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THE ROLE OF ENVIRONMENTAL JUSTICE IN THE INTER-AMERICAN COURT OF HUMAN RIGHTS

El papel de la justicia ambiental en la Corte Interamericana de Derechos Humanos

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Resumen

La Corte Interamericana de Derechos Humanos ha contribuido de manera significativa al desarrollo de la justicia ambiental a través de su jurisprudencia, con un desempeño destacado en materia de justicia procedimental, avances moderados en justicia restaurativa y una atención limitada a la justicia distributiva. La justicia procedimental —que comprende el acceso a la información ambiental, la participación pública y los recursos judiciales— se afirma con solidez en asuntos como *Pueblo Indígena Kichwa de Sarayaku vs. Ecuador* y en la Opinión Consultiva OC-23/17, garantizando procesos de decisión transparentes e inclusivos, en particular respecto de los pueblos indígenas. La justicia restaurativa se aprecia en decisiones como *Sawhoyamaya vs. Paraguay* y *Lhaka Honhat vs. Argentina*, en las que las reparaciones colectivas —incluida la restitución de tierras y medidas culturales— buscan reparar daños históricos y ecológicos, si bien su implementación suele enfrentar demoras. En cambio, la justicia distributiva permanece insuficientemente desarrollada, con escasa atención a la asignación equitativa de beneficios y cargas ambientales, como se observa en casos como *Pueblo Saramaka vs. Surinam*. La renuencia del Tribunal a

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abordar desigualdades estructurales limita su potencial transformador. El fortalecimiento de la ejecución de las decisiones, la integración del conocimiento indígena y el desarrollo de un marco sólido de justicia distributiva resultan esenciales para un enfoque integral de la justicia ambiental.

Palabras clave

Corte Interamericana de Derechos Humanos; Opinión Consultiva OC-23/17; justicia distributiva; justicia procedimental; justicia restaurativa; justicia ambiental.

Abstract

The Inter-American Court of Human Rights has significantly advanced environmental justice through its jurisprudence, excelling in procedural justice, moderately succeeding in restorative justice, and showing limited engagement with distributive justice. Procedural justice, encompassing access to environmental information, public participation, and judicial remedies, is robustly upheld in cases like *Kichwa Indigenous People of Sarayaku v. Ecuador* and *Advisory Opinion OC-23/17*, ensuring transparent and inclusive decision-making, particularly for Indigenous communities. Restorative justice is evident in rulings such as *Sawhoyamaya v. Paraguay* and *Lhaka Honhat v. Argentina*, where collective reparations, including land restitution and cultural measures, address historical and ecological harms, though implementation often faces delays. However, distributive justice remains underdeveloped, with minimal focus on equitable allocation of environmental benefits and burdens, as seen in cases like *Saramaka People v. Suriname*. The Court's reluctance to address structural inequalities limits its transformative potential. Strengthening enforcement, integrating Indigenous knowledge, and developing a robust distributive justice framework are critical for a holistic environmental justice approach.

Keywords

The Inter-American Court of Human Rights; *Advisory Opinion OC-23/17*; distributive justice; Procedural justice; restorative justice; environmental justice;

Sumario: I. INTRODUCTION. II. ENVIRONMENTAL JUSTICE: RESTORATIVE, DISTRIBUTIVE, AND PROCEDURAL. 1. Distributive Justice. 2. Restorative Justice. 3. Procedural Justice. III. THE ROLE OF RESTORATIVE JUSTICE IN THE JURISPRUDENCE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS. 1. The Precautionary Principle. IV. THE ROLE OF PROCEDURAL JUSTICE IN THE JURISPRUDENCE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS. 1. Conducting Environmental and Social Impact Assessments (EISAs). 2. Freedom of Association, Access to Information, and the Public Interest. 3. Advisory Opinion OC-23/17. V. THE ROLE OF DISTRIBUTIVE JUSTICE IN THE JURISPRUDENCE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS. VI. DISCUSSION. VII. CONCLUSION AND RECOMMENDATIONS. VIII. REFERENCES.

I. INTRODUCTION

In recent decades, the Inter-American Court of Human Rights has emerged as a leading institution in shaping environmental jurisprudence within the human rights framework. Central to this development is the concept of environmental justice, which comprises procedural, restorative, and distributive dimensions (Attanasio, 2015: 826, 832, 847). This paper critically examines the Court's engagement with these three forms of justice, highlighting both its achievements and shortcomings. A close analysis of the Court's decisions reveals that procedural justice stands out as the most effectively implemented pillar. Through extensive case law and Advisory Opinions such as OC-23/17, the Court has robustly upheld rights to environmental information, participation, and access to justice—particularly for Indigenous and marginalized communities. These procedural guarantees ensure that affected populations can influence decision-making processes, challenge harmful projects, and seek meaningful remedies when their environmental rights are threatened. The Court's insistence on consultation processes, impact assessments, and legal accessibility reflects a strong commitment to procedural fairness (Solntsev y Otrachevskaya, 2022: 57).

In contrast, restorative justice, though not as uniformly applied, finds substantial recognition in the Court's decisions involving collective reparation and the acknowledgment of cultural and ecological harm. Judgments in cases such as *Awás Tingni* (Anaya y Grossman, 2002: 1-2) and *Plan de Sánchez Massacre* (Sanford, 2003: 84) illustrate a gradual shift toward transformative reparation that includes land restitution, community development, and symbolic recognition of historical injustices. The Court has also integrated precautionary principles into its analysis, requiring states to prevent environmental harm even in the face of scientific uncertainty

(Banda, 2018: 4). These developments signify an evolving commitment to addressing past harms and rebuilding damaged relationships between communities, ecosystems, and state actors.

However, distributive justice—the fair allocation of environmental burdens and benefits—remains notably underdeveloped in the Court’s jurisprudence. Despite its centrality to broader notions of justice, the Court has not systematically engaged with questions of structural inequality, environmental racism, or the disproportionate exposure of vulnerable groups to environmental risks (Ferrer Mac-Gregor, Morales Antoniazzi y Flores Pantoja, 2022). This neglect underscores a major gap in the Court’s otherwise progressive approach. A comprehensive theory of environmental justice cannot rely solely on procedural safeguards or reparation mechanisms without addressing the systemic distribution of environmental harm. Therefore, while the Inter-American Court has made commendable strides in advancing environmental justice through procedural and restorative avenues, its failure to meaningfully address distributive concerns limits the transformative potential of its environmental human rights jurisprudence.

II. ENVIRONMENTAL JUSTICE: RESTORATIVE, DISTRIBUTIVE, AND PROCEDURAL

1. *Distributive Justice*

Justice comprises several fundamental dimensions: the fairness of distribution (distributive justice), the integrity of processes (procedural justice), and the just response to wrongdoing (retributive justice). Distributive justice is generally seen as dominant over the other two, as it addresses the fundamental issue of fairness in the allocation of societal benefits and burdens (specifically for authorities and decision-makers), which has direct and tangible impacts on people’s lives. This type of justice is particularly important when dealing with systemic inequalities, such as disparities in income, healthcare, or environmental risks. Distributive justice aligns with broader social and economic goals, aiming to create a more equitable society, and provides a concrete framework for addressing inequalities (Heuer, Penrod y Kattan, 2007: 573). In contrast to procedural justice, which emphasizes the fairness of how decisions are made (Muzumdar, 2012: 4-5), or retributive justice, which deals with proportional punishment for crimes (Carlsmith y Darley, 2008, p. 194), distributive justice directly tackles disparities in material well-being and opportunities, making it central to discussions on social justice and policy reform (Muzumdar, 2012: 4-5).

2. *Restorative Justice*

Restorative environmental justice is a comprehensive framework that aims to remedy environmental harm and assist impacted communities through cooperative and transformative measures, prioritizing restoration over retribution and tackling the underlying factors of both ecological degradation and social inequity (Forsyth *et al.*, 2021: 18, 22). Restorative environmental justice aims to rebuild damaged ecological and social relationships by addressing the deeper roots of environmental harm, such as colonialism and systemic discrimination. It emphasizes inclusive dialogue, recognition of historical injustices, and collaborative efforts for compensation and ecological restoration (Palamar, 2008). Restorative environmental justice values the knowledge and leadership of affected communities—especially Indigenous and marginalized groups—by blending traditional and scientific approaches. It promotes holistic healing that includes not just environmental repair, but also psychological, cultural, and economic recovery (White, 2014: 43-45, 48). This approach focuses on restoring ecosystems, improving community health, creating sustainable economic opportunities, and reviving disrupted cultural practices. It includes actions like land restoration, community-led monitoring, health support, and education linking environmental and social recovery (Salm, Silva Neto y Pamplona, 2021). The approach requires a fundamental reimagining of human-environment relationships, moving from extractive and exploitative models to regenerative and reciprocal frameworks that recognize the interdependence of ecological and social systems. By centering the experiences and solutions of those most directly impacted by environmental harm, restorative environmental justice offers a transformative pathway toward more just, sustainable, and resilient communities (Salm, Silva Neto y Pamplona, 2021). This paradigm challenges traditional legal and economic structures by proposing that true environmental justice requires not just preventing future harm, but actively repairing past damages and creating conditions for holistic ecological and social regeneration.

3. *Procedural Justice*

Procedural justice guarantees equitable decision-making in environmental issues, highlighting the importance of involving affected communities—particularly marginalized groups—in the development of policies that affect their environment, health, and overall well-being (Ruano-Chamorro, Gurney y Cinner, 2022: 7). Key components of procedural justice include public participation, transparency, accountability, and access to information. For instance, environmental impact assessments, public hearings, and consultation processes are mechanisms that allow communities to express concerns

and influence decisions that may affect their surroundings (Irwin y Bruch, 2002: 10784).

Procedural justice addresses power imbalances by ensuring all stakeholders, especially vulnerable groups, can participate in environmental decision-making. It promotes equity, holds governments and corporations accountable, and ensures policies reflect the needs of those most affected, leading to more inclusive and effective environmental governance (Syme, Nancarrow y McCreddin, 1999). Without procedural justice, even well-intentioned environmental policies may be unable to address the requirements of all populations, particularly those who are most at risk.

III. THE ROLE OF RESTORATIVE JUSTICE IN THE JURISPRUDENCE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Restorative environmental justice focuses on healing rather than punishment, emphasizing the repair of harm through inclusive and participatory processes. It centers on restoring relationships among people and between humans and ecosystems. Within this framework, reparation is a key element, encompassing compensation for victims, ecosystem rehabilitation, and measures to prevent future harm (Restorative Environmental Justice, 2020: 1–2). In practice, restorative justice places affected communities—especially Indigenous groups—at the center of defining and receiving reparative measures for both material and non-material harms. This approach moves beyond punitive responses toward compensation, land restitution, and culturally grounded restoration. Reparation is viewed not just economically but relationally, aiming to heal damaged relationships between people and the environment. Rooted in Indigenous traditions, restorative justice emphasizes repairing harm, restoring balance, and reaffirming community participation in defining justice and healing (Haluska, 2023: 111 and 116). The paradigm of restorative environmental justice aligns with Indigenous conceptions of environmental rights, emphasizing collective stewardship and intergenerational responsibility. By centering reparation, it ensures that remedies reflect Indigenous values and empower communities. This approach recognizes that violations of Indigenous environmental rights require both material and non-material reparations to heal affected communities and prevent future harm. It also provides a framework for understanding how institutions like the Inter-American Court of Human Rights can view reparation as a core element of justice in environmental cases involving Indigenous peoples (Restorative Environmental Justice, 2020: 1–2).

The role of reparation as a symbol of restorative justice within the jurisprudence of the Inter-American Court will be demonstrated in the following sections.

In the judgments issued by the Inter-American Court of Human Rights during its first historical period (1993–2000), the Court emphasized that, in certain cases, reparation should not be limited solely to the victim's family but must also encompass the community or social group to which the victim belonged at the time of the violation—particularly when that group is an ethnic or Indigenous population. The legal foundation for this approach is two-fold: on the one hand, it is grounded in international law related to economic, social, and environmental rights; on the other hand, it relies on the provisions of International Labour Organization Convention No. 169 (adopted in 1989), which recognizes Indigenous peoples as particularly vulnerable legal subjects. Both of these sources have gained increasing importance in the Inter-American legal framework since the late twentieth century (Cassel, 1999: 555–556) (Doohan, 1994: 12–13).

The third influential factor is that, since the early 1990s, a significant number of the constitutions of States Parties to the American Convention on Human Rights have recognized Indigenous peoples as legal subjects. This development has strengthened the evolution of specific lines of jurisprudence concerning ethnic minorities (Medellín-Urquiaga, 2013: 406–410).

In this context, the case of *Aloeboetoe v. Suriname* (Inter-American Court of Human Rights, 1993) stands as one of the first precedents of collective reparations. These reparations included the establishment of a school and a health center, as well as investment in infrastructure to ensure access to drinking water and support for the economic activities of the Maroon community, whose members were recognized as victims of arbitrary detention and the killing of seven indigenous people by army personnel. In the reparations phase, on September 10, 1993, the Court decided to adopt a combination of monetary compensation (amounting to US \$453,102) and non-monetary reparative measures, which legally represented a groundbreaking step toward the recognition of the collective rights of indigenous and minority groups (Early Reparations Jurisprudence, n.d.) (Padilla, 1995) (Saramaka, last edited 2025).

The next step was taken in the judgment condemning the case of *Caloto Massacre v. Colombia* in 2000 (Inter-American Court of Human Rights, 2000), which held the Colombian government responsible for the massacre of two dozen indigenous leaders of the Nasa-Paez community in 1991. This event was a case of forced displacement involving state armed forces (police and army) and paramilitary groups affiliated with the landowners of the El Nilo farm (Inter-American Commission on Human Rights, 2000). This case was concluded ten years later, and the Inter-American Court of Human Rights found the Colombian government not only responsible for the events and for the impunity resulting from delays in investigating the massacre, but also recognized the direct impact of the incident on members of the

Nasa-Paez indigenous community. For the first time in this case, community members were recognized as entitled to reparations, and the Court ordered the allocation of 15,656,000 hectares of land by mutual agreement with the indigenous communities as part of the reparations (Silva, 2022: 194).

The Court has dealt with cases related to the harmful effects on human health caused by environmentally destructive activities. In the *Comunidad de La Oroya v. Perú* case, the IACHR issued precautionary measures on August 31, 2007, addressing the severe health risks posed by industrial pollution in La Oroya. The IACHR found that the inhabitants suffered from various health problems due to high levels of air, soil, and water pollution resulting from the metallurgical complex's activities. This case highlighted the negative effects of industrialization on community health and underscored the need for state intervention to protect vulnerable populations from environmental hazards (Precautionary Measures, 2007).

In the case of *Kichwa Indigenous People of Sarayaku v. Ecuador*, the Ecuadorian government had granted an oil exploration concession on part of the ancestral lands of the Sarayaku community, leading to deforestation. Due to repeated non-compliance with the Commission's measures, the Court issued an order to protect the lives and physical integrity of the community members (*Kichwa Indigenous People of Sarayaku v. Ecuador*, 2012) (Precautionary Measures, 2003).

In *Comunidad San Mateo de Huanchor v. Peru*, the InterAmerican Commission on Human Rights requested that the Court declare the rights of the community's members were violated due to severe environmental contamination affecting their homes and health, resulting from the State's disposal of hazardous mining waste. It therefore sought reparations and the restoration of their soil, groundwater, and the polluted environment (Access to Justice as a Guarantee of Economic, Social, and Cultural Rights, 2007).

In 2001, this development in jurisprudence took a step forward toward the pursuit of transformative social reparation, through the Inter-American Commission on Human Rights' precautionary measure titled: "Request to halt construction of the Belo Monte mega-dam, in favor of the Indigenous communities of the Xingu River basin in the state of Pará, Brazil." (Silva, 2022: 194) In this case, the Inter-American Commission declared that the Brazilian government was responsible for violating the physical integrity of members of the Indigenous communities living voluntarily in isolation in the Xingu River Basin; therefore, the construction of the dam was temporarily suspended (e Silva, 2021: 51, 56). The diversion of this river was part of the large-scale Belo Monte hydroelectric project, led by the company Iberdrola, which caused severe flooding over 516 square kilometers along the riverbanks. This led to a major humanitarian disaster, forcibly displacing more than 20,000 people (Wolff, n.d.; 5).

This case marked a shift from treating communities merely as collections of individual victims to recognizing them as legal entities with distinct rights. Initially, reparations were granted individually, along with measures to improve victims' living conditions. Later, the Inter-American Court of Human Rights advanced collective or social reparations, acknowledging communities as rights-holders alongside their individual members. In *Plan de Sánchez Massacre v. Guatemala* (2004), the Court held the Guatemalan State responsible for the killing of 268 members of the Maya community in Plan de Sánchez (Inter-American Court of Human Rights, 2004). The perpetrators of the massacre were members of the army, who carried out the operation and the displacement of survivors as part of the "scorched earth" strategy implemented prior to the construction of the Chixoy hydroelectric power plant. Guatemala's responsibility toward the affected population lay particularly in its failure to conduct any investigation to prevent the impunity of those responsible for the massacre (Viaene, 2011: vii).

The displaced communities were already living in extreme poverty, and restoring them to their pre-harm conditions would have been insufficient. Recognizing this ongoing vulnerability, the Inter-American Court and Commission on Human Rights considered broader historical and social contexts. In 2004, the Court ordered the State not only to compensate survivors but also to implement social measures—including health, education, infrastructure, and access to drinking water—since returning victims to their prior conditions would have left them highly vulnerable and at risk of further human rights violations (Odier Contreras-Garduno, 2018) (Silva, 2022: 194–195).

In the 1990s, Nicaragua's Indigenous Awes Tingni community faced threats to their ancestral land when the government granted logging concessions to foreign companies without their consent. In 1995, with support from a University of Iowa project, the community filed a petition with the Inter-American Commission on Human Rights, claiming violations of property, cultural, and other human rights. They documented their land tenure with maps, anthropological studies, and GPS data. Despite objections, the concession was awarded to the Korean company SOLCARSA in 1996. Legal action in Nicaraguan courts led to the Supreme Court declaring the concession illegal in 1997, though subsequent approvals prompted further challenges, culminating in a binding presidential revocation. Internationally, the Inter-American Commission referred the case to the Inter-American Court in 1998, marking a significant instance of Indigenous legal advocacy to protect collective land ownership and challenge unlawful exploitation (Anaya y Grossman, 2002: 1).

The Inter-American Court of Human Rights trusted the Awes Tingni community's account of its relationship with the land and ruled that the community held ownership over the territory to which it had a legal right. After

receiving the final written submissions from the Commission and the State, the Court found Nicaragua in violation of the relevant provisions of the American Convention on Human Rights and ordered reparations (Gómez Isa, 2017: 68, 71).

The Inter-American Court of Human Rights found that Nicaragua violated the Convention by failing to protect Indigenous peoples' rights to their lands and resources, which were already recognized in national law. The Court highlighted the absence of adequate state mechanisms to respond to the Awas Tingni community's land claims and the domestic courts' delays in addressing their legal actions. This constituted violations of Article 25 (right to judicial protection) and Articles 1 and 2 (State obligations to ensure fundamental rights). The Court also ruled a violation of Article 21 (right to property), emphasizing that "property" under the Convention includes collective ownership by Indigenous peoples as defined by their customs and traditions, independent of domestic law (Inter-American Court of Human Rights, 2001, para. 146). The Inter-American Commission argued, citing European Court jurisprudence and international developments, that Indigenous property rights exist independently of domestic law. The Court agreed, recognizing that collective ownership based on Indigenous customs suffices for official recognition, even without formal title (Inter-American Court of Human Rights, 2001, para. 151). In reaching this conclusion, the Court employed an "evolutionary" approach that considers normative developments in international law both within and beyond the Inter-American system (Inter-American Court of Human Rights, 2001: para. 146). In his concurring opinion, Judge García Ramírez elaborated on this interpretive method and referred to the draft instruments of the United Nations and the Organization of American States on Indigenous rights, as well as the International Labour Organization's Convention No. 169 on Indigenous and Tribal Peoples, stressing the importance of respecting Indigenous peoples' own values and relationships with land and resources (Anaya y Grossman, 2002: 12).

The Inter-American Court of Human Rights ruled that the Awas Tingni community holds a collective property right over their lands under Article 21 of the American Convention, which includes demarcation and official registration. Nicaragua violated this right by granting resource concessions to third parties and failing to register the territory. The Court ordered reparations requiring the State to demarcate and register lands according to Indigenous customs. While advancing Indigenous land rights, the Court acted cautiously in determining monetary compensation and reimbursable costs. Under Article 63(1), the Court can issue both non-monetary remedies and financial compensation for material and moral damages. In this case, a separate reparations phase allowed the Commission to present evidence on damages and costs after the merits stage (Anaya y Grossman, 2002: 12-13).

Despite limitations in awarding financial reparations, the *Awas Tingni* judgment is widely regarded as a major success for Indigenous communities in Nicaragua. The Court cautiously advanced Indigenous rights, particularly regarding land and natural resources, setting a precedent for broader recognition and protection of collective rights. It affirmed that the American Convention obliges states to respect Indigenous communities' traditional land use and adopt measures to safeguard these rights. Grounded in international human rights law, including the American Declaration and the Universal Declaration of Human Rights, the ruling validates Indigenous land tenure systems, counters past discrimination, and establishes a new global understanding of Indigenous rights and status (Anaya y Grossman, 2002: 13).

Analysis of the Inter-American Court of Human Rights' judgments shows that the Court has increasingly adopted a restorative justice approach in cases involving Indigenous communities. Reparations have expanded beyond financial compensation to include collective, cultural, and structural remedies, recognizing the need to restore social relations and respect communities' cultural and historical identities. Cases like *Awas Tingni* and *Plan de Sánchez* illustrate measures such as land restitution, infrastructure improvements, and formal recognition of collective rights. Despite some limitations—such as cautious financial awards and initially treating communities as collections of individual victims—the Court has made significant progress in integrating human rights, environmental justice, and historical recognition, emphasizing community participation, rebuilding social structures, and respecting cultural differences, thereby advancing restorative justice principles.

1. *The Precautionary Principle*

The precautionary principle can be considered an essential component of restorative justice in the environmental field, as both emphasize the prevention of harm, compensation for damages, and the restoration of damaged relationships among communities, ecosystems, and responsible actors (Stacey, 2017). Environmental restorative justice does not limit itself to the consequences of inflicted harm but seeks to restore balance and trust through the effective participation of stakeholders and affected institutions. Within this framework, the precautionary principle functions as a forward-looking mechanism aimed at preventing irreversible damage, especially under conditions of scientific uncertainty. This approach aligns with the goals of restorative justice, as it prioritizes prevention over reaction after harm has occurred and prevents the recurrence of harm by addressing root causes. Furthermore, by recognizing communities' rights to protection against uncertain environmental risks, this principle reinforces the participatory and compensatory

dimensions of restorative justice (Pedersen, 2010: 26-49) (Richter, Laster y Soskolne, 2005).

The Inter-American Court of Human Rights has also addressed the precautionary principle in its jurisprudence—an approach whose legal authority remains a subject of considerable debate in international discussions. In this regard, the Court referred to the Rio Declaration, specifically Principle 15, which states that “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” (Inter-American Court of Human Rights, 2017: para. 175)

The InterAmerican Court noted that it draws on the jurisprudence of the International Court of Justice and the International Tribunal for the Law of the Sea, as well as relevant international and domestic regulations, when applying the precautionary principle—yet it emphasized that “the content of the precautionary principle varies depending on the instrument that establishes it” (Inter-American Court of Human Rights, 2017: para. 179). In its Advisory Opinion, the Court referred to this variation and clarified that, while States must act with due caution to protect the rights to life and personal integrity in the face of plausible risks of severe or irreversible environmental harm—even without full scientific certainty—they must also adapt the approach to the specific standards and wording of each treaty, domestic law, or judicial precedent (Inter-American Court of Human Rights, 2017: para. 125).

The Court concluded that while the principle is not yet part of customary international law, it is relevant in determining whether a state has complied with its duties under the American Convention on Human Rights. The Court emphasized that the duty to ensure the rights to life and personal integrity implies a duty to act with due diligence, and states must act in accordance with the precautionary principle, even in the absence of scientific certainty, to prevent serious or irreversible damage to the environment (Inter-American Court of Human Rights’ Advisory Opinion on the Environment and Human Rights, 2018). Furthermore, the Court highlighted the *pro homine* principle, which mandates that human rights norms be interpreted in the manner most favorable to the protection of the individual. This principle is enshrined in Article 29 of the American Convention and is reflected in the Court’s interpretation of the Convention’s provisions. By applying the *pro homine* principle, the Court ensures that interpretations of the Convention prioritize the protection of individual rights (Berbera, 2018: 6). Therefore, while the precautionary principle may not yet be a customary norm, the Court has incorporated it into its interpretation of the American Convention, particularly in relation to environmental protection and the rights to life and personal integrity. This approach underscores the Court’s commitment to safeguarding human rights, even in the face of scientific uncertainty (Inter-American

Court of Human Rights' Advisory Opinion on the Environment and Human Rights, 2018).

The Inter-American Court of Human Rights has not provided a precise or structured interpretation of the precautionary principle. It does not address issues such as reversing the burden of proof or balancing economic and developmental interests against environmental risks. The Court merely affirms that the principle applies to protecting life and personal integrity, without clarifying its independent normative force or when it should be invoked. It also fails to specify how to assess serious or irreversible environmental harm under scientific uncertainty. Consequently, the Court's vague language allows for multiple, potentially conflicting interpretations by States due to the lack of clear legal standards, evidentiary requirements, or procedural guidelines (World's Youth for Climate Justice [WYCJ], 2023).

The precautionary principle in human rights applies when serious or irreversible environmental harm could potentially affect rights such as those under Articles 4 and 5 of the American Convention. While consistent with the Court's focus on positive obligations—triggered by a causal link between environmental harm and impacts on life or personal integrity—the principle diverges by not requiring immediate risk or scientific certainty. The Court references Rio Declaration Principle 15, emphasizing that lack of full scientific certainty should not delay preventive measures. Although this aligns with restorative environmental justice by prioritizing harm prevention, it raises challenges: the Court does not clarify evidentiary standards, boundaries of application, or balancing with other public interests. Consequently, States' obligations may be triggered prematurely, potentially conflicting with proportionality or imposing undue burdens. Additionally, the causal link between environmental harm and human rights violations may be weakened, as scientific uncertainty allows the Court or claimants to sidestep establishing direct causation (Kahl, 2020: 192–193).

IV. THE ROLE OF PROCEDURAL JUSTICE IN THE JURISPRUDENCE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Procedural obligations are instrumental in nature and derive from the right to life and physical integrity in the face of potential environmental harm. These obligations include the following:

The Inter-American Court of Human Rights has emphasized in its rulings that access to environmental information must be easy, effective, and timely for all people. States are responsible for providing such information in a transparent, complete, up-to-date manner, and in language that is simple and understandable for all sectors of society. However, this right is not absolute

and may be subject to clearly defined legal limitations (Inter-American Court of Human Rights, 2017, p. 86). Public participation is also recognized as a fundamental right. This right is guaranteed in Article 23(1)(a) of the American Convention on Human Rights, the Stockholm Declaration on the Human Environment, the Rio Declaration on Environment and Development, and the World Charter for Nature. According to these instruments, “every person (individually or collectively) must have the opportunity to participate in decision-making processes that directly affect their environment.” The Inter-American Court considers public participation a tool that allows “the concerns and knowledge of the people to be incorporated into public environmental policy-making.” To make this participation effective, States are required to provide adequate and relevant information in advance. Participation must begin “at the early stages of the decision-making process,” and States must ensure that people are informed of these opportunities to participate (Kahl, 2020, p. 196). Access to justice is another fundamental principle that enables individuals to ensure that environmental laws and regulations are properly enforced. It allows people to file complaints and seek compensation if their rights are violated due to the failure to implement these laws. States are obligated to provide appropriate judicial mechanisms so that individuals can challenge government decisions or actions that contradict environmental obligations and ensure the protection of related rights, such as access to information and public participation. Ultimately, these mechanisms must lead to effective remedies for harms resulting from the breach of environmental commitments (Inter-American Court of Human Rights, 2017: para. 233).

The Court also held that Article 21 of the American Convention on Human Rights (CADH)² (American Convention on Human Rights, art. 21) does not prevent the State from granting permits for the exploration or extraction of natural resources. However, to prevent the deprivation of survival and to preserve, protect, and guarantee the special relationship of Indigenous community members, the State must comply with the following protective requirements:

a) The right to consultation and the obligation to obtain consent Consultation must ensure the effective participation of community members, and this participation must:

1. Be conducted in good faith and with the aim of reaching an agreement;

² Article 21. 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.

2. Be carried out in accordance with the customs, traditions, and traditional decision-making processes of the community;
3. Take place in the early stages of the project;
4. Include the provision of all relevant information and potential risks (The Duty to Consult in the Inter-American System, 2012).

The Court has emphasized that Indigenous communities, not the State, determine who represents them in consultations, based on their customs and traditions. It has identified six key consultation topics that must always be addressed and requires States to obtain free, prior, and informed consent for large-scale development or investment projects. This ensures effective participation and additional protection of Indigenous property rights due to the significant impacts of such projects (Inter-American Court of Human Rights, 2007: para. 134).

1. *Conducting Environmental and Social Impact Assessments (EISAs)*

In the *Saramaka* case, the Inter-American Court of Human Rights held that States must conduct or oversee comprehensive, independent, and technical studies before any development project on Indigenous lands, ensuring minimal impact on their lives, culture, and rights. Cumulative impacts of past, present, and future projects must be assessed to avoid threatening the community's survival. In *Saramaka*, Suriname granted logging concessions without such studies, causing environmental, social, spiritual, and economic harm, with no consultation or compensation, violating collective property rights under Article 21. Similarly, in *Sarayaku v. Ecuador*, oil operations proceeded without free, prior, and informed consent, endangering the community's safety and rights. These cases highlight the necessity of impact assessments, respect for collective land rights, genuine participation, and equitable benefit-sharing, affirming that development cannot override Indigenous peoples' fundamental rights (Gamboa, 2015).

In cases involving Indigenous communities, the Court has reinforced procedural justice by requiring States to conduct thorough oversight, independent environmental and social assessments, and respect Indigenous cultures and traditions. It mandates the right to consultation and prior informed consent, ensuring fair and transparent processes. This approach allows Indigenous peoples to participate actively in decision-making and helps prevent irreversible harm to their resources and culture, reflecting the Court's commitment to procedural justice.

2. *Freedom of Association, Access to Information, and the Public Interest*

In *Kawas Fernández v. Honduras*, the Inter-American Court of Human Rights addressed the assassination of Jeannette Kawas Fernández, president of the PROLANSTATE Foundation, for opposing resource exploitation in protected areas. The Court found that her murder violated her right to life (Article 4.1) and freedom of association (Article 16.1) under the American Convention, as it deterred other environmental defenders. Honduras was ordered to implement reparatory and non-repetition measures, including a national awareness campaign on the role of environmental defenders, constructing a memorial in her honor, and renaming the national park she protected, with a plaque highlighting that she died defending the environment (Honduras Sentenced by the Inter-American Court for the Murder of an Environmentalist, 2018).³

In the case of *Cabrera and Montiel v. Mexico*, also known as the “Peasant Environmentalists” case, the victims’ representatives alleged that Mr. Cabrera and Mr. Montiel were arbitrarily and unlawfully detained and subsequently tortured due to their environmental activism. These acts were described as retaliatory measures in response to their work defending the environment, and part of a broader pattern of attacks against environmental defenders, particularly members of the civil society organization OCESP (Organization of Peasant Environmentalists) in the Sierra de Petatlán and Coyuca de Catalán regions. However, since these specific allegations were not included in the original petition submitted to the Inter-American Commission on Human Rights (CIDH), the Court, in accordance with its established jurisprudence, was unable to rule on them or to issue a finding on a potential violation of Article 16 of the American Convention on Human Rights (ACHR) (RIGHTS-MEXICO: Arrest and Torture for Defending Environment, 2000) (Mexico: Ruling Calls for Military Justice Overhaul, 2010).

In the case of *Claude Reyes and Others v. Chile*, concerning access to information, the petitioners requested data from the Foreign Investment Committee about the “Condor River Exploitation” project in order to evaluate the commercial, economic, and social factors of the project, assess its environmental impacts, and exercise social oversight over the involved government agencies. The petitioners stated that, due to concerns about excessive deforestation of native forests in southern Chile, they sought this information, and being denied access to public information prevented them

³ Honduras sentenced by the Inter-American Court for the murder of an environmentalist (2018), https://cejil.org/en/press-releases/honduras-sentenced-by-the-inter-american-court-for-the-murder-of-an-environmentalist/?utm_source=

from fulfilling their oversight role. The Court, relying on various instruments that guarantee access to environmental information—including the Rio Declaration on Environment and Development—found that the State’s failure to provide the requested information and to offer a reasoned response violated the petitioners’ right to access information under Article 13 of the American Convention on Human Rights (ACHR) (Claude Reyes et al. v. Chile, Inter-Am. Ct. H.R., 2006).

In the *Xákmok Kásek Indigenous Community* case, private landowners sought to declare part of Indigenous territory as a private natural reserve. The Court found that the Indigenous community’s land claims were ignored during the designation and approval of technical documents, and the community was not informed of the plans. This harmed their traditional way of life and access to ancestral lands. Consequently, the Court ordered urgent measures to ensure the reserve designation would not block the restitution of their lands, emphasizing that environmental rights and collective land ownership must be balanced to allow mutual coexistence without one impeding the other (*Xákmok Kásek Indigenous Community v. Paraguay*, Inter-Am. Ct. H.R., 2010).

3. *Advisory Opinion OC-23/17*

Advisory Opinion OC-23/17 provides a clear perspective on access to environmental justice in the Americas and paves the way for the recognition of other access rights related to the environment. The most significant achievement of this opinion is the Court’s integrated analysis of the three main pillars of access rights. Additionally, the Court exercised its advisory jurisdiction as a tool to send a clear message to all member states of the Organization of American States (OAS)—including those that are not parties to the American Convention on Human Rights (ACHR) (Siwior, 2021) (Medici-Colombo, 2024: 277–278).

A fundamental feature of this advisory opinion is its effort to identify jus cogens principles—norms that are binding on all States and also have effect in horizontal relationships between private individuals. This expands the scope of Advisory Opinion OC-23/17 (Pacheco, 2025, pp. 353, 370). According to OC-23/17, access to environmental justice stems from the public right of access to justice, which the Court recognizes as a jus cogens norm in international law (Inter-American Court of Human Rights, 2017: para. 233).

Under Article 25 of the ACHR Convention, American States are obligated to provide effective judicial remedies for victims of human rights violations. These remedies must be implemented in accordance with due process guarantees (Article 8.1 ACHR) and within the framework of the States’ general obligation to ensure the full and free exercise of the rights recognized in the

Convention (Article 1.1 ACHR). Accordingly, access to justice in environmental matters enables individuals to demand the enforcement of appropriate environmental standards and to benefit from remedial measures in cases of human rights violations resulting from non-compliance with environmental norms. The right to access environmental information has also been affirmed by the Court in various cases, including the case of the *Maya (Sumo) Awas Tingni Community v. Nicaragua*, which concerned the exploitation of natural resources in Indigenous territories (Olmos Giupponi, 2023: 1136–1137).

One of the key features of environmental justice in the Latin American and Caribbean region is ensuring the right to participation of Indigenous peoples and vulnerable communities. The Court has addressed this issue in cases such as *Sarayaku v. Ecuador*, which involved oil exploitation in the ancestral lands of the Kichwa community. Additionally, in the case of *Jiguamiandó and Curbaradó Communities v. Colombia*, the Court held the State responsible for protecting Afro-descendant communities against illegal oil palm cultivation on their lands (Olmos Giupponi, 2023: 1137).

In its 2010 judgment in the case of the *Sawhoyamaya Indigenous Community v. Paraguay*, which concerned claims by indigenous peoples regarding the failure to guarantee access to their ancestral lands and being forced to live in areas unsuitable for hunting, fishing, and gathering (their main means of subsistence), the Court emphasized the observance of due diligence, reasonable timeframes, and efficiency in judicial proceedings to ensure the right of access to justice. The Court also stated that the right to collective ownership and possession of lands is a right held collectively by the indigenous community (Lafuente, 2023).

In the case of the *Sawhoyamaya Indigenous Community v. Paraguay* (2006), the Inter-American Court of Human Rights recognized both the individual and collective rights of Indigenous peoples regarding access to justice. The Court emphasized that the community's claim to their ancestral lands had remained unresolved since 1991, resulting in violations of their rights, including the right to property, health, and general well-being. This prolonged delay deprived the community and its individual members of effective access to justice, as guaranteed under Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights, both of which are recognized as individual rights (Zhang, 2009, p. 1) (Curtin, 1990: 709). The Court ordered the State to take concrete measures to ensure the community's access to their ancestral lands and to provide adequate reparations for the harm suffered (Inter-American Court of Human Rights, 2006: 61).

One of the fundamental issues for ensuring equal and inclusive access to justice for indigenous populations is the recognition of what is referred to in legal literature as the “indigenous-specific character.” This characteristic is

acknowledged in the context of access to justice under Article 10 of the International Labour Organization Convention No. 169 on Indigenous and Tribal Peoples; according to this article, “when penal sanctions provided for by general law are applied to members of these peoples, account shall be taken of their economic, social and cultural characteristics.” (Lafuente, 2023: 217) Carrasco highlights the Court’s emphasis on the need for states to provide effective protection to indigenous communities, taking into account their unique characteristics, economic and social conditions, vulnerability, customary rights, values, traditions, and customs. This approach underscores the Court’s commitment to ensuring that indigenous peoples’ rights are respected and integrated into broader human rights frameworks.⁴

It is noteworthy that in Latin American countries, multiple gaps exist across various dimensions that hinder equal access of indigenous populations to public services. As *Stallaert, Kleinert, and Núñez Borja* have pointed out, “despite international conventions and declarations regarding the rights of indigenous peoples, the situation continues to be characterized by discrimination, social exclusion, and poverty.” In fact, “this issue is particularly severe for speakers of indigenous or native languages.”

The right to use indigenous languages in judicial proceedings is considered one of the fundamental requirements for ensuring effective and equal access to justice for indigenous communities. In ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly in 2007, member states have committed to guaranteeing access to justice for speakers of indigenous languages and to taking necessary measures to protect this right. Article 30, paragraph 2 of Convention No. 169⁵ (International Labour Organization [ILO], 1989) explicitly states: “If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.” Likewise, the American Declaration on the Rights of Indigenous Peoples emphasizes, in Articles 14 and 22.3, the obligation of states to guarantee the right to use indigenous languages in access to justice.⁶ (Organization of American States [OAS], 2016)

In *López Álvarez v. Honduras*, the Inter-American Court of Human Rights ruled that prohibiting Alfredo López Álvarez, a Garifuna community

⁴ El derecho de acceso a la justicia de las poblaciones indígenas en el Sistema Interamericano de Derechos Humanos

⁵ International Labour Organization (ILO). *Indigenous and Tribal Peoples Convention, 1989 (No. 169)*. Adopted on 27 June 1989, entered into force on 5 September 1991.

⁶ Organization of American States (OAS). *American Declaration on the Rights of Indigenous Peoples*. Adopted on 15 June 2016 at the forty-sixth regular session of the OAS General Assembly, Santo Domingo, Dominican Republic.

member, from speaking his native language during imprisonment violated his rights to freedom of expression and personal dignity. The Court emphasized that language is central to individual and collective identity and that the restriction was discriminatory, specifically targeting the Garifuna community. The State failed to justify the measure as necessary or proportionate, and was held responsible for violating the American Convention on Human Rights (López Álvarez v. Honduras, n.d.: 2061–2062) (Inter-American Court of Human Rights, López Álvarez case, n.d.).

On the other hand, in the judgment concerning the case of *Tiu Tojín v. Guatemala* regarding the enforced disappearance of María and Josefa Tiu Tojín — a mother and daughter from the Maya K'iche' indigenous community — the Court not only highlighted the discrimination the victims' family endured from Guatemalan authorities in their search for justice but also stated that: "This Tribunal considers that in order to guarantee the victims' right to a fair trial —as members of the Maya indigenous community— and that the investigation of the facts of the case under study be performed with due diligence, without obstacles or discrimination, the State must ensure that they understand and are understood in the legal proceedings started, thus offering them interpreters or other effective means for said purpose." (Inter-American Court of Human Rights, *Tiu Tojín v. Guatemala*, para. 100)

Furthermore, regarding effective access to justice, the Inter-American Court and Commission on Human Rights have emphasized the removal of language barriers as a necessary prerequisite. In the Court's jurisprudence, the right of indigenous peoples to access justice was first clearly recognized in connection with claims related to collective land ownership. In the landmark 2006 judgment in the case of the *Sawhoyamaxa Indigenous Community v. Paraguay*, which concerned the indigenous Sawhoyamaxa community's land ownership claims in the Chaco region of Paraguay, the Court stressed the need to establish judicial procedures that are simple, accessible, and appropriate, stating that "the State is obliged to establish adequate procedures within the national legal system to address indigenous peoples' land claims." (Inter-American Court of Human Rights, *Sawhoyamaxa Indigenous Community v. Paraguay*, 2006, para. 109)

The particular situation of vulnerability of indigenous peoples has been repeatedly emphasized in the jurisprudence of the Inter-American Court of Human Rights. The Court has grounded its legal protection of indigenous peoples on two key principles: the prohibition of discrimination based on ethnic origin, as a form of "any other social condition" (Article 1.1 of the American Convention on Human Rights), and the recognition of the right to cultural identity (Article 29). For this reason, in its judgment in the case of *Norryn Catrimán et al. (leaders, members, and activists of the Mapuche Indigenous People) v. Chile*, the Court explicitly stated that "no rule,

decision, or practice under domestic law, whether by state authorities or private individuals, may in any way reduce or restrict the rights of individuals solely on the basis of their ethnic origin.” (Lafuente, 2023: 215)

Hossain emphasizes that *jus cogens* norms are hierarchically superior and form the foundation of the international legal system, protecting fundamental values such as equality and non discrimination. These norms are considered indispensable for effective international activity and cannot be derogated under any circumstances (Hossain, 2005: 72). This is consistent with the jurisprudence of the Court.

In this regard, special attention should be given to the Brasilia Rules on Access to Justice for Vulnerable People, which were first adopted at the 14th Ibero-American Judicial Summit in 2008 and later updated at the 19th Summit in 2018 in Quito, Ecuador. These rules define their main objective as follows:

“To guarantee the necessary conditions for effective access to justice for people in situations of vulnerability, without any kind of direct or indirect discrimination, through a set of policies, measures, facilities, and supports that allow them to enjoy their human rights before the judicial system” (Part I) (Lafuente, 2023: 216).

According to the Brasilia Rules, individuals in situations of vulnerability are those whose “ability to prevent, withstand, or recover from harm that puts them at risk is underdeveloped or limited, and who are therefore unable to fully exercise their rights before the justice system.” (Lafuente, 2023: 216) According to Rubio (2018), the Brasilia Rules can serve as an effective tool for litigation within the Inter-American system, provided that judicial authorities and other legal actors utilize them to ensure differentiated and real justice for vulnerable groups. Rubio emphasizes the importance of applying these rules to address the specific needs of vulnerable populations and to guarantee their access to justice in a meaningful way (Rubio, 2016).

Regarding indigenous populations, it must be emphasized that equal access to justice is a fundamental prerequisite for their effective enjoyment of rights. The Inter-American Court of Human Rights has recognized the particular vulnerability of these communities in various cases, including the aforementioned judgment in the case of the Indigenous Community of Kaxuyuk Kasak v. Paraguay. This vulnerability is linked to the lack of adequate and effective resources, the weak presence of public institutions responsible for providing essential services and goods (such as food, water, health, and education), and the prevalence of a property-based perspective that prioritizes private owners over the territorial claims of indigenous peoples—an issue that disregards their cultural identity and threatens their physical survival (Lafuente, 2023: 217).

In this regard, it should be recalled that one form of severe and inhumane discrimination is the criminalization of an individual’s indigenous origin by

the State. This means that an accused person's indigenous identity should never lead to harsher punishment or create prejudice, bias, or stereotypes during the judicial process. In the case of *Norín Catrimán et al. v. Chile*, which concerns the conviction of traditional leaders and Mapuche indigenous activists on terrorism charges, the Inter-American Commission in its petition to the Court stated that: "If a person's race or ethnic origin is used as a factor to classify a behavior—which is usually considered an ordinary crime—as a terrorist offense, this constitutes a selective and discriminatory application of criminal law." (Lafuente, 2023: 217)

The Inter-American Court of Human Rights has played a key role in protecting environmental defenders, highlighting both their vulnerability and the need for effective safeguards. A landmark case involves Blanca Jeannette Kawas Fernández, president of the PROLANSATE Foundation in Honduras, who was murdered for exposing environmental violations in Punta Sal. Her death revealed serious institutional failures, including inadequate investigations and denial of the family's right to truth and reparation. After Honduras failed to implement the Commission's recommendations, the case was referred to the Court in 2008 under Articles 51 and 61 of the American Convention. The Commission argued that the impunity in Kawas's case fostered a climate of violence against environmental defenders. Her murder, the first in Honduras linked to environmental advocacy, symbolized the broader risks faced by environmental defenders, including repeated attacks and barriers to justice.⁷ (Annual Report, 2009) (Press Release N° 5/08, 2008)

The representatives requested that the Court hold the State responsible for the following violations:

- Violation of Article 4 (right to life) of the Convention, in connection with Article 1.1, concerning Ms. Kawas, due to the possible involvement of State agents in the planning, coordination, and execution of her murder, as well as the lack of an effective investigation;
- Violation of Articles 8 (judicial guarantees) and 25 (judicial protection), in relation to Article 1.1, concerning the victim and her family, due to the absence of serious and effective investigations to prosecute and punish those responsible for the murder;
- Violation of Article 16 (freedom of association) of the Convention, in relation to Article 1.1, as the killing of Ms. Kawas was linked to her activities in defense of the right to freedom of association;

⁷ Annual Report 2009 Chapter III. The Petition and Case System, https://cidh.oas.org/annualrep/2009eng/Chap.III.o.eng.htm?utm_source; Press Release N° 5/08 IachR Takes Case to the Inter-American Court, https://www.cidh.org/Comunicados/English/2008/5.08eng.htm?utm_source

- Violation of Article 5 (right to humane treatment) of the Convention, in relation to Article 1.1, due to the psychological suffering inflicted on the victim's family as a result of the murder and the lack of effective investigation (*Kawas Fernández v. Honduras*, n.d.).

On April 3, 2009, the Court issued its judgment and declared:

- The State of Honduras is responsible for the violation of Article 4 of the Convention (right to life), in accordance with Article 1.1, with respect to Ms. Blanca Jeannette Kawas;
- And for the violation of Articles 8 and 25 of the Convention, in connection with Articles 1.1 and 2, with respect to her family. (*Kawas Fernández v. Honduras*, n.d.)

This case is significant as it was the first in which the Court highlighted the essential role of the environment in realizing other human rights and underscored the need for special protection of environmental defenders. The Court affirmed that States have a specific duty to protect human rights defenders, and failure to do so—especially when it leads to loss of life—violates this obligation. Environmental defenders act not only for themselves but for the broader public interest. The Court recognized the intrinsic link between environmental protection and human rights, explicitly treating environmental defenders as human rights defenders. It also acknowledged that their work exposes them to serious risks, making state protection crucial in contexts of rising threats, violence, and killings (Borras, 2015: 14).

The Court also stated that all environmental access rights are interconnected, because access to justice is a prerequisite for the full realization of the rights to public participation and access to environmental information (Olmos Giupponi, 2023).

Overall, the Inter-American Court of Human Rights has recognized environmental access rights as procedural in nature and has developed multilayered protections to ensure them. Its jurisprudence demonstrates a committed approach to procedural justice as a core element of environmental justice, emphasizing equal and effective access to justice for Indigenous and vulnerable populations. This includes recognizing collective rights, cultural identity, use of native languages in judicial processes, and the social, economic, and cultural specificities of Indigenous communities, preventing discrimination and unfair treatment. The Court has also stressed States' obligations to provide necessary accommodations—such as translation services and information access—to enable full participation. Procedural justice is treated not only as an individual right but as essential to preserving collective rights, cultural survival, and the physical existence of Indigenous peoples and environmental defenders. By linking procedural justice to environmental and human

rights protection, particularly where threats and violence are rising, the Court underscores the importance of preventive and effective State measures. Ultimately, its jurisprudence shows that procedural justice is crucial for social, cultural, and human justice, and without it, meaningful protection of the environment and human rights is compromised.

V. THE ROLE OF DISTRIBUTIVE JUSTICE IN THE JURISPRUDENCE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

This section examines two different aspects of the International Court's approach regarding the right of indigenous communities to participate, especially the prior and informed consultation. On one hand, the Court has taken a supportive stance in relation to the construction of a bridge by the Argentine government and intervenes carefully in favor of indigenous communities. With a deep understanding of structural inequality, the Court emphasizes that the State must not only guarantee effective participation of the communities but also ensure that this participation is conducted with respect for indigenous customs and traditions. Moreover, conducting independent environmental studies and the reasonable benefit of the communities from the interventions have been introduced as necessary conditions:

“[T]he State abstained from ensuring... that none of the public works undertaken by the State ... on ancestral territory ... complied with the obligation to ensure that it was preceded by a... social and environmental impact assessment, and that it guaranteed adequate participation and benefits for the indigenous communities.” (Inter-American Court of Human Rights, *Lhaka Honhat v. Argentina*, 2020, para. 170: 56)

This approach by the Court has been followed not only in the *Lhaka Honhat* judgment but also in other decisions. For example, in the *Suriname* case, the Court stated in this regard that:

“Social and environmental impact assessments must be carried out prior to the approval of the respective plans... included within the third requirement is the conduction of a ‘prior environmental and social impact assessment’, carried out by ‘independent and technically capable entities, with the State’s supervision.’ [...] The ultimate purpose of environmental and social impact assessments is ‘to preserve, protect and guarantee the special relationship’ of indigenous peoples with their territories”⁸ (Report No. 2/121, 2012: 70)

⁸ Report No. 2/121 Case 12.094 Indigenous Communities of the Lhaka Honhat (Our Land) Association Merits Argentina January 26, 2012, https://www.oas.org/en/iachr/decisions/court/2018/12094FondoEn.pdf?utm_source=, p.70.

This demonstrates that the Court pays attention to the concept of structural inequality and seeks to create equal conditions for participation by marginalized populations through special mechanisms. However, on the other hand, in certain cases, the same Court adopts a less supportive stance. A clear example is the Provincial Road No. 54 project, in which trees were cut down without effective consultation with the indigenous community, and the Court avoided seriously addressing the complaints raised by the community. For instance, it disregards the views of community representatives regarding the tree cutting for the Provincial Road No. 54 project: “The representatives stated that this intervention led to the cutting of trees for brick-making in Mission La Paz, and that their requests for information went unanswered.” (Inter-American Court of Human Rights, *Lhaka Honhat v. Argentina*, cited, para. 178) (Ferrer Mac-Gregor, Morales Antoniazzi y Flores Pantoja, 2022: 74)

The Court has limited the scope of prior consultation by distinguishing between “new projects” and “improvement or maintenance of existing works.” In the Provincial Road No. 54 case, it classified the State’s intervention as maintenance, exempting it from the obligation to consult the indigenous community. However, the Court provides no clear criteria or evidence to operationalize this distinction or determine how much “improvement” may occur without harming indigenous lands or communities. It also warned that requiring consultation for all projects could be an “excessive interpretation” of State obligations. This reasoning risks benefiting States while undermining indigenous participation, as many projects could be labeled as maintenance or improvement to avoid consultation, particularly affecting communities already facing structural inequalities (Ferrer Mac-Gregor, Morales Antoniazzi y Flores Pantoja, 2022: 73–74). As a result, a dangerous path is opened in which the participatory rights of indigenous communities are gradually weakened, solely because the projects are framed as “maintenance,” even if they have profound environmental or social impacts in practice.

The Court’s approach in cases involving indigenous communities—such as the road improvement project with tree felling—places an undefined burden of proof on structurally disadvantaged communities. It dismissed the communities’ claims for lack of “sufficient explanation” without specifying what would meet this standard. While acknowledging that authorities may have inadequately responded to requests for information, the Court still relied on the State’s unverified claims of community approval. By not defining minimum evidentiary standards or independently verifying facts, the Court effectively presumes the legitimacy of State actions, leaving vulnerable communities responsible for proving violations of their rights—a significant procedural shortcoming (Ferrer Mac-Gregor, Morales Antoniazzi y Flores Pantoja, 2022: 74–75).

The implication is that, through this strategy, the Court effectively fails to utilize its capacity to protect indigenous communities and applies ambiguous, inconsistent, and flexible standards that, in sensitive cases, tend to favor States to the detriment of the claimants. This approach not only contradicts the logic of procedural justice but also undermines trust in international human rights institutions.

Regarding the exploitation of hydrocarbons, “Not only were these facts subsequent to those described in the Merits Report, but they are also independent of the latter... Consequently, the Court understands that the alleged facts relating to the construction of a gas pipeline in 2015 and the development of Rancho El Nato do not form part of the factual framework of this case. Hence, nor does an administrative action relating to the gas pipeline, which the representatives alleged was filed in July 2015, form part of the factual framework. The Court will not analyze these factual circumstances or the arguments that refer specifically to them.” (Inter-American Court of Human Rights, *Lhaka Honhat v. Argentina*, 2020: para. 23)

In this section, the Inter-American Court states that it will not examine issues related to the construction of the gas pipeline and urban development projects because these activities arose after the main report and, in the Court’s view, are not directly connected to the original matters of the case. The Court explains that although these actions may affect collective property rights, their impacts are new and different from the initial issues raised by the Commission. Additionally, the Court notes that the representatives did not provide precise explanations about the locations where these activities took place, and according to statements by government officials, no exploration occurred within indigenous territories. The representatives themselves acknowledged that the State decided to carry out these activities outside indigenous land boundaries. For these reasons, the Court concludes that these matters fall outside the actual framework of the case and will not be examined.

The Court’s formalistic approach to the “factual framework of the case” is ill-suited for populations facing structural inequality. First, by treating all parties uniformly, it ignores the historical, social, and economic disadvantages of Indigenous and other vulnerable groups, instead of adopting a context-sensitive, material approach that accounts for these inequalities. Second, human rights violations against such populations are typically systemic and ongoing, so the reported events often reflect only the most visible consequences of broader discriminatory patterns, which may persist even after a judgment (Ferrer Mac-Gregor, Morales Antoniazzi y Flores Pantoja, 2022: 77). As a result, if the Court insists on deciding cases solely based on a narrow and rigid concept of the “factual framework”—one that accepts only the facts mentioned in the initial report and avoids examining broader

contexts—it essentially ignores the actual lived conditions of these communities. Such an approach not only undermines justice but also exacerbates the obstacles and injustices these populations have already endured in seeking redress before the Court, amounting to a renewed form of historical denial.

Despite some positive approaches, the Inter-American Court of Human Rights often fails to adequately address structural inequalities and uphold distributive justice in cases involving Indigenous peoples. By adopting a formalistic and rigid approach—such as limiting cases to the initial reported events, distinguishing between “new projects” and “maintenance actions” without clear criteria, and shifting the burden of proof onto marginalized groups—the Court has, at times, hindered access to justice and allowed States to evade consultation obligations. This approach undermines trust in the human rights system and weakens the protection of vulnerable communities, falling short of the Court’s expected role in addressing systemic inequality.

In this case, community representatives highlighted the ineffectiveness of judicial remedies, stating that the courts themselves exacerbated their vulnerability. When the Salta Provincial Court dismissed their complaint against a bridge construction—citing the need for further examination and the absence of “clear illegality”—the community’s urgent request to halt the project was ignored. The Inter-American Court of Human Rights, rather than addressing the structural disadvantages faced by the Indigenous community, focused on procedural formalities, noting that the complaint did not follow the “appropriate” legal route and that no evidence was presented showing the absence or ineffectiveness of other remedies. Consequently, the Court did not recognize the State’s institutional responsibility or the community’s structural vulnerability, effectively overlooking the real obstacles Indigenous groups face in accessing justice (Ferrer Mac-Gregor, Morales Antoniazzi y Flores Pantoja, 2022: 78-79).

In this case, Indigenous community representatives were never allowed to present their claims, as the provincial court deemed the amparo inadmissible, citing a lack of “clear illegality or arbitrariness” and the need for “further discussion and evidence.” It remains unclear what aspect required such additional explanation beyond the amparo framework. Nonetheless, the Inter-American Court of Human Rights placed the burden on the community to prove that no other adequate remedy existed, despite amparo being the primary legal mechanism for rights protection in the region. This approach is inequitable, given the structural imbalance between the State and Indigenous communities. If amparo is recognized as the main instrument of judicial protection, the State should instead bear the responsibility to demonstrate the existence of a more effective, rapid, and accessible remedy—a burden that is difficult to meet, as alternative mechanisms are

typically less efficient in practice (Ferrer Mac-Gregor, Morales Antoniazzi y Flores Pantoja, 2022: 79).

The view that barriers to equality in Argentina are deeply rooted and that the courts have shown insufficient attention can be found in various reports. The UN Working Group on Business and Human Rights (2023) highlighted “structural discrimination” against Indigenous peoples in northern Argentina, rooted in poverty, lack of land ownership rights, and extractive activities such as large-scale mining, hydrocarbons, and industrial agriculture. The report also raised concerns about forced evictions, the criminalization of Indigenous activists, and the failure to uphold the principle of free, prior, and informed consent (FPIC). (United Nations, n.d.) In the same vein, reports by the UN Refugee Agency and the U.S. Department of State (2015–2016) indicate that local courts often lack sufficient awareness of Indigenous land rights, and that numerous legal obstacles exist (U.S. Department of State, 2015).

In this case, given the structural vulnerability of Indigenous communities in Argentina—characterized by poverty, lack of land rights, and impacts from extractive industries—it was expected that the Inter-American Court of Human Rights would consider historical and structural inequalities. UN and U.S. reports highlight forced evictions, violations of free, prior, and informed consent (FPIC), and systemic judicial obstacles that limit Indigenous access to justice. Despite this, the Court evaluated the complaint solely through general legal standards, ignoring these structural and contextual barriers. Consequently, its approach failed to provide meaningful protection and overlooked the realities faced by a highly vulnerable group, undermining principles of inclusive and context-sensitive justice.

Accordingly, the Inter-American Court should explain why it did not take into account the following standard, which is particularly emphasized:

“[...] the State has the duty to adopt positive measures to ensure that the judicial remedies provided through the judicial system are truly effective in determining whether a human rights violation has occurred and in providing reparation.” (Inter-American Court of Human Rights, *Saramaka People v. Suriname*, 2007: para. 177)

This means that the mere formal existence of judicial remedies is not sufficient; rather, for these remedies to be considered effective, they must recognize and address the real inequalities between the parties involved in the litigation and provide responses to the human rights violations established in the Convention. Accordingly, the Court has stated that:

“the absence of an effective remedy against violations recognized by the Convention constitutes, by itself, a breach of the Convention by the State Party where such a situation occurs.” (Ferrer Mac-Gregor, Morales Antoniazzi y Flores Pantoja, 2022: 81)

In this case, although certain legal avenues may have formally existed, the victims argued that these avenues were not effective in practice, as they were never given a genuine opportunity at any stage to present and defend their claims regarding the alleged violations. Regarding the *amparo* procedure, the Court stated the following:

“On September 11, 1995, a legal representative of Lhaka Honhat filed an application for *amparo* with the Salta Court of Justice (CJS) requesting it to order the immediate suspension of the work... The request for an injunction and the application for *amparo* were rejected on November 8, 1995, and April 29, 1996, respectively. The CJS understood that the contested act lacked ‘manifest arbitrariness or illegitimacy’ and required ‘greater discussion and evidence’ than allowed by the remedy filed.” (Inter-American Court of Human Rights, *Lhaka Honhat v. Argentina*, 2020: para. 297)

The important point is that instead of examining whether this inequality in practice has rendered judicial remedies ineffective, the Court has limited itself to the mere existence of such remedies and has refrained from analyzing the case in light of the structural inequality between the parties. In fact, the Court has overlooked the fact that if a group is in a position of inequality from the outset, even the formal availability of legal pathways cannot adequately meet their real needs for effective access to justice (Ferrer Mac-Gregor, Morales Antoniazzi y Flores Pantoja, 2022: 82).

Overall, despite some apparent supportive actions, the Inter-American Court of Human Rights has failed in practice to achieve distributive justice for indigenous communities, as it has not adequately incorporated the structural inequalities and historical circumstances of these communities into its analyses. The adoption of formalistic approaches, ambiguous distinctions between types of projects, an unclear burden of proof placed on victims, and the disregard of the real difficulties in accessing effective judicial remedies all indicate that instead of using its authority to address inequalities, the Court has often reinforced these very inequalities through restrictive and unrealistic interpretations. This situation not only undermines the protective function expected from a regional human rights body but also erodes the trust of marginalized groups in the possibility of obtaining justice at the international level.

VI. DISCUSSION

Procedural justice—i.e. robust access to environmental information, participation in decisions, and judicial remedies—is by far the strongest pillar in the Inter-American Court’s environmental jurisprudence. The Court has made clear that States must proactively provide environmental information

broadly (without requiring any special interest) and facilitate public involvement in projects affecting communities (Inter-American Court of Human Rights, OC-23/17, 2017). In Advisory Opinion OC-23/17 (2017), for example, the Court held that access to information “must be handed over without the need to prove direct interest”, (Inter-American Court of Human Rights, OC-23/17, 2017) and that “public participation is one of the fundamental pillars of instrumental or procedural rights” because it allows individuals and communities to engage in democratic control and have their voices heard (Inter-American Court of Human Rights, OC-23/17, 2017). Likewise, the Court emphasizes that States must build effective channels of dialogue from the earliest planning stages, in order that indigenous or other affected peoples “can provide a voluntary and informed opinion” on any project or law affecting their lands (Inter-American Court of Human Rights, *Kichwa Indigenous People v. Ecuador*, 2012, para. 227). In its case law on indigenous land rights, the Court has repeatedly insisted on free, prior and informed consultation as a non-negotiable prerequisite to any industrial project. For instance, in *Kichwa Indigenous People of Sarayaku v. Ecuador* (2012) the Court explicitly recognized that the right of indigenous peoples to “free, prior and informed consent” is grounded in respect for their culture, and that “the right to consultation” is a fundamental guarantee of effective participation (Inter-American Court of Human Rights, *Kichwa Indigenous People v. Ecuador*, 2012, para. 124). In this way, the Court has progressively read Articles 13 (freedom of expression/information) and 21 (property) of the American Convention together so as to impose obligations on States to inform and consult affected communities before approving projects on their land.

The Court’s commitment to due process in environmental matters also extends to ensuring judicial remedies. In OC-23/17 it reaffirmed that access to justice is a peremptory norm of international law (Inter-American Court of Human Rights, OC-23/17, 2017, para. 233). Environmental harms must be remediable in the courts, and procedural systems must allow affected people to challenge offending projects. The Court held that effective judicial remedies (Art. 25 American Convention) and full due process (Art. 8) are essential to “ensure the full realization” of participation and information rights (Inter-American Court of Human Rights, OC-23/17, 2017, para. 233). In practice, the Court has invoked Article 25 to strike down domestic administrative decisions that ignored public hearings or denied evidence, even in environmental contexts. For example, in *Lhaka Honhat (Our Land) v. Argentina* (2020) the Court found the State had breached community property and consultation rights by allowing an international bridge to be built without any prior consultation. In other cases, it has ordered Environmental Impact Assessments and public hearings where States failed to do so. Together, these rulings demonstrate that the Court most readily

enforces procedural justice: it demands transparency, meaningful participation and judicial oversight of development projects. Scholars have noted the potential of courts' jurisprudence on life, health, and property to indirectly support environmental claims, but also highlighted its limitations in driving substantive policy changes. For example, the South African Constitutional Court's jurisprudence on health rights illustrates both the transformative potential and the limits of litigation in achieving social justice and policy impact (Forman, 2008, p. 661). Similarly, discussions on Earth Jurisprudence emphasize the need for frameworks that reconcile legal systems with environmental justice, while acknowledging the challenges of translating these into actionable policies (Schillmoller y Pelizzon, 2013: 1).

Restorative justice is an emerging but cautious thread. The Court increasingly recognizes that environmental harms often constitute collective rights violations, especially for indigenous communities, and it has crafted reparations accordingly. Notably, in *Sawhoyamaxa v. Paraguay* (2006) the Court ordered full restitution of ancestral lands, creation of a community development fund, and interim delivery of water, food and shelter to a landless indigenous community (Inter-American Court of Human Rights, *Sawhoyamaxa v. Paraguay*, 2006). The same month, in *Yakye Axa v. Paraguay* (2005) it likewise mandated the return of communal territory and provision of basic services. More recently, *Lhaka Honhat v. Argentina* (2020) marked the first time the Court treated the right to a healthy environment as an autonomous right in contentious proceedings. There it held Argentina responsible for violations of community property, cultural identity, and a healthy environment, and ordered a package of collective reparations: physical restitution of lands, water and food programs, forest restoration, and cultural measures. These collective remedies – land titling, joint funding, symbolic “guarantees of non-repetition” – reflect a restorative approach that goes beyond individual damages.

However, the Court's restorative interventions remain limited in practice. In *Sawhoyamaxa*, for example, the Court instructed Paraguay to return the community's land and to establish a U.S. \$1 million development fund, (Case of the *Sawhoyamaxa Indigenous Community v. Paraguay*, n.d., para. 224) but the State delayed implementation for years. Indeed, as a monitoring report later observed, “few orders had so far been implemented” even years after judgment, and the Court continued to urge the government to effect restitution and services (Case of the *Sawhoyamaxa Indigenous Community v. Paraguay*, n.d.). In *Lhaka Honhat* the Court similarly aimed for land-title deeds and environmental improvements, (Tigre, 2021: 707-708) yet the actual compensation payments and enforcement mechanisms were left largely to the State's goodwill. In short, while the Court has begun to grant collective reparations and recognized symbolic or infrastructural remedies

(water systems, schools, cultural centers), it has generally shied away from ordering large direct payouts or assuming enforcement. Reparations are often framed as measures of “satisfaction” or non-repetition (e.g. environmental remediation, new regulations), and the Court imposes them conservatively. As a result, restorative justice remains more aspirational than systemic: the Court acknowledges the need for collective redress, but leaves much of the implementation—and the finance—to the States.

By contrast, distributive justice – the equitable allocation of environmental “bads” and “goods” among social groups – has attracted far less judicial focus. The Court’s pronouncements rarely address how the benefits of development projects should be shared or how environmental risks should be prevented from falling disproportionately on marginalized communities. When the Court has mandated Environmental Impact Assessments or consultations, it is usually in the name of procedural fairness rather than reshaping who gains from resource exploitation. For example, in *Saramaka People v. Suriname* (2007) the Court insisted on thorough prior consultation and a negotiated plan for logging in tribal territories, and even recognized the Saramaka people’s right to share in royalties (Inter-American Court of Human Rights, OC-23/17, 2017). But in most cases the Court stops short of ordering concrete redistributive measures. Large-scale projects such as dams or mines often go forward as long as formal procedures are met, even if the long-term economic benefits accrue mainly to outsiders. Critics have highlighted that courts often emphasize developers’ duties, such as conducting impact studies and obtaining consent, while neglecting the rights of communities to fair profit sharing or alternative livelihoods. For instance, Morgera (2019) discusses the procedural and substantive aspects of benefit-sharing, emphasizing the need for transformative collaboration that includes community agency and equitable distribution of benefits (Morgera, 2019).

One notable indication of distributive concern is the Court’s occasional recognition of group-specific impacts. For example, in the case of *Community of La Oroya v. Peru* (2024) — the first Inter-American Court decision on toxic pollution — the Court emphasized the “differential impact” of environmental harm on vulnerable groups (children, women, the elderly). (Inter-American Court, La Oroya Case, n.d., para. 348) This acknowledgement of intersecting vulnerabilities suggests an emerging sensitivity to who bears environmental costs. Yet even in La Oroya the remedies focused on general compliance and health measures, without establishing a new mechanism for sharing economic benefits. Overall, the IACtHR’s case law remains heavily skewed toward procedural guarantees and territory restitution, with far less systematic attention to how social and economic inequalities might be redressed through its rulings. In other words, while the Court demands

that the rules be followed (access, consultation, assessments), it has largely left the distribution of risks and rewards to the political branches.

In sum, the Inter-American Court has most effectively advanced environmental justice through procedural measures, ensuring access to information, meaningful participation, and effective remedies. Its restorative justice approach—particularly in Indigenous land cases—includes communal land titling, development funds, and cultural protections. However, these orders are often implemented reluctantly, with limited redistribution, and the Court remains cautious about monetary or systemic remedies. Distributive justice, in contrast, has scarcely been addressed: beyond acknowledging differential harms to vulnerable groups, the Court has not tackled the structural inequalities driving environmental conflicts. When intervening in substantive resource disputes, its focus has largely been on enforcing procedural norms rather than developing a comprehensive approach to sharing environmental benefits or restructuring inequitable land and water systems.

VII. CONCLUSION AND RECOMMENDATIONS

In summary, the Inter-American Court of Human Rights has significantly advanced environmental justice through strong procedural protections, a growing restorative justice approach, and limited engagement with distributive justice. Its jurisprudence excels in procedural fairness—ensuring access to information, public participation, and judicial remedies—particularly in landmark rulings such as Advisory Opinion OC-23/17 and *Sarayaku v. Ecuador*, which reinforce the principle of free, prior, and informed consent for Indigenous communities. Restorative measures, including communal land titling, development projects, and cultural safeguards, show moderate success, while distributive justice remains largely unaddressed, limiting transformative outcomes. The Court's procedural framework aligns with international standards, empowering communities to participate meaningfully in environmental decision-making, though its effectiveness is often constrained by inconsistent State compliance and domestic judicial limitations, especially regarding cultural and linguistic accommodations for Indigenous populations.

Restorative justice constitutes a growing, though still developing, aspect of the Inter-American Court of Human Rights' environmental jurisprudence, particularly in cases concerning Indigenous communities. Landmark rulings such as *Sawhoyamaxa v. Paraguay*, *Yakye Axa v. Paraguay*, and *Lhaka Honhat v. Argentina* illustrate the Court's recognition of collective reparations, including land restitution, community development funds, and cultural measures such as forest restoration. These remedies are designed to repair historical and ecological harms while acknowledging the deep and

enduring connection between Indigenous peoples and their territories. The Court's application of the precautionary principle further supports restorative objectives by emphasizing the prevention of irreversible environmental damage, even in contexts of scientific uncertainty. However, the practical impact of these measures is often limited by delays in implementation and reliance on State compliance. For example, in *Sawhoyamaxa*, Paraguay's slow fulfillment of land restitution and development fund orders highlights the gap between judicial mandates and on-the-ground outcomes. Similarly, the Court's cautious stance on financial reparations—as seen in *Awás Tingni v. Nicaragua*, where it did not fully utilize the broad powers under Article 63(1) of the American Convention—constrains the transformative potential of restorative justice. Despite these limitations, the Court's gradual shift toward collective and culturally attuned reparations demonstrates a promising trajectory, particularly when aligned with Indigenous conflict resolution traditions.

Distributive justice remains the weakest aspect of the Court's environmental jurisprudence. Although it occasionally acknowledges differential impacts on vulnerable groups, as in *Community of La Oroya v. Peru*, it rarely ensures equitable sharing of environmental benefits or addresses structural inequalities. Cases like *Saramaka People v. Suriname* show limited attention to benefit-sharing, but systemic redistribution or remedies for environmental injustice are largely absent. By emphasizing procedural compliance over substantive equity—as in the narrow consultation ruling for Provincial Route 54 in Argentina—the Court risks perpetuating structural inequalities and misses opportunities to address the root causes of environmental conflicts.

To strengthen its environmental justice framework, the Court should adopt several measures. First, it must enhance enforcement mechanisms for procedural and restorative rulings by establishing clearer timelines and monitoring systems to ensure State compliance, particularly for Indigenous land restitution and community development programs. Second, the Court should develop a more robust distributive justice doctrine by explicitly addressing structural inequalities, such as through mandates for equitable benefit-sharing in resource extraction projects and protections against disproportionate environmental harm to vulnerable groups. Third, integrating Indigenous knowledge and leadership into judicial processes, as advocated in restorative justice scholarship, could bridge procedural and restorative approaches, ensuring culturally relevant remedies. Finally, the Court should clarify the application of the precautionary principle in environmental cases, specifying causal links between activities and potential human rights violations to avoid overburdening States while protecting communities. By balancing its strong procedural foundation with bolder restorative and distributive interventions, the Inter-American Court can realize a more holistic and transformative

vision of environmental justice, addressing not only the symptoms but also the root causes of ecological and social inequities.

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