

Territory and environmental rights

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Implementation of recommendations from the previous period

In 2018, Norway recommended preventing and investigating all attacks on human rights defenders and community leaders, including trade unionists, Indigenous leaders, and environmental defenders, as well as urging that the responsible parties be brought to justice. According to Indepaz, 712 environmental defenders were killed between the signing of the Final Peace Agreement (FPA) and 2022. (1) Of these, 364 are Indigenous, 93 are Afro- descendants, 122 are peasants, 25 are environmental activists, and 108 are members of Community Action Councils. (2)

Current status

Socio-environmental conflicts. In Colombia there are more than 160 environmental conflicts involving mining, energy, agro-industrial, and infrastructure megaprojects (Indepaz, 2022). (3) Affected communities face abuses of power in the form of regulations, discourse, physical force, denial of participation, state abandonment, and corporate capture. (4) Environmental authorities ignore the principles of environmental protection, precaution, and participation and grant exploration and exploitation licenses. These generate serious violations of human, environmental, and natural rights, such as privatization and impacts to water sources, fauna and flora; violations of the rights to consultation and free, prior, and informed consent; displacement, deterritorialization, and dispossession; gender-based violence; loss of local economies and social and cultural identities; and acts of aggression against environmental leaders. The presence of illegal armed groups and the militarization of territories aggravates the country's environmental challenges.

Access to drinking water.

According to the Ministry of Housing (2023), 12 million people in rural areas have inadequate drinking water services and 3.2 million do not have access to potable water. There are serious risks in relation to water resources and land grabbing in fertile areas related to coal and oil extractive projects, fracking pilots, (5) and industrial projects such as the production of ultra-processed foods and growing agro-industrial crops. (6)

(1) Final Peace Agreement, November 2016.

(2) Indepaz (2022). Informe-Conflictos-Socioambientales-en-Colombia-final.pdf (indepaz.org.co), p.7

(3) Ibidem

(4) See the report: InformeAndino-LibroBOL.pdf (cedib.org)

(5) PCDHDD. Informe sobre derecho al agua en Colombia. Fracking y explotación de carbón.

(6) The expansion of agribusiness has required a large water investment. According to the latest National Water Study (2019), agricultural activities use 43.07 % of the national water supply. Pasture for livestock (17.60 %), oil palm (10.36 %), and sugar cane (6.61 %) represent over a third (34.57 %) of the almost 16.1 billion cubic meters of water consumed per year in Colombia.

Fracking. Hydraulic fracturing consists of “injecting a fluid consisting of water (91%), sand (6%), and chemical additives (3%), at a high pressure into rock to extract the fossil fuels contained in the source rock” (7) Environmental risks include the high water consumption, polluting aquifers, emission of polluting gases, increased seismicity, and generation of toxic waste. (8) During the last national administration, Pilot Projects for Comprehensive Research (PPI) on Non-Conventional Oilfields were approved, which involved hydraulic fracturing or fracking. The pilots were rejected by local communities and have been suspended by the Environmental Authority. A bill is currently before Congress to prohibit fracking through the application of the precautionary principle.

Threats of Investment Arbitration using the Investor-State Dispute

Settlement mechanism. This mechanism, which is included in Free Trade Agreements and Bilateral Investment Treaties, allows foreign investors to unilaterally sue States when they adopt normative and regulatory changes, public policies, or judicial decisions that favor collective and environmental rights. According to the National Agency for the State Legal Defense, 12 of these lawsuits had been registered and 7 more were in the preliminary stage as of the end of the first semester of 2022, with the estimated total damages requested in these lawsuits reaching 9.8 trillion pesos. These lawsuits weaken government policies and community efforts to defend healthy environments, territories, and water. (9)

Climate crisis. A climate crisis management component has not been included in the evaluation, control, and environmental monitoring of extractive projects in Colombia. This is an obligation established in national and international regulations to comply with global environmental commitments. While Law 2099 of 2021 mentions alternative mechanisms for energy use, these continue to reproduce environmental exploitation and greenhouse gas emissions and do not constitute a true clean energy transition. (10) In 2021, the catalog of environmental crimes was expanded, creating types of crimes that contribute to the criminalization of marginalized populations in agricultural frontier zones. (11)

(7) Ministry of Environment. Bill against fracking, approved by Senate in a full session, April 18, 2023. In: Proyecto de ley contra el fracking, aprobado en plenaria de Senado - Ministerio de Ambiente y Desarrollo Sostenible (minambiente.gov.co).

(8) WWF, August 13, 2022. Esto es lo que debes saber sobre el fracking y sus riesgos | WWF; AIDA Frenando la expansión del fracking en América Latina | Interamerican Association for Environmental Defense (AIDA) (aida-americas.org)

(9) Declaración Internacional Colombia. Recuperemos la soberanía de Colombia en defensa del agua, la vida y los territorios. Available at: <https://sites.google.com/view/globalstatementcolombia/esp%C3%B1ol?authuser=0&pli=1>

(10) El Espectador. Maria Camila Bonilla. Las razones de la demanda de inconstitucionalidad a la Ley de Transición Energética, 29 January 2023. Available at: Las razones de la demanda de inconstitucionalidad a la Ley de Transición Energética | EL ESPECTADOR.

(11) Law 2111 of 2021 replaced Title XII of the Penal Code and created a new list of criminal offenses that seek to protect the environment as a legally established asset. While several crimes have been carried over from the previous legislation, new ones have also been created such as Ecocide, Deforestation, and the Illegal use of government-owned land.

Recommendations

1. Implement the Escazú Agreement for the protection of environmental defenders and guarantee broad citizen participation in environmental issues.
2. Advance in the prohibition of fracking and other environmentally aggressive techniques that put sensitive ecosystems at risk.
3. Take progressive action to overcome fossil fuel dependency and formulate exit plan policies that include environmental commitments, community participation, and human rights standards.
4. Modify regulations that aggravate or ignore the climate emergency.
5. Review Bilateral Investment Treaties, Free Trade Agreements, and all international provisions that limit the right to take actions that contribute to environmental protection.