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Cosmovision and human rights: International Law as founded in a pluricultural approach The Inter-American Court of Human Rights

Case study

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From the management of multicultural realities...

An autonomous judicial institution of the Organization of American States (OAS) charged with the task of executing and interpreting the American Convention on Human Rights (ACHR) provisions, the Inter-American Court of Human Rights (IACHR)¹ has proved to be a forum for the discussion and the management of the diverse cultural and normative realities existing on the South American continent. It reached a turning point in 2001 when the Mayagna Awas Tingni² case confronted the IACHR with the challenge of interpreting the ACHR so as to take into account indigenous peoples' diverse worldviews. Referring to the principle established by the European Court of Human Rights (ECHR) whereby International Human Rights norms are "living instruments"³ whose interpretation must be weighed according to the evolution of living conditions⁴, the IACHR considers that these norms must be adapted and interpreted according to the context in which they apply⁵. For the IACHR this means that ACHR implementation must take into account the Indigenous populations'

1. The IACHR was created in 1979 and has its seat in San José, Costa Rica

2. Corte I.D.H, Caso de la Comunidad Mayagna (sumo) Awas Tingni, la communauté Yakye Axa v. Nicaragua. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2001. Serie C No. 79. In this particular case, the state of Nicaragua had granted a foreign company a concession for timber extraction on the ancestral land of the Mayagna (Sumo) Awas Tingni community. The IACHR averred that this concession amounted to a violation by Nicaragua of the community's right to property

3. this principle was established in the cases *Johnston et alia v Ireland* (No 9697/82) judgment of 18 December 1986, ECHR and, *Pretty v. United kingdom* (No 2346/02) judgment 29 April 2002, ECHR.

4. Opinión consultiva OC-16/99 de 1 de octubre de 1999. Serie A No. 16. párr 114. "El Derecho a la Información sobre la Asistencia Consular en el Marco de las Garantías del Debido Proceso Legal."

5. With this robust interpretation of the principle established by the ECHR, the IACHR paved the case law way where the ECHR did not. Indeed, the latter is much more muted when it comes to cultural interpretation since it has left the specific resolution of these socio-cultural conundrums to the states and their national jurisdictions.

right to cultural identity⁶. The implementation of this principle has opened the inter-American jurisdictional system to the indigenous peoples' diverse cosmovisions. Such adjustments of international instruments implies accepting that other social practices exist and that, as a result, the Inter-American system of Human Rights has a duty to engage with these realities and to take them into account when defining what consists a violation of indigenous peoples' rights.

...to the elaboration of a plural international law in the field of Human Rights.

The IACHR rulings regarding indigenous communities have in the process improved intercultural understanding of Human Rights, allowed for a better understanding of the notion of damage according to the cultural values of a given indigenous community. This led the IACHR to attune its rulings concerning Human Rights violations to the cultural realities of indigenous people. Such an approach fosters actual hybridization of the normative systems (ACHR and local norms) drawn upon by the actors involved. It reinforces the rulings passed by the IACHR since they correspond to a conception and a purpose of justice accepted and recognised by all concerned.

The recognition of the collective ownership of ancestral land

In the Mayagna Awas Tingni Community case, the IACHR adopted a cross-cultural approach and handed down a founding ruling whereby it fully assumed the challenges and implications associated with taking into account multiculturalism when implementing the ACHR. This decision was also the first international court ruling to enshrine indigenous peoples' collective rights to the land and to natural resources. In this instance, on the basis of statements from members of the community involved and of expert appraisal, the IACHR concluded that, for the indigenous people, land property is considered as collective ownership for it is not concentrated in the hands of just one person but in those of the group and its community. Likewise, in the Court's eyes, the nature of the relation indigenous peoples have to the land must be recognised and understood as the essential basis of their culture, spiritual life, economical survival, their preservation and the transmission of their culture to generations to come⁷.

In 2007, in the case of the Saramaka people v. Suriname⁸, the IACHR backed this trend when it asserted that the State cannot authorise the development of economic projects in indigenous peoples' territories if those projects put the survival of the indigenous people concerned at risk. The Court stated that in order to assess such a risk, the state must consult the indigenous people before implementing its projects. IACHR case law contributes thereby in the development of an autochthon customary forum for the management and protection of indigenous peoples' ancestral land⁹.

6. This principle was established in the *Caso Comunidad Indigena Yakye Axa, v. Paraguay*. Fondo, Reparaciones y Costas. Sentencia 17 de junio de 2005. Serie C No. 125.

7. *Ibidem* para. 149

8. Corte I.D.H *Caso del Pueblo Saramaka Vs Suriname*. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 28 de Noviembre de 2007. Serie C No. 172 Voir aussi. RIVERA Francisco, RINALDI Karine « Pueblo Pueblo Saramaka Vs Suriname: el derecho a la supervivencia de los pueblos indigenas y tribales com

9. Ghislain Otis, « Coutume autochtone et gouvernance environnementale : l'exemple du système interaméricain de protection des droits de l'homme [Autochthon Custom and Environmental Governance : the example of the Inter-american system of human Rights Protection]»

The influence of native American peoples' worldview in the conception of immaterial damage

In 2004 the IACHR set forth a conception of immaterial damage on the basis of a cultural and collective perspective in the case of “the Plan de Sánchez massacre v. Guatemala”. In the case of massacres of indigenous people, the court found that the fact that the community could not bury the massacred people according to their rites and tradition was a immaterial damage. The Court took into account, when assessing the damages done, the fact that in the Maya Achi people's tradition, rites and custom are central to community life. The community's spirituality is expressed in the close relationship existing between the living and the dead. It is translated, through the practice of burial rituals, into a kind of ongoing contact of solidarity with the ancestors¹⁰.

Likewise in 2007, in the case of the Escué Zapata v. Colombia case¹¹ and in its estimation of the immaterial damage, the Court, on the strength of community members' evidence, took into consideration the importance of the relationship existing between the living, the dead and the land within Nasa culture. In this culture, when a child comes into the world it is as if he/she sprouted from the earth, remaining bound to it by the umbilical cord. When the person dies, they must be “sown” in the earth. The IACHR considered that the protracted wait for the return of American Indian Zapata's mortal remains, after he was arbitrarily killed by the Colombian army, had negative spiritual and moral aftereffects for his family and culture, and that it impacted beyond on the territory's harmony¹².

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To find out more about the IACHR:

[La démarche interculturelle d'élaboration de la jurisprudence : outil privilégié pour une approche plurielle des droits de l'Homme. Le cas du système interaméricain de protection des droits de l'Homme..](#)

10. In this instance the Guatemalan military massacred 268 people from the Maya Achi people. The survivors were forced to bury the incinerated bodies of the victims on the site of the crime. Caso masacre Plan Sánchez vs. Guatemala. Fondo. Sentencia del 29 de abril de 2004. Serie C No 105. Citado en: Parra Op. Cit. p. 1

11. Corte I.D.H. caso Escué Zapata Vs. Colombia. Fondo, Reparaciones y Costas. Sentencia de 4 de Julio de 2007. Serie C No. 165

12. Ibidem. Paragraphe 153. Pág. 41