Climate commitments in Latin America: An opportunity to strengthen the rights of Indigenous Peoples?

Over the last decade, States have built their climate governance around internationally pledged commitments under the UN Framework Convention on Climate Change (UNFCCC). These Nationally Determined Contributions (NDCs) under the Paris Agreement make it possible to identify political priorities on climate action including with regards to Indigenous Peoples. This article looks at recently updated NDCs of Latin American governments and compares them with the first generation NDCs pledged in the aftermath of COP 21 in Paris. Although recognition of Indigenous Peoples can be seen to have increased in principle, in reality their participation remains insufficient; they are presented as a homogeneous sector; Indigenous women are rendered invisible; and the causes of their vulnerability are not addressed. This raises the question of the effectiveness of NDCs in national political and economic systems built around continued extractivism with little consideration of the rights of Indigenous Peoples or environmental impact.

By Rosario Carmona, Francisca Carril and Rocío Yon - October 1st 2022

While the Intergovernmental Panel on Climate Change (IPCC) has repeatedly warned that the world needs to take urgent climate action, UN Secretary-General António Guterres has recognised that humanity is off track to comprehensively address the multiple challenges it is facing in an integrated way. Indeed, Indigenous leaders, scholars and academics have been warning for decades that humanity will not be able to solve the climate problem by relying on the same paradigm that caused it i.e. a dichotomy between the human and the non-human that enables the exploitation of the one by the other.

Indigenous Peoples are particularly affected by climate change. Like in other regions, Indigenous communities in Latin America depend directly on their territories, and these are facing loss of biodiversity, increased droughts, more frequent extreme weather events and decreased agricultural productivity. At the same time, many Indigenous women, men and youth have been displaced to the urban periphery where they feel the effects of rising
temperatures more acutely. In its latest report, the IPCC recognized that this vulnerability is a consequence of colonial dynamics which, to this day, marginalize Indigenous Peoples and threaten their right to self-determination. This exclusion is also reproduced in climate policies.

Denouncing this inequality is closely bound up with historical demands for the recognition of different Indigenous movements in Latin America. Although political pressure from these groups, together with States’ signing of international treaties, has favoured progress in the legal recognition of the region’s Indigenous Peoples, this progress has not been matched by mechanisms with which to make this implementable. This recognition has therefore not strengthened the rights or participation of Indigenous Peoples.

**Climate governance and Indigenous Peoples**

The struggle for Indigenous Peoples’ recognition has forced its way into global discussions on climate change. Indigenous Peoples have been demanding that their voices be heard since the 1970s, when States began to address the problem multilaterally. In doing so, they have had to overcome multiple barriers, such as being excluded from the UNFCCC which is open for State party membership only. This situation has gradually changed since 2001 when Indigenous Peoples formed their own constituency in the Convention.

The constituency was formalised into the International Indigenous Peoples’ Forum on Climate Change in 2008. Through this space, Indigenous movements have managed to get their rights recognized in the preamble to the Paris Agreement and ensure that the UNFCCC processes progressively promote their participation. At COP 26, States highlighted the role of Indigenous Peoples' culture and knowledge and encouraged their active participation in the design and implementation of climate measures. While these advances at the international level are significant, their impact depends to an even greater extent on the responses given at national level.

Over the last decade, States have built their climate governance around internationally pledged commitments. Nationally Determined Contributions (NDCs), which are a requirement stipulated in Article 4 of the Paris Agreement, establish States' targets for climate change mitigation and adaptation. Beyond setting objectives, these commitments
identify problems and solutions, validating actors, procedures and implementation mechanisms. In ratifying the Paris Agreement, countries have agreed to provide information on their planning and implementation plans as part of the NDCs, including the participation and engagement of Indigenous Peoples. The NDCs thus make it possible to identify the political priorities of the States and the level of recognition granted to Indigenous Peoples.

States also undertook to submit their NDCs prior to implementation of the Paris Agreement, which began in 2020, and to update them (or submit a new version) every five years with the aim of increasing their ambition. Accordingly, Latin American governments submitted first versions of their NDCs between 2016 and 2019. Since 2020, 16 States have updated these commitments and one, Argentina, has submitted a second NDC. The difference between updating an NDC and submitting a second version lies mainly in the period it covers, an individual decision taken by each State.

**Recognition of Indigenous Peoples in the Nationally Determined Contributions**

The Latin America region is home to the highest percentage of Indigenous population among the general population (an estimated 8.5%). In turn they represent an estimated 11.5% of the global Indigenous population. Across the continent, some 55 million individuals identify as belonging to one of more than 800 Indigenous Peoples. In both rural and urban areas, they suffer from high levels of marginalization, which has pushed them into conditions of poverty and extreme poverty.

Analysing the NDCs of Latin America signed between 2016 and 2022, we can see in terms of discourse an increasing recognition of Indigenous Peoples. While only 14 of the first 20 versions of the NDCs (70%) made reference to Indigenous Peoples, they were mentioned in all of the second submissions (a total of 17, including both updates and second submissions).

The references to Indigenous Peoples, varying in subject matter and depth, demonstrate differing levels of recognition. The weakest references (present in 25% of the first submissions and 47% of the second) recognize Indigenous Peoples as part of the national diversity. Recognition of Indigenous Peoples as vulnerable to climate change is also weak (up from 20% to 76%). In most cases, however, the NDCs do not consider the causes of this vulnerability in
any great depth and therefore fail to propose actions to overcome it. Only the updated NDCs of Costa Rica, Mexico and Panama, and the second NDC from Argentina, link their vulnerability to inequality. The latter recognises that Indigenous Peoples face "limited participation in decision-making and access to resources."

A deeper level of recognition is evident in those NDCs referring to Indigenous Peoples as rights holders, an increase from 20% in the first versions to 47% in the second. Despite this progress, reference to specific legislation or instruments is scarce. In its first NDC, Guyana mentions it will apply free, prior and informed consent (FPIC), as does El Salvador in its updated NDC. However, they do not mention specific legislation. The only country to do so is Brazil, whose update refers to ILO Convention 169.

A final significant level of recognition positions Indigenous Peoples as relevant actors in addressing climate change. This recognition has increased from 25% to 60% in the new NDCs. In line with Article 7 of the Paris Agreement, these NDCs promote consideration of Indigenous knowledge within climate policies. It is not in all cases clear how this knowledge is to be integrated. For instance, Chile’s updated NDC just states that Indigenous Peoples’ knowledge will be analysed “where available."

**Indigenous participation and invisibility of Indigenous women**

The extent of Indigenous Peoples’ input to climate policy depends largely on the willingness of States to facilitate their participation, both during the design of the NDCs and their implementation.

Only Guatemala, Panama, Peru and Guyana (20%) mentioned that they facilitated Indigenous Peoples’ participation in the design of the first versions of their NDCs. Guyana and Panama even implemented differentiated processes with Indigenous communities and organizations. As for the updated NDCs, Indigenous Peoples’ involvement increased to 53% with six States implementing activities that expressly included Indigenous representatives. Colombia was the only country to develop a process exclusively for Indigenous Peoples.

Depending on the involvement of Indigenous Peoples in the design process, the NDCs promote different levels of Indigenous Peoples’ participation in the implementation plans.
Although among the first versions this involvement can be seen in 25%, only Guatemala and Guyana mentioned the creation of specific mechanisms to facilitate such participation. Guatemala has committed to including Indigenous representatives in the National Climate Change Council and to establishing an Indigenous Climate Change Roundtable. Guyana, for its part, mentions a mechanism for including Indigenous communities in climate change mitigation projects.

There is clearer participation of Indigenous Peoples in the updates to the NDCs (53%) and the same is true in terms of creating mechanisms to facilitate this (35%). Within these mechanisms, some are more specific than others. For example, Argentina refers to the creation of an Expanded Roundtable and a Consultative Council that will include Indigenous Peoples’ representatives. Going one step further, Costa Rica's update includes Indigenous Peoples in the Regional Forest Environment Plans.

Greater reference to measures aimed at addressing the specific situation of Indigenous Peoples can also be seen i.e. up from 20% in the first contributions to 82% in the second. And yet most of these NDCs offer a vertical approach without reference to participation mechanisms. Exceptions include the respective updated NDCs of i) Colombia, which refers to the formation of self-governance bodies for the integrated management of the mangrove ecosystem, and ii) Costa Rica, which proposes developing a national strategy for the climate empowerment of Indigenous Peoples.

Finally, it can be noted that all NDCs present Indigenous Peoples as a homogeneous sector. They gloss over identity and territorial distinctions, both between the different peoples and among different groups within the same people. In addition, although several NDCs claim to take a gender approach into account, most fail to take Indigenous women into consideration. Only Guatemala's first NDC and Panama's update refer briefly to their particular vulnerability. It is essential to recognize this vulnerability if we are to begin to reduce it. Its omission can therefore be regarded a serious matter.

It is even more regrettable that none of the NDCs consider the visions and contributions of Indigenous women given their capabilities and knowledge which position them as key allies in responding to climate change effective, fair and culturally appropriate ways. Indigenous
children and elders who, in addition to their greater vulnerability, play a fundamental role in the intergenerational transmission of knowledge, are also omitted.

Rethinking the advancement and application of Indigenous recognition

Indigenous Peoples’ demands have pushed States to recognize and promote their contributions in the UNFCCC. And yet there is still no consistency between what States agree to internationally and what they commit to in their NDCs. Participation standards continue to be deficient and very few NDCs specify concrete instruments through which to facilitate Indigenous Peoples' advocacy and the respectful inclusion of their knowledge. Most of the NDCs fail to consider the underlying causes of Indigenous Peoples’ vulnerability and therefore do not question patterns of power distribution that are reinforced in climate policies.

In addition to being limited, there are also doubts as to the effectiveness of this recognition. As the NDCs are not legally binding, we need to consider the context in which they are produced. Firstly, they arise in a context of dialogue with national legislation (and all its inherent problems). Several governments that recognize Indigenous Peoples in their NDCs, such as the governments of Venezuela and Brazil, are involved in territorial demarcation conflicts against their Indigenous Peoples. In countries such as Chile, legislation on recognition contains serious barriers to self-determination. Finally, Indigenous participation continues to be a challenge in many countries. The right to free, prior and informed consent (FPIC) tends to be reduced to prior consultation which when implemented by governments and companies, has become a mere bureaucratic requirement for environmental projects, and one that fails to take Indigenous protocols into consideration.

Secondly, economic growth models in the region are raising questions as to the effectiveness and coherence of the pledges. While drafting and submitting their NDCs, some of the governments that recognize Indigenous Peoples, were at the same time granting new licences for oil exploitation and coal mining despite Indigenous organizations’ resistance. For example, Ecuador has expanded oil and gas extraction in Indigenous territories, including the Yasuní National Park (inhabited by uncontacted communities) and Colombia is reopening the El Cerrejón coal mine, which will affect the Wayuu.
At the same time, green extractivism – i.e. the exploitation of resources for the development of greenhouse gas reduction technologies – is continuing to advance, as illustrated by the case of lithium in Chile which is threatening Likan Antai communities. In addition, there has been increased criminalization and murder of environmental defenders, with Indigenous Peoples disproportionately affected. In Colombia, at least 109 social leaders and defenders were murdered between January and July 2022 alone, of which 27 were Indigenous.

The NDCs need to address all of these challenges to secure their enforceability and effectiveness. But these challenges also need to be addressed if we are to promote coherence between climate action and the various international agreements to which the States have signed up, such as ILO Convention 169 (ratified by 14 of the 20 States), and the Escazú Agreement (signed by 16 countries) which safeguards secure conditions for participation and political advocacy in environmental matters.

Ultimately, recognition of Indigenous Peoples in the NDCs is progressing faster than the States’ willingness to enforce it. Not only is the coherence and effectiveness of climate policy and action at stake but also the rights and vulnerability of Indigenous Peoples. If this is not immediately reversed, the opportunity to promote the institutional transformation processes necessary to respond to climate change in a fair and sustainable manner, is lost. Recognizing Indigenous Peoples in Latin America’s climate governance means questioning the political and economic assumptions on which vulnerability is built. In short, responding to what Indigenous Peoples have been demanding for centuries.

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