



**Inter-American Court of Human Rights  
Advisory Opinion OC-22/16 requested by Panama  
“Entitlement of legal entities to hold rights under the Inter-American Human  
Rights System”\***

Unofficial Summary in English of the Opinion of the IACtHR made by the Human Rights Clinic of the  
Human Rights Research and Education Centre, University of Ottawa

**Introduction**

1. The opinion of the Inter-American Court of Human Rights (IACtHR or Court) had the purpose of interpreting the rights of legal persons under the *American Convention on Human Rights* (ACHR) and other international treaties within the Inter-American Human Rights System (IAHRS).
2. The opinion of the IACtHR is that legal persons are not entitled to hold rights under the ACHR, except for (i) Indigenous and tribal communities (*comunidades indígenas y tribales*); and (ii) unions, federations and confederations (*sindicatos, federaciones y confederaciones*) to enforce rights acknowledged in Art. 8.1(a) of the *San Salvador Protocol*.

In addition, the Court acknowledges that in some cases natural persons (*personas físicas*) may exercise their rights through legal persons, such as newspapers or other media regarding freedom of speech. In these circumstances, natural persons may seek protection of their rights before the IAHRS. The IACtHR does not establish a general rule; this has to be analyzed on a case-by-case basis.

Finally, the IACtHR concludes that natural persons may, in certain cases, exhaust local remedies through legal persons when the local recourses available can only be presented by the latter, like the protection of property of a corporation. In these cases, the natural person would fulfill the requirement of exhaustion of local remedies and be allowed to submit an individual petition before the IAHRS.

3. The Advisory Opinion is divided into 4 main parts: (i) the entitlement of rights of legal persons before the IAHRS (paras. 34-70); (ii) the situation of indigenous and tribal communities as well as unions, federations and confederations (paras. 71-105); (iii) the enjoyment or exercise of rights of natural persons through legal persons (paras. 106-120); and (iv) exhaustion of local remedies by natural persons (paras. 121-140).

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4. The first part of the Advisory Opinion is a summary of the request formulated by Panama, the proceedings and the legal nature of the Advisory Opinion, and the competency of the Court to address these topics (paras. 1-33). While it is of little relevance to the purpose of our research, the IACtHR is clear in stating that, under the *compétence de la compétence*, it can determine the scope of its answer and address other topics not requested by Panama (para. 14-16).
5. The Court uses the interpretation criteria set out in Arts. 31 and 32 of the *Vienna Convention on the Law of Treaties*, the practice of the IAHRs and its jurisprudence, as well as the *travaux préparatoires* of the ACHR and other relevant Conventions.
6. The Court defines (para. 13) legal persons and *legitimación activa*<sup>1</sup> (*locus standi* or the right to be a part of a judicial proceeding before the IAHRs). The definition of legal person is based on the definition in Art. 1 of the *Inter-American Convention on Personality and Capacity of Juridical Persons in Private International Law*:

“(...) *juridical person being understood to mean any entity having its own existence and being responsible for its own actions, separately and distinctly from those of its members or organizers, and classified as a juridical person in accordance with the law of the place of its organization.*”

### The entitlement of rights of legal persons before the IAHRs

7. To analyze Art. 1(2) of the ACHR,<sup>2</sup> the IACtHR uses Art. 31 and Art. 32 of the *Vienna Convention*<sup>3</sup> (para. 35), which regulates the rules of interpretation of treaties. In the

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<sup>1</sup> The exact text reads as follows: “Por legitimación activa, la Corte entiende la aptitud para ser parte en un proceso, de conformidad con lo previsto en la Ley”.

<sup>2</sup> **Article 1 Obligation to Respect Rights**

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

<sup>3</sup> **Article 31 General rule of interpretation**

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

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

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

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

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

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) any relevant rules of international law applicable in the relations between the parties.

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

### Article 32 Supplementary means of interpretation



end, the Court uses all the methods of interpretation and reaches the same conclusion that by person, the ACHR means “human beings”.

8. Using the ordinary meaning criteria, the Court concludes that the ACHR did not leave an open-ended clause on how to interpret the term “person” but instead, gave special meaning to the term (para. 37). In this sense, a reading of Art. 1(2) of the ACHR excludes other types of persons that are not human beings (para. 38).
9. Therefore, legal persons are not entitled to the rights established in the ACHR and cannot submit individual petitions or directly participate in Inter-American proceedings as alleged victims seeking protection of rights (para. 38). This has consistently been the opinion of the Court in cases (i.e. *Cantos v Argentina Case*) raising this issue (para. 39).
10. The Court also analyzes Art. 1(2) of the ACHR using the context and object and purpose rules of treaty interpretation (para. 39), in order to ensure a coherent (*armónica*) and current interpretation of this norm.
11. Regarding the object and purpose of the treaty, the Preamble of the ACHR places emphasis on the protection of human beings. This teleological interpretation gives the same result as the ordinary meaning rule of interpretation (paras. 41-43).
12. The IACtHR also analyzes the scope of Art. 1.2 using the systematic criteria of interpretation (*interpretación sistemática*). This seeks to interpret norms as part of a set of rules, whose meaning and reach must be established according to the legal system that it belongs to (para. 44). This covers the ACHR as well as the *American Declaration on the Rights and Duties of Men*<sup>4</sup>. The IACtHR reaches the same conclusion as before, stating that person means human being.
13. In this case, the IACtHR acknowledges that there are some rights inherent to a natural person (e.g.: life, integrity) while there are other rights (property, freedom of speech) that could be enjoyed through legal persons. However, the articles contain no indications that legal persons are entitled to these rights (para. 48).
14. The Court also undertakes a comparative study of the European, African and United Nations systems. Regarding the European System, the IACtHR notes that the *European Convention on Human Rights* (ECHR) does not have a definition of person like the one

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

(a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.

<sup>4</sup> See: <https://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm>



in Art. 1(2) of the ACHR (para. 51). Unlike the preamble of the ACHR, the ECHR's preamble focuses on peace and justice for Europe.

15. The European Human Rights System has two specific provisions regarding legal persons. One is found in Art. 34 of the ECHR regarding individual applications<sup>5</sup> (para. 53), while the other is Art. 1 of Additional Protocol 1,<sup>6</sup> regarding the right to property.
16. Art. 34 of the ECHR allows natural persons, NGOs or group of individuals claiming to be a victim to submit an application to the ECHR. In an apparent similar tone, Art. 44 of the ACHR<sup>7</sup> has the same intention. However, the Court establishes that the ACHR clearly differentiates between petitioner and alleged victim (paras. 55 and 56).
17. According to the Court, Art. 44 of the ACHR permits anyone to submit an individual petition before the IAHRs in regards to a situation that affects them or a third party (para. 56). However, this article does not allow legal persons to submit petitions as alleged victims because the ACHR only protects natural persons. However, legal persons (including NGOs) may submit to the IAHRs petitions for the protection of the rights of natural persons, even when they do have their consent (para. 56).
18. A brief analysis of the African Human Rights System shows that there are no clear indications that the concept of person or peoples could cover legal persons (para. 57). The African System does allow for legal persons to submit communications to the system on behalf of third parties (para. 58) but these provisions still need further development.
19. The UN Human Rights treaty body system studied by the Court covers the Human Rights Committee, Committee on the Elimination of Racial Discrimination, Committee on the Elimination of Discrimination Against Women and Committee on Economic, Social and Cultural Rights. Regarding the *International Covenant on Civil and Political*

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**<sup>5</sup> Article 34 Individual applications ECHR**

The Court may receive applications from any person, nongovernmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

**<sup>6</sup> Article 1 Protection of property ECHR**

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

**<sup>7</sup> Article 44 ACHR**

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



*Rights*,<sup>8</sup> the rights and freedoms only extend to natural persons and not legal persons (para. 59). In this sense, Art. 1 of the *Optional Protocol* establishes that only individuals (natural persons) may submit communications to the Human Rights Committee<sup>9</sup> and that according to the jurisprudence of the Committee, only victims have this right (para. 59).

20. In the case of the CERD Committee, legal persons may submit communications regarding situations that affect their rights as a whole or in protection of their individual members as long as they are considered to be victims (para. 60).
21. Regarding the CEDAW and the DESC Committees, their conventions do not have articles similar to Art. 1(2) of the ACHR. The Court notes that to date, the DESC Committee has not adopted a resolution on this matter while the CEDAW Committee has not received a communication by a legal person (para. 61). However, the IACtHR notes that Art. 2 of the *CEDAW Optional Protocol*<sup>10</sup> and Art. 2 of the *ICESCR Optional Protocol*<sup>11</sup> establish that a group of individuals may submit communications to the conventions' respective Committees.
22. The Court's conclusion regarding the entitlement of legal persons before international human rights bodies is that the majority of these bodies do not grant them entitlement to rights (para. 62). Therefore, there is no clear indication that international human rights bodies are opening the possibility for legal persons to have victim status before their respective systems (para. 62).
23. As a final element of analysis, the IACtHR analyzes the practice of State Parties to the ACHR regarding the entitlement of legal rights to constitutional fundamental rights (*derechos fundamentales*). In this case, all states acknowledge that legal persons have certain rights (para. 64). These rights are not guaranteed to all legal persons, however,

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<sup>8</sup> See: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>9</sup> **Article 1 *Optional Protocol ICCPR***

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

<sup>10</sup> **Article 2 *CEDAW Optional Protocol***

Provides a Communications Procedure which allows either individuals or groups of individuals to submit individual complaints to the Committee. Communications may also be submitted on behalf of individuals or groups of individuals, with their consent, unless it can be shown why that consent was not received.

<sup>11</sup> **Article 2 *Communications ICESCR Optional Protocol***

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



it depends on what kind of legal person they are (i.e. unions, corporations, NGOs, indigenous peoples, etc.). Usually these rights are protected by the constitutional writ of *amparo* (para. 64).

24. Despite the fact that there is an apparent intention by State Parties to acknowledge the entitlement of rights of legal persons and the existence of legal recourses within their national legal systems, this is insufficient to change the analysis of the IACtHR, as there are different forms and degrees under which these rights are granted and protected (para. 67). Therefore, the analysis and scope of Art. 1(2) of the ACHR remains the same.
25. The *travaux préparatoires* of the ACHR (Art. 32 of the *Vienna Convention*) also guides the IACtHR to confirm that “natural person” applies to human beings (para. 69) as there is a clear indication that the purpose of states was to protect human beings.
26. The conclusion of the IACtHR on this question is that legal persons are not entitled to the rights and protection under the ACHR and cannot claim the status of victims under the IAHRs (para. 70).

### **Indigenous and Tribal Communities and Union Organizations**

27. Legal persons are not entitled to rights before the IAHRs. However, the IACtHR also analyzes whether provisions in the ACHR and the *San Salvador Protocol* grant rights to indigenous and tribal communities as well as union organizations (para. 71).

#### *Indigenous communities*

28. The Court reiterates its jurisprudence regarding Indigenous Peoples which establishes that indigenous communities are entitled to the rights covered by the ACHR and that they may present petitions to defend their rights and the rights of their members (para. 72).
29. The jurisprudence of the IACtHR originally required to present the victim status of individual members of the community but not of the community as a whole (para. 73). This changed with the *Sarayaku v Ecuador* decision, where the IACtHR acknowledged that some rights were not just rights of individual members but of the community as a whole such as property, consultation process, cultural identity, judicial protection and effective recourses (para. 74).
30. In addition, the IACtHR acknowledged in this case that some of the rights of the ACHR are enjoyed collectively (para. 74) and that international law recognizes Indigenous Peoples as collective subjects, not only their individual members (para. 75). This rule has been confirmed by the IACtHR in other rulings (against Panamá, Colombia and Honduras) and it is also applicable to tribal peoples (para. 79).



31. Therefore, in the context that the enjoyment of some of the rights of members of indigenous communities are fulfilled as a collective group, the breach of these rights also has a collective dimension and cannot be limited to an individual breach (*afectación*) (para. 82).
32. Due to the particular nature of Indigenous and Tribal communities, the IACtHR considers that these communities are entitled to some of the rights and protections covered by the ACHR (para. 83). They can submit petitions against a state when a breach of these rights affects the community collectivity (i.e. property, territory, freedom of movement, etc.) (para. 84).

### *Unions, Federations and Confederations*

33. The IACtHR also addresses the issue of unions, federations and confederations (UFC), based on Art. 8.1(a) of the *San Salvador Protocol on Economic, Social and Cultural Rights*<sup>12</sup> (para. 86).
34. It is important to take into account that Art. 19(6) of the *San Salvador Protocol*<sup>13</sup> only allows the submission of individual petitions to the IAHRs for the breach of Art. 8.1(a) (trade union rights) and Art. 13 (education). These petitions may only be filed against the states that have ratified the *San Salvador Protocol*.
35. For the analysis, the IACtHR focuses on the expressions “as an extension of that right” and “shall permit” to assess the entitlement of UFCs before the IAHRs (para. 88). This is important as it is way of analyzing the obligations of the State to enable the existence and functioning of UFCs (para. 91). The IACtHR acknowledges that UFCs are separate legal entities from the individuals that are the members of these organizations (para. 91).
36. The rights granted to workers is a framework under which more specific rights are generated on behalf of unions as autonomous subjects of rights (*sujetos autónomos de derechos*) (para. 94). This is in line with Art. 45 of the *Organization of American States*

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#### <sup>12</sup> **Article 8 Trade Union Rights**

1. The States Parties shall ensure:

a. The right of workers to organize trade unions and to join the union of their choice for the purpose of protecting and promoting their interests. As an extension of that right, the States Parties shall permit trade unions to establish national federations or confederations, or to affiliate with those that already exist, as well as to form international trade union organizations and to affiliate with that of their choice. The States Parties shall also permit trade unions, federations and confederations to function freely;

#### <sup>13</sup> **Article 19 Means of Protection**

6. Any instance in which the rights established in paragraph a) of Article 8 and in Article 13 are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Article 44 through 51 and 61 through 69 of the *American Convention on Human Rights*.



*Charter*<sup>14</sup> and Art. 10 of the *Inter-American Democratic Charter*<sup>15</sup> which both recognize the roles of unions in democracy (para. 94).

37. The interpretation of Art. 8.1(a) of the *San Salvador Protocol* must be made *pro persona* allowing the broadest protection possible (*interpretación más garantista*) (para. 95). Therefore, the protection of UFCs is indispensable to safeguard the rights of workers to form and join unions. UFCs are a means of ensuring the protection of its individual members (para. 96).
38. Therefore, using the principles of good faith (para. 99) and the *travaux préparatoires* of Art. 19 of the *San Salvador Protocol* (para. 100), the most favourable interpretation of Art. 8.1(a) is that UFCs are entitled to seek protection before the IAHRs for breaches of the rights enshrined in Art. 8.1(a) of the *San Salvador Protocol* (para. 99). This is only applicable to this specific provision of the Protocol and only against the states that have ratified it (para. 103). For all the other individual rights acknowledged in the ACHR, UFCs may present petitions to protect the rights of individual members.

### **Exercise of Rights of Natural Persons through Legal Persons**

39. Even though legal persons are not entitled to the rights established in the ACHR, this does not restrict the possibility that, under certain circumstances, an individual may enjoy or exercise (*ejercer*) their rights through legal persons and seek protection before the IAHRs (para 107).<sup>16</sup>
40. Even though legal persons cannot submit a petition as victims before the IAHRs, one must acknowledge that every right has a different analysis concerning its content and realization (para. 110). Some rights are related to the vital functions of a person (e.g. life) while others refer to the relationship of human beings with society (e.g. property, nationality) (para. 110).

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#### <sup>14</sup> **Article 45 OAS Charter**

g) Recognition of the importance of the contribution of organizations such as labor unions, cooperatives, and cultural, professional, business, neighborhood, and community associations to the life of the society and to the development process;

#### <sup>15</sup> **Article 10 Inter-American Democratic Charter**

The promotion and strengthening of democracy requires the full and effective exercise of workers' rights and the application of core labor standards, as recognized in the International Labour Organization (ILO) *Declaration on Fundamental Principles and Rights at Work*, and its Follow-up, adopted in 1998, as well as other related fundamental ILO conventions. Democracy is strengthened by improving standards in the workplace and enhancing the quality of life for workers in the Hemisphere.

<sup>16</sup> This was the most annoying paragraph to translate. The exact text reads as follows:

107. Como se indicó anteriormente, este Tribunal ha reiterado que si bien la figura de las personas jurídicas no ha sido reconocida expresamente por la Convención Americana, esto no restringe la posibilidad de que bajo determinados supuestos el individuo que ejerza sus derechos a través de ellas pueda acudir al sistema interamericano para hacer valer sus derechos fundamentales, aun cuando los mismos estén cubiertos por una figura o ficción jurídica creada por el mismo sistema jurídico.





41. In the past, the IACtHR has analyzed the situation of shareholders and workers (para. 112). The former was in regards to the right to property while the latter was in regards to freedom of expression (para. 112).
42. Regarding the right to property, there are two different situations. One is the collective property of Indigenous Peoples (para. 113), while the Court's other jurisprudence refers to the difference between the right of shareholders and the rights of the company itself (para. 114) and how the breach of the latter may affect the rights of natural persons.
43. Regarding freedom of expression and media organizations (para. 115), the Court has established that the editorial line of a news media may represent the opinion of the directors and/or its workers (para. 116). Therefore, restrictions on freedom of expression by states may not only affect legal persons but also shareholders and employees (para. 117). To reach this conclusion, one must analyze the role that the alleged victims had and their contribution to the media outlet (para. 117).
44. For a natural person to exercise a right through a legal person there must be a direct relationship between the natural person seeking protection before the IAHRs and the legal person that suffered the breach (para. 119). It is not sufficient that a mere link exists between the natural and legal person to conclude that the rights of the natural person have been breached (para. 119).
45. Therefore, an alleged victim must show that his or her participation in the legal person is substantially related to the individual rights protected by the ACHR. Due to the wide array of situations that may rise, there is no homogenous rule on this matter and it must be analyzed on a case-by-case basis (para. 120).

### **Exhaustion of local remedies by Legal Persons**

46. The question that the Court must solve is to determine if the admissibility requirements established in Art. 46 of the ACHR<sup>17</sup> are fulfilled when a legal person – by itself or in representation of its members – exhausts the local remedies (para. 121).

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#### **<sup>17</sup> Article 46 of the ACHR**

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:
  - a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;
  - b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;
  - c. that the subject of the petition or communication is not pending in another international proceeding for settlement; and



The Court addresses this question by focusing on the general rules of exhaustion of local remedies (paras. 122-127) and the issue of effectivity and suitability (*idoneidad*) of the existing local remedies (paras. 128-140). For the purpose of this summary, the second topic is relevant to the issue of legal persons.

47. The longstanding jurisprudence of the Court states that local remedies must be adequate, suitable and effective (para. 128). By suitable, the IACtHR means that the function of these remedies is to adequately protect the breached rights (para. 129). By effective, it means that the remedy has the capacity to produce the result for which it was created (para. 130).
48. Art. 46(1)(a) of the ACHR does not make a distinction between natural and legal persons in regards to the exhaustion of local remedies (para. 130). Under the principle of *effet utile*, the Court cannot interpret this provision in a way that that could diminish the access to the IAHRs by alleged victims (para. 133).
49. Under the principles of effectivity and suitability, if the local remedy exhausted by the legal person protects individual rights, this could be understood as a valid, effective and suitable remedy (para. 134). In some countries, the protection of certain rights at a local level can only be submitted by legal persons, such as freedom of expression and newspapers (para. 135).
50. If the use of a local remedy by a legal person was presented to protect the rights of a natural person, the Court does not find a reason not to consider that these remedies were effective and suitable, fulfilling the requirements established to present an individual petition before the IAHRs.
51. Therefore, the IACtHR considers that the requirement to exhaust local remedies is fulfilled when the existing remedies were effective and suitable, regardless if these were presented by a natural person or a legal person (para. 136). However, the petition presented before the IAHRs must coincide with the case litigated at a national level (*coincidencia material*) (para. 136).

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

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

- a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.



52. The rule in this case is that the use of local remedies by legal persons does not imply *per se* that the local remedies have not been exhausted by the natural persons seeking protection for breaches of their rights established in the ACHR (para. 139). This link must be studied on a case-by-case basis.

**Opinion of the IACtHR (same as para. 2 of the summary)**

53. The opinion of the IACtHR is that legal persons are not entitled to hold rights under the ACHR, except for (i) Indigenous and Tribal communities (*comunidades indígenas y tribales*); and (ii) unions, federations and confederations (*sindicatos, federaciones y confederaciones*) in regards to the rights enshrined in Art. 8.1(a) of the *San Salvador Protocol*.

In addition, the Court acknowledges that in some cases, natural persons (*personas físicas*) may exercise their rights through legal persons, like newspapers or other media outlets regarding freedom of speech, and that under these circumstances, natural persons may seek protection of their rights before the IAHRs. The IACtHR does not establish a general rule as this has to be analyzed on a case-by-case basis.

Finally, the IACtHR concludes that natural persons may, in certain cases, exhaust local remedies through legal persons, when the local remedies available can only be presented by the latter, such as the protection of property of a corporation. In these cases, the natural person would fulfill the requirement of exhaustion of local remedies and be allowed to submit an individual petition before the IAHRs.