



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



INTER-AMERICAN COURT OF HUMAN RIGHTS*

ENVIRONMENT AND HUMAN RIGHTS

ADVISORY OPINION OC-23/17 OF NOVEMBER 15, 2017 REQUESTED BY THE REPUBLIC OF COLOMBIA

OFFICIAL SUMMARY ISSUED BY THE INTER-AMERICAN COURT**

On November 15, 2017, the Inter-American Court of Human Rights (hereinafter “the Court”) issued an advisory opinion in response to a request made by the State of Colombia concerning state obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity recognized in Articles 4 and 5 of the American Convention, in relation to Articles 1(1) and 2 of said treaty.

In its request, Colombia posed the following specific questions:

I. Pursuant to Article 1(1) of the Pact of San José, should it be considered that a person, even if he or she is not within the territory of a State Party, is subject to the jurisdiction of that State in the specific case in which the following four conditions are met cumulatively?

1. that the person resides or is inside an area delimited and protected by a treaty-based environmental protection regime to which that State is party;
2. that said treaty-based regime establishes an area of functional jurisdiction, such as the one established by the Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region;
3. that, in this area of functional jurisdiction, State parties have the obligation to prevent, reduce and control pollution as the result of a series of general and/or specific obligations, and
4. that, as a result of damage to the environment or the risk of environmental damage in the area protected by the given convention, and which can be attributed to the State party – both to the convention and to the Pact of San José –, the human rights of the person in question have been violated or are threatened.

II. Are conducts and measures, whether actions and/or omissions of one of the States parties, which may cause serious damage to the marine environment – that constitutes the living environment and an essential source of livelihood for the inhabitants of the

* Composed of the following judges: Roberto F. Caldas, President; Eduardo Ferrer Mac-Gregor Poisot, Vice President; Eduardo Vio Grossi, Judge; Humberto Antonio Sierra Porto, Judge; Elizabeth Odio Benito, Judge; Eugenio Raúl Zaffaroni, Judge, and L. Patricio Pazmiño Freire, Judge. Also present, the Secretary, Pablo Saavedra Alessandri, and the Deputy Secretary, Emilia Segares Rodríguez.

** Advisory Opinion No. 23 and its official summary were done in Spanish. The Spanish text should be regarded as the authentic.

coast and/or islands of another State party – compatible with the obligations set out in Articles 4(1) and 5(1), read in relation to Article 1(1) of the Pact of San José? Or of any other permanent provision?

III. Should we interpret, and to what extent, the provisions establishing the obligation to respect and ensure the rights and freedoms set out in Articles 4(1) and 5(1) of the Pact, as to give rise to the obligation of States parties to the Pact to respect the provisions of international environmental law which seek to prevent environmental damage that could limit or make impossible the effective enjoyment of the rights to life and to personal integrity, and that one of the ways to comply with this obligation is by carrying out environmental impact assessments in areas protected by international law, and by cooperation among the States affected? If applicable, what general parameters should be considered when carrying out environmental impact assessments in the Wider Caribbean Region, and what should be their minimum content?

I. Environmental protection and human rights

In its Advisory Opinion, the Court recognized the existence of an irrefutable relationship between the protection of the environment and the realization of other human rights, due to the fact that environmental degradation affects the effective enjoyment of other human rights. In addition, the Court emphasized the interdependence and indivisibility between human rights, the environment and sustainable development, since the full enjoyment of all human rights depends on a favorable environment. Based on this close connection, the Court noted that currently: (i) numerous human rights protection systems recognize the right to a healthy environment as a right in itself, and, at the same time, there can be no doubt that (ii) numerous other human rights are vulnerable to environmental degradation, all of which results in a series of environmental obligations for States to ensure that they comply with their duties to respect and ensure those rights.

Under the Inter-American human rights system, the right to a healthy environment is recognized expressly in Article 11 of the San Salvador Protocol:

1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.
2. The States Parties shall promote the protection, preservation, and improvement of the environment.

This right should also be considered to be included among the economic, social and cultural rights protected by Article 26 of the American Convention.

The human right to a healthy environment is a right with both individual and collective connotations. In its collective dimension it constitutes a universal value that is owed to both present and future generations; while, due to its individual dimension and its relationship to other rights, such as the right to health, life or personal integrity, its violation may have direct or indirect repercussions on the individual. Environmental degradation may cause irreparable damage to human beings. Therefore, a healthy environment is a fundamental right for the existence of humankind.

That said, the right to a healthy environment, as an autonomous right, differs from the environmental content that arises from the protection of other rights such as the right to life or the right to personal integrity. Indeed, some human rights are more susceptible to environmental degradation than others. The rights that are especially related to the environment have been classified in two groups: (i) the rights whose enjoyment is particularly vulnerable to the degradation of the environment, also identified as substantive

rights (for example, the rights to life, personal integrity, health or property), and (ii) the rights whose exercise contribute to better environmental policies, also identified as procedural rights (such as the rights to freedom of expression and association, to information, to participation in decision-making and to an effective remedy).

In this Advisory Opinion, the Court ruled on the States' substantive and procedural obligations regarding environmental protection, which arise from the obligation to respect and ensure the rights to life and personal integrity, because those were the rights regarding which Colombia consulted the Court. However, based on the above considerations, the Court stressed that numerous other rights could be affected by a failure to comply with the environmental obligations, including the economic, social, cultural and environmental rights protected by the Protocol of San Salvador, the American Convention, and other treaties and instruments, specifically the right to a healthy environment.

II. The term "jurisdiction" in Article 1(1) of the American Convention, in order to determine state obligations in relation to environmental protection

The Court interpreted that, in its first question, Colombia was consulting the Court on the interpretation of the term "jurisdiction" in Article 1(1) of the American Convention, in the context of compliance with environmental obligations, particularly in relation to conducts committed outside the national territory of a State, or with effects beyond the national territory of a State. In response to this question, the Court indicated that:

- a. The States Parties to the American Convention have the obligation to respect and ensure the rights recognized in this instrument to all persons subject to their jurisdiction.
- b. The exercise of jurisdiction by a State engages its responsibility for any conduct that may be attributed to it and that allegedly violates the rights recognized in the American Convention.
- c. The jurisdiction of the States, in relation to the protection of human rights under the American Convention, is not limited to its territory. The term "jurisdiction" in the American Convention is broader than the territory of a State and includes situations beyond its territorial limits. States must respect and ensure the human rights of all persons subject to their jurisdiction, even if they are not within its territory.
- d. The exercise of jurisdiction under Article 1(1) of the American Convention outside the territory of a State is an exceptional situation that must be examined restrictively in each specific case.
- e. The concept of jurisdiction under Article 1(1) of the American Convention encompasses any situation in which a State exercises effective authority or control over an individual or individuals, either within or outside its territory.
- f. States must ensure that their territory is not used in any way that may cause significant damage to the environment of other States or of areas outside their territorial limits. Consequently, States have the obligation to prevent causing transboundary damage.

- g.** States are obligated to adopt all necessary measures to avoid that activities carried out on their territory or under their control affect the rights of individuals within or outside their territory.
- h.** Regarding transboundary damage, a person is subject to the jurisdiction of the State of origin, if there is a causal connection between the incident that took place on its territory and the violation of the human rights of persons outside its territory. The exercise of jurisdiction arises when the State of origin exercises effective control of the activities that caused the damage and consequent violation of human rights.

III. Obligations derived from the duties to respect and ensure the rights to life and personal integrity in the context of environmental protection

The Court interpreted that, with its second and third questions, Colombia was asking the Court to determine state obligations related to the duties to respect and ensure the rights to life and personal integrity in relation to environmental damages. In answering these questions, the Court found that, to respect and ensure the rights to life and personal integrity:

- a.** States are obligated to prevent significant environmental damages within and outside their territory.
- b.** To comply with this obligation of prevention, States must regulate, supervise and monitor the activities under their jurisdiction that could cause significant damage to the environment; carry out environmental impact assessments when there is a risk of significant damage to the environment; prepare contingency plans in order to establish safety measures and procedures to minimize the possibility of major environmental disasters, and mitigate any significant environmental damage that could have occurred, even when this happened despite preventive actions by the State.
- c.** States must act in keeping with the precautionary principle to protect the rights to life and to personal integrity in the event of possible serious and irreversible damage to the environment, even in the absence of scientific certainty.
- d.** States are obligated to cooperate, in good faith, to protect against environmental damage.
- e.** To comply with the obligation of cooperation, when States become aware that an activity planned under their jurisdiction could generate a risk of significant transboundary damage and in cases of environmental emergencies, they must notify other States that could be affected, as well as consult and negotiate in good faith with the States potentially affected by significant transboundary damage.
- f.** States have the obligation to ensure the right of access to information recognized in Article 13 of the American Convention in relation to possible damage to the environment.
- g.** States have the obligation to ensure the right to public participation of the persons subject to their jurisdiction, as established in Article 23(1)(a) of the Convention, in the decision-making process and in the issuing of policies that may affect the environment.

- h.** States have the obligation to ensure access to justice, regarding the state obligations for the protection of the environment previously indicated in this Opinion.

The above obligations were established in relation to the general duties to respect and ensure the rights to life and personal integrity, because those were the rights referred to by the State of Colombia in its request for an advisory opinion. However, the Court noted that this did not mean that the same obligations did not exist in relation to other rights that were particularly vulnerable to environmental degradation.

The complete text of the Advisory Opinion is available at: <http://bit.ly/2Bddq6f>