

THE INTERSECTION OF HUMAN RIGHTS AND CLIMATE CHANGE IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM: WHAT TO HOPE FOR?

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ABSTRACT

This work analyzes the role of the Inter-American System on Human Rights (IASHR) in handling claims concerning climate change. Specifically, I focus on the evolution of environmental protection standards within this system through a theoretical and empirical approach. After a brief overview of human rights rules and environmental law in Latin America, this article draws upon an original dataset of cases to discuss actions taken by human rights bodies to fight against climate change in this region. Based on disputes involving environmental damage and human rights violations addressed by the Inter-American Commission on Human Rights (IACHR), as well as the Inter-American Court on Human Rights (IACtHR) case law, I call attention to the importance of Indigenous activism and the evolving interpretation adopted by these bodies in regards to the link between environmental and human rights. This assessment also allows for exploring the innovations brought by the Advisory Opinion OC-23/17 of the IACrH. In conclusion, I argue that this document can impact future decisions of the IASHR on the matter of environmental change.

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INTRODUCTION

The twenty-first century has witnessed a rise of environmental concerns in the Inter-American System on Human Rights (IASHR). In 2001, the Inter-American Court of Human Rights (IACtHR) considered the environment as a special human right for the first time in the case *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*.¹ This case led the IACtHR to develop the concept of a human right to a healthy and sustainable environment, particularly associated with the land rights of Indigenous and traditional peoples.

In 2018, the IACtHR took another step in the path to protect the environment against harmful human activities. That year, concern about climatic changes deriving from the environmental damages caused by “big engineering projects” was expressed through Advisory Opinion OC-23/17, where the IACtHR explicitly stated that the full protection of the environment had to include the control of climate change.² In 2019, when the world watched the fires in the Brazilian portion of Amazonia with astonishment, the Inter-American Commission on Human Rights

¹ See *Mayagna (Sumo) Awas Tingni Cmty. v. Nicaragua*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 73 (Aug. 31, 2001) (dealing with the concession of forest management and exploitation to a company without the Indigenous community being consulted, despite the fact that the state had previously signed an agreement to facilitate the recognition of their communal lands).

² The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation and Scope of Articles 4(1) and 5(1) in Relation to Articles 1(1) and 2 of the American Convention on Human Rights), Advisory Opinion OC-23/2017, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶ 47 (Nov. 15, 2017) [hereinafter Advisory Opinion OC-23/2017]. When addressing “big engineering projects” in the advisory opinion, the Court refers more specifically to the construction, maintenance, and expansion of canals for maritime traffic. However, it is reasonable that an umbrella term such as “big engineering projects” could also be used to refer to hydroelectric plants or dams, for example, as well as other similar types of projects.

(IACHR) and its Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights (SRESCER) expressed their profound concern about deforestation and the potential for desertification in the Amazon region.³ The effects on the rainforest could drive the region into catastrophic climate change, with severe consequences not only for people who make a living directly from the Amazon's resources but also people who live in other regions of the world.⁴

These events illustrate how the environment and climate are in the spotlight of the new human rights era in the IASHR. Concerns about the environment were initially framed in terms of Indigenous rights violations. Later, they expanded to include the impact of infrastructure megaprojects, the preservation of ocean life and air quality, preoccupations with the survival of the rainforest, the increase in temperatures, and the claim for sustainable development.⁵

This work explores the correlations between environmental degradation, climate change, and human rights in the IASHR and how the evolving case law can be applied to promote a climate change agenda. This work describes the evolution of environmental concerns in the IASHR, especially in the roles of the IACHR and the IACtHR.⁶ More specifically,

³ Press Release, Inter-Am. Comm'n H.R., IACHR and its SRESCER Express Serious Concern about Deforestation and Fires in the Amazon (Sept. 3, 2019).

⁴ Jena Webb, *Three Critical Consequences of the Amazon Fires: Biodiversity Loss, Climate Change and Health*, AMAZON FRONTLINES (Sept. 16, 2019), <https://www.amazonfrontlines.org/chronicles/three-critical-consequences-of-the-amazon-fires/> [<https://perma.cc/DKY5-FG7D>].

⁵ See Community of San Mateo de Huanchor v. Peru, Case 504.03, Inter-Am. Comm'n H.R., Report No. 69/04, OEA/Ser.L/V/II.122, doc. 5 ¶ 66 (2004); Letter from Ariel E. Dulitzky, Assistant Exec. Sec'y, Inter-American Comm'n Hum. Rts., to Paul Crowley, Legal Representative, Attorney of Record for Sheila Watt-Cloutier, et al. (Nov. 16, 2006), http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2006/20061116_na_decision.pdf [<https://perma.cc/4XF7-87JJ>] (stating the IACHR's denial of the petition); Cmty. of La Oroya v. Peru, Case 1473.06, Inter-Am. Comm'n H.R., Report No. 76/09, OEA/Ser.L/V/II, doc. 51 ¶ 2 (2009); *Mayagna (Sumo) Awas Tingni Cmty.*, Inter-Am. Ct. H.R. (ser. C) No. 79; *Reyes v. Chile*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 151, ¶ 2 (Sept. 19, 2006); *Xákmok Kásek Indigenous Cmty. v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 169 (Aug. 24, 2010); Advisory Opinion OC-23/17, *supra* note 2, ¶ 1.

⁶ The IACHR was created in 1959 by the Organization of American States (OAS) to promote and protect human rights in the region, in addition to serving as a consultative organ of the OAS on matters related to human rights. *What is the IACHR?*, ORG. OF AM. STATES, <https://www.oas.org/en/iachr/> [<https://perma.cc/GD8D-755A>] (last visited Feb. 18, 2021). See also *Basic Documents in the Inter-American System*, ORG. OF AM. STATES, <https://www.oas.org/en/iachr/mandate/Basics/intro.asp> [<https://perma.cc/4NCU-HUER>] (last visited Feb. 11, 2021). The IACHR receives individual petitions and also conducts on-site visits

this article will show how the IACtHR has dealt with these topics through an analysis of existing cases by highlighting the leading cases that made it possible for the IACtHR to become an “environmental court”—even though the environment does not constitute an explicit right under its jurisdiction.

The process towards the recognition of the link between environmental protection and human rights was not fast or smooth. In this analysis, I emphasize four moments—ranging from the protection of Indigenous lands to the recognition of the right to the environment as a human right—in the Court’s decisions to show how the new interpretations of the American Convention on Human Rights (ACHR) may be useful to address environmental issues. These four moments are directly related to the interpretative and argumentative advances of IACtHR’s decisions regarding the extension of state obligations and the expansion of the scope of the application of the rights guaranteed by the American Convention. With this, I will show how the IASHR is moving towards the recognition of the interdependence of the fight against climate change and the protection and promotion of human rights. This link between climate change and the violation of human rights consists of a fairly innovative approach in the context of international human rights law and can have a significant impact on the future of environmental litigation in the IASHR.

and produces reports on specific themes. See *What is the IACHR?*, *supra*. The main documents that guide the work of the IACHR are the American Declaration of Human Rights and the American Convention on Human Rights. See *id*. The IACtHR is the jurisdictional organ of the IASHR and is authorized to condemn a state for violating the rights enshrined by the ACHR. The IACtHR also has a consultative role, providing Advisory Opinions on the interpretation of the dispositions of the ACHR. See generally *What is the IA Court H.R.?*, INTER-AM. CT. HUM. RTS., https://www.corteidh.or.cr/que_es_la_corte.cfm?lang=en [<https://perma.cc/97E3-V6KB>] (last visited Feb. 18, 2021); Jon Drimmer & Ignacio Boulin Victoria, *The Inter-America Court of Human Rights and the Gig Economy*, PAUL HASTINGS (Feb. 11, 2021) <https://www.paulhastings.com/about-us/advice-for-businesses-in-dealing-with-the-expanding-coronavirus-events/coronavirus-blog/international-regulatory-enforcement/2021/02/11/the-inter-american-court-of-human-rights-and-the-gig-economy> [<https://perma.cc/TD9R-2KHA>]. For States that did not adhere to the ACHR and did not accept the contentious jurisdiction of the Court, the petitions are addressed only to the IACHR and must comprise the rights enshrined in the American Declaration of Human Rights. See *Basic Documents in the Inter-American System*, *supra*.

I. AN OVERVIEW OF HUMAN RIGHTS AND ENVIRONMENTAL PROTECTION IN LATIN AMERICA

Over the past century, Latin American countries have experienced severe human rights violations. Many Latin American states faced long periods of military dictatorships that were followed by long transitional processes.⁷ Besides the severe human rights violations by the dictatorships—forced disappearances, torture, persecution, and a lack of freedom of expression—redemocratization processes also faced problems with amnesty laws that violated the right to memory and inherited structural problems that still impact the national justice systems and the rights of minority groups such as traditional populations, women, children, people of color, LGBT+, migrants, etc.⁸ At the same time, the region has also experienced important developments on matters of human rights compliance. Human rights scholar Betty Simmons refers to Latin American countries as *serial ratifiers*: they tend to ratify human rights treaties without taking serious steps further to comply with treaty provisions.⁹

Over the years, the IASHR has seen its case law and influence expand. The ACHR and the judgments of the IACtHR have become part of the legal landscape of Latin American states. Scholars identify this as the *constitutionalization of international law* in Latin America, since different states consider certain kinds of ratified international treaties to have constitutional status in their national legal system.¹⁰ This grants the IASHR an institutionally privileged position in terms of influencing national legal systems on matters of human rights in view of the mandatory

⁷ See generally Marc Becker, *Dictatorship in Latin America*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/history/dictionaries-thesauruses-pictures-and-press-releases/dictatorship-latin-america> [https://perma.cc/5GSH-HUMS] (last updated Feb. 11, 2021). See also Arch Paddington, *Latin America Shows That Democratization Is Possible Anywhere*, FREEDOM HOUSE (Aug. 3, 2015), <https://freedomhouse.org/article/latin-america-shows-democratization-possible-anywhere> [https://perma.cc/Z8W8-EXYW].

⁸ See generally Azucena Moran & Melissa Ross, *Truth, memory and democracy in Latin America*, OPENDEMOCRACY (Sept. 26, 2017), <https://www.opendemocracy.net/en/democraciaabierta/truth-memory-and-democracy-in-latin-america/> [https://perma.cc/2H9Q-8Y7L].

⁹ BETH A. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* 354 (2009).

¹⁰ See CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 5 § 3 (Braz.) (providing that international treaties and conventions approved by the National Congress are the equivalent of constitutional amendments). See generally Alexandra Huneeus, *Introduction to Symposium on the Constitutionalization of International Law in Latin America*, 109 AM. J. INT'L L. UNBOUND 89, 90 (2015) (broadly discussing the concept of constitutionalization).

nature of the ACHR, where violation and compliance are supervised by the IACtHR.¹¹

Despite having a relatively strong framework for human rights protection, the history of Latin America and the Caribbean, from colonialism to the formation of independent states through civil wars and dictatorships, has contributed to creating a region with high levels of intrastate and interstate inequality.¹² Social, political, and economic inequalities challenge the promotion and protection of human rights in the region.¹³ Additionally, the economies of most countries in Latin America and the Caribbean are based on large-scale agriculture and mining, two activities with great environmental impacts.¹⁴

Initially, the main challenges of the IASHR concerned the reinstatement of democracy and the human rights violations that took place during the rule of authoritarian regimes in the region. The IASHR questioned governmental and dictatorial court abuses, warned about structural flaws, and strengthened the construction and preservation of democracy. Only later were most IASHR-based treaties and IACtHR judgments incorporated into domestic law and used by Latin American courts.¹⁵

Human rights treaties generally have a different status in domestic law in relation to other international treaties. Argentina, Chile, and Uruguay were the first to accept the IACtHR's jurisdiction and to adopt the agenda of the IASHR into the domestic law.¹⁶

It was only in the 1990s that Argentina, Brazil, Colombia, and Mexico underwent important changes in their legal systems that have meant a greater openness to the IASRH, increasing the possibility of compliance with the ACHR. This meant that the majority of Latin

¹¹ See generally Breno Baía Magalhães, *Pluralismo Constitucional Interamericano: A Leitura Plural da Constituição de 1988 e o Diálogo Entre o Supremo Tribunal Federal e a Corte Interamericana de Derechos Humanos* [Inter-American Constitutional Pluralism: The Plural Reading of the 1988 Constitution and the Dialogue Between the Federal Supreme Court and the Inter-American Court of Human Rights] (2015) (Ph.D. dissertation, Federal University of Pará).

¹² See generally Ewout Frankema, *The Historical Evolution of Inequality in Latin America: A comparative analysis, 1870–2000* (Mar. 6, 2008) (Ph.D. dissertation, University of Groningen).

¹³ *Id.* at 197.

¹⁴ Geoffrey Jones, *Sustainability and Green Business in Latin America during Globalization Waves* 4, 6 (Harv. Bus. Sch., Working Paper No. 19-009, 2018).

¹⁵ Argentina is an example of a state that has incorporated the ACHR into their constitutional hierarchy. See Huneeus, *supra* note 10, at 90.

¹⁶ Robert Goldman, *History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights*, 31 HUM. RTS. Q. 856, 875 (2009).

American and Caribbean countries adhered to the convention, and also that many of them recognized the IACtHR's contentious competence.¹⁷ These four countries were the last to welcome the IACtHR, and it had a significant impact as those were, and still are, considered some of the most influential Latin American countries, given their economy, territorial extension, and large populations.¹⁸ It is significant because before them, other influential countries, like the US and Canada, did not adhere to the ACHR. Thus, the force and possible effectiveness of the IASHR remained dubious as the most powerful nations had not acknowledged it.

Since the 1990s, other actors such as social movements, political parties, and individuals have begun to use IASHR's protective mechanisms more systematically, which has allowed the expansion of its role. It is now a stage of activism as it shifted the focus of its institutional agenda from specific cases to work on paradigmatic cases. That is, the IACtHR now focuses on cases that reflect the social and institutional contexts of human rights violations and the structural patterns of discrimination in the Americas,¹⁹ as is the case regarding Indigenous people and environmental issues.

As for environmental protection more specifically, several declarations and treaties of international law were essential to set parameters for the development of the connection between environmental protection and human rights.²⁰ These declarations and treaties include:

- the Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I),²¹

¹⁷ *Id.*

¹⁸ *Ranking of the Most Influential Latin American States in the World*, MEXICANIST (Mar. 6, 2019), <https://www.mexicanist.com/l/ranking-of-the-most-influential-latin-american-states-in-the-world/> [<https://perma.cc/C46R-MHRN>].

¹⁹ See *Riffo v. Chile*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 239, ¶ 92 (Feb. 24, 2012) (recognizing the existence of historical and structural discrimination against sexual minorities); *Penha v. Brazil*, Case 12.051, Inter-Am. Comm'n H.R., Report. No. 54/01, OEA/Ser.L/V/II.111, doc. 20 rev. 16 ¶ 2–3 (2001) (recognizing the existence of a structural pattern of domestic violence).

²⁰ Despite the fact that these were not human rights documents, their provisions pointed out the link between environmental protection and its impact on human dignity. Once this relationship was acknowledged, many dispositions were created to limit the use of natural resources and the negative impact of military actions on the environment in order to safeguard the dignity of people.

²¹ Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) arts. 35(3), 55, June 8, 1977, 1125 U.N.T.S. 3. Both articles prohibit the use of means and methods of war that would cause

- the 1977 United Nations Convention on the Prohibition of Military or Hostile Use of Environmental Modification Techniques;²²
- the 1982 World Charter for Nature;²³
- the San José Declaration on Refugees and Forced Migrants of 1994;²⁴
- the 1989 United Nations Convention on the Rights of the Child;²⁵ and
- the 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.²⁶

The Eco-92, or Rio-92, held in Rio de Janeiro, led to the adoption of the Global Agenda 21, where 179 countries agreed on an action plan to protect the environment and promote sustainable development, social justice, and economic efficiency.²⁷ Following the Rio-92, the UN Report of the conference, or the “Forest Principles,” was published.²⁸ Later the three Rio Conventions were drafted.²⁹ This process of developing legal instruments in accordance with the Agenda 21 marks the rise of new

“widespread, long-term and severe” environmental damage, as it would “prejudice the health and survival of the population.” *Id.*

²² Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Technique, art. II, Dec. 10, 1976, 1108 U.N.T.S 151.

²³ G.A. Res. 37/7, World Charter for Nature, ¶¶ 5, 20 (Oct. 28, 1982).

²⁴ *San José Declaration on Refugees and Displaced Persons*, UNHCR (Dec. 7, 1994), <https://www.refworld.org/docid/4a54bc3fd.html> [<https://perma.cc/W3RG-PECC>] (including victims of environmental disasters in the list of forced migrants protected by the right of asylum).

²⁵ G.A. Res. 44/25, Convention on the Rights of the Child, art. 24(2)(c) (Nov. 20, 1989).

²⁶ United Nations Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, June 25, 1998, 2161 U.N.T.S 447. This Convention incorporated Principle 10 of the Rio Declaration on access to information in process decision-making on environmental issues. It was signed by thirty-five states and the European Community.

²⁷ U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26 (Vol. I), annex II (Aug. 12, 1992).

²⁸ U.N. Conference on Environment and Development, *Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests*, A/CONF.151/26 (Vol. III), (Aug. 14, 1992) [hereinafter *Forest Principles*]. Among other things, the document acknowledges the vital role of the forests in maintaining the ecological processes and balance and calls for the control of the emission of pollutants.

²⁹ As for the Rio Conventions, they are (a) the Convention on Biological Diversity, (b) the United Nations Convention to Combat Desertification and (c) the United Nations Framework Convention on Climate Change. The Rio Conventions were adopted in order to “address the need of adaptation to climate change. . . .” UNITED NATIONS, *THE RIO CONVENTIONS: ACTION ON ADAPTATION 5* (2012). Those Conventions bring out a series of dispositions that promote the adaptation of State Party tools, methods, and mechanisms of environmental management to achieve sustainable development. *Id.*

frameworks³⁰ that recognize a shared responsibility between all states to assure the right to a healthy and balanced environment through the promotion of sustainable development that would not compromise future generations.³¹

The Vienna Declaration,³² adopted at the World Conference on Human Rights in 1993, specifies the principles of universality, indivisibility, and interdependence of human rights. Based on these principles and the evolving discussions on the impact of climate change on people, one could already envisage a relationship between human rights and environmental protection. However, such a link was only globally acknowledged in 2015 through the Paris Agreement, which establishes a global effort to combat climate change and intensify actions to promote sustainable development.³³

In parallel in the American continent, due to historical, cultural, political, and economic specificities, most American states not only hold a wild variety of biomes, but they are also very dependent on their natural resources.³⁴ As such, the effects of climate change in the region are particularly intense, and the limited capacity of most states to adapt and respond to these impacts can lead to disastrous scenarios. It is, therefore,

³⁰ Following the adoption of Agenda 21, many countries started to adopt bilateral and multilateral agreements. For examples of agreements, see Council Decision 95/445 of Oct. 30, 1995, Framework Agreement for Cooperation between the European Economic Community and the Federative Republic of Brazil, 1995 O.J. (L 262) 53 (EC); PLAN NACIONAL DE RESPUESTA AL CAMBIO CLIMÁTICO [NATIONAL PLAN OF RESPONSE TO CLIMATE CHANGE] (2009) (Arg.), (accessible at http://www.inia.org.uy/online/files/contenidos/link_06052010094903.pdf [<https://perma.cc/37WY-46JW>]); and Ley General de Equilibrio Ecológico y Protección al Ambiente [LGEEPA] [General Law of Ecological Balance and Environmental Protection] Diario Oficial de la Federación [DOF] [Official Journal of the Federation] 12-07-2019, últimas reformas DOF 07-01-2021 [last revised 07-01-2021] (Mex.).

³¹ See DINAH SHELTON & ALEXANDRE KISS, JUDICIAL HANDBOOK ON ENVIRONMENTAL LAW 19–20 (2005).

³² World Conference on Human Rights, *Vienna Declaration and Programme of Action*, ¶ 32, U.N. Doc. A/CONF.157/23 (June 25, 1993).

³³ Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

³⁴ DIV. OF ENV'T L. & CONVENTIONS OF THE UNITED NATIONS ENV'T PROGRAMME, THE STATE OF BIODIVERSITY IN LATIN AMERICA AND THE CARIBBEAN: A MID-TERM REVIEW OF PROGRESS TOWARDS THE AICHI BIODIVERSITY TARGETS at iv (2016) (accessible at <https://www.cbd.int/gbo/gbo4/outlook-grulac-en.pdf> [<https://perma.cc/GSM5-2CHB>]).

not surprising that the Organization of American States (OAS) has led the development of global climate change policies.³⁵

Human rights are one of the fundamental pillars of action for the OAS. Concerns with climate change are included in those pillars considering the link between the right to a healthy environment and the enjoyment of other human rights, coupled with the vulnerability of certain groups to the effects of climate change and its implications on displacement and conflicts.³⁶ The acknowledgement of this relationship led to the adoption of the Escazú Agreement in 2018, the first regional environmental human rights treaty.

The Escazú Agreement³⁷ is an innovative treaty as it focuses not only on promoting regional cooperation for developing sustainable development policies, but also on innovative approaches focused on protecting human rights, especially of vulnerable groups, taking into consideration the particularities of Latin America and the Caribbean. Further, it also addresses environmental management, the right of access to information, and public participation. Additionally, it is the first regional document on the subject with specific provisions focused on human rights defenders working with environmental causes.³⁸

The IASHR has also contributed to establishing the intersection between the environment and human rights. This was made possible only due to the complaints raised by Indigenous peoples of several violations of their human rights.³⁹ This allowed for the institutionalization of Thematic Rapporteurships⁴⁰ in the IACHR. These Rapporteurships conducted on-site visits and published general reports on the human rights

³⁵ See ORG. OF AM. STATES, CLIMATE CHANGE: A COMPARATIVE OVERVIEW OF THE RIGHTS BASED APPROACH IN THE AMERICAS 21–23 (2016) (*accessible at* http://www.oas.org/en/sedi/dsd/docs/climate_change.pdf [<https://perma.cc/V5LV-87UT>]).

³⁶ *Id.* at 24.

³⁷ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, *opened for signature* Apr. 9, 2018, (*accessible at* <https://treaties.un.org/doc/Treaties/2018/03/20180312%2003-04%20PM/CTC-XXVII-18.pdf> [<https://perma.cc/W8X4-3F9F>]) [hereinafter Escazú Agreement]. As of February 4, 2021, the Escazú Agreement will enter into force on April 22, 2021.

³⁸ *Id.* art. 1.

³⁹ See generally Rafaela Teixeira Sena Neves, Compliance na Corte Interamericana de Direitos Humanos: um estudo a partir da propriedade communal indígena [Compliance at the Inter-American Court of Human Rights: A Study Based on Indigenous Communal Property] (Feb. 5, 2016) (Master's dissertation, Federal University of the State of Pará) (on file with the central library, Federal University of the State of Pará).

⁴⁰ A Thematic Rapporteurship is an organ responsible for examining, monitoring, advising, and reporting on specific themes to another organ.

situation of member states, as well as special reports on different human rights themes. Further, their claims were included in the judgments of the IACtHR.⁴¹ For example, in 1990, the IACHR established the Rapporteurship on the Rights of Indigenous Peoples to further analyze and comprehend the situation of Indigenous peoples in the region, and thus give support for the IACHR to organize its efforts on the matter.⁴²

Besides exposing the critical need for the protection of Indigenous peoples, this activism has also provided an opportunity for the ICrtHR to establish new interpretations of the American Convention of Human Rights (ACHR) from the perspective of Indigenous peoples. In fact, the IACtHR did not limit itself to the ACHR; it also interpreted other international treaties like the International Labor Organization's (ILO) Convention no. 169.⁴³ By interpreting international human rights from the perspective of Indigenous peoples, who also had their main demands incorporated into the IASHR, the IACtHR increased the relevance of environmental concerns through a debate about traditional territories.

The matter of traditional territories was initially discussed in the IACtHR in the *Mayagna (Sumo) Awas Tingni Community* case. After the judgment, other cases have generated jurisprudential advances in the Court's interpretation. *Yakye Axa Indigenous Community*⁴⁴ provided a joint reading of the American Convention with ILO's Convention no. 169. In *Kichwa Indigenous People of Sarayku*,⁴⁵ the IACtHR expanded its interpretation regarding the protection of traditional territories, reaching its current understanding about the right of Indigenous peoples to be consulted regarding activities that will affect them. These cases have also contributed to the strengthening of international litigation over Indigenous lands in the Court's jurisprudence by providing an understanding that

⁴¹ Neves, *supra* note 39, at 12. See also *Thematic Rapporteurships and Units*, INTER-AM. COMM'N H.R., <https://www.oas.org/en/iachr/mandate/rapporteurships.asp> [<https://perma.cc/MXR9-LPCN>] (last visited July 7, 2020).

⁴² *Rapporteurship on the Rights of Indigenous Peoples*, INTER-AM. COMM'N H.R., <https://www.oas.org/en/iachr/indigenous/> [<https://perma.cc/V2AJ-R3XP>] (last visited July 7, 2020).

⁴³ Neves, *supra* note 39.

⁴⁴ *Yakye Axa Indigenous Cmty. v. Paraguay, Merits, Reparations, and Costs*, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 52 (June 17, 2005).

⁴⁵ *Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and Reparations*, Judgement, Inter-Am. Ct. H.R. (ser C) No. 245, ¶ 160 (June 27, 2012).

Indigenous peoples have the right to the demarcation and concession of official land titles from traditionally occupied territories.⁴⁶

Three years after the first environmental issue was examined by the IACHR,⁴⁷ the Additional Protocol to the American Convention on Economic, Social and Cultural Rights (Protocol of San Salvador) included the right to the environment in the list of rights protected under the ACHR. This right was enshrined alongside a diverse range of social rights, such as the rights to work, to form and join trade union organizations, to food, to education, to access to culture, and to the protection of family, children, the elderly, and the disabled.⁴⁸

Indigenous activism was fundamental to promoting the intersection between environmental harm and human rights in IACtHR judgments even though the ACHR has never explicitly recognized this—only Article 11 of the Protocol of San Salvador has.⁴⁹ Nonetheless, the Protocol of San Salvador establishes a restriction on claiming the right to a healthy environment since this is only a justiciable right before the Court indirectly, through a concrete dispute about a violation of human rights explicitly recognized by the ACHR.

Access to the IASHR for adjudicating cases on the “right to a healthy environment”⁵⁰ and the guarantee of economic, social, and cultural rights are regulated by Article 19(1) of the Protocol of San Salvador. The Protocol establishes a mechanism that imposes an obligation on member states to report national policies implemented to mitigate environmental harms to the OAS.

The environmental debate in the IASHR is distinct from the one in the European Court of Human Rights, which has focused more on issues such as noise pollution caused by a nightclub or an airport.⁵¹ At first, most

⁴⁶ Jo M. Pasqualucci, *International Indigenous Land Rights: A Critique of the Jurisprudence of the Inter-American Court of Human Rights in Light of the United Nations Declaration on the Rights of Indigenous Peoples*, 27 WIS. INT'L L.J. 51, 61–63 (2009).

⁴⁷ See *Yanomami Cmty. v. Brazil*, Case 7615, Inter-Am. Comm'n H.R., Report No. 12/85, OEA/Ser.L./V/IL66, doc. 10 (1985).

⁴⁸ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights art. 11, Nov. 16, 1999, O.A.S.T.S. No. 69 [hereinafter Protocol of San Salvador].

⁴⁹ *Id.* For a discussion on the use of Indigenous activism, see Neves, *supra* note 39.

⁵⁰ San Salvador Protocol, *supra* note 48, art. 19(1).

⁵¹ In a case before the European Court of Human Rights, the petitioner complained that the noise pollution caused by nightclubs near her house violated her right to private and family life (Article 8 of the European Convention on Human Rights), a violation that was acknowledged by the Court since it was demonstrated that the state tolerated that practice, thus contributing for its perpetuation

of the cases at the IASHR involving environmental issues related to human rights violations of Indigenous people, traditional peoples, and the peasant communities of the Americas. This is confirmed by the Report of the General Secretariat of the OAS on Human Rights and the Environment,⁵² which underlines the examples of environmental defense through reflexive protection in Resolution 12/85 of the *Yanomami People v. Brazil* and in the case of the *Mayagna (Sumo) Awas Tingni Community*—the first cases of environmental issues analyzed by the IACHR and IACtHR, respectively.⁵³

The issuance of Resolution 12/85, in which the IACHR reported the impacts of the construction of a highway in a territory occupied by the Yanomami People, represented an increased trend in systematic human rights violations against Indigenous peoples. It not only meant an unprecedented approach (even if incidentally) to environmental issues but also revealed that other groups in similar situations of vulnerability could use the IASHR too.

Following the *Yanomami* case, other cases brought back the environmental issue in the IASHR. The cases that were analyzed by or are under the analysis of the IACHR are:

- The Friendly Solution of the *Mercedes Julia Huentes Beroiza* case, regarding the expropriation of five Indigenous women from their

over several years. See *Moreno Gómez v. Spain*, App. No. 4143/02, ¶¶ 9, 10, 11, 46, 61 (Nov. 16, 2004), <http://hudoc.echr.coe.int/eng?i=001-67478> [<https://perma.cc/3QC2-LHGQ>]. In *Powell & Rayner v. The United Kingdom*, the petitioners argued that the authorized noise level in the vicinity of an international airport was unacceptable and the noise pollution caused violated their rights under Articles 13 and 8 of the European Convention. *Powell & Rayner v. The United Kingdom*, App. No. 9310/81, ¶¶ 8,9, 25 (Feb. 21, 1990), <http://hudoc.echr.coe.int/eng?i=001-57622> [<https://perma.cc/6YEN-7CFL>]. The Court, however, did not recognize the alleged violations, arguing that the measures adopted by the United Kingdom were within the scope of its margin of appreciation. *Id.* ¶ 45. In another case concerning the same airport at issue in *Powell & Rayner*, the applicants complained about the policy of night flights that ultimately violated their right to private and family life. *Hatton & Others v. The United Kingdom*, App. No. 36022/97, ¶¶ 11–27, 84 (July 8, 2003), <http://hudoc.echr.coe.int/eng?i=001-61188> [<https://perma.cc/JC2J-R7F3>]. Despite acknowledging that in environmental cases state responsibility might arise from the lack of regulation on private industry, once again, the Court determined that the authorities didn't overstep their margin of appreciation and thus, no violation was committed. *Id.* ¶ 129.

⁵² *Huentea Beroiza v. Chile*, Case 4617/02, Inter-Am. Comm'n H.R., Report No. 30/04, OEA/Ser.L/V/II.122, doc. 5 ¶ 33 (2005).

⁵³ *Yanomami People v. Brazil*, Case 7615 Inter-Am. Comm'n H.R., Resolution No. 12/85, OEA/Ser.L/V/II.66, doc. 10 rev. ¶¶ 24, 31 (1985).

traditional lands for the construction of a hydroelectric power plant in the Alto De Bio Bio region in Chile;⁵⁴

- *Maia of Toledo Indigenous Communities v. Belize*, regarding state concession of Indigenous lands for logging without prior consent from the affected ethnic groups;⁵⁵
- *Kichwa Indigenous People of Sarayacu v. Ecuador*, regarding state concession of Indigenous lands for oil exploration without the Kichwas being consulted;⁵⁶
- *San Mateo Huanchor v. Peru*, in which a mining company used the land of the surrounding peasant communities as a toxic waste deposit;⁵⁷
- *Matter of Four Ngöbe Indigenous Communities* and its members regarding Panama, in which the state was accused of authorizing the construction of a hydroelectric power plant on ancestral Ngöbe lands without previous consultation;⁵⁸ and
- the request for *Precautionary Measure MC-382/11* from traditional communities of Xingu River basin, urging Brazil to interrupt the Belo Monte hydroelectric dam building in the Brazilian Amazon rainforest.⁵⁹

However, one specific case that deserves more attention, despite its rejection by the IACHR, is Petition 1.413/05 of the *Inuit People v. United States*,⁶⁰ which is the first to address the effects of climate change. This petition was presented in 2005 and marked the first attempt to invoke

⁵⁴ *Huentea Beroiza v. Chile*, Case 4617/02, Inter-Am. Comm'n H.R., Report No. 30/04, OEA/Ser.L./V/II.122, doc. 5 ¶ 33 (2005).

⁵⁵ *Maya Indigenous Cmty. v. Belize*, Case 12.053, Inter-Am. Comm'n H.R., Report No. 78/00, OEA/Ser.L/V/II.111, doc. 20 (Apr. 16, 2001).

⁵⁶ *Kichwa Indigenous People of Sarayaku v. Ecuador*, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 245 (June 27, 2012).

⁵⁷ *Cmty. of San Mateo de Huanchor v. Peru*, Case 504/03, Inter-Am. Comm'n H.R., Report No. 69/04, OEA/Ser.L./V/II.122, doc. 5 (2005).

⁵⁸ *Four Ngöbe Indigenous Cmty. Regarding Panama*, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) No. 1 (May 28, 2010).

⁵⁹ *Precautionary Measures*, INTER-AM. COMM'N H.R., <https://www.oas.org/en/iachr/indigenous/protection/precautionary.asp> [https://perma.cc/LAL8-MF2A] (select "Brazil-Indigenous Communities of the Xingu River Basin" underneath "2011" from the drop-down menu) (last visited Mar. 27, 2021).

⁶⁰ Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States, filed by Sheila Watt-Cloutier (Dec. 7, 2005) (*accessible at* https://www.ciel.org/Publications/ICC_Petition_7Dec05.pdf [https://perma.cc/K4BV-W46S]). The petition was later denied by the IACHR. See Letter from Ariel E. Dulitzky, *supra* note 5.

state responsibility for human rights violations resulting from climate change.⁶¹ Petitioners were representatives of the Inuit people, an Indigenous group that lives in the Arctic regions of the United States and Canada. In the petition, the Inuit people set forth the effects of global warming on the environment and addressed how such changes impacted in their culture and way of life, leading to violations of their right to life, to integrity, to residence, to culture, and to enjoyment of traditionally occupied lands.⁶² They filed a claim for the recognition of the United States' responsibility because the United States is one of the North American countries that contributes the most to global warming with high rates of greenhouse gas emissions.⁶³

While the IACHR decided to dismiss the petition, explaining that it did not provide enough information to determine if the alleged facts characterized a violation of rights protected by the American Declaration of the Rights and Duties of Man. However, its importance is undeniable since it opens the possibility of addressing the issue of human rights violations caused by climate change within the IASHR.

In the context of growing discussions regarding human rights and the environment, the OAS approved General Assembly Resolution No. 2429, named *Human Rights and Climate Change in the Americas*.⁶⁴ The Resolution established that economic development, social development, and environmental protection are interdependent pillars of sustainable development, and that poverty eradication is a main goal of the OAS.⁶⁵ It also recognized that climate change is a shared concern of all humankind and that its effects have an impact on sustainable development and could have consequences for the full enjoyment of human rights.⁶⁶

In 2009, the IACHR faced its first case concerning the pollution of the environment as a human rights violation dissociated from Indigenous rights. The case *Community of La Oroya v. Peru* concerned

⁶¹ Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States, *supra* note 60.

⁶² *Id.*

⁶³ *Id.* at 6.

⁶⁴ Org. of Am. States [OAS], *Human Rights and Climate Change in the Americas*, AG/RES. 2429 (XXXVIII-O/08) (June 3, 2008) [hereinafter AG/RES. 2429].

⁶⁵ *Id.* Press Release, Org. Am. States, IACHR Expresses Concern regarding Effects of Climate Change on Human Rights (Dec. 2, 2015), http://www.oas.org/en/iachr/media_center/PReleases/2015/140.asp [<https://perma.cc/3K2M-CN7R>].

⁶⁶ AG/RES. 2429, *supra* note 64.

contamination caused by a metallurgical complex in the city of La Oroya, which had around 30,000 inhabitants and was about 175 km away from Lima, Peru.⁶⁷ It was the first time that the IACHR issued a substantive report arguing for the recognition of dialogue between the ACHR devices and a wider range of environmental subjects that are not connected merely with the rights of Indigenous peoples.⁶⁸

At the end of 2015, the IACHR published press release No. 140/15,⁶⁹ urging OAS member states to advocate for the incorporation of a holistic approach for human rights in relation to climate change. In the press release, the IACHR stated that a growing number of cases related to conflicts over land and water, as well as threats to food sovereignty, which all point to the relevant impact on climate change on the enjoyment of the human rights in the region.⁷⁰ In presenting this overview of the situation, which is especially severe in Latin America, the IACHR highlighted the urgency of the matter, reinforcing the need for OAS member states to take a strong stand during the discussions in Paris in favor of addressing climate change from a human rights perspective.

In addition, the IACHR also emphasized the link between climate change and the aggravation of social and economic inequality in the region.⁷¹ It noted the increasing vulnerability of certain groups, especially Indigenous people and rural communities, because of their close relation with the land and its natural resources.⁷² With this press release, the IACHR exposed important factors to illustrate the urgent need to address environmental matters, which may have influenced many Latin American countries that ended up playing essential roles in securing the adoption of the Paris Agreement.⁷³

In 2016, the IACHR published the report *Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American*

⁶⁷ *Cmty. of La Oroya v. Peru*, Case 1473.06, Inter-Am. Comm'n H.R., Report No. 76/09, OEA/Ser.L/V/II, doc. 51 ¶ 2 (2009).

⁶⁸ *Id.*

⁶⁹ Press Release, *supra* note 65.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ Guy Edwards, *A giant step forward for Latin America: The Paris Agreement on climate change*, CLIMATE & DEV. LAB (Nov. 3, 2016), <http://www.climatedevlab.brown.edu/home/a-giant-step-forward-for-latin-america-the-paris-agreement-on-climate-change> [<https://perma.cc/W8GW-JV9J>].

*Human Rights System.*⁷⁴ The report acknowledged climate change as one of the main factors that spurs migration in the region, considering that climate change aggravates natural disasters and conflicts over land and water, which contribute to high rates of mobility.⁷⁵

The following year, prompted by a series of earthquakes and hurricanes that hit Mexico and Caribbean Islands, causing a lot of destruction and leaving a great number of individuals in need of humanitarian assistance, the IACHR once again reiterated the importance of adopting measures to respond to the impacts of climate change and the need to ensure human rights.⁷⁶ In press release No. 139/17, the IACHR observed that there is an undeniable link between climate change and natural disasters. The IACHR also acknowledged that climate change contributes to creating and aggravating humanitarian crises.⁷⁷ This last statement can be easily understood when recalling the situation in Haiti, which experienced an ongoing humanitarian crisis aggravated by the 2010 earthquakes, for example.

Later, in 2018, a scientific study was published confirming a correlation between the increase of natural disasters in tropical regions and climate change.⁷⁸ The study focused on an analysis of consistent increases in temperature in tropical regions—in contrast to other regions—where temperature variability is projected to decrease due to reduced meridional temperature gradient and sea-ice loss. The study shows that an increase in temperature leads to weather events, such as heatwaves or droughts, with severe impacts on biological systems.

Similar to the IACHR, the IACtHR initially connected the matter of the environment to the protection of the rights of Indigenous or traditional communities. Considering that the IACHR is responsible for forwarding the cases to the IACtHR, it is not surprising that the IACHR's discussions concerning the promotion of human rights and their relation to the protection of the environment had a significant impact on IACtHR decisions. Since then, both have mutually influenced each other to promote the evolution of the matter in the IASHR. In order to demonstrate

⁷⁴ Press Release, Inter-Am. Comm'n H.R., IACHR Publishes Report on Legal Standards for Persons in the Context of Human Mobility (Nov. 4, 2016).

⁷⁵ *Id.*

⁷⁶ Press Release, Inter-Am. Comm'n H.R., IACHR Expresses Solidarity with People Affected by Earthquake and Hurricanes in Countries of the Region and Urges States and the International Community to Take Steps to Address the Situation of Those Affected (Sept. 12, 2017).

⁷⁷ *Id.*

⁷⁸ Sebastian Bathiany et al., *Climate Models Predict Increasing Temperature Variability in Poor Countries*, 4 SCI. ADVANCES 1, 1 (May 2, 2018).

this, the evolution of the discussions regarding human rights and the environment in IACtHR case law will be analyzed in the following Part.

II. WHEN DID THE INTER-AMERICAN COURT OF HUMAN RIGHTS BECOME AN “ENVIRONMENTAL COURT”?

For the past forty years, the Inter-American Court of Human Rights has seen its power expand. Its judgments have become a part of member states’ national legal landscape. Throughout its practice, the IACtHR has aimed to secure concrete reparations for the victims of human rights violations and to restore the situation as it was before the violation, which the IACtHR defines as integral reparation.

In its early years, the Court’s main focus in its trials was to affirm the role of the IASHR over the continent.⁷⁹ In fact, in its first six years, the IACtHR dedicated itself to providing advisory opinions. Those advisory opinions were generally limited to explaining the functioning of the IASHR, the limits of the jurisdiction of the IACtHR, and to provide an almost literal application of the American Convention on Human Rights.⁸⁰

The first cases regarding human rights violations that reached the IACtHR dealt with crimes that occurred in the context of military dictatorships, such as crimes of forced disappearance, massacres, and torture. In this sense, the first cases involving Indigenous peoples did not bring up the protection of the environment—their innovation was in arguing for the international recognition of collective violations of human

⁷⁹ Rafaela Teixeira Sena Neves, *Sistema Interamericano de Derechos Humanos: da criação à prática* [*Inter-American Human Rights System: From Creation to Practice*], in *DESAPARECIMENTO FORÇADO E JUSTIÇA DE TRANSIÇÃO: UM GUIA DA JURISPRUDÊNCIA DA CORTE* [FORCED DISAPPEARANCE AND TRANSITIONAL JUSTICE: A GUIDE TO COURT JURISPRUDENCE] 57, 62-63 (Natalia Mascarenhas Simões Bentes et al., eds., 2019).

⁸⁰ “Other treaties” subject to the consultative jurisdiction of the Court (Art. 64 American Convention on Human Rights), Advisory Opinion OC-1/82, Inter-Am. Ct. H.R. (ser. A) No.1 (Sept. 24, 1982); The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75), Advisory Opinion OC-2/82, Inter-Am. Ct. H.R. (ser. A) No. 2 (Sept. 24, 1982); Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights), Advisory Opinion OC-3/83, Inter-Am. Ct. H.R. (ser. A) No. 3 (Sept. 8, 1983); Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights), Advisory Opinion OC-5/85, Inter-Am. Ct. H.R. (ser. A) No. 5 (Nov. 13, 1985); The Word “Laws” in Article 30 of the American Convention on Human Rights, Advisory Opinion OC-6/86, Inter-Am. Ct. H.R. (ser. A) No. 6 (May 9, 1986); Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights), Advisory Opinion OC-8/87, Inter-Am. Ct. H.R. (ser. A) No. 8 (Jan. 30, 1987); Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and (8) American Convention on Human Rights), Advisory Opinion OC-9/87, Inter-Am. Ct. H.R. (ser. A) No. 9 (Oct. 6, 1987).

rights and arguing that Indigenous rights should receive different interpretations of the Convention because of their different way of life.⁸¹ The cases *Aloeboetoe et al. v. Suriname*,⁸² *Bámaca Velásquez v. Guatemala*,⁸³ and the *Plán de Sánchez Massacre v. Guatemala*⁸⁴ mark the first decisions of the Inter-American Court involving Indigenous peoples.

It is important to note that Indigenous activism has contributed greatly to the development of human rights at all levels—national, regional, and international. The importance of the Universal Declaration of Human Rights⁸⁵ (UDHR) in promoting human dignity is undeniable, but it has important limitations. The UDHR uses universal language inspired by the notion of a universal individual that represents a Western paradigm, thus excluding and marginalizing subaltern groups and cultures. It has taken years of demands in the United Nations system for Indigenous populations to achieve some advances in interpreting human rights with attention to the cultural specificities of Indigenous and other traditional peoples, like the Quilombolas and extractivist communities.⁸⁶ This activism has prompted many changes at regional and national levels,⁸⁷ despite the resistance of many governments.⁸⁸ The initial cases brought to the IACtHR by Indigenous people are clear examples of how their activism has been influential in orienting the IASHR's interpretation of the ACHR towards an Indigenous perspective, thus bringing an innovative interpretation of human rights.

Through cases regarding the protection of Indigenous people, where the IACtHR developed a new conception of jurisdiction and

⁸¹ *Aloeboetoe et al. v. Suriname*, Merits Judgment, Inter-Am. Ct. H.R. (ser. C) No. 11 (Dec. 4, 1991); *Bámaca Velásquez v. Guatemala*, Merits Judgment, Inter-Am. Ct. H.R. (ser. C) No. 70, ¶ 161 (Nov. 25, 2000); *Plan de Sánchez Massacre v. Guatemala*, Reparations Judgment, Inter-Am. Ct. H.R. (ser. C) No. 116, ¶ 2 (Nov. 19, 2004).

⁸² *Aloeboetoe v. Suriname*, Inter-Am. Ct. H.R. (ser. C) No. 11.

⁸³ *Bámaca-Velásquez v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 70.

⁸⁴ *Plan de Sánchez Massacre v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 116.

⁸⁵ G.A. Res. 217 (III) A, pmb., art. 1 (Dec. 10, 1948).

⁸⁶ See Mariana Nozela Prado, *Traditional Populations, Land Rights, and Environmental Justice: The Challenges of the Amazon*, WILSON CTR.: THINK BRAZ. (Sept. 27, 2018), <https://www.wilsoncenter.org/blog-post/traditional-populations-land-rights-and-environmental-justice-the-challenges-the-amazon> [https://perma.cc/FX2L-2DBG].

⁸⁷ See Marcia Baratto, *Direitos Indígenas e Cortes Constitucionais: Uma análise comparada entre Brasil, Colômbia e Bolívia* [*Indigenous Rights and Constitutional Courts: A Comparative Analysis Between Brazil, Colombia and Bolivia*] (2016) (Ph.D. dissertation, University of Campinas) (on file with the University of Campinas Library, University of Campinas).

⁸⁸ See Dan Ruge, *Indigenous Rights in Latin America: The Gap between Doctrine and Reality*, HUM. RTS. & HUM. WELFARE 72, 73 (2009); Eloy Fisher, *Constitutional Struggle and Indigenous Resistance in Latin America: The Case of Panama*, 41 LATIN AM. PERSPS. 65, 66–67 (2014).

extraterritoriality, the IACtHR has considerably changed its understanding of environmental issues, as it came to recognize the right to the environment as a human right. This happened gradually. Below, I highlight four waves of the Court's decisions that have consolidated the current interpretation of the independence of environmental issues as a human right and the admissibility of like demands, e.g., climate change, before the IACtHR.

These waves are directly related to the consolidation of the IASHR, as well as the interpretative and argumentative advances of the IACtHR's decisions regarding the extension of state obligations and the expansion of the scope of the application of the rights guaranteed by the ACHR. The waves are:

1. Openness to Indigenous demands: The first cases in the IACtHR with Indigenous petitioners occurred between 1991 and 2001. At this time, the Court began to interpret the American Convention based on Indigenous rights, which led to changes in its interpretation of the collective violations of human rights and recognition of the state's obligation to guarantee cultural identity and respect for the customs and traditions of Indigenous peoples.⁸⁹

Since the 1990s, many Latin American countries were undergoing redemocratization after years of dictatorship.⁹⁰ During military regimes, Indigenous peoples were systematically persecuted, but they never stopped fighting to preserve their lives and culture.⁹¹ Thus, as democracy was restored, Indigenous movements played an essential role in the recognition of their rights related to territory and cultural identity, as they actively participated in redemocratization at a national level, and also appealed to the UN, showing the world their struggles and expressing their claims. Thanks to their actions, many provisions regarding Indigenous and traditional peoples were included in the constitutional texts of several countries in the region⁹² and international documents on the matter were

⁸⁹ See, e.g., *Aloeboetoe et al. v. Suriname*, Inter-Am. Ct. H.R. (ser. C) No. 11 (Dec. 4, 1991); *Bámaca Velásquez v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 70, ¶ 161 (Nov. 25, 2000).

⁹⁰ Jorge Nef, *Redemocratization in Latin America or the Modernization of the Status Quo?*, 11 CAN. J. LATIN AM. STUD. 43, 47 (1986). See generally ALBA CAROSIO, TREINTA AÑOS DE DEMOCRACIA EN AMÉRICA LATINA: PROCESOS DE DEMOCRATIZACIÓN Y AMENAZAS [THIRTY YEARS OF DEMOCRACY IN LATIN AMERICA: DEMOCRATIZATION AND THREATS] (2014).

⁹¹ See Neves, *supra* note 39.

⁹² Jane Felipe Beltrão & Assis da Costa Oliveira, *Movimientos, Pueblos y Ciudadanías Indígenas: Incripciones Constitucionales y Derechos Étnicos en Latinoamérica* [*Indigenous Movements, Villages and Citizens: Constitutional Inscriptions and Ethnic Rights in Latin America*], in

adopted, such as the UN Declaration on the Rights of Indigenous Peoples.⁹³

Reestablishing democracy meant more freedom for social movements, as well as the development and increased notoriety of the IASHR.⁹⁴ In the 1990s, social movements started to rely on the IASHR more often, thereby broadening the scope of the IACHR and the IACtHR to more complex situations, such as transitional justice and the consequences left by the dictatorships.⁹⁵ This led to changes in the institutional agenda of the IASHR to include paradigmatic cases involving social and institutional contexts and structural patterns of discrimination (including discrimination against Indigenous peoples).⁹⁶

When presenting cases to the IACtHR, Indigenous people started to use innovative strategies to promote different approaches when discussing the rights enshrined by the IAS. Because of this new interpretative perspective brought by Indigenous activism, many advances were made in IACtHR case law, as described in the following waves.

2. Inclusion of environmental issues in cases addressing Indigenous property: The second moment marks the beginning of including environmental themes in human rights litigation. Nonetheless, environmental issues were secondary to the adoption of the concept of traditional territories embraced by the IACtHR in cases involving the violation of the right to property of Indigenous peoples. From 2002 to 2006, in cases involving Indigenous peoples, the IACtHR recognized the right to traditional territory. This included the intangible relationship of Indigenous peoples to their territory, a state duty to ensure and promote a

DERECHOS HUMANOS DE LOS GRUPOS VULNERABLES [HUMAN RIGHTS OF VULNERABLE GROUPS] 241, 244–45 (2014).

⁹³ G.A. Res. 61/295, (Sept. 13, 2007).

⁹⁴ See generally Felipe González Morales, *Las transformaciones del sistema interamericano de derechos humanos durante los procesos de democratización de los estados parte* [The Transformations of the Inter-American Human Rights System During the Democratization Processes of the State Parties] (2012) (Ph.D. dissertation, University Carlos III de Madrid).

⁹⁵ Catarina Chaves Costa, *As leis de anistia nas sentenças da Corte Interamericana de Direitos Humanos* [Amnesty laws in the sentences of the Inter-American Court of Human Rights], in *DESAPARECIMENTO FORÇADO E JUSTIÇA DE TRANSIÇÃO: UM GUIA DA JURISPRUDÊNCIA DA CORTE* [FORCED DISAPPEARANCE AND TRANSITIONAL JUSTICE: A GUIDE TO COURT JURISPRUDENCE] 105, 106 (Natalia Mascarenhas Simões Bentes et al., eds., 2019).

⁹⁶ Goldman, *supra* note 16, at 875.

healthy environment, to conduct socioenvironmental impact studies, and limits on granting natural resources to private enterprises.⁹⁷

3. Consolidation of the link between environmental harm and other human rights: The third moment, between 2007 and 2016, brings the consolidation of the link between environmental harm and human rights as a reflex pathway⁹⁸ to violations of other human rights in the Convention. This moment is marked by the access to the IACtHR by non-Indigenous petitioners that requested the protection of the environment in different situations. In a series of cases, the IACtHR affirmed the state's obligation to provide all environmental information pertaining to infrastructural projects, to grant specific protection to the physical integrity and lives of environmental defenders, to carry out socio-environmental impact studies, and to consult with traditional peoples living in protected areas.⁹⁹

⁹⁷ See *Moiwana Cmty. v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 124, ¶¶ 108, 113 (June 15, 2005); *Yakye Axa Indigenous Cmty. v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶¶ 82, 84 (June 17, 2005); *Sahoyamaxa Indigenous Cmty. v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 73(2) (Mar. 29, 2006); *Escué Zapata v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 165, ¶ 61 (July 4, 2007); *Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 82 (Nov. 28, 2007); *Tiu Tojín v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 190, ¶¶ 77–78 (Nov. 26, 2008).

⁹⁸ See Valerio de Oliveira Mazzuoli & Gustavo de Faria Moreira Teixeira, “Greening” *The Inter-American Human Rights System*, 33 L’OBSERVATEUR DES NATIONS UNIES [UNITED NATIONS OBSERVER 299, 308–09 (2012) (discussing the three approaches for “environmental protection through the reflex pathway technique.”). The IACtHR refers to a “reflex pathway” in the sense that as a reflex of the effects of environmental damage, many individuals could have some of their human rights violated, such as life and personal integrity.

⁹⁹ See generally *Reyes v. Chile*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 151, ¶ 73 (Sept. 19, 2006); *Xákmok Kásek Indigenous Cmty. v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶¶ 86, 102, 301 (Aug. 24, 2010); *Cabrera García v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 220, ¶ 4 (Nov. 26, 2010); *Kichwa Indigenous People of Sarayaku v. Ecuador*, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (Ser. C) No. 245, ¶¶ 204–06 (June 27, 2012); *Afro-Descendant Cmty. Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 270, ¶ 341 (Nov. 20, 2013); *Kuna Indigenous People of Madungandí v. Panama*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 284, ¶¶ 25, 59 (Oct. 14, 2014) (Mac-Gregor Poisot, J., partially dissenting); *Peasant Cmty. of Santa Barbara v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 299 (Sept. 1, 2015); *Cmty. Garífuna Triunfo de la Cruz v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 305 (Oct. 8, 2015); *Garífuna Punta Piedra Cmty. v. Honduras*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 304 (Oct. 8, 2015); *Kaliña &*

This phase is also marked by the condemnation of states for other environmental conditions, including the lack of sanitation and treatment of protected areas, the exploitation of natural resources by companies, and the realization of tourist megaprojects, which caused imbalance in the marine life in the region.¹⁰⁰ It was during this period that the IACtHR included the States' duty to protect coastlines, the sea, and aquatic life within the American Convention's right to property.¹⁰¹

4. Recognition of the protection from climate change as a human right: The fourth and current phase features the Court's greater disposition towards considering climate change a human right. This phase started in 2016, when Colombia consulted the IACtHR about environmental protection in its territory.¹⁰² Two years later, the IACtHR issued advisory opinion OC-23/17, in which it acknowledged the possibility of approaching issues related to the environment based on the obligations to respect and guarantee the rights to life and personal integrity. It addressed this possibility without implying a violation of its material competence based on a new interpretation of the principle of extraterritoriality and the term "jurisdiction."¹⁰³

With this opinion, the IACtHR has become the leader in discussions on climate change in the Americas. So far, no country has been held accountable internationally for actions or omissions leading to climate change. However, we can still appreciate the evolution of the notion of linking climate change and its impact on the increase in human rights violations. The case law of the IACtHR, as well as other documents and provisions of the IASHR related to the environment and human rights,

Lokono Peoples v. Suriname, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 309, ¶ 107 (Nov. 25, 2015); Xucuru Indigenous People v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 346 (Feb. 5, 2017).

¹⁰⁰ See *Garifuna Punta Piedra Cmty. v. Honduras*, Inter-Am. Ct. H.R. (ser. C) No. 304; *Cmty. Garifuna Triunfo de la Cruz v. Honduras*, Inter-Am. Ct. H.R. (ser. C) No. 305; *Kuna Indigenous People of Madungandí v. Panama*, Inter-Am. Ct. H.R. (ser. C) No. 284, at ¶ 163; *Reyes v. Chile*, Inter-Am. Ct. H.R. (ser. C) No. 151, at ¶ 59(c); *Kichwa Indigenous People of Sarayaku v. Ecuador*, Inter-Am. Ct. H.R. (ser. C) No. 245, at ¶ 211.

¹⁰¹ See *Reyes v. Chile*, Inter-Am. Ct. H.R. (ser. C) No. 151. See also *Cabrera García v. Mexico*, Inter-Am. Ct. H.R. (ser. C) No. 220; *Afro-Descendant Cmty. Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, Inter-Am. Ct. H.R. (ser. C) No. 270; *Kuna Indigenous People of Madungandí v. Panama*, Inter-Am. Ct. H.R. (ser. C) No. 284; *Cmty. Garifuna Triunfo de la Cruz v. Honduras*, Inter-Am. Ct. H.R. (ser. C) No. 305; *Garifuna Punta Piedra Cmty. v. Honduras*, Inter-Am. Ct. H.R. (ser. C) No. 304; *Xucuru Indigenous People v. Brazil*, Inter-Am. Ct. H.R. (ser. C) No. 346.

¹⁰² The Interpretation of Article 1(1), 4(1) and 5(1) of the American Convention on Human Rights, Request for Advisory Opinion submitted by Colombia, Inter-Am. Ct. H.R. (ser. B) ¶ 96 (Mar. 14, 2016).

¹⁰³ Advisory Opinion OC-23/2017, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶¶ 75, 114 (Nov. 15, 2017).

has contributed significantly to acknowledging the link between climate change and human rights violations. There is hope that these new interpretations could increase the popularity of viewing climate change from a human rights perspective. The shift towards viewing climate change as a human rights issue could lead to increased state accountability for failing to combat climate change. Consequentially, states may take a more active role in combating climate change and the negative impacts of climate change may be lessened.

Taking a closer look at the case law of the IACtHR and the evolution of its decisions and interpretations, the IACtHR has been paving the way to make it possible to recognize that an obligation to counter climate change arises from states' general obligations to respect, promote, and protect human rights. After this closer view of the case law evolution, I will discuss some paradigmatic cases that have contributed to increase the IACtHR's awareness of environmental and climate issues.

The first decision of the IACtHR where it recognized an environmental issue within the context of human rights violations was *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (2001), which deals with the irregular concession of logging in Indigenous lands.¹⁰⁴ Later, the court also judged the following cases: a) *Moiwana Community v. Suriname* (2005), addressing the state's unwillingness to promote investigations and punish those responsible for a massacre carried out by the Army in November 1986 against the N'djuka Maroon community in Moiwana, which resulted in the death of more than forty Indigenous men, women and children;¹⁰⁵ b) *Yakye Axa Indigenous Community v. Paraguay* (2005), concerning the non-recognition of traditional Enxet-lengua lands and the food, medical, and sanitary vulnerability in which the Yakye Axa Indigenous people found themselves;¹⁰⁶ c) *Sawhoyamaxa Indigenous Community v. Paraguay* (2006), also concerning the non-recognition of traditional lands by the Enxet-lengua people, this time in Sawhoyamaxa;¹⁰⁷

¹⁰⁴ *Mayagna (Sumo) Awas Tingni Cmty. v. Nicaragua*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 104 (Aug. 31, 2001).

¹⁰⁵ *Moiwana Cmty. v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 124, ¶ 102 (June 15, 2005).

¹⁰⁶ *Yake Axa Indigenous Cmty. v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 82 (June 17, 2005).

¹⁰⁷ *Sawhoyamaxa Indigenous Cmty. v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 73(14) (Mar. 29, 2006).

and d) *Saramaka People v. Suriname* (2007), which again concerned a demand to rectify the non-recognition of traditional lands.¹⁰⁸

In these cases, the IACtHR has shown a remarkable amount of effort to link environmental issues to human rights. This link became possible after increasing numbers of cases were brought to the IASHR involving state actions in the environment and questioning the role that the IASHR has on the continent.

The argument used to acknowledge this link would hardly have been strengthened in a human rights protection system that did not include the unique regional issues of the Americas. For example, in *Mayagna (Sumo) Awas Tingni Community*, the IACtHR concluded that the environmental damage caused by irregular logging in the traditional territory of Indigenous groups violated the property rights of the affected communities.¹⁰⁹ This ruling demonstrated that the protection of property rights guaranteed by Article 21 of the ACHR extends to the Western perception of the right to property, similar to a kind of “market commodity” related to an individual’s right to “use, enjoy and dispose of his goods.” The ruling incorporated the concept of communal property of Indigenous peoples, guaranteeing such peoples the use of natural resources on their traditional lands in order to maintain their cultural habits such as religion, agricultural practices, hunting, fishing, and the ways of life of their respective communities.¹¹⁰

Embracing the Indigenous perspective of property, which is characterized by these peoples’ strong connection with the forest, subsequent decisions show that the IACtHR has provided an increasingly broad scope to the provisions of the American Convention. For example, in *Moiwana Community*, following a massacre that forced their displacement, the N’djuka Maronn ethnic group was unable to perform funeral rituals for the victims.¹¹¹ As a result, the N’djuka people believed the spirits of those victims would not find peace and would torment the survivors, a situation that caused them great psychological suffering.¹¹²

¹⁰⁸ See *Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 78 (Nov. 28, 2007).

¹⁰⁹ *Mayagna (Sumo) Awas Tingni Cmty. v. Nicaragua*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶¶ 162–67 (Aug. 31, 2001).

¹¹⁰ Thomas T. Ankersen & Thomas K. Ruppert, *Defending the Polygon: The Emerging Human Right to Communal Property*, 59 OKLA. L. REV. 681, 684, 686 (2006).

¹¹¹ *Moiwana Cmty. v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 124, ¶ 113 (June 15, 2005).

¹¹² *Id.*

This interpretation from the cosmovision of the N'djuka has led the IACtHR to develop the concept of “spiritual damage.”¹¹³ The damage results from violations of provisions of the American Convention related to the right to personal integrity, the right to judicial protection, the right to property, and the rights to move and residence.¹¹⁴

In *Yakye Axa Indigenous Community*, the IACtHR strengthened the legal understanding that the right to life is not restricted to the right of survival but must be extended to the promotion of a life with dignity, fully exercised with access to the benefits of culture, health, food, education, and a healthy environment.¹¹⁵

In the cases *Sawhoyamaxa Indigenous Community* and *Saramaka People*,¹¹⁶ the ineffectiveness or nonexistence of mechanisms in the domestic laws of the defendant states for guaranteeing Indigenous peoples the right to plead legal ownership of their lands caused the court to highlight the violation of the right to recognition of legal personality for depriving Indigenous peoples of contact with the land and its natural resources.¹¹⁷

The Court also abided by the IACHR’s expanded reasoning regarding environmental issues in human rights cases beyond cases involving traditional communities. In 2003, the Commission received a petition regarding the Panama Metropolitan Natural Park for the alleged

¹¹³ See *id.*, ¶¶ 2,3 (Trindade, J., separate opinion).

¹¹⁴ ASOCIACIÓN INTERAMERICANA PARA LA DEFENSA DEL AMBIENTE [INTER-AMERICAN ASSOCIATION FOR ENVIRONMENTAL DEFENSE], GUÍA DE DEFENSA AMBIENTAL: CONTRUYENDO LA ESTRATEGIA PARA EL LITIGIO DE CASOS ANTE EL SISTEMA INTERAMERICANO DE DERECHOS HUMANOS [ENVIRONMENTAL DEFENSE GUIDE: BUILDING THE STRATEGY FOR THE LITIGATION OF CASES BEFORE THE INTER-AMERICAN HUMAN RIGHTS SYSTEM] 67, 86, 88–90 (2008). See also Daniel Barstow Magraw & Lauren Baker, *Globalization, Communities and Human Rights: Community-Based Property Rights and Prior Informed Consent*, 35 DENV. J. INT’L L. & POL’Y 413, 418 (2007).

¹¹⁵ *Yakye Axa Indigenous Cmty. v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 167 (June 17, 2005) (clarifying that the state has an obligation, not only to refrain from arbitrarily depriving a human being of their life, but also to guarantee the minimum conditions for people to live with dignity).

¹¹⁶ In both cases the IACtHR acknowledged that the right to property must be interpreted in a different way in order to comply with the communal characteristics of the group and their relation to the land. By not acknowledging a collective legal personality, they would not be able to ensure the full enjoyment and exercise of their right to property. See *Sawhoyamaxa Indigenous Cmty. v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 143 (Mar. 29, 2006); *Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 78 (Nov. 28, 2007).

¹¹⁷ Dinah Shelton, *Environmental Rights and Brazil’s Obligations in the Inter-American Human Rights System*, 40 GEO. WASH. INT’L L. REV. 733, 764 (2009).

damage caused by the construction of an expressway in a protected area.¹¹⁸ In 2009, the *Community of La Oroya v. Peru* was the first time the court addressed environmental contamination linked to human rights in non-Indigenous communities in which the Commission acted more incisively.¹¹⁹

The first time the court addressed environmental issues outside the scope of Indigenous groups or traditional peoples' demands was the case *Claude Reyes et al. v. Chile* in 2006, involving Chile's refusal to provide its citizens with data on a deforestation project. In this case, the IACtHR extended the scope of the right to freedom of expression of Article 13 of the Convention to include an obligation that the state guarantee access to information in environmental matters.¹²⁰

When analyzing environmental issues in non-Indigenous communities, the IACHR and the court indicated that environmental protection through the mechanisms and principles of the ACHR encompasses the broad guarantee of the rights of "everyone." Thus, environmental protection in the IASHR arises not from environmental concern, but from the pragmatic need to protect provisions of the American Convention, such as judicial guarantees (Article 8.1), freedom of religion (Article 12), freedom of expression (Article 13) or even property rights (Article 21).¹²¹

Despite the majority of environmental issues analyzed by the IACHR and court dealing with Indigenous and traditional issues, the cases of the *Community of La Oroya v. Peru* and *Claude Reyes et al. v. Chile*

¹¹⁸ *Metro. Nature Rsrv. v. Panama*, Case 11.533, Inter-Am. Comm'n H.R., Report No. 88/03, OEA/Ser.L./V/II.118, doc. 5, rev. 2. ¶ 14 (2003).

¹¹⁹ *Cnty. of La Oroya v. Peru*, Case 1473-06, Inter-Am. Comm'n H.R., Report No. 76/09, OEA/Ser.L./V/II., doc. 51 ¶ 28 (2009). The case refers to the environmental contamination in the city of La Oroya caused by a series of dangerous substances released by a metallurgical complex that operated there for more than ten years. *Id.* ¶ 2. The population was exposed to amounts of lead, arsenic, sulfur dioxide, and cadmium that exceeded the parameters recommended both by Peru and the World Health Organization, which compromised the physical integrity and health of La Oroya's inhabitants. *Id.* ¶ 11. On the grounds that if proven, the allegations of the petitioners could represent violations of the rights enshrined by the ACHR, and having met the other requirements, the petition was declared admissible. *Id.* ¶ 74.

¹²⁰ *Reyes v. Chile*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 151, ¶ 73 (Sept. 19, 2006).

¹²¹ See Neves, *supra* note 39.

clearly signal that linking the provisions of the ACHR to a greater diversity of environmental issues is fully possible.¹²²

Thus, in the same way that metallurgic complex pollution or the restriction of access to information about the environmental impact of certain enterprises brings them within the purview of human rights violations, it must be recognized that environmental disasters resulting from changes caused by global warming result in violations of fundamental rights.¹²³

Global warming is the focus of Petition 1.413/05. This pioneering petition deals with the harmful effects on the environment of the Arctic Circle and the way of life of the Eskimo Inuit people.¹²⁴ Over the course of 175 pages, the petitioners demonstrated the interrelations between the United States' inactivity in reducing the emission of greenhouse gases and violations of the Inuit people's rights enshrined in the American Declaration of The Rights and Duties of Man.¹²⁵ Petition 1.413/05 received a two-paragraph rejection from the IACHR that stated that "the information provided does not allow us to determine whether the alleged facts tend to characterize a violation of rights protected by the American Declaration."¹²⁶

On one hand, the petition's rejection indicates a resistance towards greater openness to the environmental issue; on the other hand, Petition 1.413/05 is unprecedented because of its well-demonstrated connections between environmental degradation caused by global warming and violations of the Inuit people's fundamental rights. The petition is a milestone in the recognition of the link between climate change and human rights, which has yet to be recognized by the IACtHR.

¹²² See *Cnty. of La Oroya v. Peru*, Case 1473-06, Inter-Am. Comm'n H.R., Report No. 76/09, OEA/Ser.L/V/II, doc. 51 ¶¶ 74–75 (2009); *Reyes v. Chile*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 151.

¹²³ John H. Knox, *Linking Human Rights and Climate Change at the United Nations*, 33 HARV. ENV'T L. REV. 477, 788 (2009); See also Sacoby M. Wilson et al., *Climate Change, Environmental Justice, and Vulnerability: An Exploratory Spatial Analysis*, 3 ENV'T JUST. 13, 18 (2010).

¹²⁴ Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States, *supra* note 60.

¹²⁵ *Id.* at 78.

¹²⁶ Letter from Ariel E. Dulitzky, *supra* note 5. See also Hari M. Osofsky, *Inuit Petition as a Bridge? Beyond Dialectics of Climate Change and Indigenous People's Rights*, 31 AM. INDIAN L. REV. 675, 676 (2007); John H. Knox, *Linking human rights and climate change at the United Nations*, 33 HARV. ENV'T L. REV. 477, 482 (2009).

In 2016, the Republic of Colombia requested that the court explain the role of state responsibility for environmental harm under the ACHR, taking into consideration how the ACHR relates to other legal instruments on the matter, such as the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena Convention) and customary international law.¹²⁷ While Colombia's request focused specifically on the wider Caribbean region, the IACtHR discussed general obligations applicable to all states in America.¹²⁸

The advisory opinion sought to clarify how the ACHR should be interpreted in relation to infrastructure projects with the potential to cause environmental damage and consequentially affect the rights of specific groups. The analysis referred to Articles 4 and 5 of the ACHR to elucidate states' obligations regarding environmental changes that compromise the rights to life and personal integrity.

After this request, in 2018, the Court published the landmark Advisory Opinion on the Environment and Human Rights (Advisory Opinion OC-23/2017), which reaffirmed that human rights depend on the existence of a healthy environment. The IACtHR ruled that states must take measures to prevent significant environmental harm to individuals inside—and outside—their territory.¹²⁹ For the first time, the IACtHR recognized the existence of a fundamental right to a healthy environment under the ACHR in two ways: first, it articulated a new interpretation of the extraterritoriality in cases involving environmental harm; and second, it clarified the duty to prevent transboundary environmental harm as a matter of human rights law.¹³⁰ This ruling is significant for increasing

¹²⁷ The Interpretation of Article 1(1), 4(1) and 5(1) of the American Convention on Human Rights, Request for Advisory Opinion submitted by Colombia, Inter-Am. Ct. H.R. (ser. B) (Mar. 14, 2016).

¹²⁸ See generally Advisory Opinion OC-23/2017, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶ 47 (Nov. 15, 2017). See also, Giovanni Vega-Barbosa & Lorraine Aboagye, *Human Rights and the Protection of the Environment: The Advisory Opinion of the Inter-American Court of Human Rights*, EJIL:TALK! (Feb. 26, 2018), <https://www.ejiltalk.org/human-rights-and-the-protection-of-the-environment-the-advisory-opinion-of-the-inter-american-court-of-human-rights/> [<https://perma.cc/9TKE-ZGR7>]. Colombia's request "elicited substantial interest in the region," with Argentina, Bolivia, Guatemala, Panama, and Honduras having "submitted written observations and/or participated in the March 2017 hearing, as did the Inter-American Commission on Human Rights and numerous non-state parties." Maria L. Banda, *Inter-American Court of Human Rights' Advisory Opinion on the Environment and Human Rights*, 22 AM. SOC'Y OF INT'L L. (May 10, 2018), <https://www.asil.org/insights/volume/22/issue/6/inter-american-court-human-rights-advisory-opinion-environment-and-human> [<https://perma.cc/35UF-85Y9>].

¹²⁹ Advisory Opinion OC-23/2017, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶ 47 (Nov. 15, 2017).

¹³⁰ *Id.* ¶ 102.

access to justice and establishing additional bases of liability for transboundary environmental harm including climate change.

The IACtHR found an irrefutable link between the protection of the environment and the realization of other human rights “due to the fact that environmental degradation affects the effective enjoyment of other human rights.”¹³¹ It emphasized the interdependence and indivisibility of human rights, the environment, and sustainable development to the extent that the full enjoyment of all human rights depends on a healthy environment. This ruling extends beyond Indigenous rights since a healthy environment is necessary for a life with dignity.¹³² Based on this connection, the IACtHR explained that currently: (1) numerous human rights protection systems recognize the right to a healthy environment, and at the same time, there can be no doubt that (2) numerous other human rights are vulnerable to environmental degradation, all of which result in a series of state environmental obligations to ensure that states comply with their duties to respect and ensure those rights.¹³³

Additionally, the IACtHR explained that a healthy environment is a human right with individual and collective dimensions. In its collective dimension, it constitutes a universal right that is owed to both present and future generations, while, due to its individual dimension and its relationship with other rights (such as health and personal integrity), its violation may have direct or indirect repercussions on individuals.¹³⁴ According to the court, environmental degradation may cause irreparable damage to human beings. Therefore, the court recognizes that a healthy environment is a fundamental right to the existence of humankind.¹³⁵

The IACtHR found that the right to a healthy environment, as an autonomous right, differs from the environmental content that arises from the protection of other rights, like the rights of life or personal integrity. Indeed, some human rights are more susceptible to environmental degradation than others, like the right to a healthy environment. The IACtHR classified two groups of rights that are especially related to the environment: substantive rights and procedural rights. Substantive rights are those whose enjoyment is particularly vulnerable to the degradation of the environment (for example, life, personal integrity, health, or property).

¹³¹ *Id.* ¶¶ 22, 37, 47.

¹³² *Id.* ¶ 51.

¹³³ *Id.* ¶ 55.

¹³⁴ *Id.* ¶ 59.

¹³⁵ *Id.*

Procedural rights are those whose exercise contribute to better environmental policies (such as freedom of expression and association, to information, to participation in decision-making, and to an effective remedy).¹³⁶

In Advisory Opinion OC-23/2017, the Court also interpreted the term “jurisdiction” to be broader than a state’s territory. A state must respect and ensure the human rights of all those subject to their jurisdiction, even if they are not within its territory.¹³⁷ The exercise of jurisdiction under the ACHR outside the territory of a state is an exceptional situation that must be examined from case to case.¹³⁸ However, the concept of jurisdiction in this treaty encompasses any situation in which a state exercises effective authority or control over an individual, or individuals, either within or outside its territory.¹³⁹

Among the impacts of Advisory Opinion OC-23/2017 is its influence on how mega-infrastructure projects in the Americas—including offshore platforms, dams, and cross-border pipelines—are approved, monitored, and constructed. Additionally, it opens the door to transboundary climate litigation in a human rights tribunal. The IACtHR expressly recognized the adverse impact of climate change on human rights, and its new test for extraterritoriality is sufficiently broad to encompass climate-related harms (assuming there is a sufficient causal nexus and evidence that a state failed in its duty of due diligence).¹⁴⁰

Advisory Opinion OC-23/2017 was the first time that a human rights tribunal reinterpreted the principles and terms of an international treaty to truly include the right to a healthy environment as a human right despite no mention of this right in the treaty; it exposed how its own “traditional” jurisprudence could be applicable to a situation of environmental harm that is not limited to direct and concrete victims. Also,

¹³⁶ *Id.* ¶ 211–12.

¹³⁷ *Id.* ¶ 115.

¹³⁸ In its case law, the IACHR has established that state jurisdiction, for the purposes of applying Article 1.1 of the ACHR, is not limited to its national territory. See *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (ser. A) No. 21, ¶ 61 (Aug. 19, 2014). The state’s extraterritorial responsibility might be acknowledged if it is found that the state had effective control over the person or situation that caused the violation of human rights. *Id.* at ¶ 62; see also *Alejandro Jr v. Cuba*, Case 11.589, Inter-Am. Comm’n H.R., Report No. 86/99, ¶ 23 (1999).

¹³⁹ Advisory Opinion OC-23/2017, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶ 47 (Nov. 15, 2017).

¹⁴⁰ Christopher Campbell-Durufflé & Sumudu Anopama Atapattu, *The Inter-American Court’s Environment and Human Rights Advisory Opinion: Implications for International Climate Law*, 8 CLIMATE L. 321, 333 (2018).

it mentions the possibility of considering the environment itself as a subject of protection.¹⁴¹

III. CONCLUSION: WHAT TO HOPE FOR?

In 2018, the IACtHR published Advisory Opinion OC-23/2017, which brought an innovative interpretation of the scope of environmental protection and its relationship with human rights. The Court's analysis referred to Articles 4 and 5 of the ACHR to establish state obligations regarding environmental changes that compromise the rights to life and integrity.¹⁴²

Being one of the first opportunities for the IACtHR to address this sort of obligation, the Court took the opportunity to reinforce the existence of a link between environmental protection and the realization of human rights, seeing that the environmental damage caused by climate change has a real impact on the enjoyment of rights. The Court referred to statements made by the IACHR and the OAS General Assembly that express the same sentiment.¹⁴³

By recognizing the interdependent relationship between the protection of the environment, sustainable development, and human rights in international law, the IACtHR emphasizes that the right to a healthy environment is already acknowledged as a right in itself by many human rights systems.¹⁴⁴ The IACtHR also establishes the understanding that environmental degradation impacts the enjoyment of human rights and results in a series of environmental obligations for states. Because of this interdependence, when accessing state obligations, the Court may rely on principles, rights, and obligations of international environmental law to build its decision regarding the scope of the obligations under the ACHR.

The IACtHR recalls that the right to a healthy environment is established in Article 11 of the Protocol of San Salvador and must be considered to be included in the economic, social, and cultural rights of

¹⁴¹ In order to establish this, the IACtHR recalled its case law and all the already-recognized impacts of environmental damage to human rights to explain that states do have an obligation to adopt preventive measures when facing a potential risk.

¹⁴² Advisory Opinion OC-23/2017, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶ 47 (Nov. 15, 2017).

¹⁴³ *Id.*

¹⁴⁴ The IACtHR recalled its own case law, case law from the European Court on Human Rights and the African Commission on Human and Peoples' Rights, as well as publications of the UN, in order to establish the link between the existence of a healthy environment and the full enjoyment of human rights. *See id.* ¶¶ 55, 61, 65.

Article 26 of the ACHR.¹⁴⁵ The right to a healthy environment has both individual and collective dimensions, the first related to the violation of other human rights deriving (directly or not) from the violation of the right to a healthy environment, while the second pertains to its characteristic as a universal right owed to present and future generations.¹⁴⁶

Understood as an autonomous right, the right to a healthy environment protects all the components of the environment—for example, forests, rivers, and seas—regardless of the existence of concrete evidence of a risk to individuals. Such a broad scope of protection is based on the fact that all living organisms, as well as biomes, are vital to ensure a healthy environment. As a result, any actions designed to protect nature benefits not only society, but all living organisms and components of the environment.

Even though the damage from the environment may affect all human rights, the IACtHR recognizes that some human rights are more susceptible to violation. Those rights could be divided in two categories: *substantive rights* and *procedural rights*. Substantive rights are those whose enjoyment is particularly vulnerable to environmental degradation, such as the rights to life, personal integrity, health, and property. Procedural rights refer to those related to environmental policymaking, such as the right to information, participation, and to an effective remedy.¹⁴⁷

Despite focusing on transboundary damage, the IACtHR concluded that states have an obligation to prevent significant environmental damage inside and outside their territory. As such, it cannot be ignored that Advisory Opinion OC-23/2017 establishes an important precedent that can serve as foundation for future decisions on cases related to environmental law and human rights.¹⁴⁸

In fact, the considerations made by the IACtHR can be useful for the analysis of a pending petition presented to the IACHR in 2013, the Arctic Athabaskan Peoples Petition. This petition was presented by the Arctic Athabaskan peoples, who are seeking recognition of Canada's responsibility for the violations of their human rights resulting from the

¹⁴⁵ *Id.* ¶ 56.

¹⁴⁶ *Id.* ¶ 59.

¹⁴⁷ *Id.* ¶ 64.

¹⁴⁸ *Id.*

effects of climate change in the Arctic that were intensified by state's black carbon emission.¹⁴⁹

The Athabaskan petition argues that the effects of climate change in the environment have violated their right to culture, property, health, and their own means of subsistence. Except for the right to their own means of subsistence that has no legal provision, all of these rights are enshrined by the American Declaration, in Articles XIII, XXIII and XI, respectively.

The petitioners rely strongly on the decision of *Yanomami Case* and the IACHR Report of 1997 on Ecuador to sustain their claim on how environmental degradation violates their right to health. They also make numerous references to IACtHR case law on Indigenous property, not only regarding the right of property, but also the importance of the relationship between Indigenous people and their land for cultural purposes.

Despite evident similarities, the Athabaskan Petition is distinguishable from the petition filed by the Inuit people in 2005. The Athabaskan Petition, in contrast with the Inuit petition, focuses on black carbon emissions. According to scholars, addressing climate change caused by black carbon emission requires a more regional approach, unlike greenhouse gas emission which is a global matter and thus makes it more difficult to concretely access each state's contribution to the damage.¹⁵⁰

The success of the Athabaskan petition relies on legal developments regarding environment and human rights in the IASHR, mainly in IACtHR case law that has evolved a great deal since 2005. Although the IACHR does not apply the ACHR to countries that did not ratify the treaty, there are occasions in which it referred to the IACtHR's interpretation of the rights of the ACHR to interpret the American Declaration.¹⁵¹

The considerations made by the IACtHR in Advisory Opinion OC-23/2017 with regards to the right to life, personal integrity, and environmental damage, can serve as a reference for the IACHR in the analysis of Athabaskan petition's claims regarding the violation of their right to health.

¹⁴⁹ Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations of the Rights of Arctic Athabaskan Peoples Resulting from Rapid Arctic Warming And Melting Caused by Emissions of Black Carbon by Canada, filed by The Arctic Athabaskan Council (Apr. 23, 2013) (*accessible at* https://earthjustice.org/sites/default/files/AAC_PETITION_13-04-23a.pdf [<https://perma.cc/MQ39-SAS9>]). The petition is currently pending before the IACHR.

¹⁵⁰ Don McCrimmon, *The Athabaskan Petition to the Inter-American Human Rights Commission: using human rights to respond to climate change*, 6 POLAR J. 398 (2016).

¹⁵¹ *Id.*

Given the evolution of international law on the environment and human rights, the growing concern with the impacts of climate change in Latin America and the Caribbean, and the years-long activism of Indigenous and traditional peoples fighting to protect the environment, it is expected that future decisions in the IASHR will advance this matter. The current legal framework may not be enough to start holding states accountable for violating the right to environment in the IASHR, but it should be acknowledged that the system has been paving the way for that result. The IASHR has been a global reference for environment and human rights matters and must continue to take advantage of every opportunity to adopt innovative and bold decisions.

This is of utmost importance when we recall the serious damages provoked by the fires in the Brazilian Amazonia. Since 2019, the number of illegal fires in the rainforest has increased, and, in June of 2020, the National Space Research Institute registered the highest number of fires in the last thirteen years.¹⁵² Statements by the Brazilian President Jair Bolsonaro and his Minister of the Environment have openly encouraged this criminal practice. Not only is the government failing to take measures to fight the fires, but it is also promoting the dismantling of environmental agencies and making it difficult for environmental NGOs to act, granting effective impunity to those responsible for the deforestation.

In August 2019, Brazilian jurists presented a petition against Jair Bolsonaro to the Hague Tribunal, accusing him of ecocide.¹⁵³ More recently, the European Parliament has considered the viability of alerting the International Criminal Court to a possible crime against humanity. Although the analysis was more focused on the threats to the lives of Indigenous people and the illegal possession of their lands, the document referred to the fires and environmental damages.¹⁵⁴

Advisory Opinion OC-23/2017 sets some strong parameters that increase the possibility of bringing Brazil to the IACtHR, as it not only

¹⁵² Felipe Betim, *Amazônia registra em junho o maior número de focos de incêndio dos últimos 13 anos* [In June Amazon registers the largest number of fires in the last 13 years], EL PAÍS (July 1, 2020), <https://brasil.elpais.com/brasil/2020-07-01/amazonia-registra-em-junho-o-maior-numero-de-focos-de-incendio-dos-ultimos-13-anos.html> [https://perma.cc/RUF3-X7XQ].

¹⁵³ Afonso Benites, *Bolsonaro é denunciado por incentivar genocídio de indígenas* [Bolsonaro is denounced for encouraging genocide of indigenous people], El País (Nov. 28, 2019), <https://brasil.elpais.com/brasil/2019-11-29/bolsonaro-e-denunciado-por-incentivar-genocidio-de-indigenas.html> [https://perma.cc/FZ4N-KN28].

¹⁵⁴ See generally EUR. UNION DIR.-GEN. FOR EXTERNAL POL'YS OF THE UNION, CHALLENGES FOR ENVIRONMENTAL AND INDIGENOUS PEOPLE'S RIGHTS IN THE AMAZON REGION (June 30, 2020).

refers to the link between the right to life, personal integrity, and the protection of the environment, but also highlights states' obligations to adopt preventive measures. In the face of that, with Brazil's inactivity in relation to environmental crimes, and the harassment of Indigenous and other traditional populations, there is a strong precedent for condemnation.

In fact, the extent of the environmental damage in Brazil has also expanded the number of eligible petitioners. In 2019, the smoke from the fires in Amazonia reached the states of São Paulo and Paraná, in the country's southeast and south regions respectively, more than 2,400 km away from where the actual fires took place.¹⁵⁵ This is an evidence that the effects of the fires are not restricted to local populations but have a wider impact on individuals and communities across Brazil, entitling these communities to present a demand at the IASHR.

Although it would be audacious considering that the OC-23/2017 referred to state responsibility for extraterritorial environmental damage caused by infrastructural projects, one could imagine a petition being filed against Brazil by its neighbors, if their populations are also affected by the fires. In OC-23/2017, the IACtHR makes it clear that states must adopt all reasonable measures to avoid causing environmental damage in and beyond their borders, an obligation that is clearly not being observed by the Brazilian government.

Whereas it is valid to consider the International Criminal Court to search for accountability of state rulers regarding environmental degradation, the Brazilian state should also be held accountable. Given the development of environmental law with a human rights perspective in the IASHR and considering that Brazil has recognized the contentious competence of the IACtHR, there are plenty of arguments that could support condemnation.¹⁵⁶

However, the IASHR's boldness in environmental matters has a price. While it has set important and innovative parameters that could

¹⁵⁵ Patrícia Figueiredo, *Fumaça de Queimadas na Amazônia e em Países Vizinhos Chega aos Céus do Sul e Sudeste do Brasil* [*Smoke From Fires in the Amazon and Neighboring Countries Reaches the Skies of the South and Southeast of Brazil*], G1 (Sept. 19, 2019), <https://g1.globo.com/natureza/noticia/2019/09/19/fumaca-de-queimadas-na-amazonia-e-em-paises-vizinhos-chega-aos-ceus-do-sul-e-do-sudeste-do-brasil.ghtml> [<https://perma.cc/8ZVW-L3ST>].

¹⁵⁶ For example, recently Brazil has been promoting a dismantlement of the organs responsible for the protection of the environment, while also encouraging arson, the invasion of Indigenous and traditional lands, and illegal mining. The state has systematically disregarded its international obligations while actively creating favorable conditions for the perpetuation of those violations.

change the future of environmental protection, recently the IASHR has been facing animosity from several American countries with real repercussions on its performance. Former United States' President Donald Trump denied the environmental crisis.¹⁵⁷ In Latin-America, five countries delivered a declaration to the IACHR, criticizing the IASHR's "very incisive posture" and demanding that it observe the principle of subsidiarity and give states more space to address questions of human rights with more autonomy and in accordance with their democratic processes.¹⁵⁸

The demand for more autonomy would be convenient given the rise of right-wing leaders in Latin America and their posture regarding environmental law and the rights of minority groups.¹⁵⁹ A great example is the Brazilian President, who in his opening speech at the UN General Assembly, despite proof and evidence, not only denied the existence of the fires across the country but also blamed Indigenous and traditional peoples for them.¹⁶⁰

Recently, the OAS Secretary refused to approve the re-appointment of Paulo Abrão as Executive Secretary of the IACHR, despite the fact that he was re-elected by a unanimous vote. This decision has been vastly criticized by many human rights organizations as a threat to the IACHR's independence and stability.¹⁶¹ These recent events point out a future of challenges for the IASHR, which could lead to a deceleration of

¹⁵⁷ Chris Megerian, *At Davos, Trump Rejects Climate Crisis, Lauds U.S. Economy and Fossil Fuels*, L.A. TIMES (Jan. 21, 2020), <https://www.latimes.com/politics/story/2020-01-21/trump-rejects-warnings-of-environmental-crisis-in-speech-at-davos> [<https://perma.cc/M8H3-Y434>].

¹⁵⁸ Press Release, Ministerio de Relaciones Exteriores [Ministry of Foreign Rels.], Ministerio de Justicia y Derechos Humanos sobre Sistema Interamericano de Derechos Humanos [Ministry of Justice and Human Rights on the Inter-American System of Human Rights] (Apr. 23, 2019), <https://www.minjusticia.gov.cl/comunicado-de-prensa-ministerio-de-relaciones-exteriores-ministerio-de-justicia-y-derechos-humanos-sobre-sistema-interamericano-de-derechos-humanos/> [<https://perma.cc/M2GT-D9A4>].

¹⁵⁹ Arthur Castro, *A Onda Conservadora: os Ataques da Direita Nos Quatro cantos do Mundo* [*The Conservative Wave: Attacks From the Right in the Four Corners of the World*] JORNAL DOIS (Nov. 8, 2019), <http://jornaldois.com.br/onda-conservadora/> [<https://perma.cc/7SU5-ECW3>]; Omar G. Encarnación, *The Trumpification of the Latin American Right*, FOREIGN POL'Y (Apr. 16, 2018), <https://foreignpolicy.com/2018/04/16/the-trumpification-of-the-latin-american-right/> [<https://perma.cc/35AC-XGL4>].

¹⁶⁰ Katie Nelson, *Bolsonaro Denies Brazil Is Burning, Blames Indigenous People for Fires in Disturbing Speech At UNGA*, GREENPEACE (Sept. 22, 2020), <https://www.greenpeace.org/usa/news/bolsonaro-denies-brazil-is-burning-blames-indigenous-people-for-fires-in-disturbing-speech-at-unga/> [<https://perma.cc/H296-QAAQ>].

¹⁶¹ *IACHR's Independence, Working Conditions Contested As OAS Blocks Executive Secretary's Re-appointment*, INT'L JUST. RES. CTR. (Sept. 9, 2020), <https://ijrcenter.org/2020/09/09/iachrs-independence-working-conditions-contested-as-oas-blocks-executive-secretarys-re-appointment/> [<https://perma.cc/Z8CN-3NS3>].

the advances towards international accountability for environmental damage as a violation of a human right.