



FROM ENVIRONMENTAL RIGHTS TO ANTI-CRIMINALISATION DUTIES: RECONSTRUCTING STATE OBLIGATIONS TOWARDS INDIGENOUS HUMAN RIGHTS DEFENDERS

Received: June 19, 2026; Accepted: July 20, 2026; OnlineP ublished: Agust 10, 2026

Yasser Arafat¹

¹ *Faculty of Law, Universitas Borneo Tarakan, cutyasser@gmail.com*

Abstract: The recognition of the right to a clean, healthy, and sustainable environment has strengthened the status of the environment within the human rights regime, yet it has not fully addressed the criminalisation of communities that defend ecosystems. This article aims to reconstruct state responsibility towards Indigenous human rights defenders through the concept of anti-criminalization duties. The study employs a qualitative design based on secondary data and a doctrinal-conceptual legal research approach integrating international human rights law, environmental law, the rights of Indigenous Peoples, environmental justice, and critical legal analysis. The article finds that criminalisation operates across a spectrum of repression encompassing criminal prosecution, SLAPP, judicial harassment, administrative repression, securitization, symbolic delegitimation, and restrictions on participatory space. Its underlying mechanisms include the unequal distribution of ecological benefits and burdens, failures to recognise Indigenous territories, the weakening of FPIC, the juridification of ecological conflicts, and inadequate due diligence and corporate accountability. The originality of this article lies in shifting the analysis from the recognition of environmental rights towards state obligations to prevent the misuse of law against Indigenous human rights defenders. Its contribution is to formulate anti-criminalization duties as an evaluative framework for assessing whether states have respected, protected, and fulfilled rights in conflicts involving the environment, conservation, extraction, infrastructure, and energy transition.

Keywords: Corporate Accountability; Environmental Democracy; FPIC; Safe Civic Space; SLAPP

I. INTRODUCTION

The recognition of the right to a clean, healthy, and sustainable environment marks a fundamental shift in environmental law from an abstract paradigm of ecological

protection towards a rights-based regime that places human dignity and state accountability at the centre of analysis. Global recognition through the 2022 United Nations General Assembly Resolution and developments within the Inter-American system, particularly Advisory Opinion OC-23/17, have reinforced the understanding that the environment is not merely an object of public policy, but both a prerequisite for and an autonomous right underpinning the enjoyment of other human rights.¹ Within environmental human rights theory, this right encompasses a substantive dimension concerning adequate environmental quality and procedural dimensions involving access to information, public participation, and effective legal remedies.² Accordingly, state obligations cannot be construed narrowly as merely requiring the prevention of pollution or environmental degradation. They must also encompass duties to respect, protect, and fulfil the socio-legal conditions necessary for the effective exercise of environmental rights. This framework provides an essential basis for assessing whether the recognition of environmental rights has been translated into active protection for those defending ecosystems on the front lines of environmental conflicts.

From an environmental justice perspective, the right to a healthy environment concerns not only ecological quality but also the distribution of risks, access to environmental benefits, and the position of vulnerable groups in decision-making processes. Environmental degradation frequently reveals patterns of structural inequality, as ecological burdens, the loss of living spaces, and exposure to violence are disproportionately borne by politically and economically marginalised communities, while the benefits of extractive activities accrue to states,

¹ Nathan J. Bennett et al, 2024. *The Human Right to a Clean, Healthy and Sustainable Ocean*. NPJ Ocean Sustainability 3, no. 1, p. 1 – 8, <https://doi.org/10.1038/s44183-024-00057-7>; Mónica Feria-Tinta & Simon C. Milnes, 2019. *International Environmental Law for the 21st Century: The Constitutionalization of the Right to a Healthy Environment in the Inter-American Court of Human Rights Advisory Opinion No. 23*. ACDI - Anuario Colombiano de Derecho Internacional 12, p. 43 – 84, <https://doi.org/10.12804/revistas.urosario.edu.co/acdi/a.7568>; Przemysław Siwior, 2021. *The Inter-American Court of Human Rights Advisory Opinion OC-23/17 on the Relationship Between Human Rights and the Environment*. Review of European and Comparative Law 46, no. 3, p. 177 – 188, <https://doi.org/10.31743/recl.11915>.

² John H. Knox, 2019. *The Global Pact for the Environment: At the Crossroads of Human Rights and the Environment*. Review of European, Comparative & International Environmental Law 28, no. 1, p. 40 – 47, <https://doi.org/10.1111/reel.12287>; Dinah Shelton, 2010. *Developing Substantive Environmental Rights*. Journal of Human Rights and the Environment 1, no. 1, p. 89 – 120. <https://doi.org/10.4337/jhre.2010.01.05>.

corporations, and other dominant actors.³ Environmental justice theory therefore requires environmental protection to be understood through three interrelated dimensions: distribution, procedure, and recognition of the identities and experiences of affected groups.⁴ In this context, state obligations must extend beyond formal regulation to guarantee participation that is safe, inclusive, and free from intimidation. Without such guarantees, the right to a healthy environment risks becoming a normatively powerful declaratory claim that remains ineffective in protecting those who actively defend the environment.

The relationship between the environment, collective rights, and state accountability becomes even more apparent when examined from the standpoint of Indigenous Peoples. Indigenous Peoples cannot be understood merely as individual rights holders, but must be recognised as collective subjects whose identities, ecological knowledge, systems of governance, and continuity of life are constitutively connected to the lands, forests, waters, and biodiversity they manage.⁵ The theory of recognitional justice emphasises that rights to territory, self-determination, and free, prior and informed consent (FPIC) are necessary to ensure that Indigenous Peoples are not reduced to passive recipients of the impacts of development, but are recognised as rights holders and partners in environmental governance.⁶ Numerous studies further indicate that environmental governance incorporating Indigenous ecological knowledge, communal territorial control, and meaningful participation tends to be more compatible with ecosystem protection

³ Andrea Schapper, 2018. *Climate Justice and Human Rights*. International Relations 32, no. 3, p. 275 – 295, <https://doi.org/10.1177/0047117818782595>; Tracy Smith-Carrier & Kathleen Manion, 2022. *Bringing It All Together: Leveraging Social Movements and the Courts to Advance Substantive Human Rights and Climate Justice*. Human Rights Review 23, no. 4, p. 551 – 574, <https://doi.org/10.1007/s12142-022-00674-0>.

⁴ Fatimazahra Dehbi & Olga Martin-Ortega, 2023. *An Integrated Approach to Corporate Due Diligence from a Human Rights, Environmental, and TWAIL Perspective*. Regulation & Governance 17, no. 4, p. 927 – 943, <https://doi.org/10.1111/rego.12538>; Dinah Shelton, 2010. *Ibid*.

⁵ Vikalp Raj & Shamsheer Alam, 2023. *(Re)Affirming Sovereignty, Self-Determination, and Democratic Rights: An Analysis of Evolving Jurisprudence Concerning Indigenous Peoples Under International Law*. Multidisciplinary Reviews 6, no. 4, p. 1 – 15, <https://doi.org/10.31893/multirev.2023045>; Rodolfo Stavenhagen & María Capetillo Lozano, 2009. *Los derechos humanos de los pueblos indígenas en Filipinas*. Estudios de Asia y África 44, no. 3, p. 609 – 648. <https://doi.org/10.24201/ea.v44i3.1954>.

⁶ Elisa Morgera, 2016. *Under the Radar: The Role of Fair and Equitable Benefit-sharing in Protecting and Realizing Human Rights Connected to Natural Resources*. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.2887803>; Esteban Valenzuela & Natacha Romero, 2016. *Fuentes para una Constitución con Poder Indígena*. Ariadna Ediciones, https://doi.org/10.26530/OAPEN_619614.

than top-down models of conservation or development.⁷ The criminalisation of Indigenous human rights defenders therefore not only infringes civil liberties but also undermines the socio-political conditions required for ecological sustainability and the effective enjoyment of collective rights.

Previous scholarship on the right to a healthy environment has made an important contribution by affirming the normative status of environmental rights within the human rights regime. This literature has traced the evolution of environmental protection from a matter of public interest towards a more substantive right, including the emergence of ecocentric approaches, rights of nature, and connections between environmental rights and the principles of precaution, non-discrimination, and intergenerational justice.⁸ Its principal limitation, however, lies in its tendency to stop at strengthening normative recognition and articulating state obligations in general terms, without sufficiently explaining how environmental rights should protect defenders who give practical effect to those rights in concrete conflicts. Although some studies address enforcement, justiciability, and accountability, they have not systematically connected environmental rights with state obligations to prevent the misuse of law against Indigenous Peoples and environmental human rights defenders.⁹ The state of the art in environmental rights scholarship therefore still requires analytical development capable of bridging the recognition of rights with the protection of actors who defend their territories and ecosystems.

⁷ Barretto Filho et al, 2021. Chapter 31: Strengthening land and natural resource governance and management: Protected areas, Indigenous lands, and local communities' territories. In C. Nobre, et al, 2021. *Amazon Assessment Report 2021* (1st ed.). UN Sustainable Development Solutions Network (SDSN). <https://doi.org/10.55161/NOBA9165>; Ben Orlove et al, 2023. *Placing Diverse Knowledge Systems at the Core of Transformative Climate Research*. *Ambio* 52, no. 9, p. 1431 – 1447, <https://doi.org/10.1007/s13280-023-01857-w>.

⁸ Susana Borràs, 2016. *New Transitions from Human Rights to the Environment to the Rights of Nature*. *Transnational Environmental Law* 5, no. 1, p. 113 – 143, <https://doi.org/10.1017/S204710251500028X>; John H. Knox, 2019. *Ibid*; Elisa Morgera, 2024. *International Environmental Law: A Case for Transformative Change through the Lens of Children's Human Rights*. *Environmental Policy and Law* 53, no. 5 – 6, p. 307 – 319, <https://doi.org/10.3233/EPL-239015>.

⁹ Jérémie Gilbert, 2023. *Creating Synergies between International Law and Rights of Nature*. *Transnational Environmental Law* 12, no. 3, p. 671 – 692, <https://doi.org/10.1017/S2047102523000195>; Sava Jankovic, 2021. *Conceptual Problems of the Right to Breathe Clean Air*. *German Law Journal* 22, no. 2, p. 168 – 183. <https://doi.org/10.1017/glj.2021.1>; Armando Rocha & Rômulo Sampaio, 2023. *Climate Change Before the European and Inter-American Courts of Human Rights: Comparing Possible Avenues Before Human Rights Bodies*. *Review of European, Comparative & International Environmental Law* 32, no. 2, p. 279 – 289, <https://doi.org/10.1111/reel.12502>.

Meanwhile, the literature on environmental human rights defenders has broadened its focus beyond physical violence and killings to examine the contraction of civic space, lawfare, judicial harassment, strategic lawsuits against public participation (SLAPPs), coercive licensing, and anti-development stigma. These studies are important because they demonstrate that repression against environmental defenders does not always take the form of direct violence, but often operates through legal and administrative instruments that appear formally lawful while substantively suppressing public participation.¹⁰ Analyses of SLAPPs and the criminalisation of protest further show that law may be deployed as a technology of power to shift environmental conflicts from spaces of democratic deliberation into costly, technical, and exhausting litigation for affected communities.¹¹ Nevertheless, this literature still tends to treat criminalisation primarily as a problem of civic space or human rights defender protection, rather than as a structural failure of the state to fulfil the right to a healthy environment and the rights of Indigenous Peoples in an integrated manner. Consequently, the relationship between environmental rights, the recognition of Indigenous Peoples, the protection of human rights defenders, and state obligations has yet to be fully articulated within a single operational normative framework.

These developments reveal a research gap arising from the insufficient integration of four fields that have largely evolved in parallel: the right to a healthy environment, the rights of Indigenous Peoples, the protection of human rights defenders, and state obligations. This gap is significant because the criminalisation of Indigenous human rights defenders cannot be explained solely as a deviation in law enforcement or a violation of civil liberties. Rather, it constitutes a point of intersection between environmental degradation, inequalities of recognition, resource conflicts, and the

¹⁰ A. Djampou, 2023. *Environmental Rule of Law and Human Rights in Asia Pacific: Supporting the Protection of Environmental Human Rights Defenders—Working Paper*. <https://doi.org/10.59117/20.500.11822/42048>, Cristina Elena Popa Tache & Catalin-Silviu Sararu, 2023. *El lawfare, entre sus (no)límites y la transdisciplinariedad*. Precedente Revista Jurídica 23, p. 37 – 66, <https://doi.org/10.18046/prec.v23.5889>; Paul Wragg, 2025. *Slapps in England and Wales: the Issues and the Evidence*. <https://doi.org/10.2139/ssrn.5059068>.

¹¹ Justin Borg-Barthet & Francesca Farrington, 2024. *The EU's Anti-Slapp Directive: A Partial Victory for Rule of Law Advocacy in Europe*. German Law Journal 25, no. 6, p. 840 – 855, <https://doi.org/10.1017/glj.2024.51>; Hartiwiningsih et al, 2023. *Dysfunctional Factors of Environmental Law on Strategic Lawsuit Against Public Participation and Developing Remedial Strategies Through Reconstruction Criminal Law System Model in Indonesia*. Padjadjaran Jurnal Ilmu Hukum (Journal of Law) 10, no. 3, p. 411 – 430, <https://doi.org/10.22304/pjih.v10n3.a6>; Angela Lindt, 2023. *The Dark Side of Judicialization: Criminalizing Mining Protests in Peru*. Latin American Research Review 58, no. 2, p. 368 – 382, <https://doi.org/10.1017/lar.2023.4>.

state's failure to guarantee safe spaces for participation. Accordingly, this article advances three interrelated analytical questions: how the criminalisation of Indigenous human rights defenders can be identified and characterised; how the mechanisms connecting environmental degradation, the rights of Indigenous Peoples, and criminalisation operate; and how state obligations can be reconstructed as anti-criminalization duties. This formulation positions criminalisation not as a peripheral issue in environmental law, but as an indicator of whether the right to a healthy environment is substantively protected.

This article offers conceptual novelty by reconstructing anti-criminalization duties as a framework of state obligations connecting the right to a healthy environment, the rights of Indigenous Peoples, the protection of human rights defenders, corporate accountability, and environmental democracy. The framework does not claim to establish a separate new legal regime. Rather, it synthesises state obligations to respect, protect, and fulfil human rights into a more operational analytical instrument for the context of environmental conflicts. Under this approach, the protection of Indigenous human rights defenders is positioned as a prerequisite for the exercise of environmental rights, rather than merely an ancillary consequence of policies designed to protect activists. The significance of the article lies in its shift from environmental rights recognition towards defender-centered environmental governance: a model of environmental governance that assesses state accountability according to the state's capacity to prevent the criminalisation of communities defending their territories, ecosystems, and continuity of life.

II. RESEARCH METHODS

This study employs a qualitative design based on secondary data and a doctrinal-conceptual legal research approach to develop a conceptual-normative argument concerning the transformation of state obligations from recognising the right to a healthy environment towards an active duty to prevent the criminalisation of Indigenous human rights defenders. This approach integrates international human rights law, environmental law, the law concerning Indigenous Peoples, environmental justice, and critical legal analysis to assess the coherence, limitations, and potential doctrinal reconstruction of environmental protection norms in addressing the misuse of law, administrative repression, SLAPPs, and restrictions

on civic space.¹² The secondary data comprise primary legal materials, policy documents, institutional reports, documents issued by credible civil society organisations, articles published in reputable journals, and canonical academic books, including international legal instruments, human rights declarations, regional environmental agreements, and documents produced by the United Nations, OHCHR, ECLAC, Global Witness, UNEP, ILO, OECD, and the European Union. The data were collected through a systematic document review, searches of academic databases, the mapping of legal and policy documents, and source selection based on relevance to environmental rights, Indigenous Peoples, the criminalisation of human rights defenders, and state obligations, and were subsequently classified into norms, policies, evidence of criminalisation practices, and conceptual literature.¹³ The analysis employed qualitative content analysis, normative interpretation, thematic coding, conceptual mapping, analysis of norm–practice relationships, and conceptual synthesis to construct anti-criminalization duties as an analytical framework.¹⁴ Validity and credibility were ensured through source triangulation, prioritisation of primary legal materials, comparison between legal norms and secondary empirical evidence, analytical consistency, and transparency throughout the stages of the research process.¹⁵

¹² John W. Creswell & J. David Creswell, 2023. *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches (Sixth Edition, International Student Edition)*. New York: Sage Publications; Achmad Irwan Hamzani et al, 2024. *Implementation Approach in Legal Research*. International Journal of Advances in Applied Sciences 13, no. 2, p. 380, <https://doi.org/10.11591/ijaas.v13.i2.pp380-388>; Maryam Salehijam, 2018. *The Value of Systematic Content Analysis in Legal Research* 23, no. 1 – 2, p. 34 – 42, <https://doi.org/10.5334/tilr.5>.

¹³ John W. Creswell & J. David Creswell, 2023. *Ibid.* Lyn Richards & Janice M. Morse, 2023. *Readme First for a User's Guide to Qualitative Methods*. New York: Sage Publications, Inc, <https://doi.org/10.4135/9781071909898>.

¹⁴ Virginia Braun & Victoria Clarke, 2022. *Thematic Analysis: A Practical Guide*. New York City: Sage Publications; Matthew B. Miles et al, 2020. *Qualitative Data Analysis: A Methods Sourcebook (Fourth edition)*. New York: Sage Publications.

¹⁵ Norman K. Denzin, 2017. *The Research Act: A Theoretical Introduction to Sociological Methods (1st ed.)*. New York: Routledge, <https://doi.org/10.4324/9781315134543>; Sarah J. Tracy, 2019. *Qualitative Research Methods: Collecting Evidence, Crafting Analysis, Communicating Impact (Second Edition)*. New Jersey: Wiley-Blackwell.

III. ANALYSIS AND DISCUSSION

a. Identifying and Characterizing the Criminalization of Indigenous Human Rights Defenders

The criminalisation of Indigenous human rights defenders should be understood as a transnational pattern that operates through the use of legal, administrative, and security instruments to suppress resistance to environmental degradation in Indigenous territories. This pattern extends beyond criminal prosecution in the narrow sense to encompass criminal charges, strategic lawsuits against public participation, restrictions on organisations, coercive licensing, and stigmatisation that frames environmental advocacy as a threat to public order or development. From the perspective of critical legal analysis, law does not invariably function as an instrument for protecting rights; it may instead become a technology of power when used to shift ecological conflicts from spaces of public deliberation into legal arenas that are costly, technical, and exhausting for affected communities.¹⁶ The criminalisation of Indigenous human rights defenders therefore constitutes a legal-political phenomenon that reveals the tension between the formal recognition of environmental rights and state or corporate practices that constrain those who defend ecosystems.

The distinctive character of this criminalisation cannot be separated from the position of Indigenous human rights defenders as collective subjects who protect their territories, ecological knowledge, cultural identities, and the continuity of their communities. Within the framework of the rights of Indigenous Peoples, land, forests, water, and natural resources are not merely economic assets, but the material and spiritual foundations of identity, governance, and intergenerational continuity.¹⁷ The theory of recognitional justice emphasises that the criminalisation of Indigenous human rights defenders constitutes not only an infringement of individual freedoms but also a denial of the status of Indigenous Peoples as holders of collective rights. Accordingly, any legal measure that weakens Indigenous

¹⁶ Marie-Christine Doran, 2017. *The Hidden Face of Violence in Latin America: Assessing the Criminalization of Protest in Comparative Perspective*. *Latin American Perspectives* 44, no. 5, p. 183 – 206, <https://doi.org/10.1177/0094582X17719258>; Angela Lindt, 2023. *Ibid*; Cristina Elena Popa Tache & Catalin-Silviu Sararu, 2023. *Ibid*.

¹⁷ Fernando Aurelio Guerrero Cárdenas, 2010. *Responsabilidad Del Estado Colombiano en El Marco Del Derecho Fundamental Al Territorio Ancestral Y El Acceso a La Justicia Interamericana*. *Iustitia* 0, no. 8, p. 425, <https://doi.org/10.15332/iust.v0i8.922>; Vikalp Raj & Shamsher Alam, 2023. *Ibid*; Rodolfo Stavenhagen & María Capetillo Lozano, 2009. *Ibid*.

advocacy for their territories simultaneously undermines the socio-political conditions necessary for the substantive enjoyment of the right to a healthy environment.

Patterns of criminalisation also reveal selectivity in the operation of law towards different actors in environmental conflicts. Indigenous human rights defenders are frequently treated as lawbreakers when they oppose extractive activities, plantations, mining, exclusionary conservation, infrastructure, or energy-transition projects that threaten their territories, whereas state and corporate actors contributing to ecological degradation often acquire legitimacy through the language of investment, development, and the public interest.¹⁸ This selectivity indicates that criminalisation is not an incidental deviation, but forms part of the power relations embedded in natural resource governance. From an environmental justice perspective, law becomes problematic when risks, access to participatory spaces, and evidentiary burdens are distributed disproportionately against the very communities that defend ecosystems.

The criminalisation of Indigenous human rights defenders may be classified into several overlapping patterns. The use of criminal charges and security narratives frames protest as a threat to public order; SLAPP and judicial harassment transform public participation into a litigation burden; restrictions on organisations and funding weaken communities' collective capacity; while licensing, formal consultation, and administrative procedures may be used to discipline Indigenous claims to land and natural resources. This categorisation is important because criminalisation operates through a combination of legal, administrative, economic, and symbolic mechanisms rather than through a single form of repression. When these forms are examined together, criminalisation can be understood as a process that constricts the space for ecological citizenship and impairs the capacity of

¹⁸ Philippe Le Billon & Päivi Lujala, 2020. *Environmental and Land Defenders: Global Patterns and Determinants of Repression*. *Global Environmental Change* 65, <https://doi.org/10.1016/j.gloenvcha.2020.102163>; Arnim Scheidel et al, 2020. *Environmental Conflicts and Defenders: A Global Overview*. *Global Environmental Change* 63, <https://doi.org/10.1016/j.gloenvcha.2020.102104>; Arnim Scheidel et al, 2023. *Global Impacts of Extractive and Industrial Development Projects on Indigenous Peoples' Lifeways, Lands, and Rights*. *Science Advances* 9, no. 23, <https://doi.org/10.1126/sciadv.ade9557>.

Indigenous Peoples to defend their territories and exercise their participatory rights.¹⁹

Table 1: Patterns of Criminalisation of Indigenous Human Rights Defenders in Environmental Conflicts

Pattern of criminalisation	Principal instruments	Operational mechanism	Conceptual implications
Criminal prosecution	Criminal charges; public-order, security, defamation, or anti-terrorism provisions	Recasts advocacy and protest as conduct perceived to violate the law	Transforms human rights defenders from rights holders into objects of law enforcement
SLAPP and judicial harassment	Civil claims, defamation proceedings, and strategic litigation	Increases the costs, risks, and psychological pressures borne by environmental-defending communities	Shifts ecological conflicts from democratic spaces into unequal litigation arenas
Administrative repression	Permits, licences, organisational registration, and funding restrictions	Restricts organisations' and communities' access to resources, policy forums, and advocacy mechanisms	Turns public administration into an instrument for disciplining collective rights
Securitization	Police, military forces, security personnel, states of emergency, and threat narratives	Portrays human rights defenders as security threats or obstacles to development	Normalises the use of state force against environmental advocacy
Symbolic delegitimation	Anti-development stigma, media framing,	Weakens the moral and political legitimacy of	Obscures the role of human rights defenders as

¹⁹ A. Djampou, 2023. *Environmental Rule of Law: Tracking Progress and Charting Future Directions*. <https://doi.org/10.59117/20.500.11822/43943>; Diego Tuesta & Maritza Paredes, 2024. *Penal Extractivism: A Qualitative Study on Punishment and Extractive Industries in Peru*. *Punishment Society* 27, no. 1, p. 147 – 171, <https://doi.org/10.1177/14624745241258894>.

and legal and political narratives	Indigenous Peoples in resource conflicts	ecosystem guardians and holders of collective rights
---------------------------------------	---	---

This categorisation demonstrates that criminalisation occurs not only through judicial decisions or formal criminal proceedings, but also through regulatory structures that determine the boundaries of participation regarded as legitimate. In many environmental conflicts, administrative instruments and security narratives may operate before criminal prosecution because they constrain community mobilisation before disputes enter formal legal proceedings. Criminalisation should therefore be understood as a spectrum extending from symbolic delegitimation and administrative obstruction to strategic litigation, security intimidation, and direct criminal prosecution. This spectral interpretation reinforces the argument that state obligations cannot be confined to post-violence protection, but must encompass the prevention of the entire range of practices that constrict the participatory space available to Indigenous Peoples.²⁰

The gender dimension further intensifies the character of criminalisation because Indigenous women human rights defenders face risks that are not identical to those experienced by their male counterparts. Violence against women environmental defenders takes the form not only of legal criminalisation, but also of gender-based attacks, moral stigmatisation, threats against family members, and violence directed at their social positions within their communities. An environmental justice perspective helps explain how these vulnerabilities arise at the intersection of ecological inequality, patriarchy, state violence, and extractive interests that subject

²⁰ Hannah Smidt et al, 2020. *Silencing Their Critics: How Government Restrictions Against Civil Society Affect International 'Naming and Shaming'*. British Journal of Political Science 51, no. 3, p. 1270 – 1291, <https://doi.org/10.1017/s0007123419000693>; Brieanna Marie Watters et al, 2024. *Retribution for Tribal Sovereignty: Settler Colonial Policing and Civil Justice Impacts*. Punishment & Society 26, no. 4, p. 693 – 710, <https://doi.org/10.1177/14624745241232242>; Teresa Weber, 2022. *Are Climate Activists Protected by the Aarhus Convention? A Note on Article 3(8) Aarhus and the New Rapid Response Mechanism for Environmental Defenders*. Review of European, Comparative & International Environmental Law 32, no. 1, p. 67 – 76, <https://doi.org/10.1111/reel.12465>.

women's bodies and social roles to control.²¹ Any characterisation of criminalisation that neglects its gendered dimension will therefore fail to capture the complexity of the violence experienced by Indigenous human rights defenders in environmental conflicts.

Beyond its gendered dimension, criminalisation also operates through political delegitimation that portrays Indigenous Peoples as obstacles to development or threats to stability. This framing is analytically significant because it transforms rights-based claims into matters of public order, thereby reducing demands concerning FPIC, Indigenous territories, and ecological protection to forms of resistance portrayed as irrational or opposed to progress. Within the framework of recognitional justice, such delegitimation constitutes a form of misrecognition because it denies the experiences, knowledge, and authority of Indigenous Peoples as legitimate foundations for environmental governance.²² Consequently, criminalisation not only penalises acts of defence but also undermines the epistemic legitimacy of Indigenous Peoples as guardians of ecosystems.

The structural character of criminalisation becomes clearer when situated within the relationship between resource conflicts and development governance. Extraction, plantations, mining, exclusionary conservation, infrastructure, and energy-transition projects are frequently presented as serving the public interest, yet in practice they may result in the dispossession of Indigenous territories, ecological degradation, and restrictions on community participation. When Indigenous Peoples oppose or criticise these agendas, law is often used to discipline resistance rather than to examine substantively whether the projects satisfy

²¹ Miriam Zimmerman et al., 2025. *Defending the Land: Filipina Amidst Authoritarian Rule in the Philippines*. Development and Change 56, no. 1, p. 137 – 171, <https://doi.org/10.1111/dech.12872>; Dalena Tran, 2023. *Gendered Violence Martyring Filipina Environmental Defenders*. The Extractive Industries and Society 13, <https://doi.org/10.1016/j.exis.2023.101211>; Dalena tran et al, 2020. *Gendered Geographies of Violence: A Multiple Case Study Analysis of Murdered Women Environmental Defenders*. Journal of Political Ecology 27, no. 1, <https://doi.org/10.2458/v27i1.23760>.

²² Philippe Hanna et al, 2016. *Indigenous Rights, Performativity and Protest*. Land Use Policy 50, p. 490 – 506, <https://doi.org/10.1016/j.landusepol.2015.06.034>; Jozie Nummi et al, 2019. *#BlackLivesMatter: Innovative Black Resistance*. Sociological Forum 34, no. S1, p. 1042 – 1064, <https://doi.org/10.1111/socf.12540>; Esteban Valenzuela & Natacha Romero, 2016. *Ibid*.

standards of human rights, environmental justice, and ecological protection.²³ At this point, criminalisation functions as a stabilising mechanism for development models that remain insufficiently accountable to the rights of Indigenous Peoples and the sustainability of ecosystems.

The conceptual implication of this characterisation is that the criminalisation of Indigenous human rights defenders should be treated as an indicator of the state's failure to translate the right to a healthy environment into active protection for those who defend ecosystems. When environmental rights are understood solely as rights to enjoy a particular level of environmental quality, repression against human rights defenders can readily be treated as a separate issue within criminal law, security law, or civil liberties. By contrast, when environmental rights are understood as a regime encompassing both substantive and procedural dimensions, the criminalisation of Indigenous Peoples reveals a rupture between the recognition of rights, meaningful participation, and the protection of environmental guardians.²⁴ This analysis therefore confirms that criminalisation is not an ancillary issue in environmental law, but a crucial measure of whether the state genuinely respects, protects, and fulfils environmental rights and the rights of Indigenous Peoples in substantive terms.

In synthesis, Indigenous human rights defenders are criminalised not because they stand outside the law, but because their claims challenge the ways in which law, development, and resource governance are constructed by dominant actors. Criminalisation operates across a spectrum encompassing criminal prosecution, strategic litigation, administrative repression, securitization, symbolic delegitimation, and gender-based violence, and therefore cannot adequately be analysed merely as an individual violation of freedom of expression or assembly.

²³ Jaime Cubides Cárdenas et al, 2019. *Conflictos Normativos, Jurídicos Y Sociales Del Ciclo Extractivo en Clave Del Sistema Internacional, Regional Y Nacional De Colombia*. Revista De La Facultad De Derecho Y Ciencias Políticas 49, no. 130, p. 147 – 174, <https://doi.org/10.18566/rfdcp.v49n130.a7>; Julia Dehm, 2016. *Indigenoues Peoples and REDD+ Safeguards: Rights as Resistance or as Disciplinary Inclusion in the Green Economy?*. Journal of Human Rights and the Environment 7, no. 2, p. 170 – 217, <https://doi.org/10.4337/jhre.2016.02.01>; Ricardo Pereira, 2021. *Public Participation, Indigenous Peoples' Land Rights and Major Infrastructure Projects in the Amazon: The Case for a Human Rights Assessment Framework*. Review of European, Comparative & International Environmental Law 30, no. 2, p. 184 – 196, <https://doi.org/10.1111/reel.12400>.

²⁴ Mónica Feria-Tinta & Simon C. Milnes, 2019. *Ibid*; John H. Knox, 2019. *Ibid*; Dinah Shelton, 2010. *Ibid*.

From the perspectives of environmental justice and recognitional justice, these patterns demonstrate that environmental protection cannot be separated from the protection of Indigenous Peoples as collective subjects defending their territories, knowledge, and ecosystems. The resulting conceptual implication is the need to shift from an approach concerned solely with recognising environmental rights towards a framework of state obligations that explicitly prevents criminalisation as a prerequisite for defender-centered environmental governance.

b. Explaining the Mechanisms Linking Environmental Degradation, the Rights of Indigenous Peoples, and Criminalisation

Once the criminalisation of Indigenous human rights defenders is understood as a spectrum of legal, administrative, symbolic, and security-based repression, the next task is to explain the mechanisms through which environmental degradation is transformed into legal conflict against Indigenous Peoples. Environmental degradation does not operate as a neutral form of ecological damage; rather, it constitutes a point of convergence between unequal land control, unequal access to resource benefits, the distribution of ecological risks, and contestation over authority within Indigenous territories. In the Indonesian context, deforestation and plantation-driven land clearing demonstrate how state and corporate claims to land may intersect with ecological degradation and community claims to living space, such that conflicts concern not only environmental harm but also who possesses the authority to determine the future of the territory concerned.²⁵ Environmental degradation thus becomes an initial mechanism of criminalisation because it creates conditions in which the defence of ecosystems is positioned as an obstacle to development authority and dominant economic interests.

Within an environmental justice framework, criminalisation arises when the benefits of extraction are concentrated among the state, corporations, and powerful economic actors, while ecological burdens are borne by Indigenous Peoples and local communities. This distributive inequality transforms environmental conflicts into conflicts over power because affected communities face not only pollution, land dispossession, or the loss of livelihoods, but also legal instruments that restrict their

²⁵ Daniëlla Dam-de Jong, 2023. *Addressing Land Inequality, Rehabilitation and Competing Uses*. UK: Edward Elgar Publishing, p. 304 – 327, <https://doi.org/10.4337/9781789906929.00023>; Joice Soraya et al, 2023. *Should Trees Have Legal Standing?: Strengthening the Relationship Between Law and Ecology*. IOP Conference Series: Earth and Environmental Science 1489, <https://doi.org/10.1088/1755-1315/1489/1/012061>.

resistance. This pattern is evident in various extractive and infrastructure conflicts in which communities defending their territories experience intimidation, violence, and criminalisation because they challenge the inequitable distribution of benefits and burdens.²⁶ Criminalisation is therefore not merely a collateral consequence of environmental conflict, but a governance response that serves to preserve an unequal configuration of resource distribution.

The mechanisms linking environmental degradation, the rights of Indigenous Peoples, and criminalisation can be mapped through several interrelated analytical layers. The first concerns the distribution of ecological benefits and burdens; the second concerns the legal recognition of Indigenous Peoples; the third concerns the quality of participation and FPIC; the fourth concerns the use of litigation and legal instruments to suppress resistance; and the fifth concerns weak due diligence and corporate accountability. This mapping is important because criminalisation rarely results from a single cause, but instead emerges from an accumulation of governance failures that transform ecological conflict into restrictions on rights. The following table therefore summarises the principal mechanisms explaining the shift from environmental degradation to the criminalisation of Indigenous human rights defenders.

Table 2: Relational Mechanisms Linking Environmental Degradation, the Rights of Indigenous Peoples, and Criminalisation

Mechanism	Structural trigger	Operation within environmental conflicts	Analytical implication
Distributive inequality	The benefits of extraction are concentrated among the state and corporations, while ecological risks are	Protests against environmental degradation are portrayed as disruptions to	Criminalisation preserves an inequitable distribution of benefits and burdens

²⁶ Alida Cantor et al, 2023. *Energy Storage and Environmental Justice: A Critical Examination of a Proposed Pumped Hydropower Facility in Goldendale, Washington*. Antipode 57, no. 4, p. 1236 – 1258, <https://doi.org/10.1111/anti.12994>; Andrew Cheon et al, 2021. *Determinants of Environmental Conflict: When Do Communities Mobilize Against Fossil Fuel Production?*. Journal of Conflict Resolution 65, no. 7 – 8, p. 1308 – 1336, <https://doi.org/10.1177/0022002721999778>; Mario Pérez-Rincón et al, 2019. *Mapping and Analyzing Ecological Distribution Conflicts in Andean Countries*. Ecological Economics 157, p. 80 – 91, <https://doi.org/10.1016/j.ecolecon.2018.11.004>; Arnim Scheidel et al, 2023. *Ibid*.

	borne by Indigenous Peoples	development or investment	
Failure of recognition	Indigenous territories, customary law, and community governance are inadequately recognised	Indigenous claims are reduced to weak social or administrative claims	The defence of Indigenous territories can easily be framed as unlawful conduct
Tokenistic participation and weak FPIC	Consultation is conducted as a formal procedure without substantive consent	Community opposition to projects is treated as resistance to official policy	Procedural failure develops into legal conflict and criminalisation
Juridification of ecological conflict	Environmental disputes are transferred to costly and technical litigation arenas	SLAPP, judicial harassment, and strategic litigation increase the risks associated with public participation	Democratic deliberation is replaced by unequal litigation burdens
Weak due diligence and accountability	Extractive value chains, contractors, suppliers, and security forces are not effectively supervised	Rights violations and ecological harm continue without adequate remedies	Impunity increases the risk of violence, intimidation, and criminalisation

This mapping confirms that criminalisation operates both incrementally and recursively. Distributive inequality generates the underlying drivers of conflict; failures of recognition weaken the legal position of Indigenous Peoples; tokenistic participation closes spaces for meaningful negotiation; juridification transfers conflicts into unequal forums; and weak accountability allows repression to recur without institutional correction. The relationship among these mechanisms demonstrates that criminalisation cannot be explained solely by the conduct of state officials or judicial decisions, because it is rooted in environmental governance structures that place Indigenous Peoples in a subordinate position. By examining these mechanisms in an integrated manner, this discussion moves beyond identifying forms of criminalisation to explaining how criminalisation is produced

through the relationship between ecological harm, inequalities in rights, and the exercise of development power.

The mechanism of failed recognition is particularly significant because the status of Indigenous Peoples as collective subjects determines whether their claims to territory, customary law, ecological knowledge, and community governance are treated as rights or merely as social aspirations. Where adequate legal recognition exists, Indigenous claims may be translated into rights to territory, participation, and decision-making; conversely, where recognition is partial, the same claims may readily be portrayed as administrative obstacles or disruptions to development projects. The literature on land and water rights and Indigenous governance emphasises that collective recognition transforms territorial claims from contested spatial imaginaries into legally enforceable rights.²⁷ Within the framework of recognitional justice, criminalisation arises when the state fails to recognise Indigenous Peoples as legitimate legal and political subjects, causing the defence of Indigenous territories to be interpreted as resistance to authority rather than as the exercise of rights.

This failure of recognition is directly connected to weak FPIC and the absence of meaningful participation. FPIC should function as a procedural mechanism ensuring that projects affecting the lands, waters, forests, and resources of Indigenous Peoples are not implemented through coercion, manipulation, or merely formal consultation. However, when consent is reduced to an administrative procedure, communities that reject a project risk being portrayed as obstructing development,

²⁷ Kirsten Anker, 2018. *Aboriginal Title and Alternative Cartographies*. Erasmus Law Review 11, no. 1, p. 14 – 30, <https://doi.org/10.5553/ELR.000098>; Priscila F. M. Lopes et al, 2021. *Just Aquatic Governance: The Amazon Basin as Fertile Ground for Aligning Participatory Conservation with Social Justice*. Aquatic Conservation: Marine and Freshwater Ecosystems 31, no. 5, p. 1190 – 1205, <https://doi.org/10.1002/aqc.3586>; Elizabeth Macpherson, 2020. *Indigenous Water Rights in Comparative Law*. J. Transnational Environmental Law 9, no. 3, p. 393 – 402, <https://doi.org/10.1017/s2047102520000291>; Twenty Indigenous and Local Community Organizations across Asia, 2022. *Reconciling Conservation and Global Biodiversity Goals with Community Land Rights in Asia*. <https://doi.org/10.53892/heuk4095>.

acting uncooperatively, or violating the law.²⁸ Tokenistic participation therefore not only weakens the legitimacy of environmental decision-making but also creates a pathway to criminalisation because substantive opposition to projects ceases to be recognised as an exercise of the right to self-determination.

A further mechanism emerges when ecological conflicts are transferred from spaces of democratic deliberation into litigation and technical legal proceedings. SLAPP, judicial harassment, and the criminalisation of protest operate by increasing the costs of participation, prolonging psychological pressure, and diverting community resources from substantive advocacy towards exhausting legal defence. In such circumstances, law does not merely resolve disputes; it also determines who is capable of enduring them, because actors with greater financial resources and access to legal assistance occupy a substantially stronger position.²⁹ The juridification of environmental conflict therefore becomes a subtle yet powerful mechanism of criminalisation, as it preserves the appearance of legality while weakening the capacity of Indigenous Peoples to participate on equal terms.

Beyond recognition and participation, the mechanisms of criminalisation are further intensified by weak human rights and environmental due diligence within extractive value chains and energy-transition projects. Where corporations, contractors, suppliers, private security forces, and state partners are not subject to robust due diligence obligations, the risks of violence, intimidation, pollution, and violations of the rights of Indigenous Peoples may persist without effective remedies. This weakness demonstrates that criminalisation does not arise solely

²⁸ Julia Dehm, 2016. *Ibid*; Kelly Dudine & Sam Szoke-Burke, 2020. *Government Briefing: Incorporating Free, Prior and Informed Consent (FPIC) into Investment Approval Processes*. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.3657672>; Lorenza B. Fontana & Jean Grugel, 2016. *The Politics of Indigenous Participation Through "Free Prior Informed Consent": Reflections from the Bolivian Case*. *World Development* 77, p. 249 – 261, <https://doi.org/10.1016/j.worlddev.2015.08.023>; Natalya Turkina, 2024. *Neither Naïve Nor Fatalistic: Decolonizing Mining Partnerships With Indigenous Communities in Mongolia and Australia*. *Business & Society* 65, no. 1, p. 232 – 276, <https://doi.org/10.1177/00076503241283802>.

²⁹ Kai Bosworth & Charmaine Chua, 2021. *The Countersovereignty of Critical Infrastructure Security: Settler-State Anxiety versus the Pipeline Blockade*. *Antipode* 55, no. 5, p. 1345 – 1367, <https://doi.org/10.1111/anti.12794>; Fiona Donson, 2010. *Libel Cases and Public Debate – Some Reflections on whether Europe Should be Concerned about SLAPPs*. *Review of European Community & International Environmental Law* 19, no. 1, p. 14 – 27, <https://doi.org/10.1111/j.1467-9388.2010.00666.x>; Samuel J. Spiegel, 2021. *Climate Injustice, Criminalisation of Land Protection and Anti-Colonial Solidarity: Courtroom Ethnography In An Age of Fossil Fuel Violence*. *Political Geography* 84, <https://doi.org/10.1016/j.polgeo.2020.102298>.

from direct state conduct, but also from the state's failure to regulate non-state actors that benefit from conflict-generating projects.³⁰ Weak due diligence therefore creates a space of impunity in which corporate power, security interests, and state administration may converge to suppress Indigenous human rights defenders.

Developments concerning the rights of nature, legal personhood for ecosystems, and biocultural approaches offer both opportunities and risks in explaining the relationship between environmental degradation and the rights of Indigenous Peoples. On the one hand, recognising rivers, forests, or ecosystems as legal subjects may strengthen ecological protection and create opportunities for more relational forms of governance. On the other hand, the recognition of ecological entities may become problematic if it is not aligned with the sovereignty, customary law, and collective rights of the Indigenous Peoples who have historically protected those ecosystems.³¹ The risk arises when ecosystems are recognised in the abstract while their guardian communities remain substantively unrecognised, allowing environmental protection to coexist with restrictions on Indigenous Peoples defending their territories.

In this context, environmental degradation becomes a legal conflict because it raises fundamental questions of authority: who is entitled to define environmental harm, determine the benefits of development, assess the legitimacy of opposition, and govern the future of Indigenous territories. Environmental justice theory explains the distributive dimension of these questions, while recognitional justice theory explains why Indigenous claims often lose legitimacy when they are not supported by adequate legal and political recognition. Critical legal analysis further demonstrates that law may operate in two directions: as an instrument for

³⁰ Andrew Bogrand et al, 2023. *Threats to Human Rights Defenders: Six Ways Companies Should Respond*. Law, Business, Political Science, <https://doi.org/10.21201/2023.621490>; Fatimazahra Dehbi & Olga Martin-Ortega, 2023. *Ibid*; Mark B. Taylor, 2021. *Counter Corporate Litigation: Remedy, Regulation, and Repression in the Struggle for a Just Transition*. Sustainability 13, no. 19, <https://doi.org/10.3390/su131910742>.

³¹ Elizabeth Macpherson, 2020. *Ibid*; M. R. Peck et al, 2024. *The Conflict Between Rights of Nature and Mining in Ecuador: Implications of the Los Cedros Cloud Forest Case for Biodiversity Conservation*. People and Nature 6, no 3, p. 1096 – 1115, <https://doi.org/10.1002/pan3.10615>; Benjamin J. Richardson & Nina Hamaski, 2021. *Rights of Nature Versus Conventional Nature Conservation: International Lessons from Australia's Tarkine Wilderness*. Environmental Policy and Law 51, no. 3, p. 159 – 173, <https://doi.org/10.3233/EPL-201066>; Laura Schimmöller, 2020. *Paving the Way for Rights of Nature in Germany: Lessons Learnt from Legal Reform in New Zealand and Ecuador*. Transnational Environmental Law 9, no. 3, p. 569 – 592, <https://doi.org/10.1017/s2047102520000126>.

protecting rights and as a mechanism that normalises restrictions on subjects who challenge existing configurations of resource power. The mechanisms of criminalisation are therefore produced when distributive inequality, failures of recognition, tokenistic participation, the juridification of conflict, and weak accountability mutually reinforce one another within a single regime of environmental governance.

In synthesis, this second part of the analysis confirms that the relationship between environmental degradation, the rights of Indigenous Peoples, and criminalisation is not a simple linear relationship, but a configuration of mutually reinforcing mechanisms. Environmental degradation produces conflict by exposing distributive inequalities, while failures of recognition and FPIC transform Indigenous claims from exercises of rights into objects of legal control. SLAPP, judicial harassment, securitization, and weak due diligence subsequently intensify this process by shifting conflicts from democratic spaces into unequal legal and administrative arenas. The conceptual contribution of this subsection lies in demonstrating that anti-criminalization duties are required not only to respond to repression, but also to disrupt the structural mechanisms that transform the defence of ecosystems and Indigenous territories into criminalised conduct.

c. Reconstructing State Obligations as Anti-Criminalization Duties

The reconstruction of state obligations as anti-criminalization duties constitutes the culmination of the argument, as the preceding two sections have demonstrated that criminalisation is not an isolated legal event, but a structural manifestation of environmental governance that fails to protect those who safeguard ecosystems. The right to a clean, healthy, and sustainable environment is insufficient if understood solely as a right to enjoy a particular level of ecological quality, because it also presupposes the existence of safe civic space for communities defending the environment. Within the environmental human rights framework, the substantive dimension of environmental rights is invariably connected to procedural dimensions encompassing access to information, participation, access to justice, and the protection of environmental defenders.³² The criminalisation of Indigenous human rights defenders therefore reveals the state's failure to translate the

³² Mónica Feria-Tinta & Simon C. Milnes, 2019. *Ibid*; John H. Knox, 2019. *Ibid*; Dinah Shelton, 2010. *Ibid*.

recognition of environmental rights into obligations capable of preventing legal, administrative, symbolic, and security-based repression.

The concept of anti-criminalization duties emerges from the tension between the normative recognition of environmental rights and governance practices that continue to permit the contraction of civic space. Regional instruments such as Escazú indicate an important direction of development by connecting access to information, participation, environmental justice, and the protection of environmental human rights defenders within a more explicit procedural framework.³³ Such procedural recognition nevertheless requires conceptual reconstruction so that it does not remain merely a standard of participation, but develops into a state obligation to prevent the use of law as an instrument of intimidation. Anti-criminalization duties thus fill the gap between environmental rights recognition and the concrete protection of Indigenous Peoples defending their territories.

This reconstruction frames the state obligation to respect rights as an active prohibition against the weaponization of law. The state is required not only to refrain from causing environmental harm or obstructing participation, but also from using criminal law, licensing regimes, public administration, security forces, or development rhetoric to portray Indigenous advocacy as a threat. Analyses of the criminalisation of protest, penal extractivism, and lawfare demonstrate that law may operate as an instrument of discipline when deployed to suppress Indigenous claims to land, natural resources, and ecological protection.³⁴ The obligation to respect rights must therefore be interpreted more strictly as requiring the state to refrain from legal and administrative practices that produce a silencing effect on Indigenous human rights defenders.

³³ Gonzalo Aguilar Cavallo, 2024. *El Estado Ecológico De Derecho Y El Acceso a La Información en El Acuerdo De Escazú*. Novum Jus 18, no. 1, p. 355 – 377, <https://doi.org/10.14718/NovumJus.2024.18.1.12>; Daniela Dora Barrios Lino, 2020. *El Acuerdo De Escazú Como El Instrumento Normativo Más Importante Para Los Defensores De Derechos Humanos Ambientales en El Perú Y América Latina*. Revista De Derecho 5, no. 1, p. 114 – 128, <https://doi.org/10.47712/rd.2020.v5i1.74>; César A. Ipenza Peralta, 2018. *Un Nuevo Acuerdo Regional Para América Latina Y El Caribe Sobre El Principio 10 De Río—Acuerdo De Escazú*. Lumen 14, no. 1, p. 171 – 179, <https://doi.org/10.33539/lumen.2018.v14n1.1213>.

³⁴ Marie-Christine Doran, 2017. *Ibid*; Cristina Elena Popa Tache & Catalin-Silviu Sararu, 2023. *Ibid*. Diego Tuesta & Maritza Paredes, 2024. *Ibid*.

The protective dimension shifts the focus from direct state action to state responsibility for non-state actors involved in environmental conflicts. Corporations, contractors, suppliers, private security personnel, and non-state armed actors may employ threats, violence, SLAPP, economic pressure, and delegitimation campaigns to weaken Indigenous advocacy. The state obligation to protect therefore requires preventive, supervisory, investigative, remedial, and accountability mechanisms capable of constraining the power of non-state actors within extractive and energy-transition value chains.³⁵ Under this interpretation, anti-criminalization duties expand the concept of protection beyond merely responding to violence to encompass the obligation to regulate the political-economic structures that enable criminalisation to occur.

The fulfilment dimension requires the state to establish the institutional preconditions necessary for Indigenous Peoples to exercise their environmental and collective rights effectively. Recognition of Indigenous territories, guarantees of substantive FPIC, access to legal assistance, mechanisms for protecting human rights defenders, anti-SLAPP policies, access to environmental information, and meaningful participation must be understood as components of the obligation to fulfil rights rather than merely as policy choices. The literature on FPIC, participatory governance, and the rights of Indigenous Peoples emphasises that participation possesses legitimacy only when supported by collective recognition, relevant decision-making authority, and protection from coercive pressure.³⁶ The fulfilment of environmental rights therefore requires the state to provide a legal architecture that enables Indigenous Peoples to defend their territories without exposure to criminalisation.

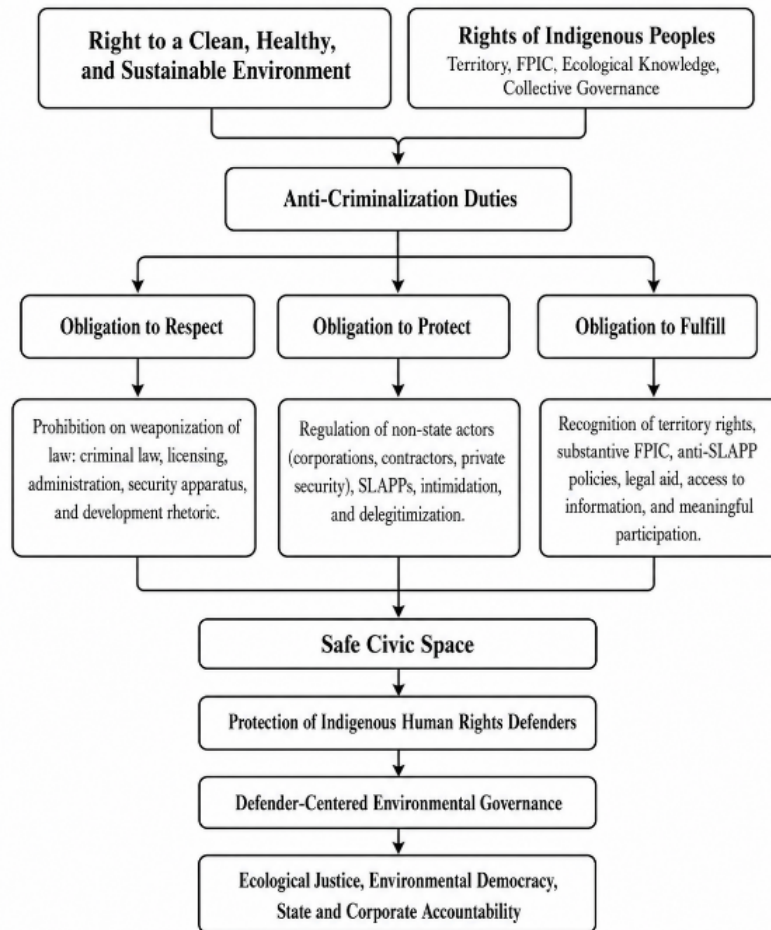
³⁵ Andrew Bogrand et al, 2023. *Ibid*; Farith Simon Campaña, 2019. *Los Derechos De La Naturaleza en La Constitución Ecuatoriana Del 2008: Alcance, Fundamentos Y Relación Con Los Derechos Humanos*. Revista Esmat 11, no. 17, p. 231, <https://doi.org/10.34060/reesmat.v11i17.293>; Fatimazahra Dehbi & Olga Martin-Ortega, 2023. *Ibid*.

³⁶ George Barrie, 2024. *The 'Right' to Free, Prior and Informed Consent: Evolving Customary International Law. Courts and Diversity*, p. 195 – 227, https://doi.org/10.1163/9789004691698_009; Belen Olmos Giupponi, 2018. *Free, Prior and Informed Consent (FPIC) of Indigenous Peoples before Human Rights Courts and International Investment Tribunals: Two Sides of the Same Coin?*. International Journal on Minority and Group Rights 25, no. 4, p. 485 – 529, <https://doi.org/10.1163/15718115-02503005>; Maria-Therese Gustafsson & Almut Schilling-Vacaflor, 2022. *Indigenous Peoples and Multiscalar Environmental Governance: The Opening and Closure of Participatory Spaces*. Global Environmental Politics 22, no. 2, p. 70 – 94, https://doi.org/10.1162/glep_a_00642; Pereira, 2021. *Ibid*.

The synthesis of these three dimensions demonstrates that anti-criminalization duties do not constitute a separate new legal regime, but rather an integrative framework for operationalising the obligations to respect, protect, and fulfil human rights in environmental conflicts. This framework connects the right to a healthy environment, the rights of Indigenous Peoples, the protection of human rights defenders, corporate accountability, and environmental democracy through a single evaluative question: whether the state prevents the conditions that transform the defence of ecosystems into an object of criminalisation. The analytical focus thereby shifts from protection after repression has occurred towards preventing the mechanisms that generate repression from the outset. This shift is important because criminalisation does not always manifest as direct violence, but frequently operates through seemingly lawful procedures that nevertheless close spaces for participation.

The ideal future construction may be visualised as a layered model connecting the normative foundation, mechanisms of obligation, implementation instruments, and governance objectives. The model places environmental rights and the rights of Indigenous Peoples at its foundation and translates them into anti-criminalization duties operating through the dimensions of respect, protection, and fulfilment. At the operational level, these duties are implemented through the prohibition of the weaponization of law, regulation of non-state actors, territorial recognition, substantive FPIC, anti-SLAPP policies, legal assistance, access to information, and mechanisms for protecting human rights defenders. The novelty of this article therefore lies in constructing a framework that assesses state accountability not only by reference to the recognition of rights, but also according to the state's capacity to guarantee safe space for Indigenous Peoples defending ecosystems.

Figure 1: Conceptual Model of Anti-Criminalization Duties in Defender-Centered Environmental Governance



The figure demonstrates that anti-criminalization duties operate as a bridge between the recognition of rights and a governance model centred on Indigenous human rights defenders. The model rejects the separation of environmental law, human rights, the rights of Indigenous Peoples, and corporate accountability because criminalisation arises precisely from the failure to integrate these four fields. Safe civic space is positioned as the conceptual nexus because, without such space, environmental rights and the rights of Indigenous Peoples cannot be exercised effectively. The model therefore reinforces the argument that protecting Indigenous human rights defenders is a prerequisite, rather than an ancillary consequence, of rights-based environmental governance.

This construction also clarifies the evaluative function of anti-criminalization duties in assessing state practices in environmental conflicts involving conservation, extraction, infrastructure, and energy transition. A state may be considered to have failed to respect rights when criminal law, licensing regimes, or security forces are used to silence advocacy; to have failed to protect rights when corporations or non-state actors are permitted to intimidate human rights defenders; and to have failed to fulfil rights when territorial recognition, substantive FPIC, legal assistance, anti-SLAPP mechanisms, and effective access to information are unavailable. This framework is consistent with the need to strengthen the environmental rule of law by assessing not only the existence of legal norms, but also their capacity to prevent repression against environmental defenders.³⁷ State accountability must therefore be evaluated according to the state's capacity to close the gap between legal recognition and lived protection.

At the same time, anti-criminalization duties strengthen corporate accountability by positioning human rights and environmental due diligence as an integral component of the protection of Indigenous human rights defenders. Due diligence cannot be reduced to an internal corporate compliance procedure because, in environmental conflicts, it determines whether the risks of intimidation, SLAPP, violence, and the delegitimation of communities can be prevented from the project-planning stage. The business and human rights framework emphasises that corporate responsibility for human rights impacts must be connected to state obligations to regulate, supervise, and provide effective remedies. Anti-criminalization duties therefore provide a conceptual basis for understanding criminalisation as a combined problem arising from state failure, corporate impunity, and weak environmental democracy.

In synthesis, this third part of the analysis confirms that the article's principal contribution lies in reconstructing state obligations from the recognition of environmental rights towards operational, evaluative, and prevention-oriented anti-criminalization duties. The first part identified criminalisation as a spectrum of repression against Indigenous human rights defenders, while the second explained the structural mechanisms linking environmental degradation, failures of recognition, tokenistic participation, the juridification of conflict, and weak accountability. The third part integrates these findings into a framework of anti-

³⁷ A. Djampou, 2023. *Ibid*; OECD, 2024. *Practical Guide for Policymakers on Protecting and Promoting Civic Space*. Paris: OECD Publishing, <https://doi.org/10.1787/6c908b48-en>.

criminalization duties that combines the obligations to respect, protect, and fulfil rights within a single model of defender-centered environmental governance. The novelty of this study lies in its conceptual shift from environmental rights recognition towards a state obligation to guarantee safe civic space as a condition for ecological justice, environmental democracy, and the substantive protection of Indigenous Peoples who safeguard ecosystems.

IV. CONCLUSION

This article concludes that the criminalisation of Indigenous human rights defenders constitutes a structural manifestation of the failure of environmental governance to connect the recognition of the right to a healthy environment with active protection for those who defend ecosystems. Such criminalisation can be identified across a spectrum of repression encompassing criminal prosecution, SLAPP, judicial harassment, administrative repression, securitization, symbolic delegitimation, and pressure on the participatory spaces available to Indigenous Peoples. The mechanisms linking environmental degradation, the rights of Indigenous Peoples, and criminalisation operate through the unequal distribution of ecological benefits and burdens, failures to recognise Indigenous territories and governance systems, the weakening of FPIC, the juridification of ecological conflicts, and inadequate due diligence and corporate accountability. The principal contribution of this article lies in reconstructing anti-criminalization duties as a conceptual framework that positions the protection of Indigenous human rights defenders as a substantive prerequisite for the exercise of the right to a healthy environment.

The theoretical implication of this article lies in broadening the understanding of the right to a healthy environment from merely a right to enjoy a particular level of environmental quality towards a framework of state obligations that encompasses the protection of actors who defend ecosystems. The article thereby strengthens the relationship between environmental law, the rights of Indigenous Peoples, the protection of human rights defenders, corporate accountability, and environmental democracy within a more operational analytical framework. In practical and policy terms, this framework may be used to assess whether states have respected, protected, and fulfilled the rights of Indigenous Peoples in conflicts involving the environment, natural resources, conservation, extraction, infrastructure, and energy transition. The limitation of this article lies in its conceptual-normative design based on secondary data; consequently, the analysis has not empirically

examined the effectiveness of mechanisms for protecting Indigenous human rights defenders within particular jurisdictions or more specific configurations of conflict.

Future research may develop case-based empirical studies to examine how criminalisation operates in law-enforcement practices, licensing, public consultation, and corporate-Indigenous community conflicts within particular national contexts. Comparative studies are also required to assess variations in models for protecting environmental human rights defenders, anti-SLAPP policies, FPIC mechanisms, and corporate due diligence across different legal systems. In addition, further research may formulate more measurable evaluative indicators for determining whether a state has effectively implemented anti-criminalization duties. Through this direction, the literature may advance beyond environmental rights recognition towards defender-centered environmental governance that positions safe civic space as a condition of ecological justice and environmental democracy.

REFERENCES

- Anker, Kirsten, 2018. *Aboriginal Title and Alternative Cartographies*. Erasmus Law Review 11, no. 1.
- Barrie, George, 2024. *The 'Right' to Free, Prior and Informed Consent: Evolving Customary International Law*. Courts and Diversity.
- Bennet, Nathan J. et al., 2024. *The Human Right to a Clean, Healthy and Sustainable Ocean*. NPJ Ocean Sustainability 3, no. 1.
- Billon, Philippe Le & Päivi Lujala, 2020. *Environmental and Land Defenders: Global Patterns and Determinants of Repression*. Global Environmental Change 65.
- Bogrand, Andrew, et al., 2023. *Threats to Human Rights Defenders: Six Ways Companies Should Respond*. Law, Business, Political Science.
- Borg-Barthet, Justin & Francesca Farrington, 2024. *The EU's Anti-Slapp Directive: A Partial Victory for Rule of Law Advocacy in Europe*. German Law Journal 25, no. 6.
- Borràs, Susana 2016. *New Transitions from Human Rights to the Environment to the Rights of Nature*. Transnational Environmental Law 5, no. 1.
- Bosworth, Kai & Charmaine Chua, 2021. *The Countersovereignty of Critical Infrastructure Security: Settler-State Anxiety versus the Pipeline Blockade*. Antipode 55, no. 5.
- Braun, Virginia & Victoria Clarke, 2022. *Thematic Analysis: A Practical Guide*. New York: Sage Publications.
- Campaña, Farith Simon, 2019. *Los Derechos De La Naturaleza en La Constitución Ecuatoriana Del 2008: Alcance, Fundamentos Y Relación Con Los Derechos Humanos*. Revista Esmat 11, no. 17.
- Cantor, Alida, et al., 2023. *Energy Storage and Environmental Justice: A Critical Examination of a Proposed Pumped Hydropower Facility in Goldendale, Washington*. Antipode 57, no. 4.
- Cárdenas, Fernando Aurelio Guerrero, 2010. *Responsabilidad Del Estado Colombiano en El Marco Del Derecho Fundamental Al Territorio Ancestral Y El Acceso a La Justicia Interamericana*. Iustitia 0, no. 8.

- Cárdenas, Jaime Cubides, et al., 2019. *Conflictos Normativos, Jurídicos Y Sociales Del Ciclo Extractivo en Clave Del Sistema Internacional, Regional Y Nacional De Colombia*. Revista De La Facultad De Derecho Y Ciencias Políticas 49, no. 130.
- Cavallo, Gonzalo Aguilar, 2024. *El Estado Ecológico De Derecho Y El Acceso a La Información en El Acuerdo De Escazú*. Novum Jus 18, no. 1.
- Creswell, John W. & J. David Creswell, 2023. *Research design: Qualitative, Quantitative, and Mixed Methods Approaches (Sixth Edition, International Student Edition)*. New York: Sage Publications.
- Cheon, Andrew, et al., 2021. *Determinants of Environmental Conflict: When Do Communities Mobilize Against Fossil Fuel Production?*. Journal of Conflict Resolution 65, no. 7 – 8.
- Dehbi, Fatimazahra & Olga Martin-Ortega, 2023. *An Integrated Approach to Corporate Due Diligence from a Human Rights, Environmental, and TWAIL Perspective*. Regulation & Governance 17, no. 4.
- Dehm, Julia, 2016. *Indigenoues Peoples and REDD+ Safeguards: Rights as Resistance or as Disciplinary Inclusion in the Green Economy?*. Journal of Human Rights and the Environment 7, no. 2.
- Denzin, Norman K., 2017. *The Research Act: A Theoretical Introduction to Sociological Methods (1st ed.)*. New York: Routledge.
- Djampou, A., 2023. *Environmental Rule of Law and Human Rights in Asia Pacific: Supporting the Protection of Environmental Human Rights Defenders—Working Paper*.
- Djampou, A., 2023. *Environmental Rule of Law: Tracking Progress and Charting Future Directions*.
- Donson, Fiona, 2010. *Libel Cases and Public Debate – Some Reflections on whether Europe Should be Concerned about SLAPPs*. Review of European Community & International Environmental Law 19, no. 1.
- Doran, Marie-Christine, 2017. *The Hidden Face of Violence in Latin America: Assessing the Criminalization of Protest in Comparative Perspective*. Latin American Perspectives 44, no. 5.

- Dudin, Kelly & Sam Szoke-Burke, 2020. *Government Briefing: Incorporating Free, Prior and Informed Consent (FPIC) into Investment Approval Processes*. SSRN Electronic Journal.
- Feria-Tinta, Mónica & Simon C. Milnes, 2019. *International Environmental Law for the 21st Century: The Constitutionalization of the Right to a Healthy Environment in the Inter-American Court of Human Rights Advisory Opinion No. 23*. ACDI - Anuario Colombiano de Derecho Internacional 12.
- Filho, Barretto, et al., 2021. Chapter 31: Strengthening land and natural resource governance and management: Protected areas, Indigenous lands, and local communities' territories. In C. Nobre, et al, 2021. *Amazon Assessment Report 2021* (1st ed.). UN Sustainable Development Solutions Network (SDSN).
- Fontana, Lorenza B. & Jean Grugel, 2016. *The Politics of Indigenous Participation Through "Free Prior Informed Consent": Reflections from the Bolivian Case*. World Development 77.
- Gilbert, Jérémie, 2023. *Creating Synergies between International Law and Rights of Nature*. Transnational Environmental Law 12, no. 3.
- Giupponi, Belen Olmos, 2018. *Free, Prior and Informed Consent (FPIC) of Indigenous Peoples before Human Rights Courts and International Investment Tribunals: Two Sides of the Same Coin?*. International Journal on Minority and Group Rights 25, no. 4.
- Gustafsson, Maria-Therese & Almut Schilling-Vacaflor, 2022. *Indigenous Peoples and Multiscalar Environmental Governance: The Opening and Closure of Participatory Spaces*. Global Environmental Politics 22, no. 2.
- Hamzani, Achmad Irwan, et al., 2024. *Implementation Approach in Legal Research*. International Journal of Advances in Applied Sciences 13, no. 2.
- Hanna, Philippe, et al., 2016. *Indigenous Rights, Performativity and Protest*. Land Use Policy 50.
- Hartiwiningsih et al, 2023. *Dysfunctional Factors of Environmental Law on Strategic Lawsuit Against Public Participation and Developing Remedial Strategies Through Reconstruction Criminal Law System Model in Indonesia*. Padjadjaran Jurnal Ilmu Hukum (Journal of Law) 10, no. 3.
- Jankovic, Sava, 2021. *Conceptual Problems of the Right to Breathe Clean Air*. German Law Journal 22, no. 2.

- Jong, Daniëlla Dam-de, 2023. *Addressing Land Inequality, Rehabilitation and Competing Uses*. UK: Edward Elgar Publishing.
- Knox, John H., 2019. *The Global Pact for the Environment: At the Crossroads of Human Rights and the Environment*. Review of European, Comparative & International Environmental Law 28, no. 1.
- Lindt, Angela, 2023. *The Dark Side of Judicialization: Criminalizing Mining Protests in Peru*. Latin American Research Review 58, no. 2.
- Lino, Daniela Dora Barrios, 2020. *El Acuerdo De Escazú Como El Instrumento Normativo Más Importante Para Los Defensores De Derechos Humanos Ambientales en El Perú Y América Latina*. Revista De Derecho 5, no. 1.
- Lopes, Priscila F. M., et al., 2021. *Just Aquatic Governance: The Amazon Basin as Fertile Ground for Aligning Participatory Conservation with Social Justice*. Aquatic Conservation: Marine and Freshwater Ecosystems 31, no. 5.
- Macpherson, Elizabeth, 2020. *Indigenous Water Rights in Comparative Law*. J. Transnational Environmental Law 9, no. 3.
- Miles, Matthew B., et al., 2020. *Qualitative Data Analysis: A Methods Sourcebook (Fourth edition)*. New York: Sage Publications.
- Morgera, Elisa, 2016. *Under the Radar: The Role of Fair and Equitable Benefit-sharing in Protecting and Realizing Human Rights Connected to Natural Resources*. SSRN Electronic Journal.
- Morgera, Elisa, 2024. *International Environmental Law: A Case for Transformative Change through the Lens of Children's Human Rights*. Environmental Policy and Law 53, no. 5 – 6.
- Nummi, Jozie, et al., 2019. *#BlackLivesMatter: Innovative Black Resistance*. Sociological Forum 34, no. S1.
- OECD, 2024. *Practical Guide for Policymakers on Protecting and Promoting Civic Space*. Paris: OECD Publishing.
- Orlove, Ben, et al., 2023. *Placing Diverse Knowledge Systems at the Core of Transformative Climate Research*. Ambio 52, no. 9.

- Peralta, César A. Ipenza, 2018. *Un Nuevo Acuerdo Regional Para América Latina Y El Caribe Sobre El Principio 10 De Río—Acuerdo De Escazú*. Lumen 14, no. 1.
- Pereira, Ricardo, 2021. *Public Participation, Indigenous Peoples' Land Rights and Major Infrastructure Projects in the Amazon: The Case for a Human Rights Assessment Framework*. Review of European, Comparative & International Environmental Law 30, no. 2.
- Peck, M. R., et al., 2024. *The Conflict Between Rights of Nature and Mining in Ecuador: Implications of the Los Cedros Cloud Forest Case for Biodiversity Conservation*. People and Nature 6, no. 3.
- Pérez-Rincón, Mario, et al., 2019. *Mapping and Analyzing Ecological Distribution Conflicts in Andean Countries*. Ecological Economics 157.
- Raj, Vikalp & Shamsher Alam, 2023. *(Re)Affirming Sovereignty, Self-Determination, and Democratic Rights: An Analysis of Evolving Jurisprudence Concerning Indigenous Peoples Under International Law*. Multidisciplinary Reviews 6, no. 4.
- Richard, Lyn & Janice M. Morse, 2023. *Readme First for a User's Guide to Qualitative Methods*. New York City: Sage Publications, Inc.
- Richardson, Benjamin J. & Nina Hamaski, 2021. *Rights of Nature Versus Conventional Nature Conservation: International Lessons from Australia's Tarkine Wilderness*. Environmental Policy and Law 51, no. 3.
- Rocha, Armando & Rômulo Sampaio, 2023. *Climate Change Before the European and Inter-American Courts of Human Rights: Comparing Possible Avenues Before Human Rights Bodies*. Review of European, Comparative & International Environmental Law 32, no. 2.
- Salehijam, Maryam, 2018. *The Value of Systematic Content Analysis in Legal Research* 23, no. 1 – 2.
- Schapper, Andrea, 2018. *Climate Justice and Human Rights*. International Relations 32, no. 3.
- Scheidel, Arnim, et al., 2020. *Environmental Conflicts and Defenders: A Global Overview*. Global Environmental Change 63.

- Scheidel, Arnim, et al., 2023. *Global Impacts of Extractive and Industrial Development Projects on Indigenous Peoples' Lifeways, Lands, and Rights*. *Science Advances* 9, no. 23.
- Schimmöller, Laura, 2020. *Paving the Way for Rights of Nature in Germany: Lessons Learnt from Legal Reform in New Zealand and Ecuador*. *Transnational Environmental Law* 9, no. 3.
- Shelton, Dinah, 2010. *Developing Substantive Environmental Rights*. *Journal of Human Rights and the Environment* 1, no. 1.
- Siwior, Przemysław, 2021. *The Inter-American Court of Human Rights Advisory Opinion OC-23/17 on the Relationship Between Human Rights and the Environment*. *Review of European and Comparative Law* 46, no. 3.
- Smidt, Hannah, et al., 2020. *Silencing Their Critics: How Government Restrictions Against Civil Society Affect International 'Naming and Shaming'*. *British Journal of Political Science* 51, no. 3.
- Smith-Carrier, Tracy & Kathleen Manion, 2022. *Bringing It All Together: Leveraging Social Movements and the Courts to Advance Substantive Human Rights and Climate Justice*. *Human Rights Review* 23, no. 4.
- Soraya, Joice, et al., 2023. *Should Trees Have Legal Standing?: Strengthening the Relationship Between Law and Ecology*. IOP Conference Series: Earth and Environmental Science 1489.
- Spiegel, Samuel J., 2021. *Climate Injustice, Criminalisation of Land Protection and Anti-Colonial Solidarity: Courtroom Ethnography In An Age of Fossil Fuel Violence*. *Political Geography* 84.
- Stavenhagen, Rodolfo & María Capetillo Lozano, 2009. *Los derechos humanos de los pueblos indígenas en Filipinas*. *Estudios de Asia y África* 44, no. 3.
- Tache, Cristina Elena Popa & Catalin-Silviu Sararu, 2023. *El lawfare, entre sus (no)límites y la transdisciplinariedad*. *Precedente Revista Jurídica* 23.
- Taylor, Mark B., 2021. *Counter Corporate Litigation: Remedy, Regulation, and Repression in the Struggle for a Just Transition*. *Sustainability* 13, no. 19.
- Tracy, Sarah J., 2019. *Qualitative Research Methods: Collecting Evidence, Crafting Analysis, Communicating Impact (Second Edition)*. New Jersey: Wiley-Blackwell.

- Tran, Dalena, 2023. *Gendered Violence Martyring Filipina Environmental Defenders. The Extractive Industries and Society* 13.
- Tran, Dalena, et al., 2020. *Gendered Geographies of Violence: A Multiple Case Study Analysis of Murdered Women Environmental Defenders*. *Journal of Political Ecology* 27, no. 1.
- Tuesta, Diego & Maritza Paredes, 2024. *Penal Extractivism: A Qualitative Study on Punishment and Extractive Industries in Peru*. *Punishment Society* 27, no. 1.
- Turkina, Natalya, 2024. *Neither Naïve Nor Fatalistic: Decolonizing Mining Partnerships With Indigenous Communities in Mongolia and Australia*. *Business & Society* 65, no. 1.
- Twenty Indigenous and Local Community Organizations across Asia, 2022. *Reconciling Conservation and Global Biodiversity Goals with Community Land Rights in Asia*.
- Valenzuela, Esteban & Natacha Romero, 2016. *Fuentes para una Constitución con Poder Indígena*. Ariadna Ediciones.
- Waters, Brianna Marie, et al., 2024. *Retribution for Tribal Sovereignty: Settler Colonial Policing and Civil Justice Impacts*. *Punishment & Society* 26, no. 4.
- Weber, Teresa, 2022. *Are Climate Activists Protected by the Aarhus Convention? A Note on Article 3(8) Aarhus and the New Rapid Response Mechanism for Environmental Defenders*. *Review of European, Comparative & International Environmental Law* 32, no. 1.
- Wragg, Paul, 2025. *Slapps in England and Wales: the Issues and the Evidence*.
- Zimmerman, Miriam, et al., 2025. *Defending the Land: Filipina Amidst Authoritarian Rule in the Philippines*. *Development and Change* 56, no. 1.