



**CORTE INTERAMERICANA DE DERECHOS HUMANOS
COUR INTERAMERICAINE DES DROITS DE L'HOMME
CORTE INTERAMERICANA DE DIREITOS HUMANOS
INTER-AMERICAN COURT OF HUMAN RIGHTS**



INTER-AMERICAN COURT OF HUMAN RIGHTS

**ADVISORY OPINION OC-22/16
OF FEBRUARY 26, 2016
REQUESTED BY THE REPUBLIC OF PANAMA**

**ENTITLEMENT OF LEGAL ENTITIES TO HOLD RIGHTS UNDER THE
INTER-AMERICAN HUMAN RIGHTS SYSTEM (INTERPRETATION AND
SCOPE OF ARTICLE 1(2), IN RELATION TO ARTICLES 1(1), 8, 11(2),
13, 16, 21, 24, 25, 29, 30, 44, 46 AND 62(3) OF THE AMERICAN
CONVENTION ON HUMAN RIGHTS, AS WELL AS OF ARTICLE 8(1)(A)
AND (B) OF THE PROTOCOL OF SAN SALVADOR)**

The Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed of the following judges¹:

Roberto F. Caldas, President
Eduardo Ferrer Mac-Gregor Poisot, Vice President
Manuel E. Ventura Robles, Judge
Diego García-Sayán, Judge
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge and
Humberto Antonio Sierra Porto, Judge

Also present

Pablo Saavedra Alessandri, Registrar and
Emilia Segares Rodríguez, Deputy Registrar

pursuant to Article 64(1) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and articles 70 to 75 of the Court’s Rules of Procedure (hereinafter “the Rules of Procedure”), issues the following Advisory Opinion, structured follows:

¹ This Advisory Opinion is issued during the Court’s 113th Regular Session. In accordance with articles 54(3) of the American Convention on Human Rights, 5(3) of the Court’s Statute and 17(1) of its Rules of Procedure, the judges who finish their mandates will continue to serve in cases that they have begun to hear and that are still pending. Therefore, Judges Manuel E. Ventura Robles, Diego García-Sayán and Alberto Pérez Pérez participated in the deliberation and signing of this Advisory Opinion.

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I SUBMISSION OF THE CONSULTATION

1. On April 28, 2014, the Republic of Panama (hereinafter “Panama”), based on Article 64(1) of the American Convention² and pursuant to the

² Article 64(1) of the Convention “The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court.”

provisions of Article 70(1) and 70(2) of the Rules of Procedure³, submitted a request for an Advisory Opinion on the interpretation and scope of article 1(2), in relation to articles 1(1)⁴, 8⁵, 11(2)⁶, 13, 16⁷, 21, 24⁸, 25⁹, 29, 30¹⁰, 44¹¹, 46¹² and 62(3)¹³ 1(1), 8, 11(2), 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62(3)

³ Article 70(1) and 70(2) of the Rules of Procedure of the Inter-American Court "1. Requests for an advisory opinion under Article 64(1) of the Convention shall state with precision the specific questions on which the opinion of the Court is being sought.

2. Requests for an advisory opinion submitted by a Member State or by the Commission shall, in addition, identify the provisions to be interpreted, the considerations giving rise to the request, and the names and addresses of the Agent or the Delegates."

⁴ Article 1(1) of the Convention "Obligation to Respect Rights. The States Parties to this Convention undertake to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition".

⁵ Article 8 of the Convention "Right to a Fair Trial 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature. 2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court; b. prior notification in detail to the accused of the charges against him; c. adequate time and means for the preparation of his defense; d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel; e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law; f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts; g. the right not to be compelled to be a witness against himself or to plead guilty; and h. the right to appeal the judgment to a higher court. 3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind. 4. An accused person acquitted by a non-appealable judgment shall not be subjected to a new trial for the same cause. 5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

⁶ Article 11(2) of the Convention "Right to Privacy. [...] 2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home or his correspondence, or of unlawful attacks on his honor or reputation".

⁷ Article 16 of the Convention "Freedom of Association. 1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others."

3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police."

⁸ Article 24 of the Convention "Right to Equal Protection. All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law."

⁹ Article 25. Right to Judicial Protection

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;

b. to develop the possibilities of judicial remedy; and

c. to ensure that the competent authorities shall enforce such remedies when granted.

¹⁰ Article 30 of the Convention. "Scope of Restrictions. The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established."

¹¹ Article 44 of the Convention "Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party."

¹² Article 46 of the Convention "1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

of the American Convention on Human Rights, as well as article 8(1)(a) and (b) of the Protocol of San Salvador (hereinafter "the request" or "the consultation"). In particular, Panama requested that the Court rule ¹⁴:

- a) in relation to Article 1(2) of the American Convention on "[t]he scope and protection of natural persons through legal entities or 'legally recognized non-governmental entities,' both to exhaust procedures in the domestic jurisdiction and to file complaints of violation [of] human rights before the Inter-American Commission on Human Rights," and "[t]he scope and protection of the rights of legal entities or 'legally recognized non-governmental entities,' as such, as instruments of natural persons to achieve their legitimate tasks";
- b) "whether article 16 of the Convention, which recognizes the right of human beings to associate, is limited or not by the restriction of protection of associations, freely formed by natural persons as 'legally recognized non-governmental entities', to protect their rights as expressed and developed through the legal entities formed under the right of association";
- c) the interpretation of article 1(2) in light of articles 29 and 30 of the Convention, and
- d) "the protection of the human rights of individuals through non-governmental organizations or legal entities, of the [...] rights [to] judicial protection and due process of Article 8 of the Convention, [to] privacy of Article 11 of the Convention, [to] freedom of expression of Article 13 of the Convention, [to] property recognized by Article 21 of the Convention, [to] equality and non-discrimination of Articles 1(1) and 24 of the Convention, [to] the right to strike and to form federations and confederations of Article 8 of the San Salvador Protocol to the American Convention on Human Rights."

a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;

b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;

c. that the subject of the petition or communication is not pending in another international proceeding for settlement; and

d. that, in the case of Article 44, the petition contains the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the entity lodging the petition.

2. The provisions of paragraphs 1.a and 1.b of this article shall not be applicable when:

a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;

b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or

c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies."

¹³ Article 62(3) of the Convention "The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement."

¹⁴ Consult the full text of the request on the Court's website at: https://www.corteidh.or.cr/solicitudoc/solicitud_14_11_14_ing.pdf.

2. Panama presented the considerations that gave rise to the consultation and indicated that:

The State invokes the practice of the Inter-American Commission regarding the interpretation of Article 1(2) of the Convention and cites the following two passages, among others, extracted from the Commission's pronouncements:

[...] that the Preamble of the American Convention on Human Rights as well as the provisions of Article 1(2) provide that 'for the purposes of this Convention, 'person' means every human being', and consequently, the system of natural persons and does not include legal entities [...] consequently, in the inter-American system, the right to property is a personal right and the Commission has powers to protect the rights of an individual whose property is confiscated, but does not have jurisdiction over the rights of legal persons, such as companies or, as in this case, banking institutions (Report No. 10/91 of 22.II.1991, Banco de Lima – Peru considering paragraphs 1 and 2).

[...] according to paragraph two of the transcribed regulation, [Article 1], the person protected by the Convention is "every human being" [...]. For this reason, the Commission considers that the Convention grants its protection to physical or natural persons, excluding legal entities from its scope of application, since these are legal fictions without real existence in the material order (Report No. 39 /99 of 11.III.1999, Mevopal, S.A.-Argentina, paragraph 17).

With these two paragraphs it seems to be understood that legal entities, being legal fictions, by themselves are not subjects of rights as are individuals that are members of the companies of the legal entity.

Given that this is an issue that has generated concern among the States and that until now there has only been reference to the opinion of the Commission, the State of Panama considers it opportune to consult the position of the honorable Inter-American Court of Human Rights on this issue.

3. Based on the foregoing, Panama submitted the following specific queries to the Court:

1. Does Article 1(2) of the American Convention on Human Rights, restrict the inter-American protection of human rights to natural persons and exclude legal entities from the scope of protection of the Convention?
2. Can Article 1(2) of the Convention also protect the rights of legal entities such as cooperatives, unions, associations, companies, as long as they are made up of natural persons associated with these entities?
3. Can legal entities have recourse to the proceedings of the domestic jurisdiction and exhaust the remedies of domestic jurisdiction to defend the rights of natural persons who own such legal entities?
4. What human rights can be recognized for legal or collective (non-governmental) entities in the framework of the American Declaration on the Rights and Duties of Man, the American Convention on Human Rights and its Protocols or supplementary international instruments?
5. Within the framework of the American Convention, in addition to individuals, do legal entities made up of human beings have the rights to freedom of association in Article 16, to privacy in Article 11, to freedom of expression of Article 13, to property of Article 21, to a fair trial, to due process and to the protection of their rights of Articles 8 and 25, to equality and non-discrimination of Articles 1 and 24, all of the American Convention?
6. Can a company or corporation, cooperative, professional partnership or commercial company, a union (legal entity), a media outlet (legal entity), an indigenous organization (legal entity) exhaust domestic remedies and go to the Inter-American Commission on Human Rights on behalf of its members (associated natural persons or owners of the business or partnership) in defense of their rights and/or of its members, or must each member or partner do so in their capacity as a natural person?
7. If a legal entity goes to the domestic jurisdiction and exhausts its jurisdictional procedures in defense of its rights and the rights of its members (associated individuals or partners thereof), can its members or associates go directly to the international jurisdiction of the Inter-American Commission in the defense of their rights as affected individuals?
8. Within the framework of the American Convention on Human Rights, do individuals have to exhaust domestic remedies themselves to resort to the Inter-American Commission on Human Rights to defend their human rights, or can the legal entities in which they participate do so?

4. Panama appointed Mrs. Farah Diva Urrutia, General Director of Legal Affairs and Treaties of the Ministry of Foreign Affairs of Panama, as its representative.

II PROCEEDINGS BEFORE THE COURT

5. Through briefing notes dated November 17, 2014, the Court Registrar (hereinafter "Registrar"), in accordance with the provisions of Article 73(1)¹⁵ of the Rules of Procedure, transmitted the query to the other Member States of the Organization of American States (hereinafter "the OAS"), the Secretary General of the OAS, the President of the Permanent Council of the OAS and the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission"). In said communications, they were informed that the President of the Court, in consultation with the Court, had set January 30, 2015 as the deadline for submitting written observations regarding the request. Furthermore, following instructions from the President and in accordance with the provisions of article 73(3)¹⁶ of said Rules of Procedure, the Registrar, through briefing notes dated November 17, December 3 and 4, 2014, invited various international and civil society organizations as well as media and political parties, and academic, religious, business and trade union institutions in the region to submit their written opinion on the points submitted for consultation within the aforementioned period. Finally, an open invitation was made through the Inter-American Court's website to all interested parties to present their written opinion on the points submitted for consultation. The previously established deadline was extended until March 30, 2015, giving them approximately four months to forward their submissions.

6. On expiry of the period granted, the Office of the Registrar had received the following written observations ¹⁷:

Written observations presented by OAS States:

- 1) Argentine Republic (hereinafter "Argentina")
- 2) Plurinational Republic of Bolivia (hereinafter "Bolivia")
- 3) Republic of Colombia (hereinafter "Colombia")
- 4) Republic of El Salvador (hereinafter "El Salvador")
- 5) Republic of Guatemala (hereinafter "Guatemala")
- 6) Republic of Honduras (hereinafter "Honduras")

Written observations presented by OAS bodies:

- 1) Inter-American Commission on Human Rights

¹⁵ Article 73(1) of said Rules of Procedure "Upon receipt of a request for an advisory opinion, the Registrar shall transmit copies thereof to all of the Member States, the Commission, the Permanent Council through its Presidency, the Secretary General, and, if applicable, to the OAS organs whose sphere of competence is referred to in the request."

¹⁶ Article 73(3) of said Rules of Procedure "The Presidency may invite or authorize any interested party to submit a written opinion on the issues covered by the request. If the request is governed by Article 64(2) of the Convention, the Presidency may do so after prior consultation with the Agent."

¹⁷ The request for an advisory opinion presented by Panama, the written and oral observations of the participating States, the Inter-American Commission, as well as international and state organizations, international and national associations, academic institutions, non-governmental organizations, and individuals from civil society are available for consultation on the Court's website, at the following link: <http://www.corteidh.or.cr/index.php/es/observaciones-panama>. They are also summarized in the annex to this opinion.

Written observations presented by international and state organizations, international and national associations, academic institutions, non-governmental organizations and individuals from civil society:

- 1) Regional Alliance for Free Expression and Information
- 2) Amnesty International
- 3) Ana Margarita Vijil
- 4) Civil Association of Human Rights "Ixtlamatque Ukari A.C" and Miguel Ángel Antemate Mendoza
- 5) Carlos Rodríguez Mejía, Alberto León Gómez Zuluaga and Marcelo Ferreira
- 6) Center for Reproductive Rights
- 7) Human Rights Clinic of the Center for Research and Education in Human Rights of the University of Ottawa
- 8) Legal clinic of the Universidad San Francisco de Quito
- 9) Federal District Human Rights Commission (CDHDF) Mexico
- 10) National Executive Committee of the Confederation of Mexican Workers, and
- 11) Confederation of Industrial Chambers of the United Mexican States
- 12) Confederation of National Chambers of Commerce, Services and Tourism of the United Mexican States (CONCANACO)
- 13) International Trade Union Confederation (ITUC) and Trade Union Confederation of the Americas (TUCA)
- 14) Coordinator of Trade Union Centers of the Southern Cone (CCSC)
- 15) David Andres Murillo Cruz
- 16) EarthRights International and Juan Pablo Calderón Meza
- 17) Faculty of Law of the Pontifical Catholic University of Chile
- 18) Faculty of Law of the National Autonomous University of Mexico (UNAM)
- 19) Faculty of Law and Political Sciences of the University of San Buenaventura de Cali
- 20) Research Hub of International Economic Law and Human Rights attached to the EAFIT University
- 21) "Iván David Ortiz" student work group of the National University of Colombia
- 22) International Commission for Labor Rights
- 23) Jorge Aguilera Suárez, Marcela Alejandra Cáceres Garza, Mario Castro Sánchez and Marion Eloisa Hidalgo García (students of the Specialization in International Law of the Autonomous Technological Institute of Mexico)
- 24) Jorge Alberto Pérez Tolentino
- 25) Lucas Lixinski, Sumer Dayal, Ashna Taneja – Australian Human Rights Centre
- 26) Luis Peraza Parga
- 27) Martha María Guadalupe Orozco Reyes, Alejandra Isabel Plascencia López, Hermilo de Jesús Lares Contreras, José Benjamín González Mauricio, José Luis Castellón Sosa and Noel Velázquez Prudencio
- 28) Miguel Angel Barboza Lopez
- 29) Amazon Human Rights Observatory of the Federal University of Amapá
- 30) Human Rights Observatory of the UnderOffice of the Registrar for Human Rights of Quilmes
- 31) Pablo Martin Fernandez Barrios
- 32) University Program on Human Rights of the National Autonomous University of Mexico

- 33) Rodolfo E. Piza de Rocafort
- 34) Santiago Bertinat Gonnet
- 35) Shirley Llain Arenilla, Cindy Hawkins Rada, Juan Miguel Cortés Quintero and Andrea Alejandra Ariza Lascarro – University of North Barranquilla
- 36) Legal Sustainability (SAS)
- 37) Selene Guevara Solís, Heberto Mejía García and Héctor Bravo Morrás - Central American University of Nicaragua, and
- 38) Jose Simeon Cañas Central American University.
- 39) Wagner Balera, Professor of Human Rights at the Law School of the Pontifical Catholic University of São Paulo

7. Once the written procedure was concluded, on May 21, 2015, the President of the Court, in accordance with the provisions of Article 73.4¹⁸ of the Rules of Procedure, issued an order¹⁹, through which it convened a public hearing and invited the Member States of the OAS, its Secretary General, the President of the Permanent Council of the OAS, the Inter-American Commission, and the members of various organizations, civil society, academic institutions, and persons who submitted written observations, for the purpose of presenting their comments on the consultation to the Court.

8. The public hearing was held on June 25, 2015, within the framework of the 109th Regular Session of the Inter-American Court of Human Rights.

9. The following persons appeared before the Court:

For Argentina, Javier Salgado, International Human Rights Litigation Director, and Rosario Álvarez Garriga, Coordinator of International Legal Affairs of the Human Rights Office of the Registrar

For Chile, Ambassador Miguel Ángel González Morales

For Colombia, Ambassador Jesús Ignacio García Valencia and Alberto Bula Bohórquez, counselor
For Guatemala, Rodrigo José Villagrán Sandoval, representative, and Héctor Rolando Palacios Lima, Ambassador of the Republic of Guatemala to Costa Rica, and Steffany Rebeda Vásquez Barillas, alternate representative;

For Honduras, Jorge Abilio Serrano, Deputy Attorney General;

For the United Mexican States, Luis Manuel Jardón Piña, Director of Cases of the General Directorate of Human Rights and Democracy, Sergio Huerta Patoni, Coordinator of Advisors of the Legal Office, and Óscar Francisco Holguín González, in charge of Political and Legal Affairs of the Embassy of Mexico in Costa Rica

For the Inter-American Commission, José de Jesús Orozco Henríquez, Second Vice President of the Commission, Elizabeth Abi-Mershed, Deputy Executive Secretary, Edison Lanza, Special Rapporteur for Freedom of Expression, Silvia Serrano Guzmán, advisor, and Jorge H. Meza Flores, advisor,

For the Regional Alliance for Free Expression and Information, Raúl Francisco Silesky Jiménez,

For Amnesty International, Gabriela Quijano and Tawanda Hondora and Daniel Jojoy,

For the Civil Association of Human Rights "Ixtlamatque Ukari" and Miguel Ángel Antemate Mendoza, Marlen Rodríguez Atriano and Norma Celia Bautista Romero, and Miguel Ángel Antemate Mendoza,

Carlos Rodríguez Mejía, Alberto León Gómez Zuluaga and Marcelo Ferreira,

For the University of Ottawa, Salvador Herencia-Carrasco and Penélope Simons,

For the Center for Reproductive Rights, Mónica Arango Olaya and Juan Sebastián Rodríguez Alarcón,

¹⁸ Article 73(4) of Rules of Procedure "At the conclusion of the written proceedings, the Court shall decide whether oral proceedings should take place and shall establish the date for a hearing, unless it delegates the latter task to the Presidency. Prior consultation with the Agent is required in cases governed by Article 64(2) of the Convention."

¹⁹ Available in Spanish at: www.corteidh.or.cr/docs/asuntos/solicitud_21_05_15_esp.pdf.

For the Human Rights Commission of the Federal District of Mexico, Marisol Mendez Cruz and Christian Ibeth Huerta Dávila,
 For EarthRights International and Juan Pablo Calderón Meza, Juan Pablo Calderón Meza,
 For the group of lawyers and students of the Universidad del Norte de Colombia, Shirley Llain Arenilla,
 For the "Iván David Ortiz" Student Work Group of the Faculty of Political and Social Sciences of the National University of Colombia, Yazmyn Ayseha Umaña Dajud
 For the International Commission for Labor Rights, Angela B. Cornell,
 For the International Trade Union Confederation (ITUC), Steven Barrett,
 Martha María Guadalupe Orozco Reyes, Hermilo de Jesús Lares Contreras, Alejandra Isabel Plascencia López, José Benjamín González Mauricio and Irma Ramos Salcedo,
 For the Human Rights University Program of the National Autonomous University of Mexico, María Esther Martínez López and Brenda Hernández Zavaleta,
 Rodolfo E. Piza Rocafort, accompanied by Manuel José Berrocal Fábrega and Román Navarro Fallas,
 Mr. Santiago Bertinat Gonnet,
 For Legal Sustainability, Álvaro Francisco Amaya Villareal, and
 For the Research Hub of International Economic Law and Human Rights attached to the EAFIT University of Medellín, Sara Bustamante Blanco and Federico Delgado Aguilar, Carlos Alberto Sarría Ocampo and José Alberto Toro Valencia.

10. After the hearing, additional briefs were received from: 1) Research Hub of International Economic Law and Human Rights attached to the EAFIT University, 2) Human Rights Commission of the Federal District of Mexico, 3) Inter-American Commission on Human Rights, 4) EarthRights International and Juan Pablo Calderón Meza, 5) Carlos Alberto Rodríguez Mejía, Alberto León Gómez Zuluaga and Marcelo Ferreira, 6) International Trade Union Confederation, 7) Martha María Guadalupe Orozco Reyes, Hermilo de Jesús Lares Contreras, Alejandra Isabel Plascencia López, José Benjamín González Mauricio and Irma Ramos Salcedo, and 8) Rodolfo E. Piza Rocafort.

11. The Court deliberated on this Advisory Opinion during its 112th and 113th Regular Sessions, beginning the deliberation on November 19, 2015, and February 23, 2016, respectively.

III JURISDICTION

12. Panama deposited its instrument of ratification of the Convention on June 22, 1978, and of the Protocol of San Salvador on February 18, 1993.

IV GENERAL CONSIDERATIONS

A. Regarding its advisory jurisdiction

13. This consultation has been submitted to the Court by Panama, in use of the power granted to it by Article 64(1) of the American Convention. Panama is a Member State of the OAS and, therefore, has the right to request advisory opinions from the Inter-American Court regarding the interpretation of said treaty or other treaties concerning the protection of human rights in the American States.

14. Similarly, the Court considers that, as a body with functions of a jurisdictional and advisory nature, it has the power inherent in its attributions to determine the scope of its own jurisdiction (*compétence de la compétence/Kompetenz-Kompetenz*). Therefore, as provided for in Article 64(1) of the Convention, it is also applicable to the exercise of its advisory function,

as is the case regarding its contentious jurisdiction.²⁰ This follows given that, in particular, the mere circumstance of resorting to it presupposes recognition of the Court's right to decide on the scope of its jurisdiction by the State or States making the consultation.

15. Panama requested an interpretation of several articles of the American Convention, its Additional Protocol on Economic, Social and Cultural Rights "Protocol of San Salvador" and the American Declaration of the Rights and Duties of Man (hereinafter "American Declaration" or "Declaration").

16. Regarding the American Convention, the advisory function allows the Court to interpret any of its provisions, and no part or aspect thereof is excluded from the scope of interpretation. In this sense, it is evident that the Court has, by virtue of being the "*final arbiter* of the American Convention,"²¹ jurisdiction to issue, with full authority, interpretations of all the provisions of the Convention, including those of a procedural nature.²²

17. Regarding the Protocol of San Salvador, the Court highlights that the requesting State made specific reference to the protection of the rights to form federations and confederations (Article 8(a)) and to strike (Article 8(b)) "of individuals through non-governmental organizations or legal entities". This Court reiterates that, by virtue of Article 64(1) of the Convention, its power to issue an opinion on "other treaties concerning the protection of human rights in the American States" is broad and not restrictive. In effect, "the advisory jurisdiction of the Court can be exercised, in general, with regard to any provision dealing with the protection of human rights set forth in any international treaty applicable in the American States, regardless of whether it be bilateral or multilateral, whatever be the principal purpose of such a treaty, and whether or not non-Member States of the inter-American system are or have the right to become parties thereto."²³

18. Based on the foregoing, Article 64(1) of the American Convention authorizes the Court to render advisory opinions on the interpretation of the aforementioned Protocol and the American Declaration, within the framework and within the limits of its jurisdiction in relation to the OAS Charter (hereinafter "the Charter") and the Convention or other treaties concerning the protection of human rights in the American States.²⁴ Therefore, when interpreting the Convention within the context of its advisory function, the Court will resort to the American Declaration when appropriate and in the terms of Article 29(d) of the Convention.

19. On affirming its jurisdiction, the Court recalls the broad scope of its advisory function, unique in contemporary international law, by which, in contrast to provisions for other international courts, all of the organs of the OAS listed in Chapter X of the Charter and the Member States of the OAS, are entitled to request advisory opinions even if they were not parties to the Convention.²⁵ Another characteristic of the breadth of this function relates to the purpose of the consultation, which is not limited to the American Convention, but, as already mentioned, reaches other treaties concerning the protection of human rights in the American

²⁰ Cf. *Case of the Constitutional Court v. Peru. Jurisdiction*. Judgment of September 24, 1999. Series C No. 55, par. 33, and *Rights and guarantees of children in the context of migration and/or in need of international protection*. Advisory Opinion OC-21/14 of August 19, 2014. Series A No. 21, par. 17.

²¹ *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, par. 124, at OC-21/14 of August 19, 2014, par. 19.

²² Cf. *Article 55 of the American Convention on Human Rights*. Advisory Opinion OC-20/09 of September 29, 2009. Series A No. 20, par. 18, and Advisory Opinion OC-21/14, par. 19.

²³ "Other Treaties" Subject to the Consultative Jurisdiction of the Court (Art. 64 American Convention on Human Rights). Advisory Opinion OC-1/82 of September 24, 1982. Series A No. 1, opinion point one, and Advisory Opinion OC-21/14, par. 20.

²⁴ Cf. *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, first and only opinion point, and Advisory Opinion OC-21/14, par. 22.

²⁵ Cf. Advisory Opinion OC-1/82, par. 14 to 17, and Advisory Opinion OC-21/14, par. 23.

States and, in addition, all OAS Member States are granted the ability to request opinions on the compatibility between any of their domestic legislation and the aforementioned international instruments.²⁶

20. Furthermore, the Court confirms that Panama's request formally meets the requirements of the provisions of Articles 70 and 71²⁷ of the Rules of Procedure, according to which for a request to be considered by the Court, the questions must be precisely defined, specify the provisions to be interpreted, indicate the considerations that initiate it and provide the name and address of the agent.

21. This Court has repeatedly established that compliance with the regulatory requirements to submit a request for an advisory opinion does not mean that the court is obliged to respond to it.²⁸ Thus, the Court recalls that its advisory jurisdiction should not, in principle, be used for abstract speculation without a foreseeable application to specific situations that justify the issue of an advisory opinion.²⁹

22. In this regard, in the request for an advisory opinion, Panama indicated that, in its view, from the Commission's interpretation of Article 1(2) of the Convention, it seems that "legal entities, being legal fictions, by themselves are not subject to [r]ights as are the members of the companies of the legal entity" and maintained that "this is an issue that has generated concerns among the States."

23. Recalling that the advisory function constitutes "a service that the Court is able to provide to all the members of the inter-American system, in order to contribute to compliance with their international commitments" on human rights,³⁰ this Court considers that, based on the interpretation of the relevant regulations, its response to the query raised will be specifically useful in clarifying whether legal entities could indeed be holders of the rights established in the American Convention and the other treaties within the framework of the inter-American system.

24. Therefore, the Court considers that it is not necessarily constrained to the literal terms of the consultations that are presented and, furthermore, in exercising its advisory jurisdiction it can also suggest, insofar as measures of another nature that are necessary to realize human rights, the adoption of treaties or other types of international standards on the [their] subject matter.³¹

25. Given the broad scope of the Court's advisory function which, as already stated, involves not only the States Parties to the American Convention, the statements in this Advisory Opinion also have legal relevance for all OAS Member States that have agreed to the American Declaration, regardless of whether or not they have ratified the American

²⁶ Cf. Advisory Opinion OC-1/82, par. 14 to 17, and Advisory Opinion OC-21/14, par. 23.

²⁷ Article 71. Interpretation of other treaties

1. If, as provided for in Article 64(1) of the Convention, the interpretation requested refers to other treaties concerning the protection of human rights in the American States, the request shall indicate the name of the treaty and parties thereto, the specific questions on which the opinion of the Court is being sought, and the considerations giving rise to the request.

2. If the request is submitted by an OAS organ, it shall indicate how the subject of the request falls within its sphere of competence.

²⁸ Cf. *Reports to the Inter-American Commission on Human Rights* (Art. 51 American Convention on Human Rights). Advisory Opinion OC-15/97 of November 14, 1997. Series A No. 15, par. 31, and Advisory Opinion OC-21/14, par. 25.

²⁹ Cf. *Judicial Guarantees in States of Emergency* (Art. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, par. 16, and Advisory Opinion OC-21/14, par. 25.

³⁰ Cf. Advisory Opinion OC-1/82, par. 39, and Advisory Opinion OC-21/14, par. 28.

³¹ Advisory Opinion OC-21/14, par. 30.

Convention,³² as well as for the OAS bodies whose sphere of competence refers to the subject of the consultation.

26. The Court recalls, as it has done on other occasions,³³ that the interpretive work that it must carry out in the exercise of its advisory function differs from its contentious jurisdiction in that there are no “parties” involved in the advisory procedure, and there is also no litigation to resolve. The central purpose of the advisory function is to obtain a judicial interpretation of one or several provisions of the Convention or other treaties concerning the protection of human rights in the American States.³⁴ In this spirit, the Advisory Opinions fulfill, to some extent, the function of a preventive control of conventionality.

B. Regarding this Advisory Opinion

27. This Court recalls that it is inherent to its powers to structure its pronouncements in the way it deems most appropriate to the interests of the law and for the purposes of an advisory opinion. In this Advisory Opinion, the Court has decided to establish, firstly, the meaning of the terms “legal entity” and “legal standing” in order to define their conceptual scope. Secondly, it will proceed to analyze the specific matters submitted for its consideration. In order to provide an adequate response to the request presented, the Court has decided to group the questions presented by Panama into four main topics, namely: (i) consultation on the ownership of rights of legal entities in the inter-American system; (ii) indigenous and tribal communities and trade union organizations; (iii) protection of human rights of natural persons as members of legal entities, and (iv) exhaustion of domestic remedies by legal entities. According to this division, in the first topic, answers will be given to questions 1 and 2 (*supra* par. 3), in the second and third questions 4 and 5 will be answered (*supra* par. 3) and, finally, in the fourth, questions 3, 6, 7 and 8 will be answered (*supra* par. 3).

28. For the purposes of this Advisory Opinion, the Court will therefore use the following terms with the meaning indicated:

a) Legal entity

To define a legal entity, the Court refers to the provisions of the Inter-American Convention on the Personality and Capacity of Legal Entities in Private International Law,³⁵ namely: “any entity that has its own existence and responsibility, other than those of its members or founders, and that is qualified as a legal entity according to the law of the place of its constitution”.

The Court also confirms that the definition at the domestic level in various countries in the region does not differ substantially from that adopted by the Inter-American Convention. Indeed, when studying different civil codes in the region, it can be concluded, in general terms, that legal entities are understood as those entities, other than their members, with the capacity to incur obligations and exercise rights, and whose capacity is restricted to the corporate purpose for which they were

³² Cf. *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, par. 60, and Advisory Opinion OC-21/14, par. 32.

³³ Cf. Advisory Opinion OC-15/97, par. 25 and 26, and Advisory Opinion OC-21/14, par. 51.

³⁴ Cf. *Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*. Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, par. 22, and Advisory Opinion OC-21/14, par. 51.

³⁵ Inter-American Convention on the Personality and Capacity of Juridical Persons in Private International Law, date of adoption: 05/24/84, date of entry into force: 08/09/92.

created.³⁶

Additionally, throughout the text the term "legal entity" will be used for the purpose of generating uniformity. However, this does not prevent other terms that allude to the same concept, such as, for example: moral persons, collective persons, persons of ideal existence or fictitious persons, from being understood.³⁷

b) Legal standing

By legal standing, the Court understands the ability to be a party to a process, in accordance with the provisions of the Law.

In the inter-American system, legal standing refers, pursuant to the provisions of Article 44 of the American Convention, to the power of any person or group of persons, or non-governmental entity legally recognized in one or more member states of the Organization to present petitions before the Inter-American Commission containing claims or complaints referring to the presumed violation by a State Party of any of the human rights recognized at the inter-American level.³⁸

Furthermore, Article 61(1) of the Convention provides that "[o]nly the States Parties and the Commission shall have the right to submit a case to the Court".³⁹

Similarly, Article 50 of the Commission's Rules of Procedure indicates that the States Parties to the American Convention have legal standing to access the System only when they have recognized the jurisdiction of the Commission to receive and examine communications in which one State Party alleges that another State Party has incurred in violations of the human rights established in the Convention.⁴⁰

29. In short, in responding to this request, the Court acts in its capacity as a court of human rights, guided by the rules that govern its advisory jurisdiction and proceeds to a strictly legal analysis of the issues raised before it, in accordance with international human rights law taking into account the relevant sources of international law.⁴¹ In this regard, it should be specified that the *corpus iuris* of international human rights law consists of a series of rules expressly recognized in international treaties or established in international customary law as evidence of a general practice accepted as law, as well as of general principles of law and of a series of general norms or soft law, which serve as guidelines for the interpretation of the former, since they provide greater precision to the basic contents of the treaties.⁴²

³⁶ Cf. Articles 141 and 143 of the Civil Code of Argentina, Article 54 of the Bolivian Civil Code, Articles 545 and 2053 of the Chilean Civil Code, Article 633 of the Colombian Civil Code and Article 98 of the Colombian Commercial Code, Article 564 of the Civil Code of Ecuador, Article 52 of the Civil Code of El Salvador, Article 16 of the Civil Code of Guatemala, Article 1795 of the Civil Code of Honduras, Articles 26 and 27 of the Federal Civil Code of Mexico, Articles 1 and 77 of the Nicaraguan Civil Code, Articles 38 and 71 of the Civil Code of Panama, Articles 94 and 96 of the Civil Code of Paraguay, Article 78 of the Civil Code of Peru, Article 21 of the Civil Code of Uruguay, and Article 19 of the Civil Code of Venezuela.

³⁷ The Court emphasizes that the reference made in this text to the term "legal entity" should not be confused with the "Right to Juridical Personality" enshrined in Article 3 of the American Convention on Human Rights. Said article establishes: Article 3. Right to Juridical Personality. Every person has the right to recognition as a person before the law.

³⁸ Cf. Articles 44 of the American Convention and 23 of the Inter-American Commission's Rules of Procedure.

³⁹ Cf. Article 61 of the American Convention.

⁴⁰ Cf. Article 61 of the American Convention.

⁴¹ Advisory Opinion OC-21/14, par. 60.

⁴² Advisory Opinion OC-21/14, par. 60.

30. In addition, the Court highlights the circumstance that, as provided in Article 1(1) of the Convention, “[t]he State Parties [to this] Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms”, for which, according to Article 2, in the event that “the exercise of any of the rights and freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of [this] Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.”

31. Such obligations imply, consequently, that the States, when adopting the necessary measures to implement human rights, must also do so with respect to legal entities that are under their jurisdiction, in order to prevent any actions by them that may compromise its international responsibility in this matter. Therefore, legal entities are, in all cases, obliged to respect human rights in the corresponding domestic or national order and, in the event that this does not occur, the relevant States may see their international responsibility compromised in so far as it does not guarantee their free and full exercise by any natural person under its jurisdiction. Similarly, Article 36 of the OAS Charter establishes that “transnational enterprises and foreign private investment shall be subject to the legislation of the host countries and to the jurisdiction of their competent courts and to the international treaties and agreements to which said countries are parties and should conform to the development policies of the host countries”.

32. In accordance with Panama’s request, this Advisory Opinion determines below, in accordance with the rules brought for consultation, the interpretation and scope of Article 1(2) of the American Convention in the framework of the questions raised by the requesting State.

33. Based on the foregoing, the Court considers, in short, that it has jurisdiction to rule on the questions posed by Panama and finds no reason in this request to refrain from resolving it, for which it finds the request admissible and proceeds to rule on it.

V

THE CONSULTATION ON THE ENTITLEMENT OF LEGAL ENTITIES TO HOLD RIGHTS UNDER THE THE INTER-AMERICAN SYSTEM

34. The Court considers that the main legal problem raised in the request for an advisory opinion is whether legal entities can be considered as holders of the rights established in the American Convention and, therefore, could have direct access to the inter-American system as alleged victims. To answer this question, it is imperative to interpret Article 1(2) of the American Convention, which establishes that:

“1(2). For the purposes of this Convention, “person” means every human being.”

35. In particular, to issue its opinion on the interpretation of the legal provisions brought for consultation, the Court will refer to the Vienna Convention on the Law of Treaties, which includes the general and customary rule of interpretation of international treaties,⁴³ which implies the simultaneous and joint application of good faith, the ordinary meaning of the terms used in the treaty in question, their context and its object and purpose. Therefore, the Court will make use of the methods of interpretation stipulated in Articles 31⁴⁴ and 32⁴⁵ of the Vienna Convention to carry out said interpretation.

⁴³ Cf. International Court of Justice, *Case concerning sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, Judgment of December 17, 2002, par. 37, and International Court of Justice, *Avena and other Mexican nationals (Mexico v. the United States of America)*, Judgment of March 31, 2004, par. 83.

⁴⁴ Article 31. General rule of interpretation. 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

36. Based on the foregoing, in order to respond to questions 1 and 2 of the request, the Court will proceed to analyze: (a) the ordinary meaning of the term and good faith, (b) object and purpose of the treaty, (c) the domestic context of the treaty, and (d) evolving interpretation. Finally, in order to confirm the interpretation arrived at, reference will be made to one of the complementary methods established in article 32 of the Vienna Convention, that is, to the *travaux préparatoires* of the Convention.

A. Ordinary meaning of the terms "person" and "human being" – literal interpretation

37. The Court reiterates that it has already held that Article 1(2) of the Convention establishes that the rights recognized therein correspond to persons, that is, to human beings.⁴⁶ In particular, it should be noted that the American Convention did not leave open the interpretation of how the term "person" should be understood, since Article 1(2) precisely seeks to establish a definition of it, which demonstrates the intention of the parties in giving the term a special meaning within the framework of the treaty, as established in Article 31(4) of the Vienna Convention. This Court has therefore understood that the two terms in Article 1(2) of the Convention must be understood as synonyms.⁴⁷

38. In this regard, the Court observes that the dictionary of the Royal Spanish Academy defines "person" in its first meaning as "[i]ndividual of the human species".⁴⁸ The dictionary then specifies the term "human" or "human" in one of its meanings as⁴⁹: "1. adj. Said of a being: that has the nature of a man (|| rational being)". In a similar sense, this Court finds that

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties. 4. A special meaning shall be given to a term if it is established that the parties so intended.

Vienna Convention on the Law of Treaties, U.N. Doc. Doc A/CONF.39/27 (1969), 1155 U.N.T.S. 331, signed in Vienna on May 23, 1969, entered into force on January 27, 1980.

⁴⁵ Article 32. Supplementary means of interpretation. Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or

(b) leads to a result which is manifestly absurd or unreasonable.

Vienna Convention on the Law of Treaties, U.N. Doc. Doc A/CONF.39/27 (1969), 1155 U.N.T.S. 331, signed in Vienna on May 23, 1969, entered into force on January 27, 1980.

⁴⁶ *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 20, 2009. Series C No. 207, par. 45, and *Case of Granier et al. (Radio Caracas Television) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of June 22, 2015. Series C No. 293, para. 19.

⁴⁷ Cf. *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 28, 2012, Series C No. 257, par. 219. Article 1(2) has been analyzed by the Court in cases in which the violation of rights to the detriment of legal entities has been requested, which has been rejected by the Court because they have not been recognized as holders of rights enshrined in the American Convention. Cf. *Case of Cantos v. Argentina. Preliminary Exceptions.* Judgment of September 7, 2001. Series C No. 85, par. 29 and *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195, par. 398.

⁴⁸ Dictionary of the Spanish language of the Royal Spanish Academy, 23rd ed. Madrid, Espasa, 2014. Available at: <http://dle.rae.es/?id=SjUil8Z>

⁴⁹ Dictionary of the Spanish language of the Royal Spanish Academy, 23rd ed. Madrid, Espasa, 2014. Available at: <http://dle.rae.es/?id=KnckSsrP>

the English,⁵⁰ Portuguese⁵¹ and French⁵² of the American Convention, which are authentic versions of the treaty, also make express reference to the term "human being" as a synonym of "person". In addition, when verifying the ordinary meaning of the terms in each of these languages,⁵³ it is the same as that given in Spanish. Taking this into account, it is clear that the literal reading of article 1(2) of the Convention excludes other types of persons who are not human beings from the protection provided by the treaty. Legal entities within the framework of the American Convention are therefore not holders of the rights established in the text and, therefore, cannot bring petitions before the inter-American system, have direct access as presumed victims, or assert human rights as their own.

39. Indeed, this is the interpretation that the Inter-American Court has been making since the first case⁵⁴ in which it faced the problem of defining whether legal entities could be protected in the inter-American system, a position from which, in principle, it finds no reason to depart. However, within the framework of this consultation, it considers it pertinent to study whether article 1(2) could be subject to other interpretations based on other existing methods of interpretation. In effect, this Court has affirmed that the interpretation of the "ordinary meaning of the terms" of the treaty cannot be a rule by itself but rather, in addition to said criterion and that of good faith, the exercise of interpretation must involve the context, especially within its object and purpose.⁵⁵ This is to guarantee a harmonious and current interpretation of the provision subject to consultation. Therefore, this Court considers it necessary to make use of all the other methods of interpretation established in Articles 31 and 32 of the Vienna Convention.

B. Object and purpose of the treaty – teleological interpretation

40. The Court has indicated that a teleological interpretation would examine the purpose of the norms involved, and therefore it will analyze the object and purpose of the treaty itself and, if pertinent, the purposes of the regional protection system.⁵⁶

41. In this regard, the Preamble of the American Convention makes several references that allow clarification of the object and purpose of the treaty:

Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;

⁵⁰ American Convention on Human Rights, Article 1(2) "For the purposes of this Convention, 'person' means every human being".

⁵¹ Convenção Americana sobre Direitos Humanos Para os efeitos desta Convenção, Artigo 1(2) "Para os efeitos desta Convenção, pessoa é todo ser humano".

⁵² Convention Americaine Relative aux Droits de L'homme, Article 1(2) "Aux effets de la présente Convention, tout être humain est une personne".

⁵³ In English the University of Oxford Dictionary defines "human being" as: "A man, woman, or child of the species *Homo sapiens*, distinguished from other animals by superior mental development, power of articulate speech, and upright stance". Available at: <http://www.oxforddictionaries.com/definition/english/human-being?q=human+being>. Similarly, it defines "person" in its first meaning as: "A human being regarded as an individual". Available at: <http://www.oxforddictionaries.com/definition/english/person>.

In Portuguese the "VOX" dictionary defines the term "humano, na" as: "adj. humano, pertencente ao homem ou próprio dele; [...] s. m. homem ou pessoa humana". Además, define "pessoa" en su primera acepción como: "individuo da espécie humana".

In French the Larousse dictionary defines "humain, humaine" in its first meaning as: "Qui possède les caractéristiques spécifiques de l'homme en tant que représentant de son espèce; qui est composé d'hommes: Être humain. Les races humaines". Disponible en: <http://www.larousse.fr/dictionnaires/francais/humain/40608?q=humain#40515>. In addition, it defines "personne" in its first meaning as: "Être humain, sans distinction de sexe". Available at: <http://www.larousse.fr/dictionnaires/francais/personne/59812?q=personne#59447>.

⁵⁴ *Case of Cantos v. Argentina. Preliminary Exceptions.* par. 29.

⁵⁵ *Cfr. Propuesta de Modificación a la Constitución Política de Costa Rica Relacionada con la Naturalización.* Opinión Consultiva OC-4/84 del 19 de enero de 1984. Serie A No. 4, párr. 23, y Opinión Consultiva OC-20/09, párr. 26.

⁵⁶ *Caso González et al. ("Cotton Field") v. Mexico*, par. 59, and *Case of Artavia Murillo et al. (In vitro Fertilization) v. Costa Rica*, par. 257.

Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states; [...]

Reiterating that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights. (emphasis added)

42. Taking the above into account, the Court has affirmed that in the case of the American Convention, the object and purpose of the treaty is "the protection of the fundamental rights of human beings,"⁵⁷ for which purpose it was designed to protect the human rights of people regardless of their nationality, against their own State or against any other.⁵⁸ In this sense, the American Convention expressly provides certain guidelines for interpretation in Article 29,⁵⁹ including the *pro persona* principle, which implies that no provision of said treaty may be interpreted in the sense of limiting the enjoyment and exercise of any right or freedom that may be recognized in accordance with the laws of any of the States Parties or in accordance with another convention to which one of said States is a party, or to exclude or limit the effect that may be produced by the American Declaration of Rights and Duties of Man and other international instruments of the same nature.

43. As indicated, the object and purpose of the treaty is "the protection of the fundamental rights of human beings," which shows that it was created with the intention of exclusively protecting them. In this way, a teleological interpretation of the norm would be in accordance with the conclusion reached through the literal interpretation, in the sense that legal entities are excluded from the protection granted by the American Convention.

C. Domestic context – systematic interpretation

44. The Court emphasizes that, according to the systematic criterion, the norms must be interpreted as part of a whole whose meaning and scope must be established based on the legal system to which they belong.⁶⁰ In this sense, the Court has considered that when interpreting a treaty, not only the agreements and instruments formally related to it are taken into account (Paragraph 2 of Article 31 of the Vienna Convention), but also the system within which it is applied (Paragraph 3 of Article 31),⁶¹ in this case, the inter-American system for the protection of human rights.

45. A systematic interpretation of the Convention must consider all the provisions that comprise it and the agreements and instruments formally related to it, such as, for example, the American Declaration of the Rights and Duties of Man, because they make it possible to

⁵⁷ *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75)*. Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, par. 29, and Advisory Opinion OC-21/14, par. 53.

⁵⁸ *Cf.* Advisory Opinion OC-2/82, par. 29, and Advisory Opinion OC-21/14, par. 53.

⁵⁹ Article 29. Restrictions Regarding Interpretation

No provision of this Convention shall be interpreted as:

(a) permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;

(b) restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;

(c) precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or

(d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

⁶⁰ *Cf. Case of González et al. ("Cotton Field") v. Mexico*, par. 43, and *Case of Artavia Murillo et al. (In vitro Fertilization) v. Costa Rica*, par. 191.

⁶¹ *Cf. The Right to Information on Consular Assistance in the Framework of the Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, par. 113, and *Case of Artavia Murillo et al. (In vitro Fertilization) v. Costa Rica*, par. 191.

verify whether the interpretation given to a specific rule or term is consistent with the meaning of the other provisions. Specifically, the norms that will be analyzed in this chapter show the use of the word “person” in the context of the treaty and the American Declaration.

46. In this regard, the first part of the American Declaration states:

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 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;
The American States have on repeated occasions recognized that the essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality;
The international protection of the rights of man should be the principal guide of an evolving American law;
The affirmation of essential human rights by the American States together with the guarantees given by the internal regimes of the states establish the initial system of protection considered by the American States as being suited to the present social and juridical conditions, not without a recognition on their part that they should increasingly strengthen that system in the international field as conditions become more favorable.
(Emphasis added)

47. The Court considers that the Preamble of the American Convention (*supra* par. 41), and the first considerations of the American Declaration, show that these instruments were created with the intention of centering the protection and ownership of rights on the human being. This is inferred from the constant reference to words such as “man”⁶² or “human person”, which denote that legal entities were not taken into account the texts were drafted. Regarding the American Declaration, the Inter-American Council of Jurists in an opinion on the Bogotá Conference stated, “[i]t is evident that the Bogotá Declaration does not create a contractual legal obligation, but also evident is the fact that it indicates a well-defined orientation in the meaning of the international protection of the fundamental rights of the human person.”⁶³

48. Similarly, the expression “every person” is used in numerous articles of the American Convention⁶⁴ and the American Declaration,⁶⁵ always to refer to the rights of human beings. As will be analyzed later (*infra* para. 108), some of the rights enshrined in these articles are inherent to the human condition, such as the rights to life, humane treatment or personal liberty, among others. Other rights of this nature, such as property or freedom of expression, could be exercised by natural persons through legal entities (*infra* para. 109), such as a company or a media outlet; however, none of the articles mentioned above contains any expression that entitles legal entities to these rights or that allows an exception to be inferred to the provisions of Article 1(2) of the Convention.

D. Other systems for the protection of human rights and comparative law – evolving interpretation

49. This Court has indicated on other occasions⁶⁶ that human rights treaties are living instruments, interpretation of which must evolve with the times and current living conditions. This evolving interpretation is consistent with the general rules of interpretation established in Article 29 of the American Convention, as well as in the Vienna Convention on the Law of

⁶² In this regard, the Court emphasizes that the use of the word “man” in the American Declaration and in the American Convention must be updated and understood as inclusive of all forms of gender identity.

⁶³ Inter-American Judicial Committee, Recommendations and Reports, 1949-1953 (1955), p. 107.

⁶⁴ Cf. Regarding Articles 1(1), 3, 4(1), 4(6), 5(1), 5(2), 7(1), 7(4), 7(5), 7(6), 8(1), 8(2), 10, 11(1), 11(3), 12(1), 13(1), 14(1), 16, 18, 20(1), 20(2), 21(1), 22(1), 22(2), 22(7), 24, 25(1) and 25(2) of the American Convention on Human Rights.

⁶⁵ Cf. Regarding Articles II, III, IV, V, VI, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXVI and XXVII American Declaration on the Rights and Duties of Man.

⁶⁶ Cf. Advisory Opinion OC-16/99, par. 114; *Case of Atala Riffo and daughters v. Chile. Merits, Reparations and Costs*. Judgment of February 24, 2012. Series C No. 239, par. 83; *Case of Artavia Murillo et al. (In vitro Fertilization) v. Costa Rica*, par. 245, and Advisory Opinion OC-21/14, par. 55. In a similar vein, the Preamble of the American Declaration of the Rights and Duties of Man indicates: “The international protection of the rights of man should be the principal guide of an evolving American law”.

Treaties.⁶⁷ In addition, the third paragraph of article 31 of the Vienna Convention authorizes, for interpretation, the use of means such as the agreements or practice⁶⁸ or relevant rules of international law⁶⁹ that States have declared on the subject matter of the treaty, which are related to an evolving view of the interpretation of the treaty. In this vein, the Court will proceed to analyze: (i) the protection of legal entities in other courts or international human rights organizations, and (ii) the protection of legal entities in the domestic law of the States Parties.

i) International courts and organizations

50. On this point, the Court considers it relevant to analyze, within the framework of an evolving interpretation, the way in which the entitlement to rights and the access of legal entities to the main courts and international human rights organizations are regulated, to determine if a recurring practice exists. Indeed, this Court has considered it useful, on other occasions,⁷⁰ to study other human rights systems and identify similarities or differences with the inter-American system, which can help determine the scope or meaning that has been given to a similar norm or to detect the unique characteristics of the treaty. This Court will proceed to study below: a) the European system; b) the African system, and c) the universal system.

a) European system

51. This Court notes that the European Convention, unlike the American Convention, does not contain a definition of the term "person". The European Convention is limited in all its articles to the use of the expression "everyone", without specifying whether it is a human person or a legal person (entity). Similarly, the Preamble of the Convention emphasizes only the value of human rights as a means to ensure justice and peace in Europe.⁷¹ Indeed, the only articles in which a direct reference is made to the legal entity are Article 34 of the European Convention and Article 1 of Additional Protocol No. 1. In this regard, the Court observes that Article 34 establishes that:

ARTICLE 34 Individual applications: The Court may receive applications from **any person, non-governmental organisation or group of individuals** claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right. (Emphasis added)

52. Article 1 of Additional Protocol No. 1 indicates that:

ARTICLE 1 Protection of property: **Every natural or legal person** is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the

⁶⁷ Cf. Advisory Opinion OC-16/99, par. 114, and Advisory Opinion OC-21/14, par. 55.

⁶⁸ *Case of Artavia Murillo et al. (In vitro Fertilization) v. Costa Rica*, par. 245. Cf. ECHR, *Case of Rasmussen v. Denmark*, (No. 8777/79), Judgment of November 28, 1984, par. 41; *Case of Inze v. Austria*, (No. 8695/79) Judgment of October 28, 1987, par. 42, and *Case of Toth v. Austria*, (No. 11894/85), Judgment of November 25, 1991, par. 77.

⁶⁹ *Case of Artavia Murillo et al. (In vitro Fertilization) v. Costa Rica*, par. 245. Cf. ECHR, *Case of Golder v. United Kingdom*, (No. 4451/70), judgment of December 12, 1975, par. 35.

⁷⁰ For example, in the advisory opinion on the Compulsory Association of Journalists, the Court compared article 13 of the American Convention, referring to the right to freedom of expression, with the analogous articles of the European Convention (article 10) and the International Covenant on Civil and Political Rights (article 19). *The Compulsory Membership of Journalists in an Association* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, par. 45 to 50. Similarly, in the Atala Riffo case, the difference between the scope of Articles 11(2) and 17(1) of the American Convention and Article 8 of the European Convention was analyzed. *Case of Atala Riffo and daughters v. Chile*, par. 175.

⁷¹ The Preamble of the European Convention establishes: Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend; Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration.

conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties (emphasis added).

53. In this sense, Article 34 of the Convention indicates who may file an application before the European Court, namely: i) any natural person; ii) any non-governmental organization, and iii) any group of individuals. The case law of the European Court has allowed for, within the concept of non-governmental organization, various classes of legal entities to submit a claim before it. In particular, the European Court has heard cases related to: (i) private legal entities, of any nature, with⁷² (civil and commercial) or non-profit⁷³ (associations and foundations), or (ii) public legal entities, as long as they do not exercise governmental powers, have not been created for purposes of public administration and are independent of the State.⁷⁴ The interpretation of article 34 of the Convention has meant that the European Court has not only heard cases of legal entities related to the right to property, which is expressly permitted by Article 1 of Protocol No. 1 of the European Convention, but has also analyzed cases related to rights such as freedom of expression⁷⁵ (Article 10 of the European Convention), non-discrimination⁷⁶ (Article 14 of the Convention), fair trial⁷⁷ (Article 6 of the Convention), freedom of assembly and association⁷⁸ (Article 11 of the Convention), to freedom of thought, conscience and religion⁷⁹ (Article 9 of the Convention) or to private and family life⁸⁰ (Article 8 of the Convention).

54. However, the Court considers it necessary to refer to Article 44 of the American Convention on this point, given that several of the written observations submitted noted that Article 34 of the European Convention would be materially identical to Article 44 of the Convention and that based on said article, the European system has granted access to legal entities. Therefore, the question arises as to whether it would be possible to extend protection to legal entities as has been done in the European system. In this regard, Article 44 of the American Convention provides that:

⁷² In this regard, see: ECHR, *SCI Boumois v. France*, (No. 55007/00), Judgment of June 17, 2003; ECHR, *Matter of SCP Huglo, Lepage and Associates, Council v. France*, (No. 59477/00), Judgment of February 1, 2005; ECHR, *Klithropiia Ipirou Evva Hellas A.E. v. Greece*, (No. 27620/08), Judgment of January 13, 2011; ECHR, *Sociedade Agricola Do Ameixial v. Portugal*, (No. 10143/07), Judgment of January 11, 2011; ECHR, *Nieruchomosci SP. Z O.O. v. Poland*, (No. 32740/06), Judgment of February 2, 2010; ECHR, *Ge.Im.A SAS v. Italy*, (No. 52984/99), Judgment of February 12, 2002; ECHR, *Matter of Studio Tecnico Amu S.A.S. v. Italy*, (No. 45056/98), Judgment of October 17, 2000; ECHR, *Lilly France Vs. France [n° 2]*, (No. 20429/07), Judgment of November 25, 2010; ECHR, *Filippos Mavropoulos-Pam. Zisis O.E. v. Greece*, (No. 27906/04), Judgment of May 4, 2006; ECHR, *S. A. GE.MA SNC v. Italy*, (No. 40184/98), Judgment of April 27, 2000; ECHR, *Sordelli and C. SNC v. Italy*, (No. 51670/99), Judgment of December 11, 2001, and ECHR, *Matter of National & Provincial Building Society, The Leeds Permanent Building Society and The York Shire Building Society Vs. United Kingdom*, (No. 117/1996/736/933-935), Judgment of October 23, 1997.

⁷³ See: ECHR, *Apeh Üldözötteinck Szövetség et al. v. Hungary*, (No. 32367/96), Judgment of October 5, 2000; ECHR, *Boychev et al., including the Unification Church Association v. Bulgaria*, (No. 77185/01), Judgment of January 27, 2011; ECHR, *Cha'Are Shalom and Tsedek v. France*, (No. 27417/95), Judgment of June 27, 2000; ECHR, *Clube de Futebol Uniao de Coimbra v. Portugal*, (No.27295/95), Judgment of July 30, 1998; ECHR, *Tüketici Bilincini Geliştirme Derneği v. Turkey*, (No. 38891/03), Judgment of February 27, 2007; ECHR, *Association Avenir d'Alet v. France*, (No. 13324/04), Judgment of February 14, 2008.

⁷⁴ ECHR, *Islamic Republic of Iran Shipping Lines Vs. Turkey*, (No. 40998/98), Judgment of December 13, 2007, par. 80, and ECHR, *Holy Monasteries v. Greece*, (No. 13092/87), Judgment of December 9, 1994, par. 49.

⁷⁵ ECHR, *Autronic AG Vs. Suiza* [Full Court, Series A], (No. 178), Judgment of May 22, 1990, par. 47.

⁷⁶ ECHR, *Religionsgemeinschaft der Zeugen Jehovas et al. v. Austria*, (No. 40825/98), Judgment of July 31, 2008, par. 87 to 99.

⁷⁷ ECHR, *Ern Makina Sanayi and Ticaret AS v. Turkey*, (No. 70830/01), Judgment of May 3, 2007, par. 28-30, and ECHR, *Case of Stoeterij Zangersheide N.V. and Others v. Belgium*, (No. 47295/99), Judgment of December 22, 2004, par. 36.

⁷⁸ ECHR, *Asunto Syndicat Nationale Des Professionnels Des Procédures Collectives v. France*, (No. 70387/01), Judgment of June 21, 2006.

⁷⁹ ECHR, *Church of Scientology v. Suecia* [D y R], (No. 16), Judgment of May 5, 1979, par. 68.

⁸⁰ ECHR, *Colas Est et al. v. France*, (No. 37971/97), Judgment of April 16, 2002, par. 40 to 41, and ECHR, *Ernst et al. v. Bélgica*, (No. 33400/96), Judgment of June 15, 2003, par. 109.

Article 44: Any person or group of persons, or non-governmental entity legally recognized in one or more Member States of the Organization, may submit petitions to the Commission that contain petitions or complaints of violation of this Convention by a State Party (emphasis added).

55. The Court considers that from the express wording of Articles 44 of the American Convention and 34 of the European Convention, it could be concluded that the wording of the two provisions is substantially similar. However, the difference lies in the fact that Article 34 of the latter adds a requirement by establishing that any person "who considers himself the victim of a violation, by one of the High Contracting Parties, of the rights recognized in the Convention or its Protocols" can submit a petition. This implies that the person who files the petition before the European Court must prove that he or she is the alleged victim of the case, that is, in the case of legal entities, for example, their own rights must be directly affected by the alleged act or omission, and they could not present petitions claiming violation of the rights of their members or third parties.

56. The above constitutes a substantial difference between the two systems of protection, since the inter-American system has differentiated between applicant and alleged victim. Thus, Article 44 of the Convention refers exclusively to legal standing, in the sense that it establishes that individual petitions can be filed both on their own behalf and on behalf of third parties, without the two categories necessarily having to exist as the same person. In effect, the Court has stated that "it is clear that Article 44 of the Convention allows any group of people to make claims or complaints for violation of the rights enshrined in the Convention. This broad power of petitions is a characteristic feature of the [inter-American] human rights protection system."⁸¹ Therefore, the Court considers that from the reference made in article 44 to "non-governmental organization or group of individuals," it is not possible to infer an authorization for legal entities to be alleged victims, but rather refers to their legal standing, in the sense that non-governmental organizations or groups of individuals are empowered to present individual petitions before the Inter-American Commission on behalf of alleged victims, even in cases where they do not have their consent.⁸²

b) African system

57. Regarding the African Charter on Human and Peoples' Rights (hereinafter "the African Charter"), the Court observes that it does not offer a definition of the term "person". Nor was an official interpretation made by its judicial bodies, on whether the term "peoples",⁸³ to which the Charter refers, could come to cover legal entities. Therefore, it is not possible to determine conclusively whether legal entities in the African system are holders of rights and can be directly considered victims.

58. As in the inter-American system, the African Charter gives legal entities the ability to submit communications to the African Commission, that is, they can denounce human rights

⁸¹ *Case of Castillo Petruzzi et al. v. Peru. Preliminary Exceptions. Judgment of September 4, 1998. Series C No.41, par. 77.*

⁸² In this regard, the Court stated in the *Acevedo Jaramillo* case that "the complaint may be filed by a person other than the alleged victim, as well as by a 'group of persons'." *Case of Acevedo Jaramillo et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 7, 2006. Series C No. 144, para. 137.* Similarly, in the *Saramaka* case, it indicated that "[a]rticle 44 of the Convention permits any group of persons to lodge petitions or complaints regarding violations of the rights set forth in the Convention. This broad authority to file a petition is a characteristic feature of the Inter-American system for the protection of human rights. Moreover, a person or group of persons other than the alleged victims may file the petition." *Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, par. 22.*

⁸³ The African Charter includes the "peoples" as the right holders. For example, they are entitled to the right to equality (article 19), to existence and self-determination (article 20), to the free disposal of their wealth and natural resources (article 21), to development (article 22), to peace and security (article 23) as well as a general satisfactory environment favorable to their development (article 24).

violations contained in the African Charter⁸⁴ on behalf of third parties. It is, then, an *actio popularis* approach, according to which the author of the communication must not know or have any relationship with the victim of the alleged violation,⁸⁵ so long as the communication complies with the requirements of Article 56 of the African Charter.

c) Universal System

59. The Court notes that the human rights contained in the International Covenant on Civil and Political Rights (hereinafter the "ICCPR") are not extended to legal entities. The official interpretation of this instrument clearly establishes that only individuals can submit a complaint to the Human Rights Committee (hereinafter "HRC" or the "Human Rights Committee"). In this regard, the HRC has established that, in accordance with the provisions of Article 1 of the Optional Protocol to the ICCPR, only individuals can file complaints with this body.⁸⁶ General Comment number 31 of the HRC also establishes that "[t]he beneficiaries of the rights recognized by the Covenant are individuals".⁸⁷ Similarly, in several resolutions, the Human Rights Committee has insisted that, "regardless of whether it appears that the allegations are related to issues of the Covenant",⁸⁸ legal entities do not have legal capacity before the body. In addition to this, the Human Rights Committee requires that the originator of the complaint, is at the same time the victim of the allegedly violated rights.⁸⁹

60. The situation is different in light of the International Convention on the Elimination of all Forms of Racial Discrimination, which expressly refers to the prohibition of discrimination against groups or organizations.⁹⁰ The Committee for the Elimination of Racial Discrimination (hereinafter CERD), in developing its Convention, has held that legal entities can report violations that impact their rights, so long as they have been harmed and can be considered victims of the case.⁹¹ In this sense, the CERD has recognized the capacity of legal entities to file complaints for violations of their own rights and also for violations of the rights of their members, shareholders and owners, both individually and collectively.⁹²

61. Regarding other international instruments, such as the International Covenant on Economic, Social and Cultural Rights (hereinafter "ICESCR") and the Convention on the

⁸⁴ Section 4, Rule 93(1) of the Rules of Procedure of the African Commission, 2010. This rule says in this regard: "A Communication submitted under Article 55 of the African Charter may be addressed to the Chairperson of the Commission through the Secretary by any natural or legal person."

⁸⁵ African Commission on Human and Peoples' Rights, *Case of Article 19 v. The State of Eritrea*, No. 275/03. Communication of 30 May 2007, par. 65.

⁸⁶ HRC, *V.S. v. Belarus*, No. 1749/2008. October 31, 2011, par. 7(3). ("Given the fact that under article 1 of the Optional Protocol only individuals may submit a communication to the Committee, it considers that the author, by claiming violations of the rights of the Religious Union, which are not protected by the Covenant, has no standing under article 1 of the Optional Protocol").

⁸⁷ HRC, General Comment No. 31. May 26, 2004, par. 9.

⁸⁸ HRC, *A newspaper publishing Company Vs. Trinidad y Tobago*, No. 360/1989. July 14, 1989, par. 3(2). ("A company incorporated under the laws of a State party to the Optional Protocol, as such, has no standing under article 1, regardless of whether its allegations appear to raise issues under the Covenant."); *A publication Company and A printing Company Vs. Trinidad y Tobago*, No. 361/1989. July 14, 1989, and *J.R.T. and the W.G. Party v. Canada*, No. 104/1981. April 6, 1983.

⁸⁹ HRC, *A Group of Association for the Defence of The Rights of Disabled and Handicapped Persons in Italy Vs. Italia*, No. 163/1984. April 10, 1984, par. 6(2).

⁹⁰

For example, article 2(1)(a) of the Convention establishes that: "1. The States Parties condemn racial discrimination and undertake to pursue, by all appropriate means and without delay, a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, act in conformity with this obligation."

⁹¹ CERD, *The Documentation and Advisory Center on Racial Discrimination (DACRD) v. Denmark*, No. 28/2003. Declared inadmissible on August 26, 2003, par. 6.4, and CERD, *Case of The Jewish Community of Oslo et al. v. Norway*, No. 30/2003. August 15, 2005, par. 7(4).

⁹² CERD, *TBB-Turkish Union in Berlin/Brandenburg v. Germany*, No. 48/2010. February 26, 2013, par. 11(2) and 11(3).

Elimination of All Forms of Discrimination against Women (hereinafter "CEDAW"), this Court finds that they do not have articles similar to Article 1(2) of the American Convention or grant rights to other types of persons. In addition, the Court confirms that the Committee on Economic, Social and Cultural Rights has not issued case law relevant to this discussion, while in the case of the Committee for the Elimination of Discrimination against Women, no complaints have been filed to date by legal entities. Nonetheless, the Court notes that both Article 2 of the Optional Protocol to CEDAW⁹³, and Article 2 of the Optional Protocol to the ICESCR⁹⁴ establish that "groups of individuals" can file complaints on behalf of individuals or groups of individuals, so long as these individuals allege, in turn, they are the victim of a violation of the rights granted by the Conventions.

d) Conclusion on international courts and organizations

62. The Court will complete this summary noting that in most of the systems analyzed, rights are not recognized for legal entities, except in the European system (*supra* par. 53) and in the framework of the CERD (*supra* par. 60). This Court also highlights that the human rights treaties that have been studied do not have a norm that defines how the term "person" should be understood, for which reason Article 1(2) of the American Convention is unique to the inter-American system. Taking this into account, the Court finds that there is currently no clear trend in international human rights law, interested in granting rights to legal entities or in allowing them access as victims to the individual petition processes established by treaties.

ii) Recognition in domestic law of rights for legal entities

63. When carrying out an evolving interpretation, the Court has given special relevance to comparative law, which is why it has used national provision⁹⁵ or the case law of domestic courts⁹⁶ when analyzing specific disputes in contentious cases. For its part, the European Court⁹⁷ has used comparative law as a mechanism to identify the subsequent practice of States, that is, to specify the context of a given treaty. In order to verify the practice of the States Parties to the American Convention, the countries in which fundamental rights have been recognized for legal persons will be presented below.

⁹³ Article 2. "Communications may be submitted by persons or groups of persons who are under the jurisdiction of the State Party and who claim to be victims of a violation by that State Party of any of the rights set forth in the Convention, or on behalf of those people or groups of people. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent, unless the author can justify acting on their behalf without such consent."

⁹⁴ Article 2. Communications: "Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent."

⁹⁵ *Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*, par. 245. See in addition on the matter: *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, par. 148.

⁹⁶ *Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*, par. 245. In the cases of *Heliodoro Portugal v. Panama* (par. 111) and *Tiu Tojín v. Guatemala* (par. 87), the Court took into account the judgments of domestic courts in Bolivia, Colombia, Mexico, Panama, Peru, and Venezuela on the non-applicability of statutes of limitations for crimes of continuing effect such as forced disappearance. In addition, in the *Case of Anzualdo Castro v. Peru* (par. 100-101), the Court used rulings of constitutional courts of American countries to support the delimitation that it has made of the concept of forced disappearance. Other examples are the cases of *Atala Riffo and daughters v. Chile* (for example, see par. 92) and the *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador* (see, for example, par. 159-164).

⁹⁷ *Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*, par. 245. For example, in the case *TV Vest As & Rogaland Pensionistparti* against Norway, the European Court took into account a document from the "European Platform of Regulatory Authorities" in which a comparison of 31 countries in that region was made, in order to determine in which of them political advertising, paid or not, was allowed and in which this type of advertising was free. Similarly, in *Hirst v. United Kingdom* said Court took into account the "regulations and practices of the States Parties" in order to determine in which countries it is allowed to suppress the active suffrage of those who have been convicted of a crime, for which the legislation of 48 European countries was studied.

64. In this regard, the Court notes that in all the countries that have ratified the Court's jurisdiction, fundamental rights are directly recognized for legal entities, which may coincide with those enshrined in the American Convention. According to the information analyzed by this Court, the rights most commonly recognized⁹⁸ for legal entities are those of property,⁹⁹ freedom of expression,¹⁰⁰ petition¹⁰¹ and association.¹⁰² Similarly, the Court observes that these rights are not necessarily guaranteed for all types of legal entities, given that some are aimed at protecting special types of legal entities, as is the case of some rights that are granted only to unions,¹⁰³ political parties,¹⁰⁴ indigenous peoples,¹⁰⁵ Afro-descendent communities¹⁰⁶ or specific institutions or groups.¹⁰⁷

⁹⁸ Other rights verified by the Court as accorded to legal entities in the region are, inter alia: judicial guarantees, due process, legality, hearing, legal certainty, public information, assembly, to the confidentiality of correspondence and other forms of private communication, to the inviolability of the domicile, to request rectification, updating, inclusion or deletion of personal data that corresponds to them, to legal recognition, to the free development of one's person, to freedom of education, freedom of religion or belief, freedom of contract, freedom of work, freedom of business, trade and industry, free competition, founding media, founding educational centers, equality, good name, honor, and habeas data.

⁹⁹ In this regard see: Article 16 Constitution of Barbados; Articles 14, 56, and 315(I) of the Political Constitution of the Plurinational State of Bolivia; Judgment No. T-396/93 of the Constitutional Court of Colombia, September 16, 1993; Judgment: 00128 File: 98-000128-0004-CI, First Chamber of the Supreme Court of Costa Rica, December 16, 1998; Article 2 of the Constitution of El Salvador and Judgment of March 9, 2011, Constitutional Chamber of the Supreme Court of Justice, Amparo Process 948-2008; Article 39 of the Political Constitution of the Republic of Guatemala; Article 36 of the Constitution of the Republic of Haiti; Supreme Court of Justice of the Nation of Mexico, Contradiction of Thesis 360/2013, Date of resolution: session on April 21, 2014; Articles 103 of the Political Constitution of the Republic of Nicaragua; File No. 4972-2006-PA/TC, La Libertad, Corporación Meier S.A.C. and Persolar S.A.C. Ruling of the Constitutional Court of Peru; Article 47 of the Political Constitution of the Republic of Panama; Article 34 of the Constitution of Suriname, and Judgment TC/0242/13, Constitutional Court of the Dominican Republic, November 29, 2013.

¹⁰⁰ In this regard, see: Article 35 of the Political Constitution of the Republic of Guatemala; Judgment No. T-396/93, Constitutional Court of Colombia, September 16, 1993; File No. 4972-2006-PA/TC, La Libertad, Corporación Meier S.A.C. and Persolar S.A.C. Judgment of the Constitutional Court of Peru, and Article 26 of the National Constitution of Paraguay.

¹⁰¹ In this regard, see: Judgment No. T-396/93, Constitutional Court of Colombia, September 16, 1993; Judgment of November 7, 2008, Constitutional Chamber of the Supreme Court of Justice of El Salvador, Amparo proceeding 103-2006; Article 80 of the Constitution of Honduras; Supreme Court of Justice of the Nation of Mexico Contrary ruling 360/2013, Date of resolution: session of April 21, 2014; File No. 4972-2006-PA/TC, La Libertad, Corporación Meier S.A.C. and Persolar S.A.C. Ruling of the Constitutional Court of Peru; Article 41 of the Political Constitution of the Republic of Panama, and Article 40 of the National Constitution of Paraguay.

¹⁰² Article 34 of the Political Constitution of the Republic of Guatemala; Judgment No. T-396/93, Constitutional Court of Colombia, September 16, 1993; Judgment with file number: 08-007986-0007-CO, Constitutional Chamber of the Supreme Court of Justice of Costa Rica, September 8, 2009; Constitutional Chamber of the Supreme Court of Justice of El Salvador, Constitutional Process 23-R-96, Ramírez and Marcelino v. Municipal Council of San Juan Opico, judgment of October 8, 1998; Article 31 and 31(1) of the Constitution of the Republic of Haiti; Supreme Court of Justice of the Nation of Mexico, Contrary Ruling 360/2013, Date of resolution: session of April 21, 2014, and File No. 4972-2006-PA/TC, La Libertad, Corporación Meier S.A.C. and Persolar S.A.C. Ruling of the Constitutional Court of Peru.

¹⁰³ Bolivia (Article 51 of the Political Constitution); Brazil (Articles 8, 74.IV. § 2º, and 103 IX of the Political Constitution); Honduras (Article 128.14 of the Political Constitution); Nicaragua (Article 87 Political Constitution); Panama (Articles 68 and 69 of the Political Constitution); Paraguay (Articles 96-98 National Constitution); Peru (Articles 28 and 42 of the Political Constitution), and Suriname (Article 32 of the Constitution).

¹⁰⁴ Argentina (Article 38 of the National Constitution); Brazil (Articles 17, 74.IV. § 2º, and 103.VIII of the Political Constitution); Colombia (Articles 107 and 108 of the Political Constitution); Haiti (Article 31(1) of the Constitution); Honduras (Article 47 of the Political Constitution), Nicaragua (Articles 55, 173.7, 173(1)1, 173(1)2, 173(1)3 of the Political Constitution); Panama (Article 140 of the Political Constitution); Paraguay (Articles 124-126 of the National Constitution), and Peru (Article 35 of the Political Constitution).

¹⁰⁵ Bolivia (Articles 30 and 32 among others of the Political Constitution); Brazil (Articles 231 and 232 of the Political Constitution); Colombia (Article 329 of the Political Constitution); Nicaragua (Articles 121 and 103 of the Political Constitution); Panama (Articles 124 and 127 of the Political Constitution), and Paraguay (Articles 62-67 of the National Constitution)

¹⁰⁶ Bolivia (Articles 32,100(I) and 395(I) of the Political Constitution), and Nicaragua (Articles 89, 90 and 121 of the Political Constitution).

¹⁰⁷ In Peru, for example, the right to non-assignment of any tax that affects goods, activities or services is recognized for universities, higher institutes, and other educational centers (Article 19 of the Political Constitution). In Chile, rights are granted to churches, confessions and religious institutions with respect to property that are granted and recognized by the current laws in force (Article 19(6) of the Political Constitution). In Nicaragua, private religious

65. Similarly, the Court notes that legal entities in a majority of the region's countries are entitled to lodge amparo proceedings or similar remedies to defend their rights.¹⁰⁸

66. Furthermore, this Court notes that three of the six States that submitted written observations—Argentina,¹⁰⁹ Colombia¹¹⁰ and Guatemala¹¹¹—expressly stated their position, according to which Article 1(2) of the Convention does not accord rights to legal entities. In addition, Mexico¹¹² joined this position during its participation in the public hearing of this request.

67. In view of the above, the Court considers that, despite the fact that there seems to be a provision in the region's countries to accord the ownership of rights to legal entities and grant them the means to attain them, the truth is that these precedents are not sufficient, since not all States carry out recognition in the same way and to the same degree. Additionally, this Court notes that this is the position that the States hold in their domestic law, meaning it is not possible to modify the scope of Article 1(2) of the American Convention based on this method of interpretation.

educational centers to teach religion as an extracurricular subject, as well as universities and higher technical education centers to enjoy academic, financial, organizational, and administrative autonomy, and tax exemption. The property and income of universities and higher technical education centers cannot be subject to intervention, expropriation or seizure, academic freedom is guaranteed, the State promotes and protects the free creation, research and dissemination of science, technology, arts and letters, and guarantees and protects intellectual property (Articles 124 and 125 of the Political Constitution); Also in Nicaragua, tax exemption is established in relation to specific imports made by the media, as well as the prohibition of prior censorship (Article 68 of the Political Constitution); also in Nicaragua the right is granted to "rural workers and other productive sectors" to participate through their own organizations in defining agrarian transformation policies (Articles 108 and 111 of the Political Constitution). In Panama, rights are accorded to the Official University of Panama (Articles 103 and 104 of the Political Constitution).

¹⁰⁸ Argentina (Article 43 of the National Constitution. Additionally, see Law No. 16,986 or Regulatory Law of Amparo Action, Article 5); Bolivia (articles 128 and 129 of the Political Constitution. See also Judgment 0763/2011 R, Constitutional Court of Bolivia, May 20, 2011); Brazil (Article 5, LXX of the Political Constitution); Chile (article 20 of the Political Constitution); Colombia (Sentence T-411/92, Constitutional Court of Colombia, June 17, 1992); Costa Rica (article 48 of the Political Constitution and articles 57 and 58 of the Law of Constitutional Jurisdiction, Law No. 7135); Ecuador (articles 86 and 88 of the Political Constitution, article 9 of the Organic Law of Jurisdictional Guarantees and Constitutional Control. Also see judgment No. 001-14-PJO-CC, Case No. 0067-11-JD, Constitutional Court of Ecuador, April 23, 2014); El Salvador (Article 247 of the Constitution. In relation see ruling of March 9, 2011, Constitutional Chamber of the Supreme Court of Justice, Amparo Process 948-2008); Honduras (Article 183 of the Political Constitution and article 44 of the Law on Constitutional Justice); Mexico (Articles 8 and 9 of the Amparo Law. See in this regard: Supreme Court of Justice of the Nation of Mexico, Contrary Ruling 360/2013, Date of resolution: session of April 21, 2014); Nicaragua (Article 45 of the Constitution and article 23 of the Amparo Law, Law No. 49); Paraguay (Article 134 of the National Constitution and Articles 4 and 5 of Law No. 340/71 that regulates Amparo); Peru (Article 200 of the Political Constitution and Article 26 of the Habeas Corpus and Amparo Law, Law No. 23506); Dominican Republic (Article 72 of the Dominican Constitution, Article 2 of Law No. 437-06 that establishes the Remedy of Amparo and Article 67 of Law No. 137-11 of the Constitutional Court and Constitutional Procedures), and Uruguay (Article 1 of Law 16011, Regulation of Provisions related to Amparo Proceedings).

¹⁰⁹ In this regard, the State of Argentina stated that "Article 1(2) excludes any possibility for a legal entity to appear as a victim before the protection bodies of the Inter-American System. It is a provision that has been conceived with the clear sense of restricting access to the System exclusively to natural persons". Written observations of the State of Argentina (merits file, folio 1918).

¹¹⁰ Colombia stated that "in light of current international law for the American region, the idea of granting human rights to legal entities derived from the international instruments that make up the IAHRs is not admissible because it is contrary to the legal precepts that govern the System itself." Written observations of the Colombian State (merits file, folio 1863).

¹¹¹ The State of Guatemala indicated that "in no way can human rights be recognized for legal entities or collective entities within the framework of the American Declaration on the Rights and Duties of Man, the American Convention [...] and its Protocols or supplementary international instruments." Written observations of the State of Guatemala (merits file, folio 1538).

¹¹² Mexico pointed out that "article 1(2) [...] states that for the purposes of the American Convention a person is every human being, the literal expression in article 1(2) has effects that go far beyond the exercise of interpretation, since it constitutes an express manifestation of the will of the signatory parties to the American Convention to define the term person, it could solely and exclusively mean every human being." Oral observations of the Mexican State in the public hearing of this advisory opinion.

E. Supplementary means of interpretation

68. According to article 32 of the Vienna Convention, supplementary means of interpretation, especially the *travaux préparatoires* of the treaty, may be used, *inter alia*, to confirm the meaning resulting from the interpretation carried out in accordance with the methods indicated in article 31.¹¹³ This implies that they are usually used only in a subsidiary manner.¹¹⁴

69. In this regard, the Court considers that the *travaux préparatoires* confirm the sense in which Article 1(2) of the Convention has been interpreted, given that the terms "person" and "human being" were used in them without the intention of making a difference between these two expressions,¹¹⁵ and therefore they should be considered synonyms. In effect, the *travaux préparatoires* show that this section was proposed from the beginning¹¹⁶ and that it was approved by the States without no major disagreement.¹¹⁷

F. Conclusion on interpretation

70. Having simultaneously and jointly applied the different hermeneutic criteria established in Articles 31 and 32 of the Vienna Convention, the Court concludes that an interpretation of Article 1(2) of the American Convention, in good faith, in accordance with the natural sense of the terms used in the Convention (*supra* paras. 37 to 39) and taking into account the context (*supra* par. 44 to 67) and its object and purpose (*supra* par. 40 to 43), it is clear that legal entities are not holders of Convention-based rights, so they cannot be considered as alleged victims in the context of contentious proceedings in the inter-American system.

VI

INDIGENOUS AND TRIBAL COMMUNITIES AND TRADE UNION ORGANIZATIONS

71. The Court has already established in this Advisory Opinion (*supra* par. 70) that Article 1(2) of the American Convention does not entitle legal entities to rights recognized in the American Convention, regardless of whether domestic State law defines them as cooperatives, companies or firms. However, due to the questions raised by the State of Panama, several of the written and oral observations that were presented throughout the consultation process said that it would be possible to perform a broad interpretation of other provisions of the Convention and the Protocol of San Salvador that would grant ownership of rights to indigenous communities and trade union organizations. In order to identify whether indigenous communities and trade union organizations could indeed be holders of rights protected by the inter-American system, the Court will refer to inter-American provisions on the matter and then make its considerations in this regard.

¹¹³ Cf. Advisory Opinion OC-3/83, par. 49, and *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica*, par. 193.

¹¹⁴ Cf. *Case of González et al. ("Cotton Field") v. Mexico*, par. 68, and *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica*, par. 193.

¹¹⁵ *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica*, par. 219.

¹¹⁶ The initial proposal of article 1 established that: Article 1

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized therein and to guarantee their free and full exercise to all persons subject to their jurisdiction without discrimination on the grounds of race, color, sex, language, religion, political or other opinions, national or social origin, economic position, birth or any other social condition.

2. They also undertake to adopt, in accordance with their constitutional procedures and the provisions of this Convention, the appropriate measures to enact the legislative or other provisions that were necessary to make these rights effective and that were not already guaranteed by legislative provisions or provisions of another nature.

3. For the purposes of this Convention, a person is every human being.

Minutes of the second session of Commission I, Doc. 36, November 11, 1969, p. 156.

¹¹⁷ The preparatory work contains the following: "The CHAIRMAN presented paragraph 3 of article 1, which, after a brief exchange of opinions, was approved unanimously, as follows: 3. For the purposes of this Convention, a person is every human being". Convention Minutes of the second session of Commission I, Doc. 36, November 11, 1969, p. 157.

i) *Indigenous and tribal communities*

72. The Court, as the *final arbiter* of the Convention,¹¹⁸ reiterates its case law according to which indigenous communities are holders of rights protected by the inter-American system and can appear before it in defense of their rights and those of their members. To do this, reference will be made to the Court's case law on the matter, as well as to some of the sources of international and domestic law on the matter that this Court considers contribute to its case law.

73. In a first stage, on the declaration of human rights violations in cases related to indigenous or tribal communities, the Court considered only the members of the communities as subjects of law and not the community itself as such.¹¹⁹ For this reason, the declared victims were the individual persons and not the community to which they belonged.

74. In 2012, in the *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, for the first time, the Court recognized not only the members of an indigenous community but also the community itself as holders of rights protected under the Convention.¹²⁰ In said case, this Court considered that the rights of the Kichwa indigenous people of Sarayaku to consultation, to indigenous communal property, to cultural identity, to a fair trial, and to judicial protection, had been violated. It also held that the State was responsible for having seriously endangered the right to life and the right to personal integrity of the members of the community. In this sense, the Court stated that there are some rights that the members of the indigenous communities enjoy by themselves, while there are other rights exercised collectively through their communities.

75. The Court also held in this case that, “[o]n previous occasions, in cases concerning indigenous and tribal communities or peoples, the Court has declared violations to the detriment of the members of indigenous or tribal communities and peoples. However, international law on indigenous or tribal communities and peoples recognizes rights to the peoples as collective subjects of international law and not only as members of such communities or peoples. In view of the fact that indigenous or tribal communities and peoples, united by their particular ways of life and identity, exercise some rights recognized by the Convention on a collective basis”.¹²¹ To conclude that the indigenous and tribal communities are recognized as subjects of rights, the Court considered that at the international level there was a development through which various treaties and case law of other international bodies have upheld the ownership of rights by indigenous communities.

76. This Court has since reiterated in more recent cases that indigenous communities are entitled to rights. For example, in the *Case of the Kuna indigenous people of Madungandí and Emberá Indigenous People of Bayano and their Members v. Panama*, the Court concluded that the State had violated the right to property,¹²² the duty to adopt provisions of domestic law,¹²³

¹¹⁸ *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica*, par. 171.

¹¹⁹ *Cf. Case of the Mayagna (Sumo) Awá Tingni Community v. Nicaragua. Merits, Reparations and Costs.* Judgment of August 31, 2001. Series C No. 79; *Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs.* Judgment June 15, 2005. Series C No. 124; *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs.* Judgment of June 17, 2005. Series C No. 125; *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs.* Judgment of March 29, 2006. Series C No. 146; *Case of the Saramaka People. vs. Suriname. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 28, 2007. Series C No. 172, and *Case of the Xákmok Kásek Indigenous Community. v. Paraguay. Merits, Reparations and Costs.* Judgment of August 24, 2010 Series C No. 214.

¹²⁰ *Cf. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations.* Judgment of June 27, 2012. Series C No. 245, operative paragraph declaration points 2 to 4.

¹²¹ *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, par. 231.

¹²² *Cf. Case of the Kuna indigenous people of Madungandí and Emberá Indigenous People of Bayano and their Members v. Panama. Preliminary Objections, Merits, Reparations and Costs.* Judgment of October 14, 2014. Series C No. 284, operative paragraph 4.

and the right to a reasonable time¹²⁴ pursuant to the American Convention to the detriment of the Kuna of Madungandí and Emberá of Bayano communities and their members; and the right to an effective judicial remedy¹²⁵ to the detriment of the Emberá indigenous communities and their members. Recently, in the cases of the *Garífuna Community of Triunfo De La Cruz and its Members*¹²⁶ and the *Case of the Garífuna Community of Punta Piedra and its Members*,¹²⁷ both *v. Honduras*, the Court declared the violations of the rights to property, a fair trial and judicial protection to the detriment of the respective communities. Similarly, in the *Case of the Displaced Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, the Court found that the State had violated the rights of movement and residence, and personal integrity, to the detriment of the Afro-descendant communities of the Cacarica river basin.¹²⁸

77. It is also relevant to indicate that the Court has already established that indigenous communities and tribal peoples share “distinct social, cultural, and economic characteristics, including a special relationship with their ancestral territories, that require special measures under international human rights law in order to guarantee their physical and cultural survival.”¹²⁹ Due to the common characteristics between indigenous communities and tribal peoples, the Court considers that the conclusions indicated in this paragraph regarding access to the inter-American system for the protection of human rights also apply to both types of communities.

78. In addition to the case law indicated above, the Court highlights that ILO Convention No. 169¹³⁰ and the United Nations Declaration on the Rights of Indigenous Peoples¹³¹ of 2007 recognize the ownership of human rights by both indigenous communities and their members.

79. Furthermore, Article 1 common to the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, establishes the right to self-determination and states that, by virtue thereof, all peoples “freely determine their political status and freely pursue their economic, social and cultural development”. To this end, they may “freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.”¹³².

¹²³ Cf. *Case of the Kuna indigenous people of Madungandí and Emberá Indigenous People of Bayano and their Members v. Panama*, operative paragraph 5.

¹²⁴ Cf. *Case of the Kuna indigenous people of Madungandí and Emberá Indigenous People of Bayano and their Members v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 14, 2014. Series C No. 284, operative paragraph 6.

¹²⁵ Cf. *Case of the Kuna indigenous people of Madungandí and Emberá Indigenous People of Bayano and their Members v. Panama*, par. 173.

¹²⁶ Cf. *Case of the Garífuna Community of Triunfo De La Cruz and its Members v. Honduras. Merits, Reparations and Costs*. Judgment of October 08, 2015. Series C No. 305.

¹²⁷ Cf. *Case of the Garífuna Community of Punta Piedra and its Members v. Honduras. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 08, 2015. Series C No. 304.

¹²⁸ Cf. *Case of the Displaced Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2013. Series C No. 270, operative paragraph 4.

¹²⁹ Cf. *Case of the Saramaka People. vs. Suriname*, par. 86.

¹³⁰ Article 3.1 of the Convention provides that “[i]ndigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.” Indigenous and Tribal Peoples Convention, No. 169 of September 5, 1991.

¹³¹ Article 1 of the Declaration indicates that “[i]ndigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights⁴ and international human rights law.”. United Nations Declaration on the Rights of Indigenous Peoples. Resolution 61/295 adopted by the General Assembly at its 107th plenary session, September 13, 2007.

¹³² International Covenant on Civil and Political Rights, adopted by the General Assembly in its resolution 2200 A (XXI) of December 16, 1966, entered into force: March 23, 1976, and International Covenant on Economic, Social and

The Committee that supervises the implementation of the International Covenant on Economic, Social and Cultural Rights by the States Parties has interpreted that the right to self-determination is applicable to indigenous communities.¹³³

80. The Committee also held on Article 15(1)(a), saying that the expression “every person” “refers to both the individual subject and the collective subject. In other words, a person can exercise cultural rights: (a) individually, (b) in association with others or (c) within a community or a group”.¹³⁴

81. In addition to all these international law standards, the Court notes that the ownership of rights of indigenous and tribal communities is also recognized domestically in several countries of the region through their Constitutions, legislation or by via jurisprudence.¹³⁵ Said protection at the domestic level seeks to contribute to the fulfillment of the international obligations assumed by States in this matter.

82. Based on these arguments, the Court reiterates that it has already recognized indigenous and tribal communities as subjects of law due to the current development of international law on the matter (*supra* par. 72). This Court would also note that similar entitlement is reflected at the domestic level in several countries of the region. In this sense, entitlement to human rights, in both areas, has not only been given to its members personally, but also with respect to the communities as collectives. This protection means that if some of the rights of indigenous and tribal community members are exercised jointly,¹³⁶ the violation of these rights has a collective dimension and cannot be limited to an individual impact. Impact

Cultural Rights, adopted by the General Assembly in its resolution 2200 A (XXI) of December 16, 1966, entered into force: January 3, 1976.

¹³³ Cf. UN, Committee on Economic, Social and Cultural Rights, *Consideration of Reports submitted by States Parties under Articles 16 and 17 of the Covenant. Concluding Observations on the Russian Federation (thirty-first session)*. UN. Doc. E/C.12/1/Add.94, December 12, 2003, par. 11 and *Case of the Saramaka People. vs. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 28, 2007. Series C No. 172, par. 93.

¹³⁴ General Comment No. 21 of 2009, Right of everyone to participate in cultural life (article 15, paragraph 1 (a), of the International Covenant on Economic, Social and Cultural Rights), par. 9.

¹³⁵ A non-exhaustive account of said rights is made below. Recognition of the capacity of indigenous communities to contract obligations and acquire rights as collectives is enshrined in countries such as Paraguay, Argentina, Colombia and Costa Rica. Additionally in countries like Paraguay, Bolivia, Colombia and Peru they have the right to their religious and cultural identity and, in this way, to their worldview, language, practices, customs and traditions. The right to collective ownership of their land is recognized in several countries such as Argentina, Bolivia, Brazil, Colombia, Costa Rica, Nicaragua, Panama, Paraguay and Peru. In countries like Bolivia, Panama and Paraguay they also have the right to participate economically, socially and politically in the life of the nation. Their right to intercultural education is enshrined in countries like Argentina, Bolivia, Nicaragua, Paraguay. In countries like Bolivia, Colombia, Paraguay, Peru, these communities also have the right to freely define their organizational and institutional systems. In addition, indigenous communities are holders of mechanisms that they can exercise in defense of their rights as collectives in countries such as Brazil, Colombia, Ecuador. Similarly, in countries such as Bolivia, Nicaragua, and Colombia, rights are recognized for the Afro-Bolivian people, the communities of the Caribbean Coast, and the Afro-Colombian community, respectively. Cf. *Case of the Xákmok Kásek Indigenous Community. v. Paraguay*, par. 14, and *Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*, par. 347. Also consult: articles 62 and 63 of the National Constitution of Paraguay; article 75(17) of the Constitution of Argentina; articles 30 and 32 of the Bolivian Constitution; article 9 of the Organic Law of Jurisdictional Guarantees and Constitutional Control; articles 107 and 121 of the Nicaraguan Constitution; article 231 of the Brazilian Constitution; article 329 of the Political Constitution of Colombia; Ruling C-463/14 of the Constitutional Court of Colombia; Judgment T-704/06 of the Constitutional Court of Colombia; Judgment of the First Chamber of the Constitutional Court of Peru, *Ucayali Native Community Sawawo Hito 40 represented by Juan García Campos*, EXP. No. 04611-2007-PA/TC of April 9, 2010, par. 8 and 9; articles 124 and 127 of the Constitution of Panama, and articles 1 and 2 of Law No. 6172 Indigenous Law of the Legislative Assembly of the Republic of Costa Rica..

¹³⁶ In relation to the collective dimension of the violation, for example, Decree 4633 of 2011 of the President of the Republic of Colombia “By means of which measures of assistance, attention, comprehensive reparation and restitution of territorial rights are dictated to the victims belonging to the indigenous peoples and communities”, states in article 42 that, for the purposes of the Decree, a collective damage occurs “when the action violates the material and immaterial dimension, the rights and assets of the indigenous peoples and communities as collective subjects of rights [...], which implies a holistic view of the damages and effects that these violations cause. The collective nature of the damage is verified regardless of the number of individuals affected. Collective damages occur, inter alia, when the rights of the members of the community are systematically violated as a result of being part of that community.”

will then have consequences for all members of the community and not only for some individuals in a specific situation.

83. The Court therefore concludes that, as provided by several international legal instruments to which the States of the inter-American system are parties, and some of their national legislation, the indigenous and tribal communities, because they are in a particular situation, must be considered as holders of certain human rights. Additionally, this is explained by the fact that, in the case of indigenous peoples, their identity and certain individual rights, such as the right to property or to their territory, can be exercised only through the community to which they belong.

84. Consequently, the Court reiterates that the indigenous and tribal communities are entitled to some of the rights protected under the Convention and, therefore, can access the inter-American system. Therefore, the Court finds no reason to depart from the criteria given on the matter in its case law and establishes that such aforementioned communities can directly access the inter-American system, as they have been doing in recent years, in the search for protection of their rights and those of their members, and it is not necessary for each member to appear individually for this purpose.

ii) Unions, federations and confederations – Analysis of Article 8 of the Protocol of San Salvador

85. The Protocol of San Salvador was adopted on November 17, 1988, entered into force on November 16, 1999, and to date has been ratified by 16 States.¹³⁷ Trade union rights are enshrined in article 8 of the Protocol in the following terms:

1. The States Parties shall guarantee:

a. the right of workers to organize unions and join the union of their choice, for the protection and promotion of their interests. As a projection of this right, the States Parties shall allow trade unions to form national federations and confederations and associate with existing ones, as well as form international trade union organizations and associate with the one of their choice. The States Parties will also allow trade unions, federations and confederations to function freely;

b. The right to strike.

2. The exercise of the rights set forth above may only be subject to the limitations and restrictions provided by law, provided that these are specific to a democratic society, necessary to safeguard public order, to protect public health or morals, as well as the rights and freedoms of others. Members of the armed and police forces, as well as those of other essential public services, will be subject to the limitations and restrictions imposed by law.

3. No one may be forced to belong to a union. (emphasis added)

86. In this regard, the Court reiterates that it has jurisdiction to decide on contentious cases regarding the rights contained in Article 8(1)(a) by virtue of the provisions of Article 19(6) of the Protocol. This article effectively permits the application of the system of individual petitions regulated by Articles 44 to 51 and 61 to 69 of the American Convention if trade union rights or the right to education (Article 13 of the Protocol) were violated by an action or omission directly attributable to a State Party to the Protocol.¹³⁸

¹³⁷ States that have ratified the Protocol: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname and Uruguay (OAS Department of International Law, General Treaty Information).

¹³⁸ Cf. *Case of Gonzales Lluy et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 1, 2015. Series C No. 298, par. 2, 3, 4.

87. To date, the Court has not had the opportunity to rule on alleged violations of trade union rights. However, in a case related to a trade union leader, the Court had the opportunity to refer to "the contents of the Protocol of San Salvador [...] and of ILO Convention No. 87 concerning freedom of association and protection of the right to organize [...] which, in Articles 8(1)(a) and 11, respectively, includes the obligation of the State to allow trade unions, federations and confederations to function freely."¹³⁹

88. Furthermore, the Court notes that the wording of Article 8(1)(a) of the Protocol is ambiguous insofar as it is not clear whether or not it confers ownership of rights to unions, federations and confederations. To answer this question, the Court considers it relevant to refer to the methods of interpretation mentioned above (*supra* par. 35 and 36). Thus, the Court will proceed to analyze the scope of Article 8(1)(a), with respect to the terms "as a projection of this right" and "allow". To this end, the Court will interpret the text in good faith, in accordance with the ordinary meaning attributed to the terms taken in context and considering the object and purpose of the Protocol of San Salvador (*supra* par. 35 and 36).

89. Regarding the ordinary meaning of the terms (*supra* par. 37), the Court highlights that Article 8(1)(a) of the Protocol draws an apparent distinction between workers, on one hand, and unions, federations and confederations, on the other. Initially, the article states that the right of workers to organize unions and to join the union of their choice must be "guaranteed" and, subsequently, indicates that as a projection of this right, unions, federations and the confederations will be "allowed" to operate freely and additionally, for unions to associate.

90. The Court will proceed to determine whether the use of the terms "project" and "allow" has a determining effect to deny the emergence of subjective rights in favor of unions, federations and confederations. The Court notes that, according to the dictionary of the Spanish Royal Academy of Language, "allow", "projection" and "project" have different meanings. The meanings of these words closest to the content of article 8(1)(a) would be: i) to allow: "[t]o make something possible";¹⁴⁰ ii) projection: "[a]ction and effect of projecting [or r]esonance or scope of a fact or the qualities of a person,"¹⁴¹ and iii) to project: "[d]evise, trace or propose the plan and the means for the execution of something [or m]ake visible on a body or a surface the figure or shadow of another."¹⁴²

91. According to the ordinary meaning of the terms, the Court then understands that when the article indicates that the States "shall allow", it is calling on the States to allow trade unions, federations and confederations to operate freely and to associate and form national federations and confederations and international trade union organizations. This free functioning implies that these collective organizations have the capacity to, for example, create their own articles of association, elect their representatives or manage their finances. Similarly, associating and forming other collective organizations also requires that they have the capacity to carry out these acts. The capacity to act implies the existence of the legal status of unions, federations and confederations. This leads the Court to conclude that the use of the term "allow" in the framework of Article 8 of the Protocol presupposes then that trade unions, federations and confederations constitute legal entities distinct from their members with capacity to contract obligations that differs from theirs, and acquire and exercise rights, such as free operation. In addition, trade union organizations would have the right to associate and form national federations and confederations, and international trade union organizations.

¹³⁹ *Case of Huelca Tecse v. Peru. Merits, Reparations and Costs.* Judgment of March 3, 2005. Series C No. 121, par. 74.

¹⁴⁰ Royal Academy of Language, Dictionary of the Spanish Language, Tricentennial Edition <http://dle.rae.es/?w=permitir&m=form&o=h>.

¹⁴¹ Royal Academy of Language, Dictionary of the Spanish Language, Tricentennial Edition <http://dle.rae.es/?w=proyecci%C3%B3n&o=h>.

¹⁴² Royal Academy of Language, Dictionary of the Spanish Language, Tricentennial Edition <http://dle.rae.es/?w=proyectar&m=form&o=h>.

92. Moreover, when article 8(1)(a) indicates that "as a projection" of workers' rights, the State will allow unions, federations and confederations to act freely as well as unions to associate and form national federations and confederations, and international union organizations, what the norm does is give a broader scope to the right of workers than the mere fact of being able to organize unions and join the union of their choice. It achieves this by specifying the minimum means through which the States will guarantee the exercise of said right. Consequently, the right that the norm enshrines in workers' favor constitutes a framework through which more specific rights are generated at the head of unions, federations and confederations as subjects of autonomous rights, whose purpose is to allow them to represent their members, through this role facilitating a more extensive protection and the effective enjoyment of workers' rights.

93. With regard to a systematic interpretation, the Court notes that the heading of Article 8 of the Protocol is "trade union rights". In this sense, the scope of application of the article refers to the rights related to union activity that arise from the will of individuals to associate and materializes in the creation of unions that, in turn, can associate with each other and create federations, confederations or trade union organizations whose operation must be free to be effective. In this sense, the heading covers the rights recognized in the norm, namely the rights of workers to organize unions and join the union of their choice, as well as that of unions to associate and that of unions, federations and confederations to function freely. Additionally, although the other original versions have the same heading,¹⁴³ the Court notes that the English title, "Trade Union Rights," could be understood in the sense already described in this paragraph and also as the rights recognized for trade unions.

94. Additionally, as previously mentioned (*supra* par. 44), the framework of the systematic interpretation of a provision includes not only the text of the treaty to which it belongs, but also the system with which it is in keeping. Consequently, the Court notes that Article 45(c) of the OAS Charter¹⁴⁴ recognizes the legal status of workers' and employers' associations and establishes the protection of their freedom and independence. In addition, 45(g) of the same instrument recognizes the contribution of unions to society, stating:

"The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, accompanied by economic development and true peace, agree to dedicate their maximum efforts to the application of the following principles and mechanisms: [...]

c) Employers and workers, both rural and urban, have the right to associate freely for the defense and promotion of their interests, including the right to collective bargaining and the right to strike by workers, recognition of legal status of associations and the protection of their freedom and independence, all in accordance with the respective legislation [...]

g) Recognition of the importance of the contribution of organizations, such as unions, cooperatives and cultural, professional, business, neighborhood and community associations, to the life of society and to the development process". (Emphasis added)

95. Additionally, the Court reiterates that the Protocol of San Salvador is part of the American Convention and contains the *pro personae principle*. In this order of ideas, the Court recalls that according to this principle, when interpreting Article 8(1)(a) of the Protocol, the interpretation with greater guarantee must be chosen and, therefore, does not exclude or limit the effect of other instruments such as the OAS Charter. As previously stated, article 45(c) of this instrument recognizes the rights of employers' and workers' associations. Similarly, article

¹⁴³ The Court notes that the header is the same in the other authentic versions of the text. In English: Trade Union Rights; in Portuguese: Direitos sindicais, and in French: Droits syndicaux.

¹⁴⁴ Charter of the Organization of American States. Adopted in Bogotá, Colombia on April 30, 1948. Entry into force on December 13, 1951.

10 of the Democratic Charter¹⁴⁵ tends, through its reference to the ILO Declaration,¹⁴⁶ of respect to freedom of association, which encompasses not only the right of workers to associate but also the right of association constituted by them to function freely.

96. In this regard, the Court reiterates that “the freedom to associate and to pursue certain collective goals are indivisible, so that a limitation of the possibilities of association represents directly, and to the same extent, a limitation of the right of the collectivity to achieve its proposed purposes. Hence the importance of adapting to the Convention the legal regime applicable to trade unions and the State’s actions, or those tolerated by it, that could render this right inoperative in the practice.”¹⁴⁷ The Court accordingly understands that the protection of the rights of unions, federations and confederations is essential to safeguard the right of workers to organize unions and join the union of their choice. By their very nature, these collective entities seek to be interlocutors through which the interests of their associates are protected and promoted, so that a lack of protection of their rights would result in a more intense impact on their members since it would affect or limit the effective enjoyment of workers to organize collectively.

97. Consequently, the Court considers that the most favorable interpretation of article 8(1)(a) entails understanding that there are enshrined rights in favor of unions, federations and confederations, given that they are interlocutors for their members and seek to safeguard and ensure their rights and interests. Reaching a different conclusion would imply excluding the effect of the OAS Charter and, therefore, disfavoring the effective enjoyment of the rights recognized therein.

98. Regarding the object and purpose of the Protocol of San Salvador, the Court points to the preamble, which indicates that the purpose of the protocols to the American Convention is to “progressively include other rights and freedoms.” It also highlights the importance of reaffirming, developing, improving, and protecting economic, social, and cultural rights based on the consolidation of democracy in the Americas, “as well as the right of its peoples to development, self-determination, and free disposal of their wealth and natural resources.” The preamble affirms that the ideal of the free human being can be realized only through the creation of the conditions “whereby everyone may enjoy his economic, social and cultural rights as well as his civil and political rights;”. It maintains that the validity of civil and political rights and economic, social and cultural rights have a close relationship and “the different categories of rights constitute an indissoluble whole that finds its basis in the recognition of the dignity of the human person, for which they demand permanent protection and promotion in order to achieve their full validity.” It follows that the protection of economic, social and cultural rights targeted by the Protocol of San Salvador is intended to safeguard not only human dignity but also, and to the same extent, democracy and the rights of peoples in this hemisphere.

99. The Court recalls that the ordinary meaning attributed to the terms must be interpreted in relation to the context and the object and purpose of the Protocol. Therefore, bearing in

¹⁴⁵ Article 10 of the Inter-American Democratic Charter establishes that: “The promotion and strengthening of democracy requires the full and effective exercise of workers’ rights and the application of core labor standards, as recognized in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work, and its Follow-up, adopted in 1998, as well as other related fundamental ILO conventions. Democracy is strengthened by improving standards in the workplace and enhancing the quality of life for workers in the Hemisphere.” Inter-American Democratic Charter, Twenty-eighth special session, September 11, 2001, Lima, Peru.

¹⁴⁶ The ILO Declaration establishes that the members of said organization are committed to respecting and promoting the principles related to the following fundamental rights: “freedom of association and trade union freedom and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation”. ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, Adopted by the International Labor Conference at its Eighty-sixth Session, Geneva, June 18, 1998.

¹⁴⁷ *Case of Huilca Tecse v. Peru*, par. 70.

mind what was stated in the preceding paragraphs, the Court considers that a good faith interpretation of Article 8(1)(a) implies concluding that it entitles trade union organizations to enjoy the rights established therein. This interpretation also implies a greater useful effect of Article 8(1)(a), thus reinforcing the equal importance that civil and political rights and economic, social and cultural rights have for the inter-American system.

100. Furthermore, the Court considers it relevant to make use of the *travaux préparatoires* work of Article 19 of the Protocol of San Salvador as a complementary means of interpretation to confirm the meaning of Article 8(1)(a) resulting from its recent interpretation. Although article 19(6) considers the means through which the rights contained in the Protocol will be protected and, therefore, the entitlement to the rights of unions, federations and confederations cannot be inferred from it, the intention to guarantee the rights of trade union organizations as immediately enforceable rights through the inter-American system¹⁴⁸ can be concluded from its *travaux préparatoires*. This is verified insofar as the preparatory work indicates that it was agreed that the system of petitions would be limited "only to the right of association and trade union freedom and freedom of education,"¹⁴⁹ excluding the right to strike. The reference to "associations" instead of "association" implicitly describes the two types of associations that arise from the article, namely those of workers and those of trade union organizations. Furthermore, the mention of "union freedom" for the purposes of the Protocol of San Salvador covers the right of workers' organizations to form federations and confederations, as well as the right to join them, and that of any organization, federation or confederation to join international workers' organizations.¹⁵⁰

101. Additionally, the Court considers that the general obligation that the States have to guarantee the trade union rights contained in Article 8(1)(a) of the Protocol translates into the positive obligation to allow and encourage the creation of suitable conditions for the effective fulfillment of those rights. In this sense, the Court turns to the ILO Convention 87 to find examples that illustrate the positive obligations that arise from the general obligation to guarantee the rights recognized to trade unions, federations and confederations. In this sense, the Court notes that Article 3(1) of the Convention establishes the right of workers' organizations to "draft their articles of association and administrative regulations, to elect their representatives, to organize their administration and activities, and to draw up their program of activities."¹⁵¹

102. Accordingly, the general obligation of States to respect rights implies the negative obligations to refrain from creating barriers such as legal or political that may prevent unions, federations and confederations from operating freely and in addition, for unions, the possibility of association. In this regard, the Court notes that Article 3(2) of Convention No. 87

¹⁴⁸ The preparatory works of the Protocol show that in the adoption of the means of protection of the rights enshrined in said instrument, the proposal of the Inter-American Commission differentiated between two types of means: the system of individual petitions for those rights called immediate enforceability and a reporting system for other rights. The proposal finally adopted, and established in article 19, "contains these two ideas". Statement made by the Chair of the Working Group in charge of studying the draft Additional Protocol, Annex II to the Report of the Committee on Juridical and Political Affairs on the Draft Additional Protocol to the American Convention on Human Rights in the Area of Economic and Cultural Rights and Social, OEA/Ser. G, CP/doc. 1938/88, October 17, 1988.

¹⁴⁹ Report of the Committee on Juridical and Political Affairs on the draft Additional Protocol to the American Protocol on Human Rights in the area of economic, cultural and social rights, OEA/Ser. G, CP/doc. 1938/88, October 17, 1988, p. 45

¹⁵⁰ Cf. Article 5 of Convention 87 on freedom of association and protection of the right to organize, 1948 (No. 87), entered into force: July 4, 1950; Adoption: San Francisco, 31st ILC meeting, July 9, 1948.

¹⁵¹ Convention 87 on Freedom of Association and Protection of the Right to Organize, 1948 (No. 87), entered into force: 04 Jul 1950; Adoption: San Francisco, 31st ILC meeting, July 9, 1948.

Likewise, the Court notes that the ILO Committee on Freedom of Association, whose mandate is to determine whether a specific situation is consistent with the principles of freedom of association and collective bargaining, has issued several decisions that reflect similar obligations. Cf. ILO, Freedom of association Compilation of decisions and principles of the Committee on Freedom of Association of the ILO Governing Body, fifth edition 2006, paras. 389, 391, 466, 495, 512, 860, 861 and 984.

establishes that “[t]he public authorities shall refrain from any interference which would restrict this right [recognized in its article 3(1)] or impede the lawful exercise thereof.”¹⁵²

103. The Court recalls that, due to the provisions of Article 19(6) of the Protocol, the system of individual petitions could only be applied to the rights contained in Articles 8(1)(a) and 13. Thus, the Court would only have jurisdiction to learn about cases in which unions, federations and confederations resort to the inter-American system seeking protection of the rights recognized in Article 8(1)(a) when it is alleged that these were violated by an action directly attributable to a State Party to the Protocol. Entitlement to rights and access to the inter-American system would thus be limited to trade union organizations established or operating in States that have ratified the Protocol, since the obligations set forth therein cannot be extended to States that have not expressed their willingness to accept them.

104. The Court considers it relevant to also refer to the right to strike established in Article 8(1)(b) of the Protocol. The Court does not have jurisdiction to hear cases in which this right is allegedly violated, because, as mentioned, article 19(6) of the Protocol only grants it jurisdiction over the trade union rights contained in article 8(1)(a). Nevertheless, the Court recalls that, in accordance with the provisions of Article 1 of the Protocol of San Salvador, the States Parties must adopt the necessary measures to progressively achieve the full realization of this right.

105. The Court has therefore concluded that trade unions, federations, and confederations are entitled to the rights established in Article 8(1)(a) of the Protocol, which allows them to appear before the inter-American system in defense of their rights. However, at this point, the Court would recall that, based on the provisions of Article 44 of the American Convention, unions, federations, and confederations legally recognized in one or more States Parties to the Convention, whether or not they are party of the Protocol of San Salvador, may file individual petitions before the Inter-American Commission on behalf of their members, in the event of an alleged violation of the rights of their members by a State Party to the American Convention.

VII

EXERCISE OF THE RIGHTS OF NATURAL PERSONS THROUGH LEGAL ENTITIES

106. The Court has established in this Advisory Opinion that legal entities are not holders of rights before the inter-American system (*supra* para. 70), except in the two particular situations described in the previous chapter. For this reason, although questions number 4 and 5 proposed by the State of Panama (*supra* para. 3) relate exclusively to the rights of legal entities, this Court understands that the State of Panama is also interested in analyzing “the protection of the human rights of natural persons through non-governmental organizations or legal entities” (*supra* para. 1). To this end, first, the Court will reiterate its case law on the matter. Second, it will study the quality of some of the human rights recognized in the American Convention as inherent to human beings, as well as some of the rights that may be recognized to a natural person through their participation in a legal entity.

¹⁵² Convention 87 on Freedom of Association and Protection of the Right to Organize, 1948 (No. 87), entered into force: 04 Jul 1950; Adoption: San Francisco, 31st ILC meeting, July 9, 1948.

Similarly, the Court notes that various decisions of the ILO Committee on Freedom of Association reflect similar obligations. See ILO. Resolution of the Committee on Freedom of Association in Case No. 1569 “Complaints against the Government of Panama presented by the International Confederation of Free Trade Union Organizations (ICFTU), the Workers’ Union of the Institute of Hydraulic Resources and Electrification (SITIRHE) and the Workers’ Union of the National Institute of Telecommunications (SITINTEL)”, para. 143(3); Cf. Case of Baena Ricardo et al. v. Panama. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, par. 162, 170 to 172; ILO, Freedom of Association Compilation of decisions and principles of the Committee on Freedom of Association of the ILO Governing Body, fifth edition 2006, par. 147, 130, 178, 190 and 391.

107. As indicated above, this Court has reiterated that although the construct of legal entities has not been expressly recognized by the American Convention, this does not restrict the possibility, under certain circumstances, for individuals exercising their rights through them to avail themselves of the inter-American system to assert their fundamental rights, even when they are covered by a legal construct or fiction created by the same legal system.¹⁵³

108. In effect, this Court highlights the existence of certain rights that are inherent and exclusive to human beings, so that their exercise can only be carried out personally, which would exclude them from a potential analysis within the framework of a case which alleges the violation of rights whose ownership resides with natural persons but the exercise of which was enacted through a legal entity. In this regard, from the Preamble of the American Convention, the inter-American system has established that the essential character of the rights recognized to human beings derives from them. Therefore, these rights "are not derived from one's being a national of a certain state, but are based upon attributes of the human personality."¹⁵⁴ The existence of the rights recognized in the Convention corresponds to the very nature of human beings as subjects of rights. This affirmation draws its foundation from different principles of the American Convention, which establish the fundamental meaning of that immanence. Thus, while article 5 of the Convention mentions the importance of understanding human dignity as an intrinsic element of the human being, article 29 of the same instrument states that "[n]o provision of this Convention shall be interpreted as [...] c) precluding other rights or guarantees that are inherent in the human personality".

109. In this regard, the Court considers that inherence and inalienability refer to the attribute of a right that is predicated on its inseparable connection with the nature of the human being.¹⁵⁵ Indeed, this Court considers that there are rights whose exercise can only be carried out personally by the natural person who owns them, because said enjoyment implies the existence of a link between human nature and the right itself.¹⁵⁶ Thus, for example, the Court has held that "for the purposes of interpreting Article 4(1) [of the Convention], the definition of person is anchored to the mentions made in the treaty regarding the 'conception' and the 'human being', terms whose scope must be assessed from the scientific literature".¹⁵⁷

¹⁵³ Cf. *Case of Cantos v. Argentina*, par. 29, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, par. 146.

¹⁵⁴ Preamble on the American Convention on Human Rights.

¹⁵⁵ In this regard, see: Judgment C-284/15 of the Constitutional Court of Colombia, par. 5.3.3.5.

¹⁵⁶ In a similar sense, the Constitutional Court of Peru has stated that "[t]he recognition of fundamental rights over legal persons is constitutionally legitimate, it should be pointed out that such consideration does not mean nor should it be interpreted as meaning that all the attributes, faculties and freedoms recognized over the natural person are the same as those corresponding to the legal entity. EXP. No. 4972-2006-PA/TC, La Libertad, CORPORACIÓN MEIER S.A.C. AND PERSOLAR S.A.C.

Similarly, the Supreme Court of Mexico stated that "[a]lthough the word "person" contained in article 10 of the Constitution of the United Mexican States includes legal entities, the ownership of fundamental rights will necessarily depend on the nature of the right in question and, where appropriate, the function or activity of those. To that extent, the judge must determine, in each specific case, whether a right corresponds to them or not, since, although there are rights that can be attributed to them without much argumentative problem, for example, those of property, access to justice or due process, there are others that, obviously, correspond only to natural persons, when referring to aspects of a human nature such as the fundamental rights to health, family or physical integrity. Supreme Court of Justice of the Nation, CONTRARY RULING 360/2013, Date of resolution: session of 04/21/2014.

The Constitutional Court of Colombia also stated that "[f]or the purposes related to the ownership of the action of protection, it must be understood that there are fundamental rights that apply exclusively to the human person, such as the right to life and the exclusion of the death penalty (article 11); prohibition of forced disappearance, torture, cruel, inhuman or degrading treatment or punishment (article 12); the right to family privacy (article 15); among others. But other rights are no longer exclusive to individuals considered in isolation, but also to the extent that they are inserted in groups and organizations, whose purpose is specifically to defend certain areas of freedom or fulfill common interests. Consequently, in principle, it is necessary to protect the fundamental constitutional rights of legal persons, not per se, but as a vehicle to guarantee the fundamental constitutional rights of natural persons, in a specific case, at the reasonable discretion of the Judge hearing an application for protection." Judgment No. T-411/92 of the Constitutional Court of Colombia.

¹⁵⁷ *Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*, par. 176.

110. The foregoing is in keeping with the conclusion reached by this Court regarding the impossibility of legal entities to resort directly to the inter-American system (*supra* par. 70), apart from the two particular situations described above (*supra* par. 72 and 105), and which relates to the idea that the human rights enshrined in the Convention are provided for the protection of natural persons and not legal entities. However, it is necessary to clarify that each right implies a different analysis in terms of its content and form of fulfillment. Thus, while some rights are directly related to the vital functions of human beings or to the physical or psychological functions of the human body, such as the right to life, personal liberty or personal integrity, others are linked to the relationship between human beings and society. Examples of this last relationship would be the rights to private property, association, nationality, among others. The latter would be the type of rights that could be the object of the analysis mentioned in the preceding paragraphs.

111. The Court has held on this basis that a distinction must be drawn to determine which situations may be analyzed by this Court within the framework of the American Convention,¹⁵⁸ in the cases where it is alleged that the right has been exercised through a legal entity. In general, it has held that in many situations, "the rights and obligations attributed to companies become rights and obligations for the individuals who comprise them or who act in their name or representation."¹⁵⁹ Thus, the rights that legal entities enjoy domestically in the States Parties to the American Convention (*supra* par. 64), in some cases, are not exclusive to them. On the contrary, the recognition of the rights of legal entities may directly or indirectly imply the protection of the human rights of the associated natural persons.

112. In this sense, in order to admit situations which may be analyzed under the framework of the American Convention, the Court recalls that it has examined the alleged violation of the rights of individuals in their capacity as shareholders¹⁶⁰ and workers,¹⁶¹ in the understanding that the alleged injury is within the scope of its jurisdiction. Thus, for example, in cases such as *Ivcher Bronstein v. Peru*, *Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *Perozo et al. v. Venezuela*, and *Granier et al. v. Venezuela*, the Court analyzed acts that affected legal entities of which they were partners.¹⁶² To date, this Court has only heard cases in which the exercise of the right was carried out through legal entities with respect to the right to property and the right to freedom of expression.

113. Regarding the right to private property,¹⁶³ the Court's case law has addressed two different situations. The first, regarding the cases in which it has recognized the right to collective property held by the indigenous and tribal communities, as it did for the first time in the Case of the *Kichwa Indigenous People of Sarayaku v. Ecuador* (*supra* par. 74), subsequently, in the *Case of the Kuna Indigenous Peoples of Madungandí and Emberá of*

¹⁵⁸ Cf. *Case of Cantos v. Argentina. Preliminary objections*, par.29, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, par. 146.

¹⁵⁹ *Case of Cantos v. Argentina. Preliminary objections*, par. 27, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, par. 54.

¹⁶⁰ Cf. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74, par. 123, 125, 138 and 156, *Case of Granier et al. (Radio Caracas Television) v. Venezuela*, par. 19.

¹⁶¹ Cf. *Case of Baena Ricardo et al. v. Panama. Merits, Reparations and Costs*. Judgment of February 2, 2001. Series C No.72, par. 109, 110, and 130, *Case of Granier et al. (Radio Caracas Television) v. Venezuela*, par. 19.

¹⁶² Cf. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*, par. 119 to 131, *Case of Granier et al. (Radio Caracas Television) v. Venezuela*, par. 146.

¹⁶³ Cf. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*, par. 119 to 131, and *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, par. 173 and 218.

Article 21 Of the Convention "Right to Property 1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.

2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

3. Usury and any other form of exploitation of man by man shall be prohibited by law."

Bayano and their Members v. Panama, and more recently, in the *Case of the Garífuna Community Triunfo De La Cruz and its Members v. Honduras*, and the *Case of the Garífuna Community Of Punta Piedra and its Members v. Honduras* (*supra* par. 76).

114. The second situation in which the Court has ruled on the right to private property has been to distinguish the rights of a company's shareholders from those of the company itself, indicating that domestic legislation grants shareholders certain specific direct rights, such as receiving agreed the dividends, attending and voting at general meetings and receiving part of the assets if the company is shut down.¹⁶⁴ In this sense, it has established that in order to determine if there has been a violation of the property rights of partners, it is necessary that the impact on their rights has been clearly proven.¹⁶⁵ Thus, for example, it has refrained from analyzing the alleged violation of the right to property over assets that formed part of the company's equity, since it differentiated between its assets and that of its partners and shareholders,¹⁶⁶ which in the case in question corresponded to the share capital of which they were holders.¹⁶⁷ In addition, this Court has stated that it must be demonstrated how the damage or harm to the assets owned by the legal entity could imply, in turn, injury of the rights of the shareholders or partners.¹⁶⁸

115. Similarly, in recent case law, this Court has analyzed the right to freedom of expression¹⁶⁹ and its materialization through a legal entity. In the *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, the Court held that the media are generally associations of people who have come together to exercise their freedom of expression on a regular basis. Indeed, this is why modern-day media communication platforms are generally held in the name of a legal entity, since the production and distribution of information as a product requires an organizational and financial structure able to meet requirements of the demand for information.¹⁷⁰ Similarly, just as trade union organizations constitute instruments for the exercise of the right of association of workers, and political parties are vehicles for the exercise of political rights of citizens, media outlets are mechanisms that serve to exercise the right to the freedom of expression of those who use them as a means of disseminating their ideas or information.¹⁷¹

¹⁶⁴ Cf. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*, par. 127, *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, par. 338.

¹⁶⁵ Cf. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*, par. 127, *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, par. 338.

¹⁶⁶ Cf. *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, par. 338 and 352.

¹⁶⁷ Cf. *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, par. 352.

¹⁶⁸ Cf. *Case of Perozo et al. v. Venezuela*, par. 402, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, par. 356.

¹⁶⁹ Article 13 of the American Convention: "Freedom of Thought and Expression. 1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

a. respect for the rights or reputations of others; or

b. the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law."

¹⁷⁰ *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, par. 148.

¹⁷¹ *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, par. 148.

116. This Court also considered that the editorial line of a television channel may be considered a reflection of the political opinion of its executives and employees insofar as they are involved in and determine the content of the information transmitted.¹⁷² Thus, it can be understood that the critical stance taken by a channel is a reflection of the critical position of its executives and employees involved in deciding the type of information transmitted. This is because, as already indicated, the media are frequently the mechanisms by which individuals exercise their right to freedom of expression, which may involve the expression of contents such as political opinions or positions.¹⁷³

117. Consequently, the Court indicated that the restrictions on freedom of expression frequently materialize through state or private actions that affect not only the legal entity that constitutes a media outlet, but also the collective of natural persons, such as its shareholders or the journalists who work there, who communicate through it and whose rights may also be violated.¹⁷⁴ On this occasion, the Court established that in order to determine whether the impact on the legal entity (media outlet, in this case) had generated a negative, certain and substantial impact on the right to freedom of expression of natural persons, it was necessary to analyze the role played by the alleged victims within the respective communication medium and, in particular, the way in which they contributed to the channel's communications mission.¹⁷⁵

118. As can be seen from the two rights described, the Court has undertaken an analysis of each situation to determine whether the natural person actually exercised their right through the fiction of the legal entity. In the first place, this Court has differentiated the scope of the rights of each type of person, as it did with the distinction between the assets of the legal entity and the assets of its partners or shareholders. Furthermore, the Court has recognized the right to collective property of indigenous communities. Second, this Court has demonstrated in specific cases the link between the exercise of the right by the natural person and the way in which it is exercised through the legal entity.

119. In this regard, it should be noted that, regardless of the specificity of each case, this Court considers that the exercise of the right through a legal entity must involve an essential and direct relationship between the natural person who requires protection by the inter-American system and the legal entity through which the violation occurred, since a simple link between both is not enough to conclude that the rights of natural persons and not of legal entities are effectively being protected. Indeed, it must be proven beyond the simple participation of the natural person in the activities of the legal entity, that said participation is substantially related to the rights alleged as violated. In addition, the Court, under the provisions of Article 29(a) of the Convention, considers that the mere existence and action of the legal entity in which the natural person, presumed victim of the alleged violation, participates cannot constitute an obstacle for it to receive the application, hear and resolve the corresponding case. Otherwise, article 1(2) of the same text of the Convention would be interpreted as allowing "any of the States Parties, group or person, to suppress the enjoyment and exercise of the rights and freedoms recognized in the Convention or limit them to a greater extent than the foreseen in it."

120. The Court therefore holds that, due to the multiple forms of legal entities that can arise, such as companies or commercial companies, political parties, religious associations or non-governmental organizations, it is not feasible to establish a single formula that serves to recognize the existence of the exercise of rights of natural persons through their participation in a legal entity, in the same way as it has done with the right to property and freedom of

¹⁷² *Case of Granier et al. (Radio Caracas Television) v. Venezuela*, par. 224.

¹⁷³ *Case of Granier et al. (Radio Caracas Television) v. Venezuela*, par. 224.

¹⁷⁴ *Case of Granier et al. (Radio Caracas Television) v. Venezuela*, par. 151.

¹⁷⁵ *Case of Granier et al. (Radio Caracas Television) v. Venezuela*, par. 151.

expression. Therefore, the Court will determine how to prove the link when it analyzes claims that rights have been violated in a specific contentious case.

VIII POSSIBLE EXHAUSTION OF DOMESTIC REMEDIES BY LEGAL ENTITIES

121. Thus far, the Court has determined in this Advisory Opinion that legal entities are not holders of rights in the inter-American system (*supra* par. 70). Similarly, the Court has established that both indigenous communities and trade union organizations (*supra* par. 72 and 105) constitute special situations. Now it is up to the Court to examine, according to questions 3, 6, 7 and 8 posed by the State of Panama, whether legal entities can claim to have exhausted domestic remedies, on their own behalf or on behalf of their members (partners, shareholders, directors, workers, etc.), and thus fulfill the admissibility requirement indicated in article 46(1)(a) of the Convention. To this end, the Court will carry out its considerations taking into account: (i) the nature of the requirement of exhaustion of domestic remedies in the inter-American system, and (ii) the suitability and effectiveness of the remedies in the domestic jurisdiction that must be exhausted in accordance with the principles of generally recognized international law.

A. Nature of the requirement of exhaustion of domestic remedies in the inter-American system

122. The requirement of exhaustion of domestic remedies is a manifestation of the principle of collaboration or complementarity of public international law. In this regard, this Court has established that State responsibility under the American Convention can only be demanded at the international level after the State has had the opportunity through its own remedies to determine whether a right has been breached and to repair the damage caused. This is based on the principle of complementarity that informs the inter-American system across the board, which is, as expressed in the Preamble of the American Convention, "reinforcing or complementing the protection provided by the domestic law of the American states."¹⁷⁶ Thus, the State is the main guarantor of people's human rights, so that, if there is an act that violates said rights, it is the State itself that has the duty to resolve the matter at the domestic level and, where appropriate, repair it, before having to answer to international instances such as the inter-American system. This is due to the nature of the international jurisdiction as a process that supports or complements the national systems of human rights guarantees. The complementary nature of international jurisdiction means that the system of protection established by the American Convention does not replace national jurisdictions, but rather complements them.¹⁷⁷ In this sense, the manner of verifying that the State, as the first line of response to protect and guarantee human rights, was aware of the violations and able to act in this regard, is precisely through the rule on the exhaustion of domestic remedies.

123. More specifically, the requirement of exhaustion of domestic remedies implies that the petitioners inform the State of the alleged violations, "for that rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it, before it has had the opportunity to remedy them by internal means."¹⁷⁸ In the inter-American system, this requirement is contained in Article 46(1)(a) of the American Convention. According to this

¹⁷⁶ American Convention on Human Rights, Preamble. San José, Costa Rica, 1969. Cf. *Case of Tarazona Arrieta et al. v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 15, 2014. Series C No. 286 par. 137.

¹⁷⁷ Cf. *Case of Acevedo Jaramillo et al. v. Peru. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2006. Series C No. 157, par. 66, and *Case of García Ibarra et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 17, 2015. Series C No. 306, par. 103.

¹⁷⁸ In the matter of *Viviana Gallardo et al.*, Decision of November 13, 1981, No. G 101/81. Series A, par. 26, and *Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 5, 2015. Series C No. 302, par. 20.

norm, “[a]dmission by the Commission of a petition or communication [...] shall be subject to the following requirements: that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.”¹⁷⁹

124. Repeatedly, this Court has established some procedural and material criteria that must be met in relation to the objection of failure to exhaust domestic remedies.¹⁸⁰ In the first place, an objection to the exercise of its jurisdiction based on the alleged failure to exhaust domestic remedies must be presented at the appropriate procedural moment, that is, during the admissibility procedure before the Commission.¹⁸¹ Second, the State filing this objection must specify the domestic remedies that have not yet been exhausted, and demonstrate that these remedies were available, adequate, suitable, and effective.¹⁸² Finally, this Court has stated that neither the Court nor the Commission is responsible for identifying *ex officio* the domestic remedies still to be exhausted.¹⁸³

125. Another relevant aspect in the analysis of the exhaustion of domestic remedies is the exceptions contained in Article 46(2) of the Convention. This norm constitutes an exception to the general rule established in Article 46(1), according to which the exhaustion of domestic remedies is an essential requirement for the presentation of individual petitions before the inter-American system. The requirement of exhaustion of remedies applies thus applies when in the “national system there are effectively available remedies that are adequate and effective to remedy the alleged violation”.¹⁸⁴ When this is not the case, due to the non-existence or ineffectiveness of remedies,¹⁸⁵ Article 46(2) of the Convention provides three exceptions that exempt the presumed victims from complying with this requirement, namely: (i) When the domestic legislation does not outline the due legal process for the protection of the allegedly violated right or rights, (ii) when the alleged victim of rights’ violation has not been allowed access to remedies in the domestic jurisdiction, or they have been prevented from exhausting them, and (iii) when there is an unjustified delay in resolving the remedies.

126. The Court has also determined that in some circumstances the analysis of the exhaustion of domestic remedies may be related to the merits of the matter, especially regarding Articles 8 and 25 of the Convention. The Court has held that “when certain exceptions to the rule of non-exhaustion of domestic remedies are invoked, such as the ineffectiveness of such remedies or the inexistence of due process of law, not only is it being argued that the aggrieved party is not obliged to file such resources, but indirectly the State involved is being accused of a new violation of the obligations contracted by the Convention.” In this regard, it is necessary to clarify that the examination carried out by the Commission in the initial stage of admissibility supposes the analysis of the exceptions contained in Article 46(2) of the Convention as norms with autonomous content “vis à vis the substantive norms of the American Convention”.¹⁸⁶ This means that although the analysis carried out by the Commission in the admissibility stage may have a direct relationship with the possible violations of Articles 8 and 25 of the Convention, the standard of assessment is different in

¹⁷⁹ Article 46(1)(a) of the American Convention

¹⁸⁰ Cf. *Case of Garibaldi v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 23, 2009. Series C No.203, par. 46.

¹⁸¹ *Case of Velásquez Rodríguez v. Honduras. Preliminary Exceptions*. Judgment of June 26, 1987. Series C No.01, par. 88, and *Case of Wong Ho Wing v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 30, 2015. Series C No. 297, par. 21.

¹⁸² *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*, par. 88, and *Case of López Lone et al. v. Honduras*, par. 21.

¹⁸³ *Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 30, 2009. Series C No. 197, par. 23, and *Case of López Lone et al. v. Honduras*, par. 21.

¹⁸⁴ IACHR. Report No. 74/14, Petition 1294-05. Admissibility. Mario de Almeida Coelho Filho and Family. Brazil. August 15, 2014, par. 29.

¹⁸⁵ *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*, par. 94.

¹⁸⁶ IACHR. Report No. 124/10, Petition 11,990. Admissibility. Oscar Orlando Bueno Bonnet et al. Colombia. October 23, 2010, par. 37.

both stages.¹⁸⁷ Consequently, “it is necessary to differentiate the concept of unjustified delay referred to in Article 46(2) of the Convention, applicable at the admissibility stage of a petition, from the standard of reasonable time, applicable to the analysis of possible violations of Article 8(1) of the Convention, in the study of the merits of the case.”¹⁸⁸

127. As a preliminary conclusion, this Court reiterates the importance of the rule of exhaustion of domestic remedies as an expression of the States’ ability to address and resolve human rights violations by their own means, prior to submitting a case before the inter-American system and in accordance with their international obligations. Furthermore, it recalls repeated statements throughout its case law regarding the procedural and material requirements that must be met by those States that raise this preliminary objection. It also considers it important to emphasize the criteria of availability, suitability, and effectiveness that have been consistently reiterated in the Court’s case law in the face of the requirement of exhaustion of domestic remedies.¹⁸⁹

B. Suitability and effectiveness of domestic legal remedies to be exhausted

128. Article 46(1)(a) provides that, for a petition to be admitted by the Commission, domestic remedies must have been filed and exhausted “in accordance with the generally recognized principles of International Law.” This Court has held that the reference of Article 46(1)(a) of the Convention to the generally recognized principles of international law “refer not only to the formal existence of such remedies, but also to their adequacy and effectiveness, as shown by the exceptions set out in Article 46 (2).”¹⁹⁰

129. In this sense, the Court has included in its case law the analysis of the criteria of “effectiveness” and “suitability” of the remedies. In general terms, suitability means that within the system of domestic law, the remedies function well enough to protect the violated rights.¹⁹¹ This Court has held that “[a] number of remedies exist in the legal system of every country, but not all are applicable in every circumstance.”¹⁹²

130. Additionally, remedies can be deemed effective if they are capable of producing the result for which they were designed.¹⁹³ For example, “Procedural requirements can make [the remedy] of habeas corpus ineffective: if it is powerless to compel the authorities; if it presents a danger to those who invoke it; or if it is not impartially applied.”¹⁹⁴

131. The Court has also said that “for an effective remedy to exist, it is not enough for it to be provided in the Constitution or laws or to be formally admissible, but rather, it must be truly suitable to establish whether human rights have been violated and provide what is necessary to remedy it.” Accordingly “remedies that, due to the country’s general conditions or due to the specific circumstances of a given case, result illusory cannot be considered effective.”¹⁹⁵

¹⁸⁷ IACHR. Report No. 124/10, Petition 11,990. Admissibility. Oscar Orlando Bueno Bonnet et al. Colombia. October 23, 2010, par. 37.

¹⁸⁸ IACHR. Report No.74/14, Petition. 1294-05. Admissibility. Mário de Almeida Coelho Filho and Family v. Brazil. August 15, 2014, par. 40.

¹⁸⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No.04, par. 64, 66 and 67, and *Case of López Lone et al. v. Honduras*, par. 21.

¹⁹⁰ *Case of Velásquez Rodríguez v. Honduras. Merits*, par. 63.

¹⁹¹ *Case of Velásquez Rodríguez v. Honduras. Merits*, par. 64.

¹⁹² *Case of Velásquez Rodríguez v. Honduras. Merits*, par. 64.

¹⁹³ *Case of Velásquez Rodríguez v. Honduras. Merits*, par.66. IACHR. Report No. 50/13, Petition 1491-06. Admissibility. Guzman Cruz family. Mexico. July 12, 2013, par. 38.

¹⁹⁴ *Case of Velásquez Rodríguez v. Honduras. Merits*, par. 66.

¹⁹⁵ *Case of Reverón Trujillo v. Venezuela*, par. 61.

132. However, the Commission stated in its observations that its current position on the admissibility of petitions in which appeals have been filed by legal entities is that "although in principle domestic remedies must be exhausted by the natural person alleged as a victim before the inter-American system, there may be circumstances in which said remedies in favor of natural persons do not exist, are not available or are not appropriate in the face of the specific state action directed against the legal entity. In the Commission's consideration, [the analysis of the] exhaustion of domestic remedies must be carried out on a case-by-case basis."¹⁹⁶

133. At this point, the Court will present its position in accordance with the provisions of Article 46(1)(a) of the Convention. In the first place, this Court notes that article 46(1)(a) does not make any distinction between natural persons or legal entities, since it focuses exclusively on the exhaustion of remedies. In this regard, this Court has held that according to the useful effect rule, the provision is aimed at producing an effect and cannot be interpreted such as to produce none or to produce a result that is manifestly absurd or unreasonable.¹⁹⁷ Therefore, the Court cannot interpret Article 46(1)(a) in such a way that it limits access to the inter-American system by possible victims and generates a lack of protection for them. In this sense, the Court considers that it is disproportionate to force an alleged victim to file non-existent remedies, when it is verified that the appropriate and effective remedy was the one exhausted by the legal entity.

134. Second, the Court considers that the principles of suitability and effectiveness are fundamental in the analysis of admissibility. Thus, within the framework of a situation under analysis, if it is verified that the remedy exhausted by the legal entity protects the individual rights of natural persons who seek to come before the inter-American system, it may be understood as a suitable and effective remedy. In other words, if the rights of individual persons were protected through a domestic remedy that was resolved in favor of a legal entity, the Court finds no reason to understand that said remedy cannot become suitable and effective, according to the analysis of each case.

135. Third, this Court considers that the exhaustion of domestic remedies requires an independent analysis of whether legal entities are rights-holders. The study on compliance with this requirement must focus on the filing of suitable and effective domestic remedies, which in some cases, will be remedies for which entities have legal standing. Thus, for example, the Commission's Special Rapporteur for Freedom of Expression maintained during the public hearing¹⁹⁸ that "in many cases in which freedom of expression is affected, the only person actively entitled to file the appropriate domestic remedies is the media platform through its legal representative." In general, "there is no other effective remedy that can be used by a natural person against a decision formally addressed to a media outlet." For this reason, "to demand as a procedural condition for a petition before the system that the natural person affected be the one to file domestic remedies when they do not have active standing to do so and knowing that for this reason they will be rejected, would run contrary to the principle of procedural economy and impose disproportionate barriers to access to the inter-American system."

136. Specifically, this Court considers that domestic remedies must be considered exhausted in compliance with Article 46(1)(a) of the Convention when: (i) it is verified that the available, suitable and effective remedies for the protection of their rights were presented, regardless of whether said resources have been presented and resolved in favor of a legal entity, and (ii) it is shown that the claims alleged by the legal entity in the domestic proceedings are consistent

¹⁹⁶ Observations of the Inter-American Commission on Human Rights on the Request for an Opinion submitted by the State of Panama (Merits file, folio 2424).

¹⁹⁷ *Case Velásquez Rodríguez v. Honduras. Merits*, par. 63 y 64.

¹⁹⁸ Written observations presented by the Special Rapporteur for Freedom of Expression during the public hearing (merits file, folio 3216).

with those that are argued before the inter-American system. In this regard, the Rapporteur for Freedom of Expression stated that "what is sought is that there is a material coincidence between the claims presented in the process that was exhausted domestically and those presented before the [Commission], in order to ensure that the national authorities were aware of the alleged violation of a protected right and, if appropriate, had the opportunity to resolve it before it is heard by an international body".¹⁹⁹

137. Additionally, the Court emphasizes that in these cases the burden of proof regarding the effectiveness and suitability of the remedy falls on the States when they present the objection of failure to exhaust domestic remedies. Therefore, it must be the States that demonstrate that, for example, there was a more suitable remedy than the one presented by the legal entity.

138. By complying with these requirements, the essential core of the rule of exhaustion of domestic remedies is respected. This means it allows the State to know in advance the requests made before the inter-American system so that the State can address human rights violations. Similarly, it should be noted that the analysis carried out on compliance with the admissibility rules contained in article 46(1) in this type of case is independent of the analysis on the merits of the petition, especially with regard to articles 1(1), 8 and 25 of the American Convention. Thus, when the exhaustion of domestic remedies is considered fulfilled through an appeal filed by a legal entity, it is not intended to impose an additional obligation on the States in the sense of modifying their domestic legislation to grant active standing to natural persons. These types of considerations are related to the merits of the case and must be analyzed according to the content of the individual rights recognized by the Convention.

139. In view of all this, the Court concludes that the filing of remedies by legal entities does not imply per se that domestic remedies have not been exhausted by the natural persons who are holders of Convention-based rights; therefore, compliance with this requirement must be analyzed in each case. In effect, the Court reiterates its case law according to which "it is not necessary to exhaust the domestic remedies with respect to all or any of the available remedies, but rather, according to the case law of this Court, 'the remedies that must be exhausted are those that are appropriate for the specific situation of the alleged human rights violations'".²⁰⁰ In this sense, this Court considers that Article 46(1)(a) implies an analysis that must focus on the suitability and effectiveness of the appeal, regardless of whether the appeal was filed by a natural person or a legal entity.

140. Considering all of the above and, in particular, given that Article 1 of the Convention establishes the obligations of the State both to respect the rights of every human being under its jurisdiction and to guarantee their free and full exercise, the Court concludes that the existence and action of a legal entity through which the natural person, presumed victim of the violation of the human right in question, acts, should not constitute an obstacle, impediment or excuse for the State to fail to comply with the aforementioned obligations.

¹⁹⁹ Written observations presented by the Special Rapporteur for Freedom of Expression during the public hearing (merits file, folio 3216).

²⁰⁰ *Case of Escher et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 6, 2009. Series C No. 200, par. 38, and *Case of Galindo Cárdenas et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 02, 2015. Series C No. 301, par. 33.

**IX
OPINION**

For the reasons stated, in the interpretation of Article 1(2) of the American Convention on Human Rights read in conjunction with Articles 1(1), 8, 11(2), 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62(3) thereof, as well as Article 8(1)(a) and (b) of the Protocol of San Salvador,

THE COURT,**DECIDES**

Unanimously, that

1. It has jurisdiction to issue this Advisory Opinion.

AND IS OF THE OPINION

unanimously, that

2. Article 1(2) of the American Convention only enshrines rights in favor of natural persons, therefore legal entities are not holders of the rights enshrined therein, as established in paragraphs 37 to 70 of this Advisory Opinion.

unanimously, that

3. Indigenous and tribal communities are holders of the rights protected in the Convention, and therefore can access the inter-American system, in the terms established in paragraphs 72 to 84 of this Advisory Opinion.

By six votes in favor and one against, that

4. Article 8(1)(a) of the Protocol of San Salvador grants rights to unions, federations and confederations, which allows them to appear before the inter-American system to defend their own rights within the framework of the article, in the terms established in paragraphs 85 to 105 of this Advisory Opinion.

Judge Alberto Pérez Pérez dissents.

By six votes in favor and one against, that

5. Natural persons may exercise their rights through legal entities in certain cases, and in these situations may appear before the inter-American system to claim violation of their rights, in the terms established in paragraphs 106 to 120 of this Advisory Opinion.

Judge Alberto Pérez Pérez dissents.

By six votes in favor and one against, that

6. Natural persons under certain assumptions may exhaust domestic remedies through appeals filed by legal entities, in the terms established in paragraphs 121 and 140 of this Advisory Opinion.

Judge Alberto Pérez Pérez dissents.

Judge Roberto F. Caldas informed the Court of his concurring opinion, which is annexed to this Advisory Opinion.

Judge Alberto Pérez Pérez informed the Court of his partially dissenting opinion, which is attached to this Advisory Opinion.

Advisory Opinion of the Inter-American Court of Human Rights OC-22/16. Requested by the Republic of Panama.

Roberto F. Caldas
President

Eduardo Ferrer Mac-Gregor Poisot

Manuel E. Ventura Robles

Diego García-Sayán

Alberto Pérez Pérez

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Pablo Saavedra Alessandri
Registrar

So ordered,

Roberto F. Caldas
President

Pablo Saavedra Alessandri
Registrar

CONCURRING OPINION OF JUDGE ROBERTO F. CALDAS
INTER-AMERICAN COURT OF HUMAN RIGHTS
ADVISORY OPINION OC-22

1. In order to add to the response given by the Inter-American Court of Human Rights in Advisory Opinion 22, requested by the State of Panama on April 28, 2014, it is necessary to make some observations on the scope of Article 21 of the American Convention on Human Rights, in this concurring opinion. Despite this Court having already developed a valuable analysis regarding the impossibility of access to the Inter-American Human Rights System by legal entities, it is necessary to formulate some considerations about the scope of the protection guaranteed to the right to property in the sphere of the Inter-American human rights system.

2. Initially, it is important to note something that can be understood as the "low receptivity" to the right to private property in the inter-American human rights system. Accordingly, from the beginning, it is a notable fact that this was one of the most discussed rights during the proposal of the original draft of the American Convention by the respective Commission, even in 1969:¹

"The discussion of this article, which enshrines the right to private property, was perhaps one of the most extensively debated within the Commission. The delegations stated, from the outset, the existence of three ideological currents that could be summed up as follows: a tendency to remove from the text of the project any reference to the right to property, similar to the Covenant on Civil and Political Rights of the United Nations; another tendency to consecrate the text of the project as it was presented, and a third conciliatory position, which will reinforce the social function of property.

After a prolonged exchange of opinions on this exciting topic the majority opinion prevailed, incorporating the right to property in the text of the Convention as it appears in the draft, adding to the first of its two paragraphs the expression that both usury and any other form of exploitation of man by man, will be prohibited by law."

3. The differences were only overcome by inserting this right in the list of rights protected by the American Convention, by including a generic concept of the right to private property as the "right to use and enjoy property" and placing the right ahead of "social interest" and "public utility" in the relative hierarchy.

4. This resistance to the incorporation of the right to private property is also observed in the universal and European human rights systems. Despite the fact that the right to private property has been established by Article 17 of the Universal Declaration of Human Rights, it ended up not being considered by the International Covenant on Civil and Political Rights (ICCPR) or by the International Covenant on Human Rights. Economic, Social and Cultural

¹OAS/Ser. K/XVI/1 (2). Inter-American Specialized Conference on Human Rights. San Jose Costa Rica. November 7-22, 1969. Minutes and Documents. Report of the Rapporteur of Commission I, Juan Isaac Lovato, November 19, 1969, p. 301.

(ICESCR). As far as the European human rights system is concerned, the right ended up being excluded from the final version of the European Convention on Human Rights, being included only in 1952, by the First Additional Protocol,² in a considerably restricted way, even giving the State broad powers to restrict the enjoyment of such right.

5. Despite the inter-American system's innovative approach in this regard, incorporating the right to private property into the American Convention, there are clear limitations to that right. The first corresponds, as previously said, to the relativization of the right resulting from the very device that establishes it. Its sections contain provisions restricting the enjoyment of the right to private property taking into account the social interest and public utility, including establishing the need to pay fair compensation in situations where the right is denied:

Article 21. Right to Private Property

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.

2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

3. Usury and any other form of exploitation of man by man shall be prohibited by law.

6. With this, it should be noted that despite the fact that private property constitutes one of the rights protected by the American Convention, it is a right with clear limitations at the international level. The broad and generalized guarantee of this right could end up turning this Human Rights Court into a court that is much more in demand for business cases or corporations, through its partners or associates who allege loss of assets or property, thus distorting the objective and *raison d'être* of such institutions: to judge human rights, the most fundamental rights.

7. To avoid this happening, it is necessary to limit the scope of the aforementioned right in the inter-American sphere, defining the assets that may or may not be disputed before the inter-American human rights system. With the American Convention not being specific in this sense, the Court could have taken advantage of the opportunity to make explicit in what type of situations the right to property can constitute the object of dispute before the inter-American system.

² Additional Protocol to the European Convention on Human Rights (Paris, 20/03/1952). "ARTÍCULO 1 Protection of property. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

8. Although the possibility of defending – even judicially – all assets legally guaranteed to the individual based on the right to private property is essential, this legal action does not correspond to human rights courts. In other words, it would be up to the domestic legal systems and the respective judicial system of each State to guarantee the defence of the right to property in a universal way; here, before the Inter-American System, only the most core part of property.

9. The Court and the inter-American system, on the other hand, would be deprived of the judicial protection of assets specially protected by the domestic legislation of many States, as is the case of assets that cannot be proscribed or seized. The special protection dedicated to these goods is due to the fact that they constitute the so-called "existential minimum", the concept of which is tied to the principle of dignity (Article 11 of the American Convention), corresponding to the most basic and essential needs of the person and of their family.

10. The emergence of the ideal of the "existential minimum" gained strength from the Second Postwar period, in the doctrine of Otto Bachof, maintaining that human dignity is not limited to the guarantee of freedom, but also necessarily encompasses the essential material resources for the maintenance of a dignified life. Shortly after Bachof's formulation, the Federal Administrative Court of Germany (*Bundesverwaltungsgericht*) recognized the individual as holder of rights and obligations in the aspect of maintaining the conditions of their existence.³

11. In other words, the action of the Court in defence of the right to property must be guaranteed in the event that restrictions on this right threaten basic needs that are essential for the maintenance of a dignified existence. Considering that it would violate human rights to deprive the individual of the minimum essential asset of property, only those cases would fall within the sphere of jurisdiction of the Court.

12. The definition of what is, in fact, covered by the notion of the existential minimum is determined by the particular socioeconomic context of each State, for which it is especially the responsibility of domestic legal systems to protect the set of assets that guarantee the owner the maintenance of a dignified physical, social, political and cultural existence.

13. Despite recognizing the importance and absolute necessity of legal protection of the right to property, this Court cannot take for itself, or accept being granted, the responsibility of deciding on the most diverse issues related to the right to property. If it did so, it would end up deviating from its primary function, the protection of human rights, a person's most essential rights. For this reason, the scope of Article 21 of the American Convention should be delimited, restricting the admissibility of cases before the inter-American human rights system to that nucleus of assets that cannot be proscribed or seized.

14. In order for cases related to the right to property to be heard by the bodies that make up the inter-American human rights system, they must: (i) be limited to the assets necessary for a dignified life for the individual or (ii) represent a vital asset for the development of professional activity, as long as it is necessary to guarantee a dignified life for the individual.

³ SARLET, Ingo Wolfgang. "Human Dignity (for the person), existential minimum and constitutional justice". Revista CEJUR TJCS, 2013.

15. It is not possible to speak of dignity of the legal entity in the field of human rights. Therefore, the accessible pathway to hear infringements to the rights of a legal entity is the common national judicial pathway, and not that of international human rights.

16. I conclude, therefore, that the intention of this opinion is not to propose the creation of a restrictive list of intangible assets; the definition must always engage with the socioeconomic reality and with the national vision of what represents the general interest, part of the democratically produced set of regulations. It does propose, however, to establish the principle that not all properties deserve protection by the inter-American system, since it certainly excludes superfluous, sumptuary, or luxury properties, that is, properties that go beyond people's basic needs that guarantee the existential minimum and provide a dignified life.

Roberto F. Caldas

Judge

Pablo Saavedra Alessandri

Registrar

**PARTIALLY DISSENTING OPINION OF
JUDGE ALBERTO PEREZ PEREZ
ADVISORY OPINION OC-22/16
REQUESTED BY THE REPUBLIC OF PANAMA**

1. I have voted against several of the operative paragraphs of this advisory opinion and the underlying rationale, for the reasons that I will now explain.

I. GENERAL CONSIDERATIONS

2. The main objection to this advisory opinion approved by a majority of the Court is that it is not focused from the point of view of international human rights law (as all its pronouncements should be), but rather from the point of view of traditional international law. The norms of international origin the content of which consists of the consecration and protection of fundamental human rights differ from the traditional norms of international law in many aspects, and in particular with regard to their interpretation, governed by the *pro persona* principle that, in the inter-American system, is affirmed and developed in article 29 of the American Convention on Human Rights.

3. Had it been focused as part of international human rights law, a few words would have sufficed to answer the first and main question posed by Panama, stating, concisely, clearly and forcefully, that when Article 1(2) of the Convention says that "*For the purposes of this Convention, "person" means every human being*" means precisely and exactly that: that a person is every human being, and that "Every person" – that is, every human being – has the right to recognition as a person before the law", as stated in article 3, entitled "Right to Juridical Personality".

4. As a logical consequence of that concise, clear and forceful initial statement, the answer to the following questions from Panama should also have been formulated in a concise, clear and forceful manner (see *infra*, chapter II). Unfortunately, the majority of the Court opted for a general approach that, despite its length, far from covered all the points that should have been included in such an approach (see *infra*, chapter III).

II. THE SPECIFIC QUESTIONS OF PANAMA AND THE ANSWER THAT SHOULD BE GIVEN

5. The specific queries formulated by Panama were very clear:

1. Does [a]rticle 1, [p]aragraph [t]wo, of the American Convention on Human Rights, restrict the inter-American protection of human rights to natural persons and exclude legal entities from the scope of protection of the Convention?
2. Can [a]rticle 1(2) of the Convention also protect the rights of legal entities such as cooperatives, unions, associations, companies, as long as they are made up of natural persons associated with these entities?
3. Can legal entities resort to proceedings in the domestic jurisdiction and exhaust the remedies of domestic jurisdiction to defend the rights of natural persons who own such legal entities?
4. What human rights can be recognized for legal or collective (non-governmental) entities in the framework of the American Declaration on the Rights and Duties of Man, the American Convention on Human Rights and its Protocols or supplementary international instruments?
5. Within the framework of the American Convention, in addition to individuals, do legal entities made up of human beings have the rights to freedom of association in Article 16, to privacy in Article 11, to freedom of expression of

[a]rticle 13, to property of [a]rticle 21, to a fair trial, to due process and to the protection of their rights of [a]rticles 8 and 25, to equality and non-discrimination of [a]rticles 1 and 24, all of the American Convention?

6. Can a company or corporation, cooperative, professional partnership or commercial company, a union (legal entity), a media outlet (legal entity), an indigenous organization (legal entity) exhaust domestic remedies and go to the Inter-American Commission on Human Rights on behalf of its members (associated natural persons or owners of the business or partnership) in defense of their rights and/or of its members, or must each member or partner do so in their capacity as a physical person?

7. If a legal entity goes to the domestic jurisdiction and exhausts its jurisdictional procedures in defense of its rights and the rights of its members (associated individuals or partners thereof), can its members or associates go directly to the international jurisdiction of the Inter-American Commission in the defense of their rights as affected individuals?

8. Within the framework of the American Convention on Human Rights, do individuals have to exhaust domestic remedies themselves to resort to the Inter-American Commission on Human Rights to defend their human rights, or can the legal entities in which they participate do so?

6. The answer to the *first specific query* –which is the fundamental query– is given by the absolutely clear and unequivocal text of article 1(2). As already expressed in paragraph 3 of this opinion, “when Article 1(2) of the Convention says that “*For the purposes of this Convention, “person” means every human being*” means precisely and exactly that: that a person is every human being, and that “Every person”– that is, every human being – has the right to recognition as a person before the law”, as stated in article 3, entitled “Right to Recognition of Legal Personality”. Therefore, the rights that the American Convention recognizes for people¹ are the rights of human beings and not of any other type, class or nature of entity.

7. The system of protection established by the Convention only includes human beings, because that is how it has been conceived. This does not exclude the recognition of rights to other entities in other systems, international or domestic (Article 29 of the American Convention). But it will not be about fundamental human rights, which can only belong to the human person, but about other kinds of rights.

8. The response to *specific query 2* should have been overwhelmingly negative: Article 1(2) of the Convention does not protect the rights of legal entities such as cooperatives, unions, associations, companies, as long as they are made up of natural persons associated with those entities. The issue of protecting the rights of natural persons “associated with these entities” or members of them is different, which the Court has resolved in its case law in the sense that “although the figure of legal persons has not been expressly recognized by the American Convention, as in Protocol no. 1 to the European Convention on Human Rights, this does not restrict the possibility that under certain assumptions the individual can resort to the Inter-American System for the Protection of Human Rights to assert their fundamental rights, even when they are covered by a concept or legal fiction created by the same legal system. However, it is worth making a distinction for the purposes of admitting which situations may be analyzed by this Court, under the framework of the American Convention. In this sense, this Court has already

¹ See *infra*, in the text proposed by me for chapter V of the Advisory Opinion, which is fully transcribed in paragraph 20 of this opinion, paras. 15-17 (American Convention) and 22 (American Declaration of the Rights and Duties of Man).

analyzed the possible violation of the rights of individuals in their capacity as shareholders".²

9. The response to *specific query 3* should have been equally clear and concise. Legal entities may use all the procedures and remedies provided for in domestic law, but this does not in itself constitute a way of "exhausting the remedies of domestic jurisdiction in defence of the rights of the natural persons holding these legal entities." In cases in which an individual resorts to the Inter-American System for the Protection of Human Rights "to assert their fundamental rights, even when they are covered by a legal concept or fiction created by the same system of Law", it will be necessary to consider in each case if the domestic remedies thus filed were sufficient to meet the requirements of the Convention. In the *Case of Cantos v. Argentina*, the Court verified that "all the administrative and judicial remedies, except for a criminal complaint and an amparo filed in 1972, at the beginning of the facts of the complaint, were presented directly by 'own right and on behalf of their companies' by Mr. Cantos" and, therefore, concluded that "the alleged violation of Mr. Cantos' Convention rights" could be analyzed by the Court "in the corresponding merits stage".³

10. The response to *specific query 4* - "What human rights can be recognized for legal or collective (non-governmental) entities in the framework of the American Declaration on the Rights and Duties of Man, the American Convention on Human Rights and of its Protocols or supplementary international instruments?"- should also be concise, clear and forceful: None.

11. The response to *specific query 5* - "In the framework of the American Convention, in addition to natural persons, do legal entities composed of human beings have the rights to freedom of association in Article 16, to privacy of Article 11, to freedom of thought and expression of Article 13, to property of Article 21, to a fair trial and to judicial protection of rights of Articles 8 and 25, to equality and non-discrimination of Articles 1 and 24, all of the American Convention?"- should also have been clear and forceful. Legal entities do not have any of the rights referred to in this consultation, because they are not holders of any of the rights included in the American Convention's system for protection.

12. The response to specific query 6 - "Can a company or corporation, cooperative, professional partnership or commercial company, a union (legal entity), a media outlet (legal entity), an indigenous organization (legal entity) , in defense of their rights and/or their members, exhaust domestic remedies and go to the Inter-American Commission on Human Rights on behalf of their members (member individuals or owners of the company or society), or must each member or partner do so in their capacity as a natural person?"- should distinguish between the various situations raised, based on the general statement that legal entities are not holders of fundamental rights protected by the American Convention:

12. The response to *specific query 6* - "Can a company or corporation, cooperative, professional partnership or commercial company, a union (legal entity), a media outlet (legal entity), an indigenous organization (legal entity) , in defence of their rights and/or their members, exhaust domestic remedies and go to the Inter-American Commission on Human Rights on behalf of their members

² *Case of Cantos v. Argentina. Preliminary Exceptions.* Judgment of September 7, 2001. Series C No. 85, par. 29; *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs.* Judgment of February 6, 2001. Series C No. 74, par. 123, 125, 138 and 156.

³ *Cf. Case of Cantos v. Argentina, cited, par. 30.*

(member individuals or owners of the company or society), or must each member or partner do so in their capacity as a natural person?"— should distinguish between the various situations raised, based on the general statement that legal entities are not holders of fundamental rights protected by the American Convention:

a) A company or corporation, a cooperative, a partnership or commercial company or a media outlet (legal entity) may not exhaust the remedies of domestic jurisdiction and go to the Inter-American Commission on Human Rights on behalf of its members (individual physical members or owners of the company or partnership), rather each member or partner must do so in their capacity as natural person who, as such, is the holder of fundamental rights protected by the Convention.

b) The special cases of trade unions and indigenous or tribal communities (not "an indigenous organization (legal entity)") deserve separate treatment (see *infra*, chapters V and VI).

13. The response to *specific queries 7* – "If a legal entity in defence of its rights and the rights of its members (associated natural persons or partners thereof), goes to the domestic jurisdiction and exhausts its jurisdictional procedures, can its members or associates go directly before the international jurisdiction of the Inter-American Commission in defense of their rights as affected individuals?"— *and 8* – "Within the framework of the American Convention on Human Rights, do individuals have to exhaust domestic remedies themselves to resort to the Inter-American Commission on Human Rights to defend their human rights, or can the legal entities in which they participate do so?"— should have been based on the *pro persona* principle and follow the general guidelines of the response to the specific query 3.

III. PROBLEMS AND OMISSIONS RESULTING FROM THE APPROACH USED

14. Opting for the general approach, which nevertheless was not complete, led to a series of problems and omissions that would have been avoided by providing a concrete response to the specific queries from Panama.

15. An initial problem is that, in appearing to cover everything related to the topic, the Court in fact omitted to consider some fundamental aspects. In particular, it did not analyze the situation of the enormous number of legal entities created in Panama, on which it is not appropriate for the Court to issue a value judgment, but whose existence and whose offshore activities it cannot ignore. The general approach also led to trying to give a general definition of "legal entity" that did not take into account the definition given by the Civil Code of Panama itself: "A legal entity is a moral entity or *fictitious person*, of a political, public, religious, industrial or commercial nature, represented by a natural person or persons, capable of exercising rights and contracting obligations." (Art. 38, par. 3; italics added). Reality shows that there are many legal entities that do not have "members", but rather owners, frequently hidden, who serve as instruments to achieve results that they could not obtain acting individually and in an undisguised manner.

16. Another problem is that a concrete answer has not been given to the specific questions referring to the supposed fundamental rights of "associations, companies" and of "a company or corporation, cooperative, professional partnership or commercial company" or "media outlet" (legal entity"). This aspect has been addressed *supra*, par. 8 and 12.

17. The references to the domestic law of various countries do not take into account, among other things, the essential difference with the German Basic Law, whose Art. 19(3) provides that "Fundamental rights also apply to legal entities based in the country, insofar as they are applicable to them by their very nature."

18. Despite the general nature of the response to the specific queries made by Panama, only the rights of Latin American countries were taken into account, forgetting that – as rightly indicated in para. 19 of the advisory opinion – the scope of application of the advisory opinions, including the legitimacy to request them, includes all the member states of the OAS. A general consideration of the issue of the relationship between legal entities and fundamental rights cannot fail to address the peculiar interpretation that the Supreme Court of the United States of America has given to the word "person" used in the Fourteenth Amendment to its Constitution.⁴ The jurisprudence of the United States Supreme Court has interpreted that a legal entity, and in particular a *corporation* (approximately equivalent to a public limited company, and often used in the sense of company) also has the same fundamental rights as a natural person, and as part of its right to freedom of expression it can freely participate in electoral political campaigns, in particular through monetary contributions.⁵

IV. FAILED ATTEMPT TO SEEK CONSENSUS (CHAPTER V OF THE ADVISORY OPINION)

19. In an attempt to seek consensus, I prepared and presented a substitute text for Chapter V that was under consideration by the Court, in which I tried to include a formulation that would be acceptable to the other judges (insofar as it included several of the fundamental points of the text under consideration) but at the same time have the clarity, conciseness and forcefulness that in my opinion the response to the specific queries from Panama should have.

20. My proposed text was as follows:

"V.

ARTICLE 1(2) OF THE AMERICAN CONVENTION ONLY COVERS NATURAL OR PHYSICAL PERSONS

1. The first and main question formulated by the Government of Panama is the following:

Does Article 1, Paragraph Two, of the American Convention on Human Rights, restrict the inter-American protection of human rights to natural persons and exclude legal entities from the scope of protection of the Convention?

2. Article 1(2) of the American Convention provides the following:

"For the purposes of this Convention, person means every human being."

⁴ Paragraph 1 of the Fourteenth Amendment provides as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Emphasis added.)

⁵ See, for example, *Santa Clara County v. Southern Pacific Railroad Company*, 118 US 394 (1886) and (after a series of rulings since 1976 moving in the same direction) *Citizens United v. Federal Election Commission*, No. 08-205, 558 U.S. Doc. 310 (2010).

Consequently, there is no doubt that legal entities are not included in "the scope of protection of the Convention" and that "the inter-American protection of human rights" only includes physical or natural persons.

3. The provision is so clear that it would not seem necessary to expand on the different interpretive criteria provided for in articles 31⁶ and 32⁷ of the Vienna Convention on the Law of Treaties, which includes the general and customary rule of interpretation of international treaties.⁸

4. However, , as the purpose of advisory opinions is to cast as much clarity and certainty as possible on the interpretations contained therein, the Court will apply the general rule of interpretation of treaties (Art. 31(1) of the Vienna Convention), that imposes an analysis of the ordinary meaning of the terms used in Art. 1(2), interpreted in good faith, taking into account the object and purpose of the treaty and the context of the terms used, as well as the provisions of Art.31(4), according to which "A special meaning shall be given to a term if it is established that the parties so intended". Subsequently, the Court will use, where appropriate, the complementary means of interpretation established in Article 32 of the Vienna Convention, in particular, the preparatory works of the American Convention.

5. All this will confirm the statement made at the beginning of this chapter: there is no doubt that legal entities are not included in "the scope of protection of the Convention" and that "the inter-American protection of human rights" only includes physical or natural persons.

A. Ordinary meaning of the terms of article 1(2) and the special meaning attributed to them in the Convention

6. The ordinary meaning of the terms of Article 1(2) is crystal clear. The Court reiterates that it has already established that Article 1(2) of the Convention establishes that the rights recognized in said instrument accrue to persons, that is, to human beings.⁹ In particular, it should be noted that the American Convention did not leave open the interpretation of how the

⁶ Article 31. General rule of interpretation.

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2.The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

⁷ Article 32 *Supplementary means of interpretation* Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or

(b) leads to a result which is manifestly absurd or unreasonable.

⁸ Article 32 *Supplementary means of interpretation* Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.

⁹ Case of *Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, par. 45, and Case of *Granier et al. (Radio Caracas Television) v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C No. 293, par. 19.

term "person" should be understood, since Article 1(2) precisely seeks to establish a definition for it, which demonstrates the intention of the parties to give a special meaning to the term within the framework of the treaty, as established in article 31(4) of the Vienna Convention. In this regard, this Court has understood that the two terms of Article 1(2) of the Convention must be understood as synonyms.¹⁰

7. "Human being" is every individual of the human species. "Person" is every individual of the human species. Therefore, legal entities are not included in "the scope of protection of the Convention" and "the inter-American protection of human rights" only includes physical or natural persons. It is not necessary to transcribe the dictionary definitions of the Spanish language,¹¹ nor those of the languages of the other official texts of the American Convention.¹² They all coincide in the sense outlined.

8. This has been the interpretation of the Inter-American Court since the first case¹³ in which the question of whether legal entities could be protected in the inter-American system was raised. That conclusion, which will be confirmed in this advisory opinion, is perfectly consistent with the principle of good faith, and – as will be seen in the following paragraphs – is fully confirmed by the analysis of the context and the object and purpose of the Convention.¹⁴

B. Object and purpose of the treaty – teleological interpretation

9. The Court has indicated that in a teleological interpretation, the purpose of the norms involved is analyzed, for which it is relevant to analyze the object and purpose of the treaty itself and, if relevant, to analyze the purposes of the regional protection system.¹⁵

10. There can be no doubt that the object and purpose of the American Convention is the protection of human beings and their rights. Its Preamble already emphatically proclaims that its purpose is to "consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man"; recognizes "that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states;" and reiterates that, "in accordance with the Universal Declaration of Human Rights, the ideal of

¹⁰ Cf. *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2012 Series C No. 257, para. 219.* Article 1(2) has been analyzed by the Court in cases in which the violation of rights to the detriment of legal persons has been requested, which has been rejected by the Court because they have not been recognized as holders of enshrined rights. in the American Convention. Cf. *Case of Cantos v. Argentina. Preliminary Exceptions. Judgment of September 7, 2001. Series C No. 85, para. 29,* and *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 398.*

¹¹ <http://lema.rae.es/drae/?val=ser+humano>.

¹² English: Oxford University Dictionary, available at:

<http://www.oxforddictionaries.com/definition/english/human-being?q=human+being>;

Portuguese: "VOX" dictionary, "human";

French: Larousse Dictionary, available at

<http://www.larousse.fr/dictionnaires/francais/humain/40608?q=humain#40515>.

¹³ *Cantos v. Argentina, Preliminary Objections.* Judgment of September 7, 2001. Series C No. 85, par. 29.

¹⁴ Cf. *Proposal to Amend the Political Constitution of Costa Rica Related to Naturalization. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, par. 23.*

¹⁵ *Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 16, 2009. Series C No. 205, par. 59, and *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 28, 2012. Series C No. 257, par. 257.

free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights”.

11. For this reason, the Court has affirmed that the object and purpose of the American Convention is “the protection of the fundamental rights of human beings”,¹⁶ and that it was designed to protect the human rights of persons regardless of their nationality, against their State itself or to any other.¹⁷

12. As indicated, the object and purpose of the Convention is “the protection of the fundamental rights of human beings”, which shows that it was created with the intention of exclusively protecting those. The teleological interpretation of the norm confirms the conclusion reached taking into account the ordinary meaning of the terms, according to which legal entities are excluded from the protection granted by the American Convention. One of the fundamental principles regarding the interpretation of human rights norms is the *pro persona* principle, which imposes the most favorable interpretation for the effective enjoyment and exercise of fundamental rights and freedoms.

13. Similarly, the guidelines for interpretation contained in Article 29 of the Convention¹⁸ imply that “[n]o provision of said convention shall be interpreted as [...] restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party” or to “excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have”.

C. Context – systematic interpretation

14. According to Art. 31(2) of the Vienna Convention, context is essentially made up of the text of the treaty, “including its preamble and annexes”. According to Art. 31(2) of the Vienna Convention, the context further includes “any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty” and “any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty”; and according to Art. 31(3), “There shall be taken into account, together with the context” likewise “any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions”, “any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions”, and “any relevant rules of international law applicable in the

¹⁶ *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights*. Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, par. 29, and *Rights and guarantees of children in the context of migration and/or in need of international protection*. Advisory Opinion OC-21/14 of August 19, 2014. Series A No. 21, par. 53.

¹⁷ *Cf. The Effect of Reservations on the Entry into Force of the American Convention on Human Rights*. Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, par. 29.

¹⁸ Article 29. Restrictions Regarding Interpretation.

No provision of this Convention shall be interpreted as:

- a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;
- b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;
- c. precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or
- d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

relations between the parties." As there are no such relevant agreements, instruments, practices or norms, the Court will consider only the text of the treaty, including its preamble.

i) The text of the American Convention

15. Beginning with the text of the American Convention, practically in all the articles in which rights are enshrined, the subject to whom those rights are attributed is "every person", that is, every human being: Articles 1(1), 3, 4(1), 4(6), 5(1), 5(2), 7(1), 7(4), 7(5), 7(6), 8(1), 8(2) (twice), 10, 11(1), 11(3), 12(1), 13(1), 14(1), 16, 18, 20(1), 20(2), 21(1), 22(1), 22(2), 22(7), 24, 25(1) and 25(2). Other articles attribute the rights to "every person" (expression equivalent to the previous one): articles 16(1) and 24. Other articles refer to all the people included in a category: "every child" (article 19), "all the citizens" (art. 23(1)), "the man and the woman" (art. 17(2)), "the contracting parties" (art. 17(3)), "the spouses" (art. 17(4)).

16. The same occurs with the articles that establish prohibitive precepts for the protection of certain fundamental rights, in which the protected subject is designated as "no one", which according to the DRAE means "no person", or directly as "no person": articles 5(2), 7(2), 7(3), 7(7), 9, 11(2), 12(2), 20(3), 21(2), 22(5).

17. In none of the aforementioned articles is any expression used that grants legal entities the ownership of any of the rights enshrined in them, or that infers a deviation with respect to the provisions of Article 1(2) of the Convention.

ii) The Inter-American System

17. Similarly, in accordance with the systematic criterion, the norms should be interpreted as part of a whole, the meaning and scope of which must be defined based on the legal system to which they belong.¹⁹ The Court has considered that when interpreting a treaty, the system within which it is in keeping must be taken into account, which in this case is constituted by the inter-American system for the protection of human rights.

19. Within this system, the American Declaration of the Rights and Duties of Man occupies a prominent place, the analysis of which makes it possible to verify whether the interpretation given to a specific norm or term is consistent with the meaning of the remaining provisions.

20. The American Declaration begins with the following considering clauses:

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 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;

The American states have on repeated occasions recognized that the essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality;

The international protection of the rights of man should be the principal guide of an evolving American law;

¹⁹ Cf. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205, par. 43, and *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 28, 2012 Series C No. 257, par. 191.

The affirmation of essential human rights by the American states together with the guarantees given by the internal regimes of the states establish the initial system of protection considered by the American states as being suited to the present social and juridical conditions, not without a recognition on their part that they should increasingly strengthen that system in the international field as conditions become more favorable

21. The transcribed expressions show that the American Declaration was proclaimed with the intention of centering the protection and entitlement of rights in the human being. The foregoing is inferred from the constant reference to words such as "man"²⁰ or "human person", which denote that the figure of legal persons was not being taken into account when drafting said instruments. Regarding the American Declaration, the Inter-American Council of Jurisconsults on the Bogotá Conference stated that "[i]t is evident that the Bogotá Declaration does not create a contractual legal obligation, but so is the fact that it indicates a well-defined orientation in the meaning of the international protection of the fundamental rights of the human person".²¹

22. The text of the American Declaration is analogous to that of the later American Convention in this regard. The holder of protection is "every human being" (art. I), every man (art. XVIII), "every person" (arts. III, IV, V, VI, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXVII), "all persons" (art. II), "all pregnant women" (art. VII), "every person who works" (art. XIV), "every person having legal capacity" (art. XX), "every individual who has been deprived of his liberty" (art. XXV), "nobody" (art. XXV), "every accused" or "every person accused of a crime" (XXVI). The same occurs with the articles related to duties, which attribute them to "every person" (arts. XXIX, XXX, XXXI, XXXII, XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII).

23. None of the aforementioned articles uses any expression that grants legal entities the ownership of any of the rights enshrined in them or the duties that they impose, nor that infers a departure from the principle that, for the purposes of the inter-American system, person is every human being.

iii) Other systems for the protection of human rights and comparative law

24. This Court has considered it useful, on some occasions,²² to analyze other systems for the protection of human rights in order to verify their similarities or differences with the inter-American system to help determine the scope or meaning that has been given to a similar norm or to detect the particularities of the treaty. In the present case, the Court will briefly refer to the European, African and universal systems, and will also refer to the domestic legal norms on the matter.

²⁰ In this regard, the Court emphasizes that the use of the word "man" in the American Declaration and in the American Convention must be understood as equivalent to "human being", according to the first meaning of the Dictionary of the Royal Spanish Academy (DRAE) ("A rational being, male or female").

²¹ Inter-American Juridical Committee, Recommendations and Reports 1949-1953 (1955), p. 107.

²² For example, in the advisory opinion on the Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, the Court compared article 13 of the American Convention, referring to the right to freedom of expression, with the analogous articles of the European Convention (article 10) and the International Covenant on Civil and Political Rights (article 19). The Compulsory Association of Journalists (Arts. 13 and 29 American Convention on Human Rights). *Advisory Opinion OC-5/85* of November 13, 1985. Series A No. 5, par. 45 to 50. Similarly, in the *Atala Riffo* case, the Court analyzed the difference between the scope of Articles 11 and 17 of the American Convention and Article 8 of the European Convention. *Case of Atala Riffo and daughters v. Chile. Merits, Reparations and Costs*. Judgment of February 24, 2012. Series C No. 239, par. 175.

a) *European system*

25. The European Convention uses the expression "every person" in its articles but does not contain a definition of the term "person", which is a substantial difference with the American Convention. In its preamble there are also no expressions analogous to those contained in the preamble of the American Convention or in the preamble to the American Declaration, since it only highlights the value of human rights as a means to ensure justice and peace in Europe.²³ Furthermore, in article 1 of Additional Protocol No. 1, relative to the protection of property, it is established that "Every natural person or legal entity has the right to respect for their property." In turn, article 34 of the European Convention, relative to individual claims (revised text under Protocol No. 11), provides that "The Court may hear a claim filed by any natural person, non-governmental organization or group of individuals who consider themselves to be victims of a violation".

26. Based on the provisions indicated, and extending the scope of its application, the European Court has heard lawsuits from various types of legal entities who alleged that they had been victims of the violation of one of their rights (and not only the right to property).

27. However, this European case law is not applicable to the system established by the American Convention, due to the substantial differences that exist between the relevant provisions of both systems. It has already been indicated that in the European system there is no standard equivalent to art. 1(2) of the American Convention; and article 34 of the European Convention, which might superficially appear analogous to Art. 44 of the American Convention, differs substantially from this because it requires that the person who files a petition be a person "who claims to be the victim of a violation by one of the contracting parties of the rights recognized in the Convention."

28. This is the point of substantial difference between the two protection systems, since in the inter-American system a distinction has been made between the petitioner and the alleged victim. Article 44 of the Convention refers exclusively to legal standing, but not to the status of victim or presumed victim. The Court has determined that "it is clear that Article 44 of the Convention allows any group of people to make claims or complaints for violation of the rights enshrined in the Convention. This broad power of claim is a characteristic feature of the [inter-American] human rights protection system."²⁴ Consequently, from the reference made in Article 44 to "Any person or group of persons or non-governmental entity" it is not possible to infer that legal entities may be alleged victims, but rather refers to their legal standing, in the sense that non-governmental entities or groups of individuals are empowered to present individual petitions before the Inter-American Commission on behalf of alleged victims, even in cases where they do not have their consent.²⁵

²³ The Preamble of the Convention establishes the following: "Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend; Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration".

²⁴ *Castillo Petruzzi et al. v. Peru. Preliminary Exceptions*. Judgment of September 4, 1998. Series C No.41, par. 77.

²⁵ In this regard, the Court, in the case of *Acevedo Jaramillo*, stated that "the complaint can be filed by a person other than the alleged victim, and may be filed by 'a group of people'." *Case of Acevedo Jaramillo et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 7, 2006. Series C No. 144, par. 137. Similarly, in the *Saramaka* case, it indicated that "[a]rticle

b) *African system*

29. Regarding the African Charter on Human and Peoples' Rights (hereinafter "the African Charter"), the Court observes that it does not contain a definition of the term "person". Nor was an official interpretation made by its judicial bodies, on whether the term "peoples"²⁶ referred to in the Charter could come to cover legal entities. Therefore, it is not possible to determine conclusively whether legal entities in the African system are the holders of rights and can be directly considered victims.

30. As in the inter-American system, the African Charter gives legal entities the legitimacy to submit communications to the African Commission alleging violations of the human rights contained in the African Charter on behalf of third parties. It is, then, an *actio popularis* approach, according to which the author of the communication is not required to know the victim of the alleged violation or to have any relationship with them, as long as the communication complies with the formal requirements required by article 56 of the African Charter.

30. As in the inter-American system, the African Charter gives legal persons the legitimacy to submit communications to the African Commission alleging violations of the human rights contained in the African Charter²⁷ on behalf of third parties. It is, then, an *actio popularis* approach, according to which the author of the communication is not required to know the victim of the alleged violation or to have any relationship with them,²⁸ as long as the communication complies with the formal requirements required by article 56 of the African Charter.

c) *Universal system*

31. Article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights (hereinafter the "ICCPR") provides as follows: "A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant." Legal entities are not included. The Human Rights Committee (hereinafter "HRC" or "the Committee") has established that, in accordance with the aforementioned provision, only individuals may submit communications to said body.²⁹ Furthermore, in the General Comment number 31 of the HRC it is established that "[t]he beneficiaries of the rights recognized by the Covenant are the individuals".³⁰ In several resolutions, the Human Rights Committee has reiterated that, "regardless of whether it

44 of the Convention allows any group of people to present claims or complaints of violations of the rights established in the Convention. This broad power to file a petition is a particular feature of the inter-American system for the protection of human rights. Any person or group of persons who are not the alleged victims may present a petition." Case of the Saramaka People vs. Surinam. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, par. 22..

²⁶ In this regard, the African Charter refers to various rights of "peoples" as right holders, for example the right to equality (article 19), to existence and self-determination (article 20); to freely dispose of their wealth and natural resources (article 21), to development (article 22); to peace and security (article 23) or to a satisfactory general environment favourable to their development (article 24).

²⁷ Section 4, Rule 93(1) of the Rules of Procedure of the African Commission, 2010. This rule says, where relevant: "A Communication submitted under Article 55 of the African Charter may be addressed to the Chairperson of the Commission through the Secretary by any natural or legal entity."

²⁸ African Commission on Human and Peoples' Rights, Case of Article 19 vs. The State of Eritrea, No. 275/03. Communication of May 30, 2007, par. 65.

²⁹ HRC, V.S. v. Belarus, No. 1749/2008. October 31, 2011, par. 7.3.

³⁰ HRC, General Comment No. 31. May 26, 2004, par. 9.

appears that the allegations are related to issues of the Covenant",³¹ legal entities do not have active standing before said body and, in addition, the person presenting the communication must also be the victim of the alleged rights violation.³²

32. The situation is different in light of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which makes express reference to rights that would be held by "groups of persons or institutions".³³ In development of the above, the Committee for the Elimination of Racial Discrimination has established that legal entities can report violations that affect their rights, as long as they have been harmed and can be considered victims of the case.³⁴ In this sense, the Committee for the Elimination of Racial Discrimination has recognized the legitimacy of legal entities to present complaints of violations of their own rights and also of violations of the rights of their members, shareholders and owners, both individually and collectively.³⁵

33. The possibility of submitting communications in which any person who is under the jurisdiction of a State Party to the International Covenant on Economic, Social and Cultural Rights (hereinafter "ICESCR") alleges to be a victim of a violation of any of the ESC rights set forth in the Covenant was not provided for in the original text of the Covenant. It has only existed since the entry into force of its Optional Protocol, which took place on May 5, 2013, and very few States have ratified it. Therefore, there is not yet a practice that is relevant to this advisory opinion. According to Art. 2, "Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by that State Party". Neither in the Covenant nor in the Optional Protocol is there a provision analogous to Art. 1(2) of the American Convention. There are also no provisions granting rights to legal entities.

34. Nor are there any such provisions in the Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter "CEDAW"). Article 2 of the CEDAW Optional Protocol also provides for the possibility of submitting communications in terms identical to those mentioned in the previous paragraph, that is, by persons or groups of persons who claim to be victims. To date, no communications from legal entities have been submitted to the Committee on the Elimination of Discrimination Against Women.

d) Conclusion on international courts and organizations

35. The Court notes that *rights are only recognized for legal entities in the systems in which this is expressly established*: the European system (*supra*, par. 25 to 28) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (*supra*, para. 32). *The American*

³¹ HRC, *A newspaper publishing Company Vs. Trinidad y Tobago*, No. 360/1989. July 14, 1989, par. 3.2; *A publication Company and A printing Company Vs. Trinidad y Tobago*, No. 361/1989. July 14, 1989; *J.J.R.T. and the W.G. Party. v. Canada*, No. 104/1981. April 6, 1983.

³² HRC, *A Group of Association For the Defence of The Rights of Disabled and Handicapped Persons in Italy Vs. Italy*, No. 163/1984. April 10, 1984, par. 6.2.

³³ States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination *against persons, groups of persons or institutions* and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation". (italics added.)

³⁴ CERD, *The Documentation and Advisory Centre on Racial Discrimination (DACRD) Vs. Denmark*, No. 28/2003. Declared inadmissible on August 26, 2003, and CERD, *Case of the Jewish Community of Oslo et al. v. Norway*, No. 30/2003. August 15, 2005, par. 7.4.

³⁵ CERD, *TBB-Turkish Union in Berlin/Brandenburg v. Germany*, No. 48/2010. February 26, 2013, par. 11.2 and 11.3.

Convention does not have any analogous text, and instead it is the only human rights treaty that contains a provision such as Art. 1(2).

iv) Recognition of rights granted to legal entities in domestic law

36. In the domestic law of numerous countries that have accepted the jurisdiction of the Court, legal entities are recognized as having fundamental rights which may coincide with those enshrined in the American Convention. According to the information analyzed by this Court, the rights that are commonly³⁶ recognized for legal entities are those of property,³⁷ freedom of expression,³⁸ petition³⁹ and association.⁴⁰ These rights are not always guaranteed for all types of legal entities, given that some of those mentioned are aimed at protecting only legal entities of certain types such as unions,⁴¹ political parties,⁴² indigenous peoples,⁴³ Afro-descendant communities,⁴⁴ or institutions or specific groups.⁴⁵ [*I would prefer to delete*

³⁶ Other rights that the Court found recognized for legal entities in the region are, *inter alia*: judicial guarantees, due process, legality, hearing, legal certainty, public information, meeting, inviolability of correspondence and other forms of private communication, to the inviolability of the home, to request the rectification, updating, inclusion or deletion of related personal data, to personality, to the free development of personality, to the freedom of education, freedom of religion or belief, freedom of contract, freedom of work, freedom of business, trade and industry, free competition, founding of media outlets, founding educational centers, equality, to good name, to honor, and to habeas data..

³⁷ In this regard see: article 16 Constitution of Barbados; articles 14 and 56 of the Bolivian Constitution; Judgment No. T-396/93 September 16, 1993 of the Constitutional Court of Colombia; Judgment: 00128 File: 98-000128-0004-CI Date: 12/16/1998 Issued by: First Chamber of the Supreme Court of Costa Rica; article 2 of the Constitution and Constitutional Chamber of the Supreme Court of Justice, Amparo Process 948-2008, judgment of March 9, 2011 of El Salvador; article 39 of the Constitution of Guatemala; article 55 of the Constitution of Haiti; Supreme Court of Justice of the Nation of Mexico Contradiction of Thesis 360/2013, Date of resolution: held on 04/21/2014; articles 103 and 14 of the Nicaraguan Constitution; File No. 4972-2006-pa/tc, La libertad, Corporación Meier S.A.C. and Persolar S.A.C. of the Constitutional Court of Peru; article 47 of the Constitution of Panama, and article 34 of the Constitution of Suriname; Constitutional Court of the Dominican Republic, Judgment TC/0242/13. File no. TC-05-2012-0143, regarding the review appeal in amparo matters filed by Residencial La Esmeralda, against Judgment no. 192-2012, issued by the First Chamber of the Superior Administrative Court, October 26, 2012
<http://www.tribunalconstitucional.gob.do/sites/default/files/documentos/Sentencia%20TC%200242-13%20C.pdf>.

³⁸ In this regard, see: article 35 of the Constitution of Guatemala; Judgment No. T-396/93 September 16, 1993 of the Constitutional Court of Colombia; File No. 4972-2006-pa/tc, La libertad, Corporación Meier S.A.C. and Persolar S.A.C. of the Constitutional Court of Peru, and article 26 of the Constitution of Paraguay.

³⁹ Judgment No. T-396/93 of September 16, 1993 of the Constitutional Court of Colombia, Constitutional Chamber of the Supreme Court of Justice of El Salvador, Amparo proceeding 103-2006, judgment of November 7, 2008; article 80 of the Constitution of Honduras; Supreme Court of Justice of the Nation of Mexico Contradiction of Thesis 360/2013, Date of resolution: held on 04/21/2014, File No. 4972-2006-pa/tc, La libertad, Corporación Meier S.A.C. and Persolar S.A.C. of the Constitutional Court of Peru; article 41 of the Constitution of Panama, and article 40 of the Constitution of Paraguay.

⁴⁰ Article 34 of the Constitution of Guatemala; Judgment No. T-396/93 September 16, 1993 of the Constitutional Court of Colombia; Judgment: 15060 File: 08-007986-0007-CO Date: 09/08/2010 Issued by: Constitutional Chamber of the Supreme Court of Costa Rica; Constitutional Chamber of the Supreme Court of Justice of El Salvador, Constitutional Process 23-R-96, Ramírez and Marcelino v. Municipal Council of San Juan Opico, judgment of October 8, 1998; article 31 of the Constitution of Haiti; Supreme Court of Justice of the Nation of Mexico Contradiction of Thesis 360/2013, Date of resolution: held on 04/21/2014, and File No. 4972-2006-pa/tc, La libertad, Corporación Meier S.A.C. and Persolar S.A.C. of the Constitutional Court of Peru.

⁴¹ Bolivia, Brazil, Honduras, Nicaragua, Panamá, Surinam.

⁴² Argentina, Brazil, Colombia, Haiti, Honduras, Panamá

⁴³ Bolivia, Brazil, Colombia, Nicaragua, Panamá, Paraguay

⁴⁴ Bolivia, Nicaragua

⁴⁵ In Peru: universities, higher institutions, and other educational centers. In Chile: churches, confessions and religious institutions. In Nicaragua: private religious-based educational centers, as well as universities and higher technical education centers; social media and regarding certain imports and prohibition of prior censorship; similarly, in Nicaragua the right is granted to organizations of "rural farmers and other productive sectors" to participate through their own organizations in defining agrarian transformation policies. In Panama, rights are recognized to the Official University of Panama.

most of the footnotes, given that this internal recognition is not relevant to the interpretation of the American Convention]

37. The Court also notes that in a large part of the countries in the region, legal entities have the ability to file an action for amparo or similar remedies in defence of the rights that are recognized to them.⁴⁶

38. However, the domestic law recognition of certain rights of legal entities, or of some of them, is not decisive for the interpretation of the American Convention. The position that the States have adopted in their domestic law does not enable them to modify the meaning and scope of Article 1(2) of the American Convention.

39. Additionally, this Court observes that three of the six States that presented written observations – Argentina,⁴⁷ Colombia⁴⁸ and Guatemala⁴⁹ emphatically stated their position, according to which Article 1(2) of the Convention does not confer ownership of rights to the legal entities. In addition, Mexico⁵⁰ joined this position during its participation in the public hearing of this request. These four States recognize rights to legal entities in their domestic system.

D. Additional means of interpretation

40. According to article 32 of the Vienna Convention, the supplementary means of interpretation, especially the preparatory works of the treaty, are able to be used to confirm, in particular, the meaning resulting from the application of Article 31, or to determine the meaning when the interpretation given in accordance with Article 31 “leaves the meaning ambiguous or obscure” or “leads to a manifestly absurd or unreasonable result”. In this case there is no ambiguity or obscurity or a manifestly absurd or unreasonable result, so that the use of the preparatory work is aimed at confirming the interpretation based on the ordinary meaning of the terms and the analysis of the context and the object and purpose of the American Convention.

41. And indeed, the examination of the brief preparatory works confirms the sense in which Article 1(2) of the Convention has been interpreted, given that the terms “person” and “human being” were used in them without the intention of differentiating between these two expressions: “a person is every human being”. The preparatory work shows that the text of paragraph 2 of article 1 was proposed from the beginning (with the only difference that it was then paragraph 3, since paragraph 2 was a text analogous to the

⁴⁶ Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico, Peru, Paraguay, and Uruguay.

⁴⁷ Argentina stated that “article 1 (2) excludes any possibility for a legal entity to appear as a victim before the protection bodies of the Inter-American System. It is a provision that has been conceived with the clear aim of restricting access to the System exclusively to natural persons” Written observations of the Argentine State (merits file, folio 1918).

⁴⁸ Colombia stated that “in light of current international law for the American region, the idea of granting human rights to legal entities derived from the international instruments that make up the IAHS is not admissible because it is contrary to the legal precepts that govern the System itself.” Written observations of the Colombian State (merits file, folio 1863).

⁴⁹ Guatemala indicated that “in no way can human rights be recognized for legal or collective entities within the framework of the American Declaration on the Rights and Duties of Man, the American Convention [...] and its Protocols or complementary international instruments.” Written observations of the Guatemalan State (merits file, folio 1538).

⁵⁰ Mexico indicated that “article 1(2) [...] indicates that for the purposes of the American Convention, a person is every human being, what is literally expressed in article 1(2) has effects that go far beyond the exercise of interpretation, since it constitutes an express manifestation of the will of the signatory parties to the American Convention to define the term person, it could solely and exclusively mean every human being.” Oral observations of the Mexican State in the public hearing of this advisory opinion.

current article 2) and that there was only "a brief exchange of views", after which it was "approved unanimously".

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E. Final conclusion

42. *The application of the criteria and means of interpretation provided for in the Vienna Convention has confirmed the interpretation of Article 1(2) of the American Convention according to which legal entities are not included in "the scope of protection of the Convention" and "the inter-American protection of human rights" only includes physical or natural persons (supra, para. 2). Legal entities cannot be considered as presumed victims in the context of contentious proceedings before the inter-American system.*

* * *

⁵¹ *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 28, 2012 Series C No. 257, para. 219..

⁵² The preparatory work contains the following: "The PRESIDENT [used] for consideration paragraph 3 of article 1, which, after a brief exchange of opinions, was approved unanimously, as follows: 3. For the purposes of this Convention, a person is every human being". Convention Minutes of the second session of Commission I, Doc. 36, November 11, 1969, p. 157.

21. The aforementioned proposal was not considered by the Court. Despite the oral reasoning that I gave regarding its relevance and the advisability of the advisory opinions being approved without dissenting votes, the majority of the Court understood that no more time could be devoted to examining the draft advisory opinion, even though it resolved to end our sessions a day earlier than planned. During the six years of my term as a judge of the Inter-American Court, I had never found myself faced with a situation like this. Whenever opposing positions were formulated, the necessary time was devoted to arguing one way or the other, and either a consensus solution was reached, or a reasoned decision was adopted by majority in one direction and the judges who held diverging opinions could express them in their opinions, if they so wished. A majority decision was never adopted based solely on the allegation of lack of time and not on the reasoned option in favor of one of the opposing arguments.

V. AN OPINION CANNOT BE GIVEN ON TRADE UNIONS WITHOUT TAKING THE ILO INTO ACCOUNT

22. The advisory opinion makes an interpretation of the provisions of the Protocol of San Salvador regarding trade unions and trade union rights. It establishes, in point 4 of its operative part, that "Article 8(1)(a) of the Protocol of San Salvador grants ownership of rights to unions, federations and confederations, which allows them to appear before the inter-American system in defence of their own rights within the framework of the provisions of said article, in the terms established in paragraphs 85 and 105 of this Advisory Opinion."

23. Paragraph 85 recalls the date of approval of the Protocol of San Salvador and indicates how many States have ratified said Protocol to date. Similarly, it transcribes Article 8(1)(a), which provides: "the right of workers to organize unions and to join the union of their choice, for the protection and promotion of their interests. As a projection of this right, the States Parties shall allow trade unions to form national federations and confederations and associate with existing ones, as well as form international trade union organizations and associate with the one of their choice. The States Parties shall also allow trade unions, federations and confederations to function freely".

24. Paragraph 105 reads as follows: "By virtue of the foregoing, the Court has concluded that trade unions, federations, and confederations are entitled to the rights established in Article 8(1)(a) of the Protocol, which allows them to appear before the inter-American system in defence of their rights. However, at this point, the Court considers it relevant to recall that, based on the provisions of Article 44 of the American Convention, unions, federations, and confederations legally recognized in one or more States Parties to the Convention, whether or not they are party of the Protocol of San Salvador, may file individual petitions before the Inter-American Commission on behalf of their members, in the event of an alleged violation of the rights of their members by a State Party to the American Convention."

25. None of the indicated paragraphs contains a true justification for operative paragraph 4. It is reckless to venture to give an interpretation of provisions that the Court has not had the opportunity to consider up to now in the exercise of its contentious jurisdiction. Furthermore, since it is an issue on which the international organization with specific competence in the matter is the International Labor Organization (ILO), the position of said organization should have been examined and stated. None of that was done. Worse yet, ILO Convention No. 87 on

Freedom of Association and Protection of the Right to Organize was cited, without taking into account that – as I noted in the deliberations on this matter – said Convention does not recognize the legal personality of unions and federations or confederations of unions, but in its article 7 provides that "The acquisition of legal personality by workers' and employers' organizations, their federations and confederations, cannot be subject to conditions whose nature limits the application of the provisions of Articles 2, 3 and 4 of this Agreement". It was also not accepted to consider whether legal status in the traditional sense is necessary for the exercise of workers' trade union rights, nor the distinction between trade union or trade union status (which recognizes the union that is the most representative in its territorial and personal area of action) and legal status (which may or may not have all existing trade unions in the same branch of activity). This distinction is clearly made, for example, in Argentine law.⁶

VI. THE CASE OF INDIGENOUS COMMUNITIES

26. The rich and innovative case law of the Inter-American Court in matters of indigenous and tribal communities, and in particular the recognition of the right to collective ownership of ancestral land, can be interpreted as a recognition of the fundamental rights of the human beings that make up these communities, and not as a fundamental right of the communities themselves. Although some recent judgments seem to lean in the second direction, it does not seem to me that it is a case law criterion specifically founded and definitively consolidated to include in an advisory opinion. This is so, in particular, given that Panama's specific consultations do not refer to indigenous communities, but to "an indigenous organization (legal entity)", and only in relation to the exhaustion of domestic remedies "on behalf of its members".

VII. CONCLUSIONS

27. The reasons set out at length in the foregoing text justify the negative vote that I cast with respect to several of the operative points. On the other hand, I voted in favor of operative paragraph 1, despite disagreeing with the reasoning contained in paragraphs 37 to 70, because the debate achieved a text with the necessary clarity, conciseness and forcefulness according to the reasoning set forth in this vote.

⁶ Law No. 23,551, approved on March 23, 1988, and enacted on April 14, 1988. Article 14 bis of the Constitution of the Republic provides, in the relevant part, the following:

"Work in its various forms will enjoy the protection of the laws, which will ensure the worker: [...] free and democratic trade union organization, recognized by simple registration in a special registry. Unions have the guarantee: to enter into collective labor agreements; resort to conciliation and arbitration; the right to strike. The union representatives will enjoy the necessary guarantees for the fulfillment of their union management and those related to the stability of their employment."

Alberto Pérez Pérez

Judge

Pablo Saavedra Alessandri

Registrar