The Inter-American Court of Human Right's Opinion on Climate Emergency and Science: A Vindication of a "Forgotten Right" and a Call for Evidence-Based Polices

By:

Salvador Herencia-Carrasco

11 August 2025

Introduction

On July 3rd, the Inter-American Court of Human Rights (IACtHR) released its Advisory Opinion (AO) on Climate Emergency and Human Rights. This Advisory Opinion (AO-32/25) establishes a series of obligations on states to address the climate emergency under the umbrella of the American Convention on Human Rights, the San Salvador Protocol and other Inter-American instruments. AO-32/25 is groundbreaking.

In a previous post on Afronomicslaw, with Prof. Danielle Pamplona, we presented the main findings of the AO, while focusing on the business & human rights obligations set by the IACtHR. This time, my purpose is to explore the section on the right to science (paras. 471-487) and its importance for states to adopt evidence-based policies to address and mitigate the impact of climate change.

The section on the right to science is brief, only 16 paragraphs long, However, not a single paragraph of this section goes to waste. The Court not only recognizes the importance to use science as a mean to adopt and implement sound policies, but it looks like it is a way for the Court to address bigger issues that we are seeing in the world right now.

The Right to Science

The right to science is au autonomous right found in different international human rights instruments. The Universal Declaration on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the American Declaration on the Rights and Duties of Man, the Protocol of Salvador Protocol on Economic, Social and Cultural Rights, and the Charter of the Organization of American States are some of the instruments that recognise it, including the right to enjoy the benefits of scientific and/or technological progress.

Building on these instruments as well as General Comment No. 25 of the UN Committee on Economic, Social and Cultural Rights, recently the International Science Council adopted an interpretation on what a right to science entails, identifying two main components: (i) the right to participate in science; and (ii) the right to enjoy the benefits of science.

Each of these components include different elements that states must fulfill. For example, the right to participate in science includes access, without discrimination, to the generation, production and dissemination of science; to collaborate and to challenge, through scientifically sound methods, established knowledge, among others. In the case of enjoying the benefits of science, this means not to be excluded from enjoying the benefits of science, an equitable access to information and the right to apply science for the good of humanity.

How is this relevant for the AO-32/25 on the climate emergency? The elements listed above are present throughout the entire Advisory Opinion. By using climate change law, the IACtHR emphasizes on the need for states to collaborate to address and mitigate the impact of climate change (paras. 247-265) and to base its policies in science (paras. 471-487). A significant section of AO-32/25 is dedicated to access to information and transparency (paras. 488-539) and to prioritize vulnerable groups that could be disproportionally affected by climate change (paras. 588-629).

The recognition of these components is important because it propels the state to foster the participation of all members of society in the production of science and scientific knowledge, but also that if science is a public good, all society should benefit from its benefits. In addition, if science is a right, then states must adopt appropriate administrative and judicial recourses to assure the protection of this right.

The Right to Science in the Advisory Opinion on Climate Emergency

AO-32/25 includes the right to science in the section focusing on the procedural rights that states must fulfill to address the climate emergency. As stated in the introduction, the section is rather brief but lays the foundation of an Inter-American approach to the right to science, while leaving room for further elaboration in future cases.

The IACtHR starts by listing the different documents that recognize the right to science (paras. 471-472), highlighting the different Inter-American instruments that include such right. In this context, the IACtHR sides with the UN Committee on Economic, Social and Cultural Rights to conclude that this right includes the "(…) access to the benefits of scientific and technological progress, as well as opportunities for them to contribute to scientific activity, without discrimination" (para. 473).

In addition, the Court states that the right to science is a substantial as well as a procedural right (para. 473). The Court considers that the realization of this right is fundamental for the enjoyment of other rights – of individual and collective nature- and a means for informed public decision-making. This classification is not just legal poetry, but standards with concrete legal implications.

The Court is telling states that climate change policies must be based on empirical evidence. Denying the existence of climate change or adopting unsound measures could mean a breach of their obligations under the American Convention on Human Rights and the Protocol of San Salvador. There is no surprise that in its first opinion (pg. 214, point 1) concluding AO-32/25, the IACtHR determines that “This climate emergency can only be addressed adequately by urgent and effective mitigation and adaptation actions, and by making progress towards sustainable development with a human rights perspective (….)".

Another important element in this section is that there is a subtle message for governments to invest in science. Latin America and the Caribbean are regions with minimal resources allocated to science and scientific research. According to a UNESCO 2021 report, Latin American governments invest only 0.70% of their GDP in research and development. This is better understood in AO-32/25 when the Court lists the different measures states must do to develop the right to science (para. 474).

The list includes, among others, invest in scientific indication, promote participation, foster climate change science and promote responsible use of science in a way that it benefits, not affects, vulnerable groups. So, if climate change is an emergency that requires cooperation (para. 475), and there is no doubt about it, states must allocate the necessary resources and means to promote, protect and guarantee a right to a healthy environment and the right to science.

Science, Local, Traditional and Indigenous Knowledge to Address the Climate Emergency

The second part of the section on the right to science focuses on the coexistence of scientific knowledge with local, traditional and indigenous knowledge (paras. 476-485). The Court first proceeds to define what each concept means (para. 476), concluding that the right to enjoy the benefits of science includes the knowledge provided by local and Indigenous Peoples (para. 477) and that states should protect their intellectual rights (para. 483).

This interrelation between science with local and traditional knowledge is not new for the IACtHR. The importance of this coexistence was used in its 2017

Advisory Opinion on the Environment and Human Rights. In addition, Art. 7, section 13 of the Escazú Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean as well as the Art. 7 section 5 of the Paris Agreement on Climate Change highlights the importance of this collaboration. In words of the IACtHR, the climate emergency must be addressed using the "best available knowledge" (para. 478), which includes the use of local, traditional and Indigenous knowledge. In the context of Latin America, the Court underscores the vital role that Indigenous and Afro-descendant communities have for the adoption of mitigation strategies (para. 479).

The main problem with this section is that it is purely aspirational and the Court obviates a fundamental social barrier. Coexistence implies a sense of respect and that different groups are perceived as equal or as peers. In Latin America, a region with structural and systemic discrimination towards Indigenous Peoples, racialized groups, women and other vulnerable populations, is Indigenous knowledge or local traditions seen or considered as rigorous as scientific knowledge? How much of this local, traditional and Indigenous knowledge is used by governments when discussing environmental or climate change policies? As an exercise, I would invite you to check how many of the 1092 footnotes included in AO-32/25 refer to local, traditional and Indigenous authors.

It is important to protect and promote the coexistence of science and knowledges (para. 484) to explore the different connections these might have (para. 480) to ensure "sustainability and effectiveness of decisions on climate mitigation and adaptation" (para. 481).

However, the IACtHR should have highlighted that to achieve this goal, states must address the structural barriers and the almost inexistent use of Indigenous knowledge in public policy. Therefore, if the Court wants to truly promote the protection of Indigenous women in the production and transfer of knowledge (para. 482), it is important to highlight measures a state must carry to achieve.

Vindication of Science

The final part of the section (paras. 485-487) vindicates the importance of science to produce sound polices to address the climate emergency. This section speaks to a context where there is an ill-founded distrust towards scientific knowledge, with governments underfunding and/or undermining the role of science and of scientific councils to produce evidence-based policy.

It should come as no surprise that, in the context of the climate emergency, the IACtHR concludes its chapter on the right to science by stating that "(…) in line with the findings of other international courts, that currently the best science available on climate change is compiled in the IPCC reports" (para. 487).

Conclusions and a Personal Homage

The Advisory Opinion on Climate Emergency and Human Rights will be fundamental to guide public policy and public interest litigation for years to come. Those working on climate change, the environment and human rights have a clear and extensive roadmap on what states, as well as businesses, should do to address and mitigate the impact of climate change. The recognition of the right to science by the IACtHR can also become a powerful tool to demand sound and evidence-based policy. The law, at least in the Inter-American Human Rights System, is clear.

I would like to conclude this post with a personal story. My father-in-law helped launch the climate change program in Canada in the late 70's. His academic background was in molecular spectroscopy and part of his work was to foster international cooperation on climate change. He was part of the Bureau of the Intergovernmental Panel on Climate Change when they were awarded the Nobel Peace Prize in 2007. We often talked about the importance of all sciences and the law to work together to mitigate and address the impact of climate change. We lost my father-in-law In March, but I believe that he would be happy to see how different international tribunals are assessing the binding obligations of states to address the impact of climate change with a human rights perspective.

Disclaimers

Disclaimer 1

The Human Rights Clinic of the Human Rights Research and Education Centre submitted a report to the IACtHR focusing on the business & human rights dimensions of this Advisory Opinion. You may read it, in Spanish, here: https://corteidh.or.cr/sitios/observaciones/OC-32/42_uni_ottawa.pdf

Disclaimer 2

No AI software was used in the research, revision or drafting of this article.

View online: The Inter-American Court of Human Right's Opinion on Climate Emergency and Science: A Vindication of a "Forgotten Right" and a Call for Evidence-Based Polices

Provided by Afronomicslaw