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How Attention to Economic, Social, Cultural, and Environmental Rights Could Increase U.S. Indigenous and African-American Civil Society Engagement with the Inter-American Human Rights System

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Abstract

This Article contends that the evolving approach of the inter-American human rights system toward the human rights of Indigenous peoples and persons of African descent, including their economic, social, cultural, and environmental rights, presents a key opportunity for U.S. civil society actors to expand beyond the dominant framework of civil rights discourse and domestic litigation. At the same time, it recognizes that developments in inter-American standards present challenges for engagement with the U.S. government, which has resisted accountability for racial discrimination and rejected the recognition of economic, social, cultural, and environmental rights. This Article will be particularly relevant to scholars and advocates interested in the intersection of the international human rights framework with the domestic legal, political, and social frameworks in the United States, as well as with the struggles of communities for social justice and human rights.

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I. Introduction

In the field of human rights, U.S. exceptionalism[1] is often understood from the perspective of the state and its policies.[2] The United States, when ratifying treaties, limits the norms it accepts through the attachment of reservations, understandings, and declarations that, in effect, render the rights protected no more expansive than their corollaries in the U.S. Constitution and laws.[3] In a similar fashion, U.S. authorities routinely refuse to recognize the oversight role of universal and regional bodies for individual complaints; the U.S. Supreme Court, these authorities insist, is the final arbiter of legal matters.

Less understood is the relationship of civil society groups to U.S. exceptionalism, the constraints exceptionalist policies place on their advocacy, and their own contributions to exceptionalist practices. Almost without exception and until quite recently, most of those advancing rights in the United States have accepted the frame of civil rights and the U.S. Constitution, rather than narratives focusing on international human rights. As long as progressives were a majority on the Supreme Court, this strategy worked reasonably well. Understanding advocacy as limited to the domestic framework made it easy to overlook some of the potential structural problems such a strategy entails. Those limitations are magnified immensely when advocates cease to prevail in civil rights litigation. Reliance on the Constitution, for example, limits the scope of advocacy to the rights protected by U.S. law and its interpretation, to the exclusion of economic, social, and cultural rights (which are not protected in the Constitution). Reliance on the Constitution and the accompanying reverence for that document, and the values it embodies for those charged with its interpretation, also borders on support for the underlying premises of U.S. exceptionalism (the idea that the United States is fundamentally different and better than other nations and thus international norms relevant for every other nation are unnecessary in and for the United States). Thus, exclusive reliance on the U.S. Constitution and law not only is detrimental to

1. In general terms, U.S. or American exceptionalism has been defined as including and accepting the following ideas: "the United States and its citizens are divinely ordained to lead the world to betterment; the United States differs politically, socially, and morally from the Old World of Europe; and the United States is exempt from the 'laws of history' that lead to the decline and downfall of other great nations." *See* Donald E. Pease, American Exceptionalism, Oxford Bibliographies (Nov. 26, 2023).

2. The first two paragraphs of the introduction have been adapted from portions of James L. Cavallaro, *US Exceptionalism, Human Rights, and Civil Society*, 16 Austrian Rev. Int'l & Eur. L. 41 (2011).

3. Louis Henkin, *U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker*, 89 Am. J. Int'l L. 341 (1995).

efforts to hold U.S. authorities responsible for human rights violations in the present but also limits the capacity of advocates to imagine justice beyond the highly limited parameters imposed by the Constitution.

This Article contends that the evolving approach of the inter-American human rights system (IAHRS) to the human rights of Indigenous peoples and persons of African descent, including their economic, social, cultural, and environmental rights (ESCER), presents a key opportunity for U.S. civil society actors to expand beyond the dominant framework of civil rights discourse and domestic litigation.[4] At the same time, it recognizes that developments in inter-American standards present challenges for engagement with the U.S. government, which has resisted accountability for racial discrimination and rejected the recognition of economic, social, cultural, and environmental rights.

Part I describes how the IAHRS's approach to the human rights of Indigenous peoples and persons of African descent has changed over time. In the landmark case *Awas Tingni* (2001), the IAHRS focused on land tenure as the primary legal basis for the rights of Indigenous peoples and developed standards regarding states' obligations when considering large development projects affecting Indigenous communities.[5] Since then, the Inter-American Court of Human Rights has continued to develop its jurisprudence on Indigenous communities' rights, as will be detailed below. At the same time, the IAHRS has largely failed to address discrimination against persons of African descent in the United States, only beginning to take limited steps in recent years. Importantly, the IAHRS has also demonstrated an increasing willingness to address violations of ESCER with implications for the rights of people of Indigenous and African descent.

Part II assesses the challenges and opportunities these changes in the IAHRS's approach present for its engagement with U.S. government and civil society. The system's emerging willingness to address

4. Ironically, the expanded focus on economic, social, cultural, and environmental rights (ESCER) by the Inter-American system presents many of the same challenges and choices that the leading African-American civil society organizations faced immediately following the creation of the United Nations. Once created, the United Nations presented a potential forum for advocacy for justice for African-Americans. Some in the organization, including W.E.B. DuBois, believed that the NAACP (and other organizations) should raise human rights issues—including economic inequality—before the new United Nations mechanisms. Eventually, due in large part to the Cold-War context and McCarthyism, opponents of the internationalist strategy won out. *See* Carol Anderson, Eyes Off the Prize: The United Nations and the African American Struggle For Human Rights, 1944–1955, at 58 (2003). *See also infra*, Subpart II.C.

5. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79 (Aug. 31, 2001).

violations of ESCER could complicate its engagement with the United States, given the U.S. government's privileging of civil and political rights over ESCER. That said, the U.S. government's long history of resistance to international human rights law in general, and to international monitoring of U.S. racial discrimination in particular, suggests that the increasing attention to ESCER by the IAHRS would have limited practical implications. Of greater interest is the effect these changes might have on IAHRS engagement with U.S. civil society. According to historians and social scientists, U.S. Indigenous movements—unlike their counterparts in Latin America—have organized primarily around the concept of sovereignty, rather than rights, which has historically made the IAHRS less relevant to their struggles for justice. This Article suggests that U.S. Indigenous civil society actors could see greater utility in engaging with the IAHRS if the system's efforts to protect the ESCER of Indigenous communities elsewhere in the Americas prove effective. Historians and social scientists have also observed that U.S. Afro-descendant civil society has tended to privilege a rights framework and has a stronger international tradition than does U.S. Indigenous civil society. This Article suggests this makes U.S. Afro-descendant civil society actors even more likely than U.S. Indigenous civil society actors to increase their engagement with the IAHRS as the system develops standards on ESCER. Increased IAHRS attention to issues of racial discrimination also provides a basis for increased engagement of U.S. Afro-descendant civil society with the inter-American system.

Before beginning, a note about source material. We are lawyers with expertise in the inter-American system, not historians or social scientists who have studied U.S. social movements in depth, firsthand. For this reason, in Part II, we rely heavily on primary sources and our own insights about the IAHRS, whereas, in Part III, especially Subparts II.B and II.C, we rely on secondary sources from historians and social scientists, bringing their insights into conversation with the changes in inter-American jurisprudence we describe in Part I. Our goal is not to produce original research on U.S. social movements nor to characterize the broad and diverse array of Indigenous and Afro-descendant civil society actors in the United States. Instead, our claim is more limited: we note that historians and social scientists have observed certain general trends in the United States that might inform these actors' approach to engaging with the inter-American system.

II. The Inter-American Human Rights System's Evolving Approach

This Part describes how the IAHRS's approach to the human rights of Indigenous peoples and persons of African descent has changed over time. Subpart II.A sets the scene by summarizing the early efforts of the system with regard to the human rights of both Indigenous peoples and persons of African descent. Subpart II.B explains the recent, limited work that the Inter-American Commission on Human Rights (the Commission or IACHR) has done on the rights of Afro-descendants following decades of neglect. Subpart II.C gives an overview of the rich jurisprudence of the Inter-American Court of Human Rights (the Court or IACtHR) on the rights of Indigenous peoples. In both Subparts II.B and II.C, the developments in rights of Indigenous peoples and persons of African descent overlap with the increasing willingness of the IAHRS to address violations of ESCER.

A. Early Efforts

In the Western Hemisphere, the Organization of American States (OAS) provided the institutional architecture for the advancement of human rights. Seven months before the Universal Declaration of Human Rights was approved by the UN General Assembly (December 10, 1948), the OAS approved the American Declaration of the Rights and Duties of Man.[6] A decade later, the OAS created the Commission (1959). In 1969, the Organization finalized the American Convention on Human Rights (1969);[7] the Convention entered into force in 1978. Yet, for several decades after the drafting of the American Declaration, the creation of the Commission, and the drafting of the American Convention on Human Rights, the growth of human rights law in the Americas was not recognized as the main or even a valuable means of advancing the interests of Indigenous peoples of the Americas. Although Indigenous peoples had diverse interests and strategies for advancing them, self-determination was generally understood to be the principal demand of Indigenous peoples, particularly in American states in which the majority of the population was Indigenous.[8] The inter-American system has increasingly used the framework of

6. Org. of Am. States (OAS), Am. Declaration of the Rts. And Duties of Man, May 2, 1948, (adopted at the Ninth International Conference of American States in Bogotá, Colombia; the same conference that adopted the Charter of the Organization of American States and thereby created the OAS).

7. OAS, Am. Convention on Hum. Rts. "Pact of San Jose, Costa Rica," Nov. 22, 1969.

8. Karen Engle, *On Fragile Architecture: The UN Declaration on the Rights of Indigenous Peoples in the Context of Human Rights*, 22 Eur. J. Int'l. L. 1, 142–62 (2011).

self-determination in the Inter-American Court of Human Rights' case law and in the Commission's reports, but initial self-determination developments were based on the right to collective property over ancestral lands and territories.[9] The move to rights involved both advantages (legitimacy, institutional fora) and disadvantages (less ambitious demands).[10] According to Karen Engle:

> The principal tactic Indigenous rights advocates pursued in the 1970s and 1980s . . . was external self-determination . . . Concerns were raised regarding the limitations of the human rights framework, including its failure to address the political rights of self-determination and its focus on the individual rather than that group.[11]

Despite these limitations, Engle observed:

> in the late 1980s and early 1990s a number of Indigenous rights advocates began to turn to human rights law . . . [They] softened their stance on self-determination and attempted to broaden the general, liberal model of human rights so as to incorporate a collective right to culture and allow for difference within an equality model.[12]

In this period, the system paid little attention to racial discrimination. This is likely the result of a range of factors, including: the influence of the United States on the IAHRS combined with the U.S. government's reluctance to be held accountable in international fora for racial discrimination;[13] the overwhelmingly white (and male) composition of members of the Commission (and later, the Court);[14] and the urgency of addressing

9. Case of the Miskito Divers (Lemoth Morris et. al.) v. Honduras, Judgment, Inter-Am. Ct. H.R (ser. C) No. 432 (Aug. 31, 2021).

10. Engle, *supra* note 8.

11. *Id.*

12. *Id.*

13. *See* Carol Anderson, *A Hollow Mockery,* in Bringing Human Rights Home: A History of Human Rights in the United States (2009) (discussing how the State Department worked to limit the powers of the UN to ensure that it would not be able to investigate racism, Jim Crow, lynching, and voter suppression in the United States, particularly in the South); see also Anderson, *supra* note 4, at ch. 4 (describing how the U.S. State Department arm-twisted the NAACP to crush the international advocacy on abuse of the rights of African Americans by a leftist rights organization).

14. With some notable exceptions from the Caribbean, the defining characteristics of the members of the Commission and judges of the Court have been white male academics of relative privilege and means. According to the webpage of the Inter-American Commission on Human Rights, until 2020, seventy-six people have served on the Commission. Of those, only eight (10.5%) have been Afro-descendants. There have been no self-identified Indigenous members of the Commission to date. *See Composition*, IACHR, https://www.oas.org/es/cidh/mandato/composicion.asp; *see also For Suitable Representation in the Inter-American Commission on Human Rights*, Ctr. for Justice & Int'l Law (CEJIL), *https://cejil.org/blog/por-una-representacion-adecuada-en-la-comision-interamericana-de-derechos-humanos*. With respect to the Court, through 2020, thirty-nine judges have served. Of these, only 5 (12.8%) have been women and 4 (10.25%) have been Afro-descendants.

other issues (the wholesale torture, summary execution and forced disappearance of political dissidents during the Cold War). Over time, however, the system's human rights bodies have addressed racial discrimination through the various functions of the Commission and the jurisprudence of the Court, as outlined in the following sections.

B. Afro-Descendants and the Inter-American Commission: Decades of Disregard, then Gradual and Limited Recognition of Racism

Despite over six decades of existence, only in the past sixteen years has the IAHRS begun to tackle racism directly. This recognition of the centrality of racism in the hemisphere no doubt tracks greater concern by civil society and state entities across the Americas over the past several decades. Although some recent cases address racial discrimination (summarized below), much of the IAHRS's work on racism has come in the form of country reports and thematic reports. Here as well, the engagement of the IACHR has been slow compared to work on other rights issues. Further, most of the work of the Commission (and of the Court) has been reactive and narrowly focused.

1. Rapporteurships

The IACHR began to create Rapporteurships in 1990 to address issues faced by groups in situations of vulnerability or subordination.[15] Since then, Rapporteurships have served to enhance the capacity of the Commission to monitor rights abuses in an increasing range of focus areas. Rapporteurships now regularly visit states in the Americas, issue statements, research and publish reports, and assist in the processing of cases and requests for precautionary measures. Remarkably, it was not until 2005, some fifteen years after the creation of the first Rapporteurship, that the Commission deemed it necessary to create the Rapporteurship on the Rights of Persons of African Descent and against Racial Discrimination. Before this, the Commission had established Rapporteurships on the rights of Indigenous peoples (1990),

No one who self-identifies as Indigenous has served on the Court. The role of Secretary of the Court has never been held by a woman, Afro-descendant, or person self-identifying as Indigenous. Of the eleven executive secretaries of the Commission, none have been Afro-descendant or have self-identified as Indigenous.

15. *Thematic Rapporteurships and Units*, IACHR, *https://www.oas.org/en/iachr/mandate/rapporteurships.asp* (last visited Dec. 5, 2021) ("Starting in 1990, the Inter-American Commission began creating thematic rapporteurships in order to devote attention to certain groups, communities, and peoples that are particularly at risk of human rights violations due to their state of vulnerability and the discrimination they have faced historically. The aim of creating a thematic rapporteurship is to strengthen, promote, and systematize the Inter-American Commission's own work on the issue.").

women (1994), migrants (1996), freedom of expression (1997), human rights defenders (2001), and persons deprived of liberty (2004).[16] To the extent that the creation of a Rapporteurship demonstrates the system's focus on a particular group, the delay between the creation of the Rapporteurship on Indigenous rights and the rights of persons of African descent is a testament to the limited importance given to racism as a human rights issue by the IAHRS.

2. Country reports

Country reports were the IACHR's earliest tool, with their first use dating back to 1961.[17] Still, the Commission did not include racial discrimination as a topic addressed in a report on a given country until three decades later. Only since the late 1990s has the IACHR addressed racial discrimination in country reports.

In its Report on the Human Rights Situation in Brazil in 1997, the Commission included a brief chapter titled "Racial Discrimination."[18] That same year, in its Report on the Human Rights Situation in Ecuador in 1997, the IACHR included a brief chapter on "the rights of Afro-Ecuatorians."[19] In 1999, in its Third Report on the Situation of Human Rights in Colombia, the Commission included a chapter on "the rights of Black communities."[20] In its Report on the Situation of Human Rights in the Dominican Republic in 1999, the IACHR included a chapter on Haitian migrant workers and their families. The chapter focused principally on migrant worker status, only tangentially addressing the racial element in the discrimination and abuses suffered.[21]

Despite this flurry of activity between 1997 and 1999, between 1999 and 2013, the IACHR adopted numerous country reports without including chapters on racism in the situation of Afro-descendants. After this fourteen-year hiatus, the Commission addressed race

16. *Id.*

17. Claudio Grossman, *Protecting Human Rights in the Americas: The Continuous Role of the Inter-American Commission on Human Rights*, *in* The Impact of the Inter-American Human Rights System: Transformations on the Ground 34, 34 (Armin von Bogdandy et al., eds., 2024).

18. IACHR, Report on the Situation of Human Rights in Brazil, OEA/Ser.L/V/II., Doc. 9 (1997).

19. IACHR, Report on the Human Rights Situation in Ecuador, OEA/Ser.L/V/II.96, Doc. 10 rev. 1 (1997).

20. IACHR, Third Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II.102, Doc. 9 rev. 1 (1999).

21. *Id.*

and Afro-descendants in its report Truth, Justice and Reparation in Colombia in 2013.[22]

From 2015 to 2021, the Commission addressed issues of racism across the hemisphere in the context of the broader human rights situation affecting each state. In its report on the Situation of Human Rights in the Dominican Republic in 2015,[23] for example, the Commission incorporated the issue of racism expressly and in detail in its analysis of the rights of Haitians and those of Haitian descent. That same year, in its Report on the Situation of Human Rights in Honduras in 2015, the Commission included several chapters that considered the rights of Afro-Hondurans.[24]

In its Report on the Situation of Human Rights in Guatemala in 2017,[25] the IACHR included a brief reference to the Afro-descendant community in Guatemala (which, in relative terms, is quite small compared to most other states in the Americas). In its report on the Situation of Human Rights in Honduras in 2019, the Commission recognized the Afro-descendant population, along with Indigenous peoples, as a group deserving of special attention.[26] In its Report on the Human Rights Situation in Cuba in 2020, the Commission included a chapter on Afro-descendants.[27] Most recently, in its report on the Human Rights Situation in Brazil in 2021, the Commission dedicated a section to historical and structural discrimination against the Afro-Brazilian population.[28]

In over seventy country reports produced by the Commission in six decades (1962–1971), the issue of racism has appeared in just ten reports, the vast majority of which were drafted in the past decade.

3. Thematic Reports

Between 1998 and 2001, the Commission adopted roughly one hundred reports on thematic issues. Of these, only three focus in-depth on the issue of racism or the situation of Afro-descendants. The Commission's first focused report on Afro-descendants was its 2011 Report on the

22. IACHR, Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia, OEA/Ser.L/V/II. (2013).

23. IACHR, Report on the Situation of Human Rights in the Dominican Republic, OEA/Ser.L/V/II, Doc. 45/15 (2015).

24. IACHR, Situation of Human Rights in Honduras, OEA/Ser.L/V/II, Doc. 42/15 (2015).

25. IACHR, Situation of Human Rights in Guatemala, OEA/Ser.L/V/II, Doc. 208/17 (2017).

26. IACHR, Human Rights Situation in Honduras, OEA/Ser.L/V/II, Doc. 146 (2019).

27. IACHR, The Situation of Human Rights in Cuba, OEA/Ser.L/V/II, Doc. 2 (2020).

28. IACHR, The Situation of Human Rights in Brazil, OEA/Ser.L/V/II, Doc. 9 (2021).

Situation of People of African Descent in the Americas.[29] The next relevant report issued by the Commission in this area addressed a specific issue in greater detail, considering the experiences of Indigenous peoples and persons of African descent in relation to extractive industries.[30] Finally, the third report to focus specifically on racial discrimination is the Commission's 2018 report African Americans, Police Use of Force, and Human Rights in the United States.[31]

4. Petitions and Cases

Petitions and cases that address issues of racism are relatively few compared to other issues considered with far greater frequency in the inter-American system. Of the many hundreds of cases resolved by the Commission and the Court, to date, no more than two dozen address issues of race. Of these, at least half have been issued in the past two years. While it is true that any case system necessarily is reactive, it is also the case that adjudicatory bodies have significant discretion in deciding which questions to address when presented with particular sets of facts. And while other matters, such as forced disappearances, torture, and political persecution, may have been more prevalent in the first decades of operation of the system, the Commission, and even more so the Court, still failed to seize various opportunities to address racism in the Americas.

One example of this failure to consider race comes from one of the earliest cases presented to the Court, *Aloeboetoe v. Suriname*, which addressed the slaughter of a Maroon community by security forces.[32] In the reparations phase of the case, the Commission suggested "that the killings were racially motivated and committed in the context of ongoing conflicts that apparently existed between the Government and the Saramaka tribe."[33] The Court rejected this interpretation of events, holding instead that:

> the origin of the events . . . lies not in some racial issue but, rather, in a subversive situation . . . Although [references are made] to the

29. IACHR, The Situation of People of African Descent in the Americas, OEA/Ser.L/V/II, Doc. 62 (2011).

30. IACHR, Indigenous Peoples, Afro-Descendant Communities and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities, OEA/Ser.L/V/II, Doc. 47/15 (2015).

31. IACHR, African Americans, Police Use of Force, and Human Rights in the United States, OEA/Ser.L./V/II, Doc. 156 (2018).

32. Aloeboetoe et al. v. Suriname, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 11 (Dec. 4, 1991).

33. Aloeboetoe et al. v. Suriname, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 15, ¶ 82 (Sept. 10, 1993).

> conflicting relationship that appears to have existed between the Government and the Saramakas, in the instant case it has not been proved that the racial factor was a motive for the killings.[34]

Below, we outline the main issues considered in the small universe of decided cases that have addressed racism to some degree into five groups: those considering racism in the application of the death penalty in the United States; racism in labor conditions in Brazil; racism in police actions; racism in land and territorial disputes; and racism in migration by authorities in the Dominican Republic. These cases address the specific context before them, assessing whether particular situations of fact that involve racism or race-based discrimination constitute violations of rights protected by the American Declaration or American Convention. There is relatively little analysis of racism as a broader phenomenon in these decisions.

a. Racism in the Criminal System of the United States (Application of the Death Penalty)

One of the earliest IAHRS cases to address racism focused on the death penalty in the United States. In *Williams Andrews v. the United States* (1997), the IACHR found that the racial biases of members of a jury violated the right to a fair and impartial trial before the law.[35] More recently, in the cases of *Kevin Cooper v. the United States* (2015),[36] *Julius Omar Robinson* (2020),[37] and *Cordia Hall* (2020),[38] the Commission considered claims of racial discrimination in the imposition of the death penalty. In all these cases, the analysis largely tracks the reasoning of U.S. decisions finding racial discrimination in the application of the death penalty and does not engage with racism beyond this limited context. The IACHR found, in these cases, that the U.S. government had failed to meet its obligation to investigate and remedy allegations of racially biased sentencing.

b. Racism in Labor Relations in Brazil

In *Simone Andre Diniz v. Brazil* (2006), the IACHR considered the actions of private parties.[39] An advertisement sought a woman childcare

34. *Id.*

35. William Andrews v. United States, Case 11.139, Inter-Am. Ct. H.R., Report No. 57/96, OEA/Ser.L/V/II.95, doc. 7 rev. at 570 (1997).

36. Kevin Cooper v. United States, Case 12.831, Inter-Am. Ct. H.R., Report No. 78/15, OEA/Ser.L/V/II. 156, doc. 31 (2015).

37. Julius Omar Robinson v. United States, Case 13.361, IACHR, Report No. 210/20, OEA/Ser.L/V/II, doc. 224 (2020).

38. Orlando Cordia Hall v. United States, Case 12.719, IACHR, Report No. 28/20, OEA/Ser.L/V/II, doc. 38 (2020).

39. Simone André Diniz v. Brazil, Case 12.001, IACHR, Report No. 66/06 (2006).

worker, "preferably white." The plaintiff, an Afro-Brazilian applicant, was not considered for the position. She complained to state authorities, who archived the investigation without results. The Commission held that the state had failed in its duty to investigate illegal discrimination adequately.

More recently, in 2021, the Commission decided a similar set of facts involving racial discrimination by private employers. In *Neusa dos Santos Nascimento and Gisele Ana Ferreira v. Brazil* (2021),[40] the Commission addressed a help-wanted advertisement placed by a private company for which Afro-Brazilian women expressed interest.[41] The company turned away these women, asserting that the positions had already been filled. Hours later, a white woman was allowed to apply and was hired.[42] The Afro-Brazilian women who had been turned away filed complaints alleging racial discrimination that were rejected or still pending at the time of the Commission's decision.[43] The IACHR held that the Brazilian state had violated its duties to ensure their right to judicial protection in conjunction with their rights to work, equality, and non-discrimination.[44]

In the case of *Hacienda Brasil Verde Workers v. Brazil* (2016), the Court again was presented with the opportunity to consider racial motivation, in addition to other factors, as responsible for a violation of rights. The *Hacienda Brasil Verde Workers* case involved a situation of forced labor involving dozens of men recruited into debt bondage in the Brazilian Amazon.[45] Although presented with evidence of racial motivation and discrimination, the Court focused its analysis on discrimination and structural injustice due to economic conditions.[46]

Finally in 2020, in the case of *Employees and Families of the Fireworks Factory of Santo Antônio de Jesús v. Brazil*, concerning an explosion in a fireworks factory not adequately supervised by state authorities, the Court addressed the racial discrimination at the root of the factory's appalling labor conditions. In the explosion, dozens were killed and gravely injured, the vast majority women and children of

40. This case is now pending before the Inter-American Court. Press Release, IACHR, IACHR Refers Case on Brazil to the Inter-American Court (Aug. 11, 2021), http://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/213.asp.

41. *Id.*

42. *Id.*

43. *Id.*

44. Neusa Dos Santos Nascimento and Gisele Ana Ferreira v. Brazil, Case 1068–03, Inter-Am. Ct. H.R., Report No. 84/06, OEA/Ser.L/V/II.127 Doc. 4 rev. 1 (2007).

45. *Id.*

46. Hacienda Brasil Verde Workers v. Brazil, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 318 (Oct. 20, 2016).

African descent. The explosion took place in a context in which labor opportunities for Afro-Brazilians (in particular, Afro-Brazilian women) were scarce. The Court held that the state had violated their rights to life, equality, and non-discrimination, and had failed in its obligation to provide special protection to children. In contrast to its analysis in *Hacienda Brasil Verde Workers* (and earlier, in *Aloeboetoe*), the Court applied intersectional analysis to address racism. In the section of the judgment concerning measures to guarantee non-repetition, the Court ordered Brazil to take steps to oversee fireworks production and, more relevant to our analysis, to implement socioeconomic development programs for the benefit of the residents of Santo Antônio de Jesús, an overwhelmingly poor, Afro-Brazilian community.[47]

c. Racism in Police Actions

In the case of *Acosta Martínez and Others v. Argentina* (2020), the state of Argentina accepted responsibility for the arrest and death in detention of an Afro-Uruguayan, as well as for employing racial profiling. As a guarantee of non-repetition, the Court ordered Argentina to include training for police forces in Buenos Aires on racial, national origin, skin color, and other stereotypes and profiling in stops, detentions, and other police actions.[48] The Court additionally ordered that this training address the negative impacts of such profiling on people of African descent.[49] Finally, the Court ordered Argentina to create and support a mechanism to register complaints by individuals who claim to have been stopped or arrested arbitrarily based on racial profiling, as well as to register data on a range of issues affecting persons of African descent in the country.[50]

Additionally, in an earlier case, *Wallace de Almeida v. Brazil* (2009), the Commission had addressed allegations of racism by military police who had killed a young, Afro-Brazilian soldier near his home in a humble hillside community in Rio de Janeiro.[51] The Commission agreed with the petitioners that state police forces had discriminated against the victim based on his race and socioeconomic status.

47. Workers of the Fireworks Factory in Santo Antônio de Jesús v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 407 (July 15, 2020).

48. *Id.*

49. *Id.*

50. Acosta Martínez et al. v. Argentina. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 410 (Aug. 31, 2020).

51. Wallace De Almeida vs. Brazil, Case 12.440, IACHR., Report No. 26/09 (2009).

d. Land Tenure and Afro-Descendant Communities

In the case of *Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, the Court addressed a range of violations in the context of the joint military and paramilitary Operation Genesis. Among the issues analyzed by the Court was the dispossession of Afro-descendant communities by the operation. The Court found Colombia responsible for rights violations, including violation of these communities' collective property rights, and ordered the state to make reparations.[52]

e. Racism in Haitian Migration in the Dominican Republic

In the case of *Yean and Bosico v. Dominican Republic* (2005), the Court addressed the refusal by authorities in the Dominican Republic to issue birth certificates to two girls of Haitian descent born in the Dominican Republic.[53] The lack of recognition by the state obstructed the girls' access to education and other rights to which they would be entitled as Dominican citizens.[54] Although the Court focused its analysis on the discrimination that the girls suffered because of their Haitian ancestry, it failed to expressly address the issue of racism, thus missing the opportunity to develop its jurisprudence on a widespread practice in the Dominican Republic and the Americas.

In 2014, the Court revisited the issue of treatment of Haitians and those of Haitian descent by Dominican authorities in *Dominicans and Haitians Expelled by the Dominican Republic*.[55] A decade after its first foray into the issue of nationality and race-based discrimination, the Court expressly addressed the racial element, holding the Dominican Republic responsible for the racially discriminatory actions and policies of its agents and requiring the state to take measures to ensure non-repetition of rights abuse based on race.

C. Indigenous Rights

The Commission first issued a final report in a case involving Indigenous peoples in 1985 in the case of the *Yanomami People v.*

52. Afro-Descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 270 (Nov. 20, 2013).

53. The Girls Yean and Bosico v. Dominican Republic, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130 (Sept. 8, 2005).

54. *Id.*

55. Dominican and Haitian People Expelled v. Dominican Republic, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 282 (Aug. 28, 2014).

Brazil, interpreting the guarantees provided in the American Declaration in relation to a highway development project.[56] The Commission ruled that the highway had detrimental impacts on the rights to health and well-being, life, and freedom of movement and residence of the Yanomamis. After this case, apart from discussion of Indigenous rights in thematic reports, it was not until over a decade later that the Commission would return to this topic. In 2001, the Court issued its first major opinion on Indigenous rights in *Awas Tingni*.[57] Although the Commission had addressed Indigenous rights in reports and cases, and the Court had considered issues related to traditional family structure (for the purpose of awarding damages in *Aloeboetoe v. Suriname*),[58] *Awas Tingni* is a watershed decision that transformed the protection of Indigenous communities in the Americas.

Although there have been other issues involving Indigenous peoples that the Commission and the Court have addressed, the focus of this Subpart is the lands, territories, and natural resources of Indigenous peoples, which have been the primary concerns raised by the affected stakeholders.[59] Between 2001 and 2021, the Commission decided ten cases directly addressing these concerns. Lands, territories, and natural resources also provide the most expansive opportunities for Indigenous peoples to advocate for their autonomy and to overcome legacies of colonialism.

Beginning with *Awas Tingni*, the Court expanded the reach of the protection of collective property and defined the scope of state obligations with increasing clarity. As detailed below, however, the Court's more recent cases have failed to reiterate earlier statements regarding the need to ensure free, prior, and informed consent (FPIC) on major projects that affect Indigenous communities. Although it has not reversed or questioned previous holdings on FPIC, the Court has failed to refer to these holdings despite the circumstances warranting such reference. At the same time, the Commission has maintained consistently that on projects of a certain magnitude, consent is required.

56. Yanomami Community v. Brazil, Case 7615, Inter-Am. Ct. H.R., Report No. 12/85, OEA/Ser.L/V/II.62, doc. 10 rev. 1 (1985).

57. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79 (Aug. 31, 2001).

58. Aloeboetoe et al. v. Suriname, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 11 (Dec. 4, 1991).

59. There are topics closely related to the autonomy of Indigenous peoples that have yet to be addressed directly by the Commission and Court. One of these is the issue of self-rule by Indigenous peoples in the application of their laws and customs and the implications of legal pluralism for recognition of their justice systems.

Awas Tingni continues to be one of the most important Inter-American Court cases on Indigenous rights. Faced with extractive-industry degradation of traditional, undemarcated lands, the Court in *Awas Tingni* held that: i) Article 21 of the American Convention (on the right to property) protects the collective property of Indigenous peoples; ii) there exists, and must be recognized, a special relationship between Indigenous peoples and their land, a relationship which is the basis for their cultural, social, spiritual, and economic life; iii) possession of lands should suffice for Indigenous peoples' property rights to be recognized by the state; iv) this collective property right imposes on the state the obligation to demarcate, delimit, and to provide title for Indigenous territories; and v) that states may be held responsible internationally for measures (such as granting concessions to third parties) that negatively affect the use and enjoyment of Indigenous lands.[60]

Several years later, in the cases of *Yakye Axa v. Paraguay* (2005),[61] *Sawhoyamaxa v. Paraguay* (2006),[62] and *Xákmok Kásek v. Paraguay* (2010),[63] the Court interpreted state obligations in Indigenous contexts arising out of International Labor Organization (ILO) Convention 169. In these cases, the Court addressed concerns related to natural resources on Indigenous lands by reference to Article 21 of the American Convention (the basis for the holding in *Awas Tingni*). In addition to reiterating that traditional possession by Indigenous peoples has equivalent legal effects to valid legal title over land, the Court held that Indigenous peoples removed from their traditional lands against their will maintain property rights over those lands notwithstanding lack of legal title (unless those lands have been transferred to good-faith, third-party buyers).

In all these cases, the Court ruled that Indigenous peoples who have lost possession of their lands have the right to be reinstated in their territory or to obtain lands of equal extension and quality. As long as there exists a special relationship with the land, this demand and thus the right of Indigenous peoples remains val*id.* Faced with these demands, the state is obligated to take steps to return traditional lands to Indigenous peoples, unless there is a valid basis rendering such return impossible. The fact that the traditional lands are in private hands,

60. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Merits, Reparations and Costs, Judgment, IACHR (ser. C) No. 79 (Aug. 31, 2001).

61. Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125 (June 17, 2005).

62. Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146 (Mar. 29, 2006).

63. Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214 (Aug. 24, 2010).

alone, is not sufficient to overcome the state's obligation in this regard. In such cases, the state is obligated to provide lands of equal extension and quality. However, the Court has maintained consistently that it is not the role of the Court to decide whether the right of the Indigenous community or another claimant should prevail: this is a determination within the exclusive domain of the state.

In the case of *Saramaka People v. Suriname* (2007), the Court reiterated prior holdings regarding the right of Indigenous peoples to effective control over their territory without interference. *Saramaka* adds detail on the scope of protection over natural resources and their relation to the economic, social, and cultural survival of Indigenous peoples. Note here, that the Saramaka people are tribal (Maroons) of African descent; the Court treated this community, for the purposes of land tenure, as analogous to Indigenous peoples.[64]

In *Saramaka,* the Court emphasized the protection of the tribal community's lands and natural resources as a means of preventing the extinction of the people themselves. It thus clarified that the natural resources protected by Article 21 are those used traditionally and those necessary for survival, development, and continuity of the life of the traditional (or Indigenous) people. At the same time, the Court reiterated that the collective property rights over lands and natural resources are not absolute.[65] These rights may be restricted, provided that no restriction implies the denial of subsistence as a tribal (or Indigenous) people. In analyzing mining or timber concessions authorized in traditional territories, the Court outlined the protections that must exist: the state must ensure the effective participation of the community, according to its customs and practices; the state must guarantee that the community will reasonably benefit from the plan undertaken in its territory; the state must ensure the realization of an environmental and social impact study.[66]

Additionally, in this context, the Court addressed for the first and only time, the question of free, prior, and informed consent in the following terms:

> [T]he Court considers that, regarding large-scale development or investment projects that would have a major impact within Saramaka territory, the State has a duty, not only to consult with the Saramakas, but also to obtain their free, prior, and informed consent, according

64. Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶¶ 87–96 (Nov. 28, 2007).

65. *Id.*

66. Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶¶ 87–96 (Nov. 28, 2007).

> to their customs and traditions. The Court considers that the difference between "consultation" and "consent" in this context requires further analysis.
>
> ***
>
> The Court agrees with the State and, furthermore, considers that, in addition to the consultation that is always required when planning development or investment projects within traditional Saramaka territory, the safeguard of effective participation that is necessary when dealing with major development or investment plans that may have a profound impact on the property rights of the members of the Saramaka people to a large part of their territory must be understood to additionally require the free, prior, and informed consent of the Saramakas, in accordance with their traditions and customs.[67]

Although in subsequent cases the Court developed more specific guidelines concerning the consultation process as well as other state obligations related to the protection of traditional territories, on the central issue of consent, the Court has not reiterated the *Saramaka* holding that consent is required in development projects with certain characteristics. In subsequent cases, the Court has either completely ignored the issue, turning directly to the specifics of the consultation, or it has included language that implies consent does not include the right to veto. Instead, the Court has indicated that the consult should be directed toward achieving consent without saying—as in *Saramaka*—that consent is required.

In the case of *Kichwa Indigenous People of Sarayaku v. Ecuador* (2012), the Court reiterated prior statements regarding the scope of Article 21's protection of lands, territories, and natural resources. In *Sarayaku,* the Court focused on the consultation in greater detail than in *Saramaka* and specified that the essential elements of a valid consultation require it: i) be prior; ii) be undertaken in good faith, seeking to reach agreement; iii) be adequate and accessible; iv) include an environmental impact study; and v) be informed.[68] The Court also ruled that states are obliged not only to realize consultation with traditional peoples, but also to oversee, control, and provide judicial review (as necessary) afterward.[69]

In the case of *Kuna of Madugandí and Emberá of Bayano and Their Members v. Panama* (2014), the Court analyzed the failure to

67. *Id.* ¶¶ 134, 137.

68. *Id.*

69. Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 245, ¶¶ 156–58 (June 27, 2012).

demarcate, delimit, and title Indigenous lands.[70] In *Kuna*, the Indigenous communities had been forced off their lands by a dam project decades earlier. The Court held the state liable for failure to provide title to the Indigenous peoples on the alternative lands they currently occupied. The following year, in *Garifuna Triunfo People de la Cruz v. Honduras* (2015), the Court reiterated the state's obligation to demarcate, delimit, and provide title to Indigenous lands. The Court addressed the prior, free, and informed nature of the consultation but failed, again, to refer to consent in the terms employed in *Saramaka*.[71]

In *Garifuna People of Punta Piedra v. Honduras* (2015), also decided the same year, the Court considered for the first time the obligation to protect collective property from private actors.[72] The Court defined this as the duty to remove any and all forms of interference in the territory so as to ensure the full possession and enjoyment of the same for the Indigenous or tribal community, including, if necessary, the duty to provide compensation and relocation to third parties encroaching on Indigenous lands. Again, the Court did not refer to consent as it had in *Saramaka*.[73]

In the case of *Kaliña and Lokono Peoples v. Suriname* (2015), the Court reiterated prior jurisprudence on the obligation to demarcate, delimit, and provide title for Indigenous lands, or, alternatively, to provide lands of equal extension and quality.[74] In *Kalinã and Lokono*, the Court considered the designation of parts of Indigenous lands as natural preserves, holding this objective consistent with the rights of Indigenous peoples over their territories, provided the Indigenous people are ensured: i) effective participation; ii) access and use of traditional territories; and iii) benefits of conservation. Again, the Court failed to mention the state's obligation to obtain consent.

In two relatively recent cases, the Court has reiterated its jurisprudence on ensuring enjoyment over property,[75] and on demarcation,

70. Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their Members v. Panama, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 284 (Oct. 14, 2014).

71. Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 305 (Oct. 8, 2015).

72. Punta Piedra Garífuna Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 304 (Oct. 8, 2015).

73. *Id.*

74. Kaliña and Lokono Peoples v. Suriname, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 309 (Nov. 25, 2015).

75. Xucuru Indigenous People and its Members v. Brazil, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 348 (Feb. 5, 2018).

delimitation, and titling.[76] Once again, the Court failed to mention the state's obligation to obtain consent as it had in *Saramaka*.

Despite its failure to address consent consistently and directly, the Court has opened a potentially rich avenue to protect Indigenous rights, as well as collective rights over the environment. In *Lhaka Honhat v. Argentina*, the Court held that there had been a violation of the rights to a healthy environment, adequate food, water, and cultural identity, encompassed in the broad terms of Article 26 of the American Convention on Human Rights. The Court issued this ruling in the context of illegal lumber operations and cattle raising in the Indigenous area, which negatively affected traditional methods of obtaining food and water for the Indigenous community. This, the Court held, altered their Indigenous way of life and violated their right to cultural identity. Thus, *Lhaka Honhat*, although silent on the consent principle of *Saramaka*, raises the potential of greater use of Article 26 to protect the environment.

III. Challenges and Opportunities for Engagement with U.S. Government and Civil Society

This Part assesses the potential challenges and opportunities that the evolution of the IAHRS's approach, described in Part II, presents for its engagement with U.S. government and civil society. Subpart III.A observes that the system's emerging willingness to address violations of ESCER could complicate its engagement with the United States, given the government's privileging of civil and political rights over ESCER. This will likely have limited practical implications, however, given the government's more general resistance to international law. Subpart II.B notes that historians and social scientists have described U.S. Indigenous movements as organizing primarily around the concept of sovereignty, rather than rights, and that this has historically made the IAHRS less relevant to their struggles for justice. Nascent inter-American efforts to protect the ESCER of Indigenous communities, however, might make them more interested in the system. Subpart III.C argues that U.S. Afro-descendant civil society, which according to historians and social scientists has mostly privileged a civil rights framework and has a stronger international tradition than does U.S. Indigenous civil society,

76. Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 400 (Feb. 6, 2020). At the time of this writing, the case of the Tagaeri y Taromenane v. Ecuador, concerning Indigenous peoples living in voluntary isolation, is pending before the Court. This case presents an issue of first impression for the Court on the impact of extractive industry on adjacent or nearby Indigenous territories, and, in particular, on peoples living in voluntary isolation.

is even more likely to increase its engagement with the IAHRS as the system develops standards on ESCER and racial discrimination.

A. Government

The system's emerging willingness to address violations of ESCER could complicate its engagement with the United States, given the government's privileging of civil and political rights over ESCER.[77] The U.S. government has undermined and failed to ratify treaties that would hold it accountable for violations of ESCER. Most notably among the UN treaties, the United States signed but did not ratify the International Covenant on Economic, Social and Cultural Rights.[78] It also opposed the creation of an optional protocol that would create a mechanism to monitor compliance with this treaty.[79] Within the inter-American human rights system, the U.S. government signed but did not ratify the American Convention on Human Rights,[80] and advocated against granting authority under this treaty for the Commission to monitor state compliance with Article 26 on economic, social, and cultural rights.[81] It neither signed nor ratified the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador).[82] It likewise has neither signed nor ratified the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará),[83] and also argued against the inclusion of Article 5, which accorded equal status to civil, political, economic, social, and cultural rights.[84]

77. Harold J. Berman, *United States Policy with Respect to International Human Rights*, 50 Emory L. J. 769, 769 (2001).

78. International Covenant on Economic, Social, and Cultural Rights, C.N. 781.2001, 993 U.N.T.S. 3 (Dec. 19, 1996).

79. Catarina de Albuquerque, *Chronicle of an Announced Birth: The Coming into Life of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights - The Missing Piece of the International Bill of Human Rights*, 32 Hum. Rts. Q. 144, 155 (2010).

80. Organization of American States, American Convention on Human Rights "Pact of San Jose, Costa Rica," Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

81. Lawrence J. LeBlanc, *Economic, Social, and Cultural Rights and the Interamerican System*, 19 J. Interam. Stud. & World Affs. 61, 75–78 (1977).

82. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador," Nov. 17, 1988, O.A.S.T.S. No. 69.

83. *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, (Convention of Belém do Pará): Status of Signatures and Ratifications*, Org. of Am. States (May 3, 1995), https://www.oas.org/en/mesecvi/docs/Signatories-Table-EN.pdf.

84. Comisión Interamericana de Mujeres, Comentarios Recibidos de los gobiernos

Even assuming that ESCER have, to some extent, attained the status of customary international law,[85] the United States likely falls under the persistent objector exception. In the Reagan era, refusal to recognize ESCER became the U.S. government's official policy. The Reagan Administration adopted a report in which it rejected the very concept of these rights, instead defining human rights as limited to civil and political rights.[86] The U.S. government justified this distinction by arguing that, in practice, the recognition of ESCER would lead to difficulties in prioritizing and focusing on violations of civil and political rights, and might even be used to defend violations of civil and political rights.[87] It also argued that economic, social, and cultural rights were distinct from civil and political rights because economic, social, and cultural rights were positive rights, whereas civil and political rights were negative.[88] Following this report, rejection of economic, social, and cultural rights became the U.S. government's consistent policy.[89]

These legal and policy arguments, as well as more practical arguments that the U.S. government used to justify its refusal to recognize ESCER, are no longer applicable and were, from the start, antithetical to the foundational principles of human rights. Far from undermining or distracting from civil and political rights, ESCER are interdependent

al proyecto de Convención Interamericana para Prevenir, Sancionar y Erradicar la Violencia contra la Mujer, OEA/Ser.L/II.3.6, CIM/doc.4/94, 292, https://www.corteidh.or.cr/tablas/22205_4.pdf (1994). *For more, see* Flávia Piovesan & Jessica Tueller, *El enfoque de interdependencia entre derechos civiles y políticos y derechos económicos, sociales y culturales*, *in* La Convención de Belém do Pará: Comentarios sobre su historia, desarrollos y debates Actuales 129 (Selene Soto Rodríguez ed., 2024).

85. William A. Schabas, *Economic, Social and Cultural Rights and Customary International Law*, *in* Furthering the Frontiers of International Law: Sovereignty, Human Rights, Sustainable Development 326 (Niels M. Blokker et al. eds., 2021).

86. Philip Alston, *U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy*, 84 Am. J. Int'l L. 365, 366, 372 (1990).

87. *See id.* at 373.

88. *See id.* at 374; Barbara Stark, *Economic Rights in the United States and International Human Rights Law: Toward an Entirely New Strategy*, 44 Hastings L.J. 79, 81 (1992) (an outdated, binaristic understanding of rights conceives of positive rights as entailing only positive obligations, that is, obligations to act in certain way, and negative rights as entailing only negative obligations, or obligations to refrain from acting in a certain way); Johan Vorland Wibye, *Reviving the Distinction Between Positive and Negative Human Rights*, 35 Ratio Juris 363, 365 (2022) (all rights entail both positive and negative obligations); Dinah Shelton, *Negative and Positive Obligations*, *in* Elgar Encyclopedia of Human Rights 545 (Christina Binder et al. eds., 2022).

89. Alston, *supra* note 86, at 373 (for example, in the 1990s, the United States fought against the international recognition of housing rights); Scott Leckie, *Another Step Towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights*, 20 Hum. Rts. Q. 81, 83 n.7 (1998).

with and indivisible from civil and political rights.[90] Likewise, both ESCER and civil and political rights have positive and negative dimensions.[91] Additionally, ESCER are not incompatible with U.S. law;[92] although these rights are not embodied in the U.S. Constitution, their equivalents can be found in state constitutions, and they may also be fulfilled by federal legislation.[93] Finally, the Cold War, during which the U.S. government construed the International Covenant on Economic, Social, and Cultural Rights as a "socialist manifesto," has ended,[94] and many other Western countries now recognize economic, social, and cultural rights.[95]

Nevertheless, the U.S. government's efforts to define for itself which rights constitute human rights, to the exclusion of economic, social, and cultural rights, has continued through to the twenty-first century, as reflected in the creation of a Commission on Unalienable Rights in 2020.[96] The Commission on Unalienable Rights' final report stated: "Since the end of the Cold War, a consistent aspect of U.S. human rights policy, across every presidential administration regardless of political party, has been U.S. reluctance to recognize economic and social rights as an integral part of the canon of international human rights."[97] After reviewing U.S. domestic and foreign policy, as well as the provisions of the Universal Declaration of Human Rights (selectively ignoring later developments in international human rights law on the indivisibility and interdependence of all human rights, including ESCER and civil and political rights)[98], the Commission on Unalienable Rights concluded that even now "it is reasonable for the United States to treat economic and social rights differently from civil and political rights."[99]

90. Piovesan & Tueller, *supra* note 84.

91. Vorland Wibye, *supra* note 88, at 365.

92. Alston, *supra* note 86, at 366.

93. Louis Henkin, *Economic Rights under the United States Constitution*, 32 Colum. J. Transnat'l L. 97, 98, 121, 123–24 (1994); Stark, *supra* note 88, at 82–83, 89, 91–98.

94. Stark, *supra* note 88, at 81, 84.

95. Alston, *supra* note 86, at 375.

96. Kenneth Roth, *Pompeo's Commission on Unalienable Rights Will Endanger Everyone's Human Rights*, Hum. Rts. Watch, Aug. 27, 2020, https://www.hrw.org/news/2020/08/27/pompeos-commission-unalienable-rights-will-endanger-everyones-human-right.

97. *Report of the Commission on Unalienable Rights*, U.S. Dep't of State, https://2017–2021.state.gov/wp-content/uploads/2020/08/Report-of-the-Commission-on-Unalienable-Rights.pdf (last visited Apr. 7, 2024).

98. *See e.g.*, G.A. Res. 40/114 (1985); *see also* Jan Essink, Alberto Quintavalla & Jeroen Temperman, *The Indivisibility of Human Rights: An Empirical Analysis*, 23 Hum. Rts. L. Rev. 1, 4–6 (2023).

99. *Report of the Commission on Unalienable Rights*, *supra* note 97, at 35.

The U.S. government's long history of resistance to international law in general and inter-American law in particular,[100] a resistance that seems in recent years even to have increased,[101] suggests that the inter-American system's evolving approach to ESCER and racial discrimination[102] would have limited practical implications. Of greater interest is the potential effect these changes could have on IAHRS engagement with U.S. civil society.

B. Indigenous Civil Society

This Subpart combines the work of historians and social scientists with our knowledge of the IAHRS to observe that U.S. Indigenous civil society, overall, has shown relatively little interest in the IAHRS in the past. This disinterest stems in part from the IAHRS's land rights framework misalignment with U.S. Indigenous movements' fight for sovereignty and self-determination. It then suggests that the IAHRS's evolving approach to the human rights of Indigenous peoples, especially its emerging willingness to address violations of ESCER, could draw more engagement from U.S. Indigenous civil society as a complement to their sovereignty-focused advocacy.

Although scholars of social movements have observed that they are no strangers to transnational organizing,[103] U.S. Indigenous peoples have tended to underutilize international human rights mechanisms, including the Commission.[104] Indigenous groups from Latin America were petitioning the Commission for decades before U.S. Indigenous claimants brought their first case.[105]

100. Cavallaro, *supra* note 2, at 41; Paolo Carozza, *The Anglo-Latin Divide and the Future of the Inter-American System of Human Rights*, 5 Notre Dame J. Int'l Comp. L. 153, 156 (2015); Jorge Contesse, *Resisting the Inter-American Human Rights System*, 44 Yale J. Int'l L. 179, 212 (2019).

101. It is worth noting that, although the U.S. government is reluctant to be held accountable on an international stage for racial discrimination, it supports the prohibition of this practice in the abstract. Jonathan M. Miller, *Adding Some Baby Teeth to U.S. Participation in the Inter-American Human Rights System: A U.S. Corollary to Hernan Gullco's Observations*, 27 Sw. J. Int'l L. 342, 343–45 (2021).

102. Carmen G. Gonzalez, *Environmental Justice, Human Rights, and the Global South*, 13 Santa Clara J. Int'l L. 151, 175 (2015).

103. Les W. Field, *Convergence and Differentiation in the Face of the Twenty-First-Century State*, *in* Transnational Americanist Anthropology 230, 230 (Kathleen S. Fine-Dare & Steven L. Rubenstein eds., 2009).

104. Derek de Bakker, *The Court of Last Resort: American Indians in the Inter-American Human Rights System*, 11 Cardozo J. Int'l & Comp. L. 939, 940 (2004).

105. *Id.* at 946 (the first case was filed in 1993 by Mary and Carrie Dann, who sought to preserve their rights with regard to the ancestral lands of the Western Shoshone, of which they were members); Mary and Carrie Dann v. United States, Case No. 11.140, Inter-Am. Comm'n H.R., Report No. 113/01 (1999).

A possible explanation for this relative lack of engagement is that U.S. Indigenous movements in general have preferred a framework of sovereignty.[106] Their advocacy appears to have focused on ensuring their autonomy, rather than on holding the U.S. government accountable for fulfilling the rights of individuals within their communities. Although the United States is far from perfect in this regard, the fact that some Indigenous peoples exercise basic sovereignty while maintaining citizenship rights has led some commentators to view the U.S. framework as a model, some of whose elements are worthy of replication.[107] Since this relatively positive practice (limited and flawed though it may be) occurs at home, there seem to have been few incentives to seek accountability abroad.

Experts have observed that when U.S. Indigenous peoples have engaged with international human rights law, it has been primarily in the interest of protecting or expanding their sovereignty through the framework of the right to self-determination.[108] For years, the Commission stopped short of recognizing a right to self-determination,[109] making it an unlikely forum for Indigenous advocacy given that other bodies, including UN mechanisms and even the U.S. government to some extent,[110] had recognized this right. Over the past two decades, however, this focus has changed as the Commission and Court have moved towards convergence with universal bodies. In 2010, the Court recognized that "[t]he identification of the Community, from its name to its membership, is a social and historical fact that is part of its autonomy. This has been the Court's criterion in similar situations."[111] Although the Court made this statement in a case decided based primarily on the denial of the right to land encompassed within Article 21 of the American Convention, on the right

106. Padraig Kirwan, '*Mind the Gap': Journeys in Indigenous Sovereignty and Nationhood*, 13 Compar. Am. Stud. 42, 45 (2015).

107. Ada Deer, *Tribal Sovereignty in the Twenty-First Century*, 10 St. Thomas L. Rev. 17, 22–23 (1997); Donna Lee Van Cott, *Prospects for Self-Determination of Indigenous Peoples in Latin America: Questions of Law and Practice*, 2 Global Governance 43, 59 (1996).

108. Curtis G. Berkey, *International Law and Domestic Courts: Enhancing Self-Determination for Indigenous Peoples*, 5 Harv. Hum. Rts. J. 65, 75 (1992); *see also* Lindsey N. Kingston, *Indigenous Nations and Tribal Sovereignty*, *in* Fully Human: Personhood, Citizenship, and Rights 150, 166 (2019).

109. Berkey, *supra* note 108, at 86.

110. Kevin Crow, *Does UNDRIP Matter: Indian Law in the United States & the International Right to Self-Determination*, 13 Hibernian L. J. 119, 119–25 (2014).

111. Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214 (Aug. 24, 2010) (citing Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172, 164 (Nov. 28, 2007)).

to property, the Court's assertion that these elements of self-determination were settled law without more lends support to the view that the Inter-American system recognizes self-determination.

The Court's analysis also invoked *vida digna*, or dignified life, a concept broad enough to encompass a range of aspects related to autonomy of Indigenous communities.[112] In 2021, the Commission issued a report in which it gathered its analysis, casework, and statements, as well as the jurisprudence of the Court, in support of the Indigenous right to self-determination.[113] The report's title—The Right to Self-Determination of Indigenous and Tribal Peoples—speaks volumes about the Commission's recognition of the self-determination frame's relevance even in a system that has emphasized land ownership as the primary basis for advancing Indigenous and tribal rights. Incentives for U.S. Indigenous peoples to engage with the IAHRS are likely to increase as it moves closer to the universal system on the issue of self-determination.

It is worth noting that the land rights approach the IAHRS initially favored seems to have been modeled on the relationships formed between Latin American states and Indigenous peoples. This approach is distinct from the approach English-speaking states such as the United States or Canada have taken to relationships with Indigenous peoples.[114] Although Indigenous peoples across the Americas have a shared experience of colonization resulting in loss of land, culture, and religion, the legal bases of colonization (and, thus, the legal regimes that arose out of it) were different for the United States and Canada than they were for Latin America.[115] In Latin America, the *encomienda* system gave individual colonizers rights over Indigenous peoples' lands and labor.[116] In the United States to this day, the "doctrine of discovery" gives the state itself ownership of Indigenous lands and Indigenous peoples residing on the land possessory rights, which can be extinguished by the state at any time.[117]

Nevertheless, U.S. Indigenous civil society actors might increase their interest in engaging with the IAHRS if efforts to protect the ESCER of Indigenous communities elsewhere in the Americas prove

112. *Id.* ¶¶ 194–217 ("The Right to a Decent Existence").

113. Inter-American Commission on Human Rights, Derecho a la libre determinación de los Pueblos Indígenas y Tribales, OEA/Ser.L/V/II., doc. 413 (Dec. 28, 2021).

114. Carozza, *supra* note 100, at 165.

115. Kristen A. Carpenter & Angela R. Riley, *Indigenous Peoples and the Jurisgenerative Moment in Human Rights*, 102 Cal. L. Rev. 173, 180–81 (2014).

116. Mattias Åhrén, *Classical International Law and Early Philosophy on People's Rights*, *in* Indigenous Peoples' Status in the Int'l Legal System 7, 16 (2016).

117. *Id.* at 25.

effective.[118] Incentives to engage with the system are likely to increase as well as it moves closer to the universal system on the issue of self-determination (as discussed above). The ESCER of Indigenous communities, including Indigenous communities in the United States, are often violated.[119] For example, U.S. Indigenous peoples experience high rates of unemployment[120] and poverty.[121] They also have low rates of school attendance,[122] significant health disparities,[123] and frequent clashes with the state on environmental issues.[124] The COVID-19 pandemic, in particular, demonstrated the gravity of these disparities.[125] Another factor counseling greater engagement with supranational litigation is the increasingly unlikely prospect of successful impact litigation before the Supreme Court of the United States.

Evidence of the potential for this increased engagement from U.S. Indigenous civil society resides in a petition before the Commission, brought by the Inuit in 2005, claiming that the United States violated their rights by failing to address climate change.[126] Climate change has led to rising sea levels flooding their villages and cutting off access to

118. Natsu Taylor Saito, *Beyond Civil Rights: Considering "Third Generation" International Human Rights Law in the United States*, 28 Univ. Miami Inter-Am. L. Rev. 387, 402 (1996).

119. Leckie, *supra* note 89, at 97 n.52.

120. Algernon Austin, *High Unemployment Means Native Americans Are Still Waiting for an Economic Recovery*, Econ. Pol'y Inst. (2013), https://files.epi.org/2013/HIGH-UNEMPLOYMENT-MEANS-NATIVE-AMERICANS-ARE-STILL-WAITING-FOR-AN-ECONOMIC-RECOVERY.pdf.

121. Van Cott, *supra* note 107, at 47.

122. Katie Johnston-Goodstar & Ross VeLure Roholt, *"Our Kids Aren't Dropping Out; They're Being Pushed Out": Native American Students and Racial Microaggressions in School*, 26 J. Ethnic & Cultural Diversity Soc. Work 30 (2017).

123. Donald Warne & Denise Lajimodiere, *American Indian Health Disparities: Psychosocial Influences*, 9 Soc. & Personality Psych. Compass 567, 567 (2015).

124. Bruce Elliott Johansen, Indigenous Peoples and Environmental Issues: An Encyclopedia 362 (2003).

125. Leslie A. Musshafen et al., *In-Hospital Mortality Disparities Among American Indian and Alaska Native, Black, and White Patients With COVID-19,* Jama Network Open (Mar. 30, 2022), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8968465 ("As of November 22, 2021, American Indian and Alaska Native persons were 1.6 times more likely to have SARS-CoV-2 infection, 3.3 times more likely to be hospitalized, and 2.2 times more likely to die as a result of COVID-19 than non-Hispanic White persons.").

126. Carmen G. Gonzalez, *Environmental Justice, Human Rights, and the Global South*, 13 Santa Clara J. Int'l L. 151, 179–80 (2015) (citing petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States); Hari M. Osofsky, *Complexities of Addressing the Impacts of Climate Change on Indigenous Peoples Through International Law Petitions: A Case Study of the Inuit Petition to the Inter-American Commission on Human Rights*, *in* Climate Change and Indigenous Peoples: The Search for Legal Remedies 313 (Randall Abate & Elizabeth Ann Kronk eds., 2013).

traditional hunting areas, as well as rising temperatures that also harm their local environment.[127] The Commission did not have a strong framework for addressing ESCER violations in place at the time of the original petition, but it does now.[128] The Court held in *Lhaka Honhat* that Article 26 of the American Convention on Human Rights protects the right to a healthy environment, and applied this provision.[129] Additionally, in January 2023, Colombia and Chile requested an advisory opinion from the IACtHR on climate change and human rights.[130] The decision by the Court is likely to address the extraterritorial obligations of states on this issue—a matter of consequence to those seeking to develop legal standards that may be applied to the United States.

C. Afro-descendant Civil Society

Historians and social scientists have observed U.S. Afro-descendant civil society has tended to favor a rights framework and has a stronger international tradition than does U.S. Indigenous civil society.[131] This Subpart suggests that U.S. Afro-descendant civil society actors are thus, in general, more likely than both the U.S. government and U.S. Indigenous civil society to increase their engagement with the IAHRS as the system develops standards on ESCER and racial discrimination.

According to historian Carol Anderson, U.S. advocates for racial equality engaged with international human rights law during the formative period in the immediate aftermath of World War II, as the United Nations was founded. At the time of the San Francisco conference that established the United Nations and immediately following its creation, the National Association for the Advancement of Colored People (NAACP), under the leadership of its foreign policy expert W. E. B. Du Bois, employed human rights discourse and international advocacy alongside

127. Rebecca Tsosie, *Climate Change, Sustainability and Globalization: Charting the Future of Indigenous Environmental Self-Determination*, 4 Env't & Energy Law & Pol'y J. 189, 190 (2010).

128. *See id.* at 190–92.

129. Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 400 (Feb. 6, 2020).

130. Ministerio de Relaciones Exteriores, *Chile y Colombia realizan inédita consulta a la Corte Interamericana de Derechos Humanos sobre emergencia climática,* Gobierno de Chile (Jan. 9, 2023), https://www.minrel.gob.cl/noticias-anteriores/chile-y-colombia-realizan-inedita-consulta-a-la-corte-interamericana-de.

131. Henry J. Richardson III, The Origins of African-American Interests in International Law xiv (2008); Nico Slate, *From Colored Cosmopolitanism to Human Rights: A Historical Overview of the Transnational Black Freedom Struggle*, 1 J. Civ. & Hum. Rts. 3 (2015).

civil rights discourse and domestic organizing.[132] Du Bois sought to leverage the Cold War to draw attention to and criticism of racial discrimination and inequality in the United States from international actors like the United Nations.[133] NAACP efforts succeeded in calling the world's attention to human rights violations in the United States.[134] The U.S. government pushed back against these efforts as McCarthyism effectively equated engagement with the United Nations with communism, bringing criticism and suspicion to the NAACP.[135] In this context, the organization abandoned its international strategy and turned inward to the Constitution and the frame of civil rights (rather than international human rights).[136] Although there were some U.S. Afro-descendant civil society groups, such as the Civil Rights Congress,[137] that continued to operate within the international human rights framework, they occupied far less space than the NAACP. Later, in the 1960s, the Black Panthers and others would turn to international human rights to frame advocacy.[138] Still, it seems fair to conclude that the dominant trend among these groups was to focus primarily on domestic advocacy.

After a brief interlude, in which historians describe U.S. advocates for racial equality as for the most part maintaining a domestic focus, Dr. Martin Luther King, Jr. succeeded Du Bois as a leader not only of the civil rights movement but also of international human rights movements against racial discrimination and oppression.[139] Although King's internationalism is not part of the simplistic narrative constructed of his message and legacy, he courageously denounced human rights violations abroad, applied a human rights framework at home, and encouraged activists to view U.S. and international struggles for rights as linked.[140] For example, King used the language of human

132. Carol Anderson, *From Hope to Disillusion: African Americans, the United Nations, and the Struggle for Human Rights, 1944–1947*, 20 Dipl. Hist. 531, 532, 563 (1996); Cavallaro, *supra* note 2, at 43.

133. Anderson, *supra* note 132, at 553; Dorothy Q. Thomas, *Advancing Rights Protection in the United States: An Internationalized Advocacy Strategy*, 9 Harv. Hum. Rts. J. 15, 16–18 (1996).

134. Thomas, *supra* note 133, at 17.

135. Anderson, *supra* note 132, at 562–63; Cavallaro, *supra* note 2, at 44.

136. Anderson, *supra* note 132, at 562–63; Cavallaro, *supra* note 2, at 44.

137. Anderson, *supra* note 132.

138. Meredith Roman, *The Black Panther Party and the Struggle for Human Rights*, 5 Spectrum 7, 9 (2016).

139. Jeremy I. Levitt, *Beloved Pan-Africanism: Martin Luther King's Stride Toward Africa, International Human Rights, and the Black International Tradition*, Ethiopian Y.B. Int'l L. 163, 164 (2019); Henry J. Richardson II., *Dr. Martin Luther King, Jr. as an International Human Rights Leader*, 52 Vill. L. Rev. 471, 476 (2007).

140. Richardson II, *supra* note 139, at 472; Martin Luther King, Jr., *Letter from*

rights when speaking about local and international poverty.[141] This is also an early example of U.S. Afro-descendant civil society's commitment to pursuing economic, social, and cultural rights alongside civil and political rights,[142] which will be discussed in greater detail below.

This tradition appears to have continued and expanded as failures of the U.S. justice system to respond to acts of state violence against Black people have led scholars and activists to turn to international human rights mechanisms, including the Commission.[143] For example, Black Lives Matter, the leading U.S.-based movement against state violence, not only has a global reach but also frames its demands in the language and law of human rights, such as the right to life.[144]

Increased IAHRS attention to issues of racial discrimination provides a basis for the system to increase engagement with this sector of U.S. civil society that seems already primed to turn more aggressively to international fora.[145] Initial convergence between U.S. and Latin American race ideology,[146] which have historically stood in contrast to each other,[147] might also facilitate this shift as similar circumstances aid in shared standards' development.

African-American civil society might also be interested in newly strengthened inter-American standards on economic, social, cultural, and environmental rights.[148] As with the economic, social, and cultural rights of Indigenous communities, the economic, social, and cultural rights of racial minorities, including African Americans in the United

Birmingham Jail (Apr. 16, 1963) ("Injustice anywhere is a threat to justice everywhere"). On the links between U.S. organizing for civil rights and international human rights movements, see Mina Yakubu, *The Interconnectedness of Black Liberation: The Cross-Political Relationship of African and African American Leaders in the Struggle for Independence and the Civil Rights Movement (1950–60)*, 6 Global. Africana Rev. 26, 26 (2022).

141. Richardson II, *supra* note 139, at 472.

142. *Id.* at 473, 475–76.

143. Laura Goolsby, *Why International Law Should Matter to Black Lives Matter: A Draft Petition to the Inter-American Commission on Human Rights on Behalf of the Family of Eric Garner*, 21 U. Pa. J.L. & Soc. Change 29, 29–36 (2018); Benjamin D. Weber, *Anticarceral Internationalism: Rethinking Human Rights through the Imprisoned Black Radical Tradition*, 106 J. Afr. Am. Hist. 706, 707 (2021).

144. Seun Matiluko, *International Human Rights Law and Black Lives Matter: Why We Should View Liberation through the Lens of the Right to Life*, 44 Fordham Int'l L. J. 1207, 1207–1208, 1211 (2021).

145. *See supra* Subpart II.B.

146. Tanya Kateri Hernandez, *Multiracial Matrix: The Role of Race Ideology in the Enforcement of Antidiscrimination Laws, a United States-Latin America Comparison*, 87 Cornell L. Rev. 1093, 1112 (2002).

147. Juliet Hooker, *Afro-Descendant Struggles for Collective Rights in Latin America: Between Race and Culture*, 10 Souls 279, 289 (2008); Helen I. Safa, *Race, Gender and Nation: Indigenous and Black Movements in Latin America*, 5 Rev. Cesla 89, 92 (2003).

148. Saito, *supra* note 118, at 402.

States, are especially prone to violation.[149] For example, Black communities have disproportionately suffered from food insecurity[150] and the devastating effects of the COVID-19 pandemic.[151] At the same time, strengthened standards on racial discrimination could help the IAHRS to see that a primary reason for the social and economic challenges faced by African Americans is the legacy of slavery, Jim Crow, and the unfinished work of Reconstruction.[152]

Conclusion

This Article thus posits that U.S. Indigenous and Afro-descendant civil society may develop a greater interest in the IAHRS, while the U.S. government will likely maintain its low level of engagement. Whether this theory is supported by greater engagement with the system in practice is a promising area for future research. In closing, we also suggest that the IAHRS could further increase the likelihood of U.S. civil society engagement, as well as U.S. government engagement, if its analyses and decisions are sensitive to the realities of the United States. For example, the IAHRS might, when applicable, call on Indigenous tribal governments to respect, protect, and fulfill rights and on the U.S. federal government to respect their sovereignty as the best way to ensure the enjoyment of rights by individuals within the tribal governments' jurisdiction. Perhaps the most effective way for the IAHRS to achieve these tailored analyses and recommendations is through frequent dialogue with civil society.[153] This Article's review of inter-American standards and scholarship on U.S. social movements suggests that the work of the IAHRS has the potential to be more relevant to U.S. Indigenous and Afro-descendant civil society now than it has been in prior decades. Still, the IAHRS holds the potential to become even more relevant to U.S. Indigenous and Afro-descendant civil society if these actors assist in shaping the standards and calling for their application.

149. Leckie, *supra* note 89, at 97 n.52.

150. Mariana Chilton & Donald Rose, *A Rights-Based Approach to Food Insecurity in the United States*, 99 Am. J. Pub. Health 1203, 1206 (2009).

151. Maritza Vasquez Reyes, *The Disproportional Impact of COVID-19 on African Americans*, 22 Health & Hum. Rts. J. 299, 300–01 (2020).

152. *See* Eric K. Yamamoto et al., *American Racial Justice on Trial – Again: African American Reparations, Human Rights, and the War on Terror*, 101 Mich. L. Rev. 1269, 1336 (2003).

153. *See* Gabriela Kletzel, *Activism Strategies Involving the Inter-American System: Reflections for the Field of Action and Perspectives from National Human Rights Organizations*, *in* The Impact of the Inter-American Human Rights System: Transformations on the Ground 625 (Armin von Bogdandy et al. eds., 2024).