



Estudio del CURI

**THE *VIDA DIGNA* CONCEPT AT THE INTER AMERICAN
SYSTEM OF HUMAN RIGHTS**

**EL CONCEPTO DE LA *VIDA DIGNA* EN EL SISTEMA
INTERAMERICANO DE DERECHOS HUMANOS**

**O CONCEITO DA *VIDA DIGNA* NO SISTEMA INTER
AMERICANO DE DIREITOS HUMANOS**

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*Consejo Uruguayo
para las Relaciones Internacionales*

05 de junio de 2018

Estudio N° 5/18

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Por Prof. Adsc. Juan Manuel Rivero Godoy¹

Abstract

At this stage of the development of the Latin-American system of human rights protection it is extremely important to face new challenges and satisfy those rights. Why is that? After the Second World War, it became clear that all the violations to basic human rights - *life, dignity, integrity*, etc. - were produced by States around the world without any effective protection, except for the legal formalism of the rule of law, but it was not enough. This wide range of human rights protections can not be separated from what dignity itself means. Dignity is a difficult concept to define within a legal framework -even within constitutionalism- which is why it so difficult to fully implement and determine. The problem becomes more pronounced when dignity is related to environmental issues. The present essay tries to show the contributions of the Inter American Court of Human Rights in the concept of *vida digna* when talking about implementation of environment and human rights.

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Key Words

Dignity, Human rights, Vida Digna, Environment, Inter American Court of Human Rights.

Resumen

En esta etapa del desarrollo del sistema latinoamericano de protección de los derechos humanos, es extremadamente importante enfrentar nuevos desafíos y satisfacer esos derechos. ¿Por qué es eso? Después de la Segunda Guerra Mundial, quedó claro que todas las violaciones a los derechos humanos básicos -vida, dignidad, integridad, etc.- fueron producidas por Estados de todo el mundo sin ninguna protección efectiva, excepto por el formalismo legal del estado de derecho, pero no fue suficiente. Esta amplia gama de protecciones de los derechos humanos no puede separarse de lo que significa la dignidad misma. La dignidad es un concepto difícil de definir dentro de un marco legal -incluso dentro del constitucionalismo- que es por lo que es tan difícil de implementar y determinar completamente. El problema se vuelve más pronunciado cuando la dignidad está relacionada con problemas ambientales. El presente ensayo trata de mostrar las contribuciones de la Corte Interamericana de Derechos Humanos en el concepto de vida digna cuando se habla de la implementación del medio ambiente y los derechos humanos.

Palabras claves

Dignidad, Derechos humanos, vida digna, medioambiente, Corte Interamericana de Derechos Humanos

Resumo

Nesse estágio do desenvolvimento do sistema latino-americano de proteção dos direitos humanos, é extremamente importante enfrentar novos desafios e cumprir esses direitos. Porquê é isso? Após a Segunda Guerra Mundial, ficou claro

que todas as violações dos direitos humanos básicos - vida, dignidade, integridade, etc. - foram produzidas pelos Estados em todo o mundo sem qualquer proteção efetiva, exceto pelo formalismo legal do estado de direito, mas não foi o suficiente. Essa ampla gama de proteções aos direitos humanos não pode ser separada daquilo que a própria dignidade significa. Dignidade é um conceito difícil de definir dentro de um quadro legal - mesmo dentro do constitucionalismo - e é por isso que é tão difícil de implementar e determinar completamente. O problema torna-se mais pronunciado quando a dignidade está relacionada a problemas ambientais. Este ensaio procura mostrar as contribuições da Corte Interamericana de Direitos Humanos no conceito de vida digna ao discutir a implementação do meio ambiente e dos direitos humanos.

Palavras chaves

Dignidade, Direitos humanos, vida digna, meioambiente, Corte Interamericana de Direitos Humanos.

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1. Relations between dignity and *vida digna*.

1.1. How is dignity described in the American Convention of Human Rights and other regional treaties?

To talk about dignity as human right in Latin America, it is necessary to analyze the principal human rights instruments that apply throughout the region.

First, the American Declaration of Rights and Duties of the Man, adopted in 1948, and following the Universal Declaration of Human Rights² asserts in its Preamble: “Whereas ... *The American peoples have acknowledged the dignity of the individual, and their national constitutions recognize that juridical and political institutions, which regulate life in human society, have as their principal*

² Available in <https://www.cidh.oas.org/basicos/english/basic2.american%20declaration.htm>.

aim the protection of the essential rights of man and the creation of circumstances that will permit him to achieve spiritual and material progress and attain happiness.” It adds that “*All men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another.*” Thus, the term “dignity” was at the foundation of the system of human rights, even before the subsequent adoption of the American Convention of Human Rights and the jurisprudence of the Inter American Court of Human Rights IACtHR.

The San Salvador Protocol on Economic, Social and Cultural Rights encompasses a variety of rights, and refers to dignity in its Preamble: “*Considering the close relationship that exists between economic, social and cultural rights, and civil and political rights, in that the different categories of rights constitute an indivisible whole based on the recognition of the dignity of the human person, for which reason both require permanent protection and promotion if they are to be fully realized, and the violation of some rights in favor of the realization of others can never be justified.*”³ The protocol also and gives prominence to the natural environment, a value that has been confirmed by some leading cases at the Inter American Court of Human Rights (herein after the “IACtHR”). Article 11 of the Protocol provides that “*1. Everyone shall have the right to live in a healthy environment and to have access to basic public services. 2. The States Parties shall promote the protection, preservation, and improvement of the environment.*”(Right to a Healthy Environment). This suggests that having a healthy environment is to be respectful of dignity and the *Vida Digna*.

The last significant human rights document in the Americas is Pacto de San Jose de Costa Rica. Article 5 the covenant establishes that “*All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person*” and Article 11 provides that “*Everyone has the right to have his honor respected and his dignity recognized.*” Here the legal reference is direct; in addition, Article 29 regarding Restrictions Regarding Interpretation, refers to dignity indirectly: “*No provisions of this Convention shall be interpreted as ...*

³ Available in <http://www.oas.org/juridico/english/treaties/a-52.html>.

precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government.” Thus, only article 11 refers to dignity as a right to be recognized. But it does not provide any definition of dignity at all. Apart from that, article 29 suggests that any other right related to inherent in the human personality must be protected, even if the human right is connected or derived from representative democracy as a form of government.

1.2 The concept of dignity

Dignity must be considered as the justification of any juridical order linked to a philosophy of human rights. All the Latin American constitutions have direct or indirect reference to human dignity. For instance, in Brazil “*a Dignidade da pessoa humana*” is the basis of the Republic (article 1).⁴ The Uruguayan constitution says: “*The enumeration of rights, duties and guarantees made by the Constitution does not exclude others which are inherent in the human personality or derived from the republican form of government*” (article 72).⁵ The Uruguayan’s Constitution does not describe what must be understood by “inherent in the human personality” but the connection between personality and dignity can be understood as a logical relationship.⁶

Because dignity is in each of the rights that relate to it, it is very difficult to try to separate it from the specifically enumerated rights identified in the rest of the legal system, whether civil and political or economic. Therefore, a violation of human dignity will usually result from a direct flouting of certain rights such as life, bodily integrity, work, housing, the environment, and any other rights that comes into the legal imaginary. Dignity as a value or principle to follow has caused a shift in human rights that has spread with a cascading effect to every situation simply because there is no situation in which the dignity of the human person should not be respected.

⁴ Available in https://www.constituteproject.org/constitution/Brazil_2014.pdf.

⁵ Available in <http://www.wipo.int/wipolex/en/details.jsp?id=7541>.

⁶ See “*Almonacid Arellano y otros c/ Chile*” (2006), “*La Cantuta c/Perú*” (2006) and “*Trabajadores Cesados del Congreso c/Perú*” (2006).

1.3 The *vida digna*: something different?

The Inter American Court has developed the idea in certain cases that the "dignified life" is a concept derived from the obligations of the State under the protection of the right to life. Indeed, the IACtHR has understood that under the protection of the right to life established in Article 4 of the American Convention, States parties have two types of obligations: one negative -- which means that they must not undermine the right to life -- and one positive, according to which States must take the measures necessary to ensure the enjoyment of that right.

The concept of "*vida digna*" then appears in the context of the jurisprudence of the Inter-American Court, as an extension to the positive obligations of the State, because not only must the state guarantee the right to life, in its simplest sense, but it also must provide the minimum conditions that allow citizens access to a *vida digna*. According to this last principle, States must provide all the conditions to guarantee the access to food, to healthy environment, to housing, etc.

The Court has developed jurisprudence on the scope of the State's obligation to ensure conditions that allow a dignified life, according to which it has determined, on a case by case basis, the positive measures that the State would have to adopt in order to avoid international liability. Thus, the Court has not sought to establish a list of positive actions that constitute a "*minimum vital*" or dignified life, that must be guaranteed by States Parties. That is why the Court has said "*the State has a positive obligation to provide the necessary conditions to develop a dignified life.*"⁷Of course it is a broad and very imprecise statement, but the Court has consistently reaffirmed the obligations of states to ensure the opportunities for all people within their jurisdictions to enjoy a dignified life.

The precise relationship between human dignity and *vida digna* is difficult to define. Human dignity is a condition linked to the character of belonging to the human race and is the basis for the general protection of all human rights, whether or not enshrined in the text of positive law. However, the concept of a dignified life implies a direct connection to the existence of the individual or group of people, and especially the various conditions of life that States within their respective

⁷*Ximenes López v. Brazil*.

jurisdictions must respect and ensure for proper realization of the human rights. The first may be more general, while the second is more specific, and more contextually grounded in particular economic, social, cultural factors.

The concern for a *vida digna* or a “decent life” implicates environmental considerations. The environmental damage caused to a region, city, or town may be subject not only to financial losses for individuals but also to their quality of life. Environmental damage can affect access to housing, the right to work and to decent working conditions, health, and many other things. At root, it must be understood that a healthy environment free of contamination or alteration is a minimal and necessary condition to ensure the existence of dignified human life.

That is why dignified life is a concrete realization of human dignity as a general principle of law or even international customary law that guides the proper protection of human rights, even in the absence of explicit legal rules. Every time human rights are violated, human dignity will be infringed as well. Therefore, both a healthy environment and human rights to health, water, natural resources, housing, work, etc., will guarantee the minimum conditions for a dignified life.

Although it derives from the case law of the Inter-American Court of Human Rights, references to decent life are few. The Court has used the positive obligations to ensure a decent life to recognize perform a series of analyzes of rights that are not expressly stated in the Convention, such as the right to health, education, food or drinking water.⁸ That is why this type of analysis can be a tool for the protection of environmental rights. Pollution of rivers, lakes and ponds that affect those people who depend on drinking water is a direct violation of certain positive rights, which ultimately is nothing but a violation to have a decent life. For example, Uruguay has recently discovered the existence of oil reserves deep in the land above the Guarani Aquifer, which it is the second largest water reservoir in the world,

⁸ See *Kaliña and Lokono vs. Suriname or Pueblo Kichwa de Sarayaku vs. Ecuador*. Resume of the IACtHR. Corte IDH. Caso Pueblos Kaliña y Lokono Vs. Surinam. Fondo, Reparaciones y Costas. Sentencia de 25 de noviembre de 2015. Serie C No. 309. Visit web site http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_casos_contenciosos.cfm?lang=es. Resume of the IACtHR. Corte IDH. Caso Pueblos Kaliña y Lokono Vs. Surinam. Fondo, Reparaciones y Costas. Sentencia de 25 de noviembre de 2015. Serie C No. 309. Visit web site http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_casos_contenciosos.cfm?lang=es.

sharing natural resource with Argentina, Brazil, Paraguay, and Uruguay. If Uruguay begins to exploit the reserves with hydrofracking or some other technique, the potentially adverse impacts could be significant, both for the environment and for the local residents' ability to enjoy a dignified life.

In the cases of *Yakye Axa Indigenous Community*⁹ and *Indigenous Xákmok Kásek*,¹⁰ both against Paraguay, the Court proceeded to examine the measures taken by the State to ensure a dignified life for community members. In both cases the facts relate to the lack of territory of communities, which had placed communities in a vulnerable circumstances. In the context of these cases and because of the environment in which the communities were located, the Court analyzed the protection and guarantees of several economic, social and cultural rights in light of the concept of *vida digna*. The IACtHR explained:

“the State did not guarantee the right of members of the Yakye Axa to community property. The Court considers that this has affected the right to a decent life of the members of the Community, as it has been deprived of the possibility to access their traditional livelihoods, as well as the use and enjoyment of natural resources to obtain clean water and for the practice of traditional medicine prevention and cure of diseases. Added to this is that the State has not taken the necessary positive measures to assure to members of the Yakye Axa, during the period they have remained in the territory, living conditions compatible with their dignity.”

This case shows the impact of *vida digna* because Paraguay did not take all the measures to guarantee economic, social and cultural subsistence for the indigenous people. The most important conclusion of the Court is not the effectiveness of the exercise of those rights but ensuring that the state provides the necessary conditions for living a dignified life.

⁹ *Yake Axe Community v. Paraguay*,
http://www.corteidh.or.cr/docs/casos/articulos/seriec_125_esp.pdf.

¹⁰ *Xákmok Kásek v. Paraguay*,
http://www.corteidh.or.cr/docs/casos/articulos/seriec_214_esp.pdf.

1.4 To what extent other human rights are related to the *vida digna* concept?

The dignified life as a right is not regulated or envisaged in the American Convention, except as part of human dignity. Thus, the right to a dignified life cannot be claimed in isolation; rather, it should be linked to the minimum conditions of existence that could directly affect the *vida digna*. These conditions are mainly of the economic order, affecting work, health, housing, and so on.

Thus, the ICHR has protected against the violation of some rights if they are claimed in general and have affected human dignity by omission. This is a violation, especially when the State uses its power against populations that have little room to maneuver in the presence or absence of the State itself. Then the IACtHR has acknowledged that rights have been violated where there is a direct link with the environment. In these situations, the Court has identified the violated rights as:

- the right to consult to the people, affecting the right to information and the right to access to judicial guarantees (including prompt and effective recourse)¹¹;
- the right to property and the right to juridical personality¹²;
- rights to life, personal liberty, personal integrity.¹³

Despite these rights the Inter American Court of Human Rights has pointed out that the “*protection of environment is part of general interest.*”¹⁴ This statement may correspond to a general expression of recognition about environment as a pre-condition to guarantee certain rights, including those mentioned above.

¹¹Inter American Convention on Human Rights, Art.8, Art. 23, Art.25,
<https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>.

¹²Inter American Convention on Human Rights, Art. 21 and Art.3,
<https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>.

¹³Inter American Convention on Human Rights, Art.1, Art.5 and Art. 7,
<https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>.

¹⁴ Both *Yake Axe Community v. Paraguay*,
http://www.corteidh.or.cr/docs/casos/articulos/seriec_125_esp.pdf, *Xákmok Kásek v. Paraguay*,
http://www.corteidh.or.cr/docs/casos/articulos/seriec_214_esp.pdf.

In that sense in *Kaliña and Lokono vs Suriname*, the Court stated that¹⁵ “*En este respecto, por ejemplo, el artículo 8.j) del Convenio de Diversidad Biológica señala que los Estados “respetará[n], preservará[n] y mantendrá[n] [...] las prácticas de las comunidades indígenas y locales que entrañen estilos tradicionales de vida pertinentes para la conservación y la utilización sostenible de la diversidad biológica y promoverá[n] su aplicación más amplia, con la aprobación y la participación de quienes posean esos conocimientos [...] y prácticas, y fomentará que los beneficios derivados de la utilización de [ellos] se compartan equitativamente”.* El artículo 10.c) del mismo, señala que se “[p]rotegerá y alentará la utilización consuetudinaria de los recursos biológicos, de conformidad con las prácticas culturales tradicionales que sean compatibles con las exigencias de la conservación o de la utilización sostenible”¹⁶.

But due to some formal restrictions on the San Salvador Protocol individuals or collective people do not have direct access to the Court and that is why the reference is indirect, which means that article 11 of San Salvador Protocol can not be enforced by itself.

2.Environment and *vida digna* in the Inter American system of human rights.

2.1. How is the right of a healthy environment connected to the right to *la vida digna*?

¹⁵ Translation: In this respect, for example, Article 8.j) of the Convention on Biological Diversity states that States "shall respect [n], preserve [n] and maintain [n] [...] the practices of indigenous and local communities that involve traditional lifestyles relevant to the conservation and sustainable use of biological diversity and will promote [n] their broader application, with the approval and participation of those who possess that knowledge [...] and practices, and will encourage the benefits derived from the use of [them] be shared equitably. " Article 10.c) of the same, states that "[p]rotegerá and encourage the customary use of biological resources, in accordance with traditional cultural practices that are compatible with the requirements of conservation or sustainable use

¹⁶ Resume of the IACtHR. Corte IDH. Caso Pueblos Kaliña y Lokono Vs. Surinam. Fondo, Reparaciones y Costas. Sentencia de 25 de noviembre de 2015. Serie C No. 309. Par. 177. Visit web site http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_casos_contenciosos.cfm?lang=es.

In the next section, we will analyze the contributions of the Inter American system of human rights as it relates to environmental and human rights protection. According to the Convention, there is not a direct guarantee of environmental protection because there is not a specific rule of law in this sense. First, the Protocol of San Salvador envisions that the environment could be taken into account only if there is connection to some kind of recognized basic right. That interpretation comes from the jurisprudence of the ICHR. Until now, the ICHR has not decided any case based on environmental rights as a single juridical category.

The environment as a whole comprises a wide range of circumstances and, in the aggregate, is the minimum standard necessary to help develop and implement other human basic rights. As a physical asset, the environment is the first condition –in a material sense - to develop and guarantee economic, social and cultural rights, as provided both in San Salvador Protocol and American Convention. The connection between human beings and the environment is clear: without responsibility and duties of present generations, no activities in the future could be guaranteed. The solidarity principle can be expressed as follows: “The principle of intergenerational solidarity is the responsibility that the present generations have toward those of the future.”¹⁷ The use of resources, industrial activity, urban expansion, etc. must be done “in such a way that the immediate benefits do not have negative consequences for living beings, human or not, in the present or the future.”¹⁸

We turn next to environment in Latin American courts and the contributions of the Inter American Court of Human Rights.

2.2. The protection of environment in Latin American System of Human Rights

¹⁷ Intergenerational Solidarity and the Needs of Future Generations (2013). Report of the Secretary-General. A/68/100.

¹⁸Miguel Cervantes University and Konrad Adenauer Stiftung (2015). Gestión Ambiental para un desarrollo humano sustentable. Page 74: “El principio de solidaridad intergeneracional es la responsabilidad que las generaciones presentes tienen respecto a las futuras”. El uso de los recursos, la actividad industrial, la expansión de la urbe, etc. deben hacerse “de modo que las ventajas inmediatas no tengan consecuencias negativas para los seres vivos, humanos o no, del presente y del futuro”

Originally, the American Convention on Human Rights did not contain direct environmental provisions; their incorporation evolved within the regional protection system and the jurisprudence of IACtHR. But with the recent Protocol of San Salvador, the environment was introduced to the Latin American System of Human Rights (LASHR) by the complementary Pacto of San José de Costa Rica. As noted, Article 11 provides that “*Everyone shall have the right to live in a healthy environment and to have access to basic public services. 2. The States Parties shall promote the protection, preservation, and improvement of the environment.*”¹⁹ These provisions express that the State must take measures to satisfy obligations to protect and preserve the environment and confirm that the right to live in a healthy environment (that is, having dignified life) is an obligation of the State. In addition, the IACHR – and the Inter American Court’s jurisprudence -- imposes on the State a general obligation to provide the conditions for *la vida digna*, as mentioned above.

On the other hand, no claim could be brought in the Inter American Latin human rights system based directly on environmental rights under Article 11. Claims by individuals against state parties may be brought to the Inter-American Court only under certain substantive provisions, such as education and worker rights –inside the San Salvador Protocol- or when basic procedural rights are violated such as access to information or to have consultative mechanisms on matters relating to the environment in a wide scope of the provisions of the ACHR and its interpretation. Of course, petitions about environment can be brought to the Inter American Commission but only for recommendations to States.

2.3. The environment in Latin American constitutions

Most Latin American states have incorporated environmental protection specifically in their constitutions. For example, article 47 of the Uruguayan Constitution provides that “*environmental protection is of general interest. People should refrain from any act that causes depredation, destruction or serious*

¹⁹ Available in https://www.oas.org/dil/treaties_b32_american_convention_on_human_rights.pdf.

pollution to the environment."²⁰Upon close examination, it becomes clear that the emphasis of the provision is meant to be on the social responsibility of all, rather than placing the full burden of responsibility of a healthy environment on the government alone. Another example comes from Bolivia, where one of the purposes and main functions of the State is to *"promote and ensure responsible use and planned use of natural resources, and promote industrialization [...] as well as conservation of the environment, for the welfare of current and future generations."*²¹In this constitutional text, there are several references that give to the State and local authorities the responsibility to manage natural resources and simultaneously appoint the State as the guardian of nature, the environment, and biodiversity.

In addition, the constitutions of Ecuador, Brazil, Panama, Cuba, Chile, and other states have entered what has been called "the new constitutionalism" as a new way of governing and managing the environment. Constitutionalizing the environment is closely linked to the creation of new collective, as well as individual, rights and to their consecration as new fundamental human rights. It has also given rise to the emergence of environmental law as a new branch of law, to the extent that a new juridical interest appears. The objective of including the environment in the constitutions by the American States is nothing more than an attempt to create variables around a new statecraft to protect the environment as much as possible, and including the development of human rights effectiveness mechanisms, such as green tribunals, for example. The existence of a constitutional provision that guarantees environmental protection and ecology, conceived as a duty of the state and as a right and duty of citizens, favors the development of more environmentally protective legislation, and from this system as a whole will emerge a new ecologically sensitive institutional regime. It is those contemporary constitutions that have been modified since the 1970s that have recognized this new value as a fundamental part of the authority of states and citizens. It remains to be seen whether the constitutional protection for new third- and fourth-generation rights is

²⁰Available in <http://www.wipo.int/wipolex/en/details.jsp?id=7541>.

²¹Art. 30 N° 15, Available in https://www.constituteproject.org/constitution/Bolivia_2009.pdf.

sufficient to guarantee *la vida digna* for those who live there while assuring the sustainability of natural resources for future generations.

2.4. How to protect *la vida digna* while implementing environmental constitutionalism?

While the jurisprudence of the Inter-American Court bridges environmental protection to *la vida digna*, national legislation implementing constitutional environmental rights does not necessarily do so, perhaps due to economic resources or development obstacles. However, some constitutional systems do recognize the link between the environment and decent living, at least implicitly. The constitution of Uruguay, for example, makes a direct reference to certain rules or principles that guide or should guide the actions of the State and citizens. This can be observed directly through the provisions about access to water:²² Article 47 provides in its second part that "*Water is an essential natural resource for life. Access to clean water and access to sanitation are fundamental human rights.*"²³ Where reference is made to life it is clear that its interpretation (according to accepted principles of human rights law known as "Interpretatio pro homine"²⁴) could be directly related to the existence of the individual and, by extension, to the guarantee of a dignified life. This suggests that environment and dignity are interconnected conditions: access to water and sanitation are minimal conditions in a modern society which makes the basis of human survival. This suggests that protection of the environment -where the water resource is put at risk- is legally cognizable in the Uruguayan legal system, even though it is not actionable in the American system of human rights, as explained above.²⁵

²² Unfortunately, the constitution does not include any generic mention of natural resources; however presumably if dignity and dignified life are the core of all public and private responsibility, protection for natural resources for present and future generations can be inferred by analogy based on the inherent dignitary interest in disposing of natural resources without harming the environment.

²³ Official translation: "*El agua es un recurso natural esencial para la vida. El acceso al agua potable y el acceso al saneamiento constituyen derechos humanos fundamentales*".

²⁴ Amaya, A. (2005). El principio pro homine: interpretación extensiva vs. El consentimiento del Estado. Revista Javeriana Volumen 3 Número 5. Universidad Javeriana, Colombia.

²⁵ According to article 19 (Means of Protection) N°6 "*Any instance in which the rights established in paragraph a) of Article 8 and in Article 13 are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on*

In the same section, the Constitution makes clear that "*sustainable management, solidarity with future generations, of water resources and preservation of the hydrological cycle are matters of general interest. Users and civil society will participate in all levels of planning, management and control of water resources...*"²⁶ These provisions are important to ensure a dignified life in line with current developments of the notion of the inherent dignity of the human being. It is in this sense that the Inter-American Court has articulated *la vida digna*, not by direct reference to the environment as a specific right of protection, but in terms of the rights which are violated in the process of government decision-making on environmental issues. Below we address the contributions that the ICHR has made to the system of environmental rights which can be used indirectly to ensure a dignified life of human beings. Ideally, these cases could allow individuals and communities direct access to the Court under the banner of *la vida digna*.

2.5. The contributions of the Inter American Court of Human Rights

The Inter-American Court of Human Rights is the main judicial organ of the Inter American system of human rights protection. Standing is limited to the Inter American Commission of Human Rights on behalf of petitioners –according to the ACHR’s provisions- and the States by the other side as counterpart²⁷. Moreover, a State Party must formally recognize the jurisdiction of the Court as binding on all matters relating to the interpretation or application of the Convention.²⁸ Remedies, too, are limited: if the Court finds that there has been a violation of a right or freedom protected by the Convention, the Court “shall rule” that the injured party be assured the enjoyment of his or her right or freedom that was violated.²⁹ Only in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, does the Court have the power to adopt such “*provisional*

Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Article 44 through 51 and 61 through 69 of the American Convention on Human Rights”. A legal action can be lodged in the Inter American Court only if education or worker rights are at risk.

²⁶ Art 47 b).

²⁷ Art. 55.

²⁸ Art. 62.

²⁹ Art. 63.

measures” as it deems pertinent in matters it has under consideration.³⁰The Court may also act at the request of the Commission with respect to a case not yet submitted to the Court.³¹

Until the San Salvador Protocol, with its independent protection for the environment, goes into force, only certain limited rights relating to the environment are judicially cognizable in the Inter American Court. The Court’s own jurisprudence identifies rights to life, private property, personal liberty, personal integrity, and certain judicial guarantees, among others, as the most likely claims to involve environmental protection.³²The following cases provide some examples where environmental interests have been asserted in association with recognized rights. The growing number of cases indicates how important environmental matters are becoming and reinforces the necessity of States to recognize the Inter American Court of Human Rights’ authority to hear environmental claims lodged by the Inter American Commission on behalf of individuals and civil society.

3. Jurisprudence of the Inter American Court of Human Rights

3.1. *Pueblo Kaliña y Lokono vs. Suriname* (2015).

In this case, Suriname granted to a National company called “Suralco” a public concession on mining in the indigenous reserve of the people of Kaliña and Lokono. The Court held that Suriname had violated the right of the indigenous people to consultation, affecting their right to information and judicial guarantees of prompt and effective recourse, the right to property and the right to juridical

³⁰Art 63 para. 2.

³¹Art.63 para. 2.

³²Caso *Pueblo Indígena Kichwa de Sarayaku*. Visit web site

http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_casos_contenciosos.cfm?lang=es. Caso *Pueblos Kaliña y Lokono Vs. Surinam*. Visit web site

http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_casos_contenciosos.cfm?lang=es. Caso *Claude Reyes y otros Vs. Chile*. Visit web site

http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_casos_contenciosos.cfm?lang=es

personality. The Court pointed out that the “*protection of environment is part of general interest*”, although it failed to explain either the significance or the consequences of this assertion.³³ The reasons may be that the San Salvador Protocol lacks the direct environmental grounds, which makes impossible an environmental claim before the Court. The Court acknowledged the right to have one’s personality recognized by the State in order to provide enjoyment of certain rights including right to natural resources and ancestral land. The Court explained this right as follows: “recognition of juridical personality of individual members of the community is necessary it is necessary for the enjoyment of other rights, such as the right to life and to personal integrity.”³⁴ Furthermore, the Court stated that “the recognition of the juridical personality is one way – but not the only way – to assure that the community, as a whole, can enjoy and fully exercise the right to property, in conformity with its own system of comunal property, as well as the right to equal judicial protection of all violations of rights.”³⁵

3.2. Pueblo indígena de *Kichwa de Sarayaku* vs. Ecuador (2012).

This case arose from Ecuador’s grant to two international companies of permits to explore and exploit oil in the territory of the Kichwa de Sarayaku, an indigenous people located in the Amazonian region of tropical forest in Ecuador, without their prior informed consent or approval. The companies used great quantity of explosives to conduct their exploration and this affected the homes and the availability of food of the indigenous people. The Kichwa community claimed

³³Both *Yake Axe Community v. Paraguay*, http://www.corteidh.or.cr/docs/casos/articulos/seriec_125_esp.pdf, *Xákmok Kásek v. Paraguay*, http://www.corteidh.or.cr/docs/casos/articulos/seriec_214_esp.pdf.

³⁴« [E]s necesario el reconocimiento de [la] personalidad jurídica de los miembros individuales de la comunidad para el goce de otros derechos, como el derecho a la vida y a la integridad personal.”

³⁵“[E]l reconocimiento de la personalidad jurídica es un modo, aunque no sea el único, de asegurar que la comunidad, en su conjunto, podrá gozar y ejercer plenamente el derecho a la propiedad, de conformidad con sus sistema de propiedad comunal, así como el derecho a igual protección judicial contra toda violación de dicho derecho.” Resume of the IACtHR. Corte IDH. Caso Pueblos Kaliaña y Lokono Vs. Surinam. Fondo, Reparaciones y Costas. Sentencia de 25 de noviembre de 2015. Serie C No. 309. Par. 107 and 108. Visit web site http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_casos_contenciosos.cfm?lang=es.

violations of the right to life, private property, personal liberty, personal integrity, and access to justice.

The Court ruled that Ecuador must engage in meaningful consultations with the indigenous populations prior to granting a public concession or permit to explore natural resources, when such exploration is likely to affect the community on whose territory the exploration and exploitation are taking place. The case was decided in terms of the *human rights* of the indigenous communities, without reference to the impact on the environment. The IACtHR decided on the legal grounds that, according to Article 21 of the ACHR, Ecuador infringed the property of the indigenous people and its right to land which it is a guarantee of economic and physical survival, cultural identity, traditions, etc. In addition, the IACtHR decided that the right to prior informed consent was infringed by Ecuador because it did not provide any mechanism of previous informed consent.

Moreover, the Court found other rights infringed by Ecuador including cultural identity, personal integrity and life, juridical guarantees, juridical protection. The Court avoided a specific reference to dignified life but it can be inferred: “The Court considers that the failure of consultation with the Pueblo Sarayaku affected their cultural identity, because there can be no doubt that the intervention and destruction of their cultural patrimony implicates a serious failure with respect to the respect owed to their social and cultural identity, to their customs, traditions, cosmovisions, as well as to the conservation of the characteristics of their own culture and way of living, resulting naturally in great concern, sadness, and suffering among the people.”³⁶

The court also made a direct statement about the SSP provisions on the *vida digna*: “The Tribunal has highlighted the importance of the protection, preservation, and amelioration of the natural environment contained in Article 11 of the Additional Protocol to the American Convention on Economic, Social, and Cultural Rights (the Protocol of San Salvador) as an essential human right relative

³⁶“La Corte considera que la falta de consulta al Pueblo Sarayaku afectó su identidad cultural, por cuanto no cabe duda que la intervención y destrucción de su patrimonio cultural implica una falta grave al respeto debido a su identidad social y cultural, a sus costumbres, tradiciones y cosmovisión, así como a la conservación de las características propias de su cultura y de su modo de vivir, produciendo naturalmente gran preocupación, tristeza y sufrimiento entre los mismos”.

to the right to the vida digna, derived from Article 4 of the Convention in light of the corpus of international jurisprudence relating to the rights of indigenous peoples.”³⁷

3.3. Claude Reyes y otros vs. Chile (2006).

This case concerned the future installation of multinational company’s deforestation activities in the Rio Condor village in Chile. Chile had negotiated and executed an investment contract with foreign investors to implement the Rio Condor Project, which would have both sustainable development and some significant environmental effects due to deforestation. Again, the claim (by a civil society organization called “Fundación Terram”) was that the local communities had not been consulted about the deforestation activities despite the high environmental impact that would result. They also claimed that Chile failed to provide all the information necessary for the public to get involved in the debate about the costs and benefits of the proposed activities, arguing that this constituted a violation of freedom of thought and expression, specifically, access to information and a prompt and effective recourse to courts. The IACHR decided that Chile had infringed the right of free expression and thinking (Article 13), the right to juridical guarantees (Article 8.1), and the right of juridical protection (Article 25).³⁸The IACHR also established that Chile must provide all the investment project information within six months and provide rapid and effective juridical recourse for failure to provide access to information. In the end, the company’s own financial difficulties prevented the project from going forward.

³⁷“el Tribunal ha resaltado la importancia de la protección, preservación y mejoramiento del medio ambiente contenido en el artículo 11 del Protocolo Adicional a la Convención Americana sobre Derechos Económicos, Sociales y Culturales²¹³ “Protocolo de San Salvador” como un derecho humano esencial relacionado con el derecho a la **vida digna** derivado del artículo 4 de la Convención a la luz del corpus iuris internacional existente sobre la protección especial que requieren los miembros de las comunidades indígenas...” Resume of the IACtHR. Corte IDH. Caso Pueblos Kaliña y Lokono Vs. Surinam. Fondo, Reparaciones y Costas. Sentencia de 25 de noviembre de 2015. Serie C No. 309. Par. 172. Visit web site http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_casos_contenciosos.cfm?lang=es.

4. Conclusion.

Although environmental concerns are quickly becoming more prevalent in the development of human rights law in the Inter American system, claims regarding the environment *per se* are still not having full effect in the Inter American Court of Human Rights. At present, it continues to be necessary to assert environmental interests under the rubric of other (first generation) rights including rights relating to speech, property, privacy, judicial process, and life. However, the Court remains attuned to the dominant thread of human dignity as it weaves the ideal of *la vida digna* throughout these cases.

While it is correct that many constitutions have taken a turn in the direction of implementing rules governing the importance of the environment and treating it as a fundamental human right, it is still the case that advancing environmental interests is most effective when they are cast in terms of the environment's direct impact on *la vida digna* and on dignity itself. As a practical matter, the struggle is between the value the state puts on its policies for economic growth, which often involve activities that endanger the environment such as opencast mining, pulp mills, nuclear energy, and so on; and the interests of environmental sustainability that takes account of future generations and the right to develop one's personality with dignity as a safeguard for such basic rights as health, work, housing, drinking water, etc. It should be understood that in order to guarantee human beings' access to a dignified life, including a safe and healthy environment, it is essential to have the necessary mechanisms to protect their living conditions, including the legal and administrative means of securing access to justice. Only with these legal mechanisms can the vulnerable peoples of the world defend themselves against the rapaciousness and arbitrariness of states and multinational companies in their continuing struggles to attain even a minimum of dignity.

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