Addressing Health Crises through Courts? Climate Litigation in Latin America, the Right to Health and Vulnerable Populations

Thalia Viveros Uehara

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ADDRESSING HEALTH CRISSES THROUGH COURTS? CLIMATE LITIGATION IN LATIN AMERICA, THE RIGHT TO HEALTH AND VULNERABLE POPULATIONS

A Dissertation Presented
by
THALIA VIVEROS UEHARA

Submitted to the Office of Graduate Studies
University of Massachusetts Boston,
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August 2023

Global Inclusion and Social Development Program
ADDRESSING HEALTH CRISES THROUGH COURTS? CLIMATE LITIGATION IN LATIN AMERICA, THE RIGHT TO HEALTH AND VULNERABLE POPULATIONS

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ABSTRACT

ADDRESSING HEALTH CRISES THROUGH COURTS? CLIMATE LITIGATION IN
LATIN AMERICA, THE RIGHT TO HEALTH AND VULNERABLE POPULATIONS

August 2023

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As Latin America faces increasing climate-related health crises that
disproportionately affect populations experiencing poverty and social exclusion, it becomes
increasingly urgent to realize the most vulnerable's right to health. While the region's new
constitutionalism (NLAC) has made progress in protecting this right, it has only recently
begun to intersect with climate change law through rights-based climate litigation. This
dissertation takes a transdisciplinary multi-methods research approach to answer the
following question: How do health crises emerge within, and how are they addressed by
courts through, domestic climate litigation in Latin America? Specifically, it examines how health concerns for vulnerable populations are raised and addressed in climate litigation, aiming to identify how the profiles, motives, and resources of claimants and judges influence how they protect the right to health of the most marginalized groups. By also considering the legal and broader socio-political contexts intertwined with climate-related health crises, the research aims to contribute to a better understanding of Latin America's climate litigation by exploring how the socio-ecological dimensions of health vulnerability are reflected in and redressed by judicial decisions.

The dissertation concludes that within the *corpus* of climate litigation in Latin America (77 cases of which 61 are rights-based), health crises manifest and are addressed by domestic constitutional courts in diverse manners, none of which sufficiently address the full socio-ecological spectrum of health vulnerability. This partial manifestation of health crises is underpinned by the complex interplay between the socio-political realities of both claimants and judges, which influence their framing and utilization of normative tools. In particular, while the right to health has emerged as a prominent instrument in climate litigation, enabling claimants to obtain legal standing and courts to justify the cessation of climate change-inducing activities, the social dimension of vulnerability (health’s relationship with poverty and social exclusion) remains partially redressed. For the most part, climate litigation serves as a platform for unidimensional ecological concerns. The research thus contends that the judicial pathway is not currently sufficient as the sole mechanism for addressing health crises.
However, there is potential for improving climate litigation’s alignment with climate justice by broadening strategic and interpretative horizons for claimants and courts to account for the realities faced by those most vulnerable to climate change. To achieve this, employing socio-ecological bottom-up strategies by litigant civil society organizations, adopting open legal standing rules, embracing broad-ranging remedial designs within progressive legal traditions, and deepening judges’ understanding of claimants' social contexts seem to be crucial components. Currently, these prospects appear more likely to materialize in Colombia and Ecuador than in Chile and Mexico.
ACKNOWLEDGMENTS

This dissertation stands as a heartfelt tribute to the network of support that has nourished, empowered, and believed in me. First and foremost, I wish to express my deepest gratitude to Zair, my husband and loving life companion, who stood by me throughout the highs and lows, the trials and triumphs. Your unwavering support, understanding, and encouragement fueled—and compassionately embraced—my intellectual and personal transformation that this Ph.D. journey prompted. Together, we navigated the uncharted territories of academia and life, and I am forever grateful for your steadfast companionship.

To my family, who have been the architects of my character and spirit - thank you. Mimi and Papi, your unwavering love and nurturing, from my early years to this moment, has been my constant. You have not merely borne witness to my evolution, but have been instrumental in shaping it, teaching me to embrace uncertainty and pursue my aspirations fearlessly. To my brother, and our extended families, the Viveros, Uehara, and Domínguez Trinidad, your encouragement, laughter, and counsel have provided an indispensable tapestry of love and support.

To my abuelito Seve and abuelita Mary, whose resilience during Mexico's turbulent socioeconomic and political transition during the 20th century inspires me. Your legacy, hard-earned and carefully nurtured, served as a beacon, reminding me of the strength that runs in our lineage.

It is imperative to honor those who have trodden the paths of life, often in silence, their stories not written but deeply etched in the fabric of our collective history. To my
forebears across the globe, your known and unknown struggles ignited a spark within me, prompting me to press forward in my own endeavors.

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To my esteemed professors, mentors, and the entire SGISD community, I extend my heartfelt gratitude. You have beautifully woven integrity, solidarity, courage, and empathy into the fabric of academia, reinforcing my commitment to use knowledge in the pursuit of a more just society and dignified lives for all. Thank you for leaving an indelible impact on my journey.
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<tr>
<td>AIDA</td>
<td>Interamerican Association for Environmental Defense.</td>
</tr>
<tr>
<td>CESCRI</td>
<td>UN Committee on Economic, Social and Cultural Rights.</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination Against Women.</td>
</tr>
<tr>
<td>CRPD</td>
<td>Convention on the Rights of Persons with Disabilities.</td>
</tr>
<tr>
<td>GHGs</td>
<td>Greenhouse gas emissions.</td>
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<tr>
<td>IACHR</td>
<td>Inter-American Commission on Human Rights.</td>
</tr>
<tr>
<td>IACtHR</td>
<td>Inter-American Court of Human Rights.</td>
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<tr>
<td>IACHROP</td>
<td>Inter-American Convention on Protecting the Human Rights of Older Persons.</td>
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<tr>
<td>IAHRS</td>
<td>Inter-American Human Rights System.</td>
</tr>
<tr>
<td>ICCAL</td>
<td>Ius Constitutionale Commune en América Latina.</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights.</td>
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<tr>
<td>IPCC</td>
<td>Intergovernmental Panel on Climate Change.</td>
</tr>
<tr>
<td>IRB</td>
<td>Institutional Review Board.</td>
</tr>
<tr>
<td>MDSD</td>
<td>Most Different System Design.</td>
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<tr>
<td>MSSD</td>
<td>Most Similar System Design.</td>
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<tr>
<td>NAPs</td>
<td>National Adaptation Plans.</td>
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<tr>
<td>NDC</td>
<td>Nationally Determined Contribution.</td>
</tr>
<tr>
<td>Acronym</td>
<td>Full Form</td>
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<td>---------</td>
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<tr>
<td>NGOs</td>
<td>Non-governmental organizations.</td>
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<tr>
<td>NLAC</td>
<td>New Latin American Constitutionalism.</td>
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<tr>
<td>OHCHR</td>
<td>Office of the UN High Commissioner for Human Rights.</td>
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<tr>
<td>PAHO</td>
<td>Pan American Health Organization.</td>
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<tr>
<td>SCA</td>
<td>Systematic Content Analysis.</td>
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<td>SER</td>
<td>Social and Economic Rights.</td>
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<tr>
<td>UNFCCC</td>
<td>United Nations Framework Convention on Climate Change.</td>
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<td>WHO</td>
<td>World Health Organization.</td>
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CHAPTER 1
INTRODUCTION

As rights-based climate litigation gains momentum in Latin America,¹ national courts are increasingly being used as avenues for pressuring governments to address climate change and fulfill their human rights obligations.² Cases such as Future Generations v. Ministry of the Environment and Others (Colombia) have been heralded for their potential to promote climate mitigation.³ In this instance, the Colombian Supreme Court ruled in favor of a group of children and youth claimants and mandated various ministries of the Colombian government and state and local authorities to decrease deforestation rates in the Amazon Forest, which were contributing to climate change and adversely affecting people's health.⁴ Although emerging scholarship on climate litigation generally views such climate lawsuits as a means to induce climate action, there are reasons to approach this view with caution,

¹ Since 2015, the number of these lawsuits brought before domestic courts in Latin American countries has increased by tenfold—from eight to 81 in 2022. In this region is where most human rights-based climate cases have been brought, after Europe and North America. “Litigation Cases,” LSE Grantham Research Institute on Climate Change and the Environment, February 22, 2023, https://climate-laws.org/litigation_cases?region%5B%5D=Latin%20America%20%26%20Caribbean&case_started_from=2010&case_started_to=2022; Joana Setzer and Catherine Higham, “Global Trends in Climate Change Litigation: 2021 Snapshot” (London: Grantham Research Institute on Climate Change and the Environment and the Centre for Climate Change Economics and Policy, 2021), 32.
particularly in Latin America, where poverty and social exclusion make already marginalized populations more vulnerable to climate change, thereby exacerbating health crises.

The COVID-19 pandemic has demonstrated the vulnerability of health systems to shocks compounded by increasing poverty and social exclusion, leading to disastrous outcomes for human well-being. Climate change similarly creates an unprecedented global disruption to health. Socioeconomic challenges exacerbate climate-related health risks, as health vulnerability to climate change depends not only on exposure to climate-related hazards but also on sensitivity to climate change (i.e., the extent to which social systems on which health outcomes depend are affected by weather conditions) and the adaptation measures in place to reduce the burden of adverse health outcomes.

The discrimination and limited access to healthcare experienced by populations living in poverty and social exclusion exacerbate the harms of climate change, making these segments of society more vulnerable to climate-related health conditions.

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Latin America is a vivid example of this pressing scenario. Abundant scientific evidence has demonstrated with medium to high confidence that climate change is exacerbating disease and pest transmission processes, increasing morbidity, mortality, and disabilities in the region. Changing climatic patterns facilitate the spread of chikungunya virus, dengue, and Zika as significant public health challenges in some countries. Moreover, extremely long dry spells are becoming more frequent and increasing the number of fires, aggravating respiratory and cardiovascular diseases. For instance, droughts have affected the well-being of over 40 million people in the southeast of Brazil.

The health outcomes of Latin American populations are strongly influenced by pervasive poverty and social exclusion, which determine who enjoys the highest attainable standard of health and who does not. Individuals living in poverty and belonging to minority groups are more likely to experience poor health outcomes as they lack the resources to prevent, treat, cure, and rehabilitate health conditions, including those related to

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12 Castellanos et al., “Central and South America,” 1712.
13 Castellanos et al., 1712.
climate change. As a result, Latin America’s 151 million people living in poverty (23.7% of the region’s population) are more vulnerable to the impacts of climate change.

Despite the region’s expansion of healthcare coverage in recent decades, significant barriers to accessing essential services persist between and within countries, particularly for the most disadvantaged populations. And even with an overall increase in coverage, healthcare systems have not become more resilient to support populations in dealing with the impacts of a changing climate. For instance, Argentina and Uruguay have more than two doctors per 1000 population, whereas Honduras and Guatemala have less than 0.5 doctors per 1000. Intra-country disparities are also evident, with Brazil's Amazonian North having only 1.1 medical doctors per 1,000 inhabitants compared to 2.8 per 1,000 in the wealthier Southeast. Similarly, access to health services is limited for 29% of Colombia's population.

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15 Parry et al., “The (in)Visible Health Risks of Climate Change.”
The climate crisis amplifies the existing health needs of socially excluded populations, often left undiagnosed or untreated, and generates further health problems that are not explicitly linked to climatic causes. Consequently, these health issues require redress in ongoing climate litigation.

Despite the significance of the region's health crises and growing number of climate litigation cases, it remains little explored how the two phenomena of health and climate intersect in litigation. Current scholarship on climate litigation has mainly focused on cases filed in the so-called Global North countries, and except for a few cases, has not explored the cases from the lens of any specific human right—other than the right to a clean and healthy environment. And while some studies have examined the intersection of health and climate in court cases, these analyses are scarce and tend to focus on high-income countries or use a public health approach rather than a human rights perspective.

This lack of research leaves knowledge gaps on the directions this judicial phenomenon is taking in the region, particularly on how this type of litigation engages with and addresses the climate-related health effects that disproportionately affect marginalized communities.

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populations. The dearth of academic works, combined with an overly optimistic view of climate litigation's potential to drive climate action, overlooks the critical role that courts play in promoting climate justice. Specifically, as current climate litigation scholarship has not placed sufficient focus on the inequality patterns inherent in the litigation process, it fails to reflect on how the judiciaries can tackle the socioeconomic challenges that compound climate vulnerability. This is a missed opportunity for expanding climate litigation’s strategic and interpretative horizons to promote the most vulnerable populations’ chances to attain high standards of health amidst a changing climate.

This dissertation helps overcome such knowledge gaps by exploring the question of how health crises emerge within, and how they are tackled by courts through domestic climate litigation in Latin America. It employs a theoretical framework (detailed in Section 1.2) that integrates epistemological contributions from law, development studies, political science, and sociology to examine the legal and socio-political contexts that influence how key actors, including claimants and courts, frame, understand and tackle climate-related health vulnerability through the litigation process. Specifically, the research considers the variables of claimants' and judges' profiles, opportunity structures, resources, motives, and legal bases to understand how climate litigation can address both existing and emerging health concerns of vulnerable populations.

To that aim, this project employs a qualitative research approach that consists of four methods undertaken sequentially (expanded upon in Section 1.3). First, to chart the various ways in which rights-based climate litigation in Latin America invokes the right to health, it applies SCA to all domestic climate change lawsuits filed through 2022 across Latin American countries that (a) recognize the right to health in their national constitutions or abide by international human rights instruments, and (b) operate under a civil law legal system. This method involves examining administrative, civil, criminal, and constitutional law cases to gather information on the profile, motives, and objectives of litigants and courts, as well as their arguments and the legal bases of their respective claims and judgments. Specifically, the analysis focuses on how these elements relate to climate justice by addressing the socio-ecological spectrum of health vulnerability.

The dissertation further sharpens its focus by conducting both doctrinal and contextual analyses and in-depth interviews with claimants and judges of five constitutional climate lawsuits filed in Chile, Colombia, Ecuador, and Mexico. The selection of these case studies follows the MSSD and MDSD29 as logics for comparative analysis. The combined application of these three methods enables an in-depth investigation of how situated framings, understandings, and experiences of climate-related health vulnerability shape the course and outcomes of the litigation process within the region's unique constitutional landscape, known as the NLAC. Furthermore, it facilitates the linkage of such data with broader patterns of inequality entwined in the litigation process.

1.1 Significance and Originality of the Dissertation

This dissertation is significant and original as it represents the first transdisciplinary inquiry of climate-related health concerns in Latin America's *corpus* of rights-based climate litigation through the lens of the right to health. As Section 1.5 further elaborates, the current climate litigation's predominant focus on the Global North and its preference for legal research methods pose theoretical and methodological gaps for understanding health crises in the distinctive socio-legal landscapes of Global South jurisdictions. The scant focus on Latin America's burgeoning climate lawsuits and their interconnectedness with health, poverty, and social exclusion misses the epistemological contributions and tools advanced by sets of literature stemming from sociology, development studies, and political science. This research thus broadens the scope beyond a restricted unidisciplinary focus to take advantage of such advancements and to fill the aforementioned knowledge gaps.

The multi-methods approach employed in this study, as described in Section 1.3, departs from the narrow focus on the black letter of the law prescribed by legal scholarship. This approach enables the capture of multi-scalar inequality patterns underlying health vulnerability to climate change throughout the litigation process. In other words, the research's relevance and originality lie in its ability to navigate the complex interactions between the socio-political context in which climate litigation unfolds and the use of normative tools in the legal sphere. Although this expanded understanding of Latin America's climate litigation is not exhaustive, it provides a useful broad overview from which current strategic and interpretive horizons used by claimants and judges can benefit.

Importantly, this dissertation advances knowledge of relevance for aligning claimants' and courts' roles with climate justice, thereby benefiting populations who are non-claimants.
By shedding light on how claimants' profiles, motives, and resources drive climate lawsuits toward the protection of vulnerable populations' health, the research reflects on the strategic horizons for them to comprehensively use the judicial pathway in the quest for climate justice. For judges, the study contributes to expanding current interpretative spaces within the NLAC to ensure they consider and redress the socio-ecological challenges behind people's health vulnerability to climate change. In this way, non-claimant vulnerable populations could benefit from measures aimed at countering climate change's social and ecological dimensions as they advance climate mitigation while promoting action on the social determinants of health in mutually supportive ways.

This work comes at a critical time. The COVID-19 pandemic has taken a disastrous toll on human well-being thereby highlighting the urgent need to enhance healthcare systems and address social disparities in every country. Meanwhile, the world is facing an escalating climate crisis, with increasingly frequent extreme weather events providing clear evidence that we can no longer delay mitigating and adapting to these new climate realities. Although the pandemic has diverted resources away from climate action, this dissertation argues that health and climate objectives are inextricably intertwined and should be treated as such. It challenges the narrow dichotomy of “the social” versus “the environmental” and envisions a way to achieve the realization of the right to health amidst a changing climate. This is at the heart of achieving climate justice, and the role that judiciaries can play in this direction through climate litigation is a crucial consideration. However, before adopting a prescriptive approach, it is essential to have a clearer understanding of how health crises emerge and how

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courts currently tackle them, which is an area where this dissertation makes significant contributions.

1.2 Theoretical Framework

This dissertation's theoretical framework is built upon the realization that the growing corpus of climate litigation in Latin America cannot be viewed as an isolated occurrence within the legal arena. Instead, it must be examined within the broader socio-political context in which it occurs, as various epistemological contributions from fields such as sociology, development studies, and political science can illuminate how normative instruments employed within the judicial realm are inextricably linked with the socio-political environment in which litigation takes place. Specifically, this non-legal scholarship highlights the interdependence of judicial processes with issues such as health, poverty, and social exclusion, emphasizing the need to move beyond monocausal approaches and towards multifaceted conceptual frameworks for analyzing climate litigation.

Accordingly, this dissertation builds on the existing research on litigation and courts, development and climate change, and human rights and climate change law (as discussed further in Section 1.5) to develop a theoretical framework that emphasizes the various connections between climate litigation in Latin America and the region's socio-political and legal context. The framework distinguishes between (1) base concepts, (2) main concepts, and (3) connecting concepts. Base concepts refer to broader socio-political and legal phenomena that contextualize the units of analysis in this research, such as “climate change,” “poverty,” “social exclusion,” and the “NLAC.” Main concepts relate to the units of analysis identified in the primary question of the dissertation, namely “health crises,” “vulnerable populations,” and “climate litigation.” Finally, connecting concepts bridge or have the
potential to bridge the main concepts across the socio-political and legal dimensions; these are “climate justice” and the “right to health.”

Although it does not fit into any of the aforementioned conceptual categories, it is important to clarify what is meant by “Latin America.” This term is used in this dissertation to emphasize the shared experiences of colonization, constitutional paradigms, and linguistic commonalities of the nations in the South American region, including Mexico.\textsuperscript{31} However, it is crucial to note that such a broad reference does not intend to undermine the distinct circumstances of each individual country. Instead, the term expands on the common historical background of these countries, particularly their development trajectories and persisting socio-economic disparities, to examine how this plays out in the impacts of the climate crisis on health. The research design of this dissertation captures countries' particular circumstances, as elaborated in Section 1.3.

Similarly, with respect to geographical considerations, this dissertation employs the North-South spatial demarcation as a means of engaging with the prevailing climate litigation scholarship. The adoption of this classification should not be misconstrued as an endorsement; instead, it aims to maintain coherence with the established categorizations prevalent in the existing body of research. It is particularly important to acknowledge this

\begin{flushright}
\end{flushright}
stance, given that the North-South divide has faced criticism for reinforcing a colonial viewpoint\textsuperscript{32} and for its insufficient representation of emerging dimensions of inequality.\textsuperscript{33}

1.2.1 Base Concepts

The IPCC defines “climate change” as a change in the state of the climate that persists for an extended period and can be identified by changes in the mean and/or variability of its properties.\textsuperscript{34} Similarly, the UNFCCC refers to this concept as “a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability.”\textsuperscript{35} While the latter definition distinguishes between climate change resulting from human activities and that caused by natural factors, the increasing prevalence of the phenomenon makes it progressively challenging to disassociate it from anthropogenic interventions.\textsuperscript{36}

The technocentric orientation of the definitions provided by the IPCC and UNFCCC fails to capture the holistic and multifaceted understandings of climate change advanced by communities who bear the brunt of its impact.\textsuperscript{37} Importantly, perspectives on climate change that are situated outside of scientific frameworks challenge the entrenched hierarchies

\textsuperscript{35} Article 1.2 of the UNFCCC.
associated with mainstream climate expertise and delve deeper into the diverse ways in which climate is experienced and understood. As such, this dissertation embraces a more fluid and dynamic conception of the phenomenon, which acknowledges the significance of scientific perspectives while recognizing that they do not represent the only valid source of knowledge. Rather, it seeks to integrate and synthesize the diverse insights that are offered by communities and individuals who have been directly affected by climate change, including those who have brought climate lawsuits.

Regarding the concept of “poverty,” while there is no universally agreed-upon definition, an exclusive focus on its economic dimension is no longer viable from an epistemological standpoint. The seminal works of Amartya Sen and Martha Nussbaum have prompted a critical rethinking of poverty, arguing that it is not determined solely by what people economically possess but by the opportunities they have to achieve well-being. The capability approach that they advanced expanded the concept of poverty from being a state merely contingent upon a person's income level to comprising the deprivation of capabilities, emphasizing how poverty affects the enjoyment of good physical and mental health.

Realizing a healthy life depends on various determinants, including the opportunity to access quality healthcare services and safe natural environments. The lack of these opportunities results in disadvantages that deprive people of the capability to be healthy,

38 Wright, “Feeling Climate Change to the Bone: Emotional Topologies of Climate.”
41 Sen, Development as Freedom, 87.
42 Sen, 39.
thereby undermining their ability to live free from poverty.\textsuperscript{43} From this perspective, poverty is a multidimensional phenomenon, for whose eradication the assurance of health care and clean environments, is essential.\textsuperscript{44} The capability approach thus offers this dissertation’s theoretical framework a more comprehensive and nuanced concept of poverty than the conventional understanding exclusively based on the individuals’ economic assets.

Furthermore, this dissertation draws on the concept of “social exclusion,” which is often conflated with poverty but provides a distinct lens through which to examine disadvantage. According to Popay et al., social exclusion refers to dynamic, multi-dimensional processes driven by unequal power relationships across economic, political, social, and cultural dimensions at different levels.\textsuperscript{45} It operates at individual, household, group, community, country, and global levels, and focuses on social interactions that lead to deprivations and “set apart” or “lock out” specific groups from participation in social life.\textsuperscript{46} Social exclusion thus captures an important dimension that the concept of poverty overlooks and complements the understanding of poverty by focusing on the social relations that underlie deprivations.

Similar to the case of the concept of poverty, the capability approach also aids the conceptual clarification of social exclusion, and in doing so, it serves as a foundation where both such concepts coalesce.\textsuperscript{47} In particular, the capability approach sheds light on the complex domain of disadvantage both as a multidimensional \textit{outcome} (the deprivation of a

\textsuperscript{43} Sen, 39.
\textsuperscript{44} Sen, 90.
\textsuperscript{46} Popay et al., 91
person or group’s freedoms to achieve valuable functionings, as poverty suggests), and process (the production of disadvantage due to oppressive and discriminatory practices, as social exclusion emphasizes).

Additionally, the capability approach helps clarify climate change’s connections with poverty and social exclusion by bringing attention to how these three phenomena interact in the context of human health. Given that the extent to which climate change compromises human health depends on (1) the exposure to the climate-related hazards, (2) social systems’ sensitivity to climate change impacts (the extent to which they are affected due to changes in weather and climate), and (3) the adaptation measures in place, the health of population groups deprived of social opportunities is disproportionately impacted. Poverty and social exclusion exacerbate climate change’s detrimental effects on health as they diminish the capability to be healthy especially of people who not only are exposed to climate hazards but also who lack access to social opportunities—such as quality health care services. Thus, individuals and groups who live in poverty and experience gender-, ethnicity-, racial-, ability-, and/or age-based discrimination exhibit higher vulnerability to climate change. This understanding is a critical component of the concept of “vulnerable populations,” which this dissertation’s theoretical framework also embraces (as detailed in the following Subsection).

The NLAC refers to the constitutional law reconfiguration initiated by several Latin American countries during the 1980s and 1990s. These states enacted a series of reforms

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aimed at incorporating social rights provisions in their constitutions, thereby making their
domestic constitutional law more compatible with international human rights law regarding
SER.\textsuperscript{50} This constitutional reconfiguration placed an expectation on national courts to deliver
the social transformation that the ordinary political systems seemed unable to provide by
interpreting fundamental rights through the international human rights framework.\textsuperscript{51}
Consequently, various civil society groups and NGOs committed to social change mobilized
through strategic litigation as a central means of addressing exclusion.\textsuperscript{52} These actors, along
with national courts, constitute central operators of the NLAC through the use of human
rights as both a legal and social language in litigation.\textsuperscript{53} Since this paradigm represents a
distinctive component of the region’s socio-legal scenario, it is referred to in this dissertation
as Latin America's ‘distinctive constitutionalism’ or particular ‘socio-legal landscape.’

1.2.2 Main Concepts

The concept of “health crises” refers to the urgent coupling of two pressing issues: the
severity of climate change (often referred to as the “climate crisis”) and Latin America’s
pervasive poverty and social exclusion (which have been exacerbated by the COVID-19
pandemic).\textsuperscript{54} This concept thus reflects the high level of health vulnerability resulting from
the combined effects of the exposure to climate hazards and the lack of health systems—or
their inadequacy—for certain populations necessary to help them withstand such detrimental

\textsuperscript{50} Armin von Bogdandy, 34; Couso, 68.
\textsuperscript{51} Armin von Bogdandy, 34; Couso, 68.
\textsuperscript{52} Armin von Bogdandy, 33; Couso, 68.
impacts.\textsuperscript{55} It is noteworthy that climate hazards encompass both acute extreme weather events and chronic changes in climatic patterns.\textsuperscript{56} Hence, in the context of this dissertation, health crises are not restricted solely to the incidence of disasters but are also a consequence of the gradual, non-abrupt, variations in the climate.

The reference to “vulnerable populations” encompasses individuals and groups who lack access to instrumental opportunities for achieving the highest attainable standard of health due to their deprivation of essential functionings and social exclusion.\textsuperscript{57} Historically, these include women, Indigenous peoples, peoples of African descent, persons with disabilities, children, and older persons.\textsuperscript{58} For this dissertation’s analytical purposes, it considers the vulnerability experienced by such populations as stemming from their lack of or deficient access to health systems, including (1) access to safe environmental conditions and (2) quality, affordable, and resilient healthcare services—which are crucial assets upon which a high standard of health, and thus climate resilience, depends.\textsuperscript{59}

Moreover, although the dissertation also refers to these populations as “marginalized” or “excluded,” such adjectivization does not intend to characterize any personal or group trait. Rather, its purpose is to draw attention to the external circumstances of poverty and exclusion that make them more susceptible to climate hazards. As elaborated on previously, these circumstances are the result of societal structures that have historically disadvantaged

\textsuperscript{55} Ebi, Kovats, and Menne, “An Approach for Assessing Human Health Vulnerability and Public Health Interventions to Adapt to Climate Change.”
\textsuperscript{56} IPCC, “Annex II: Glossary,” 2911.
\textsuperscript{58} Parry et al., 3.
certain groups based on their race, ethnicity, gender, or socioeconomic status. Therefore, it is essential to avoid any revictimization by acknowledging that these populations are not inherently vulnerable, but rather have been made vulnerable by systemic inequalities.

The third concept identified in this dissertation’s research question is “climate litigation.” It consists of lawsuits that are generally brought before judicial bodies in which climate change arguments, law, policy, or science are material issues of law or fact. The definition of “climate litigation” used in this dissertation follows that of the climate litigation database of AIDA, which is more comprehensive than the one offered by the Sabin Center for Climate Change Law. However, despite this dissertation’s wide-ranging definition, it does not include cases that make only a passing reference to climate change without elaborating meaningful arguments or addressing climate-relevant laws, policies, or actions.

Within the body of climate lawsuits, this dissertation further selects the so-called “positive” and “rights-based” litigation. Positive litigation refers to the litigation that strives to reduce GHGs, preserve the environment, and increase adaptive capacity. This type of litigation is usually initiated by NGOs or community members and distinguishes itself from “negative” litigation, which attempts to avoid these shifts by challenging mitigation or adaptation measures. Typically, corporations initiate negative litigation. The term “rights-

60 AIDA’s climate litigation database defines “climate litigation” as “all judicial actions that include either main or peripheral arguments related to state and other actors’ legal obligations on climate change.” Please see “Plataforma de Litigio Climático para América Latina y el Caribe,” Interamerican Association for Environmental Defense, April 21, 2022, https://litigioclimatico.com/es/sobre-la-plataforma
61 The Sabin Center for Climate Change Law defines “climate litigation” as “cases that are generally brought before judicial bodies in which climate change law, policy, or science are material issues of law or fact.” Please see, “U.S. Climate Change Litigation database,” the Sabin Center for Climate Change Law at Columbia Law School, March 24, 2022, http://climatecasechart.com/climate-change-litigation/about/
based” in the concept of climate litigation refers to the use of human rights as the legal basis of claimants and courts, with an emphasis on the linkages between human rights and climate change. This type of litigation can be anchored on different legal structures, namely administrative, civil, criminal, or constitutional law—depending on the liability system on which it sits. Therefore, this dissertation’s reference to “climate litigation” comprises the cases brought before administrative, civil, criminal, or constitutional courts that explicitly (1) mention climate change arguments, law, policy, or science as argumentative factors and (2) invoke human rights as states’ legal obligations.

Although the concept of climate litigation refers to a specific thematic litigation that may materialize differently in each national setting, it encompasses stages that are common to the general litigation process, enabling its comparative study across jurisdictions. In this vein, Siri Gloppen distinguishes four distinct but interrelated stages of the litigation process: claims formation, adjudication, implementation, and social outcomes stages (Figure 1). This analytical framework allows for cross-country scrutiny and tracing of the implications of the litigation's socio-political contexts, making it relevant to the conceptual scope of this proposal.

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63 de Vilchez Moragues and Savaresi, “The Right to a Healthy Environment and Climate Litigation,” 2.
66 Gloppen, 26.
Figure 1. Siri Gloppen’s framework to analyze what drives the litigation process.
Furthermore, by drawing attention to the profiles of litigants and courts, their respective claims and arguments, Gloppen’s analytical framework is particularly well-suited for scrutinizing Latin America’s climate litigation, especially in the context of the NLAC. This is because, as mentioned earlier, civil society groups acting as claimants, and courts are instrumental in the workings of this unique socio-legal landscape.\(^{67}\) Therefore, when it comes to claimants, it is reasonable to focus on their profiles and examine the type of civil society actor they embody\(^ {68}\)—whether they are lay individuals, grassroots organizations, domestic or international non-profit organizations—and who represents them. In this dissertation, these groups, together with their attorneys (if any), are referred to generically as “claimants” unless their profiles are specified.

1.2.3 Connecting Concepts

This dissertation uses the “right to health” and the concept of “climate justice” to examine the interactions between the socio-political context of climate litigation and their use of normative tools in the legal sphere. These concepts are mutually complementary because they both address the disproportionate climate-related health impacts that affect populations living in poverty and experiencing social exclusion. By emphasizing the inequalities that exist along ecological and social dimensions of health vulnerability, they provide a valuable lens for understanding health crises and thus identifying such phenomena within climate

\(^{67}\) Armin von Bogdandy and Urueña, “Comunidades de práctica y constitucionalismo transformador en América Latina,” 131.

\(^{68}\) “Civil society,” “civil society organizations,” and “civil society actors” refer to a realm in which individuals voluntarily associate with each other outside of state institutions and business organizations. This can encompass a variety of actors, including but not limited to actors with formal structures or accreditations such as NGOs. Evan Schofer and Wesley Longhofer, “The Global Rise of Nongovernmental Organizations,” in *The Nonprofit Sector: A Research Handbook*, ed. Walter W. Powell and Patricia Bromley (Stanford, California: Stanford University Press, 2020), 603.
litigation. And equally important, they provide a normative and conceptual toolkit to counteract these harmful asymmetries.

The right to health is a fundamental right enshrined in the national constitutions of several Latin American countries and in international human rights treaties ratified by most of them.\(^{69}\) Article 12 of the ICESCR\(^{70}\) provides that this right entails the enjoyment of the highest attainable standard of physical and mental health and that its full realization requires states to take necessary steps for:

a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

b) The improvement of all aspects of environmental and industrial hygiene;

c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

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The CRC,71 CEDAW,72 and CRPD73 also protect the right to health albeit *ratione personae*. Furthermore, within the regional human rights system, this right is recognized by the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)74 and the IACHROP.75

In a parallel vein, the climate justice concept brings to light the disproportionate impacts of climate change on populations who are already deprived of social opportunities due to poverty and social exclusion.76 It emphasizes how differentials along the distributive, procedural, and corrective aspects of justice determine *who* bear the responsibility for climate destabilization and *who* experiences the brunt of its impacts.77 The distributive aspect of climate justice refers to the different allocation of climate change’s burdens and resources to cope with them among countries and populations.78 Procedural justice concerns who decides

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and participates in decision-making, and corrective justice entails redress for such adverse climate impacts, including the recognition of diverse cultures and perspectives.\textsuperscript{79} The Paris Agreement comprises these three aspects by calling on its parties to implement climate responses on the basis of the principle of equity and common but differentiated responsibilities and respective capabilities,\textsuperscript{80} international cooperation,\textsuperscript{81} public participation,\textsuperscript{82} and foster climate resilience and low GHGs development.\textsuperscript{83}

The normative content of the right to health is compatible with the Paris Agreement’s inroads with the three aspects of climate justice. In terms of climate justice's corrective component, the right to health requires governments to address the ecological and social aspects of vulnerability. The CESCR explains that the right to health includes a range of factors affecting people's ability to lead a healthy life, including “improvement of all aspects of environmental [...] hygiene,” which encompasses the climate system.\textsuperscript{84} Thus, states must prevent harmful human activity that impacts the environment, not only by reducing GHGs but also by dedicating the maximum available resources to gradually achieve this goal.\textsuperscript{85}

Regarding the social dimension of vulnerability, Article 12.2 of the ICESCR and the CESCR's General Comment 14 specify that the right to health includes the right to a healthcare system, including access to medical facilities, goods, and services essential to

\textsuperscript{79} Borràs, 101; Gonzalez, 113; IPCC, 124.
\textsuperscript{80} Article 1.2 of the Paris Agreement.
\textsuperscript{81} Articles 6.1, 7.6, 7.7, and 8.4 of the Paris Agreement.
\textsuperscript{82} Articles 6.8 and 12 of the Paris Agreement.
\textsuperscript{83} Article 2.1 of the Paris Agreement.
maintaining health. Consequently, governments should create sustainable and resilient health systems and infrastructure to fulfill their minimum core obligations related to this right, which is crucial for climate adaptation.\(^{86}\) This must be done while paying close attention to the unique needs of vulnerable and marginalized groups.\(^{87}\)

The right to health and climate justice also intersect in the distributive component of climate justice. Drawing on CESCR's General Comment No. 2 and the 1978 Declaration of Alma-Ata, which acknowledges the vast health inequality between developed and developing countries,\(^{88}\) the right to health requires states to address global patterns of inequality by enabling access to essential health facilities, goods, and services in other countries.\(^{89}\)

Moreover, in accordance with the principle of equity and the common but differentiated responsibilities of climate justice, high-income countries that have contributed the most to climate change are obligated to assist the most vulnerable low- and middle-income countries in dealing with their climate-related health crises. The right to health also prohibits discrimination based on factors such as race, sex, disability, social status, or any other aspect that nullifies the realization of the right to health.\(^{90}\)

Finally, the procedural component of climate justice is embodied in the right to health, which includes access to health-related education and information and participation in health-related decision-making at the community level. In a similar vein, the concept of

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\(^{87}\) UN CESCR, *General Comment No. 14*, para. 34-37.


\(^{89}\) UN CESCR, *General Comment No. 14*, para. 38-42.

\(^{90}\) UN CESCR, para. 18.
climate justice emphasizes the need for inclusive and democratic climate action that involves local individuals and groups.  

1.3 Methodology

This dissertation's theoretical framework geared at scrutinizing climate litigation within its broader socio-political and legal contexts calls for a multifaceted research design beyond a monodisciplinary focus. The framework draws upon various epistemological contributions that propose methodological approaches whose combined application of empirical and legal methods grounds the present dissertation’s transdisciplinary research design. This design fulfills the criteria of transdisciplinary research as defined by Pohl and Hadorn. In particular, because it (a) grasps the complexity behind how Latin America’s climate change litigation intersects with the broader socio-political reality; (b) expands the view on such phenomenon beyond the current climate litigation scholarship’s legal focus by bringing in the life experiences of claimants, judges, and the researcher; (c) applies connecting concepts (climate justice and the right to health) to concrete climate litigation cases, and (d) promotes the common good by helping better understand the role of claimants and courts in expanding the most vulnerable population’s opportunities to be healthy amidst a changing climate.

In that vein, the research design relies on the epistemic potential of four qualitative methods conducted consecutively with a comparative lens, namely: (1) SCA, (2) doctrinal

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94 Leavy, 27.
legal research, (3) semi-structured and informal interviewing, and (4) contextual analysis. Crucially, their combined application permits going from a general overview of how Latin America’s body of climate litigation relates to health concerns to delving into the socio-political and legal gist of selected case studies. Gradually achieving such a level of specificity involves situating and discerning how claimants' and courts' profiles, opportunity structures, resources, motives, and legal basis steer the extent to which the litigation process addresses the region’s health crises. The following Subsections elaborate on each of this dissertation's methods, their significance for the research question, and their application.

1.3.1 Systematic Content Analysis

SCA is a valuable tool for achieving an objective understanding of a large number of legal documents where each holds roughly the same value. Its strength lies in its potential to provide a broader empirical perspective on the contours of any legal phenomenon involving multiple cases, rather than narrowly focusing on single document interpretations. This method typically involves three stages: (1) selecting cases, (2) coding cases, and (3) analyzing the case coding, through which legal researchers can gain a comprehensive view of the horizons laid by a considerable number of cases. Therefore, given that Latin America's climate litigation is primarily defined by the numerous lawsuits filed in the region's domestic jurisdictions, this dissertation employed SCA as the first step to uncover the broad horizons of such a phenomenon regarding climate-related health concerns.

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The research applied SCA to the full body of rights-based climate lawsuits filed through 2022 across Latin American countries that (a) recognize the right to health in their national constitutions or by abiding by international human rights instruments and (b) have a civil law legal system. This analysis qualitatively traced the manifest content of complaints and judgments of administrative, civil, criminal, and constitutional law cases regarding the right to health. Specifically, using a deductively generated code list based on Gloppen's analytical framework (Figure 1), it assessed the claims formation and adjudication stages of the litigation process by identifying data on the profile and motives of claimants and courts, their arguments, and the legal bases for existing and emerging health concerns of vulnerable populations.

This method’s first step consisted of collecting the region’s litigation cases and their respective claims and judgments. They were obtained from the databases of (1) AIDA’s climate litigation platform, (2) the Grantham Research Institute on Climate Change and the Environment, and (3) the Sabin Center for Climate Change Litigation, which contain the most comprehensive and updated record of climate change cases filed in most Latin American jurisdictions. A total of 77 cases (filed across 7 Latin American countries, namely, Argentina, Brazil, Chile, Colombia, Ecuador, Mexico, and Peru) were systematized into a single Microsoft Excel database, with their general information and research variables

(claimants' and courts' profiles, motives, arguments, and legal bases) organized into columns.

Figure 2 provides a sample of this database.
Figure 2. Sample of Microsoft Excel database.
After compiling the cases into the Microsoft Excel database, the method further focused on cases that used the right to health as a legal basis and met the following criteria: (1) they had been adjudicated, (2) their resolution favored the claimants, and (3) their case documentation was publicly available. Seven cases out of the 77 fulfilled these conditions and were coded and analyzed in NVivo using a rubric of questions based on Gloppen’s analytical framework, as shown in Table 1. This facilitated the identification of data on the complementarities between the right to health and climate justice (as elaborated in Subsection 1.2.3), in the motives of litigants, the objectives of litigants and courts, their arguments, and the legal bases of their complaints and judgments. Figure 3 provides a sample of the NVivo data coding and analysis.
Table 1. Rubric of questions to guide the content analysis of the litigation process.

<table>
<thead>
<tr>
<th>Unit of analysis</th>
<th>Variable</th>
<th>Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints</td>
<td>1. Claimant profiles</td>
<td>What is the demographic profile of the claimants? Do they belong to socially excluded populations (from an intersectional perspective)? Are they assisted or represented by for-profit lawyers, Global North, or Global South nonprofit organizations?</td>
</tr>
<tr>
<td></td>
<td>2. Motives</td>
<td>Are the claimants motivated by climate-related health concerns? Are they motivated by the distributive, procedural, and/or corrective aspects of such concerns? How?</td>
</tr>
<tr>
<td></td>
<td>3. Objectives</td>
<td>Do the claimants seek access to healthy environmental conditions? How? Do they seek access to quality and resilient healthcare services? How?</td>
</tr>
<tr>
<td></td>
<td>4. Arguments</td>
<td>How do the claimants frame the health–climate change nexus? How do they understand such a nexus in relation to poverty, social exclusion, and vulnerability? Do they situate it within the existing global and local patterns of inequality? How?</td>
</tr>
<tr>
<td></td>
<td>5. Legal bases</td>
<td>Do the claimants invoke the right to health? Where and how do they ground these claims? Do they invoke climate change law? Where and how do they ground these claims? How do they juxtapose such legal bases?</td>
</tr>
<tr>
<td>Resolutions</td>
<td>6. Objectives</td>
<td>Do the judges address climate-related health concerns? How? Do they tackle distributive, procedural, and/or corrective aspects of such concerns? How?</td>
</tr>
</tbody>
</table>

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| 7. Arguments                          | How do the judges frame the health–climate change nexus?  
|                                      | How do they understand it in relation to poverty, social exclusion, and vulnerability?  
|                                      | Do they situate it within the existing global and local patterns of inequality? How? |
| 8. Legal bases                       | Do the judges draw on the right to health? Where and how do they ground these claims?  
|                                      | Do they invoke climate change law? Where and how do they ground these claims?  
|                                      | How do the right to health and climate change law overlap in judicial reasoning? |
Undertaking a systemic scrutiny of Latin America's climate litigation through the lens of the right to health was a novel approach not previously explored. As the first endeavor in this direction, the application of SCA was subject to methodological constraints. Due to the method's broad scope, the analysis focused on the bulk of cases rather than individual particularities, and did not sort cases by legal field, rendering them non-comparable. Nevertheless, the application of SCA provided insightful perspective on the overall landscape of the region's climate litigation and its implications for the right to health and climate justice, allowing for their conceptualization into a “climate justice gradient” (as detailed
further in Chapter 2). This initial layer of knowledge served as a foundation for deeper scrutiny, which was achieved through the remainder of three methods in this dissertation.

1.3.2 Comparative Research and Case Selection

Comparative research has proven a valuable tool for analyzing the extent to which states fulfill their human rights obligations. Its essence lies in contrasting and identifying differences or similarities that illuminate answers to the research question. In this vein, Latin America's shared socio-legal landscape but unique national contexts provide a valuable analytical ground to discern variations feed this dissertation's enquiry. More specifically, by tracing how similarly and differently the socio-political contexts, embedded in the claimants' and courts' profiles, opportunity structures, resources, motives, and legal bases, influence climate litigation's interactions with the use of the right to health—and thus climate justice—a comparative approach is geared towards outlining useful directions in the way climate litigation tackles health concerns.

Accordingly, this dissertation utilizes a comparative lens in its semi-structured and informal interviews, and contextual analysis of five selected constitutional climate lawsuits across four countries: Chile, Colombia, Ecuador, and Mexico—as displayed in Table 2.

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Table 2. Selected case studies for semi-structured and informal interviews, and contextual analysis.

<table>
<thead>
<tr>
<th>Country</th>
<th>Case</th>
<th>Summary (and relevant dates)</th>
<th>Adjudicating court</th>
<th>Type of action</th>
<th>Area of law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chile</td>
<td>Mejillones Tourist Service Association and others v. Environmental Evaluation Service (SEA) of Antofagasta</td>
<td>In September 2021, the Mejillones Tourist Services Association and other organizations challenged the Antofagasta Environmental Assessment Service's rejection of climate change variables in the revision of the Environmental Assessment Resolution of a thermoelectric power plant. The Court of Appeals rejected the claim on procedural grounds, but the Chilean Supreme Court overruled it on April 19, 2022. The ruling orders the inclusion of climate change variables in the review process of the</td>
<td>Supreme Court of Justice</td>
<td>Protección action</td>
<td>Constitutional</td>
</tr>
<tr>
<td>Country</td>
<td>Case Title</td>
<td>Reason</td>
<td>Court</td>
<td>Action Type</td>
<td></td>
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<tr>
<td>-------------</td>
<td>----------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------</td>
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<td></td>
</tr>
<tr>
<td>Colombia</td>
<td>Future Generations v. Ministry of the Environment and Others</td>
<td>In January 2018, a group of children and youth sued several government agencies for their failure to reduce deforestation in the Colombian Amazon. A lower court ruled against the youth claimants. However, in April 2018, the Supreme Court reversed the lower court’s decision and ordered the government to formulate and implement action plans to address deforestation in the Amazon.</td>
<td>Supreme Court of Justice</td>
<td>Tutela action</td>
<td></td>
</tr>
<tr>
<td>Colombia</td>
<td>Center for Social Justice v. Ministry of the Environment and Others</td>
<td>In January 2015, Indigenous and Afro-descendent communities sued governmental authorities for failing to prevent the pollution of the Atrato river. In October 2015, the Constitutional Court reversed the lower court’s decision.</td>
<td>Constitutional Court</td>
<td>Tutela action</td>
<td>Constitutional</td>
</tr>
<tr>
<td>Ecuador</td>
<td>Herrera Carrion and Others v. Ministry of the Environment and Others</td>
<td>In February 2020, a group of girls filed a constitutional injunction against the government of Ecuador for authorizing gas flaring, which causes serious impacts on the environment and people's health. In July 2021, the Court of Justice of the Sucumbíos Province reversed the court’s dismissal of the case at first instance and mandated the government to update the plan for the gradual and progressive elimination of the gas flares.</td>
<td>Court Justice of the Sucumbíos Province</td>
<td>Protección</td>
<td>Constitutional</td>
</tr>
</tbody>
</table>
In May 2020, Greenpeace Mexico filed a lawsuit against the Mexican government, challenging the constitutionality of two electricity-sector policies that would limit renewable energies. In November 2020, the court ruled in favor of the claimants.
By employing a “few-case comparison” approach, this study aims to provide an in-depth examination of each case, enabling a comprehensive assessment of the emergence and treatment of health crises within them.\(^{104}\) The selection of constitutional cases over other types of litigation structures is justified by the fact that constitutional law represents the most direct domestic manifestation of human rights law in the region.\(^{105}\)

To ensure the most comprehensive understanding possible, the selection of cases followed both logics of comparative enquiry: the MSSD and the MDSD.\(^{106}\) Although the four selected display features of the NLAC, they exhibit distinct similarities and differences in the way their constitutional justice system can advance social rights, including the right to health. Section 1.6 elaborates that constitutional justice in Colombia and Ecuador has been more receptive to judicializing the right to health, given the improvement of their constitutional system in terms of authority and autonomy over the years.\(^{107}\) In contrast, authority and autonomy of Chile’s and Mexico’s constitutional courts have been found to be less able to engage with challenges experienced by individuals living in poverty and social exclusion.\(^{108}\) This divide is also highlighted in this dissertation's “climate justice gradient,” which was facilitated by the SCA method, as detailed in Chapter 2.

Thus, similar systems are climate lawsuits filed in Colombia and Ecuador, on the one hand, and on the other, cases in Chile and Mexico. Different systems consist of any cross reference between MSSD. This dissertation offers a concise contextual description of each of

\(^{104}\) Andreassen, 244.  
\(^{106}\) Andreassen, “Comparative Analyses of Human Rights Performance,” 244.  
\(^{108}\) Brinks and Blass, 36.
these four countries and the corresponding cases on aspects relevant to the research question. Such essential requirement for comparative research is fulfilled in Section 1.6, which includes a review of literature of the cases’ socio-political and legal contexts, and Chapter 4, which employs the contextual analysis method.\textsuperscript{109}

1.3.3 \textit{Doctrinal Legal Research}

This dissertation aimed to conduct a detailed doctrinal analysis of five selected case studies, which went beyond the surface-level analysis attained by the SCA.\textsuperscript{110} By examining the substance of judicial reasoning in light of international and regional treaties, national laws, and jurisprudence, this research delved into a deeper layer of analysis.\textsuperscript{111} Specifically, the analysis focused on the formal and material intersections between the right to health and climate change law within the NLAC. Through this analysis, the study aimed to contrast how both fields of law overlapped in written sources of law, claims, and judgments. The focus was on how these legal domains addressed different aspects of climate justice along the socio-ecological spectrum of vulnerability, as outlined in Table 3.

\begin{footnotesize}
\begin{enumerate}
\item Andreassen, “Comparative Analyses of Human Rights Performance,” 228.
\item Hall and Wright, “Systematic Content Analysis of Judicial Opinions,” 121.
\end{enumerate}
\end{footnotesize}
Table 3. Complementarities between the right to health and climate justice in their relation to the environmental and social dimensions of vulnerability.

<table>
<thead>
<tr>
<th>Vulnerability dimensions</th>
<th>Right to health</th>
<th>Climate justice</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ecological</strong></td>
<td>Distributive: Establishes the duty to take steps through international assistance and cooperation to respect, protect, and fulfill the right to health, prevent discrimination, and ensure equality (by providing special protection to the most vulnerable populations).</td>
<td>Distributive: Acknowledges that countries that contribute the most to climate change bear the most responsibility for mitigating such a phenomenon (the principles of equity and common but differentiated responsibilities and respective capabilities).</td>
</tr>
<tr>
<td></td>
<td>Procedural: Mandates states to provide access to health-related information and the participation of individuals and groups in decision-making processes, which may affect their development.</td>
<td>Procedural: Calls for the empowerment and participation of local individuals and groups directly affected by climate change.</td>
</tr>
<tr>
<td></td>
<td>Corrective: Mandates the state to take necessary steps to make the most of their available resources to improve the environment as an underlying determinant of health by preventing dangerous anthropogenic interference with the climate system (climate mitigation).</td>
<td>Corrective: Calls for reducing GHGs to avoid catastrophic warming (climate mitigation).</td>
</tr>
<tr>
<td><strong>Social</strong></td>
<td>Distributive: Establishes the duty to take steps through international assistance and cooperation to respect, protect, and fulfill the right to health; prevent discrimination; and ensure equality (by providing special protection to the most vulnerable populations).</td>
<td>Distributive: Acknowledges that countries that contribute the most to climate change bear the most responsibility for helping adapt to such a phenomenon.</td>
</tr>
<tr>
<td></td>
<td>Procedural: Mandates states to provide access to health-related information and the participation of individuals and groups in decision-making</td>
<td>Procedural: Calls for the empowerment and participation of local individuals and groups</td>
</tr>
<tr>
<td>processes, which may affect their development.</td>
<td>directly affected by climate change.</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>Corrective: Obliges states to take necessary steps to make the most of their available resources to develop sustainable and resilient healthcare services and ensure their availability, accessibility, acceptability, and quality (climate adaptation).</td>
<td>Corrective: Calls for fostering climate resilience and low GHGs (climate adaptation) as efforts to eradicate poverty.</td>
<td></td>
</tr>
</tbody>
</table>
1.3.4 Semi-structured and Informal Interviews

To expand the epistemological horizons of the doctrinal method, this dissertation incorporated semi-structured and informal interviews with the claimants and judges of the case studies and climate litigation experts. These interviews drew on a rubric of questions (Table 4) to facilitate data collection on factors inherent to the cases’ socio-political contexts beyond the written law, such as the claimants’ and judges’ profiles, opportunity structures, resources, and motives, which influenced how climate litigation dealt with the health crises (as per Gloppen’s analytical framework—see Figure 1). This method was well-suited to the dissertation's transdisciplinary and empirical orientation given its widely proven potential for observing how courts built their understanding of intersecting legal compartments.\textsuperscript{112}

Moreover, the interviews with claimants and judges enabled the dissertation to discern how their individual approaches affected the decision-making process, the reasons behind their approaches, and how interpretation hurdles could be resolved.\textsuperscript{113}

To ensure that ethical principles and federal regulations were followed in this study involving human participants, the research underwent review and approval by the University of Massachusetts Boston’s IRB. The IRB assessed the research design to determine if it posed minimal risks to interviewees and approved the study on October 25, 2022, assigning it an IRB ID Number of 3325. Recruitment of participants began on this date and involved contacting potential participants through written statements sent to their emails and third-party contacting.


\textsuperscript{113} Jaremba and Mak.
Table 4. Interview schedule.

<table>
<thead>
<tr>
<th></th>
<th>Plaintiffs</th>
<th>Judges</th>
<th>Experts</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>I. Experience on research topic</strong></td>
<td>How were involved in (case name and number? Could you please share what brought you there?</td>
<td>How were involved in (case name and number? Could you please share what brought you there?</td>
<td>In which capacity have you followed the (case name and number)? Could you please share what brought you there?</td>
</tr>
<tr>
<td><strong>II. Profiles (Knowledge, references, possibilities, and constraints)</strong></td>
<td>Which social challenges do you experience? Is poverty and access to health care issues that concern you directly? Do you self-ascribe as a population group living in vulnerable conditions? Which one? Why? How such circumstances played into the case? Were you assisted by for-profit lawyers, Global North, or South non-profit organizations? How? Are you related with other civil society actors/social movements fighting against climate change? How?</td>
<td>Could you please share your professional background? How does it relate to climate change? The intersections between human rights and climate change law began materializing just until recently, how does this knowledge permeate into the court’s work? How does the court inform itself on climate change, its relationship with health and poverty generally? What references does it use to inform its work? In your view, how does law address the relationship between climate change and health? How does human rights law address this link particularly?</td>
<td>Could you please share your professional background? How does it relate to climate litigation? The intersections between human rights and climate change law began materializing just until recently, how does this knowledge permeated into the case? How did the plaintiffs and court inform themselves on climate change, its relationship with health and poverty generally? What references did they use to inform their claims and judgment? In your view, how does the case address the relationship between climate change and health? How does human</td>
</tr>
<tr>
<td>III. Opportunity structures</td>
<td>Why did you choose this type of legal action over other strategies?</td>
<td>Why was this type of legal action better suited over other strategies?</td>
<td>Why was this type of legal action better suited over other strategies?</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>---------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>Was this judicial pathway accessible for you in terms of procedural requirements? How?</td>
<td>Is this type of legal action the best suited to address the linkage between climate change, health, and poverty? Why? If not, which action would it be?</td>
<td>Is this type of legal action the best suited to address the linkage between climate change, health, and poverty? Why? If not, which action would it be?</td>
</tr>
<tr>
<td></td>
<td>Was the court physically accessible?</td>
<td>Was this judicial pathway accessible for claimants in terms of procedural requirements? How?</td>
<td>Was this judicial pathway accessible for claimants in terms of procedural requirements? How?</td>
</tr>
<tr>
<td>IV. Accessibility and resources</td>
<td>What type of economic, knowledge, and organizational resources you needed to file the claim? How</td>
<td>Is the court physically and economically accessible for population groups living in poverty?</td>
<td>Is the court physically and economically accessible for population groups living in poverty?</td>
</tr>
</tbody>
</table>

Is human rights and climate change law concerned with poverty? If so, how?
What are the opportunities and limits at the legal, institutional, and broader national levels that the judiciaries confront to address the connection between climate change, health, and poverty?

Is human rights law address this link particularly?
Is the case concerned with poverty? If so, how?
What are the opportunities and limits at the legal, institutional, and broader national levels that the plaintiffs and judiciaries confront to address the connection between climate change, health, and poverty?
<table>
<thead>
<tr>
<th>V. Motives, objectives, and arguments</th>
<th>What motivated you to file the claim?</th>
<th>How did you frame the health-climate change nexus in the case? Why? (Did you address it as a personal or collective issue?)</th>
<th>How does the case the health-climate change nexus? Why? (Was it addressed as a personal or collective issue?)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>What did you seek through the lawsuit?</td>
<td>What motivated you to frame it in such a sense?</td>
<td>What were the motives of claimants and judges to frame the nexus in such a sense?</td>
</tr>
<tr>
<td></td>
<td>How did health concerns factor into your motivation and objectives?</td>
<td>Would you consider that such a frame could be argued differently, in a way that better addresses the linkage between climate change, health, and poverty?</td>
<td>Would you consider that such a frame could be argued differently, in a way that better addresses the linkage between climate change, health, and poverty?</td>
</tr>
<tr>
<td></td>
<td>How do you connect climate change with such health concerns?</td>
<td>What should be the objective of rights-based climate lawsuits that rely on the right to health?</td>
<td>What should be the objective of rights-based climate lawsuits that rely on the right to health?</td>
</tr>
<tr>
<td></td>
<td>Did you seek access to healthy environmental conditions and/or access to health care services?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>How are such health concerns? Are they collective or personal, tangible, or projected?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**VI. Legal bases**

<table>
<thead>
<tr>
<th>Question</th>
<th>Question</th>
<th>Question</th>
</tr>
</thead>
<tbody>
<tr>
<td>Why did you invoke the right to health in your argumentation?</td>
<td>Did you draw on the right to health and climate change law?</td>
<td>Did the case draw on the right to health and climate change law?</td>
</tr>
<tr>
<td>Where did you ground such a claim on the right to health?</td>
<td>How?</td>
<td>How?</td>
</tr>
<tr>
<td>How did the right to health played into the course of the lawsuit?</td>
<td>Where did you ground such arguments legally?</td>
<td>Where were such arguments legally grounded?</td>
</tr>
<tr>
<td>How did you juxtapose the right to health with climate change law?</td>
<td>How does the right to health and climate change law overlap in such judicial reasoning?</td>
<td>How does the right to health and climate change law overlap in such judicial reasoning?</td>
</tr>
<tr>
<td>Why?</td>
<td>Are there ways in which their overlap could better addresses the linkage between climate change, health, and poverty?</td>
<td>Are there ways in which their overlap could better addresses the linkage between climate change, health, and poverty?</td>
</tr>
</tbody>
</table>
The written statement inviting participants to the interview was composed in Spanish and included details about the research purpose, aim, expected duration of participation, as well as other relevant information outlined by federal regulations such as potential risks and benefits, confidentiality and privacy procedures. Fifteen potential interviewees were contacted, one claimant, one judge, and one climate expert for each of the five case studies addressed in this dissertation. Eleven of the contacted individuals agreed to participate in the interviews. The interviews were conducted in Spanish over a six-month period, from October 2022 to March 2023, using the video conferencing tool, Zoom. Please refer to Table 5 for a list of interviewees per case study. Informed consent forms were handed out to the interviewees before the interviews, and all these forms were signed accordingly.

In addition to conducting semi-structured interviews, the researcher also attended three academic events on the NLAC and the study of Latin American courts, providing opportunities to connect with experts in climate change and the judicialization of social rights in the region. As a result of these encounters, informal interviews were conducted with five individuals identified in Table 6.
Table 5. List of participants in semi-structured interviews per case study.

<table>
<thead>
<tr>
<th>Case Study</th>
<th>Participant</th>
<th>Date of Interview</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mejillones Tourist Service Association and others v Environmental Evaluation Service (SEA) of Antofagasta (Chile)</td>
<td>Nicolás Bribbo Amas (Claimant)</td>
<td>November 15, 2022.</td>
</tr>
<tr>
<td></td>
<td>Manuel Carvajal (Claimant)</td>
<td>December 5, 2022.</td>
</tr>
<tr>
<td></td>
<td>Gloria Stella Ortiz (Judge)</td>
<td>February 2, 2023.</td>
</tr>
<tr>
<td></td>
<td>Anaid Velasco (Claimant)</td>
<td>March 17, 2023.</td>
</tr>
</tbody>
</table>
Table 6. List of participants in informal interviews.

<table>
<thead>
<tr>
<th>Event</th>
<th>Participant</th>
<th>Date of Interview</th>
</tr>
</thead>
</table>
1.3.5 **Contextual Analysis**

Contextual analysis is a crucial aspect of comparative research in the human rights field.\(^{114}\) Context refers to the setting in which a particular legal phenomenon occurs, including the social, cultural, historical, and political conditions that influence it.\(^{115}\) Comparative research seeks to identify similarities and differences across cases, but this cannot be done effectively without a thorough understanding of the contexts in which they occur.\(^{116}\) Therefore, applying contextual analysis was essential for this dissertation’s comparative approach. It elucidated how the specific socio-political circumstances of case studies manifested in the trajectory of climate change litigation followed. In other words, this method helped illuminate how the settings in which claimants and courts found themselves translated into the way they drove the litigation process and ultimately framed and addressed health crises. This dissertation’s contextual analysis is offered in Chapter 4. It expands upon the specific aspects of each case study outlined in Section 1.6, relevant to the research question.

1.3.6 **Data Validity**

The validity of findings in this study was controlled in three pivotal ways. Firstly, three different methods were applied to the same units of analysis (five case studies) under a coherent conceptual framework, facilitating the triangulation of findings.\(^{117}\) Secondly, member checking and audit trail validity procedures were employed to engage study

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\(^{114}\) Andreassen, “Comparative Analyses of Human Rights Performance,” 228; Farran, “Comparative Approaches to Human Rights,” 137.


\(^{116}\) Andreassen, “Comparative Analyses of Human Rights Performance,” 228.

participants and external readers in review processes. The former involved providing interviewees with a transcript of their interview and highlighting the most salient points as they related to the research question, allowing them to revise and provide feedback. The audit trail procedure consisted of presenting this dissertation's chapters to expert groups who provided feedback, as indicated in Table 7. This review process took place in addition to the peer-review process undergone as part of the chapters’ publication processes. The feedback offered by the expert groups was instrumental in improving the quality of the dissertation's chapters and enhancing the rigor of the research.

Altogether, these procedures provided opportunities for addressing potential deficiencies and biases in individual measurements, leveraging emerging insights during the research process, and ensuring the rigor of the transdisciplinary approach. Through this iterative process of recalibrating the research, the quality of the study was continually improved.

118 Creswell and Miller, 127.
119 Leavy, Essentials of Transdisciplinary Research, 77.
Table 7. Audit trail validation of the dissertation’s chapters.

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Expert Group</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter Two. Litigating Climate Justice: The Right to Health and Vulnerable Populations in Latin America</td>
<td>Centre on Law and Social Transformation (presented at the Special Track “Contestations over Natural Resources &amp; Climate” of the PhD Course “Effects of Lawfare,” organized by the University of Bergen, August 8-30, 2022).</td>
</tr>
<tr>
<td>Chapter Three. The fundamental rights to life and health in climate litigation: insights from Latin America</td>
<td>Max Planck Institute on Comparative Public Law and International Law (presented at the Agora, February 1, 2023). Kellogg Institute for International Studies at the University of Notre Dame (presented at the Reparations Lab, February 17, 2023).</td>
</tr>
</tbody>
</table>

1.3.7 Ethics Approval and Reflexivity

The IRB of the University of Massachusetts Boston granted approval to the study on October 25, 2022, assigning it an IRB ID Number of 3325. It determined that the research entailed no more than minimal risks to interviewees.

In addition to such an institutional ethics procedure, reflexivity played a pivotal role in this research, as it tackled intricate issues within multifaceted cultural contexts. As a Mexican woman investigating topics that might not have been directly connected to her personal experiences, the dissertation author recognized the need to acknowledge her singular perspective and background while endeavoring to contribute significantly to the ongoing academic dialogue.

As a result, the author adopted the role of a proficient facilitator of knowledge, rather than claiming expertise. In this capacity, the research fostered interdisciplinary dialogue and
engaged diverse groups, assigning equal importance to the experiences of those directly involved in the analyzed cases. By being cognizant of her unique standpoint and the potential limitations it entailed, the author exemplified the principles of research reflexivity, striving for an inclusive, empathetic, and perceptive approach to scholarly inquiry. This heightened self-awareness facilitated an open exchange of ideas among the various stakeholders involved, ultimately leading to a more nuanced analysis.

1.4 Dissertation Outline

This dissertation has been developed in accordance with the Student Handbook of the Global Inclusion and Social Development Doctoral Degree at the University of Massachusetts Boston and follows a multi-monograph format. The Handbook states that a multi-monograph dissertation consists of “three or more monographs, each judged by the dissertation committee to be of a quality and form suitable for publication in the peer-reviewed literature of a relevant field.”120 In addition, it requires comprehensive introductory and concluding chapters.

The introductory chapter ought to explain the background in which the research is set, its significance for the field, connect the individual monographs together, specify the theoretical framework and a literature review demonstrating that the dissertation research was needed to fill a gap.121 The dissertation’s concluding chapter presents the broad conclusions of the body of work as it focuses on implications for the field as a whole and discusses the interdependence of the individual monographs.122

121 SGISD, 31.
122 SGISD, 31.
With that in mind, this Section aims to provide a clear outline of the remainder of the dissertation, highlighting the logical progression, interconnectedness, and coherence of the various chapters. The next Sections 1.5 and 1.6 will delve into the literature review and offer a contextual overview of the case studies. Following this, the dissertation's three monographs, which have been accepted for publication in respected academic outlets, will be presented in Chapters Two, Three, and Four.

1.4.1 Chapter Two - Litigating Climate Justice: The Right to Health and Vulnerable Populations in Latin America

This article has undergone peer-review by the Verfassung und Recht in Übersee (VRÜ) / World Comparative Law (WCL) journal and has been revised based on the reviewers' comments. Currently, it is awaiting publication in the upcoming Special Issue on the Climate Emergency, scheduled for release in late Spring 2023. The paper utilizes the SCA method, which is the first method employed in this dissertation, to analyze the body of domestic rights-based climate lawsuits filed across various Latin American jurisdictions through 2022. Specifically, the study examines how claimants’ and courts’ use of the right to health is related to climate justice in terms of their motives, objectives, arguments, and legal bases in their respective complaints and judgments. Through this analysis, this article contributes to shedding light on the general perspective of the region's climate litigation and its implications for the health concerns of vulnerable populations, thereby providing a first layer of analysis toward the research question. In so doing, this article lays the foundation for case study selection and thus a deeper scrutiny through the use of the next methods.
1.4.2 Chapter Three - The Fundamental Rights to Life and Health in Climate Litigation: Insights from Latin America

This article, which has been peer-reviewed by the E-Publica Public Law Journal and published in the Special Issue on Climate Change and Fundamental Rights in December 2022, builds upon the findings of the SCA (Chapter Two) by conducting a deeper layer of analysis. Specifically, the study uses doctrinal research to examine how constitutional case studies employ the normative tools of the right to health to frame and address health crises. By exploring the normative synergies between human rights and climate change law, the study reveals how these two legal frameworks intersect in establishing state responsibility and corresponding remedies for acts and omissions that threaten the health of the most vulnerable. This deeper analysis sheds light on areas where the full normative scope of the right to health has not been fully utilized, creating an opportunity for further investigation into the socio-political reasons behind these gaps. The paper thus expands upon the previous article's findings by identifying how health crises are particularly framed and addressed in law, a crucial step in understanding the underlying reasons behind these legal approaches.

The next methods aim to achieve this subsequent goal.

1.4.3 Chapter Four – Addressing Health Crises through Courts? Understanding Inequality in Latin America’s Climate Litigation

This article has been accepted for publication as a book chapter and submitted for peer-review to the Climate Litigation in the Global South Project of the Global Network for Human Rights and the Environment. It aims to expand the findings of the previous paper (Chapter Three) by using contextual analysis and conducting semi-structured interviews with the case studies' claimants and judges, as well as climate litigation experts from the
respective countries. Specifically, the study situates the way in which such lawsuits legally frame and address health crises within the socio-political contexts in which they unfold, thereby illuminating the inequalities outside the litigation process that influence the extent to which climate litigation protects the right to health of the most vulnerable populations. Furthermore, the comparative approach of the research sheds light on the strategic and interpretative horizons for improvement. This addresses the core research question of this dissertation and provides knowledge relevant to aligning claimants' and courts' roles with climate justice.

Chapters Two, Three, and Four follow a logical progression. Chapter Two offers the general perspective of Latin America’s climate litigation and its implications for the most vulnerable’s health concerns. Chapter Three illuminates how selected cases legally frame and address health crises. Chapter Four builds upon this to illuminate the socio-political factors outside the litigation process that influence the ways in which such cases used normative tools to advance the right to health.

Chapter Five provides a conclusion to this dissertation. It synthesizes the findings from the previous chapters in response to the research question and identifies future research directions. The chapter concludes that health crises emerge within climate litigation and are addressed in partial alignment with climate justice. It thus discusses some strategic and interpretive avenues for claimants and courts to promote the right to health of the most vulnerable populations more comprehensively.

1.5 Literature Review

This dissertation builds upon epistemological contributions from various disciplines, including law, development studies, sociology, and political science, specifically existing
scholarship on (1) climate change and social rights litigation, (2) development and climate change, and (4) human rights and climate change law. In particular, this literature highlights that Latin America's increasing body of climate litigation cannot be viewed as an isolated occurrence within the legal sphere. Rather, it underscores the importance and potential of normative instruments used in the judicial domain, which are intrinsically linked to the socio-political context in which litigation occurs. To clarify how these contributions compose the knowledge base upon which this dissertation departs, the following Subsections provide an overview of the relevant advancements related to the research question.

1.5.1 Research on Climate Change and Social Rights Litigation

1.5.1.1 Climate Change Litigation

Climate change has become a subject of contention in courts as its global impacts have become more tangible. The first lawsuits concerning climate change emerged in the United States and Australia during the early 1990s. Over the following decades, international climate change politics, law, and the consolidation of transnational climate movements led to the spread of such cases to other parts of the world. In particular, after the adoption of the Paris Agreement in 2015, a spike in lawsuits has been observed especially

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in jurisdictions of the so-called Global South. However, a wave of climate litigation in high-income countries had already taken off years before so that even today, most of the world's climate litigation cases are based on precedents set in Global North jurisdictions.

For example, two cases that have attracted considerable media attention are the *Massachusetts v. US Environmental Protection Agency* and *Urgenda Foundation v. The State of the Netherlands* cases. In the former, the US Supreme Court concluded in 2007 that the State of Massachusetts had standing to challenge the federal government's failure to regulate GHGs from new motor vehicles. In the latter, the Supreme Court of the Netherlands ruled that the government should take steps to reduce GHGs consistent with limiting warming to an average of 1.5°C.

The proliferation of climate litigation worldwide holds significant potential to catalyze climate action—as the IPCC has recently recognized. However, this remains little explored particularly in Global South countries as academic research on climate litigation has mainly followed the aforementioned Global North pattern, with most literature focusing on mitigation cases in such jurisdictions. The first systematic review of academic literature on climate change litigation, conducted in 2019 by Setzer and Vanhala, reveals that most papers

127 Setzer and Higham, 10.
128 Massachusetts et al. v Environmental Protection Agency et al., 549 (US Supreme Court 2007); Urgenda Foundation et al. v The State of the Netherlands, 19/00135 (Supreme Court of The Netherlands 2019).
129 Massachusetts et al. v Environmental Protection Agency et al., 549 at 23.
130 Urgenda Foundation et al. v The State of the Netherlands, 19/00135 at para. 4-8.
published in English during the last 20 years (2000-2018) were concerned with litigation to address mitigation with a focus on Global North jurisdictions.\textsuperscript{133}

Among the few precious studies on climate litigation in the Global South stands Jacqueline Peel and Jolene Lin's first attempt to systematically examine the characteristics of such a phenomenon.\textsuperscript{134} By comprehensively evaluating cases across Asia, the Pacific, Africa, and Latin America, the authors identified three unique features of such cases that diverge from previous understandings of the litigation phenomenon in the Global North. These characteristics include their reliance on human rights as a legal basis, their predominant focus on enforcement failure (as compared to regulatory omissions in the Global North), and their peripheral character among other policy priorities of countries.\textsuperscript{135} The authors also highlighted the significance of transnational cooperation as a determinant of the forces propelling climate litigation in this latter geography.\textsuperscript{136} In this regard, they found that the Global South docket of climate cases shows a high degree of cooperation with NGOs, with Global North NGOs often supporting local communities or individuals in bringing climate cases against governments or corporations.\textsuperscript{137}

All these situated characteristics reveal some of the unique ways in which climate change manifests in the Global South, which are symptomatic of common (yet non-identical) socio-political circumstances across countries. The work of Joana Setzer and Lisa Benjamin sheds light on how the social dimension of climate change resonates in the climate litigation

\textsuperscript{133} Setzer and Vanhala, 4.
\textsuperscript{134} Peel and Lin, “Transnational Climate Litigation,” 679.
\textsuperscript{135} Peel and Lin, 692-693.
\textsuperscript{136} Peel and Lin, 710.
\textsuperscript{137} Peel and Lin, 710.
of Global South jurisdictions. Like Peel and Lin, the authors identify the emergence of rights-based claims and the technical and financial support provided to plaintiffs by international and domestic actors. More specifically, they note that in climate litigation in Global South countries, “the character of human rights claims is arguably more desperate because of the high vulnerability of their populations to climate-induced risks and loss and damage, as well as their limited access to life-sustaining resources.” They also observe that Northern NGOs have been providing strategic support to overcome claimants' lack of financial resources and expertise.

Birsha Ohdedar's research makes a valuable contribution to the limited inquiry on climate litigation in Global South jurisdictions. Specifically, he enhances our understanding of climate vulnerability within climate law scholarship by tracing the implications of social vulnerability framings in India’s litigation outcomes. His work highlights the importance of considering the interplay of socio-economic challenges within climate litigation for this avenue to effectively address vulnerability and related rights concerns.

In general, the few academic works on climate litigation in Global South settings underscores the need for closer examination of their unique vulnerabilities to climate change. These vulnerabilities are increasingly being framed in human rights terms. Therefore, there is

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138 Setzer and Benjamin, “Climate Litigation in the Global South,” 77.
139 Setzer and Benjamin, 79.
140 Setzer and Benjamin, 106.
142 Ohdedar, 138.
143 Ohdedar, 155.
a pressing need to explore the intersection of climate change and human rights in the Global South context.

While rights-based litigation is not unique to the Global South, the recent “rights turn” trend observed by Peel and Osofsky\(^\text{144}\) is seen by many experts as a promising pathway for achieving climate action, particularly in these jurisdictions.\(^\text{145}\) There are two reasons behind this hypothesis. First, on the “demand” and “supply” sides of litigation, the increasing intersections between international climate change law and the human rights framework strengthen the climate-human rights linkages on which both claimants and courts substantiate their arguments.\(^\text{146}\) Second, the recognition of human rights by most constitutions in these jurisdictions provides a legal opportunity for affected individuals and communities to raise their climate concerns before courts.\(^\text{147}\)

Over the past five decades, Latin American countries have increasingly recognized human rights in their national constitutions and ratified several regional and international human rights treaties—as a result of constitutional reconfiguration processes collectively known as the NLAC.\(^\text{148}\) It is therefore not surprising that this region of the world is where most human rights-based climate cases have been brought, following North America and

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\(^{144}\) Peel and Osofsky, “A Rights Turn in Climate Change Litigation?,” 37.


\(^{148}\) For a comprehensive introduction to the NLAC from the perspective of the Ius Constitutionale Commune en América Latina, please see the edited volume by Armin von Bogdandy et al., eds., *Transformative Constitutionalism in Latin America. The Emergence of a New Ius Commune* (Oxford: Oxford University Press, 2017).
Europe.Latin America has also witnessed the adjudication of significant pro-climate cases that have garnered extensive media attention. One of the most prominent cases is *Future Generations v. Ministry of Environment and Others*, filed in 2018 before the District Court of Bogotá by a group of children and youth against several Ministries of the Colombian government and state and local authorities for their lack of action to protect the Amazon.

The *Future Generations* case has become a standard reference in scholarship on Latin America's rights-based climate change litigation. Recent academic work has analyzed this case from its strategic use of SER, pointing out its significance as an illustration of the human rights potential for addressing climate change challenges from courts. While the implementation of the judgment remains a concern, acknowledging collective actions by some legal systems can broaden the participation and diversity of claimants.

Nonetheless, there is a lack of systematic research on the role of human rights in climate change litigation within the unique socio-legal landscape of Latin America. Among the few scholars to address this issue is Juan Auz, whose analysis of the legal opportunity structures for rights-based climate litigation in the region stands out. He argues that the constitutional protection of environmental rights in several Latin American countries, combined with the openness of their legal systems to international human rights law, and the

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152 Juan Auz, “Human Rights-Based Climate Litigation: A Latin American Cartography,” 114.
availability of expeditious constitutional mechanisms for redressing rights violations have facilitated the proliferation of climate lawsuits. However, Auz also identifies several barriers along the socio-political context of the region to bringing climate concerns to courts; these include the neoliberal extractivism embraced by many Latin American countries as an economic model, varying levels of power and knowledge among judiciaries, and the increasing professionalization required of claimants in litigation, which may exclude those with limited technical expertise. The importance of assessing such socio-political circumstances in litigation has also been emphasized by Lisa Vanhala, who draws on legal mobilization theory to urge consideration for whose voices are heard in courts and whose voices are excluded.

Another work that examines several Latin American jurisdictions is Francesco Sindico and Makanee Moïse Mbenge's 2021 edited compilation of commentaries on the legal opportunities and challenges for advancing climate litigation. More recently, Paul de Vilchez Moragues has conducted an inquiry into the strengths and challenges facing climate litigation, which includes cases filed in the region. However, neither of these important contributions primarily focuses on the unique socio-political realities in Latin America that affect the use of the human rights framework, which is also the case of most research on the intersection of human rights and climate litigation.

153 Auz, 121-126.
154 Auz, 126-135.
156 Francesco Sindico and Makane Moïse Mbengue, eds., Comparative Climate Change Litigation: Beyond the Usual Suspects (Cham: Springer International Publishing, 2021).
157 Pau de Vilchez Moragues, Climate in Court.
The study of rights-based litigation has largely adopted a global perspective, either by examining all jurisdictions worldwide or by using the Global North versus South analytical divide as a framework, without specifically addressing the distinctive socio-legal landscape of Latin America. Examples of these efforts include Eric Posner's critical appraisal of climate change and international human rights litigation, Savaresi and Auz's survey of the human rights arguments in climate change litigation, Gloppen and Vallejo's study of the significance of climate litigation for economic, social, and cultural rights, and Petel's analysis of the strategic use of human rights in climate litigation.

Furthermore, at the thematic level, climate change litigation scholarship has not concentrated on exploring the implications of any particular human right in the litigation process other than the right to a clean and healthy environment. Among the studies that have addressed this issue are Varvastian's and de Vilchez and Savaresi's assessments of the right to a healthy environment in rights-based litigation. While the significance of the right to health in protecting public health through climate litigation is crucial, only a few works have focused on this area. Notable examples include Sabrina McCormick et al.'s 2018 survey, which examined how US local, state, and federal court decisions relating to climate change considered health impacts when shaping public health policy, and Narayan Toolan et al.'s

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159 Savaresi and Auz, “Climate Change Litigation and Human Rights: Pushing the Boundaries,” 244.
Although these studies did not focus on Latin America, they demonstrate that climate litigation can effectively protect public health and emphasize the need for further research to enhance public health protection by all actors involved in the litigation process. As such, this general statement warrants closer examination in the specific context of Latin America.

In summary, the academic literature on climate change litigation has yet to fully explore the significance of Latin America's unique socio-legal landscape and its connection to the right to health. Nonetheless, existing scholarship has opened up new avenues of inquiry that are highly relevant to the realities of Latin America. Specifically, the literature on litigation in the Global South highlights three such aspects deeply intertwined with the socio-political context of these jurisdictions. Firstly, the use of human rights to frame the profound implications of pressing social challenges on climate vulnerability. Secondly, it highlights the constitutional architecture of countries as a facilitator of litigation. Finally, it explores how the “demand” and “supply” sides of litigation can influence the outcome of the litigation process. The transnationalization and professionalization of claimants are of particular concern for the inclusion of vulnerable populations, while varying levels of power and knowledge among judiciaries can also impact the outcome of cases.

With this in mind, this literature review is called upon to consider other epistemological developments that have extensively investigated the legal and socio-political aspects of climate change litigation in Latin America. By doing so, this review can better

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situate the region's litigation efforts and contribute to addressing current geographic and thematic knowledge gaps in climate change litigation scholarship.

1.5.1.2 Social Rights Litigation

Scholarship on social rights litigation and climate litigation follows distinct thematic pathways, yet it addresses common aspects such as the interplay between the judicial process and its socio-political context. While both fields share these features, social rights litigation benefits from a more substantial corpus of academic work, with some studies extensively examining the courts of Latin America in the context of its new constitutionalism. Consequently, this body of literature offers conceptual tools that enable a more comprehensive analysis of the aforementioned interplay. Specifically, research into the litigation of the right to health offers crucial insights into the capacity and constraints of courts in protecting vulnerable populations. This aspect is particularly germane to the research question this dissertation aims to address, as further elaborated in the following paragraphs.

Scholarly interest in right to health litigation emerged in response to the growing number of court cases seeking to promote the right to health through domestic and international tribunals worldwide since the 1990s. These legal actions have addressed various issues related to the right to health, including access to health services and fundamental determinants of health, and have proliferated particularly in Global South jurisdictions. As a result, the focus of academic inquiry has shifted from the initial question


\[\text{\footnotesize 166 Gloppen, “Litigation as a Strategy to Hold Governments Accountable for Implementing the Right to Health,” 21.}\]
of the justiciability of the right to health\textsuperscript{167} towards exploring the potential of litigation to drive social transformation.\textsuperscript{168} In other words, scholarship initially aimed at challenging the conventional assumptions about the non-justiciability of economic, social, and cultural rights, while subsequent research has focused on analyzing the distributive impacts of right to health litigation.

The most recent scholarship on right to health litigation offers divergent views on its effects on vulnerable populations. Two prevalent perspectives can be identified. On the one hand, some works argue that litigating the right to health has transformative potential at both individual and societal levels.\textsuperscript{169} This view suggests that litigation provides an opportunity for individuals and civil society groups to hold governments accountable and seek redress, as well as for courts to clarify the meaning of health-related rights, contributing to securing better health-related services for individuals and communities.\textsuperscript{170} Some scholars argue that such a transformative potential of the right to health litigation has been significantly driven


by the relationship between Latin America's socio-legal landscape and the IAHRS. The ICCAL, for example, contends that the region's institutionalization of rights and the IAHRS's growing empowerment have facilitated a legal dialogue across countries, where courts play a crucial role. The ICCAL argues that this dialogue has advanced the human rights agenda and enhanced the protection of vulnerable groups, including their right to health.

On the other hand, empirical research suggests that the legal enforcement of SER, including the right to health, exacerbates socioeconomic inequality. By assessing who brings the claims before courts, how courts engage in rights interpretation, and the distributive effects of health policies to which judicial adjudication leads, this academic perspective contends that the right to health litigation has not benefited populations living in poverty. Comparative analyses of health litigation in Colombia and Brazil, for example, show that adjudication shapes policies in a way that does not make health services more accessible to the most marginalized groups. This is because plaintiffs do not belong to population groups living in poverty, and courts fail to interpret the right to health in its collective dimension. Furthermore, while health litigation brought up by individuals with greater resources as claimants could still bring about broad policy changes that benefit the

171 Mariela Morales Antoniazzi and Laura Clérico, eds., Interamericanización del derecho a la salud. Perspectivas a la luz del caso Poblete de la Corte IDH (Querétaro: Instituto de Estudios Constitucionales del Estado de Querétaro, 2019).
172 Armin von Bogdandy et al., eds., Transformative Constitutionalism in Latin America.
173 Morales Antoniazzi and Clérico, eds., Interamericanización del derecho a la salud. Perspectivas a la luz del caso Poblete de la Corte IDH.
175 Motta Ferraz, 1663-64.
most disadvantaged, such litigation has not typically focused on public health measures that are among the highest priorities for individuals experiencing poverty and social exclusion.\textsuperscript{178}

Although this scholarship's view on the impacts of health litigation on socioeconomic inequality remains inconclusive,\textsuperscript{179} it has provided theoretical tools for comprehending the socio-political dynamics that shape the direction of these impacts. For example, by considering the socioeconomic background of claimants as one of the determinants of whether litigation benefits the most vulnerable or not constitutes, the literature helps connect litigation’s broader context of poverty and social exclusion with its outcomes.\textsuperscript{180} Of particular relevance to the study of Latin America is Siri Gloppen's analytical framework as it facilitates comparative and interdisciplinary reviews across jurisdictions.\textsuperscript{181} It draws attention to the litigation process’ “input” (demand) and the “output” (supply) dynamics which are highly embedded into the lawsuits’ socio-political contexts.\textsuperscript{182} The former take place at the claims formation stage and influence whether or not health rights claims come to courts, while the latter occur at the adjudication stage and uncover factors that influence how judges deal with health rights claims in their jurisprudence.\textsuperscript{183} Because both of these dynamics can influence the success of the litigation process in multiple ways, including an immediate sense (success in court), a material sense (by improving the situation of claimants), and a broader

\textsuperscript{180} Motta Ferraz, “Harming the Poor through Social Rights Litigation,” 1643; da Silva and Vargas Terrazas, “Claiming the Right to Health in Brazilian Courts,” 825; Yamin and Gloppen, \textit{Litigating Health Rights}.
\textsuperscript{182} Gloppen, 25.
\textsuperscript{183} Gloppen, 25.
social sense (by advancing the right to health of non-litigants), they warrant scrutiny in any endeavor aimed at determining whether litigation benefits the most vulnerable or not.

In this regard, it is worth introducing the learning curve that scholarship on social rights litigation has advanced regarding the implications of the input and output dynamics on the litigation process in contexts characterized by steep socioeconomic inequalities. On the “input” dynamics—concerned with who litigates and what is litigated—Octávio Luiz Motta Ferraz suggests that insofar legal mobilization is initiated and sustained by those who enjoy a better opportunity structure it is unlikely to address the concerns of the most disadvantaged. And even though the support of transnational networks of social rights activists and funders has facilitated the access of least resourced claimants to courts, scholarship has made efforts to examine the extent to which such support may impose or infuse foreign agendas.

Furthermore, the nature of the relief sought by claimants through litigation appears to play a crucial role in determining whether this pathway will effectively address the concerns of the most vulnerable. In their empirical analysis of social rights litigation in Brazil, India, Indonesia, and South Africa, Daniel M. Brinks and Varun Gauri found that social policy areas where uncoordinated individuals file claims to seek individualized benefits are more likely to experience regressive tendencies against the poor. Conversely, they also identified that social rights litigation explicitly undertaken for its collective effects is more likely to avoid

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184 Gloppen, 25.
185 Motta Ferraz, Health as a Human Right: The Politics and Judicialisation of Health in Brazil, 15.
the potential “anti-poor bias” of the courts. However, Sandra Botero et al. observe that the inability of claimants to demand and establish such collective change within robust support structures frustrates the transformative potential of social rights litigation.

With respect to "output" dynamics, social rights scholarship highlights a strong link between courts' resources and the outcome of the litigation process. This includes courts' autonomy and authority, which Daniel M. Brinks and Abby Blass identify as key determinants in shaping a country's constitutional justice and protecting rights. They argue that courts with high autonomy and broad authority are major policy players and better positioned to promote social and economic inclusion. Conversely, Botero et al. suggest that courts often fail to deliver on the promise of rights protection due to institutional pathologies, such as corruption and nepotism. Moreover, the scope of courts’ responses to social rights cases depends on their approach. For instance, courts in Brazil tend to rely on a formalistic approach that focuses on the language of the constitutional text and the facts of the case. On the other hand, courts in Colombia or South Africa use individual cases to develop more public policy-like solutions to underlying problems that generate repeated cases.

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192 Brinks and Blass, 31.
195 Brinks et al., 297.
196 Brinks et al., 297.
In summary, the study of climate change and social rights litigation has developed along separate but parallel academic trajectories, with complementary theoretical propositions. In particular, scholarship on the right to health litigation has engaged substantively with the implications of Latin America's legal and socio-political dimensions for the judiciaries in advancing the right to health, broadening the knowledge horizon from which exploration of climate litigation can depart. Of particular relevance to this dissertation's research question is the attention given to how the input and output dynamics of the litigation process affect its outcome. This scholarship emphasizes the need to scrutinize the claimants' opportunity structures, as well as their and the courts' profiles, resources, and legal bases thereby offering a valuable analytical lens for determining the extent to which litigation can benefit the most vulnerable populations.

1.5.2 Climate Change in Development Studies

A comprehensive analysis of Latin America's climate vulnerabilities, as discussed in the sparse academic literature on climate litigation in the Global South, necessitates the incorporation of insights from development studies. Two interconnected reasons make this necessary. Firstly, legal scholarship has been faulted for applying the concept of climate vulnerability broadly.197 Secondly, the development field provides a greater understanding of how social challenges interplay with climate change, amplifying its impacts.198 Thus, leveraging the extensive literature on this topic in the development studies discipline is imperative to augment the current knowledge base in climate litigation scholarship.

The field of development studies has enhanced our comprehension of the intricate relationship between poverty, social exclusion, and climate change.\(^{199}\) Poverty compounds climate vulnerability, while climate change exacerbates the precariousness of living conditions.\(^{200}\) This pernicious interconnection is primarily characterized by the concept of vulnerability. Research on vulnerability to the impacts of climate change spans the two major research traditions in vulnerability, namely the analysis of vulnerability as lack of entitlements and the analysis of vulnerability to natural hazards.\(^{201}\) As such, climate vulnerability is comprehensively understood in both natural and social systems, defined as a function of exposure to climate impacts, sensitivity of social systems, and adaptive capacity.\(^{202}\)

The sub-set of literature devoted to the understanding of climate impacts on health builds on the concept of vulnerability. It emphasizes the critical role of factors such as socioeconomic status, access to healthcare systems, and health infrastructure in shaping the extent to which changing weather patterns impact health.\(^{203}\) A. J. McMichael, a late epidemiologist at the Australian National University and a pioneer in studying the impact of

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202 Adger, 274.
climate change on human health, contended that low-income populations would primarily bear the adverse health consequences of climate change due to vulnerability differentials arising from external climatic exposure, as well as the status, conditions, and adaptive capacity of the exposed population.\textsuperscript{204} Together with E. Lindgren, McMichael found that the complexity of climate change is not limited to the direct health effects caused mainly by extreme weather events but also includes indirect pathways spanning a range of complex, diffuse, or deferred causal paths, such as the spread of zoonotic infections.\textsuperscript{205} Thus, the authors suggest that while climate change mitigation is necessary, adaptive strategies in public health are required because climate change is already happening, and further change is already "locked in."\textsuperscript{206}

Luke Parry et al. highlight how social inequalities amplify both such direct and indirect risks from climate change, with poorer and marginalized populations facing greater vulnerability within and across countries.\textsuperscript{207} The authors argue that poverty and social exclusion are the underlying causes of this trend in Latin America, as they lead to poor healthcare access and precarious health infrastructure.\textsuperscript{208} The authors bring together multiple studies to document how widespread discrimination against indigenous and Afro-descendant women in Guatemala, for example, leads to patient-blaming, abuse, disregard of traditional

\textsuperscript{206} McMichael and Lindgren, 410.
\textsuperscript{208} Parry et al., 9.
beliefs, shame, limited access to quality healthcare, and deterred healthcare-seeking.\textsuperscript{209} Moreover, their analysis reveals the challenges faced by undocumented migrants to access healthcare, resulting in under-diagnosis, poor disease control from lack of treatment, and under-reporting.\textsuperscript{210}

A substantial body of academic literature further highlights the significant implications of Latin America's highly uneven access to healthcare systems for the climate vulnerability of populations living in poverty and social exclusion. Notably, the Sixth Assessment Report of the IPCC draws on this knowledge base to underscore that populations with limited access to health services, particularly historically discriminated groups such as elderly persons, are most severely impacted by climate change.\textsuperscript{211} For example, the IPCC report recognizes a crucial relationship between changes in climatic events and the outbreak of infectious diseases in the Brazilian Amazon.\textsuperscript{212} In Venezuela, the transmission of malaria and dengue has also been significantly influenced by changes in rainfall and temperature.\textsuperscript{213} Furthermore, forest fires pose a major threat to public health in the region, as they are associated with an increase in hospital admissions due to respiratory problems, particularly among children and the elderly.\textsuperscript{214}

This body of scholarship establishes a connection between the heightened climate vulnerability of specific populations and the notion of climate justice.\textsuperscript{215} Notably, such a

\textsuperscript{209} Parry et al., 4
\textsuperscript{210} Parry et al., 4.
\textsuperscript{211} Castellanos et al., “Central and South America,” 1705-1710.
\textsuperscript{212} Castellanos, 1705.
\textsuperscript{213} Castellanos, 1705.
\textsuperscript{214} Castellanos, 1705.
conceptual overlap shapes the strategies that the literature proposes to tackle the pressing health crises arising from the combined impact of climate change severity and widening social inequalities. Specifically, this scholarship identifies strategies along the three aspects of climate justice, namely the distributive, procedural, and corrective justice. The distributive aspect of climate justice refers to the allocation of different burdens and resources related to climate change among countries and populations to cope with them.216 Based on this principle, development studies literature emphasizes the need for achieving universal healthcare through more equitable health spending in countries.217

Procedural justice concerns who decides and participates in decision-making.218 Therefore, this literature emphasizes the significance of ensuring equitable stakeholder participation in the design and implementation of actions aimed at mitigating and adapting to climate risks.219 Lastly, corrective justice entails redressing adverse climate impacts, including the recognition of diverse cultures and perspectives.220 Poverty alleviation is at the center of this approach as arguably the most critical strategy to reduce the impacts of climate change on the most vulnerable.221

In summary, research on climate change in development studies provides a more comprehensive understanding of the unique climate vulnerabilities specific to Latin America.

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219 Siri Eriksen et al., “Adaptation Interventions and Their Effect on Vulnerability in Developing Countries: Help, Hindrance or Irrelevance?,” World Development 141 (May 1, 2021): 3.
221 Leichenko and Silva, “Climate Change and Poverty: Vulnerability, Impacts, and Alleviation Strategies,” 548.
that are lacking in the limited academic literature on climate litigation in the region. This knowledge is vital for analyzing the socio-political landscape that is a critical component in studying the intersection of climate litigation and health—as research on social rights litigation further suggests. Specifically, development studies illustrate how poverty and social exclusion exacerbate health vulnerabilities and situates this as a climate justice issue. By doing so, they highlight the importance of distributive, procedural, and corrective measures to address health crises. This literature’s conceptualization of vulnerability and climate justice substantiates the links between research on climate change and social rights litigation and human rights and climate change law (elaborated on in the following Subsection), providing a cohesive framework for this dissertation's inquiry.

1.5.3 International Human Rights and Climate Change Law

Law has bestowed escalating attention on the detrimental impacts of climate change on human health, stemming from both the international legal domains of human rights and climate change. In the realm of human rights, there has been a growing recognition among human rights bodies in recent years that the adverse impacts of climate change pose a significant threat to the realization of human rights, particularly the right to health. The Human Rights Council adopted its first resolution on climate change and human rights in 2008, which expressed concern that climate change poses an immediate threat to the full enjoyment of human rights. Since then, the council has issued several more resolutions, including encouraging mandate holders to consider the issue of climate change and human rights within their respective mandates. As a result of these efforts, the Special Rapporteur

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223 Resolutions 10/4, para. 3; 26/27, para. 8; and 29/15, para. 7.
on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment examined the human rights obligations relating to climate change in 2016. He noted that the greater the increase in average temperature, the greater the effects on the right to health. Therefore, states have a duty to keep the increase in global temperature to well below 2°C and implement appropriate adaptation measures in order to protect this right.224

The OHCHR took another significant step towards clarifying the scope of obligations pertaining to the right to health in relation to climate change in 2016, when it issued an analytical study on the subject matter.225 The study highlighted that in order to fulfill the right to health, states must take measures to mitigate climate change and ensure that all individuals, particularly those in vulnerable situations, have adequate capacity to adapt to changing climatic conditions.226 In this vein, to promote climate-resilient populations, states should focus on developing resilient health systems and infrastructure, including by promoting universal health coverage.227 The study further emphasized the critical relation between climate change, health, and poverty by recommending the protection of public health as a priority for investment in climate adaptation and mitigation, with efforts targeted at alleviating poverty and addressing global inequity.228

Further efforts stemming from the international human rights system to promote the protection of the right to health in the context of climate change include General

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225 UN Human Rights Council, Analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
226 UN Human Rights Council, para. 54.
227 UN Human Rights Council, para. 57.
228 UN Human Rights Council, para. 60.
Recommendation No. 37 of the Committee on the Elimination of Discrimination against Women\(^{229}\) (CEDAW) and the upcoming General Comment No. 26 of the Committee on the Rights of the Child (CRC).\(^{230}\) The former recommendation urges states to invest in health systems that are resilient to climate and disasters, while also allocating the maximum available resources to respond to the changing healthcare needs that arise from climate change and related disasters.\(^{231}\) The latter document is expected to be adopted by the CRC in May 2023.\(^{232}\)

While international climate change law has long acknowledged the impacts of climate change on health, its intersection with the human rights framework has only recently gained attention. The UNFCCC regime first recognized health concerns in the 2010 Cancún Agreements, which called for the development of NAPs to reduce vulnerability to current and future climate change risks.\(^{233}\) However, it wasn't until the 2015 Paris Agreement that a legally binding instrument explicitly acknowledged the links between climate change and the right to health. The preamble of the agreement states that "Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right


\(^{231}\) CEDAW, General recommendation No. 37, para. 68.b.

\(^{232}\) Committee on the Rights of the Child, “Draft general comment No. 26.”

to development [...]" This recognition marks an important step towards ensuring that climate action is undertaken in a way that upholds and promotes human rights, particularly for those who are most vulnerable to the impacts of climate change.\footnote{Alexandra L. Phelan, “The Environment, a Changing Climate, and Planetary Health,” in \textit{Foundations of Global Health \\& Human Rights}, ed. Lawrence O. Gostin and Benjamin Mason Meier (New York, NY: Oxford University Press, 2020), 422.}

Scholarship examining the intersection of human rights and climate change law particularly within the context of climate change litigation can be categorized into two distinct lines of thought. The first perspective emphasizes the need for a deeper understanding of how these legal realms can work together in the pursuit of climate justice. Commentators belonging to this group argue that as both fields of law converge in climate lawsuits, there is potential for mutual support in addressing complex issues such as health crises. On the other hand, the second perspective argues that human rights law may not be an adequate framework for addressing the socio-ecological vulnerabilities that climate change exacerbates. Thus, they call for a complete rethinking of the law to account for the complexities and challenges of climate change.

Academic works that advocate for an integrative approach see the role of courts as critical in clarifying the linkages between human rights and climate change law. These works argue that judicial interpretation is key to overcoming potential collisions between both legal compartments and making them work in light of their connections to broader societal concerns. Gloppen and Vallejo's analysis of the reciprocal implications of climate litigation and economic, social, and cultural rights is an example of such scholarship. They demonstrate how rights-based arguments feature prominently in major climate lawsuits worldwide, highlighting violations of the right to health, the right to life, and a healthy environment. Their work concludes that while courts have the potential to strengthen


national and subnational governance to address the climate crisis positively, they have yet to fully apply the sustainable development paradigm and the precautionary principle, particularly concerning the challenges faced by the most marginalized communities.²⁴¹

This strain of scholarship has also identified the shared interpretative spaces where the potential of both fields of law to face climate justice concerns sit. Juan Auz examines the reciprocities between the human rights duty of international cooperation and the principle of common but differentiated responsibilities stemming from international climate change law.²⁴² The author suggests that such an overlap could guide courts towards reparations that facilitate restorative and distributive justice.²⁴³ Birsha Ohdedar offers a critical inquiry on the varying framings of climate vulnerability that are embedded within climate litigation and argues that courts can make this pathway a vehicle for adaptation by considering social vulnerability and the human rights framework.²⁴⁴

Notably, there is a dearth of studies that focus on the potential of integrating the right to health specifically and climate change law within litigation. The only notable exception is Chuan-Feng Wu's work.²⁴⁵ He analyzes how the reciprocities between the climate change framework and the right to health are emerging within litigation, pointing to greater integration between both fields. The consolidated legal basis resulting from such integration, he further argues, can urge states to systematically carry out human rights impact assessments prior to and during the implementation of climate change measures, and,

²⁴¹ Gloppen and Vallejo, 409.
²⁴³ Auz, “Two Reputed Allies: Reconciling Climate Justice and Litigation in the Global South,” 155.
²⁴⁵ Wu, “Challenges to Protecting the Right to Health under the Climate Change Regime,” 121.
reciprocally, to provide effective redress mechanisms for those whose right to health is violated due to climate change health threats.246

Scholarship advancing the second perspective is nascent. While critiques of human rights as ill-suited for the cognitive requirements of the Anthropocene have been substantiated previously,247 their specific instantiation in climate litigation is novel. In this regard, the analysis of César Rodríguez Garavito is instructive.248 He asserts that the suitability of SER for addressing the challenges of climate change depends on the augmentation and refinement of theoretical, doctrinal, and advocacy efforts. At the same time, he also acknowledges the need for jurisprudential innovations to address the root causes of the climate crisis whereby civil, political, socioeconomic, and environmental rights are threaded together in an holistic understanding. While not entirely ruling out the potential of the human rights framework, he emphasizes the importance of this alternative approach, which he calls the “climatization of rights.”249

In summary, the growing inroads of international human rights and climate change law has drawn considerable scholarly attention, predominantly within the legal field. Within the expanding body of climate litigation, academic works have focused on the intersections between these two areas, and two distinct perspectives have emerged. Some scholars view the integration of human rights and climate change law as a pertinent pathway for addressing the complex challenges posed by climate change, while others call for a rethinking of the law.

246 Wu, 125.
249 Rodríguez-Garavito, 29.
as they believe the human rights framework is insufficient to cope with such complexities. While both perspectives contribute to questioning the adequacy of the law in the face of today’s climate crisis, they both primarily focus on the court’s interpretation of the law, failing to consider how legal interpretations interact with the socio-political contexts in which climate litigation occurs. In other words, their focus on the content of arguments and judgments fails to capture how external factors lead to varying amalgamations of human rights and climate change law to address vulnerabilities and pursue climate justice. This is a critical blind spot, particularly given the theoretical tools provided by the literature on social rights litigation, which shed light on the input and output dynamics of the litigation process to comprehend how the socio-political contexts influence the directions in which legal interpretations move.

Therefore, before considering the suitability of human rights and climate change law for tackling health crises, a review of this literature reveals the need for a better understanding of what drives the use of normative tools in litigation in one way or another. The complementarity between both scholarships is therefore relevant to unraveling the inquiry of this dissertation.

1.6 Context of Case Studies

Drawing on this dissertation’s comparative approach, the present Section presents a concise contextual overview of the selected case studies (as presented in Table 2). Specifically, it describes the socio-political and legal context of Chile, Colombia, Ecuador, and Mexico on aspects relevant to the research question. The depiction focuses on the ecological and social dimensions of these countries' health vulnerabilities to climate change, as well as their constitutional justice systems’ input-output dynamics, along with their legal
and policy frameworks related to the right to health and climate change. As highlighted in Subsection 1.3.5 of the Methodology, this contextual analysis fulfills the methodological requirement of comparative research and exposes the underlying logics of the MSSD and MDSD for the case selection.

1.6.1 Chile

1.6.1.1 Climate Change and Health Vulnerability

Over the past few decades, Chile has experienced significant changes in its climate patterns and socio-economic landscape, which have had profound impacts on health. The IPCC observes an increase in the duration and frequency of heatwaves, a robust drying trend across the country, and a considerable increase in sea levels along the central coast. These climatic changes have been further linked to variations in temperature and precipitation regimes, due to which impacts on public health are expected over the long term. Although the health effects of climate change have not been thoroughly described for this country, some studies have associated warmer climates with the spread of vector-borne diseases such as Chagas and dengue.

Chile has undergone accelerated economic growth and reduced poverty levels, resulting in improvements in the Chilean healthcare system in terms of equity and responsiveness. However, persistent disparities in income, education, and rural-urban factors continue to impact the quality of care, health system barriers, and differential access

250 Castellanos et al., “Central and South America,” 1713.
251 Castellanos et al., 1713
to healthcare. Such inequalities strongly associate health vulnerability to climate change to socioeconomic, geographic, and gender factors. Low government spending on social infrastructure, such as health and education, along with ethnic discrimination and social exclusion, further reduce healthcare access for marginalized populations. These marginalized populations often lack the necessary documentation to access public services, leading to underreporting, low diagnosis, and inadequate treatment of diseases such as vector-borne diseases.

Studies have shown that the health system in Chile exhibits pro-rich inequality in the use of public services, fueled by historical and structural inequalities that hinder solidarity between social classes. These inequities are further exacerbated by challenges faced by the public sector, including a shortage of medical specialists, infrastructure, and management effectiveness in primary care, as well as guaranteeing an adequate supply of medicines. In this vein, the PAHO recognizes that the greatest challenge for Chile in the coming years to reduce health vulnerability will be to “reduce the socioeconomic gaps that pose an obstacle to more equitable, comprehensive, and inclusive development.”

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254 Castellanos et al., “Central and South America,” 1715.
255 Castellanos et al., 1715.
256 Angeline Ferdinand et al., “Indigenous Engagement in Health: Lessons from Brazil, Chile, Australia and New Zealand,” *International Journal for Equity in Health* 19, no. 1 (December 2020): 47; Castellanos et al., 1765.
257 Castellanos et al., 1765.
1.6.1.2 Constitutional Justice System

Chile's 1980 Constitution offers a range of remedies for the protection of fundamental rights, with the most frequently employed being the *recurso de protección* (protection action) enshrined in Article 20. The informality and broad scope of this legal recourse have led to its widespread use by individuals seeking to assert their rights and safeguard their interests. Consequently, it has evolved into a powerful instrument for extending the protection of certain socio-economic rights that are not explicitly addressed within the constitutional text.\(^{260}\) In adjudicating this type of injunction, Chilean courts have underscored the primacy of international human rights treaties within the nation's constitutional hierarchy, thereby bolstering the protection of fundamental rights—a hallmark approach of the NLAC.\(^{261}\) This constitutional practice emerged in the wake of the 1989 constitutional reform, which acknowledged the state's obligation to uphold human rights as guaranteed by both the Constitution and the international treaties to which Chile is a party, as stipulated in Article 5. These factors make the protection action more suitable than environmental remedies even for climate litigation, as reported by Pilar Moraga Sariego.\(^{262}\)

Moreover, the Constitution delineates several principles that underpin the jurisdictional function, directly correlated to the autonomy and authority of courts (output dynamics). Primarily, it safeguards judicial independence by explicitly proscribing other branches from encroaching upon court powers, while concurrently ensuring judges' tenure,

\(^{261}\) Lovera Parmo, 95.
contingent upon commendable conduct.\footnote{Lovera Parmo, “Chile,” 103.} Furthermore, the Constitution bestows upon courts the prerogative to enforce their decisions and mandates adherence to the principle of legality, necessitating legislation to govern the judiciary's organizational structure, responsibilities, and procedures.\footnote{Lovera Parmo, 103.}

However, comparative analyses of Chile's constitutional function reveal an impartial yet relatively marginal role, in contrast to, for instance, the active presence and issuance of broadly binding rulings by Colombian courts.\footnote{Brinks and Blass, The DNA of Constitutional Justice in Latin America, 44.} This body of literature also identifies a prevailing conservative formalistic culture within the Chilean judiciary.\footnote{Siri Gloppen et al., Courts and Power in Latin America and Africa (New York: Palgrave Macmillan US, 2010), 4.} Consequently, the nation's constitutional function has been classified as highly autonomous yet possessing limited authority when it comes to adjudicating social rights, as per the categorization of Daniel M. Brinks and Abby Blass.\footnote{Brinks and Blass, The DNA of Constitutional Justice in Latin America, 36.}

Pertaining to the input dynamics of the jurisdictionary function, specifically the litigants involved, scholarly research on social rights and climate litigation in Chile underscores the pivotal role played by civil society groups and NGOs in bolstering legal mobilization within communities. For instance, claims brought forth by individuals living with HIV/AIDS reached Chilean courts, primarily due to the efforts of various civil society organizations that, by the mid-1990s, had commenced devising their own thematic agendas for marginalized minorities.\footnote{Jorge Contesse and Domingo Lovera Parmo, “Access to Medical Treatment for People Living with HIV/AIDS: Success without Victory in Chile,” Sur: Revista Internacional de Direitos Humanos 5 (2008): 147.} Similarly, the limited yet growing number of climate lawsuits...
filed in the country has predominantly been initiated by community members, with the staunch backing of NGOs.\textsuperscript{269}

A closer examination of the environmental movements in Chile, which are closely connected to climate change advocacy, reveals the extent to which the legacies of dictatorship and transition have left their imprint on their agendas and strategies. The persistence of elitism, alienation, and depoliticization serves to weaken civil society.\textsuperscript{270} As David Carruthers notes, these legacies have fostered an environment in which NGOs aligned with the North American conservationist/preservationist tradition flourish, as opposed to those environmentalists who conceive the crisis more broadly, encompassing issues of social and ecological justice.\textsuperscript{271}

1.6.1.3 	extit{Right to Health and Climate Change Legal Frameworks}

The 1980 Constitution acknowledges the right to health in Article 19(9), which guarantees all individuals "the right to health protection" and enumerates a series of obligations for the State deriving from this right. These duties encompass ensuring free and equal access to health promotion, protection, recovery actions, and individual rehabilitation, as well as the coordination and control of health-related actions. Moreover, Chile's Constitutional Tribunal has confirmed in multiple rulings the justiciability of this right.\textsuperscript{272} To that aim, drawing on article 5(2) of the Constitution, the court has referred to the corpus of treaties where the right to health is enshrined, including the ICESR.\textsuperscript{273} Chile ratified the

\begin{footnotesize}
\textsuperscript{269} Moraga Sariego, “Climate Change Litigation in Chile,” 299.
\textsuperscript{270} David Carruthers, “Environmental Politics in Chile: Legacies of Dictatorship and Democracy,” \textit{Third World Quarterly} 22, no. 3 (June 2001): 354.
\textsuperscript{271} Carruthers, 352.
\textsuperscript{273} Figueroa García-Huidobro, 291.
\end{footnotesize}
ICESCR in 1972 and subsequently the CEDAW, CRC and CRPD, in 1989, 1990, and 2008, respectively. Within the IAHRS, Chile is among the relatively few countries that have ratified the IACHROP in 2017. However, it has not yet ratified the Protocol of San Salvador.

Regarding Chile's climate change legal framework, it is essential to highlight that the country has been a party to the UNFCCC since 1994 and ratified the Paris Agreement in 2017. In compliance with the obligations established therein, Chile submitted its NAP in 2017 and its NDC in 2020. These instruments address climate-related health impacts through various approaches.

The NAP establishes the overarching guidelines for the development of the Climate Change Adaptation Plan in Health, which is currently in its draft phase. These guidelines include the strengthening of capacities within the health system, the implementation of preventive measures to reduce the sector's vulnerability to extreme events, and the mitigation of vulnerability to infectious diseases, particularly among individuals from lower socioeconomic strata. Furthermore, the NDC delineates several contributions for the health sector.

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279 “NDC Registry,” UN Climate Change, accessed on March 22, 2023, [https://unfccc.int/ndcreg](https://unfccc.int/ndcreg)

sector to adapt to climate change. One such contribution involves ensuring that companies in this sector implement comprehensive risk management plans.\textsuperscript{281}

\subsection{1.6.2 Colombia}

\subsubsection{1.6.2.1 Climate Change and Health Vulnerability}

In equatorial regions like Colombia, the El Niño and La Niña climatic phenomena have engendered a myriad of direct and indirect repercussions on human health, aggravating extant challenges such as poverty, food insecurity, and restricted access to potable water.\textsuperscript{282} These climate anomalies exacerbate meteorological factors such as precipitation, temperature, and relative humidity, which have exerted a discernible influence on the incidence of vector-borne diseases like dengue.\textsuperscript{283} The exclusion of marginalized populations from accessing health systems renders these groups more vulnerable to the spread of such diseases. The country's fragmented health systems have done little to address maternal mortality rates,\textsuperscript{284} particularly in afro-descendent and indigenous women, while healthcare access remains elusive for the approximately 800,000 migrants in the country.\textsuperscript{285}

A review of Colombia's healthcare system lays bare its challenges to address climate-related health issues, especially for vulnerable populations.\textsuperscript{286} Nurse and psychiatrist-to-population ratios in the country are below the Latin American average, and there are significant disparities in prenatal care access between the highest and lowest income

\begin{thebibliography}{9}
\bibitem{281} Gobierno de Chile, \textit{Chile's Nationally Determined Contribution} (Santiago: Gobierno de Chile, 2020), 43.
\bibitem{282} Castellanos et al., “Central and South America,” 1701.
\bibitem{283} Castellanos et al., “Central and South America,” 1702.
\bibitem{286} Thalia Viveros-Uehara, “Health Care in a Changing Climate,” \textit{Health and Human Rights} 23, no. 2 (December 2021), 141.
\end{thebibliography}

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Furthermore, while studies on racial and ethnic health disparities are limited, available research consistently shows that Indigenous and Afro-descendant children in Colombia are at a higher risk of stunting and wasting.\footnote{OECD and World Bank, \textit{Health at a glance: Latin America and the Caribbean} 2020, 23–32.}

\subsection*{1.6.2.2 Constitutional Justice System}

Colombia’s constitutional architecture reflects the nation’s efforts to address past crises and transform its society. The justice system it erected can be understood in the context of the country's tumultuous history during the 1980s, marked by the rise of drug trafficking, guerrilla warfare, paramilitary expansion, and political crises.\footnote{Lucrecia Mena-Meléndez, “Ethnoracial Child Health Inequalities in Latin America: Multilevel Evidence from Bolivia, Colombia, Guatemala, and Peru,” \textit{SSM - Population Health} 12 (December 1, 2020): 7.} These events led to the adoption of the 1991 Constitution, which sought to transform Colombian society through two main avenues. First, the recognition of a wide array of rights, including social, collective, civil, and political rights; and second, the establishment of effective judicial mechanisms to guarantee these rights.\footnote{Antonio Barreto-Rozo, “Constitutional History of the Colombian Paradox (1886–2016): Hegemony, Exception, and Postponement,” in \textit{The Oxford Handbook of Constitutional Law in Latin America}, ed. Conrado Hübner Mendes, Roberto Gargarella, and Sebastián Guidi (Oxford University Press, 2022), 124.} This transformative vocation was accompanied by an openness to international human rights law, with human rights treaties incorporated into the constitutional text via the block of constitutionality.\footnote{Rodrigo Uprimny Yepes and Luz María Sánchez Duque, “Constitución de 1991, justicia constitucional y cambio democrático: un balance dos décadas después,” \textit{Cahiers des Amériques latines}, no. 71 (December 31, 2012): 36.}

The 1991 Constitution introduced key features to reinforce constitutional control. It established a Constitutional Court tasked with reviewing the constitutionality of laws, which could be challenged by any citizen through public action of unconstitutionality.\footnote{Barreto-Rozo, “Constitutional History of the Colombian Paradox (1886–2016),” 126.}
Furthermore, it introduced the tutela action, which allows individuals to request direct protection of their fundamental rights from any judge, with decisions reviewed by the Constitutional Court. While the Constitutional Court maintains a monopoly on constitutional matters, it shares some powers with the Council of State and judges from different jurisdictions, following the Colombian tradition of diffuse control. Both the Supreme Court of Justice and the Council of State also take cognizance of the tutela action and are subject to review by the Constitutional Court.

The Constitutional Court's role in protecting fundamental rights and upholding the normative supremacy of the Constitution has had significant impacts on Colombian society over the past two decades. The experience of judicial protection of rights through the tutela action has been intense and has influenced the design and implementation of measures to address structural rights violations, including by actively shaping the enforcement of the right to health and health policy. Furthermore, the ease of access to constitutional justice has turned the Constitutional Court into a leading actor in the country's political life. This has made the Colombian constitutional justice system one of the most powerful and open in the world.

The constitutional architecture in Colombia significantly influences the output dynamics of litigation, as its courts have garnered a reputation for activism and

293 Uprimny Yepes and Sánchez Duque, 37.
295 Cifuentes Muñoz, 70.
receptiveness. As noted by Daniel M. Brinks and Abby Blass in their analysis, Colombian courts are “major policy players” with a comprehensive social democratic agenda, designed to serve as essential arenas for policy contestation. In particular, the Colombian Constitutional Court has acted against the interests of dominant political actors on occasion, enabled by its relative insulation from political pressure, accessibility, and a diverse toolkit to exert influence across various domains. Consequently, Brinks and Blass argue that Colombia, widely acknowledged it as being the most active and consequential court in the region, with the highest degree of authority among their counterparts.

Concerning the input dynamics of the jurisdictional function, scholars analyzing social rights litigation in Colombia have observed that, despite the courts' proactive and receptive stances, movements seeking large-scale social transformation often invest substantial efforts in developing well-integrated political and legal strategies. In the context of climate litigation, it is therefore unsurprising that claimants have carefully chosen their framing and legal basis, drawing upon the wealth of advocacy experience that Colombian and Latin American NGOs have accumulated in the field of social rights litigation. The engagement of expert NGOs in litigation bolsters claimants’ positions by enhancing the strength of their strategies, ultimately contributing to more persuasive efforts.

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299 Brinks and Blass, The DNA of Constitutional Justice in Latin America, 41.
300 Brinks and Blass, 38.
301 Brinks and Blass, 41.
303 Rodríguez-Garavito, “Human Rights,” 42.
1.6.2.3 Right to Health and Climate Change Legal Frameworks

In Colombia's Constitution, the right to health is established as a public service. This is enshrined in Article 49, which mandates that the state is responsible for providing healthcare and environmental sanitation as public services. The Constitution also emphasizes the fundamental rights of children, as outlined in Article 44, which guarantees their right to life, physical integrity, health, and social security. Since the adoption of the Colombian Constitution in 1991, the Constitutional Court has played a pivotal role in enforcing the right to health and shaping health policies.\textsuperscript{304} The court's interpretations have often been grounded in international treaties that enshrine the right to health.\textsuperscript{305} A prominent example is the widely acclaimed Judgment T-760/2008, celebrated for its structural approach, which drew upon the ICESCR\textsuperscript{306}—to which Colombia has been a state party since 1969.\textsuperscript{307} The country also ratified CEDAW in 1982, the CRC in 1991, and the CRPD in 2011.\textsuperscript{308} Within the IAHRS, it has been party to the Protocol of San Salvador since 1997\textsuperscript{309} and to the IACHROP since 2022.\textsuperscript{310}

In the realm of climate change law, Colombia ratified the UNFCCC in 1995 and the Paris Agreement in 2016.\textsuperscript{311} The country's 2016 NAP serves as the overarching policy framework for mitigating the socioeconomic and environmental consequences of climate change.

\textsuperscript{306} Judgment T-760/08, para. 4.4.3 (Constitutional Court of Colombia 2008).
\textsuperscript{307} “Chapter IV. Human Rights,” UN Treaty Collection.
\textsuperscript{308} “Chapter IV. Human Rights,” UN Treaty Collection.
\textsuperscript{309} “Signatories for Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador),” The Danish Institute for Human Rights.
\textsuperscript{310} “Signatories and Ratifications of the Inter-American Convention on Protecting the Human Rights of Older Persons,” OAS Department of International Law.
\textsuperscript{311} “Chapter XXVII. Environment,” UN Treaty Collection.
change.\textsuperscript{312} Although the plan addresses the health component of climate adaptation within its third objective, it only partially incorporates a human rights-based approach to health. For instance, the NAP fails to consider factors such as the availability, accessibility, and acceptability of healthcare systems in light of the growing health vulnerabilities of excluded populations.\textsuperscript{313} Furthermore, Colombia's updated NDC,\textsuperscript{314} submitted in 2020, reveals an incongruity between the acknowledgement of health impacts and the overall ambition in GHGs reduction.\textsuperscript{315}

1.6.3 Ecuador

1.6.3.1 Climate Change and Health Vulnerability

In the Northern Andes region, encompassing countries such as Ecuador, significant changes in temperature and rainfall patterns have been observed during the period from 1961 to 1990.\textsuperscript{316} These climate shifts have had substantial consequences for public health and increased the vulnerability of populations to disease outbreaks, particularly in coastal areas.\textsuperscript{317} Similar to the situation in Colombia, the El Niño Southern Oscillation (ENSO) has been identified as the primary driver of these climate changes. These shifts have been correlated with malaria outbreaks and have been shown to influence the proliferation of cholera bacteria.\textsuperscript{318} Furthermore, projections indicate that dengue cases are likely to increase

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\textsuperscript{312} Departamento Nacional de Planeación, \textit{Marco Conceptual y Lineamientos del Plan Nacional de Adaptación al Cambio Climático (PNACC)} (Bogotá: Gobierno de Colombia, 2016).

\textsuperscript{313} Viveros-Uehara, “Health Care in a Changing Climate,” 146.

\textsuperscript{314} “Actualización de la Contribución Determinada a Nivel Nacional de Colombia (NDC),” Gobierno de Colombia, last accessed on March 22, 2023, \url{https://unfccc.int/sites/default/files/NDC/2022-06/NDC%20actualizada%20de%20Colombia.pdf}

\textsuperscript{315} “Are national climate commitments enough to protect our health? The Global Climate & Health Alliance, last accessed on March 22, 2023, \url{https://climateandhealthalliance.org/initiatives/healthy-ndcs/ndc-scorecards/}

\textsuperscript{316} Magrin et al., “Central and South America,” 1508.

\textsuperscript{317} Magrin et al., 1535-36.

\textsuperscript{318} Magrin et al., 1535-36.
under both the 1.5°C and 3.7°C warming scenarios by 2050 and 2100. The estimated range of increased cases in this region varies from 34,600 to 110,000, highlighting the growing public health concerns associated with climate change.\textsuperscript{319}

Although Ecuador has implemented substantial legal and institutional reforms to enhance health protection, enduring patterns of historical inequality continue to play a pivotal role in determining health vulnerability. In 2008, the country amended its constitution to enshrine healthcare as a fundamental right, subsequently initiating an ambitious endeavor to extend primary healthcare services.\textsuperscript{320} Preliminary evaluations of the reform's ramifications demonstrated a marked decline in preventable hospitalization rates for both genders, signifying an amelioration in the efficacy of primary healthcare services following the 2008 national health reform.\textsuperscript{321} Furthermore, these assessments highlighted a substantial reduction in healthcare inequality, attributable to a comprehensive suite of public interventions and investments aimed at combating the determinants of health and inequality.\textsuperscript{322} Nevertheless, disparities across income and education strata persisted as contributing factors to inequality in the utilization of healthcare services.\textsuperscript{323}

Subsequent research has identified that these disparities in access to healthcare services adhere to a geographical pattern that strongly correlates with the distribution of inequalities in historically marginalized areas and disenfranchised social groups within the

\textsuperscript{319} Castellanos et al., “Central and South America,” 1702.
\textsuperscript{321} Flores Jimenez and San Sebastián, 4.
\textsuperscript{323} Granda and Jimenez, 6.
nation. This pattern is discernible in regions such as the Amazon, central Andean highlands, and north-central coastal areas of Ecuador, which are predominantly inhabited by indigenous, Afro-Ecuadorian, and Montubio populations—ethnic groups that have been historically subjected to discrimination.\textsuperscript{324}

1.6.3.2 Constitutional Justice System

The Ecuadorian constitutional justice system has experienced considerable transformations over the past few decades. The country has seen the development of twenty constitutions, with the 2008 Constitution of Montecristi being heralded as a lasting document.\textsuperscript{325} This contemporary constitutional framework is undergirded by a robust commitment to human rights, both domestically and internationally, and an array of mechanisms for their protection, including the innovative protection action. Notably, the 2008 Constitution affords international human rights law a privileged position within the Ecuadorian constitutional system, stipulating that enforceable human rights in Ecuador extend beyond those enshrined in the constitutional text and ratified treaties to encompass rights safeguarded by all human rights instruments.\textsuperscript{326}

Moreover, a salient feature of the 2008 Constitution is the incorporation of diverse mechanisms for protecting rights, with the protection action, as delineated in Article 88, being one of the most innovative.\textsuperscript{327} This mechanism safeguards constitutional rights through a streamlined, expeditious, and efficient process. Crucially, under the 2008 constitutional

\textsuperscript{326} Salazar, 179.
framework, all judges and courts are inherently deemed adjudicators of this type of action, entrusted with safeguarding constitutional rights when determining jurisdictional guarantees.\textsuperscript{328} Local judges of first instance hold competence in adjudicating jurisdictional actions if the act or omission occurred within their jurisdiction or yielded effects therein.\textsuperscript{329} Decisions rendered by first-instance judges may be appealed before the Provincial Court of Justice, which serves as an appellate body.\textsuperscript{330} While these decisions are considered final, the Constitutional Court possesses the authority to select decisions for examination, issue binding jurisprudence, and potentially revise them.\textsuperscript{331}

The Ecuadorian Constitutional Court's authority and autonomy are essential for the effective safeguarding of social rights. The 2008 Constitution endows the Court with substantial powers, including the capacity to review legislation for constitutional compliance and to adjudicate disputes among various branches of government.\textsuperscript{332} Despite facing challenges in asserting its independence, the Court has delivered decisions with significant implications for social rights protection.\textsuperscript{333} However, preserving the Court's autonomy and guaranteeing its freedom from political interference remain crucial for the ongoing evolution of Ecuador's constitutional justice system.\textsuperscript{334} In this respect, Daniel M. Brinks and Abby

\textsuperscript{328} Salazar, “The Constitutional History of Ecuador,” 199.
\textsuperscript{329} Salazar, 199.
\textsuperscript{330} Salazar, 199.
\textsuperscript{334} Brinks and Blass, The DNA of Constitutional Justice in Latin America, 43.
Blass posit that the Ecuadorian court exhibits high degrees of formal autonomy while maintaining substantial authority.\textsuperscript{335}

A meticulous examination of the input dynamics within Ecuador's jurisdictional function for the protection of social rights and the environment reveals a similar landscape to that of Chile and Colombia. Claimants have garnered support from NGOs to pursue the advancement of rights through judicial avenues. The Sarayaku people's campaign to ensure compliance with the Inter-American Court ruling (on the \textit{Sarayaku indigenous people v. Ecuador} case) exemplifies this transnational collaboration. It encompassed not only professional NGOs and specialized international agencies but also social movements, local and international NGOs, national NGOs from other countries operating internationally, and online activist networks and citizen journalism outlets.\textsuperscript{336} Rodríguez-Garavito observes that while power disparities persist in these and other campaigns, efforts to mitigate such disparities through various collaborative approaches are also evident.\textsuperscript{337}

\textbf{1.6.3.3 Right to Health and Climate Change Legal Frameworks}

Ecuador's 2008 Constitution affirmed health as a fundamental right and established the state's obligation to guarantee it. Article 32 emphasizes that health, as a right guaranteed by the state, is intertwined with the realization of other rights, such as access to water, food, education, physical culture, work, social security, and healthy environments, which collectively contribute to well-being. The enactment of this provision also catalyzed a health reform process that included the organization of a National Health System to address prior

\begin{flushleft}
\textsuperscript{335} Brinks and Blass, 42.  
\textsuperscript{337} Rodríguez-Garavito, 505.
\end{flushleft}
fragmentation, the enhancement of primary healthcare, and the consolidation of these transformations through increased financing.\(^{338}\) Moreover, by integrating international human rights into the Ecuadorian constitutional framework, the new Constitution acknowledged the normative content of the right to health as outlined in the ICESCR, CEDAW, CRC and the CRPD. Ecuador ratified these treaties in 1969, 1981, 1990, and 2008 respectively.\(^{339}\) It has also been a state party to the Protocol of San Salvador since 1993, and to the IACHROP since 2019.\(^{340}\)

In relation to Ecuador's legal framework on climate change and its connection to health issues, it is crucial to mention that the country ratified the UNFCCC in 1993 and the Paris Agreement in 2017.\(^{341}\) Ecuador's NDC, submitted in 2019, identifies health as a priority sector for adaptation and emphasizes the need for policies to address climate-related health impacts.\(^{342}\) While the IPCC has acknowledged the progress made by the country in bolstering the resilience of its health systems (for example by deploying forecast models for dengue transmission),\(^{343}\) as of March 2023, Ecuador had not yet submitted its NAP.\(^{344}\) This plan would provide further details on the specific measures to be implemented in order to reduce health vulnerability among marginalized groups.


\(^{339}\) “Chapter IV. Human Rights,” UN Treaty Collection.


\(^{341}\) “Chapter XXVII. Environment,” UN Treaty Collection.

\(^{342}\) República de Ecuador, Primera Contribución Determinada a Nivel Nacional para el Acuerdo de París bajo la Convención Marco de Naciones Unidas sobre Cambio Climático (Quito: República de Ecuador, 2019), 34.

\(^{343}\) Castellanos et al., “Central and South America,” 1743.

\(^{344}\) “NAP Central,” UN Climate Change.
1.6.4 Mexico

1.6.4.1 Climate Change and Health Vulnerability

In Mexico, the effects of climate change have become more evident in recent years, with significant consequences for public health, particularly in vulnerable populations. The IPCC identifies an increase in the intensity and frequency of heavy precipitation events since the mid-20th century, while projecting high-humidity hazards to rise in regions around the Gulf of Mexico.345 These climatic changes are contributing to a variety of health risks, including the spread of vector-borne diseases and mental health issues.

The IPCC attests to the link between the spread of vector-borne diseases such as dengue and chikungunya and climate change in Mexico.346 Here, the geographic range of these diseases is influenced by factors such as temperature, with the dengue mosquito vector being well established in the country.347 Projections suggest that dengue cases will increase this century, while areas suitable for chikungunya transmission are expected to expand.348 Socioeconomic inequalities in the distribution of these diseases have been identified, with poorer and less-educated individuals having twice the odds of infection.349 In addition to physical health concerns, climate change has also been linked to mental health issues. Suicide rates in Mexico are projected to increase by 2050 due to rising temperatures.350

346 Hickle et al., 1969.
347 Hickle et al., 1969.
348 Hickle et al., 1969-70.
One critical aspect of the climate change-health relationship in Mexico is the strong entwinement of vulnerability and disparities. Poor neighborhoods and informal settlements are often located in areas exposed to recurrent flooding.\textsuperscript{351} Residents in these areas typically lack access to public services, technical resources for risk reduction, and have limited mobility, which heightens their vulnerability to climate change impacts.\textsuperscript{352} Furthermore, linguistic barriers and poor information access impede healthcare access and behavioral responses to climate extremes.\textsuperscript{353} An example of how social exclusion exacerbates health vulnerability in Mexico is provided by Holmes, who studied the migration of indigenous Triqui Mexicans in western USA and Mexico.\textsuperscript{354} He found that health disparities with other groups were determined by ethnicity and citizenship, which is indicative of structural and symbolic violence, with each group being perceived as deserving its place in the hierarchy.\textsuperscript{355}

1.6.4.2 \textit{Constitutional Justice System}

The Constitution of 1917, the fifth in Mexico's history, remains the country's guiding legal document. Its adoption followed the Mexican Revolution (1910-1917), which sought to address economic exclusion and extreme land concentration through redistribution and the enshrinement of social rights.\textsuperscript{356} As one of the few Latin American nations to transition from authoritarian rule to democracy without enacting a new constitution, Mexico has relied on reformismo or gradualism, leading to approximately 740 constitutional amendments.\textsuperscript{357} Since

\begin{footnotes}
\item[351] Jeffrey A. Hickle et al., 1953.
\item[353] Romero-Lankao et al., 232.
\item[355] Parry et al., 4
\item[357] Pou Giménez, 205.
\end{footnotes}
the late 1990s, the piecemeal addition of fundamental rights to the Constitution has been a defining characteristic, with various rights addressing indigenous peoples, third-generation rights, and environmental concerns.\textsuperscript{358} Although Mexico has actively ratified a significant number of human rights treaties, their daily impact on legal disputes remained limited until the 2011 "human rights reform" constitutional amendment, which granted ratified treaties equal interpretative standing as rights established in the Constitution.

The 2011 reform also introduced changes in the procedural channels for guaranteeing rights, particularly in the regulation of the writ of amparo. The amparo is a judicial mechanism that allows citizens to file complaints with federal judges against public authorities for violating their constitutional rights.\textsuperscript{359} It broadly protects against acts and norms from various authorities and can function as a habeas corpus, a means to activate judicial review of legislation, or as a forum where federal judges ensure that other judges adjudicate conflicts between private parties while respecting fundamental rights. However, the amparo has become increasingly complex over time, threatening its core function as a rights-protective institution.\textsuperscript{360}

Even though a constitutional amendment in June 2011 and the Amparo Statute reform in 2013 aimed to loosen the amparo's standing rules and simplify other procedural requirements, it remains uncertain whether this mechanism meets Inter-American standards for an "effective channel."\textsuperscript{361} Furthermore, the Mexican judiciary retains much of its

\textsuperscript{358} Pou Giménez, 207.
\textsuperscript{359} Articles 103 and 107 of the Mexican Constitution.
\textsuperscript{361} Pou Giménez, “The Constitution of Mexico,” 223.
traditional, hierarchical style; the abandonment of such formalistic and deferential adjudication styles has been slow.\textsuperscript{362}

In contrast to some of its regional counterparts, the Mexican judiciary has not ventured into the domain of structural injunctions or remedies for the protection of social rights.\textsuperscript{363} This highlights the need for further reforms and adjustments to enhance the effectiveness and responsiveness of the Mexican legal system in safeguarding human rights.

1.6.4.3 Right to Health and Climate Change Legal Frameworks

The Mexican Constitution of 1917 pioneered the inclusion of justiciable social rights, such as the right to health, making it among the first constitutions globally to do so.\textsuperscript{364} Article 4 of the Constitution stipulates that "every person has the right to health protection" and mandates that the law set forth the principles and conditions for accessing health services while delineating the responsibilities of the Federation and local governments concerning sanitation. Additionally, the Constitution explicitly safeguards the right to health for children and indigenous populations.\textsuperscript{365}

Mexico's ratification of international treaties on health occurred in the following decades. The country ratified the ICESCR and the CEDAW in 1981, the CRC in 1990, and the CRPD in 2007.\textsuperscript{366} Mexico has been a party to the Protocol of San Salvador since 1996\textsuperscript{367}

\begin{thebibliography}{99}
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\item \textsuperscript{362} Pou Giménez, 224.
\item \textsuperscript{363} Juan Manuel Acuña, “El caso Mini Numa. Nuevos rumbos para la protección de los derechos sociales a través del juicio de amparo en México,” in El juicio de amparo a 160 años de la primera sentencia. Tomo I., ed. Manuel González Oropeza and Eduardo Ferrer Mac-Gregor (Mexico: Universidad Nacional Autónoma de México, 2019), 45; Lara Chagoyán, El Constitucionalismo mexicano en transformación, 66; Pou Giménez, 225.
\item \textsuperscript{364} Yamin, “The Right to Health. The Potential and Limits of Catalysing Systemic Change through the Courts,” 769.
\item \textsuperscript{365} Articles 2.B(III) and 4 para. 9 of the Mexican Constitution.
\item \textsuperscript{366} “Chapter IV. Human Rights,” UN Treaty Collection
\item \textsuperscript{367} “Signatories and Ratifications of the Inter-American Convention on Protecting the Human Rights of Older Persons,” OAS Department of International Law.
\end{thebibliography}
and recently ratified the IACHROP in December 2022. The incorporation of these international treaties into Mexico's constitutional framework, as facilitated by the 2011 "human rights reform," further strengthens the right to health and provides a robust mandate for ensuring equitable access to healthcare services for all individuals.

Mexico has established a robust legal framework regarding climate change. It became the first Latin American country to enact a Climate Change Law in 2012 and signed the UNFCCC just one month after its adoption in 1992.368 Mexico has also been a party to the Paris Agreement since 2016.369 However, similar to Colombia, the country's NDC reveals a discrepancy between the acknowledgment of health impacts and overall ambition.370 Furthermore, Mexico has not yet submitted its NAP,371 which indicates a lack of comprehensive policy focus on preparing healthcare systems to address the vulnerabilities of its population.

368 “Chapter XXVII. Environment,” UN Treaty Collection.
369 “Chapter XXVII. Environment,” UN Treaty Collection.
370 “Are national climate commitments enough to protect our health? The Global Climate & Health Alliance.
371 “NAP Central,” UN Climate Change.
1.6.5 Section Summary

This Subsection provided a contextual overview of Chile, Colombia, Ecuador, and Mexico, focusing on socio-political and legal aspects relevant to climate-related health concerns and climate litigation. These countries have similarities and differences that form the basis for comparison in this research. All four countries experience health impacts from climate change, worsened by social challenges that result in unequal vulnerability among their populations. In Chile, warmer climates contribute to the spread of diseases like Chagas and dengue. Similar issues occur in Colombia and Ecuador due to El Niño and La Niña phenomena. In Mexico, climate change has been linked to mental health issues, as rising temperatures can exacerbate stress and other psychological factors.

Despite improvements in healthcare coverage in the four countries over recent decades, persistent disparities in income, education, and rural-urban factors continue to affect healthcare quality and accessibility in these countries. Structural inequalities perpetuate a pro-rich bias in Chile, while indigenous and Afro-descendant children in Colombia face higher risks of health issues due to care access disparities. Similar patterns of inequality are evident in Ecuador and in Mexico, where residents of low-income neighborhoods and informal settlements often lack healthcare resources, increasing their vulnerability to climate change impacts.

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372 Pino et al., “Chile Confronts Its Environmental Health Future After 25 Years of Accelerated Growth,” 362.
373 Castellanos et al., “Central and South America,” 1702; Magrin et al., “Central and South America,” 1535.
374 Burke et al., “Higher Temperatures Increase Suicide Rates in the United States and Mexico,” 723.
375 Pan American Health Organization and World Health Organization, Health in the Americas. Summary: Regional Outlook and Country Profiles, 112.
Furthermore, the countries also share features of the NLAC and have enacted constitutional protection actions to address social challenges. For example, Chile's 1980 Constitution established the recurso de protección, while Colombia's 1991 Constitution introduced the tutela action. Ecuador's 2008 Constitution enshrines the protection action, and Mexico's 1917 Constitution includes the amparo.

However, differences emerge in how their constitutional justice systems advance social rights, including the right to health. In particular, the autonomy and authority of the constitutional adjudicators in these countries, which have been recognized by the literature on Latin America’s constitutional justice as critical factors in determining the efficacy of protection actions in upholding rights, vary from one set of countries to other. The autonomy and authority of constitutional adjudicators vary, with Colombia and Ecuador being more receptive to judicializing the right to health, while Chile and Mexico have taken a more conservative approach.379

As outlined in Section 1.3 on Methodology, the MSSD and MDSD principles guide this dissertation’s comparative approach, which recommends treating common characteristics as "controlled." Because Chile, Colombia, Ecuador, and Mexico share features such as unequal health vulnerability to climate change and elements of NLAC, these are regarded as "controlled" factors. The distinct ways in which their constitutional justice systems adjudicate social rights, however, allow for comparisons between two sets of countries: Colombia and Ecuador on one hand, and Chile and Mexico on the other. Examining cross-

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379 Brinks and Blass, The DNA of Constitutional Justice in Latin America, 36.
comparisons within these groups emphasizes the influence of diverse adjudication approaches.

Subsequent chapters present this dissertation's three monographs that delve further into the specific socio-political and legal landscapes of each selected case study, using the broad commonalities and differences as a comparative baseline. As these monographs function as separate publications, they may occasionally revisit contextual aspects to ensure a comprehensive understanding for readers encountering the topic for the first time. This approach may result in some repetition, but it aims to maintain clarity and coherency.
CHAPTER 2
LITIGATING CLIMATE JUSTICE: THE RIGHT TO HEALTH AND VULNERABLE POPULATIONS IN LATIN AMERICA

Abstract. As the climate crisis disproportionately imperils the health of populations living in poverty and social exclusion in Latin America, realizing the most vulnerable population's right to health as a crucial component for achieving climate justice becomes increasingly urgent. While the region's new constitutionalism has made progress toward protecting this right, a transformative approach is just beginning to take hold in the field of climate change law, as evidenced by the growing number of rights-based climate litigation cases. This paper employs SCA to qualitatively examine the corpus of domestic rights-based climate change lawsuits filed across Latin American jurisdictions through mid-2022 and places a sharper focus on the adjudicated cases. The goal is to scrutinize the relationship between the use of the right to health and climate justice within this body of litigation. Particularly, the study delves into the interplay of the social and ecological factors that compound climate vulnerability. It achieves this by identifying and classifying data based on the motives of the litigants, the objectives of the litigants and courts and their arguments, and the legal bases of their respective complaints and judgments as they relate to the existing and emerging health concerns of vulnerable populations. The findings reveal a constellation of ways in which litigants and courts use the right to health in relation to the socio-ecological
spectrum of health vulnerability. This paper proposes a typology of cases (climate justice gradient) to conceptualize this phenomenon as a first step in expanding the strategic and interpretative horizons of the current climate litigation toward a more comprehensive approach to climate justice.

2.1 Introduction

Rights-based climate litigation is proliferating in Latin America. Since 2015, the number of these lawsuits has increased tenfold: from 8 to 81 in 2022.\(^1\) As the human rights framework holds great influence over civil society actors and national courts in this region, it has been instrumental in “opening the door” to climate litigation.\(^2\) Consequently, most human rights-based climate cases have been filed here, after Europe and North America.\(^3\) The affected individuals and groups are turning to courts and arguing on human rights grounds to hold governments accountable for failing to implement and enforce existing policies for climate mitigation and adaptation.\(^4\)

The few academic works that have thus far studied climate litigation in the so-called “Global South,” where Latin America has been ascribed,\(^5\) shed light on how this region’s

\(^1\) LSE Grantham Research Institute on Climate Change and the Environment, Litigation Cases, https://climate-laws.org/litigation_cases?region%5B%5D=Latin%20America%20%26%20Caribbean&page=1&case_started_from=2010&case_started_to=2022 (last accessed on 22 February 2023).


\(^5\) The North-South conceptualization has played a significant role in shaping international law. However, this geographical division has been criticized for promoting a colonial view of the world and failing to account for new forms of inequality. Despite such concerns, this paper uses the ‘Global North-South’ notion as a reference point for analyzing climate change litigation to build on existing scholarship in the field. For a comprehensive historical recount of the North-South concept within international law, see M. Rafiqul Islam, History of the North-South Divide in International Law: Colonial Discourses, Sovereignty, and Self-Determination, in: Shawkat Alam / Sumudu Atapattu / Carmen G. Gonzalez / Jona Razzaque, (eds.), International Environmental Law and the Global South, Cambridge 2015, p. 23.
pressing socioeconomic challenges distinctively pervade and influence the outcome of climate-related lawsuits. This literature points to how, unlike the motivations behind lawsuits in the Global North jurisdictions, the poverty and disadvantages that increase the populations’ vulnerability to global warming project onto the motivations behind rights-based climate litigation in the Global South. By showing climate change as not only an ecological issue but also a broader problem of social justice that disproportionately affects the least-advantaged populations, climate litigation has arguably become a platform for climate justice contestations.

The concept of climate justice highlights the multifaceted inequalities that contribute to people's vulnerability to the impacts of climate change, resulting in certain populations disproportionately experiencing the most severe damages despite having contributed the least to global warming. Its praxis has been articulated around several human rights, including the right to a healthy and safe environment and social rights like the right to health. While the former right has been central to the Global South’s rights-based climate litigation, major climate lawsuits in Latin America have also relied on the latter to frame climate challenges as health concerns, such as the Future Generations v Ministry of the Environment and Others

7 Setzer / Benjamin, note 6, p. 79.
9 Sultana, note 8, p. 119.
10 Gonzalez, note 8, p. 113.
and *Greenpeace Mexico v Ministry of Energy and Others* cases. Yet, the use and significance of the right to health have been understudied. Thus far, the literature has not specifically concentrated on the implications of any human right in climate litigation other than those connected with the right to a clean and healthy environment.

Leaving the right to health within Latin America’s climate litigation unexplored has significant consequences for the region’s pursuit of climate justice. On the one hand, health is one of the challenges that make the multifaceted inequalities behind climate vulnerability most evident. While the region has contributed with 11% of the historical cumulative net anthropogenic GHGs—as opposed to North America’s 23% and Europe’s 16%—it, for example, possesses higher susceptibility to the transmission of vector-borne diseases. To make matters worse, Latin America’s high levels of social and health inequality between and within the countries exacerbate health vulnerability to climate change, especially among populations experiencing poverty and social exclusion. On the other hand, Latin America’s

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constitutional tradition, known as the new constitutionalism (NLAC), furnishes the right to health with the potential to address both the environmental and social dimensions of vulnerability, thereby paving strong connections with climate justice concerns.

Hence, this paper traces how the right to health has been invoked within Latin America’s climate litigation and its significance against climate justice concerns. More specifically, it applies SCA to the corpus of domestic climate lawsuits filed as of mid-June 2022 across all Latin American countries that aimed to advance climate action (positive litigation), were grounded in human rights (rights-based litigation), and used the right to health as a legal basis. The study analyzes the complaints and resolutions to identify the data on the litigants’ motives, the objectives and arguments of the litigants and courts, and the legal bases of their respective complaints and judgments as they relate to the existing and emergent health concerns of vulnerable populations. Then, the paper focuses more sharply on seven cases from this body of litigation that meet the following criteria: (1) they have been adjudicated, (2) their resolution favored the claimants, and (3) their case documentation is publicly available.

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20 Climate litigation scholarship distinguishes between “positive” and “negative” types of litigation based on the direction toward which lawsuits seek to move climate policy. The former strives to reduce greenhouse gas emissions, preserve the environment, and increase adaptive capacity (usually initiated by NGOs or community members), while the latter attempts to avoid these shifts by challenging mitigation or adaptation measures (usually brought by corporations). Early categorizations along these lines were suggested by *David Markell* and *J. B. Ruhl*, An Empirical Assessment of Climate Change in the Courts: A New Jurisprudence or Business as Usual Climate Change Special Issue, Florida Law Review 64 (2012), p. 65–66; *Navraj Singh Ghaleigh*, ‘Six Honest Serving-Men’: Climate Change Litigation as Legal Mobilization and the Utility of Typologies, Climate Law 1 (2010), p. 43.
This study constitutes the first systematic inquiry into the right to health in climate litigation conducted in Latin America; only a few studies have analyzed this and mostly in high-income countries or through a public health lens.21 As a humble early step, the study employs a descriptive approach to the phenomenon by examining the “how” question, rather than delving into why the right is used in different ways. Therefore, the analyzed cases are not directly comparable, but they provide valuable initial insights into the implications of climate litigation on health vulnerability. This leads to the proposal of a typology of rights-based cases (climate justice gradient) built on their potential to address climate-related health concerns more directly, which contributes to expanding strategic and interpretive horizons and turning them into more comprehensive approaches to climate justice through the judicial pathway.

An important conceptual note pertains to the significant diversity among the countries of Latin America. While this paper employs the term “Latin America” to underscore the commonalities of these nations regarding their constitutional paradigms and development trajectories, this reference is not intended to diminish the unique circumstances of the individual countries. Given that Latin America is often referred to as a region of countries that share a history of colonization and ongoing socio-economic inequalities,22 this paper expands on this background to trace how the urgency of the climate crisis disproportionately affects the health of the most vulnerable populations in this region.

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22 Armin von Bogdandy, note 19, p. 30.
The following Section presents the theoretical framework guiding this examination. It begins with an overview of the intersections between climate justice and Latin America’s health vulnerability, then outlines how they overlap with the normative content of the right to health. Section 2.3 provides a brief note on the paper’s methodology, and Section 2.4 delves into the findings. The final Sections 2.5 and 2.6 introduce the climate justice gradient and contain some concluding remarks.

2.2 Intersecting Pathways: A Theoretical Framework of Health and Justice in Climate Litigation

2.2.1 Climate Justice and Vulnerable Populations in the Courts

Climate litigation in Latin America is arguably at the forefront of climate justice quandaries. This is because, unlike the climate lawsuits in the Global North, the climate vulnerability exacerbated by this region’s pressing socioeconomic challenges manifests itself in its cases. Although academic research on climate litigation in the Global South is scant, such efforts shed light on how the broader social dimensions of climate change determine people’s vulnerability and project onto the motivations of rights-based climate litigation.

According to Joana Setzer and Lisa Benjamin, in climate litigation in these regions, including Latin American jurisdictions, “the character of human rights claims is arguably more desperate because of the high vulnerability of their populations to climate-induced risks and loss and damage, as well as their limited access to life-sustaining resources.”23 Similarly, Jacqueline Peel and Jolene Lin observe that the saliency of social challenges may

23 Setzer / Benjamin, note 6, p. 79.
interconnect climate change matters with other issues, such as public health, in climate litigation.\(^{24}\)

This embeddedness of vulnerability in Latin America’s climate litigation is strongly associated with the multi-scale patterns of inequality that climate justice calls to attention.\(^{25}\) Several studies have made it difficult to deny that the populations most vulnerable to the impacts of climate change are often those who have contributed the least to global warming.\(^{26}\) Who is susceptible to, unable to avoid, or cope with climate change’s adverse effects is a function of not only the exposure to climate hazards—due to growing GHGs—but also the lack of social assets, such as health systems, which decrease the population’s ability to withstand such impacts.\(^{27}\) In other words, because climate vulnerability is a function of ecological conditions (exposure to climate hazards) and social infrastructure determining the sensitivity and adaptive capacity to climate change,\(^{28}\) populations living in poverty, whose historical GHGs are neglectable, bear the greatest risks.\(^{29}\) These inequalities that drive vulnerability differentials across populations and along the ecological and social dimensions are the foundational concerns of climate justice, thereby making this aspect bound to climate litigation in Latin America.

\(^{24}\) Peel / Lin, note 4, p. 694.

\(^{25}\) Michael MacLennan / Leisa Perch, Environmental Justice in Latin America and the Caribbean: Legal Empowerment of the Poor in the Context of Climate Change, Climate Law 3 (2012), p. 287.


\(^{27}\) Caroline Moser / Andrew Norton / Alfredo Stein / Sophia Georgieva, Pro-Poor Adaptation to Climate Change in Urban Centers: Case Studies of Vulnerability and Resilience in Kenya and Nicaragua, Washington D.C. 2010, p. 2.


\(^{29}\) IPCC, note 26, p. 1204; Ohdedar, note 8, p. 140.
Particularly, in this region, health challenges mirror the interplay between global and local inequalities and vulnerability’s socio-ecological dimensions.30 From a global perspective, Latin America’s historical share of CO₂ emissions (11%) is half of North America’s (24%) and less than Europe’s (16%),31 yet, for example, it showcases higher susceptibility for the transmission of vector-borne diseases,32 among other conditions that lead to increased morbidity, mortality, and disabilities.33 This pattern is also traceable at the local level: while the highest decile of the region’s population has a higher carbon footprint than the bottom 50%,34 it is the people in the lower deciles whose health is disproportionately affected by climate change.35

Similar to the ecological dimension of vulnerability, the social dimension also shows strong associations with multi-scalar inequalities. For Latin America’s 151 million people living in poverty (23.7% of the region’s population), access to quality healthcare services, an instrumental asset for withstanding climate-related health conditions, is severely restricted.36 Although healthcare coverage has expanded during the past few decades, barriers to accessing these essential services persist within these countries, which primarily affect the

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31 IPCC, note 15, p. 10.
32 The Lancet, note 16.
35 Magrin et al., note 33, p. 1537.
most disadvantaged people.\textsuperscript{37} Moreover, overall growth in coverage has not resulted in more resilient health systems capable of supporting populations in withstanding climate change.\textsuperscript{38}

Latin America’s pressing socio-ecological inequalities make the climate crisis a health crisis. As human rights provide a legal language for flagging climate change–entrenched vulnerabilities within litigation in this region, they articulate climate-justice concerns.\textsuperscript{39} In particular, the right to health may offer a starting point for the judiciaries to acknowledge the health vulnerability of their populations to climate change.\textsuperscript{40} Consequently, climate litigation performs a crucial role, highlighting the need for climate justice to the judiciary, especially for vulnerable populations susceptible to health risks due to changes in climatic patterns.

\textit{2.2.2 The Right to Health as a Tool for Climate Justice}

Currently, 13 countries of the Latin American region recognize the right to health in their national constitutions. Moreover, nearly all of them have done so by ratifying the ICESCR, whose Article 12 enshrines the right to the highest attainable standard of health.\textsuperscript{41}

\begin{flushleft}
\textsuperscript{37} PAHO and WHO, note 17, p. 15; OECD, Primary Health Care for Resilient Health Systems in Latin America, Paris 2022, p. 21.
\textsuperscript{38} Yglesias-González et al., note 14, p. 2.
\textsuperscript{39} Gonzalez, note 8, p. 113.
\textsuperscript{40} Setzer / Benjamin, note 6, p. 98.
\end{flushleft}
The CRC,\textsuperscript{42} CEDAW,\textsuperscript{43} and CRPD,\textsuperscript{44} which also protect the right to health albeit \textit{ratione personae}, have equally been ratified by most, if not all, Latin American countries.

Furthermore, pertaining to the regional human rights system, 16 of these countries are parties to the Protocol of San Salvador.\textsuperscript{45} Nine out of these sixteen countries have thus far ratified the IACHROP, one of the most recently-adopted Inter-American treaties and the first international instrument that fully regulates older people’s human rights, whose Article 19 protects this population’s right to physical and mental health.\textsuperscript{46}

        Crucially, the constitutional reforms that several Latin American countries have undergone since the 1990s, known as the NLAC, have opened the possibility for judiciaries to bring this international and regional human rights corpus into the domestic legal order.\textsuperscript{47}

This has emboldened national courts to protect the right to health of the most vulnerable

\textsuperscript{42} This convention recognizes the right to health in Article 24; it was adopted on 20 November 1989 and entered into force on 2 September 1990. UN Treaty Collection, Status of the Convention on the Rights of the Child, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en (last accessed on 28 February 2023).

\textsuperscript{43} This convention recognizes the right to health in Article 12; it was adopted on 18 December 1979 and entered into force on 3 September 1981. UN Treaty Collection, Status of the Convention on the Elimination of All Forms of Discrimination against Women, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en (last accessed on 28 February 2023).


\textsuperscript{47} \textit{von Bogdandy}, note 19, p. 17; \textit{Couso}, note 19, p. 61.
populations. Consequently, in some Latin American countries, domestic courts have intervened to address health-related challenges, resulting in a number of their rulings having structural effects. For example, Colombia’s Constitutional Court has issued resolutions related to the right to health, and these resolutions have had wide-reaching effects on health policymaking; for example, Decision T-760/08 led to the reform of Colombia’s national health system. On the other hand, all Latin American countries are parties to the UNFCCC and have also ratified the 2015 Paris Agreement.

The potential of the human rights framework anchored in the NLAC, including the right to health, is mutually supportive of the climate change law. Although case law is still in its infancy in this regard, several bodies of the universal and Inter-American Human Rights Systems have extensively clarified the conceptual and normative spaces where they overlap. Drawing on such interpretative sites, several complementarities can be identified.

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between the right to health and the concept of climate justice. More specifically, the normative content of the right to health relates to the three components of climate justice—distributive, procedural, and corrective—which the UNFCCC regime sets forth.54

The distributive aspect of climate justice refers to the allocation of climate change’s different burdens and resources among countries and populations to cope with them.55 Procedural justice concerns who decides and participates in decision-making, and corrective justice entails the redressal for adverse climate impacts, including the recognition of diverse cultures and perspectives.56 The Paris Agreement comprises these three aspects by calling on its parties to implement climate responses on the basis of the principles of equity and common but differentiated responsibilities, respective capabilities,57 international cooperation,58 and public participation59 and foster climate resilience and low GHGs.60

Crucially, the synergies that arise due to the overlap of the right to health with each of these components of climate justice protect the socio-ecological dimensions of vulnerability, as summarized in Table 3; the full realization of the right to health constitutes a pathway to climate justice as both entail mitigating the occurrence of (and consequent exposure to) climate impacts and also accessing the health systems that enable the most vulnerable to withstand such effects.

55 Borràs, note 8, p. 101; Gonzalez, note 8, p. 113; IPCC, note 26, p. 124.
56 Borràs, note 8, p. 101; Gonzalez, note 8, p. 113; IPCC, note 26, p. 124.
57 Article 1.2 of the Paris Agreement.
58 Articles 6.1, 7.6, 7.7, and 8.4 of the Paris Agreement.
59 Articles 6.8 and 12 of the Paris Agreement.
60 Article 2.1 of the Paris Agreement.
Pertaining to the corrective component of climate justice, the right to health entails state duties aimed at redressing the ecological and social dimensions of vulnerability. For the former dimension, the CESCR clarifies that the right to health embraces a wide range of factors that determine people’s opportunities to lead a healthy life, which encompass “the improvement of all aspects of environmental […] hygiene,” including the climate system.\(^{61}\) Thus, this right obliges states to prevent dangerous anthropogenic interference with the environment, a duty to not only require the states to reduce GHGs (climate mitigation)\(^{62}\) but also dedicate the maximum available resources to progressively realize such mitigative measures.\(^{63}\) Regarding vulnerability’s social dimension, Article 12.2 of the ICESCR and CESCR’s General Comment 14 states that besides promoting a healthy environment, the right to health also includes the right to a system of health protection, namely, access to a variety of medical facilities, goods, and services necessary to ensure attention in the event of sickness. Therefore, states must take measures to develop sustainable and resilient health systems and infrastructure to fulfill their minimum core obligations concerning the right to health, which is instrumental for climate adaptation.\(^{64}\) Crucially, this ought to be done by paying particular attention to the specific needs of vulnerable or marginalized groups of society.\(^{65}\)

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\(^{63}\) For a comprehensive commentary on the right to health’s principle of progressive realization as interpreted in 2021 by the Committee on the Rights of the Child, see Benjamin Mason Meier / Flavia Bustreo / Lawrence O. Gostin, Climate Change, Public Health and Human Rights, International Journal of Environmental Research and Public Health 19 (2022), p. 7.

\(^{64}\) UN Human Rights Council, note 53, para. 57.

\(^{65}\) UN CESCR, note 61, para. 34-37.
The right to health and climate justice also synergize with the distributive component of the latter concept. Drawing on CESCR’s General Comment No. 2 and the 1978 Declaration of Alma-Ata—which recognizes the “gross inequality in the health status of people, particularly between [the so-called] developed and developing countries”66—the right to health grounds states’ obligations on global patterns of inequality by calling on the governments to comply with their international obligation to “facilitate access to essential health facilities, goods, and services in other countries,” among other tasks.67 In this way, in line with the principles of equity and common but differentiated responsibilities of climate justice, the right to health obliges states that have contributed the most to climate change (high-income countries) to assist the most vulnerable nations (low- and middle-income countries) in addressing their climate-related health crises.68 Furthermore, to address more localized forms of inequality, the right to health proscribes any discrimination on the grounds of race, sex, disability, and social or other status, which nullifies the realization of the right to health.69

The right to health encompasses the procedural component of climate justice, as it also extends to access to health-related education and information and the participation of all populations in health-related decision-making at the community level.70 In a parallel and mutually supportive vein, the concept of climate justice lends urgency to advancing inclusive

66 International Conference on Primary Health Care, Declaration of Alma-Ata, USSR 1978, para II.
67 UN CESCR, note 61, para. 38-42.
69 UN CESCR, note 61, para. 18.
70 UN CESCR, note 61, para. 11.
and democratic climate actions for which the involvement of local individuals and groups is essential.  

2.3 Methodology

This paper conducts a SCA on all domestic rights-based climate lawsuits filed as of mid-2022 across Latin American countries that (1) have recognized the right to health—in their national constitutions or by abiding by international human rights instruments—and (2) have a civil legal system in place.  

Here, the reference to climate litigation encompasses the cases generally brought before judicial bodies in which the climate change law, policy, or science are material issues of law or fact. These cases constitute the so-called “positive litigation,” which strives to advance climate action by reducing GHGs, preserving the environment, and/or increasing adaptive capacity (unlike “negative litigation,” in which corporations challenge mitigation or adaptation measures). Furthermore, the “rights-based” attribution to the concept of climate litigation concerns the use of human rights as the legal basis of the claimants’ arguments and judicial decisions whose linkages with climate change are emphasized.  

Although climate litigation may materialize in different ways, depending on each legal field and national setting, it encompasses common stages whose identification enables

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74 David Markell / J. B. Ruhl, An Empirical Assessment of Climate Change in the Courts: A New Jurisprudence or Business as Usual Climate Change Special Issue, Florida Law Review 64 (2012), pp. 65-66; Ghaleigh, note 20, p. 43; Setzer / Higham, note 3, p. 27.  

75 de Vilchez Moragues / Savaresi, note 11.
the systemic comparative study of litigation across sectors and jurisdictions.\textsuperscript{76} In this vein, Siri Gloppen distinguishes four distinct but interrelated stages of the litigation process: (1) claims formation, (2) adjudication, (3) implementation, and (4) social outcome stages (Figure 1).\textsuperscript{77} The logic of Gloppen’s analytical framework helps trace the implications of discourses and rights in litigation. Hence, this research uses that template as its analytical foundation for exploring the litigation process. However, it focuses only on the claims formation and adjudication stages, given that the novelty of climate litigation in Latin America constrains the availability of the data for the implementation and the social outcome stages.

Based on this analytical template, this study places a sharper focus on the cases that have used the right to health as their legal basis and meet the following criteria: (1) they have been adjudicated, (2) their resolution favored the claimants, and (3) their case documentation is publicly available. Particularly, this study classifies the data based on the litigants’ motives, the objectives of the litigants and courts, their arguments, and the legal bases of their respective complaints and judgments, as they relate to existing and emergent health concerns of vulnerable populations. To that aim, the study uses a rubric of questions to guide the analysis along the complementarities between the right to health and climate justice (see Table 1). Moreover, the analyzed lawsuits are drawn from the most comprehensive and up-to-date databases of climate-change cases filed in Latin American jurisdictions, including

\textsuperscript{77} Gloppen, note 76, p. 26.
AIDA’s climate litigation platform, the Grantham Research Institute on Climate Change and the Environment, and the Sabin Center for Climate Change Litigation.\textsuperscript{78}

As one of the first attempts to examine how the right to health is employed in Latin America's climate litigation, this study intentionally uses a broad selection criterion to enable a comprehensive analysis. Consequently, the cases are not classified by legal fields, meaning that torts and constitutional, administrative, and criminal cases are all included for analysis, resulting in a non-comparability among them. Nevertheless, they collectively provide a useful foundation for further in-depth explorations of the implications of climate litigation for health vulnerability.

2.4 The Right to Health in Climate Litigation: Mapping a Constellation

A search through the three databases that this paper draws on unveiled a total of 77 domestic climate lawsuits filed as of mid-2022 across seven Latin American countries (Argentina, Brazil, Chile, Colombia, Ecuador, Mexico, and Peru). Of these, 61 are rights-based cases, most of which have been filed since 2015. Brazil showed the highest number of rights-based complaints (16), followed by Argentina (12), Mexico (12), and Colombia (9), as Figure 4 illustrates.

\textsuperscript{78} Asociación Interamericana para la Defensa del Ambiente, Plataforma de Litigio Climático para América Latina y el Caribe, https://litigioclimatico.com/es/sobre-la-plataforma (last accessed on 15 June 2022); Grantham Research Institute on Climate Change and the Environment, Litigation Cases, https://climate-laws.org/litigation_cases (last accessed on 15 June 2022); The Sabin Center for Climate Change Law at Columbia Law School, U.S. Climate Change Litigation database, note 73.
Figure 4. Total number of climate-change lawsuits, rights-based climate-change lawsuits, and rights-based climate-change lawsuits invoking the right to health, filed per country.

In total, 32 (52%) of the rights-based lawsuits invoked the right to health in their complaints or judgments. Of them, 19 were pending resolution, while 13 had already been adjudicated. This paper's analysis focuses on 7 of the 13 rights-based climate lawsuits that invoked the right to health. This is so because (1) their resolution favored the claimants and (2) the publicly available case documentation permits their scrutiny under this paper's methodology—either because their complaint and judgment documents were at hand or, whenever their complaints were not, their resolutions contained a thorough description of the claimants' arguments. Five of the sampled cases were situated within the constitutional field of law, and two followed the administrative law track. Table 8 lists these seven cases, their jurisdiction, relevant dates, type of action, the area of law in which they are anchored, and a summary of their substance.
2.4.1 The Claims Formation Stage: Who Litigates and How?

Synergies exist between the affected individuals and nonprofit organizations to bring these cases before the judiciary branches as claimants prevail across most of the analyzed cases. Notably, the affected individuals belong to population groups historically associated with the region's structural sociopolitical imbalances based on gender, ethnicity, race, and age. In cases such as *Future Generations v Ministry of the Environment and Others* (Colombia) and *Herrera Carrion and Others v Ministry of the Environment and Others* (Ecuador), national NGOs provided strong support to children and the group of girls who acted as claimants, respectively. Indigenous, Afro-descendent, and Campesino communities were the claimants in the *Center for Social Justice v Ministry of the Environment and Others* (Colombia) and *Indigenous Communities v Ministry of the Environment and Others* (Colombia) cases. Only one case was filed by the government and another by an international (high-income country) NGO as the sole claimant.
Table 8. Summary and relevant aspects of the analyzed cases through SCA.

<table>
<thead>
<tr>
<th>Country</th>
<th>Case</th>
<th>Summary (and relevant dates)</th>
<th>Adjudicating court</th>
<th>Type of action</th>
<th>Area of law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chile</td>
<td>Private Corporation for the Development of Aysen and Others v. Environmental Evaluation Service of Chile</td>
<td>In September 2016, the claimants challenged the Environmental Assessment Service of Chile's approval of the proposed hydroelectric project Central Hidroélectrica Cuervo in the southern region of Aysén. In January 2018, the court ruled in favor of the claimants and annulled the approval of the project.</td>
<td>Third Environmental Tribunal</td>
<td>Reclamación action</td>
<td>Administrative</td>
</tr>
<tr>
<td>Colombia</td>
<td>Future Generations v. Ministry of the Environment and Others</td>
<td>In January 2018, a group of children and youth sued several government agencies for their failure to reduce deforestation in the Colombian Amazon. A lower court ruled against the youth claimants. However, in April 2018, the Supreme Court reversed the lower court's decision and</td>
<td>Supreme Court of Justice</td>
<td>Tutela action</td>
<td>Constitutional</td>
</tr>
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ordered the government to formulate and implement action plans to address deforestation in the Amazon.

<table>
<thead>
<tr>
<th>Colombia</th>
<th>Municipality of Ibagué v. Ministry of the Environment and Others</th>
<th>In September 2011, the Municipal Authority of Ibagué filed a popular action against the Ministry of Environment, the Mining Agency, two mining companies, and three individuals to challenge mining permits in the Combeima and Cocora rivers. In September 2020, the Council of State denied the defendants’ appeal and reaffirmed the lower court’s decision, which favored the claimants’ petition.</th>
<th>Council of State</th>
<th>Popular action</th>
<th>Administrative</th>
</tr>
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<td>Colombia</td>
<td>Center for Social Justice v. Ministry of the Environment and Others</td>
<td>In January 2015, Indigenous and Afro-descendent communities sued governmental authorities for failing to prevent the</td>
<td>Constitutional Court</td>
<td>Tutela action</td>
<td>Constitutional</td>
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pollution of the Atrato river. In October 2015, the Constitutional Court reversed the lower court’s decision, which denied the claimants’ petition. The higher court recognized the Atrato river as a subject of rights and ordered the government to decontaminate the river and eradicate illegal mining.

<p>| Colombia | Indigenous Communities v. Ministry of the Environment and Others | In December 2015, Indigenous communities filed a lawsuit against Colombian authorities and private companies for the diversion of the Bruno River to conduct mining activities. In November 2011, the Constitutional Court acknowledged the risks posed by the mining activities in a region vulnerable to climate change and ordered the defendants to | Constitutional Court | Tutela action | Constitutional |</p>
<table>
<thead>
<tr>
<th>Country</th>
<th>Plaintiff</th>
<th>Case Details</th>
<th>Court/Action</th>
<th>Outcome</th>
</tr>
</thead>
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<tr>
<td>Ecuador</td>
<td>Herrera Carrion and Others v. Ministry of the Environment and Others</td>
<td>In February 2020, a group of girls filed a constitutional injunction against the government of Ecuador for authorizing gas flaring, which causes serious impacts on the environment and people's health. In July 2021, the Court of Justice of the Sucumbíos Province reversed the court’s dismissal of the case at first instance and mandated the government to update the plan for the gradual and progressive elimination of the gas flares.</td>
<td>Court Justice of the Sucumbíos Province</td>
<td>Protección Constitutional</td>
</tr>
<tr>
<td>Mexico</td>
<td>Greenpeace Mexico v. Ministry of Energy and Others</td>
<td>In May 2020, Greenpeace Mexico filed a lawsuit against the Mexican government, challenging the constitutionality of two electricity- Second District Court</td>
<td>Amparo</td>
<td>Constitutional</td>
</tr>
</tbody>
</table>
While an in-depth assessment of the claimants' identities and related vulnerabilities is not feasible, it is apparent that the way they invoked their right to health, framed their climate-related health concerns, and pursued legal action is associated with interlocking inequalities that drive their socio-ecological vulnerability to climate change. From this perspective, the analyzed cases can be grouped into two categories: (1) cases in which claimants emphasized the social dimension of vulnerability and (2) cases in which they focused solely on ecological vulnerability. These categories have varying implications, particularly for the distributive and corrective aspects of climate justice.

The analyzed cases reveal that, on the one hand, claimants belonging to populations directly affected by current or imminent environmental damage impacting their health and who also live in areas characterized by poverty emphasize the social dimension of climate vulnerability. They draw attention to the importance of ensuring a healthy environment and a safe climate, as well as improving local infrastructure, including health and sanitation services. This is illustrated by the three cases in Colombia (two brought by ethnic communities and one by a local authority) and the one in Ecuador (filed by a group of girls exposed to climate change–inducing pollution).

In *Center for Social Justice v Ministry of the Environment and Others*, the claimants requested the Constitutional Court to protect several human rights, including their right to
health, by ordering measures to address the “health, socio-environmental, ecological, and humanitarian crisis” experienced in the basin of the Atrato River. They raised concerns over the death of Indigenous and Afro-descendant children in the Chocó Department because of the pollution of the river and cited reports of Colombia's National Human Rights Institution, which documented the death of 3 minors and the intoxication of 64 from the Indigenous communities of Quiparadó and Juinduur (located in the lower Atrato subregion) due to drinking contaminated water. The claimants also argued that because of the mining activities and illegal deforestation polluting the Atrato River, diarrhea, dengue, and malaria had proliferated. They denounced that the affected region lacked an adequate health system to treat and cure such detrimental health conditions.

In Ecuador’s Herrera Carrion and Others v Ministry of the Environment and Others case, the claimants were a group of girls who lived near gas flare stacks and who, as a consequence of such proximity, had experienced and witnessed first-hand detrimental impacts on their personal and community health. They argued that, by emitting toxic pollutants, gas flaring in the provinces of Sucumbíos and Orellana (in the Ecuadorian Amazon) contributed to climate change and caused detrimental health conditions such as cancer in the local inhabitants. The claimants further denounced that the lack of medical facilities in the region to treat such a disease made matters worse.

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80 Center for Social Justice v Ministry of the Environment and Others, note 79, 2.4.
81 Center for Social Justice v Ministry of the Environment and Others, note 79, 2.4.
82 Center for Social Justice v Ministry of the Environment and Others, note 79, 2.4.
84 Herrera Carrion and Others v Ministry of the Environment and Others, note 83, 6.1.6.
On the other hand, the claimants for whom climate change impacts had not yet materialized or who did not raise the issue of poverty as a challenge directly affecting them focused on the ecological dimension of climate change by seeking mitigation measures. The cases in Chile and Mexico (brought forth by domestic and international nonprofit organizations) and Colombia's *Future Generations v Ministry of the Environment and Others* illustrate this point.

In the *Future Generations v Ministry of the Environment and Others* case, children and youth requested the protection of their right to health as they alleged both potential and current climate-related health impacts.\(^8^5\) They argued that the government's failure to protect the Colombian Amazon had resulted in an increase in GHGs, which contributed to climate change.\(^8^6\) This led to a growing risk of diseases and could also hinder riverside communities’ access to healthcare services, given the projected change in rain patterns and the availability of water resources.\(^8^7\) Additionally, some claimants who had experienced atopic dermatitis claimed that this health condition was currently and tangibly exacerbated by the increase in the temperature in their region.\(^8^8\) However, these claimants did not raise the socioeconomic conditions of the area for which they requested protection as an issue affecting them directly, thus not framing it as a motive for their complaint.

In arguing how their right to health is being, or would be, violated in the context of climate change, the claimants of the seven analyzed lawsuits grounded their claims on

\(^8^6\) *Future Generations v Ministry of the Environment and Others*, note 85, p. 3.
\(^8^7\) *Future Generations v Ministry of the Environment and Others*, note 85, p. 104.
international human rights instruments, national constitutions, and jurisprudence where such a right is enshrined. Specifically, the claimants resorted to Article 12 of the ICESCR, General Observation 14 of the CESCR, Article 10 of the Protocol of San Salvador, Article 49 of Colombia’s Constitution, Article 45 of Ecuador’s Constitution, and Article 4 of Mexico’s Constitution. Regarding national jurisprudence on the right to health, the claimants of the *Future Generations v Ministry of the Environment and Others* case pointed to Decisions T-060/2007, T-148/2007, and T-760/2008, through which the Constitutional Court recognized the fundamental character of the right to health.\(^89\)

Correspondingly, the claimants legally substantiated their requests for stopping climate change-inducing (thus health-detrimental) activities on international and national climate-change and environmental laws and policies. This observation stems solely from the three cases in which the claimants focused on the ecological dimension of vulnerability—as no complete detail was available on this matter for the cases in which the claimants exposed vulnerability's social dimension. In the Chile case, the claimants turned to the Ramsar Convention, in which the country has been a state party since November 1981\(^90\), to emphasize the government's obligation to protect wetlands whose role as carbon sinks is essential for climate mitigation.\(^91\) They also referred to the National Strategy for Climate

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\(^89\) *Future Generations v Ministry of the Environment and Others*, note 85, p. 102.


Change and Forest Resources, which reflects the country's international commitments to address climate change.\footnote{Private Corporation for the Development of Aysen and Others v Environmental Evaluation Service of Chile, note 91, p. 33826.}

Notably, the claimants’ legal arguments on the right to health and climate change followed separate, yet parallel paths. In other words, except for the Future Generations case, in which the claimants alluded to the Paris Agreements’ human rights preambular clause\footnote{Future Generations v Ministry of the Environment and Others, note 85, p. 9.}, neither in Private Corporation for the Development of Aysen and Others nor in Greenpeace Mexico cases did the claimants juxtapose the obligations that the states bear to realize the right to health with their commitments to mitigate and adapt to climate change. Instead, they grounded their request to protect the right to health solely on human rights law and, conversely, to advance climate mitigation on climate change law, thereby mirroring the fragmentation between human rights and climate change law.

2.4.2 The Adjudication Stage: Assessing Courts’ Decisions

While all the courts acknowledged the violations of the right to health in their decisions (except for the Municipality of Ibagué case), they varied in the extent to which they redressed climate-related health concerns. A closer examination of the judgments of the seven cases allowed the identification of a connecting line between the redressal measures that the courts mandated and their understanding of the claimants' vulnerability. Although the type of legal action also determined the scope of the rulings, the courts' understanding of vulnerability seemed to play a role, particularly in the distributive and corrective dimensions of climate litigation. This perspective divides the analyzed cases into two broad categories: (1) the cases in which the courts addressed the social dimension of vulnerability and (2) the
cases in which they focused solely on ecological vulnerability. Specifically, the decisions that ordered reparation measures encompassing the social dimension of vulnerability were based on the arguments that considered how poverty and social exclusion played a role in the context of climate change. On the other hand, the decisions solely concerned with ceasing climate change-inducing activities or measures were based mainly on the ecological dimension of vulnerability.

The *Center for Social Justice* and *Herrera Carrion* cases fell into the first category, wherein, besides ordering the cease of the environmentally harmful (climate change-inducing and health detrimental) activities challenged by the claimants, the courts mandated measures for the protection of health systems. These measures included conducting assessments of the impacts of such activities on the health of surrounding populations\(^{94}\) and, in the Ecuador case, even the potential provision of oncology units for the diagnosis and treatment of cancer.\(^{95}\)

In all these cases, the deployment of contextual analysis permitted judicial reasoning to identify a linkage between climate change and the affected populations’ precarious social contexts, a connection upon which the courts framed the health vulnerability of communities. For example, in *Herrera Carrion* and Others, the Court of Justice of the Sucumbíos Province recognized that gas flaring contributed to climate change and affected human health.\(^{96}\) It situated the case within the high poverty rates affecting the provinces of Sucumbios and Orellana (where the claimants lived) and drew from Articles 50, 358, and 363 of Ecuador's

\(^{94}\) *Center for Social Justice v Ministry of the Environment and Others*, note 79, 10.2.5.  
\(^{95}\) *Herrera Carrion and Others v Ministry of the Environment and Others*, note 83, 9.9.VII.5.  
\(^{96}\) *Herrera Carrion and Others v Ministry of the Environment and Others*, note 83, 9.9.II and 9.9.III.
Constitutions to argue that the protection of vulnerable groups entailed access to universal and free healthcare.97

Similarly, the judicial reasoning in the Indigenous Communities case reflects a broad understanding of the claimants' vulnerability, although Colombia's Constitutional Court did not direct any measures to directly tackle its social dimension. More specifically, this tribunal acknowledged that poverty rates in the Cerrejón department—where the challenged mining activities took place—were higher than the country's average.98 It also considered the adverse impacts that this region had experienced from El Niño-Southern Oscillation while also highlighting that one of such department’s municipalities (Albania) had not issued a climate change plan to address such effects.99 However, the Constitutional Court instructed the inter-institutional working group (comprising the Ministry of the Interior, the National Mining Agency, and Carbones de Cerrejón Limited, among others) to undertake a technical study on the mining project’s environmental and social risks, which did not specify any consideration for or measures against ongoing climate-related health concerns.100

Furthermore, the procedural aspect of climate justice surfaced throughout these three cases, as the courts ordered the involvement of local communities as a means of countering existing inequalities. Crucially, Colombia’s Constitutional Court and Ecuador’s Court of Justice of the Sucumbíos Province mandated the participation of affected communities and

97 Herrera Carrion and Others v Ministry of the Environment and Others, note 83, 8.6.
99 Indigenous Communities v Ministry of the Environment and Others, note 98, 1.1.6 and 5.1.3.
100 Indigenous Communities v Ministry of the Environment and Others, note 98, III.3.
vulnerable populations in the implementation of their decisions (Center for Social Justice, Indigenous Communities and Herrera Carrion cases).^{101}

Unlike the cases discussed earlier, the Private Corporation for the Development of Aysen and Others and the Greenpeace Mexico cases fall into the second category, where the decisions were solely focused on the ecological aspect of vulnerability. Specifically, the courts in these cases directed the cessation of activities or measures that contributed to climate change.\(^{102}\) However, while the courts recognized in both cases that climate change-inducing emissions could lead to health concerns, they did not consider the social contexts that make certain population groups more vulnerable to these health challenges.

In the Future Generations case, the Supreme Court of the Justice of Colombia ordered the country's Presidency, the Ministry of Environment and Sustainable Development, and the Ministry of Agriculture and Rural Development to issue an “intergenerational pact for Colombian Amazon.”^{103} The court stated that this pact should adopt measures to reduce deforestation and GHGs, including national, regional, and local strategies to adapt to climate change.\(^{104}\) While this ruling appears to have opened up an avenue in which the social dimension of vulnerability could play a central role through its reference to climate adaptation, the preceding judicial reasoning did not give attention to the contexts of

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104 Future Generations v Ministry of the Environment and Others, note 103, p. 49.
inequality of populations inhabiting the Colombian Amazon. Instead, by framing the connection between the loss of forest cover, its contribution to climate change, and its impacts on human health, the court's arguments emphasized the ecological dimension of vulnerability.

Moreover, the overlap between human rights and climate change law was not evident even in the judgments that grounded their arguments in instruments from both fields of law. Similar to the findings on the lawsuits' claims, although the rulings in the Future Generations, Municipality of Ibagué, Center of Social Justice, Herrera Carrion and Others, and Greenpeace Mexico cases acknowledged the obligations that the states bear toward the right to health on the one hand and the countries' commitments to reduce GHGs on the other, none of these decisions interpreted the duties associated with the right to health in the light of the responsibilities to mitigate and adapt to climate change. For instance, in the Municipality of Ibagué case, the Council of State of Colombia identified the realization of the right to health as an end of the state, based on Article 49 of the country's Constitution, but did not link health issues to the commitments that the Paris Agreement entailed for Colombia.105

2.5 From Vulnerability to Justice: Climate Litigation through a Climate Justice Gradient

The examination of Latin America's rights-based climate lawsuits from the perspective of the right to health reveals a constellation of ways in which litigants and courts invoke and substantiate this right, with varying degrees of emphasis on the socio-ecological spectrum of health vulnerability. To aid in the discussion of the implications of this for climate justice in litigation, Figure 5 proposes a “climate justice gradient.” It categorizes how

these actors framed and responded to climate-related health issues in climate litigation, based on their positions along the socio-ecological spectrum of vulnerability.

Figure 5. Climate justice gradient relative to the climate lawsuits’ use of the right to health and their corresponding positions along the socio-ecological spectrum of vulnerability.

The extreme right side of the gradient (the darkest shade) represents the hypothetical closest alignment between the use of the right to health in climate litigation and climate justice. Following this paper’s theoretical framework, this area assumes that the full realization of the right to health serves as a pathway to climate justice when it includes mitigating the occurrence of climate impacts and ensuring that the most vulnerable populations have access to the health systems necessary to cope with such adverse effects. Therefore, the further to the right side of the gradient a case is, the greater its implications are in terms of the distributive, procedural, and corrective dimensions of climate justice.

Upon categorizing the analyzed cases according to the climate justice gradient (as presented in Figure 5), two aspects become more evident. First, cases in which the claimants
demonstrated higher vulnerability (because they belonged to populations whose health was directly affected by climate change-inducing activities or climate change itself while also residing in impoverished areas) used the right to health to seek protection for both the socio-ecological dimensions of climate vulnerability. These cases (right side of the gradient) led to judicial reasoning that involved contextual analysis of the claimants' precarious living conditions, resulting in the implementation of measures to assess health impacts or even provide healthcare infrastructure. On the other hand, the claimants for whom the ecological dimension of vulnerability was the sole concern witnessed resolutions aligned with a corresponding view on vulnerability (left side of the gradient). Environmental NGOs bringing forth cases that support this observation (Private Corporation for the Development of Aysen and Others and Greenpeace Mexico) may reflect how the unidimensional scope and agendas of such actors manifest in (and ultimately influence) the litigation process—a concern not unfamiliar to the literature on social movements in Latin America.106

In the same vein, even for the Future Generations case, which was filed by a group of children and youth, this does not diverge from the latter observation when analyzed from an intersectional lens. More specifically, concerns based on the claimants’ socioeconomic contexts were absent from their framing of vulnerability, which was based solely on their age. Moreover, although some of the claimants claimed personal, current, and tangible detrimental health effects, they used the right to health to request the protection of its

ecological determinant (a safe climate)\textsuperscript{107} and not against the lack of access to health infrastructure, nor the infrastructure’s deficient preparedness for climate events, unlike the \textit{Herrera Carrion and Others} case.\textsuperscript{108} To be sure, the complaint’s lack of attention to local inequalities may not be the only factor behind the Colombia Supreme Court’s preclusion of the Amazon forest’s pressing socioeconomic challenges from its reasoning, but this factor cannot be disregarded. The court mandated the participation of affected (non-claimant) communities in the implementation of its decision, but it did not go beyond instructing broad measures on “adaptation”; in other words, health crises did not specifically come up in the judgment at all.\textsuperscript{109}

The second aspect that became evident through the climate justice gradient is that none of the analyzed cases comprehensively addressed the ecological and social dimensions of climate vulnerability. Even the three cases at the right end of the gradient in Figure 5 are still some distance away from the climate justice pathway. This gap in addressing climate justice can be attributed to the failure of these cases to fully utilize the normative potential of the right to health in relation to climate justice, which is not an unreasonable consequence of the fragmentation between human rights and climate change law in the claims and judgments. Although the claimants’ social contexts played a significant role in their experience of adverse health effects due to climate change or climate change-inducing activities, the judgments in these cases invoked human rights and climate change frameworks independently. None of them explored the normative content of the right to health within the context of the states’ obligations to mitigate and adapt to climate change.

\textsuperscript{107} Future Generations v Ministry of the Environment and Others, note 85.
\textsuperscript{108} Herrera Carrion and Others v Ministry of the Environment and Others, note 83, 6.1.6.
\textsuperscript{109} Future Generations v Ministry of the Environment and Others, note 103.
The climate justice gradient underscores the implications of differentiated vulnerabilities and legal fragmentation for climate justice. Although all the analyzed cases mandated the participation of affected individuals and groups in decision-making (procedural justice), they only partially fulfilled the distributive and corrective aspects of climate justice. Regarding these latter aspects, the lawsuits’ superficial attention to the social context of the claims (left side of the gradient) led to a failure in identifying the most vulnerable segments of society. As a result, focalized protection required by the right to health and climate change law was not provided—which, in turn, impeded direct redistribution efforts. Consequently, these cases promoted corrective measures aimed solely at restricting or ceasing activities harmful to the environment and health. While this is crucial for achieving climate justice, it left situated inequalities unaddressed. It is important to note that this does not mean these cases do not align with climate justice; they are simply not intended to either immediately or directly address the sharp differentials that render specific populations more vulnerable to climate change within countries.

One possible explanation for this is the influence of legal opportunity structures and socio-political factors beyond the litigation process that enable the realities of disadvantaged individuals or groups to reach the judicial pathway, as existing scholarship on rights litigation suggests.110 Regarding the legal opportunity structures of these cases, it is worth noting that the lawsuits in Colombia and Ecuador, which involved directly affected populations as claimants, comprised tutela and protección actions, respectively. Both constitutional

procedures are accessible and provide ample means to claim rights.¹¹¹ In contrast, the *Private Corporation for the Development of Aysen and Others* and *Greenpeace Mexico* cases comprised Chile’s *reclamación* (administrative) action and Mexico’s constitutional *ampaño*, respectively.¹¹² These procedures require more procedural and substantial formalities, thus requiring greater technical legal expertise, which NGOs possess.¹¹³ Nevertheless, exploring how socio-political factors contribute to the differing approaches taken by these cases in addressing socio-ecological vulnerability goes beyond the scope of this inquiry.

Moreover, the gradient’s right-side cases only partially satisfied the corrective and distributive aspects of climate justice because they lacked an in-depth substantiation of the obligations to allocate the maximum available resources toward progressively realizing the right to health and providing international assistance and cooperation, respectively. Although the *Center for Social Justice* and *Herrera Carrion* cases mandated measures for the protection of health systems, they did not touch upon the crucial question of how states could allocate financial resources for implementing such measures. Examining this possibility could have further promoted the right to health in terms of the aforementioned aspects of climate justice, especially as reducing the inequitable distribution of health facilities, goods, and services have profound resource implications.

The principle of progressive realization could have provided an interpretative horizon for establishing the subsidiary responsibility of developed countries to take joint action

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¹¹² Ley 19300 of 1994, Article 20; Political Constitution of the Mexican United States 1917, Article 103.
toward fulfilling the right to health,\textsuperscript{114} thereby better aligning the corrective and distributive aspects of climate justice. The Colombia Constitutional Court came closer to this interpretative lens in the \textit{Center for Social Justice} case, informing the remedies it issued by drawing on the “inter comunis” legal concept that requires third-party participation in the implementation of its decision.\textsuperscript{115} However, it is worth acknowledging that although the duty of international cooperation is a cornerstone of distributive, and thus corrective, justice amid the multi-scalar complexity of climate change, it has seldom been integrated into domestic climate litigation in the Global South.\textsuperscript{116}

\subsection*{2.6 Conclusion}

Latin America’s burgeoning corpus of rights-based climate litigation is a heterogeneous assemblage. Even when a considerable number of lawsuits appeal to the right to health, a more profound investigation into their deployment vis-à-vis the social and ecological determinants of health vulnerability reveals a constellation of ways in which they intersect with the climate justice pathway. In this vein, the climate justice gradient that this paper has posited brings to light the implications of such intersections for the distributive, procedural, and corrective facets of climate justice. This typology does not insinuate that any of the scrutinized cases are misaligned with the objective of achieving climate justice.

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\textsuperscript{115} Center for Social Justice v Ministry of the Environment and Others, note 79, 10.1; Chris Thornhill / Carina Rodrigues de Araújo Calabria, Global Constitutionalism and Democracy: The Case of Colombia, Jus Cogens 2 (2020), p. 165.

\textsuperscript{116} Auz, note 68, p. 155. For an insightful analysis of how the duty of international cooperation interacts with domestic climate litigation in Global North jurisdictions, please refer to Jannika Jahn, Domestic Courts as Guarantors of International Climate Cooperation: Insights from the German Constitutional Court’s Climate Decision, MPIL Research Paper Series 17 (2022).
\end{flushleft}
Instead, it signals how some of them have the potential to address more localized inequalities that render certain populations particularly susceptible to the effects of climate change.

The gradient exposes the multi-scalar disparities inextricably linked with Latin America's climate litigation. It suggests that the analyzed cases do not fully address the disparities, thereby underscoring the need to reflect on whether strategic and interpretative horizons can align more closely with the distributive and corrective dimensions of climate justice. Climate litigation might redress this quandary by ensuring that the predicaments of marginalized individuals and groups gain access to the judicial pathway. Filling out the normative content of the right to health, particularly the principle of progressive realization and the duty of international cooperation in the context of climate change law, also offers a way forward. Moreover, the complexities delineated by this paper compel us to converge the conventional conceptual lines between mitigation and adaptation that characterize climate litigation scholarship. Even cases typically associated with mitigation efforts, such as the Herrera Carrion (Ecuador) case, highlight the pressing need to consider adaptation, as precarious health systems significantly exacerbate the claimants’ vulnerability to the already visible effects of climate change.

Nevertheless, while this paper is inclined to advocate a shift toward the right end of the climate-justice gradient, it proceeds with caution in taking a prescriptive stance. Methodological limitations impede it from addressing critical questions central to unpacking the legal and socio-political constraints and possibilities that the claimants and courts face in better aligning with climate justice. Overcoming this incomplete comprehension of Latin America's climate litigation is crucial in prescribing how climate litigation can confront the myriad complexities that arise from climate change’s inextricable link with human health.
However, as the first systematic inquiry into the right to health in the region's corpus of litigation, this study provides useful insights into the prospects for more comprehensive approaches to climate justice via the judicial pathway.

As the climate crisis continues to disproportionately imperil the health of populations experiencing poverty and social exclusion, the extent to which climate litigation offers a pathway for climate justice will determine whether the involvement of the judiciaries can indeed effectuate a meaningful difference or replicate the executive and legislative branches’ failures that it aims to tackle.
CHAPTER 3
THE FUNDAMENTAL RIGHTS TO LIFE AND HEALTH IN CLIMATE LITIGATION: INSIGHTS FROM LATIN AMERICA

Abstract. This paper scrutinizes the use and significance of the fundamental rights to life and health within constitutional climate lawsuits filed in Latin American jurisdictions. The study takes the normative synergies between both rights as points of departure to doctrinally and comparatively analyze how they overlap with climate change law in establishing state responsibility and corresponding remedies for acts and omissions threatening people's lives and health. In so doing, it contributes to expanding our current understanding of climate litigation as a strategic endeavor to limit the global temperature from warming beyond 1.5°C and situates this against the region’s broader socioeconomic challenges that mediate people’s vulnerability to climate change; an analysis that is especially relevant for Latin America given its transformative constitutionalism. This analysis concludes that even when the indivisibility between the fundamental rights to life and health gives rise to principles and obligations to address both the environmental and social dimensions of climate vulnerability, such a normative potential has not yet been harnessed evenly nor to its fullest extent.
3.1. Introduction

The “rights turn” that climate litigation has experienced in several jurisdictions around the world mirrors increasing strategic efforts by litigants and courts to advance the protection of the climate system by deploying bolder legal argumentation (Rodríguez Garavito, 2022; Savaresi and Auz, 2019; Peel and Osofsky, 2018). Particularly, in countries characterized by steep poverty, mainly those of the so-called “Global South,” human rights arguments in climate lawsuits epitomize the inextricable nexus between climate change and persisting development challenges (Setzer and Benjamin, 2020). In so doing, they serve as a tool for flagging—and thus tackling—both the environmental and social dimensions of climate vulnerability (Ohdedar, 2022).

Academic research on climate litigation has focused mainly on cases in the Global North (Lin and Peel, 2022; Peel and Lin, 2019). And while scholarship concerned with the potential of rights-based litigation in the Global South has proliferated over the recent years (Rodriguez Garavito, 2022; Setzer and Vanhala, 2019), few efforts have been undertaken to systematically ascertain what specific rights are invoked therein. Consequently, it is little understood the types of obligations—and their inherent remedies and courses of action—that states are (or ought to be) demanded to fulfill and follow (Savaresi and Setzer, 2022: 19). The

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1 While the North-South divide has underlain the creation and evolution of international law (Islam, 2015), this spatial demarcation has been called into question for typifying a colonial understanding of the world (Eckl and Weber, 2007) and failing to capture new trajectories of inequality (Horner and Hulme, 2019; Islam, 2015). With such caution in mind, the present paper nevertheless borrows this spatial differentiation since it constitutes a contact point with climate change litigation scholarship (Auz, 2022a; Rodriguez Garavito, 2020; Setzer and Benjamin, 2020; Peel and Lin, 2019).

2 The concept of climate vulnerability has been used generically by climate law scholarship (Ohdedar, 2022: 138). However, academic literature from development studies provides a sharper understanding of it—mainly by contributing to the knowledge of how poverty and climate change are bound (Mearns and Norton, 2010). These non-legal works see climate vulnerability as a function of both biophysical and social factors: the former concern climate change as an environmental threat, while the latter focus on the broader socio-political conditions and resources that determine how people respond to climate impacts (Chávez-Rodríguez and Klepp, 2021: 160; Ribot, 2010: 50).
precious few works that focus on the significance of particular rights pay most attention to
the right to a healthy environment (de Vilchez Moragues and Savaresi 2021; Varvastian
2019). Moreover, a few other analyses concentrate on how courts consider health in climate
litigation—yet they do so by studying high-income countries (McCormick et al., 2018) or by
deploying a public health lens as opposed to the human rights legal framework (Toolan et al.,
2022).

We are thus before a notable knowledge gap, especially when considering two
important aspects concerning the rights to life and health to which recent systematic
assessments of climate change litigation based on human rights law have pointed (Varvastian,
2021; Peel and Osofsky, 2018). First, the right to life is the most common right invoked by
plaintiffs in rights-based climate litigation (Varvastian, 2021: 383). Furthermore, several
adjudicative and supervisory bodies have recently recognized that climate change threatens
the enjoyment of this right and the right to health in interrelated ways (Varvastian, 2021: 383;
Wu, 2021). Due to such an overlap, some case-law cover aspects of the right to health by
only addressing the right to life (Wu, 2021: 126). For example, in Leghari v. Federation of
Pakistan (2015), the Lahore Appellate Court granted the plaintiff’s claims that the
government had violated their fundamental rights to life and dignity (articles 9 and 14.1 of
the 1973 Pakistani Constitution) by failing to meet the goals of the National Climate Policy
of 2012—which encompassed actions to address issues in various sectors including health

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3 The works of Samvel Varvastian (2021) and Pau de Vilchez Moragues (2022) are notable exceptions. While
not drawing on a systemic analysis of domestic climate lawsuits, they explore the use and significance of
several human rights in key climate litigation cases worldwide.
4 Article 9 of the Constitution of the Islamic Republic of Pakistan provides that “[n]o person shall be deprived
of life or liberty save in accordance with law”; article 14.1 sets that “[t]he dignity of man and, subject to law, the
privacy of home, shall be inviolable.”
(Lahore High Court, 2015: para. 4). This court consequently mandated establishing a committee to enforce such a regulatory framework and monitor its progress.

Latin America flags the need to better understand the use of the rights to life and health in rights-based climate litigation as a strategic endeavor and its significance against broader socioeconomic challenges. This is so for three main reasons. First, this world region is where most rights-based climate cases have been brought—after Europe and North America (Setzer and Higham 2021: 32); over half of such lawsuits invoke the right to health in their complaints or judgments (Viveros-Uehara, forthcoming). At the same time, the mobilization of groups affected by environmental justice concerns is vibrant throughout the region, which appears to be increasingly shaped by climate change motivations (MacLennan and Perch 2012: 284).

Second, Latin America’s socioeconomic challenges strongly mediate people’s vulnerability to climate change (Parry et al., 2019). Concerningly, the lives and health of the region’s inhabitants have already been compromised by changing climatic patterns—and disproportionately so for the 32.1% of the population who live in poverty and therefore exhibit higher vulnerability to climate change (ECLAC 2022: 14). An abundance of scientific evidence has laid bare how climate change exacerbates disease and pest transmission processes while increasing morbidity, mortality, and disabilities due to extreme

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6 Sixty-one of the 77 domestic climate lawsuits filed as of June 2022 are rights-based cases. Thirty-two of these (52%) invoked the right to health in their complaints or judgments (Viveros-Uehara, forthcoming).

7 The UN Economic Commission for Latin America and the Caribbean estimates that in 2021 the extreme poverty and poverty rates in this world region reached 13.8% and 32.1%, respectively. Compared to 2020, the number of people living in extreme poverty increased from 81 to 86 million, while the total number of people living in poverty declined slightly from 204 to 201 million (ECLAC 2022: 14).
weather events in this region (Magrin et al. 2014: 1535). Changing climatic patterns are facilitating the spread of the chikungunya virus, dengue, and Zika as significant public health challenges in some countries (Cissé et al. 2022: 28). Also, as extremely long dry spells become more frequent and increase the number of fires, the incidence of respiratory and cardiovascular diseases has aggravated (Castellanos et al. 2022: 33).

As persons living in poverty and members of minority groups lack the means to prevent, treat, cure, and rehabilitate climate-related health conditions, they are less likely to withstand climate change. This is because the climate crisis finds them already having health needs that often go undiagnosed or untreated (GBD, 2016; Manderson et al., 2009) and itself creates further health problems that are often not explicitly identified as being linked to climatic causes and thus requiring redress in ongoing climate litigation (Wu, 2021).

A third reason is the NLAC’s openness towards and compatibility with the international human rights framework, which has paved the way for constitutional courts to play a key role in delivering social transformations (von Bogdandy, 2017: 33; Couso, 2006: 68). More specifically, the region’s “transformative constitutionalism”—adopted during the 1990s in the constitutional projects that followed a period of authoritarian regimes—opened the domestic legal order to international law as well as pertinent national and international case-law (von Bogdandy et al. 2016: 2).

By connecting international human rights with constitutional rights, national constitutions of Latin American countries embolden domestic judges as they must determine

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8 This article’s notion of NLAC refers to "Latin America's progressive neo-constitutionalism," which Javier Couso (2022: 356) associates with the “Latin American Ius Commune’s movement”—a doctrinal effort aimed at diffusing human rights standards and promoting empowering dynamics among social actors to overcome the exclusion and inequalities that characterize the region (von Bogdandy et al. 2016).
the meaning of such rights and principles (von Bogdandy et al. 2016: 17). Particularly, through constitutional adjudication of social rights, the NLAC seeks to confront the structural deficiencies and exclusion that characterize the region. Hence, over the past decades, constitutional courts have gained increasing preponderance in holding governments accountable for their human rights obligations—including through the judicialization of the rights to life and health (Hoffmann and Bentes, 2008: 101; Bergallo, 2011: 1624; Motta Ferraz, 2009: 33; Parra-Vera, 2016: 147). Such a trajectory has arguably paved a fertile ground for rights-based climate litigation to sprout in the region (Lin and Peel, 2022: 192; Rodríguez-Garavito, 2020: 40; Peel and Lin, 2019: 707).

In view of that, to expand our current understanding of the use and significance of the rights to life and health in Latin America’s climate litigation, this paper analyzes three constitutional climate lawsuits that invoke both rights and that have already been adjudicated. It takes the normative synergies between the rights to life and health as points of departure to shed light on how they overlap with climate change law to provide the basis for establishing state responsibility and corresponding remedies for acts and omissions that threaten people’s lives and health. In so doing, the paper examines climate litigation as a strategic endeavor to limit the global temperature from warming beyond 1.5°C while situating it against Latin America’s broader socioeconomic challenges. Further, given the region’s socio-legal scenario where international and constitutional human rights amalgamate, this paper uses the terms “fundamental rights” or “rights” to describe both (Borowski, 2002). Nevertheless, it refers to "national fundamental rights,” and “international fundamental rights” whenever an indication of their national or international sources, respectively, is necessary.
Hence, the next Section 3.2 presents the interactions and complementarities that have arisen through the interpretative work of international human rights bodies and national courts. Then, Section 3.3 clarifies the rationale underpinning the selection of cases and the methodology on which their analysis is drawn, while Section 3.4 presents the substance of such analysis. Finally, Section 3.5 discusses the cases and offers some concluding remarks.

3.2. The Fundamental Rights to Life and Health: Normative Interactions and Complementarities

The close interaction between the rights to life and health materialized in the legal realm since the 1948 Universal Declaration of Human Rights enshrined both rights in article 25. By asserting that “[e]veryone has the right to a standard of living adequate for the health and wellbeing of himself and his family, including food, clothing, housing, and medical care and necessary social services […],” this milestone document recognized a mutually supportive relationship between both rights. While not expressly recognizing the right to life, it defined that the right to a standard of living is given by how it allows the realization of (the highest attainable standard) health. Later, the recognition of these rights followed different instruments. The ICCPR sets the right to life in article 6, while the ICESCR does so with the right to health in article 12.⁹

Both rights are recognized in regional instruments, yet also separately. Particularly relevant to the Latin American region is the American Convention on Human Rights, where

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⁹ Article 6.1 of the ICCPR states that “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” The ICCPR was adopted in December 1966 and entered into force in March 1976 (UN Treaty Collection, 2022). Article 12.1 of the ICESCR states that “[t]he States Parties to the present Convention recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” The ICESCR was adopted in December 1966 and entered into force in January 1976 (UN Treaty Collection, 2022).
the right to life is enshrined (article 4). ¹⁰ The Protocol of San Salvador sets the right to health in article 10.¹¹ However, the IAHRS has developed an extensive body of case-law that emphasizes how inextricably intertwined the rights to life and health are (Cenedesi Bom Costa Rodrigues, 2005: 107). The IACtHR first paved the way for acknowledging such interrelationship in its judgment of the case “Street Children” (Villagran-Morales et al.) v. Guatemala (1999). Here, the court reasoned that the fundamental right to life entailed a broad scope by including “not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not to be prevented from having access to the conditions that guarantee a dignified existence” (IACtHR, 1999: para. 144). The rights’ explicit interconnectedness was further reiterated in the decisions of the cases Gonzales Lluy et al. v. Ecuador (2015), Chinchilla Sandoval et al. v. Guatemala (2016), Poblete Vilches et al. v. Chile (2018), Cuscul Piraval et al. v. Guatemala (2018), and Vera Rojas et al. v. Chile (2021) (Corte Interamericana de Derechos Humanos, 2021).

International fundamental rights and, by extension, constitutional rights have been described as interrelated, interdependent, and indivisible.¹² Given that these three concepts carry distinct meanings, it is relevant in the context of the present analysis to situate where the relationship between the rights to life and health stands. Considering that interrelatedness describes the broadest connections among rights; interdependence connotes their synergistic

¹⁰ The American Convention on Human Rights, also known as the “Pact of San José,” was adopted in November 1969 and entered into force in July 1978. Its article 4.1 indicates sets out that “[e]very person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life” (UN Treaty Collection, 2022).
¹¹ The Protocol of San Salvador was adopted in November 1988 and entered into force in November 1999; its article 10.1 indicates that “[e]veryone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social wellbeing” (UN Treaty Collection, 2022).
¹² The Vienna Declaration and Programme of Action, adopted in 1993 by the World Conference on Human Rights, states in paragraph 5 that “[a]ll human rights are universal, indivisible and interdependent and interrelated.”
function, and indivisibility describes the rights’ *integral* nature—thereby constituting a much stronger claim (Daly and May, 2019: 174)—the relationship between the fundamental rights to life and health falls within the latter concept. Adjudicative and supervisory bodies at the international and national levels have established that both rights are indivisible as their relationship is profound and inextricable.\(^\text{13}\) Noticeably, in Latin American countries, the criterion of connectedness between these rights has been used to circumvent rules that do not allow for the direct protection of social rights (Yamin, 2022: 766; Parra-Vera, 2016: 151).\(^\text{14}\)

In climate change law, the rights to life and health have also come to interact, albeit until recently. The Paris Agreement was the first core instrument of the climate change international regime that recognized state parties’ obligations on human rights (Phelan, 2020: 422).\(^\text{15}\) Even though it did so by explicitly referencing the right to health only, climate lawsuits commonly invoke the right to life (Varvastian, 2021: 383)—thereby heralding the inroads both rights are currently making in the context of climate change as well. However, as mentioned, there is a knowledge gap on the use and effects of the specific rights invoked within climate litigation. Hence, while it is clear that the rights to life and health interact in

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\(^\text{13}\) For example, the UN Human Rights Committee provides, in its General Comment 36, that the duty to protect the fundamental right to life implies ensuring essential health care (2019: para. 26). Reciprocally, in its General Comment 14, the UN Committee on Economic, Social, and Cultural Rights has interpreted that the right to life encompasses integral components of the right to health (2000: para. 3).

\(^\text{14}\) For instance, in a paradigmatic case concerning an 11-year-old girl with Type 1 Gaucher’s Disease—to whom the Costa Rican Office of Social Security denied treatment—the Fourth Chamber of the Supreme Court of Costa Rica (the Constitutional Chamber) ordered the government to provide the treatment for the claimant. It did so by arguing that "if the right to life is especially protected in all modern legal states and, therefore, so is the right to health, any economic criteria that negatively affect the exercise of such rights must be put aside because… without the right to life all other rights are useless" (Parra-Vera, 2016: 152).

\(^\text{15}\) In its Preamble, the Paris Agreement acknowledges that "climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity." The Agreement was adopted in December 2015 and entered into force in November 2016 (UN Treaty Collection, 2022).
climate-related legal cases, it is vague how such overlaps—and their inherent implications—are occurring.

The absence of a robust body of international jurisprudence dealing with climate change and human rights is what Wewerinke-Singh (2019: 9) points out as "perhaps the greatest methodological challenge" in integrating both fields of law. Except for two decisions issued by the UN Human Rights Committee (HRC),\(^{16}\) no international or regional tribunal has adjudicated a climate change-related lawsuit.\(^{17}\) Further, because climate litigation is still a novel issue—particularly in Global South jurisdictions—such a jurisprudential gap also holds at the national levels (Peel and Lin, 2019: 684). This lack of precedents confronts judicial decision-making with the open question of how to interpret international and national fundamental rights in the context of climate change. Existing human rights case-law relative to environmental issues have provided an alternative ground for legal scholars to deal with the gap challenge (Wewerinke-Singh, 2019). Also, the interpretative work of human rights treaty bodies offers a stepping stone for determining the scope of human rights obligations in light of climate change law (de Vilchez Moragues, 2022).

Therefore, to provide meaning to the use and significance of the rights to life and health in Latin America’s climate litigation, it is important to first unpack how the overlap between such fundamental rights has already been interpreted by existing international and domestic human rights case-law on climate and environmental issues and human rights treaty

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\(^{17}\) For an analysis of the climate cases currently under the European Court of Human Rights consideration, see Heri (2022); for those filed before the Inter-American Human Rights System, see Auz (2022).
bodies. By recounting such precedents, this Section sheds light on two key aspects where the rights to life and health are strongly articulated in the context of climate change, namely, (i) the prevention, precautionary, and progressivity principles and (ii) substantive and procedural obligations.

3.2.1. The Prevention, Precautionary, and Progressivity Principles

The IACtHR (2017) addresses in its Advisory Opinion OC-23/17 the obligations to respect and ensure the right to life in the context of environmental law (including the obligations relative to addressing climate change). Crucially, it reasons that in order to comply with them—which the court acknowledges as essential for the enjoyment of the right to health—states bear the responsibility to prevent environmental damage and fulfill the precautionary principle.\(^\text{18}\) Regarding the former duty, the court draws on the International Court of Justice's consideration that the obligation of prevention arises when there is a risk of "significant damage."\(^\text{19}\) In line with this, the IACtHR further deliberates that any harm to the environment that may involve a violation of the rights to life and personal integrity must be considered significant harm.\(^\text{20}\)

On the obligation to observe the precautionary principle, the IACtHR understands that states must act according to this principle to protect the rights to life and personal integrity.\(^\text{21}\) This principle calls for adopting measures where there is no scientific certainty about the impact that an activity could have on the environment.\(^\text{22}\) In the same vein, the HRC


\(^{19}\) Idem, para. 135.

\(^{20}\) Idem, para. 140.

\(^{21}\) Idem, para. 180.

\(^{22}\) Idem, para. 175.
(2019) considers climate change to constitute a serious threat to the ability of present and future generations to enjoy the right to life. Therefore, in its General Comment 36, it establishes that the obligation to respect and ensure the right to life in the context of climate change entails state parties “pay due regard to the precautionary approach.”

Progressivity is another principle that stands at the normative junction between the rights to life and health. It entails the obligation for states to mobilize and allocate the maximum available resources for the gradual realization of the right to health and, therefore, the advancement of the right to life. In this respect, the OHCHR (2016) calls on states to fulfill such a duty by mitigating climate change and ensuring that all persons, particularly the most marginalized groups, have adequate capacity to adapt to changing climatic conditions. While climate mitigation entails the phase-out of GHGs, adaptation concerns the progressive development of sustainable and resilient health systems and infrastructure. Because this latter aspect is essential for overcoming the socioeconomic challenges that strongly determine people’s vulnerability to climate change, the progressivity principle is relevant for addressing the climate-related health concerns that arise in contexts characterized by poverty and exclusion.

24 Idem, para. 62.
26 OHCHR (see note 25), para. 54.
27 Idem, para. 57.
Climate (and environmental) litigation has borrowed on these principles when invoking the interconnectedness between the rights to life and health. This is illustrated in the Residents of the Torres Strait region v. Australia case before the HRC (2022), the first internationally adjudicated climate-related legal action that favored the claimants. Here, the claimants argued that the state party had violated their right to life by failing to devote the maximum available resources to reduce GHGs.\(^{28}\) While the Human Rights Committee did not find Australia to have violated claimants’ right to life,\(^{29}\) it should be noted that the right to life was a central argument in the Committee’s reasoning of the case, as the individual opinion of Committee Member Duncan Laki Muhumuza shows. He argued a violation of article 6 of the ICCPR based on Australia’s failure to take precautionary measures to prevent the imminent danger to the claimants’ rights.\(^{30}\)

At the regional level, the case-law of the European Court of Human Rights (ECtHR) on the right to life in the context of environmental concerns underscores the relevance of the precautionary principle (Wewerinke-Singh, 2019: 109). For example, in the case Tatar and Tatar v. Romania (2007), this court stressed that even in the absence of scientific probability regarding the causal link between the harm caused to the applicants and the state’s conduct, the state should adopt measures to protect their private and family life. Hence, by failing to fulfill such a duty, the ECtHR found Romania to have violated the applicants’ right to private and family life.\(^{31}\)

\(^{28}\) HRC Communication No. 3624/2019 of 21/07/2022 (see note 16), para. 3.4.
\(^{29}\) Idem, para. 8.8.
\(^{30}\) Idem, para. 14 & 17.
On the progressivity principle, the IACtHR recently indicated that addressing critical situations of lack of services, which are essential for the health and life of claimants, is a component of the state's responsibility to fulfill rights that are closely interconnected with the right to health.\textsuperscript{32} In the \textit{Lhaka Honhat Association v. Argentina} (2020) case—the first judgment in which the court declared the responsibility of the state for violating the rights to a healthy environment, adequate food and water based on article 26 of the American Convention (progressive development)—this tribunal mandated Argentina to formulate and implement an action plan to provide adequate goods and services, namely drinking water and food, necessary for the health of the affected groups.\textsuperscript{33} This, in addition to “[ensuring] reasonable conservation and improvement of the environmental resources.”\textsuperscript{34}

Domestic climate lawsuits have also drawn on the prevention, precautionary, and progressivity principles when arguing on the grounds of the rights to life and health (de Vilchez Moragues, 2022). In the \textit{Urgenda Foundation v. State of the Netherlands} case (2019), for instance, the Supreme Court of The Netherlands acknowledged that the warming of the planet—to which GHGs lead—“will result in, among other things, the significant erosion of ecosystems, which will […] endanger health and cost human lives.” \textsuperscript{35} Hence, this tribunal considered climate change a risk that may affect individuals’ rights to life and respect for private and family life enshrined in articles 2 and 8 of the European Convention

\textsuperscript{33} Idem, para. 333.
\textsuperscript{34} Idem.
on Human Rights, respectively.\textsuperscript{36} It consequently upheld that, consistent with the precautionary principle, the protection afforded by these two rights—whose obligations largely overlap\textsuperscript{37}—encompassed the state's duty to take preventive measures to counter the danger, even if the materialization of that danger is uncertain.\textsuperscript{38}

3.2.2. Substantive and Procedural Obligations

The rights to life and health entail a distinct—yet intertwined—normative content from which substantive and procedural obligations arise. In clarifying the scope of the right to life, the HRC provides that it entails the duty to take positive measures, including establishing adequate legal frameworks and institutions, under a due diligence obligation to protect the life of individuals against foreseeable threats.\textsuperscript{39} These measures, the Committee further clarifies, should ensure special protection for persons in vulnerable situations\textsuperscript{40} and address the “general conditions in society” that may prevent the enjoyment of the right to life by, among others, ensuring access to health care.\textsuperscript{41} The right to life also encompasses procedural guarantees such as access to effective measures to vindicate rights and the state's duties to investigate, prosecute, punish, and remedy violations.\textsuperscript{42}

Concerning the normative content of the right to health, the CESCR, in its General Comment 14, interprets this right as extending beyond timely and appropriate health care. It considers this right also to entail the underlying determinants of health, such as healthy environmental conditions\textsuperscript{43}—which falls under the “general conditions in society” that the

\textsuperscript{36} Idem, para. 5.2.2. and 5.2.3.
\textsuperscript{37} Idem, para. 5.2.4.
\textsuperscript{38} Idem, para 5.3.2.
\textsuperscript{39} General Comment No. 36 (see note 23), para. 19, 20, & 21.
\textsuperscript{40} Idem, para. 23.
\textsuperscript{41} Idem, para. 26.
\textsuperscript{42} Idem, para. 27, 28 & 67.
\textsuperscript{43} General Comment No. 14 (see note 25), para. 11.
right to life protects. Particularly, the Committee sets out three obligations that such a right encompasses. First, the obligation to respect requires states to refrain from limiting equal access to health services and unlawfully polluting the air, water, and soil.\textsuperscript{44} The obligation to protect calls on states to adopt measures to ensure that third parties do not interfere with the realization of the right to health.\textsuperscript{45} And the obligation to fulfill mandates for the provision of health care and equal access for all to the underlying determinants of health, including by formulating policies to reduce and eliminate pollution.\textsuperscript{46} The right to health also implies the obligation for states to assist other countries in advancing such a right.\textsuperscript{47} Crucially, it entails the procedural duties to secure participation, access to information\textsuperscript{48} and effective judicial or other types of remedy.\textsuperscript{49}

The rights to life and health intertwine through the aforementioned obligations. In its Resolution 3/2021, the IACHR (2021) clarifies what the relationship between both rights implies for the state duties in the context of climate change drawing on the interdependence and indivisibility between both rights and other human rights.\textsuperscript{50} Specifically, it provides that states bear a “reinforced” obligation to protect the most vulnerable individuals and groups.\textsuperscript{51} It further declares that the fulfillment of substantive obligations, including taking positive measures, should be undertaken under the due diligence principle.\textsuperscript{52} In this regard, states—

\textsuperscript{44} Idem, para. 34.
\textsuperscript{45} Idem, para. 35.
\textsuperscript{46} Idem, para. 36.
\textsuperscript{47} Idem, para. 38 & 42.
\textsuperscript{48} Idem, para. 11.
\textsuperscript{49} Idem, para. 59.
\textsuperscript{51} Idem, para. 16.
\textsuperscript{52} Idem, para. 10.
and companies under their jurisdictions—should reduce GHGs.\textsuperscript{53} They should also ensure access to health care\textsuperscript{54}—an obligation that the OHCHR (2016) interprets in more depth when calling on states to “develop sustainable and resilient health systems and infrastructures […] including by promoting universal health coverage and social protection floors.”\textsuperscript{55}

In addition, the commission emphasizes the effective implementation of the rights of access to information, public participation, and access to justice as procedural conditions for the fulfillment of substantial obligations.\textsuperscript{56} Another procedural obligation to which both the IACHR and the OHCHR call attention is the states' duty to make full reparations to the victims, which consists of the restoration of the environment.\textsuperscript{57}

In interpreting such substantive and procedural obligations, regional human rights case-law on environmental issues has laid useful parameters that help define the extent of the duties’ scope. While the focus of these precedents in the IACtHR has been mostly given to property rights of Indigenous and tribal communities—as opposed to the ECtHR’s attention on the right to life (de Vilchez Moragues, 2022: 233)—the inter-American judicial practice has substantiated the interconnection between the rights to life and health. It, therefore, still offers valuable guidance on the duties arising from such an overlap. This is particularly visible in the case of the \textit{Yakye Axa Indigenous Community v. Paraguay} (2005), in which the IACtHR found that the state violated the right to life—embodied in article 4(1) of the American Convention on Human Rights—by failing to take positive, concrete measures toward generating minimum living conditions compatible with the dignity of the human

\textsuperscript{53} \textit{Idem}, para. 43.
\textsuperscript{54} \textit{Idem}, para. 50.
\textsuperscript{55} OHCHR (see note 25), para. 57.
\textsuperscript{56} \textit{Idem}, para. 32.
\textsuperscript{57} \textit{Idem}, para. 14; OHCHR (see note 25), para. 62.
person specially in the case of persons who are vulnerable and at risk.\textsuperscript{58} This special protection, the court argued, entailed the duty of progressive development outlined in article 10 of the Protocol of San Salvador where the right to health is enshrined.\textsuperscript{59} In view of such obligations, this regional tribunal ordered the state to grant the affected Yakye Axa community “regular medical care and appropriate medicine to protect the health of all persons, especially children, the elderly and pregnant women, including medicine and adequate treatment for worming of all members of the Community.”\textsuperscript{60} Pertaining to procedural obligations, the court deemed it necessary for the state to create effective mechanisms for Indigenous people to vindicate their ancestral lands.\textsuperscript{61}

In sum, amidst the jurisprudential gap on climate change, existing precedents from rights-based cases on environmental issues and the ample interpretative work of human rights treaty bodies offer useful guidance for determining the scope of human rights obligations in light of climate change law. Particularly, they recognize that the inextricable relationship between the rights to life and health articulates mainly when the prevention, precautionary, and progressivity principles and several substantive and procedural obligations are involved. Crucially, as this Section’s review has pointed out, such an overlap encompasses both the environmental and social dimensions that determine people’s vulnerability to climate change as it calls for reducing GHGs \textit{and} ensuring access to health systems and infrastructure.

Because rights-based climate litigation is proliferating in Latin America (Setzer and Higham 2021: 32), such normative synergies are worth examining in this world region. By

\textsuperscript{59} \textit{Idem}, para. 163.
\textsuperscript{60} \textit{Idem}, para. 221.
\textsuperscript{61} \textit{Idem}, para. 225.
providing a fertile ground to explore how the rights to life and health interact in the context of climate change, a focus on Latin America's body of climate lawsuits could help better understand the horizons of the jurisprudential gap—and thus eventually contribute to overcoming it. This endeavor cannot be timelier as climate change increasingly and disproportionately disrupts the wellbeing and health of the significant number of people who live in poverty in the region (Castellanos et al. 2022: 33; Cissé et al. 2022: 28; Magrin et al. 2014: 1535).

The NLAC adds another compelling reason to explore Latin America’s climate litigation. This concept, which connotes the reconfiguration of the countries’ constitutions during the late decades of the twentieth century (Couso, 2006; 2022: 355), sheds attention on the instrumentality of the human rights legal framework for propelling social transformation in the region (von Bogdandy, 2017: 33). In particular, the incorporation of several social rights into national constitutions and the harmonization of constitutional law with international human rights law (Couso, 2006: 68; Piovesan, 2017) have emboldened constitutional courts to determine the meaning of such fundamental rights thereby confronting pressing social ailments. This is illustrated by the structural impacts that the judicialization of health-related challenges through constitutional adjudication has had in some countries and cases (Yamin, 2022; Parra-Vera, 2016).62

Lastly, it is important to bear in mind that almost all countries of the region recognize the rights to life and health in their constitutions (Lawyers Collective and O’Neill Institute, 2022) and are Parties to the ICCPR, ICESCR, the American Convention on Human Rights,

62 Decision T-760/08 issued in 2008 by the Constitutional Court of Colombia is an example of structural judicial intervention since it mandated several general provisions aimed at reforming the country’s health care system (Parra-Vera, 2016: 161).
and the Protocol of San Salvador (UN Treaty Collection, 2022). Further, they are all Parties to the UNFCCC, and the majority has already ratified the Paris Agreement (UN Treaty Collection, 2022).

3.3. Methodology

This inquiry applies comparative doctrinal analysis to three constitutional cases, one adjudicated by Colombia’s Supreme Court (2018), another by the Constitutional Court of Colombia (2016) and the third one by the Court of the Francisco de Orellana Canton in Ecuador (2021). Because this method studies the substance of judicial reasoning vis-à-vis the existing corpus of international and regional treaties, national constitutions, and case-law (Egan, 2018; Hutchinson 2018), the analysis illuminates the formal and material intersections between the rights to life and health and climate change law. Crucially, by doing so against the precedents outlined in Section 3.2, it draws attention to the normative spaces in which both rights overlap in the context of climate change and, thus, to their use and significance within current climate litigation.

The three cases were selected from the database that the author elaborated. This database compiles judicial cases from the databases of (1) AIDA’s climate litigation platform, (2) the Grantham Research Institute on Climate Change and the Environment, and (3) the Sabin Center for Climate Change Litigation—as they currently contain the most comprehensive and updated record of climate change cases filed in most Latin American jurisdictions. The author’s database further systematizes all such cases according to (1) the

type of motivation, whether they (2) are “rights-based,” (3) the rights invoked in their complaints and judgments (laying particular emphasis on the rights to life and health), (4) the type of legal action, and (5) the status of the litigation process (pending or adjudicated).

A critical clarification here concerns the reference to “climate litigation.” For the purposes of elaborating the author's database, this concept encompasses cases generally brought before judicial bodies in which climate change law, policy, or science are material issues of law or fact (The Sabin Center, 2022). Further, because climate litigation has been motivated by a broad spectrum of interests and actors, scholars have identified various litigation “types” (Gloppen and Vallejo, 2020; 2013; Markell and Ruhl, 2012: 15; Ghaleigh, 2010). An overarching analytical thread across these typologies based on actors' motivation has been the direction toward which they seek to move climate policy. “Pro” or “positive” litigation strives to reduce GHGs, preserve the environment, and increase adaptive capacity—usually initiated by NGOs or community members. “Anti” or “negative” litigation attempts to avoid these shifts by challenging mitigation or adaptation measures—these are usually cases brought by corporations (Setzer and Higham, 2021: 27; Markell and Ruhl, 2012: 65; Ghaleigh, 2010: 43). While the author’s database distinguishes between these two types, this inquiry concentrates on cases concerned with tackling the adverse climate impacts on life and health, which belong to the former type of litigation. Hence, unless otherwise explicitly stated, references to “climate litigation” henceforth refer to the “positive” type.

The “rights-based” attribution to the concept of climate litigation refers to cases that invoke international or national fundamental rights as the legal basis of plaintiffs’ claims and/or judicial decisions and whose linkages with climate change are emphasized (de Vilchez Moragues and Savaresi, 2021). Moreover, by distinguishing the type of action, the author’s
database identifies whether cases are filed on administrative, civil, criminal, or constitutional grounds.

The author's database unveiled 77 domestic climate lawsuits filed as of mid-June 2022 across 7 Latin American countries (Argentina, Brazil, Chile, Colombia, Ecuador, Mexico, and Peru). Sixty-one are right-based cases belonging to the positive type of litigation. Thirty-two (52%) of these rights-based lawsuits invoked the right to health either in their complaints or judgments, while eighteen (29%) did so with the right to life (Figure 6). Fourteen (23%) of the 61 rights-based cases were grounded on both rights, eleven of which were brought on constitutional grounds. Relevant to this inquiry is noticing that just five out of the fourteen rights-based cases that jointly invoked the rights to life and health have already been decided. Within this sub-group, constitutional actions are equally predominant, as they constitute four cases while only one pertains to an administrative action.

Figure 6. Rights-based climate litigation cases filed in Latin American countries (as of June 2022) that invoked the rights to life and health.
Following the most similar system design (MSSD) as a logic of comparative inquiry—which suggests the comparison of cases that are similar in as many features as possible, assuming that this provides the optimal sample for comparison (Andreassen, 2017: 244)—this analysis opted for the constitutional cases that pursued a “pro” or “positive” motivation. Furthermore, given that the doctrinal method relies on case records (Hutchinson, 2018; Egan, 2018), the enquiry selected cases that were already adjudicated and whose documents are publicly available—or whenever their complaint documents are not, their resolutions contain a thorough description of the claimants' arguments. According to the author’s database, three of the four constitutional cases that relied on the rights to life and health fulfill these criteria, namely the *Future Generations v. Ministry of the Environment and Others* (Colombia), the *Atrato River* (Colombia) and the *Baihua Caiga et al. v. PetroOriental S.A.* (Ecuador) cases.

### 3.4. Insights from Colombia and Ecuador

While a substantive body of literature has analyzed the *Future Generations* case (Auz, 2022: 129; de Vilchez Moragues and Savaresi 2021; Gloppen and Vallejo, 2020: 395; Setzer and Benjamin, 2020: 79), few works have laid a sharper focus on how the normative synergies between the rights to life and health interplay with climate change law—and thus examined the use and significance of such rights specifically within this climate lawsuit.\footnote{For an analysis of the *Future Generations v. Ministry of the Environment and Others* case from the lens of the right to health, see Viveros-Uehara (2022).} Filed in 2018 by a group of children and youth before the Superior Tribunal of the Bogotá Judicial District (STB), it is arguably “the first attempt to dovetail climate change and human rights arguments in a Latin American court” (Auz, 2022: 129), an effort that is visible in the
claimants’ and the court’s arguments. In its complaint, the claimants relied on the 1991
Colombian National Constitution to request the judicial protection of several rights, including
the rights to life and health enshrined in articles 11 and 49. They argued that the detrimental
impacts on these rights were consequential of the threats that the deforestation of the Amazon
posed to their right to a healthy environment—for which the Colombian government was
responsible due to its failure to halt such loss in forest cover.

Drawing on case-law of the country’s Constitutional Court (CCC) (ruling T-1096 of
2004), claimants emphasized that the fundamental right to life entailed a life of dignity, the
possibility of designing a life plan and of “living as one wants” (vivir como se quiera), the
existence of both material (vivir bien) and intangible conditions, and physical and moral
integrity (vivir sin humillaciones). In this respect, one of the plaintiffs testified that they
could not live as they wanted given that they no longer had the possibility of practicing sports
outdoors due to the increasing temperatures in their residence. They asserted that such a

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65 Article 11 of the Colombian National Constitution provides that "[t]he right to life is inviolable. There will be
no death penalty." Article 49 states that "[h]ealth care and environmental hygiene are public services provided
by the state. Everyone is guaranteed access to health promotion, protection, and recovery services.” Complaint
66 Idem.
67 Ruling T-1096 of 2004 derived from a tutela action filed by a person deprived of liberty against the National
Prison Institute. The claimant considered that by refusing to transfer them to a prison establishment where
health services were duly provided and where they were not subjected to sexual harassment and abuse, such an
institute violated their rights to life, health, physical and moral integrity, and sexual freedom. In line with
international case-law, the CCC ruled that the fundamental rights to life and health of persons deprived of
liberty must not be restricted. Thus, the National Prison Institute must adopt measures to prevent cruel,
inhuman, and degrading treatment against such populations. CCC Ruling T-1096 of 04/11/2004. Delivered in
,El%20CNP%20advierte%20de%20manera%20categ%C3%B3rica%20el%20respeto%20a%20los%20derechos%20humanos%20universalmente%20reconocidos.
68 Complaint of 29/01/2018 (see note 65), p. 94
69 Idem, p. 95.
detrimental situation also imperils their health, as this closely relates to the opportunity to do regular physical activity.\textsuperscript{70}

Regarding the right to health, claimants drew on article 49 of the National Constitution, case-law of the CCC (rulings T-060 of 2007, T-148 of 2007, T-760 of 2008, and T-1077 of 2012)\textsuperscript{71} and General Comment 14 of the CESCR to elaborate on the duties to ensure access to quality healthcare and other determinants of health and to grant special protection to vulnerable populations.\textsuperscript{72} They further emphasized that such obligation entailed the duty to protect the environment as this constitutes a determinant of health.\textsuperscript{73} Based on the potential threats that claimants argued to their rights to life and health, they called on the STB to consider the precautionary principle and the importance of securing public participation.\textsuperscript{74} Moreover, they requested the court to order the state to take positive measures, such as elaborating a plan and an intergenerational pact to reduce the Amazon’s deforestation rate.\textsuperscript{75} Claimants also demanded that the state investigate the illegal activities that led to the alleged environmental degradation.\textsuperscript{76}

\textsuperscript{70} Idem.

\textsuperscript{71} Rulings T-60 and T-148 of 2007 and T-760 of 2008 refer to the Colombian healthcare system. Drawing on the obligations arising from the country’s National Constitution (articles 48 and 48) and international human rights instruments (article 12 of the ICESCR), the CCC considered that the fundamental character of the right to health was given by its connection with the right to life—which also entails providing special protection to vulnerable individuals. On this basis, in these three rulings, the Constitutional Court considered that whenever the denial of access to medicines and treatments by insurance companies (EPS) imperiled claimants’ lives, the EPS are obliged to provide such treatments regardless of whether they are included in the claimants’ health benefits packages. Rulings T-1077 of 2012 and T-672 of 2014 were derived from cases concerning the health impacts of environmental pollution. The CCC reasoned that the state obligation to protect the rights to life and health against environmental pollution implied observance of the precautionary principle and reinforced protection for vulnerable populations.

\textsuperscript{72} Complaint of 29/01/2018 (see note 65), p. 102.

\textsuperscript{73} Idem, p. 103.

\textsuperscript{74} Idem, p. 117.

\textsuperscript{75} Idem.

\textsuperscript{76} Idem.
In February 2018, the STB dismissed the petition given that it considered that the *tutela* action was not the “appropriate mechanism to issue the orders requested by the claimants […] which concern the protection of the collective right to a healthy environment and other fundamental rights.” The claimants thus filed an appeal before the country’s Supreme Court (SCC). In April of that same year, this latter tribunal reversed the lower court’s decision and ruled in favor of the plaintiffs. Specifically, it ordered several agencies of the Colombian government (the defendants) to formulate, along with the affected communities and interested actors, a short-, medium-, and long-term plan and an “intergenerational pact for the life of the Colombian Amazon” to counter the deforestation rate in the Amazon.

In the reasoning that preceded this mandate, the SCC considered the rights to life and health in two fundamental and synergistic ways. First and crucially, the claimants' legal standing was recognized on both rights' grounds, thereby contradicting the lower court reasoning by conceding that the *tutela* action was indeed the appropriate means for them to request judicial protection. Second, grounding its reasoning on the ICESCR (article 12), the Paris Agreement, the National Constitution and national jurisprudence, this court provided that the realization of the fundamental rights to life and health is substantially determined by the natural environment. Hence, it recognized that the state’s failure to cease the

80 *Idem*, p. 22.
degradation of the Amazon forest contravened its responsibility to protect such rights.\textsuperscript{81} Given that such a failure affected mainly the rights of future generations and also considering the irreversibility of the environmental damage, the court drew on the precautionary principle to mandate the state to take preventive and corrective measures geared at climate adaptation.\textsuperscript{82}

The \textit{Atrato} case also concerned a \textit{tutela} action. This was filed in January 2015 before the Administrative Tribunal of Cundinamarca by a group of Indigenous and Afro-descendent communities living near the Atrato River against several ministries of the Colombian government.\textsuperscript{83} The claimants invoked the rights to life and health, among others, to claim the state’s responsibility for failing to prevent and counter the mining activities and illegal deforestation that caused the pollution of the said river.\textsuperscript{84} They argued that because they depended on the Atrato river for agricultural purposes and domestic use, its pollution threatened their lives and health. Drawing on reports from the country’s Ombudsman Office, they indicated:

“In the Indigenous communities of Quiparadó and Juinduur, which are located in the subregion of the lower Atrato (Riosucio), the death of 3 minors and poisoning of 64 more for drinking contaminated during the year 2013 water was attested. Similarly, the Indigenous Embera-Katío peoples, located

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{81} Idem, p. 39.
\item \textsuperscript{82} Idem, pp. 36 & 46.
\item \textsuperscript{83} Ministry of the Environment and Sustainable Development; the Ministry of Housing, City and Territory; Ministry of Agriculture and Rural Development; Ministry of Mining and Energy; Ministry of Health and Social Protection; and the Mayor of Carmen de Atrato.
\end{itemize}
\end{footnotesize}
in the Andágueda river basin—a tributary of the Atrato—reported the deaths of 34 children in 2014 for similar reasons.  

In February of that same year, the tribunal found the *tutela* inadmissible, arguing that claimants intended the protection of collective and not of fundamental rights. The claimants appealed such a decision, which was further upheld by the Council of State two months later, in April 2015, for considering that the plaintiffs did not demonstrate irreparable harm. Given the scope and seriousness of the Atrato River’s reported situation, the CCC stepped in to review the case.

In its ruling, the Constitutional Court regarded the rights to life and health in two instrumental ways pertaining, on the one hand, to the case admissibility and, on the other, to the state's responsibility. First, it drew on articles 1 and 44 of the National Constitution and rulings T-060 of 2007, T-148 of 2007, and T-760 of 2008 to recognize the intertwined character of both rights. This court further argued that their realization depends on the opportunity to enjoy a healthy environment. Crucially, to strengthen such an argument, the court relied on the IACtHR’s conceptualization of the right to life in relation to the right to health as outlined in the case *Yakye Axa Indigenous Community v. Paraguay*. Specifically, Colombia’s Constitutional Court recalled:

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87 Article 1 of the Colombian National Constitution provides that “Colombia is a social State organized in a decentralized Republic, with autonomous territorial entities, democratic, participatory, and pluralistic, founded on respect for human dignity, on the work and solidarity of the people that integrate it and on the prevalence of the general interest.” Article 44 establishes that “children’s fundamental rights are the rights to life, physical integrity, health and social security, a balanced diet, name and nationality, having a family and not being separated from it, care and love, education and culture, recreation and free expression of their opinions.”
89 CCC Ruling T-622/16/10/11/2016 (see note 84), p. 27.
90 *Idem*, p. 27 & 46.
91 *Idem*, p. 67.
“[in the Yakye Axa Indigenous Community v. Paraguay case] the Inter-American Court, after recognizing that the right to life ‘includes not only the right of every human being not to be arbitrarily deprived of his life, but also the right that conditions that impede or obstruct access to a decent existence should not be generated,’ it indicated that the inability to access water affects the right of the ethnic community to decent existence and other rights such as education and cultural identity. In this sense, [the IACtHR] specified that:

‘special detriment to the right to health, and closely tied to this, detriment to the right to food and access to clean water, have a major impact on the right to a decent existence and basic conditions to exercise other human rights […]’” 92

The Constitutional Court also recognized that both rights entailed the obligation to ensure special protection for persons in vulnerable situations.93 Hence, because claimants—ethnic and Campesino communities—had their fundamental rights to life and health threatened and belonged to vulnerable populations, the court considered the tutela action admissible.94 Furthermore, the Constitutional Court elaborated on the significance of the precautionary principle for the protection of the right to health (based on rulings T-1077 of 2012 and T-672 of 2014)95 while also calling on the progressivity principle to argue that the state should take strict measures against illegal mining96—and its detrimental effects on the environment and communities’ wellbeing and health.

92 Idem, p. 67.
93 Idem, p. 27.
94 Idem, p. 28.
95 For a summary of CCC Rulings T-1077 of 2012 and T-672, see note 71.
96 CCC Ruling T-622/16 of 10/11/2016 (see note 84), pp. 109 & 110.
After assessing several testimonies and evidence on the Atrato River’s situation and that of its neighboring communities, the court found that the defendants (several agencies of the Colombian government) had violated the claimants’ rights to life, health, and to a healthy environment by failing to fulfill their constitutional duties to prevent the pollution of the said river, its tributaries, and surrounding territories. Consequently, it mandated the defendants to adopt seven measures which included elaborating and implementing a plan to decontaminate the water sources of the Atrato Basin and prevent further environmental damage. It also instructed them to undertake toxicological and epidemiological studies to evaluate and identify the impacts of the Atrato River’s pollution on the health of surrounding populations.

Ecuador’s case (Baihua Caiga et al. v. PetroOriental S.A.) concerns a constitutional proceeding (acción de protección) filed in 2020 before the Court of the Francisco de Orellana Canton by three members of the Waorani Nation and three civil society organizations against PetroOriental S.A. The claimants argued that this company’s gas flaring damages the environment and contributes to climate change, thereby threatening several fundamental rights, including their rights to nature, life, and health. They asserted violations of article 32 of the country’s 2008 National Constitution (right to health) given that, by polluting the environment, the challenged activities hinder claimants’ access to food and traditional

97 Idem, p. 144.
98 Idem, p. 163.
99 Idem, p. 164.
100 Article 32 of Ecuador’s National Constitution provides that “health is a right guaranteed by the State, the realization of which is linked to the exercise of other rights, including the right to water, food, education, physical culture, work, social security, healthy environments and others that support the ‘buen vivir.’”
medicines. Interrelatedly, plaintiffs alleged violations of article 66 (right to life)\textsuperscript{101} arguing that they lacked the minimum living conditions to undertake their life projects.\textsuperscript{102} To establish such a connection, claimants also relied on the IACtHR’s judgment of the \textit{Yakye Axa Indigenous Community v. Paraguay} case, the IACHR Advisory Opinion OC-23/17, and General Comment 14 of the CESCR.\textsuperscript{103}

Drawing on the duties that the state bear to fulfill the rights to life and health under the above-mentioned legal instruments, the claimants requested the court to declare the violation to such rights (among others) and to mandate (the government to command) PetroOriental S.A. to terminate the polluting activities and provide the victims with an effective remedy.\textsuperscript{104} Regarding this latter measure, the plaintiffs demanded the defendant fund several projects to strengthen Indigenous knowledge and food sovereignty, including climate adaptation and traditional medicine, as these are two essential aspects for ensuring the rights to life and health.\textsuperscript{105}

In July 2021, the Francisco de Orellana Canton Court dismissed the case. It considered that there was no evidence of violations of the right to nature under article 71 of Ecuador’s Constitution and consequently, of any other by-the-claimants-invoked fundamental rights derived therefrom. Noticeably, this court argued such dismissal by devoting attention solely to one of the several rights on which the claimants grounded their petition, namely the

\textsuperscript{101} “Article 66. [The following rights] are recognized: 1. The right to the inviolability of life. There will be no death penalty. 2. The right to a dignified life, which ensures health, food and nutrition, drinking water, housing, environmental hygiene, education, work, employment, rest and leisure, physical culture, clothing, social security and other necessary social services.”


\textsuperscript{103} Idem, p. 51.

\textsuperscript{104} Idem, p. 57.

\textsuperscript{105} Idem, p. 58.
right to nature. It stated that the claimants failed to prove the causal connection between PetroOriental S.A.’s gas flaring, climate change, and the detrimental impacts they argue to be experiencing. And even though the court welcomed the testimonies of Indigenous people—to supplement the lack of scientific studies on the subject matter—which reiterated how the defendant jeopardized their lives and health, the judgment paid no regard to such claims.

3.5. Discussion and Concluding Remarks

The three cases reflect how climate change impacts the lives and health of claimants. While they similarly drew on the fundamental rights to life and health to invoke the states' responsibility for their climate-related detrimental experiences, judicial reasoning varied in some ways and shared common ground in a few others. Three aspects are worth examining in further depth as climate litigation continues to proliferate in the region: two emerge out of convergence across the cases, and one out of divergence.

A first common aspect among the Colombian cases is the use of the rights to life and health to demonstrate claimants’ standing in the tutela action. In both lawsuits, the lower courts declared the inadmissibility of the cases, considering that such a constitutional proceeding was not intended to request the protection of a collective right (the right to a healthy environment). To overcome such a barrier, in the appellate stage, claimants argued that by failing to deter climate change-inducing activities, the state violated their fundamental rights to life and health in connection with their right to a healthy environment. The Supreme and Constitutional Courts of Colombia also adopted such a position, thereby admitting the

**tutela** actions and ultimately ruling in favor of the claimants. Even though Ecuador's case may appear to be the exception, it shares this commonality because it is a lower court that also dismisses the case (like in the *Future Generations* and *Atrato* cases). The *Baihua Caiga et al.* case adds to the body of lawsuits in the Global South, where procedural formalism seems to stand in the way of the judiciaries to process highly novel challenges such as climate change (Setzer and Benjamin, 2020: 95).

A second aspect that the three cases showcase is the type of general relief that claimants sought—and the judiciaries ordered—based on the obligations deriving from the rights to life and health concerning the right to a healthy environment. Particularly, in the three cases, claimants drew on the prevention and precautionary principles to request the cessation of activities harmful to the environment and the participation of affected individuals and groups. The judgments of the *Future Generations* and *Atrato* cases uphold most of such requests in the measures that courts mandated. Crucially, the courts’ arguments heavily drew on the interpretative work of the IAHRS that emphasizes the indivisibility of the rights to life and health in the context of environmental and climate change challenges—such as the *Yakye Axa Indigenous Community v. Paraguay* case, the Advisory Opinion OC-23/17, and IACHR’s Resolution 3/2021. Moreover, even when they reiterated national jurisprudence, they still brought the interpretative work of international and inter-American human rights bodies into their reasoning—albeit indirectly—given that the former precedents relied on the latter standards.107 This openness toward the international human rights

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107 For example, CCC Ruling T-148 of 2007, cited by the claimants of the *Future Generations* case and the Constitutional Court in the *Atrato* case, drew on article 93 of Colombia’s National Constitution to recognize that the normative content of the right to health as provided by the CESCR in its General Comment 14 applies to the national fundamental right to health.
framework illustrates how the NLAC plays out in domestic climate litigation: courts integrate international fundamental rights into the domestic order to help guide their interpretation of the rights to life and health.

On the other hand, the analysis unveiled a divergence across the cases on the extent to which claimants invoked the particular scope of obligations and their inherent remedies. While petitioners in the three lawsuits centrally argued the broad scope of the right to life in connection with the right to health, only those of the Atrato and the Baihua Caiga et al. cases raised the duty of the states to progressively provide essential services for the realization of such rights. To be sure, the group of Indigenous and Afro-descendent communities and the members of the Waorani Nation argued that they lacked the minimum living conditions to enjoy a decent existence and thus demanded that the states address such situations. Consequently, the Constitutional Court of Colombia (in the Atrato case) tackled this particular concern—though not comprehensively—by mandating the government to undertake studies to identify detrimental health conditions among the population due to the pollution of the Atrato River. In contrast, neither the claimants nor Colombia's Supreme Court explicitly addressed such a social dimension in the remedies they sought and ordered in the Future Generations case. They instead laid a sharper focus on the environmental dimension of climate change by requesting and mandating the reduction of the GHGs resulting from the Amazon’s deforestation.

In conclusion, the fundamental rights to life and health are quantitatively prominent in case argumentation in Latin America’s climate litigation. Jointly, they are invoked in almost 60% of the region’s rights-based lawsuits. To better understand this phenomenon, this study has first provided a recount of the normative synergies between such rights as per the
existing human rights case-law relative to environmental issues and the interpretative work of human rights bodies. The inquiry has taken this recount as its point of departure to shed light on how the said fundamental rights and climate change law overlap in Latin America’s climate cases. In so doing, it has unveiled how the quantitative prominence of the rights to life and health in this body of litigation is also qualitative. The normative synergies of both rights emerged within the three cases to demonstrate legal standing, thereby helping to overcome procedural barriers. Such synergies were also used to substantiate the states' responsibility to apply the prevention and precautionary principles and to ensure the participation of affected individuals and communities.

However, even when the indivisibility between the rights to life and health gives rise to principles and obligations towards the environmental and social dimensions that determine people’s vulnerability to climate change, not all cases yielded such a normative potential evenly nor to its fullest extent. This analysis showed that when it comes to these rights’ interpretation and vindication in connection with climate concerns, their environmental dimension (reducing GHGs and thus mitigating climate change) can prevail over the social dimension (ensuring access to health care systems necessary for reducing claimants’ vulnerability to climate change)—a challenge that Daly and May (2019: 179) have identified in environmental cases. Whether claimants and judges use the rights’ normative overlap in comprehensive ways will depend on how they thread climate concerns with their highly interconnected development challenges.

While this paper unveiled that the use of both rights within constitutional climate lawsuits in the region does not uniformly harness the rights’ full normative scope, why this happens is still to be explored. Further research is needed to scrutinize how the non-legal
socio-political realities of the region influence claimants’ and courts’ understanding of the
dimensions that determine people’s health vulnerability amidst our changing climate. As
climate litigation continues to unfold alongside Latin America’s socioeconomic challenges,
the synergies between the fundamental rights to life and health in constitutional adjudication
under the NLAC may offer a plausible pathway to better address the multi-dimensional
complexity of climate change in the world's most unequal region.
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CHAPTER 4
ADDRESSING HEALTH CRISSES THROUGH COURTS? UNDERSTANDING INEQUALITY IN LATIN AMERICA’S CLIMATE LITIGATION

Abstract. Latin America is where most human rights-based climate lawsuits have been brought—after Europe and North America—and the most unequal region in the world. Here, the lack of means to prevent and treat climate-related and exacerbated health conditions disproportionately increases socially excluded populations’ health vulnerability to climate change, thereby making the climate crisis a crisis of health. Despite the constellation of actors who have brought climate lawsuits before national courts in this region—including Indigenous peoples and children—and although more than half of this body of litigation has “climatized” the right to health, little is known about how claimants frame complex forms of health vulnerability and thus how these are understood and addressed by courts. To fill this gap, the chapter explores the question of: How do claimants and judges frame, understand, and advance the protection of the right to health of vulnerable populations through domestic climate litigation? Particularly, it discerns how the profiles, opportunity structures, resources, and motives of such actors, intertwined with the litigation’s inequality contexts, shape the course and outcomes of the litigation process. With this aim, the chapter examines the input and output dynamics of five constitutional climate lawsuits across Colombia, Chile, Ecuador, and Mexico in which vulnerable individuals and groups invoked the right to health. By
conducting contextual analysis and semi-structured interviews with the actors involved in these cases, the study sheds light on the socio-political dynamics within the lawsuits, which, in turn, reveals the potential of climate litigation to address health crises exacerbated by climate change in contexts characterized by steep socioeconomic inequalities. The chapter concludes that although climate litigation has only partially addressed these crises, the judicial pathway can more comprehensively tackle the socio-ecological spectrum of health vulnerability if both claimants and courts broaden their strategic and interpretative horizons. Employing bottom-up approaches in civil society work, open legal standing rules, progressive legal traditions, and supporting judges committed to understanding the social contexts of claimants seem instrumental for this purpose.

4.1 Introduction: Why the Inequality Context of Climate Litigation

In nearly every world region, climate change has increased the incidence of diseases and already caused hundreds of thousands of deaths.\(^1\) While everyone is susceptible to these alarming impacts, not all population groups are equally vulnerable.\(^2\) Those who, in addition to being exposed to changing climatic patterns, lack access to services and infrastructure for preventing, treating, and addressing the resulting effects, bear the brunt of the adverse health consequences of climate change.\(^3\) This heightened vulnerability is particularly evident among

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populations experiencing poverty and social exclusion.\textsuperscript{4} The urgent coupling of such pressing issues—the severity of climate change and precarious opportunities for healthcare—makes the climate crisis a crisis of health.

The human rights framework has been used in climate litigation to highlight such vulnerability differentials, especially between Global North and South jurisdictions.\textsuperscript{5} Rights-based claims in the latter regions—filed most frequently in Latin America\textsuperscript{6}—are often more urgent due to limited access to life-sustaining resources,\textsuperscript{7} including adequate healthcare. In considering climate litigation as a means to advance climate action, the few academic works on climate litigation in the Global South suggest a deeper understanding of how human rights and climate change law can work together to address the multifaceted challenges that compound vulnerability.\textsuperscript{8} Some scholars have even recently proposed expanding the human

\textsuperscript{6} In this region is where most human rights-based climate cases have been brought, after Europe and North America. See Joana Setzer and Catherine Higham, 'Global Trends in Climate Change Litigation: 2021 Snapshot' (Grantham Research Institute on Climate Change and the Environment and the Centre for Climate Change Economics and Policy 2021) 32.
\textsuperscript{7} Setzer and Benjamin (n 5) 79.
rights framework to accommodate the realities and challenges of the Anthropocene by “climatizing” economic and social rights.9

This chapter examines how the converging urgency of climate change and health-related social challenges manifests in climate litigation that relies on the right to health, demonstrating that expanding this right may not be sufficient for addressing health crises. While focusing on the right to health may give rise to long-standing tensions between anthropocentric and ecocentric perspectives due to this right’s inherent human-oriented origins,10 the present chapter opts not to engage in this important conversation for now.11 Instead, it takes as its point of departure the indivisibility of the human rights framework and underscores the relevance of the right to health in understanding context-specific realities.12 These realities may be overlooked when the emphasis is placed solely on the green agenda without recognizing the urgent social issues at hand, and vice versa.13 Ultimately, the goal is to ensure a dignified life for all—both humans and non-humans—within a stable climate.

9 César Rodríguez-Garavito, ‘Climatizing Human Rights: Economic and Social Rights for the Anthropocene’ (SSRN Scholarly Paper, 18 October 2022) 29.
10 For a comprehensive genealogy of the overlap between international human rights and environmental law from the perspective of health protection, please see Marie-Catherine Petersmann, ‘Narcissus’ Reflection in the Lake: Untold Narratives in Environmental Law Beyond the Anthropocentric Frame’ (2018) 30 J Env L 235, 242. For an account of the dimensions of the right to health according to international human rights law, see Pedro A Villarreal, ‘El derecho a la salud en lo individual y en lo colectivo: la calidad en los servicios de salud a partir de Poblete Vilches vs. Chile’ in Mariela Morales Antoniazzi and Laura Clérico (eds), Interamericanización del Derecho a la Salud: Perspectivas a la Luz del Caso Poblete de la Corte IDH (Instituto de Estudios Constitucionales del Estado de Querétaro 2019) 279.
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12 On the topic of indivisibility of social rights and understanding vulnerability in the Latin American context, see Mariela Morales Antoniazzi and María Barraco, ‘Vulnerabilidad y justiciabilidad de los derechos sociales en el contexto interamericano’ in Armin von Bogdandy, Juan Ignacio Ugartemendia Eceizabarrena, Daniel Sarmiento Rodríguez-Escudero and Mariela Morales Antoniazzi (eds), El futuro de la Unión Europea (Instituto Vasco de Administración Pública 2021) 225.
This objective cannot be achieved in a world that boasts a safe climate yet remains burdened by poverty and social exclusion.

The normative potential of the right to health is substantial, especially in Latin American countries, owing to their constitutional tradition known as the NLAC.\textsuperscript{14} This tradition denotes the constitutional transformations in various Latin American countries during the 1980s and 1990s, which integrated international human rights law into domestic systems and strengthened the role of national courts in their interpretation.\textsuperscript{15} Yet, despite the right to health being widely “climatized” in climate litigation,\textsuperscript{16} its normative potential has not been applied to its fullest extent.\textsuperscript{17} The inquiry into why this occurs brings attention to the socio-political factors that influence whether and how the health concerns of the most vulnerable enter litigation, and thus affect litigation outcomes—aspects that have been insufficiently explored by climate litigation scholarship.

If we envision the Anthropocene as a turbulent ocean and the human rights framework as a ship slowly taking on water due to various vulnerability leaks, the answer is not to simply expand the size of patches to stop these leaks by climatizing rights through litigation. Although this may give the impression of productive action, it is futile if we do not

\textsuperscript{14} The implications of Inter-American legal standards for addressing vulnerability have been previously discussed by Morales Antoniazzi and Barraco (n 12); and on quality of healthcare by Villarreal (n 10) 308. For a general overview on the NLAC, see Armin von Bogdandy, 'Ius Constitutionale Commune en América Latina: Observations on Transformative Constitutionalism' in Armin von Bogdandy and others (eds), Transformative Constitutionalism in Latin America: The Emergence of a New Ius Commune (Oxford University Press 2017) 27, 33; Javier A Couso, 'The Changing Role of Law and Courts in Latin America: From an Obstacle to Social Change to a Tool of Social Equity' in Roberto Gargarella, Domingo Pilar, and Roux Theunis (eds), Courts and Social Transformation in New Democracies (Ashgate Publishing Limited 2006) 61, 65.

\textsuperscript{15} Couso (n 14) 65, von Bogdandy (n 14) 33.


\textsuperscript{17} Thalia Viveros-Uehara, ‘The fundamental rights to life and health in climate litigation: Insights from Latin America’ (2022) 9(3) E-Publica Public Law Journal 147, 171.
first discern the type and location of these leaks, assessments critical for determining the
efficacy of our patch materials and whether litigation can actually address these
vulnerabilities or if a completely new ship is required. This analysis of Latin America's health
crises allows us to identify such situated vulnerabilities (leaks) and begin exploring the
factors that could enable or hinder their successful resolution through litigation.

To conduct this analysis, the chapter draws upon the epistemological insights offered
by the more abundant scholarship on social rights litigation. In particular, academic works on
the right to health litigation in Latin America, which have proliferated over the past decade,\(^\text{18}\) provide a solid theoretical foundation for examining and understanding the role of courts in
addressing the concerns of the most vulnerable populations. Siri Gloppen's analytical
framework is especially relevant to the study of courts' role in addressing health crises.\(^\text{19}\) This
framework emphasizes the "input" and "output" dynamics of the litigation process, both of
which are intrinsically connected to the socio-political dimensions of lawsuits, arising from
their inequality contexts.\(^\text{20}\) The input dynamics occur at the claims formation stage and
influence whether health rights claims reach the courts. They encompass claimants’ profiles,
legal opportunity structures, resources, and motives, while the output dynamics take place at
the adjudication stage and reveal factors that affect how judges approach health rights claims

\(^{18}\) For notable examples of landmark works, please see Paola Bergallo, 'Courts and Social Change: Lessons
from the Struggle to Universalize Access to HIV/AIDS Treatment in Argentina' (2011) 89 Texas Law Review
1611; Octavio Luiz Motta Ferraz, 'Harming the Poor through Social Rights Litigation: Lessons from Brazil'
(2011) 89 Texas Law Review 1643; Roberto Gargarella et al., 'Courts, Rights and Social Transformation:
Concluding Reflections', in Roberto Gargarella, Pilar Domingo, and Theunis Roux (eds), Courts and Social
Transformation in New Democracies (Ashgate Publishing Limited 2006) 255; Malcolm Langford, 'Domestic
Rts 91; Cesar Rodriguez-Garavito, 'Beyond the Courtroom: The Impact of Judicial Activism on Socioeconomic
Rights in Latin America' (2011) 89 Texas Law Review 1669; Alicia Ely Yamin and Siri Gloppen (eds),
\(^{19}\) Siri Gloppen, ‘Litigation as a Strategy to Hold Governments Accountable for Implementing the Right to
\(^{20}\) Ibid, 25.
in their reasonings.\textsuperscript{21} These dynamics consists of the courts’ opportunity structures and resources. As both types of dynamics account for the inequality context in which litigation unfolds and thus shape its outcome,\textsuperscript{22} they warrant examination in any endeavor aimed at determining whether litigation can effectively address the needs of the most vulnerable populations.

This chapter scrutinizes the input and output dynamics using five constitutional climate lawsuits as case studies across Chile, Colombia, Ecuador, and Mexico. It does so through contextual analysis and interviews with involved actors to examine \textit{why} the cases frame and address health vulnerabilities in varying ways, often lacking comprehensiveness. Each lawsuit utilizes the respective country's available constitutional proceeding (representing the most direct domestic manifestation of human rights law), invokes the right to health, and has been adjudicated in a positive way (in favor of claimants who seek to advance climate action). The selection of these cases adheres to the logic of the MSSD and MDSD for comparative inquiry, which focuses on similarities and differences between countries, treating common characteristics as “controlled.”\textsuperscript{23} Although the four selected countries face social challenges that result in unequal vulnerability to climate change among their populations and display features of the NLAC (“controlled” characteristics), they demonstrate notable similarities and differences in how their constitutional justice systems have advanced social rights, including the right to health. Constitutional justice in Colombia and Ecuador has been more receptive to judicializing the right to health, given the

\textsuperscript{21} Ibid.
\textsuperscript{22} Ibid.
improvement of their constitutional systems in terms of authority and autonomy over the years. In contrast, Chile's and Mexico's constitutional adjudication has taken a more conservative approach to engage with challenges experienced by individuals living in poverty and social exclusion. Hence, MSSD comprises, on the one hand, Colombia and Ecuador, and on the other, Chile and Mexico. MDSD consists of any cross-reference between both groups. Their comparison helps trace how similarly and differently their socio-political contexts, embedded in the claimants' and courts' profiles, opportunity structures, resources, and motives, influence the adjudication of the right to health in constitutional climate lawsuits, which outlines useful directions for how climate litigation can address health crises.


25 Brinks and Blass (n 24). Regarding the conservative culture in Chile’s constitutional adjudication, see Javier Couso and Lisa Hilbink, 'From Quietism to Incipient Activism: The Institutional and Ideological Roots of Rights Adjudication in Chile' in Gretchen Helmke and Julio Rios-Figueroa (eds), Courts in Latin America (1st edn, CUP 2011) 99; Gloppen et al. (n 24) 4. On Mexico’s formalistic style in constitutional adjudication, see Juan Manuel Acuña, 'El caso Mini Numa: Nuevos rumbos para la protección de los derechos sociales a través del juicio de amparo en México' in Manuel González Oropeza and Eduardo Ferrer Mac-Gregor (eds), El juicio de amparo a 160 años de la primera sentencia: Tomo I (UNAM 2019) 31, 45; Roberto Lara Chagoyán, El Constitucionalismo mexicano en transformación: Avances y retrocesos (Instituto de Estudios Constitucionales del Estado de Querétaro 2020) 65; Francisca Pou Giménez, 'The Constitution of Mexico' in Conrado Hübner Mendes, Roberto Gargarella, and Sebastián Guidi (eds), The Oxford Handbook of Constitutional Law in Latin America (OUP 2022) 203, 224.
To achieve this goal, the chapter first provides an overview of the inequality contexts relevant to health vulnerability in the selected lawsuits. It situates the varying ways in which the five cases raised and addressed health concerns, specifically the extent to which each engages with the socio-ecological spectrum of health vulnerability in their claims and remedies. The analysis then proceeds to scrutinize the input and output dynamics of these cases through contextual analysis and insights gained from interviews with relevant actors involved in each. The chapter subsequently offers a discussion of the implications of the cases' socio-political contexts on the climatization of the right to health and the suitability of the judicial pathway to address health crises. Finally, it presents some concluding remarks.

4.2 Navigating Latin America’s Climate Litigation: Overview of the Cases’ Inequality Contexts

A general overview of Chile, Colombia, Ecuador, and Mexico unveils several common factors contributing to the health vulnerability of their inhabitants. An extensive body of scientific evidence underscores the present and projected health consequences correlated with shifting climatic patterns, occurring within contexts marked by persistent social challenges. In Chile, warmer climates have been linked to the spread of vector-borne diseases such as Chagas and dengue. The same is true in equatorial regions like Colombia and Ecuador due to El Niño and La Niña climatic phenomena. In addition to these physical health concerns, climate change has been linked to mental health issues in Mexico, as rising temperatures have been found to exacerbate stress and other psychological factors.

26 Castellanos et al. (n 1) 1691, Magrin et al. (n 1) 1535.
28 Castellanos et al. (n 1) 1702; Magrin et al. (n 1) 1535.
Longitudinal data on many geographic units over time projects a 2.1% increase in suicide rates in some Mexican municipalities, attributed to the heat-induced stress and discomfort experienced by residents in these areas.29

Social inequalities play a pernicious role in amplifying the current and anticipated health consequences of climate change in these five countries.30 Although Chile, Colombia, Ecuador, and Mexico have experienced improvements in healthcare coverage over the past decades,31 persistent disparities in income, education, and rural-urban factors continue to affect the quality and accessibility of healthcare.32 Studies have demonstrated that the Chilean health system displays a pro-rich bias in the utilization of public services, perpetuated by historical and structural inequalities that obstruct solidarity among social classes.33 In Colombia, Indigenous and Afro-descendant children are at a higher risk of stunting and wasting due to considerable disparities in care access.34 Similar patterns of inequality are evident in regions of Ecuador, such as the Amazon, central Andean highlands, and north-central coastal areas, which are predominantly inhabited by indigenous, Afro-Ecuadorian, and Montubio populations.35 In Mexico, residents of low-income neighborhoods and informal settlements, often situated in areas prone to recurrent flooding,36 typically lack

30 Parry et al. (n 4).
32 Castellanos et al. (n 1) 1715.
35 Andrés Peralta et al., 'Developing a Deprivation Index to Study Geographical Health Inequalities in Ecuador' (2019) 53 Revista de Saúde Pública 97, 10.
access to healthcare resources for risk reduction, exacerbating their vulnerability to climate change impacts.\(^{37}\)

This scenario illustrates that vulnerability to climate change, both within and across these countries, manifests through two equally urgent dimensions: the ecological, represented by the global temperature increase and exposure to related consequences, and the social, encompassing poverty and social exclusion. The history of Latin America is replete with these latter challenges that can be traced far back in time. In an effort to address these issues, many countries of the region underwent significant constitutional reconfigurations during the 1980s and 1990s.\(^{38}\) Crucially, the reforms included constitutional protection actions that enabled historically excluded groups to mobilize and assert their rights before national courts. This approach simultaneously afforded the judiciaries a key role in facilitating social transformation—in part by interpreting fundamental rights through the international human rights framework.\(^{39}\)

Chile's 1980 Constitution established the *recurso de protección* (protection action) under Article 20, a legal mechanism designed to safeguard constitutional rights by providing a means for “regular people” to directly access courts in order to contest actions or omissions that undermine their fundamental rights.\(^{40}\) Similarly, Colombia's 1991 Constitution introduced the *tutela* action in Article 86, a swift and informal judicial procedure that allows individuals to claim immediate protection of their fundamental rights when threatened or

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\(^{37}\) Paty Romero-Lankao et al., 'Scale, Urban Risk and Adaptation Capacity in Neighborhoods of Latin American Cities' (2014) 42 Habitat International 224, 228.

\(^{38}\) Couso (n 14) 65, von Bogdandy (n 14) 33.

\(^{39}\) Ibid.

\(^{40}\) Domingo Lovera Parmo, 'Chile' in Conrado Hübner Mendes, Roberto Gargarella, and Sebastián Guidi (eds), *The Oxford Handbook of Constitutional Law in Latin America* (OUP 2022) 79, 94.
violated. In Ecuador, the 2008 Constitution enshrines the protection action in Article 88, a legal instrument to guarantee rights and hold public or private entities accountable for rights violations. Mexico's 1917 Constitution includes the *amparo*, a judicial remedy aimed at protecting constitutional rights, which underwent significant reforms in 2011 and 2013 to expand its scope and streamline the process.

Table 9. Overview of constitutional protection actions in Chile, Colombia, Ecuador, and Mexico.

<table>
<thead>
<tr>
<th>Country</th>
<th>Protection Action</th>
<th>Constitutional Provision</th>
<th>Relevant Standing and Procedural Requirements</th>
<th>Scope of Redress Measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chile</td>
<td><em>Recurso de protección</em></td>
<td>Article 20</td>
<td>The petitioner must be an affected party, can be filed by the person or on their behalf, and must specify the legal rights or guarantees that are being infringed.</td>
<td>Declaration of rights, prevention and/or cessation of harmful actions.</td>
</tr>
<tr>
<td>Colombia</td>
<td><em>Acción de tutela</em></td>
<td>Article 86</td>
<td>The petitioner must be an affected party, immediate protection required, can be filed directly or through a representative, applicable when no other means of judicial defense are available or as a temporary measure.</td>
<td>Protection of fundamental rights, restoration of the violated right, and the adoption of necessary reparation measures.</td>
</tr>
</tbody>
</table>

42 Salazar (n 24) 199.
43 Pou Giménez (n 25) 223.
These protection mechanisms similarly serve as valuable resources for individuals seeking to safeguard their fundamental rights before domestic courts. Their procedural and standing requirements, as well as the scope of redress measures vary across countries, which are summarized in Table 9 above. A relevant characteristic for the comparative enquiry of this chapter is the autonomy and authority of the constitutional adjudicators in these countries, which have been recognized by the literature on Latin America’s constitutional justice as critical factors in determining the efficacy of these protection actions in upholding rights.\textsuperscript{44} The constitutional justice systems in Colombia and Ecuador showcase more

<table>
<thead>
<tr>
<th>Country</th>
<th>Action</th>
<th>Article</th>
<th>Petitioner Requirements</th>
<th>Redress Measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ecuador</td>
<td>Acción de protección</td>
<td>Article 88</td>
<td>The petitioner must be a person, group, or community whose rights have been violated or are at risk, must be filed within 30 days from the violation, and can be presented to any jurisdictional authority.</td>
<td>Declaration of rights, suspension of harmful actions, restoration of the violated right, and the adoption of necessary reparation measures.</td>
</tr>
<tr>
<td>Mexico</td>
<td>Juicio de Amparo</td>
<td>Articles 103 and 107</td>
<td>The petitioner must be an aggrieved party, can be filed against acts of authority that violate individual guarantees, must be filed within 15 days from the notification of the act, and must exhaust prior remedies.</td>
<td>Declaration of rights, prevention and/or cessation of harmful acts or omissions, restoration of the situation (whenever possible).</td>
</tr>
</tbody>
</table>

\textsuperscript{44} Brinks and Blass (n 24) 38.
autonomy and authority, thereby demonstrating greater receptivity to the judicialization of social rights.\(^{45}\) In contrast, the constitutional adjudication processes in Chile and Mexico—courts with less autonomy and authority—have taken a more conservative stance in addressing the challenges faced by individuals experiencing poverty and social exclusion.\(^{46}\) Considering these similarities and differences in the approach of constitutional adjudication, MSSD encompasses Colombia and Ecuador, on the one hand, and Chile and Mexico on the other. MDSD consists of any cross-reference between both groups. Within the burgeoning number of climate change lawsuits filed in the five countries, constitutional protection actions have been widely deployed, as Figure 7 shows.

Figure 7. Number of constitutional protection actions among total number of climate change lawsuits filed in Chile, Colombia, Ecuador, and Mexico as of mid 2022.\(^{47}\)

\(^{45}\) See note 24 above.

\(^{46}\) See note 25 above.

Mexico currently leads in the number of constitutional climate lawsuits, followed by Chile, Colombia, and finally, Ecuador. Although one might assume that countries with less receptive constitutional adjudication (Chile and Mexico) would exhibit fewer lawsuits than the more progressive ones (Colombia and Ecuador), the distribution of climate litigation is influenced by multivariate factors, as the literature on health litigation has demonstrated. The openness of courts is not the sole determining factor. While a systematic exploration of this particular question falls beyond the scope of this chapter, considering the population size of each country as a baseline for magnitude is reasonable. Mexico has the largest population at 126.7 million inhabitants, followed by Colombia with 51.5 million, Chile with 19.4 million, and Ecuador with 17.7 million. It is also essential to contextualize the prevalence of climate lawsuits compared to other legal phenomena, as they represent only a negligible fraction when compared to health litigation. In Colombia, a widely studied country concerning health litigation, an estimated 74,956 cases occurred annually during the 1999-2008 period. In contrast, the country currently has 11 climate-related cases over seven years (2015-2022). This suggests that climate litigation is gradually gaining momentum, positioning this chapter as an early effort to better understand this emerging trend.

The in-depth examination afforded by this chapter’s case studies within this body of litigation exhibits instead a more nuanced perspective. It reveals that the convergence of the gravity of the climate emergency, its intersection with the countries' existing social

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48 On the geographical distribution of litigation against development index, see, for example, Octávio Luiz Motta Ferraz, *Health as a Human Right: The Politics and Judicialisation of Health in Brazil* (CUP 2020) 12.
challenges—particularly the scarcity of opportunities to prevent and address climate-related health conditions—manifests to varying extents across countries in both the claimants' articulation of their concerns and the corresponding judicial decisions. Table 2 provides a general overview of these case studies.

This Section lays bare how health crises in Colombia’s Center for Social Justice case and Ecuador’s Herrera Carrion and Others case surface along both ecological and social dimensions, thereby embodying more situated forms of health vulnerability. While the Future Generations case and cases in Chile and Mexico embrace the ecological but demonstrate a more nebulous engagement with social considerations. Additionally, it highlights the disparate directions in which constitutional protection proceedings address these challenges, often lacking comprehensiveness.

In January 2015, Paimadó's community leader decried the severe health consequences of new and unknown diseases affecting children and women in the Chocó department of Colombia.51 He was among the claimants of a tutela action filed by ethnic communities in the Chocó department, against various Colombian government entities for their failure to prevent Atrato River pollution in the face of changing climate conditions (Center for Social Justice case). A few years later, Carlos and Rosa, pseudonyms for two children hailing from the Bolívar and Cauca departments in Colombia, recounted their struggles with atopic dermatitis and fever exacerbated by rising temperatures, which greatly impacted their daily lives.52 These children, along with other young activists, took the Colombian government to

the Supreme Court in 2018, accusing them of not sufficiently addressing deforestation in the Amazon rainforest (*Future Generations* case). Not far away, just over 800 kilometers south of Colombia's capital city of Bogotá, in February 2020, Sofia (a pseudonym), an eight-year-old from the Province of Orellana in Ecuador, joined forces with eight other girls of similar age to file a constitutional protection action against multiple Ecuadorian government ministries, including the Ministry of the Environment. The case, known as the *Herrera Carrion and Others*, was presented before the Cantonal Judge of Lago Agrio in the Ecuadorian oil-rich province of Sucumbios. Sofia's primary objective was to remove gas flares from her community, as she lived in constant fear of developing cancer, much like her mother had.53

These three climate litigation cases illustrate the shared concerns of populations grappling with ongoing health challenges which are exacerbated by the increase in global temperature. Although the cases share overarching similarities, a closer examination of the claimants' contexts, motives, and sought remedies reveals the unique vulnerabilities they face, contingent upon the resources and opportunities available to overcome the adverse health conditions they denounced. In contrast to the claimants in the *Future Generations* case, Colombia’s ethnic communities decried that the emergence of new diseases aggravate their already precarious situation due to the absence of healthcare access.54 Similarly, the girls in the Ecuadorian case highlighted the financial and logistical barriers faced by those

54 *Center for Social Justice* (n 51) 304.
already sick, who must travel long distances to Quito for medical care, only to find they lack the resources for medicines and lodging.\textsuperscript{55}

As a result, the claimants in the Center for Social Justice and Herrera Carrion and Others cases sought comprehensive redress measures that not only included stopping climate-inducing and polluting activities, but also, crucially, implementing measures to prevent and address ongoing and future health concerns. Conversely, the claimants in the Future Generations case demanded that the Colombian government create an action plan to reduce deforestation in the Amazon. In the former cases, after navigating through multiple levels of the judicial process, the Constitutional Court of Colombia and the Court of Justice of Sucumbíos Province in Ecuador directed the defendants to ensure the cessation of illegal mining and gas flaring, respectively.\textsuperscript{56} Furthermore, these courts mandated the conduction of scientific studies to investigate the adverse health effects denounced by the claimants.\textsuperscript{57} However, they did not go further to redress the lack of healthcare systems that also compounded claimants’ detrimental conditions. In the Future Generations case, the Supreme Court of Colombia ordered the government, in collaboration with relevant stakeholders, to establish an intergenerational pact committed to reducing deforestation.\textsuperscript{58}

A more nebulous engagement with the social dimension of health vulnerability to climate change is illustrated by the Mejillones Tourist Service Association and Others (Chile) and Greenpeace Mexico (Mexico) cases. In 2021, a group of residents from the Mejillones commune, situated over 1400km north of the Chilean capital, Santiago, filed a constitutional

\textsuperscript{55} Herrera Carrion and Others (n 53) 7.1.1.
\textsuperscript{56} Center for Social Justice (n 51) 170; Herrera Carrion and Others (n 53) VII.1.
\textsuperscript{57} Center for Social Justice (n 51) 170; Herrera Carrion and Others (n 53) VII.5.
protection action against the Environmental Service of the Antofagasta Region. They challenged the approval of the environmental assessment for the Angamos power plant, arguing that the emissions generated would contribute to climate change, consequently increasing health risks for the commune due to the projection of more frequent heat waves.\textsuperscript{59} The claimants demanded that the defendant reevaluate the power plant's environmental assessment, taking into account its impacts on broader environmental variables such as atmospheric impacts, pH, temperature, and sediment levels.\textsuperscript{60} Further north on the American continent, in 2020, Greenpeace Mexico filed an amparo against Mexico's Legislative and Executive branches for enacting an agreement regarding the national electric system. This agreement limited the participation of renewable energy in the national grid, favoring fossil fuels instead.\textsuperscript{61} Greenpeace contended that the climate change-inducing and polluting emissions resulting from the carbon-based energy production encouraged by the disputed agreement were linked to health risks such as respiratory and cardiovascular diseases.\textsuperscript{62} Consequently, the organization sought to have the agreement declared void.\textsuperscript{63}

The remedies sought by the claimants in both cases were upheld by the Chilean Supreme Court and a District Judge in Mexico. The former directed the Environmental Service of the Antofagasta Region to consider additional environmental impacts in the assessment of the Angamos power plant,\textsuperscript{64} while the latter invalidated Mexico’s executive

\textsuperscript{59} Mejillones Tourist Service Association and others v Environmental Evaluation Service (SEA) of Antofagasta [2021] Appellate Court of Antofagasta (Complaint) 42.
\textsuperscript{60} Idem, 51.
\textsuperscript{61} Greenpeace Mexico v Ministry of Energy and Others [2020] Second District Court in Administrative Matters (Complaint) 2.
\textsuperscript{62} Idem, 59.
\textsuperscript{63} Idem, 70.
\textsuperscript{64} Mejillones Tourist Service Association and others v Environmental Evaluation Service (SEA) of Antofagasta [2021] Chile Supreme Court 20.
agreement that encouraged fossil fuel-based energy production. By targeting the factors directly contributing to climate change, the outcomes of both litigation cases collectively benefit health. In other words, everyone, irrespective of their vulnerability level, is expected to benefit from the ordered measures. However, as laid bare by the ethnic communities in Colombia and the girls in Ecuador's Sucumbios province, within this collective, there are groups that necessitate tailored approaches to better manage the already more pronounced health impacts of climate change.

All claimants in the five illustrated cases are susceptible to climate impacts, but they are not equally vulnerable. The convergence of the climate emergency and existing health-related social challenges manifests to differing degrees in climate litigation. Some cases embody—and seek to address—more localized forms of health vulnerability, while others aim to deliver health benefits in a broader sense. Whether courts can serve as a venue for the most affected populations to fully realize their right to health depends on our understanding of why health crises only partially emerge in the first place. Why have climate litigation cases not comprehensively addressed the social and ecological dimensions of health vulnerability, even when claimants sought such remedies? Answers to this question are closely tied to the socio-political contexts of the cases, whose analysis extends beyond the black letter of the law and case records. Therefore, the next Section provides a contextual analysis of each case and brings forth the direct perspectives of their actors.

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65 *Greenpeace Mexico v Ministry of Energy and Others* [2020] Second District Court in Administrative Matters 104/2020 199.
4.3 The Input Dynamics: The Claimants and Formation of Climate-Related Health Claims

4.3.1 Claimants’ Profiles and Opportunity Structures

In the five cases examined, a shared feature concerning the claimants' profiles is the significant involvement of both international and domestic professionalized civil society organizations, which either acted as representatives or, uniquely in the case of Greenpeace Mexico, as claimants themselves. The organizations' areas of work and methods of addressing the claimants' concerns spanned a range from socio-ecological bottom-up to techno-ecological top-down approaches. The ethnic communities and girl claimants in the cases of the Center for Social Justice and Herrera Carrion and Others, respectively, were supported by domestic organizations that exemplify the former, as described by one of their members:

“Our mission, as institution, is to support the […] communities in ensuring that their vision is respected […] So, how did we arrive at the litigation? First, it is due to our mission, and secondly, we work on developing legal actions with communities in their territories. Specifically, in the years prior to filing these legal actions, we conducted a series of workshops on the use of law from the communities' perspective; consequently, it was the communities themselves who suggested bringing the case to the Constitutional Court, the most important tribunal in the country […] it is a co-creation process between litigants and communities.”

In developing legal actions through a co-creation process with communities, the claimants' vulnerable situations, encompassing both ecological and social dimensions, served as central points around which legal teams crafted their strategies. This approach was
indissolubly connected to the organizations' institutional ethos, which was of instrumental relevance, as in these two cases, claimants had been for years directly affected by changing climatic patterns and climate change-inducing activities. Importantly, numerous members within these organizations have devoted years to collaborating with the communities in their territories, embracing their cultures and concerns. They regarded this as crucial in ensuring that the claimants' actual experiences—rather than the organizations' interests—were the focus when presenting the cases to the courts.

The Mejillones Tourist Service Association and Others case occupies an intermediary position within the socio-ecological bottom-up and techno-ecological top-down spectrum. Claimants were local residents living in proximity to the Angamos power plant, and they mobilized to demand a reduction in the facility's GHGs. However, their concerns were strategically negotiated with the Santiago-based organization supporting their case to maximize the likelihood of receiving a favorable response from the courts. Consequently, although the local residents experienced health effects they attributed to the plant's operations and faced challenges in obtaining accessible medical care, they ultimately sought to improve the facility's environmental performance. From such a strategic perspective, they found it challenging to present health-related arguments in court. As one interviewee explained,

“Reaching scientific certainty that the environmental effects we observe impact health proved to be a challenge […] despite our efforts for many years […] Individuals requiring more specialized treatments cannot be treated in the [affected town] but must instead go to [a larger city]. Due to this circumstance, the health evidence and statistics are concentrated there. For instance, if there were 100 people with cancer in 1995, by 2022, there could
be 100,000. However, these numbers are hypothetical since, unfortunately, we do not have access to the exact figures for the reasons previously explained. Consequently, it is impossible to achieve scientific certainty in this regard."

Moreover, the claimants' climate change arguments synergized with the supporting organization's goal of mitigating global temperature increases. The organization started incorporating such arguments into its work after the adoption of the Paris Agreement in 2015, as this established a framework for requesting state action to address climate change through mitigation and adaptation efforts.

The cases of Greenpeace Mexico and Colombia's Future Generations exemplify a techno-ecological top-down approach, in which well-intentioned professionals from an international and domestic organization respectively, adeptly respond to environmentally detrimental junctural circumstances by crafting targeted strategies. In Mexico, the Executive branch has driven recent policy changes that contradict the country's energy transition strategy by promoting fossil fuel-based energy production. Concurrently, in Colombia, the gradual withdrawal of guerrilla forces from the rainforest since 2016 permitted various groups and interests to extract resources without government oversight, leading to a significant surge in deforestation rates. In contriving their legal strategies against such climate change-inducing events, the right to health was instrumental in fortifying legal argumentation and consequently, persuasion. These strategies employed international

science-based narratives to bolster their arguments and align them with broader global environmental concerns. As one claimant points out, drawing from a case akin to the Greenpeace Mexico:

“In the lawsuits, we incorporated arguments based on the Harvard health study, which showed that in places with polluted air, there was a higher incidence of COVID-19, and populations were more vulnerable. Thus, we cited this study and questioned the changes in policies and laws […] which would lead to greater electricity generation through fossil fuel sources. In addition to contributing to climate change, these sources deteriorate air quality and, in a pandemic context, according to the Harvard study, populations in these cities are more vulnerable to COVID-19.”

While children and youth, a demographic group afforded special protection, were the claimants in the Future Generations case, the legal strategy did not focus on immediate impacts on their health or their immediate social contexts. Instead, it aligned with a transnational movement advocating for future generations that was gaining momentum at the time.68 In this regard, an expert close to this case recalls:

“At that time, climate change was perceived as a problem for future generations […] Today, the narrative is different, partly because Colombia and many other countries are already facing severe effects of climate change. At that time, the children may not have been the first to allude to this, but rather connected with a strategy. The discourse was different […] The main focus

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was on containing deforestation, not addressing climate change across the entire country or deforestation throughout the territory, but only in the Amazon arc. That was the problem they sought to solve. The strategy aimed to push the State to make decisions that would ultimately impact climate change and the rights of future generations.”

Despite the diverse fields of work and methods used to address the claimants' concerns, the involvement of civil society organizations in the five cases proved crucial for accessing the judicial pathway. While the constitutional proceedings employed in the four countries are theoretically intended to be accessible for every affected citizen, none of the claimants felt that this accessibility was realized in practice. This was particularly evident when raising complaints against defendants perceived as technically and politically powerful, such as national governments. Furthermore, when compared to alternative legal mechanisms available under administrative and civil law, the characteristics of the constitutional proceedings in these cases were perceived as more time-efficient by the claimants. Claimants contended that pursuing popular actions in Colombia and Mexico or turning to Chile’s specialized environmental tribunals, entailed longer durations and involved stricter legal standing formalisms.

69 Pursuant to Article 88 of the Colombian Constitution, popular actions are a constitutional mechanism for the protection of collective rights related to public health, the environment, and other fields.

70 Popular complaints in Mexico are an administrative complaint procedure enshrined in Article 189 of the General Law on Ecological Balance and Environmental Protection. Any person or organization can file this complaint with the Federal Environmental Protection Agency if they believe any act or omission has caused damage to the environment.

71 For an overview of the implementation of Chile’s Law 20.600/2012, which created environmental tribunals, please see Carolina Riquelme Salazar, ‘Los Tribunales Ambientales En Chile. ¿Un Avance Hacia La Implementación Del Derecho de Acceso a La Justicia Ambiental?’ (2013) 4(1) Revista Catalana de Dret Ambiental 1. On the suitability of the constitutional protection action in Chile’s climate litigation, see Pilar Moraga Sariego, 'Climate Change Litigation in Chile: Between the Constitutional and the Environmental Jurisdiction Path' in Francesco Sindico and Makane Moïse Mbengue (eds), *Comparative Climate Change Litigation: Beyond the Usual Suspects* (Springer International Publishing 2021) 287, 292.
In turn, as these organizations address claimants' concerns in accordance with their areas of work and methods, which span a range from socio-ecological bottom-up to techno-ecological top-down approaches, their involvement appeared to significantly mediate the legal framing of claimants' health vulnerability. The interaction of these aspects with the resources utilized by claimants and the formation of claims are further explored in the following Subsection, which delves into the specifics of the litigation strategies employed.

4.3.2 Resources and Claims Formation

The five cases analyzed are consistent with the NLAC's *modus operandi*, as they rely on legal expertise provided by civil society organizations as a central resource, utilizing human rights as a legal language by grounding claims on international human rights legal standards.\(^{72}\) These standards included the ICESCR, General Comment 14 on the right to health, article 10 of the Protocol of San Salvador and inter-American standards, like the Advisory Opinion 23/2017 on the environment and human rights. In so doing, they take advantage of the countries' constitutional provisions that allow national courts to directly interpret these international norms into cases through the block of constitutionality.\(^{73}\) Claimants in the five cases concurred on the strategic utility of these international legal standards for bolstering their arguments.

However, while the legal repertoire of international human rights law is extensive, encompassing both the ecological and social dimensions of health vulnerability,\(^{74}\) the

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\(^{73}\) Idem, 133.

\(^{74}\) Morales Antoniazzi and Barraco (n 12); Viveros-Uehara (n 17).
selection of these legal instruments was influenced by the architecture of the constitutional proceedings and the claimants' profiles, as evidenced by the remedies they sought. Redress measures targeting both the ecological and contextual social challenges were sought by claimants supported by civil society organizations employing a socio-ecological bottom-up approach to engage with the claimants' concerns. The comprehensiveness of these measures was deemed suitable for addressing more situated forms of health vulnerability, as they involved not only halting climate change-inducing and polluting activities but also, crucially, requiring the state to conduct health assessments of populations and implement measures for providing adequate medical services. This was the case in the Center for Social Justice and Herrera Carrion and Others cases.

In contrast, the remedies sought by the Mejillones Tourist Service Association and Others, the Future Generations, and the Greenpeace Mexico cases were comparatively less comprehensive. Analyzing these cases highlights differences in the opportunity structures of each country's constitutional proceedings, which correspond with the formalistic traditions of the Chilean and Mexican constitutional justice systems and the progressive tradition of the Colombian system. While the involvement of professional civil society organizations utilizing a techno-ecological top-down approach in these three cases seems to have influenced the narrower scope of redress measures pursued by claimants, this varies according to the legal architecture of each country’s constitutional protection action. Comprehensive redress along various social and ecological aspects are less common in Chile and Mexico,75 but not in Colombia (see Table 9). In Colombia, the tutela action enables a

75 Redress measures in Chile and Mexico have declarative and concrete inter partes effects; they do not encompass integral reparation measures. See Humberto Nogueira Alcalá, ‘La acción constitucional de protección en Chile y la acción constitucional de amparo en México’ (2010) 16(1) Ius et Praxis 219, 271.
wider range of redress measures, including integral reparations\textsuperscript{76}; however, claimants in the *Future Generations* case did not seek such remedies. This observation confirms that the focus and methods employed by civil society organizations in addressing claimants' concerns significantly impact the framing of situated health vulnerabilities in court.

Moreover, the use of the human rights framework as a social language,\textsuperscript{77} especially the right to health, played a crucial role in connecting claimants with other national human rights advocates concerned about the compounded health effects of adverse ecological impacts and social exclusion. The *Center for Social Justice, Herrera Carrion and Others*, and *Mejillones Tourist Service Association* cases (which were supported by civil society organizations that employed a bottom-up, socio-ecological approach to addressing claimants' concerns) could articulate with broader national networks of actors who shared similar challenges, such as the adverse health effects and poverty contexts experienced by the claimants. These connections represented a valuable resource for advancing their claims before courts in both tangible and intangible ways.

Tangible contributions came in the form of *amicus curiae* briefs. For instance, the *Center for Social Justice* case received support from seventeen such briefs, submitted by international and national academic institutions and advocacy organizations. In contrast, intangible benefits manifested in the trust and community resilience that emerged within these networks amid increasing violence against human rights defenders. As one claimant observed:

\begin{quotation}
\end{quotation}

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von Bogdandy and Urueña (n 72) 137.
\end{quotation}
“[A few years ago] we tried to see how we could take into account this inequality that we had against the company in every aspect, and we had the opportunity to contact [national NGOs] that have funds from international organizations because we already had experience with lawyers who, once we made progress on environmental issues, would directly sell themselves out. So, we started searching for someone to work with and someone to trust because that was the main thing for us. In light of everything that was happening, and considering that suddenly we could not even trust our own peers because we saw that strange things were happening, obviously because the power of multinationals is greater. They can even buy people who are in this situation like us, as activists, and we become suspicious of everything. We [managed to meet] with many organizations that support the cause and are trusted by the territories, especially in this part of the world, where unfortunately environmental activists are either murdered or face other bad situations.”
Similary, an NGO representative recounted:

“We [worked with a] coalition of human rights organizations to strengthen our defense in the second instance, especially because the case was not accepted in the first instance. Also, affected communities across the country have their own resilience networks and spaces for sharing experiences and strategies.”

In summary, the analysis of the five cases reveals a strong connection between claimants' legal opportunity structures, profiles, and resources. The legal expertise required by Chile's, Colombia's, Ecuador's, and Mexico's constitutional protection actions, together with their standing rules, create a conducive environment for professional civil society organizations to spearhead the cases. The areas of work and methods employed by these organizations in addressing local communities' concerns significantly influence how health crises are framed in climate litigation and the remedies pursued. Notably, bottom-up approaches foster a connection between international human rights standards and community realities, with the aim of addressing the comprehensive socio-ecological spectrum of health vulnerability. By placing communities' needs at the forefront of the legal strategy, this approach offers the most vulnerable’s realities a chance to reach the courts, helping to balance existing inequalities between them and the defendants, as well as disparities in expertise.

4.4 The Output Dynamics: Adjudicating Health in Climate Litigation

4.4.1 Judges’ Opportunity Structure and Resources

Three cases were adjudicated by the respective high courts of the countries involved (Chile's Supreme Court of Justice, and Colombia's Supreme Court of Justice and
Constitutional Court), while two were decided by lower courts (Ecuador's Court of Justice in Sucumbios Province and Mexico's Second District Court). With the exception of the Mexican case, all the rulings were reached following multiple appellate stages. This advanced stage of the judicial process indicates that the cases were ultimately overseen by specialized courts possessing extensive technical knowledge, aligning with existing literature on the limitations of legal expertise in Latin America's first-tier courts. Mexico is not an outlier in this regard. Its Second District Court on Administrative Matters, despite functioning as a court of first instance, was established in 2013 as a highly specialized forum for adjudicating cases related to telecommunications and energy policy, such as regulatory compliance, licensing, and competition.

Interviewed actors concurred that the courts’ legal expertise played a pivotal role in interpreting the intersection of international human rights standards and international climate change law, effectively incorporating these principles into the domestic legal framework to grant claimants the protection they sought. Importantly, this interpretation was informed by scientific evidence presented to the courts through two channels: (1) on paper by courts’ legal teams, claimants, and amicus curiae submissions from organizations supporting the claimants, and exclusively in the case of Colombia’s Constitutional Court (2) through on-site visits conducted by the court to assess the impacted areas first-hand.

One judge underscored the significance of such evidence in judicial reasoning, particularly that which is generated by the IPCC, as articulated in the statement below:

“The IPCC issued a study on climate change in which it argues that the changes in Earth's climate in all regions [...] are unprecedented in hundreds of thousands of years [...] These types of tools also allow us, when making decisions, to have not only persuasive arguments because I can say that a public policy, like the climate or environmental policy [...] can pose a risk. But I need to demonstrate it to strengthen and to make very clear the motivation in my judgments; thus, I have to gather all those elements. [...] The legitimacy of our role as constitutional judges is precisely that the motivation and argumentation of the resolutions are sufficiently solid and robust to be sustained.”

Reflecting on the role of *amicus curiae* in an analyzed case, an expert recalled

“I believe that *amicus curiae*, which are technical, meaning they provide technical information for the resolution of the case, are indeed given special value by the judges. [They are] more than necessary as a tool. I understand that, in fact, that's how amicus curiae are being used [...] Strategically relying on amicus curiae can provide greater nuances to judges when making decisions.”

Although all the adjudicating courts demonstrated high legal expertise, which enabled them to effectively utilize the evidence presented to them, a more nuanced examination of the factors influencing their selection and pursuit of specific evidence reveals that judges' maneuverability is related to the scope of claims put forth by claimants and the remedies they sought. In other words, courts ordered remedies based on how claimants framed their vulnerability. For instance, claims that encompassed both ecological and social concerns
were granted remedies addressing both aspects, including precarious social contexts exacerbating ongoing health conditions, whereas claims focused solely on halting climate change-inducing activities received remedies specific to that particular objective.

As discussed in Section 4.3, this constraint is closely related to the areas of work and methods employed by professional civil society organizations supporting claimants, as well as the architecture of the constitutional protection actions. Judgments that more comprehensively addressed health crises, specifically in the cases of the *Center for Social Justice* and *Herrera Carrion and Others*, followed processes in which courts received multiple *amicus curiae* submissions (which highlighted concerns about climate change and the precarious healthcare conditions in the claimants’ contexts) suggesting the presence of robust support structures facilitated by bottom-up approaches. The Colombian Constitutional Court even carried on on-site inspections to monitor the complexity of the entwined dimensions. Equally instrumental for these outcomes was the fact that Colombia's *tutela* and Ecuador's protection action allow for comprehensive redress measures, as opposed to the cases in Chile and Mexico, which display a restricted focus (see Table 9).

The legal culture of the countries also appeared to influence the varying ways in which the five adjudicating courts addressed climate change-related health concerns. Actors involved in the litigation processes of the *Mejillones Tourist Service Association* and *Greenpeace Mexico* cases perceived the existence of a "formalistic legal tradition" in the Chilean and Mexican constitutional justice systems, which prevented judicial reasoning from extending beyond well-established national jurisprudence. This reluctance to embrace legal

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80 See Guerra Moreno (n 76), on the scope of redress measures of Colombia’s *tutela*.
81 See note 75 above on the scope of redress measures of Chile’s and Mexico’s constitutional protection actions.
82 On Chile’s and Mexico’s conservative style in constitutional adjudication, see note 25 above.
innovations stands in contrast to the well-known openness of Colombian constitutional justice and the progressive impetus embedded in the Ecuadorian constitutional system, as reflected in its 2008 Constitution.83

However, it is worth noticing that even in the aforementioned "ideal" cases from Colombia and Ecuador (Center for Social Justice and Herrera Carrion and Others), redress measures did not extend far enough to mandate the state to fulfill its duty of ensuring quality and resilient healthcare, even at the most basic level. An exploration of the political contexts of these cases, which next Subsection discusses, may help explain this observation.

4.4.2 Judicial Independence and Political Contexts

The adjudication of the cases Center for Social Justice and Herrera Carrion and Others was not exempt from circumstances that posed challenges to the courts' autonomy and authority, which ultimately seemed to influence the judicial outcomes. In Ecuador, the Executive branch representatives allegedly exerted indirect pressure on the presiding judges by insinuating that their decisions might result in the depletion of financial resources for essential social needs, should they drive wealthy oil corporations away or mandate comprehensive redress measures for the impacted communities. To overcome this obstacle, the actors involved in the case underscored the significance of judges' connections to the affected regions. The fact that judges’ families resided in the affected areas fostered a perception of empathy towards the severity of health concerns experienced by the petitioners. However, in the absence of counterfactual scenarios, it remains unclear to what extent this

83 Regarding the receptiveness of Colombian and Ecuadorian courts for adjudicating social rights, see note 24 above.
favorable circumstantial aspect provided judges with greater maneuverability to rule in a more comprehensive manner amidst the Executive's indirect pressures.

In Colombia, presidential interference was less prominent in the work of the Supreme and Constitutional Courts. However, given the well-known activism of the latter, various interest groups have sought to reform the judicial structure to diminish its authority. Within this context, the Constitutional Court is cautious in ensuring that its decisions do not encroach upon the jurisdiction of other branches of government and that they are adopted unanimously to demonstrate legitimacy. This consideration is visible in the remedies prescribed in the Center for Social Justice case. The court's orders were sufficiently broad, allowing for a considerable degree of discretion by the Executive branch in their implementation, thus respecting the delineation of competencies between branches. The court did not explicitly mandate the provision of healthcare, which would have been a specific costly measure, but instead called for "progressivity" and financial planning of the ordered remedies. These included health assessments of affected communities and the establishment of baseline indicators, demonstrating a balanced approach to addressing the concerns at hand.

In Chile and Mexico, interview data did not reveal interference of the countries’ Executive branches in the adjudicating courts' work. The rulings in the Mejillones Tourist Service Association case in Chile and the Greenpeace Mexico case attest these courts' autonomy, as they challenged corporate interests and state actions, respectively. As a high court in Chile and a highly specialized court in Mexico, they possess resources that

\[\text{84 Center for Social Justice (n 51) 171.}\]
\[\text{85 Idem, 170.}\]
potentially enable them to better navigate adverse circumstances compared to local first-instance courts. Nonetheless, this analysis did not investigate the experiences of lower courts nor examine cases with negative outcomes, which might have provided a more insightful sample for exploring contextual factors that hinder courts from countering the growing pro-fossil fuel interests of the executive branch, particularly in Mexico. In this latter country, according to interviewees, the current government has not only pursued policies favoring fossil fuels but also allegedly attempted to undermine the judiciary's autonomy. This has further exacerbated the challenges faced by the courts in upholding environmental protection and the rule of law.

In summary, the output dynamics of adjudicating health in climate litigation across Latin America reveal the intricate interconnections between judges' opportunity structures, available resources, and the prevailing political contexts. The courts' legal expertise, coupled with access to scientific evidence, impacted the positive interpretation and integration of international human rights standards and climate change law into domestic legal systems. Moreover, the breadth of remedies awarded was intrinsically linked to the manner in which claimants framed their vulnerability, the architecture of constitutional protection actions, and the distinctive legal culture of the respective countries.

4.5 Discussion: Health Crises in the Hands of Courts

As the adverse health consequences of climate change become progressively more apparent, Chile, Colombia, Ecuador, and Mexico confront the dual urgency of addressing these effects while simultaneously tackling disparities in the opportunities they provide to their populations for preventing and treating climate-related and/or exacerbated health challenges. Although the populations of these nations exhibit differentiated levels of health
vulnerability, an in-depth analysis of climate litigation cases within these countries reveals that health crises are only partially reflected. For the most part, climate litigation serves as a platform for ecological concerns, with only a few instances addressing and seeking redress for the underlying socioeconomic factors that exacerbate these challenges. While it is not expected that issues of poverty and social exclusion are uniformly addressed in all cases, given the diverse interests present in democratic societies, the incomplete representation of these challenges highlight critical concerns about the accessibility of the judicial system for the most vulnerable populations in a reality where climate change effects are detrimentally intersecting with long-standing social challenges. Indeed, a more thorough examination of the socio-political factors underpinning climate lawsuits reveals that this limited emergence is far from coincidental.

The analysis suggests that those who gain access to courts shape the framing of health vulnerability (input dynamics), which subsequently, in conjunction with the structure of constitutional protection actions and legal traditions (output dynamics), impacts the scope of remedies granted. While this observation may not be particularly novel, given that existing literature on social rights litigation has highlighted this relationship, the unique complexities of the climate crisis present distinct conceptual challenges in devising the potential distributive effects of climate litigation as proposed by such scholarship. The emphasis on the individualized scope of claims and benefits sought, as proposed by Ocávio L. Motta Ferraz, Daniel Brinks, and Varun Gauri in studying the “anti-poor bias” of courts, seems less indicative of regressive trends against the most vulnerable in climate lawsuits. By

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86 For notable examples of landmark works, please refer to the citations provided in notes 18 and 19.
halting deforestation, fossil fuel-based energy production, and other climate-inducing activities, the unidimensional ecologically-driven outcomes of these litigation cases are expected to benefit everyone, irrespective of their vulnerability levels. Yet, as this chapter has discussed, there are groups within this collective that require comprehensive approaches, which also consider their social realities, to more effectively address the unequal health burdens resulting from climate change. These groups encounter great challenges in ensuring their voices are adequately heard before the judiciaries.

A prominent similarity in the input dynamics across the five examined cases is the involvement of professional civil society organizations. However, differences among the MSSD (Colombia and Ecuador, Chile and Mexico) reveal that the focus areas and methods of engagement with situated concerns employed by these organizations—along with strategic decisions influenced by the constraints of the protection actions’ architecture and legal culture—have a considerable impact on the framing of health crises in climate litigation and the pursued remedies. These factors even hold greater importance than the organizations' international or national status or funding source—as experiences in health litigation have also demonstrated.88 The supporting organizations in the five analyzed cases are international and domestic, receive funding from various sources, and belong to transnational communities of practice. Thus, contrasts in claim formation are mainly attributed to their operational mechanics and their legal opportunity structures.

In both the Center for Social Justice and Herrera Carrion and Others cases, where claimants framed concerns encompassing the ecological and social dimensions of health

vulnerability and courts ordered redress measures accordingly, their supporting organizations employed a bottom-up approach that placed claimants' realities at the core of the legal strategies. In contrast, the Future Generations case demonstrates how a top-down approach, driven by well-intentioned legal experts, leans more toward unidimensional ecological concerns.

The cases in Chile and Mexico demonstrate the strategic decisions that civil society organizations must make in contexts with more limited legal maneuverability. The Mejillones Tourist Service Association case neither expanded upon nor sought redress for the health impacts experienced by local residents and their difficulties in obtaining medical care. This omission resulted from a strategic decision made in collaboration with the supporting organization to maximize the likelihood of achieving a positive outcome in litigation, given the perceived challenges stemming from a lack of scientific certainty and a conservative legal culture.

By facilitating community engagement and fostering extensive support networks, a bottom-up type of approach between supporting professional organizations and claimants is likely to yield positive effects even during the implementation stage of rulings—as robust support structures have been identified as crucial for social rights litigation to achieve transformative potential. Furthermore, pursuing legal actions with a broader scope in more progressive legal traditions appears to liberate the legal imagination of these organizations, enabling them to effectively incorporate the intricate relationship between health vulnerability and social challenges into their strategic approaches.

89 Sandra Botero, Daniel Brinks and Ezequiel Gonzalez-Ocantos, 'Working in New Political Spaces: The Checkered History of Latin American Judicialization' in Daniel M Brinks, Ezequiel A Gonzalez-Ocantos and Sandra Botero (eds), The Limits of Judicialization: From Progress to Backlash in Latin America (CUP 2022).
Regarding the climate lawsuits’ output dynamics, it is worth noting that the prominent legal expertise of all adjudicating courts enabled them to leverage both scientific knowledge and the human rights framework as pivotal components in their climate-favorable reasoning. Submissions of amicus curiae from various organizations provided a further significant resource for judges to broaden their comprehension of claimants' health concerns. In this regard, the invaluable on-site inspections conducted exclusively by Colombia’s Constitutional Court reinforced this understanding. Furthermore, marked differences among MDSD (Colombia and Ecuador vs. Chile and Mexico) cases underscore the instrumental role legal cultures play in addressing localized forms of health vulnerability: the prospect of judges innovating to expand redress measures beyond the framework of legal actions seemed remote in Chile and Mexico, while courts in Colombia and Ecuador pursued this comprehensive approach as much as possible. However, even in these "ideal" cases that aimed for comprehensive redress measures, they did not go far enough to address the inadequate healthcare access that further intensified people's vulnerability. The need to preserve legitimacy by refraining from encroaching on Executive branches or compromising the national budget factored into these considerations.

Lastly, it is worth noticing that these findings reflect a phenomenon that is not unique to Latin America. Prior research on social rights litigation in countries like India and South Africa has similarly underscored that the transformative potential of constitutions goes beyond the black letter of the law.90 Experiences in these nations also show that litigation

strategies and their socio-political contexts can influence the litigation process in ways that may not always fulfill expectations regarding the advancement of rights for the most vulnerable.

4.6 Conclusion

The five cases analyzed showcase the varied approaches employed by the judicial system to address health concerns related to climate change by "climatizing" this right. Each case has the potential to generate diffuse health benefits by promoting climate action at the ecological level through the reduction of GHGs. In theory, preventing global temperatures from reaching catastrophic levels should benefit everyone. However, such optimistic outlook assumes that all individuals are equally vulnerable to the impacts of climate change. In Latin America, this is not the case. Health vulnerability is starkly differentiated among populations experiencing poverty and social exclusion. This unequal distribution highlights a crucial, context-specific aspect that climate litigation has only partially addressed. Of the five cases examined, only two provided an "ideal" avenue for redressing these heightened forms of health vulnerability.

In the cases where health crises were addressed most comprehensively—albeit not fully—particularly by implementing redress measures that considered the socio-ecological vulnerability spectrum of claimants, the socio-political circumstances were nearly exceptional. This suggests that while it is not impossible to tackle such issues through the judicial pathway, it is far from being the norm. For vulnerable populations to access the legal expertise of a civil society organization that emphasizes a bottom-up approach within a socio-ecological framework, several challenging conditions must be met. These include open legal standing rules, a progressive legal tradition, and judges committed to claimants' social
context, who are willing to resist intimidation from political branches. This challenging journey seems difficult to embark upon. At present, the ecological dimension of health vulnerability appears to have a more straightforward route within the judicial system. It remains uncertain, however, how this unidimensional focus will impact the pursuit of justice for those most affected by ongoing climate impacts in Latin America. Additionally, it is unclear whether this approach will effectively lead to a greener but still impoverished landscape, leaving those affected without proper remedies.

This chapter has highlighted the often-overlooked socio-political factors that influence the extent to which health concerns of the most vulnerable populations are addressed in climate litigation, subsequently affecting the outcomes of these cases. By examining the input and output dynamics arising from the inequality contexts of selected case studies, the findings presented here are not meant to be generalizable. Nevertheless, they offer valuable insights into the remaining opportunities and challenges associated with promoting climate justice for health in settings marked by significant inequality, even after "climatizing" the right to health. Using the human rights framework ship metaphor, this chapter has demonstrated that climate litigation has yet to produce a more specific patch for the distinctive, yet unseen leaks on the ship's underside. This patch requires no extension, but rather meticulous threading and installation. To accomplish this, a mechanism must be in place that amplifies the voices of the most vulnerable, grants them standing, allows broad redress, and fosters autonomy and authority while discouraging excessive formalism within the judiciaries.

As the world increasingly seeks to address multifaceted challenges, such as climate change, through litigation, future research on cases in lower courts, those negatively
adjudicated, and the cases' implementation stages becomes essential. Nevertheless, the foundational insights provided by this chapter cast an initial light on the complexity that climate litigation introduces to the purview of courts, especially in contexts characterized by situated inequalities that diverge from litigation in Global North geographies. Here, navigating the Anthropocene necessitates comprehensive approaches across the socio-ecological spectrum of vulnerability, a need ever more evident in the inroads between climate change and health.
CHAPTER 5
CONCLUSIONS

5.1 Introduction

This dissertation has explored the multifaceted intersections between climate-related health concerns and Latin America's climate litigation landscape. By employing a layered analysis, it has progressed from an overarching examination of the corpus of lawsuits (77 cases of which 61 are rights-based) and their relationship with health issues to a more nuanced, in-depth inquiry into the socio-political and legal underpinnings of five selected case studies within their inequality contexts. This comprehensive approach necessitated an evaluation and recognition of the input and output dynamics that influenced litigation outcomes. Hence, the study scrutinized claimants' and courts' profiles, opportunity structures, resources, motives, and legal foundations, linking these factors to the manner in which the right to health has been invoked in litigation—or “climatized—to tackle health crises and thus promote climate justice.

The ensuing Sections reexamine the dissertation's question, progressively delving into the input and output dynamics of the litigation process through its multifarious layers of analysis. This ultimately paves the way for a conclusive synthesis of how health crises manifest in climate litigation and how this avenue is currently addressing them. To achieve this, Section 5.2 summarizes the findings from each of the three monographs in an
interdependent manner, and expands upon their arguments by discussing the opportunities and constraints they imply for climate litigation to advance health protection in contexts characterized by pervasive poverty and social exclusion. It then proceeds to discuss the broader implications of the findings for scholarly and practical advocacy and judicial work (Section 5.3) and identifies potential avenues for future research (Section 5.4).

In Section 5.2, the conclusion begins to revisit the research question, *how do health crises emerge within, and how are these tackled by courts, through domestic climate litigation in Latin America?* This review, encompassing the three monographs, elucidates the complementarities between the right to health and the concept of climate justice, allowing for a more profound understanding of the socio-ecological dimensions of health vulnerability (as expounded upon in Sections 1.2 and 1.5). The synthesis further clarifies the complex interplay between the socio-political context of climate litigation and the employment of normative tools in the legal sphere. Specifically, by linking the findings of each monograph, this Section points to how such dynamics operate across the four selected national landscapes, ultimately casting light on the broader patterns and trends in Latin American climate litigation.

Section 5.3 delves into the broader implications of this research for current scholarship and litigation efforts, examining the potential for climate lawsuits as mechanisms for addressing health crises and promoting climate justice. This discussion highlights both the opportunities and limitations of litigation strategies, drawing upon the case studies analyzed throughout the dissertation. It also considers the role of courts in helping to navigate the ever-increasing health challenges posed by climate change, particularly in contexts marked by pervasive poverty and social exclusion.
Lastly, Section 5.4 identifies promising avenues for future research, acknowledging that this dissertation represents only a preliminary foray into the complex and evolving field of climate litigation and health crises. Potential research trajectories include expanding the geographic scope of analysis, exploring the implementation stage of rulings, diversifying the selection criteria for case studies, and investigating novel legal strategies to address health concerns in the context of climate change. By outlining these future directions, the dissertation emphasizes the importance of continued scholarly inquiry into this critical area of study, with the ultimate aim of furthering climate justice and safeguarding public health in an era of unprecedented challenges.

5.2 Revisiting the Research Question: How do health crises emerge within, and how are these tackled by courts, through domestic climate litigation in Latin America?

This dissertation concludes that health crises within Latin American domestic climate litigation emerge and are addressed by courts in a constellation of ways; however, none of these approaches are yet comprehensive enough to tackle the full socio-ecological spectrum of health vulnerability. This partial manifestation of health crises is underpinned by the intricate interplay between claimants' and judges' socio-political realities, which shape their framing, understanding, and utilization of normative tools. Specifically, while the right to health has emerged as a prominent instrument in climate litigation, the social dimension of vulnerability (health’s relationship with poverty and social exclusion) remains only partially addressed. For the most part, climate litigation serves as a platform for ecological concerns, with only a few instances addressing and seeking redress for the underlying socioeconomic factors that exacerbate health crises—such as the lack of access to resilient healthcare. The
research contends that the judicial pathway is not currently sufficient as the sole mechanism for promoting comprehensive climate action.

Nonetheless, there is potential for improvement by broadening strategic and interpretative horizons to account for the realities of those for whom it is most challenging to access the judicial pathway—ultimately fostering what Daniel Brinks and Varun Gauri refer to as "shared policy spaces" from a multidimensional perspective.¹ For this, socio-ecological bottom-up approaches of litigant civil society organizations, adopting open legal standing rules, embracing broad-ranging remedial designs within progressive legal traditions, and deepening judges’ understanding of claimants' social contexts seem to be crucial components. Currently, these prospects appear more likely to materialize in Colombia and Ecuador than in Chile and Mexico.

Chapter Two² provided a general overview of Latin America’s corpus of climate litigation and its relationship with health issues. This overview made it clear that this phenomenon is at the forefront of climate justice quandaries because, unlike climate lawsuits filed in Global North jurisdictions, the climate vulnerability in Latin America is exacerbated by the region's pressing socioeconomic challenges, which manifest themselves in its cases. By applying SCA to such a body of lawsuits, I found that even when 52% of these lawsuits (32 out of a total of 61) appeal to the right to health in this region, there is a constellation of

ways in which claimants and courts invoke and substantiate (“climatize”) this right, with varying degrees of emphasis on the socio-ecological spectrum of health vulnerability.

To facilitate the discussion of the implications of this constellation for climate justice in litigation, Chapter Two introduced a “climate justice gradient” (Figure 5) categorizing how claimants and courts framed and addressed climate-related health issues based on their positions along the socio-ecological spectrum of vulnerability. The gradient was constructed based on the theoretical and legal intersections between the right to health and climate justice, with a particular emphasis on the concept of vulnerability (developed in Chapter Two and presented in Table 3).

The extreme right side of the gradient (the darkest shade) represents the hypothetical closest alignment between the use of the right to health in climate litigation and climate justice. Following the theoretical framework summarized in Table 3, this area assumes that the full realization of the right to health serves as a pathway to climate justice when it includes mitigating the occurrence of climate impacts and ensuring that the most vulnerable populations have access to the health systems necessary to cope with such adverse effects. Therefore, the further to the right side of the gradient a case is, the greater its implications are in terms of the distributive, procedural, and corrective dimensions of climate justice.

The categorization of climate lawsuits facilitated by the gradient unveiled two significant aspects present across the analyzed cases. First, cases where claimants exhibited greater vulnerability (owing to their direct health impacts from climate change-inducing activities or climate change itself, coupled with residence in impoverished areas) employed the right to health to seek protection for both social and ecological dimensions of climate vulnerability. Such cases led to judicial reasoning that incorporated contextual analysis of the
claimants' precarious living conditions, culminating in the implementation of measures to assess health impacts or even provide healthcare infrastructure. Conversely, claimants solely concerned with the ecological dimension of vulnerability experienced resolutions consistent with this view on vulnerability—cases brought by NGOs working exclusively on environmental agendas.

The second aspect unveiled by the climate justice gradient is the absence of any analyzed cases comprehensively addressing both ecological and social dimensions of climate vulnerability. This gap can be ascribed to these cases' failure to fully harness the normative potential of the right to health in relation to climate justice, which is an unsurprising outcome of the fragmentation observed between human rights and climate change law in the claims and judgments examined in Chapter Two. Despite the claimants' social contexts playing a crucial role in their experience of adverse health effects due to climate change or climate change-inducing activities, none of the judgments delved into the normative content of the right to health within the context of states' obligations to mitigate and adapt to climate change. In other words, none of the judgments mandated comprehensive redress of such ill-effects through the provision of resilient health systems that claimants lacked.

Chapter Two's classification of Latin America's climate litigation cases along the climate justice gradient did not imply that none of them could ultimately lead to achieving climate justice. Instead, it indicated how some cases had the potential to address more localized inequalities that rendered certain populations disproportionately susceptible to climate change effects. Importantly, the climate justice gradient emphasized the implications of differentiated vulnerabilities and legal fragmentation across the distributive, procedural, and corrective dimensions of climate justice. While all analyzed cases mandated the
participation of affected individuals and groups in decision-making (procedural justice), they only partially fulfilled the distributive and corrective aspects. In terms of these latter aspects, the lawsuits' cursory attention to the social contexts of claimants resulted in a failure to identify the most vulnerable segments of society. Consequently, the focalized protection required by the right to health and climate change law was not provided—which, in turn, impeded the call for direct redistribution efforts. As a result, these cases promoted corrective measures aimed exclusively at restricting or ceasing activities harmful to the environment and health but did not address the absence of health systems that exacerbated claimants' already apparent climate-related health conditions.

Halting environmentally detrimental activities is crucial for attaining climate justice, as it generates collective benefits, including non-claimants. From this viewpoint, it is conceptually challenging to assert that anticipated collective positive impacts could be unsuitable for the most vulnerable populations. Therefore, this chapter argues that the issue is not merely about scale (collective v. individual benefits), as social rights litigation has mainly suggested, but rather encompasses multidimensionality (social and ecological aspects of vulnerability). The chapter thus maintains that such measures are not unsuitable but insufficient. It highlights that an exclusive focus on the ecological dimension neglects the contextual social challenges faced by claimants, which have been shown to both exacerbate and be exacerbated by climate change.

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Furthermore, although Chapter Two seemed inclined to recommend a shift toward the right end of the climate justice gradient, it cautiously refrained from adopting a prescriptive stance. The SCA was not a suitable method for addressing critical questions central to unraveling the legal and socio-political constraints and possibilities that claimants and courts face in better aligning with climate justice. Overcoming this incomplete understanding of Latin America's climate litigation is essential for prescribing how climate litigation can tackle health crises; thus, Chapters Three and Four aimed to delve into a deeper layer of analysis through doctrinal and contextual analyses and interviews.

Chapter Three delved into the legal sphere of climate lawsuits by applying doctrinal analysis to the first three case studies, specifically, two constitutional cases in Colombia and one in Ecuador. It sought to illuminate how the right to health intersected with climate change law in these cases to establish state responsibility and corresponding remedies for acts and omissions that endangered people's lives and health.

To contextualize the use and significance of the right to health in Latin America's climate litigation, Chapter Three initially examined the legal intersections between this right and international climate change law, as interpreted by existing international and domestic human rights case-law on climate and environmental issues, and human rights treaty bodies. This step was crucial to address the current jurisprudential gap on climate change and human rights, which Wewerinke-Singh identifies as "the greatest methodological challenge" in integrating both fields of law. Consequently, in considering such intersections, Chapter

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Three's doctrinal analysis focused on (i) the prevention, precautionary, and progressivity principles and (ii) substantive and procedural obligations, drawing on precedents established by (in alphabetical order) the European Court of Human Rights, the Human Rights Committee, the IACtHR, the IACHR, the CESCR, and the OHCHR.

Chapter Three built upon Chapter Two's findings, noting that the quantitative prominence of the right to health in case argumentation in Latin America's climate litigation (observed in Chapter Two) was also qualitative. In the case studies, this right was utilized to demonstrate legal standing, helping overcome procedural barriers. It also served to substantiate states' responsibility to apply the prevention and precautionary principles and ensure the participation of affected individuals and communities. For example, in the *Future Generations v. Ministry of the Environment and Others* case in Colombia (filed in 2018 by a group of children and youth before the Superior Tribunal of the Bogotá Judicial District), the country’s Supreme Court reversed the lower court’s dismissal of the claimants’ petition, ultimately ruling in their favor. To do so, this high court considered the right to health in two synergistic ways. First, it recognized claimants' legal standing by conceding that the tutela action was indeed the appropriate means for them to request judicial protection as the realization of their individual right to health was interdependent and thus substantially determined by the (collective) right to a healthy environment. Second, grounding its reasoning on the ICESCR (article 12), the Paris Agreement, the National Constitution, and

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national jurisprudence, this court provided that the state’s failure to cease the degradation of the Amazon forest contravened its responsibility to protect such right.\textsuperscript{7}

The Chapter enlisted the legal precedents affording the right to health legal principles and duties suitable for addressing the environmental and social dimensions determining people's vulnerability to climate change. At the same time, it identified that not all cases uniformly harnessed this normative potential nor to its fullest extent. This analysis further revealed that, in interpreting and vindicating the right to health in connection with climate concerns, its ecological dimension (reducing GHGs and thus mitigating climate change) can take precedence over the social dimension (ensuring access to healthcare systems necessary for reducing claimants' vulnerability to climate change). The Chapter concluded that the comprehensive utilization of the right's normative potential by claimants and judges may depend on how they interweave climate concerns with their highly interconnected development challenges. In other words, it exposed that while the use of the right to health within constitutional climate lawsuits in the region seems to be quantitatively and qualitatively prominent, this deployment has only partially tapped into the full normative potential of the right when addressing the intricate forms of health vulnerability arising from the intersection of climate change and Latin America's unique social context. The Chapter thus suggested the need to discern the reasons behind this phenomenon, which was explored in the subsequent Chapter Four.

The conclusions drawn from Chapters Two and Three align with the prevailing trends in scholarly research exploring the intersection of human rights and climate change law within climate litigation. A small but growing body of academic work suggests the potential

\textsuperscript{7} Idem, p. 39.
integration of these legal fields in the pursuit of climate justice,\textsuperscript{8} with the most progressive perspective urging a reevaluation of theoretical, doctrinal, and advocacy efforts towards the “climatization of rights.”\textsuperscript{9} In this regard, the initial chapters of this dissertation reveal that the analyzed cases have indeed "climatized" the right to health by grounding their arguments on this right; yet, at the same time, they reveal that none of these lawsuits managed to fully harness the right's complete potential to address the social and ecological dimensions of health crises. In shedding light on this partial emergence of health crises, Chapter Three’s conclusions posed the question of why this happens, which Chapter Four further examined.

Chapter Four\textsuperscript{10} drew upon the epistemological insights offered by scholarship on social rights litigation,\textsuperscript{11} with particular emphasis on Siri Gloppen's analytical framework, whose focus on the socio-political dimensions of lawsuits holds analytical relevance for examining the role of courts in addressing health crises.\textsuperscript{12} This Chapter scrutinized the input and output dynamics using five constitutional climate lawsuits as case studies across Chile,


\textsuperscript{9} César Rodriguez-Garavito, “Climatizing Human Rights: Economic and Social Rights for the Anthropocene” (SSRN Scholarly Paper, 18 October 2022) 29.

\textsuperscript{10} Thalia Viveros-Uehara, “Addressing Health Crises through Courts? Understanding Inequality in Latin America’s Climate Litigation,” \textit{Climate Litigation in the Global South} (forthcoming). This article has been accepted for publication as a book chapter and submitted for peer-review to the Climate Litigation in the Global South Project, expected publication date: early Spring 2024.

\textsuperscript{11} For a discussion of landmark contributions in social rights litigation scholarship, please refer to Subsection 1.5.1.2 of the Literature Review (Section 1.5 in Chapter One).

Colombia, Ecuador, and Mexico, which Table 2 presents. It did so through contextual analysis and interviews with involved actors to examine why the cases frame and address health vulnerabilities in varying ways, often lacking comprehensiveness. Each lawsuit entailed the respective country's available constitutional proceeding (representing the most direct domestic manifestation of human rights law), invoked the right to health, and was adjudicated in a positive way (in favor of claimants who seek to advance climate action). The selection of these cases adhered to the logic of the MSSD and MDSD for comparative inquiry, which focuses on similarities and differences between countries, treating common characteristics as “controlled.”

The four selected countries face social challenges that result in unequal vulnerability to climate change among their populations and display features of the NLAC (“controlled” characteristics). However, they demonstrate notable similarities and differences in how their constitutional justice systems have advanced social rights, including the right to health. Constitutional justice in Colombia and Ecuador has been more receptive to judicializing the right to health, given the improvement of their constitutional systems in terms of authority and autonomy over the years. In contrast, Chile's and Mexico's constitutional adjudication has taken a more conservative approach to engage with challenges experienced by

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13 In Chapter One, Section 1.3 provides an in-depth examination of the comparative rationale behind choosing case studies, along with considerations pertaining to data validity and the selection of appropriate methodologies.

individuals living in poverty and social exclusion.\textsuperscript{15} Hence, for the purpose of Chapter Four’s analysis, MSSD comprised, on the one hand, Colombia and Ecuador, and on the other, Chile and Mexico. MDSD consisted of any cross-reference between both groups. Their comparison helped trace how similarly and differently their socio-political contexts, embedded in the claimants' and courts' profiles, opportunity structures, resources, and motives, influenced the adjudication of the right to health in constitutional climate lawsuits, which outlined useful directions for how climate litigation can address health crises.

A close examination of the cases' socio-political contexts and their interplay with the right to health unveiled similarities and differences across MSSD (Colombia and Ecuador, Chile and Mexico) and MDSD (Colombia and Ecuador v. Chile and Mexico) cases, which seemed to bear implications on claimants' and courts' capacity to more effectively address health crises. A prominent similarity in the input dynamics across the five examined cases is the involvement of professional civil society organizations. However, differences among the MSSD reveal that the focus areas and methods of engagement with situated concerns employed by these organizations—along with strategic decisions influenced by the constraints of the protection actions’ architecture and legal culture—have a considerable impact on the framing of health crises in climate litigation and the pursued remedies.

In both the *Center for Social Justice* (Colombia) and *Herrera Carrion and Others* (Ecuador) cases, where claimants framed concerns encompassing the ecological and social dimensions of health vulnerability and courts ordered redress measures accordingly, their supporting organizations employed a bottom-up approach that placed claimants' realities at the core of the legal strategies. In contrast, the *Future Generations* case (Colombia) demonstrates how a top-down approach, driven by well-intentioned legal experts, leans more toward unidimensional ecological concerns.

The cases in Chile and Mexico demonstrate the strategic decisions that civil society organizations must make in contexts with more limited legal maneuverability. The *Mejillones Tourist Service Association* case (Chile) neither expanded upon nor sought redress for the health impacts experienced by local residents and their difficulties in obtaining medical care. This omission resulted from a strategic decision made in collaboration with the supporting organization to maximize the likelihood of achieving a positive outcome in litigation, given the perceived challenges stemming from a lack of scientific certainty and a conservative legal culture in the country’s judiciary branch.

Regarding the climate lawsuits’ output dynamics, Chapter Four highlighted how the prominent legal expertise of all adjudicating courts enabled them to leverage both scientific knowledge and the human rights framework as pivotal components in their climate-favorable reasoning. Submissions of *amicus curiae* from various organizations provided a further significant resource for judges to broaden their comprehension of claimants' health concerns. In this regard, the invaluable on-site inspections conducted exclusively by Colombia's Constitutional Court reinforced this understanding.
Marked differences among MDSD cases (Colombia and Ecuador v. Chile and Mexico) underscored the instrumental role legal cultures play in addressing localized forms of health vulnerability: the prospect of judges innovating to expand redress measures beyond the framework of legal actions seemed remote in Chile and Mexico, while courts in Colombia and Ecuador pursued this comprehensive approach as much as possible. However, even in "ideal" cases within these latter countries that aimed for comprehensive redress measures (such as the Center for Social Justice and Herrera Carrion and Others cases), they did not go far enough to address the inadequate healthcare access that further intensified people's vulnerability. The need to preserve legitimacy by refraining from encroaching on executive branches or compromising the national budget factored into these considerations.

The progressive analysis presented in Chapters Two, Three, and Four allows us to recognize that health crises do indeed emerge in both claimants' narratives and judges' rulings to varying degrees. However, the social dimension of health vulnerability consistently went unacknowledged in all of these cases, leading to insufficient redress through litigation. Health crises have only been partially addressed through this judicial avenue, as the most vulnerable groups face significant challenges in ensuring their experiences are not only adequately represented before the courts, but also reflected in the available standing and remedial design.

For a case to effectively recognize and redress the intricate ways in which the social aspects of health vulnerability intertwine with the ecological dimensions of climate change, certain “extraordinary” conditions must be met. For now, at least, this presents a formidable journey to undertake. On one hand, the concerns of the most affected populations should be prioritized in legal strategies, for which partnering with professional civil society
organizations that emphasize bottom-up approaches appears essential. Additionally, this should occur within constitutional mechanisms that enable open legal standing rules, broad redress measures, including integral reparations, and within a progressive legal culture—qualities currently exemplified by only Colombia and Ecuador. Consequently, the judicial pathway cannot currently be considered the sole instrument for promoting comprehensive climate action aligned with countries’ development trajectories, particularly with respect to health challenges.

The conclusions derived from my research trajectory do not materialize in isolation. While they are far from coincidental, building upon long-standing debates that have garnered significant academic attention, they also open new horizons by embracing the complexity of climate change-health intersections through a transdisciplinary approach. Both these points of intellectual departure and destination are interconnected. The scholarly discussions that my conclusions have revisited are now called to incorporate new conceptual threads concerning the ever-increasing complexity of challenges arising from the combination of the rising global temperature, poverty, and social exclusion.

Specifically, the scholarly works engaged by this dissertation reflect enduring tensions between situated perspectives, primarily (1) the environmental v. social ("green" v. "brown") concerns and (2) the individual v. collective logics of litigation’s distributive effects. Although delving into the heart of each of these issues falls beyond the scope of this dissertation, it is essential to delineate at least how they informed my point of departure and how the conclusions reconnect with these (yet unresolved) debates. Please note that such final remarks do not pertain to the overarching academic implications of the dissertation, which the subsequent Section 5.3 emphasizes. Instead, they delve into specific intellectual
concerns that I deem relevant to tackle as the judicial pathway becomes increasingly utilized for navigating the health-related complexities of the Anthropocene.

The intricate relationship between health and climate change unfolds along multiple dimensions, each manifesting differently across regions. In the making of the international climate change regime and the spread of transnational and national climate litigation, for example, the so-called Global North predominantly champions a “green” stance (reducing GHGs), while countries of the Global South have traditionally emphasized the importance of considering pressing social concerns. As I embarked on my research trajectory, these geographically situated perspectives inevitably permeated my data and thought processes. This was particularly evident given my unique positionality as a Mexican scholar pursuing a doctoral degree in the United States of America and studying a global phenomenon in the Latin American region during a research stay in Germany.

The onset of a global pandemic in 2020 compelled me to question how the occasionally conflicting green v. social dimensions of the health-climate change nexus could lead to more constructive horizons, either separately or synergistically. The COVID-19 pandemic's devastating impacts, as I began developing my research design, are an experience inextricably linked to the formation of this research project. The pandemic underscored our macro-ecological interconnectedness, while also highlighting the importance of local social and health infrastructure. Most importantly, this is the lesson that my focus on health brings to the table: reminding us that climate change, while inherently global, is simultaneously deeply intertwined with situated realities. Although every individual on this planet is susceptible to its impacts, not all are equally vulnerable. Thus, as both the ecological and the

16 This debate is presented in Subsection 1.5.1.1 of Section 1.5 (Literature Review), Chapter One.
social dimensions shape health vulnerability, any attempt to build resilience should integrate these dimensions rather than promoting the predominance of either.

The right to health distinctively encompasses all these dimensions—unlike, for example, the predominant ecological focus of the right to a healthy environment. This distinction offers exceptional analytical value for considering the manifestations of situated vulnerabilities across regions, countries, and societies. My research drew on such a potential. As the first transdisciplinary exploration of Latin America's corpus of rights-based climate litigation through the lens of the right to health, it accorded equal significance to both ecological and social dimensions. In doing so, it identified a prevailing ecological inclination in current climate litigation (curtailing climate change inducing activities) and, consequently, highlighted the necessity for increased focus on addressing underlying social challenges (ensuring access to treatment and alleviation of ongoing climate-related and exacerbated health conditions).

The second tension my research navigated pertains to the individual v. collective logics of examining litigation's distributive effects. Landmark works on the right to health litigation have assessed this phenomenon’s impacts on the most vulnerable populations according to the individual and/collective scope of claims and judgments. This presupposes that those pursuing individual interests trigger courts’ “anti-poor” tendencies, unlike demands seeking collective benefits. My research did not examine the implementation stages of the cases—and therefore, did not assess their actual distributive effects, which Siri Gloppen

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17 See Table 3.  
18 Please, see note 3 above.
refers to as “success” in the material and social senses. However, it focused on the expected outcomes of implementation, considering the distributive, procedural, and corrective aspects of climate justice as represented in the redress measures outlined in the rulings. For instance, rulings that did not explicitly mention any type of redress measure were not considered to yield such expected results. This anticipated approach is not uncommon in the climate litigation literature as lessons are progressively being sought and applied to employ the judicial pathway more effectively when addressing issues with profound social, economic, and political foundations.

This individual v. collective analytical dichotomy presented a conceptual challenge to my work, as I sought to identify the circumstances in which even expected collective benefits might not significantly benefit the most vulnerable sectors of society. Many wonder, how could ensuring a healthy and safe environment be anything but beneficial for populations living in poverty and social exclusion? By only focusing on the ecological dimension of their vulnerability, however, I argue that climate litigation may not de facto yield ideal outcomes for these groups. Employing the multidimensional lens of the right to health proved particularly insightful as it prompted a much-needed nuanced understanding of the term "collective." The collective implications of this right encompass both ecological and social dimensions—a safe environment as well as access to resources for treating and curing climate-related and exacerbated health conditions. From this starting point, it becomes

20 The relationship between the normative content of the right to health and the three components of climate justice (distributive, procedural, and corrective) are developed in Chapter Two. Please, see Table 3.
conceptually more straightforward to argue that court-ordered provisions for a healthy and safe environment are insufficient for populations living in poverty and social exclusion as these groups also require justice in the form of access to essential infrastructure—as interviewed claimants attested. In the context of climate change litigation, ideal outcomes ought not only be collective (or as Daniel Brinks and Varun Gauri refer to “shared policy spaces”) but also multidimensional.22 It is therefore troubling for the judicial pathway to ignore the pursuit of a dignified life in all its dimensions, especially for under-resourced claimants who have most times undergone lengthy, resource-intensive legal processes.

My conclusions reengage with the individual v. collective assessment logics of litigation’s distributive effects by emphasizing the importance of incorporating an additional layer in such an analytical matrix. Particularly when exploring the complexities of climate change in Global South contexts, the focus on collectivism obscures a more nuanced analysis able to capture how local precarious circumstances compound the health impacts of climate change. Both the collective and the individual must now also be viewed through their ecological and social dimensions. It is worth noting that all the cases I analyzed exhibited collective scopes. None of them advanced individual interests, as no claimants sought individual benefits on the basis of climate change arguments. For now, this seems not unreasonable as climate litigation is an emerging field, with novel litigation techniques only beginning to develop. Additionally, my methodology concentrated on positive litigation—i.e., litigation that seeks to advance climate action, which historically, as mentioned earlier, has primarily pursued “green” collective goals.


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In Latin America, health crises surface within, and are addressed by, courts through domestic climate litigation in a partial manner, as this approach does not sufficiently consider the social dimension of climate change that exacerbates health concerns. While cases are expected to prompt collective ecological action, merely providing a safe climate may be insufficient if long-standing vulnerabilities rooted in poverty and social exclusion persist. To consider and overcome situated inequalities, the transdisciplinary approach of my research emphasized the value of driving a more equal playing field through the input and output dynamics of the litigation process: from professional civil society organizations strategizing with the most marginalized realities to questioning the extent to which remedial designs and legal cultures permit multidimensional redress measures that can harness the normative potential of the law. From this perspective, the transformative potential often ascribed to the human rights framework, including the right to health, is far from prompting a healthier future amidst a changing climate solely through legal text.

5.3 Scholarly and Practical Implications

This multi-monograph dissertation represents the first transdisciplinary inquiry of climate-related health concerns in Latin America's corpus of rights-based climate litigation, specifically through the lens of the right to health. As a singular component within the broader architecture of knowledge, it offers valuable contributions while acknowledging its inherent methodological and epistemological limitations. These contributions hold implications for both the scholarly and practical realms. Building upon the epistemological foundations of existing scholarship on climate change and social rights litigation, development and climate change, and human rights and climate change law, this study has provided reciprocal insights for each domain.
Firstly, by presenting a detailed examination of Latin America's climate litigation through the right to health lens, the present dissertation has contributed to filling the current geographic and thematic gap in climate litigation scholarship. This area of study has predominantly focused on jurisdictions in the Global North and on exploring the implications of the right to a clean and healthy environment. Furthermore, by moving beyond mere analysis of legal texts and drawing inspiration from the rich body of social rights litigation research, this study has illuminated the significance of socio-political contexts in shaping the input and output dynamics influencing the litigation process. Such empirical shift has expanded the horizons of current legal research on the intersections of human rights and climate change law, shedding light on how challenges beyond the legal sphere affect the widely praised integration process between both fields of law.

Moreover, this dissertation has examined the contributions of development studies within an operationalizing mechanism—the judicial pathway—by confronting this body of literature with practical dimensions, namely the litigation process's intricate connections with inequality. In doing so, it has offered a novel perspective that bridges the gap between theoretical insights and real-world applications, ultimately enriching the discourse on the complex interplay between climate change, human rights, and development.

In the practical realm, this research offers valuable insights into the complex interplay between claimants and judges, highlighting how their roles are either empowered or constrained by their socio-political contexts. For claimants, the study emphasizes the significance of adopting a bottom-up approach in litigation strategies, one that thoughtfully integrates the health concerns of the most marginalized populations and acknowledges the interwoven nature of climate change and development issues. By adopting this approach,
biases stemming from narrow (often exclusively environmental) agendas can be diminished. While strategies might be limited by the scope of legal recourse and perceptions of judicial authority's formalism, crafting narratives that encompass a wider socio-ecological spectrum of climate vulnerability is crucial in cultivating a “shared policy space” for health and climate change. As social rights litigation literature has shown, claimants’ narratives have the potential to inform and influence courts' reasoning, ultimately expanding their interpretative horizons toward situated realities that showcase the complex intersections of climate change with poverty and social exclusion.

For courts, this research illuminates the interpretative possibilities to foster a more comprehensive and nuanced approach to addressing health crises. While courts may be constrained by concerns surrounding legitimacy and the desire to avoid overstepping into the executive branch's domain, the study reveals crucial normative connections between the right to health and climate change law in relation to pressing development challenges. Consequently, even rulings that may appear overly demanding can be justified, as they are firmly rooted in the existing legal landscape. By embracing these interpretative horizons, courts can play a pivotal role in driving meaningful and equitable progress in the fight against climate change and its far-reaching health consequences, which disproportionately burden marginalized populations.

Finally, it is essential to recognize that this singular contribution to knowledge comes with inherent limitations. Focusing on a world region characterized by shared socioeconomic challenges and a significant historical background, the study does not provide a systematic examination of each individual country. Nor does it cover all types of climate lawsuits. As a result, it reveals common observable features that are not universally applicable to every
lawsuit. Nonetheless, the research offers valuable insights into how the analyzed variables shape the complex interplay between climate change and health within the judicial pathway, particularly in settings burdened by significant access inequalities. With climate litigation being a rapidly evolving phenomenon, these insights will soon require reevaluation and adaptation in response to an ever-changing landscape. This research seeks to serve as a foundation for such future inquiries.

5.4 Exploring New Research Frontiers

The theoretical and practical implications derived from this research's insights can be further investigated to strengthen the role of climate litigation in promoting climate justice, especially in settings where pervasive poverty and social exclusion distinctively compound climate change challenges. To this end, it is vital to consolidate the knowledge base by broadening the assessment to encompass a larger number of cases and their implementation stages, as they continue to emerge and case documentation becomes increasingly accessible. Additionally, focusing on low-profile cases and those adjudicated negatively can illuminate more diverse experiences and barriers to securing favorable court rulings. In this regard, gaining insights directly from the experiences of claimants and judges has proven to be essential. Furthermore, applying a transdisciplinary framework to assess other specific rights within the judicial pathway that are closely associated with climate change—such as the right to adequate food or housing—may augment our comprehension of how interconnected development challenges can be more effectively tackled through the growing wave of climate litigation.
Thalia Viveros Uehara, originally from Xalapa, Mexico, draws deep influence from her roots—a fusion of rich cultural heritage, natural surroundings, and unique socioeconomic complexities. Such conditions have nurtured her profound connection with the environment and fostered a commitment to addressing social injustices. Driven by these passions, she charted her academic course, culminating in the achievement of dual Bachelor's degrees in Laws (LL.B) and Environmental Engineering (B.Eng.) from the University of Veracruz.

Taking a step further in her educational journey, Thalia was privileged to receive the Chevening Scholarship from the Foreign and Commonwealth Office of the United Kingdom. This opportunity enabled her to deepen her expertise with an MSc in Environmental Policy and Regulation from the London School of Economics and Political Science. Simultaneously, she sought to broaden her horizon in the human rights domain, achieving this through a Diploma in Human Rights Law from the European University Institute.

Leveraging such educational foundation, Thalia then applied her expertise towards societal betterment, with a focus on her native Mexico. Over the course of a decade, she took on the roles of Advisor to the Environment Commission of the Senate and Director of Advocacy and Civil Society Participation at the National Human Rights Commission.

Thalia's doctoral studies in Global Inclusion and Social Development at the University of Massachusetts Boston provided her with regional and global perspectives that
invariably interconnect environmental and social challenges. While working towards her
degree, she lent her research skills to the Boston Human Rights Commission. Moreover, the
breadth of her doctoral dissertation led her to undertake a research stay at the Max Planck
Institute for Comparative Public Law and International Law in Heidelberg, and subsequently
to affiliate with the Centre on Law and Social Transformation at the University of Bergen.
These experiences allowed invaluable exchanges with human rights activists and experts,
particularly those focused on Latin America, significantly enriching her research.