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Sébastien Duyck, Sébastien Jodoin, Alyssa Johl

Integrating a human rights–based approach to address climate change impacts in Latin America

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Andrea Rodriguez, María José Veramendi Villa
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Introduction

Latin America is one of the regions that has been most affected by climate change. People in situations of vulnerability, such as indigenous communities, have been most affected. As a result of climate change impacts, their human rights have been and/or are at risk of being violated.

Based on a limited analysis performed to date, we have examined two specific case studies – one in Peru and one in Bolivia – to determine the climate change impacts on two communities, the existing legislation on climate change and human rights, and the extent to which effective measures were taken to mitigate such impacts.

Through analysis of climate- and human rights-related papers and materials, this chapter provides an analysis that demonstrates the negative impacts climate change has on the fulfillment of human rights. It also evaluates State interventions and legal frameworks to address the issue.

Climate change impacts in Bolivia

Bolivia is one of the countries most vulnerable to the effects of climate change in Latin America. Glacier retreat in the Andean Region, severe drought, and increased and heavier rainfall are among the impacts affecting the country and its people. Climate change is exacerbating existing development-related issues that threaten the livelihood of the Bolivian population, particularly the most vulnerable. For example, glacier retreat in the Andes is currently affecting valuable water sources for main cities, including Bolivia’s capital, La Paz.

The recent disappearance of the second largest lake in Bolivia is one of the most alarming examples of the destructive power of climate change.
The case of Lake Poopó

Lake Poopó is situated in the department of Oruro, Bolivia. It is the second largest lake in the country (2,337 square kilometers). It is the home to more than 200 species of birds, fish, and plants.3 In December 2015, Lake Poopó dried up completely.

The Bolivian government claims that this unfortunate situation can be attributed to weather changes caused by El Niño, mining activities in the area, and climate change caused primarily by developed nations.4 The latter is supported by arguments made by the scientific community, in which it has been estimated that the lake has warmed, on average, 0.23 degrees Celsius each decade since 1985.5 The warming of the lake has led to the disappearance of many species and has forced local communities to relocate. This is the case with the Uru-Murato people.

The human rights dimension

The Uru-Murato people are the oldest indigenous ethnic group living in the area. They are known as “men from the lake,” given their close relationship with and dependence on the natural resources of Lake Poopó.

Since the lake’s disappearance, this ethnic group has been forced to leave their communities and find work in nearby mines or salt flats. It is estimated that only 636 Uru-Murato remain in the area and nearby villages.6

The lake’s warming and subsequent disappearance has had serious implications on the fulfillment of indigenous rights, particularly those related to “the protection of their cultural identity, religious beliefs, spiritualities, practices and customs, and their own world view,”7 as recognized under the Bolivian Constitution. The Uru-Murato people can no longer fish or trade. Fishing was the primary activity and source of food and income for this ethnic group.8

Rights to water and food security have also been undermined. Unable to fish, these communities are forced to change their diets and adapt to other sources of food, which are scarce in the Bolivian flatlands.

The Uru-Muratos’ rights to self-determination and territoriability, as proclaimed in the Bolivian Constitution, have also been affected.9 They are forced to migrate and seek alternate ways of living that do not necessarily correspond with their traditional lifestyle. The Uru-Muratos are a clear example of a community displaced by climate change.

Climate change and human rights policies in Bolivia

Bolivia adopted a new constitution in 2009 into which a wide range of rights providing constitutional protection for the environment, Mother Earth, and Indigenous Peoples were incorporated.10 Chapter II states the fundamental rights of Bolivians, including the right to water and food, the right to an adequate habitat and home, and the right to universal and equitable access to basic services. Chapter IV describes the particular rights of rural native Indigenous Peoples, including the right to a healthy environment.

In 2010, Bolivia passed the Rights of Mother Earth Law; and in 2012, the Mother Earth Law and the Integral Development to Live Well Law.11 These legal instruments declare both Mother Earth and her life systems as titleholders of rights. These laws incorporate climate change perspectives into general environmental and socio-economic legislative frameworks.

In 2014, a disaster risk management law also was approved,12 incorporating climate change estimates into national, regional, and local risk management strategies. A national fund was created to finance prevention projects.
Bolivia ratified the United Nations Framework Convention on Climate Change (UNFCCC) in October 1994. In a recent effort to contribute to the success of the Paris Agreement, in 2015 Bolivia submitted its Intended Nationally Determined Contribution, which states that the government will make fair and ambitious efforts to address the impacts of climate change. However, these efforts will only be ambitious if means of implementation, including financial support, are made available through mechanisms of international cooperation.

Bolivia is also a signatory of the major human rights treaties of the United Nations and the Inter-American System on Human Rights, including the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, the “Protocol of San Salvador” and its Additional Protocol. This instrument recognizes the right to live in a healthy environment and to have access to basic public services. It also states the duties of State Parties to “promote the protection, preservation, and improvement of the environment.”

Furthermore, the Bolivian Constitution states that any international treaty ratified by Bolivia prevail over national law. The right to water is recognized as a human right, and the State assumes responsibility to manage, regulate, protect, and plan the adequate and sustainable use of water resources. As a response to this critical issue, the Bolivian government adopted a General Framework for the Management of Lake Poopó. This legal instrument will provide a plan to distribute water to different sectors, including people living in nearby areas. It is difficult to estimate whether this plan will be sufficient to address the problem, particularly the human rights impacts. The framework attempts to provide equal redress to people and other sectors affected by the depletion and contamination of the water, including the mining sector. However, it does not give priority to the Uru-Murato people.

Concrete measures to compensate and reduce the impacts on the Uru-Muratos have not been made beyond the adoption and implementation of the legal instrument, through which the government hopes to remediate the lake’s problem. No formal human rights complaint has been made to strengthen support for local affected communities.

The case of Uru-Murato people is a clear example of how communities in vulnerable areas are being affected despite the existence of national and international regulatory frameworks that secure and protect the rights of Indigenous Peoples. The fundamental rights of the Uru-Muratos have been affected and will continue to be affected as the planet continues to warm. Whether these issues can be directly attributed to climate change or to poor management of the lake’s resources, the government of Bolivia will require assistance to ensure its most vulnerable people can adapt to the impacts of climate change without having their human rights undermined.

Unfortunately, government measures to address this issue have so far proved to be insufficient. Given the particular fragility and vulnerability of the region, it is vital for the international community to strengthen their climate change commitments in an effort to avoid situations such as this one.

Climate change impacts in Peru

Peru is another country highly vulnerable to the impacts of climate change. In 2004, the Tyndall Centre for Climate Change research released a report indicating that Peru is one of the top 10 most vulnerable countries in the world, and the third most vulnerable in Latin America, to the impacts of climate change. According to the Grantham Research Institute on Climate Change and Environment at the London School of Economics, “Peru reportedly experiences more natural disasters than any other country in Latin America. Since 1970, it has experienced over 100 droughts, floods, mudslides, frosts, earthquakes and volcanic eruptions resulting in tens of thousands of deaths.” These hydrometeorological phenomena have increased more than sixfold...
Climate change in Latin America

between 1997 and 2006. Among these, the so-called El Niño phenomenon is happening more often and with more intensity.

Peru has rich ecological and climatic diversity, featuring 27 of the world’s 32 climates. The Cordillera Blanca (White Mountain Range) is home to 71 percent of the world’s tropical glaciers. Twenty-two percent of the surface area of Peru’s glaciers has disappeared in the past 30 years. As indicated by the World Bank,

[t]ropical glaciers play a key role in regulating water in the Andean region. During droughts or the dry season, the [glaciers] provide abundant water for human consumption, agriculture and hydroelectric energy. One result of accelerated glacier retreat is the formation of new lakes in the highlands, which increase the risk of floods and landslides, in addition to hindering the glaciers’ ability to regulate water, thereby increasing water shortages.

One such example is the case of Lake Palcacocha.

The case of Lake Palcacocha

The Palcaraju and Pucaranra glaciers lay above Lake Palcacocha. In December 1941, a large piece of Palcaraju fell into the lake, causing a wave that flooded the city of Huaraz, killing more than 5,000 people. Tropical glaciers are melting rapidly due to climate change, and it’s possible that what happened that December might happen again. A 2013 report from the National Institute of Civil Defense indicates that between January 2011 and October 2012, 11 Supreme Decrees were issued declaring a state of emergency for Lake Palcacocha due to high water levels and the subsequent risk posed to residents of Huaraz.

A 2013 analysis on glacial hazards in Huaraz simulated the worst-case scenario and a smaller melting event. Both resulted in extensive flooding of the city. The study found that “[b]ecause of the inundation depth and the velocity of the flow, most of the area of the city that experiences flooding will have a very high hazard level, putting both lives and property at risk.”

Saul Luciano Lliuya is a farmer and tour guide in the Cordillera Blanca who, in March 2015, filed a complaint letter with German energy utility company RWE demanding compensation for the impact its activities have on climate change and glaciers. Lliuya alleged that RWE’s contribution to climate change is causing glacial melting and therefore putting Lake Palcacocha and the city of Huaraz, his home, at high risk of flooding. Lliuya’s claim goes hand-in-hand with RWE’s definition of the company as Europe’s “biggest single emitter of CO₂.”

In May 2015, RWE issued an official reply to the letter asserting that the claims lack a legal basis and that the company is not responsible for any damages. On November 24, 2015, Lliuya filed a lawsuit against RWE at the Regional Court in Essen, Germany, where the company is headquartered. Lliuya claims that RWE is partially responsible for glacial melting in the Andes and for placing his home, located at the foot of the mountains, at risk. In his claim, he requests financial contributions from RWE, with a payment proportional to the company’s contribution to climate change, as well as safety measures for Lake Palcacocha.

In the course of the lawsuit, RWE has continued to deny responsibility, arguing that “individual emissions cannot be tied to glacial melting in the Andes.” RWE further claims that “local temperatures have even decreased, meaning there would be no warming that could be tied to increased glacial melting [and] . . . that flooding no longer poses a risk for the Andean city of Huaraz.”

On December 15, 2016, the Essen District Court dismissed Lliuya’s claims because, according to the judge, “legal causality” was not demonstrated. The lawyer representing Lliuya indicated that “legal causality does exist” and that they will “most likely appeal.”
**The human rights dimension**

Huaraz, with a population over 100,000, is the capital city of the department of Ancash, located in the Cordillera Blanca. Huaraz is located on the flood path of Lake Palcacocha. It has been and continues to be at risk of being affected by a disaster such as the one that occurred in 1941.

A possible overflow of Lake Palcacocha and the consequent flooding of the city of Huaraz will cause severe human rights impacts on its population.

The rights of people will be affected if glacier melting continues, including the right to life – given the human toll that a potential flood could cause without any early warning systems in place – and the right to water – since the city’s main source of drinking water is the Paria River, which flows from Lake Palcacocha.

A flood could cause mass displacement and, in turn, affect the ways of life of the traditional and indigenous populations living in the impacted area. The lack of comprehensive adaptation plans, on both the national and local levels, would have a direct impact on the survival of the city of Huaraz and its residents.

**Climate change and human rights policies in Peru**

The Peruvian Constitution of 1993 establishes that every person has the right to a balanced and appropriate environment for the development of life. Peru is also a signatory of the major human rights treaties of the United Nations and the Inter-American System on Human Rights. Article 11 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, known as the “Protocol of San Salvador,” establishes that: “1. Everyone shall have the right to live in a healthy environment and to have access to basic public services. 2. The States Parties shall promote the protection, preservation, and improvement of the environment.”

Peru has existing obligations to respect and guarantee human rights, as well as to adopt legislation or other measures to give effect to the rights enshrined in those treaties. On the climate change front, Peru ratified the UNFCCC in 1992 and created the National Commission on Climate Change in 1993. In 2002, it ratified the Kyoto Protocol and in 2003 adopted Decree No. 086–2003 PCM – National Strategy on Climate Change. It is worth noting that the Strategy does not refer to the human rights impacts of climate change. It also faced a number of challenges for its implementation. In 2015, the Strategy was updated and approved via Decree No. 011–2015 of the Ministry of Environment. The new strategy identifies glacial retreat and reduced access to the associated water resources as climate risks.

In 2011, the National Disaster and Risk Management System (SINAGRED) was established. The Decree by which the System was created states that any policies, strategies, or plans related to climate change are part of the National Disaster and Risk Management Policy.

Peru submitted its INDC in 2015, which INDC recognizes that “seven basins studied in the “Cordillera Blanca” (mountain range) have exceeded a critical transition point in their retreat.” Despite acknowledging the high vulnerability of the country to the impacts of climate change, nowhere in the INDC is there a reference to the impact on human rights and/or any hint of using a human rights–based approach when addressing the impacts of climate change and/or the measures to adapt to it.

Finally, Peru ratified the Paris Agreement on July 21, 2016, the preamble of which provides guidance for the respect, promotion, and consideration of existing human rights obligations in its implementation. This is of particular importance when designing adaptation plans for the
population that will be adversely affected by receding glaciers and potential floods caused by Lake Palcacocha.

Conclusions and recommendations

Climate change impacts cannot be attributed to a single or specific event. From a liability standpoint, it is difficult to assess who should be responsible for the negative impacts of climate change and the required remediation of human rights violations.

While there are indications that Peru and Bolivia have taken measures to ensure legal and institutional frameworks are in place, effective implementation is required to address climate-related impacts and guarantee the protection of human rights, particularly for the most vulnerable populations.

The narrative presented indicates that enhanced efforts are needed by the international community for more ambitious climate change efforts. This does not translate into disregarding the responsibility of developing countries over their own obligations to protect human rights from climate change impacts. Efforts to mainstream a human rights dimension in climate change policy are needed, as are mitigation measures to reduce the risk of climate change in the fulfilment of human rights.

Effective and ambitious climate measures are particularly important for the survival of vulnerable indigenous groups. Many of these groups are reaching a tipping point and, without the support and commitment of the international community to effectively tackle climate change, disappearance will be the only possible result.

Notes

4 Ibid.
6 Ibid.
8 S. Gerardo, Amazonia y sus Etnias 2010, at 154.
9 Art 30 (I), supra note 7.
10 Ibid.
11 Law N 071, Law of the Rights of Mother Earth (2010) and Law No 300, the Mother Earth Law and Integral Development to Live Well (2012).
13 UN Framework Convention on Climate Change, Intended Nationally Determined Contribution of the Plurinational State of Bolivia (2015), available online at http://www4.unfccc.int/submissions/INDC/Published%20Documents/Bolivia/1/INDC-Bolivia-english.pdf.
14 Ibid.


19 Grantham Research Institute on Climate Change and the Environment at the London School of Economics and Political Science, Climate Change Legislation in Peru, available online at www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2015/05/PERU.pdf, at 6.

20 Servindi, Perú es el tercer país más vulnerable del mundo al cambio climático, available online at www.servindi.org/actualidad/99300.


23 Ibid.

24 Ibid.

25 M. A. Somos-Valenzuela et al., Inundation Modeling of a Potential Glacial Lake Outburst Flood in Huaraz, Peru, 14-01 CRWR Online Reports, The University of Texas at Austin (March 2014) 7, available online at http://hdl.handle.net/2152/27738.

26 Ibid.


30 Germanwatch, Regional Court Dismisses Climate Lawsuit Against RWE – Claimant Likely to Appeal, available online at https://germanwatch.org/en/13234.

31 Ibid.


36 Instituto Nacional de la Defensa Civil (INDECI), DECRETO SUPREMO No 048-2011-PCM que crea el Sistema Nacional de Gestión del Riesgo de Desastres (SINAGERD) (2011), available online at www.indeci.gob.pe/objetos/secciones/MQ==/Mw==/lista/MzEx/MzE0/201110131549081.pdf.

37 UN Framework Convention on Climate Change, Intended Nationally Determined Contribution (INDC) from the Republic of Peru, available online at http://www4.unfccc.int/ndcregistry/PublishedDocuments/Peru%20First/INDC%20Per%C3%BA%20english.pdf.