

Glimpses of indigenous rights before The Inter-American Court of Human Rights

Atisbos de derechos indígenas en la Corte Interamericana de Derechos Humanos

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Abstract

For almost four decades The Inter American Court of Human Rights (IACHR Court) has analyzed different cases where Indigenous rights have been on the spot. Among the cases analyzed, there are subjects such as minority, traditional lands, identity, political participation, religion. In these years, the IACHR has passed through three different periods with three different visions of these rights. This article explores five different subjects the IACHR has faced by studying their main arguments. A conclusion is presented arguing if the IACHR has become an activist court or not.

Note: Because of the words “The InterAmerican Court of Human Rights” and The Interamerican Commission of Human Rights” form the same acronym it will be differentiated by using the acronym “IACHR Court” for the first one and “IACHR Commission” for the second one.

Keywords: The Inter American Court of Human Rights IACHR, traditional lands, identity, political participation, religion

Resumen

Por casi cuatro décadas la Corte Interamericana de Derechos Humanos (CORTE IDH) ha analizado diferentes casos en los que los derechos indígenas se encuentran en el punto central. Entre los casos analizados se encuentran tópicos como las minorías, tierras tradicionales, identidad, participación política, religión. En estos años la Corte Interamericana de Derechos Humanos ha pasado por tres periodos diferentes con tres visiones diferentes sobre estos derechos. Este artículo explora cinco tópicos diferentes sobre los que la Corte IDH ha enfrentado mediante el estudio de sus argumentos. Al final se presenta una conclusión donde se analiza si se encuentra una Corte IDH activista o no.

Palabras clave: Corte IDH, tierras tradicionales, identidad, participación política, religión

SUMMARY

I. Introduction: The 3 phases of The IACHR on indigenous rights. II. The arguments. III. Traditional relationships with land and ownership. IV. Identity. V. Recognition. VI. Beliefs and religion. VII. Political participation. VIII. Closing Conclusions: What type of pluralism does the IACHR manage? IX. Bibliography.

I. INTRODUCTION: THE 3 PHASES OF THE IACHR ON INDIGENOUS RIGHTS

According to Rodríguez-Piñero (2010, p. 160) the IACHR¹ has gone across three dissimilar stages when analyzing indigenous rights. During this first stage, the Court considered Indigenous peoples to be an accumulation of individuals or groups simply constituted by individuals (Salmon, 2010, p. 38).

It was during this period in the 70's of the last century that the first case was resolved (Interamerican Court of Human Rights, 1974, 1976, 1984). It was a complaint against the Colombian state which alleged “acts of harassment and torture of indigenous peoples in the Planas region”, which belonged to the Guahibo people in Colombia.

“In that case the IACHR had an approach that moved around individual rights and ‘indigenist’ approaches. The second case was about the conditions of “slavery and other acts of genocide that were committed against indigenous peoples in Paraguay, especially against the Ache’s Indians”. There the Commission requested Paraguay to adopt “strong measures to effectively protect the rights of the Aché tribe. In these cases, (...) The Court adopted a rights protection approach in the light of the vulnerability of the group, as well as its cultural conditions” (Salmon 2010, p. 37).

A second stage started in the IACHR after a bunch of indigenous movements and protests that exposed among other things a lack of protection. Rodríguez-Piñero (2010, p. 161), describes it as “a second phase of interest for the situation of indigenous peoples, from the general standpoint of individual human rights, in the 1980s and mid-1990s”. Some of the most iconic cases solved by the IACHR are the complaints against Brazil and Nicaragua concerning the Yanomami and Miskito peoples, respectively. The Yanomami case received a lot of international attention; it was based on protecting them

and preventing the destruction of their lands after the settlement of farmers and miners, especially since the construction of a major road in 1973 that crossed the Yanomami territory.

And finally, and following the classification of Rodríguez-Piñero (2010, p. 162), the third stage can be called “recognition and protection of indigenous peoples” and begun in the early 1990s as part of the draft of The American Declaration on the Rights of Indigenous Peoples and was strengthened by the *Awás Tingni Case*, in 2001,² a phase that endures to this day.

A first stage is linked to the protection of indigenous people in terms of vulnerable individuals; a second stage which incorporates the idea of rights worthy of special protection, focusing on the idea of equality and non-discrimination, and on the doctrine developed internationally on minorities; the last stage, based on an approach to rights, considering indigenous peoples as full holders of rights and in certain aspects with a special protection in the use and exercise of certain rights (Salmon 2010, p. 37).

II. THE ARGUMENTS

The activity of the IACHR on the third stage has been profound and vast, and when the opportunity to discuss indigenous rights issues arose, it was done to deliver an enhanced understanding of the case or to hold a better argument to protect or defend an indigenous group or tribe. In these cases, issues such as traditional lands, minority, identity, political involvement, and religion were analyzed.

Given the excessive number of cases analyzed by the Court over the past 30 years, it is almost impossible to study them all in a single document. A methodological reduction was therefore required to manage an appropriate number of cases from a random sampling of selected cases according to their significance. This importance was based understanding these as those that have happened for the first time, those that have been an exception or those that have provided a broad or a unique protective about indigenous rights.

III. TRADITIONAL RELATIONSHIPS WITH LAND AND OWNERSHIP

The ownership and possession of the traditional territories of Indigenous communities has been examined by the Court on several occasions. It is a right that has been established by various standards, such as the American

Convention on Human Rights under article 21. The right of ownership says that.

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
3. Usury and any other form of exploitation of man, by man shall be prohibited by law (Organization of American States, 1978, p. 8).

In addition to this right the United Nations Declaration on the Rights of Indigenous Peoples states in Article 26, mentions

Article 26 1. Indigenous peoples have the right to the lands, territories, and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous peoples have the right to own, use, develop and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. 3. States shall give legal recognition and protection to these lands, territories, and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned (United Nations, 2007, p. 19).

The Court in 2001 judged The Awas Tingni Vs. Nicaragua case and when reflected on this property, this court asserted.

The close relationship that indigenous people maintain with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, the relationship with the land is not merely a matter of possession and production, but a material and a spiritual element that they must fully enjoy, including to preserve their cultural legacy and transmit it to the following generations (Interamerican Court of Human Rights, 2001, p. 2).

Subsequent to that, in the same case, the court said:

(e) The customary property law of the Awas Tingni Aboriginal peoples shall be considered for the purposes in question. As a product of custom, land ownership should be sufficient for indigenous communities without

a royal title to land ownership to obtain official recognition of the land and the consequent registration (Interamerican Court of Human Rights, 2001, p. 79).

In the Case of the Sawhoyamaxa Indigenous Community v. Paraguay, the Court considered

Likewise, this Court considers that indigenous communities might have a collective understanding of the concepts of property and possession, in the sense that ownership of the land “is not centered on an individual, but on the group and its community (Interamerican Court of Human Rights, 2006, p. 70).

Disregard for specific versions of use and enjoyment of property, springing from the culture, uses, customs, and beliefs of each person, would be tantamount to hold that there is only one way of using and disposing of property, which, in turn, would render protection under Article 21 of the Convention.

Consequently, the close ties of indigenous peoples to their traditional lands and the native natural resources thereof, associated with their culture, as well as any incorporeal element deriving therefrom, must be secured under Article 21 of the American Convention. On the matter, the Court, as it has done before, is of the opinion that the term “property” as used in Article 21, includes “material things which can be possessed, as well as any, right, which may be part of a person’s patrimony; that concept includes all movable and immovable, corporeal and incorporeal elements and any other intangible object capable of having value” (Interamerican Court of Human Rights, 2006, p. 77).

An analogous parameter was determined in *Yakye Axa Vs. Paraguay* case when the Inter-American Human Rights Court decided Article 21.1 of the Convention specifies that

The law may subordinate [the] use and enjoy [the goods] in the social interest. The need for legal envisaged restrictions will depend on whether they are aimed at satisfying an imperative public interest, with insufficient evidence, for example, that the law serves a useful or timely purpose. The proportionality to any restriction must be closely adjusted to the achievement of a legitimate objective, interfering to the least extent possible in the effective exercise of the restricted rights. Finally, to be compatible with the Convention, restrictions must be justified according

to collective objectives which, because of their importance, clearly take a priority over the need for full access to restricted rights. This is the aspect of the right to communal property whose protection is demanded in the framework of the American Convention, interpreted in light of ILO Convention No. 169 and the obligations recognized in Paraguay's own Constitution, and this is the aspect of the right that has not been guaranteed by the State; h) the right to ancestral lands prevails, in this regard, in the framework of the American Convention and in Paraguayan constitutional order, over the right to private property. This right enjoys a preferential position vis-à-vis the right to property in general, in view of the set of rights that, in the specific situation of the Yakye Axa Community, are closely linked to guaranteeing said right: the right to life, the right to ethnic identity, the right to culture and to recreate it, the right to survive as an integrated indigenous Community (...) (Interamerican Court of Human Rights, 2005c, pp. 98-99).

The Court emphasized the importance of traditional ownership and possession in *Sawhoyamaya v. Paraguay* case not only in net worth or cost, but in a deeper sense for groups, when it found that.

(1) The traditional possession of indigenous peoples has effects equivalent to the title of full rule granted by the State; (2) traditional possession gives indigenous people the right to demand official recognition of ownership and registration; (3) members of indigenous peoples who, for reasons beyond their control, have left or lost possession of their traditional lands retain the right to property over them, even in the absence of legal title, except where the lands have been legitimately transferred to third parties in good faith; and (4) members of indigenous peoples who have inadvertently lost possession of their lands, and these have been legitimately transferred to innocent third parties, have the right to recover them or to obtain other lands of equal extent and quality. Consequently, possession is not a requirement that conditions for the existence of the right to land reclamation (Interamerican Court of Human Rights, 2006, pp. 71-72).

IV. IDENTITY

The *Yakye Axa vs. Paraguay* case also served to support a crucial decision on identity by the Court when mentioned that the State has insistently denied the identity of the Yakye Axa Community and its members, and has done so attempting to dilute it, first in the *Enxet-Lengua* people and then in the

Chanawatsan subgroup. The State has also denied the Community's history and memory, as well as the special meaning of the relationship with their ancestral land and territory for its cosmogony and that of its members. Thus, the Paraguayan State has abridged the right of the Yakye Axa Community and of its members to have their own identity and cosmogony, and to that extent it has violated the right to life, to the detriment of the members of the Community.

(...) The Court deems appropriate to recall that, pursuant to Articles 24 (Right to Equal Protection) and 1(1) (Obligation to Respect Rights) of the American Convention, the States must ensure, on an equal basis, full exercise, and enjoyment of the rights of these individuals who are not subject to their authority. However, it is necessary to emphasize that to effectively ensure those rights, when they interpret and apply their domestic legislation, the States must consider the specific characteristics that differentiate the members of the indigenous peoples of the general population and that constitute their cultural identity. The Court must apply that same reasoning, as it will do in the instant case, to assess the scope and content of the Articles of the American Convention, which the Commission and the representatives allege were breached by the State. g) What the Yakye Axa Community is claiming is the ancestral land that historically belongs to them and on which the permanence and identity of the Community as such depend on this land. In this regard, the Community has proven with its history (reflected in the testimony of its members and in the anthropological expert reports) and with the customs that guide the way it identifies its land, that the right to communal property existed before they were deprived of it, and that several families of the Community were forced to move to the Colony at "El Estribo"³³ (Interamerican Court of Human Rights, 2005c, pp. 75-76).

At this stage of the Court, a question arose about the identity of the group: was it or was it not an aboriginal or tribal group? If it were a group which might correspond to one of the two definitions given in Convention No. 169 as an indigenous or a tribal group, this Court could have given a broader protection and initiate a different defense strategy, one where the identity, territory and a sense of community were the central elements of the argumentation.

This led the Court to open a door for the admission of expert's opinions in anthropology to confirm whether they were isolated groups or groups without an identity or sense of belonging to something from their past. In this case, the Court was faced with a procedural problem because of a group of people that the State of Suriname did not recognize as the owner of its own identity.

Identity is... the central... cultural element of the inter-American judge's reflection. However, at the edge of the cases, the IACHR has developed other inherent cultural elements, in particular relating to the right to life, judicial guarantees, ownership, and political participation, which naturally led it to revisit the notion of conventional rights holders (Estupiñán Silva, 2014, p. 599).

This turned into a breaking point for the Court because if they were not recognized as a group (indigenous or tribal) they would get a chance to get justice would have vanished or become minimal. And if they could demonstrate that they are native or tribal, their status would change and get a different and broader legal protection.

Because of this, the IACHR decided to take several measures related to the recognition and defense of the identity of the groups to find out whether it conforms to the definition given by ILO Convention 169 in Article 1 1. This Convention applies to:

- a) Tribal peoples in independent countries whose social, cultural, and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.
- b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural, and political institutions (International Labor Organization, 1990, p. 2).

The Court therefore decided to hear the people of Surinam and experts in anthropology and the history of the region. The outcome of these experts was to assume that these groups developed a relationship with their territory where they were established centuries ago. The experts concluded that they met the characteristics of a non-indigenous group in the region, but that they were a tribal group of multiple origins, from the Caribbean to Africa.

V. RECOGNITION

The last section showed how the Court granted an identity to a Surinamese tribal group, was analyzed. Closely related to this action, the Court recognized this group as tribal. This came due an argument given by the state where they

debated that they were only scattered people without a sense of belonging to nothing or just a bunch of disperse and spread communities since they were descendants of slaves from Africa and the Caribbean and their link to their past was broken decades ago.

The State (Surinam) has objected that the Saramaka people could define themselves as a tribal community subject to the protection of international human rights law with respect to the right to collective ownership of property. Therefore, the Court should examine whether the members of the Saramaka people form a tribal community and, if so, whether it is subject to extraordinary measures to ensure the exercise of their rights (Interamerican Court of Human Rights, 2007).

The Court and the representatives alleged that the Saramaka people form a tribal unity, and that international human rights law imposes on the State the obligation to take extraordinary measures to ensure recognition of the rights of tribal peoples, including the right to collective ownership of property.

The process generated by the Court focused on the attempt to construct an identity each time it had been denied by the state of Suriname. This meant that the Court had to assist the Surinamese groups in the conduct of the proceedings to give them a certain procedural possibility. That completely reconfigured the process with an alternative approach.

The asymmetric relationship these groups faced since the beginning of their defense in Suriname is reduced by finding in the Court a sympathetic institution that helped them to Recategorize their status. As a result, the Saramaka people became a tribal group under ILO Convention 169.

First, the Court notes that the Saramaka people are not indigenous to the region they live in (as already mentioned before); but were brought during the time of colonization to what is now known as Suriname. Therefore, they are asserting their rights as a presumed tribal people, that is, a people who are not indigenous to the region, but who share similar characteristics with indigenous peoples, such as having social, cultural, and economic traditions different from other sections of the national community, identify with their ancestral territories and be regulated, at least in part, by their own norms, customs or traditions. A.1) The members of the Saramaka people as a distinct group in social, cultural, and economic terms and with a special relationship with respect to their ancestral territory (Interamerican Court of Human Rights, 2007).

VI. BELIEFS AND RELIGION

One subject that causes a significant impact on the development of the indigenous rights was the study the ICHCR made about how beliefs and religion are an important and fundamental part of the daily life of indigenous and tribal groups. Any action against their practice, their dissemination to young people or new members can have such a profound impact on their cultural development. The modification or alteration of their beliefs and religions can cause a deep impact on their daily life and sometimes it can cause deeper problems that can risk the life of these groups.

In the *Yakye Axa vs. Paraguay* cases, the Court analyzed on a case that developed certain ideas of the general extension of belief and religion in the day-to-day life of groups.

i) The lands that have historically been inhabited by indigenous communities and peoples are not only their means of subsistence and livelihood, but also the basis of their very existence, the foundation on which they develop their identities and worldviews. In this regard, they are a component of their worldview and of their spirituality and religiosity. Thus, collective survival of indigenous communities and peoples, as a survival of life and of culture, is intimately linked to their land and territory; j) the human, spiritual and cultural tie of the Yakye Axa Community and of its members with their ancestral land is deeply felt by them. The ancestral land of the Yakye Axa Community and the habitat that its members have humanized in this land, in which they have shifted around, molds their past, their present, and their future. It defines the identity of the Community and of its members and it represents the place where it is possible for them to imagine the realization of life aspirations that respect their cosmogony and their cultural practices. The Community's decision to settle alongside the road, next to their land, waiting to recover it, expresses, in the present time, what this land and this territory mean for the Yakye Axa Community and its members, and k) the State has not ensured the Yakye Axa Community's return to their ancestral land and to their own territory and habitat. This has harmed the strong tie between the identity of the Community and of its members and their ancestral land. The State insistently denied the identity of the Yakye Axa Community and its members, and has done so attempting to dilute it, first in the Enxet-Lengua people and then in the Chanawatsan subgroup. The State has also denied the Community's history and memory, as well as the special meaning of the relationship with their ancestral land and territory for its cosmogony and that of its members. Thus, the Paraguayan

State has abridged the right of the Yakye Axa Community and of its members to have their own identity and cosmogony, and to that extent it has violated the right to life, to the detriment of the members of the Community (Interamerican Court of Human Rights, 2005c, 86-87).

VII. POLITICAL PARTICIPATION

For many decades, political participation has been an unresolved problem for many nations and indigenous groups. Their political participation has been vast and complex, but most of times there were not being a recognized as a right. Usually they can participate, but as a citizen or nationals of a country, or as part of a political party, but never under the indigenous law, rules, or point of view. Neither was a possibility to deal with more complicated things like a mega - development initiated by a company or a country.

Even when there was an emergence of new forms of indigenous mobilization (or indigenous awakening) has been explained in several ways. It is possible to argue that indigenous peoples have already participated in the struggles for land reforms since the 1950s to the seventies, but under the label of “peasants”, emphasizing more an ethnicity-like identity. In addition, they were always mobilized under the leadership of mestizo’s nationalist or leftist groups, and thus contributed to the processes of land reform and the dissolution of the farming system that characterized the rural world. These experiences undoubtedly paved the way for a recomposing of indigenous communities, the formation of local movements and the emergence of a new leadership (Assies, 2009, p. 90).

The Saramaka vs. Surinam case made a fundamental decision, indigenous groups had to be consulted, prior to any development or decision with the possibility to affect them, free from any blackmail and with all the information that development or decision might take. The tool is referred to as free, prior, and informed consent, or Free, Prior and Informed Consent (FPIC). It is a right that paves the way for dialogue about issues that affect the individual or collective lives of indigenous and tribal peoples.

The FPIC consultation allows them to be heard on topics such as the implementation of a public policy, energy development which could be affecting their lands (between dozens of other possibilities). It is a right given to indigenous groups, minorities, plural and diverse social actors, a juridical tool that can express their feelings, offer an opinion, or discuss the issue. This has made it possible to become one of the few opportunities that these

minorities have to provide a fantastic tool for social struggle and political participation. Free, prior, and informed consent has a primary legal origin in the International Labour Organization's Convention 169 on Indigenous and Tribal Peoples (Convention 169). It is a broad document based on improvements to ILO Convention 107 of 1957.

This Convention 169 made FPIC consultation, a prerequisite for of the legislative or administrative decision's adoption when they intend to take on economic development projects in the territories or areas of influence of these minorities. The right to FPIC consultation, is established in ILO Convention 169, directly in articles 6, fraction 1 and 1 a), 1. to conduct the provisions of this Convention, Governments shall: a) consult the peoples concerned, through proper procedures and through their representative institutions, when legislative measures or administrative susceptible of affecting them directly were taken.⁴

Based upon this, the Court established in *Saramaka vs. Surinam* case that.

The State shall grant the members of the Saramaka people legal recognition of the collective juridical capacity, concerning to the community to which they belong, with the purpose of ensuring the full exercise and enjoyment of their right to communal property, as well as collective access to justice, in accordance with their communal system, customary laws, and traditions, in the terms of paragraphs 174 and 194(b) of this case. The State shall adopt legislative, administrative and other measures necessary to recognize and ensure the right of the Saramaka people to be effectively consulted, in accordance with their traditions and customs, or when necessary, the right to give or withhold their free, informed and prior consent, with regards to development or investment projects that may affect their territory, and to reasonably share the benefits of such projects with the members of the Saramaka people, should these be ultimately carried out. The Saramaka people must be consulted during the process established to comply with this form of reparation, in the terms of paragraphs 129-140, 143, 155, 158, and 194(d) of this case (Interamerican Court of Human Rights, 2007, pp. 65-66).

VIII. CLOSING CONCLUSIONS: WHAT TYPE OF PLURALISM DOES THE IACHR MANAGE?

Over the past two decades, the Inter American Court of Human Rights (IACHR), in its verdicts, has introduced and developed allegations and concepts, which allow the configuration of elements to profoundly affect

Indigenous rights. This includes, for example, anthropological expertise studies, free, prior, and informed consent, and the development of cultural criteria, such as identity, religions, lands, and recognition, among other things.

The Court, in rendering its decisions, used separate cultural criteria to resolve it. They have followed a course of action like *Pueblo Saramaka vs. Suriname*, taking a central element related to indigenous or tribal culture: The Inter-American judge has enshrined the responsibility of granting enhanced protection to indigenous and tribal communities when their rights conflict with the rights of third parties [*Mayagna- Awas Tingni*, para. 164; *Sarayaku* pars. 145, 167].

From the founding ruling, *Mayagna – Awas Tingni to Río Negro Massacres* (last sentence in 2012), the Court will assert as consolidated jurisprudence that the State acquires responsibility for violations committed by individuals against indigenous and tribal peoples, to the extent that a failure of the state's duty to protect can be verified and this failure consists of a faulty action by the public authorities [*Yakye Axa*], a negligent intervention [*Sarayaku*] or a non-existent action in the presence of the duty to protect [*Saramaka*] (*Estupiñán Silva, and Ibáñez Rivas, 2014, pp. 301-336*).

Also, it is possible to see that the IACHR, has developed a universal method of interpretation is initiated in which it uses all tools to support pluralism by oscillating this between the indigenous and the tribal rather than a discussion about the minority. It should be noted here that while the IACHR appeals to the defining provided by ILO Convention 169, the vision under which it sees Indigenous and tribal groups in their resolutions, they form diverse criteria such as considering them as:

1. Humanist groups in a situation of weakness or devalence, in situations of vulnerability and marginality. (*Interamerican Court of Human Rights, 2005a*).
2. In vulnerable situations (*Inter-American Court on Human Rights, 2005b*).
3. In vulnerable conditions (*Inter-American Court of Human Rights, 2005c*).
4. In a situation of vulnerability (*Saramaka, par. 174*), *Yatama v. Nicaragua 2005*; *Moiwana Community Case vs. Moiwana Community. Suriname, 2005*, *Yakye Axa Indigenous Community v. Paraguay, 2005*; *Saramaka People vs. Saramaka Suriname, 2007* (*Estupiñán Silva and Ibáñez Rivas, 2014, p. 303*).

It is truly clear that the recognition given to indigenous and tribal groups was done as legal minors.

The Court has addressed issues of Indigenous rights in its verdicts as part of the life of indigenous peoples, that as a procedural element, allows them to establish a category that breaks asymmetrical relations with the state. But this is not necessarily about generating pro-indigenous or tribal activism or providing tools for enhancing political, economic, or simply state recognition. On the contrary, it must resolve cases closely in order not to violate States' autonomy. So, a vicious duality is formed, it is a recognition of indigenous rights that makes indigenous and tribal groups visible but does not take it to the maximum level of possibilities. As a result, the Indigenous rights are analyzing and constructed by the IACHR in a restricted, paternalistic, and limited way, regardless of whether a type of universal interpretation can be identified.

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Notes

- 1 The IACHR is a principal and autonomous organ of the Organization of American States (“OAS”) whose mission is to promote and protect human rights in the American hemisphere. It is composed of seven independent members who serve in a personal capacity. Created by the OAS in 1959, the Commission has its headquarters in Washington, D.C. Together with the Inter-American Court of Human Rights (“The Court” or “the I/A Court H.R.”), installed in 1979, the Commission is one of the institutions within the Inter-American system for the protection of human rights (“IAHRS”). The formal beginning of the IAHRS was approval of the American Declaration of the Rights and Duties of Man at the Ninth International Conference of American States held in Bogota in 1948. There the OAS Charter (hereinafter “the Charter”) was adopted, which declares that one of the principles upon which the Organization is founded is

the “fundamental rights of the individual”. The inter-American human rights system was born with the adoption of the American Declaration of the Rights and Duties of Man in Bogotá, Colombia in April of 1948. The American Declaration was the first international human rights instrument of a general nature. The IACHR was created in 1959 and held its first session in 1960. Since that time and until 2009, the Commission has held 134 sessions, some of them at its headquarters, others in different countries of the Americas. Up until 1997, the IACHR has received thousands of petitions, which have resulted in 12,000 cases which have been processed or are currently being processed. (The procedure for the processing of individual cases is described below). The final published reports of the IACHR regarding these individual cases may be found in the Annual Reports of the Commission or independently by country. In 1969, the American Convention on Human Rights was adopted. The Convention entered into force in 1978. As of August of 1997, it has been ratified by 25 countries: Argentina, Barbados, Brazil, Bolivia, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay and Venezuela. The Convention defines the human rights which the ratifying States have agreed to respect and ensure. The Convention also creates the Inter-American Court of Human Rights and defines the functions and procedures of both the Commission and the Court. The IACHR also possesses additional faculties which pre-date and are not derived directly from the Convention, such as the processing of cases involving countries which are still not parties to the Convention. Available at <http://www.corteidh.or.cr/historia-en.cfm>. (Consultation date: July 19, 2022)

- 2 Legal pluralism is part of any democratic and multicultural society. Its conceptual topicality is evident in two fundamental aspects: in the fact that, unlike its European counterpart, the inter-American judge acts broadly because of the law applicable within the accused State (Interamerican Court of Human Rights, 2007, paras. 129-134; 2012, paras. 183, footnotes 183-185) and, in the fact that inter-American legal pluralism also extends to Indigenous and tribal law (Estupiñán Silva, 2014, p. 308). Of all the evidence, this was understood by the IDH Court, when in *Bámaca Velázquez*, it asserted the indigenous worldview to assess the cultural consequences of enforced disappearance beyond the repercussions on direct or indirect victims individually considered. The unity of humanity between the living and the dead and the central relevance of this link within the Mayan culture were the gateway to a pluralistic analysis of rights in the light of cultural identity (Interamerican Court of Human Rights, 2000, para. 145, p. 309).
- 3 Displacement of the Community to this Colony, due to extremely precarious and poor conditions, has not annulled that right. 135. The culture of the members of the indigenous communities directly relates to a specific way of being, seeing, and acting in the world, developed on the basis of their close relationship with their traditional territories and the resources therein, not only because they are their main means of subsistence, but also because they are part of their worldview, their religiosity, and therefore, of their cultural identity. 136. The above relates to the provision set forth in Article 13 of ILO Convention No. 169, that the States must respect “the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and the collective aspects of this relationship. 137. Therefore, the close ties of Indigenous peoples with their traditional territories and the natural resources therein associated with their culture, as well as the components derived from them, must be safeguarded by Article 21 of the American Convention. In this regard, the Court has previously asserted that the term “property” used in said Article 21 includes “those material things which can be possessed, as well as any right which may be part of a person’s patrimony; that concept includes all movables and immovables, corporeal and incorporeal elements and any other intangible object capable of having value” (Interamerican Court of Human Rights, 2005c).
- 4 Herrera, 2019. Some other works on this topic can be seen on Herrera, 2015a, 2015b, 2018a, 2018b