http://dx.doi.org/10.18623/rvd.v19i43.2159

THE "GREENING" OF THE AMERICAN CONVENTION ON HUMAN RIGHTS: INDIGENOUS PEOPLES AND ENVIRONMENTAL PROTECTION IN CONVERGENCE

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ABSTRACT

This study aims to analyze the convergence between International Environmental Law and International Human Rights Law in the Inter-American Court of Human Rights (IACHR) from a phenomenon known as "greening" of human rights treaties. Along the past years, the growth of demands involving environmental issues in international human rights protection mechanisms has evinced the strategic use of protection treaties of civil and political rights for the indirect judicialization of linked litigations to environmental protection. Regarding the Inter-American System of Human Rights – in which a great part of the regional population is made up by Indigenous and tribal peoples, who we know maintain a close relationship with their lands and natural resources –, that phenomenon has a significant relevance. We observed that, in light of recent developments in jurisprudence, especially in Advisory Opinion no. 23/17 and in the "Nuestra Tierra" v. Argentina case, that practice tends to widen itself to enable the use of that system to rule on environmental issues. This study used a qualitative approach based on a bibliographic and documental research.

Keywords: environment; greening; human rights; Indigenous peoples; Inter-american Court of Human Rights.

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O “ESVERDEAMENTO” DA CONVENÇÃO AMERICANA DE DIREITOS HUMANOS: POVOS INDÍGENAS E PROTEÇÃO AMBIENTAL EM CONVERGÊNCIA

RESUMO

Este trabalho tem por objetivo analisar a convergência entre os campos do Direito Internacional do Meio Ambiente e Direito Internacional dos Direitos Humanos no âmbito da Corte Interamericana de Direitos Humanos (Corte IDH), a partir de um fenômeno conhecido como greening ou esverdeamento dos tratados de direitos humanos. Ao longo dos últimos anos, o crescimento de demandas envolvendo questões ambientais nos mecanismos internacionais de proteção de direitos humanos tem evidenciado a utilização estratégica de tratados de proteção dos direitos civis e políticos para a judicialização indireta de litígios ligados à proteção do meio ambiente. No âmbito do Sistema Interamericano de Direitos Humanos – no qual grande parte da população regional é composta por povos indígenas, que reconhecidamente mantêm estreita relação com suas terras e recursos naturais –, esse fenômeno apresenta particular relevância. Observou-se que, à luz dos recentes desenvolvimentos jurisprudenciais, sobretudo, na Opinião Consultiva no. 23/17 e no caso Nuestra Tierra v. Argentina, essa prática tende a se ampliar, de maneira a possibilitar a utilização do sistema para pautar a temática ambiental. A metodologia utiliza abordagem qualitativa, baseada em pesquisa bibliográfica e documental.

Palavras-chave: *Corte Interamericana de Direitos Humanos; direitos humanos; greening; meio ambiente; povos indígenas.*

INTRODUCTION

This article aims to discuss the greening of international human rights treaties based on the actions of the Inter-American Court of Human Rights (IACHR). The demands related to the right to a healthy environment have grown in importance, as they directly influence thousands of people's daily lives.

From the 1970s onward, the environment entered the international agenda and gradually became linked to human rights, such as after the 1972 Declaration of the United Nations (UN) on the Human Environment. However, this alone has been unable to curb humans' harmful action on the planet. Moreover, most international environmental protection treaties are considered soft law standards, thus failing to effectively oblige states to comply with them.

To a large extent, the effectiveness of international norms, especially those of human rights, does not take place automatically or mechanically within the states. In this area, several different social, political, and legal actors play an important role, actively contributing so international standards are applicable and rights are effectively protected. IACHR also influences and directs the application of international standards and the effective respect for human rights.

In this direction, the greening of international human rights treaties represents an indirect use of civil and political rights protection mechanisms to safeguard environmental rights. Within the framework of the Inter-American System of Human Rights, greening is mainly based on protecting environmental rights via American Convention provisions on Human Rights, which are, in principle, aimed at guaranteeing civil and political rights.

Based on this, this research asks how we can observe the greening of human rights treaties in IACHR judgments involving Indigenous peoples.

The question is justified in the fact that, within the IACHR framework, a large part of the regional population is composed of Indigenous peoples, who are closely related to their lands and natural resources. Thus, greening has particular relevance in this region.

Our hypothesis is that, in view of recent jurisprudential developments, especially in Advisory Opinion no. 23/2017 and in the Nuestra Tierra v. Argentina case, the possibilities of using greening are significantly expanded to enable the use of this system to guide the environmental theme.

We first analyze the processes of consolidation of international environmental and human rights law, emphasizing the connection between them from the emergence of the concept of "right of future generations". Then, we assess IACHR cases involving the protection of Indigenous peoples and their relation with the environment. Finally, we address IACHR Advisory Opinion no. 23/2017 and its repercussion in a later case.

Our methodology uses a qualitative approach, based on bibliographic and documentary research, and an inductive method to catalogue decisions. This study is linked to the legal-sociological aspect as it aims to discuss the effectiveness of international human rights standards and their implementation in IACHR decisions. As for the content analysis technique, theoretical research is used to analyze the contents of legislative, jurisprudential, and legal texts on the subject.

1 THE RIGHT OF FUTURE GENERATIONS ON THE AGENDA

Over the past two centuries, the world has experienced the deepening of a process that some scientists would more recently point to as a new geological era. The Anthropocene, marked by intense human activity on the planet, seems to indicate the period in which human beings replace nature as the dominant force on Earth. More than a geological classification, the Anthropocene warns of the effects of human action on all life forms and on inequalities in the accumulation of these effects in different regions and human groups (TURPIN, 2018). Regardless of the debate about whether or not we have finally entered a new milestone of our trajectory as a species, the effects of anthropic pressure on the environment are currently undeniable.

In response to this process, international environmental law has largely expanded and strengthened itself, especially in the last decades of the 20th century, marked by conceptual and normative advances (FONSECA, 2007). At first, international treaties on the subject were merely reactive, arising as a response to environmental damage or focusing on the preservation of commercial species. They then began to progressively acquire a proactive character, aiming to reduce gradually generated damages, such as holes in the ozone layer (FONSECA, 2007).

The right of future generations emerged in the 1940s. This concept is not born within environmental law but in human rights, in which the

international society tries to consolidate forms to protect human beings in the face of atrocities similar to those in World War II (MAZZUOLI; TEIXEIRA, 2013). The very preamble to the Universal Declaration of Human Rights of 1945 mentions the preservation of future generations, establishing it as one of the central elements which should guide the application of human rights.

Likewise, an inclusive reading of art. II of the Declaration allows us to infer that the right to life relates to the right to a healthy environment. This entails indispensable conditions so present and future generations can survive, ensuring the substrates necessary for life, such as water, food, and a pollution-free atmosphere (FENSTERSEIFER, 2009).

Art. II anticipates the perception that not only war can threat humanity but, undeniably, so can the damage generated by the very deterioration man imposes on the environment. The independence of African countries and the increasing threats of environmental disasters and relevant actors in international law, which now includes not only states but also individuals and non-governmental organizations (NGOs) foster the debate after the 1960s, resulting in a significant increase in the number of environmental agreements (MAZZUOLI; TEIXEIRA, 2013; FONSECA, 2007).

Although relevant, we need to bear in mind that consolidating human rights in its conception is, in itself, the result of a long process of individualistic and Western claims. The "*every person*, *every human*, *men, and women"* expressed in the lexicon of human rights come from a generalized subject who ignores the contexts of individuals' existence on the margins of this ideal imaginary (HERRERA FLORES, 2008). Especially in the Global South, this universality concept operates in favor of coloniality, perpetuating logics which dominate, exploit, and subordinate colonized peoples' knowledge (GROSFOGUEL; MIGNOLO, 2008).

Thus, the Indigenous leader Ailton Krenak criticizes the creation of the concept of man as an abstract unit and the existence of an idea of humanity as a generalized identifiable collectivity. He proposes experimenting with a contact with other possibilities of humanity which would imply "listening, feeling, smelling, inspiring, exhaling those layers of what was outside us as 'nature,' but which for some reason is still confused with it", thus suggesting new perspectives to think about humanity (KRENAK, 2019, p. 33).

From 1972 onward, the Stockholm Conference definitively inserts the environment in the international agenda and determines the priorities for

future negotiations, creating the United Nations Environment Programme (UNEP) and strengthening non-governmental organizations and civil society (LAGO, 2013). The United Nations Conference on the Environment in Stockholm, as a result of these negotiations, signs the link between the environment and universally recognized human rights which its holders can, thus, claim (FONSECA, 2007).

The United Nations Charter on Economic Rights and Duties of States, 1974, in art. 30, makes clear the state responsibility to preserve the environment for present and future generations, a duty consolidated, in 1980, by the UN in proclaiming the historical responsibility of states to preserve nature (CANÇADO TRINDADE, 2003).

Almost 20 years later, the United Nations Conference on Environment and Development, ECO 92, reaffirms the human rights principles of universality, indivisibility, and interdependence, linking them to environmental protection. Thus, after Stockholm and ECO 92, international environmental law is marked by inserting the right to a healthy environment in the list of human rights to solidarity (MAZZUOLI; TEIXEIRA, 2013).

However, we should note that these treaties are based on soft law standards lacking binding force. Added to this obstacle is the absence of international mechanisms specifically focused on the environment, the existing incompatibility between current economic and environmental policies, and the disarticulation between internal and external policies. Moreover, note the incipient empowerment of vulnerable groups – which are still the most affected by environmental damage, such as Indigenous peoples – to claim rights to solidarity.

Therefore, one strategy to ensure the protection of the environment is to link the environmental cause to the protection of civil, political, economic, social, and cultural rights which can be judicious within the international human rights protection mechanisms. This reinforces the connection already made by a number of treaties, such as the Additional Protocol (I) to the Geneva Conventions (1977), the United Nations Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (1977), the World Charter for Nature (1982), and the San Salvador Protocol (1988). This phenomenon has been called the greening of human rights treaties, which now serve as an indirect instrument to protect the environment (BOYLE, 2012; CANÇADO TRINDADE, 2003; MAZZUOLI; TEIXEIRA, 2013).

The indirect protection of the environmental cause carries the burden

of showing the relation between environmental damage and violated human rights. This mechanism is incapable of considering an autonomous violation of environmental rights. However, it still represents the best strategy for pursuing this end. This process is called par ricochet protection (MAZZUOLI; TEIXEIRA, 2013).

The growth of cases involving environmental protection in human rights protection mechanisms highlights the greening of existing human rights treaties to the detriment of adding new rights to already constituted catalogs. The main focus on the judicialization of the right to the environment, especially with regard to Indigenous groups, has been in relation to the right to life, property, and health (BOYLE, 2012).

2 ENVIRONMENTAL PROTECTION IN INTER-AMERICAN JURISPRUDENCE CONCERNING INDIGENOUS PEOPLES

In the Inter-American Human Rights System (IHRS), protecting the healthy environment is guaranteed by art. 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador). It guarantees everyone the right to live in a healthy environment and enjoy basic public services. However, this right was for a long time limited to the petition monitoring system, until the advent of Advisory Opinion no. 23/17.

However, the assessment of infringements of that right has never been ignored. Within the IACHR framework, normative guidelines and generic procedural values derived from human rights have greened the American Convention on Human Rights (a key instrument of the system). This is clear by the connection of the environmental theme with the protection of Indigenous communities, linking it, in general, to civil and political rights, rather than considering it an autonomous cause. Most cases brought to the IHRS relate to violations of material or even spiritual values (LIXINSKI, 2010; ELIAS, 2013).

Not incidentally, the protection of ethnic minorities, such as Indigenous peoples, converges with human rights and international environmental legislation. Unlike other societal sectors, which see land and resources only as basis for development, Indigenous peoples use them to meet immediate needs, thus demanding greater environmental protection (JANKI, 2009). The environment issue profoundly affects the life of Indigenous communities not only because it is the direct source

of the elements necessary for their subsistence but also because it is an integral part of the formation of their cultural identities (LOUREIRO, 2010; CANÇADO TRINDADE, 2011).

Principle 22 of the Rio Declaration, for example, recognizes that Indigenous peoples' traditional practices play a vital role in managing and developing the environment. The International Labor Organization (ILO) convention no. 169 on Indigenous and Tribal Peoples, widely used by the IACHR as an interpretative source, provides, in its arts. 14 and 15 for these peoples' right to the property and possession of their traditionally occupied lands and the use and conservation of the natural resources in them.

The United Nations Declaration on the Rights of Indigenous Peoples determines, in its arts. 24 and 25, that Indigenous peoples have the right to enjoy their lands and resources and to maintain and strengthen their spiritual relationship with their territories, seas, and the like.

Within the IHRS framework, the American Declaration on the Rights of Indigenous Peoples, art. 19, item 1, explicitly states that "Indigenous peoples have the right to live in harmony with nature and to a healthy, safe, and sustainable environment, essential conditions for the full enjoyment of the rights to life and to their spirituality, cosmovision, and collective well-being" (OAS, 2016).

Thus, the first decision addressing the theme was the Mayagna (Sumo) Awas Tingni v. Nicaragua case, judged by the IACHR in 2001. It discussed the lack of ancestral territory demarcation, its exploitation concession to a private company, and the lack of adequate protection and judicial guarantees to the affected Indigenous community.

The Court concluded that Nicaragua violated the right to property established in art. 21 of the American Convention on Human Rights to the detriment of Mayagna (Sumo) Awas Tingni's members (CORTE IDH, 2001). The Court established that art. 21 encompasses dimensions such as collective property, territoriality, ancestry, and sacredness which must be considered to fully guarantee this right to Indigenous peoples (MELO, 2006).

The IACHR developed their interpretation of art. 21 in light of device 29(b) of the same treaty, which states that that instrument must offer interpretations ensuring the greatest protection of the rights enshrined therein. The IACHR has repeatedly indicated that human rights treaties are living instruments and their interpretation must follow the evolution of current times and living conditions. This evolutionary interpretation is

consistent with the general interpretative rules of art. 29 of the Convention and with those of the Vienna Convention on the Law of Treaties (CORTE IDH, 2017).

Consequently, there can be no restriction against any other normative instrument, whether they are internal laws or other treaties to which the State is a party. Thus, the right to property was recognized not only in its classical civil conception (though unable to capture the way of life and acting of Indigenous populations) but also property in the community context, expressed in the use and enjoyment of their "goods", comprising both corporeal and incorporeal elements (CORTE IDH, 2001).

> Given the characteristics of the instant case, some specifications are required on the concept of property in indigenous communities. Among indigenous peoples there is a communitarian tradition regarding a communal form of collective property of the land, in the sense that ownership of the land is not centered on an individual but rather on the group and its community. Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations (CORTE IDH, 2001, p. 77-78).

IACHR faced the Moiwana Community v. Suriname case four years later. This case discussed the lack of due diligence in the investigation of the N'djuka Marron's massacre and destruction of their territory, which resulted in the death of 40 people. The Court understood that the separation of that community from its ancestral land made it impossible for it to develop their traditional way of life, subsistence, and support, implying a violation of the right to personal integrity (art. 5.1) (CORTE IDH, 2005a).

In the supervening cases, the Court developed its jurisprudence relating Indigenous territories to rights to life and integrity. This is because the right to life has two principles: a procedural one, which forbids all from being arbitrarily deprived of it, and a substantive one, by which every human being has the right to have their lives respected, assigning states the duty to adopt effective guarantees to ensure it. The right to life broadly encompasses people's right not to be arbitrarily deprived of their lives and have the appropriate means of subsistence and a decent standard of living (CANÇADO TRINDADE, 2003; CORAO; RIVERO, 2014). These dimensions show the guarantee of the right to life to all people and

collectivities, with particular attention to vulnerable groups. Thus, the right to a healthy environment emerges as a corollary of the right to life (CANÇADO TRINDADE, 2003).

In practice, greening is observable in cases such as the Yakye Axa, Sawhoyamaxa, and Shahkmok Kásek Indigenous Communities against Paraguay. These cases are part of a context which stripped Indigenous communities of their lands, starting at the beginning of the last century. Paraguay sold territories in the Chaco region on the London stock exchange without its inhabitants' awareness. Already in the 1990s, community representatives requested the return of their ancestral territories using internal procedures, but they proved fruitless (CORTE IDH, 2005b).

The three communities lived in unhealthy conditions which were inadequate to maintain their traditional way of life. The soil was infertile, water was unfit for human consumption, and hunting was impossible. From this scenario, in the Yakye Axa case, the Court highlighted that these conditions acutely affected the right to dignified existence and the basic conditions of other rights, such as the right to cultural identity. Consequently, the right to life was violated (art. 4.1) (CORTE IDH, 2005b).

Likewise, Paraguay had its international liability proven in the Sawhoyamaxa and Shahkmok Kásek cases. In these, in addition to being convicted of not guaranteeing decent living conditions for these community members, it was also held liable for the deaths due to the absence of such conditions (CORTE IDH, 2006; CORTE IDH, 2010).

These demands evince that the human right to a healthy and ecologically balanced environment, in view of the access to clean water and appropriate basic sanitation services, was related to the right to life in the foundation of its merit. However, art. 11 of the San Salvador Additional Protocol was not expressly included in the sentencing device, which may characterize its tendency of indirect protection in the IACHR (ELIAS, 2013).

Until then, there were no cases in the IHRS in which the right to life was considered directly violated due to threats or environmental damage. At the first opportunity to appreciate a demand addressing the issue (concerning land concessions to logging and mining private companies in the Saramaka People v. Suriname case), the Court disfavored the Commission's claim in its preliminary exceptions (CORTE IDH, 2007).

The IACHR justification was that the Commission would not have submitted, in its application, the reasons for the supposedly permanent

and continuous effects resulting from the flood due to the construction of a hydroelectric reserve, which would have forcefully displaced the Saramaka in the 1960s. The Commission failed to mention the environmental damage caused by the project in its petition. This could have been a great opportunity to develop inter-American jurisprudence about the environmental impacts on the right to life (LIXINSKI, 2010).

On the other hand, the case represented an advance regarding considerations of the relation between resource preservation and the right to communal property. The Court has acknowledged that Art. 21 of the Convention also applies to natural resources in Indigenous communal properties, limiting this right only to those who are traditionally essential to their physical and cultural survival (PENTASSUGLIA, 2011). Furthermore, the Court pointed out that the environmental deterioration caused by mining added to the lack of supervision of socioenvironmental studies and consultations with the community, thus violating the right to communal property (CORTE IDH, 2007). In this decision, therefore, the Court implicitly recognized the right to a healthy environment as autonomous (WESTON, BOLLIER, 2013).

In 2012, the Court had the opportunity to speak on the subject in the trial of the Sarayaku Kichwa v. Ecuador case, in which it analyzed the defendant's international liability for granting Indigenous land for oil exploration, which even used explosive equipment. The Commission argued that such exploitation offered a constant risk and threat to community members' lives. Moreover, explosives destroyed forests, water sources, underground rivers, caves, sacred places, and traditional hunting areas, which would have diminished the Kichwa's livelihood. Additionally, the victims' representatives claimed that the vulnerability in which the community was, especially during food shortages, caused a series of diseases which mainly affected children and older adults (CORTE IDH, 2012).

The Court's decision, however, does not seem to have fully acknowledged the environmental claim at the time. The Court found that the state was liable for violating the right to life to the detriment of the Sarayaku Kichwa members, stressing its obligation to conduct environmental impact studies. However, the Court merely mentioned the creation of a permanent situation of risk and threat to life and personal integrity, generated by the proliferation of explosives and the potential of their detonation, without highlighting any consideration of the consequences of the environmental damage (CORTE IDH, 2012). It is surprising that the Court's analysis

disregarded such an aspect. In appreciating the violation of the right to private property, the Court had recognized that Indigenous communities have close ties to their lands and natural resources and that this guarantees their survival.

Subsequently, the Court had the opportunity to revisit the issue in Kuna of Madungandí and Embera of Bayano's members v. Panama case. The case refers to the international liability of the State for its lack of recognition, demarcation, and titration of the Kuna of Madungandí and Embera of Bayano territories. Such omission would have allowed third parties to initiate raids in those areas. On that occasion, the Commission argued that the State should be held liable for allegedly continuing to violate their right to private property, resulting from its failure to compensate them for their forced detachment from their communities between 1973 and 1975 (CORTE IDH, 2014). The Court, however, as in the Saramaka case, disfavored the Commission's claim still in its preliminary stages. This time, the Court justified this by claiming that it would not have temporal authority to analyze events which occurred before July 18, 1978, the date Panama recognized the court's litigation jurisdiction (CORTE IDH, 2014).

At the time, the Commission again failed to submit allegations exclusively related to a continued infringement of the right to communal property for failure to pay compensation or to the permanent and continuing effects that the construction of a hydroelectric dam had on the use and enjoyment of communal property and, ultimately, on the right to life.

3 THE ADVISORY OPINION NO. 23/17 OF THE IACHR AND ITS REPERCUSSION

Since the issuance of the Advisory Opinion (OC) no. 23/17 there has been a significant jurisprudential progress regarding the right to a healthy environment. IACHR advisory opinions are mechanisms which the body uses to interpret legal norms and fix their scope and content without necessarily having a contentious case in dispute.

Advisory opinions are an expression of the IACHR advisory authority. They explain the meaning of conventional devices, generating practical consequences for their application. Thus, they are an important source for determining the extent of state obligations and may even transform governmental conducts as states aim to adjust to that authorized Convention interpretation, avoiding further accountability (PIOVESAN; CRUZ WEDGE, 2021).

> The Court's advisory function allows it to interpret any article of the American Convention, and no part or aspect of this instrument is excluded from such interpretation. Thus, it is evident that, since the Court is the "ultimate interpreter of the American Convention", it has full authority and competence to interpret all the provisions of the Convention, even those of a procedural nature (CORTE IDH, 2017, p. 12).

AO no. 23/17 refers to the consultation by Colombia on the right to a healthy environment to protect the right to life and personal integrity. The Court aimed to find the best interpretation of the Convention on major infrastructure works which severely affected the Greater Caribbean marine environment, with consequent damage to coastal region inhabitants.

Among several aspects which the Court's opinion addressed, we highlight the understanding of the possibility of judicializing the right to a healthy environment within art. 26 of the IACHR, which included the protection of economic, social, and cultural rights (CORTE IDH, 2017).

Furthermore, the Court emphasized the right to a healthy environment as autonomous. Its decision was innovative by breaking with the anthropocentric view of environmental law and, consequently, ensuring the protection of all life forms, even if its destruction poses no threat to individuals or collectivities:

> This means that it protects nature and the environment, not only because of the benefits they provide to humanity or the effects that their degradation may have on other human rights, such as health, life or personal integrity, but because of their importance to the other living organisms with which we share the planet that also merit protection in their own right (CORTE IDH, 2017, p. 29).

The Court also highlighted the way vulnerable groups, like Indigenous peoples, are particularly affected by environmental damage. It reiterated previous decisions which found the protection and access to the natural resources in Indigenous peoples' territories paramount for such peoples' survival, development, and lifestyle continuity. Thus, states must face this peculiar condition by complying with equality and non-discrimination principles (CORTE IDH, 2017).

Recently, the interpretation promulgated by the IACHR in AO no. 23/17 finally found resonance in the decision of a contentious case involving environmental claims. In the case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, the IACHR recognized the international liability of the Argentine State for violating plaintiffs' rights to Indigenous community property, cultural identity, a healthy environment, food, and water.

The claim, which involves five peoples from the Argentine cross-border with Paraguay and Bolivia, revolves around the absence of measures to protect traditional territories, which non-Indigenous peoples have occupied and exploited. Moreover, the original peoples were affected by the construction of an international bridge, built without prior consultation with the communities (CORTE IDH, 2020).

In the decision, the Court stressed that the right to a healthy environment should be considered based on art. 26 of the Convention by force of arts. 30, 31, 33, and 34 of the Charter of the Organization of the American States, which mentions peoples' integral development, revisiting the interpretation already established three years earlier in AO no. 23/17 (CORTE IDH, 2020). This position established the case as an important precedent in inter-American jurisprudence. It was the first case in which the defense of the environment was directly judicialized by the petition monitoring system, dispensing with indirect protection.

The IACHR also reiterated its position indicated in AO no. 23/17, stressing the autonomous character of the right to a healthy environment. This more than desirable hermeneutic proves indispensable to judicialize environmental disputes in their immanent importance since it exempts victims from proving the causal link between environmental damage and the violation of any of the civil and political rights provided for in the ACHR catalogue. Thus, the par ricochet pathway, until then used, was relegated to the background.

Another aspect contemplated by the Court's analysis concerns the positive dimension of the right to a healthy environment. The decision stressed that the right to a healthy environment does not only cover respect but also guarantee, and states should supervise and inspect activities which may negatively impact the enjoyment of human rights. Moreover, it stated that state action in environmental matters should be guided by the prevention principle, considering that often after the damage has been produced it will be impossible to return to the state prior to the violation (CORTE IDH, 2020).

Finally, the Court's statement stands out by stating that environmental damage can affect various rights, especially in the case of vulnerable groups, such as Indigenous communities and others which directly depend on the environment for their resources. Moreover, it interpreted the relation of interdependence between the right to a healthy environment and the rights to cultural identity, food, and water. Several international instruments were

used, such as the Rio Declaration and ILO Convention no. 169, highlighting the special bond which community members maintain with their ancestral territory (CORTE IDH, 2020).

The ruling in this case constitutes a radical shift in the defense of the right to a healthy environment. Thus, it broadened the horizon of possibilities for using the Inter-American regional system to protect human rights to address autonomous environmental issues.

In general, we find that the IACHR has overcome its strictly civilist, Western, and anthropocentric interpretation of environmental complaints. In its decisions, it has encompassed collective dimensions and analyzed the disputes from each community's worldview. We can also claim that, from AO no. 23/17, greening, which is generally manifested by an indirect approach to the environmental agenda, found, in the ACHR, its maximum expression since it sees, in art. 26, the possibility of directly petitioning the right to a healthy environment.

CONCLUSION

Gradually, international environmental law and human rights converge in international treaties and the decisions of their supervisory mechanisms, thus greening human law treaties. The greening of the American Convention is particularly important in the Inter-American system as a large part of the regional population is composed of Indigenous peoples who, as we know, are closely related to their lands and natural resources. Thus, this research aimed to determine how we can observe the greening of human rights treaties in IACHR judgments involving these peoples.

From the Mayagna (Sumo) Awas Tingni v. Nicaragua case, judged by the IACHR in 2001, we found an evolutionary interpretation of the terms of the American Convention itself. It expanded the concept of private property to include what the affected Indigenous communities held as property to the detriment of the classic civil concept of property. Thus, IACHR understood that art. 21 of the Convention provided for collective property, territoriality, ancestry, and sacredness.

Subsequently, in 2005, the IACHR ruled on the case of the Moiwana Community v. Suriname. the IACHR linked the community's right to ancestral land to its members' right to personal integrity to the extent that removing them from that place implied the impossibility of maintaining their traditional way of life and subsistence. Then, the IACHR developed

its jurisprudence linking the right of Indigenous peoples to their territories to their members' rights to life and integrity. In all cases analyzed, the right to a healthy environment indirectly stemmed from the right to life. We can observe this in the Yakye Axa, Sawhoyamaxa, and Shahkmok Kásed Indigenous Communities against Paraguay cases. As for the Saramaka people v. Suriname case, in 2007, the IACHR implicitly recognized the right to a healthy environment as autonomous.

In the cases studied in this research, the IACHR increasingly recognized the right to a healthy environment for Indigenous peoples. To a large extent, this recognition was linked to other rights, such as its members' right to life and physical integrity. We found that IACHR decisions attested to the symbiotic relationship Indigenous peoples maintain with nature, acting to recognize that the Inter-American Court of Human Rights protects their right to a healthy environment in light of an evolutionary interpretation by, above all, par ricochet protection.

However, from AO no. 23/2017 and, subsequently, the IACHR decision in Nuestra Tierra v. Argentina, judged in 2020, the greening of the ACHR is revealed in its maximum expression. By these opinion and decisions, the possibility of petitioning the right to a healthy environment via art. 26 gains centrality, powerful tools to protect the environment and Indigenous peoples.

Thus, we confirmed the hypothesis formulated at the beginning of the research: from AO no. 23/2017 and the Nuestra Tierra v. Argentina case, the possibilities of using greening broadened the horizon of employing the system to guide the environmental theme.

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Article received on: 26/05/2021
Article accepted on: 06/04/2022

How to cite this article (ABNT):
WAGNER, D.F.; SOUZA, F. S. The “greening” of the American Convention on Human Rights: Indigenous peoples and environmental protection in convergence. *Veredas do*, Direito, Belo Horizonte, v. 19, no. 43, p. 369-388, jan./apr. 2022. Available from: http://www.domhelder.edu.br/revista/index.php/veredas/article/view/2159. Access on: Month. day, year.