EUROPEAN REVIEW OF LATIN AMERICAN AND CARIBBEAN STUDIES
REVISTA EUROPEA DE ESTUDIOS LATINOAMERICANOS Y DEL CARIBE

No. 120 (2025): July-December, pp. 59-73
www.erlacs.org

Special Issue:
Understanding Latin America and the Caribbean:
Current and Upcoming Developments

Exploration | Exploración

Indigenous and Afro-descendant territorial justice claims and sociolegal mobilization in Latin America: Future agendas

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Abstract

The multicultural and plurinational constitutional turn of the late twentieth century in Latin America recognised the rights of Indigenous and Afro-descendant communities to land. In the face of deepening neoliberal extractivism, defence of their ancestral territories has involved attempts to enforce legal rights through recourse to the courts alongside advocacy, direct action, and strategies to strengthen place-based forms of autonomy. This essay reviews the balance of scholarship on Indigenous and Afro-descendant mobilisation for collective rights to land through the courts in Latin America and outlines areas for future research. These include the implementation gap; climate justice litigation; rights of nature; transitional justice; cuerpo-territorio; courts and the authoritarian turn; and criminalisation of protest and extrajudicial violence. *Keywords*: Indigenous, Afro-descendant, sociolegal mobilisation, territory, climate justice.

Resumen: Reclamaciones de justicia territorial y movilización sociojurídica de los pueblos indígenas y afrodescendientes en América Latina: Agendas futuras

El giro constitucional multicultural y plurinacional de finales del siglo XX en América Latina reconoció derechos territoriales de las comunidades indígenas y afrodescendientes. Ante la profundización del extractivismo neoliberal, la defensa de sus territorios ancestrales ha implicado intentos de hacer valer sus derechos legales mediante el recurso a las cortes, así como la incidencia política, la acción directa y estrategias para fortalecer sus distintas formas de autonomía territorial. Este ensayo analiza las investigaciones recientes sobre la movilización indígena y afrodescendiente por los derechos colectivos a la tierra a través de las cortes en América Latina y describe áreas para posibles debates de investigación futuros. Estas incluyen la brecha de implementación; el litigio por la justicia climática; los derechos de la naturaleza; la

DOI: http://doi.org/10.32992/erlacs.11460

WWW.ERLACS.ORG is published by CEDLA – Centre for Latin American Research and Documentation / Centro de Estudios y Documentación Latinoamericanos, Amsterdam; www.cedla.uva.nl; ISSN 0924-0608, eISSN 1879-4750.

justicia transicional; el cuerpo-territorio; las cortes y el giro autoritario; y la criminalización de la protesta y la violencia extrajudicial. *Palabras clave*: indígena, afrodescendiente, movilización sociojurídica, territorio, justicia climática.

Introduction

At the end of the last century, the collective rights to land of Indigenous peoples and rural Afro-descendant communities were recognised through successive waves of constitutional reforms and legislation in Latin America. To a greater or lesser extent, these legal innovations reflected long-run struggles to guarantee Indigenous rights to self-determination within existing nation-states based on protection for Indigenous peoples' territories and their distinctive ways of life. Constitutional recognition for certain Afro-descendant communities – for example, the quilombos in Brazil and the comunidades negras of Colombia's Pacific Coast – also established land rights, mirroring the forms of cultural or ethno-racial recognition extended to Indigenous groups. Collective land rights underpinned numerous other human rights, including those related to health, education, livelihoods, and food sovereignty. From the early 1990s, a considerable body of scholarship analysed the potentials and pitfalls of the multicultural and plurinational turn, pointing to the complex and often contradictory dynamics between forms of legal recognition for distinct cultural groups and neoliberalism (Hale, 2002; Engle, 2010; see also Povinelli, 2002; Coulthard, 2014). By the turn of the century, it was clear that extractivist political economies across Latin America were poisoning lands, rivers and seas, generating "sacrifice zones" of enormous environmental and epistemic violence that disproportionately affected Indigenous and Afro-descendant communities. Political economies premised on extractivism have been reinvigorated as part of the "green" energy transition, involving the pursuit of strategic minerals essential to the maintenance of capitalist models of consumption in the face of the climate crisis. Research on climate justice has pointed to what many authors refer to as "green colonialism", a form of development that violates Indigenous peoples' collective rights to consultation and consent, replicating historical injustices, including land grabs and displacement (Gudynas, 2020; McKay et al., 2021; Svampa, 2019).

Indigenous and Afro-descendant communities' social mobilisation for territorial justice involves attempts to enforce legal rights through recourse to the courts alongside advocacy, direct action, and strategies to strengthen place-based forms of autonomy and self-governance. After decades of sociolegal mobilisation, what is the balance of activism and scholarship on the effects of taking ethno-racial collective territorial claims to the courts? Can litigation contribute to protecting specific territories and place-based ontologies from the worst excesses of colonial capitalism? What theoretical perspectives and methodological tools best help us to analyse the limits and potentialities of these sociolegal battles? Given the accelerating climate crisis, renewed extractivism for the energy transition, and the authoritarian political turn in many countries, are the courts

still an option for the political struggles of these historically marginalised communities? How can we think about forms of justice that go beyond rights framings and justiciability in the courts? Of course, these are big questions that cannot be adequately addressed in an essay of this length, but what I hope to do here is suggest avenues for future sociolegal research on territorial and socioenvironmental disputes affecting Indigenous and Afro-descendant people in Latin America. In the first section, I summarise research on law, justice and the collective territorial claims of Indigenous and Afro-descendant communities in the region, signalling key contributions and controversies. The second section outlines some themes and issues for future enquiry.

Litigating territorial defence

The extensive literature on extractivism and its impacts on rural life-worlds has tended to see law and regulation as an essential part of the architecture of ongoing racialised dispossession, echoing neo-Marxist accounts of law as part of the superstructure of capitalism. Yet across Latin America, activists and scholars working collaboratively with Indigenous and Afro-descendant communities have also understood law and legal institutions as a key arena of contentious politics and have endeavoured to draw strategic lessons from their ongoing engagements with human rights discourses, law and the courts. Such approaches echo earlier analyses that pointed to the potentialities of social movements' uses of law in combination with other forms of social and political struggle (Rodríguez Garavito & Santos, 2005).[1]

Indigenous and Afro-descendant communities' territorial litigation has combined claims for recognition of their cultural difference from dominant society and for the redistribution of material elements to enable their political self-determination and autonomy. As part of their broader struggles to defend territory, they appeal to courts to recognise the socioeconomic and spiritual basis of their distinct livelihoods and protect or recover lands removed from their control through ongoing processes of territorial and historical occupation (Gilbert, 2020; Pataxó, 2022; Shields, 2023). Faced with threats to their ancestral lands, Indigenous peoples and their allies became early "repeat players" in successive judicialized battles, appealing to the national courts and the Inter-American Court of Human Rights (IACtHR) to uphold their collective rights set out in national constitutions, laws and international legal instruments. International Labour Organisation Convention 169 on the rights of Indigenous and Tribal Peoples (ILO C169), adopted in 1989 and ratified by most Latin American states during the 1990s, established rights to ancestral lands and free, prior and informed consultation about legislative, administrative, or project-related measures that affect Indigenous peoples' lands, territories, or resources. Afro-descendant communities lack a similarly robust international human rights regime codifying their collective rights to ancestral land and territory (Aebersold, 2022), but they have also opposed extractivist projects by mobilising through the courts. Complex

disputes over territory have been litigated in different ways, but research has shown that two dominant frames have been mobilised before the Latin American courts: rights to free, prior and informed consultation (FPIC), and rights to ancestral or communal land titles (Alfonso, Braconnier De León & Sieder, 2025).

Indigenous peoples' rights to FPIC were established in ILO C169 and strengthened in the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP) through the formulation of free prior and informed consent, requiring states to obtain their consent for legislative, administrative, or project-related measures that affect their lands, territories, or resources.[2] While not covered by ILO C169 or the UNDRIP, Afro-descendant communities in Latin America have also appealed to courts to guarantee similar rights to consultation, invoking specific constitutional and legislative protections extended to Afro-descendant peoples and municipal and administrative laws on citizen participation. A significant body of legal and sociolegal research has shown that FPIC claims are the most common form of case law in Latin America for Indigenous peoples' judicialized struggles over territory, and that courts have affirmed the consultation rights of Indigenous communities and insisted on states' obligations to ensure FPIC. Judicial rulings have cited emerging international standards and, not infrequently, ordered the suspension of extractive projects pending adequate consultation processes, although other courts sometimes overrule these suspensions on appeal, as occurred, for example, in the multiple legal actions over the Bello Monte dam in the state of Pará, Brazil. Typically, courts have ordered the relevant ministries or the national congress to regulate the right to consultation and reaffirmed the obligation of public administration to carry out consultations. Some judicial remedies have required that environmental impact assessments of specific projects be carried out as part of FPIC. Courts have generally stopped short, however, of recognising the stronger formulation of free, prior and informed consent. Across Latin America, FPIC litigation has firmly established Indigenous peoples' legal standing as collective subjects of rights and confirmed the specific, distinct character of their lands, in effect changing legal opportunity structures to enable claims for territorial self-determination to at least be heard in the courts (Sieder, 2016). In terms of outcomes, litigating breach of FPIC obligations has provided financial reparations for some affected communities, but this has often had adverse effects, further fragmenting political organisation (Schilling-Vacaflor & Eichler, 2017). Governments and companies have frequently ignored court rulings, and in many contexts, extractive industries continue to operate in violation of courts' recognition of communities' consultation rights. Earlier critiques highlighting how multicultural politics of recognition were central to reproducing dominant forms of political economy have been echoed in empirical sociolegal research, which has shown how litigation centering FPIC has at best slowed extractivist initiatives but has not secured broader transformations in state development policies nor structural reparations for those subject to ongoing colonial dispossession (Rodríguez-Garavito & Orduz Salinas, 2012; Flemmer, 2023; Schilling-Vacaflor & Flemmer, 2019; Torres-Wong, 2023).

The second frame used to litigate Indigenous and Afro-descendant people's territorial claims is that of collective land titles, rights that were established to varying degrees between the 1990s and 2000s by Latin America's multicultural and plurinational constitutional reforms and in some countries by secondary legislation, for example, Colombia's Law 70 of 1993, recognizing the collective territorial rights of black Pacific rural communities. Recognition of these collective land rights entails the identification, physical delimitation, demarcation, registration, and titling of the lands in question to protect them from fragmentation through market mechanisms (Gilbert, 2020). Titling advanced through administrative programs in some countries, such as Bolivia (Anthias, 2012), but in others faced political resistance meaning that Indigenous and Afro-descendant communities went to court to try and force states to uphold constitutional guarantees of protection for their lands. For example, in Colombia, Indigenous and Afro-descendant communities have claimed collective titles rather than individual property rights, arguing that their identities and forms of social and political organisation are dependent on specific, ancestral territories (Alfonso, 2021; Grueso, 2007). This interpretation has been supported since the 2000s by a growing body of domestic jurisprudence in Colombia and by key judgements of the IACtHR, which has argued that Indigenous people's historic occupation and use of their ancestral lands are analogous to property rights, and that states have a duty to recognize and register those collective property rights, in turn enabling self-government of those territories by Indigenous peoples (Ramírez & Maisley, 2016; Gómez Isa, 2017; Kroshus Medina, 2024). The IACtHR has also upheld Afro-descendant land rights, for example, of the Garífuna Afro-descendant community of Triunfo de la Cruz on the northern Caribbean Coast of Honduras, which has waged a long legal battle against the expansion of palm oil, tourist developments and mining projects on their ancestral lands (Loperena, 2023). Responses have varied across countries and courts: sometimes they have recognised collective title and even restituted stolen lands; in other contexts, they have refused to treat Indigenous collective property claims as matters of constitutional and human rights, instead sending plaintiffs to the civil courts where they face almost insurmountable evidentiary challenges. We have documented this last phenomenon in Guatemala, particularly since the capture of the constitutional court by elites supporting extractivist projects (Sieder & Braconnier De León, n.d.).

In general, courts have failed to mandate the redistribution of land, resources or governance powers over territory to enable a greater degree of Indigenous and Afro-descendant self-determination. Even where Indigenous and Afro-descendant land rights are strongly recognised in constitutional law or where a collective title has been granted, Latin American states retain sovereignty over subsoil resources, meaning that governments continue to approve licenses for the extraction of minerals, oil, and gas and concessions for hydroelectric dams affecting rivers situated in these territories. Research in Bolivia, Paraguay, and Nicaragua has shown that even successfully litigated claims and titling have not guaranteed adequate protection against de facto fragmentation of land, territorial

dispossession, and the activities of extractive industries (Anthias, 2012; Correia, 2023; Wetterslev, 2024). In other words, favourable judgements in court affirming collective rights have not significantly modified extractive political economies and have increased tensions between Executives and high courts. Overall, research shows that courts in Latin America have granted important forms and levels of recognition for Indigenous peoples as possessors of their territories and as social actors with legal standing. At the same time, judicial decisions on socioenvironmental territorial disputes in the region have tended to replicate the hierarchy of colonial logics on the conceptions, uses and relations around land (Alfonso, Braconnier De León & Sieder, 2025).

Some scholars have argued that appeals to liberal and human rights legalities to dispute the violence of dominant development paradigms reinstantiates and ultimately reinforces forms of law rooted in Western colonialism (Anthias, 2021). Inevitably, complex historical grievances are simplified and mistranslated through hegemonic legal framings and the distance between life-or-death struggles on the ground and lengthy litigation processes can be enormous. However, sociolegal disputes have played an important role in amplifying and making legible Indigenous and Afro-descendant peoples' ontological justice claims, claims that exceed the legal liberalism of human rights. Special expert witness reports used in litigation processes place relational, less human-centred forms of inhabiting territory in the public sphere, challenging the logics of colonially derived law and dominant capitalist frames. Instead of understanding land, water, or forests as commodities, through different forms of political mobilization and litigation Indigenous and Afro-descendant communities have attempted to place alternative, embodied, and place-based understandings and ontologies of land and territory, and long readings of history, in the legal and political sphere, defending their specific understandings (Blaser, 2025; De la Cadena, 2015; Escobar, 2020; Loperena, 2023). Taken together, they represent calls for engagement with different epistemologies and ontologies of living together in territory, less extractive and more planetarily sustainable ways of coexisting, and multiple forms of repair. In contrast to the possessive individualism of liberal property rights and contract law that underpins continued extractivism, Indigenous and Afro-descendant communities' judicialized territorial claims question the colonial premises of dominant forms of property, built as they are on "racialized regimes of land ownership" (Bhandar, 2018) and colonial scales of value driven by logics of appropiation and dispossesion which continue to deny those communities the power to administer and govern the lands they occupy.

The sociolegal literature suggests that rather than evaluating judicialization efforts narrowly in terms of their success or failure (for example, by focusing on whether the case was won or lost, or the extent to which rulings are subsequently enforced), we should view recourse to the courts in pursuit of collective claims as a form of politics, a means of resistance and a means of staking alternative paradigms (Rodríguez Garavito & Santos, 2005; Wilson & Gianella, 2019). Through processes of social mobilisation and litigation, excluded communities

across Latin America have amplified their voice, challenging the proprietary logics of liberal law and contributing to an emergent anti-colonial, post-capitalist legal consciousness. Courts continue to be an important arena for contentious politics, with ripple effects that extend far beyond the outcomes of specific cases. Where courts have maintained relative independence, they have been an important arena for marginalised groups to stake their claims. However, this may not continue to be the case if courts are co-opted and either directly or indirectly controlled by the Executive, or if they lack independence from powerful elites aligned with unbridled extractivism.

Future research agendas

We should continue to develop region-wide, comparative empirical analysis on Indigenous and Afro-descendant socio-legal mobilisation for territorial justice in Latin America, in addition to in-depth case studies. A forward-looking research agenda can bring together several existing and emergent themes and issues. I signal these briefly here: the implementation gap; climate justice litigation; rights of nature; transitional justice; *cuerpo-territorio*; courts and the authoritarian turn; and the criminalisation of protest and extrajudicial violence.

The implementation gap

Although courts in Latin America have upheld Indigenous and Afro-descendant communities' rights to land in specific cases, there is a notable gap in the implementation of court-mandated remedies. It seems that compliance with Indigenous and Afro-descendant land litigation is much lower than with other judicialized social justice issues. For example, Jaramillo's work on compliance with constitutional court rulings in favour of LGBTI rights in Colombia reveals the importance of sociolegal networks comprised of elite state and civil society actors for securing meaningful policy shifts (Jaramillo, 2024). Research that explores how elites manage to block implementation of judicial rulings in favour of Indigenous and Afro-descendant communities' territorial claims, and how this relates to the insertion of Latin American economies within global structures of capitalism, can deepen our understanding of the potential and limitations of sociolegal struggles around territorial justice. The cumulative distributional impacts of litigation over territory are also an area for future enquiry. As signalled above, research to date has underlined how court judgements in Latin America have tended to affirm the recognition of the special status of Indigenous and Afro-descendant peoples and their lands, but not to redistribute land, resources or governance rights over territory. However, instead of prioritising a case-by-case approach, a more longitudinal and process-oriented analysis of sociolegal mobilisation for territorial rights in different countries and cross-regionally may permit more nuanced understandings of the distributive outcomes of sociolegal mobilisation (Alfonso, Braconnier de León, & Sieder, 2025).

Climate justice litigation

This is an emerging field of practice and scholarship. Environmental litigation has focused on issues such as carbon emissions, fossil fuel investments, the failure of governments and corporations to mitigate climate risk, intergenerational costs and damages (Rodríguez Garavito, 2023, 2024). Research and practice should bring in insights from analysis of Indigenous and Afro descendant territorial litigation, which underlines the need for anticolonial and intersectional perspectives to combat the racialised environmental injustices of land dispossession. The sociolegal mobilisation of Indigenous and Afro-descendant peoples in Latin America represents a vision of environmental futures grounded in collective, place-based forms of knowledge that foregrounds justice for historical violence and dispossession, mutual responsibility, stewardship, and a politics of care (Blaser, 2025; Escobar, 2008, 2020). Exploring the synergies and conflicts between environmental and Indigenous and Afro-descendant litigation frames and broader forms of mobilisation, including advocacy and direct action, is an important area for future research.

Rights of nature

This is an area where scholarship has both tracked and promoted the increasing global legal trend towards recognising rights of nature (RoN), including the recognition of rivers and mountains as non-human subjects of rights (Izquierdo & Viaene, 2018; Vargas Roncancio, 2024). Significant RoN litigation has been studied in Colombia, where the constitutional court developed the concept of "biocultural rights" in the Atrato river case and granted legal personhood to the Amazon rainforest to protect it for future generations, and Ecuador, where the constitutional tribunal decided that two copper mining concessions violated the rights of Los Cedros cloud forest (Fuchs, 2025). The RoN trend has expanded across the region, indicating a diffusion effect of this new legal figure (Alfonso, Braconnier De León & Sieder, 2025; Fiorini Beckhauser, 2023). Some authors have enthusiastically endorsed the RoN turn and suggested it reinforces Indigenous and Afro-descendant peoples' ontological specificities and their territorial claims; others are more circumspect (González Serrano, 2025). We need more empirical research that considers the intersecting and conflicting rights claims involved in RoN cases, as well as studies of how legal diffusion works in practice across activist-lawyer networks and judiciaries.

Transitional justice

Studies in transitional justice in Latin America have analysed the relationship between different justice claims and judicial and quasi-judicial mechanisms and institutions, producing a rich and mature body of scholarship. Colombia's more recent transitional justice process features legal innovations with regional and

global implications, such as the recognition of territory as a victim of the armed conflict, the insistence on intercultural, interethnic coordination between Indigenous and Afro-descendant legal systems and state law (as specified in Colombia's 1991 Constitution) which prioritizes Indigenous and Afro-descendant knowledge, and the inclusion of Indigenous and Afro-descendant judges in the Jurisdicción Especial para la Paz (JEP) (Braconnier Moreno, 2024; Bries Silva, 2025a, 2025b). Evolving debates and practices in Colombia on multispecies reparations in/of territory, centring the victims of the armed conflict, are particularly important for future thinking about pluriversal forms of justice. These legal innovations attempt to challenge the epistemological racism and formalism that have historically constituted dominant forms of legal knowledge in Latin America. Transitional justice mechanisms like the JEP differ from courts, and we do not know what broader impact such practices and formulations will have on sociolegal struggles in other contexts. Future research can track how these innovations are mobilised, by whom, and to what effect.

Cuerpo-territorio

Indigenous, Afro-descendant and mestizo communitarian feminisms in Latin America have produced powerful conceptualisations of gendered forms of harm and repair, most often signalled in the term cuerpo-territorio. This refers to the ontological indivisibility of certain human and non-human bodies and territories and insists on the historical continuities of their racialization and exploitation. Through this lens, extractivist political economies are understood as a form of heteropatriarchal, colonial, racialised violence against humans and non-humans (Ojeda, 2021). Such interpretations of extractivism have been mobilised in processes of sociolegal mobilisation for territorial defence but also in cases of sexual violence perpetrated against Indigenous and Afro-descendant women during internal armed conflicts, for example, in Guatemala, where special expert witness reports in the case of Sepur Zarco revealed the connections between land dispossession and sexual violence against Maya Q'eqchi' women (Velásquez Nimatuj, 2019). Cuerpo-territorio underlines the centrality of a gendered, intersectional analysis of territorial disputes. It also points to the politically generative possibilities of reparations that place bodies-territories within economies centred on care and healing.

Courts and the authoritarian turn

Indigenous and Afro-descendant sociolegal mobilisation for territorial justice in Latin America is occurring amid a broader backlash in many countries. Recent analysis of judicial politics points to the politicisation of the judiciary and court capture, the corollary of authoritarian backsliding and overzealous use of the courts in anticorruption cases (Botero, Brinks & Gonzalez Ocantos, 2022; Brinks & Pérez, 2025) and progressive judicial rulings crossing "red lines" that

threaten historical class privileges (Braconnier De León, 2021). There is a pressing need for ongoing analysis of changing judicial and political opportunity structures and the impacts of litigating territorial claims by Indigenous and Afro-descendant communities. To the extent that authoritarian regimes coopt the courts, blatantly question the legality of court judgements upholding Indigenous and Afro-descendant peoples' collective rights, and litigate to favour extractivism, the authoritarian turn reduces the prospects for judicial recourse. However, more authoritarian governments do not necessarily mean more authoritarian or anti-rights courts; indeed, the role of the courts in restraining authoritarianism remains an urgent area of enquiry.

Criminalisation of protest and extrajudicial violence

The increasing economic demand for lands, territories and resources is driving different forms of violence and persecution, both legal and extrajudicial. A growing body of research has focused on "lawfare", generally understood as the abusive use of the legal system by powerful elites against their opponents (Brinks & Pérez, 2025; Gloppen, 2018). In disputes over territory and megaprojects, private and state interests have pursued the criminalisation of community and social movement leaders, levelling charges of kidnapping, terrorism and criminal damage designed to intimidate and demobilise. Pre-trial detention can stretch to years. In addition to community activists and human rights defenders, lawfare increasingly targets journalists, NGOs and academics. Of particular concern is the growing global phenomenon of SLAPPs – Strategic Lawsuits Against Public Participation – in which powerful actors bring defamation or economic loss charges intended to harass, intimidate, and financially or psychologically exhaust opponents. The Greenpeace/Standing Rock case is perhaps the best-known internationally. However, examples of this type of litigation against journalists and researchers in Latin America have been documented, with Mexico and Brazil experiencing high numbers of cases (Zuluaga Jaramillo & Noel Leoni, 2022). In terms of extrajudicial violence, Latin America remains one of the most lethal areas in the world for territorial defenders, especially Indigenous, Afro-descendant and peasant communities. The highest numbers of killings have been recorded in Colombia and Mexico, but reflect a common practice across many countries in the region (Menton & Le Billon, 2021; Global Witness, 2022). Future research should analyse the specificities of lawfare in territorial disputes across Latin America and the ways this affects social and political mobilisation. It will be important not only to track trends in anti-rights litigation but also to examine how regressive use of the legal system interacts with broader patterns of extrajudicial violence.

Conclusions

Many scholars working on sociolegal mobilisation of Indigenous, Afro-descendant and other marginalised communities are aligned in one way or another with their struggles for territorial and environmental justice. Rigorous research on judicial politics has undoubtedly fed into mobilisation strategies. At the same time, extended collaborations with those communities have also challenged the assumptions of liberal human rights legalism, enabling more profound and generative reflections on different temporalities and registers of justice. These reflections, driven primarily by Indigenous and Afro-descendant justice claims, have fed into judicial thinking and practice and have also provoked backlash. In this brief essay, I have summarised the findings of existing sociolegal research on the judicialization of Indigenous and Afro-descendant territorial rights. I have suggested that deeper conversations and collaborations among scholars working on Indigenous and Afro-descendant rights, socioenvironmental conflicts, climate justice, and judicial politics can enrich our understanding of the processes and effects of sociolegal mobilisation and help build anti-colonial, pluriversal futures beyond capitalist extractivism. Extending our comparative lens beyond Latin America in conversation with activists and scholars in other regions can only enrich these endeavours.

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Acknowledgements: The ideas developed in this essay form part of collective discussions within the Research Council of Norway-funded project "PluriLand: Theorizing Conflict and Contestation in Plural Land Rights Regimes" (project no. 300851). For a more extended discussion, see Alfonso, Braconnier De León & Sieder, 2025. I am particularly indebted to the PluriLand research team and to the Asociación de Abogados y Notarios Mayas de Guatemala for the opportunity to think together. Special thanks to Tatiana Alfonso for her thoughtful comments on an earlier draft of this essay and to the two anonymous reviewers at ERLACS.

Notes

1 The judicialization of Indigenous peoples' collective rights claims has been studied within the broader literatures on the politics of social movements, and the judicialization of social and economic rights claims (Couso et al., 2010; Gauri & Brinks, 2008; Wilson & Gianella, 2019).
2 Only ILO 169 is binding on states party to the convention.

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