living of peasant communities, among other traditional communities, are undergoing serious negative changes. Of particular note are the damage to physical and mental health and the impacts on family farming and livestock raising. Many families are abandoning their territories because they can no longer bear to live near the towers.

120. The highlighted cases show how renewable energy projects such as hydroelectric and wind power can have serious impacts on the rights of indigenous and tribal peoples by replicating the same extractivist logic of fossil fuel exploitation. In the context of energy transition, it is essential to recognize that Indigenous Peoples' territories cannot be considered sacrifice zones<sup>168</sup>, where economic and private interests prevail over human rights, the rights of Indigenous and tribal peoples, and environmental protection.

121. The territories of indigenous peoples and communities contain ecosystems that are vital for biodiversity and the preservation of the natural habitats they shelter. Instead of sacrificing these territories, the energy transition and any other project must respect the right to self-determination, consultation,

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<sup>168</sup> "Sacrifice zones" are areas where communities face serious threats to their health and human rights due to exposure to pollution and toxic substances. These areas are often home to highly polluting and dangerous industries, such as open-pit mines, oil refineries, and chemical plants, and are typically located near marginalized communities. This situation is perpetuated in part by private interests and a reluctance to adopt sustainable practices. Report of the Special Rapporteur on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy, and sustainable environment. Available at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F49%2F53&Language=E&DeviceType=Desktop&LangRequested=False>.

and free, prior, and informed consent, respecting the harmonious relationship between indigenous peoples and communities and nature. This also involves respecting these peoples' refusal to carry out these projects within their territory.

122. We also need to refocus the current extractivist model towards a fair and popular energy transition that is equitable and post-extractivist<sup>169</sup>, that respects the rights of peoples and communities. In fact, in 2020, the richest 1% of the world used approximately twice as much energy as the poorest 50%<sup>170</sup>. This disparity is also reflected in the historical North-South inequality, given that the extraction of so-called critical minerals needed to sustain energy consumption in the Global North is concentrated in low and middle-income countries<sup>171</sup>. Furthermore, the amount of waste is staggering: in the Euro-

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<sup>169</sup> A just and popular energy transition is crucial to addressing the climate and environmental crisis. It requires a production model that is compatible with sustainability and the care of ecological systems, prioritizing life. This transition is not only technical, but also social and cultural, involving the construction of new ways of understanding and satisfying human needs. To achieve this, state and social actions are needed to promote the decommodification, democratization, defossilization, deconcentration, decentralization, and depatriarchalization of energy. It is essential to build a vision of energy as a collective right, recovering the public sphere in terms of ownership and management. Legislative reforms are required to reverse the privatization of the energy sector, correct fossil fuel subsidy policies, and establish mechanisms for public participation. Recognizing and strengthening institutions and actors outside the capitalist market is crucial for a just and popular transition. Community debates and proposals offer alternative perspectives, inviting collaboration on initiatives for a sustainable future. Beyond green colonialism Global justice and the geopolitics of eco-social transitions. Available at: <https://www.clacso.org/wp-content/uploads/2023/11/Mas-alla-colonialismo.pdf>.

<sup>170</sup> Gore, T. (2020). Confronting Carbon Inequality. Oxfam. Available at: <https://www.oxfam.org/en/research/confronting-carbon-inequality>. The richest 1% have accumulated almost twice as much wealth as the rest of the world's population in the last two years. Available at: <https://www.oxfam.org/es/notas-prensa/el-1-mas-rico-acumula-casi-el-doble-de-riqueza-que-el-resto-de-la-poblacion-mundial-en#:~:text=The%20richest%201%20%25%20of,in%20the%20Paris%20Agreement>.

<sup>171</sup> Milanez, Bruno (2021). Climate crises, critical mineral extraction and their effects in Brazil. figshare. Preprint. <https://doi.org/10.6084/m9.figshare.16903480.v3>.

pean Union alone, around 160 million mobile phones are discarded every year<sup>172</sup>. These data emphasize the urgent need to address inequality in resource and energy consumption at the global level and to seek a fairer and more sustainable balance in the distribution of these vital resources in order to tackle the challenges of climate change and the transition to a cleaner and fairer economy.

123. It also implies that high-income countries, which are also the most polluting, establish measures to protect and guarantee the rights of peoples and communities affected by the operations of their companies, which operate in countries with lower incomes and lower levels of pollution.

### **iii. The impact of carbon market projects on villages and communities and the inadequacy of carbon markets as mitigation measures**

124. Carbon markets have long been promoted as a way to provide incentives and financing for emission reduction activities, as well as to protect crucial ecosystems such as forests. However, they have failed to live up to these claims. In theory, carbon markets work by generating credits from emission reduction activities, which are then purchased by another entity that uses those reductions to continue emitting while claiming to meet its emission reduction targets. To a large extent, these credits are used to offset the buyer's ongoing emissions

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<sup>172</sup> 5.3 billion smartphones will end up in the trash in 2022. Available at: [https://www.nationalgeographic.com/es/naturaleza/5300-millones-smartphones-acabaran-basura-2022\\_18992](https://www.nationalgeographic.com/es/naturaleza/5300-millones-smartphones-acabaran-basura-2022_18992).

elsewhere, so that they can claim to have met their emission reduction obligations, or claim “carbon neutrality” or “net reductions.” When the purported emissions reduction activity is linked to a nature-based project or activity, claims are often made about the benefit to that forest or ecosystem<sup>173</sup>.

125. However, carbon offsets have largely failed to deliver on any climate or nature protection promises. Instead of promoting overall emissions reductions and increasing ambition, carbon markets have facilitated emissions trading around the world and the outsourcing of climate action, allowing states and companies to continue business as usual, such as extracting and consuming fossil fuels, while claiming to be combating the climate crisis by purchasing credits. Worse still, carbon markets can lead to an increase in global emissions by overestimating reductions or selling credits for non-permanent reductions that allow emissions elsewhere<sup>174</sup>.

126. Furthermore, offsets do not address the underlying causes of forest loss. The main driver of tropical forest loss is large-scale commodity production. It is estimated that the agricultural industry is responsible for 80% of deforestation in the

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<sup>173</sup> These arguments were highlighted in the Contribution to the United Nations Special Rapporteur on the Rights of Indigenous Peoples for a report on “Green Finance, a Just Transition to Protect the Rights of Indigenous Peoples” to be presented to the Human Rights Council.

<sup>174</sup> The Guardian, *Revealed: more than 90% of rainforest carbon offsets by biggest certifier are worthless, analysis shows*. Available at: <https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe>. Investor Group Bans Carbon Removal CO2 reduction plans. Available at: <https://www.reuters.com/business/sustainable-business/investor-group-bans-carbon-removal-co2-reduction-plans-2023-01-31/>. Follow the Money, Available at: <https://www.ftm.eu/articles/south-pole-kariba-carbon-emission?share=6RVuzdbosPV-0PoeNbS%2BHo6J1ACyVhYtk%2F6WUHcx2K3WRT2THqLrTelrujq%2F6FG0%3D>.

Amazon<sup>175</sup>; globally, it accounts for approximately three-quarters<sup>176</sup>. Mining, fossil fuel extraction, and infrastructure development also contribute to deforestation in the Amazon<sup>177</sup>. However, the urgent need to curb these destructive drivers is largely overlooked in favor of offset schemes.

127. Similarly, the offset model perpetuates environmental injustice, as these projects result in violations of the rights of indigenous and tribal peoples, whose lands are often the site of implementation of these projects. This situation is exacerbated by oil extraction in devastated territories, which contributes significantly to global warming and disproportionately affects communities most vulnerable to climate change. Furthermore, by creating a false sense of compensation, the model leads to an increase in global greenhouse gas emissions by overestimating reductions or selling credits for non-permanent reductions that allow emissions elsewhere.

128. Several indigenous and tribal peoples, such as the Autonomous Territorial Government of the Wampís Nation (GTANW), have denounced the states' intention to convert their ancestral territories into conservation zones or protected

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<sup>175</sup> *Mongabay*. "New report examines drivers of rising Amazon deforestation on country-by-country basis. Available at: <https://news.mongabay.com/2019/05/new-report-examines-drivers-of-rising-amazon-deforestation-on-country-by-country-basis/>.

<sup>176</sup> Geist, H. J., & Lambin, E. F. "Proximate Causes and Underlying Driving Forces of Tropical Deforestation," *BioScience*, Vol. 52, Iss. 2, February 2002, Pg. 143–150.

<sup>177</sup> Inter-American Dialogue, *Nearing the Tipping Point: Drivers of Deforestation in the Amazon Region*. Available at: <https://www.thedialogue.org/analysis/nearing-the-tipping-point-drivers-of-deforestation-in-the-amazon-region/>.

areas. Indeed, the Peruvian State has expressed its intention to convert the ecological and spiritual heart of its ancestral Amazonian territory into a conservation area administered by the State. In fact, the Wampís fear that the government’s attempt to categorize such an important part of their territory is being carried out with the aim of obtaining REDD+ funding for a forest that they have always preserved and protected<sup>178</sup>.

129. Their concerns are based on a series of cases of land appropriation carried out by the Peruvian government itself. The most notorious case is the conflict between the Kichwa people and the government over the creation of the Cordillera Azul National Park, established in 2001 without the consent of the Kichwa communities and other Indigenous Peoples whose territories overlap. Between 2008 and 2019, the park sold 25 million tons of carbon credits to aviation and oil companies, while the Kichwa claim they have not received any benefits from these sales nor given their consent for these transactions<sup>179</sup>.

130. Far from promoting genuine climate action, carbon schemes tend to divert attention from effective solutions and can cause significant harm to peoples and communities during contractual negotiations. The inherent complexity of carbon credits can hinder peoples’ and communities’ understanding and participation, compromising their rights in the process.

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<sup>178</sup> UN questions Peruvian government over violations of indigenous rights in Cordillera Azul National Park and REDD+ Project. Available at: <https://www.forestpeoples.org/es/news/2023/Peru-un-cerd-questions-state-indigenous-rights-pncaz-REDD>.

<sup>179</sup> The case is currently under litigation in Peru.

131. Similarly, actors involved in carbon trading often fail to inform communities about the final destination of credits generated from their lands, forests, and other resources. This strategic silence obscures the connection between the issuance of these credits and the continuation of harmful activities, such as oil extraction and consumption. This lack of transparency further undermines the rights of communities, who may be unwittingly contributing to the harm suffered by other peoples who bear the consequences of natural resource extraction. Clear communication and informed consent in these processes are essential to guarantee the integrity of local communities' rights and to avoid negative impacts on other regions.

132. In this regard, as in the case exemplified in Peru, States may violate the right to territory, self-determination, and free, prior, and informed consultation and consent of indigenous and tribal peoples when attempting to create protected or conservation areas in the ancestral territories of Indigenous Peoples, which ultimately deprives them of the use and enjoyment of their territories.

133. From this perspective, it is not possible to combat climate change without reducing greenhouse gases and eliminating fossil fuel exploration and drilling, especially on Indigenous lands. Likewise, in the current context of energy transition towards renewable energies and the elimination of fossil fuels, it is important to apply the concepts of self-determination, territory, climate change, and free, prior, and informed consulta-

tion and consent together. This implies that in the phase-out of fossil fuels, **States have an obligation to take all necessary measures to protect, guarantee, and respect the right to self-determination of Indigenous Peoples.**

### **V. Obligations of states to guarantee self-determination and related rights in the context of the climate emergency and energy transition**

134. Having described the violations of the climate emergency and the current energy transition model in relation to the right to self-determination and related rights, we now propose to the Inter-American Court of Human Rights the obligations that states have to respect, protect, and guarantee the right to self-determination and related rights.

#### **a. Obligations related to the right to collective territory in the context of the climate emergency**

135. As we pointed out earlier, the territories of indigenous peoples and communities play a fundamental role in the context of the climate emergency. Their harmonious and ancestral relationship with their territory positions them as the best protectors, making them strategic allies in the fight against climate change. However, in the current context of climate emergency, in which we should be guaranteeing this way of life and defending not only

their territories but also a way of life based on their self-determination, they have been placed in a situation of extreme danger<sup>180</sup>. Their ancestral way of life has proven to be compatible and harmonious with ecosystems, in contrast to the approaches that caused the climate crisis. That is why it is necessary to guarantee the full and effective enjoyment of their territories, as well as to protect and recognize their own territorial protection systems.

### **i. Obligation to respect and protect the collective territories of peoples and communities**

136. Protecting the territories and ways of life of peoples and communities are the most powerful tools for curbing deforestation, preserving the integrity of rivers, and protecting socio-biodiversity. National legal systems, the inter-American system, and the international human rights protection system indicate that States are obliged to recognize and protect these collective territories.

137. International instruments and precedents on the rights of indigenous and tribal peoples have established that these peoples' right to territory is inherent and pre-exists the establishment of the State<sup>181</sup>. Thus, in the context of the climate

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<sup>180</sup> We know that there are other writings that discuss in greater detail the role of defenders, the importance of protecting them, and the obligations that states have towards them. Therefore, in this paper we will not discuss this, but will instead focus on the protection of the right to self-determination of peoples and communities as a way of protecting indigenous and community defenders.

<sup>181</sup> Inter-American Commission on Human Rights. "Rights of Indigenous and Tribal Peoples over their Ancestral Lands and Natural Resources. Standards and jurisprudence of the Inter-American Human Rights System" (2009). Available at: <https://www.oas.org/es/cidh/indigenas/docs/pdf/>

emergency, the protection of these territories, both in terms of recognizing and protecting their ways of life and respecting and promoting their forms of collective governance, must be rethought as an obligation inherent to the commitment of states to mitigate the climate emergency. In this sense, the protection of the collective territories of peoples and communities also becomes a matter of global interest and sustainability.

138. However, there is a huge difference between, for example, concessions for public works and services, which are granted extremely quickly, and the processes for granting title to peoples and communities, which face many bureaucratic barriers. In the cases monitored by the signatory organizations, the processes of titling integral territory<sup>182</sup> take decades and present many administrative and bureaucratic barriers. It is not

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tierras-ancestrales.esp.pdf; “Indigenous Peoples, Afro-descendant Communities, and Extractive Industries” (2015). Available at: <https://www.oas.org/es/cidh/informes/pdfs/industriasestractivas2016.pdf>; and “Human Rights Situation of Indigenous and Tribal Peoples in the Pan-Amazon Region” (2019). Available at: <https://www.oas.org/es/cidh/informes/pdfs/panamazonia2019.pdf>.

<sup>182</sup> The Inter-American Court has recognized this relationship between the rights of indigenous peoples and territory, stating that “indigenous territorial rights encompass a broader and different concept that is related to the collective right to survival as an organized people, with control over their habitat as a necessary condition for the reproduction of their culture, for their own development, and for carrying out their life plans.” Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of June 17, 2005. Series C No. 125, para. 146. Available at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_125\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_125_esp.pdf). For indigenous peoples, such as the Wampis, the integral territory has three dimensions. The first refers to individual and family ownership, as well as their connection to the resources or bounty of nature. The second is the space that houses a set of natural resources that serve as material and spiritual sustenance for the Wampis Nation. The third comprises the space that contains the toponymic and historical socio-cultural traces that make it possible to identify the territorial coverage of the Wampis Nation, the historical time of its presence and its development, which together mark its cultural identity. In this sense, the integral territory goes beyond collective ownership of certain areas of land; the territory also includes unoccupied areas where hunting and fishing are practiced, the roads between communities, and spaces of spiritual connection such as hills and waterfalls. However, under current Peruvian legislation, it is not possible to title the entire Wampis territory, understood in these three dimensions.

possible for peoples and communities to fully exercise their rights or participate in a consultation process on equal terms if the legal security of their integral territory is not guaranteed in advance. Thus, based on self-determination, **states have a duty to title, delimit, and demarcate the collective ancestral integral territory**, taking into account its particular characteristics and avoiding granting concessions for projects that may affect territories in the process of titling, delimitation, and demarcation<sup>183</sup>.

## **ii. Obligation to respect and protect indigenous and community territorial protection systems and defenders of collective territory**

139. In Latin America, the defense of the rights of peoples and communities has undergone a remarkable evolution, with defenders belonging to these peoples playing an increasingly prominent role. However, this trend presents considerable challenges, especially in the context of a regional crisis of indigenous rights, where the vulnerability of defenders is exacerbated by threats from both state agents and non-state actors linked to formal and informal activities. Most of these defenders are exposed to significant risks, not only for defending the environment, but also for defending their territory and a freely and collectively determined ancestral way of life.

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<sup>183</sup> Inter-American Commission on Human Rights. Climate Emergency: Scope of Inter-American Obligations on Human Rights adopted by Resolution No. 3/2021. Available at: [https://www.oas.org/es/cidh/decisiones/pdf/2021/resolucion\\_3-21\\_spa.pdf](https://www.oas.org/es/cidh/decisiones/pdf/2021/resolucion_3-21_spa.pdf).

140. In this context of growing threats to indigenous territories arising from the formal and informal extractive economic model, the response involves not only recognizing this defense work, but also protecting and respecting the way of life and development that these defenders uphold<sup>184</sup>. This means interpreting the right to defend territories and the environment in conjunction with applying the right to self-determination enshrined in existing regulations, such as the United Nations Declaration on the Rights of Indigenous Peoples and the American Declaration on the Rights of Indigenous Peoples.

141. In this regard, States have an obligation to: (a) collaborate with indigenous governments in the implementation of their own life plans and land management models; (b) respect, guarantee, and promote indigenous peoples' own justice and defense mechanisms over their territories; (c) build State protection systems designed jointly with indigenous peoples and communities; and (d) refrain from criminalizing indigenous peoples' and communities' own protection systems.

**b.Obligations related to the recognition and protection of indigenous peoples' and communities' own systems of governance and government**

142. One of the central components of self-determination is the ability of peoples and communities to collectively

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<sup>184</sup> Elizabeth Salmón. Defender of indigenous peoples' rights. Available at: [https://idehpucp.pucp.edu.pe/opinion\\_1/defensa-de-derechos-de-pueblos-indigenas/](https://idehpucp.pucp.edu.pe/opinion_1/defensa-de-derechos-de-pueblos-indigenas/).

determine their identity, political position and organization, and development. It is these systems of self-governance and jurisdiction that enable the existence of peoples as collective subjects of rights. The guarantee of self-governance is a minimum standard for forms of protection of territory, the environment, and the climate. In the context of the climate emergency, States have a duty to a) recognize and respect indigenous legal systems and governance, b) recognize collective legal subjects, with full legal capacity and conditions of representation as decided by each people and not limited by restrictive State legislation, and c) respect decisions on the ways of life and development vision of peoples and communities.

### **i. Obligation to recognize and respect their own legal systems and governance**

143. There are examples of peoples and communities that have created documents establishing their internal governance systems, based on the right to self-determination. For example, the Autonomous Territorial Government of the Wampís Nation (GTANW), based on the self-determination recognized in international instruments such as ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples, as well as the Peruvian constitutional bloc, declared itself autonomous, notifying the Peruvian State of its autonomous status in 2017<sup>185</sup>. The Wampís Nation seeks recognition and

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<sup>185</sup> Statute of the Autonomous Territorial Government of the Wampís Nation. Available at: <https://nacionwampis.com/wp-content/uploads/2017/05/estatuto-constitutivo-del-gobierno-territo->

full enjoyment of its rights, especially in the autonomous management of its entire territory, despite national legal challenges. For the GTANW, self-government implies the ancestral and traditional administration of its territories, with its own forms of conflict resolution, cultural institutions, and management of its own resources, while the GTANW Statute is a technical instrument that supports this system of governance.

144. In July 2022, the Wampís Nation published a Protocol for Relations with the Peruvian State<sup>186</sup>, together with its Statute. These documents establish the State's duties towards the Wampís Nation, provide guidelines for relations with state institutions, and prohibit illegal activities, highlighting the importance of prior consultation. The presentation was formal in nature, as for the Wampís Nation, the right to self-determination is backed by internationally recognized rights. Therefore, states have a duty to recognize and respect these legal systems and governance structures.

## **ii. Obligation to recognize the subject of collective law with full legal capacity**

145. The report of the Inter-American Commission on Human Rights (IACHR) on the right to self-determination<sup>187</sup> high-

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rial-autc3b3nomo-de-la-nacic3b3n-wampc3ads.pdf.

<sup>186</sup> Protocol for relations, consultation, and dialogue based on mutual respect between the Wampís Nation and the Peruvian State. Available at: <https://nacionwampis.com/wp-content/uploads/2022/08/Publicacio%CC%81n-Protocolo-Wampis-Julio2022.pdf>.

<sup>187</sup> Inter-American Commission on Human Rights. Right to self-determination of indigenous and tribal peoples. Approved by the Inter-American Commission on Human Rights on December 28, 2021. Available at: <https://www.oas.org/es/cidh/informes/pdfs/LibreDeterminacionES.pdf>.

lights the importance of formal legal recognition and legal personality of indigenous peoples as “peoples” or “nations,” rather than being treated solely as “ethnic groups” or “ethnicities.” It considers this distinction essential to respecting the right to self-determination of these peoples. The denial or imposition of inappropriate categories, such as “civil association,” can disregard their status as peoples, affecting their self-government and autonomy.

146. The Inter-American Commission also points to cases in which, despite constitutional recognition, indigenous peoples are treated simply as owners of communal lands, which limits their ability to fully exercise their rights. Lack of adequate recognition can lead to difficulties in obtaining recognition of ancestral territories and affect the exercise of their rights, including bureaucratic obstacles.

147. In some countries, such as Peru and Ecuador, the structure of peoples and communities is ignored, violating their right to legal personality<sup>188</sup>. One example is the Achuar Nation of Peru, which, despite having legal personality<sup>189</sup>, still faces difficulties in registering in Peru’s public records due to the lack of a Registry of Peoples. This situation affects not only the Achuar people, but also other indigenous peoples, Afro-Pe-

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<sup>188</sup> The Political Constitution of Peru recognizes “native and peasant communities” as entities that exercise autonomy over their territories. However, these entities are small fragments of Indigenous Peoples that occupy larger territorial areas. Despite various Peruvian infra-constitutional laws that mention “Indigenous or native peoples,” no procedure has yet been established for these peoples to obtain legal personality that would allow them to exercise their collective rights, including the right to prior consultation.

<sup>189</sup> Recognized by Resolution 253-2018-GRL-P. Available at: [https://www.derechosociedad.org/IIDS/Documentos/2018/Resolucion\\_Ejecutiva\\_Regional\\_253-2018-PI.pdf](https://www.derechosociedad.org/IIDS/Documentos/2018/Resolucion_Ejecutiva_Regional_253-2018-PI.pdf).

ruvians, and peasant patrols, as they cannot register or exercise their collective legal personality, which prevents them from accessing property titles, bank accounts, tax identification numbers, signing agreements, conducting business, and receiving donations, among other things<sup>190</sup>.

148. Therefore, the State has the obligation to recognize the subject of collective rights, with full legal status and conditions of representation as each people decides, and not limited by restrictive State legislation.

### **iii. Obligation to respect decisions on the lifestyles and development vision of peoples and communities**

149. Similarly, other peoples and communities have created Life Plans or constitutive laws establishing their models of life. One such people is the Kichwa Indigenous People of Sarayaku, located in the Bobonaza River basin in Ecuador, who, in exercising their self-determination, established their Own Law for the Exercise of Self-Determination in the Application of the Right to Free, Prior, and Informed Consent<sup>191</sup>. This Own Law reflects these visions in the field of the exercise of the right to self-determination of indigenous peoples and its application in relation to the right to consultation and free, prior, and informed consent.

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<sup>190</sup> Indigenous and Afro-Peruvian authorities participate in forum on the right to register their legal personality. Available at: <https://www.derechosociedad.org/autoridades-indigenas-y-afroperuanas-participan-de-foro-sobre-el-derecho-al-registro-de-su-personalidad-juridica/>.

<sup>191</sup> This Law was approved at the Extraordinary Assembly of the Kichwa Indigenous People of Sarayaku on May 29, 2022.

150. The Kichwa Indigenous People of Sarayaku base their existence on a worldview rooted in the “Kawsay Sacha” or Living Forest<sup>192</sup>. Their relationship with the beings of the forest is crucial to the perpetuity of the Kawsak Sacha, which is the source of Sumak Kawsay (good living)<sup>193</sup>. With seven communities and an autonomous organizational system, they live in harmony with nature, considering the earth as mother and source of life. Their way of life, called “Sumak Kawsay,” focuses on common well-being, cultural identity, and preservation of the territory.

151. Thus, Article 16<sup>194</sup>, Title V of this Law specifies the areas not subject to consent, indicating the incompatibility and therefore exclusion of all extractive activities within the territory of the Kichwa Indigenous People of Sarayaku. This incompatibility was evident during the invasion by the oil company

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<sup>192</sup> Kawsay Sacha or Living Forest. Proposal by the Kichwa Indigenous People of Sarayaku. Available at: <https://sarayaku.org/en/propuesta-kawsak-sacha/>.

<sup>193</sup> Rivers, lakes, and mountains are inhabited by beings such as Yaku runa and Yaku mama, who maintain the balance and abundance of aquatic species. Mountains are considered living beings and homes to protectors of flora and fauna. Communication between these beings occurs through spiritual connections. In the jungle, ancient trees such as the Uchuputu and Kamaktua are fundamental to spiritual balance and vital energy. The Yachakkuna communicate with the Kawsak Sacha to receive knowledge that guides the Amazonian peoples toward a harmonious life in all aspects.

<sup>194</sup> Article 16: *All activities involving hydrocarbon exploitation, mining, large-scale commercial logging, biopiracy, and commercial water exploitation are expressly excluded from these regulations, and the Kawsak Sacha declaration shall be understood as a clear expression that these activities are not subject to consent because they constitute: a) The death of all beings that balance the life of Pachamama or Mother Earth and with it the certain risk of the disappearance of our life and cultural identity. b) A situation of social and cultural imbalance for the ayllukuna—families and their holistic relationship with the protective beings and Kawsak Sacha. c) A situation of ethnocide for indigenous peoples, ecocide for the living forest, and the hoarding and commodification of the goods of life. d) The violation of the fundamental right to self-determination and autonomy of the Kichwa Indigenous People of Sarayaku.*

CGC, which threatened the Living Forest, its cultural practices, and the autonomy of the people. The successful resistance highlights their commitment to preserving the Forest and their way of life rooted in respect for nature.

152. Furthermore, it is mining and oil concessions that, instead of bringing the much-vaunted economic development, introduce external dynamics to towns and communities, placing them in a more vulnerable situation. For example, with the implementation of extractive projects, roads are built that affect the ecosystem, including the flora and fauna on which Indigenous Peoples depend. Similarly, for the extractive project to function, technical labor is needed, which results in the construction of worker camps, attracting other businesses, both legal and illegal, placing the Indigenous population in a situation of greater vulnerability.

153. In this regard, States should respect these decisions on the lifestyles and development visions of peoples and communities.

### **c. Obligations related to consultation and free, prior, and informed consent**

154. As mentioned above, self-determination is the frame of reference that allows for the evaluation of the adequate implementation of collective rights recognized by States. We have pointed out in section II that consultation and free, prior, and informed consent are the main mechanisms through which self-determination can be achieved. Therefore, they must be interpreted together.

155. It is not feasible for prior consultation to truly fulfill its purposes as a mechanism for intercultural dialogue or for guaranteeing the protection of other rights if no progress has been made in implementing minimum guarantees for the coexistence of peoples and communities with the hegemonic societies in their countries. In other words, prior consultation cannot function if it is understood as an isolated mechanism. In this regard, we set out below the minimum and necessary guarantees that must be met for effective consultation and free, prior, and informed consent, interpreted on the basis of the right to self-determination.

**i. Minimum guarantees necessary for effective prior consultation and free, informed consent**

156. Although Article 6 of ILO Convention 169 establishes that consultation must be prior, free, and informed, under the current conditions of legal uncertainty in the territories of indigenous peoples and communities, it is not possible to participate in a consultation process freely and on equal terms.

157. First, prior to the consultation process, states must guarantee minimum conditions such as the demarcation and titling of the entire territory. As mentioned above, concessions are granted quickly without a consultation process, while the titling and demarcation of the entire territory takes decades and involves cumbersome processes. Therefore, **if concessions were created on indigenous territories that were not prop-**

**erly titled and demarcated, they should be considered null and void, and no consultation process could begin.**

158. Secondly, Indigenous Peoples in the Americas face twice the rates of poverty and extreme poverty as non-Indigenous peoples<sup>195</sup>. Furthermore, it is the territories of Indigenous Peoples that, in most cases, are affected by concessions for extractive projects under the pretext that they bring economic development to the territories. For example, 1,647 Indigenous territories in the Amazon are overlapped by oil blocks<sup>196</sup>, while approximately 43% of Indigenous households in the hemisphere face poverty and 24% live in extreme poverty<sup>197</sup>. Although the region has experienced economic growth, poverty reduction is not distributed equitably, and poverty rates among indigenous households have not decreased proportionally, exacerbating inequality. In this regard, **granting concessions in indigenous territories with high levels of poverty without first ensuring intercultural policies that address this inequality means that the consultation does not meet the minimum guarantees of being free and conducted in good faith**<sup>198</sup>.

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<sup>195</sup> This situation is attributed to persistent structural and historical exclusion, reflected in higher levels of illiteracy, malnutrition, and difficulties in accessing basic services. Inter-American Commission on Human Rights. Poverty and Human Rights (2017). Available at: <https://www.oas.org/es/cidh/informes/pdfs/PobrezaDDHH2017.pdf>.

<sup>196</sup> Occupied territory: 1,647 indigenous territories and 52 protected areas affected by overlap with oil blocks in the Amazon. Available at: <https://es.mongabay.com/2022/04/territorios-indigenas-y-areas-protégidas-afectadas-por-superposicion-con-lotes-petroleros-amazonia/>.

<sup>197</sup> Inter-American Commission on Human Rights. Poverty and Human Rights (2017). Available at: <https://www.oas.org/es/cidh/informes/pdfs/PobrezaDDHH2017.pdf>.

<sup>198</sup> In this regard, Article 2.3 of the 2018 United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, which also applies to indigenous peoples in accordance with Article 1.1,

159. Third, as explained above, before entering into the consultation process, States must recognize and respect the governance system of the peoples and their decision-making. The lack of recognition of their governance systems is exploited by companies seeking to carry out an extractive project, which initiate the consultation process with communities separately, starting with those that might be in favor of the extractive project, ignoring the organizational structure and representativeness of the entire territory. In some cases, this situation has fostered division among communities within the same town, causing violent conflicts between members of the same town that affect and impact the social fabric of the town<sup>199</sup>. Therefore, **before initiating the consultation process, States have an obligation to recognize the legal personality of Indigenous Peoples, respect their system of governance, legitimate organizational structure, traditions, and worldview.**

160. Based on the foregoing, and by virtue of the principle and right to self-determination, States have an obligation to ensure that,

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states, for example, that consultation processes must take into account “the existing power imbalances between the different parties and ensure the active, free, effective, meaningful, and informed participation of individuals and groups in related decision-making processes.” Available at: <https://viacampesina.org/wp-content/uploads/2020/04/UNDROP-Book-of-Illustrations-I-ES-I-Web.pdf>.

<sup>199</sup> For example, in the case of the Achuar People of Pastaza in Peru, this practice already posed a problem for the Achuar People of Pastaza when the oil company Talismán SRL spoke with some Achuar communities and convinced them to accept the exploration and exploitation project for Lot 64, which overlaps our entire territory. Since most Achuar communities opposed the project, we staged a protest to prevent operations at oil wells 3X and 2X in Lot 64. The Talismán company convinced members of the Achuar communities who accepted the operations to confront those who were protesting, provided them with weapons, and transported them by helicopter to the protest areas. This led to a violent confrontation between members of the same Achuar people. This conflict, fomented by the company, was denounced by the Peruvian Public Prosecutor’s Office as an act of genocide committed by Talisman Energy against the Achuar communities.

prior to entering into the process of free, prior, and informed consultation, **a) indigenous territories are duly titled and demarcated, b) recognize and respect the legal personality of Indigenous Peoples, and c) the granting of projects in indigenous territories with high poverty rates only occurs after the implementation of intercultural policies that address these disparities.**

161. Of course, implementing this right involves complex forms of intercultural dialogue, but it cannot be achieved without guaranteeing these peoples' right to say no to state projects and works that violate their collective vision and priorities in the face of the climate emergency.

**ii. Self-determination means being able to “say no” to extractive activities.**

162. The right to consultation and free, prior, and informed consent is a mechanism for realizing the right to self-determination. In this sense, the right to consent and, therefore, the right not to give consent, is based on the right to self-determination. This right, wielded as a safeguard of the guarantees inherent in the right to life and to a dignified existence for the ethnic group, stands as a protector of the physical, cultural, and spiritual integrity of peoples and communities<sup>200</sup>.

163. The right to say no to projects and threats that may affect their ways of life is inseparable from the right to free,

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<sup>200</sup> SILVA, Liana Amin Lima da. In: *Consulta Prévia e Livre Determinação dos Povos Indígenas e Tribais na América Latina: Re-existir para Co-existir*. Thesis (doctorate), 2017. pp. 273–281.

prior, and informed consent. The right not to give consent is an inalienable aspect of the right to consultation, and its full realization is indispensable for the full respect of the self-determination of indigenous peoples. It is an exercise of the self-determination of peoples and communities to oppose a decision they consider harmful to their rights<sup>201</sup>. Once the consultation process has been carried out in accordance with the norms of the traditional people or community, the right of those subjects to oppose the object of the consultation must be respected.

164. The jurisprudence of the Inter-American Court of Human Rights consistently illustrates the intrinsic connection between the rights to self-determination, self-identification, participation, ownership of lands and territories, a healthy environment, natural resources, and development, and the right to free, prior, and informed consultation of indigenous and tribal peoples<sup>202</sup>. This interrelationship takes on greater significance in the contemporary context, where the climate and ecological crisis poses existential and cumulative threats to the collective life and survival of these peoples and communities, heightening the need for unequivocal recognition of the right to say no

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<sup>201</sup> Inter-American Commission on Human Rights. Right to self-determination of indigenous and tribal peoples. Approved by the Inter-American Commission on Human Rights on December 28, 2021. Available at: <https://www.oas.org/en/iachr/reports/pdfs/self-determination-EN.pdf>.

<sup>202</sup> Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations, and costs, judgment of November 28, 2007, Series C, No. 172. Available at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_172\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_172_esp.pdf). Inter-American Court of Human Rights. Case of the Yaky Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of June 17, 2005. Series C No. 125, para. 146. Available at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_125\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_125_esp.pdf).

as the final decision in consultation and consent processes.

165. Indeed, climate change disproportionately affects peoples and communities, threatening their territory, their survival as peoples and communities, and their right to self-determination<sup>203</sup>.

166. Prior consultation has been considered by the Court as a “general principle of international law”<sup>204</sup> and this principle, applied to the development of solutions to climate change, cannot be guaranteed without full recognition and respect for the right to self-determination; consent is therefore an indispensable element of any prior consultation on solutions to climate change, given everything we have pointed out throughout this document regarding the implications for existence, territorial protection, the right not to be displaced, and the embodiment of the Indigenous Peoples’ way of life.

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<sup>203</sup> Indigenous and tribal peoples consider their territory to be sacred and essential to their development based on the principle of self-determination. Similarly, the Human Rights Committee, a United Nations body, referred to the special relationship between Indigenous Peoples and territory in General Comment No. 23, noting that “culture manifests itself in many ways, including a particular way of life related to the use of land resources, especially in the case of Indigenous Peoples. This right may include traditional activities such as fishing or hunting and the right to live in reserves protected by law. The enjoyment of these rights may require the adoption of positive legal measures of protection and measures to ensure the effective participation of members of minority peoples in decisions that affect them.” Similarly, General Comment No. 21 of the Committee on Economic, Social and Cultural Rights, the United Nations body responsible for monitoring the implementation of the ICESCR, stated that “[t]he cultural values and rights of Indigenous Peoples associated with their ancestral lands and their relationship with nature must be respected and protected in order to avoid the degradation of their unique way of life, including their livelihoods, the loss of natural resources and, ultimately, their cultural identity.”

<sup>204</sup> Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations. Judgment of June 27, 2012. Series C No. 245, paragraph 164. Available at: [https://corteidh.or.cr/docs/casos/articulos/seriec\\_245\\_ing.pdf](https://corteidh.or.cr/docs/casos/articulos/seriec_245_ing.pdf).

**d. Obligations of states regarding the energy transition**

167. The Inter-American Court of Human Rights has guaranteed the protection of rights not only with respect to the American Convention on Human Rights but has also relied on other international instruments in order to carry out a systematic and evolving interpretation. The climate emergency calls for urgent action on the part of States to comply with their obligations under the Paris Agreement, interpreted in accordance with other international human rights treaties such as ILO Convention 169, the Declaration on the Rights of Indigenous Peoples, the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, etc. In this regard, the Court must interpret the obligations of states in relation to the climate emergency not only on the basis of the American Convention but also with the support of that framework.

**i. The phase-out of fossil fuels must be carried out through a consultation process.**

168. The United Nations Declaration on the Rights of Indigenous Peoples, the Paris Agreement, and the 2030 Agenda for Sustainable Development Goals also recognize the importance of respecting indigenous traditional knowledge, cultures, and practices in order to meet these goals by 2030, recognize the right to free, prior, and informed consent, and establish mechanisms for participation in activities that affect their lands

or resources. In addition, both the 2030 Agenda and the Paris Agreement recognize the crucial role of indigenous and tribal peoples in the fight against climate change, promoting their effective participation in discussions on the issue. These instruments further strengthen the role of indigenous and tribal peoples in climate change mitigation and promote their participation in decisions related to the environment.

169. Additionally, as pointed out by former UN Special Rapporteur on the Rights of Indigenous Peoples James Anaya, “self-determination has a reparative aspect, whereby it promotes new arrangements between Indigenous Peoples and States to overcome the patterns that have suppressed the ability of these peoples to develop according to their own priorities and to be secure in their rights as distinct peoples<sup>205</sup>”. In this regard, states have the following obligations:

a. Incorporating worldviews into public policy: States have a responsibility to incorporate the worldviews of indigenous and tribal peoples into their public policies related to climate change. This involves recognizing and respecting the specific visions, interests, and proposals of these peoples in mitigating and adapting to the climate emergency.

b. Consultation, consent, and active participation: States must conduct consultations that respect self-determination

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<sup>205</sup> Foreword to the Legal Report Supporting the Legal Status of Autonomous Indigenous Governments under the Principle of Self-Determination: Autonomous Territorial Government of the Wampis Nation, 2023, p. 8.

and ensure the active participation of indigenous and tribal peoples in the development, implementation, and evaluation of measures related to the climate emergency. This ensures that their rights and knowledge are effectively taken into account.

c. Reparation for historically violated rights: States must recognize and address all conditions of deterioration, degradation, or contamination that have affected indigenous territories or their sources of subsistence. This implies prioritizing the protection of these territories and repairing them within the framework of the climate emergency.

d. Reparations and agreed alternatives: In the case of the phase-out of fossil fuels and the dismantling of oil infrastructure, states must design alternatives and reparations measures in consultation and agreement with the affected communities, respecting the principles of the relevant international instruments.

e. Prevention of current threats: States have a responsibility to take preventive measures to address current threats to indigenous territories, whether through industrial practices, environmental degradation, or other activities that may negatively affect these peoples.

f. Protection against threats and conflicts: States must develop specific policies and programs to prevent and address threats to the security of indigenous and tribal territories, as well as their leaders. This includes measures to protect against invasions, criminal activities linked to extractivism, and to guarantee the safety of those who defend the rights of their communities.

170. In summary, states' obligations in response to the climate emergency must go beyond technical and economic considerations, comprehensively addressing the protection of the rights of indigenous and tribal peoples and their active participation in decision-making related to climate change.

**ii. Energy transition projects must have a reinforced consultation process**

171. Likewise, climate change mitigation and adaptation projects implemented on collectively owned territories or in areas that affect such properties would contravene the American Convention on Human Rights if the constituent elements of the right to collective property are not fully protected<sup>206</sup>. In relation to the energy transition and the rights of indigenous and tribal peoples, states have a duty to:

a. Comprehensive climate consultation: States must conduct consultations that cover a broad spectrum of decisions, policies, and programs relevant to climate change from the perspective of indigenous and tribal peoples. This includes not only environmental policies, but also energy policies, decisions on extractive activities that affect their territories, and all measures related to the prevention of threats to their territories and leaders.

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<sup>206</sup> Inter-American Commission on Human Rights. Climate Emergency: Scope of Inter-American Obligations on Human Rights adopted by Resolution No. 3/2021. Available at: [https://www.oas.org/en/iachr/decisions/pdf/2021/resolucion\\_3-21\\_ENG.pdf](https://www.oas.org/en/iachr/decisions/pdf/2021/resolucion_3-21_ENG.pdf).

b. Inclusion in energy policies: States have a responsibility to include indigenous and tribal peoples in decision-making on energy policies, particularly in the transition to sustainable energy. This involves considering their perspectives, needs, and proposals in the planning and implementation of policies related to energy generation and the phase-out of fossil fuels.

c. Consultation on sustainable economic alternatives: States have an obligation to consult with indigenous and tribal peoples, respecting their self-determination, to discuss and define sustainable economic alternatives in their territories that are not based on extractivism or fossil fuels. This consultation must include the active participation of communities in the identification, design, and implementation of economic models that respect their rights, cultural values, and environment, promoting sustainable development adapted to their priorities.

d. Seek consent based on free, prior, and informed consent in conservation programs: States should seek consent from indigenous and tribal peoples in relation to conservation programs and projects that promote incentives for conservation, such as REDD+ funds, payments for environmental services, and alternative development projects. The active participation of these communities is essential to ensure that these initiatives respect their rights and consider their needs.

172. In summary, states' obligations in the face of the climate emergency involve a comprehensive approach that includes broad consultations, active participation, protection

from threats and conflicts, inclusion in energy policies, and compliance with international agreements to ensure respect for the rights of indigenous and tribal peoples.

ORAL INTERVENTIONS<sup>207</sup>  
HEARING “CLIMATE EMERGENCY  
AND HUMAN RIGHTS” - IACHR COURT,  
Manaus-AM, May 27 and 28, 2025.

Honorable Judges of the Inter-American Court,

I am **Inocente Sangama Sangama**<sup>208</sup> of the Kichwa people from the Peruvian Amazon, and I speak today representing CEP-KA, which is a base organization of AIDESEP, the Interethnic Association for the Development of the Peruvian Rainforest.

We find ourselves at a crucial moment, a moment in which the climate emergency demands more than just words; it demands decisive action and profound reflection on the rights of indigenous and tribal peoples.

Our territories cover 28% of the world’s land surface and are home to 80% of the planet’s biodiversity. Our lands, under our stewardship, are essential for mitigating climate change.

Our traditional ways of occupation and our ancestral knowledge have kept our lands largely untouched, acting as a shield against deforestation and biodiversity loss. Our presence in the territories, based on our ways of life, is more effective than the establishment of protected areas that States impose on

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<sup>207</sup> Reproduction of the oral interventions delivered by representatives of our Amicus Curiae delegation during the session held in Manaus-AM, on May 27 and 28, 2025, as part of the 167th Ordinary Session of the Inter-American Court of Human Rights (IACHR).

<sup>208</sup> Kichwa People, Interethnic Association for the Development of the Peruvian Rainforest (AIDESEP), Peru.

our territories without consent, and the scientific evidence for this is undeniable. We are the true guardians of biodiversity!

This way of life is protected by our right to self-determination. We have demonstrated that the exercise of our indigenous autonomy, based on self-determination, is fundamental to confronting the climate emergency. When States protect our ways of life, they protect the territories and biodiversity, which significantly contributes to climate change mitigation.

However, the reality is devastating. Our right to self-determination is being systematically violated. Extractive activities that invade our territories endanger our ways of life, bring contamination, and cause the loss of our rich biodiversity. The climate emergency and the energy transition only aggravate these dangers.

The time for action is now. This is why we ask the Inter-American Court, in this advisory opinion, to establish that States have the obligation to:

1. Respect and protect our collective territories of the peoples and communities. This means the obligation to demarcate and title them to provide us with legal security.
2. Respect and protect our own systems of territorial protection, such as the indigenous guard.
3. Recognize and protect our own systems of governance and government of the peoples and communities. We have demonstrated that exercising our indigenous autonomy more reliably protects biodiversity.

4. Respect our decisions regarding models of life and development, as well as our right to say NO to extractive projects in our territories.

Thank you very much!

Honorable Judges of the Inter-American Court,

I am **Liana Lima**<sup>209</sup>, a professor at the Faculty of Law and International Relations of the Federal University of Grande Dourados, coordinator of the Observatory of Community Protocols, and executive director of CEPEDIS. We present our brief regarding questions A.2; B.1; D.2 and E.3, on “**State Obligations related to the right to self-determination of peoples concerning consultation and free, prior, and informed consent in the context of the climate emergency,**” as part of a regional coalition with organizations from Brazil, Colombia, Ecuador, and Peru.

Our intervention focuses on arguments concerning:

1. The scope of the right to consent;
2. Community protocols;
3. State obligations to guarantee the demarcation and titling of territories;

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<sup>209</sup> Professor of Human Rights and Borders at the Faculty of Law and International Relations and the Graduate Program in Borders and Human Rights of the Federal University of Grande Dourados (PP-GFDH/UFGD), Coordinator of the Observatory of Community Protocols (OPCPLI), Executive Director of the Center for Research and Extension in Socio-Environmental Law (CEPEDIS), Brazil.

4. The obligation of prior consultation for climate change adaptation and mitigation measures, the energy transition, and large-scale projects;

In the cases of the Saramaka People; the Kichwa People of Sarayaku; and the Kaliña and Lokono Peoples, we have the recognition of the right to consultation and consent. However, in Brazil, the State has systematically transferred its obligation to consult to companies, violating international standards.

Prior consultation as a fundamental collective right in ILO Convention 169 is distinct from public consultation and hearings in environmental licensing. It applies to public policies and legislative bills, so that peoples can effectively contribute and propose alternatives. It must occur at every stage of the infrastructure investment cycle, as it involves distinct administrative decisions.

Through the Observatory's monitoring, we have identified 120 community protocols in Brazil. These are recognized as good practices by the Inter-American Commission in its Report on the Right to Self-Determination. Community protocols express legal diversity (jusdiversity) stemming from their own legal systems and dictate how consultation should be conducted, including its informative stages and internal deliberation. They create guidelines and principles for States to carry out consultation without subordinating the peoples and their knowledge.

I will now pass the floor to the community leaders.

I am **Jeferson Pereira**<sup>210</sup>, a quilombola from the Território Águas do Velho Chico, a lawyer with CONAQ, and I speak as a researcher for the Observatory of Protocols.

I would first like to pay my respects to my ancestors and greet the more than 5,000 quilombola communities, the 305 indigenous peoples, and all 28 segments of traditional peoples and communities existing in Brazil, all collective subjects of the right to free, prior, and informed consultation.

Peoples and their traditional territories play a fundamental role in confronting the climate emergency. This is a historic moment where the Court can advance this global agenda. Jurisprudence has advanced with the recognition of States' obligation to protect and title territories, as in the case of the **Xucuru Indigenous People**.

However, in Brazil, state inertia persists. At the current pace, it would take over 2,188 years to title all quilombola territories. Conversely, the National Congress approved the "Marco Temporal" law, which is unconstitutional and contrary to international conventions.

State omission regarding the duty to consult peoples remains. The fundamental right to consultation and consent is anchored in self-determination, understood as a foundational right.

Furthermore, States must recognize and respect the governance systems and decision-making processes of the peoples, in accordance with our Autonomous Protocols.

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<sup>210</sup> Quilombola Lawyer, National Coordination for the Articulation of Black Rural Quilombola Communities (CONAQ), Quilombola Lawyers Network (RENAAQ), Brazil. Researcher at the Observatory of Community Protocols (OPCPLI).

Regarding the scope of consultation, consent must encompass the **right “to say no”** to projects that threaten our physical, cultural, and spiritual existence and integrity. The right **not** to consent is indispensable for there to be genuine respect for the protection of life and the rights of nature.

Thus, we request that this Court recognize:

1. The right to free, prior, and informed consultation and consent encompasses the right to say no, based on the right to life, integrity, and self-determination of peoples;
2. States have the duty to consult, in accordance with ILO Convention 169 and the American Declaration on the Rights of Indigenous Peoples, and this obligation cannot be transferred to Companies;
3. Community protocols must be observed and validated in consultation processes, with recognition of their legal nature and binding character for States;

My name is **Jhajayra Machoa**<sup>211</sup>, I am 24 years old, and I am a member of the A'I Cofán indigenous nationality. I represent the Confederation of Indigenous Nationalities of the Ecuadorian Amazon (CONFENIAE) and I am a Youth Leader.

We, the youth, especially indigenous youth, are witnesses to how the unchecked drive for development and economic

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<sup>211</sup> A'I Cofán People, Confederation of Indigenous Nationalities of the Ecuadorian Amazon (CONFENIAE), Ecuador.

progress of previous generations has triggered a crisis that threatens life itself on our planet. We face a great challenge concerning the destiny of our lands, our cultures, and our future.

Extractive activities such as oil and mining, energy projects, and exploitation in our territories have brought us to the brink of an environmental and cultural abyss, endangering our ways of life and the biodiversity that sustains all humanity.

The UN Secretary-General has stated that it is inevitable to move away from fossil fuels and transition to renewable energy. However, this transition has brought new forms of violation of our rights as indigenous peoples. From the expansion of energy projects on our lands to the imposition of conservation programs that ignore our needs, we have been marginalized and excluded from crucial decisions that affect our present and our future.

We face the paradox of being the guardians of the earth and, at the same time, the most affected by the irresponsible actions of those who seek to benefit at the expense of environmental destruction. Our forests, rivers, and sacred territories are sacrificed in the name of so-called progress, while our voices are silenced and our rights trampled.

It is time for our voice to be heard, not as a mere formality. We demand to be active participants in all stages of the energy transition, from the planning to the implementation and evaluation of policies and projects. For example, in Ecuador, we demand the implementation of the Consultation on Yasuní, and

that it be done by repairing the damage to the peoples affected by oil activity in that area.

We demand respect for our autonomy and self-determination as indigenous peoples, and the recognition and reparation of historical damages caused by centuries of exploitation and colonialism. Things are no longer as they always were. The most notable changes we experience in my territory are the result of oil activity, such as the Dureno and Parahuaco blocks. What has affected us the most are the “gas flares” from the oil fields, which emit toxic gases, and the oil extraction wells. We live and feel their impacts every day. We fight against extractivism in our territories and are threatened by oil companies, who have even gone as far as assassinating our leaders, like Eduardo Mendua; and there is still no justice or reparation.

So-called climate justice cannot be achieved without justice for indigenous peoples. Our communities have been custodians of the land since time immemorial, and our ancestral wisdom is essential to finding truly sustainable and equitable solutions. We are not mere spectators in this struggle; we are leaders and guardians of life on Earth.

I request this honorable Court to order States to:

1. Recognize and repair the historical impacts of extractive activities in the territories of indigenous and tribal peoples.
2. Consult and design economic alternatives to extrac-

tive models, in addition to reparation measures, in consultation and with the consent of the peoples and communities.

3. Conduct comprehensive consultations on climate decisions and guarantee the inclusion of indigenous and tribal peoples in energy policies.

Honorable Judges of the Inter-American Court,

*Mbae'chapa. Che vera* **Junior Anderson Guarani Kaiowá**<sup>212</sup>, from *Tekoha Guapo'y*, Mato Grosso do Sul, a Law student at the Federal University of Grande Dourados and researcher at the Observatory of Community Protocols.

I speak on behalf of a people marked by persecution, targeted by attacks and massacres through the State's police apparatus and large economic groups that see us as obstacles to development. They enslave us, kill us, and displace us to exploit and contaminate our lands. I speak here for the Guarani Kaiowá people, Brazil's second largest indigenous population, living in the border region between Brazil and Paraguay, amidst the landscape of agricultural expansion with transgenic soy and corn monocultures. In the transition between the Atlantic Forest, Cerrado, and Pantanal biomes, our region faces the threat of desertification - without forests, without water, without animals.

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<sup>212</sup> Guarani Kaiowá People. *Tekoha Guapo'y* Community, Amambai, Mato Grosso do Sul. Law Undergraduate Student, Faculty of Law and International Relations, Federal University of Grande Dourados (FADIR/UFGD). Researcher at the Observatory of Community Protocols (OPCPLI).

In our struggle to reclaim our *tekoha* and recover our ancestral territory, through prayer we ask *Nhānderu* to bless the tree seedlings we plant, so they may not die. Every weekend, the *Nhānderu* gather to pray for the river contaminated with pesticides, that it may not dry over time, while we plant native trees to restore the springs. In Guarani Kaiowá cosmology, the rivers and forests have owners and maintain the balance of global warming. Therefore, when we indigenous people enter the forest and river, we always ask *Nhānderu vussu* for permission.

As defenders of human rights and nature, we have faced violence, hostility, and discrimination - a situation reflecting the injustice faced by indigenous peoples worldwide. In this historic moment, during this hearing in the Amazon, we ask the Court to consider States' obligations toward indigenous peoples, recognizing that our struggle seeks *buen vivir* and the future of all humanity.

Our demands for territory demarcation are the preservation of life. We need to teach you Karáí the paths to seek *Teko Joja*, the Guarani Kaiowá way of harmonious being. As guardians of the land, we are rooted in the forests we protect, the rivers that nourish us, and the lands for future generations. Therefore, we request that the Court establish the need for States to create means for our protection, avoiding the criminalization of our leaders, and that they assess the impact of extractive activities not only on our lives but also on the climate emergency.

As defenders of life, our protection is not individual but collective. We cannot abandon our territories in the face of threats,

as this weakens our community and opens doors to deforestation and biodiversity loss. Our presence in the territories has ensured that 80% of biodiversity remains in indigenous lands.

When a leader is threatened and assassinated, a clear message of intimidation reaches us. The impacts are not individual or familial but collective, because we live in community. We demand swift and impartial investigations, and that the perpetrators be held accountable. As should the State, which neither protected us nor demarcated our lands.

In Mato Grosso do Sul alone, between 2019 and 2022, 146 indigenous people were murdered, and 795 across the national territory during this period, according to CIMI data. We demand justice, respect, and protection to exercise our right to live according to our ways of life. When one of our lives is violently cut short, we unite, reclaim our self-determination, and become seeds of resistance.

States have the responsibility to guarantee our rights and security. The Marco Temporal law is unconstitutional and contrary to international conventions! For the protection of our lives and territories, we need real commitment and confrontation of a structural issue: demarcation now!

*ATYMÃ PORÃ. AGUYJEVETE.*





LETRA DA LEI



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